

THE COUNCIL OF THE CITY OF NEW YORK

Speaker of the Council
Christine C. Quinn



Hon. Elizabeth Crowley, Chair, Fire and Criminal Justice Services
Committee

Hearing on the Mayor's Fiscal 2013 Preliminary Budget & the Fiscal 2012 Preliminary Mayor's Management Report

Legal Aid/Indigent Defense Services

March 8, 2012

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Summary and Highlights

New York City, according to State law, is solely responsible for funding legal representation for indigent criminal defendants in New York City. Whereas some jurisdictions across the country have government-employed public defenders, New York City contracts with several institutional providers and operates the Assigned Counsel Program to provide legal services to indigent criminal defendants. The goal of the City’s indigent defense services is to insure that all individuals charged with crimes have effective assistance of counsel, both at the trial and on appeal.

Indigent Defense Funding Summary

Dollars in thousands

	FY2012 Adopted	FY2012 Feb. Plan	FY2013 Feb. Plan
18-B Assigned Counsel Program	\$75,273	\$75,273	\$75,273
Legal Aid Society (Primary Provider)	\$94,900	\$92,800	\$92,800
NY County Defenders	\$7,236	\$7,236	\$6,432
Bronx Defenders	14,250	14,250	13,482
Brooklyn Defender Services	16,015	16,015	14,290
Queens Law Associates, P.C.	8,450	8,450	8,450
Battiste, Aronowsky & Suchow, Inc. (Staten Island)	131	131	
Alternative Providers - Trial Level sub-total	\$46,082	\$46,082	\$42,654
Appellate Advocates	\$4,283	\$4,283	\$4,283
Center for Appellate Litigation	3,783	3,783	3,783
Alternative Providers - Appellate Level sub-total	\$8,067	\$8,067	\$8,067
Neighborhood Defender Services (Upper Manhattan)	\$4,750	\$4,750	\$4,750
Office of the Appellate Defender	\$1,751	\$2,308	\$2,308
Center for Family Representation (Manhattan)	\$2,380	\$2,380	\$2,380
Center for Family Representation (Queens)	2,711	2,711	2,711
Bronx Defenders	3,988	3,988	3,988
Legal Services for New York City (Brooklyn)	3,605	3,605	3,605
Family Court Providers sub-total	\$12,684	\$12,684	\$12,684
Funding to Cover Estimated New Costs Emanating from RFP & Art. 10 Family Justice Center	\$6,218	\$0	\$2,062
TOTAL Indigent Defense Services Budget	\$249,724	\$241,963	\$239,898

Legal Aid/Indigent Defense Services

The Indigent Defense Funding Summary Table above displays the portion of the City's Miscellaneous Budget (Agency 098) that pertains to indigent defense services.

The Legal Aid Society (LAS), under agreement with the City of New York, serves as the primary indigent criminal defense provider in the State Court System, at both the trial and appellate levels, for individuals who cannot afford private legal counsel. Indigent criminal defendants are also represented by other entities. In the Criminal and Supreme Courts, indigent defense work is performed by five alternative contractors (one in each borough), by a Court-appointed panel of assigned counsel (18-B) attorneys, and by the Neighborhood Defender Service (NDS), which is a full-service agency serving Northern Manhattan.

In the Appellate Courts, cases are handled by LAS and two alternative contractors, the Office of the Appellate Defender, and 18-B attorneys. The City also provides, on a limited basis, institutional representation for adults in Family Court.

Trial Level Indigent Defense Contracts

After a series of delays, most significant of which emanates from ongoing legal challenges allowing for a shift to institutional providers a portion of the conflict cases being handled by 18-B attorneys, last year the City completed the Request for Proposal (RFP) process for indigent criminal defense trial-level services and parole revocation defense services without assigning any conflict cases to the providers.

In April 2011, the Office of the Criminal Justice Coordinator let new contracts with the Legal Aid Society and the four alternative providers. The contracts had been delayed for more than three years. The current multi-year contracts are for three years (April 1, 2011 to June 30th, 2013) with two 2-year renewal options.

