



NEW YORK
STATE OF
OPPORTUNITY™

**Indigent
Legal Services**

Seventh Annual Report

INDIGENT LEGAL SERVICES BOARD

CALENDAR YEAR 2018

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DIRECTOR'S SUMMARY

The transformation of criminal defense occurring in New York State today flowed from an historic 2014 Settlement in *Hurrell-Harring v State of NY*, requiring ILS to oversee the five defendant counties in implementing eligibility standards, providing counsel at arraignment, and improving representation through quality initiatives and caseload caps. The experience of the Settlement counties has proven that deficiencies in the criminal defense system are not intractable. Quality representation is possible, and it is happening.

In 2018, ILS's *Hurrell-Harring* team reached many Settlement milestones. The agency issued its second report about the implementation of Eligibility Standards. By 2018, three of the five Settlement counties had created centralized arraignment programs, and an update report detailed the actions ILS has taken to improve arraignment coverage, bringing a revolutionary change in the system. Implementation of quality improvement and caseload relief objectives has meant that Settlement providers have significantly increased staff and supervision. The five Assigned Counsel Programs ("ACPs") have mentors and resource attorneys, as well as second-chair programs. Both the institutional providers and ACPs have bolstered administrative infrastructures and have provided counsel with access to non-attorney professionals and enhanced training opportunities. These initiatives have given attorneys the time needed to fully litigate cases, develop better relationships with clients, and achieve just outcomes.

ILS's experience to date in the implementation of the *Hurrell-Harring* Settlement was drawn upon by a working group of experts convened in 2016 to develop standards for establishing and administering ACPs. Overseen by the ILS Criminal Defense Trials Director, the group also looked to other existing standards and their own experience in developing comprehensive standards. In late 2018, draft standards were reviewed by the ILS Board. The goal was to promulgate final standards in mid-2019. Adherence to the standards will factor strongly in ILS's approval of ACPs, pursuant to the agency's statutory authority, effective April 1, 2019.

In 2017, legislation called for *Hurrell-Harring* reforms to be expanded statewide. Over a five-year period, the State is required to fund plans for counsel at arraignment, caseload standards compliance, and improved quality of representation. For year one, \$50 million was appropriated. ILS has the authority to develop, implement, monitor, and report on the plans. During the first year of implementation, ILS's statewide team held hundreds of meetings with counties to help them develop implementation plans. In 2018, 38 such plans were completed. The plans call for creating new institutional structures and ACPs; expanding staffing, training, and non-attorney professional services; and improving technology and data management tools.

Our mission encompasses not only criminal defense, but also parental representation, which was not included in the statewide *Hurrell-Harring* reforms. In 2018, to address that omission, ILS played a

INDIGENT LEGAL SERVICES

The New York State Office of Indigent Legal Services was created in 2010 by Executive Law § 832 and § 833 to "monitor, study and make efforts to improve the quality of services provided" to criminal defendants and Family Court litigants unable to afford counsel. Such representation affects the constitutional rights, liberty, and lives of people arrested for crimes or facing possible State intervention in their families. Led by a nine-member Board and a Director, ILS works closely with counties and public defense providers to effectively use State funding to improve the representation and justice delivered in our State. ILS is responsible for implementing criminal defense in five counties, pursuant to the 2014 settlement of *Hurrell-Harring v State of NY*. Statutory amendments enacted in 2017 empowered the agency to expand *Hurrell-Harring* reforms statewide. ILS also seeks statewide parental representation reform to better protect New York families.

significant role in drafting two critical reports on parental representation. The New York State Bar Association (“NYSBA”) adopted a report declaring that the State should pay for mandated parental representation and provide for statewide oversight. The ILS Parent Representation Director served as special advisor to the Chief Judge’s Commission on Parental Legal Representation, created in 2018, and helped in planning four public hearings held that year, and developing an interim report focusing on child welfare matters.

In 2018, ILS sought to improve mandated representation in criminal and family law appeals by creating the Appellate Defender Council, a group of 21 appellate leaders. The Council, which serves as a platform for statewide policy and program development, played a role in providing numerous trainings to trial attorneys regarding how to preserve the right to appeal of criminal defendants. In addition, with ILS Research staff, the Council conducted a survey of the appellate defense bar to design a two-day pilot training program, to be presented in 2019. A second appellate innovation was our DECISIONS OF INTEREST, disseminated each week to hundreds of public defense attorneys to help them stay abreast of the latest developments in the law.

ILS continued the work of the six Regional Immigration Assistance Centers established in 2015. The RIACs offer training and legal advice so that counsel can provide competent advice to non-citizen clients regarding potential immigration consequences of criminal convictions. They also advise attorneys representing parents in Family Court about relevant immigration issues. The RIACs received 5,000 requests for assistance and did nearly 100 trainings in 2018.

New York is the first state to implement fully funded caseload limits for all providers of mandated criminal representation. Our Caseload Standards have required us to establish new ways to obtain caseload data from providers and to develop rules about data. In 2018, the authority for collecting annual reports from providers was transferred to ILS, and our Research staff devoted much of the year to designing a new reporting form, the ILS-195, to capture the data needed to monitor Caseload Standards implementation. Milestones in 2018 included the dissemination of a definition of a criminal “case” for counting purposes and a training program regarding the ILS-195.

