

THE COUNCIL OF THE CITY OF NEW YORK

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Report of the Finance Division on the
Fiscal 2019 Preliminary Budget

The Legal Aid Society and Indigent Defense

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Finance Division

Steve Riester, Senior Financial Analyst
Eisha Wright, Unit Head

Latonia McKinney, Director
Regina Poreda Ryan, Deputy Director

Nathan Toth, Deputy Director
Paul Scimone, Deputy Director

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Indigent Defense Services

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

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

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

Indigent Defense Funding Summary				
<i>Dollars in Thousands</i>				
	Adopted	Preliminary		*Difference
	FY18	FY18	FY19	2018-2019
18-B Assigned Counsel Program	\$12,644	\$12,644	\$12,644	\$0
18-B Assigned Counsel Program	39,751	39,751	39,751	0
Total 18-B Assigned Counsel Program - Sub-total	\$52,395	\$52,395	\$52,395	\$0
Legal Aid Society	\$93,631	\$93,631	\$93,246	(\$385)
Legal Aid Society - Appellate	9,481	9,481	9,481	0
Legal Aid Society - Conflict	5,643	5,643	5,643	0
Legal Aid Society - Sub-total	\$108,755	\$108,755	\$108,370	(\$385)
NY County Defenders	\$7,577	\$7,577	\$7,577	\$0
Bronx Defenders	12,147	12,147	12,070	(77)
Brooklyn Defender Services	16,029	16,029	15,952	(77)
Neighborhood Defender Services	5,013	5,013	4,936	(77)
Queens Law Associates, P.C.	9,553	9,553	9,476	(77)
Alternative Providers – Trial Level Sub-total	\$50,318	\$50,319	\$50,011	(\$307)
Appellate Advocates	\$5,448	\$5,448	\$5,448	\$0
Center for Appellate Litigation	5,505	5,505	5,505	0
Office of the Appellate Defender	2,079	2,079	2,079	0
Alternative Providers – Appellate Level Sub-total	\$13,032	\$13,032	\$13,032	\$0
Bronx Family Defense Practice - Bronx Defenders	\$7,251	\$9,892	\$9,892	\$2,641
Brooklyn Family Defense Project - Brooklyn Defender Services	7,606	10,163	10,163	2,557
Center for Family Representation	5,952	8,758	8,758	2,806
Neighborhood Defender Services - CA Harlem	2,574	3,319	3,319	745
Family Court Providers - Sub-total	\$23,383	\$32,131	\$32,131	\$8,748
Bronx Defenders	\$1,808	\$1,808	\$1,808	\$0
New York County Defenders Services	1,489	1,489	1,489	0
Brooklyn Defender Services	2,823	2,823	2,823	0
Queens Law Associates	1,972	1,972	1,972	0
Conflict Case Providers - Subtotal	\$8,092	\$8,092	\$8,092	\$0
Indigent Defense Contract Total:	\$255,974	\$264,724	\$264,031	\$8,057
State Regional Immigration Centers	\$450	\$450	\$150	(\$300)
Wage Adjustment	1,713	1,697	3,408	1,695
Miscellaneous	3,196	3,196	3,196	(0)
Service Provider Wage Adjustment	0	16	44	44
Other Subtotal:	\$5,359	\$5,359	\$6,797	\$1,438
Grand Total:	\$261,333	\$270,083	\$270,828	\$9,495
Funding source				
City	\$220,439	\$229,188	\$230,926	\$10,487
State	40,894	40,894	39,901	(993)
TOTAL	\$261,333	\$270,082	\$270,827	\$9,495

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

The Fiscal 2019 Preliminary Budget for the indigent defense is \$270.8 million, \$9.5 million more than the Fiscal 2018 Adopted Budget of \$261.3 million. Funding for indigent defense is scheduled in the Miscellaneous Budget (098) and is managed by MOCJ. City tax-levy funding accounts for \$230.9 million or 85.3 percent of the budget, with the remaining \$39.9 million or 14.7 percent from the State. The slight decrease in family court provider funding is a result of a decrease in State funding recognized in the Fiscal 2019 Preliminary Budget.

The Fiscal 2019 Preliminary Budget for the indigent defense contracts totals \$260 million, an increase of \$8.1 million compared to the Fiscal 2018 Adopted amount of \$255.9 million. The budget increase is primarily due to the increase to family court providers.

Below is the significant change to indigent defense budget.

