



STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

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William J. Leahy
Director

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Andrew M. Cuomo
Governor

November 5, 2019

Robert Mujica
Director of the Budget
Room 117
State Capitol
Albany, New York 12224

Re: Office of Indigent Legal Services Budget Request for FY 2020-2021

Dear Mr. Mujica,

Enclosed please find the Office of Indigent Legal Services (ILS) budget request for FY 2020-2021. We request an appropriation of \$267,181,644; consisting of \$7,371,644 for State Operations and \$259,810,00 for Aid to Localities. Please note that this budget request was approved by the Indigent Legal Services Board at its meeting on September 20, 2019.

The State of New York has a constitutional obligation to provide effective representation to people who cannot afford to retain counsel but have been charged with a crime or threatened with the loss of their children. See, e.g., *Gideon v. Wainwright*, 372 U.S. 335 (1963), *People v. Witenski*, 15 N.Y. 2d 392 (1965), and *In re Ella B.*, 30 N.Y. 2d 352 (1972). The State is now meeting these obligations for legally mandated criminal representation with the implementation of the 2015 *Hurrell-Harring v. State of New York* settlement, the 2017 enactment of Executive Law § 832 (4) to extend the settlement to the entire State, and the initial installments of State funding over the past two budget years to begin implementing these reforms over the five-year phase-in period established by that statute. However, the representation of indigent parents in Family Court - equally mandated by our Constitution and our laws - continues to languish, despite the devastating findings and the thoughtful recommendations for reform issued by Chief Judge DiFiore's *Commission on Parental Legal Representation* in its February 2019 Interim Report to the Chief Judge.

As described below, this appropriation request seeks the continuation of funding to implement the terms of the *Hurrell-Harring* settlement; the third installment of funding under the five-year schedule for complying with the statewide extension of the *Hurrell-Harring* settlement reforms by the statutory deadline of April 1, 2023; and modest additional funding to begin addressing the long-neglected crisis in the quality of parental representation.

I. Continued Support for Implementation of the Hurrell-Harring Settlement Agreement

To date, the State has fully funded implementation of the *Hurrell-Harring* settlement. This funding has been critical to the success of settlement implementation, resulting in achievement of the following key settlement deadlines: the October 2016 deadline for compliance with the ILS *Eligibility and Criteria for Determining Financial Eligibility for Assigned Counsel*; the November 2016 deadline for ensuring defense counsel representation at all arraignments; and the April 2019 deadline for compliance with ILS caseload standards. In practical terms this success means that people who cannot afford private counsel are assigned counsel almost immediately at the commencement of a case, when they need it the most, and that defense attorneys in the five settlement counties have manageable caseloads and the resources needed to deliver quality representation. As Daniel Russo, Administrator for the Suffolk County Assigned Counsel Program stated in an email to ILS, “It gives me great pleasure to know that if this is the future of indigent defense representation then we are certainly on good footing to provide justice for all clients.” With continued State funding of \$23.8 million per year for *Hurrell-Harring* settlement implementation, as well as full funding of Statewide implementation (discussed below), New York will have established itself as a national leader in ensuring equal justice for all people regardless of their ability to pay for counsel.

II. Statewide Extension of the Hurrell-Harring Reforms

The statewide extension of the three major criminal defense reforms - providing defense counsel at arraignment; funding new caseload standards that afford defense attorneys the time and resources necessary for effective representation; and providing essential support services, training, supervision and oversight - promises to vault New York into full compliance with its Sixth Amendment obligations and to national prominence with its fulfillment of the promise of *Gideon* by the statutory compliance date of April 1, 2023. Its success depends upon the continuation of the appropriation amounts we identified as needed in our December 1, 2017 Implementation Plan, including the funding necessary to establish in this budget cycle two Regional Support Centers, one in far western New York and the second in the North Country.

