

THE COUNCIL OF THE CITY OF NEW YORK

Hon. Corey Johnson
Speaker of the Council

Hon. Rory L. Lancman
Chair, Committee on the Justice System



Report of the Finance Division on the
Fiscal 2020 Preliminary Plan

The Legal Aid Society and Indigent Defense

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Indigent Defense Services

State law requires New York City to assume sole responsibility for funding legal representation for indigent criminal defendants, or those who are unable to pay. The Mayor's Office of Criminal Justice (MOCJ) manages the Assigned Counsel Program (18-B, or 18-B Program) and contracts with several community-based legal service providers that represent indigent criminal defendants. The City's indigent defense program ensures that all individuals charged with crimes will have fair, just, and effective counsel at both the trial and appellate levels.

Legal Aid Society (LAS), the City's primary service provider, provides indigent criminal defense services in the State courts at the trial, appellate, conflict, and homicide levels. LAS is the sole institutional provider for Richmond County and on Riker's Island for indigent parole revocation defense. There are five additional indigent defense providers in the City: New York County Defenders (NYCD), Brooklyn Defender Services (BDS), Bronx Defenders (BXD), Queens Law Associates, P.C. (QLA) and the Neighborhood Defender Service of Harlem (NDS). Lawyers appointed to the 18-B Program represent indigent defendants in all five boroughs.

In the Appellate Courts, LAS, 18-B Attorneys and three other alternative contractors: Appellate Advocates (AA), Center for Appellate Litigation (CAL), and the Office of the Appellate Defender (OAD) handle cases. On a limited basis, the City provides legal representation to indigent parents or guardians in Family Court for Article 10 cases (abuse and neglect). The providers are the Center for Family Representation (CFR), which handles cases in Manhattan and Queens; Brooklyn Defenders Services (BDS) in Kings County; Bronx Defenders (BXD) in Bronx County; and Neighborhood Defender Service of Harlem (NDS), which represents defendants from northern Manhattan.

This report provides an overview of the total funding for Indigent Defense Providers as of the Fiscal 2020 Preliminary Plan, key budget issues for Fiscal 2020, and an overview by provider and case type.

Financial Plan Summary and Funding Overview

The table below provides an overview of the Providers' Adopted Budget for Fiscal 2019 and planned expenditures for Fiscal 2019 and Fiscal 2020 as proposed in the Current Plan.

