

The Sixth Annual Report of the Indigent Legal Services Board

Covering Fiscal Year 2016-2017

“In the coming months, my administration will introduce a plan to bring these groundbreaking [*Hurrell-Harring* Settlement] reforms to the rest of the state.” (Governor Andrew M. Cuomo, Veto Message # 306, December 31, 2016)

“To ensure fair and equal representation for all accused individuals, the FY 2018 budget includes resources to develop the framework through which the state will fund one hundred percent of the costs necessary to extend the reforms provided for in the *Hurrell-Harring* settlement to all 62 counties in New York.” (Division of the Budget, “Governor Cuomo and Legislative Leaders Announce Agreement on FY 2018 State Budget”, April 7, 2017)

“We have a responsibility to protect the constitutional rights of New Yorkers and a moral obligation to relieve public defenders of heavy workloads that compromise the quality of representation they deliver.” (Assembly Speaker Carl E. Heastie, “SFY 2017-18 Budget Includes Six Year Plan to Improve Public Defense Services Statewide”, April 8, 2017)

Summary of Accomplishments and Challenges:

The April 2017 enactment of Executive Law § 832 (4) gave the ILS Office, in consultation with the Board, the authority and responsibility to extend three key provisions of the *Hurrell-Harring* settlement – counsel at arraignment, reduced caseload limits, and specified quality improvement initiatives – to every one of the sixty-two counties in New York, including New York City, at state expense. By April 1, 2023 every provider of publicly funded criminal defense representation should have the resources and the support needed to provide high quality, effective representation to every client, in every criminal case. The Board expresses its deep and lasting gratitude to Governor Cuomo and his staff; to Assembly Speaker Heastie and Senate Majority Leader Flanagan; to Senator DeFrancisco and Assemblymember Fahy; and to all the organizations who supported this year’s statutory amendments and fiscal commitment. The Board specifically expresses its appreciation to the New York State Bar Association (NYSBA) and the New York State Association of Counties (NYSAC) for their unswerving and influential support over many years.

Even as the Board acknowledges and applauds and prepares to implement the statewide reforms in public defense, it is keenly aware that its responsibility and that of the Office to improve the quality of parental representation in Family Court has not yet achieved statutory reform or fiscal relief. While incremental progress is being made, and alliances are being established, we have a long way to go before it can be said that structures and funding are in place to assure effective representation of every client in every case. The achievement of these twin goals, structural reform and appropriate state funding, is a core priority of the Office and the Board going forward.

Hurrell-Harring Implementation Milestones

Last year's Annual Report provided abundant information about the first year of implementation of the historic advances in public defense in the five counties covered by the *Hurrell-Harring Settlement Agreement*. Those counties – Onondaga, Ontario, Schuyler, Suffolk and Washington – saw dramatic improvement in the quality of representation provided to persons accused of a crime who could not afford to exercise their constitutional right to counsel by hiring an attorney; and those improvements continued and accelerated during this second year of implementation, thanks to the outstanding work of the ILS *Hurrell-Harring* Implementation Unit under the leadership of Chief Implementation Attorney Patricia Warth. The major milestones in HH implementation this year are as follows:

- April 1, 2016: In its 2016-2017 fiscal budget, the State makes \$10.4 million available to the *Hurrell-Harring* counties for caseload relief. This is an interim amount to ensure that the counties can start caseload relief initiatives while ILS develops caseload standards in accordance with the Settlement.
- April 4, 2016: Pursuant to the *Hurrell-Harring* Settlement, ILS issued and disseminated the *Criteria and Procedures for Determining Assigned Counsel Eligibility (Eligibility Standards)*.
- April 27, 2016: ILS conducted a convening at the New York State Bar Association in Albany, NY for all mandated providers to provide an overview of the *Eligibility Standards*, discuss statewide implementation, and respond to questions.
- July 2016: Working closely with the five counties, the *Hurrell-Harring* Team finalized the development of plans for thoughtfully spending the \$10.4 million that the State made available in caseload relief funding. These plans provide for the hiring of attorney and non-attorney staff, the creation of strong provider infrastructures for training and quality control oversight, and access to the supports needed for quality representation, including access to experienced and credentialed experts.