I emphasize that our proposal to establish these two Regional Support Centers is essential not only for successful implementation of these reforms, but also to assure the most efficient use of the State's significant fiscal investment. With respect to implementation of the *Hurrell-Harring* reforms, these Centers will provide hands-on, locally accessible ILS expertise, advice and support that will replicate the problem-solving approach that our *Hurrell-Harring* Implementation Unit has utilized with great effectiveness to implement these same reforms in the five lawsuit counties during the past four years. With respect to fiscal efficiency, the Centers will serve three very important functions: first, to ensure the collection of complete, accurate and consistent data that is essential to measuring implementation progress; second, to help ILS identify and rectify perceived areas of inefficiency; and third, as a creative catalyst for driving both intra-county and especially regional approaches that improve both quality and efficiency. The *Hurrell-Harring* team's promotion and facilitation of the Tompkins County-Schuyler County regional Assigned Counsel Program (ACP) stands as a model of what may be replicated in counties across the state.

Please see our memorandum, **Regional Support Centers for Far Western New York and the North Country: An Imperative for Successful Public Defense Reform** and its attached position descriptions for more detailed information about this essential component of our Implementation Plan for statewide public defense reform.

III. The Urgent Need for Parental Representation Reform

In its February 2018 interim report, Chief Judge DiFiore's *Commission on Parental Legal Representation* decried the current crisis in the quality of parental representation, stating: "For decades, reports have chronicled the crisis in parental representation particularly regarding child welfare proceedings. Instances of inadequate representation, delays in access to representation, and outright denial of representation, are all too frequent." Yet, while the State has made a meaningful investment to improve the quality of public criminal defense, the quality of parental defense continues to languish without urgently needed State support and oversight.

As detailed below, this appropriation request seeks to jump-start parental representation reform by: 1) making \$5 million in Aid to Localities funding available for ILS to distribute to counties through quality-improvement grants; and 2) establishing an ILS Parental Representation Unit.

Appropriations Requested

To achieve the above goals, ILS requests the following appropriations:

State Operations: \$7,371,644 (increase of \$1.3 million):

We request an appropriation of \$7,371,644 in State Operations for FY 2020-2021 which includes the funding highlighted below:

- The \$1.3 million increase will assure the continued effective operation of our office as it works to implement the Settlement reforms in the five *Hurrell-Harring* counties and the historic statewide public defense reform in the remaining 52 counties and New York City. These increases would annualize salaries for employees hired in FY 2019-2020, including members of our *Hurrell-Harring* and Statewide Implementation Units, and account for the 2% salary increase in FY 2019-20 as well as the anticipated 2% increase in FY 2020-21. This funding would also enable the hiring of one critical new position for our Grants Unit in FY 2020-2021. It also includes State funding for the Assistant Counsel position that was approved in the current fiscal year.
- The increase would also allow for the creation of six new positions for a Parental Representation Unit modelled after the *Hurrell-Harring* settlement and statewide implementation units that are working effectively to improve the quality of mandated criminal defense representation.

The attached memorandum, **Requested FY 2020-2021 ILS Staff Positions**, describes the need for the new Grants Unit position and the creation of a Parental Representation Unit.

Aid to Localities: \$259,810,000 (increase of \$55 million):

We request an appropriation of \$259.81 million in Aid to Localities, an increase of \$55 million, to accomplish the following vital goals:

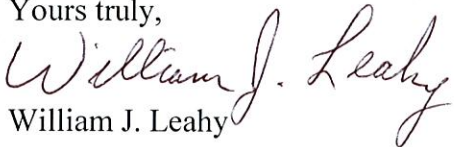
- \$150 million (a \$50 million increase from last year's appropriation) to finance the third year of our five-year implementation of the Hurrell-Harring reforms statewide, pursuant to plans that we filed on December 1, 2017. As in the final FY 2018-19 and FY 2019-20 ILS Aid to Localities Budgets, we would request language to authorize the transfer of funds from the Aid to Localities budget to the State

Operations budget to support our Regional Support Centers and Data Officer positions.

- \$5 million to fund a new RFP that will enable a significant number of counties to reduce excessive caseloads and make important quality improvements in their delivery of mandated parental representation. We have demonstrated in the past our ability to leverage modest amounts of new state funding in upstate counties to achieve significant and measurable improvements in criminal public defense representation. We are confident that we can utilize these funds to achieve similar progress in rectifying the crisis in legally required parental representation. Please see the attached memorandum, **Parent Representation Caseload Relief and Quality Improvement: Replicating a Successful Public Defense Initiative.**

Thank you for your careful consideration and support of our budget request. We look forward to discussing it with DOB staff. Please feel free to call me or ILS Counsel Patricia Warth with any questions.

