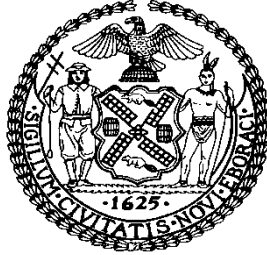


Committee on Courts and Legal Services

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**THE COUNCIL**

**Committee Report of the Governmental Affairs Division**

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**COMMITTEE ON COURTS AND LEGAL SERVICES**

Hon. Rory Lancman, Chair

**December 4, 2015**

**INT. NO. 958:**

By Council Members Lancman, Arroyo, Gentile, Johnson,  
Koo, Palma and Cohen

**TITLE:**

A Local Law to amend the Administrative Code of the city  
of New York in relation to client satisfaction surveys for  
city-funded indigent legal services.

## **I. INTRODUCTION**

On December 4, 2015, the Committee on Courts and Legal Services, chaired by Council Member Rory Lancman, will hold a hearing on Introductory Bill Number 958 (Int. No. 958), a Local Law to amend the administrative code of the city of New York in relation to client satisfaction surveys for city-funded indigent legal services. Those expected to testify include, Mayor's Office of Criminal Justice, Human Resources Administration and various advocates and stakeholders.

## **II. BACKGROUND**

Federal and State laws mandate that persons who are unable to afford legal counsel are provided representation when facing criminal charges. New York City contracts with legal service providers to meet the needs of those individuals. Many initiatives have been proposed to extend representation to civil court litigants, where low-income people battle life-altering issues related to housing, health care, and other civil matters. Notably, in April of 2015, Local Law 61 established an Office of Civil Justice that would oversee the efficacy and capacity of each aspect of civil justice. The Civil Justice Coordinator or CJC, would also work with agencies on their budget requests, make recommendations on budget priorities, and evaluate and recommend mechanisms for providing free and low-cost civil legal services during and after emergencies.

On Tuesday, September 9, 2015, Chief Judge Jonathan Lippman held a hearing to identify the cost and need of civil legal services for low-income New Yorkers, highlighting the many ongoing initiatives and their importance. The City and the State's commitment to improving access to legal services are evidenced by the increase of funding, including \$85 million allocated in the Judiciary budget for the current fiscal year, an increase from \$12.5

million in 2011.<sup>1</sup> Though the extension of legal representation in civil courts is still in planning stages, conceptualizing how the City can begin to evaluate client-satisfaction of city-funded indigent services is a concern that Intro. No. 958 aims to resolve.

### ***Criminal Indigent Legal Services***

It has been over fifty years since the United States Supreme Court decided the landmark case, *Gideon v. Wainwright*, which found that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”<sup>2</sup> Since that decision in March of 1963, the right to counsel has evolved with increased clarification and has extended the Sixth Amendment right to counsel to each and every citizen throughout the nation who faces a criminal prosecution. In *People v. Witek*, 15 N.Y. 2d 392 (1965), the New York State Court of Appeals took this proposition even further by ruling that not only did defendants in all criminal cases have a fundamental right to appointed counsel if they cannot afford a lawyer, but that the right to counsel must be made “meaningful and effective.”<sup>3</sup> In accordance with these rulings, New York State enacted Article 18-B of the County Law, which required each county and the City of New York to establish a plan for the provision of counsel for indigent defendants.<sup>4</sup> The law allowed localities to choose among several options, including: (i) create a public defender office and appoint an attorney through the locality’s governing body to fill the position; (ii) designate a legal aid society; or (iii) adopt a plan set forth by a county bar

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<sup>1</sup> Denney, Andrew. "Advocates of Civil Legal Services Point to Collateral Benefits." *New York Law Journal* 30 Sept. 2015 available at <http://www.newyorklawjournal.com/home/id=1202738538352/Advocates-of-Civil-Legal-Services-Point-to-Collateral-Benefits?mcode=1202617075062&curindex=2&slreturn=20150902115235>

<sup>2</sup> *Gideon vs Wainwright* 372 U.S. 335 (1963)

<sup>3</sup> 15 N.Y. 2d 392, 395 (1965).

