



Improving the Quality of Mandated Representation Throughout the State of New York

To: Indigent Legal Services Board
 From: Bill Leahy
 Re: State-Funded Upstate Caseload Limits
 Date: September 25, 2014

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Our **Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2013 Update**, released yesterday, draws a direct parallel between the state’s success in reducing the weighted criminal caseloads of New York City institutional defenders from almost 600 in 2009 to under 400 today, via the infusion of annual state appropriations; and the challenge of reducing upstate providers’ caseloads from over 700 in 2012 (and 680 in 2013) to a similar level. Critical to the success of the City’s progress was the institution of caseload limits, set in 2010 but not to take effect until April 1, 2014, by which time state funding support was expected to, and did, suffice to support the reduced caseload levels.

Our data shows that, in 2013, available funding fell \$105.2 million short of the amount that would have permitted upstate providers to be in compliance with national maximum caseload limits. (As explained in last year’s Cost Estimate, we have tentatively set the weighted caseload limit for institutional providers at 367, to account for supervision as the national standards require, but do not quantify). There can be little question that setting a caseload limit for upstate institutional providers, *contingent on state funding directed for that purpose, and effective only when such funding shall have been appropriated*, would provide powerful backing for our funding advocacy.

Therefore, I ask the Board to establish a limit of 367 weighted new case assignments in any calendar year in institutional provider offices in the 57 upstate counties, such cases to be weighted in accordance with the analysis found in our 2012 Upstate Cost Estimate at pages 3-5 (i.e., 367 misdemeanors or 138 felonies or parental representation cases). This caseload limit is contingent upon the appropriation of sufficient state funds to fully support it; and it is to become effective only when the Office of Indigent Legal Services has certified that sufficient state funds have been appropriated. These limits are to apply as an average per staff attorney within an organization, so that the leadership of the organization may assign individual staff attorneys so as to promote the most effective representation of clients.

In order to estimate the amount of additional state funding needed for upstate providers to be in compliance with national maximum caseload limits, the Director shall annually, at the time of the preparation and submission of the Office's Executive Budget Request, review the workload of upstate providers and present the Board with an updated Cost Estimate. In undertaking such review, the Director may consider differences among categories of cases that comprise the workload of the provider; the level of activity required at different phases of the proceeding; local court practice, including the duration of a case; and any other factor the Director deems relevant.

These limits may be adjusted upon written request by the Director of the Office and with the approval of the Indigent Legal Services Board.