Indigent Defense Funding Summary <i>Dollars in Thousands</i>	Adopted FY19	Preliminary FY19	Preliminary FY20	*Difference 2019-2020
18-B Assigned Counsel Program (City)	\$12,396	\$34,396	\$11,654	(\$742)
18-B Assigned Counsel Program (State)	39,751	39,751	39,751	0
Total 18-B Assigned Counsel Program - Subtotal	\$52,147	\$74,147	\$51,405	(\$742)
Legal Aid Society - Trial	\$93,246	\$93,246	\$93,246	\$0
Legal Aid Society - Appellate	9,481	9,481	9,481	0
Legal Aid Society - Conflict	5,643	5,643	5,643	0
Legal Aid Society - Subtotal	\$108,370	\$108,370	\$108,370	\$0
NY County Defenders	\$9,066	\$9,066	\$9,066	\$0
Bronx Defenders	13,878	13,878	13,878	0
Brooklyn Defender Services	18,775	18,775	18,775	0
Neighborhood Defender Services	4,936	4,936	4,936	0
Queens Law Associates	11,448	11,448	11,448	0
Alternative Providers - Trial Level and Conflict Subtotal	\$58,102	\$58,102	\$58,102	\$0
Non-Homicides New Contracts	\$7,800	\$7,800	\$7,800	\$0
Indigent Defense - Homicides New Contracts	12,757	12,757	19,999	7,242
New Contracts - Subtotal	\$20,557	\$20,557	\$27,799	\$7,242
Appellate Advocates	\$5,448	\$5,448	\$5,448	\$0
Center for Appellate Litigation	5,505	5,505	5,505	0
Office of the Appellate Defender	2,079	2,079	2,079	0
Alternative Providers - Appellate Level Subtotal	\$13,031	\$13,031	\$13,031	\$0
Bronx Family Defense Practice - Bronx Defenders	\$9,892	\$9,892	\$7,251	(\$2,641)
Brooklyn Family Defense Project - Brooklyn Defender Services	10,163	10,163	7,606	(2,557)
Center for Family Representation	8,758	8,758	5,952	(2,807)
Neighborhood Defender Services - CA Harlem	3,319	3,319	2,574	(744)
Article 10 Increase	0	0	8,740	8,740
Family Court Providers - Subtotal	\$32,131	\$32,131	\$32,123	(\$9)
Indigent Defense Contract Total:	\$284,340	\$306,340	\$290,831	\$6,491
State Regional Immigration Centers	\$150	\$150	\$0	(\$150)
Wage Adjustment	3,408	3,408	5,138	1,731
Miscellaneous	3,196	3,196	3,196	0
Service Provider Wage Adjustment	44	44	61	17
Cost of Living Adjustments	0	6,288	0	0
Other Subtotal:	\$6,797	\$13,086	\$8,395	\$1,598
Grand Total:	\$291,137	\$319,426	\$299,226	\$8,089
<i>Funding source</i>				
City	\$251,236	\$279,524	\$259,475	\$8,239
State	39,901	39,901	39,751	(150)
TOTAL	\$291,137	\$319,426	\$299,226	\$8,089

*The difference of Fiscal 2018 Adopted Budget compared to Fiscal 2019 Preliminary Budget.

The Fiscal 2020 Preliminary Plan for indigent defense is \$ 299.2 million for Fiscal 2020, \$8.1 million more than the Fiscal 2019 Adopted Budget of \$291.1 million. Funding for Legal Aid and indigent defense is scheduled in the Miscellaneous Budget (098) and is managed through contracts with MOCJ. City tax-levy funding accounts for \$259.4 million, or 87 percent of the budget, with the remaining \$39.7 million, or 13 percent of funding, coming from the State.

The Fiscal 2020 Preliminary Budget for the indigent defense contracts totals \$290.8 million, an increase of \$6.5 million when compared to the Fiscal 2019 Adopted Budget of \$284 million. This increase is primarily due to the addition of \$7.2 million to support indigent defense homicide contracts, as well as a \$1.7 million increase in wage adjustments.

- Indigent Defense for Homicide Cases.** In 2016, MOCJ released a Request for Proposal (RFP) for trial level indigent criminal defense for primary, conflict, and homicide cases; previously, indigent defense contracts did not include homicide cases and indigent defendants charged with homicide were solely represented through specialized 18-B panels. These contracts were added to the Indigent Defense budget at the time of the 2019 Executive Budget and providers began taking homicide cases as of January 1, 2019. As such, the Fiscal 2019 Budget includes \$12.7 million for start-up costs, and a half-year amount for providing services. This amount increases to \$19.9 million in Fiscal 2020 and in the outyears. The table below outlines the expected caseload for each provider for Fiscal 2019 and Fiscal 2020.

Projected Homicide Caseload

Provider	FY19	FY20
Legal Aid Society	98	196
Bronx Defender	14	28
New York County Defenders Services	7	13
Brooklyn Defender Services	32	63
Neighborhood Defender Services	7	13
Queens Law Associates	17	34
TOTAL	175	347

