



Andrew M. Cuomo  
Governor

STATE OF NEW YORK  
**OFFICE OF INDIGENT LEGAL SERVICES**

80 S SWAN STREET, SUITE 1147  
ALBANY, NEW YORK 12210  
Tel: (518) 486-2028 Fax: (518) 474-5050  
E-Mail: [info@ils.ny.gov](mailto:info@ils.ny.gov)  
<http://www.ils.ny.gov>

William J. Leahy  
Director

Joseph F. Wierschem  
Counsel

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

## INDIGENT LEGAL SERVICES BOARD

April 13, 2018

### Agenda

- I. Approval of minutes of November 3, 2017 meeting
- II. Report on Final FY 2018-2019 budget (Joe Wierschem) (attachments)
- III. Presentation by Cynthia Feathers, Director of Appellate and Post-Conviction Representation
- IV. Recent Developments in Parental Representation (Bill and Cynthia)
  - Commission on Parental Legal Representation
  - NYSBA Committee on Families and the Law (April 13-14) (attachment)
  - *Families Matter* Training Conference (April 20-21) (attachment)
- V. Progress Reports on *Hurrell-Harring* and Statewide Reform Implementation (Bill and Joe)
- VI. Washington County Nominated for National Criminal Justice Award (distributed at meeting)
- VII. Leahy, *The Right to Counsel in the State of New York: How Reform Was Achieved After Decades of Failure*, 51 Indiana L. Rev. 145 (2018) (distributed at meeting)
- VIII. Participation by Bill Leahy and Andy Davies at ABA Public Defender Roundtable and Summit, and Bill at Indiana Public Defense Task Force (April 19-20)
- IX. Remaining 2018 Board Meetings:
  - Friday, June 1**
  - Friday, September 21**
  - Friday, November 30**

**Minutes for the Indigent Legal Services Board Meeting**

November 3, 2017

11:00 A.M.

New York City Bar Association

**Board Members Present:** Chief Judge Janet DiFiore, Mike Breslin, John Dunne, Carmen B. Ciparick, Judge Sheila DiTullio, Lenny Noisette

**ILS Office:** Bill Leahy, Joe Wierschem, Joanne Macri

**Invited Guest:** Suzette Melendez (by phone)

**Minutes recorded by:** Mindy Jeng

The Chief Judge made brief opening remarks and noted that board member Joe Mareane is dealing with health issues and is in the Board's thoughts and prayers.

**I. Approval of September 22, 2017 Meeting Minutes**

A motion to approve the September 2017 meeting minutes was made and seconded. The minutes were approved by a unanimous vote.

**II. Approval of Sixth Annual Report of the Board**

A motion to approve the report was made and seconded.

Bill Leahy reported that the Sixth Annual Report references the December 31, 2016 veto message by the Governor as well as the April, 2017 legislation extending the *Hurrell-Harring* reforms to all 62 counties. The Report was approved by the Board and signed by the Chief Judge.

**III. Status Report on ILS FY 2018-2019 Budget Request**

Since the submission of the FY 2018-19 budget request, Joe Wierschem reported that ILS has engaged in numerous meetings with the Division of Budget. The meetings have been productive and collaborative in nature. In anticipation of the filing of plans by ILS on December 1<sup>st</sup> for statewide expansion of the *Hurrell-Harring* reforms, there have been a number of discussions about ILS staffing needs and the level of local aid funding in our FY 2018-19 budget request.

**IV. Report on Activities of the Statewide Implementation Unit**

Joanne Macri reported that the statewide implementation unit is working on improving the quality of public defense and improving access to experts and other support services. They have

focused on gathering information in a short period. They developed a survey and sent it out to counties. They had a 95% response rate. The unit interviewed providers in every county. Using videoconferencing technology, the staff asked providers about staffing, attorney experience levels, budgets, access to experts, retention, and recruitment.

The statewide implementation unit finished surveying all counties and NYC providers on November 2. They are now developing profiles for every county and determining the needs of every county. They will reach a consensus about what every county needs, for the reports which are due on December 1.

To gather information on Counsel at First Appearance (CAFA), they have distributed a survey for each county, covering 1258 courts. The survey results should identify where counties always have attorneys at arraignments and will allow ILS to follow up and see where the gaps are.

Andy Davies is leading the research into caseload relief for the upstate counties. He is processing statewide data from UCS 195 reports. Some of the providers have been able to provide data about the seven different case types, in accordance with the ILS Caseload Standards.

Several board members commented that the statewide implementation unit is doing a phenomenal job. They are taking a very organized approach to the work. One board member asked about the most difficult hurdles at this stage in the process. Bill Leahy replied that counsel at arraignment remains one of the most challenging areas. ILS is considering what is successful in other HH counties and in other parts of the state. Many counties are still considering how to approach the issue. Bill Leahy noted that every county knows that CAFA needs to get done.

A board member asked if judges are open to CAFA. Bill stated that there has been support from the magistrates in rural counties. The goal is to have a sustainable program. Adequate staffing is an issue in many areas.

Bill commented that every county is different. Before 2010, each county was operating its own system for five decades. County and providers are at different stages of understanding what is required and what is possible. ILS is working with the counties and hopes to implement regional support centers; ILS would like a local presence to deliver that message on a regular basis. Bill stated that ILS does not underestimate the task ahead. Bill noted that the 95% response rate to the survey was due to Joanne Macri's diligence in calling people and encouraging them to complete the survey.

## **V. Family Visiting Policy for Children in Foster Care**

Bill stated that Angela Burton was working on this upstate family visiting policy for children in foster care. The policy is aimed at helping programs comply with the federal audit of Children and Family Services. New York City has already implemented a family-friendly visiting policy that allows for visitation by natural parents of children in foster care.

Angela worked through the Child Welfare Court Improvement Project and elicited the support of upstate family providers. Angela has been working to get family visiting identified by OCFS as a response to the federal audit. She pushed for an administrative directive on family visitation.

Many different counties are now conducting trainings and issuing advice and at times, policy. The process has brought a lot of stakeholders together. Collaboration has not happened like this previously in the upstate counties.

A board member inquired about the type of visits that will be permitted. The emphasis will be on unsupervised visits. They are trying to avoid the feeling of a “prison visit.”

A board member noted that in upstate, others are saying that people finally care about Family Court. A board member noted that ILS should continue to advocate for family representation.

## **VI. Significant ILS Office Activities**

ILS completed a 2017 update to the *Hurrell-Harring* plans to implement Counsel at Arraignment and quality improvement objectives. Patricia completed the plan early. ILS will discuss it with plaintiff’s counsel and solicit their comments and ideas. Patricia has done amazing work on updating the plan. Bill noted that *Hurrell-Harring* is the foundation of everything ILS is doing. Our statewide progress has flowed from our implementation of the lawsuit settlement.

Bill stated that ILS has exceeded expectations in the HH counties. Counties are challenging themselves to get the reform done, and ILS is very pleased at the progress.

Cynthia Feathers submitted a letter on the proposed increased rates for court-appointed experts. OCA appears poised to take action on that front.

Bill discussed OCA’s press release on off-hour arraignment parts, as well as the Magistrates’ Association Meeting in October. Bill was pleased with the memo and said the meeting was impressive. Judge Murphy spoke about what the law requires, and there was support from the magistrates.

Jonathan Gradess had a retirement event in Albany, at which Bill was one of the speakers. Jonathan communicated to Bill that he wanted to help create a state system for public defense. At the Association of Pretrial Service Agencies, Bill spoke about bail reform from a defense perspective. In NYC, most people charged with misdemeanors and non-violent felonies are released. This is not true upstate, as data demonstrate. Bill has been advocating for a statutory presumption of release and a complete prohibition of arraignment without counsel. Bill believes that when a bail has been set, there should be a statutory right to de novo review at the earliest opportunity. The de novo review would be before an OCA judge.

A board member shared that individuals can be held for a month or two in rural counties. Local courts know their localities, and they do not like people coming into their town and committing a crime, even when it is not a crime of violence.

Deputy Attorney General Rod Rosenstein gave a speech on the right to counsel at the Right to Counsel National Consortium in Washington. It was the last annual meeting of the Consortium, as its funding was not renewed. Bill will consult with other experts about what can be done to address this.



Bill will inform other state and local organizations at the National Association for Public Defense caseload conference in St. Louis that New York has caseload standards with legal force due to the *Hurrell-Harring* settlement. No other state is implementing fully funded caseload standards at the level of the ILS standards. Joseph Wierschem is leading a panel including Patricia Warth, Joanne Macri and Andrew Davies at the National Legal Aid and Defender Association in Washington. This is another excellent opportunity to inform other jurisdictions about public defense reform in New York.

**VII. Scheduling 2018 Meetings**

Bill asked the members to carefully look at their schedules. He will finalize the meeting dates with the Chief Judge and try to find dates that work for everyone.

**VIII. Executive Session**

A board member moved to begin the executive session, and the motion was seconded.

A motion was made to move back into general session, and the motion was seconded.

During the Executive Session, no action was taken. A motion was made to adjourn the meeting, and the motion was seconded. The meeting was adjourned. The meeting ended at 12:57 pm.

**FY 2018-19 Final Budget**  
**Office of Indigent Legal Services (ILS) (Office)**

	<b>FY 2017-18 Final Budget</b>	<b>Executive Budget proposal</b>	<b>Assembly Budget proposal</b>	<b>Senate Budget proposal</b>	<b>FY 2018-19 Final Budget</b>
<b>State Operations</b>	<b>\$4.8 million</b>	<b>\$5.7 million</b>	<b>\$5.7 million</b>	<b>\$5.7 million</b>	<b>\$5.7 million</b>
<b>Aid to Localities</b>	<b>\$104.8 million</b>	<b>\$155.5 million</b>	<b>\$155.5 million</b>	<b>\$155.5 million</b>	<b>\$155.5 million</b>
<b>All Funds</b>	<b>\$109.6 million</b>	<b>\$161.2 million</b>	<b>\$161.2 million</b>	<b>\$161.2 million</b>	<b>\$161.2 million</b>

**State Operations**

- **Office Operations (A.9500-D/S.7500-D):**
  - Of the \$5.7 million State Operations appropriation in the FY 2018-19 Final Budget, \$3.0 million is allocated for general office operations; \$1.3 million for implementation of the *Hurrell-Harring* settlement; and \$1.4 million for implementation of the statewide expansion of *Hurrell-Harring* reforms.

**Aid to Localities:**

- **ILS Distributions and Grants; Implementation of Hurrell-Harring Settlement; and Implementation of Statewide Expansion of Hurrell-Harring Reforms (A.9503-D/S.7503-D):**
  - Of the \$155.5 million Aid to Localities appropriation in the FY 2018-19 Final Budget, \$81 million is allocated to fund ILS distributions and grants, \$23.8 million is allocated for implementation of the *Hurrell-Harring* settlement, and \$50.7 million is allocated for the statewide expansion of *Hurrell-Harring* reforms.
  - **Hurrell-Harring Settlement.** The \$23.8 million for implementation of the *Hurrell-Harring* settlement is suballocated as follows:
    - \$19.0 million for the five settlement counties to add staff and other resources needed to comply with caseload/workload standards determined by ILS;
    - \$2.0 million to further implement the written plan developed by ILS to improve the quality of indigent defense in the five settlement counties; and
    - \$2.8 million to further implement the written plan developed by ILS to provide in person representation of eligible defendants at all arraignments in the five settlement counties.
  - **Statewide Expansion of Hurrell-Harring Reforms.** The \$50.7 million for implementation of the statewide expansion of the *Hurrell-Harring* reforms is suballocated as follows:
    - \$50.0 million to implement the plans submitted by ILS on December 1, 2017 to extend *Hurrell-Harring* reforms statewide. The budgetary language (1) authorizes the transfer of these funds to state operations and suballocation of these funds to other state agencies and (2) limits extensions for statewide expansion contracts to 24 months.

- \$720,000 for the development, administration and auditing of contracts. These funds may be transferred to state operations or suballocated to other state agencies.

**Article VII language:**

- **Transfer of Authority to Approve Bar Association Assigned Counsel Plans and Conflict Defender Offices (A.9505-D/S.7505-D. Part MM):**
  - Part MM of the FY 2018-19 PPGG Article VII (1) transfers the authority to approve plans of bar associations to operate an assigned counsel program or office of conflict defender from the Chief Administrator to the Office of Indigent Legal Services and (2) requires indigent legal service providers to file annual reports with both the Chief Administrator and ILS. This legislation would take effect April 1, 2019.