<sup>4</sup> Final Report to the Chief Judge of the State of New York, Commission on the Future of Indigent Defense Services, 2006

association to secure the services of private counsel on a rotational schedule. The law also allowed a county to adopt a combination of these options.<sup>5</sup>

In the years following *Gideon*, New York City has implemented several different scenarios to provide legal representation for indigent New Yorkers. From 1965 until 1990 the Legal Aid Society (“Legal Aid”) was designated as the primary provider of indigent defense services.<sup>6</sup> From 1990 through 1996 the Neighborhood Defender Service of Harlem joined Legal Aid in acting as an institutional defender in the City representing indigent defendants at trial, with conflict cases being routinely assigned to the 18-B Assigned Counsel Program.<sup>7</sup> The 18-B program engages private attorneys to represent indigent defendants at a statutorily established rate.

In 1996, the structure changed once again. After a brief strike and reorganization by Legal Aid, the then Mayor of New York City began allowing other smaller providers to take on a larger portion of the City’s indigent defense case load. For the next several years, these newer organizations began to grow in size, handling more cases and causing a decrease in assignments to Legal Aid. In fact, in 1996 Legal Aid sued the city for contracting out approximately 9% of the Society’s indigent caseload to criminal contractors in Queens and Brooklyn.<sup>8</sup>

The role of the 18-B program was also modified as these additional law firms took on a greater portion of the cases coming through criminal courts. In January 2010, the City’s adoption of chapter 13 of title 43 of the Rules of the City of New York permitted the alternative

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<sup>5</sup> Id. at p.7. (Final Report to the Chief Judge of the State of New York, Commission on the Future of Indigent Defense Services), 2006

<sup>6</sup> See New York City Mayoral Executive Order No. 178

<sup>7</sup> A typical conflict arises when more than one defendant is charged in the same crime and representation by the same law firm or institutional provider would be a conflict.

<sup>8</sup> <https://michaelletwin.wordpress.com/1996/08/01/1996-08-00-legal-aid-society-sues-giuliani-administration-nlg-nyc-notes/>

providers to be eligible for assignments in all conflict cases, something which up to then was exclusively reserved for the 18-B panel.<sup>9</sup> It was believed that this reorganization would reduce cost and increase oversight while enhancing the indigent representation through the many programs offered to attorneys through their provider organizations.

### ***Funding of Representation***

New York City is responsible for funding legal representation for indigent criminal defendants in the City.<sup>10</sup> The Mayor's Office of Criminal Justice (MOCJ) is responsible for managing the indigent defense system and for contracting with these selected providers. Currently, the institutional providers which have contracts with the City include, Legal Aid, as well as five alternative firms. These include: New York County Defender Services (NYCDS) which handles cases in New York County; Bronx Defenders in Bronx County (BXD); Brooklyn Defender Services (BDS) in Kings County; Queens Law Associates, P.C. (QLA) in Queens County; and the Neighborhood Defender Service (NDS) which represents defendants from northern Manhattan.

Restructuring of the City's contracts for indigent legal representation was not the only change that effected city funding. In 2009, newly enacted state legislation established caseload standards for indigent defense providers.<sup>11</sup> The law aimed to ensure that attorneys have manageable caseloads in order to provide high quality representation. The case cap, which limits the number of cases per attorney to 400 a year,<sup>12</sup> was phased in over a four year period, being fully implemented by the spring of 2014. Funding for providers to hire additional staff to

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<sup>9</sup> See *Matter of the New York County Lawyer's Association v Bloomberg*, 95 AD3rd, 92 (2012)

<sup>10</sup> N.Y. City Council Finance Division, report on the fiscal 2016 Preliminary budget Indigent Defense and the Legal Aid Society, Mar. 27, 2015