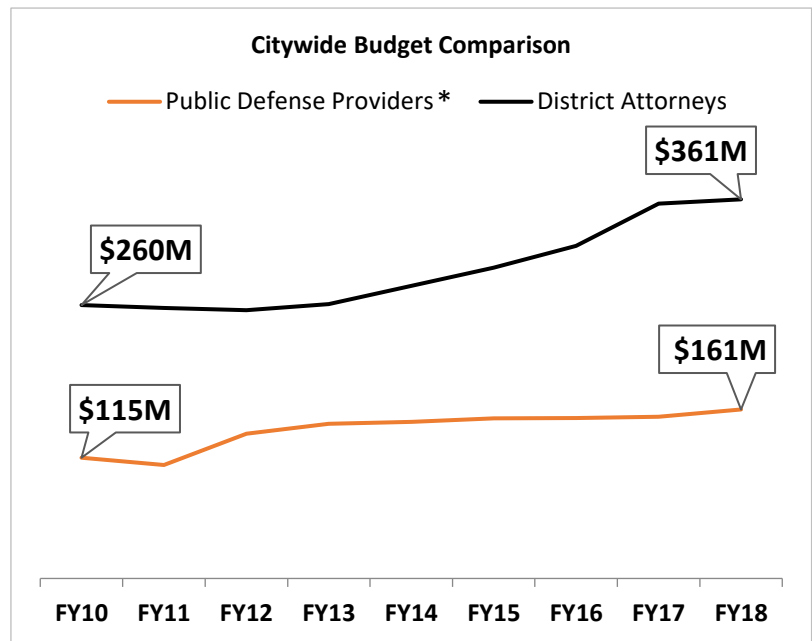
Source: MOCJ

The Fiscal 2020 Preliminary Plan introduces budget actions that impact the Fiscal 2019 Budget, including \$22 million from the City to support reimbursement for 18-B providers and an additional \$6.2 million to support cost-of-living adjustments. 18-B Attorneys do not have fixed caseloads and must submit vouchers to the Court for reimbursement within 45 days of the time of final disposition. Because of this, there is usually a structural deficit in the budget and this adjustment typically happens every year. This will be discussed further in the report under the 18-B section.

Key Budget Issues for Fiscal 2020

Pay Parity

During Fiscal 2019, the Justice Committee held an oversight hearing on Pay Parity and Retention Rates for ADAs and Public Defenders to examine the DAs and Public Defenders Salary and its misalignment with the New York City Law Department Counsel (Corporation Counsel) salary. According to a report, “The Funding Crisis Facing Public Defenders in NYC” submitted to Council staff by the indigent defense providers, when an attorney hits his or her fifth or sixth year of service, they leave the public sector to obtain higher salaries.



*Total Budget of Institutional Providers Criminal Defense Representation
 Source: “The Funding Crisis Facing Public Defenders in NYC”

In addition to lacking comparable salary to Corporation Counsel, Public Defense Service providers have to provide employee health insurance, rent, and specialized investigatory costs associated with their cases from their budget, whereas the DA Offices and other City agencies do not. The chart demonstrates how DA funding has increased overtime, while the Public Defenders’ funding has remained stagnant.

Family Court Contracts

The current funding for Article 10 Family Defense neglect and abuse cases does not reflect actual spending. Due to an uptake in abuse and neglect cases since Fiscal 2016, providers are seeing more Article 10 cases. According to the 2018 PMMR, the Administration of Children’s Services (ACS) filed more than 10,500 cases in Family Court, a 64 percent increase over the cases filed by ACS during the same months of the previous year. MOCJ is continuing to monitor the situation and the budget has included one-shot funding of \$8.7 million dispersed among the providers for the past two years, but has not baseline the funding as of the Fiscal 2020 Preliminary Budget. This will be discussed in further detail in the report. It is estimated that to right-size the budgets of the defenders that handle Article 10 Family Defense cases the cost would be approximately \$10 million.

