



STATE OF INJUSTICE:

How New York State Turns
its Back on the Right to
Counsel for the Poor

“The amount of money someone makes should not determine how justice is served.”

DONALD TELFAIR, NEW YORK STATE DEFENDANT

“In all criminal prosecutions, the accused shall enjoy the right to . . . Assistance of Counsel . . .”

UNITED STATES CONSTITUTION, SIXTH AMENDMENT



State of Injustice:

How New York State Turns its Back on the Right to Counsel for the Poor

September 2014

ACKNOWLEDGMENTS

This report was written by Ujala Sehgal, Helen Zelon and Lauren Alexander. It was edited by Jennifer Carnig, Christopher Dunn, Donna Lieberman and Corey Stoughton. Additional support was provided by Sejal Singh, Mariko Hirose, Erin Harrist and lawyers from the firm of Schulte Roth & Zabel LLP. It was designed by Li Wah Lai, who generously donated her time. Graphics and additional support were provided by Abby Allender.

ABOUT THE NEW YORK CIVIL LIBERTIES UNION

The New York Civil Liberties Union (NYCLU) is one of the nation's foremost defenders of civil liberties and civil rights. Founded in 1951 as the New York affiliate of the American Civil Liberties Union, we are a not-for-profit, nonpartisan organization with eight offices and nearly 50,000 members across the state. The mission of the NYCLU is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality and due process of law for all New Yorkers. For more information, please visit www.nyclu.org.



CONTENTS



Executive Summary	1
I. The Right to Counsel: From Clarence Gideon to Kimberly Hurrell-Harring	5
New York’s History of Neglect.....	6
<i>Hurrell-Harring: A Class Action Lawsuit Intent on Change</i>	7
II. How New York’s Poor Defendants Are Denied Justice	8
Public Defense Eligibility.....	9
Initial Attorney Contact.....	10
Arraignment.....	10
Attorney-Client Communication.....	12
Research, Investigators and Experts.....	13
III. Defense Attorneys: Set Up to Fail	16
“Cattle Call Criminal Justice”.....	16
Absent Oversight.....	18
IV. How Underfunding Created a Broken System	20
V. Recommendations	23
VI. Endnotes	25



EXECUTIVE SUMMARY

“You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you.”

If you watch enough television, you’ve probably heard the Miranda rights – your rights if you’re accused of a crime and arrested. Most Americans know those words as well as they know the Pledge of Allegiance. Those rights give us a sense of freedom and security. They define who we are as Americans.

The right to an attorney is guaranteed under the United States Constitution. In 1963, the United States Supreme Court unanimously ruled in *Gideon v. Wainwright* that everyone accused of a crime is entitled to a competent lawyer even if he or she cannot afford one.

But more than 50 years later, poor and often innocent New Yorkers are forced through the criminal justice system and sent to jail undefended and alone.

Almost immediately after the Supreme Court’s ruling in *Gideon*, New York abdicated its constitutional duty by dumping the responsibility for public defense on its 62 counties. There were no standards and no oversight.¹ As a result, today there is a jumble of inadequate public defense systems across the state. Not until 2010 did the state create an agency related to public defense, the Office of Indigent Legal Services, which has been consistently underfunded and unable to provide meaningful oversight. Meanwhile, New York has turned its back on decades of studies and official reports warning that indigent defendants are consistently denied their right to counsel.

As a result, justice in New York often is available only for those who can afford it.

James Adams was arrested for stealing deodorant from a drug store in Onondaga County. Without a lawyer, he was charged with two felonies and a misdemeanor, and his bail was set at \$2,500 – an amount he could not afford. His lawyer did not visit him in jail for more than 90 days, and did not show up at court hearings. At trial, he was acquitted of the two felony charges and sentenced to time served. While he sat in jail for months, he lost his job and his family was evicted.²

Undefended and Alone. Every day in courtrooms across New York State, people accused of crimes who can't afford a private attorney stand alone. They stand alone at arraignment, the initial hearing before a judge when bail is set and the defendant must plead guilty or not guilty. They stand alone while law enforcement and prosecutors conduct investigations and talk to experts to build cases against them, using resources the accused will never have access to themselves. They stand alone as they accept or reject plea bargains, often unaware of the consequences of their actions.

New York's public defense attorneys feel alone, too – caught in a system in which they are forced to carry caseloads that make them violate their own rules of professional conduct by providing woefully inadequate representation to their clients.

Jacqueline Winbrone was held in Onondaga County on \$10,000 bail for criminal possession of a weapon – a gun her husband admitted he put in her car. She called her attorney for five days straight but he did not respond. Winbrone's husband died during the 50 days she was in custody awaiting trial. Her lawyer failed to notify her when the case was ultimately dismissed.³

The impact of this broken system is magnified because it involves New York's most vulnerable residents. Children are needlessly separated from parents and placed in foster care, even though a competent attorney might have easily negotiated the parent's release from custody. Too often, the sick and elderly who depend on family members for care deteriorate as their spouses and relatives languish in jail, awaiting trial. Those who live paycheck-to-paycheck are the first to lose their homes and jobs when no lawyer is there to negotiate bail.

The poor may suffer the most obvious effects, but all New Yorkers pay the price. There are no public safety benefits to sending innocent people to jail or locking up minor offenders for too long. Instead, New Yorkers bear significant moral and social costs, not to mention the financial burden of funding expensive and unnecessary incarceration.

In 2007 the New York Civil Liberties Union and the law firm Schulte Roth & Zabel LLP sued New York State over its failure to represent poor, or indigent, defendants.⁴ The class-action lawsuit, *Hurrell-Harring et al. v. New York*, focused on five New York counties: Onondaga, Ontario, Schuyler, Suffolk and Washington (Ontario County has since settled with the NYCLU).

This report examines the disgraceful state of public defense in New York State, focused on these five counties. The data and personal accounts in this report were gathered from testimony, affidavits, budget requests and other materials obtained through the discovery process in the *Hurrell-Harring* lawsuit.

KEY FINDINGS

This report reveals how New York’s public defense system routinely fails poor people accused of crimes.

- In Onondaga County in 2012, where there are routinely more than 10,000 public defense cases a year, defendants never met with an attorney outside of court in almost one-third of public defense cases. Most of them ultimately plead guilty to criminal charges.⁵

Poor defendants never met an attorney out of court in almost **one in three** public defense cases in Onondaga County in 2012 – where there are often more than **10,000 public defense cases a year**.

- Although effective counsel often requires a factual investigation and forensic expertise, defense counsel often fail to consult expert witnesses in New York.⁶ Experts were consulted in effectively zero percent of the tens of thousands of cases in Suffolk County.⁷ In Onondaga County in 2011, investigators were not hired in 99.7 percent of cases.⁸

- The New York State Bar Association and national legal experts recommend that attorneys carry no more than 150 felony cases a year.⁹ In New York State, public defense attorneys have been known to carry as many as 420 felony cases a year, in addition to misdemeanor cases and, in some instances, family court cases.¹⁰

Public defense attorneys should carry no more than **150 felony cases**. In New York, public defense attorneys are known to carry **420 felonies a year** – nearly three times as many as the recommended maximum.