Yours truly,


William J. Leahy

cc: Kumiki Gibson, Counsel
Beth Garvey, Special Counsel and Senior Advisor
Robert Barbato, Chief Budget Examiner
Jill Starishevsky, Assistant Counsel



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

Regional Support Centers for Far Western New York and the North Country: An Imperative for Successful Public Defense Reform

The most famous and most fundamental finding in the historic Final Report of Chief Judge Judith Kaye's *Commission on the Future of Indigent Defense Services* was its declaration that:

"New York's current fragmented system of county-operated and largely county-funded indigent defense services fails to satisfy the state's constitutional and statutory obligations to protect the rights of the indigent accused."

- *Final Report to the Chief Judge of the State of New York* (June 18, 2006) at 15.

Thirteen years later, in 2019, we can say that the Kaye Commission's condemnation of over-reliance on local funding has been addressed in several important ways: by the 2009 legislation and 2010 Order of the Chief Administrative Judge that provided state funding to reduce public defenders' caseloads in New York City and annual state funding to accomplish that goal; by the 2014 settlement of the *Hurrell-Harring v. The State of New York* lawsuit and implementation by the Office of Indigent Legal Services (ILS) of its three critical reforms – caseload limits, counsel at arraignment, and the assurance of adequate support for quality improvement – fully funded by the State, in the five defendant counties; by the 2017 amendment of County Law §722-e and enactment of Executive Law § 832(4) that expanded those critical reforms statewide at State expense for full implementation by April 1, 2023 pursuant to plans filed by ILS on December 1, 2017; and finally by the appropriations in the FY 2018-2019 state budget (\$50 million) and FY 2019-2020 state budget (\$100 million) of the projected \$250 million annual cost of implementing those reforms.

In our December 1, 2017 plans for statewide implementation, we highlighted the need to address the structural deficiencies identified in the Kaye Commission's Report. Specifically, we emphasized a) the compelling need to collect accurate data from every one of the 126 providers of public criminal defense representation in the 52 non-*Hurrell-Harring* counties and New York City; and b) the equally compelling need for ILS to provide locally based state expertise for local providers and governments, to assure that these critical reforms will be implemented as effectively and as efficiently as possible in every one of the 53 localities. We have been heartened by the affirmative response to our appropriation request for Data Specialists in every county and on the ILS staff. Yet, to date, there has not been specific funding of the Regional Support Center component of our plan. That component is essential and indeed it is indispensable, if these reforms are to be implemented successfully and with maximum efficiency.

Since we filed our Implementation Plans almost 2 years ago, we have honed and streamlined our vision for these Centers. We have decided to focus this fiscal year on just two: one in the

8th Judicial District covering far western New York, and a second in the 4th Judicial District covering the North Country. We have reduced the number of staff for each Center from eight to six, and have targeted those positions specifically to the highest priority implementation needs to achieve effective and efficient reform. Please see the attached **Job Descriptions for Regional Support Center Personnel**.

On September 28, 2018, I presented this specific component of our FY 2019-20 budget request to the Indigent Legal Services Board, which unanimously approved it. Please see my memorandum to the Board, attached and entitled ***Creation of ILS Regional Support Center for the 8th Judicial District***. As indicated in that memorandum, this Judicial District is at the farthest remove from Albany. Its 1.5 million people, almost two-thirds of whom reside in Erie County, are spread over more than 8,100 square miles. For decades, the rural counties in the District have been left to their own devices in trying to comply with the mandate of the Sixth Amendment right to counsel, without meaningful funding or guidance by the State. They need both.

During the September 20, 2019 Board meeting, I reiterated the need for Regional Support Centers, with the first one to be established in the 8th Judicial District. I also discussed the need for a second Regional Support Center, this one located in the 4th Judicial District. The 4th Judicial District covers a wide swath of northern New York, constituting 26% of the State's land mass. It encompasses eleven counties, with a total population of 840,000 people. Though geographically beautiful (most of the Adirondack Park is in the 4th Judicial District), travel from one part of the District to another is time-consuming, and in the winter months, can be treacherous. Yet, because there are few criminal defense attorneys who practice in the District's rural counties, this region is in dire need of regional oversight and approaches to implementing the *Hurrell-Harring* reforms.

