An Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York

A Report of the Office of Indigent Legal Services
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An Estimate of the Cost of Compliance
with Maximum National Caseload Limits
in Upstate New York

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An Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York

Executive Summary

- In 2012, the 57 upstate counties of New York State spent $165,934,692, largely from county funds, to provide legally mandated representation to indigent persons under NY County Law Article 18-B.

- Maximum national caseload limits published in the 1970s stipulate that the weighted caseloads of attorneys in institutional providers of indigent legal services should average no more than 400. In the 71 such providers in upstate New York in 2012 the average weighted caseload was 719.

- In order to comply with maximum national caseload limits in 2012, New York would have had to spend an additional $111,214,533 on indigent legal services in upstate counties.

- $69,360,191 of this amount was needed in the 71 institutional providers of representation in upstate counties. This would have paid for 567 new staff attorneys in addition to the 654 employed that year. It would also have funded 324 new non-attorney staff in addition to the 297 who were already employed. Expenditures in each of these programs would have had to increase by an average of 92%.

- $41,854,342, or the remainder of the total, would have been required to bring the 58 upstate assigned counsel programs into compliance with national standards. Expenditures in each of these programs would have had to increase by an average of 67%.

- This estimate is grounded on conservative assumptions with respect to both the caseload limits used, which have been criticized as excessively high, and the methods by which caseloads, salaries and expenditures were quantified. This was to avoid overstating the cost of bringing New York's upstate counties into compliance with national caseload maxima.

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> At the Commission's four public hearings, virtually all institutional defenders testified to having to labor under excessive caseloads.
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> *Commission on the Future of Indigent Defense Services*
> Final Report to the Chief Judge of the State of New York, *2006, p. 17.*

Introduction

Since the 2006 publication of the Final Report of the Commission on the Future of Indigent Defense Services, there has been some effort to ameliorate the crushing caseloads under which providers of indigent defense in New York State labor. In 2009, a program of state funding was begun with the objective of reducing the average caseloads of attorneys employed by six service providers in New York City to a level below 400 misdemeanor or 150 felony assignments annually.[1] Compliance with these limits is required by April 1, 2014, and $40 million was budgeted for that purpose in fiscal year 2013-14.[2]

For the 135 providers of indigent legal services in the fifty-seven upstate counties of New York State,[3] however, little has changed either in terms of the workloads with which they contend or the availability of

[1] See Rules of the Chief Administrative Judge §127.7, Workload of Attorneys and Law Offices Providing Representation to Indigent Clients in Criminal Matters in New York City, available at http://www.nycourts.gov/rules/chiefadmin/127.shtml#07 (accessed 11/6/13). The rule reads in part as follows: "The number of matters assigned in a calendar year to an attorney appointed to represent indigent clients in criminal matters pursuant to Article 18-B of the County Law in New York City shall not exceed 150 felony cases; or 400 misdemeanor cases; or a proportionate combination of felony and misdemeanor cases (at a ratio of 1:2.66)."

[2] This figure comes at the culmination of a period of progressively increased funding since 2009, during which progress toward national caseload limits in these six providers has been tracked. Although this report does not address New York City, it is notable that the caseload reduction program now in place covers just six of the fifteen providers of indigent legal services that were active in the city in 2012. The providers receiving funding were the Legal Aid Society, Bronx Defenders, Brooklyn Defender Services, Neighborhood Defender Services of Harlem, Queens Law Associates and New York County Defender Services. The remaining providers include three providers of appellate representation (Appellate Advocates, Office of the Appellate Defender and the Center for Appellate Litigation), two providers of representation to parents in family court (the Center for Family Representation and the Brooklyn Family Defense Project), and four assigned counsel programs (two each in the first and second judicial departments, covering family and criminal defense respectively.) The total number of providers is now only fourteen, following the merger of the Brooklyn Family Defense Project with Brooklyn Defender Services in January of 2013.

[3] The fifty-seven counties include all counties outside of the five boroughs of New York City.

external funding. For that reason, on August 22, 2013, the Office of Indigent Legal Services (ILS) issued a Request for Proposals titled *Upstate Quality Improvement and Caseload Reduction Grant*, aimed at providing an initial outlay of resources to reduce the stresses under which upstate providers are working, and empowering those providers to tailor locally-crafted solutions to the unique caseload and quality challenges they face. The grant program will provide a total of $4 million annually in funding to as many as 45 of the 57 eligible counties over three years.[4]

The purpose of this report is to assess the true size of the financial need for caseload relief in upstate New York. In 2012, a total of $165,934,692 was spent on indigent legal services in upstate counties.[5] The analysis that follows estimates an additional $111,214,533 would have been required to fully fund compliance with maximum national caseload limits in upstate counties in that year alone.

Throughout this analysis, ILS strove to base its calculation of needed resources on conservative assumptions and available data. This analysis of the resources needed to fund deficiencies in representation in upstate New York therefore represents a reliable, yet conservative, estimate of the amount needed.

