



New York State Office of
Indigent Legal Services

Testimony of the Office of Indigent Legal Services

Joint Legislative Hearing on the FY 2022-23 Public Protection Budget

Presented before:

**The Senate Finance Committee
and
The Assembly Committee on Ways and Means**

**Presented by:
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On behalf of the New York State Office of Indigent Legal Services (ILS) and the ILS Board, thank you for this opportunity to discuss ILS' FY 2022-23 budget request. Thank you also for your consistent support of our Office and Board throughout our eleven years of existence. Because of the support of both the Legislative and Executive branches, substantial resources have been appropriated in recent years to help ILS fulfill one part of our statutory mission: improving the quality of mandated public criminal defense representation throughout New York State, including the ongoing commitment to implement the historic settlement in *Hurrell-Harring et al. v. State of New York*¹ (HH settlement) and its expansion statewide.

However, as explained in greater detail below, an equally important part of ILS' statutory mission has not received the same amount of attention or resources: improving the quality of mandated parental representation in Family Court.

Appendix A (attached) summarizes ILS' FY 2022-23 budget request and the relevant portions of Governor Hochul's FY 2022-23 Executive Budget proposal. Below are key summary points:

- *HH settlement:* The Executive has continued its commitment to full funding for ongoing implementation of the HH settlement reforms in the five lawsuit counties by including \$23.8 million in the ILS Aid to Localities budget for the HH settlement program.
- *HH statewide:* The Executive has fully funded the fifth year of the five-year phase-in for implementation of the HH settlement reforms statewide by including \$250 million in the ILS Aid to Localities budget for the HH statewide program. This is an increase of \$50 million over last year's enacted budget.
- *State Operations:* The Executive has fully funded ILS' State Operations request, allowing us to add three new positions to bolster our IT capacity and our capacity to monitor and make efforts to improve the quality of parental representation in Family Court.
- *Family Court representation:* The Executive included \$2.5 million in the ILS Aid to Localities budget to improve the quality of mandated representation of parents in Family Court matters (Family Court representation). This funding essentially honors and continues the \$2.5 million that the Legislature included in last year's enacted budget for this purpose. However, it is \$6.5 million less than the \$9 million we are seeking for this program and a fraction of what is needed to meaningfully reform the quality of Family Court representation.

¹ On March 11, 2015, the Albany County Supreme Court approved the 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*. With this settlement, the State of New York, for the first time since 1965 when it delegated to counties the duty to provide counsel to indigent persons charged with a crime, accepted its responsibility to implement and fund constitutionally compliant representation in the five counties named in the lawsuit. ILS, under the direction of its Board, accepted the responsibility and has since implemented the terms of the settlement, in which the State agreed to ensure that: 1) all people charged with a crime and unable to retain counsel are provided representation at their arraignment; 2) caseload/workload standards are developed by ILS and implemented in the five counties, thereby reducing the crushing caseloads previously carried by providers of public defense services; and 3) funding is provided to implement specific quality improvements to public defense services.

Demonstrated Progress:
Ongoing Successes in Improving the Quality of Mandated Criminal Defense

We are encouraged that the Executive has continued its commitment to improving the quality of constitutionally and statutorily mandated criminal defense by fully funding the HH settlement and its statewide implementation. Markers of success to date include the following:

- New Public Defender Offices have been created in three counties (Clinton, Delaware, and Hamilton), and a fourth county (Oswego) is in the process of doing so.
- 407 new attorneys have been hired or placed on contract since statewide implementation began, and there has been a substantive increase in hours and responsibility for an additional 67 attorneys.
- 203 non-attorney positions have been hired or placed on contract, and there has been a substantive increase in hours and responsibility for an additional 35 non-attorney professionals.
- All counties in New York now have programs in place for either partial or full arraignment coverage, with nearly all having programs for full arraignment coverage.
- All counties have funding to create or bolster their Assigned Counsel Program (ACP) infrastructure to ensure that no client receives sub-par representation because of a conflict with the county's institutional provider.

