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Indigents Benefit From Caseload Caps, Report Shows

Joel Stashenko, New York Law Journal

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Caseload caps imposed five years ago on attorneys who provide indigent criminal defense services in New York City are working, a study released Tuesday by the state courts indicates.

Goals set for attorney workload reductions were met by 2013, according to [a study by the Center for Court Innovation](#) on the implementation of caseloads in Brooklyn. Interviews by the group with attorneys, judges and legal services supervisors showed lawyers have had more time to spend with clients and on specialized needs, such as immigration status cases.

Those and other "highly positive" results suggest success if caseload caps are applied elsewhere, the researchers said.

"The implementation experience in Brooklyn suggests that similar initiatives can improve indigent defense representation in other counties where there is a demonstrated need," the report said.

It also noted the success was supported by funding from the state, which has climbed steadily to the \$55.6 million awarded to institutional providers this fiscal year.

Court-supervised improvements to criminal defense services are being implemented in five counties outside of New York City, with Chief Judge Jonathan Lippman and others advocating for eventual adoption of uniform statewide standards.

The data was compiled from the two primary providers of indigent legal services in Brooklyn: the Legal Aid Society and Brooklyn Defense Services. It showed that the misdemeanor-equivalent caseload of 505 that attorneys for the two groups averaged in 2009 had fallen to 358 in 2014—a 29 percent drop.

A goal of 400 misdemeanor equivalents was set as the maximum average caseload when the program was established under a bill approved by the Legislature in 2009 ([NYLJ, April 6, 2009](#)).

Impact of Caseload Caps in Brooklyn

Legal Aid Society and Brooklyn Defender Services

	Annual caseload, by misdemeanor caseload equivalent	Annual attorney staffing, by full-time equivalent	Annual non-attorney staffing, including investigators, social workers and paralegals
2009	505	196	73
2010	493	195	74
2011	467	210	83
2012	420	237	101
2013	382	255	119
2014	358	282	139

According to the study, the Legal Aid Society and Brooklyn Defense Services increased their attorney staff from 196 to 282 between 2009 and 2014—an increase of 43 percent.

While the data is confined to Brooklyn, Lippman said court administrators believe the numbers represent caseload reductions throughout the city since the program was created.

"The legislation that resulted in the case caps was just phenomenal and a great thing for the city and the state," Lippman said in an interview Tuesday. "I am very proud of case cap. I don't think there is a jurisdiction in the country that has done more with public funding than we've done to put those case caps in place."

Lippman said he hopes the Brooklyn statistics will make a strong case for adopting similar criminal defense caseloads outside New York City, where the Office of Indigent Legal Services (ILS) estimates the misdemeanor-equivalent caseload of defense attorneys is 681—far higher than what their city colleagues face.

The board of the ILS, which Lippman chairs, unsuccessfully requested money in the current state budget to extend the caseload cap statewide ([NYLJ, Sept. 29, 2014](#)).

"Where the funding has been so uneven and inadequate, you don't need to be a nuclear scientist to know that the quality of representation runs a grave risk of being beneath state-of-the-art," Lippman said. "Where you have a low level of funding and tremendous caseloads, I don't care if you are Clarence Darrow, you are not going to provide the representation that everybody deserves."

The study also included group discussions involving judges and officials at the legal services providers and surveys of attorneys working for the groups. The report said judges, in general, noted positive changes in the quality of representation and services provided by social workers, investigators and other support staff.

Surveys of lawyers showed overwhelming agreement that they had more time to spend with their clients and more time to complete their duties within normal working hours.

Researchers said the lawyers also expressed frustration at the amount of time wasted waiting for jail and court personnel to produce incarcerated clients for court appearances or conferences.

Dawn Ryan, attorney-in-charge of the Legal Aid Society's Brooklyn Criminal Practice Office, said her group contributed information to the center's report.

"We agree with the conclusions of the study in that we have been able to devote more resources to our clients once our caseloads are reduced," Ryan said. "We also consider the case cap reductions to be a work in progress and once caseloads are reduced further, we hope to attain appropriate staffing ratios especially those of social worker and investigator to attorneys and assist clients even further."

Lisa Schreibersdorf, founder and executive director of Brooklyn Defense Services, said she agrees that caseload caps have been positive.

"They [staff attorneys] have more time to think about their cases, more time to dig in on their cases, more time to talk to their clients," Schreibersdorf said. "That's better for the courts, for

the law, for our clients, for the lawyers and it's better for me. I don't have to see so many people running around with unmanageable caseloads."

Freeing up additional attorneys to do training has also given supervisors more flexibility to better prepare new attorneys, Schreibersdorf said.

Lippman said the Center for Court Innovation was directed to study Brooklyn because a large borough would give researchers a more manageable sample.

Between them, the Legal Aid Society (63.7 percent) and Brooklyn Defense Services (26.5 percent) represent most of the indigent defendants charged with crimes each year in Brooklyn. The rest are represented by 18-B assigned counsels.

The ILS estimated that it would cost about \$105 million a year to bring caseloads for criminal legal services providers in the 57 counties outside of New York City down to levels reported in Brooklyn ([NYLJ, Sept. 25, 2014](#)).

ILS Director William Leahy said [the center's report](#) provides more proof that devoting resources to reducing caseloads can produce tangible results in terms of better representation.

"I know this study is commissioned by the OCA and it comes out pretty much the way you would expect it to," Leahy said. "But I think this Brooklyn study is very important. It ...will provide research that will be needed as we set a strong path for representation in the entire state."

Leahy's office is monitoring compliance with a court settlement in *Hurrell-Harring v. State of New York* that calls for improvements in the criminal defense services provided by Suffolk, Washington, Ontario, Onondaga and Schuyler counties ([NYLJ, Oct. 22](#)). The ILS said it wants the models established for defense services in those counties, along with those available in New York City, to be a guide for those available in the rest of the state.

ILS director of research, Andrew Davies, said the Brooklyn study also shows improvements in the legal services provided to clients with mental health disorders and who are military veterans, two groups that have been found with particular legal needs statewide.

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