



Brooklyn Defender Services
177 Livingston St, 7th Fl
Brooklyn, NY 11201

Tel (718) 254-0700
Fax (718) 254-0897
info@bds.org

Lisa Schreibersdorf

BROOKLYN DEFENDER SERVICES

Presented Before

**The New York State Senate Finance Committee and Assembly Ways and Means
Committee**

Joint Legislative Budget Hearing: Public Protection

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On behalf of Brooklyn Defender Services, I would like to thank the Senate Finance Committee and Assembly Ways and Means Committee and Chairs Krueger and Weinstein for the opportunity to testify today. I am the Executive Director of Brooklyn Defender Services. Our primary mission is to provide public defense services through contracts with the City of New York that are funded by the city and the State of New York. There are two primary public defense functions we provide—representing people who have been arrested in Brooklyn and representing parents who have been accused of child neglect and abuse in family court. BDS provides these services to about 25,000 people each year. These functions satisfy the state’s constitutional and statutory obligations to provide legal representation to anyone who cannot afford to hire an attorney and is facing the devastating possibility of conviction and/or jail or the removal of their children into the foster system. BDS also provides a wide array of additional legal and social services to our clients, such as immigration representation, assistance with housing, public benefits, employment, and education. Many of our clients have co-occurring issues, such as mental illness, drug or alcohol misuse as well serious health issues and/or disabilities. And we are grateful for the support from the Assembly, which allows us to provide re-entry services for our clients who are returning to their community from jail or prison.

Before I speak about the budget, I would like to point out that a large percentage of the clients we serve and represent are Black and Brown people who are disproportionately represented in the systems within which we work. Not only do we fight for each individual client to achieve the best outcome in their case, but we also work to change the laws that contribute to unfairness and racial inequity. Most of you know me as someone who has advocated here in Albany for changes to the state’s discovery law, to improve outcomes for young people and even going back more than a decade, to reform the Rockefeller drug laws. This year, I will be back after the budget season to advocate for a wider range of more humane dispositions in criminal cases and fairer procedures in family court cases. But today I am here to discuss the budget.

Today’s hearing is critical. Without proper funding for our office and defenders across New York State, people who are enmeshed in the criminal and family legal systems have little chance of

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fairness or mercy. The underlying systems that feed people into these legal systems have been repeatedly shown to be neglectful at best and intentionally harmful far too often. Low-income communities and communities of color face the brunt of these systems. From our perspective, often the only measure of accountability is an attorney standing beside the accused, an attorney with access to investigators, social workers, support staff and technology.

Given the disproportionate rates of people we represent living in under-resourced communities, a critical asset we provide is our social work staff who secure services and support our clients and their families. Many of our clients are struggling to meet their basic needs, such as housing and medical care, which too often can only be met through the provision of social services. Oftentimes, we may not be able to work on the underlying legal case until our client's basic needs have been met. For example, if a client is living with food or housing insecurity, it is impossible to expect them to sit at a meeting with their attorney and work on the defense of their case. Likewise, if a client is struggling with drug or alcohol misuse, they need to obtain services before they can participate in their defense. Fortunately, when a client receives services, it can have a positive impact on their case. A person with a mental illness who seeks and receives treatment may be able to resolve a case in criminal or family court. A person who has no place to live and does not know where their next meal is coming from can dramatically improve their chances of avoiding jail now and in the future by applying for public benefits. A person who has a disability themselves or whose child is not receiving the educational services they need can receive accommodation and successfully achieve family reunification.

Essentially, because the police and, in many cases, child protective services (CPS), have become the *de facto* solver of what are really social and medical issues, the "solutions" have become arresting people or intervening in inappropriate and often traumatic ways in the lives of families. Without a well-resourced defense attorney to hold the government accountable while also identifying a more well-rounded approach to societal problems, there would be no end to mass incarceration and family separation in this state and across the country.

Yet, even knowing what we provide for our clients and their families as well as the broader community, we find ourselves overlooked in the Governor's budget.

