

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

**Joint Legislative Hearing on the 2019-2020 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 29, 2019**

Good afternoon Chairwoman Krueger, 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 2019-20 budget request of the Office of Indigent Legal Services and Board.

**Past support.** I would like to thank you for your past support of the Office and Board. Thanks to your support, substantial additional resources were made available in the FY 2018-19 Final Budget to accelerate our progress toward fulfilling our statutory responsibility to improve the quality of mandated representation throughout New York State. In the past few years, overall responsibilities of the Office have increased significantly to include implementation of the terms of the groundbreaking settlement between the State of New York and plaintiff class in *Hurrell-Harring et al. v. State of New York*<sup>1</sup> and to implement reforms specified in the FY 2017-18 Final Budget to extend the *Hurrell-Harring* settlement reforms statewide. In last year's FY 2018-19 Final Budget, you fully funded the first year of the five-year phase-in of those statewide reforms.

At last year's Joint Legislative Public Protection Budget Hearing, I asked this Committee to support the FY 2018-19 Executive Budget proposal that dedicated \$23.8 million in funding for the *Hurrell-Harring* settlement counties to (1) ensure that each eligible individual charged with a crime is provided representation at his or her arraignment (\$2 million) and 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 (\$19.0 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 previously 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 pleased to tell you that in its FY 2019-20 Budget proposal, the Executive has again fully honored its settlement obligations, by dedicating \$23.8 million to implement the written plans submitted by my Office to ensure that each eligible individual charged with a crime is provided representation at his or her arraignment (\$2.8 million)<sup>2</sup> and enhance the quality of representation in criminal cases in the five counties (\$2 million);<sup>3</sup> and 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 (\$19.0 million). The figure of \$23.8 million again represents the full funding needed to implement the *Hurrell-Harring* settlement.

I therefore ask for your full support of the FY 2019-20 Executive Budget as it pertains to funding the implementation of the *Hurrell-Harring* settlement.

**Statewide Expansion of Hurrell-Harring Reforms.** In addition to providing the funding needed to further implement the *Hurrell-Harring* settlement, the FY 2018-19 Executive Budget proposal was historic, because it provided first year funding in the amount of \$50 million to begin implementation of the written plans developed by this Office to extend the reforms of the *Hurrell-Harring* settlement statewide. Those plans were submitted to the Executive on December 1, 2017 and included interim steps for counties and New York City to achieve full compliance by April 1, 2023. As I noted in my testimony last year, these reforms will extend 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.”

Through your efforts, this first-year funding was secured, and adequate funding was provided for Office operations to continue supporting the eight-person Statewide Expansion of Hurrell-Harring reform unit that was created in the FY 2017-18 Final Budget.

I am very pleased to inform you that in its FY 2019-20 Budget proposal, the Executive has dedicated an additional \$50 million to finance the implementation of the second year of the five-year Statewide Expansion of *Hurrell-Harring* reforms, for a total funding amount of \$100 million. This amount represents the entirety of what we requested in our FY 2019-20 Budget Request for statewide implementation. I believe this funding will allow us to fully implement the second year of our plans - ensuring that every eligible individual charged with a crime is

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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 third 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.

provided representation at his or her arraignment; enhancing the quality of representation in criminal cases; and adding staff and other resources needed to reduce average weighted caseloads in criminal cases to satisfy the caseload standards we issued in December, 2016, as part of the *Hurrell-Harring* settlement. The additional \$50 million figure represents not only the funding needed to finance the second year of the Statewide expansion, but it allows us to remain on target for full implementation of the plans by April 1, 2023 – when the total estimated cost to achieve compliance with our plans will be approximately \$250 million.

I therefore ask for your full support of the FY 2019-20 Executive Budget as it pertains to funding the statewide implementation.

### **FY 2019-20 ILS Budget Request.**

In September, 2018, the Indigent Legal Services Board unanimously approved our budget request of \$ 215.4 million for FY 2019-20.<sup>5</sup> Of this amount, \$ 208.5 million would be devoted to Aid to Localities and \$6.9 million to State Operations.

- **Local Aid.** The \$ 208.5 million in Local Aid represents an increase of \$53.0 million over FY 2018-19 funding levels, with proposed 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 second year of the five-year implementation of the written plans developed by the Office pursuant to Executive Law § 832 (4) and filed with the Division of Budget on December 1, 2017. These plans to extend the reforms of the *Hurrell-Harring* settlement statewide would ensure that, by April 1, 2023, (1) each indigent person charged with a crime in New York State is provided representation at his or her arraignment, (2) caseload/workload standards are fully implemented in the non-Hurrell-Harring counties and the City of New York in accordance with the caseload standards the Office issued in December, 2016 and (3) adequate funding is provided to implement specific support services and quality improvements to public defense representation.
    - **Regional Support Centers.** \$1.2 million of this Local Aid appropriation would be used to establish the first of a statewide network of Regional Support Centers, which are essential for the realization of uniform, high quality representation in every county and region. The first Center would