- Public defense attorneys have severely limited budgets for investigations, paralegals and workplace basics, including computers.¹¹ In Washington County in 2012, the seven attorneys in the Public Defender’s Office shared a single computer.¹²

RECOMMENDATIONS

The time to end New York's shameful failure to provide adequate public defense is now. New York's approach to public defense undermines our state's historic reputation as a national beacon of fairness, equality and justice. As a progressive leader of a politically progressive state, Governor Andrew Cuomo should recognize the travesty that New York began decades ago and take immediate steps to correct it.

Three broad reforms are essential to advance New York's commitment to equal justice for all, ensure fair outcomes in criminal cases and improve the efficiency of our judicial system. State leaders including Gov. Cuomo should:

- Immediately ensure that there is a lawyer representing every poor criminal defendant in New York at the initial court appearance, and ensure that the lawyer has previously met with the defendant and is prepared to contest the charges and advocate for pre-trial release or affordable bail.
- Immediately reduce the huge caseloads of public defense attorneys so they have the time to communicate with defendants, investigate cases, research and file legal motions, and be prepared for court.
- Replace the disorganized and underfunded county-based arrangement for public defense with a true system run by New York State with adequate funding, standards and supervision to assure poor criminal defendants receive the defense to which they are entitled under the Constitution.¹³ ■



I. The Right to Counsel: From Clarence Gideon to Kimberly Hurrell-Harring

More than half a century ago, a poor Florida drifter named Clarence Gideon was arrested for breaking into a pool hall near his temporary, \$6-a-week lodging. Gideon, who quit school after eighth grade and ran away from home, asked the court for an attorney to defend him because he could not afford one. But at the time, counsel for poor or indigent defendants was only provided in death penalty cases. Forced to defend himself, Gideon was convicted and sentenced to five years in prison.¹⁴

From the prison library, Gideon handwrote a five-page petition to the Supreme Court, requesting an appeal. The court heard his case and, in 1963, ruled unanimously that the guarantee of counsel, as codified in the Sixth Amendment, is a fundamental right of all Americans. The court also made clear that, through the due process clause of the 14th Amendment, states are responsible for providing counsel when defendants cannot afford representation.

In the *Gideon v. Wainwright* decision, the court called the right to counsel “fundamental.” Justice Hugo Black wrote:

In our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . This seems to us to be an obvious truth. . . [L]awyers in criminal courts are necessities, not luxuries.

Since *Gideon*, a series of Supreme Court cases has established that the right to counsel requires more than the mere assignment of an attorney. The Sixth Amendment has been interpreted to require *effective* assistance.¹⁵ In 1972, the Supreme Court expanded on the duties and purpose of a lawyer: “Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.”¹⁶

The Right to Counsel in New York State

New York State's Constitution, like the U.S. Constitution, guarantees the right to counsel.¹⁷ New York's Criminal Procedure Law provides that a defendant is entitled to counsel for any offense other than traffic infractions.¹⁸ Various court decisions have made it clear that the right to counsel encompasses the right to investigation of your case and expert review when it is necessary to mount a proper defense.¹⁹ As the state is bound to provide defendants with an attorney, these resources must be provided by the state if defendants cannot afford representation.

In addition, the rules of the legal profession in New York also require all attorneys who represent clients to be diligent and prompt in their assistance.²⁰ If attorneys have too many clients, too few resources, too little expertise or otherwise unmanageable caseloads, they violate their duties as members of the bar.²¹

NEW YORK'S HISTORY OF NEGLECT

In 1965, two years after the Supreme Court ruled that states were responsible for providing counsel to people who could not afford it, New York responded by shifting this burden onto its 62 counties. Each county was required to come up with its own plan and provide for public defense itself. By January 1967, the New York State Bar Association had already detected serious shortcomings in the state's provision of indigent defense.²²

Over the next five decades, a series of reports would go on to document the state's ongoing public defense crisis. Most recently, in 2006, a commission headed by former New York State Chief Judge Judith Kaye investigated public defense practices in New York. The commission concluded that the state is "severely dysfunctional" and "structurally incapable" of providing effective representation, persistently failing to satisfy its constitutional obligations.²³

To this day, state funds cover no more than a small fraction of the cost that New York's counties pay to provide lawyers to the poor. While New York created a state wide Office of Indigent Legal Services (ILS) in 2010, it is effectively incapacitated due to underfunding.²⁴ The state has refused to fully fund the ILS since it first began submitting budget requests.²⁵ As of the 2014-15 fiscal year, the ILS does not guarantee a single county any amount of money for public defense. It can only redistribute small amounts of grant money, which it then cannot afford to monitor or evaluate.²⁶

Sadly, not much has changed in the 50 years since *Gideon v. Wainwright*. According to ILS director William J. Leahy, persistent, destructive

gaps in county public defense systems are "a result of the state tossing the ball to the counties in 1965."²⁷ Leahy added that "most, perhaps all, counties do not currently comply" with laws requiring indigent representation.²⁸

HURRELL-HARRING: A CLASS ACTION LAWSUIT INTENT ON CHANGE

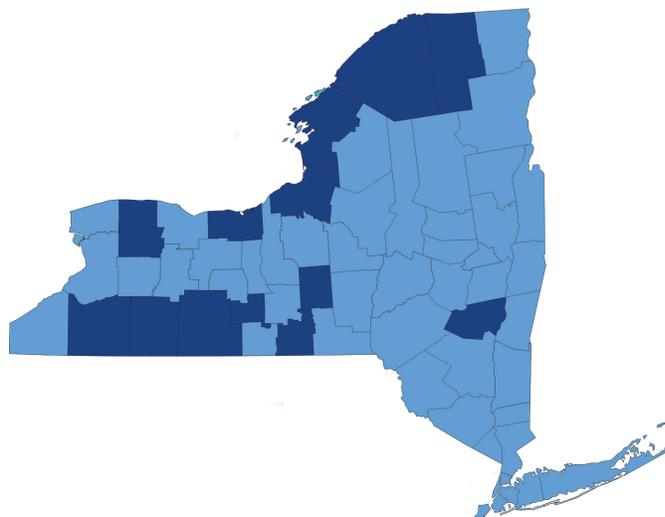
Following its own investigations, in 2007 the New York Civil Liberties Union and the law firm Schulte Roth & Zabel LLP filed *Hurrell-Harring et al. v. New York*, a landmark class action lawsuit on behalf of poor New Yorkers denied proper counsel. The lead plaintiff, Kimberly Hurrell-Harring, was a 31-year-old nursing assistant and mother of two who committed a misdemeanor by trying to bring a small amount of marijuana to her husband in prison.²⁹ Such a misdemeanor rarely results in jail time, especially as Hurrell-Harring was a first-time offender. But her court-appointed lawyer – since disbarred – had her plead guilty to a felony. She spent four months in jail and lost her job and her home.³⁰