ILS received the funding and authorization in 2018 to enhance our operations as to distributions, grants, contracts, reimbursements, and budget modifications. We progressed in our goals to ensure that ILS is responsive to counties and that State funding flows efficiently. Bolstering our infrastructure included the creation and filling of the new position of an Administrative Officer to work closely with ILS Counsel and the Grants Unit, and the expansion of the grants staff.

Our mission and our work reflect two realities. First, the right to counsel is not self-executing. Second, public defense attorneys need not be burdened by excessive caseloads, inadequate support, and poor training. State funding and ILS oversight can ensure meaningful representation. As Sergio De La Pava of New York County Defender Services said: “The right to effective assistance of counsel is meaningless if the attorneys...are systematically hamstrung in their ability to represent their clients.” Chief Judge Janet DiFiore explained why she created a commission to develop a vision for parental representation reform: “New York’s parental representation system has suffered from many of the same systemic deficiencies that once afflicted our indigent criminal defense system... [we must] determine how best to ensure the future delivery of quality, cost-effective parental representation.” We will strive to stay true to those messages as we move forward.

William J. Leahy
June 11, 2019

I. HURRELL-HARRING IMPLEMENTATION

As amended, the *Hurrell-Harring v State of NY* Settlement requires that, within the first three years, the five defendant counties—Onondaga, Ontario, Schuyler, Suffolk, and Washington—implement infrastructures needed to ensure that all defendants are represented by defense counsel at arraignments; that defendants who cannot afford to retain counsel are assigned counsel; and that the quality of representation is improved through quality initiatives and caseload caps. Toward that end, the Settlement sets forth these deadlines, all of which were met by the “*HH Team*,” led by the Chief *Hurrell-Harring* Implementation Attorney, Patricia Warth.

November 2015: ILS to submit final plans for quality improvement and counsel at arraignment.

April 2016: ILS to promulgate Criteria and Procedures for Determining Financial Eligibility for Assigned Counsel (“Eligibility Standards”).

October 2016: Settlement counties to have fully implemented the Eligibility Standards.

November 2016: Settlement counties to have defense counsel present at all arraignments.

December 2016: ILS to finalize Caseload Standards.

October 2018: Settlement counties to have finalized the hiring of staff and implementing of infrastructures needed for caseload standard compliance.

As a result of the above actions and the creation of relevant infrastructures, the counties were well-positioned to meet the next significant Settlement deadline: by April 30, 2019, the providers of mandated representation must comply with ILS Caseload Standards.

Eligibility Standards

To implement the Eligibility Standards, starting in 2016, ILS embarked on an intensive training program, traveling across the State to ensure that providers of mandated representation, judges, and magistrates were trained. ILS has coordinated with the Office of Justice Support of the Office of Court Administration (“OCA”) to conduct 10 joint trainings for magistrates, one of which was videotaped for a webinar. These trainings resulted in more than 600 magistrates receiving live training, with many more benefitting from the webinar. ILS conducted 19 regional trainings for providers, most in partnership with the New York State Defenders Association (“NYSDA”). For these trainings, we travelled to about 20 locations. ILS has updated its website to ensure that Eligibility Standards training materials and a FAQ are easily accessible. We continue to respond to queries about Eligibility Standards, providing technical assistance to counties as they implement the Standards and conducting additional trainings upon request. Through 2018, ILS has issued two reports about the implementation of Eligibility Standards in the *Hurrell-Harring* counties—one in April 2017 and another in April 2018. These reports are available on our website.

Counsel at Arraignment

In November 2015, ILS issued a Final Plan for Implementing the Counsel at Arraignment Obligations under the Settlement. In its 2017-2018 budget, the State fully funded this plan so that the counties could meet the deadline for full arraignment coverage. Such coverage requires multiple programs in each county, including programs to staff court sessions; on-call programs; and agreements with law enforcement to issue appearance tickets for criminal court sessions. Fortunately, in 2016, Judiciary Law § 212 (1) (w) was enacted to allow counties to create Centralized Arraignment Programs (“CAPs”) to facilitate having defense counsel at all arraignments. Three of the five Settlement counties have done so, with Washington County beginning its CAP in October 2017; Onondaga in December 2017; and Ontario in May 2018.

ILS has monitored the arraignment programs and, where needed, has worked with the counties to improve arraignment coverage. These steps are summarized in November 2016, October 2017, and October 2018 Update Reports, all available on the ILS website. We estimate that, between July 1, 2017 and June 30, 2018, more than 44,350 defendants were represented at arraignment in the Settlement counties, and there were fewer than 100 missed arraignments. The Settlement providers acknowledge that striving to ensure counsel at arraignment has involved a considerable investment of work and commitment. They also emphasize the importance of monitoring the programs and devising strategies to address inevitable problems. The time and effort have produced important results, as capsulized by Julia Hughes, Administrator for the Tompkins/Schuyler Regional Assigned Counsel Program:

Providing counsel at arraignment has made the most significant difference...[It] is very difficult, but it is keeping people out of jail and means that many more clients are no longer losing jobs or having their kids taken into foster care. It is the most revolutionary change in the criminal justice system and the lives of our clients.

