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Testimony of The Legal Aid Society

on

Access to Justice

Presented before:

**The Assembly Committees on Codes, Judiciary,
Governmental Operations, and Corrections**

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The Legal Aid Society

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The Legal Aid Society welcomes this opportunity to testify at this special Assembly hearing focused on access to justice and necessary State funding for the Society's essential legal services for clients in New York City.

With a staff of 1,450, including 850 lawyers and 600 social workers, paralegals, investigators, and support and administrative staff, the Legal Aid Society provides crucial civil, criminal, and juvenile rights legal assistance to low income families and individuals in literally every community in the five boroughs of New York City. During the past year, the Legal Aid Society provided civil, criminal, and juvenile rights legal services in some 295,000 cases and legal matters for New Yorkers in desperate need of legal help. Many of these clients are referred to the Legal Aid Society by the constituent services staffs of State elected officials or by community-based organizations serving every district of the City. Indeed, since its founding in 1876, the Legal Aid Society has been a vital part of the fabric of the City.

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 Assembly for civil and criminal services have provided crucial funding for the Society's legal assistance 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.

We are mindful of the extreme financial difficulties that the State is facing. At the same time, these extraordinary economic conditions are having an especially harsh impact on low income New Yorkers and the need for the legal help that the Society provides to these struggling families and individuals is increasing exponentially. Against this backdrop, the proposed State cuts for criminal defense and civil legal services in the 2009-2010 budget will hurt New Yorkers accused of crimes and families and individuals who need legal help in the midst of this severe economic downturn. In the criminal defense area, we cannot keep taking on new cases, provide the constitutionally mandated defense for New Yorkers, and absorb new State cuts on top of \$2.7 million in cuts that we have already sustained in the 2008-2009 State and City budgets this year. On the civil side, we have also already suffered \$3 million in cuts in the 2008-2009 State and City budgets and we are forced to turn away six out of every seven New Yorkers who seek our help. With the new proposed State cuts, we will have to turn away more families and individuals who need legal aid to get unemployment and disability benefits, flee from domestic violence, and prevent evictions, foreclosures, and homelessness which is at record levels in New York City.

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. With criminal defense trial offices in the Bronx, Brooklyn, Manhattan and Queens, the Legal Aid Society represents indigent defendants accused of crimes ranging in seriousness from alleged disorderly conduct to first degree murder. The Legal Aid Society's criminal defense program 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 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.

The proposed 2009-2010 Executive Budget includes \$9.8 million in State Aid to Defense funding, including \$7.6 million for the Legal Aid Society. This proposed funding level represents a cut of nearly \$1.1 million from the Legal Aid Society's funding allocation of approximately \$8.7 million in the adopted 2008-2009 State budget. This proposed reduction comes on top of annual reductions from the 2003 State-wide Aid to Defense funding level of \$13.6 million, of which \$10.8 million had been allocated to the Legal Aid Society.

These State reductions in Aid to Defense funding for the Legal Aid Society from \$10.8 million to the proposed \$7.6 million level for 2009-2010 are coming at a time of increasing arrests in New York City and increasing need for our constitutionally mandated criminal defense services. In fact, the Society's annual criminal defense caseload increased from approximately 210,000 new cases in City fiscal year 2005-2006 to nearly 227,000 new cases in 2007-2008 and that trend of increased cases is continuing this year. As a result of these increased arrests in New York City, annually the Legal Aid Society's criminal defense staff of 435 attorneys is handling more than 100,000 cases which survive a first court appearance, and approximately 30 percent of those cases are felonies. Eighty-one percent of our individual attorneys have annual caseloads significantly in excess of standards set by the Appellate Division, First Department, which limit annual criminal defense attorney caseloads to 400 misdemeanors or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed caseloads. The Legal Aid Society's average annual caseload is now 592 cases and the average pending caseload is more than 100 cases.

This intolerable situation has been exacerbated by \$2.7 million in State and City cuts in our criminal defense funding that have already been implemented during this past summer. The combination of State funding with City funding is integral to our ability to provide constitutionally mandated representation to indigent New Yorkers. Accordingly, the proposed additional reduction in State funding on top of prior State and City cuts at a time when 81 percent of our criminal defense lawyers have been handling caseloads far in excess of the First Department standards will further impair our ability to provide constitutionally mandated representation. The proposed State budget cuts of approximately \$1.1 million in State Aid to Defense funding and proposed additional State cuts in special program funding, including \$1.6 million in traditional Assembly funding, simply cannot be absorbed. In fact, the recent overall cuts in the Legal Aid Society's Aid to Defense funding from \$10.8 million to the \$7.6 million proposed for 2009-2010 simply shift the State's obligation to fund constitutionally mandated criminal defense representation to New York City. With an increasing caseload and proposed further decreased funding, the Legal Aid Society does not have to the resources to keep taking on new cases and provide the constitutionally mandated defense for New Yorkers.

Although we are mindful of the extraordinary fiscal situation, in order to address this immediate crisis with respect to the State's obligation to provide resources for constitutionally mandated defense representation, it is essential that the final State budget restore the State Aid to Defense allocation for the Legal Aid Society to \$10.8 million (and the State-wide allocation to \$13.6 million). However, the truth is that additional resources are needed beyond these short-term restorations in order to bring the Legal Aid Society's caseloads into compliance with constitutional requirements and we stand ready to work with the State to achieve this result.