The NYCLU's lawsuit cites long-standing, systemic denials of counsel to poor criminal defendants like Hurrell-Harring across New York State. The lawsuit originally focused on five counties across the state – Onondaga, Ontario, Schuyler, Suffolk and Washington – to demonstrate how delegating the responsibility of public defense to counties is a widespread failure. One county, Ontario, settled with the NYCLU in September 2014 before the *Hurrell-Harring* lawsuit goes to trial, after making efforts to enhance public defense services and pledging further improvements should state funding become available.³¹

Hurrell-Harring v. New York is slated to go to trial in the fall of 2014. New York's counties, fed up with bearing an impossible burden, are increasing the pressure on Gov. Andrew Cuomo to fix the broken public defense system. The call for a state-managed public defense system as the only way to stop failing vulnerable defendants, overcrowding prisons and violating New Yorkers' fundamental rights is getting louder. As of July 2014, 14 New York counties have formally passed resolutions asking the state to take over public defense and settle the *Hurrell-Harring* lawsuit.³²

The data and personal stories in this report, which date from before 2005 through 2014, were gathered from the collection of testimony, affidavits, budget requests and other materials uncovered through the discovery process in the *Hurrell-Harring* lawsuit. ■

New York counties that have formally passed resolutions asking the state to take over public defense and settle the *Hurrell-Harring* lawsuit (as of 2014):



- Allegany
- Cattaraugus
- Cortland
- Franklin
- Genesee
- Greene
- Jefferson
- Orleans
- Oswego
- Schuyler
- St. Lawrence
- Steuben
- Tioga
- Wayne



II. How New York's Poor Defendants Are Denied Justice

New York's criminal justice system has a series of protections built into it that occur the moment someone is arrested.

Today, if you are accused of a crime, you should retain an attorney as soon as possible. Your attorney needs time to review facts before your initial court appearance – your arraignment – that might persuade the judge to release you from custody, such as your ties to the community and your criminal history (or lack thereof). The earlier a defense attorney enters your case, the better chance he or she has to protect your rights and provide effective representation.

You must be brought before a judge in your local criminal court for arraignment within 24 hours of being arrested, and your lawyer must be present during arraignment to advocate on your behalf.³³ During arraignment, the judge will determine whether or not you can be released from custody on bail or whether you must be remanded to jail while you await the resolution of your case.

After arraignment, your case can be resolved through a plea bargain, dismissal or trial. Your attorney should meet with you to discuss and evaluate the merits of plea bargaining and to keep you apprised of hearings, plea bargain offers and other procedures affecting your case and your life. Your attorney should also continue to investigate your case throughout its resolution. Investigation includes interviewing witnesses, collecting physical evidence and consulting experts. Public defense attorneys should work with investigators to help gather and analyze evidence. Experts are often necessary to present an effective defense (e.g., insanity or battered woman's syndrome) or to provide an opinion independent of the prosecution's expert. Any fact-finding can have critical influence on the outcome of your case and the decisions you make.

In New York, however, failures in the public defense system have occurred and continue to occur at every step of this process. From attorney assignment to case resolution, poor and vulnerable New Yorkers are falling through cracks.

Robert Kulas was charged with assault and evidence-tampering. After nearly two months of waiting, he finally spoke to his Onondaga County public defense attorney. Without investigating his side of the story, the attorney advised him to take a plea bargain for five years in prison. The attorney then left to feed his parking meter and never returned.

*Despite applying three times for a public defense attorney, **Shawn Chase** was forced to wait roughly five months before meeting an attorney. (Chase's application was denied because his parents' income exceeded poverty minimums, even though 20-year-old Chase received no financial support from them and did not personally meet the income threshold). He testified at trial without discussing or preparing for his testimony beforehand with his attorney. He was found guilty and sentenced to 60 days at the Schuyler County Jail for driving under the influence.*

PUBLIC DEFENSE ELIGIBILITY

In New York, requests for representation are often denied due to counties' drastically low minimum income thresholds or other regulations that limit poor defendants' eligibility for public defense services.

In Schuyler County, the Public Defender's Office based eligibility on state and federal poverty guidelines to keep costs down, so that a person with an annual income of \$12,763 in 2007 would likely be deemed ineligible for public defense.³⁴ According to the county's former chief public defender, more than 40 percent of defendants referred to the Public Defender's Office between 2004 and 2006 were denied services because they were deemed "not indigent."³⁵ In Washington County, one poor defendant who had an annualized income of \$10,320 a year and was supporting her son was denied public defense services.³⁶

Some counties also fail to take into account financial obligations, such as mortgages, in calculating whether people qualify for public defense, forcing defendants to choose between paying their mortgage or hiring an attorney. Onondaga County disqualifies people for public defense in certain cases if they own a house or a car, even if they have no actual income and have no equity in the house or car.³⁷

Some counties also exclude defendants 20-years-old and younger from accessing public defense services if their parents have enough money to afford an attorney, even when the defendant is not living with or dependent on his or her family's financial support.³⁸ "Many of those clients were not able to locate or access their parents, or their parents refused to provide the financial information required," said one former Onondaga County public defense attorney.³⁹ In Washington County, one applicant with no personal income, but \$8,840 annualized from unemployment, was denied based on his girlfriend's income.⁴⁰

As a result, many people too poor to afford an attorney are nonetheless unable to access public defense services in New York State.

INITIAL ATTORNEY CONTACT

For those defendants who are deemed eligible for public defense services, the sooner the defense attorney enters their case, the better equipped the lawyer is to protect their rights. If a public defense attorney enters a defendant's case right away, there is also less chance that the poor defendant will be trapped in jail for excessively long periods of time, unable to go to work and support his or her family. However, thousands of poor defendants in New York State have had no attorney contact outside of court for a full month after a lawyer has been assigned to them.⁴¹

In Onondaga County, for example, more than 1,600 poor criminal defendants in 2012 were still waiting to communicate with their attorneys outside of court a full month after the attorney's appointment.⁴² One in four people charged with felonies were still waiting to see their attorney outside of court within two weeks of arrest.⁴³

ARRAIGNMENT

Arraignment before a judge is the critical moment when charges are read, bail is set and defendants are either jailed or released, pending trial. Most people lack the training and knowledge to challenge spurious charges or make an effective bail request on their own. While a lawyer should ideally begin working with a client before arraignment, a New York Court of Appeals ruling requires legal representation at arraignment.⁴⁴

Despite the critical importance of having counsel at arraignment, poor defendants in New York appear alone at arraignment as a matter of course. There are simply not enough lawyers to attend every arraignment in understaffed public defense offices, especially arraignments that

"My Attorney Only Met Me to Get Paid."

Richard Love, Onondaga County

Richard Love was arraigned without a lawyer and held on charges of grand larceny and criminal possession of a forged instrument at the Onondaga Justice Center, awaiting trial. After his arraignment, Love was given a piece of paper with the contact information for his assigned counsel. Love was often unable to even leave his attorney a voicemail. The only way he could feasibly call anyone from inside the jail was by making a collect call or calling a toll-free number that allowed incarcerated people to leave messages for public defense attorneys, but that voice mailbox was often full. Love was never able to reach his attorney directly. While he sat in jail, his lawyer failed to inform him of plea deal offered by the prosecution. He was eventually sentenced to two- to four-years imprisonment.

