

15

Testimony of Mark S. Williams, Esq., Public Defender, Cattaraugus County and President Elect, Chief Defenders Association of New York, Inc., before the New York State Senate Finance Committee, Honorable Catherine Young, Chair. February 4, 2016, Albany, NY.

Thank you for the opportunity to testify here today in regards to the New York State Executive Budget for 2016-17. For those of you who do not know me, I am Mark Williams and I am here today as the Public Defender of Cattaraugus County. With a population of approximately 80,000 New Yorkers, it is very representative of upstate New York. Over 13 years ago, Cattaraugus County made a decision to start a public defender's office as its primary method under New York State County Law to handle indigent defense and mandated family representation. I have had the honor of serving in that position for those thirteen years. Starting with myself and a secretary, our office now employs seven attorneys, two investigators, two legal secretaries, an account clerk typist and two keyboard specialists.

I am also here testifying as the President-Elect of the Chief Defenders Association of New York. We are an 18 month old incorporated association of the leaders of indigent defense providers and programs throughout all of New York State from Long Island, New York City, the Hudson Valley, the Capital Region, the Adirondacks, Central New York, Syracuse, Rochester, Buffalo, the Chautauqua-Allegheny Region and the entire Southern Tier. I am here giving a voice to our thousands of clients we represent every day throughout this great state. Whether urban, suburban or as rural as you can imagine, we stand here united in our position on the proposed executive budget.

We have three concerns that I would like to address today with the Executive Budget.

The first issue is the level of funding for the Indigent Legal Services office. The Executive Budget will cause significant deterioration of services in most counties in New York State. While we are excited and grateful to see full funding of the state's settlement of the Hurrell-Harring lawsuit, that will positively impact only the five counties that were named in the suit. It will do nothing to help with the overwhelming caseloads confronting providers in those counties not part of the settlement. It will do nothing to ensure representation by counsel at the first appearance by a defendant in criminal courts. In fact, it will make conditions worse in Cattaraugus County and the other 51 counties outside of NYC. How can that be, you may ask. In Cattaraugus County, three years ago we were one of 25 upstate counties awarded a discretionary grant that allowed us to hire an attorney, an investigator and two part time clerical workers, positions which allowed us to start to fashion a remedy to the crisis of New Yorkers being taken before a local judge to be arraigned on charges and more often than not, ordered to jail, sometimes for 30 days or more until the next court session, without ever seeing or being represented by counsel. In the words of our New York State Court of Appeals "... [T]he Constitution undoubtedly guarantees representation at all critical stages of the criminal proceedings. In New York, arraignment is, as a general matter, such a stage." Many times bail is set at what we here might consider a small amount, but is actually out of reach for many of our

clients. Folks lose their jobs when they can't make bail, furthering their cycle of poverty and, tragically, negatively impacting their family. Without the legislature increasing the funding to the initial amount requested by Indigent Legal Services, our grant and the grants in 24 other upstate counties will end later this year. Cattaraugus County does not have and will not absorb this \$200,000 annual reduction in funding. Four providers of services to the residents of Cattaraugus County will lose their jobs. And people currently not being jailed at their initial appearance will face jail, again. The costs to taxpayers will surge, jobs will be lost by defendants and jail populations will increase. There will be no justice. This will likely be repeated throughout all of the other 24 counties in Upstate New York that lose this funding. It also will deprive the other counties who did not submit an original grant proposal from starting to end this insidious system of jailing people without access to counsel.

Also impacted is a second set of grants, this one at approximately \$100,000 a year to Cattaraugus County, again targeted at upstate providers with a purpose of caseload reduction. Being the Chief Public Defender of a rural county with over 4,600 referrals last year in both mandated family representation and indigent defense and with nearly 2,600 cases actually handled by our seven attorneys, I have the privilege of being the head of a program with one of the highest caseloads per attorney in the whole state. It is not a statistic that I am proud of, but I can tell you that if the caseload reduction grant is not fully funded, we will lose another full time attorney and a part time clerical position. Again, Cattaraugus County is not unique in its position as we are just one of 47 counties that rely on this grant from Indigent Legal Services to provide counsel for clients. Just because the funding goes away, the clients and their legal matters will not disappear. You will have already overworked attorneys taking on more work that they do not have the capacity to handle. The Constitutionally required representation will become even less likely to be received by those most in need.