- May-October 2016: The *Hurrell-Harring* Team conducted trainings for providers in all the *Hurrell-Harring* counties on implementation of the *Eligibility Standards*. Additionally, in coordination with the Office of Court Administration's Office of Justice Court Support (OJCS), ILS also conducted trainings for the judges and magistrates in the *Hurrell-Harring* counties.
- October 3, 2016: The *Hurrell-Harring* counties met the Settlement deadline for implementation of the ILS *Eligibility Standards*.
- November 10, 2016: ILS submitted reports to the *Hurrell-Harring* parties updating them on the progress of implementing the 2015 Quality Improvement Plan and the 2015 Counsel at Arraignment Plan. The 2016 Quality Improvement update report can be found here: <https://www.ils.ny.gov/files/Hurrell-Harring/Quality%20Improvement/Hurrell-Harring%20Updated%20Quality%20Improvement%20Plan%20111016.pdf>. The 2016 Counsel at Arraignment update report can be found here: <https://www.ils.ny.gov/files/Hurrell-Harring/Counsel%20At%20Arraignment/Hurrell-Harring%20Updated%20Counsel%20At%20Arraignment%20Plan%20111016.pdf>.
- November 11, 2016: The five *Hurrell-Harring* counties met the Settlement's deadline for having programs in place to provide counsel at all arraignments in the counties. For all the providers, full arraignment coverage requires the implementation of multiple programs to cover arraignments that occur during regular court sessions as well as off-hour arraignments (i.e., those that occur any time of day or night outside of regular court sessions). In Onondaga County, for example, this means implementation of four arraignment programs: i) one for Syracuse City Court arraignments; ii) one for Syracuse Traffic Court arraignments; iii) arraignments programs for all regular court sessions in the County's 28 town and village courts; and iv) an on-call program for off-hour arraignments throughout the County.
- November-December, 2016: On November 18, the RAND Corporation delivered its draft caseload study report, pursuant to its contract with ILS. The RAND draft report detailed its comprehensive study of public defense providers' caseloads in the five *Hurrell-Harring* counties, and furnished its findings and recommendations to ILS. During late November and early December, ILS consulted with government officials and public defense providers in the five counties, and with the *Hurrell-Harring* parties. These consultations were essential to developing appropriate caseload standards under the Settlement Agreement.
- December 8, 2016: ILS met the Settlement deadline to submit a report setting appropriate caseload standards for providers. As the report notes: "Implementation of these standards in [the *Hurrell-Harring*] counties marks an historic

accomplishment: the achievement of fully funded caseload relief that is unprecedented in its provision of time and resources for public defenders and assigned counsel to represent their clients in accordance with established professional standards and ethical rules.” The report was released on May 8, 2017, and can be found here: <https://www.ils.ny.gov/files/Hurrell-Harring/Caseload%20Reduction/Caseload%20Standards%20Report%20Final%20120816.pdf>.

- January 2017: ILS issued a research report entitled: *The Impact of Eligibility Standards in Five Upstate New York Counties*, describing what we had learned about the impact of the Eligibility Standards on provider caseloads in the five *Hurrell-Harring* counties. This report can be found here: <https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20in%20Five%20Upstate%20New%20York%20Counties%20-%20ILS%20report%20January%202017.pdf>. On March 27, 2017, ILS supplemented this report with a Suffolk County Addendum, which can be found here: <https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20-%20Suffolk%20County%20Addendum%20-%20March%202017.pdf>.
- February 1, 2017: Having worked extensively with the providers to develop Settlement-related data collection and maintenance practices, ILS received the first Quarterly Reports from providers with data concerning implementation of the ILS Eligibility Standards, provision of Counsel at Arraignment, and information about attorney practices in areas that are markers of quality (e.g., use of non-attorney supports, client communication, motion practice). A dedicated email address was created to facilitate the routine transmittal of standardized data reports by all providers.
- March 2017: The *Hurrell-Harring* team began a series of structured interviews with attorneys to better understand their day-to-day work and to learn more about their perspectives on the barriers to delivering high quality representation. Team members also engaged in regular court observations, this time with an emphasis on County Court. The structured interviews and court observations informed our continued implementation efforts in all counties, and provided context for the issues raised and the progress highlighted in the 2017 Update Report.
- April 4, 2017: As required by the Settlement, ILS issued a report detailing implementation of the Eligibility Standards in the five *Hurrell-Harring*

counties. This report can be found here:

<https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/Implementation%20of%20Eligibility%20Criteria%20and%20Procedures%20in%20the%20Hurrell-Harring%20Counties%20040417.pdf>.