The Board unanimously agreed to the importance of funding for both these Centers.

As the Job Descriptions and Board Memorandum demonstrate, and as our December 1, 2017 Plan for Implementation emphasizes, these Regional Centers are essential not only to achieve effective implementation of these reforms: they are equally needed to ensure that the State's investment in public defense reform is cost-effective and smart. These Centers will promote best practices in data collection, they will ensure a higher and more consistent quality of criminal defense representation, and they will encourage and facilitate regional approaches for delivering constitutionally mandated representation that are more effective and more efficient.



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

Job Descriptions for ILS Regional Support Center (RSC) Personnel

1. Attorney in Charge/Director of Regional Planning:

- Forges and strengthens relationships with local government officials and providers of mandated representation throughout the region;
- Promotes the most effective implementation of the ILS reform plans within the region;
- Maximizes the most efficient use of state funding by all providers and counties within the region;
- Promotes regional cooperative efforts including shared services agreements between and among counties;
- Oversees progress of Data Specialist to ensure accurate and consistent caseload, quality initiatives and counsel at arraignment data; also staffing, spending, case outcome and other data as ILS requires for each provider and county;
- Oversees performance of Support Resources Specialist to assure compliance with Executive Law § 832 (4) (c), Initiatives to improve the quality of public defense.
- Oversees work of Criminal Defense Counsel, Family Court Counsel and Appellate Counsel in the exercise of their responsibilities to support reform implementation and improve the quality of representation by all providers of mandated representation within the region;
- Reports to ILS Chief Statewide Implementation Attorney, who reports to agency Counsel and Director;
- Participates in scheduled meetings with agency leadership and communicates regularly with leaders of other ILS Regional Centers

2. Data Specialist:

- Primary responsibility to collect accurate and consistent caseload, quality initiatives and counsel at arraignment data; also staffing, spending case outcome and other data as ILS requires for every county and provider within the region;
- Works closely with the Data Officer in each county within the region to ensure consistent tracking of all required data pursuant to ILS instructions and definitions;
- Maintains familiarity with all ILS data collection requirements and is prepared to assist regional providers and counties with compliance as needed;
- Develops understanding of data collection techniques and technology in each provider and county;
- Communicates effectively with RSC Criminal Defense and Appellate Counsel, County Data Officers, ILS researchers and Statewide Implementation Unit to assist compliance by ILS with Executive Law § 832 (4);
- Consults regularly with the ILS Director of Research and Data Specialists in other regions to assure data accuracy and uniformity;
- Reports to Attorney in Charge/Director of Regional Planning

3. Support Resource Specialist:

- Primary responsibility to cultivate and communicate to all providers of mandated representation contact information for available providers of non-attorney support services including but not limited to investigators, expert witnesses, social workers, translators, mental health evaluators and sentencing advocates, in furtherance of effective implementation of Executive Law § 832 (4) (c), Initiatives to improve quality;
- Communicates requests made by mandated representation providers within the region for such services to the appropriate RSC Counsel for consideration;
- Tracks available funding for utilization of non-attorney support services;
- Consults regularly with the ILS Statewide Implementation Attorney – Quality Enhancement and Support Resource Specialists in other regions to assure uniformity;
- Reports to Attorney in Charge/Director of Regional Planning

4. Criminal Defense Counsel:

- Responsible for effective implementation of Executive Law § 832 (4) (a), Counsel at arraignment, § 832 (4) b), Caseload relief and § 832 (4) (c), Initiatives to improve quality with respect to Trial Court cases;
- Provides consultation to providers of mandated criminal defense representation upon request in complex cases;
- Facilitates regional initiatives and efficiencies in the delivery of mandated trial level representation within the region;
- Works closely with the Data Specialist and the Support Resource Specialist to ensure accurate collection and reporting of all relevant data, and with Family Court Counsel and Appellate Counsel to identify areas where quality improvement and greater efficiencies may be achieved;
- Consults regularly with the ILS Director of Quality Enhancement for Criminal Defense Trial Representation and Criminal Defense Counsel in other regional centers;
- Reports to Attorney in Charge/Director of Regional Planning

