

Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2015 Update

A Report of the New York State Office of Indigent Legal Services
November, 2016.

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with Maximum National Caseload Limits
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Executive Summary

- In order to comply with maximum national caseload limits in 2015, New York would have had to spend an additional \$97,788,121 on indigent legal services in upstate counties. This amount represents a 1.3% decrease on the \$99,084,243 that would have been needed to bring upstate counties into compliance with caseload limits in 2014.
- \$57,959,344 or 59% of this total, was needed in the 80 institutional providers of representation in the 57 upstate counties. This would have paid for 450 new staff attorneys in addition to the 759 employed in 2015. It would also have funded 262 new non-attorney staff in addition to the 358 who were already employed.
- \$39,828,776, or 41% of this total, would have been required to bring the 58 upstate assigned counsel programs into compliance with national standards.
- In 2015, the 57 upstate counties of New York State spent \$188,749,947, largely from county funds, to provide legally mandated representation to indigent persons under NY County Law Article 18-B. This represents an increase of almost 4% on the \$181,620,327 spent in 2014.
- In the 80 institutional providers of indigent legal services operational in upstate New York in 2015, attorneys handled an average of 561 new weighted cases. This exceeds the maximum national caseload limit of 367 new weighted cases per attorney per year by 52%.
- This estimate is grounded on conservative assumptions with respect to both the caseload limits used and the methods by which caseloads, salaries and expenditures were quantified. Our purpose has been to provide an accurate and not overstated estimate of the cost of bringing New York's upstate counties into compliance with national caseload maxima.

Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2015 Update

Introduction

2015 saw continued progress in New York toward reducing the enormous unmet resource needs of providers of legal services across the state.¹ This study estimates those needs at \$97,788,121, down from over \$111 million in 2012. This progress, though incremental and insufficient, is reflected elsewhere in this report in terms of increases in attorney and non-attorney staff numbers across the state’s public defender and legal aid society providers, reductions in average attorney caseloads, and increases in the amount spent per case.

Nevertheless, the evidence of continuing resource needs remains clear. Nine of the 80 institutional provider programs across the state have caseloads which are more than double maximum national caseload limits. Meeting the unmet need for attorney and non-attorney staff in institutional provider programs alone would require hiring no fewer than 450 attorneys and 262 non-attorney staff across the state. Assigned counsel funding statewide would need to increase by 51% to meet minimum standards.

Recognizing the limitations of existing national standards, and of data available in New York, the analysis in this report is intentionally conservative. We give no weight here to cases involving persons facing parole revocation, appealing decisions in family court, or appealing criminal convictions in a county supreme court. We provide no adjustment for representation in specialty court programs or for sex offender classification proceedings. And yet providers around New York are required to represent persons in all of these cases, and to do so with the resources they report here.

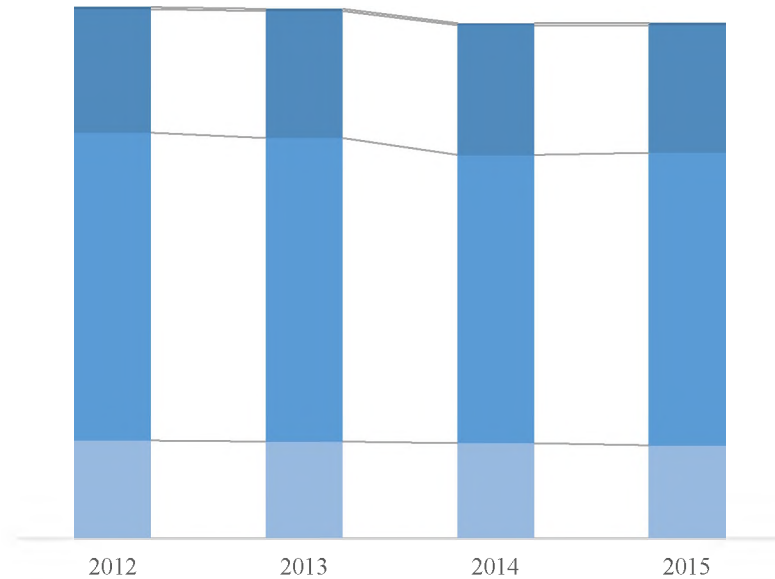
Pursuant to its obligations under the *Hurrell-Harring et al. v. The State of New York*,² ILS is in the process of producing new, data-driven caseload standards which will apply in the five counties named in that suit. Those standards will apply to a wider range of cases than the ones used in this report and will provide more nuanced distinctions among case types. They promise to provide a new basis on which to explore the resource needs of providers across the state in pursuit of the singular goal of providing effective assistance of counsel.

¹ The total number of providers of services in 2015 was 138, up from 134 in 2014 due to the creation of new appellate representation programs in Otsego, Saint Lawrence and Warren counties, and the creation of a ‘Third Alternate Conflict Defender’ in Columbia County.

² The Settlement agreement in the case is available at: <https://www.ils.ny.gov/files/Hurrell-Harring%20Final%20Settlement%20102114.pdf>.