As a result of the funding made available via the HH settlement and its statewide implementation, in calendar year 2020 statewide expenditures for mandated representation increased by \$68.7 million over 2019. The fact that statewide implementation of the HH settlement reforms continued to occur during the pandemic and the ensuing budget crisis illustrates both how important this reform is and the unyielding commitment to it exhibited by the counties, New York City, the Executive, the Legislature, and mandated criminal defense providers across the State.

However, as discussed below, the crisis in the quality of Family Court representation is in dire need of State attention and action, as is the related crisis in the statutory compensation rates for assignment of counsel.

We urge the Legislature to work with Governor Hochul to make addressing the issues below a priority as you enact a final FY 2022-23 budget.

Unfinished Business:
State Investment in Improving the Quality of Mandated Family Court Representation

ILS' mission, as set forth in Executive Law § 832, is to study, monitor, and make efforts to improve the quality of representation provided under County Law Article 18-B. This includes

not only the legal representation of low-income New Yorkers in criminal cases, but also the representation of low-income parents in Family Court matters.

Under County Law Article 18-B, New York’s system of mandated representation is county-based and county-funded. For years, the State did not meaningfully supplement county funding for this representation, leading to a crisis in the quality of representation provided. In 2004, then-Chief Judge Judith Kaye convened a commission (“Kaye Commission”) to study the quality of mandated criminal representation.² In 2006, the Kaye Commission issued its *Final Report to the Chief Judge of the State of New York* decrying the dire state of mandated criminal defense in New York State and concluding that “there is, indeed, a crisis in the delivery of defense services to the indigent throughout New York State and the right to effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it.”³

The Kaye Commission prompted the *Hurrell-Harring* litigation, which ultimately led to the HH settlement in 2014 and its 2017 extension to the entire state, both requiring the State to make a significant financial investment to improving the quality of mandated criminal defense. What is often overlooked, however, is what the Kaye Commission said about mandated Family Court representation:

Though the Commission was not charged with studying Family Court mandated representation, the criminal defense programs studied by TSG were, in many instances, inseparable from the programs providing Family Court representation. As TSG observed, “[f]amily court matters are an integral part of New York’s indigent defense system and cannot be completely removed from an overall consideration of the current system.” ...⁴

Unfortunately, the Kaye Commission’s warning that mandated Family Court representation is inseparable from mandated criminal representation has gone unheeded. Despite the fact that publicly funded representation of parents in Family Court cases is every bit as legally required as criminal representation, there has been no comparable effort by the State to appropriate the funding needed to bring the quality of Family Court representation to a constitutionally compliant level.

More recent reports have detailed the crisis that now exists in Family Court representation. In its 2019 *Interim Report of the Commission on Parental Representation*, the Commission, convened

² This commission, officially titled The Commission on the Future of Indigent Defense Services, is most often referred to as the Kaye Commission. The Kaye Commission retained the services of The Spangenberg Group (TSG) to conduct a study of New York’s public criminal defense system.

³ Kaye Commission report, at 15.

⁴ Id. at 20 (emphasis added)

by Chief Judge Janet DiFiore,⁵ found that the providers of mandated Family Court representation face overwhelming attorney caseloads, insufficient access to essential supports and resources, and failure to provide parents with timely access to counsel. A 2018 *Memorandum in Support of State Funding for Mandated Parental Representation* issued by the NYSBA Committee on Families and the Law, which was approved by the NYSBA House of Delegates, emphasized that the representation of parents in Family Court cries out for support and guidance by the State. Both reports noted that in these cases – where not only the established legal rights of parents but the integrity of families is often at stake – the poor parent far too often finds herself represented too late by a lawyer who is overburdened by far too many cases and who utterly lacks support resources.

The circumstances surrounding the state of legally mandated Family Court representation in New York – a clear legal mandate, lack of State investment, contemporaneous reports detailing the crisis – share many historical echoes of the circumstances that led to the *Hurrell-Harring* lawsuit. Many have concluded that only litigation like *Hurrell-Harring* will spur action by the State. But litigation is a last resort that can and must be avoided.

ILS has persistently urged that the State take proactive steps to improve the quality of mandated Family Court representation. In previous budget years, ILS has requested additional Aid to Localities funding for that purpose, but until this year, no such funding has been included in Executive Budget proposals.