"My attorney only saw me in jail once in the month and a half he represented me, and that was just so I could sign the form he needed to get paid," Love said. "And my case was no exception. All around me there were others relying on public defense attorneys they seldom heard from – like me, they would wait around in jail for months, just hoping that something was being done on their behalf."

“I Wish I’d Had Someone on My Side.”

Gia Callaway, Suffolk County

After Gia Callaway was arrested and charged with robbery, she was arraigned in a Suffolk County court. Before she appeared for her arraignment, no one had interviewed her about what happened in her case. At arraignment, the attorney present on her behalf did not ask a single question that might have affected the outcome – such as about her criminal history or about reducing her bail. She wound up remanded to the county jail in Riverhead to await trial with a new attorney. Once there, she made multiple attempts to contact her new attorney through the Legal Aid Society but was unable to get through.

Callaway sat in jail for about four months before her assigned attorney visited her. During that time, she stopped hearing from her husband and lost her home and possessions. When her attorney finally visited her, their discussion lasted less than 15 minutes.

“I have nothing left, nothing to return to . . . I just wish I would have had someone on my side,” she said.

Unbeknownst to her and without her consent, Callaway’s lawyer had her court appearance adjourned numerous times.

“I was never asked if I wanted to be in court. It wasn’t until after reading my court documents that I was even aware of each of the adjournments requested by my own counsel,” said Callaway.

Worse yet, despite the existence of multiple witnesses and video footage, her lawyer never investigated the evidence in her case, discussed defense strategy with her or explained her what her options were. He only urged her to take a plea deal – which resulted in her sentence of one-and-a-half to three years.

“I was railroaded through the system – just another name for them to get through,” she said. “The facts of my case did not matter.”

occur at night or on weekends.⁴⁵

According to Schuyler County's former chief public defender Connie Fern Miller, in 2007 there were 11 courts across the county that met weekly, so it was virtually impossible for the one part-time assistant public defender to appear more than once a month at each court. Defendants routinely appeared at arraignment without an attorney in both felony and misdemeanor cases.⁴⁶

Without counsel at arraignment, poor defendants are often incarcerated or stuck with exorbitant bail they cannot afford, when an attorney could have negotiated a conditional release. Once a defendant is in jail, communication becomes increasingly difficult, and postponements of court dates happen without the person knowing, sometimes for several weeks or months. While awaiting trial, defendants lose their families, homes and jobs, all at the taxpayers' expense.

ATTORNEY-CLIENT COMMUNICATION

Following an arraignment, whether the defendant remains in custody or is released, court proceedings continue until the criminal case is resolved. It is essential that attorneys meet with their clients to discuss and evaluate the merits of plea bargaining and keep clients informed of hearings, plea offerings and other procedures.

Poor defendants are routinely ignored by their assigned public defense attorneys as they make efforts to find out what is happening in their case or express their preferences for plea bargains

or trials. Last-minute communication is the default mode in New York State. Defendants meet with their attorneys mere minutes before they are scheduled to appear in court. Conversations about potential defenses and plea bargains that should be private take place in public corridors and waiting rooms – even in the courtroom when prosecutors are within earshot.⁴⁷

Profound, systemic dysfunction regarding attorney-client contact was present across all five counties covered in this report.

- In Onondaga County, there was no client-attorney contact outside of court in one in three cases in 2012.⁴⁸

Public Defense Attorneys Can't Do Their Jobs Ontario County*

PERCENTAGE OF CASES WHERE PUBLIC DEFENSE ATTORNEYS BILLED ZERO MINUTES FOR...



*Estimate is based on a sample of assigned counsel billing statements between 2010 and 2012 in Ontario County. In 2014, Ontario County settled with the NYCLU after taking steps to reform its public defense system.

SUFFOLK COUNTY



SUFFOLK COUNTY SUGGESTS ITS PUBLIC DEFENSE ATTORNEYS SPEND **NO MORE THAN 10 MINUTES** WITH EACH CLIENT.

- In Ontario County between 2010 and 2012, for one out of every four clients, public defense attorneys billed 30 minutes or less for time spent communicating with or interviewing clients.⁴⁹ In 40 percent of felony cases, public defense attorneys billed zero minutes preparing their clients for sentencing.⁵⁰ In fact, in one in five cases, attorneys spent more time preparing

their billing statements for a case than interviewing the client involved.⁵¹

- In Suffolk County, training materials suggest that public defense attorneys spend no more than five to 10 minutes with each client.⁵²
- Defendants who do not have contact with attorneys – or who are subjected to a revolving door of “serial” attorneys who briefly appear and are summarily replaced, without notice or the defendant’s consent – are at an enormous disadvantage in the criminal justice system. This can have dramatic consequences on their lives.

RESEARCH, INVESTIGATORS AND EXPERTS

Investigators and experts are often necessary in criminal cases, either for essential fact-finding or preparing a defense. But across all five counties reviewed in this report, legal research, investigation and expert consultation are denied to poor defendants on a regular basis.

- In Onondaga County, attorneys spent an hour or less conducting any kind of investigation in 98 percent of cases.⁵³ Lawyers spent less than an hour on legal research in 94 percent of felony cases and 99 percent of misdemeanors.⁵⁴
- Of the more than 14,000 cases reviewed in Onondaga County in 2011, investigators worked on fewer than 50 cases (0.3 percent of all cases), and experts were used in only 22 cases.⁵⁵ Not a single expert was consulted in the 23 cases for which charges included murder, manslaughter or homicide.⁵⁶
- In Ontario County, based on a review of the assigned counsel billing statements between 2010 and 2012, attorneys billed zero minutes for investigating in 61 percent of cases and zero minutes for research in 65

percent of cases.⁶⁴ Public defense attorneys failed to speak to a single witness in almost 90 percent of all cases. In fact, seven in 10 attorneys spent more time preparing their billing statements than they did interviewing witnesses.⁵⁷

- In Schuyler County, out of the hundreds of cases handled by public defense attorneys from 2011-2012, investigators were used in six cases, and experts were rarely used, if ever.⁵⁸
- In Suffolk County, out of the tens of the thousands of cases in 2010-2011, experts were consulted in 17 cases – approximately zero percent.⁵⁹ ■



In Suffolk County, out of the **tens of thousands** of cases in 2010-2011, experts were consulted in 17 cases – approximately **zero percent**.

One Case, Six Useless Attorneys

Eric Witherspoon, Suffolk County

Eric Witherspoon was held in jail for more than two years in Suffolk County without being found guilty of anything.

Witherspoon was held in jail awaiting his trial after he was arraigned on three-year-old burglary charges. He went nine months without any private communication with his public defense attorney.

As the father of an adolescent boy, Witherspoon said that “the hardest thing was not being able to tell my son anything. I had no idea what was going on in my case. There was nothing I could say when he asked about what was happening.”

In an initial conversation with the county’s Legal Aid Society, Witherspoon asked that his attorney preserve several of his rights, including the right to a grand jury hearing. But on his second court date, Witherspoon learned that his attorney had ignored his wishes and submitted waivers to those rights without his consent. When he asked to speak to his attorney about this, the attorney said he was too busy. Witherspoon remained in jail with no idea of what was happening with his case.

