

## 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."

**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.