How Many Cases Were Upstate Providers Handling 2012-2015?³

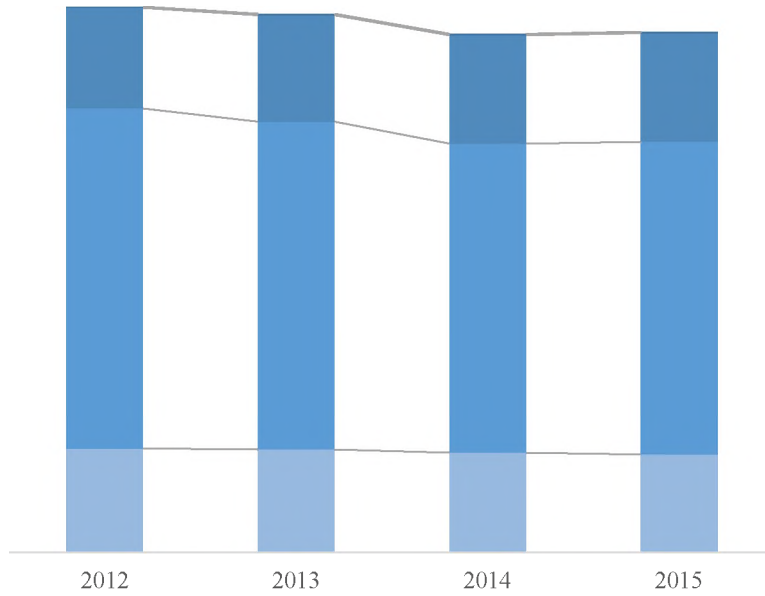
Figure 1: New Cases In Upstate Counties, 2012-2015, All Providers



	2012	2013	2014	2015	2014-15 % change
<u>Cases</u>					
Homicides	198	273	288	286	-0.7%
Felonies	71,493	70,701	69,456	67,935	-2.2%
Misdemeanors	224,780	221,565	210,556	213,714	+1.5%
Family court	90,187	92,699	94,658	93,021	-1.7%
Appellate	1,568	1,585	1,504	1,600	+6.4%
Total cases	388,226	383,123	376,462	376,556	<0.1%
Total weighted cases	682,082	675,329	673,573	669,830	-0.6%

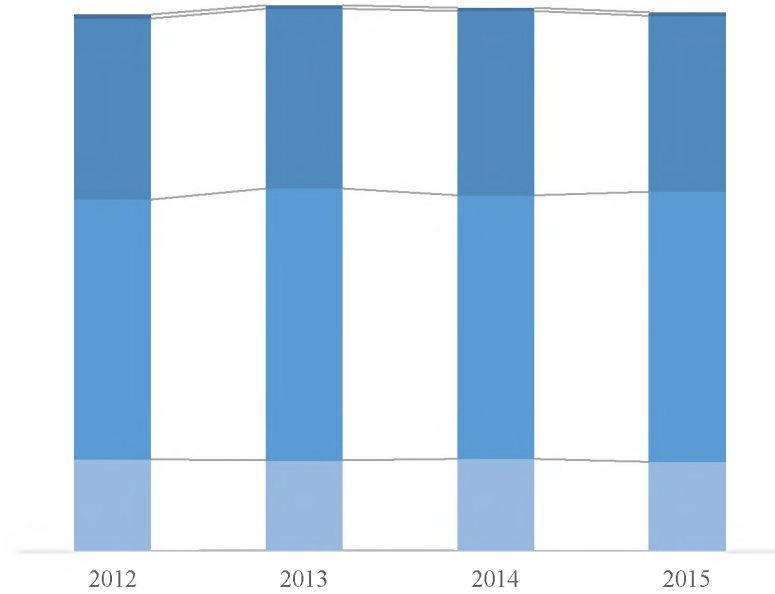
³ ILS identified one program in 2015 which was accepting ‘single appearance assignments’ to represent clients at their initial appearance in court. The assignments ended after the initial appearance. These single appearance assignments were weighted to be equivalent to 0.25 of a misdemeanor case.

Figure 2: New Cases In Upstate Counties, 2012-2015, Institutional Providers



	2012	2013	2014	2015	2014-15 % change
<u>Cases</u>					
Homicides	64	104	131	123	-6.1%
Felonies	50,760	50,197	48,603	47,752	-1.8%
Misdemeanors	165,708	159,777	150,670	152,320	1.1%
Family court	49,025	51,879	52,804	53,058	0.5%
Appellate	650	761	767	790	3%
Total cases	266,207	262,718	252,975	254,043	0.4%
Total weighted cases	442,705	444,774	434,048	434,451	0.1%

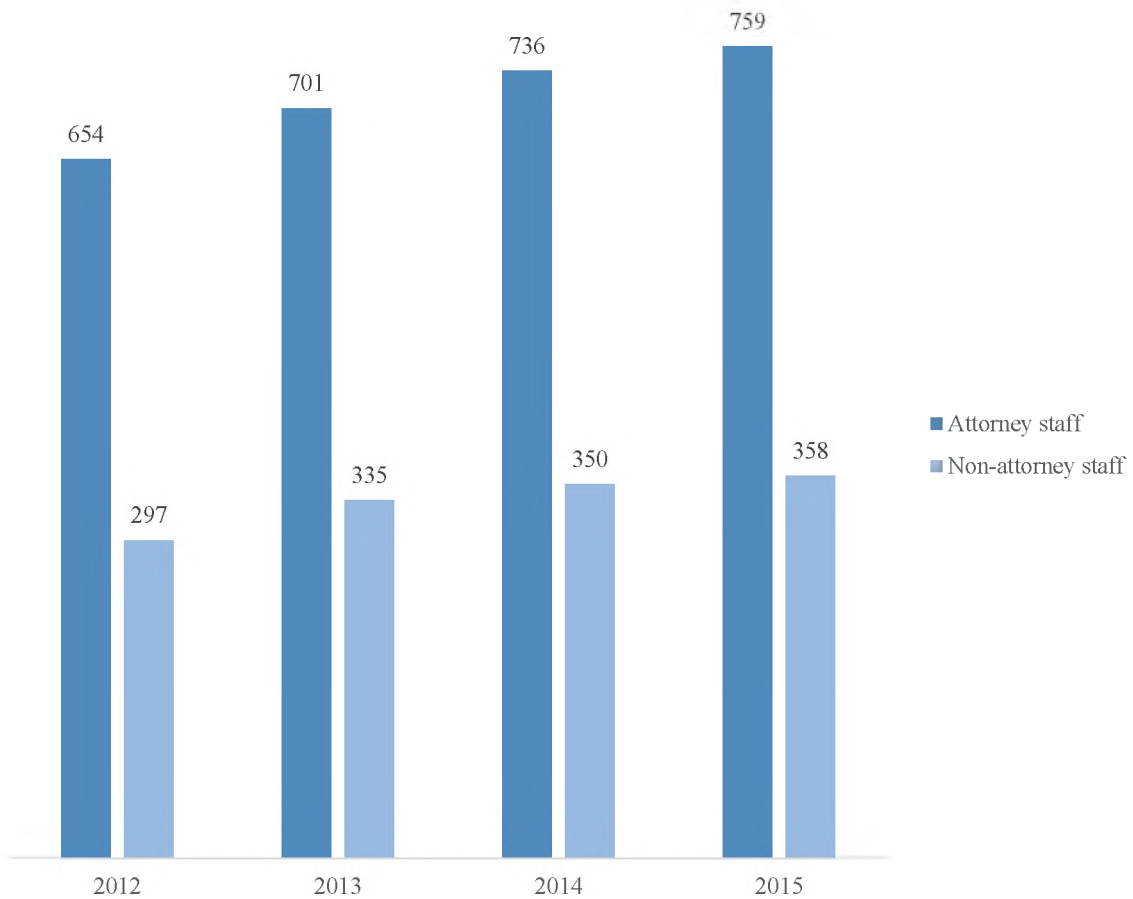
Figure 3: New Cases In Upstate Counties, 2012-2015, Assigned Counsel