Caseloads and Quality

In November 2015, ILS issued its Final Plan for Implementing the Quality Improvement Objectives. To set caseload standards, ILS contracted with RAND Corporation for a three-phase caseload study, conducted research on caseload studies done throughout the nation, and consulted with the Settlement counties. As a result of these efforts, ILS issued a December 2016 report determining Caseload Standards. In April 2017, the State budget included full funding for implementation of these standards in the five counties.

For the institutional providers, implementation of the Settlement’s quality and caseload objectives has meant a significant increase in staff. From 2015 through 2018, the six Settlement institutional providers have hired a total of 64 new attorney positions¹ and 35 new non-attorney positions. Implementing these initiatives has also meant better access to, and enhanced use of, non-attorney professionals (investigators, interpreters, social workers, sentencing advocates/mitigation specialists, and experts) to achieve a more comprehensive, client-centered approach to defense.

¹This includes six Washington County Public Defender Office attorneys who transitioned from part-time to full-time.

The providers have bolstered supervision and administrative infrastructure, thus allowing for enhanced quality oversight and greater engagement in community criminal-justice initiatives. Finally, the funding has meant enhanced training, including opportunities to attend high caliber, multi-day, skills-based trainings. Some Settlement providers now have regular training programs that they make available to their own attorneys, as well as other public defenders in the region.

For ACPs, Settlement implementation has resulted in the creation of infrastructures that support attorneys and encourage them to spend the time needed for quality representation. The five ACPs now have mentor and resource-attorney programs for both one-on-one mentoring and consultation with more experienced attorneys on particularly thorny issues or case theory development. Protocols facilitate access to non-attorney professionals, and attorneys no longer need to apply to courts or face unrealistic caps on payment for these critical resources. Like the institutional providers, the ACPs have training funds so that panel attorneys can access training, including multi-day, intensive skill-development trainings. The ACPs are also more often using second-chair opportunities as a means of “hands-on” training and to ensure that defendants are well-represented. Finally, Settlement funding has been used to bolster ACP administrative infrastructures, thus allowing for timely voucher processing, enhanced quality oversight, and timely access to supports and resources.

Attorneys state that the Quality and Caseload Relief initiatives have made a tremendous difference in how they practice. An attorney for the Schuyler County Public Defender Office relayed the following: “Because of caseload relief, I have more time to identify possible legal issues; to research them to see if they are viable; and, if so, to fully litigate them. The work is now more engaging and interesting.” He also reported that having more time has allowed him to develop better relationships with his clients. In one case, for example, this attorney spent a significant amount of time meeting with his client to convince him that testifying at trial would hurt his defense. The client finally agreed to follow his attorney’s advice. As a result, at trial, the client was found not guilty of the felony charges against him. After trial, the client thanked the attorney for “saving him from himself.” A Suffolk County Legal Aid staff attorney was succinct in assessing the impact of Settlement funding: “Having social workers readily available has made all the difference!”

Dan Russo, the Suffolk County ACP Administrator, has aptly described how the “*Hurrell-Harring* world” impacts ACP attorneys. A complicated homicide case was assigned to an experienced ACP attorney, who sought support. Because of the Settlement initiatives, he had multiple brainstorming sessions with mentor attorneys and retained an investigator and experts. Russo reflected:

In years past, lawyers...handling assigned cases would be left alone to investigate and prepare for issues such as these. If you were lucky enough to get experienced colleagues to be able to conference with you, those meetings were usually brief...In the *Hurrell-Harring* world, we are able to provide the defense attorney with two attorneys who together probably have 80 years of experience handling these cases. These attorneys are always available and have shown great eagerness to prepare this case for trial...The insight from colleagues and the assistance of the experts has certainly made a great difference in the level of representation that is

expected...[I]f this is the future of indigent representation, then we are certainly on good footing to provide justice for all clients.

The experience of the Settlement counties demonstrates that the deficiencies in our public criminal defense system, described in the 2006 *Kaye Commission Report*², are not intractable. The infusion of State funding, with the thoughtful guidance of ILS, is already making a difference in the five Settlement counties. As described in the next section, the remaining counties in New York are well on their way to creating the “*Hurrell-Harring world*” throughout the State.

II. STATEWIDE EXPANSION

Background

As of 2017, statewide criminal defense reform in New York was no longer a pipe dream. In April of that year, legislation was enacted that calls for New York State to pay for the statewide expansion of *Hurrell-Harring* reforms and gives ILS, in consultation with its Board, the responsibility for overseeing that process. A groundbreaking amendment to Executive Law § 832 also authorized ILS to develop five-year State plans in three areas (“Plans”): (1) counsel at arraignment for criminal defendants eligible for mandated representation; (2) caseload/workload standards for providers; and (3) improvements in the quality of representation. Further, ILS was empowered to implement, monitor, and report on these Plans. In December 2017, ILS submitted Plans addressing how each locality can use State funding to effectuate statewide reform by April 2023. The arraignment, caseload, and quality plans encompass counties not covered by the Settlement, that is, 52 counties plus New York City (“NYC”). Costs to implement the Plans are to be reimbursed by the State to the county or city providing such services, with funds appropriated each year by the State. In FY 2018-2019, \$50 million was appropriated in the State budget for the first year of statewide reform, and ILS began the process of implementing the Plans.