Last year, \$2.5 million for improving the quality of mandated Family Court representation was included in the final enacted budget because this Legislature recognized the need to address this crisis. ILS has acted expeditiously to utilize this \$2.5 million, and in early August 2021, we issued an RFP soliciting applications from counties outside of New York City for grants of up to \$500,000 over three years for improved Family Court representation. Twenty-five counties submitted applications. ILS announced the five awardees in November 2021, and the contacts for these awards will soon be sent to the awardees. The fact that we could issue only five awards for a limited amount of funding (i.e., \$167,000 per year) illustrates the limits of the \$2.5 million in addressing the crisis. Appendix B (attached) explains how we would use the \$9 million in FY 2022-23 for improved Family Court representation.

There are many compelling reasons for the Executive and Legislature to act with urgency and prioritize the \$9 million for Family Court representation during this year’s budget discussions, including the following:

⁵ *Commission on Parental Legal Representation: Interim Report to Chief Judge DiFiore*, at 4. This report is available at: http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf.

1. An investment in the quality of Family Court representation is an investment in families.

There is no question that an investment in the legal representation of parents in Family Court matter is an investment in families. As stated in the 2019 *Interim Report of the Commission on Parental Legal Representation*:

Numerous witnesses recounted the enormous costs to families and the State caused by inadequate parental representation in child welfare cases. Children can face unnecessary, prolonged and sometimes permanent separations from their families and communities, resulting in confusion, mistrust, trauma, and an irreparable sense of loss. The State must pay for court-related costs, as well as significant expenses related to foster care, guardianship, and adoption subsidies. Just as the costs of inadequate representation are great, the benefits of meaningful representation are profound....⁶

In its report, the Commission noted that the power of well-resourced quality parental representation to help keep families together has been exemplified by offices such as the Bronx Defenders and the Center for Family Representation (CFR) in New York City.⁷ For example, in a recent report, the Bronx Defenders indicated that 43% of parent clients were not charged with abuse or neglect. Where petitions were filed, nearly half of families remained intact. In more than one-fourth of the cases, if removal occurred, children were temporarily placed with relatives or friends. In only 4% of cases were children placed in foster care with strangers. The significant savings that can flow from a State investment in Family Court representation is illustrated by a report revealing that CFR reduced the stay for a child in foster care from the statewide average of 29 months to an average of less than five months. CFR estimated that, over a 15-year period, they saved the city \$37 million in foster care costs.

2. The quality of Family Court representation has a disparate impact on Black and Brown families.

The harm caused by state intervention in families is experienced most profoundly by families of color. Bias in our child welfare system harms families of color living in poverty and impacts every stage of the system, from reporting to foster care placements to termination of parental rights.⁸ The reasons for a sharp disproportionality include limited access to services and implicit

⁶ Id. at 10.

⁷ Id. at 20.

⁸ Several studies highlight the disparate impact the child welfare system has on communities of color. See, for example: 1) *Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners*, December 17, 2019, American Bar Association, Center on Children and the Law. https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/race-and-poverty-bias-in-the-child-welfare-system---strategies-f; 2) Monroe County, Report of the Commission on Racial and Structural Equity (RASE Commission), at p. 146, available at RASE (rocrase.com)

biases of child welfare professionals. Often our child welfare system focuses on the harmful effects of poverty and casts blame on vulnerable families, mostly Black and Brown, for their vulnerability, rather than providing needed support and services.⁹ Quality legal representation of parents in these matters, including representation that begins during the child welfare investigation and prior to a petition being filed in Family Court, is necessary to guard against this foundational unfairness.

