

**Testimony of the Office of Indigent Legal Services**

**Joint Legislative Hearing on the 2018-2019 Public Protection Budget**

**Presented before:**

**The Senate Finance Committee**

**and**

**The Assembly Committee on Ways and Means**

**Presented by:**

**William J. Leahy**

**Director**

**Office of Indigent Legal Services**

**January 30, 2018**

Good afternoon Chairwoman Young, Chairwoman Weinstein and distinguished members of the Committees.

I am William Leahy, Director of the Office of Indigent Legal Services. Thank you for the opportunity to appear before you to discuss the FY 2018-19 budget request of the Office of Indigent Legal Services and Board.

**Past support.** First, I would like to thank you for your past support of the Office and Board. Thanks to your support, additional resources were made available in the FY 2017-18 Final Budget to continue our progress toward fulfilling not only our statutory responsibility to improve the quality of mandated representation throughout New York State, but also the responsibilities we undertook to (1) implement the terms of the historic settlement between the State of New York and plaintiff class in *Hurrell-Harring et al. v. State of New York*<sup>1</sup> and (2) fulfill the responsibilities added in the FY 2017-18 Final Budget to extend the *Hurrell-Harring* reforms statewide.

Last year, I asked this Committee to support the FY 2017-18 Executive Budget proposal that dedicated \$23.8 million in funding for the *Hurrell-Harring* settlement counties to (1) implement the written plans submitted by my Office to (a) ensure that each eligible individual charged with a crime is provided representation at his or her arraignment (\$2 million) and (b) enhance the quality of representation in criminal cases in the five counties (\$2 million); (2) add staff and other necessary resources in the five settlement counties to reduce average weighted caseloads in criminal cases so that these counties could achieve compliance with the new caseload standards we issued in December, 2016 (\$19 million); and (3) ensure that the funding received by the four settlement counties participating in our first Counsel at First Appearance competitive grant would be guaranteed in light of the release of our second Counsel at First Appearance competitive grant (\$800,000). Through your efforts, all of these funding initiatives were secured, and adequate funding was provided for Office operations to continue supporting the eight-person *Hurrell-Harring* settlement implementation unit that was created in the FY 2015-16 Final Budget.

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<sup>1</sup> On March 11, 2015, the Albany County Supreme Court approved an historic settlement between the State of New York and a plaintiff class represented by the New York Civil Liberties Union in *Hurrell-Harring et al. v. State of New York*, in which the State of New York, for the first time since 1965, when it delegated its duty to provide counsel to indigent persons charged with a crime to counties, accepted its responsibility to implement and fund constitutionally compliant representation in the five counties named in the lawsuit. My Office, under the direction of its Board, accepted the responsibility and has since been engaged in the implementation of the terms of the settlement, in which the State agreed to ensure that (1) each indigent person charged with a crime is provided representation at his or her arraignment, (2) caseload/workload standards are developed by my Office and implemented in the five counties, thereby reducing the crushing caseloads currently carried by providers of indigent legal services; and (3) funding is provided that is dedicated to implementing specific quality improvements to representation provided in the counties.

**Hurrell-Harring Settlement.** I am very pleased that in its FY 2018-19 Budget proposal, the Executive has again fully honored its settlement obligations, by dedicating \$23.8 million to (1) implement the written plans submitted by my Office to (a) ensure that each eligible individual charged with a crime is provided representation at his or her arraignment (\$2.8 million)<sup>2</sup> and (b) enhance the quality of representation in criminal cases in the five counties (\$2 million);<sup>3</sup> and (2) add staff and other resources necessary to reduce average weighted caseloads in criminal cases to ensure that the caseload standards determined by ILS are implemented and adhered to by the providers in the five settlement counties (\$19 million). The figure of \$23.8 million represents the full funding needed to implement the *Hurrell-Harring* settlement.

I therefore ask for your full support of the FY 2018-19 Executive Budget as it pertains to funding the implementation of the *Hurrell-Harring* settlement.

