

Testimony of The Legal Aid Society

on

**THE 2008-2009 EXECUTIVE BUDGET
TOPIC: PUBLIC PROTECTION**

Presented before:

**The Senate Finance Committee
and
The Assembly Committee on Ways and Means**

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The Legal Aid Society welcomes this opportunity to testify at this 2008-2009 Executive Budget hearing concerning necessary State funding for the Society's essential legal services for clients in New York City.

During the past year, with a staff of 1,450, the Legal Aid Society provided civil, criminal, and juvenile rights legal services in some 295,000 cases for low income families and individuals in all five boroughs of New York City. On an ongoing basis, members of the constituent services staffs of State elected officials refer many of these client cases to the Society for legal help.

State funding supports the Society's legal assistance in the areas of civil legal services, criminal defense, indigent parolee defense, and juvenile rights. Special annual allocations from the Legislature for civil and criminal services have provided crucial funding for the Society's legal services for New Yorkers who have nowhere else to turn for legal help.

This testimony describes the impact of proposed State Executive Budget funding levels for civil legal services, criminal defense, and indigent parolee defense. The Society's Juvenile Rights Practice representation of children in Family Court proceedings is funded separately by the Office of Court Administration, but we will also highlight needs in that practice area.

Funding For Criminal Defense Services: Since 1965, the Legal Aid Society has served as the primary defender for criminal defendants in New York City who cannot afford counsel. The Society's Criminal Defense Division (CDD) is at the forefront of efforts to address new issues in the criminal justice system, ranging from assisting in the design and staffing of specialized court parts that deal with drug abuse, domestic violence, mental illness and juvenile offenders to consulting regularly with State and City officials on legislation and policy issues of importance to our clients and securing system-wide reform through our Special Litigation Unit. The Society's Special Litigation Unit, for example, litigated the landmark case that established the 24-hour standard for arrest-to-arraignment in New York State.

With trial offices in the Bronx, Brooklyn, Manhattan and Queens, CDD represents indigent defendants accused of crimes ranging in seriousness from alleged disorderly conduct to first degree murder. CDD staff members are committed to ensuring that clients receive high quality legal services, and that representation is not compromised because clients cannot afford to hire an attorney.

The 2008-2009 Executive Budget includes \$8.6 million in State Aid to Defense funding for the Legal Aid Society to support criminal defense legal services. Until State fiscal year 2003 - 2004, the State provided the Society with \$10.85 million in Aid to Defense funding. By State fiscal year 2006 - 2007, the prior Administration had reduced overall State Aid to Defense funding by 20 percent, and the Society's annual funding level was reduced to the current \$8.6 million level. The Assembly has provided annual allocations of discretionary funds to partially ameliorate this annual funding cut.

Last year, the 2007-2008 Executive Budget restored State Aid to Defense for the Society to \$11 million. Unfortunately, during the budget process, the proposed restoration was not sustained and the Society's 2007-2008 Aid to Defense funding was \$8.6 million, which is also the proposed funding level for 2008-2009. As the 2008-2009 State budget process proceeds, it is essential to restore the Society's Aid to Defense funding to the \$11 million level that was originally proposed in the 2007-2008 budget but not provided in the adopted budget. This funding level is crucial to enable the Society to provide constitutionally mandated criminal defense representation, particularly at a time when the Society's annual workload has increased. For example, until the Society's July 1, 2006 – June 30, 2007 fiscal year, the Society's annual criminal defense workload had been approximately 210,000 cases for a number of years. During the 2006-2007 fiscal year, the Society's criminal defense workload increased to 225,000 cases. This increased workload trend has continued during the first six months of City fiscal year 2007-2008, and the Society's criminal defense staff of 435 attorneys has handled nearly 5,000 more cases than during the first six months of the prior fiscal year. During the last fiscal year, the Society's criminal defense attorneys handled more than 100,000 cases which survived a first court appearance, and approximately 30 percent of those cases were felonies.

Based on this increased caseload, at a minimum, the Society needs a restoration to return the Society's State Aid to Defense funding to the \$11 million level that had been the Society's historic allocation, instead of the current proposed \$8.6 million level. As the primary provider of criminal defense services in New York City designated through a public process, it is also essential that these funds continue to be allocated by contract directly to the Society and not through a separate county contract.

With the Society's increased caseload, however, the truth is that additional funding is needed beyond a restoration of the prior 20 percent annual State Aid to Defense cut. In addition to increased staffing needs resulting from increased caseload needs, the Society's operating costs increase from year to year and core funding for the Society's constitutionally mandated representation should be increased accordingly. We remain hopeful therefore that an additional allocation beyond this \$2.4 million Aid to Defense restoration can be provided with additional funds.