“At every turn they refused to listen,” Witherspoon said. “It felt as though I was talking to a wall.”

Witherspoon worked with three separate Legal Aid lawyers and three separate assigned public defense attorneys on his case. He was not indicted for a full year after his arrest, and he didn’t learn that one of his legal advisers was no longer representing him until he arrived for a court date to find a new attorney had been assigned to him. At that point he was so frustrated he elected to represent himself, with only a third assigned attorney as an adviser. Eventually, he lost at trial and was sentenced to 20 years in prison.



III. Defense Attorneys: Set Up to Fail

One attorney who signed up to take Onondaga County's public defense cases found getting essential resources like investigators for his cases to be an uphill battle. The county would question why he had spent time on work such as communicating with clients and drafting motions, and delay reimbursing him for his upfront costs. Eventually, he couldn't afford to cover the costs of being a public defense attorney and stopped taking those cases.

The widespread constitutional violations taking place in New York's public defense system are not the fault of the state's overworked, underfunded public defense attorneys. Rather, the state fails its poor criminal defendants by first failing the attorneys whose job it is to represent them.

From county to county, public defense services are inconsistently provided through county-run public defender's offices, local legal aid societies, "assigned counsel programs" that contract with private attorneys, or through a combination of the three. These different mechanisms are subject to varying degrees of funding and oversight, none of which are sufficient.

In large parts of New York State, public defense attorneys retained by the counties lack the tools and time they need to adequately defend clients. Defense attorneys often carry unmanageable caseloads without budgets for investigations, paralegals and workplace basics like computers. Furthermore, a lack of supervision and oversight results in attorneys essentially practicing in a vacuum, without direction or evaluation. It is no wonder their professional responsibilities go unmet.

In Washington County in 2012, caseloads were not tracked at all. Assistant public defense attorneys were asked twice a year about their caseloads; the number was written down on a Post-it note that was not kept.

"CATTLE CALL CRIMINAL JUSTICE"

Attorneys who represent poor defendants in most of New York State shoulder caseloads that exceed professional recommendations on top of having

thin-to-nonexistent support staff. This puts them – and their clients – at a stark disadvantage next to the prosecutors who have lighter caseloads and greater support.

The New York State Bar Association and national legal experts recommend that attorneys carry no more than 150 felony cases or 400 misdemeanor cases a year.⁶⁰ In “most upstate counties,” caseloads routinely outstrip recommended maximums “by a factor of 1.5 or 2 or 3 or 4 or 5,” according to Office of Indigent Legal Services director William J. Leahy.⁶¹

In New York State, public defense attorneys carry up to 420 felony cases a year, in addition to misdemeanor cases and, in some instances, family court cases.

- Suffolk County’s Legal Aid Society consists of nearly 70 attorneys who carry more than 25,000 criminal cases a year.⁶² In the County Court Bureau, 11 attorneys each carried on average 255 felony cases in 2010.⁶³ In the District Court Bureau, attorneys carried on average 600 cases a year – or 200 cases at any given time.⁶⁴
- In Onondaga County, one assigned counsel attorney indicated that he carried 400 to 600 cases a year – of which 280 to 420 were felony cases – as much as three times the recommended maximum for felony cases.⁶⁵
- In Washington County in 2012, caseloads were not formally tracked at all. Assistant public defenders were asked twice a year about their caseloads; the number was written down on a Post-it note that was not kept. The caseloads of private attorneys who took on public defense cases were not even discussed.⁶⁶

“Cattle Call Criminal Justice”

Donald Telfair, Suffolk County

On August 10, 2013, Donald Telfair was brutally assaulted by a group of individuals who thought that he had robbed them earlier that evening. The assault was so severe that Telfair was hospitalized overnight for multiple procedures, and his fractured jaw was wired shut.

Telfair met his lawyer at his arraignment the next day – in front of the judge and prosecutor. His attorney didn’t ask him any questions about what had happened or about his criminal history. When the prosecutor made blatant errors by mischaracterizing his history, Telfair’s attorney failed to protest. Telfair had to address the court himself – with his jaw wired shut.

“Everything in the court was rushed,” Telfair said. “It’s cattle call criminal justice. It is all a numbers game, no matter that a person is standing before you – it is all about getting through the court calendar for the day.”

Unable to post bail, Telfair was sent to Suffolk County jail, where he remained for months, until he took a plea bargain for one-and-a-half to three years. By then, he had already served the bulk of the time he would anticipated he would have to.

“The system is broken and needs to be fixed,” Telfair said. “The amount of money someone makes should not determine how justice is served.”

ABSENT OVERSIGHT

New York State's failure to provide oversight means that both state officials and poor defendants are in the dark about the lack of justice for poor New Yorkers.

In much of New York State, virtually any lawyer can sign up to be part of assigned counsel programs that contract with counties to provide public defense services. As one assigned counsel program administrator in Onondaga County said, to qualify to take on misdemeanors, "All you need is a pulse and malpractice

"My Children Were Victims of the Broken System."

Donnell Stepney, Onondaga County

Donnell Stepney was driving with some friends when police officers stopped the car, pulled him out of the passenger seat and brutally beat him. Upon searching the vehicle, the officer found a 9mm handgun that belonged to the driver. Stepney and the driver were both arrested for criminal possession of a handgun and other charges and taken into custody.

The driver owned the handgun and plead guilty to possessing it, so the charge of gun possession against Stepney should have been dropped. However, Stepney's lawyer failed to submit the driver's guilty plea as evidence in Stepney's trial.

"All he kept telling me was to take the plea [bargain]. But I wasn't guilty," Stepney said.

After the trial, Stepney's attorney gave him a file filled with documents he had never seen. It was clear Stepney had been excluded from the defense process all along.

"The hardest part of all this is that I was robbed of the ability to take care of my children," he said. "I was all they had."

Stepney was eventually sentenced to eight years in prison. After his incarceration, his three children were placed in a home by the Department of Social Services.

"There is not a day that goes by that I don't think about those kids," Stepney said. "If I had committed this crime, I would have taken the plea deal and served my time. But I didn't. So I went to trial, hoping my lawyer would put the government to the test. Instead, I became the victim of a broken system and so did my children."

insurance.”⁶⁷ Once a lawyer is engaged in public defense work, he or she is subject to minimal ongoing oversight.⁶⁸

- In Onondaga County, no prior criminal defense or trial experience is required to sign up to take on misdemeanor public defense cases through the assigned counsel program.⁶⁹ Nor does the county or the assigned counsel program supervise the work of the attorneys who are part of the assigned counsel program.
- Ontario County did not supervise the work of public defense attorneys that are part of its assigned counsel program or ensure that they met standards for representation.⁷⁰ It did not offer training, legal research resources (physical or electronic) or monitoring. (As its 2014 settlement agreement with the NYCLU shows, Ontario has since established a public defender’s office, minimum attorney practice standards and reporting requirements.)⁷¹
- Schuyler County has no written policies for attorneys beyond a general manual for all county employees. Apart from paying for attorneys to meet their basic requirements to retain their licenses, the Public Defender’s Office does not offer any training or orientation to its attorneys.⁷² There is no written plan for how cases are assigned through its assigned counsel program, and no evaluation or review of their performance.⁷³
- The Suffolk County Legal Aid Society, which handles the bulk of cases for poor defendants, does not offer formal training for new attorneys, who only shadow experienced attorneys for one week. One former Legal Aid Society attorney described his experiences as “being thrown out there without any proper training.”⁷⁴ Suffolk County also does not offer written policies or processes for evaluating potential conflicts.⁷⁵
- Washington County does not offer formal training, reviews or written standards for attorneys.⁷⁶ ■



IV. How Underfunding Created a Broken System

Lane Loyzelle was accused of stealing \$20. He was arraigned without a lawyer, and the bail was set at \$2,500, an amount he could not afford to pay. He saw an attorney once, after waiting 13 days, but no subsequent visits occurred for months. While in pretrial incarceration, he lost his job. With no confidence that he could go to trial with an attorney he hadn't heard from in months, he accepted a plea offer for three months incarceration.