5. Family Court Counsel:

- Responsible for improving the quality of representation of parents within the region, not only in Family Court but also in Integrated Domestic Violence (IDV) Court;
- Works closely with Criminal Defense Counsel and Appellate Counsel to assure continuity and quality of representation of clients whose cases overlap criminal and civil proceedings;
- Furthers statewide reform implementation by working closely with Criminal Defense Counsel and Appellate Counsel to identify inefficiencies and propose structural improvements in the delivery of representation;
- Consults regularly with the ILS Director of Quality Enhancement for Parent Representation and Family Court Counsel in other regional centers;
- Reports to Attorney in Charge/Director of Regional Planning

6. Appellate Counsel:

- Responsible for effective implementation of Executive Law § 832 (4) (b), Caseload relief and § 832 (4) (c), Initiatives to improve quality with respect to appellate cases;
- Provides consultation to providers of mandated appellate representation upon request;
- Facilitates regional initiatives and efficiencies in the delivery of mandated appellate representation within the region;
- Works closely with Criminal Defense Counsel and Family Court Counsel to identify areas where quality improvement and greater efficiencies may be achieved;

- Consults regularly with the ILS Director of Quality Enhancement for Appellate and Post-Conviction Representation and Appellate Counsel in other regional centers;
- Reports to Attorney in Charge/Director of Regional Planning



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

To: Indigent Legal Services Board

From: Bill Leahy

Re: Creation of ILS Regional Support Center for the 8th Judicial District

Date: September 25, 2018

The Board has been on record since 2012 as supporting the establishment of ILS Regional Support Centers in every upstate Judicial District, because, as we argued in the December 1, 2017 submission of our Statewide Implementation Plan pursuant to Executive Law § 832 (4), they are “a necessity for improving the quality, the consistency, and the efficiency of legally mandated representation throughout New York.” See **Regional Support Centers: An Essential Component of Statewide Reform**, attached.

In our Statewide Plan, we argued for the creation of nine RSCs – one in each upstate JD and one in New York City – over a three-year period. However, in subsequent discussions with Executive Branch staff, we agreed to defer this priority for a year, to focus our attention and resources on the goal of reaching agreement on contracts including first year funding with 52 counties and NYC.

During this period, we have also reviewed and amended the details of our vision for these Centers. We have analyzed how local needs have been altered by the HH Settlement and the passage of statewide reform, which has led us to recognize that the collection of accurate data is essential to the success of statewide reform. We have reconsidered whether the provision of local training (as opposed to its facilitation) should be a task of these Centers, when other entities are already so engaged. We have heeded providers’ concerns that the Centers not duplicate quality improvements that local programs are making. Finally, we have made it clear that the encouragement and support of regional planning and cooperation is the primary responsibility of the RSC Attorney in Charge.

In the end, we have reduced staffing in the Centers from eight in our October, 2017 budget request to six in our current proposal. Finally, in light of the enormous continuing challenge of getting contracts executed and underway, we have decided to establish just one Regional Center this fiscal year, in far western New York in the 8th JD. In sum, the plan for RSCs has evolved to suit current conditions and to maximize the efficiency with which each Center will operate, and to prioritize the area of greatest immediate need.

The 8th Judicial District is our first RSC priority because of both need and opportunity. As to need, its public defense offices lie at the farthest remove from ILS headquarters in Albany (The Chautauqua County Public Defense office lies 352 miles west of the ILS office in Albany, the Cattaraugus County office 306 miles, the Erie County offices 288 miles and Niagara County 287). Its eight counties contain seventeen providers of mandated representation; 220 courts of which 193 (87.7%) are Town or Village Courts; and a population of 1.5 million spread over 8,100 square miles. Its institutional criminal defense providers suffer some of the highest average caseloads in the state; and all lacked sufficient data capacity to provide accurate data under the ILS Caseload Standards for inclusion in our December, 2017 Plan. Except in Erie County, its assigned counsel programs are either non-existent or in need of enhanced support and consideration of regional approaches. Outside of Buffalo and its suburbs, it is very rural.

As to opportunity, Erie County has long supported mature and efficient institutional and assigned counsel providers, the Legal Aid Bureau of Buffalo and the Assigned Counsel Program under the Erie County Bar Association. The city of Buffalo is centrally located within the Judicial District. Erie County providers and government leaders understand the need for a Regional Center and support its establishment. Interest in regional initiatives is strong throughout the District, and there is a Regional appellate program in place covering some but not all counties and providers. In short, the need and the opportunity are present.

