

March 21, 2024

Governor Kathy Hochul
Governor of New York State

Hon. Andrea Stewart-Cousins
President Pro Tempore & Majority Leader
New York State Senate

Hon. Carl E. Heastie
New York State Assembly Speaker
New York State Assembly

RE: Saving IOLA Wasn't Enough. Stop the ILSF Sweep & Fund Public Defense.

Dear Governor Hochul, Majority Leader Stewart-Cousins, and Speaker Heastie:

As you negotiate the final budget, we urge you to reject the proposed sweep of \$234 million from the Indigent Legal Services Fund in the FY25 Executive Budget. These funds are crucial to ensure that low-income New Yorkers receive the high-quality legal representation they deserve and are entitled to by the United States Constitution. The ILS Fund must be restored.

In the 30-day amendments, the Governor correctly removed a \$100 million proposed sweep of the IOLA Fund, which supports civil legal services, after widespread outcry, particularly by the legal profession. However, criminal and family court legal services are not covered by the IOLA Fund. These services are funded by New York State through the Indigent Legal Services Fund (ILSF). While the Senate rightfully rejected the sweep in its One House budget, the Assembly and Governor are still considering it. We urge you to join with the Senate in rejecting it full stop.

The ILS Fund was created twenty years ago to ensure high-quality public defense for all low-income New Yorkers. These monies are used to ensure people have access to the zealous representation required to defend themselves in criminal court, to fight to have their children returned to them in family court, and to navigate technical and complicated appeals processes. No one should have to face these legal systems alone without quality legal representation, including crucial investigative and social work support. ILS also provides counties across the state with funding for non-citizen advisals on immigration consequences (called *Padilla* support). In most counties, ILS funding is the only funding to support constitutionally-required *Padilla* advisals.

Public defenders meet people at some of the worst moments of their lives, and help them through to the other side. Without sufficient funding from the ILSF, many defender offices around the state will not have sufficient resources to provide many critical services to their clients. In addition, attorneys will be back to handling too many cases at one time, increasing the risk of missing

important legal and factual issues. Large caseloads also lead attorneys to leave the public interest field, adding to the attrition that was experienced during the pandemic.

The ILS Fund protects counties from otherwise unfunded mandates. Prior to the settlement of a lawsuit brought by the NYCLU in 2015, counties were responsible for most of the costs of funding constitutionally-mandated public defense, with only a limited amount of state funding available. The *Hurrell-Harring* settlement clarified that it is the state's responsibility to fund such obligations. The source for that funding is the ILS Fund. Without these funds, the state risks going backwards in its obligation. Perhaps more importantly, funding in family court is woefully inadequate and the sweep of these funds makes it even more unlikely that the state will play their part in funding these services.

As has been made clear by numerous task forces and reports as well as Chief Judge Wilson in his recent State of the Judiciary remarks, there must be an investment in New York's family court, including legal services, as well as continued support for legal services for low-income people across the court system.

The ILS fund was created to ensure equity, justice, quality representation and family unification for indigent New Yorkers. The proposed sweep of \$234 million undermines these goals and sets a dangerous precedent that will harm our communities. We collectively urge you instead to appropriate the funds in the ILSF for their intended purpose of improving public defense throughout New York State.

Signed:

1. Albany County Public Defender, by Stephen W. Herrick, Public Defender
2. Allegany County Public Defender's Office
3. The Bronx Defenders
4. Brooklyn Defender Services
5. Brooklyn Legal Services Corporation A
6. CAMBA Legal Services
7. Center for Community Alternatives
8. Center for Elder Law & Justice
9. The Center for Family Representation
10. Chemung County Public Advocate
11. Chief Defenders Association of New York
12. Children's Defense Fund-New York
13. City Bar Justice Center
14. The Door
15. Dutchess County Bar
16. Dutchess County Public Defender's Office
17. Empire Justice Center

18. Erie County Bar Association Volunteer Lawyers Project, Inc.
19. The Fortune Society
20. Frank H. Hiscock Legal Aid Society
21. Genesee County Public Defender
22. Goddard Riverside Law Project
23. Her Justice
24. Housing Conservation Coordinators
25. IOLA Fund of the State of New York
26. Immigrant Defense Project
27. JASA|Legal Services for Elder Justice
28. Journey's End Refugee Services
29. JustCause
30. Law Offices of Jason F. Valentin, P.A.
31. Lawyers For Children
32. League of Women Voters of New York State
33. League of Women Voters of the Rochester Metro Area
34. Legal Aid Bureau of Buffalo, Inc.
35. The Legal Aid Society
36. The Legal Aid Society of Nassau County
37. The Legal Aid Society of Rochester, New York
38. The Legal Aid Society of Suffolk County
39. The Legal Aid Society of Westchester County
40. The Legal Project
41. Livingston County Public Defender's Office
42. Mobilization for Justice
43. Monroe County Bar Association
44. Monroe County Public Defender's Office
45. MRS Baking Distribution
46. Neighborhood Defender Service of Harlem
47. NMIC
48. New York Civil Liberties Union
49. New York County Defender Services
50. New York Lawyers for the Public Interest
51. New York State Association of Counties (NYSAC)
52. New York State Association of Criminal Defense Lawyers
53. New York State Defenders Association
54. North American Climate, Conservation and Environment (NACCE)
55. The NYC Justice Peer Initiative
56. Office of Montgomery County Public Defender
57. Oneida County Public Defender
58. Onondaga County Assigned Counsel Program
59. Ontario County Office of the Conflict Defender

60. Ontario County Public Defender
61. Partnership for the Public Good
62. Pro Bono Net
63. Queens Defenders
64. Rural Law Center of New York
65. Seneca County Public Defender
66. Tompkins County Assigned Counsel
67. Urban Justice Center
68. Volunteer Lawyers Project of CNY, Inc.
69. Volunteers of Legal Service
70. Warren County Public Defender's Office
71. Wayne County Assigned Counsel Program
72. Wayne County Public Defender
73. Western New York Law Center
74. Wyoming County- Attica Legal Aid
75. Youth Represent