	2012	2013	2014	2015	2014-15 % change
<u>Cases</u>					
Homicides	134	169	157	163	3.8%
Felonies	20,733	20,504	20,853	20,183	-3.2%
Misdemeanors	59,072	61,788	59,886	61,394	2.5%
Family court	41,162	40,820	41,854	39,963	-4.5%
Appellate	918	824	737	810	9.9%
Total cases	122,019	124,105	123,487	122,513	-0.8%
Total weighted cases	239,377	239,158	239,525	235,379	-1.7%

How Many Staff Were Employed In Upstate Institutional Providers in 2012-2015?

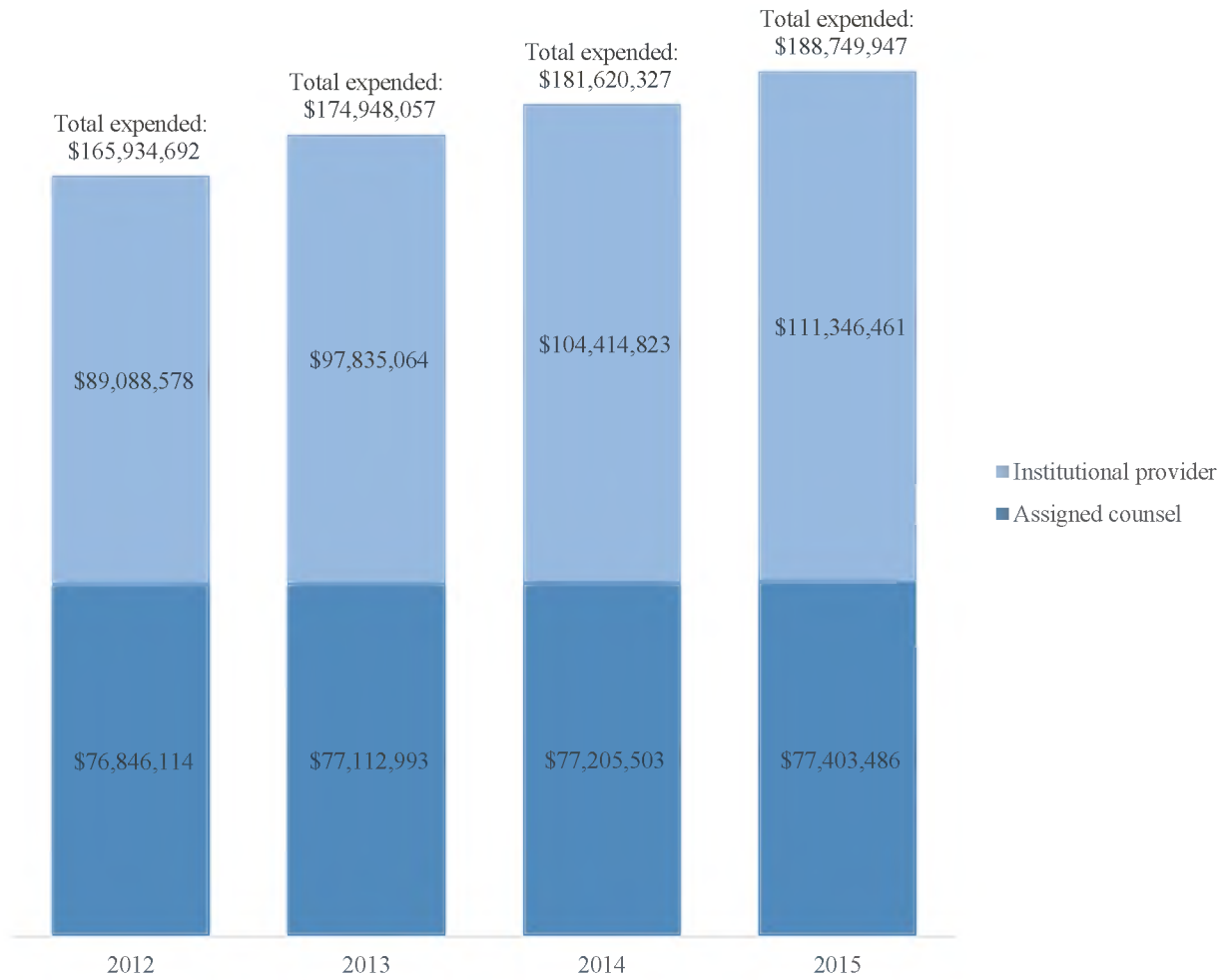
Figure 4: Full-Time-Equivalent Attorney And Non-Attorney Staff In Institutional Providers, 2012-2015.⁴



⁴ Counts of staff as of July 1 were requested from each institutional provider in the respective year. Part-time staff were counted as a proportion of a full-time staff member (e.g., 0.5) with providers specifying the proportion. Non-attorneys includes all non-volunteer staff working in providers who are not attorneys, such as administrative staff, social workers, paralegals and investigators.