April 9, 2017: The state budget for FY 2017-2018 includes an appropriation of \$19,010,000 for full funding in the five lawsuit counties of the caseload standards established by ILS on December 8, 2016; and provides \$2.8 million for counsel at arraignment and \$2 million for quality improvement initiatives pursuant to the *Hurrell-Harring* settlement agreement.

Meetings and Actions of the Board

April 22, 2016: At the outset of this meeting, the Board and the Director honored the contributions made by original Board member Sue Sovie, whose involvement was instrumental in the Board's 2015 approval of the ILS *Standards for Parental Representation in State Intervention Matters*. At this meeting, the Board also:

- Voted to reallocate funds previously designated for other purposes, in order to increase the annual amount that would be available to support successful proposals in response to our second RFP for Counsel at First Appearance (CAFA). The Board's action increased the available funding for fulfilling this vital legal right from \$4 million to \$5.74 million annually;
- Authorized the Director to submit a plan to the Director of the Budget to expend up to \$800,000 for the continuation of CAFA in four of the five *Hurrell-Harring* counties;
- Received and reviewed a document submitted by Director Leahy entitled *Indicia of Progress in the 57 Counties Outside of New York City*. This report documented significant staffing increases in upstate institutional provider programs from 2012 to 2014. Attorney staffing in these offices rose by 12.5 %, and support staff by 17.8%. The average weighted caseload per attorney dropped from 719 in 2012, to 616 in 2014. This number, while far exceeding the maximum national standard of 400 weighted cases and the September, 2014 ILS standard of 367, nevertheless constituted a 14.3% reduction during this period;
- Welcomed a presentation by Director of Regional Initiatives Joanne Macri on the establishment of our first in the nation statewide network of Regional Immigration Assistance Centers.

June 17, 2016: At the outset of this meeting, the Board and the Director expressed their appreciation to Toni Cimino, Esq., who served with great distinction as liaison between the

Board and the Office since their establishment in 2010 and 2011 respectively; and congratulated her on her appointment as judge on the New York City Civil Court. At this meeting, the Board:

- Heard from Director Leahy and ILS counsel Joe Wierschem about the status of the Justice Equality Act legislation sponsored by Assemblymember Patricia Fahy of Albany and Sen. John DeFrancisco of Syracuse, which was nearing final approval by the Senate and the Assembly in the closing moments of the legislative session. (This bill was to receive final and unanimous approval in both legislative branches that evening, as reported in the New York Law Journal article *Indigent Defense Proponents Hail 'Historic Moment' in NY* (June 21, 2016);
- Reviewed a Request for Proposals issued by Onondaga County on June 10, 2016 seeking a first-rate vendor to provide high quality indigent defense services in the county; and heard a report from Amanda Oren, Quality Enhancement Attorney on the HH implementation team, concerning that RFP and the establishment of a mentor program in the county's Assigned Counsel Program;
- Received an update by Director of Research Andy Davies and HH Caseload Standards Attorney Nora Christenson concerning progress on the HH Caseload Standards Study, to be conducted by the RAND Corporation, whose report will be due in November, 2016;
- Reviewed the agenda and heard a report describing the meeting of the six Regional Immigration Assistance Centers that took place in Albany on June 2, 2016.

