

Submitted



# NYSACDL

NEW YORK STATE ASSOCIATION  
OF CRIMINAL DEFENSE LAWYERS

**TO:** Senate Finance Committee Chair Liz Krueger  
Assembly Ways & Means Committee Chair Helene Weinstein

**FROM:** Tina Luongo, President, Chief Defenders Association of New York  
Lori Cohen, President, NYS Association of Criminal Defense Lawyers

**RE:** January 29, 2019 New York State Senate and Assembly  
Public Hearing on the Public Protection Budget

**DATE:** January 29, 2019

The members of our organizations are public and private criminal defense attorneys and offices across New York State that represent hundreds of thousands of clients each year. We write to provide you with our positions on important public defense budget issues in the FY 2019-2020 Executive Budget.

We regret that we were not able to testify at today's hearing, however, we wanted to provide our memoranda on the budget of the New York State Office of Indigent Legal Services, New York State Defenders Association and the Indigent Parole Representation Program. We also express our strong support for a list of urgent and interconnected criminal justice reforms to help end mass incarceration in our state. Please see the attached memoranda.

Thank you for your consideration.



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**MEMORANDUM OF SUPPORT**

**NYS Office of Indigent Legal Services  
FY 2019-2020 Budget of \$210.9 Million**

**Includes \$100 Million for 2nd Year of Statewide Expansion of  
*Hurrell-Harring* Reforms to Improve Public Defense Programs  
*Delete Unfair Budget Reimbursement Practice Provision***

We support the Governor's proposed budget for the NYS Office of Indigent Legal Services (ILS) Budget Allocations. It includes the following provisions.

**Aid to Localities:** \$204.8 million would be allocated as follows.

- \$81 million for ILS grants and distributions to Public Defense Programs.
- \$23.8 million for the *Hurrell-Harring* settlement in the five counties to maintain the current funding for counsel at arraignment, caseload relief, and quality improvement.
- \$100 million to finance the second year of the five-year statewide implementation of *Hurrell-Harring* reforms pursuant to plans filed by ILS on December 1, 2017.

**State Operations:** \$6.1 million would fund the following ILS office operations: \$3.4 million for general office operations; \$1.375 million for office operations to implement the *Hurrell-Harring* reforms in five counties; and \$1.35 million for office operations to implement statewide expansion of the *Hurrell-Harring* reforms.

**A proposed restriction on county reimbursement needs to be deleted  
as it would hinder the statewide expansion efforts and  
negatively impact Public Defense Programs.**

The Executive budget includes appropriation language that restricts reimbursement for county expenditures to those *expenditures submitted for reimbursement within twelve months after having been incurred*. Over the past 10 months, ILS, the counties, and public defense programs have been working on county-level plans for the statewide expansion and many counties have started expending money based on those plans. But contracts with the counties have not been finalized yet. This budget language could prevent counties from getting fully reimbursed as promised. Many counties are burdened by the current reimbursement system; the additional restrictions proposed would be counterproductive to the effort to improve the quality of public defense services. **This new budget language should be deleted from the Aid to Localities Appropriations Bill.**



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## **MEMORANDUM IN SUPPORT**

### **New York State Defenders Association Budget: Support New York State Senate Funding \$400,000 for Backup Center & \$560,000 for Veterans Defense Program**

We urge support for a Senate appropriation of \$400,000 for NYSDA's Public Defense Backup Center new initiative that will further justice in the state's criminal justice system and improve the lives of justice-involved low-income adults and adolescents. For NYSDA's Veterans Defense Program, we urge support for a renewal of the Senate's match with the Assembly of \$250,000 each; a renewal of the Senate's \$220,000 for a Long Island office; and an increase of \$180,000 (\$90,000 match from each house) for an upstate attorney, staff support, and a *Legal Practice Manual on Defending Veterans in Criminal Courts* to be distributed to public defender offices, legal aid societies, and assigned counsel programs, for a total of \$560,000 from the Senate.

**Public Defense Backup Center:** Since 1981 under a state grant, the Backup Center executes the State's public defense support obligation required by the Sixth Amendment, which guarantees New Yorkers the right to effective public defense regardless of their ability to pay. The Backup Center is vital to the statewide expansion implementation of the *Hurrell-Harring* reforms by providing training, data collection relating to quality improvements and caseload analysis, and other case management services to public defense providers across the state.

The goal of the Backup Center's new initiative is for public defense programs to recruit and hire social workers and mitigation specialists dedicated to assisting public defense clients, expand the use of sentencing mitigation and alternatives to incarceration, and ensure quality representation of adolescent clients under the Raise the Age law. The Backup Center will: 1) Assist public defense providers to recruit social workers and sentencing mitigation specialists as part of the *Hurrell-Harring* statewide expansion. Conduct client-centered trainings of public defense attorneys, social workers, and sentencing mitigation specialists on sentencing mitigation and alternatives to incarceration; and 2) Conduct Raise the Age Training for public defense attorneys to ensure that 16- and 17-year olds receive quality representation in the Youth Part and through the removal process.