How Much Did Programs Spend In 2012-2015?

Figure 5: Expenditures In Indigent Legal Services Programs Statewide 2012-2015, by Program Type



How Many Cases Were Attorneys Taking in Upstate Institutional Providers 2012-2015?⁵

Figure 6: Average Weighted Caseload Per Attorney In Institutional Providers, 2012-2015

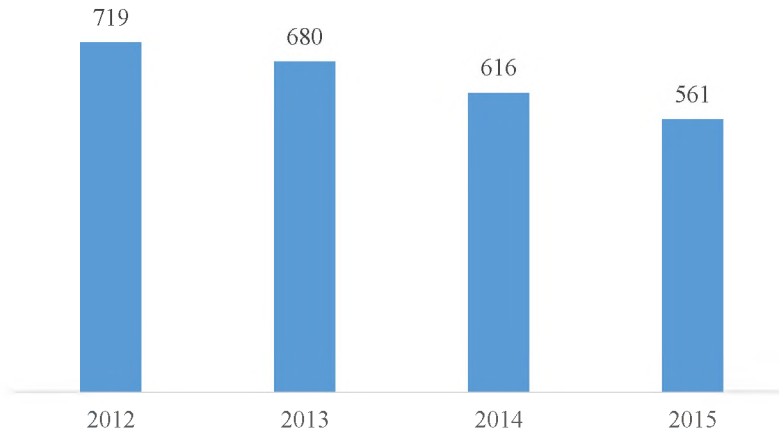
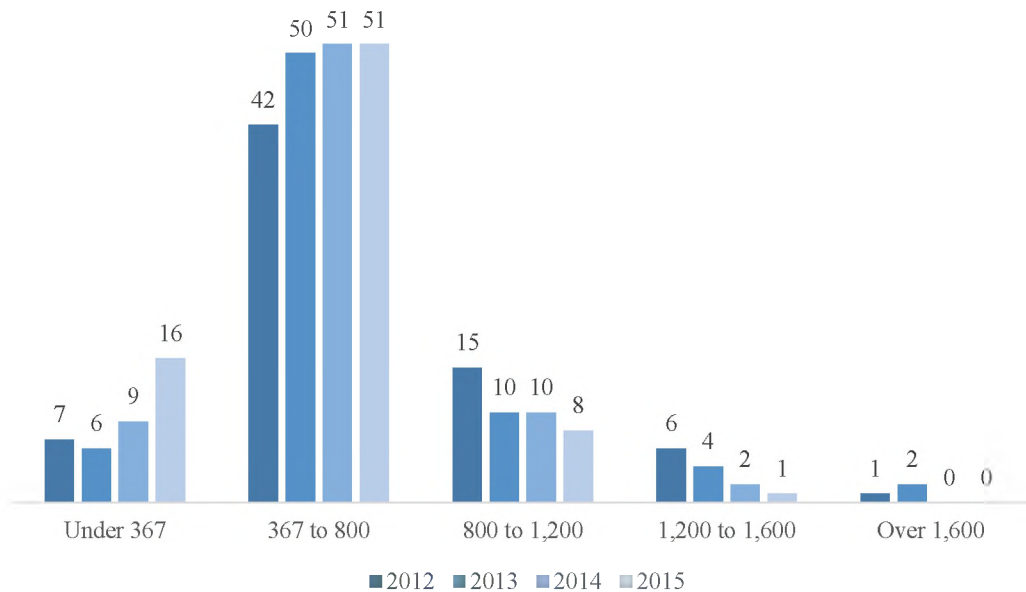


