

**LEGISLATIVE PUBLIC HEARINGS**  
**ON THE 2019-2020 EXECUTIVE BUDGET PROPOSAL**

**Testimony before**  
***The New York State Senate Finance Committee***  
**and**  
***The New York State Assembly Ways and Means Committee***  
***on the Public Protection Budget***

**Charles F. O'Brien**  
**Executive Director**  
**New York State Defenders Association, Inc.**

**Presented by Susan C. Bryant, Deputy Director**



**January 29, 2019**  
**Albany, NY**

## **New York State Defenders Association: Supporting Public Defense Across New York State**

Thank you for the opportunity to testify today about the 2019-2020 State Fiscal Year budget as it relates to public defense services and the essential role played by the New York State Defenders Association (NYSDA), and its Public Defense Backup Center and Veterans Defense Program (VDP), in public defense. Quality public defense representation is a critical, inherent part of the justice system statewide.

First, we would like to thank the Legislature and the Executive for funding NYSDA's Public Defense Backup Center since 1981 to help ensure that the State's public defense responsibilities are met. Now, as then, NYSDA provides comprehensive support to public defense lawyers across the state who represent people accused of crime and adults involved in family court cases who cannot afford to hire an attorney. Currently, NYSDA serves approximately 6,000 public defenders, legal aid society lawyers, and court-appointed attorneys in more than 130 county-based programs with award-winning training, legal research assistance, technical assistance, and other support services. And, with the statewide expansion of the *Hurrell-Harring* (H-H) settlement, as discussed below, counties around the state are calling upon the Backup Center even more, seeking training, data management, and other support services to ensure that increased state funding improves the quality of representation they provide.

NYSDA's VDP has been funded by the Legislature to provide training, support, and legal assistance to public defenders. VDP promotes trauma-informed, client-centered representation of veterans and service members who are suffering from the invisible wounds of war and involved in New York State's criminal and family court systems. We thank the Legislature for its ongoing support of the VDP.

To ensure that NYSDA continues to provide its services, which are integral to the public defense system, and is able to support the growth in that system through the statewide expansion of the H-H settlement, we are requesting a total appropriation of \$3,389,000: \$2,489,000 for its Public Defense Backup Center and \$900,000 for VDP.

<b>Public Defense Backup Center</b>	
Public Defense Backup Center (Executive Budget)	\$1,030,000
Public Defense Backup Center (Assembly Budget Request-restoration of base funding [totaling \$2,089,000])	\$1,059,000
Social Worker/Sentencing Mitigation Training & Recruitment Assistance and Raise the Age Training Proposal (Senate Budget Request)	\$400,000
<b>Subtotal</b>	<b>\$2,489,000</b>

<b>Veterans Defense Program</b>	
Veterans Defense Program (Senate and Assembly Budget Request)	\$500,000
Veterans Defense Program increase for Long Island VDP office opened in 2018 and additional staff/services statewide (Senate & Assembly Budget Request)	\$400,000
<b>Subtotal</b>	<b>\$900,000</b>

<b>New York State Defenders Association Total</b>	<b>\$3,389,000</b>
---	--------------------

## **Daily Public Defense Support Through Training, Direct Defender Services, the Public Defense Case Management System, and Other Services**

### **Restoration of Backup Center Base Operating Budget**

NYSDA requests that the Legislature add \$1,059,000, as it has in past years, to restore the Backup Center to its base operating budget of \$2,089,000. NYSDA's budget request will allow the Backup Center to continue offering the critical public defense support described below.

Public defense lawyers, offices, and their clients around the state rely on the Public Defense Backup Center's daily support to ensure quality representation. The Backup Center provides free and low-cost continuing legal education (CLE) programs to public defense attorneys, training for public defense investigators and social workers, legal research and consultation services, print and electronic newsletters, expert referrals, and other services. The Backup Center's Public Defense Case Management System (PDCMS) is used by 74 public defense programs in 46 counties to improve caseload management, perform conflict checks, and streamline workflow; this helps efficiently focus county public defense resources on client representation. PDCMS's robust reporting capabilities allow offices to run reports for office management and meet the data reporting requirements of entities like the Office of Indigent Legal Services (ILS). The Backup Center saves the State and counties money by centralizing services and functioning as a clearinghouse for all parts of that system.