Caseload Limits

The purpose of caseload limits is to establish the minimum conditions under which it is possible to provide adequate representation to clients. Compliance with such limits does not necessarily mean such services will be adequate, but evidence of non-compliance is an indication that it would be presumptively impossible for any lawyer, no matter how competent, to provide adequate representation. Such limits specify the maximum numbers of cases a lawyer may be assigned in a given year, and also the levels of supervision and support from other staff that would be necessary to make satisfactory representation possible. Consequently, it is possible to use such limits to determine the caseload levels below which an indigent legal services provider must stay to avoid providing inadequate representation.

Institutional Providers

Institutional providers of indigent legal services include public defender offices and legal aid societies with staffs of attorneys. The National Advisory Commission on Criminal Justice Standards and Goals (NAC) stated in 1973 that the maximum number of cases attorneys in such agencies could reasonably be expected to handle should not average over 400 misdemeanors, 150 felonies, or 25 appeals per attorney per year.[6] The standards also went on to say that for every ten line attorneys a supervising attorney with

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[4] The Office of Indigent Legal Services sought additional funding in both FY 2012-13 and FY 2013-14 in response to the acute level of concern among providers of indigent legal services about this issue.

[5] Data obtained from county reports to the Office of State Comptroller and provider reports to the Office of Court Administration on file with the Office of Indigent Legal Services. Of this amount, $89,088,578 was spent in institutional provider offices, and $76,846,114 was spent in assigned counsel programs.

[6] National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (United States Government Printing Office, Washington DC, 1973). See Chapter 13, 'The Defense', and Standard 13.12, Workload of Public Defenders, available at http://www.nlada.org/Defender/Defender_Standards/Standards_For_The_Defense#thirteentwelve (accessed 11/6/13).

reduced caseload ought also to be present.[7] In the First Judicial Department in New York City, the Indigent Defense Organization Oversight Committee has stipulated that the caseload of that supervisor should be equal, at most, to 10% of that of a regular attorney.[8] Taken together, these standards suggest that when an office's staffing and cases are combined the average caseload per attorney should not exceed 367 misdemeanors, 138 felonies or 23 appellate cases, rounding to the nearest case.[9] Put another way, felony cases should be weighted as equivalent to 2.67 misdemeanors, and appellate cases weighted as equivalent to 16 misdemeanors.[10]

We applied the same limit for parent representation cases as in felony criminal cases, setting the ratio at 138 cases per lawyer after accounting for supervision. This standard is conservative when compared to those in place in other states such as Massachusetts, where providers are limited to 125 cases.[11] We were also guided by national standards issued by the American Bar Association, which suggest that attorneys for parents should be limited to between 50 and 100 cases at any one time. New York has not established a limit for parent representation, though it is instructive that attorneys for children in the state's family courts may not exceed 150 open cases.[12]

Recognizing that adequate representation cannot be provided in the absence of "[s]ocial workers, investigators, paralegal and paraprofessional staff as well as clerical/secretarial staff," national standards also stipulate the ratio of attorney to non-attorney staff that organizations require.[13] The Model Contract for Public Defense Services, drawn up in 2000 under the joint auspices of the Federally-funded Criminal Court Technical Assistance Project and the National Legal Aid and Defender Association, stipulates that investigators and social workers should be provided at a rate of one for every 450 felony cases respectively (suggesting a ratio of one of each for every three attorneys), in addition to one legal assistant

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[7] Ibid.

[8] General Requirements for All Organized Providers of Defense Services to Indigent Defendants, July 1, 1996. *Indigent Defense Organization Oversight Committee (IDOOC)*. See standard V.B.2.c.

[9] More precisely, combining supervisory and staff attorney caseloads in this way results in standards of 367.27 misdemeanor cases, 137.72 felony cases, and 22.95 appellate cases per attorney per year.

[10] The concept of 'weighted caseload' has been used commonly in New York City, where providers sometimes quantify their progress as an attempt to achieve a 'weighted caseload' of 400.

[11] See Standard 16, *Policies and Procedures Governing Billing and Compensation*, 2011, available at http://www.publiccounsel.net/private_counsel_manual/CURRENT_MANUAL_2010/MANUALChap5links3.pdf (accessed 11/6/13).

[12] For the American Bar Association standards see Commentary to Obligation 2 of Attorney Managers ('Determine and set reasonable caseloads for attorneys', p. 32, available at http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf (accessed 11/6/13). For attorneys for children in New York, see Rules of the Chief Administrative Judge, §127.5 Workload of the Attorney for the Child. Available at http://www.nycourts.gov/rules/chiefadmin/127.shtml#05 (accessed 11/6/13). We also note that Washington State limits parent attorneys to 80 open cases, see Standard 3, *Washington State Bar Association Standards for Indigent Defense Services*, 2011, available at http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/~/media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20(2011).ashx (accessed 11/6/13).