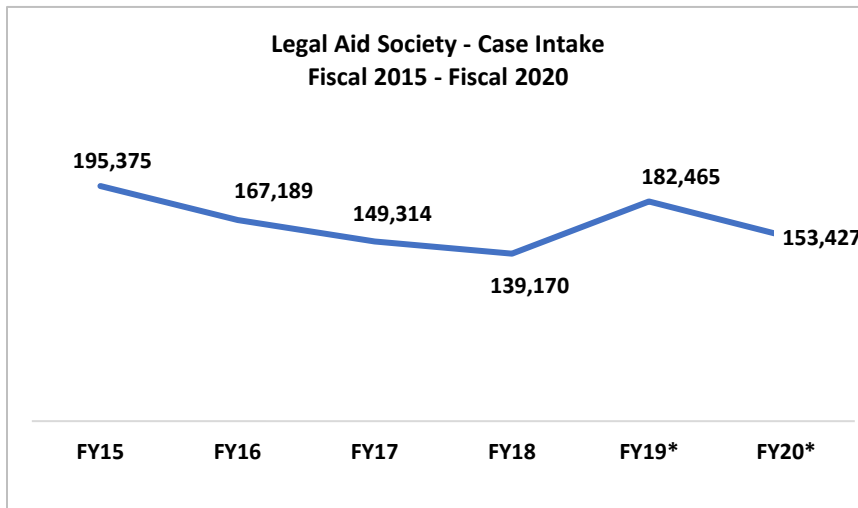
Immigrant Defense

The government’s approach to immigration has increased the workload of Public Defenders and there is an unmet need for increased work in immigration law. Beginning in March of 2019, the Varick Street courthouse is adding two additional intake courtrooms, which is a 66 percent increase over the three courts that currently take on new cases. Due to this increase, the providers are asking for an increase in NYIFUP funding.

Overview by Provider and Case Type

The Legal Aid Society (LAS)

As of the current Financial Plan, the Legal Aid Society’s Fiscal 2020 Budget totals \$108.3 million, plus an additional \$11.1 million for homicide cases, bringing its total Fiscal 2020 Budget to nearly \$119.4 million. Legal Aid Society provides services for trial, conflict, appellate, and as of Calendar Year 2019, homicide cases, through contracts with MOCJ. As of the Fiscal 2020 Preliminary Budget, the LAS’ Fiscal 2019 Budget totals \$108.3 million, plus an additional \$6.6 million for homicide cases. This brings LAS’ total budget for Fiscal 2019 to \$114.9 million.



The chart to the left shows historical and projected case intake for the Legal Aid Society from Fiscal 2015 through Fiscal 2020; case intake for Fiscal 2019 and Fiscal 2020 are projected. Legal Aid Society’s average annual caseload for Fiscal 2015 through 2018 was 162,762. The majority of cases are trials and conflict.

Source: MOCJ

*Projected Caseload

- As of January 2019, conflict cases ceased being allocated separately from primary cases. Conflict cases decrease of approximately 50 percent from Fiscal 2018 to 2019 and drop to zero beginning in Fiscal 2020 due to the contracting change; conflict contracts will be absorbed into trial case contracts.

Trial Level Alternate Providers

The Fiscal 2020 Budget for the alternate providers totals \$58.1 million, with an additional \$7.8 million in funding for non-homicide (dispersed the same as above). An additional \$8.6 million out of the allocated \$19.9 million in homicide contracts is also dispersed to the providers (BXD will receive \$1.9 million; NYCDS - \$603,000; BDS - \$3.6 million; NDS - \$603,000; and QLA - \$1.9 million), bringing the total Fiscal 2020 Budget to \$74.5 million. Similar to LAS, conflict case contracts for the alternate providers will be absorbed into trial case contracts starting in Fiscal 2020. The table below outlines the case intake that is contracted by alternate providers for Fiscal 2019.