In the past year, NYSDA has been helping counties, public defense programs and lawyers, and ILS take the first steps in implementing the H-H statewide expansion. The Backup Center is supporting public defense attorney recruitment to ensure a pool of high-quality applicants for programs statewide. For example, we partnered with ILS, the Chief Defenders Association of New York, and the University at Buffalo School of Law to hold the first-ever public defender career fair in October 2018. The Backup Center has also expanded its training program offerings. We have made modifications and additions to our PDCMS that defender offices need in order to collect and report new data elements to ILS, which are required by the H-H statewide expansion.

NYSDA has worked closely with ILS in the implementation of the H-H settlement since 2015. This work includes helping to identify H-H-related training needs and providing accredited CLE programs in the H-H counties. ILS selected the PDCMS for data collection related to the settlement conditions, including counsel at first appearance, caseload reduction, and quality improvements.

The Backup Center also supports four of the ILS-funded [Regional Immigration Assistance Centers](#) (RIACs), which were established to provide expert immigration expertise for public defense counsel. Representing clients who are not U.S. citizens provides unique challenges that the RIACs help public defense lawyers meet. NYSDA developed and supports a case intake system used by four RIACs and we co-sponsor CLE programs with some of those offices.

The H-H settlement and statewide expansion did not address the enormous amount of public defense representation occurring on behalf of parents and other adult respondents in Family Court where they face the loss of time with their children or even their right to act as parents. The State's continuing, nearly total delegation of family defense to counties makes NYSDA's centralized services and assistance invaluable in localities struggling to carry the burden. These services include training lawyers on issues specific to family defense representation;<sup>1</sup> maintaining an

---

<sup>1</sup> For many years, NYSDA has provided free and low-cost family defense training programs. From at least 2000 to 2012, NYSDA sponsored one or more family defense CLE programs each year. Beginning in

experienced Family Court Staff Attorney at the Backup Center to provide knowledgeable direct defender services and relevant content in publications; installing and supporting our PDCMS in offices that provide family defense representation;<sup>2</sup> and working closely with ILS to further the goal of improving the quality of public defense representation of parents.

More information about NYSDA's work is available in our Annual Reports, available online at [www.nysda.org/?page=AnnualReports](http://www.nysda.org/?page=AnnualReports). We ask that the Legislature add the \$1,059,000 for NYSDA's Public Defense Backup Center that was not included in the Executive Budget so that we can continue our daily work to improve the quality of public defense representation in criminal and family court.

### **Social Worker/Sentencing Mitigation and Raise the Age Proposal**

NYSDA also seeks a legislative add of \$400,000 for our Backup Center to provide social worker and sentencing mitigation training, recruitment assistance, and training for public defenders on the Raise the Age law.

Social workers, sentencing mitigation specialists, and related professionals are a necessary element of quality public defense representation. Recognition of this is growing, and as part of the H-H statewide expansion plan, public defense providers need to recruit and hire a large number of social workers and similar professionals who can provide sentencing mitigation and other services to public defense clients. With sufficient funding, the Backup Center will coordinate with social work programs and social work associations to educate these professionals about public defense work and opportunities available in this field. As noted above, the Backup Center has already been involved in successful efforts to recruit attorneys as part of the statewide expansion.

Recruitment is the first step. Social workers and sentencing mitigation specialists entering public defense, as well as the attorneys working with them, will also need training. The Backup Center will offer trainings on issues such as the use of a treatment-oriented approach for clients suffering from substance abuse, mental health ailments, or other issues, as well as training on skills such as client interviews, mitigation investigations, and writing effective sentencing memoranda.

The Backup Center also proposes to conduct Raise the Age training for public defenders to ensure quality representation of 16- and 17-year old clients in the newly created Youth Parts. If the Raise the Age law is to have its intended effect, public defenders must receive training on a variety of relevant topics, including adolescent development, available resources and services, and the enmeshed consequences of convictions and adjudication as a youthful offender or juvenile delinquent. It is critical to start this training as soon as possible, as Raise the Age has already taken effect for 16-year-olds and it will take effect for 17-year-olds on October 1, 2019.