September 23, 2016: At this meeting, the Board:

- Voted to allocate the \$96.2 million FY 2016-17 Aid to Localities appropriation as recommended in Director Leahy's memorandum. Included within this amount was the **\$40,000,000** statutory distribution to New York City under State Finance Law § 98-b (3) (b); an allocation of **\$30,210,924** for Quality Enhancement distributions in New York City and the 57 counties that lie outside the city; an increased amount of **\$5,740,278** for Counsel at First Appearance grants; **\$4,000,000** for Quality Enhancement and Upstate Caseload Reduction grants; and **\$870,139** for the development of a Model Upstate Parental Representation Office. The Board also voted to allocate \$15.2 million for Hurrell-Harring implementation: **\$10,400,000** for caseload relief, **\$2,800,000** for counsel at first appearance, and **\$2 million** for quality improvement initiatives;
- Approved the Office's FY 2017-18 budget request in the amount of \$136,600,000, which consisted of \$130.2 million in Aid to Localities funding, and \$6.4 million in State Operations. The latter request included funding for a network of Regional Support Centers, for a Statewide Appellate Resource Center, and for additional funding for implementation of the *Hurrell-Harring* settlement;

- Heard a report by Angela Burton, ILS Director of Quality Enhancement for Parental Representation, who presented the Board with copies of the draft RFP for the Upstate Model Parental Representation Office, emphasizing the need for early representation and for a comprehensive or holistic, client centered philosophy of representation. She also informed Board members about the second annual statewide training conference that was scheduled for October in conjunction with the Child Welfare Court Improvement Project and NYSDA, and she thanked Chief Judge DiFiore for agreeing to give a videotaped welcome to the conference participants.

December 9, 2016: At this meeting, the Board:

- Reviewed the Off-Hours Arraignment Parts bill (Chapter 492) and the Streamlined Procedure for Poor Person Status on Appeal bill (Chapter 459), which had been signed into law by the Governor on November 28; and the amendment of County Law § 722-f (2) (Chapter 337) to require the counties and New York City to file their annual financial reports with ILS rather than the State Comptroller, which had been signed into law on September 29;
- Reviewed the 2016 updates on implementing the Counsel at Arraignment Obligations and the Quality Improvement Objectives of the *Hurrell-Harring* Settlement Agreement, which ILS had submitted to the parties on November 10, 2016;
- Received a report by the Director concerning the Office's December 8, 2016 determination of appropriate caseload standards for providers of public defense in the five counties, which had been timely delivered to the parties;
- Received a report on the December 1, 2016 RIAC meeting at the ILS Office at which the Director of the Governor's Office for New Americans appeared;
- Received a report by the Director concerning the Governor's consideration of the Justice Equality Act which had received unanimous legislative approval in June, 2016. Ultimately, this legislation would be vetoed by the Governor on December 31, 2016. In his veto message, the Governor vowed to propose the extension statewide of the *Hurrell-Harring* public defense reforms; and he fulfilled that promise with the release of his Executive Budget in January, 2017;
- Agreed that, given the necessarily intense focus on implementing all aspects of the *Hurrell-Harring* Settlement Agreement in timely fashion, publication of the Board's Fifth Annual Report would be deferred until March, 2017.

Parental Representation Activity

Angela Burton, ILS Director of Quality Enhancement for Parent Representation, engaged in the following activities:

- **April 8, 2016:** Delivered opening remarks at the CUNY Law Review Symposium, Reimagining Family Defense. Her article *Introduction to Symposium: Reimagining Family Defense* was published in the Winter 2016 issue, 20 CUNY L. Rev. 1, <http://academicworks.cuny.edu/clr/vol20/iss1/>
- **June 10, 2016:** Presented to Family Court Judges on ILS Standards for Parental Representation in State Intervention Matters at 9th JD Family Court Judges meeting in Pleasantville, at invitation of Hon. Kathie Davidson, 9th JD Family Court Supervising Judge
- **August 21, 2016:** Presented on ILS Standards at 8th JD Family Court Judges Meeting in Buffalo, at invitation of Hon. Michael Griffith, Supervising Judge
- **Families Matter 2016:** Co-sponsored this second successful statewide conference on October 14-15, 2016 in Albany with the New York State Defenders Association (NYSDA) and the NYS Child Welfare Court Improvement Project (CWCIP). This conference, attended by over 200 public defense attorneys representing parents in Family Court, featured opening remarks (via video) by Chief Judge DiFiore, and the presentation of the inaugural **Ella B. Family Justice Award** to Lauren Shapiro, Esq., Brooklyn Defender Services.
- **March 2, 2017:** Presented on ILS Standards at meeting of NYC Family Court Judges, Child Protective Affinity Group in Manhattan, at invitation of Hon. Jeanette Ruiz, Administrative Judge, NYC Family Court