The Fiscal 2020 Preliminary Budget for Fiscal 2019 includes \$58.1 million for the trial court defenders trial and conflict cases. Each provider was also allocated funding from the \$7.9 million in funding for non-homicide contracts (NYCDS - \$2.6 million; NDS - \$1.5 million; BDS - \$3.4 million; BXD - \$.6 million; and QLA - \$1.7 million), as well as the \$12.7 million in funding for homicide contracts

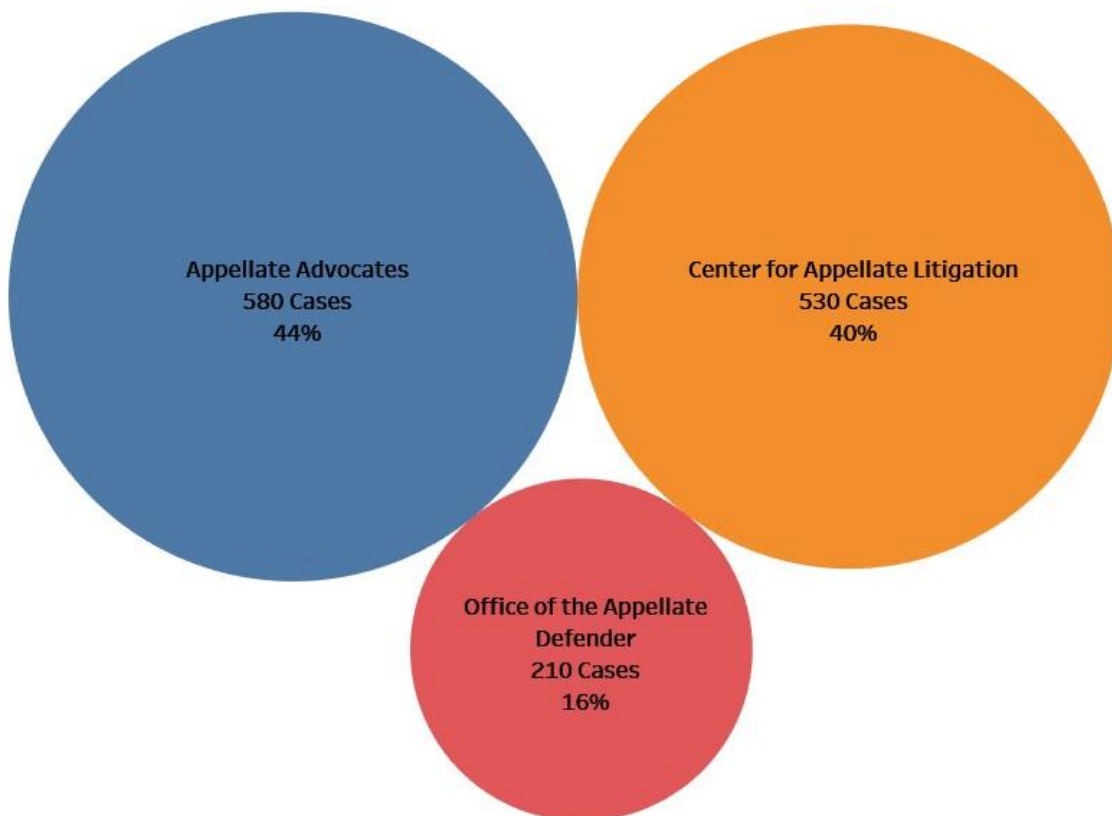
Provider	Criminal Trials	Conflict Cases	Homicide Cases	Total
NYCDS	16,543	1,250	7	17,800
BXD	25,866	1,500	14	27,380
BDS	35,110	2,220	32	37,362
NDS*	8,608	-	7	8,615
QLA	23,036	1,800	17	24,853
TOTAL	109,163	6,770	77	116,010

(NYCDS - \$457,000; NDS - \$451,000; BDS - \$1.9 million; BXD - \$1.4 million; and QLA - \$1.9 million) bringing the total value of the alternate providers trial contracts to \$72 million. In Fiscal 2019, the alternate providers collectively are contracted to intake 116,010 cases. This includes 109,163 for criminal trials, 6,770, for conflict cases, and 77 for homicide cases.