New York State is bound by federal law to provide legal representation to criminal defendants who cannot afford counsel. But New York's decision to delegate its responsibilities to its counties has permitted the state to retreat from its financial and ethical responsibilities.

State money accounts for only 16 to 28 percent of the money the five counties covered in this report spent on mandated public defense. It's plain that funding for public defense services is not a state priority. Between 2008 and 2012, New York swept more than \$40 million from the Indigent Legal Services Fund – the main source of state funding for public defense services – and re-deposited it into the state's general fund to support other agenda items. In the fiscal year of 2014, New York authorized an additional \$11 million sweep.⁷⁷

This inadequate state funding has been especially harmful for poor defendants because counties generally opt to spend their own funds on district attorneys rather than on public defense attorneys, despite the obvious overlap in caseloads. The differences in resources and salaries can be stark. Moreover, the pay gap between public defense attorneys and prosecutors widens over time, pushing qualified attorneys out of public defense and into private practice or the District Attorney's office.⁷⁸

- In 2012, Onondaga County's annual expenditure on its assigned counsel program – which handled roughly 95 percent of its public defense cases – was less than half of the county District Attorney's budget.⁷⁹ In 2011, the county spent \$28,161 on investigators in indigent defense cases, while it funded the District Attorney's Investigations Bureau with 35 times that amount – \$997,414 – enough to hire 11 full-time employees.⁸⁰

Onondaga County also refuses to reimburse attorneys for routine expenses and delays payment on statutorily authorized reimbursements.

No One Checked the Evidence

Ray Robinson, Onondaga County

Ray Robinson moved to Onondaga County from his native Queens. He had worked hard to rebuild his life after a childhood history of abuse, persistent mental health issues and a record of petty crime that led to multiple stays at juvenile facilities.

While incarcerated for 15 years on drug charges, Robinson experienced an awakening: “I realized the life of want I was living came at a cost, and it wasn’t worth it.” Upon release, he threw himself into construction work and volunteering at shelters.

In 2011, Robinson’s ex-girlfriend accused him of threatening her life in a text message, characterizing him as a dangerous gangbanger. Robinson, confident of his innocence, went to the precinct the next morning after receiving a call from police. But at the precinct his phone was confiscated, and he was arrested, fingerprinted and placed in a holding cell.

“The officers assumed I was guilty because of what I had done in the past,” he said. Robinson was issued a restraining order and arraigned in court without an attorney.

When he was finally assigned an attorney, Robinson implored him to review the actual text message in question. His attorney declined to do so, insisting that Robinson take the plea deal being offered by the prosecution.

“Just take the deal,’ he would say to me,” Robinson said. “It was as if he was working with the prosecutor.”

After six months of being stonewalled by his defense attorney, Robinson asked the court for a hearing to determine if there was enough evidence. The judge agreed. When the public defense attorney and the prosecutor looked at the actual text message in question, Robinson’s misdemeanor charge was knocked down to a violation, for which Robinson was fined.

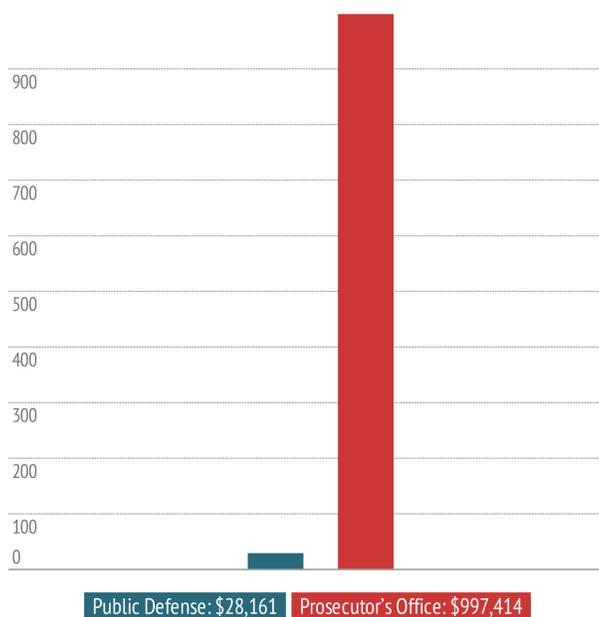
Half a year of court proceedings could have been avoided if Robinson’s lawyer had investigated one single piece of evidence – the text message on Robinson’s phone.

Having waited up to a year for reimbursements, some attorneys in Onondaga County have stopped taking cases through the assigned counsel program altogether.⁸¹

- In Schuyler County, no written policies or procedures guide the provision of legal services to indigent defendants. The Public Defender makes \$40,000 less than the District Attorney.⁸²
- In Suffolk County, prosecutors are far more richly resourced than public defense attorneys, both in salary and staff. For example, Suffolk County's Legal Aid Society employs five investigators, while the District Attorney's office employs 56 investigators.⁸³ Suffolk's Legal Aid Society has no paralegals, while the DA's office has eight.⁸⁴
- In Washington County, where more than 1,400 cases were referred for public defense in 2011, at the time the Chief Public Defender and all of the Chief Public Defender's six assistant public defenders worked part-time and carried private practices. The county did not fund full-time assistant public defense attorneys, paralegals or legal assistants. All seven attorneys shared one computer.⁸⁵

Funding for Public Defense vs. Prosecution Onondaga County*

PUBLIC FUNDS SPENT ON INVESTIGATING IN 2011



* In 2011, Onondaga County funded the District Attorney's Investigations Bureau with \$997,414, sufficient to hire 11 full-time employees.

Poor defendants and the attorneys representing them are not the only victims of New York's abdication of its responsibility to provide public defense. The broken system also harms taxpayers, who are financially responsible for the state's decisions and bear the economic burden of prolonged prison stays, unnecessary court proceedings and wrongful conviction lawsuits. ■



V. Recommendations

The Supreme Court's command is clear: All criminal defendants, no matter the crimes of which they are accused, are entitled to representation. Yet thousands of people move through New York's criminal justice system every year without an active, competent advocate – exacting tolls of harm that ripple outward to families, communities, cities and towns.