In addition to this essential Aid to Defense funding, other criminal defense program funding needs to be restored in the 2009-2010 budget. For example, in the past 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, funding for this program was reduced to \$485,000 from the Assembly only in the adopted 2007-2008 and 2008-2009 budgets, which was then cut by 6 percent during the current fiscal year. 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 2009-2010 fiscal year. The recent federal stimulus package allocates increased federal Byrne funding to the State which can be used to fund these important services for adolescent New Yorkers.

Likewise, the Division of Criminal Justice Services has annually allocated \$910,000 in Byrne 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 Legal Aid Society was allocated reduced funding of \$825,000 for this program. For 2009-2010, we have been advised that funding for the program will be cut by at least an additional 20 percent because of reduced Byrne funding. Without full funding from the State of \$910,000, including a \$250,000 restoration, the Society will simply be unable to continue to provide these crucial client services in the Bronx, Brooklyn, Manhattan, and Queens. Again, the recent federal stimulus package allocates additional Byrne funding to the State which can be used to fund these important services for mentally ill and chemically addicted New Yorkers.

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 (which was reduced by 6 percent during this fiscal year). Continued funding for these two programs is necessary to preserve these crucial criminal defense services for New Yorkers.

At the same time as these urgent immediate funding needs are addressed, we urge the State 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. 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's caseload standards for the Society 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. Accordingly, we urge the State to implement a plan to limit criminal defense client caseloads to comply with the First Department standards in order to ensure that New Yorkers accused of crimes receive the constitutionally mandated level of representation to which they are entitled.

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 9,000 preliminary and final parole violation hearings. The Legal Aid Parole Revocation Defense Unit provides cost-effective, high quality representation. The Legal Aid Society has 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, 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 Pataki 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 for the Legal Aid Society's representation of indigent parolees in the adopted 2008-2009 budget. Likewise, we greatly appreciate the Assembly's restoration of \$273,700 in funding for the Society's representation of mentally ill parolees in the adopted 2008-20089 budget. For the State's 2009-2010 fiscal year, restoration of these funds is critical to enable the Society to maintain these vital services for vulnerable parolees.

Since our 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 Legal Aid 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.

Since 1993, the Assembly has funded a State-wide allocation for civil legal services, including funding for domestic violence and HIV legal services programs. Although most of these programs were reduced by 6 percent during this fiscal year, we are very thankful for the Assembly's allocation of civil legal services funding to the Legal Aid Society in these program areas in the adopted 2008 – 2009 State budget: \$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 \$67,000 grants as part of the Assembly's Legal Services Fund allocation for legal aid for senior citizens. This Assembly legal services funding is in addition to \$960,000 in support for civil legal aid provided to the Society through an allocation from the Office of Court Administration.

Overall, during the current fiscal year, New York allocated more than \$8 million dollars for civil legal services, of which the Society received approximately \$2.2 million. In the prior fiscal year, the State had allocated nearly twice that amount.

Unfortunately, in the original proposed 2009-2010 budget no State funds were allocated for civil legal services and now the amended budget contains only \$1 million for civil legal help. In view of the increased need for civil legal assistance as a result of the extreme economic situation, a full restoration of the current \$8 million funding level and a partial restoration of the prior funding level for a total State-wide restoration of \$11.4 million is needed. A restoration at this level is crucial because of reduced available IOLA funding as a result of the economic downturn. State-wide the current annual IOLA funding level of \$25 million is projected to be reduced by at least 60 to 70 percent during calendar year 2010. Consequently, the Society is facing a minimum 60 to 70 percent reduction in its \$4.5 million annual IOLA grant.

Against this background of proposed State funding cuts, decreased IOLA funding, and an increased need for civil legal help in the economic crisis, a restoration of core State 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. The consequences of eliminating critical State civil legal services funding will be dire – increases in evictions, foreclosures 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.

Indeed, during this past summer, the Legal Aid Society already sustained City and State civil legal services cuts of approximately \$3 million which means that we are turning away increasing numbers of vulnerable New Yorkers with legal problems which we could otherwise solve. The economic downturn is having a particularly harsh impact in our client communities and the need for our civil legal services is more crucial than ever. Homelessness, for example, is at record levels in New York City, and unemployment and hunger are on the rise. Again, although we recognize the extreme fiscal crisis, we urge the State to preserve and enhance the Legal Aid Society's traditional annual civil legal services funding during this severe economic downturn when the need for our civil legal assistance is increasing exponentially (\$1.3 million in special funding allocated by the Assembly to support the Legal Aid Society's civil legal services in all five boroughs of the City; and \$960,000 in funding allocated by the prior Administration through the Office of Court Administration to support the Society's civil legal services). Again, newly available federal stimulus funding for New York State can be allocated for civil legal services to address the exponentially increasing need for civil legal help in the midst of the deepening economic crisis and to alleviate the IOLA funding shortfalls due to decreased interest rates and the drying up of economic activity.

The Need To Support The Representation of Children In Family Court: The Society's Juvenile Rights Practice is funded in the Office of Court Administration's budget and no funding is included in the Executive Budget itself. The Juvenile Rights Practice is the primary counsel for children in the Family Court in the 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. The Family Court 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.

To begin to address this crisis, during the 2007 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. As a result of this landmark legislation, the Office of Court Administration implemented a client case cap rule to reduce the number of children our lawyers represent in Family Court to 150 at any given time from an average of approximately 250 when the legislation was introduced. We are in the process of reducing client caseloads to the required level with additional resources for compliance that the Office of Court Administration provided during this fiscal year. This new law will have a positive impact on the children we represent.

As the budget process proceeds, we also appreciate the Legislature's continued 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 access to justice funding needs that we have highlighted in this testimony can be met.