Requested FY 2020-21 ILS Staff Positions

Administrative Position

- **#1. Assistant Grants Manager 2 (projected annual salary range: \$75k-\$85k)**

The FY 2018-19 Final Budget provided funding to add four administrative positions to our Grants Unit to better address the workload (and backlog) generated by our nine distributions, five competitive grants, *Hurrell-Harring* Settlement implementation, and implementation of the Statewide Expansion of *Hurrell-Harring* reforms. To accommodate the expected growth of the Grants Unit, the Unit was restructured, and a new series of internal titles created (Assistant Grants Manager 2, Assistant Grants Manager 1, Grants Administrator 2, Grants Administrator 1, and Auditor). Three of these positions have been filled, while a fourth (Grants Administrator 2) is pending. This restructuring allows us to further professionalize the Unit, introduce specialization of work duties within the Unit, and create the framework needed for adding new staff during the five year phase-in of the Statewide Expansion of *Hurrell-Harring* reforms. These four positions represented the first step in growing and professionalizing the Grants Unit to the size needed to properly manage over 400 active reimbursement contracts, manage the *Hurrell-Harring* Settlement structured payment contracts, and undertake the immense new responsibilities of the five-year Statewide Expansion of *Hurrell-Harring* reforms.

The FY 2019-20 Final Budget provided for two additional positions for the better structured Grants Unit – an Assistant Grants Manager 1 and a Grants Administrator 2 position. As the Grants Unit grows in size and responsiveness to ILS' growing contract needs, we have intentionally paced the hiring of new staff people to ensure that they are fully trained and incorporated into the Grants Unit work before additional people are brought on-board. Thus, while these two positions are necessary, they have not yet been filled.

For FY 2020-21, we recognize the importance of filling the positions funded in FY 2019-20. We also propose one additional Grants Unit position to bolster the improved Grants Unit structure – a third Assistant Grants Manager 2 position. This position will have expertise in contract requirements to work closely with the Grants Unit Manager in overseeing the review and approval/disapproval of contracts and budget modifications. This position will provide much needed support to the Grants Unit Manager, diminishing the current bottleneck in the supervisor review of contract and budget modifications. This position (in addition to the two positions funded in the FY 2019-20 budget) will also help to develop the capacity needed to process the contracts and claims that result from the requested \$5 million additional Model Parental Representation funding.

Executive Position

- **#2 Assistant Counsel (projected annual salary range: \$90k-\$95k)**

As ILS has grown in responsibility, distribution and oversight of State funding, and increased staff, the responsibilities of ILS Counsel have become overwhelming. The Assistant Counsel position – the funding for which has been approved by the Director of Budget - will provide much-needed support to Counsel and assist in ILS office executive oversight and responsibilities. This position will assist in the programmatic review of contract proposals, particularly Distribution proposals. Additionally, the FY 2018-19 Budget amended County Law § 722 (3) (b) and (c) to transfer authority to approve plans of bar associations to operate an assigned counsel program or office of conflict defender from the Chief Administrator of the Courts to the Office of Indigent Legal Services. Under the statute, approval of bar association plans to operate assigned counsel programs or conflict defender offices is required before counties are permitted to put these plans in operation. This transfer of authority took effect in April 1, 2019. The Assistant Counsel will assist the Counsel in working with counties, providers and bar associations to develop bar association plans that satisfy the ILS standards for the administration of assigned counsel program and to address the large backlog of bar association plans that have been submitted by counties to the Office of Court Administration in the past few years, but have not been acted upon in anticipation of this authority being transferred to the Office.

Finally, this position would assist Counsel with other office management and fiscal responsibilities.