3. *Failure to invest in improving the quality of mandated Family Court representation will jeopardize the work being done to improve the quality of mandated criminal representation.*

Our work to use State funding to improve the quality of criminal representation has made us aware of just how prescient were the Kaye Commission’s statements about the inextricable link between mandated criminal representation and mandated Family Court representation. The failure to address the crisis in Family Court representation will inevitably impact the State’s efforts to improve the quality of mandated criminal representation. This point was made in ILS’ recent report, *Evaluating the Effectiveness of Caseload Standards in the Hurrell-Harring Settlement Counties: 2021 Update*. Written to comply with the settlement’s reporting requirements, this report details information obtained from interviews and focus groups conducted of public defense attorneys in the five settlement counties. Though attorneys were not specifically asked about Family Court representation, at nearly every interview it emerged as an issue that demands immediate attention. Below is a summary of what we learned:¹⁰

[T]hough the *Hurrell-Harring* settlement is limited to improving the quality of mandated criminal defense, we would be remiss if we did not address the lack of parity in Family Court funding. Every provider in the five counties also provides mandated parental defense in Family Court and many of the attorneys we talked with juggle time-consuming Family Court cases with the expectations that come with significantly better resourced criminal case representation. Further, Family Court representation is not immune to the stressors we detailed above – the compounded workload with rising new cases in 2021 and low ACP rates – and has been deeply affected by the pandemic-related court disruption.

(noting that 74% of the children in foster care are children of color, that 86% of the child protective cases involve children of color, and that 77% of the children placed into direct custody are children of color); and 3) Michael Fitzgerald, “New York City Confronts Massive Overrepresentation of Black Children in Foster Care,” The Imprint (available at: [New York City Confronts Overrepresentation of Black Children in Care \(imprintnews.org\)](https://www.imprintnews.org/new-york-city-confronts-overrepresentation-of-black-children-in-care)).

⁹ It’s Time to Stop Confusing Poverty with Neglect,” The Imprint, Youth & Family News, January 17, 2020. <https://www.imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222>

¹⁰ This summary comes from the ILS report, *Evaluating the Effectiveness of Caseload Standards in the Hurrell-Harring Settlement Counties, October 2021*, available on ILS’ website at: [October 2021 Hurrell-Harring Caseload Report Full Amd 11 11 12.pdf \(ny.gov\)](https://www.ils.org/2021/11/11/10-2021-hurrell-harring-caseload-report-full-amd-11-11-2021.pdf).

Several chief defenders told us that Family Court workloads significantly increased during the pandemic. This is creating an additional stress as the programs must continue to support now robust criminal practices while also managing an increased number of family defense matters without similar resources or adequate funding to implement caseload standards.¹¹ One chief defender expressed concern that this is creating a culture of “the haves and have nots.” Family Court attorneys see their criminal counterparts with additional support that has improved the quality of representation. This leaves them frustrated that they do not have access to the same kind of resources. For attorneys who handle both criminal matters and Family Court matters, their ability to adequately represent their criminal clients risks being hampered by their excessive parental legal representation caseloads.

Given the scope of the crisis in New York’s system of mandated Family Court representation, our request for \$9 million to begin reducing the crushing caseloads of parents’ attorneys and providing their clients with essential resources like a social worker or a parent advocate, may strike some as too little. In a strictly long-term sense, it *is* too little. But parents and children live in the here and now. We simply cannot wait any longer.

We respectfully reiterate our plea that the Legislature work with Governor Hochul to provide this crucial funding in the FY 2022-23 enacted budget.

The Urgent Need to Increase Assigned Counsel Rates

The compensation rates for assigned counsel attorneys providing mandated criminal and Family Court representation are not part of the ILS budget. But the need for adequate compensation for these attorneys lies at the core of ILS’ mission. Therefore, we use this opportunity to request that the Legislature work in coordination with the Executive to address the crisis in assigned counsel rates.

In a recent *New York Daily News* op-ed, Senator Jamaal Bailey decried the current statutory rates paid to assigned attorneys who, as he aptly describes, “are the attorneys on the front lines ... [who] fight day in and day out to ensure that our judicial system is fair for our most vulnerable and marginalized.” He noted that the assigned counsel rate has not increased since 2004, and that

¹¹ ILS issued *Caseload Standards for Parents’ Attorneys in New York State Family Court Mandated Representation Cases* on June 4, 2021 which are available at: <https://www.ils.ny.gov/files/Caseload%20Standards%20Parents%20Attorneys%20NYS%20Family%20Court.pdf>. However, while the state’s FY 2021-2022 budget included \$2.5million in aid to localities for mandated parental representation, this is not enough funding to implement these standards statewide and indeed allows ILS to issue only small awards to approximately 5 counties for the purposes of some caseload relief and quality improvement in child welfare matters.

attorneys who do this work at the federal level are paid twice as much.¹² His words echo those of Chief Judge Janet DiFiore, who noted in a February 26, 2019 letter to the Governor and legislative leaders that “[f]ailure to adjust assigned counsel rates has led to a growing shortage of attorneys, resulting in excessive caseloads that diminish the quality of legal representation for indigent litigants and impairing the ability of our criminal and family courts to operate efficiently.”