New York has squandered its reputation as a national leader in protecting fundamental principles of fairness, equality and justice. To restore that reputation, ensure fair outcomes in criminal cases and improve the efficiency of our justice system, the state should immediately take the following steps:

- **Immediately ensure that there is a lawyer representing every poor criminal defendant in New York at the initial court appearance, and ensure that the lawyer has previously met with the defendant and is prepared to contest the charges and advocate for pre-trial release or affordable bail.**

New York must immediately follow the mandate issued by the state's highest court in 2010 and expand and make permanent existing grant programs that allow county public defense programs to hire enough lawyers to be both present and prepared at every arraignment in the state.

- **Immediately reduce the huge caseloads of public defense attorneys so they have the time to communicate with defendants, investigate cases, research and file legal motions, and be prepared for court.**

New York State law limits caseloads for attorneys – but only in New York City.⁸⁶ Lawyers and defendants throughout the rest of the state deserve the same standard. The state must develop a system to accurately weigh attorney caseloads using existing, widely accepted and well-tested standards. The state must also require county defense providers to track and monitor caseloads, and ensure that adequate funding exists to bring caseloads in line with those standards.

- **Replace the disorganized and underfunded county-based arrangement for public defense services with a true system run by New York State with adequate funding, standards and supervision to ensure poor**

criminal defendants receive the defense to which they are entitled under the Constitution.

The state must end its abdication of responsibility for public defense – an unfunded mandate to the counties – by transforming the New York State Office of Indigent Legal Services (ILS) into an agency with the power and resources necessary to manage New York’s public defense system. As it now stands, ILS has no enforcement authority and distributes a small number of state grants that do little to repair the fundamental flaws in the justice system.

Counties still bear 75 to 90 percent of the costs of public defense services. That equation must be flipped. The state, through ILS, should bear the majority of the costs of public defense, and ILS must be given the power and independence to ensure that state money is spent efficiently and in the best interests of criminal defendants who cannot afford counsel. ■



VI. Endnotes

1 Information on the Office of Indigent Legal Services (ILS) is available at <https://www.ils.ny.gov> (last visited Sept. 2, 2014). See also Plaintiffs' Memorandum of Law In Opposition to the State Defendant's Motion for Summary Judgment at 39, *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. October 3, 2013) [hereinafter Plaintiffs' Memorandum of Law].

2 The facts of this account and the other accounts in this report are drawn from court filings and other sources.

3 See *id.*

4 Amended Class Action Complaint, *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. November 8, 2007), available at <http://www.nyclu.org/files/Amended%20Class%20Action%20Complaint.pdf> (last visited Sept. 2, 2014). In 2014, Ontario County settled with the NYCLU. The settlement agreement is available at <http://www.nyclu.org/files/NoticeofClassActionandProposedSettlement.pdf> (last visited Sept. 2, 2014).

5 Almost one-third (30.91 percent) of Onondaga County defendants in 2012 never met with their attorney outside of court. Affidavit of Gary King at 61, Oct. 1, 2013, *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. Nov. 8, 2007) [hereinafter King Affidavit].

6 See Plaintiffs' Memorandum of Law, *supra* note 1, at 24, 44, 47. See also Affirmation of Erin Beth Harrist in Support of Plaintiffs' Opposition to State Defendant's Motion for Summary Judgment at 64, *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. Nov. 8, 2007) [hereinafter Harrist Affirmation].

7 This data is based on public defense cases in Suffolk County between 2010 and 2011. See King Affidavit, *supra* note 5, at 32.

8 Statistics on Suffolk County and Onondaga County are available in Plaintiffs' Memorandum of Law, *supra* note 1, at 23-24.

9 See ABA Standing Committee On Legal Aid and Indigent Defendants, *Ten Principles of a Public Defense Delivery System*, American Bar Association, Feb. 2002. Available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/l_s_claid_def_tenprinciplesbooklet.authcheckdam.pdf (last visited Sept. 2, 2014).

10 Affirmation of Kristie M. Blase in Support of Plaintiffs' Opposition to State Defendant's Motion for Summary Judgment Ex. 176, *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. Nov. 8, 2007) ("We handle about 4 to 600 cases an attorney"). See also Plaintiffs' Memorandum of Law, *supra* note 1, at 67 (Onondaga County); *id.* at 66 (Ontario County); *id.* at 19 (Schuyler County); *id.* at 18 (Washington County, noting that cases are not formally tracked).

11 See Plaintiffs' Memorandum of Law, *supra* note 1, 61-62.

12 In 2012, the Public Defender's Office in Washington County consisted of the Chief Public Defender and six part-time public defenders, all of whom shared one computer. Affirmation of Matthew Schmidt in Opposition to State Defendant's Motion for Summary Judgment at 18, *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. Nov. 8, 2007) [hereinafter Schmidt Affirmation].

13 Existing state standards are available on the New York State Defender's website at <http://www.nysda.org/PublicDefenseStandards.html> (last visited Sept. 2, 2014).

14 Background on Clarence Gideon is available on Wikipedia at http://en.wikipedia.org/wiki/Gideon_v._Wainwright (last visited Sept. 2, 2014).

15 *McMann v. Richardson*, 397 U.S. 759 (1970).

16 *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

17 A "party accused shall be allowed to appear and defend in person and with counsel." N.Y. Constitution, art. 1 § 6 (1938). See also *People v. Arthur* 22 N.Y.2d 325 (1968); *People v. Benevento*, 91 N.Y.2d 708 (1998).

18 See N.Y. C.P.L. 180.10(3)(c); N.Y. C.P.L. 170.10 (3); N.Y. C.P.L. 210.15 (2)(c).

19 Plaintiffs' Memorandum of Law, *supra* note 1, at 46-47.

20 N.Y.S. Bar Ass'n Rule 1.3, available at <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=50671> (last visited Sept. 2, 2014).

21 National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (4th ed. 2006). Available at http://www.nlada.org/Defender/Defender_Standards/Performance_Guidelines (last visited Sept. 4, 2014).

22 Commission on the Future of Indigent Defense Services, *Final Report to the Chief Judge of the State of New York*, June 2006: 8. Available at http://www.nycourts.gov/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf (last visited Sept. 2, 2014).

23 *Id.* at 40.

24 Plaintiffs' Memorandum of Law, *supra* note 1, at 12-14, 57 – 62.

25 *Id.* at 13.

26 "ILS has neither the authority nor the capacity to enforce the standards it has promulgated." *Id.* at 12, 39.

27 *Id.* at 41.

28 *Id.* at 38.

29 *Id.* at 77.

30 Complaint in *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. November 8, 2007), available at http://www.nyclu.org/files/releases/public_defense_complaint_110807.pdf (last visited Sept. 2, 2014).

31 See Settlement Agreement Regarding Claims Involving Ontario County in *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. November 8, 2007), available at http://www.nyclu.org/files/releases/executed_ontariocounty_settlement_agreement.pdf (last

visited Sept. 2, 2014).

32 The number of counties that have passed resolutions can be obtained from the National State Defenders Association at www.nysda.org (last visited Sept. 2, 2014).

33 *Hurrell-Harring v. State of New York*, 15 N.Y.3.d. 8, 25. (2010).