OFFICE OF INDIGENT LEGAL SERVICES

AID TO LOCALITIES 2018-19

1 For payment according to the following schedule:

2	APPROPRIATIONS	REAPPROPRIATIONS
3 Special Revenue Funds - Other .....	155,530,000	255,615,000
4	-----	-----
5 All Funds .....	155,530,000	255,615,000
6	=====	=====

7 SCHEDULE

8 HHS STATEWIDE IMPLEMENTATION ..... 50,720,000  
9 -----

10 Special Revenue Funds - Other  
11 Indigent Legal Services Fund  
12 Indigent Legal Services Account - 23551

13 For services and expenses related to the  
14 implementation of the plans developed  
15 pursuant to subdivision 4 of section 832  
16 of the executive law. Such contracts shall  
17 be extended for a period of not more than  
18 twenty-four months. A portion of these  
19 funds may be transferred to state oper-  
20 ations and may be suballocated to other  
21 state agencies ..... 50,000,000

22 For services and expenses related to the  
23 development, administration, and auditing  
24 of contracts established pursuant to  
25 subdivision 4 of section 832 of the execu-  
26 tive law. These funds may be transferred  
27 to state operations and may be suballo-  
28 cated to other state agencies ..... 720,000  
29 -----

30 HURRELL-HARRING SETTLEMENT PROGRAM ..... 23,810,000  
31 -----

32 Special Revenue Funds - Other  
33 Indigent Legal Services Fund  
34 Indigent Legal Services Account - 23551

35 For services and expenses related to the  
36 implementation of the settlement agreement  
37 in the matter of Hurrell-Harring, et al,  
38 v. State of New York in accordance with  
39 paragraphs IX(C), V(C), and IX (D) of such  
40 settlement agreement.

41 For the purposes of accomplishing the objec-  
42 tives set forth in paragraph III(A)(1) of  
43 such settlement agreement in Ontario,

OFFICE OF INDIGENT LEGAL SERVICES

AID TO LOCALITIES 2018-19

1	Onondaga, Schuyler, Suffolk and Washington	
2	counties. Any funds received by a county	
3	under such appropriation shall be used to	
4	supplement and not supplant any local	
5	funds that the county currently spends for	
6	the provision of services pursuant to	
7	county law article 18-B (55507) .....	2,800,000
8	For the purposes of accomplishing the objec-	
9	tives set forth in paragraph V(A) of such	
10	settlement agreement in Ontario, Onondaga,	
11	Schuyler, Suffolk and Washington counties.	
12	Any funds received by a county under such	
13	appropriation shall be used to supplement	
14	and not supplant any local funds that the	
15	county currently spends for the provision	
16	of services pursuant to county law article	
17	18-B (55508) .....	2,000,000
18	For the purpose of accomplishing the objec-	
19	tives set forth in paragraph IV(C) of such	
20	settlement agreement in Ontario, Onondaga,	
21	Schuyler, Suffolk and Washington counties.	
22	Any funds received by a county under such	
23	appropriation shall be used to supplement	
24	and not supplant any local funds that the	
25	county currently spends for the provision	
26	of services pursuant to county law article	
27	18-B (55509) .....	19,010,000
28		-----
29	INDIGENT LEGAL SERVICES PROGRAM .....	81,000,000
30		-----
31	Special Revenue Funds - Other	
32	Indigent Legal Services Fund	
33	Indigent Legal Services Account - 23551	
34	For payments to counties and the city of New	
35	York related to indigent legal services	
36	pursuant to section 98-b of the state	
37	finance law and sections 832 and 833 of	
38	the executive law (55502) .....	81,000,000
39		-----

OFFICE OF INDIGENT LEGAL SERVICES

AID TO LOCALITIES - REAPPROPRIATIONS 2018-19

1 HURRELL-HARRING SETTLEMENT PROGRAM

- 2 Special Revenue Funds - Other
- 3 Indigent Legal Services Fund
- 4 Indigent Legal Services Account - 23551

5 By chapter 53, section 1, of the laws of 2017:

6 For services and expenses related to the implementation of the settle-  
7 ment agreement in the matter of Hurrell-Harring, et al, v. State of  
8 New York in accordance with paragraphs IX(C), V(C), and IX (D) of  
9 such settlement agreement.

10 For the purposes of accomplishing the objectives set forth in para-  
11 graph III(A)(1) of such settlement agreement in Ontario, Onondaga,  
12 Schuyler, Suffolk and Washington counties. Any funds received by a  
13 county under such appropriation shall be used to supplement and not  
14 supplant any local funds that the county currently spends for the  
15 provision of services pursuant to county law article 18-B [~~(55504)~~]  
16 (55507) ... 2,800,000 ..... (re. \$2,800,000)

17 For the purposes of accomplishing the objectives set forth in para-  
18 graph V(A) of such settlement agreement in Ontario, Onondaga,  
19 Schuyler, Suffolk and Washington counties. Any funds received by a  
20 county under such appropriation shall be used to supplement and not  
21 supplant any local funds that the county currently spends for the  
22 provision of services pursuant to county law article 18-B [~~(55504)~~]  
23 (55508) ... 2,000,000 ..... (re. \$2,000,000)

24 For the purpose of accomplishing the objectives set forth in paragraph  
25 IV(C) of such settlement agreement in Ontario, Onondaga, Schuyler,  
26 Suffolk and Washington counties. Any funds received by a county  
27 under such appropriation shall be used to supplement and not  
28 supplant any local funds that the county currently spends for the  
29 provision of services pursuant to county law article 18-B [~~(55504)~~]  
30 (55509) ... 19,010,000 ..... (re. \$19,010,000)

31 INDIGENT LEGAL SERVICES PROGRAM

- 32 Special Revenue Funds - Other
- 33 Indigent Legal Services Fund
- 34 Indigent Legal Services Fund Account - 23551

35 By chapter 53, section 1, of the laws of 2017:

36 For payments to counties and the city of New York related to indigent  
37 legal services pursuant to section 98-b of the state finance law and  
38 sections 832 and 833 of the executive law (55502) .....  
39 81,000,000 ..... (re. \$81,000,000)

40 By chapter 53, section 1, of the laws of 2016:

41 For payments to counties and the city of New York related to indigent  
42 legal services pursuant to section 98-b of the state finance law and  
43 sections 832 and 833 of the executive law (55502) .....  
44 81,000,000 ..... (re. \$40,366,000)

45 For services and expenses related to the implementation of the settle-  
46 ment agreement in the matter of Hurrell-Harring, et al, v. State of



OFFICE OF INDIGENT LEGAL SERVICES

AID TO LOCALITIES - REAPPROPRIATIONS 2018-19

1 New York in accordance with paragraphs IX(C), V(C), and IX (D) of  
 2 such settlement agreement.  
 3 Of the amounts appropriated herein, \$2,000,000 shall be made available  
 4 for the purposes of accomplishing the objectives set forth in para-  
 5 graph III(A)(1) of such settlement agreement in Ontario, Onondaga,  
 6 Schuyler, Suffolk and Washington counties; Provided further that, of  
 7 the amounts appropriated herein, \$2,000,000 shall be made available  
 8 for the purposes of accomplishing the objectives set forth in para-  
 9 graph V(A) of such settlement agreement in Ontario, Onondaga,  
 10 Schuyler, Suffolk and Washington counties; Provided further that, of  
 11 the amounts appropriated herein, \$10,400,000 shall be made available  
 12 for the purposes of accomplishing the objectives set forth in para-  
 13 graph IV(C) of such settlement agreement in Ontario, Onondaga,  
 14 Schuyler, Suffolk and Washington counties. Any funds received by a  
 15 county under such appropriation shall be used to supplement and not  
 16 supplant any local funds that the county currently spends for the  
 17 provision of counsel, expert, investigative and any other services  
 18 pursuant to county law article 18-B (55504) .....  
 19 14,400,000 ..... (re. \$10,220,000)  
 20 For services and expenses related to the implementation of the settle-  
 21 ment agreement in the matter of Hurrell-Harring, et al, v. State of  
 22 New York in Ontario, Onondaga, Schuyler, Suffolk and/or Washington  
 23 counties, as deemed necessary and pursuant to a plan developed by  
 24 office of indigent legal services and approved by the director of  
 25 the budget (55505) ... 800,000 ..... (re. \$800,000)

26 By chapter 53, section 1, of the laws of 2015:  
 27 For payments to counties and the city of New York related to indigent  
 28 legal services pursuant to section 98-b of the state finance law and  
 29 sections 832 and 833 of the executive law (55502).....  
 30 81,000,000 ..... (re. \$36,767,000)  
 31 For services and expenses related to the implementation of the settle-  
 32 ment agreement in the matter of Hurrell-Harring, et al, v. State of  
 33 New York. Of the amounts appropriated herein, \$1,000,000 shall be  
 34 made available in accordance with paragraph III(C) of such settle-  
 35 ment agreement for the purposes of paying costs associated with  
 36 interim steps described in paragraph III(A)(2) of such settlement  
 37 agreement in Ontario, Onondaga, Schuyler, Suffolk and Washington  
 38 counties; provided further that in accordance with paragraph III(C)  
 39 of such settlement agreement, a portion of these funds may be trans-  
 40 ferred to state operations to pay costs incurred by the office of  
 41 indigent legal services. Provided further that, of the amounts  
 42 appropriated herein, \$2,000,000 shall be made available in accord-  
 43 ance with paragraph V(C) of such settlement agreement for the  
 44 purposes of accomplishing the objectives set forth in paragraph V(A)  
 45 of such settlement agreement in Ontario, Onondaga, Schuyler, Suffolk  
 46 and Washington counties; provided further that in accordance with  
 47 paragraph V(D) of such settlement agreement, a portion of these  
 48 funds may be transferred to state operations to pay costs incurred  
 49 by the office of indigent legal services to provide services  
 50 designed to effectuate the objectives set forth in paragraph V(A) of  
 51 such settlement agreement. Any funds received by a county under such

OFFICE OF INDIGENT LEGAL SERVICES

AID TO LOCALITIES - REAPPROPRIATIONS 2018-19

1 appropriation shall be used to supplement and not supplant any local  
2 funds that the county currently spends for the provision of counsel,  
3 expert, investigative and any other services pursuant to county law  
4 article 18-B (55504) ... 3,000,000 ..... (re. \$436,000)

5 By chapter 53, section 1, of the laws of 2014:  
6 For payments to counties and the city of New York related to indigent  
7 legal services pursuant to section 98-b of the state finance law and  
8 sections 832 and 833 of the executive law (55502) .....  
9 77,000,000 ..... (re. \$22,905,000)  
10 For additional payments to counties and the city of New York related  
11 to indigent legal services pursuant to section 98-b of the state  
12 finance law and sections 832 and 833 of the executive law (55503) ..  
13 4,000,000 ..... (re. \$4,000,000)

14 By chapter 53, section 1, of the laws of 2013:  
15 For payments to counties and the city of New York related to indigent  
16 legal services pursuant to section 98-b of the state finance law and  
17 sections 832 and 833 of the executive law (55502) .....  
18 77,000,000 ..... (re. \$16,091,000)  
19 For additional payments to counties and the city of New York related  
20 to indigent legal services pursuant to section 98-b of the state  
21 finance law and sections 832 and 833 of the executive law (55503) ..  
22 4,000,000 ..... (re. \$2,377,000)

23 By chapter 53, section 1, of the laws of 2012:  
24 For payments to counties and the city of New York related to indigent  
25 legal services pursuant to section 98-b of the state finance law and  
26 sections 832 and 833 of the executive law (55502) .....  
27 77,000,000 ..... (re. \$5,114,000)  
28 For additional payments to counties and the city of New York related  
29 to indigent legal services pursuant to section 98-b of the state  
30 finance law and sections 832 and 833 of the executive law (55503) ..  
31 4,000,000 ..... (re. \$1,135,000)

32 By chapter 53, section 1, of the laws of 2011:  
33 For payments to counties and the city of New York related to indigent  
34 legal services pursuant to section 98-b of the state finance law and  
35 sections 832 and 833 of the executive law (55502) .....  
36 77,000,000 ..... (re. \$1,679,000)

37 By chapter 50, section 1, of the laws of 2010, as amended by chapter 53,  
38 section 1, of the laws of 2011:  
39 For payments to counties and the city of New York related to indigent  
40 legal services pursuant to section 98-b of the state finance law and  
41 sections 832 and 833 of the executive law (55502) .....  
42 77,000,000 ..... (re. \$8,915,000)

OFFICE OF INDIGENT LEGAL SERVICES

STATE OPERATIONS 2018-19

1 For payment according to the following schedule:

	APPROPRIATIONS	REAPPROPRIATIONS
2		
3	Special Revenue Funds - Other .....	195,000
4		
5	All Funds .....	195,000
6		

7 SCHEDULE

8 HHS STATEWIDE IMPLEMENTATION ..... 1,402,000  
 9 -----

10 Special Revenue Funds - Other  
 11 Indigent Legal Services Fund  
 12 Indigent Legal Services Account - 23551

13 For services and expenses related to the  
 14 statewide improvement to the quality of  
 15 indigent defense.

16 Personal service--regular (50100) .....	682,000
17 Supplies and materials (57000) .....	10,000
18 Travel (54000) .....	40,000
19 Contractual services (51000) .....	185,000
20 Equipment (56000) .....	15,000
21 Fringe benefits (60000) .....	449,000
22 Indirect costs (58800) .....	21,000
23	

24 HURRELL-HARRING SETTLEMENT ..... 1,299,000  
 25 -----

26 Special Revenue Funds - Other  
 27 Indigent Legal Services Fund  
 28 Indigent Legal Services Account - 23551

29 For services and expenses related to the  
 30 implementation of the settlement agreement  
 31 in the matter of Hurrell-Harring, et al,  
 32 v. State of New York.