<sup>11</sup> N.Y. City Council finance Division, report on the fiscal 2016 Preliminary Budget Indigent Defense and the Legal Aid Society, March 27, 2015

<sup>12</sup> A felony is weighted as the equivalent of 2.66 misdemeanors; e.g., 60 felonies and 240 misdemeanors would be counted as 400 cases.

comply with this law began in 2010. Legal Aid, for example, was able to increase its Manhattan and Bronx staff by 11.6% from Fiscal Year (“FY”) 2010 to FY 2011, and the average caseload per attorney decreased from 600 to 498 in those two counties.<sup>13</sup> During the same period, the Bronx Defenders expanded its staff by 49%, and its average caseload went from 441 to 382.<sup>14</sup> In 2015, a study was released by the Center for Court Innovation that highlighted the case cap effect on the number of cases being managed. The data was compiled from the two primary providers of indigent legal services in Brooklyn: Legal Aid and Brooklyn Defense Services. It showed that the misdemeanor equivalent caseload of 505 that attorneys for the two groups averaged in 2009 had fallen to 358 in 2014—a 29% drop.<sup>15</sup>

The New York City Office of Management and Budget (“OMB”) originally estimated a net savings of \$6 million a year beginning in FY 2015, crediting a lower cost per case of institutional providers compared to 18-B attorneys.<sup>16</sup> Due to a lower number of actual contracted cases than originally projected, the FY 2015 Preliminary Budget recognizes and projects additional savings: \$3.7 million in FY 2014, \$8.6 million in FY 2015, \$9.2 million in FY 2016 and \$9.9 million in FY 2017 and the out years.<sup>17</sup>

### ***Reporting Requirements and Performance Indicators***

For several years the Council has engaged in discussions with MOCJ regarding how best to evaluate the effectiveness of the provision of indigent defense services beyond the cost per case to the City. For both institutional providers and 18-B attorneys there are quality control measures currently in place to ensure that all of the people represented by their attorneys are of

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<sup>13</sup> Report of the Indigent Defense Organization Oversight Committee to the Appellate Division, First Department, for Fiscal Years 2010-2011, at p. A-2

<sup>14</sup> Report of the Indigent Defense Organization Oversight Committee to the Appellate Division, First Department, for Fiscal Years 2010-2011, at p. A-3

<sup>15</sup> The New York Law Journal, Indigent Benefit From Caseload Caps, Reports Shows, August 5, 2015

<sup>16</sup> NYC Council hearing on the Fiscal 2015 Preliminary Budget & the Fiscal 2014 Preliminary Mayor’s Management Report, Legal Aid Society/Indigent Defense, at p.3, March 27, 2014.

<sup>17</sup> Id.

the highest caliber.<sup>18</sup> 18-B attorneys use a construct of experience to ensure the quality of the representation – the least experienced attorneys work only with misdemeanor clients, while felony caseloads require a greater level of experience. In addition, 18-B attorneys are required to attend regular training sessions and a select number of attorneys who work in specialized areas may have to undergo recertification.<sup>19</sup>

The institutional providers similarly have rigorous guidelines and standards relied upon to ensure that the highest quality of legal services is being provided. These standards include extensive recruiting and hiring practices, routine performance reviews and each provider possessing an internal structure of robust supervision and training for their attorneys.

