



**Submitted to the Joint Legislative Fiscal Committees of the New York State Legislature for the Hearing
on the FY 2025-2026 Public Protection Executive Budget Proposal
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On behalf of the New York State Bar Association (NYSBA), the nation's oldest and largest voluntary state bar association, I warmly thank the Joint Fiscal Committees for the opportunity to submit testimony on the Governor's 2025-2026 Executive Budget. The Bar appreciates its longstanding working relationship with the Legislature, and I would like to offer our appreciation to the Legislature and for the attention our priorities have received in the past, especially those policies regarding access to justice and the right to counsel. For a century and a half, NYSBA and New York State's Legislature have enjoyed a collaborative and fruitful partnership.

Indigent Legal Services Fund (ILSF) Sweep

More than two decades ago, New York State rightfully amended the State Finance Law to establish the ILSF with the intention to "...result in real improvements in the quality of the public defense system in New York..."¹ The maintenance and expansion of this program is vital for those seeking to access justice in our state, and in turn is critical to NYSBA's mission.

State Finance Law § 98-b enumerates three purposes of the fund: (1) to assist counties and New York City in providing public defense representation under County Law Article 18-b; (2) to assist the state in improving the quality of public defense services and in funding representation provided by assigned counsel paid in accordance with Judiciary Law § 35; and (3) to support the operation of the Office of Indigent Legal Services (ILS), which is tasked with disbursing ILSF funds. Notwithstanding these statutorily detailed purposes, the Governor has proposed in Part EE of the Public Protection and General Government Art. VII bill (PPGG) / (S.8305/A.8305) to authorize the transfer of up to \$120 million from ILSF to the State's General Fund. The Executive has offered action that comes with no discernible ILS-related purpose related to this transfer. Instead, the proposal would negatively improve the quality of effect public defense in New York State and would simultaneously deprive rural upstate, as well as New York City, of sorely needed funding to support the quality public defense services for New Yorkers who cannot afford to retain an attorney. Depleting the ILSF for purposes unrelated to public defense also sends a signal to our municipalities and public defense providers that the State may not live up to its commitment to funding constitutionally and statutorily mandated quality public defense.

The Executive should use the ILSF to further the purposes of State Finance Law and other justice-driven policies. Given that the sweep is imprudent at present for the justice system and is inconsistent with the ILSF's legislative intent and statutorily earmarked purposes, the New York State Bar Association opposes the proposal. Rather, the Bar respectfully requests that the Legislature rejects this sweep and instead ensures that the ILSF is used to improve the quality of public defense consistent with ILS's budget request.

¹ Chap. 62, 2003 Biennium, 227th Reg. Sess. (NY. 2003) p. 55, line 50

Assigned Counsel Rates Escalator

NYSBA appreciates the commitment that New York State has made in recent years to properly funding the Assigned Counsel (commonly referred to as “18-b”) and Attorney for the Child programs. The Bar nonetheless continues to urge the Legislature and Executive to provide a built-in mechanism for a regular statewide rate review and adjustment to safeguard equal access to representation throughout the state. This type of escalator – similar to that which exists for prosecutors and the Judiciary- would ensure a responsible allocation of state funding is made for assigned counsel, as is already required by law. This is only possible with a mechanism for adjustment of rates in future years.

Assigned counsel attorneys are court appointed attorneys who represent indigent clients facing criminal charges, as well as children in a myriad of complex family law matters. Up until 2 years ago, the hourly rates of compensation for assigned counsel attorneys in New York had remained stagnant for nearly two decades. The inadequacy of the rates has resulted in an alarming shortage of assigned counsel available to represent individuals who are constitutionally and statutorily entitled to legal representation, often at times of extreme crisis and vulnerability. The importance of this funding in child welfare cases is stressed in the 2022 [*NYSBA Report and Recommendations of the Committee on Families and the Law Racial Justice and Child Welfare*](#).

The 2023-2024 enacted budget included a statutory increase of these assigned counsel rates for attorneys to \$158 an hour, consistent with the federal program. Although the Bar remains grateful to the Governor and the Legislature for making that necessary correction, more must be done. As part of this year’s budget New York State should enact a mechanism for annual review and adjustment of assigned counsel rates that reflect the economic realities of the representation. Establishing a stable, sustainable, and recurring source of funding to benefit all the needy individuals who require the services of court-appointed attorneys will ensure that every New Yorker can realize their constitutional right to fair and quality representation.

