

FAQ: Caseload Standards Setting Study

1) Since the goal of the *Hurrell-Harring v. State of New York Settlement* is to provide more resources to providers in the 5 counties, why are we doing the study at all?

We are doing the study to determine what resources are needed. The *Hurrell-Harring Settlement* (“the Settlement”) requires ILS to develop numerical caseload/workload standards for the providers in the five counties, i.e., ILS must determine the amount of time attorneys providing mandated representation in the five counties need in order to provide effective representation in their cases. Once these standards are set, ILS will assess the time attorneys have available to them for the providers in each of the counties and identify what staffing is needed (for the institutional providers) and resources are needed (for the ACP providers) to meet the standards. Under the terms of the Settlement, the State is initially required to take tangible steps to secure funding for the counties to meet these needs. At a later date, the State must ensure that the caseload/workload standards are implemented. (See Settlement § IV(C)).

Rather than come up with an arbitrary number of what we think caseloads should be, we are doing a data-driven study to determine the realities of how lawyers practice in the five *Hurrell-Harring* counties. The results of this New York county-based study will better reflect how much time attorneys truly need to provide quality representation to criminal defendants and will aid ILS in determining the most appropriate caseload standards possible. Thus, this in-depth, local study will allow ILS to accurately determine how long, on average, it will take to provide quality representation in the five New York State counties. The results of this study will produce credible caseload standards and, ultimately, a high integrity budget request to meet the counties’ resource needs.

2) In Phase 1 of the Study - time tracking - what are the included case classifications?

There are eight case type categories:

- Criminal violent felony
- Criminal other felony
- Criminal misdemeanor
- Violation case
- Post-disposition case
- Appeal of a criminal trial verdict
- Appeal of a guilty plea in a criminal case
- Parole revocation

This list includes all types of cases covered by the *Hurrell-Harring* settlement, which are criminal matters at the trial and appellate levels handled on behalf of indigent defendants. However, the study will also capture information about individual cases beyond only these eight broad categories, such as the class of felony (e.g. A, B, C) and the substance of the allegations against the client (e.g. possession of narcotics). We will use this more granular information to determine whether the eight categories of case are sufficient to capture the true range of attorney effort in cases before settling on the final standards.

3) In our county, many judges take vacation in August, when the time tracking phase will be conducted. Has this been factored into the study?

Researchers at the RAND Corporation and ILS are aware that these types of issues can affect data. Systematic differences in the ways cases are processed at different times of the year is called “seasonality” in the data. We will be able to detect and control for it in this study. In addition to the 8 week time tracking phase, RAND and ILS will also be extracting three years of caseload data for analysis from provider databases in all five counties. Those data will give us a clear picture of whether caseloads change depending on the time of year and provide detailed information about the demand for attorney services in the five counties. When the time tracking data are analyzed, one of the things that will be looked at is whether the numbers are typical, and, if they are not, why and how that should be accounted for.

These are exactly the kinds of local issues that are important to understanding the practice in each of the counties. ILS encourages attorneys to continue to raise issues relevant to the practice as we conduct this study.

4) Each criminal case is highly fact-specific so it is difficult to make generalizations on how cases are handled. How will you account for this in the study?

We understand that each criminal case is dependent on the specific charges, the underlying facts, local legal culture and conditions, and a host of other issues that may affect how a case is handled. For example, a complicated misdemeanor could take more time and require more resources than a straightforward felony. A case that on first glance might look easy could in the end prove time consuming with multiple appearances. Like all research, this study must set some parameters in order to collect the necessary data for analysis. The intent is to capture a range of experiences and aggregate the data to come up with a standards for the *average* amount of time an attorney should spend on each case type.

5) Does ILS have any insight into what resources the ACP attorneys feel they actually need?

In the past, ILS has looked at the provider’s USC 195 reports and compared them to a weighted version of the NAC caseload standard to calculate the unmet financial need in the five counties. We hope that this study will provide a more nuanced understanding of the counties’ resource needs.

Over the past year, we have spent some time interviewing attorneys in each of the *Hurrell-Harring* counties, and we have learned of the need for a variety of resources, such as better access to non-attorney supports (including investigators, social workers, experts, sentencing advocates, interpreters, etc.). We have also learned of the need for more streamlined processes, such as regular voucher payments for assigned counsel panel attorneys. These interviews are on-going and will continue so we can learn more. Additionally, we will continue to work with each of the providers in each of the *Hurrell-Harring* counties to gain a more complete

understanding of what is necessary to build program capacity and infrastructure so that they can fully support their attorneys. Finally, we are always interested in hearing from the attorneys themselves about what will help them provide quality mandated criminal defense representation.

6) Some judges move their calendars faster than other judges, some courtrooms are understaffed so attorneys have to wait longer for clients to be produced from jail, and sometimes attorneys have to wait for hours for clients to show up or for other reasons. How will the study account for these types of issues?

The case tracking application allows attorneys to track 13 different activities related to work performed on each case. One of the activities you can track is “time spent in court on this case.” If you spend three hours in court waiting for a client to appear or be produced from jail, you will be able to track that time accordingly and it will be counted. Another example of time that you will be able to track is “time spent traveling.” Though this may seem non-productive time, it is in fact necessary to your client representation and will be counted. The resulting analysis will quantify how much time is necessary to complete a case based on this information.

This study will be a reflection of mandated criminal defense representation in the five counties right now. Thus, like in Question 3, if there are local issues, such as understaffed courtrooms that affect your representation, please inform ILS so that the study analysis can take these issues into account.

7) Is it the intention of this study to evaluate the current ACP system and move toward an institutional provider based system instead?

No. This study is intended to look at the current time expenditures of the attorneys from the existing providers of mandated criminal defense representation in each of the five *Hurrell-Harring* counties and assess the time actually needed to provide quality client services. The standards will be derived from the current work of both ACP attorneys and attorneys who work for institutional providers. Accordingly the standards will apply to both ACP attorney members and institutional providers. When the study has concluded, ILS will look at the existing infrastructures – whether Assigned Counsel Panel, Legal Aid Society, Public Defender, Conflict Defender, or some combination – and determine where more resources are needed for each existing program. ILS will work with those programs, and county and state government, to allocate those resources.

It bears emphasizing that ILS’ mission is to promote quality representation for all providers of mandated representation – including institutional providers and Assigned Counsel Programs. ILS recognizes that all counties need an Assigned Counsel Program; even counties with an institutional provider as the primary provider need an Assigned Counsel Program to handle conflict and overflow cases. ILS recognizes that it is critical to ensure that the needs of Assigned Counsel Programs are met so that all defendants in a county have access to quality representation. ILS also understands the critical role that the private bar plays in maintaining high standards for the delivery of criminal defense services.

8) How will the information gathered as part of the time study be kept confidential?

All information will be kept strictly confidential. The website is password-protected and managed by JusticeWorks (JW), one of the nation's leading providers of case management systems for public defenders. JW has never experienced a data breach in all the time it has existed.

When the time tracking period finishes, the information attorneys have put into the system will be extracted and passed to the RAND Corporation for analysis. However, the client names and attorney names will NOT be extracted. These are only used in the system for the convenience of attorneys using the system in order that they can call up old cases to input new time using the name of the client. In other words, the information passed to the RAND Corporation for analysis will be completely anonymous. As a result, no staff at either the RAND Corporation or the Office of Indigent Legal Services will ever be able to know who the client was in a case, or who the attorney was that represented them. Moreover neither ILS nor the administrators of the indigent defense programs in the five counties will have access to data that will provide time or activity information at the individual attorney, case, or client levels.