In addition to this essential Aid to Defense funding, other criminal defense program funding needs to be restored in the 2008-2009 budget. For example, in State fiscal year 2006-2007, the Society received \$970,000 from the Department of Criminal Justice Services and the Assembly to operate a special program for adolescents accused of crimes in the Bronx, Brooklyn, Manhattan, and Queens. This program has had substantial documented success in reducing re-arrests for adolescent clients who the Society represents in criminal proceedings. Unfortunately, for State fiscal year 2007-2008, funding for this program was reduced to \$729,000. Without full funding of \$970,000, the Society is unable to continue to operate this successful program in the Bronx, Brooklyn, Manhattan, and Queens for the 2008-2009 fiscal year. Likewise, the Division of Criminal Justice Services has annually allocated \$910,000 in Bryne funding to the Society to operate a special program for persons accused of crimes who are

mentally ill and chemically addicted. This program has also had significant success in preventing re-arrests for clients the Society represents. For 2008-2009, the Society has been advised that this program may not be able to continue because of reduced Byrne funding. Without funding from the State, the Society will simply be unable to continue to provide these crucial client services in the Bronx, Brooklyn, Manhattan, and Queens. Similarly, the Assembly has been able to allocate funding to the Society to support a \$300,000 annual enhancement for Aid to Defense and a \$40,000 annual grant for “point of entry” services in connection with drug activity in New York City airports. Continued and enhanced funding for all of these crucial programs, in addition to allocating restored State Aid to Defense funding to the Society, is necessary to preserve innovative services for New Yorkers and to enable the Society to handle the continuing caseload increases.

At the same time, we urge the Executive and the Legislature to address the findings of the Chief Judge’s Indigent Defense Commission report on the adequacy of constitutionally mandated criminal defense representation in the State. Although the primary focus of the Commission’s June 2006 report was on inadequate criminal defense representation in the counties outside of New York City, the Commission found that there is a crisis in criminal defense representation in New York State that requires a State response in terms of adequate funding and caseload and quality of representation standards. The Commission recommended State oversight of criminal defense services. Irrespective of the structure of oversight for criminal defense services in New York State, providing adequate funding and setting caseload and quality of representation standards are pressing priorities. For instance, the First Department has set caseload standards for the Society that are not incorporated in the Society’s criminal defense contract with the City. Therefore, as the number of cases that the Society is handling increases, the Society is unable to maintain staff caseloads within the First Department’s guidelines. As the Chief Judge’s Commission found, there is an urgent need to set caseload and quality of representation standards to ensure the provision of constitutionally mandated criminal defense representation. Equally pressing is the need to provide sufficient funding to enable the Society to meet these standards, which will require more funding than the restorations described in this testimony.

While the Executive Budget allocates \$3 million in funding for a new State initiative to review criminal defense operations, there is an urgent need to put appropriate caseload and standards in place to ensure the provision of constitutionally mandated criminal defense representation. Funding for such an initiative also not should be allocated from funds which currently support direct client services, which is the case with the funding for this new initiative.

The Need For Restored Funding For Indigent Parolee Representation: The Legal Aid Society’s Parole Revocation Defense Unit (PRDU), established in 1972, was the first program in the nation to provide legal representation and social work diversion services specifically to persons who have been paroled from State prisons. By contract with New York City, the Society serves as the primary defender of persons accused of parole violations prosecuted in New York City. Annually, the Society’s Parole Unit conducts approximately 10,000 preliminary and final parole violation hearings. With a well-trained staff, the Legal Aid

Parole Revocation Defense Unit provides cost-effective, high quality representation. The Society's staffing and programming efforts have designed specific intake procedures to meet the special needs of parolees with chemical addiction and with mental illness in order to prevent the cycle of re-arrest, release, and recidivism. In addition to lawyers, three social workers are specifically trained to identify special need parolees and refer them for necessary services and programs.

Historically, the State has provided \$1.3 million in funding to support these critical parole defense services. However, during the prior Administration, this State funding for indigent parolee defense was eliminated from the Executive Budget and restored by the Assembly. This year, the Executive Budget also does not include this funding.

We are very grateful for the Assembly's restoration of \$515,870 in funding from the Legal Assistance Fund for the Society's representation of indigent parolees during the State's 2007-2008 fiscal year. Likewise, we greatly appreciate the Assembly's restoration of \$273,700 in funding from the Legal Assistance Fund for the Society's representation of mentally ill parolees in the 2007-2008 fiscal year. For the State's 2008-2009 fiscal year, restoration of these funds is critical to enable the Society to maintain these vital services for vulnerable parolees.

Since the Society's indigent parolee defense program is designed to divert low-risk parole violators from prison to community-based treatment programs, the loss of these funds would result in a larger number of parolees returning to prison. The Society's innovative program develops alternatives to incarceration for this population in the form of medical discharge plans and program placements, and has achieved a demonstrable reduction in repeat offenses. Because treatment is a less expensive means of protecting public safety than returning a parolee to prison, averaging only \$15,000 per year as opposed to \$34,000 annually, any savings from the elimination of this State indigent parolee representation funding would be offset by the need to commit significantly higher amounts of money to the budget of the State Department of Correctional Services. The Society's program for mentally ill parolees is particularly cost-effective given the substantial cost of incarceration of mentally ill clients that would otherwise be absorbed by the Department of Correctional Services and local governments.