Child Welfare Court Improvement Project:

- Participated on NYS Office of Child and Family Services (OCFS) Stakeholder Review Team for Federal government's Child and Family Services Review; recruited attorneys for Parent Attorney Focus Group requested by the CFSR team, and participated in the Focus Group
- Submitted written recommendations to OCFS for inclusion in federally required Program Improvement Plan for the CFSR, including a proposal that OCFS issue statewide guidelines to ensure adequate parenting time for children placed in foster care (Parenting Time Policy)
- Suggestion for Statewide Parenting Time Policy, although not included in the Program Improvement Plan, was adopted by OCFS to be drafted, with input from Angela, as a statewide Administrative Directive

Model Upstate Parental Representation Office: On March 20, 2017, ILS issued a competitive RFP to establish a model Parental Representation Office in a county outside of New York City, which will implement a client-centered, holistic, and multidisciplinary model of representation as embodied in the ILS *Standards for Parental Representation in State Intervention Matters*.

ILS Research Accomplishments

Andrew Davies, ILS Director of Research, reported the following significant activities:

November 2016: Publication of fourth annual Upstate Cost Estimate report

Using national caseload standards, the *Cost Estimate* report showed that unmet funding needs for public defenders declined approximately 12% between 2012 and 2015.

Full report: <https://www.ils.ny.gov/files/Hurrell-Harring/Caseload%20Reduction/Estimate%20of%20the%20Cost%20of%20Compliance%20with%20Maximum%20National%20Caseload%20Limits%20in%20Upstate%20New%20York%20-%202015%20Update.pdf>

December 2016: Completion of the RAND caseload study & resulting caseload funding request

ILS contracted with the RAND corporation to assist in the development of caseload standards pursuant to the Office's obligations under the *Hurrell-Harring* settlement. That study, which involved intensive data collection from the five lawsuit counties, sought to establish what additional time and resources attorneys needed to represent their clients effectively. Concluding in late 2016, the study formed the basis for ILS' determination of caseload standards for the five *Hurrell-Harring* counties. Those standards led to our successful request for \$19 million to those counties to guarantee the time attorneys need to provide appropriate representation for every client.

“Over 140 practicing public defenders and assigned private attorneys participated in one or more components of the study. For the first time in the history of New York State outside of New York City, these lawyers had an opportunity to measure the time they currently expend on criminal cases; to comment upon the sufficiency of that time; and to consider what time it should take to provide high quality representation for their clients in assigned criminal cases at the trial and appellate levels. The RAND study left no doubt that the 1973 NAC standards are outdated and excessive. Moreover, the study made it clear that modern caseload standards, suitable for representation in the twenty-first century, must include more criminal case categories than the felony-misdemeanor-appeal triad of the NAC standards.” **A Determination of Caseload Standards pursuant to §IV of the *Hurrell-Harring v. The State of New York* Settlement** (December 8, 2016) at 13.

January 2017: Publication of analysis of Impact of Eligibility Standards

ILS' eligibility standards, published in April of 2016, were made mandatory in the Hurrell-Harring counties in October of that year. We examined the impact of the standards upon caseloads and published our findings in January, 2017. Although the proportion of applicants deemed eligible for services increased in all the counties we studied, the increase was less than 4% on average, and no more than 6% in any county. A short Addendum to the report was published in March 2017 with data on Suffolk County that had not previously been available.

Original Report: <https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20in%20Five%20Upstate%20New%20York%20Counties%20-%20ILS%20report%20January%202017.pdf>

Suffolk County Addendum report: <https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20-%20Suffolk%20County%20Addendum%20-%20March%202017.pdf>.