The need for the statutory rates to be increased is irrefutable. Moreover, it is critical that the State assume responsibility for this increase. The counties lack sufficient resources to fully fund this increase and if required to pay for it, would likely cut other mandated representation costs, jeopardizing the ongoing successful implementation of the HH settlement and its expansion statewide and deepening the crisis in mandated Family Court representation.

ILS urges the Legislature to make increased assigned counsel rates a priority in negotiating the final FY 2022-23 enacted budget.

The Importance of Full Funding for NYSDA’s Public Defense Backup Center

The goal of improving the quality of mandated criminal and Family Court representation is best achieved through a collaborative approach that values the expertise of the different entities involved. Since its creation in 1967, the New York State Defenders Association (NYSDA) has played a leading role in working to improve the quality of public defense in New York, and NYSDA has consistently been a strong ally in working with ILS in pursuit of our statutory mission. For that reason, we ask the Legislature to fully support NYSDA’s request to fund its Public Defense Backup Center and its Veterans Project.

NYSDA’s Backup Center provides three services that promote successful implementation of the HH settlement and its expansion statewide, and that also serve to enhance the quality of Family Court representation.

First, NYSDA provides a Public Defense Case Management System (PDCMS), which is the case management system used most frequently by mandated providers throughout the state. Support of this PDCMS is critical to ILS obtaining the data needed to assess the pace and success of HH settlement and statewide implementation, and to better monitor and assess the crisis in parental representation.

Second, NYSDA hosts high-quality defense trainings and Continuing Legal Education (CLE) programs for defenders across the state. As specifically recognized by the HH settlement and Executive Law § 832(4), training is a key component of quality improvement. Since the onset of

¹² The op-ed can be found here: <https://www.nydailynews.com/opinion/ny-oped-better-pay-assigned-counsel-20220110-6lytyvg62baifczgnzv2t7nrve-story.html>.

the pandemic, NYSDA has successfully pivoted to make these trainings available to defenders virtually.

Third, NYSDA's Backup Center provides defenders with support, legal expertise, and written materials. Public defense providers across New York depend upon the immediate and accurate legal advice they receive from NYSDA staff. This support is indispensable to maintaining the quality of representation provided to clients who cannot afford to hire counsel. This year, NYSDA is also seeking an additional \$900,000 in funding for a Statewide Defense Discovery & Forensic Support Unit to assist public defenders in effectively utilizing the discovery they now receive. This is a modest request for a resource that is vitally important in ensuring full implementation of New York's 2019 discovery reforms.

Simply stated, 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, which is why ILS urges this Legislature to fully fund NYSDA.

APPENDIX A

FY 2022-23 ILS Budget Request and the Executive Budget Proposal

At its September 24, 2021 meeting, the Indigent Legal Services Board unanimously approved our budget request of **\$370,756,000** for FY 2022-23. Of this amount, \$363,810,000 would be devoted to Aid to Localities and \$6,946,000 for State Operations.

Governor Hochul, in her Executive budget, proposes a total ILS budget appropriation of **\$364,268,000** with \$357,310,000 devoted to Aid to Localities, and \$6,958,000 devoted to State Operations.