Parental Representation Unit

- **#3, Chief Implementation Attorney (projected salary: \$108K-\$112K)**
- **#4 Assistant Counsel (projected annual salary range: \$92k-\$97k)**
- **#5 Senior Researcher (projected salary range: \$80k-\$85k)**
- **#6 Research Specialist (projected salary range: \$55k-\$60k)**
- **#7 Analyst (projected salary range: \$50k-\$55k)**
- **#8 Student Assistant (paid hourly to \$30,000/year)**

As emphasized in the February 2019 Interim Report issued by the Commission of Parental Representation, the “lack of resources and support attorneys require to deliver consistently effective representation” has led to a “crisis in parental legal representation.” A Parental Representation Unit is needed to seek out and use available funds to improve the quality of parental defense through enhanced resources and support. This proposed Parental Representation Unit would build upon ILS’ existing Parental Representation staff (the Director of Quality Enhancement for Parent Representation, and the Assistant Counsel for Parent Representation) to add a Chief Implementation Attorney, an additional attorney position, two research positions, an analyst position, and a student assistant. Doing so would create a Parental Representation Unit modeled upon the staffing pattern of the *Hurrell-Harring* Settlement Implementation Unit, which has been highly effective in using State funding to improve the quality of public criminal defense representation in the five defendant counties. Having a total of four attorneys would allow the Unit to effectively work with and support parental defense providers throughout the State. Two research positions would enable the Unit to work with providers to

collect and analyze parental representation data and to conduct much needed qualitative and quantitative research about the quality of parental representation. This research capacity will also be instrumental for implementation of the ILS standards for determining financial eligibility for assignment of counsel in Family Court matters as well as monitoring the implementation of caseload standards. An Analyst would provide much needed administrative support to the Unit, while the Student Assistant could assist the researchers and the attorneys, as the Student Assistant currently attached to our Statewide HH Implementation Unit has been doing very effectively.



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**Parent Representation Caseload Relief and Quality Improvement:
Replicating a Successful Public Defense Initiative**

The immediacy and urgency of our request for \$5 million dollars to reduce excessive caseloads and provide access to appropriate professional support services for providers of mandated parent representation has been made apparent by two significant findings and recommendations. First, in January 2018, the New York State Bar Association (NYSBA) Committee on Families and the Law issued its *Memorandum in Support of State Funding for Mandated Parental Representation*. Approved by NYSBA House of Delegates in April 2018, this memorandum states as follows:

With groundbreaking reform well underway in criminal defense, similarly intense attention needs to be focused on improving parental representation. . . . 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.”

Second, in February 2019, Chief Judge DiFiore’s Commission on Parental Legal Representation issued an interim report decrying the “systemic problems in our underfunded, county-based system [as] well-documented” and calling for State investment and oversight of parental representation in child welfare matters.

The need for State funding and support cannot be seriously questioned. Nor can the efficacy of our approach to begin redressing these well-established deficiencies. We plan to replicate our low-cost, high-impact, pre-*Hurrell-Harring* offering of targeted funding to county providers, for the purposes of reducing caseloads and accessing appropriate support services such as investigators, social workers and parent advocates.

This approach has worked well in the past with respect to the delivery of mandated criminal defense representation. In an April 19, 2016 memorandum to the Indigent Legal Services Board, I reported on the impact of similarly modest and targeted state funding upon public defense staffing and caseloads in upstate counties between calendar year 2012 and 2014. In that memorandum, which is attached, I reported a 12.5% increase in attorney staff numbers, a 17.8% increase in support staff, and a 14.3% decrease in average caseloads. These real and measurable impacts can certainly be replicated among providers of parent representation. We therefore request funding in the amount of \$5 million in our Aid to Localities appropriation for this purpose.



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

To: Indigent Legal Services Board

From: Bill Leahy

Re: Indicia of Progress in the 57 Counties Outside of New York City

Date: April 19, 2016

Every fall for the past three years, our Director of Research, Andrew Davies, has produced an Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York. Each report covers the previous calendar year – 2012, 2013, and 2014 have been analyzed thus far, using caseload data submitted to OCA by over 130 providers of mandated representation, and spending reports required to be filed by counties with the Office of State Comptroller (OSC).

Recently I took the time to review these annual reports, in search of trends between calendar 2012 and calendar 2104 that might help us assess our progress and influence future action. A few of our most prominent findings are highlighted below.