**Expansion of Hurrell-Harring Reforms Statewide.** In addition to providing the funding needed to further implement the *Hurrell-Harring* settlement, the FY 2017-18 Executive Budget proposal was historic, because it extended the “groundbreaking advances in those five counties . . . to the rest of the state,” with the State funding “one hundred percent of the costs necessary to extend the reforms.”<sup>4</sup> In doing so, “indigent criminal defendants [in every county will] have counsel at arraignment,” “new caseload standards [will be established] so that attorneys can devote sufficient attention to each case,” and the “quality of the representation provided to those who cannot afford an attorney [will] not vary from county to county.”<sup>5</sup>

The FY 2017-18 Executive proposal gave my Office the responsibility to develop written plans to implement the reforms contained in the *Hurrell-Harring* settlement statewide, with the plans to be completed no later than December 1, 2017, and with the plans to be implemented at state expense.<sup>6</sup> These plans would also include interim steps for counties and New York City to achieve full compliance by April 1, 2023.

The support of this Legislature was critical to the development of these reform plans, including the guarantee of state funding to reimburse expenses “incurred for the provision of counsel and services as a result of the implementation of [such] plans.”<sup>7</sup> Through your efforts,

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<sup>2</sup> The \$2.8 million appropriation request combines the \$2 million request for counsel at arraignment and the \$800,000 request to continue funding for the four counties that participated in our first Counsel at First Appearance competitive grant.

<sup>3</sup> Significantly, the terms of the settlement did not require that quality improvement funding be provided beyond FY 2016-17, but the Executive has nonetheless requested this continued funding for the second year in a row.

<sup>4</sup> See “New York State: Ever Upward, 2017 State of the State, Governor Andrew M. Cuomo,” pp. 186-187.

<sup>5</sup> *Ibid*, p. 186

<sup>6</sup> Like the *Hurrell-Harring* settlement, my Office would be required to develop written plans to ensure that (1) each indigent person charged with a crime is provided representation at his or her arraignment, (2) caseload/workload standards are developed and implemented in the non-Hurrell-Harring counties and City of New York, thereby reducing the caseloads currently carried by providers of indigent legal services; and (3) funding is provided that is dedicated to implementing specific quality improvements to representation provided in the counties.

<sup>7</sup> See Chapter 59 of the Laws of 2017, Part VVV, § 11-13. These provisions can also be found at Executive Law § 832 (4) and County Law § 722-e. This legislation contains a requirement that the plans are submitted to the

this historic reform became a reality and was enacted into law as part of the FY 2017-18 Final Budget

**Statewide Expansion of Hurrell-Harring Reforms.** I am pleased to inform you that my Office has successfully fulfilled the responsibility given to it to develop and submit written plans to the director of the division of the budget by December 1, 2017. Furthermore, I am pleased to say that the Executive, in response to the submission of these plans, has dedicated \$50.7 million in the FY 2018-19 Executive Budget proposal to finance the implementation of the first year of these five year plans. Indeed, this funding amount represents the entirety of what we requested in our FY 2018-19 Budget Request for statewide implementation. I believe this funding, if it becomes part of the Final Budget, will allow us to fully implement the first year of our plans - ensuring that every eligible individual charged with a crime is provided representation at his or her arraignment; enhancing the quality of representation in criminal cases; and adding staff and other resources to reduce average weighted caseloads in criminal cases in order to satisfy the caseload standards we determined in December, 2016. The \$50.7 million figure represents not only the funding needed to finance the first year of the Statewide expansion, but it allows us to remain on target for full implementation of the plans by April 1, 2023.

I therefore ask for your full support of the FY 2018-19 Executive Budget as it pertains to funding the implementation of the Statewide Expansion of the *Hurrell-Harring* reforms.

### **FY 2018-19 ILS Budget Request.**

In September, 2017, the Indigent Legal Services Board unanimously approved an ILS budget request of \$166.8 million for FY 2018-19.<sup>8</sup> Of this amount, \$158.8 million would be devoted to Aid to Localities and \$8.0 million to State Operations.

