

Testimony of The Legal Aid Society

on

**THE 2014-2015 EXECUTIVE BUDGET
TOPIC: PUBLIC PROTECTION**

Presented before:

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

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The Legal Aid Society welcomes this opportunity to testify at this 2014-2015 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.

We are mindful of the significant financial challenges that the State continues to face. At the same time, the continuing difficult economic conditions are having an especially harsh impact on low-income New Yorkers, particularly in combination with the continuing effects of Superstorm Sandy. The need for the legal help that the Society provides to struggling low-income families and individuals – including Sandy survivors – is increasing exponentially. However, due to a lack of resources, we have been forced to turn away substantial numbers of 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 the continuing economic downturn and Superstorm Sandy's aftereffects 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 more than 1,100 of the brightest legal minds. These 1,100 Legal Aid Society lawyers work with more than 700 social workers, investigators, paralegals, and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 26 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 two 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 citywide primary defender has been reaffirmed through the City's 2010 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 serious felonies.

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, juvenile offenders, and human trafficking 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. Recent Society systemic law reform efforts include litigation to stop unlawful marijuana arrests resulting from the New York Police Department's stop and frisk policy as well as unlawful trespass arrests of residents and their guests in New York City Housing Authority developments.

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 Revocation Defense Unit, which have played a leadership role in successful appellate and post-conviction representation to reverse wrongful convictions and improper sentences. The Society's Parole Revocation Defense Unit 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. The Legal Aid Society also deploys paralegals directly on Rikers Island who provide innovative assistance to the clients of other providers and individual 18-B attorneys in addition to Legal Aid clients.

Within our criminal defense trial offices in all five boroughs, we provide the following services and programs to enhance legal assistance for clients:

- special representation for clients with mental health and chemical addiction needs, including deploying social workers directly at arraignments in all five boroughs, that has

been singled out for support by the Langeloth Foundation, the van Ameringen Foundation, and the New York State Division of Criminal Justice Services;

- innovative representation for victims of human trafficking that has been praised by the American Bar Association as one of two initiatives in the United States that is addressing this issue;
- targeted representation of juveniles charged as adults in criminal cases as well as youthful offenders that has been recognized by the New York City Council as part of its initiative to address gun violence;
- enhanced representation in DNA matters through a newly formed citywide unit that is the first of its kind in New York and draws on similar DNA initiatives in public defender offices in other parts of the United States, and through which Unit staff is deployed to provide expert and more cost-effective representation as co-counsel in individual cases in each county;
- immigration services for which the Society has a national, statewide, and citywide representation for excellence;
- a staff training and continuing legal education program which the New York University School of Law's Brennan Center has recognized as a national model for institutional providers; and
- social work services integrated with criminal defense representation which the Society pioneered nationally in the 1970s;

Moreover, The Legal Aid Society is able to provide these unique and essential additional services to enhance criminal defense representation:

- comprehensive collateral civil legal assistance provided in each borough through the Society's nationally recognized Civil Practice; and
- legal aid for clients under the age of 21 who have juvenile justice or child welfare needs provided in each borough through the Society's nationally recognized Juvenile Rights Practice.

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 2014-2015 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 472 as of the November 30, 2013 end date of the most recent reporting period for the Office of Court Administration. Pursuant to the caseload law, the Society's average annual weighted caseload must be reduced to 400 effective for the April 1, 2014 – March 31, 2015 State fiscal year, with felonies weighted as 2.66 misdemeanors. The Judiciary's 2014-2015 budget will enable the Society to come into 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 is comparable to the Society's 2001-2002 level.

We are therefore very pleased to report that the Governor's Executive budget continues the current overall Statewide allocation for State Aid to Defense so as to maintain The Legal Aid Society's current State Aid to Defense funding of \$6.299 million for State fiscal year 2014-2015. 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 2013-2014 fiscal year, the Legislature was only able to provide the Society with \$265,000 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. For a number of years, the Division of Criminal Justice Services has allocated annual Byrne funding to the Society to operate a special MICA program for persons accused of crimes who are mentally ill and chemically addicted. Originally funded at a level of \$925,000 and then reduced to \$660,000, this program has had significant success in preventing re-arrests for clients the Society represents. Because of federal reductions in federal Byrne pass through funding, the Division of Criminal Justice Services could only provide \$514,800 for the Society's MICA program in 2012-2013 and 2013-2014. For 2014-2015, it is essential for the Division of Criminal Justice Services to continue to allocate 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 pursued – our defined benefit pension plan has been frozen and replaced with a defined contribution plan, employees contribute to health care, and union and non-union staff went for five years without a Cost of Living Adjustment salary increase.