These grants make a difference in people's lives. For example, last year I was able to use my time more effectively to better represent a mother charged with multiple felonies. After she sat in jail for a year awaiting her trial, we were able to achieve justice for her and an acquittal of the felony charges. It was because of the additional resources provided through the grant that we were able to achieve this result. Without those resources we put into her defense, she certainly would have been wrongfully convicted. I will never forget meeting with her daughter, then 3 years old, who thanked me for getting her mommy home to her. It brought tears to my eyes then and even now as I think about her sincere gratitude at getting her mother back and the fact that had we not had those resources to work on her case because of the grant, this little girl might not have seen her mother for ten years or more.

I am sure the other 46 Upstate providers who have resources available because of these grants from ILS would have similar experiences to tell you. We need the funds restored to the Indigent Legal Services budget to keep the status quo, to allow us to keep treading water rather than sinking to the bottom and drowning in excessive caseloads. We need to keep making gains in providing counsel to fellow New Yorkers at the critical moment when they are hauled before a judge for that first appearance. We need to keep

moving towards caseload standards that will allow sufficient time for effective representation and give meaning to the Constitutional right to counsel. We are specifically requesting that the appropriation to the Indigent Legal Services be restored to the amount of \$139.26 million as requested.

Our second point is requesting full funding of the New York State Defenders Association (NYSDA). The Executive budget has ignored the Backup center run by NYSDA. My office, like many other small providers, who make up the bulk of front line defense in Upstate New York, is dependant on the backup center. I jokingly refer to the backup center as my back office because they are there with me everyday for every one of my clients. I have called for assistance in the middle of trials so often that I can't even begin to tell you how many times. But, what I can tell you is that the assistance that they provide can be life altering for my clients. My acquittal rate in felony trials over the last 13 years is one of the highest in New York State. It is the advice, legal research, experts they find and sometimes just words of encouragement that are so valuable. The lawyers at the backup center have become friends and colleagues. Even with the caseload relief grant, we do not have the time nor resources to duplicate the critical services provided by the Backup Center. Again, I speak not just for myself but for all of the members of the Chief Defenders Association of New York when I ask you to restore the requested funds necessary to keep our tenuous system of indigent defense and mandated family representation going and keeping the NYSDA Backup Center fully functioning. We are specifically requesting that the funding of New York State Defenders Association in the amount of \$3.15 million be appropriated.

Lastly, I want to speak briefly about the Veterans Defense Program, sponsored by NYSDA. As a Veteran and retired Commander in the United States Navy, two-term Commander of the American Legion in Cattaraugus County and past Commander of Norton Chambers Post 1434 of the American Legion in Hinsdale, I can speak to the importance of this project to our Veterans population. There is a dire need to continue the work on behalf of our Veterans through this program. The training of attorneys to represent Veterans who have very unique needs as a result of the last decade and a half of wars and wartime deployments, the actual representation of Veterans where there are no local attorneys able to represent them and a need to expand the program into New York City, are owed to the Veterans who have defended our freedoms. Funding is necessary in the amount of \$1.1 million. We implore you to continue the work started and to not let our Veterans in need go without meaningful representation by qualified counsel who understand their needs.

We look forward to working with you on these important funding needs. Most of the funds necessary to achieve these goals are already there in dedicated funds created by earlier sessions of the legislature specifically for Indigent Defense and Mandated Family representation. We are confident that all of you understand the need for these funds to be appropriated and distributed to counties who do not have the ability to replace state funds. Please do not make the forgotten counties – those counties other than the five Hurrell-Harring Settlement counties – go backwards in their representation of Indigent Defense and Mandated Family cases. The Hurrell-Harring counties represent only 11%

of New York State's population. The citizens who make up the remaining 89% of our state need their rights protected, too. Think of that, nearly 9 out of 10 New Yorkers are not covered by that settlement and are being deprived of their Constitutional rights. If you do not take action now, your counties and your constituents will suffer.

Thank you.