- Article 10 Neglect and Abuse.** The Fiscal 2019 Preliminary Budget grows by \$8.7 million in Fiscal 2018 and 2019 due to an increase in caseload for the four family court providers. In Fiscal 2017, the \$8.7 million growth due to caseload increases brings total contract spending to \$30.6 million. The anticipated caseload now totals 5,058 cases. MOCJ will continually evaluate the caseload and overages for a two year period to determine appropriate funding levels for family court providers. Page four details funding for family court providers. Indigent Defense Providers

The Legal Aid Society (LAS). The LAS’ Fiscal 2019 Preliminary Budget totals \$108.4 million. For Fiscal 2018, LAS is contracted to intake a total of 217,203 cases, including 210,000 criminal cases, 6,200 conflict cases, and 1,003 appellate cases.

The two charts below show historical and projected spending and case intake for the Legal Aid Society from Fiscal 2013 through Fiscal 2019. Spending and case intake for Fiscal 2018 and Fiscal 2019 are projected.

Legal Aid Society - Spending							
Fiscal 2013 – Fiscal 2018							
	FY13	FY14	FY15	FY16	FY17	FY18*	FY19*
Trials	\$86,686	\$88,414	\$90,341	\$89,387	\$90,610	\$93,631	\$93,246
Appeals	11,423	8,302	7,685	9,596	8,532	9,481	9,481
Conflict	-	4,621	3,503	2,627	3,718	5,643	5,643
TOTAL	\$98,109	\$101,337	\$101,529	\$101,610	\$102,860	\$108,755	\$108,370

Source: MOCJ and OMB

*Projected Spending

- Annual actual expenditures over the last five years averaged \$89.1 million for criminal trials and \$9.1 million for criminal appeals for LAS.
- Expenditures for criminal trials increased by \$1.7 million from Fiscal 2012 to Fiscal 2013 due to labor-related costs. Expenditures for criminal appeals increased by \$3.1 million from Fiscal 2012 to 2013 to cover costs associated with 218 appellate cases from Fiscal 2012.

Legal Aid Society – Case Intake Fiscal 2013 – Fiscal 2018						
	FY13	FY14	FY15	FY16	FY17	FY18*
Trials	211,820	220,242	188,243	159,636	142,408	210,000
Appeals	1,294	950	969	1,133	980	1,003
Conflict	-	8,253	6,163	6,420	5,926	6,200
TOTAL	213,114	229,445	195,375	167,189	149,314	217,203

Source: MOCJ

*Projected Caseload

- In the last five years, LAS has averaged an annual actual case intake of 184,470 for criminal trials and 1,065 for criminal appeals. For the last four years, LAS has an annual averaged a case intake of 6,691 for conflict cases.
- Criminal justice reform efforts focused on number of people arrested and arraigned on violations and misdemeanors contributed to a decline in case-intake for Fiscal 2015 to Fiscal 2017 criminal trials.

Alternate Criminal Trial and Criminal Appellate Indigent Defense. In addition to LAS, the City contracts with eight other indigent defense legal service providers; five for trial level representation and three for the appellate level. The five trial court defenders include NYCDS, BXD, BDS, QLA and NDS. The three appellate level legal service providers are CAL (1st Appellate Department), AA (2nd Appellate Department) and OAD (1st Appellate Department).

Case Intake Contracted by Alternate Provider for Fiscal 2018 Criminal Trials and Conflicts			
Provider	Criminal Trials	Conflict Cases	Total
NYCDS	18,000	2,500	20,500
BXD	28,000	3,000	31,000
BDS	38,000	4,440	42,440
NDS*	10,000	-	10,000
QLA	26,000	3,600	29,600
TOTAL	120,000	13,540	133,540

*NDS does not have a contract for conflict cases

Trial Level Alternate Providers. The Fiscal 2019 Preliminary Budget for Fiscal 2018 includes \$58.4 million (\$50.3 million for trials and \$8.1 million for conflict cases) for the five trial court defenders. This includes \$58.1 million in City tax-levy funding and \$308,000 in State Office of Indigent Legal Services funding. The State aid supports client representation in immigration law and deportation matters. The Fiscal 2019 Preliminary Budget decreases slightly by approximately \$308,000 since the Fiscal 2018 Adopted amount, as the State funding is not yet recognized in contract budget. In Fiscal 2018, the alternate providers collectively are contracted to intake 133,540 cases in Fiscal 2017. This includes 120,000 for criminal trials and 13,540 for conflict cases.

Redesign of the Trial-Level Indigent Criminal Defense Services Program Model. MOCJ released a Request for Proposal (RFP) in December 2016 for trial level indigent criminal defense for primary, conflict and homicide cases. The current indigent defense contract does not include homicide cases; attorneys selected for a specialized 18-B panel represent indigent defendants’ charged with homicide. MOCJ expects to award multiple contracts for each county. Providers will be required to represent clients from intake until final case resolution. The proposal period ended in February 2017 and MOCJ is currently reviewing bids. MOCJ is preparing a six-month negotiated acquisition extension. Once funding level is determined, MOCJ will begin to negotiate new contracts and plan overall program implementation.

