

# THE COUNCIL OF THE CITY OF NEW YORK

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Chair, Committee on the Justice System



Report to the Committee on Finance and the Committee on the Justice System  
on the Fiscal 2021 Executive Budget for the

## **Legal Aid Society and Indigent Defense**

May 20, 2020

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## Legal Aid Society and Indigent Defense Justice Budget Overview

This report presents a review of the Legal Aid Society (LAS) and Indigent Defense providers' (providers) Fiscal 2021 Executive Budget. The section below presents an overview of the providers' budget, followed by a review of the significant budget actions introduced in the Fiscal 2021 Executive Budget, how COVID-19 has impacted the operations and budget, as well as major issues related to the providers' budget. For additional information, please refer to the Fiscal 2021 Preliminary Budget Report for LAS and Indigent Defense at: <https://council.nyc.gov/budget/fy2021/>.

The table below provides an overview of the providers' Adopted Budget for Fiscal 2020, and planned expenditures for Fiscal 2020 and Fiscal 2021 as proposed in the Executive Financial Plan.

<b>Indigent Defense Funding Summary</b>	<b>Adopted</b>	<b>Executive Plan</b>		<b>*Difference</b>
<i>Dollars in Thousands</i>	<b>FY20</b>	<b>FY20</b>	<b>FY21</b>	<b>2020-2021</b>
18-B Assigned Counsel Program (City)	\$11,654	\$11,654	\$10,598	(\$1,056)
18-B Assigned Counsel Program (State)	39,751	39,751	39,751	0
<b>Total 18-B Assigned Counsel Program - Subtotal</b>	<b>\$51,405</b>	<b>\$51,405</b>	<b>\$50,349</b>	<b>(\$1,056)</b>
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
<b>Legal Aid Society - Subtotal</b>	<b>\$108,370</b>	<b>\$108,370</b>	<b>\$108,370</b>	<b>\$0</b>
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
<b>Alternative Providers - Trial Level Subtotal</b>	<b>\$58,102</b>	<b>\$58,102</b>	<b>\$58,102</b>	<b>\$0</b>
Non-Homicides New Contracts	\$7,800	\$7,800	\$7,800	\$0
Indigent Defense - Homicides New Contracts	9,999	19,999	19,999	0
<b>New Contracts - Subtotal</b>	<b>\$27,799</b>	<b>\$27,799</b>	<b>\$27,799</b>	<b>\$0</b>
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
<b>Alternative Providers - Appellate Level Subtotal</b>	<b>\$13,031</b>	<b>\$13,031</b>	<b>\$13,031</b>	<b>\$0</b>
Bronx Defenders	\$7,251	\$7,251	\$7,251	0
Brooklyn Defender Services	7,606	7,606	7,606	0
Center for Family Representation	5,952	5,952	5,952	0
Neighborhood Defender Services - CA Harlem	2,574	2,574	2,574	(0)
Article 10 Increase	8,740	8,740	0	(8,740)
<b>Family Court Providers - Subtotal</b>	<b>\$32,123</b>	<b>\$32,123</b>	<b>\$23,383</b>	<b>(8,740)</b>
<b>Indigent Defense Contract Total:</b>	<b>\$290,831</b>	<b>\$290,831</b>	<b>\$281,036</b>	<b>(\$9,796)</b>
Indigent Legal Services (ILS) State Funding	\$0	\$36,349	\$0	\$0
Indigent Defense Providers' Salary Adjustment	0	3,690	3,690	3,690
Criminal Justice Reform Implementation	0	9,518	9,375	9,375
State Regional Immigration Centers	0	55	0	0
Indirect Cost Rate	0	824	1,319	1,319
Wage and Cost of Living Adjustment	14,419	14,419	14,419	0
Service Provider Wage Adjustment	61	61	61	0
Miscellaneous	3,196	3,196	3,196	0
<b>Other Subtotal:</b>	<b>\$17,676</b>	<b>\$68,112</b>	<b>\$32,060</b>	<b>\$14,384</b>
<b>Grand Total:</b>	<b>\$308,507</b>	<b>\$358,943</b>	<b>\$313,095</b>	<b>\$4,588</b>
<i>Funding source</i>				
City	\$249,409	\$263,495	\$267,082	\$17,673
State	54,243	90,592	44,442	(9,801)
Federal	4,855	4,855	1,572	(3,284)
<b>TOTAL</b>	<b>308,507</b>	<b>\$358,943</b>	<b>\$313,095</b>	<b>\$4,588</b>