The Legal Aid Society will continue its status as the primary indigent criminal defense trial-level provider for the City of New York. Through the RFP process the Society, has once again secured its position as the primary indigent defense provider in Staten Island. As shown in the Indigent Defense Summary chart, funding for Battiste, Aronowsky & Suchow, Inc. is included for Fiscal 2012 only to support current caseloads through June 30th, 2012. In addition, Legal Aid will continue to serve as the sole institutional provider of indigent parole revocation defense representation on Rikers Island.

While the February 2012 Plan includes \$92.8 million to support Legal Aid's contracts for trial level criminal indigent defense (\$84.7 million) and appellate litigation (\$8.1 million), the Society is still in negotiations with the Administration to finalize the amount for Fiscal 2013. It is anticipated that of the contract will be finalized by the Executive Budget.

Funding of \$42.6 million in Fiscal 2013 reflects the finalized contract amounts for the alternative providers. The Fiscal 2012 amount of \$46 million is higher because it reflects increased contractual expenses for leases and health care, startup costs and funding to cover additional costs associated with offering advice and services to clients regarding collateral consequences.

Funding History

In Fiscal 2010 and Fiscal 2011, the City’s actual expenditures for indigent defense services totaled \$224.9 million and \$219.4 million respectively. The Fiscal 2011 Adopted Budget appropriated \$200.7 million (including \$7.15 million in City Council discretionary funding) to support indigent defense services. The Fiscal 2012 Executive Budget added \$17.3 million to the Fiscal 2011 appropriation increasing it to \$218 million. The Fiscal 2012 Adopted Budget further increased the indigent defense budget by adding \$31.7 million for a total of \$249.7 million for Fiscal 2012

The Fiscal 2011 and Fiscal 2012 increases were intended to cover costs associated with the new trial-level indigent defense contracts. These increased costs included: (1) the baselining of prior-year City Council funding for the LAS and the NDS into the City’s Financial Plan; (2) start-up funding for the LAS to resume primary provider status on Staten Island; (3) funding for all trial level providers reflecting increased overhead costs and/or an expansion of responsibilities and caseloads; and (4) funding for institutional providers to assume a portion of the 18-B caseload as anticipated in the Request for Proposals (RFP) issued February 3, 2010

The Fiscal 2013 Preliminary Plan reduces the Fiscal 2012 Budget by \$8.3 million for a total of \$241.4 million; however, the Fiscal 2013 Budget of \$239.9 million remains unchanged¹. The portion of indigent defense funding provided by the State is forecast in the February 2012 Plan to be \$40 million in Fiscal 2012 and 2013. The table below provides a history of indigent defense spending since Fiscal 2010.

Indigent Defense Budget History	
<i>Dollar in thousands</i>	
Fiscal 2010 - Actual Spending	\$224.90
Fiscal 2011 - Actual Spending	\$219.40
Fiscal 2011 - Adopted Appropriation	\$200.70
Fiscal 2011 - As per the Executive Plan	\$218.00
Fiscal 2012 – Adopted Appropriation	\$249.70
Fiscal 2012 – As per the Feb 2012 Plan	\$241.40
Fiscal 2013 – As per the Feb 2012 Plan	\$239.90

¹. The new trial-level RFP solicited bids for conflict caseloads from the borough based providers. These conflict caseloads are primarily handled by individual 18-B Panel attorneys. The goal of the RFP was to lower indigent defense costs while improving the overall quality of services. At present, the City is barred from contracting with institutional providers for the conflict portion of the criminal indigent defense services because the matter is still being litigated on in the courts. The \$8.3 million reduction to the Fiscal 2012 budget represents funding that would have otherwise been used to support the conflict cases for the institutional providers.

The Providers

The Legal Aid Society (LAS)

The Legal Aid Society is the City's long-time primary provider of criminal indigent defense services. For Fiscal 2011, the Society received \$79.5 million. This included a baseline funding appropriation by the Administration of \$73.9 million supplemented by a \$5.65-million enhancement through City Council discretionary funds.

The Fiscal 2012 Adopted Budget baselined the long standing City Council discretionary funding that was used to supplement the budget of LAS. The baselined amount was \$11.3 million, bringing LAS' Fiscal 2012 funding for criminal indigent defense to \$84.7 million. LAS also received \$8.1 million for appellate Litigation for a total budget of \$92.8 million

As discussed above, LAS has been awarded the largest number of trial-level criminal defense cases and will continue to be the primary indigent criminal defense provider in the Bronx, Brooklyn, Manhattan, and Queens. In addition, the LAS has been restored to its prior role as the primary indigent criminal defense provider on Staten Island, and has been designated to continue to serve as the sole institutional provider of indigent parole revocation defense representation on Rikers Island.