- Each trial-level criminal defense provider will be required to maintain a central office near the county’s criminal court in each contracted county; and

- Each trial-level criminal defense provider will be expected to maintain an array of resources that include: legal staff, social worker, paralegals, and investigators that can serve non-English speaking defendants.

Total available funding for the trial-level indigent criminal defense services will be approximately \$150 million annually for all five counties.

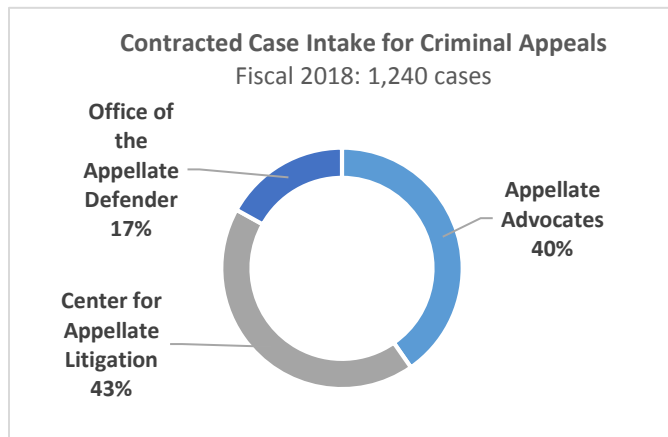
Assigned Counsel Program (18-B)

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

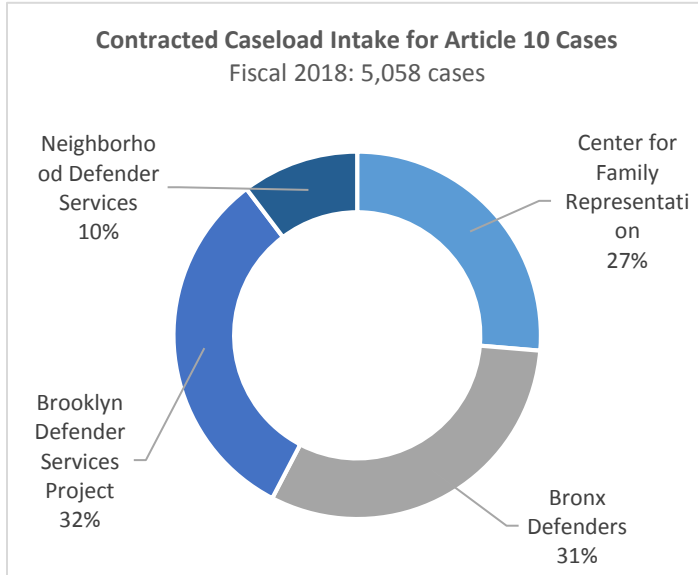
The Fiscal 2019 Preliminary Budget for the 18-B Program is \$52.4 million. This includes \$12.6 million in City tax-levy funding and \$39.7 million in State funding. The funding level has remained unchanged from the Fiscal 2018 Adopted Budget. Rates for 18-B attorneys are \$60 per hour for misdemeanor cases and \$75 per hour for all other cases. 18-B Attorneys do not have fixed caseloads and must submit vouchers to the Court for reimbursement when final disposition occurs. As a result, the projected budget for Fiscal 2019 is an estimate of the actual costs.

Appellate Level Alternate Providers

The Fiscal 2019 Preliminary Budget for Fiscal 2018 for appellate litigation services includes \$13.0 million. OAD provides representation to indigent defendants in the First Department, primarily criminal appeals in State Court and collateral proceedings in State and federal court. In Fiscal 2018, the appellate providers are contracted collectively to intake 1,240 cases.



Family Court Providers



On a case-by-case basis, institutional providers provide legal representation for indigent parents or guardians in Article 10 abuse and neglect cases heard in Family Court. The Fiscal 2019 Preliminary Budget includes \$32.1 million, \$8.7 million more when compared to the Fiscal 2018 Adopted Budget of \$23.4 million. The \$8.7 million increase will enhance the contract value for the four family court providers, supporting as a result of the increased caseload. Of the \$8.7 million increase, \$2.6 million is for Bronx Defenders,

\$2.6 million is for Brooklyn Defender Services, \$2.8 million for the Center for Family Representation, and \$744,248 is for Neighborhood Defender Services. In Fiscal 2018, the family court providers are contracted to collectively intake 5,058 cases.