### **NYSDA's Veterans Defense Program**

Finally, NYSDA seeks a legislative add of \$900,000 for its VDP. VDP provides in-depth training, support, and legal assistance to engender informed and zealous representation of veterans and service members in criminal and family courts, offering assistance in dealing with military-service-

---

2013, NYSDA has made efforts to increase the number of family defense programs and we are now offering programs in a variety of locations around the state. Our programs feature state and national experts and they are consistently well received by participants.

<sup>2</sup> The Center for Family Representation chose NYSDA's PDCMS for its office and we customized PDCMS to meet CFR's needs. NYSDA is able to use that work and the expertise to help other family defense offices or units within public defense programs manage their cases.

related mental health issues such as Post-Traumatic Stress Disorder and Traumatic Brain Injury and facilitating treatment to heal these war wounds. The demand for the VDP's services has continued to increase, as recognized by the funding last year for a Long Island office, which we opened in October 2018. To further increase our capacity to provide these services on Long Island and statewide we are seeking an additional \$180,000 over last year's appropriation of \$720,000.

Because state funding for VDP has come from outside the Public Protection budget, VDP offered separate budget testimony during the Human Services hearing on January 24. But support from other members of the Senate and Assembly is needed. VDP's testimony budget is available at [www.nysda.org/resource/resmgr/pdfs--vets/VDP\\_Budget\\_Testimony\\_Jan\\_24\\_.pdf](http://www.nysda.org/resource/resmgr/pdfs--vets/VDP_Budget_Testimony_Jan_24_.pdf).

### **Public Defense Funding and the Office of Indigent Legal Services**

NYSDA supports the Executive Budget Aid to Localities proposal of \$204,810,000 for public defense, which provides the base support of \$81 million for counties and New York City, \$23.81 million for the H-H settlement, and \$100 million for the second year of expansion of the H-H settlement reforms to the rest of the state. We thank the Legislature and the Executive for the 2017 H-H statewide expansion legislation and the investments the State is making on the criminal defense side of public defense.

However, we oppose language in the proposed appropriation of the \$100 million and \$81 million and the reappropriation of the \$50 million for year one of the H-H statewide expansion that precludes reimbursement for county public defense expenditures that are submitted more than 12 months after they are incurred. This restriction fails to recognize the difficulties faced by counties that must simultaneously provide and improve public defense representation and comply with the emerging administrative requirements inherent in the State's recent and overdue recognition of the need to increase its funding and oversight of public defense services. The unnecessary deadline would hinder the statewide expansion efforts and have a negative impact on public defense programs around the state.

Since April 2018, ILS, public defense programs, and the counties have been working together to develop county-level plans that comply with the H-H expansion plans ILS submitted to the Division of the Budget on December 1, 2017. Many counties have started expending money based on those plans, even without finalized contracts, relying on the promise of full reimbursement. The State cannot retroactively impose such a harsh and unnecessary restriction on reimbursement.

For many counties, the existing reimbursement system, which requires tracking a number of multi-year grants, is already a burden. The proposed restriction would exacerbate that burden, will not solve any concerns that may exist about delays in reimbursement submissions, and it will ultimately be counterproductive to the effort to improve the quality of public defense services.

### **Support for \$3 Million for the Parent Representation and Quality Improvement Proposal**

The Office of Indigent Legal Services proposed a \$3 million appropriation to fund an RFP for Parent Representation Caseload Relief and Quality Improvement. NYSDA fully supports this request. While the State has recognized and funded efforts to reduce caseloads on the criminal defense side of public defense, it has not taken steps to do so on the equally important family defense side. This past fall, the New York State Unified Court System Commission on Parental Legal Representation heard from many public defense providers, clients, and others about problems within family defense system, including the need for reduced caseloads and improved

access to professional services.<sup>3</sup> Family defense attorneys need sufficient time to establish a professional relationship and strategize with their client, investigate defenses, execute demands for discovery, identify and interview witnesses, procure materials and services that will assist the client, and prepare for hearings. Counties cannot bear the cost of quality family representation alone. The modest funding sought by the ILS Office would be the first step towards ensuring that parents and other adults in family court receive the quality public defense representation necessary to strengthen families in crisis. **NYSDA asks that the State Legislature include a \$3 million appropriation for this urgently needed program.**

## **ILS State Operations**

NYSDA also supports the Executive Budget proposal for a total State Operations appropriation to ILS of \$6,090,000. As noted above, the Public Defense Backup Center will continue to assist and support ILS, and stands ready to help ILS and the counties implement the plans being developed to achieve the reforms this Legislature set in motion two years ago.

