

Testimony of The Legal Aid Society

on

THE 2012-2013 EXECUTIVE BUDGET
TOPIC: PUBLIC PROTECTION

Presented before:

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

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January 30, 2012

The Legal Aid Society welcomes this opportunity to testify at this 2012-2013 Executive Budget hearing concerning crucial State funding for the Society's essential legal services for constituents in all five boroughs of New York City. During the past year, from offices in all five boroughs of New York City, the Society provided legal assistance in more than 300,000 cases and legal matters for clients.

State funding from the Executive and the Judiciary has supported the Society's legal assistance in the areas of civil legal services, criminal defense, indigent parolee defense, and juvenile rights. Special annual allocations from the Legislature for civil and criminal services have also provided crucial funding for the Society's legal assistance for New Yorkers who have nowhere else to turn for legal help. This testimony describes the impact of the proposed State budget on civil legal services, criminal defense, indigent parolee defense, and juvenile rights as well as the impact of several proposed juvenile justice and criminal justice measures.

We are mindful of the continuing significant financial challenges that the State is facing. At the same time, these extraordinary economic conditions are having an especially harsh impact on low-income New Yorkers. The need for the legal help that the Society provides to these struggling families and individuals is increasing exponentially. However, due to a lack of resources, we are forced to turn away eight out of every nine New Yorkers who, among other things, seek our help to obtain unemployment and disability benefits, flee from domestic violence, and prevent evictions, foreclosures, and homelessness – which is at record levels in New York City. It is therefore essential that the final adopted State budget make provision for low-income New Yorkers who urgently need civil legal assistance in the midst of this severe economic downturn as well as New Yorkers accused – often wrongfully – of criminal conduct.

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 900 of the brightest legal minds. These 900 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals, and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of the City for clients who cannot afford to pay for private counsel.

The Society operates three major legal practices – Civil, Criminal and Juvenile Rights – and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective

that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low-income families and individuals in New York City and the landmark rulings in many of these cases have a Statewide and national impact.

Funding For Criminal Defense Services: Since 1965, The Legal Aid Society has served as the primary defender for persons accused of crimes in New York City who cannot afford counsel. The Society's status as the city-wide primary defender has been reaffirmed through the City's recent competitive bidding process. With criminal defense trial offices in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island, The Legal Aid Society represents indigent defendants accused of crimes ranging from alleged disorderly conduct to first degree murder.

The Legal Aid Society's criminal defense program is at the forefront of efforts to address new issues in the criminal justice system, ranging from assisting in the design and staffing of specialized court parts that deal with drug abuse, domestic violence, mental illness and juvenile offenders to consulting regularly with State and City officials on policy issues of importance to our clients and securing system-wide reform through our Special Litigation Unit. The Society's Special Litigation Unit, for example, litigated the landmark case that established the 24-hour standard for arrest-to-arraignment in New York State.

In addition to criminal defense trial offices in each of the five boroughs, our overall Criminal Practice includes a citywide Appeals Bureau and a citywide Parole Unit, which have played a leadership role in successful appellate and post-conviction representation to reverse wrongful convictions and improper sentences. Within our trial offices, we also operate a MICA Unit for mentally ill and chemically addicted clients, an Adolescent Intervention and Diversion Unit, and a Trafficking Victims Legal Defense and Advocacy Project. To enhance client services, Society social workers in our Defender Services Program provide comprehensive services in conjunction with our defense representation. In addition, we deploy paralegal staff directly in the City jails on Rikers Island to assist in our client representation.

In the 2009-2010 budget, the Legislature enacted a landmark law authorizing the Chief Administrative Judge to promulgate caseload standards for The Legal Aid Society and other criminal defense lawyers in New York City that are being phased in over a four-year period. This action by the Legislature is so significant that the United States Attorney General cited this law as one of two major breakthroughs for the provision of indigent defense in the entire nation. The Chief Administrative Judge is proceeding with the process of implementing the required standards and the Judiciary's 2012-2013 budget continues to make provision for complying with this historic new law to ensure that New Yorkers accused of crimes – often wrongfully – are represented by Legal Aid lawyers with proper caseloads.

As a result of the Judiciary's implementation of the 2009 caseload law to date, the annual average weighted caseload of the Society's criminal defense lawyers has been reduced from 682 at the time of the implementation of the law to 533 through December 31, 2011. Pursuant to the caseload law, the Society's average annual weighted caseload must be reduced to 400 effective April 1, 2014, with felonies weighted as 2.66 misdemeanors. The Judiciary's 2012-2013 budget will enable the Society to continue to move towards compliance with this annual weighted standard which is based on long-standing caseload requirements promulgated by the Appellate Division, First Department as well as well-established minimum national standards.