- **Higher Spending, especially in Institutional Provider Programs:** overall spending rose by almost \$16 million, or 9.5%. Almost all of increase occurred in Institutional Provider Programs (+ 17.2%), while Assigned Counsel Program (ACP) spending rose by only 0.5%.
- **Significant staff increases in Institutional Provider Programs:** attorney staff rose from an FTE of 654 to 736, an increase of 12.5%. Support staff rose from 297 to 350 FTE, an increase of 17.8%.
- **A Reduction in Institutional Provider Weighted Caseloads:** the average weighted caseloads of attorneys in upstate institutional providers declined by 14.3%, from 719 in 2012 to 616 in 2014. Note that this number remains far in excess of national and ILS caseload limits of 367 new weighted cases per attorney per year.
- **The Amount Spent Providing Representation per Case Increased:** The amount spent on each case is one indicator of effective lawyering. While the average cost per case among upstate providers is very low, it has increased by \$46.51 (22%) among institutional providers, and by \$52.95 (16%) in Assigned Counsel Programs.

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- **Institutional Providers Spend Significantly Less per Case:** In 2014 the average spending per case was \$382.59 in Assigned Counsel programs, compared to \$255.28 in Institutional Provider Programs.
- **The Estimated Cost of Compliance with Maximum Caseload Limits Decreased:** The estimated cost of compliance declined from \$111.2 million in 2012, to \$105.2 million in 2013, to \$99.1 million in 2014; a two-year decrease of \$12.1 million or 10.9%.

This progress is primarily attributable, we believe, to several actions which the Office and Board have undertaken. First, we have required mandated representation providers and county officials to consult with each other, and have encouraged them to produce an annual proposal to use ILS funds to improve the quality of their representation. Many counties have done so, which has undoubtedly contributed to the staffing increases and reduced caseloads noted above. Second, by 2014 as many as 25 counties were providing representation at a defendant's first court appearance pursuant to the state funding provided under our Counsel at First Appearance grant program. And finally, a few of the 47 counties who responded to our RFP for Upstate Quality Improvement and Caseload Reduction RFP may have begun hiring before the end of 2014.

Can this progress be sustained and enhanced? Certainly it can and will be enhanced in the five counties in which we are implementing the settlement order in the *Hurrell-Harring* case. For the remaining 52 upstate counties which benefit neither from the New York City caseload reduction funding nor from the lawsuit settlement, the answer is much less certain. We have just witnessed a third consecutive state budget that contains no increase in funding for any of the 52 counties or their 120 providers of mandated representation, and we have heard concerns from some providers that the Eligibility Standards and Criteria that go into effect on October 3, 2016 may drive up costs in counties that can ill afford the additional expense. There is no question that our progress toward assuring a capable and uniform quality and availability of representation in every locality within the state of New York is in its very early stages, and faces daunting challenges. At a minimum, there remains a dire need for significant additional state funding and enhanced agency authority that the Fahy-DeFrancisco bill would provide; and for the Regional Support Centers and the statewide Appellate Resource Center that we have long proposed.

My hope is that this analysis will generate an ongoing discussion, in which Board members will be actively engaged, as to how we can best advance the day when New York will provide well-prepared and high-quality representation to every eligible client in mandated representation cases.

**New York State
Division of the Budget
All Funds Budget Request FY 2020-21
Agency Summary
Recapitulation of Current Year Adjusted Appropriations
and Requested Changes for the Next Fiscal Year**

Agency: Office of Indigent Legal Services

(A)	(B)	(C)	(D)
Appropriation Category/Fund Type	Adjusted Appropriations 2019-20	Requested Change	Total Request (Column B+C) 2020-21
State Operations			
General Fund	0	0	0
Special Revenue - Federal	0	0	0
Special Revenue - Other	6,090,000	1,281,644	7,371,644
Enterprise	0	0	0
Internal Service	0	0	0
Private Purpose Trust	0	0	0
Subtotal	6,090,000	1,281,644	7,371,644
Aid to Localities			
General Fund	0	0	0
Special Revenue - Federal	0	0	0
Special Revenue - Other	204,810,000	55,000,000	259,810,000
Enterprise	0	0	0
Subtotal	204,810,000	55,000,000	259,810,000
Capital Projects			
Capital Projects Fund			0
Special Revenue - Other			0
Enterprise			0
Internal Service			0
Subtotal	0	0	0
Debt Service	0	0	0
Agency Total	210,900,000	56,281,644	267,181,644