33 Personal service--regular (50100) .....	724,000
34 Supplies and materials (57000) .....	25,000
35 Travel (54000) .....	40,000
36 Contractual services (51000) .....	10,000
37 Equipment (56000) .....	15,000
38 Fringe benefits (60000) .....	462,000
39 Indirect costs (58800) .....	23,000
40	

OFFICE OF INDIGENT LEGAL SERVICES

STATE OPERATIONS 2018-19

1	INDIGENT LEGAL SERVICES PROGRAM .....	3,016,000
2		-----
3	Special Revenue Funds - Other	
4	Indigent Legal Services Fund	
5	Indigent Legal Services Account - 23551	
6	Personal service--regular (50100) .....	1,556,000
7	Temporary service (50200) .....	35,000
8	Supplies and materials (57000) .....	135,000
9	Travel (54000) .....	140,000
10	Contractual services (51000) .....	80,000
11	Equipment (56000) .....	28,000
12	Fringe benefits (60000) .....	994,000
13	Indirect costs (58800) .....	48,000
14		-----

OFFICE OF INDIGENT LEGAL SERVICES

STATE OPERATIONS - REAPPROPRIATIONS 2018-19

1 INDIGENT LEGAL SERVICES PROGRAM

2 Special Revenue Funds - Other

3 Indigent Legal Services Fund

4 Indigent Legal Services Account - 23551

5 By chapter 50, section 1, of the laws of 2015:

6 For services and expenses related to the implementation of the settle-  
7 ment agreement in the matter of Hurrell-Harring, et al, v. State of  
8 New York. Of the amounts appropriated herein, up to \$500,000 shall  
9 be made available for the purposes of paying costs associated with  
10 the obligations contained in paragraph IV(A) of such settlement  
11 agreement.

12 Contractual services (51000) ... 500,000 ..... (re. \$195,000)



S. 7505--C

24

A. 9505-D/S. 7505-C transfer of authority  
Art. VII, Part MM A. 9505--D

1 provision of residential facilities licensed by the office of children  
2 and family services including all necessary and usual attendant and  
3 related facilities and equipment.

4 § 3. Subdivision 2 of section 1680 of the public authorities law is  
5 amended by adding a new paragraph k to read as follows:

6 k. (1) For purposes of this section, the following provisions shall  
7 apply to the powers in connection with the provision of detention facil-  
8 ities certified by the office of children and family services or by such  
9 office in conjunction with the state commission of correction or for the  
10 provision of residential facilities licensed by the office of children  
11 and family services including all necessary and usual attendant and  
12 related facilities and equipment.

13 (2) Notwithstanding any other provision of law, any entity as listed  
14 above shall have full power and authority to enter into such agreements  
15 with the dormitory authority as are necessary to finance and/or  
16 construct detention or residential facilities described above, including  
17 without limitation, the provision of fees and amounts necessary to pay  
18 debt service on any obligations issued by the dormitory authority for  
19 same, and to assign and pledge to the dormitory authority, any and all  
20 public funds to be apportioned or otherwise made payable by the United  
21 States, any agency thereof, the state, any agency thereof, a political  
22 subdivision, as defined in section one hundred of the general municipal  
23 law, any social services district in the state or any other governmental  
24 entity in an amount sufficient to make all payments required to be made  
25 by any such entity as listed above pursuant to any lease, sublease or  
26 other agreement entered into between any such entity as listed above and  
27 the dormitory authority. All state and local officers are hereby author-  
28 ized and required to pay all such funds so assigned and pledged to the  
29 dormitory authority or, upon the direction of the dormitory authority,  
30 to any trustee of any dormitory authority bond or note issued, pursuant  
31 to a certificate filed with any such state or local officer by the  
32 dormitory authority pursuant to the provisions of this section.

33 § 4. This act shall take effect immediately.

34

## PART MM

35 Section 1. Paragraphs (b) and (c) of subdivision 3 of section 722 of  
36 the county law, as amended by section 3 of part E of chapter 56 of the  
37 laws of 2010, are amended to read as follows:

38 (b) Any plan of a bar association must receive the approval of the  
39 ~~[state administrator]~~ office of indigent legal services before the plan  
40 is placed in operation. In the county of Hamilton, representation pursu-  
41 ant to a plan of a bar association in accordance with subparagraph (i)  
42 of paragraph (a) of this subdivision may be by counsel furnished by the  
43 Fulton county bar association pursuant to a plan of the Fulton county  
44 bar association, following approval of the ~~[state administrator]~~ office  
45 of indigent legal services. When considering approval of an office of  
46 conflict defender pursuant to this section, the ~~[state administrator]~~  
47 office of indigent legal services shall employ the guidelines it has  
48 heretofore established ~~[by the office of indigent legal services]~~ pursu-  
49 ant to paragraph (d) of subdivision three of section eight hundred thir-  
50 ty-two of the executive law.

51 (c) Any county operating an office of conflict defender, as described  
52 in subparagraph (ii) of paragraph (a) of this subdivision, as of March  
53 thirty-first, two thousand ten may continue to utilize the services  
54 provided by such office provided that the county submits a plan to the



S. 7505--C

25

A. 9505--D

1 state administrator within one hundred eighty days after the promulga-  
2 tion of criteria for the provision of conflict defender services by the  
3 office of indigent legal services. The authority to operate such an  
4 office pursuant to this paragraph shall expire when the state adminis-  
5 trator (or, on or after April first, two thousand nineteen, the office  
6 of indigent legal services) approves or disapproves such plan. Upon  
7 approval, the county is authorized to operate such office in accordance  
8 with paragraphs (a) and (b) of this subdivision.

9 § 2. Subdivision 3 of section 722 of the county law is amended by  
10 adding a new paragraph (d) to read as follows:

11 (d) For purposes of this subdivision, any plan of a bar association  
12 approved hereunder pursuant to this subdivision, as provided prior to  
13 April first, two thousand nineteen, shall remain in effect until it is  
14 superseded by a plan approved by the office of indigent legal services  
15 or disapproved by such office.

16 § 3. Subdivision 1 of section 722-f of the county law, as added by  
17 chapter 761 of the laws of 1966 and as designated by section 4 of part J  
18 of chapter 62 of the laws of 2003, is amended to read as follows:

19 1. A public defender appointed pursuant to article eighteen-A of this  
20 chapter, a private legal aid bureau or society designated by a county or  
21 city pursuant to subdivision two of section seven hundred twenty-two of  
22 this ~~[chapter]~~ article, ~~[and]~~ an administrator of a plan of a bar asso-  
23 ciation appointed pursuant to subdivision three of section seven hundred  
24 twenty-two of this ~~[chapter]~~ article and an office of conflict defender  
25 established pursuant to such subdivision shall file an annual report  
26 with the ~~[judicial-conference]~~ chief administrator of the courts and the  
27 office of indigent legal services. Such report shall be filed at such  
28 times and in such detail and form as the ~~[judicial-conference]~~ office of  
29 indigent legal services may direct.

30 § 4. This act shall take effect on April 1, 2019.

31

## PART NN

32 Section 1. Section 135.60 of the penal law, as amended by chapter 426  
33 of the laws of 2008, is amended to read as follows:

34 § 135.60 Coercion in the ~~[second]~~ third degree.

35 A person is guilty of coercion in the ~~[second]~~ third degree when he or  
36 she compels or induces a person to engage in conduct which the latter  
37 has a legal right to abstain from engaging in, or to abstain from engag-  
38 ing in conduct in which he or she has a legal right to engage, or  
39 compels or induces a person to join a group, organization or criminal  
40 enterprise which such latter person has a right to abstain from joining,  
41 by means of instilling in him or her a fear that, if the demand is not  
42 complied with, the actor or another will:

- 43 1. Cause physical injury to a person; or
- 44 2. Cause damage to property; or
- 45 3. Engage in other conduct constituting a crime; or
- 46 4. Accuse some person of a crime or cause criminal charges to be  
47 instituted against him or her; or
- 48 5. Expose a secret or publicize an asserted fact, whether true or  
49 false, tending to subject some person to hatred, contempt or ridicule;  
50 or
- 51 6. Cause a strike, boycott or other collective labor group action  
52 injurious to some person's business; except that such a threat shall not  
53 be deemed coercive when the act or omission compelled is for the benefit  
54 of the group in whose interest the actor purports to act; or

NYS Office of Indigent Legal Services announces nominations are now open for the **Ella B. Family Justice Award**. This award recognizes efforts to advance high quality representation for low-income parents and caregivers threatened with the temporary or permanent loss of their children to state custody. See *In Re Ella B.*, 50 N.Y.2d 352 (1972) (establishing the constitutional right of indigent parents to assigned counsel in child welfare proceedings; codified in 1975 in Family Court Act § 262).

Nominees must be attorneys or other advocates (social worker, investigator, parent advocate, legislator, policy advocate, etc.) working to advance high quality representation for low-income parents in proceedings brought against them by a child protection services agency.

The nominee must meet one or more of the following criteria:

- Advancement of high quality representation in accordance with one or more provisions of the NYS Office of Indigent Legal Services Standards for Parental Representation in State Intervention Matters (<https://www.ils.ny.gov/content/parent-representation-standards>)
- Outstanding fidelity to client-centered representation
- Generous collaboration with colleagues to achieve justice for families

Nomination forms and further instructions can be found on the NYS ILS Family Court website: <https://www.ils.ny.gov/node/59>

Nomination packets must be received by  
**Monday, April 9, 2018**

### MCLE Credit

NYSDA has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of Continuing Legal Education in the State of New York (2016–2019). This transitional/nontransitional program has been approved in accordance with the requirements of the Continuing Legal Education Board for a maximum of 9.0 credit hours. No CLE credit may be earned for repeat attendance at any accredited CLE activity within any one reporting cycle. Tuition assistance for financial hardship is available. Please contact [lmccarthy@nysda.org](mailto:lmccarthy@nysda.org) for more information.

NEW YORK STATE DEFENDERS ASSOCIATION  
194 Washington Avenue, Suite 500  
Albany, New York 12210-2314

Non-Profit Organization  
U.S. Postage  
PAID  
Albany, NY  
Permit #590



## FAMILIES MATTER

STATEWIDE FAMILY  
DEFENDER CONFERENCE

APRIL 20-21, 2018

ALBANY LAW SCHOOL

ALBANY, NEW YORK

*Parents' fundamental liberty interest in the companionship, care, custody, and control of their children "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State . . . parents retain a vital interest in preventing the irretrievable destruction of their family life."*

—Santosky v. Kramer, 455 U.S. 745, 753 (1982)

### SPONSORED BY



NEW YORK STATE  
DEFENDERS ASSOCIATION



NYS Office of Indigent Legal Services  
Improving the Quality of Mandated Representation Throughout the State of New York



ALBANY LAW SCHOOL



NEW YORK STATE UNIFIED COURT SYSTEM  
CHILD WELFARE COURT IMPROVEMENT PROJECT



PROGRAM

Friday, April 20, 2018

12:30 pm  
Sign In

1:20 - 2:00 pm - Welcoming Remarks

Hon. Karen K. Peters  
Former Presiding Justice, Supreme Court, Appellate  
Division, Third Judicial Department  
Martin Guggenheim  
Fiorello LaGuardia Professor of Clinical Law, NYU School  
of Law

2:15 - 3:30 pm - Select One

The Evidence Is In: Advancing Permanency Through  
Quality Hearings  
Christine Kiesel, NYS Child Welfare Court Improvement  
Project Coordinator  
Family Court Case Law Update  
Margaret Burt, private practice, Rochester, NY

3:30 - 3:45 pm - Break

3:45 - 5:00 pm - Select One

Family Court Appeals: Making a Good Record  
Kate Woods, Co-Deputy Director of Operation, Legal  
Assistance of Western New York, Inc. and Saul Zipkin,  
Appellate Attorney, Family Defense Practice, The Bronx  
Defenders  
A Removal is a Removal: *Matter of Elizabeth C.*  
Rebecca Horwitz Ingerman, Director of Government  
Affairs and Special Projects, Center for Family Represent-  
ation and Tracey Orick, Litigation and Trial Attorney,  
Latham & Watkins, LLP

5:15 - 7:00 pm - Welcome Reception

HOTEL RESERVATIONS

Special Conference Rate of \$125  
expires March 2, 2018.