To provide constitutionally mandated criminal defense services, as the primary criminal defense provider in New York City pursuant to the local RFP process, for many years The Legal Aid Society has received a direct grant of State Aid to Defense funding from the Division of Criminal Justice Services to support the Society's representation of New Yorkers accused of felonies. Prosecutors receive such funding through the State Aid to Prosecution program. The funding for the Society supports attorneys, including staff attorneys who are members of the Association of Legal Aid Attorneys/UAW, and non-attorney staff, including members of 1199/SEIU. Prior State Administrations reduced significantly funding for the Society's Aid to Defense allocation from \$10.8 million in State fiscal year 2001-2002 to the current funding level of \$6.299 million, despite the fact that the Society's current annual felony caseload of 25,576 cases represents an increase from the 2001-2002 level of 23,014. During this time, the Society's overall criminal defense caseload also increased from 210,000 new cases in 2003 to in excess of 225,000 new cases annually.

We are therefore very pleased to report that the Governor's Executive budget maintains our current State Aid to Defense funding of \$6.299 million for State fiscal year 2012-2013. We urge that this direct allocation to the Society be continued in the adopted budget, especially given the significant impact for New Yorkers charged with even relatively minor offenses in terms of collateral consequences for housing, employment, education, public benefits, and immigration.

In addition to State Aid to Defense, funding from the Legislature is a crucial element of State support that the Society needs to provide constitutionally mandated representation for clients. In recent years, the Society has received the following legislative funds to provide criminal defense services to constituents: \$1.1 million in Senate legislative funding for criminal defense; \$300,000 from the Assembly in supplemental Aid to Defense funding; \$485,000 in Assembly funding to provide special representation services for juveniles in Criminal Court cases; and \$40,000 from the Assembly to focus on drug interdiction matters involving the airports. Because of the State's financial condition, for the 2011-2012 fiscal year, the Legislature was only able to provide the Society with \$288,000 in Assembly criminal defense funding. Restoration of these funds for the Society's criminal defense services in all five boroughs of the City is crucial again this year.

A further concern in the criminal defense area involves our representation of clients who are mentally ill and chemically addicted. The Division of Criminal Justice Services has allocated \$660,000 in annual Byrne funding to the Society to operate a special program for persons

accused of crimes who are mentally ill and chemically addicted. Originally funded at a level of \$925,000, this program has also had significant success in preventing re-arrests for clients the Society represents. For 2012-2013, it is essential that the Division of Criminal Justice Services again allocates this Byrne funding to enable the Society to continue to operate this critical initiative for these vulnerable New Yorkers. In the past, the Legislature has urged the Division of Criminal Justice Services to continue this vital Byrne-funded program and we ask that the Legislature do so again.

For your consideration of these continuing funding needs to provide constitutionally mandated representation, we also want to note that, as we have described in prior testimony, the Society has already implemented the types of internal cost saving measures that the State itself has proposed – our defined benefit pension plan has been frozen and replaced with a defined contribution plan, employees contribute to health care, and there have been no Cost of Living Adjustment salary increases since 2008.

Funding For Indigent Parolee Representation: The Legal Aid Society's Parole Revocation Defense Unit, established in 1972, was the first program in the nation to provide legal representation and social work diversion services specifically to persons who have been paroled from State prisons. By contract with New York City, the Society serves as the primary defender of persons accused of parole violations prosecuted in New York City. Annually, the Society's Parole Unit conducts nearly 7,000 preliminary and final parole violation hearings. With a well-trained staff, the Legal Aid Parole Revocation Defense Unit provides cost-effective, high quality representation. The Legal Aid Society has designed specific intake procedures to meet the special needs of parolees with chemical addiction and with mental illness in order to prevent the cycle of re-arrest, release, and recidivism. In addition to lawyers, social workers are specifically trained to identify special needs parolees and refer them for necessary services and programs.

Historically, the State had provided \$1.3 million in Statewide funding to support these critical parole defense services. However, prior Administrations eliminated this State funding for indigent parolee defense. Most recently, the Assembly had allocated \$472,000 for the Society's representation of indigent parolees and a further special grant of \$273,000 for the Society's representation of mentally ill parolees. Because of the State's budgetary constraints, these funds could not be allocated in 2011-2012, but we urge the Legislature to consider maintaining this critical program in 2012-2013 in order to provide services to constituents that have a proven track record of reducing recidivism.