Outreach and Information

In early 2018, under the leadership of Statewide Chief Implementation Attorney Joanne Macri, the Statewide Implementation Unit (“Statewide Team”), began holding in-depth meetings with county official and providers to discuss priorities and preliminary ideas and prepare for year one of implementation of the Plans. An intensive information-gathering process that began in early 2017 continued throughout 2018 to help ensure the effective, efficient implementation of each county’s plans for counsel at arraignment, caseload relief, and quality improvement.

For counsel at arraignment, the Statewide Team has engaged in an ongoing process to gather and analyze data from many sources. The data was used to assess the status of current programs and the challenges to be overcome in providing counsel arraignment in all State criminal courts. On a biannual basis, ILS has been collecting information regarding where arraignment counsel is consistently provided during regular, business-hour court sessions and during off-hour

²The report, entitled the “Commission on the Future of Indigent Defense Services: Final Report to the Chief Judge of the State of New York,” is available here:

https://nycourts.gov/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf
(last accessed June 25, 2019).

arraignments. In addition, from 2017 to 2018, ILS used nearly 200 in-depth meetings, as well as questionnaires, to gather the information needed to determine how providers could improve the quality of criminal defense representation, including information about these critical elements, identified in Executive Law § 832 (4):

- Effective supervision and training;
- Access to, and appropriate use of, non-attorney professional services;
- Effective communication with clients;
- Attorneys with necessary qualifications and experience; and
- In the case of assigned counsel attorneys, protocols ensuring that counsel are assigned in a manner that takes into account their experience and caseload/workload.

Reliable data is critical for ILS to monitor and report on the statewide implementation of reform. So in 2017 and 2018, the agency worked closely with each provider, county, and NYC to ascertain their capacity to gather and report on data and to identify the resources needed—such as case management systems, technology upgrades, trained staff, and oversight—to meet agency data requirements. Further, each county and NYC are required to have a designated data officer responsible for working with ILS in meeting data-gathering and reporting requirements; to participate in ILS data trainings; to provide regular updates to ILS; and to coordinate the annual reporting of data to the agency in a uniform, accurate, and timely manner.

Proposals in Year One

In 2018, the primary focus of the Statewide Team has been negotiating budget proposals and developing work plans with each locality for the first year of statewide implementation. To collaborate with and assist providers, counties, and NYC in developing their plans, the Team has had more than 500 meetings. The plans vary to fit the needs and challenges of each locality, but typical elements include significant improvements in program structure and resources, as well as expanded attorney and non-attorney staffing. About 38 such budget proposals and work plans were completed by the end of the calendar year. These proposals and plans envision significant reforms:

- Eight counties committed to new and/or expanded institutional provider offices (Public Defender and/or Conflict Defender offices).
- At least 17 counties have committed to the development or restructuring of an assigned counsel program with sufficient staffing and/or to expanding staff and resources to better support existing programs.
- Institutional providers in some counties with too few private attorneys available to accept assignments have made plans to upgrade part-time positions to full-time positions.
- Many counties have proposed hiring, or contracting with, additional attorneys and non-attorneys to reduce caseloads and provide more supervision and support.
- Training, mentoring, and second-chair programs for attorneys are to be implemented.

- Appellate/litigation support and legal research resources have been embraced.
- Many counties plan the creation or enhancement of resources, including non-attorney professional services, such as the services of experts, investigators, interpreters, and social workers.
- Technology upgrades and other technical services are planned.
- A data officer has been designated in each locality, to be trained by ILS, and improved data management tools and support are to be implemented.

Regarding counsel at arraignment, ILS has helped counties develop plans tailored to their unique needs,³ which requires confronting unique and daunting challenges, including limited resources and availability of trained counsel; geography and population density; more than 1,100 Town and Village courts in the counties outside NYC (excluding *Hurrell-Harring* counties), as well as more than 100 County and City courts; and the vast number of law enforcement agencies. In counties with existing arraignment programs, resources will be expanded to provide greater coverage, particularly for off-hours arraignments. Some counties are reconfiguring their programs, such as transitioning from individual arraignment coverage to CAPs. Where counsel has not been provided at arraignment, pilot programs will be launched in busier and willing courts.

Another significant challenge is the inadequate number of qualified criminal defense attorneys to sustain reform. In 2017 and 2018, several counties reported a significant reduction in the number of private attorneys available to accept assignments under County Law article 18-B. In addition, many institutional defenders have experienced problems in retaining or recruiting staff. In response to these challenges, ILS is working closely with other statewide defender organizations to develop recruitment strategies, including organizing job fairs. In October 2018, ILS co-sponsored the first New York State Public Defenders Career Fair, held at the State University of New York at Buffalo Law School, with participation by provider organizations from throughout the State and more than 100 participants seeking employment opportunities.