The table below provides an overview of the ILS budget request compared to the proposed Executive Budget:

	FY 2022-23 ILS Budget Request	FY 2022-23 Proposed Executive Budget
Aid to Localities		
ILS Program	\$81 million	\$81 million
Hurrell-Harring Settlement	\$23.8 million	\$23.8 million
Statewide HH Implementation	\$250 million	\$250 million
Family Court Representation	\$9 million	\$2.5 million
Total	\$363,810,000	\$357,310,000
State Operations	\$6,946,000	\$6,958,000

Explanation of the ILS Budget Request:

- I. **Aid to Localities.** The ILS request for \$363,810,000 in Aid to Localities funding represents an increase of \$56.5 million over the FY 2021-22 enacted budget. Below is a brief overview of each Aid to Localities program:
 - **ILS Program (\$81 million requested).** Of this \$81 million in funding, \$40 million is disbursed to NYC pursuant to State Finance Law § 98-b(3)(b), \$30.2 million is disbursed to counties and New York City via non-competitive distributions, and the remaining \$10.8 million is used for the following innovative programs:
 - *Counsel at First Appearance* – Since 2011, ILS had disbursed funding to counties to build programs that provide defense representation at first court appearances (arraignments). Though not enough for full arraignment

defense coverage, this grant has proven instrumental to jump-starting the process of full arraignment coverage that is being completed with the HH settlement and HH statewide funding.

- *Upstate Quality Improvement and Caseload Relief* – Currently 40 counties benefit from a relatively modest amount of funding (approximately \$100,000 per year) for quality improvement and/or caseload reduction initiatives. ILS replicated this model in creating the RFP to disburse the \$2.5 million for improved Family Court representation appropriated in the FY 2021-22 Aid to Localities budget.
 - *Regional Immigration Assistance Centers (RIACs)* – With this funding, ILS issued awards to create six RIACs that work statewide to support attorneys in fulfilling their obligation under *Padilla v. Kentucky* to accurately advise their clients of the immigration consequences of their arrest and possible conviction. The RIACs also serve as a resource for information about the immigration consequences of a Family Court proceeding.
 - *Upstate Model Family Defense Office* – To date, ILS has issued awards for two Upstate Model Family Representation Offices, one in Westchester County and one in Monroe County. These offices utilize the interdisciplinary approach to representation of parents in child protective proceedings highlighted in the 2019 *Interim Report of the Commission on Parental Representation*.
- **Hurrell-Harring Settlement (\$23.8 million requested)**. This funding ensures ongoing compliance in the five settlement counties with the HH settlement’s core objectives of ensuring that: 1) all persons charged with a crime are provided representation at their arraignment; 2) there is ongoing compliance with the caseload standards ILS issued in December 2016; and 3) adequate funding is provided to implement quality improvement initiatives that ensure adequate supervision, training, and access to non-attorney professional services for attorneys providing mandated criminal defense representation.
 - **Statewide Implementation of Hurrell-Harring Reforms (\$250 million requested)**. The additional \$50 million over last year’s budget funds the fifth of the five-year phase-in for implementation of the written plans developed by ILS 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 HH settlement to all the non-HH settlement counties and NYC to ensure: 1) defense counsel representation at arraignment; 2) compliance with ILS caseload standards; and 3) implementation of quality improvement initiatives.
 - **Family Court Representation (\$9 million requested)**. \$6.5 million of the additional Aid to Localities funding request would be used to improve the quality of mandated parental representation in Family Court with the funding to be disbursed as described in Appendix B (ILS FY 2022-23 Request: \$9 Million for Family Court Representation).

- **State Operations (\$6.95 million requested).** The \$6.95 million request in State Operations funding represents a slight increase of \$483,000 over the FY 2021-22 funding levels. The funding will assure the continued effective operation of the ILS Office as we work to implement the historic HH settlement reforms in the five defendant counties and extend the settlement’s initiatives statewide. The funding would also enable the hiring of three new positions: an Assistant Manager of Information Services, a Family Court Senior Research Associate, and a Family Court Program Associate. These positions will enhance ILS’ ability to collect, analyze and publicly report data that is necessary to fulfill our mission. To be fiscally prudent, we re-assessed our office staffing needs, determining that we do not need one of the positions that has been approved in previous budget years. This proposed budget eliminates that position, for a net gain of only two positions, thereby diminishing the fiscal impact.