The Legal Aid Society's innovative program develops alternatives to incarceration for this population in the form of medical discharge plans and program placements, and has achieved a demonstrable reduction in repeat offenses. Because treatment is a less expensive means of protecting public safety than returning a parolee to prison – averaging only \$15,000 per year as opposed to \$45,000 annually as the Assembly Speaker's prior report found – the Society's program for mentally ill parolees is particularly cost-effective. Our client services can help reduce the substantial costs of incarceration of mentally ill clients that are otherwise

absorbed by the Department of Correctional Services and local governments.

Funding For Civil Legal Services: The Society provides civil legal services through our neighborhood-based offices in all five boroughs of New York City and citywide units that serve families and individuals with special needs. Our civil program provides legal assistance in literally every community in New York City.

In addition to contacting us directly, clients are referred to the Society by the constituent services staffs of elected officials as well as the courts, community and social services organizations, government agencies, or by word of mouth. Other legal services groups also refer their clients to us when they cannot provide all necessary services, have limited or no case intake capacity, or do not serve a particular community.

Over the past year, we worked on some 43,000 individual civil matters benefiting more than 100,000 of the most vulnerable New Yorkers: survivors of domestic violence, senior citizens, children and adults with disabilities or chronic illnesses, immigrants fleeing oppression, unemployed and low-wage workers, persons with HIV infection, and children and adults faced with evictions, foreclosures and homelessness. We help clients with legal problems involving: domestic violence and family law; elder law for senior citizens; housing and homelessness; income and economic security assistance such as federal disability benefits, employment and low-wage worker matters, earned income tax credits, federal food stamps, and public assistance; immigration; health care, including Medicare Part D, Medicaid, and access to hospital charity support; consumer credit and debt matters; HIV and AIDS; housing development and community development opportunities to help clients move out of poverty; and re-entry to the community from correctional facilities.

The continuing extraordinary economic conditions are having a particularly adverse impact on low-income New Yorkers and the need for civil legal help for these struggling families and individuals is increasing exponentially. Without ongoing State support for the provision of civil legal assistance, the Society and other civil legal services programs across the State and in New York City will continue to have to turn away increasing numbers of families and individuals who desperately need legal aid to obtain and maintain the basic necessities of life – housing, health care, food, personal safety, and subsistence income or self-sufficiency.

The current economic downturn has clearly increased the need for civil legal services. Recently released federal poverty data shows that the number of children and adults living at or below 200 percent of the federal poverty level in New York State has increased from 5.6 million in 2008 to 6.3 million.

At the same time, the economic downturn has diminished available funds for these crucial legal services. Most notably, the Interest On Lawyers Account Fund of New York State (IOLA) – a critical funding source for providers of core civil legal services in every area of the State – has eroded from an amount close to \$32 million annually to \$6.5 million due to the drop in interest rates. In the last two State budgets, the Legislature supported the Judiciary's effort to

offset partially this dramatic reduction, but the need to address this urgent problem is continuing.

Against this background, every day, civil legal services programs like the Society provide for thousands of vulnerable New Yorkers a lifeline for basic survival. And the situations our clients are facing – loss of jobs, foreclosure, eviction, hunger – are the grim hallmarks of this current fiscal crisis.

The work performed by civil legal services programs also brings millions of dollars into the New York economy each year and saves State and local government millions of dollars annually. For example, a task force appointed by Chief Judge Jonathan Lippman has found that civil legal services programs in New York State obtain millions of dollars in retroactive and ongoing federal disability awards for clients, thereby bringing millions of dollars into the State annually which, in turn, sustain jobs and additional economic activity. Likewise, the Chief Judge's task force has found that the provision of civil legal assistance saves millions of public dollars each year by preserving homes, averting homelessness for New Yorkers, and keeping families together.¹

However, because of a lack of resources that the IOLA reductions have exacerbated, the Chief Judge's task force has concluded that civil legal services programs are at best able to meet only 20 percent of the need for civil legal assistance for low-income New Yorkers. For example, although the Society worked on some 43,000 civil legal matters over the past year in literally every zip code in the City, we are able to help only one out of every nine New Yorkers who seek our help with civil legal problems because of our lack of resources. The situation has become particularly dire during the continuing economic downturn. Since the economic downturn began in 2008, we have seen unprecedented increases in requests for help in core areas of need:

- a 29% increase in requests for help with unemployment benefits and employment problems;
- a 40% increase in requests for health law assistance and help obtaining Medicaid, Medicare, and other health care coverage;
- a 12% increase in requests for help to obtain food stamps, federal disability benefits, and public assistance;
- a 16% increase in requests for domestic violence and family law help;
- a 15% increase in requests for help from current or former low-wage workers with earned income tax credit or other low-income taxpayer problems;
- a 21% increase in requests for eviction prevention representation; and
- a stunning 800% increase in requests for foreclosure defense assistance.