Hilton Garden Inn  
(Albany Medical Center Hilton, across the street from Albany Law)

62 New Scotland Ave, Albany NY

Call 1-877-782-9444 or 518-396-3500  
to make your reservation now!

Group Code: NYSDA  
Check In Date: 4/20/18  
Check Out Date: 4/21/18

PROGRAM

Saturday, April 21, 2018

9:00 - 10:15 am - Select One

Preparing Your Neglect Case: Try Everything  
Nancy Farrell and Amanda McHenry, Supervising Attor-  
ney and Assistant Supervising Attorney, Hiscock Legal  
Aid Society and Sophia Bernhardt, Senior Staff Attorney,  
Family Defense Practice, Brooklyn Defender Services  
Litigating Permanency  
Michelle Burrell and Michael Weinstein, Managing  
Attorney and Supervising Staff Attorney, Neighborhood  
Defender Service of Harlem

10:15 - 10:30 am - Break

10:30 - 11:45 am - Select One

The Art of Cross-Examination of CPS and DSS Case-  
workers  
Laurie Shanks, Clinical Professor of Law, Emerita, Albany  
Law School  
Collaboration: Making Interdisciplinary Practice Work  
for Your Clients  
Jessica Horan-Block, Supervising Attorney, Noemi Cotto,  
Social Work Supervisor, Dinah Adames-Ortiz, Parent  
Advocate Supervisor, Family Defense Practice, The Bronx  
Defenders and Linda Lovell, Assistant Public Defender  
and Dawn Westfall, LMSW, Cattaraugus County Public  
Defender's Office

11:45 am - 1:30 pm - Lunch

Ella B. Family Justice Award Ceremony

1:30 - 2:45 pm - Select One

Discovery Is Everything  
Bob Ballan, private practice, St. Lawrence County and  
Kristal Padolina, Senior Staff Attorney, Family Defense  
Practice, Brooklyn Defender Services  
The State Central Register: What Family Court Lawyers  
Should Know  
Christine Gottlieb, Adjunct Professor of Clinical Law,  
Co-Director, NYU School of Law Family Defense Clinic  
and Kylee Sunderlin, Senior Staff Attorney, Family De-  
fense Practice, Brooklyn Defender Services

2:45 - 3:00 pm - Break

3:00 - 4:15 pm - Adjournment Session

1985 Actions, Article 78, Habeas Corpus, and the Future  
of Family Court: Finding Allies and Changing the Law  
Linda Gehron, President and CEO, Hiscock Legal Aid  
Society, Anya Mukarji-Connolly, Supervising Attorney,  
Family Defense Practice, Brooklyn Defender Services  
and David Lansner and Carolyn Kubitschek, Partners at  
Lansner and Kubitschek

REGISTRATION FORM: Statewide Family Defender Conference - April 20-21, 2018

Please complete this form and return it, along with your payment, one of the following three ways:

1. By Mail: NYSDA, 194 Washington Ave, Suite 500, Albany, NY 12210
  2. By Fax: 518-465-3249
  3. By Email: [dgeary@nysda.org](mailto:dgeary@nysda.org) - Attach a copy of the fillable portion or scan and send a pdf of your registration form, with credit card information. Please make check for \$125 payable to NYSDA or complete the credit card authorization below.
- Your registration form must be received by March 30, 2018.

NAME: \_\_\_\_\_ OFFICE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/Zip Code: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ CELL PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

I am not engaged in the prosecution of FCA Article 10 cases.  If you have any special needs, please check box and we will contact you prior to the event.

Please check all that apply:  NYSDA Member  18-B Attorney  Legal Aid Society Attorney  Public Defender  Other Family Advocate

To pay by credit card:  VISA  MasterCard  Discover  American Express

CARD BILLING ADDRESS: \_\_\_\_\_

CREDIT CARD NUMBER: \_\_\_\_\_

CARDHOLDER'S SIGNATURE: \_\_\_\_\_

EXP. DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

**NEW YORK STATE BAR ASSOCIATION  
COMMITTEE ON FAMILIES AND THE LAW**

**MEMORANDUM IN SUPPORT OF  
STATE FUNDING FOR MANDATED PARENTAL  
REPRESENTATION**

**January 2018**

**Opinions expressed in this Memorandum are those of the NYSBA Committee on Families and the Law and do not represent those of the New York State Bar Association unless and until they have been adopted by the NYSBA's Executive Committee or House of Delegates.**

**NEW YORK STATE BAR ASSOCIATION  
COMMITTEE ON FAMILIES AND THE LAW**

**MEMORANDUM IN SUPPORT OF  
STATE FUNDING FOR MANDATED PARENTAL REPRESENTATION**

**January 2018**

The Committee on Families and the Law urges the New York State Bar Association (“NYSBA”) to adopt a Resolution calling for the State to fund and oversee all constitutionally and statutorily required representation provided—pursuant to §§ 262 and 1120 of the Family Court Act, and § 407 of the Surrogate’s Court Procedures Act — to litigants who are financially unable to obtain counsel (“mandated parental representation” or “parental representation”).

***Introduction***

In April 2017, Governor Andrew Cuomo fulfilled a promise to reimburse 100% of the costs to the counties and New York City for certain statewide improvements in criminal defense provided to persons who are financially unable to obtain counsel (“indigent criminal defense” or “criminal defense”). The final FY 2018 State budget included two groundbreaking statutory amendments. Executive Law § 832 (4) now gives the New York State Office of Indigent Legal Services (“ILS”) the authority and duty to develop plans to: (a) ensure that each criminal defendant eligible for mandated representation is represented by counsel at arraignment; (b) establish numerical caseload/workload standards for each provider of indigent criminal defense representation; and (c) improve the quality of representation in indigent criminal defense statewide. ILS submitted those plans on December 1, 2017. Further, County Law § 722-e was amended to specify that the State will cover the costs to implement the reform plans produced by ILS, thereby relieving the counties of the burden to alone pay for indigent criminal defense.

This progress was achieved partly thanks to NYSBA’s staunch support of State funding and oversight of indigent criminal defense. Such leadership was consistent with the important role played by the State Bar for decades, including advocating for an increase in assigned counsel rates and creating the Special Committee to Ensure the Quality of Mandated Representation (now the Committee on Mandated Representation).

The next frontier is mandated parental representation. This realm is as important as indigent criminal defense, and NYSBA should advocate for similar State leadership and commitment to reform in this area. Just as in criminal defense, constitutionally protected rights are at stake. Whereas the U.S. Constitution guarantees the right to assigned counsel in criminal cases where physical liberty is implicated, the New York State Constitution guarantees the right to counsel to indigent parents in matters involving fundamental liberty interests in the parent-child relationship. First recognized by the New York State Court of Appeals in 1972, the parental right to assigned counsel has been codified in State statute since 1975.

The impact of the quality of representation is as profound for parents experiencing a family crisis as for persons accused of committing a crime. Certain Family Court proceedings involve allegations that can result in the temporary separation of a child from his or her family, with the potential for permanent destruction of the parent-child relationship, and, in some instances, for criminal charges against the parent. More generally, Family Court cases determine life-altering matters affecting the safety of children and parents and the integrity and autonomy of families. Recognizing that the “objective of any [mandated] representation plan should be to ensure high quality legal services for every individual represented under the plan,” the NYSBA *Standards for Providing Mandated Representation*, issued by the Committee to Ensure the Quality of Mandated Representation, cover parental representation, as well as criminal defense.<sup>1</sup>

With groundbreaking reform well underway in criminal defense, similarly intense attention needs to be focused on improving parental representation. Both areas of practice suffer myriad problems under the framework established by County Law Article 18-B, which requires each county and the City of New York to maintain a plan for the provision of assigned counsel.<sup>2</sup> These problems include, among others, lack of clear, uniform, and enforceable standards of performance, attorney workload/caseload, and litigant financial eligibility; inadequate training and supervision of attorneys; lack of sufficient resources for non-attorney professional services; failure to provide access to assigned counsel in a timely manner; inadequate client contact; and lack of State oversight and funding.<sup>3</sup> Indeed, more than a decade ago, while noting that its “mandate was limited to indigent criminal defense,” Chief Judge Judith Kaye’s Commission on the Future of Indigent Defense in New York (the “Kaye Commission”), in its 2005 Interim Report, emphasized that “identical problems affect representation of adults in family court. This representation, carried out by the same 18-B providers, with the same staff, under the same statutory scheme . . . needs to be addressed.”<sup>4</sup>

Since its establishment in 2010, ILS has made modest inroads toward improving mandated parental representation, but much more must be done. Parental representation in some counties has benefitted from sorely needed, yet woefully inadequate State funds distributed by ILS for attorneys and non-attorney professional services, such as experts, investigators, and social work staff. In 2015, ILS initiated *Families Matter: Parental Defense in New York*, a now biannual statewide training conference co-sponsored by ILS, the Office of Court Administration’s (“OCA”) Child Welfare Court Improvement Project, and the New York State Defenders Association. Also in 2015, the ILS Board adopted *Standards for Parental Representation in State*

---

<sup>1</sup>NYSBA, *2015 Revised Standards for Providing Mandated Representation*, pp. 4-5 (“The standards are also intended to apply to Family Court cases in which counsel is assigned to represent an adult or to represent a child.”), <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=44644>.

<sup>2</sup>County Law § 722.

<sup>3</sup>The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services: Final Report*, pp. ii -iv, 15-19 (June 16, 2006), <https://www.nycourts.gov/ip/indigentdefense-commission/SpangenbergGroupReport.pdf>.

<sup>4</sup>Commission on the Future of Indigent Defense Services, *Interim Report to the Chief Judge of the State of New York*, p. 16, fn. 27, <http://www.nycourts.gov/reports/futureofindigentdefense.pdf>.



*Intervention Matters*, developed by ILS in collaboration with lawyers and social work professionals across the State, to guide attorneys in providing high-quality representation in child protective and termination of parental rights (“state intervention”) cases.<sup>5</sup> While significant, these initiatives only scratch the surface of the reforms needed to ensure effective mandated parental representation.

In contrast to the flawed county-based system, there is precedent for a different approach to parental representation. Decades ago, a pioneering statewide system, fully funded and administered by the State, was established for representation of children—the Attorneys for the Child (“AFC”) (formerly Law Guardian) Program. The AFC Program has demonstrated the wisdom and value of a State-based, rather than county-based, approach to mandated representation in Family Court matters. Ultimately, the new vision for parental representation in Family Court and related proceedings should embrace a statewide system that is fully financed and administered by the State. Such an approach would better ensure that the rights of parents *and* children are protected.

### ***High-Quality Parental Representation Protects Constitutionally Recognized Liberty Interests of Parents and Children***

Our Family Courts address the safety of children and other family members, as well as the integrity, autonomy, and financial stability of families. In child welfare proceedings, Family Courts determine whether children are at risk of harm and, if so, how they should be protected, whether by providing services to the family or removing the child and placing him or her in foster care. When orders of protection are needed in cases of domestic violence, when parents have custody disputes, or when child support orders are violated, Family Courts provide needed relief.

The U.S. Supreme Court has long emphasized that the Constitution recognizes and protects parents’ interests in the parent-child relationship and the integrity of the family unit.<sup>6</sup> The Court has specifically recognized parents’ fundamental liberty interest in the care and custody of their children.<sup>7</sup> Indeed, depriving a parent of the right to raise his or her own child is viewed by many as “more grievous” than a prison sentence,<sup>8</sup> and the determination of parental rights is often referred to as the “civil death penalty.”<sup>9</sup> Even in

---

<sup>5</sup>*Standards for Parental Representation in State Intervention Matters*, ILS (2015), <https://www.ils.ny.gov/files/Parental%20Representation%20Standards%20Final%20110615.pdf>.

<sup>6</sup>*E.g. Troxel v. Granville*, 530 U.S. 57, 65 (2000) (“The liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court.”); *Parham v. J. R.*, 442 U.S. 584, 602 (1979) (“Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course.”).

<sup>7</sup>*Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

<sup>8</sup>*Lassiter v. Department of Social Services*, 452 U.S. 18, 59 (1981) (Stevens, J., dissenting).