III. IMMIGRATION ASSISTANCE

In 2018, ILS continued to support a network of six Regional Immigration Assistance Centers (“Centers” or “RIACs”), for these regions: Western New York, Central New York, Capital District and Northern New York, Hudson Valley, NYC, and Long Island. Established in 2015, these Centers are responsible for ensuring that providers within each region have access to the training and legal support necessary to provide competent advice to non-citizen clients as to potential immigration consequences of criminal convictions, in compliance with legal obligations established by the Supreme Court in *Padilla v Kentucky*, 559 US 356 (2010). The Centers also advise and train counsel, assigned to provide representation to parents or other adults in Family Court matters, regarding immigration issues that might impact parental rights. The Centers have done extensive work to establish themselves as experts in their regions and to ensure that judges, nonprofit organizations, and other stakeholders have access to the training necessary to appreciate the potential—and often unintended—immigration consequences that may arise from judgments of conviction or Family Court dispositions.

³ILS did not consult NYC, since all courts there have counsel available at each arraignment hearing.

In 2018, the RIACs received 5,000 requests for assistance and conducted, or participated in, 95 trainings and presentations. The Western NY RIAC (Region #1) conducted 16 training events, including presentations to magistrates' associations, court clerks, and Family Court judges. The Central NY Center (Region #2) conducted trainings for the Fifth and Sixth Judicial District judges, as well as for City Court judges. The Capital District and Northern NY RIAC (Region #3) held 34 trainings, including presentations regarding Refugee Services in the State Office of Temporary Disability Assistance, and participated in various defender trainings. The Hudson Valley Regional Center (Region #4) was been involved in 10 training events, encompassing collaborations with other offices to train assigned counsel; and the office also provided refresher trainings for public defender offices in seven counties.

The NYC RIAC (Region #5) participated in 26 training-related events, which included discussions of adverse consequences in Family Court matters and how to address courthouse arrests by U.S. Immigration and Customs Enforcement agents. The Long Island Regional Center (Region #6) participated in 36 training events, including on immigration consequences at arraignment. In addition, that RIAC partnered with the Long Island Language Advocates Coalition and met with the Suffolk County Sheriff to ensure that full and equal access to programs and services is provided to non-citizens.

IV. QUALITY ENHANCEMENT: CRIMINAL DEFENSE TRIALS

ACP Standards

In 2012, the ILS Board approved the Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest. Building on these standards, in 2016, ILS convened a working group of experts and public-defense practitioners from across the State to develop standards for establishing and administering ACPs. In working to develop meaningful standards, this working group has looked to existing national, state, and local standards; their own collective experience in overseeing assigned counsel programs; and the experience of the *Hurrell-Harring* ACPs in effectively using an influx of State funding to improve the quality of representation. Ultimately, the standards will seek to ensure that ACPs have the infrastructure needed to support panel attorneys in providing quality representation and complying with all applicable individual representation standards and with the New York Rules of Professional Conduct. A draft of the standards was shared with the ILS Board in late 2018, with the goal of promulgating the standards by mid-2019. The ILS Director of Quality Enhancement for Criminal Defense Trials, Matthew Alpern, has overseen the development of ACP Standards.

Forensics

In addition, the Criminal Defense Trials Director has continued to work closely with defense providers across the State, lending his experience to case theme and theory development, as well as litigating forensic evidence issues and effectively using experts. He has regularly attended the Annual NACDL-Cardozo Law National Forensic College, a week-long forensic CLE featuring the foremost national experts in a wide range of forensic disciplines. The Director is sharing the

information from these conferences, and the connections he has built with the *Hurrell-Harring* Settlement and Statewide Teams, to develop forensic pilot projects in western and central New York. Finally, the Director has served a critical role in working closely with the Westchester County ACP to develop and implement a vibrant mentor program for attorneys new to the panel. Throughout 2018, he delivered several CLE programs for the new attorneys and their mentors and provided technical assistance to the ACP for this initiative.

V. QUALITY ENHANCEMENT: PARENTAL REPRESENTATION

From its inception, ILS has been devoted to improving not only criminal defense representation, but also parental representation—by Constitution and statute, New York guarantees a broad right to counsel for litigants in Family Court matters. In 2015, the agency held its first statewide training conference on parental defense and issued comprehensive Standards for Parental Representation in State Intervention Matters. When parental representation was not included in 2017 legislation providing for the statewide expansion of *Hurrell-Harring* reforms, ILS developed a strategy to move forward, and in 2018, played a significant role in a State Bar report and a State Commission that strongly recommended parental representation reform.

State Funding and Grants

The ILS strategy to elevate the quality of parental representation included enlisting the support of NYSBA. In 2018, that goal was accomplished. The ILS Director of Quality Enhancement for Parent Representation, Angela Burton, authored a January 2018 Memorandum in Support of State Funding for Mandated Parental Representation on behalf of the NYSBA Committee on Families and the Law Committee. In April 2018, the Parent Representation Director joined the Committee Chair to present the Memorandum to the State Bar House of Delegates, resulting in the House's unanimous vote to adopt the Memo as NYSBA policy. NYSBA declared that the State of New York should pay the entire cost of mandated parental representation—or at least the cost of elevating the quality of representation—and should also provide for statewide oversight of such representation.

