

**JOINT LEGISLATIVE PUBLIC HEARINGS
ON THE 2020-2021 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**

**Susan C. Bryant
Executive Director
New York State Defenders Association, Inc.**



**February 12, 2020
Albany, NY**

New York State Defenders Association: Supporting Public Defense in Changing Times

Thank you for the opportunity to testify today about the 2020-2021 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 the public defense system. Quality public defense representation is a critical, inherent part of the justice system statewide; it is a function with constitutional dimensions. Always essential, support for public defense providers will be especially crucial in the coming months and years during implementation of reforms to pretrial procedures.

First, we must thank the Legislature and the Executive for funding NYSDA’s Public Defense Backup Center since 1981 to help ensure that the State meets its public defense responsibilities. 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. With the ongoing statewide expansion of the *Hurrell-Harring* (H-H) settlement initiated in 2017, 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 focused training, support, and legal assistance to public defenders. The 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 help public defenders who are implementing the landmark discovery, speedy trial, and bail laws, we are requesting a total appropriation of \$3,209,000: \$2,489,000 for our Public Defense Backup Center and \$720,000 for the VDP.

Public Defense Backup Center	
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
Discovery, Speedy Trial & Bail Implementation Initiative (Senate Budget Request)	\$400,000
Subtotal	\$2,489,000

Veterans Defense Program	
Veterans Defense Program (Senate and Assembly Budget Request)	\$500,000
Veterans Defense Program Long Island office (opened in 2018) (Senate Budget Request)	\$220,000
Subtotal	\$720,000

New York State Defenders Association Total	\$3,209,000
---	--------------------

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 providers 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 affordable 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.

Eighty-four (84) public defense programs in 51 counties use the Backup Center's Public Defense Case Management System (PDCMS) to improve caseload management, perform conflict checks, and streamline workflow; this helps efficiently focus county public defense resources on client representation. Our PDCMS team is constantly adding new functionality to the system to help defenders better represent clients. Current examples include: 1) adding the capacity to easily send text and email reminders to clients to ensure their appearance in court; and 2) developing a component that allows offices to streamline the process for accessing discovery materials for individual cases. PDCMS's robust reporting capabilities allow offices to run reports for internal management and to meet the expanded data reporting requirements of the Office of Indigent Legal Services (ILS) and other entities. PDCMS is an example of how the Backup Center saves the State and counties money by centralizing services and functioning as a clearinghouse for all parts of that public defense system.

NYSDA also helps counties, public defense programs and lawyers, and ILS to implement the H-H statewide expansion. The Backup Center has expanded its training program offerings and brought training programs to a variety of locations around the state. The Backup Center is also supporting public defense attorney recruitment to ensure a pool of high-quality applicants for programs statewide. In 2019, we co-sponsored with the Chief Defenders Association of New York two public defender career fairs, one at Albany Law School (Spring 2019) and one at the University at Buffalo School of Law (Fall 2019). Additionally, 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 itself 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 have co-sponsored CLE programs with some of those offices. We anticipate continuing to provide support to the RIAC centers that are awarded contracts under the currently pending [Request for Proposals](#) issued by ILS.

As noted during our testimony last year, the H-H settlement and statewide expansion did not address the enormous quantity 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—and near 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;¹ maintaining an 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;² 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, which are available at www.nysda.org/?page=AnnualReports. **We ask that the Legislature add a minimum of \$1,059,000 for NYSDA's Public Defense Backup Center, not included in the proposed Executive Budget, so that we can continue our daily work to improve the quality of public defense representation in criminal and family court.**

Discovery, Speedy Trial & Bail Reform Implementation Initiative

NYSDA also seeks a legislative add of \$400,000 for our Backup Center to assist public defenders during implementation of the historic new discovery, speedy trial, and bail laws. These laws represent a tremendous shift towards greater fairness in our criminal justice system. The practice of criminal law in New York State has fundamentally changed as of January 1, 2020, and NYSDA's centralized assistance is vital to helping defenders across the state ensure that clients receive the benefits of the reforms.

The new laws are already helping New York move towards a fairer criminal law system. The substantive and procedural requirements of the new discovery law allow defense counsel to obtain vitally important information about the strength of the prosecution's case much earlier, so that trial preparation is thorough and guilty pleas are knowing and voluntary. And the bail laws ensure that individuals are not detained pretrial because they cannot afford bail. We thank the Legislature for establishing laws that help guarantee the criminal legal system will treat people as innocent until proven guilty, and ask you to reject efforts to roll back these laws.

Both new and experienced public defense attorneys need to be educated on these reforms. Since the laws were passed, our small Backup Center legal team has been training public defenders with the help of other experienced defenders. We will continue to offer training and legal support, but flat funding over the past eight years has hampered our capacity to provide continuing, much less newly needed, services. This additional funding will help us provide more training, legal support, and resources, and host convenings on best practices about the new laws to help public defenders provide quality representation to all clients. This initiative will further justice in criminal

¹ 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 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. In 2019, we held programs in Dutchess, Monroe, Ontario, and Westchester counties. Our programs feature state and national experts and they are consistently well received by participants.