<sup>9</sup>*E.g. Stephanie N. Gwillim, The Death Penalty of Civil Cases: The Need for Individualized Assessment and Judicial Education When Termination Parental Rights of Mentally Ill Individuals*, 29 St Louis U Pub L Rev 341 (2009) (citing *In re K.A. W.*, 133 S.W.3d 1, 12 (Sup. Ct., Mo. 2004); see also *In re Smith*, 77 Ohio App.3d 1, 16 (1991) (“A termination of parental rights is the family law equivalent of the death penalty in a

cases of alleged maltreatment, parents' fundamental liberty interest in raising their children does "not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State...parents retain a vital interest in preventing the irretrievable destruction of their family life."<sup>10</sup> Likewise, the New York Court of Appeals has emphasized that "governmental interference with the liberty of a parent to supervise and rear a child" is prohibited, "except upon a showing of overriding necessity."<sup>11</sup>

Children also have liberty interests in the parent-child relationship.<sup>12</sup> Our Court of Appeals has recognized the fundamental principle that "[a] parent has a 'right' to rear [his or her] child, and the child has a 'right' to be reared by [his or her] parent."<sup>13</sup> Similarly, the U.S. Supreme Court has observed that, in termination of parental rights proceedings, until the State proves parental unfitness, "the child and his parents share a vital interest in preventing erroneous termination of their natural relationship."<sup>14</sup>

These fundamental principles are embedded in our statutes. As noted by the Court of Appeals, "[l]ooking to the child's rights as well as the parents' rights to bring up their own children, the Legislature has found and declared that a child's need to grow up with a 'normal family life in a permanent home' is ordinarily best met in the child's 'natural home.'"<sup>15</sup> In 1990, the Legislature adopted "Family policy guidelines, set out in Executive Law §§ 990-992, to "ensure that all state and local planning and provision of services are effectuated in a manner that maximizes support and strengthening of the family structure." These standards are "directed toward stemming the human and financial costs of the unnecessary placement of children outside their homes, while ensuring the safety and well-being of children" by providing them and their families with necessary services, or, when appropriate, providing for permanency for children through other means.<sup>16</sup>

---

criminal case. The parties to such an action must be afforded every procedural and substantive protection the law allows.").

<sup>10</sup>*Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

<sup>11</sup>*Matter of Marie B.*, 62 N.Y.2d 352, 358 (1984)

<sup>12</sup>See e.g. *Troxel v. Granville*, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting) ("[I]t seems to me extremely likely that, to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation."); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) ("[T]he reciprocal rights of both parent and children [include the interest] of the children in not being dislocated from the 'emotional attachments that derive from the intimacy of daily association' with the parent.").

<sup>13</sup>*Matter of Bennett v. Jeffreys*, 40 N.Y.2d 543, 546 (1976); see also *Rankel v. County of Westchester*, 135 A.D.3d 731, 733 ("parents have a liberty interest in the care and custody of their children, and children have a parallel liberty interest in not being dislocated from their family.")

<sup>14</sup>*Santosky v. Kramer*, 455 U.S. 745, 760 (1982).

<sup>15</sup>*Matter of Michael B.*, 80 N.Y.2d 299, 309 (1992) (citing Social Services Law § 384-b[1][a][i], [ii])

<sup>16</sup>Executive Law § 991 ("The legislature finds that the children of this state are at the same time both our most important resource and our most vulnerable citizens. Children best develop their unique potential in a caring and healthy family environment either with their birth parents or other relatives or in an adoptive family, with support from other nurturing environments, especially the schools and the community. As such, children need a special state policy to ensure the strength and viability of their families.")

To protect these vital interests, New York has long recognized a broad parental right to counsel in matters affecting the family. In 1972, in *Matter of Ella B.*, the Court of Appeals held that constitutional principles of fundamental fairness, due process, and equal protection require appointment of governmentally-funded lawyers for indigent parents in child protective proceedings.<sup>17</sup> “A parent’s concern for the liberty of the child, as well as for his care and control,” the Court said, “involves too fundamental an interest and right to be relinquished to the State without the opportunity for a hearing, with assigned counsel if the parent lacks the means to retain a lawyer.”<sup>18</sup> One year later, citing *Ella B.*, the Second Department held that indigent parents in proceedings under Family Court Act Article 4, regarding the violation of support orders, have the right to assigned counsel, in light of their possible incarceration if found to have willfully violated such an order.<sup>19</sup>

In the wake of these decisions, in 1975, the Legislature enacted legislation—drafted and introduced by OCA—which codifies a broad parental right to counsel. See Family Court Act §§ 261, 262, and 1120.<sup>20</sup> Emphasizing potential infringements of parents’ “fundamental interests and rights, including the loss of a child’s society and the possibility of criminal charges,” the Legislature recognized counsel’s “indispensable” role in the “practical realization of due process of law” and in assisting the court “in making reasoned determinations of fact and proper orders of disposition.” See Family Court Act § 261. Our courts have repeatedly emphasized that the parental right to assigned counsel means *effective assistance of counsel* under the State Constitution.<sup>21</sup>

Since its enactment, New York’s parental right to counsel statute has been expanded on numerous occasions. It currently extends to specified litigants in proceedings involving child custody and visitation, abuse/neglect, foster care placement and review, termination of parental rights, destitute children, adoption, paternity, and family offenses. Additionally, assigned counsel is available to a person charged with contempt of court for violation of a prior Family Court order (including willful violation of a child support order), and persons in any other proceeding in which the judge concludes that the U.S. or New York State Constitution requires the assignment of counsel. See Family

---

<sup>17</sup> *Matter of Ella B.*, 30 N.Y.2d 352 (1972).

<sup>18</sup> *Id.* at 356.

<sup>19</sup> *Jennings v. Jennings*, 42 A.D.2d 568 (2<sup>nd</sup> Dep’t 1973).

<sup>20</sup> See Letter from Richard A. Bartlett, State Administrative Judge to Hon. Judah Gribbetz, Counsel to the Governor, (July 22, 1975), <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=75119>.

<sup>21</sup> E.g. *Matter of Nassau County Dept. of Social Services v. King*, 149 A.D.3d 942, 944 (2<sup>nd</sup> Dep’t 2017) (“Accordingly, in support proceedings such as this one in which a party faces the potential of imprisonment and has a statutory right to counsel, we hold that the appropriate standard to apply in evaluating a claim of ineffective assistance is the meaningful representation standard.”); *Matter of Brown v. Gandy*, 125 A.D.3d 1389, 1390 (4<sup>th</sup> Dep’t 2015) (“[B]ecause the potential consequences are so drastic, the Family Court Act affords protections equivalent to the constitutional standard of effective assistance of counsel afforded defendants in criminal proceedings.”); *Matter of Eileen R. (Carmin S.)*, 79 A.D.3d 1482 (3<sup>rd</sup> Dep’t 2010) (“Indigent parents facing termination of parental rights are entitled to the assignment of counsel, and such counsel must provide effective assistance comparable to that afforded to criminal defendants.”).



Court Act § 262. Most of this representation occurs in Family Court proceedings, but certain types of cases may also be heard in Surrogate's or Supreme Court.<sup>22</sup>

As shown above, New York's laws and policies recognize that high-quality representation is essential when fundamental familial rights and interests are at stake. However, as the Kaye Commission found, the current system does not satisfy the State's obligations to protect those rights and interests. What is required is a structure, funded and administered by the State, that creates, monitors and enforces standards of mandated parental representation.

### ***State System of Representation for Children: Attorneys for the Child***

The establishment of the AFC Program, administered by OCA and fully funded by the State, stands in stark contrast to the parental representation system. New York's recognition of a child's right to counsel in Family Court matters pre-dated by five years the U.S. Supreme Court's 1967 recognition of a child's right to counsel in juvenile delinquency matters.<sup>23</sup> In 1962, New York became the first state to create a broad statutory right to counsel for children in juvenile delinquency and family-related matters.<sup>24</sup> The Legislature declared in Family Court Act § 241 that "minors who are the subject of family court proceedings or appeals . . . should be represented by counsel of their own choosing or by assigned counsel," and established an assigned counsel program to "help protect [children's] interests and to help them express their wishes to the court." From the outset, the State assumed both administrative and fiscal responsibility for the AFC Program. All operating costs are payable by the State, pursuant to Family Court Act § 248. For FY 2018-2019, the Judiciary budget request estimates the statewide cost of the program to be \$127,957,373.<sup>25</sup>

Full State funding and administrative oversight of the AFC program supports a framework for representation of children. Administrative responsibility for the program is

---

<sup>22</sup>Surrogate's Court Procedure Act § 407 mandates County Law Art. 18-B representation for: respondents in proceedings involving termination of parental rights under Social Services Law §384-b or approval of a surrender of a child under Social Services Law §384; the parent of a child in any adoption proceeding who opposes the adoption of such child; the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child; any of the aforementioned persons upon an appeal in any of those proceedings; and any adult in a proceeding under the Surrogate's Court Procedure Act if the judge determines that such assignment of counsel is mandated by the constitution of this state or of the United States. Judiciary Law § 35 (8) provides that, "[w]henver supreme court shall exercise jurisdiction over a matter which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto pursuant to law, and under circumstances whereby, if such proceedings were pending in family court, such court would be required by section two hundred sixty-two of the family court act to appoint counsel, supreme court shall also appoint counsel."

<sup>23</sup>*In re Gault*, 387 U.S. 1 (1967).

<sup>24</sup>Fam. Ct. Act Article 2, Part 4 – *Attorneys for Children*; see also Merril Sobie, *The Meaningful Representation of Children: An Analysis of the State Bar Association Law Guardian Legislative Proposal*, 64 NY St BJ 52 (May/June 1992).

<sup>25</sup>Unified Court System Budget, Fiscal Year 2018-2019, "Attorney for the Child Program," p. 107, <http://www.nycourts.gov/admin/financialops/BGT18-19/2018-19-UCS-Budget.PDF>.



divided between OCA and the Appellate Divisions (see Family Court Act §§ 241-243). Family Court Act § 246 empowers the Administrative Board of OCA to "prescribe standards for the exercise of the powers granted to the appellate divisions under this part and may require such reports as it deems desirable." The program is supervised by the Appellate Division presiding justices. Each Department's AFC Director conducts initial and ongoing training programs and certifies and re-certifies panel attorneys. Over the years, NYSBA has advocated for improvements in the AFC system. In part due to reports published by NYSBA in 1984 and 1990,<sup>26</sup> significant improvements have been made, including oversight by the Directors to determine attorney compliance with standards of practice adopted by NYSBA at the behest of the Committee on Children and the Law.<sup>27</sup>

### ***Other State Systems of Representation: Capital Defender Office, Mental Hygiene Legal Services, and Parental Representation in Supreme Court***

In addition to the AFC program, other statutory schemes have provided for State funding and oversight of programs for representation of indigent New Yorkers.

Now defunct, a notable State system of indigent legal representation was the State Capital Defender Office ("CDO"). Established in 1995 by Judiciary Law §35-b, the CDO was created to ensure adequate representation for indigent persons accused of crimes punishable by death<sup>28</sup> and was funded by an appropriation from the State Operations budget.<sup>29</sup> The CDO closed in the wake of a 2004 New York Court of Appeals decision which effectively declared the State's death penalty law unconstitutional.<sup>30</sup>

Mental Hygiene Legal Service ("MHLS") is a State agency responsible for representing, advocating, and litigating on behalf of individuals receiving services for a mental disability. The agency provides a broad range of legal services and assistance to mentally disabled persons in State facilities. MHLS, which is funded by the State through the Judiciary budget, will have an estimated cost of \$32,853,966 in FY 2018-2019.<sup>31</sup>

As noted above, in certain situations, parents are entitled under the Judiciary Law to State-funded assigned counsel in Supreme Court cases.<sup>32</sup> Assignment of counsel in

---

<sup>26</sup> Jane Knitzer and Merrill Sobie, *Law Guardians in New York State: A Study of the Legal Representation of Children*, NYSBA (1984); *Report and Recommendations of the Task Force on the Law Guardian System*, NYSBA (1990). See also Merrill Sobie, *The Representation of Children: A Summary and Analysis of the Bar Association Law Guardian Study*, NY St BJ (Feb. 1985), at 41, <http://digitalcommons.pace.edu/lawfaculty/616/>.

<sup>27</sup> NYSBA, *Standards for Attorneys Representing Children in New York*, <http://www.nysba.org/StandardsforAttorneysRepresentingChildren>.

<sup>28</sup> Judiciary Law § 35-b (3).

<sup>29</sup> Judiciary Law § 35-b (9).

<sup>30</sup> *People v. LaValle*, 3 N.Y.3d 88 (2004)

<sup>31</sup> Unified Court System, *Budget Request FY 2018-2019*, p. 112, accessible at <https://www.nycourts.gov/admin/financialops/BGT18-19/2018-19-UCS-Budget.PDF>.

<sup>32</sup> Judiciary Law §35 (8).