34 Schuyler County public defense eligibility in 2007 was based on the state's 2007 poverty guidelines. See Affirmation of Connie Fern Miller at 3, *Hurrell-Harring v. State, appeal docketed* No. 8866-07 (N.Y. App. Div. Nov. 8, 2007) [hereinafter Miller Affirmation].

35 *Id.*

36 Schmidt Affirmation, *supra* note 12 at 9.

37 Affirmation of Mariko Hirose in Support of Plaintiffs' Opposition to State Defendant's Motion for Summary Judgment at 19, *Hurrell-Harring v. State, appeal docketed* No. 8866-07 (N.Y. App. Div. Nov. 8, 2007) (discussing how assets may detract from public defense eligibility in Onondaga County) [hereinafter Hirose Affirmation].

38 See, e.g., Miller Affirmation, *supra* note 34 at 3; Schmidt Affirmation, *supra* note 12 at 9.

39 Affirmation of Christine Cagnina in Opposition to State Defendant's Motion for Summary Judgment at 2, *Hurrell-Harring v. State, appeal docketed* No. 8866-07 (N.Y. App. Div. Nov. 8, 2007).

40 Schmidt Affirmation, *supra* note 12, at 9.

41 See Plaintiffs' Memorandum of Law, *supra* note 1, at 50; King Affidavit, *supra* note 5, at 59.

42 King Affidavit, *supra* note 5, at 59.

43 See Plaintiffs' Memorandum of Law, *supra* note 1, at 22.

44 *Hurrell-Harring*, 15 N.Y.3.d. 8, 25. (2010).

45 Miller Affirmation, *supra* note 34, at 3-4.

46 *Id.*

47 Affidavit of Gia Callaway at ¶ 18, Sep. 30, 2013, *Hurrell-Harring v. State, appeal docketed* No. 8866-07 (N.Y. App. Div. Nov. 8, 2007); Harrist Affirmation, *supra* note 6 at ¶ 161; Affidavit of Donald Telfair at ¶ 13-24, Sep. 30, 2013, *Hurrell-Harring v. State, appeal docketed* No. 8866-07 (N.Y. App. Div. Nov. 8, 2007).

48 Almost-one third of Onondaga County defendants (30.91% in 2012) never met with their attorney outside of court. King Affidavit, *supra* note 5, at 61. See also Plaintiffs' Memorandum of Law, *supra* note 1, at 49.

49 King Affidavit, *supra* note 5, at 96.

50 Plaintiffs' Memorandum of Law, *supra* note 1, at 23.

51 *Id.* at ft. 14. See also King Affidavit, *supra* note 5, at 108.

52 Plaintiffs' Memorandum of Law, *supra* note 1, at 55. Suffolk County training materials are not publicly available.

53 Plaintiffs' Memorandum of Law, *supra* note 1, at 54.

54 *Id.* at 24.

55 *Id.* at 23.

56 *Id.*

57 King Affidavit, *supra* note 5, at 103-110. These estimates are based on a sample of assigned counsel billing statements between 2010 and 2012 in Ontario County. Prior to 2010, the Ontario County Assigned Counsel Program handled all of the county's public defense cases. In April 2010, Ontario County opened a Public Defender's Office, which proceeded to take on the majority of trial level public defense cases. As of October 2013, for example, the Ontario County Assigned Counsel Program was estimated to handle between "10-15 percent" of trial level public defense cases, and all cases in which there is a conflict between the Public Defender's Office and a criminal defendant unable to afford counsel. See Affidavit of Normal Lefstein at 12, Oct. 8, 2013, *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. Nov. 8, 2007).

58 Affirmation of Matthew Yoeli in Support of Plaintiffs' Opposition to State Defendant's Motion for Summary Judgment at 23-24, *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. Nov. 8, 2007) (indicating experts may never have been used) [hereinafter Yoeli Affirmation].

59 Investigation and expert data is based on cases in Suffolk County from 2010-2011. See Plaintiffs' Memorandum of Law, *supra* note 1, at 23-24; King Affidavit, *supra* note 5, at 32.

60 See *Ten Principles of a Public Defense Delivery System*, *supra* note 9.

61 See Plaintiffs' Memorandum of Law, *supra* note 1, at 68.

62 *Id.* at 20.

63 *Id.* at 64; Harrist Affirmation, *supra* note 6, at ft. 12.

64 Harrist Affirmation, *supra* note 6, at 94.

65 Plaintiffs' Memorandum of Law, *supra* note 1, at 67.

66 Schmidt Affirmation, *supra* note 12, at 5.

67 Renee Captor, Assigned Counsel Administrator of Onondaga County, interview with a party associated with the Office of Indigent Legal Services, Apr. 9, 2012. This document is on file at the NYCLU.

68 Plaintiffs' Memorandum of Law, *supra* note 1, at 70.

69 Hirose Affirmation, *supra* note 37, at 8.

70 Affirmation of Brooke Menschel in Support of Plaintiffs' Opposition to State Defendant's Motion for Summary Judgment at 12, *Hurrell-Harring v. State*, appeal docketed No. 8866-07 (N.Y. App. Div. Nov. 8, 2007).

71 Plaintiffs' Memorandum of Law, *supra* note 1, at 17, 70.

72 Other than paying for continuing legal education credits (CLEs), the Public Defender's Office in Suffolk does not offer any training or orientation to its attorneys. See Yoeli Affirmation, *supra* note 58, at 5.

73 *Id.* at ¶¶ 233 -234.

74 Several attorneys indicated that their training program only consisted of shadowing more senior attorneys for a week. See Harrist Affirmation, *supra* note 6, at 4-6.

75 *Id.* at ¶ 128 ("[E]vidence demonstrates that there is no LAS [Legal Aid Society] policy requiring a search through WebCrims, nor do all LAS attorneys use WebCrims in order to check for conflicts.")

76 Plaintiffs' Memorandum of Law, *supra* note 1, at 71.

77 *Id.* at 13-15, 49.

78 *Id.* at 61-62

79 *Id.* Data on the number of public defense cases in 2012 is from the New York State Unified Court System Office of Court Administration, on file with the NYCLU. The Unified Court system Office of Court Administration's contact information is available at <http://www.nycourts.gov/admin/oca.shtml> (last visited Sept. 2, 2014).

80 See 2012 Onondaga County Annual Budget at 3-104, 3-105, on file with the NYCLU. See also Plaintiffs' Memorandum of Law, *supra* note 1, at 44.

81 *Id.* at 59.

82 *Id.* at 60.

83 Harrist Affirmation, *supra* note 6, at ¶ 116.

84 *Id.* at ¶ 226.

85 Schmidt Affirmation, *supra* note 12, at 18. In 2012, Washington County's Public Defender's Office consisted of the Chief Public Defender and six part-time public defenders.

86 New York City caseload standards were passed in 2009. John Eligon, "State Law to Cap Public Defenders' Caseloads, but Only in the City," *New York Times* 5 Apr. 2009. Available at <http://www.nytimes.com/2009/04/06/nyregion/06defenders.html> (last visited Sept. 2, 2014).