Currently, providers that contract with the City to provide indigent defense services at the trial level are required to submit monthly reports on the number of new criminal cases assigned, as well as quarterly programmatic data to the City that includes:

- a. Cases disposed at criminal court arraignment
- b. Intake at criminal court arraignment by crime type (felony, misdemeanor, violation)
- c. Cases not disposed of at arraignment by crime type
- d. Cases not accepted by contractor—number and reason
- e. Cases relieved after arraignment—number and reason
- f. Dispositions in criminal and supreme court—breakdown
- g. New assignments in criminal court (post-arraignment)
- h. New assignments in supreme court
- i. Cases pending in criminal and supreme court
- j. Number of cases from which contractor was relieved during the preceding month

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<sup>18</sup> New York City Council Hearing on Indigent Defense, Transcript: January 2015, pg.12

<sup>19</sup> New York City Council Hearing on Indigent Defense, Transcript: January 2015, pg. 12

- k. Trials in criminal and supreme court
- l. Average time in disposition by Penal Law section
- m. Actual caseload for attorneys during the preceding month.<sup>20</sup>

In addition, the Indigent Defense Organization Oversight Committee to the Appellate Division, First Department, publishes a report every two years analyzing the providers' work.<sup>21</sup> Another mechanism of oversight comes from the New York State Office of Court Administration, which enforces compliance with the caseload limitation standards and distributes the funds dedicated to hiring additional attorneys to meet new staffing needs.<sup>22</sup>

On January 26, 2015, Kara Dansky, Special Advisor in MOCJ testified at the Council's hearing on Indigent Defense that MOCJ is currently working on developing a system-wide evaluation in New York City.<sup>23</sup> Dansky stated that the Administration's intention was to model its approach on the information gathered from two other jurisdictions currently administering surveys, Texas and North Carolina. Dansky stated that the city's plan in collecting their information would base their approach on established standards in ten fundamental areas.<sup>24</sup> In 2009, the North Carolina Systems Evaluation Project ("NCSEP") developed a set of metrics to quantify system and client outcomes for indigent defense, with the use of statistical indicators, to measure performance.<sup>25</sup> NCSEP created a performance measurement guide for indigent services

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<sup>20</sup> See, Renewal Agreement between NYC Mayor's Office of the Criminal Justice Coordinator and Brooklyn Defender Services, Exhibit A, at p. 22, June 4, 2013.

<sup>21</sup> Supra, note 13.

<sup>22</sup> See transcript, NYCC Fire and Criminal Justice Services Committee and Immigration Committee hearing, p.12, September 23, 2013.

<sup>23</sup> Keshner, Andrew. "City Broadens Its Evaluation of Indigent Criminal Defense" *New York Law Journal* 28 January, 2015 available at <http://www.newyorklawjournal.com/id=1202716258500/City-Broadens-Its-Evaluation-of-Indigent-Criminal-Defense?slreturn=20151030143108>

<sup>24</sup> Id.

<sup>25</sup> Greese, Margaret, Atkinson, Daryl V. "The Challenge: Evaluating Indigent Defense: North Carolina Systems Evaluation Project Performance Guide" 2012 available at [http://www.ncids.org/systems%20evaluation%20project/performance%20measures/PM\\_guide.pdf](http://www.ncids.org/systems%20evaluation%20project/performance%20measures/PM_guide.pdf)



and a video to help the defense community begin to engage in data-driven evaluations.<sup>26</sup> Some legal service providers have conducted their own evaluations.

In 2001 Legal Aid commissioned New York University's Robert F. Wagner School of Public Service to develop methods to collect and analyze data necessary for reporting to the Interest on Lawyers Accounts ("IOLA").<sup>27</sup> As part of IOLAs grantee report, grantees are required to provide information related to how clients experience service delivery.<sup>28</sup> As a result Legal Aid tasked the research team to conduct a client-satisfaction survey, provide tools to record data to measure wait-time and rejection, and trained Legal Aid staff on how to use the data collection tools.<sup>29</sup> Additionally, the Bronx Defenders also conduct their own client satisfaction surveys, which are an "important part of the office's self-evaluation efforts."<sup>30</sup> According to the Bronx Defenders, their client surveys indicate that over 90% of their clients are happy with the representation they receive.<sup>31</sup>

### **III. INT. No. 958**

This bill would require the Coordinator of the Office of Civil Justice and the Coordinator of Criminal Justice, respectively, to develop client satisfaction surveys to be completed by persons who have been represented by city-funded attorneys in legal matters. Each survey would measure the client's satisfaction with the representation, including the attorney's overall performance, investigation of the case, efficiency, and communication and the level of participation allowed to the client. The bill would require that the surveys be distributed to attorneys who provide indigent legal services and that those attorneys give these surveys to

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<sup>26</sup> Id.