- **Local Aid.** The \$158.8 million in Local Aid represents an increase of \$54.0 million over FY 2017-18 funding levels, with increases consisting of the following:
  - **Statewide Expansion of Hurrell-Harring Reforms.** \$50 million of the additional Local Aid funding request would be used to finance the first year of the five-year implementation of the written plans developed pursuant to Executive Law § 832 (4) and filed on December 1, 2017. The plans to extend the reforms of the *Hurrell-Harring* settlement statewide would ensure that (1) each indigent

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director of the division of the budget for “review and approval,” however, such “approval shall be limited solely to the plan’s projected fiscal impact of the required appropriation for the implementation of such plan, and his or her approval shall not be unreasonably withheld.” (see Executive Law § 832 [4]).

<sup>8</sup> The ILS Budget Request was approved by the ILS Board at its September 22, 2017 meeting to ensure that it would be timely submitted to the Division of Budget in October for the FY 2018-19 Executive Budget process.

person charged with a crime is provided representation at his or her arraignment, (2) caseload/workload standards are implemented in the non-Hurrell-Harring counties and the City of New York in accordance with the new caseload standards ILS issued in December, 2016 and (3) funding is provided that is dedicated to implementing specific quality improvements to representation.

- **Parental Representation.** \$3 million of the additional Local Aid funding would be used to improve the quality of mandated parental representation in Family court, by funding a new RFP that will enable up to four additional counties outside New York City to establish a Model Upstate Parental Representation office. Last year, my office issued an RFP that will establish a Model Parental Representation Office in one upstate county.
- **Hurrell-Harring Settlement.** \$1 million of the additional Local Aid funding would be used to enhance funding for implementation of the plan developed by my office to implement quality improvement initiatives in the five settlement counties.
- **State Operations.** The \$8.0 million in State Operations funding represents an increase of \$3.2 million over FY 2017-18 funding levels, with increases consisting of the following:
  - **New Staff and Retention.** \$1.2 million of the additional State Operations funding would be used to (a) add four new positions in the office, including an Administrative Officer, two Grants Administrators and one Parental Representation analyst; (b) fund a long-time employee retention salary increase; and (c) fully annualize costs of office positions added in the FY 2017-18 Budget.
  - **Regional Support Centers.** \$2 million of the additional State Operations funding would be used to establish the first two of a statewide network of nine Regional Support Centers, which are essential for the realization of uniform, high quality representation in every county and region. These first two Centers would be located in areas of greatest need for such regional help.

#### **FY 2018-19 Executive Budget Proposal**

The Executive Budget proposal (released on January 16, 2018) recommends funding in the amount of (1) \$5.7 million in State Operations and (2) \$155.5 million in Aid to Localities, or an All Funds total of \$161.2 million. Overall, this amount represents an increase of \$51.6 million

over the All Funds amount appropriated in the FY 2017-18 Final Budget, with the increases as follows:

- **State Operations.** The additional State Operations funding (\$900,000) would be used for two purposes, namely, to (1) add four positions to the office and (b) fully annualize the costs associated with existing positions in the office.
- **Local Aid.** The additional Local Aid (\$50.7 million) would be used to implement the written plans submitted on December 1, 2017 to extend the *Hurrell-Harring* reforms statewide. In particular, \$50 million would be used to finance the implementation of the first year of the five year plans. The remainder of the funding, or \$720,000, would be available to assist the office in the development, administration, and auditing of contracts used to implement the plans.<sup>9</sup>

#### **Seventh year operations of the Office and the Board.**

During its first seven years of operations, the Board has approved the development of eight *non-competitive* distributions – in amounts sufficient to restore every county and New York City to the level of funding they received in 2010.<sup>10</sup>

The Board has also approved the development of six *competitive* grants, each targeted to improve the quality of mandated representation under county law 18-B by using dedicated state funding to address current deficiencies in the delivery of those services. These competitive grants provide additional funding to the counties and New York City, above and beyond the 2010 level of funding provided by the non-competitive distributions.