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<sup>5</sup> The ILS Budget Request was approved by the ILS Board at its September 28, 2018 meeting.

be located in far western New York in the 8th Judicial District, which represents the area of greatest need for such regional assistance.<sup>6</sup>

- **Parental Representation.** \$3 million of the additional Local Aid funding request would be used to improve the quality of mandated parental representation in Family court, by funding a new RFP that will enable providers of mandated parental representation to reduce excessive caseloads and gain access to appropriate professional support services. The immediacy and urgency of this need has been communicated by providers and counties to us on frequent occasion, and was made apparent again this past fall in the testimony heard by Chief Judge DiFiore’s Commission on Parental Legal Representation.
- **State Operations.** The \$6.9 million request in State Operations funding represents an increase of \$1.2 million over FY 2018-19 funding levels, consisting of the following:
  - **Staff Positions.** Adding four new positions, including (a) an Assistant Grants Manager 1 position; (b) Grants Administrator 2 position;<sup>7</sup> (c) Assistant Director of Technology;<sup>8</sup> and (d) Director of Quality Representation - Assigned Counsel Plans.<sup>9</sup>
  - **Long-term Employee Retention Salary Increases.** Approximately \$100,000 would be used for long-time employee retention salary increases;<sup>10</sup> and

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<sup>6</sup> Our written plans submitted on December 1, 2017 to extend the *Hurrell-Harring* reforms statewide included funding for the establishment of a statewide network of eight Regional Support Centers. The FY 2018-19 Final Local Aid Budget included language to authorize the transfer of Local Aid funding to State Operations, which would be needed to establish these Centers.

<sup>7</sup> In FY 2018-19, the Grants 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). This restructuring allows us to further professionalize the Unit, introduce specialization of work duties within the Unit, and create the framework needed for adding additional staff during the five-year phase-in of the Statewide Expansion of Hurrell-Harring reforms. The addition of the Assistant Grants Manager 1 and Grants Administrator 2 positions will increase the overall work capacity of the Grants Unit and allow the Grants Manager and Assistant Grants Manager 2 more flexibility to properly manage the Unit.

<sup>8</sup> The Assistant Manager of Information Services would not only assist the Manager of Information Services to ensure that the immediate technology needs of the Office are met but would also satisfy a longer term concern of the Office – providing the necessary training and development of expertise to ensure continuity in the delivery of technology services, in the event the Manager of Information Services is unable to do so.

<sup>9</sup> 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, effective April 1, 2019. The Director of Quality Representation – Assigned Counsel Plans would work directly with counties, providers and bar associations to develop bar association plans that satisfy the ILS standards for the administration of assigned counsel program.

<sup>10</sup> The long-term employee retention salary increases are modest, merit based salary increases targeted for staff who have performed with great distinction for a minimum of five years and whose exempt status (Management Confidential) makes them ineligible for civil service “step” increases.

- **Full Annualization Costs.** Remaining funds would be used to fully annualize costs of new FY 2018-19 and FY 2019-20 staff positions.

### **FY 2019-20 Executive Budget Proposal**

The FY 2019-20 Executive Budget proposal (released on January 15, 2019) recommends funding for the Office in the amount of (1) \$6.1 million in State Operations and (2) \$204.8 million in Aid to Localities, or an All Funds total of \$210.9 million. These appropriation amounts represent an increase over FY 2018-19 Final Budget levels of (1) \$0.4 million in State Operations (FY 2018-19: \$5.7 million) and (2) \$49.3 million in Local Aid (FY 2018-19: \$155.5 million), or an All Funds increase of \$49.7 million (FY 2018-19: \$161.2). The Executive Budget proposed increases are as follows:

- **State Operations.** The additional State Operations funding (\$0.4 million) would primarily be used to add two positions to the Office’s grants unit – but this funding increase would not be adequate to support the two additional positions we requested (Assistant Director of Technology and Director of Quality Representation - Assigned Counsel Plans) nor would it support much needed long-term employee retention salary increases.
- **Local Aid.** The additional Local Aid funding (\$50 million) is designed to enhance funding levels for the second year of the five-year implementation of the written plans developed by the Office to extend the *Hurrell-Harring* reforms statewide. In particular, with this additional funding of \$50 million, a total of \$100 million would be appropriated in FY 2019-20 to finance the implementation of the second year of the five-year plans.<sup>11</sup> In addition, the Executive’s FY 2019-20 Local Aid budget language includes language to transfer funding to State Operations, which would be needed in order establish our first Regional Support Center.
  - **Reimbursement claims.** The Local Aid appropriation contains language that would restrict the time period for which claims can be submitted for reimbursement for Statewide expansion and ILS general distribution and grant program contracts. We fear that this language, which we believe is intended to encourage counties to submit reimbursement claims in a timely manner would, if enacted, be counterproductive. As currently worded, it would hinder and not

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<sup>11</sup> In addition, the Aid to Localities language (1) adds an annual reporting requirement for the statewide expansion of Hurrell-Harring reforms and (2) restricts reimbursement payments for county expenditures to those expenditures submitted for reimbursement within twelve months after having been incurred. This payment restriction would apply to reimbursement payments derived from FY 2019-20 and FY 2018-19 Aid to Localities appropriations.

help our efforts to work with the counties and providers to most efficiently implement the Statewide expansion and our other reimbursement contracts. Therefore, we believe that this language should be revised.