² The Center for Family Representation (CFR) chose NYSDA's PDCMS for its office and we customized PDCMS to meet CFR's needs. NYSDA has used that work and the expertise to help other family defense offices or units within public defense programs manage their cases.

proceedings across the state and improve the lives of justice-involved low-income adults.

Through this initiative, the Backup Center would hold regional training programs across New York State for public defense attorneys. We would also distribute the training materials and legal practice resources to all public defense offices (public defenders, conflict defenders, legal aid societies, and assigned counsel programs) to ensure broad access to the information.

Fundamental to the success of the discovery law is the ability of public defenders to receive and evaluate materials disclosed by the prosecution. The Backup Center needs additional resources to help public defense offices and assigned counsel programs develop processes and procedures for managing and maintaining discovery materials, both print and electronic. Because New York's prior discovery laws were so restrictive, most defender offices and individual assigned counsel attorneys lack experience with handling large volumes of print and electronic materials. The Backup Center would conduct regional convenings of chief defenders and key members of their offices; lead discussions on current discovery practices and the new procedures defenders are using in their offices; and share information about best practices in other states and the federal public defender system. The regional convenings would also address implementation of the bail reforms and barriers to implementation. A statewide convening would give chief defenders a chance to report on the practices and procedures they have implemented and lessons learned, as well as ongoing implementation of the bail reforms.

NYSDA's Veterans Defense Program

Finally, NYSDA seeks a legislative add of \$720,000 for our VDP. The 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-related mental health issues such as Post-Traumatic Stress Disorder and Traumatic Brain Injury and facilitating treatment to heal these war wounds.

Because state funding for the VDP has come from outside the Public Protection budget, the VDP offered separate budget testimony during the Human Services hearing on January 30. Nevertheless, support from other members of the Senate and Assembly is needed. The VDP's testimony budget is available at https://www.nysda.org/resource/resmgr/pdfs--vets/VDP_Budget_Testimony_Jan_30_.pdf.

Public Defense Funding and the Office of Indigent Legal Services

NYSDA supports the Executive Budget Aid to Localities proposal of \$254,810,000 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 \$150 million for the third year of the statewide expansion of the H-H settlement reforms. **We thank the Legislature and the Executive for the 2017 H-H statewide expansion legislation and the continuing investment the State is making on the criminal defense side of public defense.**

Support for \$5 Million for the Parent Representation Caseload Relief and Quality Improvement Proposal

The Office of Indigent Legal Services proposed a \$5 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.

In 2018, the Chief Judge's Commission on Parental Legal Representation heard from many public defense providers, clients, and others about problems within the family defense system, including the need for reduced caseloads and improved access to professional services. The Commission's [Interim Report to Chief Judge DiFiore](#), issued last February, provided a brief history of the right to counsel in family court and made six initial recommendations. One of the recommendations dealt with caseloads. The Commission recommended that the State fund a study to determine appropriate maximum caseload standards, and until the study is completed, that a caseload maximum for family defenders in child welfare cases be set at 50-60 clients per attorney, by legislation or rule.³ ILS is in the middle of conducting the recommended caseload study, examining the time and resources that attorneys need to provide quality representation. 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 ILS would allow defender offices to move towards the caseload standards identified in the Commission's interim report. The State's investment of this money would be an important first step towards demonstrating its commitment to strengthening families in crisis. **NYSDA asks that the State Legislature include a \$5 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 \$6,463,000. Of note, the small increase for ILS State Operations will support the hiring of two critical positions: Assistant Grants Manager and Assistant Counsel. The Assistant Grants Manager will help the existing Grants Management team to efficiently and effectively review grant budgets and process reimbursement requests for the hundreds of contracts ILS has with counties, contracts that are key to improving the quality of public defense representation. The Public Defense Backup Center will continue to assist and support ILS, and stands ready to help ILS and the counties implement contracts for the H-H expansion to achieve the fundamental improvements this Legislature set in motion in 2017.

Other Public Defense and Related Funding Requests

Aid to Defense: Unfortunately, last year's final budget did not restore Aid to Defense funding to its 2018 level of \$8,099,000. This year's Executive Budget proposes to maintain the reduced Aid to Defense funding of \$7,658,000. 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.⁴ The reduction in this funding means these localities are less able to focus on the quality improvements that are necessary to ensure that the State meets its constitutional obligations. **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

³ More information about the Commission and the testimony it received is available at <http://www.nycourts.gov/ip/Parental-Legal-Rep/>.

⁴ 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.

fund IPP. This Program provides partial reimbursement to counties⁵ 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 33% less than last year's final appropriation of \$3,300,000. While the prison population has declined in recent years, a trend that we hope will continue, the demand for PLS's services has always exceeded its capacity. Denying people in prison access to legal assistance, and therefore to justice, is both cruel and unwise. The State should sufficiently fund PLS so that it can help all 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.**

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 does not get addressed until it reaches a crisis level. The last such crisis⁶ resulted in a fee increase sixteen 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.⁷ However, the State never formed this task force.

We have reached a crisis level again. Many county assigned counsel programs are struggling to find any attorneys who will join the criminal and family defense panels. Some assigned counsel programs have needed to look to counties far away to find attorneys for their panels. 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.

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 2020-2021 State Fiscal Year.

⁵ 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.

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

⁷ L 2003, ch 62, Part J, § 13.