Appellate Level Alternate Providers

The Fiscal 2020 Preliminary Budget for the three appellate litigation service providers is \$13 million. The Office of the Appellate Defender provides representation to indigent defendants convicted of felonies in Manhattan and the Bronx assigned by the 1st Department, in the New York Supreme Court, and State and federal courts. Center for Appellate Litigation also provides services to individuals assigned by the 1st Department, in criminal appeals and post-conviction proceedings in Manhattan and the Bronx. Appellate Advocates cases are assigned by the 2nd Department, and represent clients facing a range of misdemeanors to felonies in the York Court of Appeals and post-conviction proceedings in trial court. In Fiscal 2019 and 2020, the appellate providers are contracted collectively to intake 1,320 cases. The chart below provides a breakdown of the contracted criminal cases by provider for Fiscal 2019.

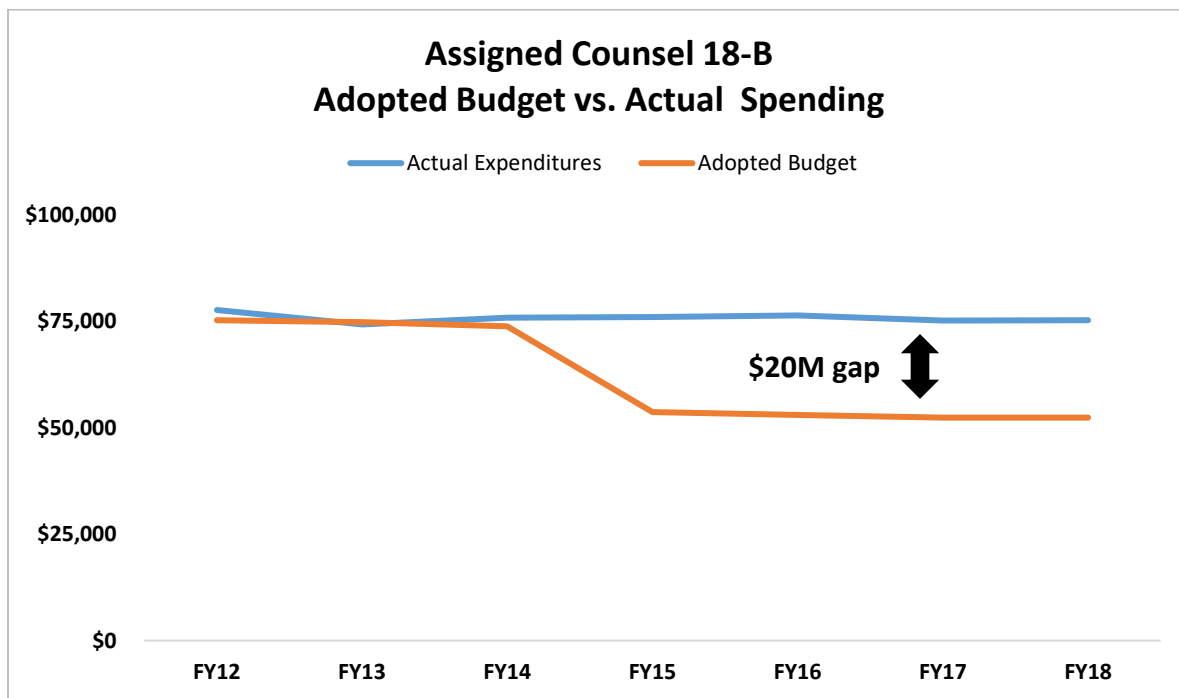
Caseload by Provider



Assigned Counsel Program (18-B)