A few months ago, the Governor convened a group of elected District Attorneys and chief defenders in New York City to discuss the growing backlog of court cases and brainstorm solutions. One critical issue that emerged from this meeting was that both the defenders and prosecutors were experiencing extreme levels of attrition, a major factor in cases not moving through the courts. While the "Great Resignation" is one reason for the rise in attrition, another is the lack of technology and support staff to manage the influx of electronic and digital evidence in criminal cases. As a result of this meeting, convened by the Governor's counsel and facilitated by the Center for Justice Innovation, the heads of all the defender offices joined with the District Attorneys of each of the five boroughs of New York City to make an unprecedented joint request. We all determined that if the criminal legal system is to function, we each need to have one



paralegal for every three attorneys, at a minimum, in our offices and we must build technological solutions for data collection, storage, and the exchange of evidence under the discovery laws. We also asked for a 25% increase in staff salaries to ensure that these public service jobs, on both sides, support a modest but livable lifestyle. We emphasized that losing experienced staff is becoming more and more common and if we do not head it off soon, we risk having few qualified attorneys to handle the most serious cases and train newer attorneys coming out of law school.

Despite this unprecedented collaboration between defenders and prosecutors, we were shocked to see the Governor's budget include \$87 million for the state's District Attorneys and **zero** provided for the defense. This was after last year's \$40 million provided to the DA's and again, zero funding to the defense to implement discovery reforms.

On top of this, the Office of Indigent Legal Services (ILS), which supplies a significant percentage of defense funding, did not ask the Governor to add a cost-of-living-adjustment (COLA) increase to their fund, meaning that we cannot provide even modest raises to staff or afford the rent increases that are in our leases for their portion of our budget.

While I will try not to compare injustices, it is possible that the lack of funding for parents' defense representation is even more disturbing.

In November of 2021, the Office of Indigent Legal Services released caseload standards that determine appropriate maximum caseloads for attorneys representing parents facing loss of custody of their children in family court. This came soon after a 2019 report by the Chief Judge's Commission on Parental Legal Representation that spelled out in detail the need to adequately fund attorneys to represent parents in their legal cases and provide social work and other resources to help families stay together. That same year, a study found that interdisciplinary teams representing parents at risk of losing their children, made up of attorneys, social workers, and parent advocates, reduced the time children spent in the foster system in New York City by 4 months and saved the city \$40 million per year. The actual savings, however, are even greater. The report does not consider the many families that stay together due to the legal advocacy and social work intervention that our offices provide at the start of or before a petition is filed in court that prevents removal entirely. Our early defense program, funded by the New York City Council, has shown that supporting a parent during a CPS investigation can reduce the filings of these devastating proceedings by as much as 25% and increase the use of kinship foster placements when children are removed. The benefit of these early interventions to families and communities is dramatic. Even one day away from a parent under these circumstances can cause long-lasting trauma to a child.

There is extensive scientific evidence to support the basic premise that child removal should always be a last resort and should only take place when a child is in danger. Yet, despite these removals or threats of removal, in 90% of the cases where we represent the parent, the allegation is neglect, not child abuse. And in many cases, with proper analysis and support, families can stay



safely together. Close to 100% of our clients are Black, Latine or an immigrant, making the child removal system analogous to the family separation policies we saw happen at the United States border a few years ago, which rightly generated much outrage. In fact, a recent report done internally by the New York City Administration for Children's Services ("ACS") established definitively that the agency has known it is operating in a racist manner and causing harm to mostly communities of color. That report was hidden by ACS and only unearthed by a FOIL request, a fact that demonstrates the agency's inability to hold themselves accountable. It is not hard to connect the ease with which ACS removes Black children from their parents, often violently and with a police officer present, to the horrible images of enslaved children being ripped away from a parent and sold. A total reorientation of this system is required. But in the meantime, it is the defense attorneys alongside social workers, parent advocates, paralegals and admin professionals working at BDS and other offices like ours who are stemming the tide of injustice daily. Despite the important role we play in preventing family separations, BDS is operating at about double the caseload recommended by ILS.