Supreme Court generally involves issues of custody, visitation, or contempt or willful violation of orders of protection or child support. In addition, Judiciary Law § 35 provides for assigned counsel in other matters, including habeas corpus proceedings involving prisoners in State institutions; commitment proceedings involving persons who are mentally ill, mentally incompetent or those with narcotic addictions; commitment of a child to an authorized agency by reason of the mental illness or retardation of his or her parent; and adoption or custody proceedings where counsel is constitutionally mandated. Pursuant to Judiciary Law § 35 (5) the costs of these services are a State charge through the Judiciary Budget. For FY 2018-2019, the costs are estimated to be \$1,985,000.<sup>33</sup>

### ***County-Based Mandated Parental Representation***

In contrast to representation of children via the State AFC Program, parental representation is relegated to the county-based system that has proven so inadequate for indigent criminal defense. In 1975, when enacting the parental right to counsel in the Family Court Act, the Legislature added the cost and administration of indigent parental representation to County Law Article 18-B, thus forcing the counties alone to shoulder this responsibility.<sup>34</sup>

Unsurprisingly, as the Kaye Commission noted in 2005, “identical problems affect representation of adults in family court” as have been identified in indigent criminal defense representation.<sup>35</sup> In 2006, the “most comprehensive study of indigent defense representation ever undertaken in New York State”<sup>36</sup> confirmed the existence of numerous, overlapping deficiencies in the county-based indigent criminal defense and mandated parental representation systems. The Spangenberg Group (“TSG”), which conducted the study on behalf of the Kaye Commission, observed that:

“Although not part of the Commission’s charge, we found that family court matters are an integral and inextricable part of New York’s indigent defense system. . . Like the provision of indigent defense representation in criminal cases, the provision of representation in family court is a severely fractured and under-funded system, and one that is quite disparate from the [Attorneys for Children] Program that provides for the representation of children in family court.”<sup>37</sup>

---

<sup>33</sup>Unified Court System, *Budget Request FY 2018-2019*, p. 104, accessible at

<https://www.nycourts.gov/admin/financialops/BGT18-19/2018-19-UCS-Budget.PDF>.

<sup>34</sup>County Law Article § 722; see also Joel Stashenko, “Counsel Costs for Indigent Family Court Litigants Often Overlooked,” *NYLJ*, Jan. 5, 2017.

<sup>35</sup>Kaye Commission Interim Report, *supra*, n. 4.

<sup>36</sup>Commission on the Future of Indigent Defense in New York, *Final Report to the Chief Judge of the State of New York*, p. 2, (June 18, 2006) (“Kaye Final Report”), accessible at

[http://nycourts.gov/ip/indigentdefense-commission/IndigentDefenseCommission\\_report06.pdf](http://nycourts.gov/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf).

<sup>37</sup>The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services, Final Report*, pp. iii-iv, (June 16, 2006) (“TSG Report”), <https://www.nycourts.gov/ip/indigentdefense-commission/SpangenbergGroupReport.pdf>.



Reiterating TSG's findings, the Kaye Commission remarked that "the criminal defense programs studied by TSG were, in many instances, inseparable from the programs providing Family Court representation" and suggested that "[t]he Indigent Defense Commission that we propose also oversee services providing for Family Court representation."<sup>38</sup>

Providing high-quality parental representation is a difficult and challenging endeavor, requiring great skill and dedication. Many assigned attorneys throughout the State work zealously on behalf of their clients. However, far too many attorneys have little or no training or experience in family law, and minimal, if any, supervision and oversight. Many lack access to administrative staff and non-attorney professional services, such as investigators, social workers, interpreters, and experts.<sup>39</sup> These deficiencies not only undermine the goal of meaningful representation and effective assistance of counsel; they also threaten the safety and stability of children and families.

Effective representation for parents supports the safety, stability, and well-being of children and families. The federal Administration for Children and Families ("ACF") recently issued a Technical Guidance encouraging "all child welfare agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure parents, children and youth, and child welfare agencies, receive high-quality representation at all stages of child welfare proceedings."<sup>40</sup> ACF pointed to research linking representation for all parties in child welfare proceedings to increased party engagement, improved case planning, expedited permanency, and cost savings to State government.<sup>41</sup>

New York City's approach to parental representation illustrates the benefits of high-quality parental representation. Since 2007, the New York City Mayor's Office of Criminal Justice has operated a multidisciplinary, institutional model of parental defense that requires the use of social workers, paralegals, investigators, experts, and parent advocates as part of the legal team. The Center for Family Representation ("CFR") – cited in the ACF's Technical Guidance as an "exemplary" model of parental representation - is one of several institutional providers with whom New York City contracts to provide parental representation in State intervention cases.<sup>42</sup> In 2014 the average length of stay for a child in foster care in New York was 29 months; for CFR clients' children, the average length of stay was less than five months. As a result of CFR attorneys' early entry into the case, they are able to work closely with the family and the social services agency to identify and access appropriate services. In about half of its cases, CFR succeeded in keeping children out of foster care entirely, while

---

<sup>38</sup>Kaye Final Report, *supra* n. 36, p. 20, fn. 33.

<sup>39</sup>See e.g. *New York County Lawyers' Ass'n v. State of N.Y.*, 196 Misc.2d 761, 771 (2003).

<sup>40</sup>U.S. Health and Human Services, *High Quality Legal Representation in Child Welfare Proceedings*, ACYF-CB-IM-17-02, (Administration for Children and Families, January 17, 2017), <https://www.acf.hhs.gov/cb/resource/im1702>.

<sup>41</sup>*Id.*, pp. 6-7.

<sup>42</sup>Currently, CFR, Brooklyn Defender Services, the Bronx Defenders, and the Neighborhood Defender Service of Harlem are the primary providers for state intervention cases in New York City.



maintaining them safely within their families of origin. As of 2017, CFR estimated that its services reduced the cost of foster care by \$37 million.<sup>43</sup>

Indeed, research has demonstrated a direct connection between high-quality parental representation and improved outcomes and timeliness to permanency for children involved in child welfare proceedings. A study of the Washington State Office of Parental Representation program ("OPR") found that enhanced parental representation "speeds reunification with parents, and for those children who do not reunify, it speeds achieving permanency through adoption and guardianship."<sup>44</sup> The program is also credited with contributing to fewer continuances, improved case participation by parents, and better access to services, among other benefits. Key elements of the OPR include caseload limits and professional attorney standards; access to expert services and independent social workers; supervisory oversight; and ongoing training and support. What started in 2000 in two counties has gradually expanded, and as of Fall 2017, the program operates in 34 of Washington's 39 counties. The Washington State Legislature has provided funding to extend it to all of the remaining counties beginning in July 2018.<sup>45</sup>

Building on experiences such as those in New York City and Washington State, in August 2017, ILS announced a three-year grant for an Upstate Model Parental Representation Office in the amount of \$2,610,417 (\$870,139 per year for each of three years).<sup>46</sup> The grant will support a demonstration project which will provide high-quality, comprehensive, and multidisciplinary representation to parents in State intervention cases. ILS has included in its FY 2018-2019 budget a request for funding to enable up to four additional counties outside New York City to establish such a program.<sup>47</sup>

Timely access to counsel for indigent parents is critical. However, such parents often appear without representation at hearings where judges make critical decisions, including whether to separate a child from his or her family or to continue such separation following an *ex parte* or non-judicial removal by a local child protective services ("CPS") agency.<sup>48</sup>

---

<sup>43</sup>CFR, *2014 Report to the Community*, <https://www.cfmv.org/wp-content/uploads/2012/12/Annual-Report-2014-FINAL.pdf>; CFR, *Our Results*, <http://www.cfrny.org/about-us/our-results/>.

<sup>44</sup>Courtney, M. E., & Hook, J. L., *Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care*, Children and Youth Services Review,

<sup>45</sup>See Washington State Office of Public Defense, *Parental Representation Program*, <https://www.opd.wa.gov/program/parents-representation>.

<sup>46</sup>ILS, *Request for Proposals: Model Upstate Parental Representation Office*, <https://www.ils.ny.gov/files/Parent%20Representation/RFP-Upstate%20Model%20Parental%20Representation%20Office%20Grant%20032017.pdf>.

<sup>47</sup>ILS Budget Request, October 18, 2017, <https://www.ils.ny.gov/files/Budget%20Request%20FY%202018-19.pdf>.

<sup>48</sup>See e.g. *In re Hannah YY*, 50 A.D.3d 1201 (3<sup>rd</sup> Dept. 2008); see also Judge Leonard Edwards (Superior Ct., California, ret.), *Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment*, Juv & Fam Ct J 63, no. 2 (Spring 2012), [http://www.mainecourtimprovement.org/fileLibrarv/file\\_52.pdf](http://www.mainecourtimprovement.org/fileLibrarv/file_52.pdf); Mark Hardin & Susan Koenig, *Early Appointment of Counsel for Parents*, in Court Performance Measures in Child Abuse and Neglect Cases:



Some indigent parents in State intervention cases do not meet their assigned counsel until weeks, and sometimes months, after their child has been taken into custody by CPS. A 1989 report by the New York State Senate Standing Committee on Child Care found that “even though 67 percent of respondents have counsel within one month of petition filing . . . a number of significant events can and frequently do occur during that first month (during which time a third of respondents have no appointed counsel).”<sup>49</sup> The report noted that preliminary hearings affecting the child’s placement occurred, and preliminary removal orders or temporary orders of protection were often issued, “in the absence of representation for the respondent, which may be prejudicial to the respondent’s interests.”<sup>50</sup> The authors emphasized that “a number of highly significant events occur prior to the initial appearance and prior to the initial appointment of representation for the respondent. *All of these events occur on an ex parte basis and many of the events are of a magnitude to shake the family structure of the respondent.*”<sup>51</sup>

Numerous standards urge access to counsel for parents at the earliest possible stage of a child protective case.<sup>52</sup> As pointed out by the U.S. Department of Justice, “[i]f the parents’ attorneys are not involved prior to the emergency removal hearing, the court is more likely to place children away from the parents,” potentially traumatizing the child and “ultimately mak[ing] it more difficult for the parent to correct the problems that led to State intervention.”<sup>53</sup> Standards issued by ILS, as well as the American Bar Association, emphasize timely access to counsel.<sup>54</sup> NYSBA’s *Revised Standards for Providing Mandated Representation* require that “[c]ounsel shall be available when a person reasonably believes that a process will commence that could result in a proceeding where representation is mandated,” (Standard B-3); Standard B-4 urges the establishment of systematic procedures “to ensure that prompt mandated representation is available to all eligible persons, particularly . . . where a child has been removed by a governmental agency from the person’s home.” Indeed, pointing to NYSBA’s standards, one judge observed that they “demonstrate, objectively, that

---

Technical Guide, U.S. Department of Justice, Office of Justice Programs (2nd Printing, 2009), pp. 101-109.

<sup>49</sup>Jules Kerness and Constance R. Warden, *Child Protection and the Family Court: A Study of the Processes, Procedures, and Outcomes Under Article Ten of the New York Family Court Act*, p. 130, New York State Senate Standing Committee on Child Care, (Sen. Mary Goodhue, Chair) (National Center on Child Abuse and Neglect, December 1989),

<https://www.ncirs.gov/pdf/files1/Digitization/126665NCJRS.pdf> .

<sup>50</sup>*Id.*

<sup>51</sup>*Id.* at pp. 131-132 (emphasis added).

<sup>52</sup>Court Performance Measures, pp. 101-107.

<sup>53</sup>*Id.*, p. 101.

<sup>54</sup>ILS, *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, Standard 5 (2012) (requiring counties to ensure that mandated legal services providers “[p]rovide representation for every eligible person at the earliest possible time and begin advocating for every client without delay, including while client eligibility is being determined or verified.”); ILS, *Standards for Parental Representation in State Intervention Cases*, Standard I – Representation Prior to Court Intervention; American Bar Association, *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, Standard 4 (2006) (the parent’s attorney shall “[a]ctively represent a parent in the prepetition phase of a case, if permitted within the jurisdiction.”)

effective representation for indigent individuals entails representation without delay pending the judge's eligibility determination . . . there is no scenario under which indigent individuals would not be afforded an impaired quality of representation where the Public Defender's function as counsel is effectively disabled pending receipt of a judge's order of appointment."<sup>55</sup>

In general, early access to counsel supports the goals of Family Court Act § 261 by giving litigants the opportunity to receive advice and counsel before initiating or responding to litigation; protecting due process rights of parents and families; and providing judges with comprehensive information upon which to make critical decisions. Thus, it is crucial that the timing of access to counsel be included in reform of the parental representation system.

### **Hurrell-Harring and Criminal Defense Reform**

In 1963, the U.S. Supreme Court held in *Gideon v. Wainwright*, 372 U.S. 335, that each state is obligated to provide representation for persons facing possible incarceration who are unable to hire a lawyer. In 1965, New York State decided to impose upon the counties the fiscal and administrative responsibility for providing such representation. Without State funding, standards or oversight, the quality of representation a client receives is largely dependent on the wealth of the counties. County Law § 722, which requires localities to choose from several methods for providing assigned counsel, contains no standards regarding the quality of representation. It establishes no oversight mechanism to ensure meaningful representation and prevent disparities based on geography. For decades, the law has placed a serious financial burden on counties and led to serious shortcomings in indigent criminal defense.