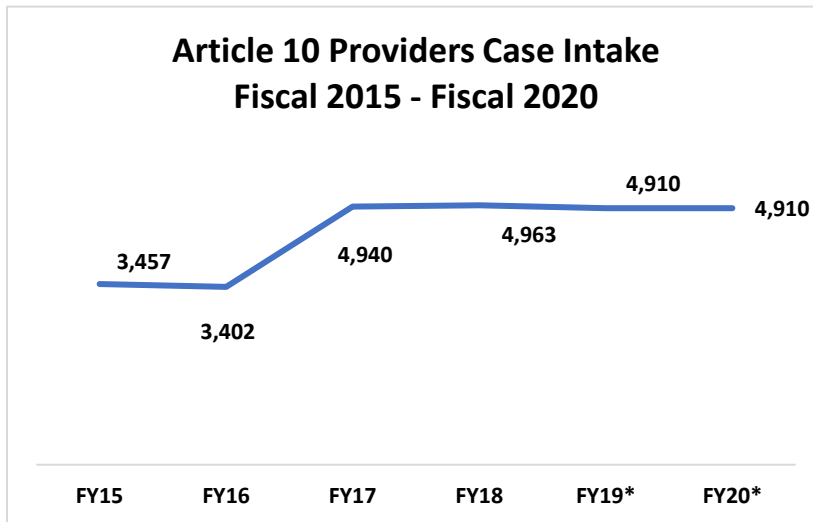
The courts appoint attorneys from the Assigned Counsel Program to represent defendants when representation by one of the indigent defense providers would present a conflict of interest or when a defendant is charged with a crime punishable by death or life imprisonment. Attorneys appointed to the 18-B program represent indigent defendants in criminal trials, appeals, family court proceedings, parole violation and integrated domestic violence (IDV) cases. IDV cases are cases involving families where domestic violence is the underlying issue and one judge presides over all criminal, civil and family court matters involving the family.

The Fiscal 2020 Preliminary Budget for the 18-B Program is \$51.4 million. This includes \$39.7 million in State funding and \$11.7 million in City tax-levy funding. The State funding level has remained unchanged from the Fiscal 2019 Adopted Budget. However, the City funding for Fiscal 2019 has increased by \$22 million to support reimbursements, as described above, and for Fiscal 2020, has decreased by \$742,175. Because of reimbursements, the projected budget for Fiscal 2020 is an estimate of the actual costs and may result in the need for and adjustment in Fiscal 2020.



Source: MOCJ

Although the above chart only shows from Fiscal 2012, 18-B has historically spent what they have been budgeted. In Fiscal 2015, the Administration reduced the 18-B City funded budget by approximately \$20 million to fund conflict cases in hopes to save the City money; the City was under the belief that it would be cheaper to procure contracts with the alternate providers through conflict cases. However, as demonstrated in the chart above the 18-B Program providers’ actual spending has not decreased. They continue to spend approximately \$75,000 annually, and approximately \$20 million is provided through one-shot funding each year to the 18-B providers for reimbursement.



Source: MOCJ
 *Projected Caseload

Family Court Providers

On a case-by-case basis, institutional providers provide legal representation for indigent parents or guardians in Article 10 abuse and neglect cases heard in Family Court. The Fiscal 2020 Preliminary Budget includes a total of \$23.3 million for Family Court Providers, \$8.7 less when compared to the Fiscal 2019 Adopted Budget of \$32.1 million. However, the Fiscal 2020 Preliminary Budget includes one-shot

funding for Fiscal 2020 of \$8.7 million to increase Article 10 funding to the previous year’s funding. This increase is to account for a growth in caseload for family court abuse and neglect cases; caseloads have been consistently increasing and the City allocated one-shot funding to support this issue in Fiscal 2018 and Fiscal 2019, as well. OMB and MOCJ will continue to monitor the caseload for Article 10 cases as they move forward. Of the \$8.7 million increase, \$2.6 million is for Bronx Defenders, \$2.6 million is for Brooklyn Defender Services, \$2.8 million for the Center for Family Representation, and \$744,248 is for Neighborhood Defender Services. In Fiscal 2019, the family court providers are contracted to collectively intake 4,910 cases. The chart below provides a breakdown of the contracted Article 10 cases by provider for Fiscal 2019.