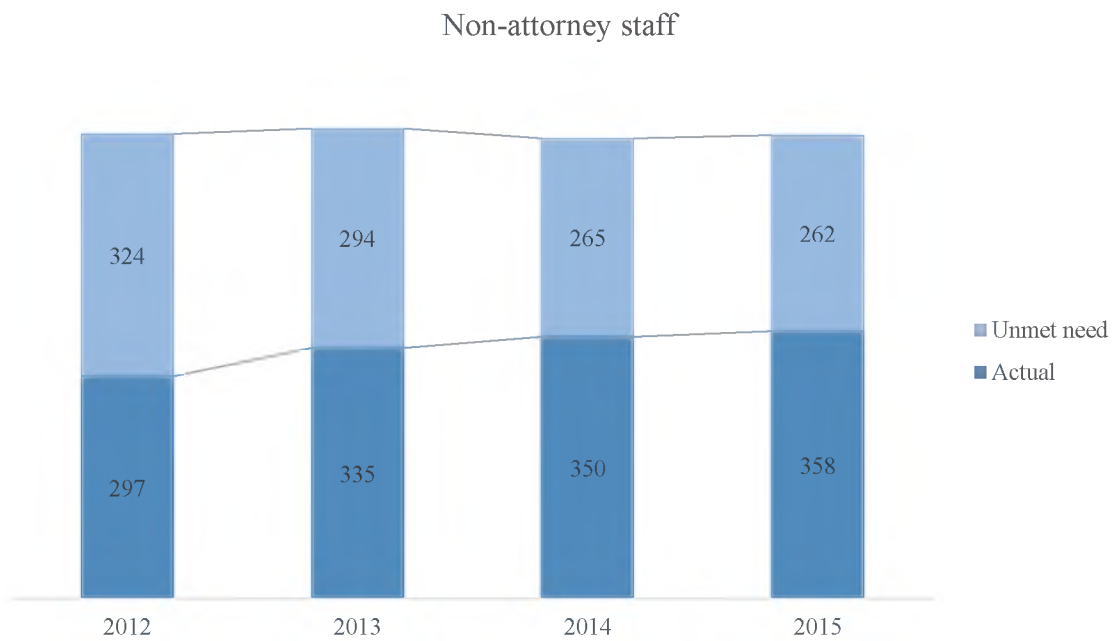
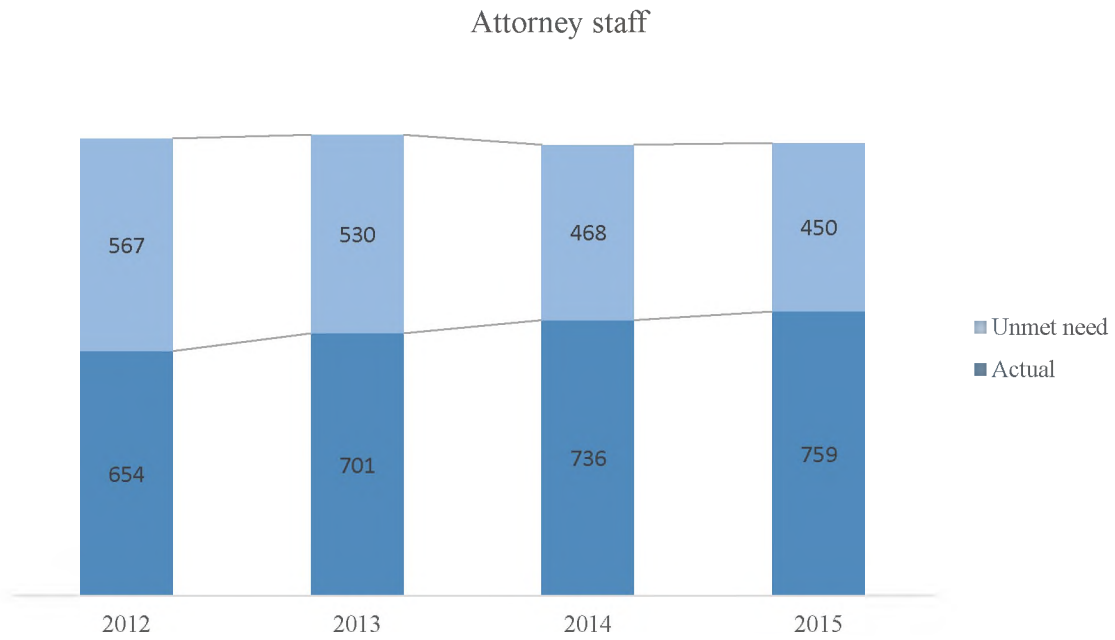
Figure 7: Distribution Of Weighted Caseloads Per Attorney In Institutional Providers, 2012-2015.



⁵ Providers operational for only part of the year are excluded from Figures 6 and 7. There were 4 such providers in 2014 and a further 4 in 2015.

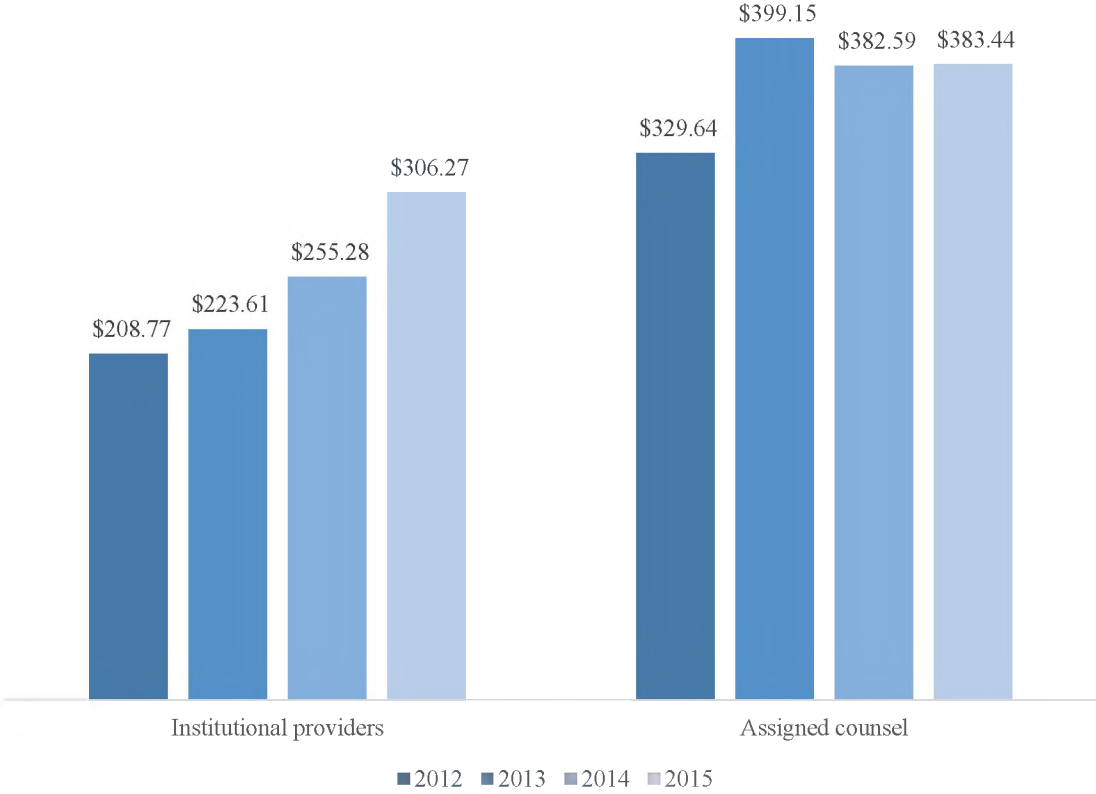
How Many Additional Staff Did Institutional Providers Need 2012-2015?