In 2007, a lawsuit initiated in Albany County on behalf of a certified plaintiff class of indigent criminal defendants charged that the State was violating their constitutional rights by failing to provide effective assistance of counsel. Ultimately, the State agreed to assume responsibility for improving representation in the five defendant counties.<sup>56</sup> In 2014 the State entered into a Settlement Agreement, agreeing to address four major areas: lack of counsel at arraignment; excessive caseloads; lack of quality control and inadequate support services; and the absence of a uniform standard of eligibility for the assignment of counsel.

For the first time, the State acknowledged its responsibility to comply with the promise of *Gideon*. Further, the State vested in ILS the responsibility for implementing these reforms. However, the Settlement had significant limitations, including that its first three remedial provisions—counsel at first appearance, caseload standards, and quality

---

<sup>55</sup>*People v. Rankin*, 46 Misc. 3d 801 (County Ct, Monroe County, 2014).

<sup>56</sup>*Hurrell-Harring vs. State of N.Y.*, Supreme Court, Albany County, Index No. 8866/2007. The stipulation in that matter can be accessed at: <https://www.ils.ny.gov/files/Hurrell-Harring%20Final%20Settlement%20102114.pdf>.



improvement—apply only to the five named counties. Moreover, the Settlement is applicable only to indigent criminal defense.

In 2016, State Senators Patricia Fahy and John DeFrancisco introduced legislation (the “Fahy-DeFrancisco” bill) that would have expanded the reforms of *Hurrell-Harring* statewide and would have encompassed not only indigent criminal defense, but also mandated parental representation. The bill passed unanimously in both chambers of the Legislature, but, on December 31, 2016, Governor Andrew Cuomo vetoed the bill. In his veto memorandum, the Governor promised to introduce a plan to extend the *Hurrell-Harring* criminal defense reforms to the rest of the State. In doing so, however, he characterized the inclusion of parental representation in the bill as an attempt to “transfer to the taxpayers of this State an entirely new obligation to pay for any and all existing expenses related to general defense legal work, far beyond representation of indigent criminal defendants.”<sup>57</sup> He further stated that the Fahy-DeFrancisco bill would require the State “to ultimately expend more than \$800 million dollars every year—of which nearly \$650 million a year” would go to “expenses associated with non-criminal legal defense work, including legal services in family court and surrogate [sic] court.”<sup>58</sup> No explanation was provided as to the basis for the \$650 million figure, which far exceeds the amount spent in 2015 on all types of indigent legal services statewide, which at the time was reported to be between \$400 and \$500 million.<sup>59</sup> Moreover, as of January 2016, of the estimated \$550 million being spent annually by the 57 counties, New York City, and the State for indigent representation, only about one-quarter was attributable to mandated parental representation.<sup>60</sup>

In January 2017, Governor Cuomo fulfilled his promise to begin improving the quality of indigent criminal defense by proposing, at State expense, the extension of the *Hurrell-Harring* reforms throughout the State. Three months later, the final FY 2018 State budget included the aforementioned statutory amendments requiring the State to pay for the reform of criminal defense and empowering ILS to develop and implement statewide plans for counsel at arraignment, caseload relief, and quality improvement. By ensuring counsel at arraignment, increasing staffing, improving training and supervision, expanding non-attorney professional services, and improving client-communications, the reforms hold the promise of significantly elevating the quality of mandated representation in criminal defense.

The State can, and should, similarly transform the caliber of representation in Family Court and improve the fate of families throughout New York by providing for State

---

<sup>57</sup> *Id.*

<sup>58</sup> Veto #306, State of New York, Executive Chamber (December 31, 2016).

<sup>59</sup> New York State Association of Counties, *Indigent Legal Defense Services: Balanced Justice and Mandate Relief*, p. 3 (June 2016), [http://www.nysac.org/files/NYSAC%20Indigent%20Legal%20Defense%20Services%20White%20Paper\(1\).pdf](http://www.nysac.org/files/NYSAC%20Indigent%20Legal%20Defense%20Services%20White%20Paper(1).pdf); see also Matthew Hamilton, “Supporters urge Cuomo to sign indigent legal services bill,” Capitol Confidential, Dec. 6, 2016, <http://blog.timesunion.com/capitol/archives/269921/supporters-urge-cuomo-to-sign-indigent-legal-services-bill/>.

<sup>60</sup> Stashenko, *supra*, n. 35.



funding and oversight of mandated parental representation. As discussed above, the experience in New York City and elsewhere has shown that a reformed system of mandated parental representation can also save money by, among other things, helping to more promptly resolve family disputes, to preserve family units, to reduce foster care and subsidized adoptions, and to improve the quality of decision-making by the courts.

There is no doubt that the State's delegation to the counties of its responsibility for parental representation has been "a recipe for inconsistency, inequity, and failure."<sup>61</sup> A 2001 report issued by the Appellate Division First Department Committee on Representation of the Poor concluded that "[t]he outmoded, underfunded, overburdened, and organizationally chaotic system in operation today dishonors New York's long-standing commitment to an individual's right to meaningful and effective representation, often with devastating effects on the thousands of children and indigent adults who pass through that system each year."<sup>62</sup> The Committee recommended, among other things, that the State "reconsider the entire legislative structure relating to [mandated representation] in order to assist counties and New York City in overcoming the current crisis in legal representation of the poor." In particular, the First Department Committee urged the elimination of the "bifurcation" of State fiscal and administrative responsibility for the AFC program on the one hand, and county responsibility for parental representation in Family Court proceedings on the other.<sup>63</sup>

The time is now for immediate action to address egregious deficiencies in parental representation. ILS Director William J. Leahy highlighted the urgency of the need for reform in his January 31, 2017 testimony before the Joint Legislative Hearing on the 2017-2018 Public Protection Budget testimony:

The representation of parents in Family Court, and, to a much lesser extent, Surrogate's Court, is a vital component of legally mandated representation under County Law article 18-B. This representation is every bit as mandated by law as is criminal defense; yet, because it was not included in the *Hurrell-Harring* lawsuit, it was not included in the Settlement Agreement whose provisions the Executive budget proposal would extend throughout the State. This category of cases and clients, with family integrity and children's well-being at stake in every case, must not continue to be neglected. We call upon the Governor and the

---

<sup>61</sup>William J. Leahy, *The Right to Counsel in the State of New York: How Reform was Achieved After Decades of Failure*, \_\_\_ Indiana L Rev \_\_\_ (2017) (forthcoming 2018).

<sup>62</sup>Appellate Division First Department Committee on Representation of the Poor, *Crisis in the Legal Representation of the Poor: Recommendations for A Revised Plan to Implement Mandated Governmentally Funded Legal Representation of Persons Who Cannot Afford Counsel*, p. 2 (March 23, 2001), [http://www.courts.state.ny.us/press/old\\_keep/1ad-rep-poor.shtml](http://www.courts.state.ny.us/press/old_keep/1ad-rep-poor.shtml).

<sup>63</sup> Id.



Legislature to include parental representation as an integral part of the planned statewide reforms.<sup>64</sup>

The State and NYSBA leadership that helped bring us to the brink of criminal defense reform must now be directed to parental representation. There is no justifiable basis for distinguishing between these two categories of mandated representation. The fact that the right to counsel in criminal defense is grounded in the U.S. Constitution, whereas the broad right to counsel for parents is found in the State Constitution, does not provide a sound rationale for repairing the broken system for one set of litigants, but not the other. Both species of mandated representation have a profound impact on the fundamental rights of New Yorkers. Both realms require sweeping improvements and State funding and oversight to ensure quality representation.

For all these reasons, the Committee on Families and the Law makes the following Recommendation.

### **Recommendation**

- The NYSBA Executive Committee or House of Delegates should proclaim that the State should pay the entire cost of mandated parental representation, or at least for the cost to elevate the quality of representation being provided, and should provide a mechanism for statewide oversight of such representation.

---

<sup>64</sup>William J. Leahy, *Testimony of ILS, Joint Legislative Hearing on the 2017-2018 Public Protection Budget* (January 31, 2017), <https://www.ils.ny.gov/files/FY%202017-18%20Legislative%20Budget%20Testimony%20013117.pdf>.

**Chair**  
Hon. Lora Livingston  
261st Judicial District Court  
PO Box 1748  
Austin, TX 78767-1748  
Lora.Livingston@traviscountytx.gov

**AMERICAN BAR ASSOCIATION**

**Standing Committee on Legal Aid  
and Indigent Defendants**  
321 N. Clark Street  
Chicago, Illinois 60654-7598  
www.abalegalservices.org

**Members**  
Hon. Cheri Beasley  
Raleigh, NC

James Bethke  
Austin, TX

Walter Eggers  
Cheyenne, WY

Teresa Enriquez  
Miami, FL

David Hilgers  
Austin, TX

Theodore Howard  
Washington, DC

Lauren Sudeall Lucas  
Atlanta, GA

R. Edward Marks  
Albuquerque, NM

Charles Weiss  
St. Louis, MO

Bryant Yang  
Los Angeles, CA

**Board of Governors Liaison**  
David Bienvenu  
New Orleans, LA

**Committee Counsel**  
Terry Brooks  
312-988-5747  
terry.brooks@americanbar.org

**Associate Counsel**  
Bev Groudine  
312-988-5771  
bev.groudine@americanbar.org

**Director, Resource Center for  
Access to Justice Initiatives**  
April Faith-Slaker  
312-988-5748  
April.Faith-Slaker@americanbar.org

**Assistant Counsel for  
Indigent Defense**  
Malia Brink  
202-662-1584  
Malia.Brink@americanbar.org

William Leahy  
New York Office of Indigent Legal Services  
Alfred E Smith Bldg  
80 S. Swan Street, Suite 1147  
Albany, NY 12210

March 1, 2018

Dear Mr. Leahy,

I am writing on behalf of the Indigent Defense Advisory Group to the ABA Standing Committee on Legal Aid and Indigent Defendants (ABA SCLAID) to invite you to attend and speak at a Roundtable for public defense leaders and reform advocates. The Roundtable will take place from 2-5:30 pm on April 19, 2018, the day before the ABA Public Defense Summit in Chicago. The meeting will take place at the ABA Headquarters (321 N. Clark Street, Chicago, IL).

Originally, this meeting was initiated as a way to ameliorate some of the tensions that had developed among some defenders and to provide an opportunity to share ideas and plan ways to work together on public defense reform. Thankfully, the tensions have dissipated and we find this meeting a great way to share ideas and build connections.

This year, the Agenda for the Roundtable is as follows:

Bail Reform Litigation	Alec Karakatsanis (Civil Rights Corp)
State Indigent Defense Commissions	Bill Leahy (NY); Geoff Burkhart (TX)
Indigent Defense Research	Pam Metzger, Janet Moore and Andrew Davies (IDRA); Marea Beeman (NLADA/BJA)
Federal Defense Issues	Cait Clarke (AO)
Systemic Reform Litigation	Steve Hanlon (NAPD); Jason Williamson, Brandon Buskey (ACLU); Lisa Graybill (SPLC)

As indicated in the above agenda, we hope that you could speak on the topic of State Commission and update the group about the developments in New York. Regrettably, we do not have any funds to pay travel costs. We hope that you might be attending the ABA Public Defense Summit on April 20<sup>th</sup>, and so this will coordinate with your travel to the Summit, or that you otherwise will be able to join us in Chicago.

If you have any questions about the Roundtable or the Summit, please do not hesitate to contact me.

Respectfully,

*Malia N Brink*





Standing Committee on  
**Legal Aid & Indigent Defendants**

Challenges and Innovations in Public Defense:

The 13th Annual Summit on Public Defense Improvement

American Bar Association Headquarters  
Chicago, IL

Friday, April 20, 2018

8:00–8:30 a.m.

**Registration and Breakfast**

8:30–9:00 a.m.

**Welcome Remarks**

Jim Bethke, Chair, Indigent Defense Advisory Group—ABA  
Standing Committee on Legal Aid and Indigent Defendants  
Amy Campanelli, Cook County Public Defender

9:00–10:00 a.m.

**Conflicts Issues in Public Defense: Challenges and Solutions**

Amy Campanelli, Cook County Public Defender  
Ann Sutton, Chief Counsel, Marion County Public Defender  
Agency  
Robert Burns (Invited), William M. Gurley Professor of Law,  
Northwestern University School of Law

Public defenders are under increasing pressure to retain cases despite a potential or actual conflict. The recent decision of *Illinois v. Cole*, holding that a public defender office is not a law firm for the purpose of turning down conflicting representations, appears to exacerbate this issue. This panel will address what further can be done to empower public defenders to determine when a conflict prohibits a representation. Additionally, the panel will discuss steps public defender offices have taken to ensure quality representation even where pressured to take conflict cases?

