

THE COUNCIL OF THE CITY OF NEW YORK



Hon. Christine C. Quinn
Speaker of the Council

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

Hearing on the Fiscal 2014 Preliminary Budget & the Fiscal 2013 Preliminary Mayor's Management Report

Legal Aid Society/Indigent Defense

March 7, 2013

Regina Poreda Ryan, Deputy Director
Eisha N. Wright, Unit Head

Finance Division
Preston Niblack, Director
Jeffrey Rodus, First Deputy Director

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Indigent Defense Fiscal 2014 Preliminary Budget Overview

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 law firms to represent indigent criminal defendants and also operates the Assigned Counsel Program. 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. The Mayor's Criminal Justice Coordinator is responsible for managing the indigent defense system and for contracting with providers.

The Legal Aid Society (LAS) serves as the City's primary indigent criminal defense provider in the State courts at both the trial and appellate levels. The City also has engaged four alternative firms to represent indigent defendants. They are New York County Defenders which handles cases in New York County, Brooklyn Defender Services in Kings County, Bronx Defenders in Bronx County, and Queens Law Associates, P.C. in Queens County. Additionally, the Neighborhood Defender Service (NDS) represents defendants from Northern Manhattan. The LAS is the sole institutional provider in Richmond County. Of note, Battiste, Aronowsky & Suchow served as the alternative provider on Staten Island through Fiscal 2012. Lawyers appointed to the Assigned Counsel Program, also known as the 18B Program may also represent indigent defendants in all counties. The LAS also is the City's only institutional provider of indigent parole revocation defense representation on Rikers Island.

In the Appellate Courts, the LAS, two alternative contractors (Appellate Advocates and Center for Appellate Litigation), the Office of the Appellate Defender, and 18-B attorneys handle cases. The City also provides, on a limited basis, institutional representation for adults in Family Court.

This report presents an analysis of the Indigent Defense portion of the City's Miscellaneous Budget (Agency 098) as proposed in the Fiscal 2014 Preliminary Budget. In the section below, the Fiscal 2014 budget is presented in a funding summary table which provides an overview of indigent defense spending for Fiscal 2013 and Fiscal 2014 by provider. The chart is followed by a discussion of year over year changes, an overview of the criminal indigent defense providers and the civil legal services provided by Legal Aid and funded through City Council Initiatives. The Committee on Fire and Criminal Justice Services will hold a hearing on the Fiscal 2014 Preliminary Budget for the Legal Aid Society and Indigent Defense on March 7, 2013.

Indigent Defense Funding Summary

<i>Dollars in Thousands</i>	2013 Adopted	2013 Jan. Plan	2014 Jan. Plan	*Difference 2013-2014
18-B Assigned Counsel Program	\$74,836	\$74,160	\$74,836	\$0
Legal Aid Society – Criminal Defense	\$86,686	\$86,686	\$84,700	(\$1,986)
Legal Aid Society - Appellate	11,423	11,423	9,481	(1,942)
Legal Aid Society - sub-total	\$98,109	\$98,109	\$94,181	(\$3,928)
NY County Defenders	\$7,236	\$7,236	\$7,236	\$0
Bronx Defenders	11,732	11,732	11,732	0
Brooklyn Defender Services	14,440	15,098	14,440	0
Queens Law Associates, P.C.	8,448	8,448	8,448	0
Alternative Providers - Trial Level sub-total	\$41,856	\$42,514	\$41,856	\$0
Appellate Advocates	\$7,035	\$7,035	\$5,351	(\$1,684)
Center for Appellate Litigation	7,156	7,156	5,040	(2,116)
Alternative Providers - Appellate Level sub-total	\$14,191	\$14,191	\$10,391	(\$3,800)
Neighborhood Defender Services (Upper Manhattan)	\$4,750	\$4,750	\$4,750	\$0
Office of the Appellate Defender	\$2,611	\$2,611	\$2,054	(\$557)
Center for Family Representation (Manhattan)	\$2,442	\$2,442	\$2,442	\$0
Center for Family Representation (Queens)	2,483	2,483	2,483	0
Bronx Defenders	4,163	4,163	4,163	0
Legal Services for New York City (Brooklyn)	3,805	3,805	3,805	0
Family Court Providers sub-total	\$12,892	\$12,892	\$12,892	\$0
Art. 10 Family Justice Center	\$117	\$117	\$234	\$117
Miscellaneous	\$3,233	\$3,233	\$2,233	(\$1,000)
State Office of Indigent Defense Funding			\$661	
Total Indigent Defense Services Budget	\$252,595	\$253,239	\$243,427	(\$9,168)

*The difference of Fiscal 2013 Adopted compared to Fiscal 2014 Preliminary Plan.