[13] Standard 4.1, *Guidelines for Legal Defense Systems in the United States*, Final Report of the National Study Commission on Defense Services (National Legal Aid and Defender Association, Washington DC, 1976), http://www.nlada.org/Defender/Defender_Standards/Guidelines_For_Legal_Defense_Systems#fourone (accessed 11/6/13). The NSC standards go on to stipulate that one investigator should be provided for every three attorneys, but do not specify ratios for other types of non-attorney staff.

for every four attorneys. All told, these standards suggest a ratio of 0.92 non-attorney staff for every attorney.[14] State standards in Indiana suggest a ratio of 0.75:1, while those in Washington State suggest ratio of 0.5:1 though the latter mentions only secretarial and investigative support, while stipulating that social work, mental health and interpretive staff must be provided in addition.[15] In this report, we applied a conservative standard of 0.5 non-attorney staff per attorney.[16]

Table 1: Ratios Used in Analysis

Criminal cases per attorney	
Misdemeanors	367:1
Felonies	138:1
Appeals	23:1
Family cases per attorney	138:1
Non-attorney staff per attorney	0.5:1

Assigned Counsel Providers

Assigned Counsel systems of representation provide indigent legal services through individual lawyers appointed by the court and paid hourly for their time. Among assigned counsel providers of indigent representation, the application of caseload limits presents unique problems. The total caseloads of assigned attorneys cannot usually be known because they may take cases on private retainer in addition to their indigent legal services work. Assigned attorneys do, however, bill for a specific number of hours

[14] National Legal Aid and Defender Association, 2000. *Model Contract for Public Defender Services*, section VII.F. The ratio of 0.92:1 non-attorney-to-attorney staff is obtained by combining the ratios of 0.333:1 for investigators, 0.333:1 for social workers, and 0.250:1 for legal assistants.

[15] The Washington standard, providing for one legal assistant for every four attorneys and one investigator for every four attorneys but also noting social work staff, mental health professionals, and interpreters must be available in addition, can be found here: http://your.kingcounty.gov/mkcc/agendas/ljhs/20120911-ljhhs-additional.pdf?_sm_au_=iVV4qV61R5kSQVQ5 (accessed 11/6/13). The Indiana standard, providing that one secretary/paralegal, one investigator/paralegal, and one other supporting staff member should be available for every four attorneys, is available here (see Table 2): http://www.in.gov/judiciary/pdc/files/indigent-defense-non-cap.pdf?_sm_au_=iVV4qV61R5kSQVQ5 (accessed 11/6/13).

[16] The reason for the leniency of the standard is to assure the estimates of the need for additional staff were not unjustly inflated. We do not endorse this standard as sufficient, however, but regard the need to establish a truly adequate standard as a matter for future research and consultation. Additionally, we did not attempt to distinguish between types of non-attorney staff (investigator, social worker, administrative, etc.) because we are aware these categories are quite elastic. Workload pressures frequently require staff with 'investigator' job titles to engage in administrative or other activities unrelated to the factual investigation of cases. For that reason, correctly quantifying the number of 'investigators' retained on staff in New York would require detailed knowledge of their occupational roles. In addition to this problem, national standards are not in consensus over ratios of specific types of supporting staff within a defender office, though all assert the critical importance of investigative, paralegal, social work and administrative support in some combination. For the present analysis, therefore, a gross measurement of the total number of non-attorney staff was employed in combination with a conservative benchmark (0.5:1) for which support could reasonably be deduced from national standards.

worked on each case, and expectations for hours spent per case can be inferred from caseload standards.[17] Assuming a total working year has 1,875 hours,[18] an attorney with 367 misdemeanors or 138 felony or family court assignments should spend 5.1 and 13.6 hours on cases of each type respectively. Similarly, a single appellate case should demand 81.7 hours of work.[19] We used these standards as the benchmarks for the analysis of assigned counsel providers that follows.

Support and supervision are no less necessary for indigent legal services provided under the auspices of assigned counsel programs than for institutional providers. We accounted for supervision through the use of the same caseload standards employed for institutional providers, which incorporate a prorated caseload reduction for supervising attorneys. Likewise, to account for support from non-attorney personnel, we assumed that for every hour that an attorney works, a non-attorney should work for 0.5 hours.

Should Limits Be Lower?

The caseload limits used in this report are of national pedigree and relatively long historical standing. Nevertheless, the benchmarks they set have frequently and fairly been criticized as out-of-date, empirically unsupported, and, above all, too high. Created in an historical period before the massive increase in both the complexity of the criminal trial process and also the seriousness of the consequences of a criminal conviction, the NAC standards do not account for the increases in the severity of the criminal penalties and civil consequences to which defendants have been subjected since 1973.[20] They also do not account for innovations which have created new kinds of work for defenders such as problem-solving courts and the civil commitment of sex offenders.[21] ILS is aware, for example, that several defenders in upstate counties provide representation to all defendants at regular drug court status conferences – including those who have retained private counsel.

The standards also provide no empirical justification for the setting of the benchmarks at the levels they do, and even at the time of writing included the caveat that lower limits might be appropriate in certain localities.[22] Evidence produced since that time has examined the link between caseloads and the actual

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[17] It is pertinent to note here that the rates of compensation for assigned counsel work remain at the level set in 2004, namely $60 per hour for misdemeanor cases and $75 per hour for all other cases. Per-case caps are set at $2,400 and $4,400 respectively and can be exceeded only in 'extraordinary circumstances'. (See NY County Law §722-b.) ILS has heard numerous reports around the state of these rates and caps being insufficient to assure quality representation.