Even more troubling, in recent months, we have seen further increases in requests for our civil legal aid above these high levels of increased legal need: an additional 54% increase for low-wage employment and unemployment matters; an additional 18% increase for housing problems; an additional 12% increase for domestic violence and family matters; an additional

¹ The Chief Judge's Task Force Report is available at <http://www.nycourts.gov/ip/access-civil-legal-services/>.

23% increase for subsistence income support problems; and an additional 11% increase for access to health care matters.

In these severe economic times, civil legal assistance is needed now more than ever. In fact, an unprecedented series of hearings in all four Judicial Departments of the State that the Chief Judge conducted in 2010 and 2011 has revealed widespread support for civil legal assistance.

At the Chief Judge's hearings over the course of the past two years, business leaders, including representatives of both private and public property owners, the banking industry, and other corporations, have presented clear testimony about the adverse impact on represented parties that results when unrepresented parties require repeated adjournments and cannot present or resolve their cases that otherwise could be resolved by counsel without the need for protracted litigation.

Similarly, front-line Judges in every Judicial Department in the State have described how each day extra court time is expended unnecessarily when parties appear without representation. The Judges have further testified that the lack of counsel undermines the Judiciary's core function of serving as a neutral arbiter of disputes when Judges struggle to help vulnerable unrepresented litigants.

Both representatives of the business community and Judges have testified that the provision of legal assistance at an early stage would in many instances avert the need to commence litigation in the first place. Indeed, the lack of civil legal aid is having an adverse impact on the bottom line for represented private and governmental parties as well as on judicial resources.

Local government officials have also testified about the cost-savings to State and local governments resulting from the provision of civil legal assistance – particularly legal assistance to prevent wrongful evictions and foreclosures that lead to homelessness and the expense of providing emergency shelter. They have further described the key role that civil legal services plays in stabilizing neighborhoods.

Testimony from leading District Attorneys has cautioned that the lack of available civil legal assistance undermines comprehensive assistance for crime victims, particularly survivors of domestic violence. The District Attorneys have further testified that the lack of access to civil legal aid diminishes innovative programs to divert New Yorkers from the criminal justice system who have underlying civil legal needs – such as problems relating to housing and homelessness, lack of mental health services, and improper denials of employment and education assistance.

Leading educators have testified that civil legal assistance is very important to the education of children and young adults because without the provision of legal services to resolve a family's legal problems their education is often disrupted, frequently with a permanent impact.

Likewise, physicians and medical providers have described how in the absence of civil legal aid chronic health problems (such as asthma) can worsen until the cost of providing ongoing medical care to address the situation far exceeds the cost of providing legal assistance to resolve the matter (such as negotiating an agreement to remedy a housing condition that is an asthma trigger for a child).

Providers of domestic violence prevention services and other community leaders have also described the dire consequences for vulnerable New Yorkers when civil legal assistance is lacking – and the resulting destabilizing impact on entire neighborhoods in combination with the destabilizing impact on individual families.

In addition, leaders of prominent labor unions in New York have testified that the need for civil legal assistance has been growing among their own rank and file members across the State because, despite having a job, many members still have a very low-income. They have identified foreclosures and consumer debt as the most pressing areas of need among their members who earn less than 200 percent of the federal poverty level.

Against this extensive evidence developed at the Chief Judge's hearings documenting both a dire human need and a positive State and local economic impact resulting from investing in civil legal assistance, we urge the Legislature to support the Judiciary's budget which contains urgently needed Statewide support for civil assistance for vulnerable low-income New Yorkers. This Judiciary effort is targeted to the most basic needs for struggling families and individuals – help with legal problems involving the essentials of life: housing (including evictions, foreclosures, and homelessness), family matters (including domestic violence, children, and family stability), access to health care and education, and subsistence income (including wages, disability and other benefits, and consumer debts).

Moreover, in addition to absolutely crucial Judiciary support, legislative funding has historically provided core support for civil legal assistance throughout New York State. For example, in the recent past, the Society has received the following essential legislative support for civil legal services: \$573,000 in Senate civil legal services funding; \$1,091,251 in Assembly civil legal services funding; \$140,000 as part of the Assembly's allocation for HIV legal services; and \$50,000 and \$75,000 grants as part of the Assembly's Legal Services Assistance Fund allocation for legal aid for senior citizens and supplemental domestic violence legal assistance. As a result of the State's financial limitations, for the 2011-2012 fiscal year, only \$45,000 and \$67,000 grants could be provided as part of the Assembly's Legal Services Assistance Fund allocation for legal aid for senior citizens and supplemental domestic violence legal assistance. Restoration of these funds for the Society's civil legal assistance in all five boroughs of the City is crucial again this year.