Figure 8: New Staff Required In Institutional Providers, 2012-2015



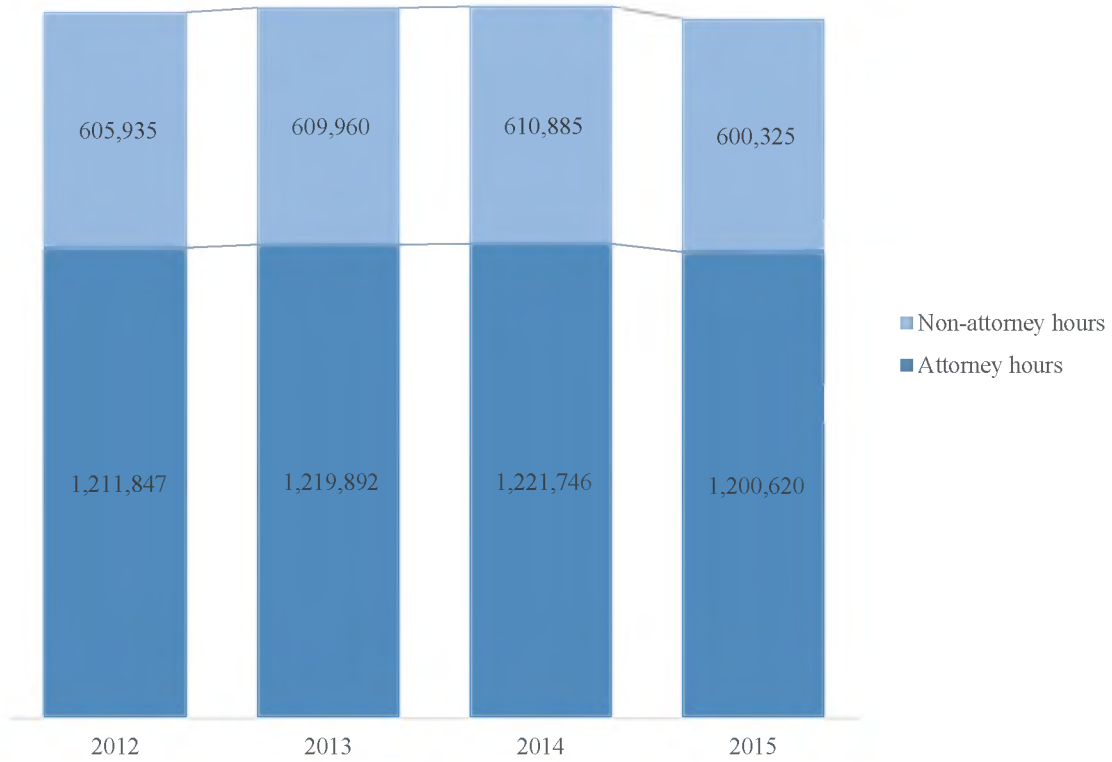
How Much Did Providers Spend Per Case 2012-2015?

Figure 9: Average of Provider Spending Per Weighted Case 2012-2015



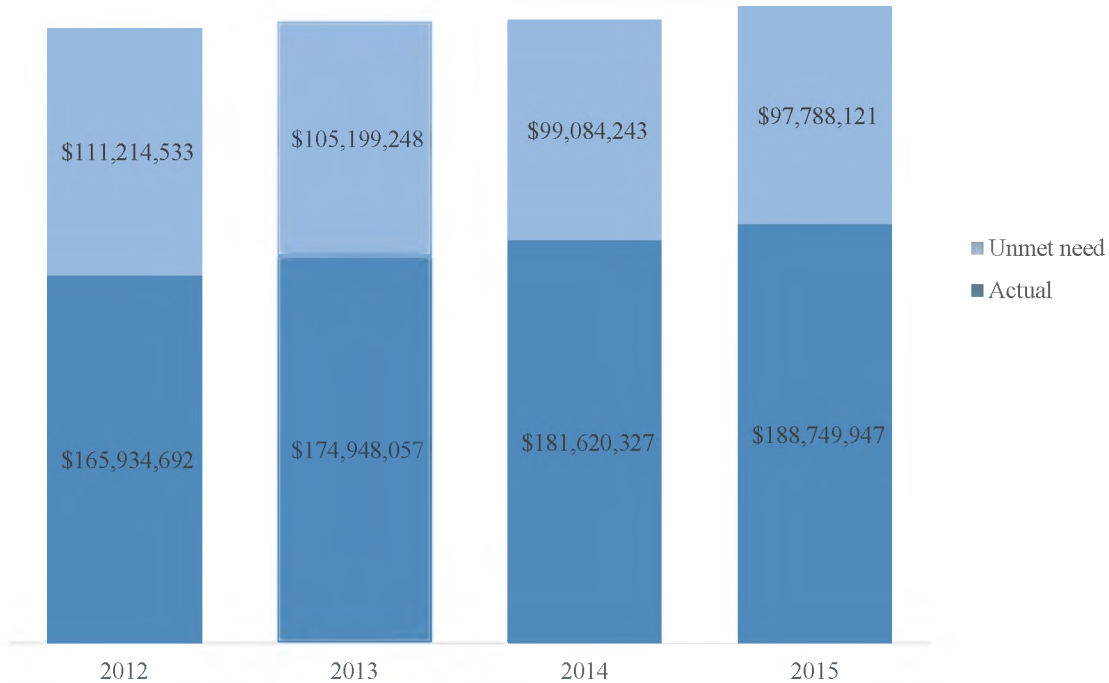
How Many Hours Of Work Were Required To Handle Assigned Counsel Caseloads?

