



# NYCLU

NEW YORK CIVIL LIBERTIES UNION

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## Testimony Regarding the 2017-18 Public Protection Budget

*Testimony of the New York Civil Liberties Union to be presented by Mariko Hirose, Senior Staff Attorney, before the Joint Legislative Hearing on the Executive's 2017-18 Public Protection Budget*

January 31, 2017

Good afternoon, Senator Young and Assembly Member Farrell, and good afternoon to all the members of the joint budget committee. My name is Mariko Hirose. I am a senior staff attorney with the New York Civil Liberties Union. The NYCLU is a membership organization dedicated to protecting the civil rights and civil liberties of New Yorkers. The organization has eight offices across the state and more than 80,000 members and supporters.

As many of you know, ten years ago the NYCLU, with the law firm of Schulte Roth & Zabel LLP as co-counsel, filed *Hurrell-Harring v. State of New York*—a class action lawsuit seeking to reform the state's public defense system. The filing of the lawsuit followed a series of reports published over decades that decried the state's decision in the 1960s to saddle the counties with the financial responsibility for providing public defense services and to disclaim responsibility for oversight. The former Chief Judge of New York, the late Judge Judith Kaye, described the state's public defense services as a "patchwork system" that "fails to satisfy the state's constitutional and statutory obligations to protect the rights of the indigent accused."

The parties in *Hurrell-Harring* reached a settlement in 2014. That settlement was approved by the court in 2015, finally setting the stage to begin long-overdue public defense reform in the five counties that were defendants in the case: Onondaga, Ontario, Schuyler, Suffolk, and Washington.

The *Hurrell-Harring* settlement is being implemented by the Office of Indigent Legal Services, which has done exceptional work in fulfilling the terms, and objectives, of the settlement. ILS has worked closely with the five counties to develop and implement plans for reform pursuant to the terms of the settlement. These reforms have had a transformative impact due, in important part, to the work of the ILS staff. As of November 2016, indigent defendants in the five counties are guaranteed counsel at arraignment—defendants' first appearance in court where important decisions like bail eligibility are often made. In addition, in the past year the ILS launched programs to improve the quality of public defense; establish fair and uniform criteria regarding

eligibility for public defense services, which have been successfully applied in the five counties; and develop caseload standards that will help to ensure that public defense attorneys have adequate time to devote to each of their cases.

I appear before you today to seek your continued support for the provisions in the governor's proposed budget that make possible the implementation of the court-ordered settlement in *Hurrell-Harring*. We applaud the governor for his commitment to the settlement reforms in the five counties, including funding for much-needed caseload relief.

I also commend members of the Senate and Assembly for passing legislation in the last session that would have achieved statewide reform of public defense services. The NYCLU staff and its members, along with civil rights and social justice advocates across the state, were deeply disappointed when the governor vetoed the bipartisan reform bill, which was passed without a single negative vote.

We ask for your continued support in the fight to create a fairer and more effective public defense system. The failure of public defense services in New York is systemic – and so must be the remedy.

In the budget, the governor proposes his own version of public defense reform, but his proposal differs significantly from the legislation that passed last session. ~~The governor's budget bill does~~ not require the state to fully fund public defense services statewide. His legislation would obligate the state to provide the resources necessary to implement the *Hurrell-Harring* reforms statewide, but would empower the Division of Budget to approve plans developed by ILS that address standards and operations – including plans intended to ensure that a lawyer is present when an individual is arraigned; that public defense providers are subject to reasonable limits on caseloads and workloads; and that public defense offices have the capacity to train and supervise staff, conduct investigations, and utilize expert witnesses, as needed, to provide constitutionally mandated standards of legal representation.

These matters are beyond the competence of the Division of Budget's staff. What's more, in authorizing the Division of Budget to approve ILS plans regarding public defense operations, the governor's bill is inconsistent with the terms, and objectives, of the *Hurrell-Harring* settlement.

The ILS staff has consistently demonstrated competence and sound judgment in advancing its mission to monitor, audit, and provide oversight of public defense services – not only in the five counties that are parties to the *Hurrell-Harring* settlement, but in all New York State counties. The NYCLU recommends that legislation that seeks to reform public defense services should not diminish the authority provided ILS, under the state's Executive Law, to establish and uphold standards of accountability for public defense providers. This recommendation in no way diminishes the role of the executive and of the Division of Budget in maintaining fiscal oversight of ILS.

Sixty years after *Gideon* and ten years after the filing of *Hurrell-Harring*, it is time for the state to accept its constitutional responsibility for funding public defense services. The current “patchwork” system is not fair to the counties, to the criminal defense attorneys who toil under crushing caseloads, or to those who spend weeks in jail without seeing a lawyer because they cannot afford to hire one.

On behalf of the NYCLU, I ask for your support in creating a public defense system that is fair, just and equal throughout the state.