Discovery Reform

Over the years, the Association has had several Task Forces study and make recommendations regarding the State’s discovery law. Nearly a decade ago, before the State made demonstrable changes to our discovery laws, the 2015 [*New York State Bar Association Report of the Task Force on Criminal Discovery*](#) called for significant revisions. Many were adopted as part of the new discovery statute enacted in 2019 and, as [*NYSBA's Task Force on Modernization of Criminal Practice*](#) noted in 2023, the enactment of Criminal Procedure Law 245 has resulted in greater transparency and fairness in the criminal justice system in New York.² There are further recommendations from the 2015 report that should be enacted, and the 2023 report highlighted the need for technological enhancements and investments the Executive and Legislature should give credence and attention to, and we applaud the Executive for these investments in securing fair justice.³

² New York State Bar Association Report of the Task Force on Modernization of Criminal Practice, approved by the House of Delegates on Jun 10, 2023. p5 <https://nysba.org/app/uploads/2023/06/final-report-Task-Force-on-Modernization-of-Criminal-Practice-June-2023.pdf>

³ Id. at 6

Two parts of the proposal outlined by the Executive in PPGG Part B, are consistent with recommendations made by the Bar Association in 2015:

- First, NYSBA recommended that the Courts should not penalize prosecutors or defense lawyers for rule violations and lapses that occur despite the parties’ reasonable efforts to comply, and instead the court should remedy violations when they are significantly prejudicial.⁴ The Executive has proposed an amendment that brings us close to this recommendation, in that if a prosecution’s discovery compliance is later challenged, the time between certification and the challenge is retroactively counted against the prosecution, often resulting in dismissals unrelated to the merits of the case or the legality of the investigation. It seems prudent to clarify the law so that even when such a prosecutorial issue needs to be remedied, the result is not outright dismissal. While we do not echo the way the Executive has framed the recommendation in terms favorable to the prosecution, we acknowledge the need for a system that is fair to both parties and protects the interests of the prosecution as well as defense, thereby ensuring Justice’s scales are balanced.
- Second, the 2015 report concluded that the defense should receive the early disclosure of relevant information that is provided in other states with *special procedures to ensure the safety of witnesses*.⁵ The Executive’s proposal recommends an expansion of the scope of automatic redaction to include additional sensitive details consistent with this principal. While it is vital both sides be able to contact witnesses to secure an adequate defense, the prosecution should be permitted to provide “...adequate alternative contact information...” and not personal information.⁶ Therefore, we agree with the Executive’s recommendation.

NYSBA will continue to study the Executive’s proposal and stands willing to assist the Legislature any way we can with the wealth of experience and knowledge our membership brings.

Right to Counsel for Those in Need

New York must enact a right to counsel for children and families; legal advice and protection should be guaranteed for juveniles as well as parents and caretakers who are the subject of investigations of child protective services.⁷ There is currently no legal obligation to notify a child’s parent or caretaker of their right to consult with an attorney, the right to refuse to disclose personal information about the family, or the right to refuse to allow the caseworker to conduct a search of their home before a court order has been obtained. As a result, too many parents and caregivers are unaware of their rights in this regard. Likewise, as children may often have only a limited understanding of their legal rights, the need for the involvement of legal counsel to safeguard children’s rights before questioning is vital. This was introduced under Office of Court Administration Internal # 87 by Senator Brisport (S.9695 of 2024). We urge the Legislature to include this language in their one-house

⁴ *New York State Bar Association Report of the Task Force on Criminal Discovery*, approved by the House of Delegates on Jan. 30, 2015. p36-38. (<https://nysba.org/app/uploads/2020/02/Criminal-Discovery-Final-Report.pdf>)

⁵ *Id.* at 9, emphasis added

⁶ *Id.* at 9

⁷ *New York State Bar Association Report and Recommendations of the Committee on Families and the Law Racial Justice and Child Welfare*, approved by the House of Delegates on April 2, 2022. p28. (<https://nysba.org/app/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf>)

budget proposals and the final budget.

Similarly, supporting a right to counsel for immigrants will benefit all New Yorkers. Accordingly, we strongly urge the legislature to include in their one-house budget proposals and the final budget language that is consistent with S.141 (Hoylman-Sigal)/A. 270 (Cruz). In 2019, the [New York State Bar Association Committee on Immigration Representation](#) issued a report detailing its findings regarding access to counsel for immigrants in New York. Based on an initial review of publicly available data as well as field research conducted by some Committee members it has become apparent that, despite the progress made by the Committee, new policies have continued to impede immigrants' access to counsel and, by extension, to justice. In addition, New York State's diverse geography, its uneven distribution of service providers, and concentrated funding streams pose significant challenges for immigration attorneys throughout the state, as well as the communities that seek to access their services.⁸

Immigrant New Yorkers own more than 300,000 businesses, account for one quarter of the workforce, and have an estimated \$118 billion in annual spending power.⁹ During the global pandemic, they were responsible for life-saving work that sustains our economy and safeguards health and safety, and they have been disproportionately on the front lines as essential workers.¹⁰ Despite making invaluable contributions, Immigrant New Yorkers carry enormous burdens in this state. Not least among those burdens, during the pandemic, the risk of contracting and dying from COVID-19 was higher for Immigrant New Yorkers than for their native-born neighbors.¹¹

New York's leadership in advancing publicly funded immigration legal services like the New York Immigrant Family Unity Project and the Liberty Defense Project has made it a respected national model. As has been done throughout the history of the Empire State, more than 50 states, counties, and cities have now followed New York's lead by investing in deportation defense programs.¹² These jurisdictions have invested in these programs as a component of their efforts to safeguard public health and safety and to stand with immigrants and communities historically targeted by racial injustice.