With this information before the Governor both last year and this year, a mere \$4.5 million was allocated for parental representation. Last year these funds were distributed to a small number of counties to increase their staff by one or two employees. ILS, the agency that oversees these funds, has put forward that to continue this modest program equitably across the state, it needs \$28 million. ILS made this request to the Governor, yet no additional funding was provided. Even the nominal impact achieved by the \$4.5 million will be diluted by inflation and increased costs to those programs that received it, not to mention the offices, like mine, that did not receive any of those funds last year and will not again this year. The Chief Defenders Association of New York (CDANY), of which I am a past president, has estimated that between \$125 million and \$150 million is needed to right-size the programs that provide legal representation to parents in family court. We have asked the state to do something like what was agreed upon in the *Hurrell-Harring* settlement that required New York State to provide adequate funding in criminal cases. CDANY has asked the state for a five-year plan, starting with the \$28 million that ILS recommended, and increasing the funds by \$28 million each year for five years.

I have been doing this work for a very long time and, sadly, I am no longer shocked by the lack of support for the important work that we do. But this year, members of the Assembly and Senate, I have to say I am genuinely blown away to see that nothing has come out of the efforts and hard work chief defenders across the state have put into educating and advocating with the Governor's office over the past two years. Not only have we shared repeatedly the dire state of New York's public defense services and how important these services are given the ways New Yorkers are struggling, but we have also partnered directly with our in-court opponents to assure that we are all provided the resources we need to keep the legal system operating.

At this point, I'm afraid, there is nothing left that we could do to convince the Governor of the value and need of our services. There is clearly no respect for the legal right of an individual to



have a qualified and well-resourced attorney to represent them in cases that often should not have been brought in the first place.

I am here today to ask both the Assembly and the Senate to add the following funds to your one-house budgets and fight for us. We are serving your constituents by meeting them during the worst moments in their lives and providing them with respect and dignity through grueling, often unjust processes. We provide the highest quality legal services to people who have nowhere else to turn in systems that are complicated and byzantine, not to mention cruel and dehumanizing. And to add to that, we are providing social services that we should not have to be responsible for, but which we have stepped in to do because there is often nobody else who cares to do so.

BROOKLYN DEFENDER SERVICES ASKS BOTH HOUSES TO ADD THE FOLLOWING TO THE ONE-HOUSE BUDGETS:

Indigent Legal Services Office, Aid to Localities

Category of Funding	Executive Proposal	Defense Ask	Difference
Family Court Defense	\$4,500,000	\$28,000,000	\$23,500,000
<i>Hurrell-Harring</i> Statewide	\$250,000,000	\$257,500,000	\$7,500,000 (3% COLA)
<i>Hurrell-Harring</i> Settlement	\$23,810,000	\$24,524,300	\$714,300 (3% COLA)
Distributions to NYC and Counties	\$81,000,000	\$83,430,000	\$2,430,000 (3% COLA)



Division of Criminal Justice Services, Aid to Localities

Category of Funding	Executive Proposal	Defense Ask	Difference
Aid to Defense	\$7,658,000	\$12,549,000	\$4,891,000 Match Aid to Prosecution funding and expand to all counties
Discovery funding for the defense	\$0	\$127,000,000	\$127,000,000 Match Prosecution Discovery Funding for this year and last year (\$80 million), plus \$47 million proposed for additional funding for prosecution services

Furthermore, BDS supports the following programs and urge that they be fully funded:

Indigent Parolee Program	\$0	\$5,000,000	\$5,000,000 (\$600,000 restoration + \$4,400,000 to provide full reimbursement to all counties & NYC for parole representation)
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Brooklyn Defenders

New York State Defenders Association (NYSDA)	\$1,030,000	\$3,580,000	\$2,550,000 ((\$2,100,000 restoration + \$450,000 for discovery support and statewide recruitment and retention support project))
Veterans Defense Program, NYSDA	\$0	\$1,000,000	\$1,000,000 ((\$720,000 restoration + \$280,000 for increased services))