

Testimony Regarding the 2016-17 Public Protection Budget

Testimony of the New York Civil Liberties Union presented by Mariko Hirose, Senior Staff Attorney, before the Joint Legislative Hearing on the Executive's 2016-17 Public Protection Budget

February 4, 2016

Good afternoon, Committee Chairs Young and Farrell, and 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 over 50,000 members and supporters.

I appear before you today to seek your support for the provisions in the Governor's proposed budget that address funding for the New York Office of Indigent Legal Services (ILS). These provisions make possible implementation of the court-ordered settlement in *Hurrell-Harring v. State of New York*.

I also request your support for the principles on which the settlement is based. These principles recognize that it is the state's constitutional obligation to fund public defense services and that such funding must be adequate to provide effective legal representation to persons facing criminal charges who cannot afford to hire a private attorney.

Hurrell-Harring is the class action lawsuit filed in 2007 by the NYCLU, along with our co-counsel at the law firm of Schulte Roth & Zabel LLP, 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 this system 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 ILS. ILS is staffed with experts in the field of public defense and it has done exceptional work in fulfilling the terms, and objectives, of the settlement. In the past year, ILS has worked closely with the counties that are part of the settlement to develop detailed plans for providing attorneys at arraignment—defendants’ first appearance in court where important decisions like bail eligibility are often made—and for improving the quality of representation.

ILS has also conducted public hearings across the state to solicit input and develop criteria that will ensure that eligibility for public defense counsel is determined in a fair and consistent manner across the state. ILS has continued to analyze the excessive caseloads carried by public defense attorneys and will be working with the counties named in the lawsuit to meet reduced caseload standards by the end of 2017.

The money allocated to ILS in the Executive budget reflects the amount required for implementation of the settlement in the coming year. We commend Governor Cuomo for his leadership in introducing an executive budget that fulfills the promises made in the *Hurrell-Harring* settlement, and we urge legislators to support the budget so that the state can continue to comply with the terms of the settlement.

We also call on the state’s lawmakers to ensure that reforms brought about by the settlement are not bound by the geographic boundaries of the five counties that are parties in the *Hurrell-Harring* litigation. These five counties were defendants in the lawsuit not because their public defense systems were the worst, but because they illustrated the struggles of the county-funded public defense offices across this state.

It is time for the state to accept its constitutional responsibility for funding public defense services. The current 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.

I expect that lawmakers on this panel are familiar with recently introduced, bipartisan legislation that provides a historic opportunity to repair New York’s broken public defense system. The bill, introduced by Sen. DeFrancisco and by

Assembly Member Fahy, would shift to the state – incrementally, over four years – fiscal responsibility for public defense services. The bill authorizes ILS, consistent with its statutory authority, to establish and uphold standards for public defense services.

We believe that passage of this bill should be a priority for this legislative session, and we ask that lawmakers view the framework for reforming public defense services in the five defendant counties as a model for statewide reform. This, we submit, is the goal – statewide reform. The failure of public defense services is systemic – and so must be the remedy.

To this end, we urge that the governor and legislators allocate funds in this year’s budget that begins to shift from all counties, to the state, the cost of providing public defense services.

The budget request submitted by ILS includes money that would allow the agency to begin advancing reforms in counties not named in the *Hurrell-Harring* settlement. That money would allow those counties to take steps toward ensuring that an attorney is present at every arraignment and reducing caseloads to levels recommended by national experts. We ask you to support the budget request submitted by ILS so that these basic standards of representation can be met in every county across New York and so that the constitutional rights of every person accused of a crime will be zealously defended from the moment legal jeopardy attaches.

Public defense reform is critical to a fair criminal justice system and to a just society. When the public defense system fails, people who pose no danger to others may lose their jobs, their housing, and their loved ones merely because they could not afford to hire a competent attorney. A substandard public defense system drives mass incarceration—and this has exorbitant human and financial costs.

The budget requested by ILS would fund ongoing reform in the five defendant counties and would enable the office to undertake reform across the state. This allocation of state money is a smart investment in fair and efficient criminal justice.

On behalf of the NYCLU, I ask for your support in creating a public defense system that is fair and just, efficient and cost effective.