[18] According to www.workingdays.us (accessed 11/6/13) New York State had 250 working days in 2012 after accounting for weekends and State holidays. We allocated 7.5 billable hours to each day.

[19] More precisely, the standards require that programs average at least 5.105 hours per misdemeanor case, 13.614 hours per felony or family case, and 81.683 hours per appellate case.

[20] See *Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel*, Report of the National Right to Counsel Committee, 2009, at www.constitutionproject.org/pdf/139.pdf (accessed 11/6/13) especially pages 38-39.

[21] It is also worth noting a subtly different problem observed in some New York counties whereby providers of indigent legal services are charged with responsibilities which are outside the scope of providing representation. The most common instance of this is the de facto practice of defenders performing checks on the financial eligibility of clients for services – a function properly the preserve of the judiciary, and one which consumes resources intended for the provision of representation.

[22] National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (United States Government Printing Office, Washington DC, 1973). The text of the commentary to the caseload standard raises "the caveat that

work that attorneys do, and has established not only the negative relationship between caseloads and the quality of representation, but has also been used to generate new, lower caseload limits in some places.[23] These findings, combined with the changes in the nature of the work indigent legal services providers are expected to perform, confirm that the NAC was right to be circumspect about setting caseload standards at the levels it did. In 2002, the American Bar Association declared that the NAC numbers "should in no event be exceeded."[24] Moreover, the most recent and authoritative national assessment of caseloads concluded flatly that "the NAC's maximum caseload numbers per attorney per year are too high."[25]

The caseload limits used here are best understood as absolute maxima – levels beyond which any defender office or assigned counsel program should be considered inherently crippled and presumptively unable to provide adequate services. With further study, we may conclude that these maxima should be set lower. In the interest of producing only a conservative estimate of the necessary investment of resources required to bring upstate New York in line with what are the most widely-recognized maximum caseload limits, however, we employ them here.

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particular local conditions – such as travel time – may mean that lower limits are essential to adequate provision of defense services in any specific jurisdiction" (page 277, commentary to Standard 13.12).

[23] For evidence that caseloads are related to case outcomes, see Luchansky (2009) *The Public Defense Pilot Projects: Washington State Office of Public Defense*, available at http://digitalarchives.wa.gov/WA.Media/do/0C9435A31893A6A3C504FA4AA28678A5.pdf (accessed 11/6/13); Harper, Brennan and Szolnoki (2005), *Dependency and Termination Parents' Representation Program Evaluation Report 2005*, available at http://www.opd.wa.gov/documents/0048-2005_PRP_Evaluation.pdf (accessed 11/6/13); Iyengar (2007) *An Analysis of the Performance of Federal Indigent Defense Counsel*, National Bureau of Economic Research, working paper series # 13187, available at http://www.nber.org/papers/w13187 (accessed 11/6/13); Anderson, David C. (1997), *Public Defenders in the Neighborhood: A Harlem Law Office Stresses Teamwork, Early Investigation* available at: https://www.ncjrs.gov/pdffiles/163061.pdf (accessed 11/6/13). For specific guidance on lower caseload standards based on a workload assessment, see *Lancaster County Public Defender Workload Assessment*, July 2008 (recommending a limit of 127 felony assignments per attorney) available at http://ppc.unl.edu/userfiles/file/Documents/projects/Public%20Defender/Public%20Defender%20Workload%20Assessment.pdf (accessed 11/6/13). See also Massachusetts Committee for Public Counsel Services, *Policies and Procedures Governing Billing and Compensation*, (2011), Standard 16, setting a limit of 100 Superior Court (i.e. serious felony) cases per attorney and 250 District Court (misdemeanors and lesser felony) cases per attorney, available at: http://www.publiccounsel.net/Private_Counsel_Manual/CURRENT_MANUAL_2010/MANUALChap5links3.pdf (accessed 11/6/13). We also note the well-established understanding among providers of appellate representation in New York State that 25 criminal appellate assignments a year is significantly above what a single attorney can handle if they are expected to provide adequate representation. Practitioners in this area in New York City have established policies whereby attorneys typically handle no more than ten to fourteen such assignments annually. ILS continues to study the issue of appropriate caseload limits for trial and appellate work, and our use of the NAC's standards should not be read as an endorsement.

[24] American Bar Association, 2002. *Ten Principles of a Public Defense Delivery System*. See commentary to Standard 5. Available at: http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf (accessed 11/6/13).

[25] Lefstein, N., 2012. *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, American Bar Association Standing Committee on Legal Aid and Indigent Defendants, page 47, available at: http://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf (accessed 11/6/13).

Data Collected

ILS sought data on the caseloads, staffing and expenditures of the 150 known providers of indigent legal services in the State in 2012. 15 of these were eliminated from this analysis because they were based in New York City which is presently subject to the caseload reduction program mentioned above. A further six were individual attorneys contracted to provide representation respectively in Clinton County (3 family court attorneys) and Rensselaer County (2 family and 1 appellate attorney). Data could not be obtained from either County breaking out the work of these attorneys, and the caseload and expenditure data associated with their work were therefore merged with the data of the assigned counsel program from each county.