The Need For Restored Funding For Civil Legal Services: The Society provides civil legal services through our neighborhood-based offices in all five boroughs of New York City and city-wide units that serve families and individuals with special needs. Our civil program provides legal assistance in literally every community in New York City. In many cases, clients are referred to us by the constituent services staff of elected officials who have nowhere else to turn for help with emergency problems.

Annually, we handle more than 30,000 individual civil matters for the most vulnerable New Yorkers: survivors of domestic violence, senior citizens, disabled or chronically ill children and adults, immigrants fleeing oppression, unemployed workers, persons with HIV infection, and children and adults faced with evictions and homelessness. We help clients with legal problems involving: domestic violence and family law; elder law for senior citizens; housing and

homelessness; income and economic security assistance such as federal disability benefits, employment and low wage worker matters, earned income tax credits, federal food stamps, and public assistance; immigration; health care, including Medicare Part D, Medicaid, and access to hospital charity support; HIV and AIDS; and housing development and community development opportunities to help clients move out of poverty.

Beginning in 1993, the Assembly has funded a State-wide allocation for civil legal services, including funding for domestic violence and HIV legal services programs. For the State's 2007-2008 fiscal year, we are very thankful for the Assembly's allocation of civil legal services funding in these program areas: \$1,091,251 as part of the Assembly's State-wide civil legal services allocation; \$52,218 as part of the Assembly's special allocation for legal services for survivors of domestic violence; \$134,000 as part of the Assembly's allocation for HIV legal services; and \$50,000 and \$15,000 grants as part of the Assembly's Legal Services Fund allocation for legal aid for senior citizens.

Unfortunately, these funds are not included in the 2008-2009 Executive Budget. A restoration of this core funding which has historically been provided as part of a series of State-wide civil legal services initiatives is essential to preserve client services in all five boroughs of New York City. Indeed, even at current calendar year 2008 funding levels, because of lack of resources, we can only help one out of every seven persons who seek our help. Irrespective of any estimated increases in Interest On Lawyer Account funding that may occur a year from now, elimination of this long-time, core civil legal services funding as of April 1, 2008 will result in an immediate gap in access to justice for the most vulnerable New Yorkers. The consequences of this gap will be dire – increases in evictions and homelessness, increases in the number of women and children who cannot escape domestic violence, increases in the numbers of immigrants lawfully in this country who will be wrongfully deported, and increases in the numbers of children and adults who will go without subsistence income, health care, and food because of bureaucratic mistakes that cannot be challenged effectively in the absence of counsel.

The Need To Support The Representation of Children In Family Court: The Society's Juvenile Rights Practice is funded through the Office of Court Administration's budget and no funding is included in the Executive Budget itself. Nevertheless, we want to note some challenges in this practice area. The Society's Juvenile Rights Practice is the primary counsel for children in the Family Court in New York City who are the subject of abuse and neglect proceedings, persons in need of supervision cases, and juvenile delinquency proceedings.

The continuing impact of the tragic deaths of children who were known to the City's child welfare system highlights the need to make sure that there are adequate resources for the child welfare system as well as for the Family Court system, including the Society's representation of children in these cases. In recent months, press accounts have reported on the huge caseloads for Family Court Judges in New York City as well as the Society's Juvenile Rights staff resulting from the dramatic increase in the number of abuse and neglect proceedings that were filed in the wake of these deaths. The Society's staff of 135 front line lawyers is now representing 27,000 children. The Family Court and law guardian workload problem in New

York City has been further exacerbated by the new State permanency law which requires semi-annual hearings on cases instead of annual hearings, but does not provide funding for these additional hearings. Consequently, the Society's Juvenile Rights lawyers are representing an average of 220 children at a time when national standards provide that lawyers representing children in these cases should not represent more than 100 children at any given time.

To address this crisis, during the last session the Legislature passed and the Governor signed a new law requiring the Office of Court Administration to set workload standards for lawyers representing children in these Family Court cases, including the maximum number of children who can be represented at any given time. The new law requires the workload standards, including the cap on the numbers of clients who can be represented, to be effective April 1, 2008. The Society is participating in the Office of Court Administration's process for setting the required standards. In its initial budget submission on December 1, 2007, the Office of Court Administration allocated \$5 million to increase support for lawyers representing children in these cases, and has committed that this allocation can be increased to meet the mandate of the April 1, 2008 client cap standard when it is finalized.

As the process of setting the client cap standard proceeds during this session, we will continue to keep the Legislature informed of the situation. We appreciate the Legislature's continued focus on this process so that the new statutory client cap requirement is implemented at a level to ensure that lawyers have appropriate client workloads and children receive high quality of representation in these Family Court cases. As the budget process proceeds, we also appreciate the Legislature's focus on the need to increase the number of Family Court Judges to help alleviate Family Court workload problems that adversely affect children by delaying consideration of their cases.

Again, we thank you for the vital State support that you have allocated to us in the past to provide client services, and we are hopeful that the critical continuing funding needs that we have highlighted in this testimony can be met.