April 7, 2017: Publication of first report on the Counsel at First Appearance Project

ILS' collaboration with SUNY Albany to assess the impact of Counsel at First Appearance (CAFA) in six upstate counties produced its first publication this year. The article, titled *Court Reform: Why Simple Solutions Might Not Fail? A Case Study of Implementation of Counsel at First Appearance*, appeared in the Spring 2017 volume of the *Ohio State Journal of Criminal Law*. The article documented the process of implementing CAFA in the counties under study, and sought to identify the ways counties and providers had overcome the obstacles they faced. It concluded that “programs largely overcame these difficulties by adopting incremental approaches to expanding defense services, designing programs that were adapted to local conditions, and by persevering in the face of political resistance.” This project was begun in 2014 with funding from the National Institute of Justice. Further publications from the CAFA team are expected in the future.

Full reference: Alissa Worden, Andrew Davies, Reveka Shteynberg and Kirstin Morgan (2017), “Court Reform: Why Simple Solutions Might Not Fail? A Case Study of Implementation of Counsel at First Appearance.” 14(2), *Ohio State Journal of Criminal Law* 521-551.

Other research activities:

- Alyssa Clark, ILS research analyst, was admitted to study for a Ph.D. in criminal justice at SUNY Albany in fall of 2016.
- Andrew Davies co-edited a volume of empirical research on public defense in the *Ohio State Journal of Criminal Law* with Prof. Janet Moore of the University of Cincinnati. Davies was co-author on two pieces – one of which was the CAFA article referenced above, and the other of which reported results of a survey of practicing public defenders on what they thought researchers should investigate. (Full reference: Janet Moore and

Andrew Davies (2017), "Knowing Defense." 14(2), Ohio State Journal of Criminal Law 345-371.)

- In fall of 2016, Davies was named co-Principal Investigator on the *Survey of Publicly Appointed Defense Attorneys*. This project, funded by the Department of Justice's Bureau of Justice Statistics, will develop a survey instrument to gather nationally representative information on publicly appointed defense attorneys and their work. Other collaborators on the project are the National Association for Public Defense and the Urban Institute.
- Davies organized the third annual series of panels dedicated to research into indigent legal services at the 2016 *American Society of Criminology* meeting in New Orleans, Louisiana, in November of that year.
- He also presented before the National Right to Counsel Consortium (on 'Research and Reform') in September 2016, and the White House Interagency Roundtable (on 'Indicators of Access to Justice') in October 2016.

Regional Immigration Assistance Centers

Joanne Macri, ILS Director of Regional Initiatives, reports the following significant activities:

- **June 2 and December 1, 2016:** Statewide meetings of the six RIACs led by ILS Director of Regional Initiatives Joanne Macri, including training sessions and roundtable exchanges of information
- **October 27, 2016:** RIAC staff visited the Department of Homeland Security (DHS) Buffalo Federal Detention Facility; attended a session on local policy issues by the DHS Office of Chief Counsel, and engaged in a discussion of statewide enforcement policies and practices impacting access to counsel in criminal proceedings with the District Director of US Customs and Immigration Enforcement (ICE) and the DHS Chief Counsel.
- **January, 2017:** ILS developed and released a shared library of resources for statewide use by the RIACs, as a means to develop statewide materials that may be utilized in each region.
- **Trainings Conducted:** During this year, Joanne Macri conducted 27 trainings or presentations related to the RIACs and to the participation by ILS on the NYS Interagency Task Force on Human Trafficking. These included six training sessions for judges on the RIACs and Immigration Consequences, one was a program on Human Trafficking at the Westchester Bar Association, and one was a presentation at the New York State Bar Association Annual Meeting on behalf of the NYSBA Criminal Justice Section.

The Board concludes this Report by expressing its pride in the great progress that has been accomplished in improving the quality of public criminal defense representation, its commitment to extending the *Hurrell-Harring* public defense reforms throughout the state, and its determination to seek similar reforms for legally mandated parental representation.

Approved on this third day of November, 2017.

Janet DiFiore, Chair

Michael G. Breslin

Carmen Ciparick

Sheila DiTullio

Vincent E. Doyle

John R. Dunne

Joseph C. Mareane

Leonard Noisette