10:00–11:30 a.m.

**Public Defender Workloads: Responding to the Crisis**

Michael Barrett, Director, Missouri State Public Defender System  
Carlos Martinez, Public Defender, Miami-Dade County  
Stephen Hanlon, Project Director, ABA Public Defender Workload Studies  
Malia Brink (Moderator), Assistant Counsel for Public Defense, ABA Standing Committee on Legal Aid and Indigent Defendants

Report after report has documented that public defenders across the country have excessive workloads. What efforts are being taken to stem this tide? Have any been effective? This panel will discuss efforts to reduce public defender workloads through studies, litigation and advocacy, with a focus on the role of public defenders in this reform effort.

**11:30–11:45 am**

**Break**

**11:45 am–12:45 p.m.**

**Fines, Fees and Misdemeanor Courts**

Hon. Lisa Foster (Ret.)  
Nusrat Choudhury, American Civil Liberties Union  
Joanna Weiss, Laura and John Arnold Foundation  
Sarah Reese, Municipal Court Public Defender, Biloxi, MS

Excessive fines and fees imposed on individuals without regard to that person’s ability to pay frequently lead to mounting court debt, warrants for failure to appear in court to address that debt, and, far too often, imprisonment. This panel will address efforts to break this cycle of over-criminalization through impact litigation, policy reform efforts, and improving courtroom advocacy for reducing and waiving fines and fees. The discussion will focus on the role public defenders can play in achieving reform.

**12:45–1:30 p.m.**

**Lunch and Keynote Address**

**Keynote Speaker: Rick Kammen**

Mr. Kammen served as learned death penalty counsel to Abd al-Rahim al Nashiri, who was accused of conspiring to bomb the USS The Sullivans, and of organizing the bombings of the USS Cole and a French oil tanker off the coast of Yemen, in 2000 and 2002 respectively. Nashiri was captured in Dubai in 2002 and held in secret Central Intelligence Agency custody until his transfer to Guantanamo Bay in 2006. While in CIA custody Nashiri was repeatedly tortured by the CIA. This case raised not only the use of waterboarding and other enhanced interrogation techniques, but also the Constitutional sufficiency of the military tribunals at Guantanamo Bay.

In October 13, 2017, Mr. Kammen and the other civilian lawyers representing Nashiri requested to withdraw and their withdrawal was approved by Gen. John Baker, the Chief Defense Counsel. A statement issued by Mr. Kammen regarding the decision acknowledged, “The circumstances surrounding this are highly classified. But . . . doing so was necessary because it was no longer ethical for us to



proceed.” Mr. Kammen went on to offer his assessment regarding the military tribunals: “The military commission system is a failed experiment.... No justice will ever come out of Guantanamo.”

**Statement by Rick Kammen: Brig. Gen. John Baker, Chief Defense Counsel for Guantanamo Military Commission, Disbands the Defense Team in the USS COLE Case (Oct 13 2017)**

The withdrawal of the defense team set off a chain of events no one could have predicted. Mr. Kammen and his colleagues were ordered to Guantanamo, an order that they contend is illegal. The Chief Defense Counsel for the military commission Brig. Gen. John Baker was held in contempt when he refused to rescind his decision excusing Mr. Kammen and the other lawyers. Mr. Kammen was forced to obtain an order from a federal judge to prevent the military commission tribunal from compelling him to appear. And Mr. Nashiri is now being represented by a single military lawyer with no homicide or death penalty experience.

In his address, Mr. Kammen will discuss his experience as a defense lawyer before the Guantanamo Bay military commission and the difficult choice to cease representation.

**1:30–2:30 p.m.**

**Innovations in Public Defense**

**2:30–3:30 p.m.**

**The Judicial Role: What role should Judges play in public defense reform?**

Chief Justice Donald W. Beatty (Invited), South Carolina Supreme Court  
Rep. Marcia Morey, N.C. House of Representatives  
Justice Cheri Beasley (Moderator), North Carolina Supreme Court

Judges have unique exposure to the problems of the criminal justice system, and in particular problems relating to the quality or sufficiency of public defense. Judges see these problems from the vantage point both one who must adjudicate individual cases in which such problems may play a role and as the chief administrators of the courts. To what extent, can judges, as administrators, be agents of change without compromising, or appearing to compromise, the role of unbiased and independent adjudicator? What is the appropriate role for judges in public defense reform?

**3:30–3:45 p.m.**

**Break**

3:45–4:45 p.m.

**Progressive Prosecution: Can Prosecutors drive criminal justice reform?**

Larry Krasner (Invited), District Attorney, Philadelphia, PA  
Mark Gonzalez, District Attorney, Nueces County, TX  
Miriam Krinsky, Executive Director, Fair and Just Prosecution  
Bryant Yang (Moderator), Asst. U.S. Attorney, Los Angeles, CA

The last few years have seen a wave of prosecutors elected to office on a platform of reform from Philadelphia to Corpus Christi. But what does progressive prosecution look like in practice? What is the impact of a progressive prosecutor on the individual accused of a crime? Can prosecutors drive more systemic criminal justice reform?

Mark W. Rutherford, Chairman  
Indianapolis

Richard Bray  
Martinsville  
Hon. Mary Ellen Diekhoff  
Bloomington  
Representative Ryan Dvorak  
South Bend  
Hon. Kelsey B. Hanlon  
Spencer

# Public Defender Commission



David J. Hensel  
Indianapolis  
Senator Eric Koch  
Bedford  
Larry Landis  
Indianapolis  
Hon. Steven P. Meyer  
Lafayette  
Senator Gregory G. Taylor  
Indianapolis  
Representative Thomas Washburne  
Dormstadt

309 W Washington Street Suite 501 • Indianapolis, IN 46204

[www.in.gov/publicdefender](http://www.in.gov/publicdefender) • ph 317-233-6908

March 9, 2018

Mr. Bill Leahy, Director  
NYS Office of Indigent Legal Services  
80 S. Swan Street  
11<sup>th</sup> Floor  
Albany, NY 12210

Dear Mr. Leahy,

The Indiana Task Force on Public Defense extends an invitation for you to speak before the Task Force on April 20, 2018 at the office of the Indiana Public Defender Commission. This invitation is conveyed on behalf of the Chairman of the Task Force, Judge John Tinder (Ret.) of the 7<sup>th</sup> Circuit Court of Appeals.

The Task Force, which began in response to a report issued by the Sixth Amendment Center on the state of public defense in Indiana, is well into the fact-finding phase of its process. The Task Force is comprised of members of the judiciary, executive branch, and the legislature. A report is anticipated for August of 2018 which will be considered for legislative reforms in the following year.

Your expertise on public defense reform would be invaluable. We reach out to you upon the recommendation of Norman Lefstein, Dean Emeritus of the Indiana University School of Law – Indianapolis and David Carroll of the Sixth Amendment Center. At the April 20<sup>th</sup> meeting you would be part of a 2-person panel that would include a member of the public defense reform effort in Michigan.

We will be able to reimburse you for your flight and hotel accommodations, as well as provide a per diem at government rates for food and incidental travel expenses including taxis.

For more information on the Task Force or the Commission, please contact me at 317-650-8043 or at [Kathleen.casey@pdcom.in.gov](mailto:Kathleen.casey@pdcom.in.gov). You may also view meeting materials from our previous meetings at <http://www.in.gov/publicdefender>.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen Casey".

Kathleen Casey

## Reforming Public Defense in New York State: Study, Litigation, Legislation, Agency Action

### Chronology

**2006:** Kaye Commission report condemns New York's "fragmented system of county-operated and largely county-financed indigent defense services [that] fails to satisfy the state's constitutional and statutory obligations to protect the rights of the indigent accused." Recommends statewide public defender system, and state assumption of the cost of providing counsel in criminal cases.

**2007:** NYCLU files class action litigation *Hurrell-Harring v. The State of New York*.

**2009:** Legislation directs Chief Court Administrator to set weighted caseload standards for New York City only: 150 felony/400 misdemeanor limit (i.e., 1973 NAC standard) set in 2010, fully funded by 2014.

**2010:** Enactment of Executive Law sections 832, creating the Office of Indigent Legal Services (ILS) and section 833, the Indigent Legal Services Board (ILSB). Decision by NY Court of Appeals in *Hurrell-Harring*, 15 NY 3d 8 (2010) reverses lower court dismissal and allows case to proceed to trial on theory of constructive denial of the state's responsibility to provide counsel.

**2011:** ILS begins operations in February with hiring of its Director. Issues first distribution of quality improvement funding (\$4.4 million) to counties and New York City.

**2012:** ILS issues *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, effective July 1 and extended to all trial level representation as of January 1, 2013.

**2013:** ILS contracts with 25 upstate counties to provide state-funded counsel at first appearance, and issues its first annual *Estimate of the Cost of Compliance with National Maximum Caseload Limits*.

**2014:** ILS contracts with 47 upstate counties to provide state-funded caseload relief and quality improvements. ILS Board adopts statewide weighted caseload of 367, contingent on state funding. Board approves ILS *Appellate Standards and Best Practices*, effective as of January 5, 2015

**2012-2015:** Average weighted caseload per attorney in the 57 upstate counties is reduced by 22%, from 719 in 2012 to 561 in 2015. Still far above NYC and NAC standards.

**2015:** The October, 2014 settlement of the *Hurrell-Harring* case ("HH") is approved by the Court and goes into effect. The Settlement Agreement authorizes ILS to set caseload standards for the 5 lawsuit counties. State funding is provided for ILS to create an 8 member HH Implementation Unit.

On November 12, ILS files its Final Plans for implementing Counsel at Arraignment and Quality Improvement Initiatives in the five HH counties, pursuant to sections III and V of the HH settlement.

ILS *Standards for Parental Representation in State Intervention Matters* are effective as of December 1.

The Brooklyn Study (*Indigent Defense Reforms in Brooklyn, New York*) demonstrates reduction of caseloads and improvements in representation in one NYC borough due to state-funded caseload relief.

**2016: April 1:** State budget includes \$10.4 million for caseload relief to help the five HH counties reach the ILSB standard of 367 weighted cases; and millions for counsel at arraignment and quality improvement initiatives in those counties.



**April 4:** ILS issues its Criteria and Procedures for Determining Assigned Counsel Eligibility.

**June 17:** NY Senate and Assembly pass Public Defense Mandate Relief Act (PDMRA) also known as the Justice Equality Act (JEA) by unanimous votes. The Act would expand HH reforms statewide at state expense, and would provide full state reimbursement for local cost of providing mandated representation, including representation of parents in Family Court.

**July 6:** ILS announces creation of six **Regional Immigration Assistance Centers**, providing comprehensive statewide training and advice to providers of mandated representation.

**November 29:** Governor Cuomo signs into law Chapter 492, authorizing the creation of Centralized Arraignment Parts to facilitate the appearance of counsel at arraignment.

**December 8:** ILS delivers its Caseload Standards to the HH parties.

**December 31:** Governor Cuomo vetoes the PDMRA/JEA, and vows to propose statewide, state-funded application of *Hurrell-Harring* reforms in his January, 2017 Executive Budget proposal.

**2017: January 6:** ILS issues its second Counsel at First Appearance (CAFA) Request for Proposals. Fifty-two counties are eligible to apply. Thirty-seven counties apply by the February 24 deadline.

**January 17:** Governor's budget proposal includes \$23.8 million for HH settlement costs in the five counties, including \$19 million for implementation of the new caseload standards established by ILS. Proposal directs ILS to submit plans for extension of the HH caseload limits, counsel at arraignment and quality improvements statewide by December 1, 2017; and funds a new Statewide Implementation Unit.

**March:** Assembly and Senate budget proposals concur with Governor's proposal.

ILS issues RFP for first-ever Model Upstate Parental Representation Office. Proposals are due by May 12, 2017.

**April 9:** Governor and Legislature agree on a state budget that includes statutory authority for ILS to develop and implement plans to extend HH reforms (counsel at arraignment, caseload relief and quality improvement initiatives) statewide. Plans for each county and New York City are due by December 1, 2017. Full implementation, fully state funded, due by April 1, 2023. Estimated annual cost of full implementation is \$250 million.

**December 1:** The plans are timely filed.

**2018: January:** Governor's budget provides \$50 million in additional funding for first year of implementing statewide criminal defense reforms.

**February:** Chief Judge DiFiore announces creation of the **Commission on Parental Legal Representation**, "to examine the current state of mandated Family Court representation and determine how best to ensure the delivery of quality, cost-effective parental representation."

**March:** *The Right to Counsel in the State of New York: How Reform Was Achieved After Decades of Failure*, 51 Indiana Law Review 145.

**April:** The FY 2018-2019 state budget is enacted. It provides the full \$50 million for the first year of statewide indigent criminal defense reform.