Support For The Representation of Children In Family Court: The Society's Juvenile Rights Practice is funded through the Judiciary's budget. The Juvenile Rights Practice is the primary counsel for children in the Family Court in New York City who are the subject of abuse and neglect proceedings, persons in need of supervision cases, and juvenile delinquency proceedings. Annually, we represent some 34,000 children in these matters.

The continuing impact of the tragic deaths of children who were known to the City's child welfare system highlights the need to make sure that there are adequate resources for the child welfare system as well as for the Family Court system, including the Society's representation of children in these cases. The Family Court workload problem in New York City has been further exacerbated by the State's permanency law which requires semi-annual hearings on cases instead of annual hearings, but does not provide funding for these additional hearings.

To begin to address this crisis, during the 2007 session the Legislature passed and the Governor signed a new law authorizing the Chief Administrative Judge to set client caseload standards for lawyers representing children in these Family Court cases, including the maximum number of children who can be represented at any given time. As a result of this landmark legislation, the Chief Administrative Judge implemented a client case cap rule to reduce the number of children our lawyers represent in Family Court to 150 at any given time from an average of approximately 250 when the legislation was introduced. This new law has had an extremely positive impact on the children we represent.

As the budget process proceeds, we also appreciate the Legislature's continued focus on the need to increase the number of Family Court Judges to help alleviate Family Court workload problems that adversely affect children by delaying consideration of their cases.

Additional Juvenile Justice and Criminal Justice Matters: Finally, there are two substantive matters in the public protection area that we want to highlight briefly.

As part of our role as attorneys for children in Family Court proceedings, the Society's Juvenile Rights Practice represents the majority of the children who are charged with delinquency in New York City. Because of substantial harm suffered by children who were placed in State juvenile detention prisons, including injuries due to the excessive use of force by facility staff and the denial of mental health services, we commenced federal court litigation during the prior State Administration. Given continuing harm to children in these facilities that has been documented in the Society's litigation and in litigation brought by the United States Department of Justice, we support the Governor's plan to bring the City's children home from these upstate juvenile prisons. Under the Governor's plan, children who are determined by a court to be in need of confinement will now be in the City's care in not-for-profit facilities within the five boroughs where they will be under the watchful eyes of their families and our lawyers who are appointed to represent them. The Governor's plan will provide a strong protection against the long-standing abuses and lack of services that have characterized the current detention facilities. We commend both the Governor and the Mayor for devising this important new initiative that will greatly benefit the children we represent.

In the budget process, the State has also proposed to expand the collection of DNA from New Yorkers in connection with criminal matters. On behalf of our clients, we have historically opposed such initiatives because of significant fairness concerns. In the context of the current proposal, we urge consideration of broader remedies to address wrongful convictions. The

majority of criminal cases do not involve DNA evidence and New York's antiquated discovery rules in criminal cases and coerced false confessions are significant factors in wrongful convictions in such cases. Modernizing New York's discovery procedures for criminal cases as other States have done is essential to remove the current trial by ambush approach in which critical information is often not provided or is provided too late to permit any investigation – both of which can lead to wrongful convictions. Similarly, recording custodial interrogations is an effective way to address the documented problem of coerced false confessions. With regard to the DNA proposal itself, we recommend amendments to ensure effective protections against wrongful convictions, including amendments: authorizing the court, on motion of the defendant, to order fingerprint and DNA comparisons between samples in databanks and crime scene samples both at the pre-trial and post-trial stage; enacting procedures for the court, in response to a 440 motion, to order and regulate access to information and evidence that may yield relevant DNA evidence; providing for discovery in the 440 context; revising §440.30 of the Criminal Procedure Law to allow persons who have pleaded guilty to have access to post-conviction DNA testing; and requiring the Forensic Science Commission to establish a policy for the cataloging and preserving of forensic evidence and records of such evidence. We stand ready to work with the Governor and the Legislature on these matters to remedy the unacceptable problem of wrongful convictions.

Again, we thank you for the vital State support that you have allocated to us in the past to provide client services, and we are hopeful that the critical continuing funding needs we have highlighted in this testimony can be addressed.

Submitted by,

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