In 2017, ILS announced a three-year grant to fund a pilot upstate project to provide high quality, holistic representation to parents in State intervention proceedings. Central to the RFP was the concept that parents should be granted access to counsel during the child protective agency investigation, since premier programs in NYC have demonstrated that such timely access leads to fairer outcomes and benefits parents, their children, counsel, the courts, and taxpayers. Ultimately, the grant was not awarded, but the RFP was to be reissued in 2019. ILS remains committed to taking all steps necessary to achieve parental representation funding from the State and cooperation by the counties and providers that will be needed to achieve effective parental representation reform—including timely access to counsel in child welfare matters.

Parental Representation Commission

The Commission on Parental Legal Representation was established by Chief Judge Janet DiFiore in February 2018 to examine the current state of representation for indigent parents in family-related matters in which the assignment of counsel is constitutionally and/or statutorily mandated; and to develop a plan to ensure the future delivery of quality, cost-effective parental representation across the State. The ILS Parent Representation Director was named special advisor to the Commission. In that role, she worked closely with the Commission Chair and Counsel to plan four public hearings—held in fall 2018 in Rochester, NYC, Albany, and Mineola. In addition, she helped to plan several meetings of the Commission, as it gathered information needed to prepare an Interim Report, slated to be issued in February 2019. In concert with the ILS Research unit, the ILS Parent Representation Director helped to develop surveys of clients, attorneys, and judges to be used in the preparation of the Interim Report. The Commission determined that the Interim Report would focus on child welfare matters, since inadequate parental representation has a particularly devastating impact in such matters, by causing unnecessary removals of children, trauma to families, and avoidable financial costs to the government.

Conference, Council, Staffing

In April 2018, ILS and NYSDA held a Families Matter Statewide Family Defender Conference in Albany. The event, attended by hundreds of practitioners from throughout the State, covered topics such as preparing a neglect case, the art of cross-examination of child protective services caseworkers, and discovery. In August 2018, ILS created a Parental Representation Advisory Council. Members of this internal advisory group include mandated representation providers from around New York and a parent affected by the child welfare system. Two meetings were held in 2018. ILS also manages ILSFAM, a listserv, now in its seventh year, that serves as a forum for providers to have robust discussions on practice issues and broader policy and systemic issues; to post questions and make announcements; and to seek feedback and assistance from peers. Given the scope and importance of ILS parental representation efforts, in 2018, the agency hired a second experienced parental representation attorney, Lucy McCarthy, to advance our mission in this realm. In 2018, the ILS Parent Representation Director also helped to further our goals by serving on the State Court Improvement Project Multidisciplinary Statewide Team; the New York State Permanent Judicial Commission on Justice for Children; the American Bar Association’s Family Justice Initiative; and the Parent Leadership Action Network, a newly formed, parent-led community outreach and advocacy group.

VI. QUALITY ENHANCEMENT: APPELLATE REPRESENTATION

In 2015, ILS published Appellate Standards and Best Practices (“Appellate Standards”) setting forth aspirational standards for mandated representation in criminal and family law appeals. With the statewide expansion of *Hurrell-Harring* reforms, the agency’s appellate goals are to use State funding to effectuate the Appellate Standards, as well as ILS Caseload Standards, regarding criminal appellate matters. The agency also seeks to improve the quality of appellate parental representation. In the area of child neglect and abuse, the ILS Standards for Parental

Representation in State Intervention Matters also provide relevant guidance. ILS's appellate mission is guided by the Director of Quality Enhancement for Appellate and Post-Conviction Representation, Cynthia Feathers.

Appellate Defender Council

The Appellate Defender Council is a unique group devoted to quality in mandated appellate representation in New York State court criminal and Family Court appeals. Established by ILS in February 2018, the Council is a group of 21 appellate attorneys from throughout the State. Many members lead institutional programs that provide appellate representation in criminal and/or Family Court cases. In addition, Council members include experienced appellate attorneys from ILS, NYSDA, public defender offices, and ACPs. The Council meets several times a year and seeks to address appellate issues of statewide importance; to provide insights and ideas about how to best improve appellate representation using funding available via statewide implementation of *Hurrell-Harring* reforms; and to present quality trainings presented by highly experienced attorneys.