Figure 10: Attorney and Non-Attorney Hours Required For Assigned Counsel, 2012-2015



How Much Additional Funding Was Required To Meet National Caseload Limits in 2012-2015?⁶

Figure 11: Actual and Needed Spending Statewide, 2012-2015, All Providers



⁶ The statistics in Figures 11 and 12 employ the analytic methods described in the first report in this series, [An Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York](#), using updated salary data. Salaries for non-attorney employees in 2015 were estimated at \$52,773 – the average of May 2015 salaries for paralegals (occupation code 23-2011, \$57,920), private investigators (occupation code 33-9021, \$59,410) and administrative assistants (occupation code 43-0000, \$40,990) as published by the Bureau of Labor Statistics (see *May 2015 State Occupational Employment and Wage Estimates, New York*, available at http://www.bls.gov/oes/current/oes_ny.htm). Fringe rates were set at 50% for attorneys and 68% for non-attorney staff based on the Bureau of Labor Statistics publication *Employer Costs for Employment Compensation – June 2015* (see http://www.bls.gov/news.release/archives/eccc_09092015.pdf, Table 3). These figures resulted in an estimated hourly cost for non-attorney services of \$47.09. Attorney salary information was not updated as the most recent (2014) National Association for Law Placement survey did not collect sufficient responses for a regional estimate for the North-East. Accordingly, the 2012 salary information was retained (\$51,521). See National Association for Law Placement (2014). *Public Sector and Public Interest Attorney Salary Report*, (NALP, Washington DC).