These deletions and merges resulted in a final dataset with 129 programs. 71 of these were institutional providers, and 58 were assigned counsel programs.[26] For the institutional providers, we collected data on newly assigned cases in 2012, as well as the total numbers of attorney and non-attorney staff in the programs. For the assigned counsel programs, we collected caseload figures as well as data on total expenditures for 2012.

Caseloads

Every provider of indigent legal services in New York State is required to submit statistics on newly assigned homicide, felony, misdemeanor, family and appellate cases via an annual report known as the UCS-195.[27] For 88 of the 129 providers under study, 2012 caseload data were obtained from these submissions. Of the remaining 41 programs, one made a submission containing data on new assignments that were not broken down by case type, two made submissions that were missing data on family court caseloads, while the remaining 38 either did not submit the form at all (14 programs) or submitted forms which combined data on caseloads from multiple programs (24 programs – combined into just 11 forms).

ILS therefore contacted each of these 41 programs directly to request that they provide the data required for the analysis – in some cases for the first time, and in other cases by breaking out the numbers they had already provided in the appropriate way. 36 were able to provide data.[28] Of the remaining five programs, two could not provide any data, and three could provide criminal caseloads only. Thus, of the 129 programs, caseload data were obtained for 124.

Our data collection procedures were designed to prevent the over-statement of caseloads in defender offices. Indeed, there is every likelihood that caseloads are understated in this report. While data were

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[26] Although there are 57 upstate counties, Wayne County runs its family and criminal court assignments under different auspices and reports the caseload data separately, so these were treated as separate programs here.

[27] See NY County Law §722-f.

[28] Thirty-one programs provided 2012 caseload data. Two provided 2010 data, and three provided a total number of new assignments, not broken out by case type (felony, misdemeanor etc.), from which data were inferred. In these three latter programs the total number of new assignments was divided into an estimate of felony and misdemeanor cases based upon statistics published by the Division of Criminal Justice Services (DCJS) indicating the breakdown of arrests in the county by felony vs. misdemeanor. For example, in one county, the public defender indicated that 200 criminal cases were conflicted out to assigned attorneys but could not report how many were felony and how many were misdemeanor cases. The arrest data showed that in 2012 28.7% of arrests in the county were for felony offenses. The 200 assigned cases were apportioned accordingly, resulting in an estimated 57 felony cases and 143 misdemeanors.

collected on assignments to felony, misdemeanor, family and appellate cases, we did not collect data on the representation being provided to clients undergoing treatment programs in problem-solving courts or to clients facing the possibility of civil commitment as a sex offender. We also did not apply any additional weight to serious cases such as homicides, violent felonies, or serious sex offenses, despite the large amounts of work they require. Appellate assignments in county courts, family courts, parole appeals, and Sex Offender Registration Act (SORA) hearings were also omitted from the data.[29] In each of these types of cases a defendant, or respondent as the case may be, is entitled to counsel. Yet, either because no data were available or no caseload limits were stipulated in the standards we reviewed, we did not factor this work into our analysis.

Staffing

We sought data on the numbers of full-time-equivalent attorney and non-attorney staff in each of the 71 institutional providers under study. In order to obtain these data, we first examined the UCS-195 submissions from these providers, where they were available, and cross-referenced any figures with memoranda prepared by ILS staff from site visits conducted in 2012. In many cases, these yielded data on both the attorney and non-attorney staffing levels of offices, though holes in the data remained. Each of the 71 providers was then contacted, shown the data that had been collected, and asked to verify or alter them as appropriate. In this way, data on attorney and non-attorney staff were successfully collated for all programs.

In order to project the cost of recruiting additional attorney and non-attorney staff in institutional providers where staffing levels were low, it was necessary to glean data on the average salaries and benefits of such individuals. Data on salaries for public defenders were obtained from the 2012 *Public Sector and Public Interest Attorney Salary Report* which indicated entry-level public defenders in the Northeast were paid an average of $51,521 that year.[30] Data from the Bureau of Labor Statistics on the average wage for paralegals ($53,570), private investigators ($52,430) and administrative assistants ($38,010) in New York State in 2012 were also obtained for the purpose of calculating the cost of recruiting non-attorney staff.[31] The cost of a single non-attorney staff member was estimated to be the average of these three, or $48,003 a year. The cost of employee benefits was calculated using Bureau of Labor Statistics data showing that the average cost of providing benefits to a local government employee was equal to 49% of their salary for management and professional employees, and 66% of their salary for clerical support workers.[32] For the purposes of the assigned counsel analysis, the hourly rate for non-

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[29] Our data on appellate caseloads of providers were obtained directly from the clerks of courts in each judicial department, to whom we are immensely grateful. These data omitted appeals from misdemeanor convictions, however, which are typically heard in county court, as well as proceedings in the other categories mentioned in the text.