### **Operations of the Office and the Board.**

During its first eight years of operations, the Board has approved the development of nine *non-competitive* distributions – in amounts sufficient to restore every county and New York City to the level of funding they received in 2010; and to utilize that spending to improve the quality of representation.

The Board has also approved the development of seven *competitive* grants to counties and indigent legal service providers, each targeted to improve the quality of mandated representation under county law 18-B by using dedicated state funding to address specific 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.

Our staff is dedicated to improving the quality of mandated representation and has been working tirelessly for the past four years to implement the terms of the *Hurrell-Harring* Settlement Agreement in the five counties and for the past two years to begin implementation of the *Hurrell-Harring* reforms statewide. And, as I have said in previous years, we are as proud of the quality of work done by our *Hurrell-Harring* and Statewide Implementation Units as we are of the statewide progress accomplished by our small pre-existing staff, working with limited resources.

I would also like to remind you 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 three 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. I am also pleased to tell you that we are about to release our second, slightly larger Regional Immigration Assistance Center RFP, to continue the work started in the first RFP.

### **Unfinished Business**

The representation of parents in Family 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 was not included in this year's FY 2019-20 Executive Budget proposal, despite our request for an additional \$3 million to reduce excessive caseloads and enable providers to obtain appropriate professional support services to represent their clients effectively. 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 now. We call upon the Governor and the Legislature to include parental representation as an integral part of this year's FY 2019-20 Final Budget.

### **Public Defense Backup Center.**

Finally, as I do every year, I would like to emphasize the critical importance of the New York State Defender Association's Public Defense Backup Center receiving adequate funding to continue performing its 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.



**FY 2019-20 Executive Budget Proposal**  
**Office of Indigent Legal Services (ILS)**

	<b>Final FY 2018-19 ILS Budget</b>	<b>FY 2019-20 ILS Budget Request</b>	<b>FY 2019-20 ILS Requested Change</b>	<b>FY 2019-20 Executive Budget proposal</b>	<b>FY 2019-20 Executive Proposed Change</b>
<b>State Operations</b>	\$5.7 million	\$6.9 million	+\$1.2 million	\$6.1 million	+\$0.4 million
<b>Aid to Localities</b>	\$155.5 million	\$208.5 million	+\$53.0 million	\$204.8 million	+\$49.3 million
<b>All Funds</b>	\$161.2 million	\$215.4 million	+\$54.2 million	\$210.9 million	+\$49.7 million

**State Operations (A.2000/S.1500)**

- **Office Operations:**

- Of the Executive’s proposed \$6.1 million State Operations appropriation (\$0.4 million increase over FY 2018-19 funding) , \$3.4 million is allocated for general office operations; \$1.4 million is allocated for implementation of the *Hurrell-Harring* settlement; and \$1.4 million is allocated for implementation of the statewide extension of *Hurrell-Harring* reforms.

**Aid to Localities (A.2003/S.1503):**

- **ILS Distributions and Grants; Implementation of Hurrell-Harring Settlement; Extension of Hurrell-Harring Reforms statewide:**

- The Executive’s proposed \$204.8 million Local Aid appropriation would be allocated as follows:
  1. **Statewide Expansion of Hurrell-Harring Reforms.** \$100.0 million to finance the second year of the five-year statewide implementation of Hurrell-Harring reforms, pursuant to plans filed by ILS on December 1, 2017 (counsel at arraignment; caseload relief, and quality improvement). This funding amount would represent an increase of \$50 million over FY 2018-19 funding levels. The budgetary language (1) adds an annual reporting requirement and (2) restricts reimbursement payments for county expenditures to those expenditures submitted for reimbursement within twelve months after having been incurred.
  2. **ILS Distributions and Grants.** \$81.0 million is allocated for ILS distributions and grants. This funding amount will continue current funding levels for ILS programs. The budgetary language restricts reimbursement payments for county expenditures to those expenditures submitted for reimbursement within twelve months after having been incurred.
  3. **Hurrell-Harring Settlement.** \$23.8 million is allocated for implementation of the *Hurrell-Harring* settlement. This funding will continue current funding levels for HHS programs (counsel at arraignment; caseload relief, and quality improvement)

**PPGG Article VII (Part DD of A.2005/S.1505)**

- **Indigent Legal Services Fund (ILSF).**

- The Executive proposal would increase fees to enhance Indigent Legal Services Fund (ILSF) revenues by increasing the (1) OCA criminal history records search fee from \$65 to \$90 and (2) biennial attorney registration fee from \$375 to \$425.