Figure 12: Actual and Needed Spending Statewide, 2012-2015, by Provider Type

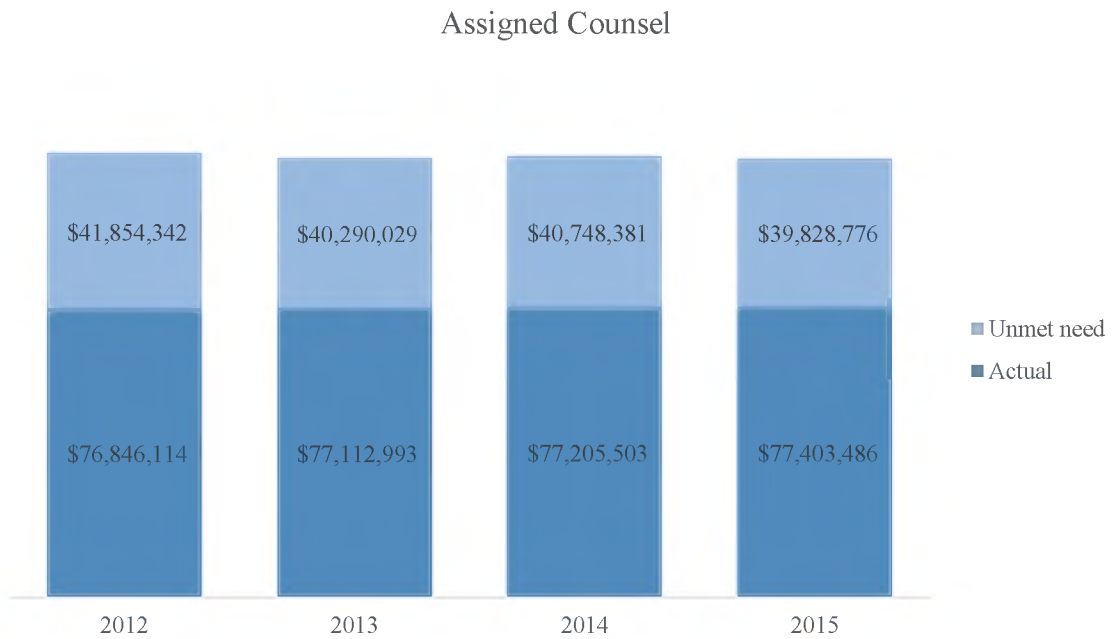
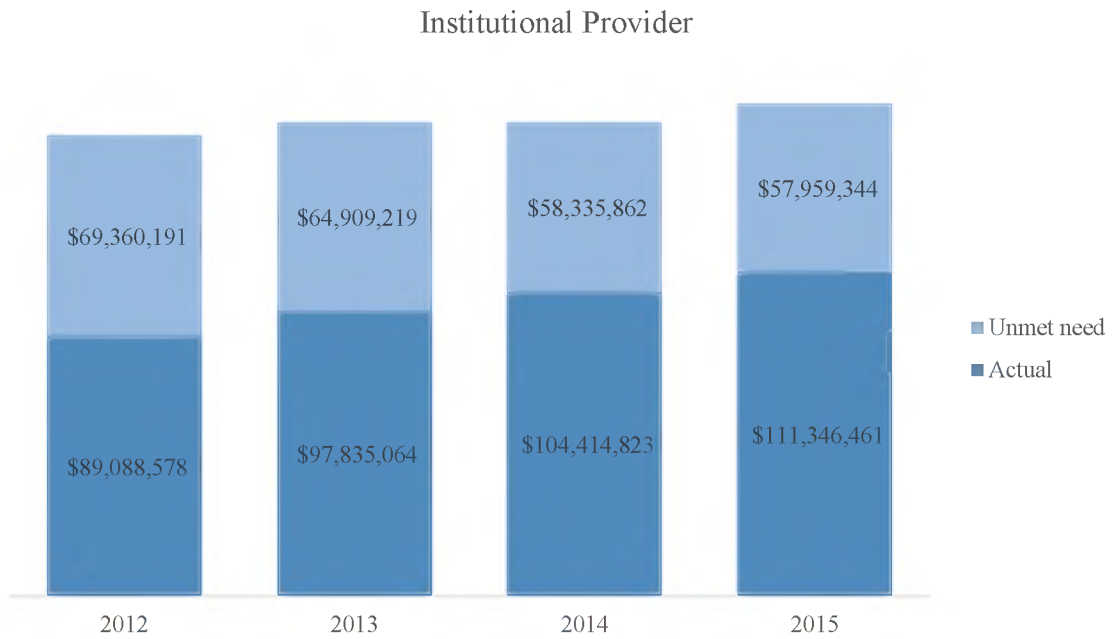
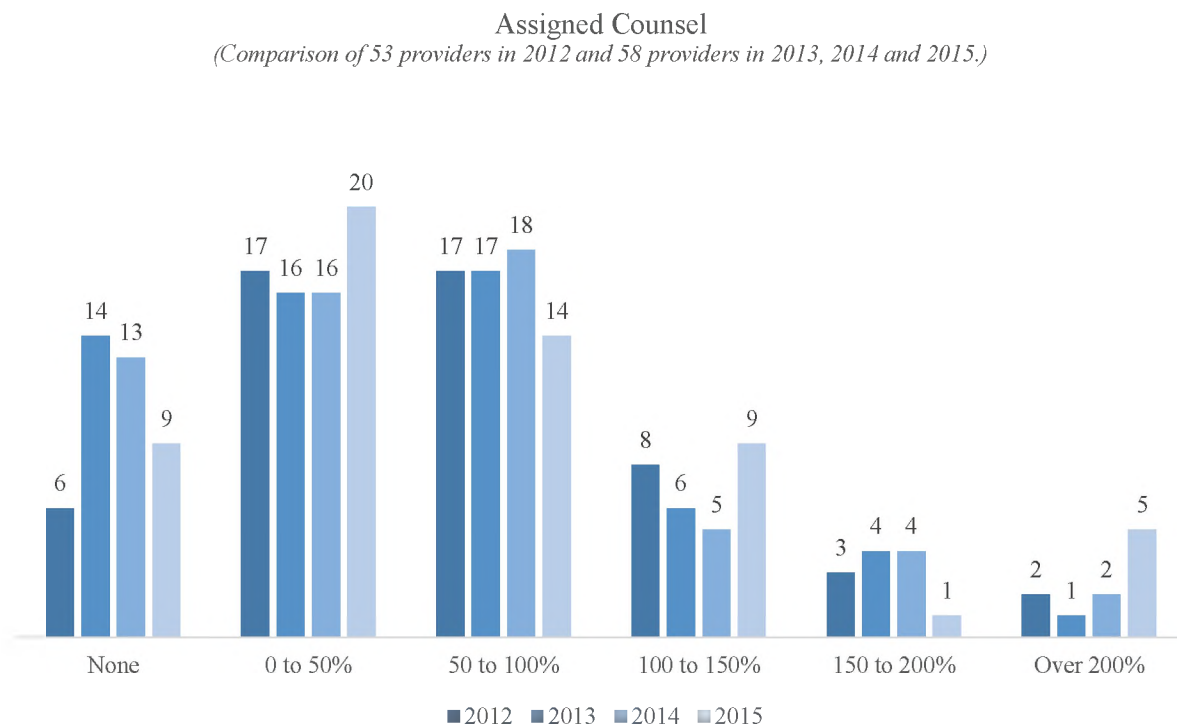
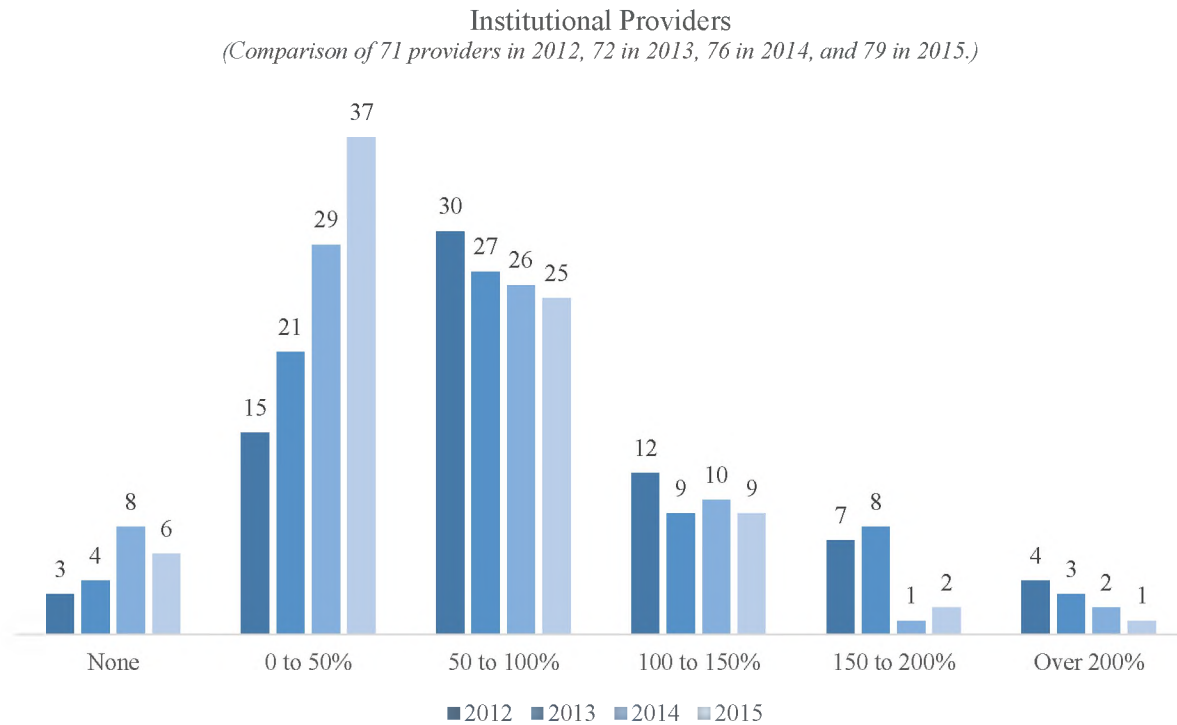


Figure 13: Distribution of Needed Spending Increases, 2012 -2015, by Provider Type



Conclusion

We estimate that a minimum of an additional \$97,788,121 was required to bring providers of indigent legal services in the upstate counties of New York State into compliance with maximum national caseload limits in 2015.