A working group on the training of trial attorneys determined that the appellate mission must begin with trial counsel. The Council joined forces with other defender groups to hold CLE programs throughout New York to guide staff attorneys and assigned counsel regarding how to preserve the right to appeal of criminal defendants by filing of notices of appeal and applying for poor person relief. In addition, these sessions have addressed the immigration benefits for non-citizen defendants of filing a notice of appeal. A working group on appellate attorney trainings collaborated with ILS Research to design and conduct a survey of the appellate bar on training needs. The appellate training team determined that the Council should offer a two-day pilot training on criminal appeals in Albany, with one day in spring 2019 and the second the following fall. In the future, we also expect to implement a regional appellate training program with an expanded criminal defense curriculum; to develop a training regimen for Family Court appeals; and to produce criminal and family appeals handbooks for the mandated representation bar. As a result of a 2018 proposal by the Council, the OCA Advisory Committee on Criminal Law and Practice is working with court clerks to refine a bill that proposes an amendment to CPL 380.55 regarding assignment of counsel for criminal appeals. Further, the Council has weighed in on other relevant legislative reform, including a bill regarding appellate representation for CPL 440.10 and 440.20 motions; proposals to DOCCS to facilitate communication between appellate counsel and incarcerated clients, consistent with ILS Standards; and potential revisions to ILS data collection as to appellate cases.

ILSAPP, Decisions, Other

ILS seeks to support public defense counsel by emailing weekly DECISIONS OF INTEREST that offer one-paragraph summaries of key decisions issued the prior week. An ILS listserv of 400 public defense attorneys is the vehicle for transmitting the DECISIONS. ILS also provides separate IMMIGRATION DECISIONS for attorneys at the RIACs. All DECISIONS are posted to Appellate Resources section of the ILS website. In addition, resources created by appellate providers throughout the State are transmitted via the listserv and then posted on the ILS website. The listserv also serves as a forum for a discussion by the mandated representation bar on appellate issues of

general interest. Among the other functions of the Appellate Director are to serve as a consultant to the public, trial attorneys, and pro se litigants; and to communicate about our activities through published articles. Within ILS, the Appellate Director also assists the ILS Director on various projects and fellow Directors and other colleagues, including: working with the Criminal Defense Trials Director on the development of ACP Standards; our Raise-the-Age expert on memoranda of law regarding implementation issues; the Parent Representation Director on memoranda and reports; the Commission on Parental Legal Representation as appellate advisor; the ILS Research Director on data issues involving appellate matters; and the *Hurrell-Harring* and Statewide Implementation Teams regarding ways to use State funding to improve the quality of appellate representation in counties statewide.

VII. RESEARCH

Through its research, ILS strives to “become a repository for all known and available information on indigent legal services providers around the state.”⁴ In 2018, we advanced that mandate through implementation of the *Hurrell-Harring* Settlement and the statewide expansion and work in support of the Commission on Parental Legal Representation and appellate training efforts. Led by Director of Research Andrew Davies, the Research staff improved our caseload data collection and published important findings regarding counsel at first appearance. Our work has covered everything from creating the instruments and technology to gather new data, to the processing, analyzing, and publishing of final results. ILS has benefited greatly from the cooperation of defenders. Our research would not be possible were it not for defenders willing to share their data, accept new ideas, and share insights. As ILS’s responsibilities evolved in 2018, the agency continued to seek new and better data from defenders, while assisting those who wished to refine data collection and to use data in new ways to improve their representation. This section provides an overview of research activities, while the *Hurrell-Harring* and Statewide implementation sections above offer further details on research in those realms.

Caseload Standards Implementation

New York is the first state in the country to implement fully funded caseload limits for all providers of mandated criminal representation. The Caseload Standards have required ILS to establish new ways of obtaining caseload data from providers and to develop and disseminate clear rules as to what the data must include. To obtain valid, reliable, and accurate data from more than 150 providers statewide, we undertook a series of research projects. A critical change came in the 2018-2019 State budget legislation, transferring to ILS the mandate to collect annual reports from providers of representation under County Law § 722-f. These annual reports—which historically have taken the form of the UCS-195 reporting form and have been gathered by OCA—included varied questions about caseloads. Our Caseload Standards require us to ask new and different questions. Therefore, ILS researchers spent much of 2018 redesigning this form. The agency ultimately developed a plan to replace the UCS-195 incrementally with a new ILS-195 reporting form. Milestones in 2018 included the dissemination of a definition of a criminal “case” for counting purposes and delivery of a training program to more than 180 participants regarding the ILS-195. This work was bolstered by studies of provider data systems and by providers who

⁴See <https://www.ils.ny.gov/content/research-and-data-analysis> (last accessed June 25, 2019).

participated during the public comment period as to the proposed definitions and instruments. In coming years, ILS expects to continue refining these instruments in collaboration with providers.⁵

Counsel at First Appearance

ILS embarked on a partnership with the State University of New York–Albany in 2014 in order to evaluate the impact of counsel at first appearance (“CAFA”) in six upstate counties. Initial results in 2018 indicated that the provision of CAFA was associated with more moderate bail outcomes, including less use of cash bail, and lower bail amounts. These findings generated publications and presentations, which have been cited by the Brookings Institution, reproduced on a London School of Economics blog, and highlighted at the International Legal Foundation conference in Tblisi, Georgia. Future publications will expand the analyses to cover new types of cases, test their robustness with the addition of new statistical tests, and examine other data from a wider variety of sites.⁶

Other Activities

ILS researchers continued examining mandated representation across New York, at times engaging external parties whose expertise benefited the agency. In late 2018, ILS signed letters of support for a funding request to the Laura and John Arnold Foundation by the Harvard University Access to Justice Lab for an investigation of the impact of text message reminders of court appearances and attorney meetings for defendants in two upstate counties. The Harvard Lab has developed a system that interacts with case management systems at public defender offices to

⁵Here are links to relevant documents:

ILS Study of Case Counting Practices among Providers of Mandated Criminal Defense.