**Veterans Defense Program:** The VDP provides training, support, and legal assistance to engender effective representation of veterans in criminal and family courts, taking a treatment-oriented approach. The VDP helps the most vulnerable of our veterans by assisting defense attorneys to represent clients who have military-related mental health issues, such as Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and facilitating treatment to heal veterans' war wounds. The VDP has helped many justice-involved veterans to be diverted into treatment and probation, avoiding a maximum total of 518 years of incarceration with a cost saving to the State of over \$30 million.



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## **MEMORANDUM IN SUPPORT**

### **New York State Defenders Association Budget: Support New York State Assembly Funding \$1.059 Million for Backup Center & \$340,000 for Veterans Defense Program**

We strongly support full funding for the New York State Defenders Association. This year, the Executive Budget only proposed \$1,030,000 for NYSDA's Public Defense Backup Center. We urge support for an Assembly restoration of \$1,059,000 for the Backup Center.

For NYSDA's Veterans Defense Program, we urge support for a renewal of the Assembly's match with the Senate of \$250,000 each, and an increase of \$180,000 (\$90,000 match from each house) for an upstate attorney, staff support, and a *Legal Practice Manual on Defending Veterans in Criminal Courts* to be distributed to public defender offices, legal aid societies, and assigned counsel programs, for a total of \$340,000 from the Assembly.

#### **Public Defense Backup Center**

The Backup Center is vital to the statewide expansion implementation of the *Hurrell-Harring* reforms by providing training, data collection relating to quality improvements and caseload analysis, and other case management services to public defense providers in every county of the state. The Public Defense Backup Center services include:

- **Training:** Free and low-cost continuing legal education (CLE) programs and training are provided for Public Defense Programs and Legal Aid Societies across the state.
- **Public Defense Case Management System:** This system is used by 74 public defense programs in 46 counties to manage cases and report data to entities including the Office of Indigent Legal Services.
- **Support Services:** The Backup Center staff provides consultation, legal research assistance, publications, and other support services to public defense attorneys who represent clients in criminal and family courts.
- **Assistance to the Office of Indigent Legal Services:** The Backup Center assists the Office of Indigent Legal Services by helping to draft representation standards, participating in its advisory groups, and supporting the implementation of the *Hurrell-Harring* reforms.

#### **Veterans Defense Program**

The VDP provides training, support, and legal assistance to engender effective representation of veterans in criminal and family courts, taking a treatment-oriented approach. The VDP helps the most vulnerable of our veterans by assisting defense attorneys to represent clients who have military-related mental health issues, such as Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and facilitating treatment to heal veterans' war wounds. The VDP has helped many justice-involved veterans to be diverted into treatment and probation, avoiding a maximum total of 518 years of incarceration with a cost saving to the State of over \$30 million.



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### **Support Restoration of \$600,000 for the Indigent Parolee Representation Program**

Under New York State law, poor people facing parole proceedings and parole appeals have a right to court-appointed counsel in revocation hearings and in appeals from adverse parole release or revocation decisions. To ensure that counties would not be fiscally burdened by this state mandate, the Indigent Parolee Representation Program (IPP) was created in 1978. **The program was designed to reimburse expenses incurred by localities—especially those with prisons in their jurisdictions—in providing counsel in these parole-related proceedings.**

IPP funding has been devastated over the years. In every year since 1996, the Executive budget proposal has not included any funding for IPP. In the past few years, the Legislature has added \$600,000 to the budget for IPP, with 31% of the appropriation allocated to Wyoming County and not less than 6% of the remaining amount allocated to representation related to the Willard drug and alcohol treatment program. By cutting the reimbursement to counties for cases arising from parole representation—a completely state-administered system—and by perpetual reduction of the amount provided to localities, the State has wrongly imposed another unfunded mandate on localities.

Background: In 1989, the NYS Defenders Association was asked by the Division of Criminal Justice Services and the Division of the Budget to project the amount needed for this program in light of the 1986 assigned counsel fee increase. NYSDA reported a need in counties then more than twice the traditional appropriation amount at \$3.5 million. (See *The Deepening Crisis in the Indigent Parolee Representation Program: The Critical Need for Additional Funds*, NYSDA 1990, and *Indigent Parolee Representation: A Mandate Unfulfilled*, NYSDA 1992.) Today the appropriation would need to be much higher; yet it is completely absent in the Executive budget. But public defense lawyers still represent clients, and counties still absorb the cost.

**We strongly urge the Legislature to restore \$600,000  
for the IPP in the 2019/2020 Budget.**