[30] *2012 Public Sector and Public Interest Attorney Salary Report,* National Association of Legal Professionals, Washington DC, September 2012, page 14. The report goes on to show that attorneys with 2 years of experience are paid an average of $56,019, those with 5 years $65,778, and those with 8-10 years $75,300. We used the entry-level salary to keep our estimate of the cost of employing additional attorneys as conservative as possible.

[31] *May 2012 State Occupational Employment and Wage Estimates (New York)*, Bureau of Labor Statistics, available at http://www.bls.gov/oes/current/oes_ny.htm#43-0000 (accessed 11/6/13).

[32] *March 2013 Employer Costs for Employee Compensation (Table 3)*, Bureau of Labor Statistics bulletin available http://www.bls.gov/news.release/archives/ecec_06122013.pdf (accessed 11/6/13). The 49% figure was applied to attorneys, the 66% figure to non-attorneys.

attorneys was calculated from these same figures to be $42.50.[33] While we make no comment on the adequacy of these salaries, they are at least grounded in real-world data.

Expenditures

The total amounts expended in 2012 were sought for each of the 129 programs in the study. These figures were obtained from the UCS-195 submissions and each county's annual report of indigent legal services spending to the Office of State Comptroller. Where the two reports differed in the amount reported, we chose the higher amount in order to be sure we captured all spending.[34] Where neither source could provide the data, we contacted providers directly. Expenditure data were successfully obtained for all 129 programs.

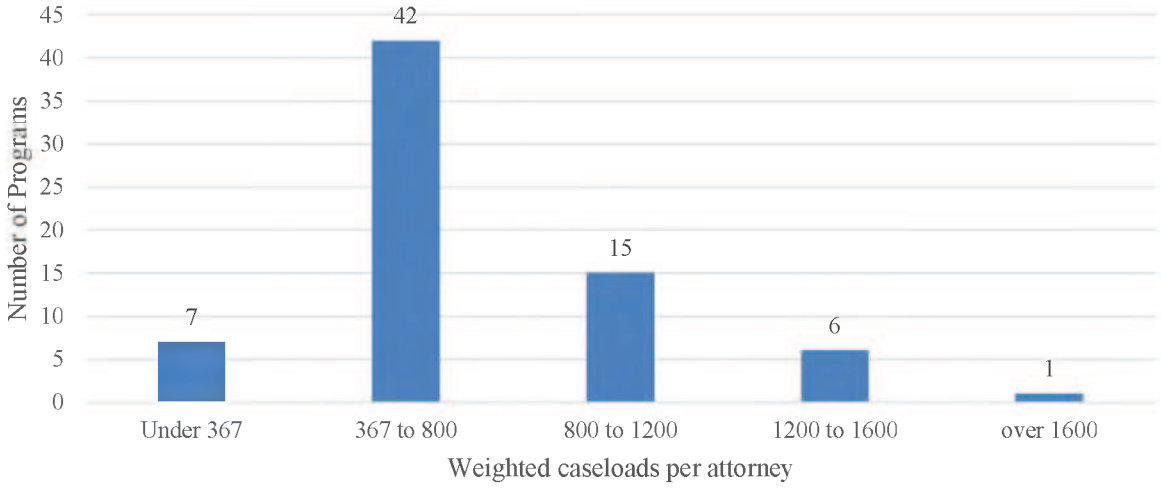
Analysis

Institutional Providers

Using the caseload and attorney staffing data, weighted caseload-per-attorney ratios were calculated.[35] Whereas national standards suggest the weighted caseload per attorney in each program should be 367 or lower, the 71 upstate providers in fact averaged 719 cases per attorney in 2012, almost double the maximum standards. Figure 1 shows the range in caseloads across all 71 providers.

Figure 1: How Many Cases Are Attorneys Taking in Upstate Institutional Providers?

Analysis includes all 71 providers



[33] This figure was based on the assumptions of a $48,003 annual salary, increased by 66% for fringe benefits, divided across a working year of 1,875 hours ($48,003 * 1.66 / 1,875 = $42.50).
[34] For the two programs for which 2010 caseloads were obtained, 2010 spending figures were also used.
[35] Weighting cases transforms all caseload counts into misdemeanor-equivalent cases. Misdemeanor cases are therefore weighted by a factor of 1, while family court and felony cases are weighted by 2.67 and appeals weighted by 16. Stated in this way, a provider meets national maximum caseload limits when their weighted caseload is lower than 367.

Calculating the cost of bringing institutional providers into compliance with national standards required three steps. First, caseload data were used to calculate how many full-time equivalent (FTE) attorneys and FTE non-attorney personnel were needed to cover all the cases assigned to each program. Second, the numbers of FTE attorneys and non-attorneys already known to be present in each program were subtracted to find the number of additional employees needed. Third, the cost of employing these additional staff was calculated by multiplying those numbers by the salary data mentioned earlier. An example is shown in Table 2 using data from a provider in an upstate urban county.

Table 2: Example of Institutional Provider Analysis
All monetary amounts rounded to the nearest dollar.

Step 1: Find how many staff are needed to cover all cases assigned to the program.