However, current funding levels fall short of meeting the growing need. As of December 2024, more than 160,000 cases in New York State immigration courts were unrepresented- 44 percent of all pending cases. With a backlog of nearly 375,000 immigration cases in New York, increased legal services funding is essential to ensuring timely and fair proceedings.¹³ We strongly urge the Legislature to make targeted increases in the Office

⁸ New York State Bar Association Special Committee on Immigration Representation on the Need for Access to Counsel in Immigration Proceedings in New York, approved by the House of Delegates on June 15, 2019. (<https://nysba.org/app/uploads/2020/02/Agenda-Item-8-Immigration-Representation.pdf>)

⁹ Vera Institute of Justice, "Profile of the foreign-born population in The State of New York," <https://www.vera.org/audio/foreign-born-population-nys.pdf>.

¹⁰ Fiscal Policy Institute, "Legal Status for Undocumented Essential Workers: New York Gains," estimating there are 380,000 undocumented essential workers in NYS, <https://fiscalpolicy.org/legal-status-for-undocumented-essential-workers-new-york-gains>

¹¹ Organization for Economic Co-operation and Development, "What is the impact of the COVID-19 pandemic on immigrants and their children?" October 19, 2020, <http://www.oecd.org/coronavirus/policy-responses/what-is-the-impact-of-the-covid-19-pandemic-on-immigrants-and-their-children-e7cbb7de/#:~:text=COVID%2Drelated%20mortality%20rates%20for,lower%20seniority%20on%20the%20job>.

¹² See map of publicly funded deportation defense programs, "Advancing Universal Representation Initiative," Vera Institute of Justice, <https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative>.

¹³ Vera Institute of Justice, "Immigration Court Legal Representation Dashboard," accessed December 12, 2024,

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and Department of Education to expand legal services to sustain and supplement existing grants, enabling legal services providers to recruit and retain staff to meet the growing need for representation; connect immigrants with programs that help them preserve their rights, gain citizenship and other immigration benefits, participate in the workforce, and learn English; increase capacity building for legal service providers so that these organizations have the resources to strengthen their programs and continue to offer high-quality, life-saving assistance; fund New York-accredited law schools to train students specializing in immigration law through clinics and fellowships; create a five-year Student Loan Contribution Plan for nonprofit and pro bono immigration attorneys; and create a five-year program supporting people seeking Department of Justice accreditation to represent Immigrant New Yorkers at risk of deportation. We urge the Legislature to take this under advisement and include language in their one-house budget proposals and the final budget addressing this concern.

Finally, New York State should establish as part of this year's budget, a right to counsel for low-income tenants involved in housing defense proceedings, consistent with S.2721 (May) of 2023. Housing law is complex and difficult to successfully navigate without a lawyer. Unfortunately, most tenants cannot afford to hire counsel and currently free legal services available do not match the scale of need. This was introduced in 2021 and subsequently in 2023 as A.1493 (Joyner) and S.2721 (May). We urge the Legislature to include this language in their one-house budget proposals and the final budget.

Expansion of Justice in Rural Areas

The New York State District Attorney and Indigent Legal Services Attorney Loan Forgiveness Program administered by the New York State Higher Education Services Corporation are invaluable. These programs are designed to retain experienced attorneys employed as district attorneys, assistant district attorneys, or indigent legal services attorneys throughout New York State. Attorneys may apply for this program from both urban and rural areas of the state. This is a retention program designed to keep people in these positions longer term.¹⁴

Furthermore, we urge the Legislature to enact legislation that expands the eligibility period for Indigent Legal Service (ILS) attorneys to receive certain loan forgiveness and increase loan reimbursement for ILS attorneys, consistent with S.161 (Ramos)/ A.1602 (Simon). When debilitating student loan payments prevent young people from pursuing a legal career, the result is a dearth of attorneys in underserved areas. This leads to a collapse in accessing justice in underserved areas. New York must do all that it can to ensure all its residents have access to justice. This has been introduced in the 2025 session as S.161 (Ramos) and A.1602 (Simon). We urge the Legislature to include this language in their one-house budget proposals and the final budget.

<https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative/immigration-court-legal-representation-dashboard>. Out of 373,171 total proceedings at New York State immigration courts, 162,972 did not have legal representation.

¹⁴ *New York State Bar Association Task Force on Rural Justice*. Approved by the House of Delegates on April 4, 2020. p18. (<https://nysba.org/app/uploads/2020/04/Report-Task-Force-on-Rural-Justice-April-2020-.pdf>)

Conclusion

It has truly has never been more important to bolster the constitutional rights of those without endless resources to fight government overreach. The New York State Bar Association stands ready to aid the Legislature in any way possible to further our common goals of increasing access to justice for all. We hope you will consider our reports and recommendations.

If you have any questions or need any additional information, please contact NYSBA's Director of Government Relations, Matthew Pennello at mpennello@nysba.org or via telephone at 518-487-5748.

Thank you.