The Fiscal 2014 Preliminary Budget for indigent defense services includes \$243.4 million for Fiscal 2014. This is \$9.2 million less than the Fiscal 2013 Adopted amount of \$252.6 million and the current Fiscal 2013 modified budget of \$253.2 million.

At the time of Adoption for Fiscal 2013 the projected budget for Fiscal 2014 was \$243.4 million and has remained unchanged. The year over year change of \$9.2 million is attributable to one-time costs that were included in the Fiscal 2013 Adopted budget but not in the baseline budget.

The Fiscal 2013 Modified Budget remains essentially unchanged compared to the adopted budget. Contract adjustments totaling \$643,449 have increased the Fiscal 2013 budget to \$253.2 million. These changes include a \$658,000 increase for Brooklyn Defender Services; recognition of \$660,815 in State Office of Indigent Legal Services funds (OILS) to support immigrant legal services provided by six providers; and a reduction to the 18-B Assigned Counsel program of \$675,366. (Please see the provider section below for individual contract details.)

The Providers

The Legal Aid Society (LAS)

The Fiscal 2014 Preliminary Budget for Legal Aid includes \$94.2 million, \$4.2 million less than the Fiscal 2013 Adopted Budget of \$98.2 million. For Fiscal 2014, \$84.7 million is for criminal indigent defense and \$9.5 million is for appellate litigation services. As the primary indigent criminal defense provider in the State court system there is no cap on the number of criminal indigent cases that LAS handles. On the appellate level LAS is funded to handle 1,118 cases annually.

The reduction of \$4.2 million is attributable several one-time costs that were included in the Fiscal 2013 Adopted Budget but not in the baseline budget. A \$1.9 million increase in Fiscal 2013 covered costs associated with 218 additional appellate cases that were handled in Fiscal 2012 by LAS. Another \$2 million was added to cover the LAS' increased health care costs for UAW staff attorneys and non-union staff, increased 1199 health care and pension costs, and seniority increases for the UAW and 1199 staff. Although the \$2 million is an ongoing expense for LAS it is not included in the Preliminary Budget for Fiscal 2014 because LAS re-negotiates the terms of its contract each year with the Criminal Justice Coordinator. Finally, State funding of \$322,729 was added in Fiscal 2013 only to support and enhance legal services provided to immigrant criminal defendants.

Alternative Indigent Defense Contractors

In addition to the Legal Aid Society, the City contracts with six indigent defense firms. The four that provide criminal defense services include New York County Defenders, Bronx Defenders, Brooklyn Defender Services, and Queens Law Associates, P.C. The two that provide appellate advocacy are the Center for Appellate Litigation (1st Appellate Department) and Appellate Advocates (2nd Appellate Department.) The alternate providers are contracted to represent a fixed number of cases, unlike Legal Aid.

Trial Level Alternate Providers

The Fiscal 2014 Preliminary Budget includes \$41.8 million in Fiscal 2014 for the trial-level alternative provider which remains unchanged since June 2012.

The November 2012 Plan included contractual adjustments of \$932,125 (City \$658,000 and State \$274,124) increasing the Fiscal 2013 budget. Of that amount, \$658,000 supported the expansion of office space for Brooklyn Defender Services due to an increase in its caseload. The remaining \$274,124 was State OILS funding to support legal services for immigrant criminal defendants. Queens Law Associates, P.C. received \$82,238 and the other three providers each received \$63,962.

Appellate Level Alternate Providers

The Fiscal 2014 Preliminary Budget for appellate litigation services includes \$10.4 million, \$3.8 million less than the Fiscal 2013 Adopted amount of \$14.2 million. For Fiscal 2014, \$5.35 million

will support work provided by the Appellate Advocates (AA) and \$5 million will support work provided by the Center for Appellate Litigation (CAL).

The reduction of \$3.8 million (\$1.7 million for AA and \$2.1 million for CAL) is attributable to one-time costs that were included in the Fiscal 2013 Adopted budget to cover costs associated with additional appellate cases (171 for AA and 215 for CAL) that were handled in Fiscal 2012.

Appellate Advocates are funded to handle 601 appellate cases annually and Center for Appellate Litigation is funded to handle 595 appellate cases annually.

Assigned Counsel Program (18-B Attorneys)

The Courts appoint attorneys to the Assigned Counsel Program to represent defendants when representation by an indigent defense provider would 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. The Fiscal 2014 Preliminary Budget includes \$74.8 million for the 18-B Assigned Counsel Program which remains unchanged since June 2012. Of that amount approximately \$34.9 million is city-funded and \$40 million is State funded.