Total attorney staff required	= (2,871 felonies / 138) + (7,536 misdemeanors / 367)
	+ (1,188 family / 138) + (27 appellate / 23)
	= 20.804 + 20.534 + 8.609 + 1.174
	= 51.12 attorney staff
Total non-attorney staff required	= 51.12 attorney staff / 2
	= 25.56 non-attorney staff

Step 2: Find difference between total staff required and present staffing levels

Additional attorneys required	= 51.12 – 21.5 attorneys on staff at present
	= 29.62 additional attorney staff needed
Additional non-attorneys req.	= 25.56 – 11 non-attorneys on staff at present
	= 14.56 additional non-attorney staff needed

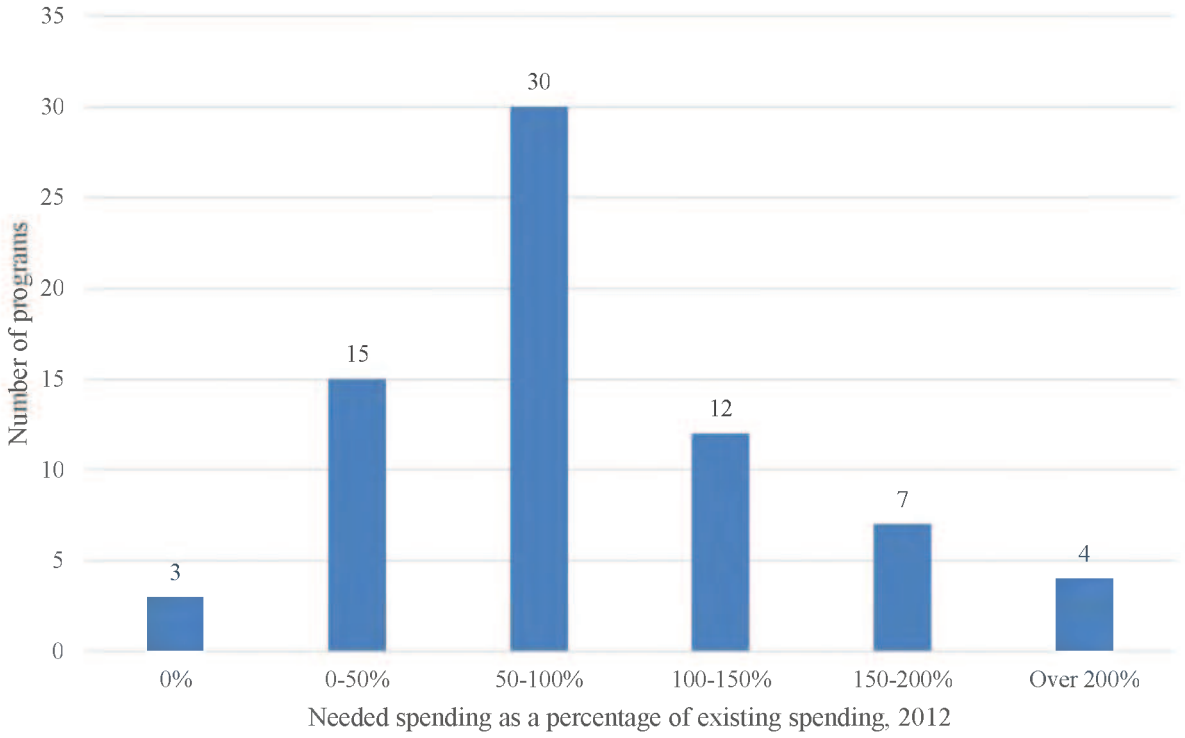
Step 3: Multiply by cost of staff salaries

Cost of additional attorneys	= (29.62 attorney staff) x (salary & benefits)
	= 29.62 x ($51,521 x 1.49)
	= $2,273,818
Cost of additional non-attorneys	= (14.56 non-attorney staff) x (salary & benefits)
	= 14.56 x ($48,003 x 1.66)
	= $1,160,213
Total cost of new staff	= $3,434,031

Taking into account both attorney and non-attorney staff, just three of the 71 institutional providers were found to be staffed at levels that complied with maximum national caseload limits in 2012. In order to comply with those limits, a total of 567 new attorneys would need to have been on staff in those providers in addition to the 654 already employed. 324 new non-attorney staff would also have been required in addition to the 297 then employed. On average, employing these new staff would have required institutional providers to increase their spending by 92% over what they actually spent in 2012. Figure 2 shows the range of spending increases needed across the state. The estimated total cost of employing these required additional staff in all programs combined was $69,360,191.

Figure 2: By What Percentage Did Institutional Provider Spending Need To Increase?

Analysis includes all 71 providers.