Upon resolution of the pending lawsuit and with the execution of a new contract, the Administration intends to shift additional budgeted funding to Legal Aid commensurate with recognized baseline costs and new contractual responsibilities.

Alternative Indigent Defense Contractors

Over ten years ago, the City restructured indigent defense services in New York City by contracting a portion of the LAS caseload to alternative providers in each borough. Seven indigent defense firms were created and funded - five that provide criminal defense services which include; New York County Defenders, Bronx Defenders, Brooklyn Defender Services, Queens Law Associates, P.C, and two that provide appellate advocacy; the Center for Appellate Litigation (1st Appellate Department) and Appellate Advocates (2nd Appellate Department). Alternate providers each traditionally handle a fixed number of cases, unlike Legal Aid.

As discussed above funding of \$46 million in Fiscal 2012 and \$42 million in Fiscal 2013 has been included in the budget for the trial-level alternative providers for the contracts emanating from the RFP. (See Indigent Defense Funding summary for individual amounts).

Funding of \$8 million to support services of the two appellate providers remains unchanged for Fiscal 2012 and 2013. However, the appellate providers are currently in the last year of their 2-year renewal option. It is anticipated that within six months, the CJC will release an RFP to begin the process of re-negotiating the contracts. The current renewal will end by June 30, 2014.

Assigned Council Program (18-B Attorneys)

The Court appoints private 18-B attorneys to represent defendants when representation by a given provider would otherwise create a conflict of interest (i.e., when multiple defendants need

representation) or when the defendant is charged with a crime punishable by death or life imprisonment.

As indicated above, the RFP released last February by the CJC sought to create institutional conflict providers. If the City prevails in court and the Office of the CJC succeeds in executing one or more such institutional contracts, the number of cases handled by 18-B attorneys, and by extension, the associated dollars paid to them, may be significantly reduced. The Fiscal 2013 Preliminary Budget, however, recognizes no 18-B savings.

Neighborhood Defender Service

NDS is a full service, community-based indigent defense organization. For several years the City Council funded NDS to provide indigent defense services in the catchment area of Northern Manhattan. In years past, NDS has been deemed ineligible to receive non-discretionary funding from the City since past RFPs have sought the provision of services exclusively at the borough level as opposed to a catchment area level. This contracting reality necessitated the annual provision of funding by the City Council to keep NDS in business.

The recently-released RFP allowed NDS, for the first time, to submit a responsive bid on a catchment area basis. NDS was awarded a multi-year contract with Administration to provide indigent defense services. An executed contract emanating from this process is in place and the current February Plan contains funding for NDS in the amount of \$4.75 million in Fiscal 2012 and \$4.75 million in Fiscal 2013.

Office of the Appellate Defender (OAD).

OAD is a twenty-two year old not-for-profit firm devoted to providing representation to indigent defendants in the First Department, primarily in criminal appeals in State Court and collateral proceedings in State and Federal Court. For several years the City Council funded OAD to provide these services. As a result of the RFP issued for appellate criminal defense services, OAD entered into a multi-year contract with the Administration.

The February 2012 Plan increases the Office of the Appellate Defenders contract from \$1.7 million to \$2.3 million in Fiscal 2012 and Fiscal 2013. The increase of \$557,266 is attributed to an increase in their caseload from the Office of Court Administration that was not originally covered under their contract. As discussed above, the appellate providers are currently in the last year of their two-year renewal option. It is anticipated that within six months, the CJC will release an RFP to begin the process of re-negotiating the contracts. The current renewal will end by June 30, 2014.

Family Court Providers

As it has for the past several years, the indigent defense budget contains funding for three organizations to provide legal representation for adults in certain Family Court proceedings. This combined funding, which emanated from a formal RFP solicitation, and which according to the February 2012 Plan includes \$12.7 million in Fiscal 2012 and the outyears, allows for the

provision of such services in four boroughs: Manhattan (Center for Family Representation, or CFR), the Bronx (Bronx Defenders), Brooklyn (Legal Services NYC), and Queens (CFR).