<https://www.ils.ny.gov/files/Research%20and%20Data%20Analysis/Study%20of%20Case%20Counting%20Practices%20Among%20Providers%20Of%20Mandated%20Criminal%20Defense.pdf>
(last accessed June 25, 2019).

Definitions for Reporting Counts of Criminal Cases to the Office of Indigent Legal Services.

<https://www.ils.ny.gov/files/Annual%20Data%20Reporting/Definitions.pdf> (last accessed June 25, 2019).

ILS-195 Demonstration Form: <https://ils195-demo.questionpro.com> (last accessed June 25, 2019).

Accompanying materials: <https://www.ils.ny.gov/content/annual-data-reporting>
(last accessed June 25, 2019).

⁶Andrew Davies, Kirstin Morgan, Reveka Shteynberg, and Alissa Worden authored three articles regarding ILS research findings on CAFA:

Beyond the City Limits: Evaluating Court Reforms in Rural and Small-Town Courts, in TRANSLATIONAL CRIMINOLOGY. <https://cebcp.org/wp-content/TCmagazine/TC13-Fall2017> (last accessed June 25, 2019).

What difference does a lawyer make? The effect of counsel at arraignment on detention and bail decisions in misdemeanor courts, published in CRIM JUSTICE POLICY REV, Vol 29, Issues 6-7.

<https://journals.sagepub.com/doi/abs/10.1177/0887403417726133?journalCode=cjpa>
(last accessed June 25, 2019).

Guaranteeing Representation at First Court Appearances may be Better for Defendants, and Cheaper for Local Governments, published in a London School of Economics blog post.

<https://blogs.lse.ac.uk/usappblog/2018/08/28/guaranteeing-representation-at-first-court-appearances-may-be-better-for-defendants-and-cheaper-for-local-governments> (last accessed June 25, 2019).

send notifications to clients of upcoming attorney meetings and court dates. Lab researchers intend to launch an investigation regarding the impact of those notifications on attendance at attorney meetings and court dates, and corollary impacts on case outcomes and client experiences, even if funding is not forthcoming. ILS is grateful for the assistance and time dedicated by the Lab.⁷

VIII. ADMINISTRATIVE INFRASTRUCTURE

Because of the *Hurrell-Harring* Settlement and its expansion to the entire State, ILS has experienced significant growth in responsibility. This has required the hiring of qualified attorneys, researchers, and other program staff who coordinate with the counties to develop and implement the various programs needed to enhance the quality of representation, ensure manageable caseloads, and provide counsel at first appearance. In 2018, ILS received the funding and authorization needed to enhance administrative operations and improve its ability to: review and approve distributions, competitive grants, and *Hurrell-Harring* grant proposals; develop and send completed contracts to the counties; process county expense reports and vouchers for timely reimbursement; and review and process requests to modify contract budgets. Achieving these goals will ensure that ILS is responsive to counties; that State funding flows consistently and efficiently; and that we can appropriately accommodate needed changes in contracts. The bolstering of ILS's infrastructure started with the October 2018 hiring of an Administrative Officer, Christine Becker, to work closely with ILS Counsel and Grants Unit. Late in 2018, the agency also started recruiting and interviewing for two assistant grants manager positions and an auditor position. In the meantime, the ILS Grant Manager, Jennifer Colvin, and her staff strove throughout 2018 with limited resources to meet growing operational responsibilities.

CONCLUSION

Criminal defense reform marches forward in New York, as do our efforts to support parental representation on many fronts. We expect our next annual report to reflect this continuing progress. While there are many elements to the effective transformation of mandated representation, a fundamental truth at the center of our efforts is that criminal defense and parental representation attorneys must have manageable caseloads to spend enough time on each case and each client and do their jobs right. That was highlighted in a January 31, 2019 New York Times article dramatizing the national crisis of excessive defense attorney caseloads. *One Lawyer, 194 Felony Cases, and No Time* revealed that our nation is not honoring its commitment to due process, equal justice, and the right to counsel, as set forth in *Gideon v Wainwright*, 372 US 335 (1963), and *Matter of Ella B.*, 30 NY2d 352 (1972). However, the article failed to mention the profound progress and real hope we are experiencing in New York. In 2018, we participated in a bold, State-funded, and locally implemented plan to make possible the delivery of the effective assistance of counsel to clients who are unable to afford counsel.

⁷In 2018, ILS also worked on a variety of projects resulting in other articles, including *Access to Counsel for Criminal Defendants in New York's Rural Courts*, by Andrew Davies and Alyssa Clark, published in NYSBA GOV'T LAW & POLICY J, Vol 17, Issue 1, pp 15-21. <https://ssrn.com/abstract=3131206> (last accessed June 25, 2019).