## LAS and Indigent Defense Providers' Budget Changes

- The Fiscal 2021 Executive Budget is unchanged from the Preliminary Budget. The Budget for indigent defense totals \$313.1 million, \$4.6 million, or 1.5 percent, more than the Fiscal 2020 Adopted Budget of \$308.5 million. The current budget for the indigent defense contracts totals \$358.9 million, an increase of \$50.4 million, or 15 percent, when compared to the Fiscal 2020 Adopted Budget of \$308.5 million. The below budget actions reconcile the Indigent Defense Budget to its current Fiscal 2020 Budget of \$358.9 million.
  - Budget actions in the November 2019 Financial Plan increased the Fiscal 2020 budget by \$14 million which included \$9.5 million in funding for criminal justice reform and \$3.7 million for pay parity.
  - Several actions in the Executive Budget result in a net increase of approximately \$35.9 million due to the recognition of \$36.3 million in State Indigent Legal Services (ILS) funding, offset by a decrease of \$495,765 in direct-cost rate funding.

### Changes by Funding Source

- City tax-levy funding increases indigent defense by \$14 million in Fiscal 2020 and \$17.7 million in Fiscal 2021 as compared to the Fiscal 2020 Adopted Budget. State funding increases the current Fiscal 2020 budget by \$36.3 million; however, these funds decrease by \$13 million in Fiscal 2021 because State and federal funding is typically recognized on a one-year basis during the course of each fiscal year.

## COVID-19

The onset of the COVID-19 pandemic in March 2020 led to a PAUSE order for New York State, with emergency Executive Orders leading to citywide shutdowns of nonessential businesses and services as part of a concerted public health response. In the following weeks, the Governor signed several Executive Orders impacting the operations of Courts and the work of the indigent defense providers. As of March 22, 2020, virtual court operations began for New York City's Family Court and Criminal Court, including arraignments, and New York City Civil Court started hearing essential or emergency applications. The New York State Unified Court System, which includes the Supreme Civil and Criminal Courts, Family and Surrogate Courts, as well as some specialized court parts, are using Skype Business for all virtual court operations. As of April 13, 2020, New York City Civil Court began hearing selected non-essential cases and virtual court operations continue to expand to include non-essential functions. Most recently, preliminary hearings will begin in lieu of convening a Grand Jury in felony cases where someone would be held in custody. Notably, this is the first time that New York City will hold preliminary hearings.

The providers have shifted operations and programming due to COVID-19. These programmatic changes have mostly occurred within the providers' existing resources, but the providers have accrued additional costs related to COVID-19. Below are updates as a result of the pandemic.

### Impacts on Personnel and Budget

The staff of the providers are currently working from home for the duration of the Governor's Executive Order for all non-essential staff to work remotely. As discussed above, Court functions in all five boroughs have transitioned to remote operations. As such, the providers have equipped their attorneys with Skype Business to allow representation of clients in virtual court rooms. Additionally, as the virtual

capacity of the Courts continues to expand, providers are supplying staff with printers, toner, and other supplies to support remote work. As of May 14, 2020, The Legal Aid Society has spent a total of \$886,140 on COVID-19 related expenses, Center for Family Representation has spent \$66,745, the New York County Defenders has spent \$11,404, and Bronx Defenders has spent \$983,570. As shown in the graphic below, the majority has been spent on technology and equipment necessary for attorneys and staff to work from home.

### COVID-19 Spending



### Impacts on Operations and Programming

- Releases from City Jails and State Department of Corrections and Community Supervision (DOCCS).** Due to the COVID-19 pandemic, the City and State took action to release as many people as possible from City Jails and State facilities. In collaboration with the Mayor’s Office of Criminal Justice (MOCJ), the Department of Correction (DOC), the indigent defense providers, the District Attorneys, and State DOCCS, the City has released over 2,650 people from DOC custody. According to The Legal Aid Society, workload within the legal departments and special litigation units has increased with filing of writs of habeas corpus, appeals, and bail applications. The providers have negotiated cases that have resulted in the release as many clients as possible from incarceration. As of mid-March, DOC has provided individuals who are incarcerated with tablets and indigent defense attorneys have the ability to video conference with clients being held in custody.
- Legal Aid’s Prisoners’ Rights Project (PRP).** The Council funds PRP at \$1 million in Fiscal 2020. The program has seen an increase in calls and emails as compared to the same reporting period this time last year. Legal Aid has reported that PRP is fielding close to 1000 emails and 55 calls a day as concerns about health and safety related to COVID-19 increase among those who are incarcerated.
- Supportive Services.** Provider testimony given at the Council’s Disparate Impacts of COVID-19 hearing highlighted the historical disinvestments in communities of color that have resulted in health disparities and COVID-19 comorbidities, coupled with higher rates of incarceration. Since the providers have connections with their clients they are assisting with supportive services in expansion of their defense work. Re-Entry individuals are eligible for public benefits and providers are working to collaborate with social work staff to connect individuals to services including economic and benefits support, housing resources, personal protective equipment, and address issues of food insecurity, mental health, and substance use among others. The