<sup>27</sup> NYU Capstone *Measuring Client Satisfaction* Legal Aid Society of New York- Civil Division 2001 available at <http://wagner.nyu.edu/courses/capstone/project/measuring-client-satisfaction>

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> The Center for Holistic Defense: A Project of the Bronx Defenders May 2014 available at <http://www.bronxdefenders.org/wp-content/uploads/2014/09/2014HolisticDefenseSymposiumReport.pdf> pg 16

<sup>31</sup> The Bronx Defenders, *Criminal Defense Practice* available at <http://dev.bronxdefenders.org/our-work/>

clients at the conclusion of the attorney's representation of the client, but the bill would make completion of the survey optional. Finally, the bill would require the Coordinator of the Office of Civil Justice and the Coordinator of Criminal Justice, respectively, to compile and report on the results of surveys collected and make recommendations for systemic change to improve clients' experience with legal services provided by city-funded attorneys.

This bill would take effect immediately.

Int. No. 958

By Council Members Lancman, Arroyo, Gentile, Johnson, Koo, Palma and Cohen

A Local Law to amend the administrative code of the city of New York, in relation to client satisfaction surveys for city-funded indigent legal services

Be it enacted by the Council as follows:

Section 1. Title 7 of the administrative code of the city of New York is amended by adding a new chapter 10 to read as follows:

CHAPTER 10

CIVIL INDIGENT LEGAL SERVICES

Subchapter 1

General Provisions

§ 7-1001 Definitions. For the purposes of this chapter, the following terms have the following meanings:

Civil indigent legal services. The term “civil indigent legal services” means free and low-cost legal services that are funded in whole or in part by the city and are provided to clients in civil legal matters on the basis of financial need.

Client. The term “client” means a person represented in a civil legal proceeding by a city-funded attorney.

Coordinator. The term “coordinator” means the coordinator of the office of civil justice.

Subchapter 2

Client Satisfaction Surveys and Reporting

§ 7-1021 Client satisfaction surveys. a. No later than 180 days after the effective date of the local law that added this chapter, the coordinator shall develop a survey for distribution to persons represented by attorneys providing civil indigent legal services and written instructions for

submitting such survey to the coordinator when completed. Such survey and instructions each shall include a prominent notice informing the client that by submitting the survey, the client waives confidentiality with respect to the client's responses, including the existence of the representation. The coordinator shall provide different options for completing and submitting such survey, which options shall include, but need not be limited to, submission by mail, by telephone and electronically over the internet.

b. The survey required by subdivision a of this section shall contain questions designed to measure a client's satisfaction with his or her representation in a civil legal matter by a city-funded attorney according to the following factors:

1. The client's overall satisfaction with the attorney's performance;

2. The client's satisfaction with the level of participation he or she had in the representation;

3. The client's satisfaction with the attorney's investigation of the case;

4. The client's satisfaction with the efficiency of the attorney's use of time;

5. The client's satisfaction with the attorney's communications about the case in general and its possible outcomes; and

6. Any other factors that the coordinator deems important to gauging the client's satisfaction with the representation.

c. No later than 30 days after developing the survey pursuant to subdivision a of this section, the coordinator shall distribute to all attorneys providing civil indigent legal services to one or more clients or who have current contracts with the city to provide civil indigent legal services:

1. Copies of the survey; and

2. Instructions for how the client can submit the survey by mail, by telephone or electronically.

d. Commencing 30 days after the coordinator develops the survey pursuant to subdivision a of this section, at the conclusion of any representation by an attorney providing civil indigent legal services, such attorney shall provide the client with the materials listed in subdivision c of this section. Completion of the survey by the client is optional. The client shall submit any completed survey directly to the mayor's office of civil justice according to the instructions provided with the survey. The city shall bear the cost of submission of surveys.

e. The coordinator shall retain every survey collected pursuant to this section for at least two years.