## **Other Public Defense and Related Funding Requests**

**Aid to Defense:** At a time when the State has recognized its responsibility to fund improvements to the public defense system, the Executive Budget proposes to decrease Aid to Defense funding by 5%. Aid to Defense, created as a counterpart to Aid to Prosecution to offset some of the increased costs of certain law enforcement initiatives, currently provides financial support to public defense entities in 25 counties and New York City.<sup>4</sup> Any reduction in this funding means these localities are less able to focus on the quality improvements promised in last year's budget and which are necessary to ensure that the State meets its constitutional obligations. Last year's final appropriation for Aid to Defense was \$8,099,000. **NYSDA asks the Legislature to restore the base funding of \$8,099,000 for Aid to Defense.**

**Indigent Parolee Program (IPP):** As in prior years, the Executive has left it to the Legislature to fund IPP. This Program provides partial reimbursement to counties<sup>5</sup> that provide representation to individuals in parole revocation hearings and in appeals from adverse parole release or revocation decisions. Parole proceedings stem from state, not county, policies, and these costs should be fully reimbursed. **NYSDA asks the Legislature to, at a minimum, restore the base appropriation of \$600,000 for IPP.**

**Prisoners' Legal Services of New York (PLS):** This year's proposed appropriation for PLS is 25% less than last year's final appropriation of \$2,950,000. While the prison population has declined over the past several years, a trend that we hope will continue, the demand for PLS's services has always exceeded its capacity. Proposals in the Executive Budget and bills pending in the Legislature seek to reduce reliance on solitary confinement and expand the geriatric parole program, the latter in recognition of the aging nature of New York's prison population. PLS helps individuals in prison exercise their rights and ensure compliance with prison reforms. **NYSDA asks the Legislature to appropriate the same amount as last year for PLS.**

---

<sup>3</sup> More information about the Commission and the testimony it received is available at <https://www.ils.ny.gov/content/commission-parental-legal-representation>.

<sup>4</sup> Aid to Prosecution provides financial support to all 62 district attorney offices around the state. The Executive Budget maintains last year's Aid to Prosecution funding level of \$12,549,000.

<sup>5</sup> In recent years, the reimbursement rate for counties is less than 50%. Wyoming and Seneca counties receive specific funding amounts, but those amounts are unlikely to cover the entire expense in those counties.

## **Assigned Counsel Hourly Rates Must Be Increased and Include a Procedure for Future Rate Adjustments**

The adequacy of rates paid to private lawyers for providing public defense services, set by statute in New York, is a recurring issue. Low rates make finding attorneys willing to accept assigned cases difficult, yet this perennial problem has been addressed only at the crisis level. The last such crisis<sup>6</sup> resulted in a fee increase fifteen years ago, in 2004. Along with the rate increase, the law directed the establishment of a “task force to review the sufficiency of” assigned counsel compensation rates and limits.<sup>7</sup> However, the State never formed this task force. NYSDA urges the Legislature to increase assigned counsel rates and establish procedures for adjusting the rates without the need for new legislation. This will ensure that assigned counsel rates keep pace with increases in the cost of living. Insufficient compensation of assigned counsel erodes the availability of quality public defense representation.

## **Pretrial Justice Reform: The Details Matter**

Similar to last year, the Executive Budget includes proposals to reform New York’s discovery, bail, and speedy trial laws. Both the Senate and the Assembly have also introduced their own reform proposals. Reform of these key elements of the criminal justice system is necessary, but reform efforts must proceed carefully to avoid creating new problems or exacerbating existing ones. NYSDA looks forward to working with the Legislature and the Executive to achieve just and lasting reforms.

## **Conclusion**

NYSDA looks forward to assisting Legislators and others on proposals affecting public defense and public defense clients as the budget process unfolds and throughout this session, and to continuing its backup support of public defense in New York throughout the 2019-2020 State Fiscal Year.

---

<sup>6</sup> See for example, "Assigned Counsel Compensation in New York: A Growing Crisis" (January 2000) at <https://www.nycourts.gov/ip/nya2j/pdfs/assignedcounselcompensation.pdf>.

<sup>7</sup> L 2003, ch 62, Part J, § 13.