Center for Family Representation has spent \$12,500 on pre-paid smartphones for clients to remain in contact with their attorney, and social workers. Furthermore, the providers are working to supply clients with masks and personal protective equipment. Providers, such as the Bronx Defenders, are working within their communities to accept donations of clothing, MetroCards, and other necessary items to support the success of individuals returning to their communities, and Legal Aid's Community Justice Unit has pivoted to providing virtual Know Your Rights workshops to community members with specific legal questions and issues.

- **Case Intake.** According to NYPD data, arrests are down since March 12<sup>th</sup> to May 7<sup>th</sup> when compared to the same time period as last year. For example, misdemeanor arrests have decreased 52 percent. As a result of the decrease in arrests, new case intake has decreased substantially, especially for low-level arrests. However, due to the State's PAUSE and halt on trials, pending case loads are growing until such time when they can move forward in Court. Additionally, providers, such as the Bronx Defenders, have noted that although arrests decreased when the pandemic first started, the organizations are concerned that arrests are increasing back to levels seen before the pandemic.
- **Change in Processes.** Although the impact of COVID-19 is devastatingly negative, the indigent defense providers are hopeful that some criminal justice practices will change moving forward as a result of the pandemic. For example, if virtual court capabilities are continued in some capacity, it could decrease an individuals' barriers, such as work or transportation, to attending court appearances. Furthermore, in the City's efforts to release as many people as safely possible from incarceration, the City may continue to invest in diversion programs and alternatives to incarceration. The City should consider long-term investments to support these capabilities moving forward.

## Budget Issues

The following section provides issues and concerns as it pertains to the Indigent Defense budget. The following budget risks were identified as part of the Fiscal 2021 Preliminary Budget, or as a result of COVID-19, that have not been addressed in the Executive Budget.

- **COVID-19 Related Costs.** Although the providers' contracts are not at risk of being cut due to the COVID-19 pandemic, the providers have spent money out-of-pocket to provide staff with necessary equipment to work from home and will continue to do so as the pandemic continues. It is expected that the City will reimburse these expenses, however, this is not reflected in the Executive Plan.
- **\$3.7 million for Pay Parity Across MOCJ Contracts.** The Fiscal 2020 Adopted Budget included \$3.7 million to support pay parity for lawyers with less than five years of experience working on MOCJ's baselined contracts. This adjustment will impact a total of 399 attorneys. Although the funding is budgeted, OMB has not approved the plans yet, and as such MOCJ has not yet amended the providers' contracts to reflect the salary adjustments. Additionally, the adjustments only cover attorneys that are working on MOCJ's baselined contracts; attorneys with zero to four years of experience working on State and City Council discretionary contracts are not included in these adjustments, which is a priority across all of the providers. Some Offices have provided the adjustments upfront, putting a strain on their budgets. Additionally, the providers are concerned that the phase two analysis the Administration committed as part of the Fiscal 2020 Adopted Budget will no longer occur due to the City's fiscal crisis due to

COVID-19. For more information on this topic, please see the Council's website and view the Fiscal 2021 Preliminary Report mentioned on Page One.

- **Technology Gaps.** As discussed in the Fiscal 2021 Preliminary Report, in January 2020, the Committee held an oversight hearing in an attempt to examine the "technology gap" between District Attorney Offices and Public Defender Offices in New York City. The two areas in which the providers are lacking forensic analysis tools are in DNA analysis and digital forensic analysis. Software needs include technology such as STRmix, a forensics tool that assists in analysis of DNA, and Cellebrite, which offers data extraction, transfer, and analysis from cellular devices. These software are prohibitively costly to license and maintain compared to the overall budgets of the indigent defense providers. In addition to software, some providers would need to hire additional staff whose purpose would be to provide operation and expertise related to the software and analysis. The Administration should commit to analyzing these issues and the budget implications, and consider amending the providers' contracts. Additionally, the providers are concerned with having the necessary systems in place to handle discovery processes. For more information on these topics, please see the Council's website and view the Fiscal 2021 Preliminary Report mentioned on Page One.