§ 7-1022 Reporting. a. No later than October 1 of each year, the coordinator shall submit a report to the mayor and the council on the quality and effectiveness of civil indigent legal services provided by city-funded attorneys.

b. Such report shall include:

1. Conclusions drawn from the surveys submitted pursuant to section 7-1021 and any other relevant indicators of quality that the coordinator deems appropriate; and

2. Recommendations for systemic changes that would improve clients' trust in, participation in and overall satisfaction with the civil indigent legal services provided by city-funded attorneys.

§ 2. Title 9 of the administrative code of the city of New York is amended by adding a new chapter 3 to read as follows:

CHAPTER 3

CRIMINAL INDIGENT DEFENSE SERVICES

Subchapter 1

General Provisions

§ 9-301 Definitions. For the purposes of this chapter, the following terms have the following meanings:

Client. The term “client” means a person represented in a criminal proceeding by a city-funded indigent criminal defense attorney.

Coordinator. The term “coordinator” means the coordinator of criminal justice services.

## Subchapter 2

### Client Satisfaction Surveys and Reporting

§ 9-321 Client satisfaction surveys. a. No later than 180 days after the effective date of the local law that added this chapter, the coordinator shall develop a survey for distribution to persons represented by city-funded indigent criminal defense attorneys and written instructions for submitting such survey to the coordinator when completed. Such survey and instructions each shall include a prominent notice informing the client that by submitting the survey, the client waives confidentiality with respect to the client’s responses, including the existence of the representation. The coordinator shall provide different options for completing and submitting such survey, which options shall include, but need not be limited to, submission by mail, by telephone and electronically over the internet.

b. The survey required by subdivision a of this section shall contain questions designed to measure a client’s satisfaction with his or her representation by a city-funded indigent criminal defense attorney according to the following factors:

1. The client’s overall satisfaction with the attorney’s performance;
2. The client’s satisfaction with the level of participation he or she had in the representation;
3. The client’s satisfaction with the attorney’s investigation of the case;
4. The client’s satisfaction with the efficiency of the attorney’s use of time;

5. The client's satisfaction with the attorney's communications about the case in general and its possible outcomes; and

6. Any other factors that the coordinator deems important to gauging the client's satisfaction with the representation.

c. No later than 30 days after developing the survey pursuant to subdivision a of this section, the coordinator shall distribute to all city-funded indigent criminal defense attorneys who have one or more clients in criminal proceedings in the city or who have current contracts with the city:

1. Copies of the survey; and

2. Instructions for how the client can submit the survey by mail, by telephone or electronically over the internet.

d. Commencing 30 days after the coordinator develops the survey pursuant to subdivision a of this section, at the conclusion of any representation by a city-funded indigent criminal defense attorney such attorney shall provide the client with the materials listed in subdivision c of this section. Completion of the survey by the client is optional. The client shall submit any completed survey directly to the mayor's office of criminal justice according to the instructions provided with the survey. The city shall bear the cost of submission of surveys.

e. The coordinator shall retain every survey collected pursuant to this section for at least two years.

§ 9-322 Reporting. a. No later than October 1 of each year, the coordinator shall submit a report to the mayor and the council on the quality and effectiveness of representation provided by city-funded indigent criminal defense attorneys.

b. Such report shall include:

1. Conclusions drawn from the surveys submitted pursuant to section 9-321 and any other relevant indicators of quality that the coordinator deems appropriate; and

2. Recommendations for systemic changes that would improve clients' trust in, participation in and overall satisfaction with the legal services provided by city-funded indigent criminal defense attorneys.

§ 3. This local law takes effect immediately.

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