APPENDIX B

ILS FY 2022-23 Request: \$9 Million for Family Court Representation

With the State's investment in the *Hurrell-Harring* settlement and its statewide expansion, New York has made great strides in improving the quality of mandated criminal representation. Yet New York has not made the same investment in improving the quality of parental representation in Family Court matters, despite the reality that it is just as legally mandated as criminal defense and in dire need of comprehensive and expensive reform. *See, e.g.,* February 2019 *Interim Report of the Commission on Parental Legal Representation to Chief Judge DiFiore* (Interim Report). The crisis described in the Interim Report has intensified as the pandemic has destabilized the financial and emotional well-being of families throughout New York.

This fiscal year, ILS is requesting that **\$9 million total be included in ILS' Aid to Localities** budget for improved quality legally mandated Family Court representation. ILS would disburse part of this funding (\$7 million) via an RFP process, much like the one being utilized to distribute the \$2.5 million from the FY 2021-22 budget (described below). This RFP would focus on improving legally mandated Family Court representation of parents in child welfare proceedings. In such proceedings, the need is most urgent to prevent children from needlessly being removed from their parents and to diminish reliance on foster care. Such focus would also allow ILS to take advantage of the federal Title IV-E funding, potentially increasing resources available to localities for improved Family Court representation of parents in child welfare proceedings. ILS would use the remainder of this funding (\$2 million) to create one or more Model Family Representation Offices, using an RFP process just as we have done for the two Model Family Representation Offices discussed below. Notably, for these previous RFPs, ILS received several high-quality applications, demonstrating both the county capacity and the dire need for more Model Family Representation Offices.

This request—although \$6.5 million more than the amount in last year's budget and this year's Executive budget—is a modest investment in the critically important work of keeping families intact and meeting the State's legal mandates for representation.

To date, ILS has accomplished as much as can be possibly done to improve the quality of Family Court representation without a meaningful State financial investment. Indeed, over the past year, we have used the limited funding and resources available to us to advance Family Court representation energetically, creatively, and persistently, accomplishing the following:

- *Upstate Model Family Representation Offices* – ILS has worked with Legal Services of Hudson Valley and Westchester County to ensure the success of our first Upstate Model Family Representation Office. In April 2021, ILS issued an RFP for a second model office, using previously appropriated funds. In early July 2021, we announced that Monroe County was the top-scoring applicant for this RFP. It is anticipated that that this second model office will be operational in early 2022.
- *Federal Title IV-E Funding* – During 2021, ILS successfully negotiated a MOU with the State Office of Children and Family Services (OCFS) to access federal Title IV-E

funds for the improvement of Family Court representation of parents in child welfare cases. In accord with this MOU, OCFS will be responsible for the claiming and fiscal components of this funding, and ILS will be responsible for working with localities to ensure that the federal funding is used to improve the quality of Family Court representation of parents in child welfare proceedings.

- *Standards for Determining Financial Eligibility in Family Court Matters* – ILS finalized Eligibility Standards for Family Court designed to ensure timely access to counsel for parents, as recommended by the Commission on Parental Legal Representation. These standards were presented to the ILS Board at its December 2020 meeting. Soon after the Board’s adoption of these standards, ILS partnered with the New York State Defenders Association to conduct a series of virtual trainings for providers of mandated Family Court defense, offering an overview of the standards and strategies for successful implementation.
- *Family Court Caseload Standards* – After collaborating with the Welfare Research Institute for a comprehensive, three-part caseload study, and extensively consulting providers of mandated Family Court representation, ILS finalized our Caseload Standards for Parents Attorneys’ in NYS Family Court Mandated Representation Cases. At its June 2021 meeting, the ILS Board approved these standards, contingent upon the availability of State funding. These standards cannot be meaningfully implemented without greater State funding.

In addition, ILS has acted expeditiously to utilize the \$2.5 million for improved Family Court representation included in our FY 2021-22 Aid to Localities budget. In early August 2021, we issued an RFP soliciting applications from counties outside of New York City for grants of up to \$500,000 over three years for improved Family Court representation of parents in child welfare proceedings. Twenty-five counties submitted applications. ILS announced the five awardees in November 2021, the procurement record was recently approved, and the contracts will be sent to the awardees by the end of this month.