Assigned Counsel

Of the 58 assigned counsel providers known to ILS, caseload data were obtained for all but five, while expenditure data were obtained for every program. The five missing programs accounted for approximately 3.1% of the total spent on assigned counsel representation throughout the fifty-seven upstate counties.[36]

Calculating the cost of bringing assigned counsel providers into compliance with national standards required three steps. First, the total number of hours for both attorneys and non-attorneys required by

[36] The five missing programs expended $2,404,452 in 2012, out of a total of $76,846,114 in all upstate counties.

standards to cover all cases assigned to the program was calculated. Second, the number of hours was multiplied by the statutory rates of compensation for attorneys ($60/hr for misdemeanors and $75/hr for all other cases) and the calculated rate for non-attorneys ($42.50/hr) to find the total cost of all these hours combined. Third, the result was compared to the amount actually spent by the program. Table 3 below shows an example using data from an Assigned Counsel Program in an upstate, semi-rural county.

Table 3: Example of Assigned Counsel Program Analysis
All monetary amounts rounded to the nearest dollar.

Step 1: Calculate total hours required by NAC standards for all cases

Total felony case hours required	= 13.614 hours x 210 felony cases = 2,859 hours
Total misdem. case hours required	= 5.105 hours x 558 misdemeanor cases = 2,849 hours
Total family case hours required	= 13.614 hours x 382 family cases = 5,201 hours
Total appellate case hours required	= 81.683 hours x 15 appellate cases = 1,225 hours
Total non-attorney hours required	= (Sum of attorney hours) / 2 = (2,859 + 2,849 + 5,201 + 1,225) / 2 = 6,067 hours

Step 2: Calculate total cost of hours required by standards

Total cost misdemeanor case hours	= 2,849 hours x $60/hour = $170,940
Total cost all other case hours	= 9,285 hours x $75/hour = $696,375
Total cost non-attorney services	= 6,067 hours x $42.50/hour = $257,848
Total cost of all hours combined	= $170,940 + $696,375 + $257,848 = $1,125,163

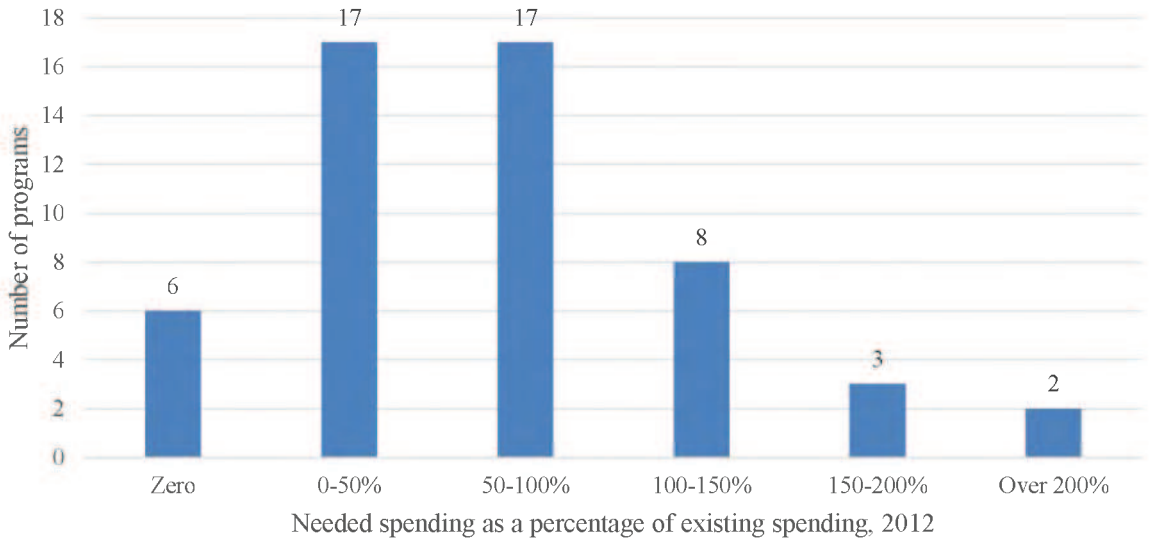
Step 3: Compare spending on attorneys by program with cost according to standards

Amount spent	= $612,636
Amount required by standards:	= $1,125,163
Total additional spending needed	= $512.527

47 of the 53 assigned counsel programs for which data were available were found to have spent at lower levels than standards indicated was required. On average, these programs would have needed to increase their spending by 67% in 2012 to meet national standards. Figure 3 shows the range of spending increases needed across the state. The sum of the amounts required to be spent in all of these programs combined was $40,544,754. In order to account for the remaining 5 programs, which accounted for 3.1% of the total spent on assigned counsel in upstate counties, we increased our estimate by an equivalent proportion. Accordingly, the amount needed to bring all 58 programs into compliance with national standards was estimated to be $41,854,342.[37]

Figure 3: By What Percentage Did Assigned Counsel Spending Need to Increase?

Analysis based on data from 53 programs



Conclusion

Adding the totals for institutional and assigned counsel providers, we estimate that a minimum of an additional $111,214,533 is required to bring the upstate counties of New York State into compliance with maximum national caseload limits.

[37] The five programs lacking data represented approximately 3.1% of assigned counsel spending in all upstate counties combined. We therefore assumed that the $40,544,754 of verified need across 53 programs represented approximately 96.9% of the total need in all programs. Accordingly, the final estimate for all 58 programs was computed using the following arithmetic: $40,544,754 / 0.969 = $41,854,342.