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 more than 6,000 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 2013-2014, but we urge the Legislature to consider reinstating this critical program in 2014-2015 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, 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 in which the need for our legal assistance increased due to Superstorm Sandy, we worked on some 48,000 individual civil matters benefiting nearly 120,000 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.

More than 5,800 of the matters that we handled during the last year involved civil legal aid for Sandy survivors. In the immediate aftermath of Sandy, Legal Aid Society staff members were called upon to provide comprehensive disaster relief legal assistance at the shelters for homeless and displaced New Yorkers, at the disaster centers, at community-based organizations, through the Society's Mobile Justice Unit, and through our special Disaster Relief Helpline. The Society targeted disaster relief services in the most affected communities in Far Rockaway, Coney Island, Red Hook, Staten Island, parts of Lower Manhattan, and other locations with individuals and families affected by Hurricane Sandy. Many New Yorkers impacted by Sandy have needed assistance with the types of services we handle on a day-to-day basis, including: housing, public benefits, health law, family law, immigration, employment law, tax assistance, consumer assistance, assistance for homeowners, and assistance for small businesses.

As a result of the continuing extraordinary economic conditions and the aftereffects of the Hurricane, the need for civil legal help for struggling low-income 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 significant 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.

Even apart from the impact of Superstorm Sandy, the economic conditions in our State have increased the need for civil legal services. For example, the latest federal data for 2012 shows that 6,291,509 New Yorkers are living below 200 percent of the federal poverty level – 33 percent of the residents of the State. For New York City, the percentage of residents living below 200 percent of the federal poverty level in 2012 is 41.3 percent, higher than the State level in 2012 and higher than last year.

At the same time, the economic downturn has diminished available funds for these crucial legal services. Most notably, the Interest On Lawyer 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 \$7 million currently due to the drop in interest rates. In the recent State budgets, the Legislature has 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 the current economic conditions.

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

In these severe economic times, civil legal assistance is needed now more than ever. In fact, unprecedented annual hearings in all four Judicial Departments of the State that the Chief Judge conducted in 2010, 2011, 2012, 2013 have revealed widespread support for civil legal assistance.

¹ The Chief Judge’s 2010, 2011, 2012, and 2013 Task Force Reports are available at <http://www.nycourts.gov/ip/access-civil-legal-services/>.

At the Chief Judge's hearings over the course of the past four years, business leaders – including representatives of both private and public property owners, the banking industry, and other corporations – have testified 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.

The New York State Association of Counties, local government officials, and the Attorney General 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).

Although there continues to be a substantial gap between the need for civil legal aid and available resources, the civil legal services funding in the Judiciary's 2014-2015 budget is all the more essential because the Judiciary's civil legal services funding allocated in prior years is closing the access-to-justice gap in New York State. For example, as a result of the allocation of the Judiciary's civil legal services funding in 2011, 2012, and 2013, preliminary data shows that The Legal Aid Society has been able to reduce the number of low-income New Yorkers with legal needs involving the essentials of life who we must turn away due to lack of resources. Prior to the allocation of the additional funding through the Chief Judge's civil legal services initiative, we were forced to turn away 8 out of every 9 low-income families and individuals who sought our civil legal help. As a result of the allocation of the Judiciary's civil legal services funding, preliminary survey data shows that we are now able to represent 1 out of every 4 low-income families and individuals who seek our representation to address essential civil legal needs. The funding in the Judiciary's 2014-2015 budget will enable our State to continue to make progress in closing this unconscionable justice gap for low-income families and individuals.

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 2013-2014 fiscal year, only \$44,000 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.

Finally, as a result of the State-funded Disability Advocacy Project (DAP) through which The Legal Aid Society receives an allocation of funding, we are able to represent New Yorkers with disabilities in federal administrative appeals hearings, and thereby generate millions of dollars in savings for the State and local governments while helping vulnerable children and adults meet their basic needs by obtaining federal disability benefits in place of New York State and local benefits. Every dollar invested in our DAP program generates \$3 in savings, and we win benefits for New Yorkers in approximately 90 percent of our cases. Restoring program funding to the 2007 level will require additional State funding of \$1.12 million over last year's State funding level of \$2.38 million. Within just two years, however, this investment will be generating an additional \$5.4 million in savings and cost avoidance for the State and for local governments. The 2014-2015 Executive Budget proposes increasing baseline funding by approximately \$500,000. This is an important first step. But we urge a full restoration of the baseline funding in order to benefit both taxpayers and hundreds of low-income families and individuals facing unnecessary continued receipt of New York State and locally funded public assistance instead of federal benefits that can be obtained as a result of DAP representation.

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.

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. Likewise, we stand ready to work with the Governor and the Legislature on the effort to raise the age of criminal responsibility in New York State as the Governor proposed in his State of the State address.

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.

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