The November 2012 Plan included a contractual adjustments of \$675,366 which lowered the Fiscal 2013 budget to \$74.2 million.

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.

Last year, NDS won a multi-year contract with the Administration to provide indigent defense services, and the Fiscal 2013 Adopted budget included baseline funding of \$4.74 million which remains unchanged for the Fiscal 2014 Preliminary Budget.

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.

The Fiscal 2014 Preliminary Budget includes approximately \$2 million for OAD, \$557,000 less than the Fiscal 2013 Adopted amount of \$2.6 million. The reduction of \$557,000 is one-time costs that were included in the Fiscal 2013 Adopted budget due to an increase in their caseload from the Office of Court Administration that was not originally covered under their contract.

☑ Family Court Providers

The indigent defense budget contains funding for three organizations to provide legal representation for adults in certain Family Court proceedings. This combined funding includes approximately \$12.9 million in Fiscal 2014 and the outyears 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). Of that amount, CFR is funded at a total of \$4.8 million, Bronx Defenders is funded at approximately \$4.2 million, and Legal Services NYC is funded at \$3.8 million.

Council Initiatives and Funding

Since Fiscal 1993 the City Council has funded the Legal Aid Society to provide a range of civil legal services to New Yorkers. Civil legal services are a great resource for low-income New Yorkers. At the Committee on Fire and Criminal Justice Services' hearing on the Fiscal 2013 Executive Budget, Steve Banks the Attorney-in-Chief of LAS indicated that the civil program handled more than 44,000 individual civil matters which benefited around 100,000 poor children and adults citywide. The civil matters that the LAS helps New Yorkers with run the gamut from housing and immigration issues to domestic violence and family law to employment matters.

The Fiscal 2014 Preliminary Budget contains \$2.2 million for the Legal Aid Society to provide civil legal services through several Council Initiatives. None of the Fiscal 2013 Initiative funding is baselined. Please see below for the initiatives that were funded by the Council in Fiscal 2013.

FY 2013 Council Initiatives	
Anti Eviction and SRO Legal Services	
Legal Aid Society / Civil Division- Bronx	\$124,643
Legal Aid Society / Civil Division- Brooklyn	163,963
Legal Aid Society / Civil Division- Community Law Office	262,782
Legal Aid Society / Civil Division- Queens	93,750
Legal Aid Society / Civil Division- Staten Island	68,750
Subtotal	\$713,888
Anti-Gun Violence Initiative	\$550,000
Citywide Civil Legal Services	\$750,000
Immigrant Opportunities Initiative	\$585,000
Unemployment/SSI Program	\$500,000
Subtotal	\$2,385,000
Local Initiatives	\$26,719
Total	\$3,125,607

- **Anti Eviction and SRO Legal Services** – Funded at \$2 million in Fiscal 2013, this initiative supports services to low-and moderate-income people faced with eviction and to Single Resident Occupancy (SRO) tenants. Legal Aid received \$714,000 for the provision legal services and advocacy.
- **Anti-Gun Violence Initiative** – Funded at \$550,000 in Fiscal 2013, this initiative is intended to provide services to people touched by gun violence in the five neighborhoods with the highest rates of gun violence. LAS will provide legal support to help at-risk youth and their families navigate different issues. Issues may include access to government services such as health, childcare, and income support or legal assistance to individuals who are involved and aware of circumstances around shooting incidents who are not aware of their rights or apprehensive to provide assistance due to other criminal justice involvement.
- **Immigrant Opportunity Initiative** – Funded at \$4 million in Fiscal 2013, this initiative supports a variety of programs that serve New York City’s immigrants, including legal services. Legal Aid received \$241,000 to provide legal assistance with wage and hour disputes and other workplace issues faced by immigrants.
- **Citywide Civil Legal Services** – Funded at \$1.5 million in Fiscal 2013, this initiative funds several organizations to provide legal assistance indigent persons. Legal Aid received \$750,000 through this initiative, which supports its services that include but are not limited to: direct client representation, including representation in class action cases; provision of legal advice; community legal education presentations; pro-bono and volunteer lawyer programs; and hotline and other telephone-based legal services. The types of legal assistance that the LAS provides include, but are not limited to: consumer and finance; education; employment; family; juvenile rights; health; housing; income maintenance; individual rights; and miscellaneous benefits.
- **Unemployment Insurance/Supplemental Security Income Program** – Funded at \$1 million in Fiscal 2013, this initiative is intended to help eligible New Yorkers access unemployment insurance and supplemental security income benefits. Legal Aid received \$500,000 to provide legal representation to disabled and unemployed individuals at hearings before Administrative Law Judges seeking Unemployment Insurance Benefits (UIB) and Supplemental Security Income (SSI) benefits.