Significantly, these initiatives - the non-competitive distributions and competitive grants - do not impose any unfunded mandates on the counties. Counties are not asked to perform any additional service that state funding will not support – and the counties and the State benefit from having the quality of indigent legal services improve significantly.

My staff is extremely dedicated to improving the quality of mandated representation and been working tirelessly for the past three years to implement the terms of the *Hurrell-Harring* Settlement Agreement in the five counties and for the past year to begin implementation of the statewide reform. And we are as proud of the quality of work done by our *Hurrell-Harring* and

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<sup>9</sup> The Executive Aid to Localities Budget proposal conditions payment of any expenditures from such appropriation on (1) approval of an operational plan submitted by the office to the director of the division of the budget and (2) approval by the division of the budget of a plan for the development, administration and auditing of local assistance contracts.

<sup>10</sup> For the first four years of operation, non-NYC counties were guaranteed by statute a percentage of the ILSF funds they received in March, 2010 (year 1 – 90%; year 2 – 75%; year 3 – 50%; year 4 – 25%). In March of 2014, the non-NYC counties received their final statutory payment under these phase-out provisions. New York City, which is guaranteed an annual sum of \$40 million, or 98% of its March, 2010 ILSF allocation, will receive its next annual sum in March, 2018.

Statewide Implementation Units as we are of the statewide progress accomplished by our small pre-existing staff, working with limited resources.

I would be remiss if I did not talk about the establishment in 2016 of six Regional Immigration Assistance Centers serving providers of mandated representation throughout New York. As I have noted in my testimony in past years, these Centers made New York the first state to establish a statewide network of offices to assist attorneys in complying with their obligation to provide appropriate advice to their clients concerning the immigration consequences of conviction, as required by the United States Constitution. And as important as these Centers have been in the first two years of their operation, they have taken on an even greater importance in the past year given the changes in immigration policy emanating from the Federal government.

### **Unfinished Business**

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, nor in the Statewide reform legislation enacted as part of the FY 2017-18 Budget. Funding for parental representation is not provided in this year's FY 2018-19 Executive Budget proposal, despite our request for an additional \$3 million to expand the number of Model Parental Representation offices in upstate counties. This category of cases and clients, with family integrity and children's well-being at stake in every case, has been neglected for far too long and must be addressed. We call upon the Governor and the Legislature to include parental representation as an integral part of this year's FY 2018-19 Final Budget.

### **Other Public Defense and Related Funding Provisions**

My testimony typically is not focused on related public defense funding provisions in the Executive Budget proposal outside the context of my office's budget. But this year it is imperative that I request that funding levels for programs such as Aid to Defense and Indigent Parolee Programs at least be maintained at their existing funding level, even though such funding is not part of our budget. It is vital that these programs be maintained at current funding levels because, aside from their obvious importance to improving the quality of mandated representation, the success of the statewide plans that we submitted on December 1<sup>st</sup> depends upon their continued funding. These non-ILS funding streams are a part of the foundation upon which statewide reform will be built. As we did when we developed plans for implementing the *Hurrell-Harring* settlement, we have developed and submitted our statewide plans on the assumption that counties and their providers would continue to receive their existing funding for mandated representation, from whatever source (federal, state or local). The plans we

developed, and funding we requested, are designed to improve the existing quality of representation, not replace existing funding.

**Public Defense Backup Center.**

Finally, as I do every year, I cannot emphasize enough the critical importance of the New York State Defender Association's Public Defense Backup Center receiving adequate funding to continue performing its indispensable function of providing essential training and support services, including its case management system, to indigent legal service providers throughout the state. Public defense providers all over the state of New York depend upon the immediate and accurate legal advice they receive from NYSDA staff, every day. This support is indispensable to maintaining the quality of representation provided to indigent clients in every locality. Simply stated, the Office of Indigent Legal Services cannot succeed in our mission to improve the quality of representation without a robust Public Defense Backup Center. NYSDA is essential to New York's fulfillment of its Constitutional obligation to provide competent counsel to those who cannot afford to pay for it.