

New York State Office of Indigent Legal Services

Funding Announcement

Second Counsel at First Appearance Grant

NYS Office of Indigent Legal Services Request for Proposals

The Office of Indigent Legal Services (Office) and nine-member Indigent Legal Services Board (Board) were created by legislation enacted in 2010, found in Executive Law Article 30, sections 832 and 833. As part of its statutory mission “to monitor, study and make efforts to improve the quality of services provided pursuant to Article 18-B of the county law,” the Office, operating under the direction and pursuant to policies established by the Board, assists county governments in the exercise of their responsibility to provide effective and meaningful representation of persons who are legally entitled to counsel but cannot afford to hire an attorney. The assistance provided by the Office and Board includes distributing state funds and targeting grants to counties in support of innovative and cost-effective solutions to enhance the quality of indigent legal services.

Timelines for This Request for Proposals

RFP Release Date	Friday, January 6, 2017
Questions Due By	Monday, January 30, 2017 (Q & A period closed)
Questions Posted By	Friday, February 10, 2017
Proposal Due Date	Friday, February 24, 2017, 5:00 p.m. EST
Award Announcement	April 2017
Tentative Contract Start Date	June 2017

Intent of this Request for Proposals

*The New York State Office of Indigent Legal Services (Office) is announcing the availability of funds and soliciting proposals from **counties** to continue and expand effective programs funded under the Office’s first Counsel at First Appearance Demonstration Grant and develop new, innovative programs or practices to improve the delivery of indigent defense services at first appearance.*

The intent of this Request for Proposals (RFP) is to make demonstrable and measureable improvements in the delivery of indigent defense services to eligible persons at a defendant’s

first appearance before a judge. The grants will serve to provide effective representation of indigent persons at their first appearance before a judge and promote the continuous representation of such persons. *Projects that produce a replicable model or practice that is usable, adaptable, or scalable by other localities or counties are encouraged.*

The terms ‘first appearance’ and ‘arraignment’ are used interchangeably in this document and refer to *the defendant’s first appearance before a judge*. These proceedings can result in loss of liberty and have other important consequences. Applications that do not address representation whenever a defendant first comes before a judge will not be considered.

All eligible counties are strongly encouraged to apply, as we are interested in identifying promising practices and strategies that are put in place that can be shared with other counties.

Background

The right to representation in a criminal matter is a basic right guaranteed by the Constitutions of New York and of the United States and by State statutes. These rules of law guarantee that defendants in criminal cases have legal assistance for their defense. In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court held that states are required under the Sixth Amendment to provide representation in criminal cases for defendants who are unable to afford their own attorneys. Supreme Court Justice Hugo Black wrote in *Gideon* that “. . .in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him,” and that in the United States, the defendant’s right to counsel is fundamental and essential to a fair trial.

In 1965, in response to the *Gideon* decision and *People v. Witek*, 15 NY2d 392 (1965), New York enacted County Law Article 18-B and created a county-based system of delivering mandated legal services to indigent defendants to ensure that they receive meaningful and effective assistance of counsel. However, across New York State, this guaranteed right to effective legal representation has yet to be fully realized. In a 2006 report issued by the Commission on the Future of Indigent Defense Services, created by then-Chief Judge Judith Kaye, glaring deficiencies were found in the quality of indigent legal services offered by counties, including excessive caseloads, inability to hire full-time defenders, lack of adequate support services, lack of adequate training, minimal client contact and, in some courts, outright denial of the constitutional right to counsel.

In May of 2010, the Court of Appeals reinstated a complaint brought by the New York Civil Liberties Union on behalf of indigent criminal defendants in *Hurrell-Harring v. New York*, 15 NY3d 8 (2010) that alleged New York’s indigent defense system was inadequate to ensure the constitutional right to counsel under *Gideon*. The court recognized a cognizable claim for relief based on allegations made in the complaint that indigent defendants were not represented at arraignments and were kept in custody with little or no contact with their attorneys. In *Hurrell-Harring*, the Court also recognized that an arraignment is a “critical stage of the proceeding” which requires the presence of counsel. The Court noted that, at arraignment, a defendant’s “pretrial liberty interests were on that occasion regularly adjudicated with most serious consequences, both direct and collateral, including the loss of employment and housing, and inability to support and care for particularly needy dependents.”

The Supreme Court in *Rothgery v. Texas*, 554 U.S. 191 (2008), made clear that the right to counsel attaches at arraignment. The Court stated “that the right to counsel guaranteed by the Sixth Amendment applies at first appearance before a judge at which a defendant is told of the formal accusations against him and restrictions are imposed on his liberty.”

More recently, in October, 2014, the parties to *Hurrell-Harring* entered into a Settlement, which required the State to ensure that, within 20 months after the effective date of the Settlement, any criminal defendant charged with a crime and eligible for publicly funded representation would be provided legal representation at arraignment. To accomplish this, the Settlement named the Office as the agency responsible for implementing the terms of the Settlement and required that the Office, in consultation with the Executive and the five Settlement counties, develop a written plan for achieving compliance with this obligation.

On March 11, 2015, the Settlement was approved by the Albany County Supreme Court. In accordance with the terms of the Settlement, and following the review of the Office’s preliminary written plan by the parties, the Office submitted a final plan for implementation on November 12, 2015, entitled “Implementing the Counsel at Arraignment Obligations in the *Hurrell-Harring v. The State of New York Settlement: Final Plan.*” The Office is currently assisting the five Settlement counties in the full implementation of that Plan.

This Funding Announcement marks the second request for proposals issued by this Office to improve the delivery of indigent defense services at first appearance. On November 30, 2012, the Office issued a Funding Announcement for a Counsel at First Appearance Demonstration Grant, with total available funds of \$12 million (\$4 million per year for three years). All twenty-five New York State counties that applied for funding under this Grant were given an award. At present, these counties continue to operate programs funded under this Grant, however, funding will soon expire.

Despite recent progress in providing counsel at first appearance, significant challenges persist. Persons eligible for indigent legal defense services continue to be arraigned without counsel at first appearance. Causes include, among other things, excessive caseloads, a lack of resources, statutory restrictions, and logistical challenges. This often results in unnecessary or excessive bail being set and keeps people of limited financial means in jail awaiting trial.

Project Description – What is this RFP Seeking to Achieve?

The Office has established this RFP to assist counties to implement a model that effectively demonstrates innovative and creative approaches to providing counsel at first appearance, with the overarching goal of strengthening the delivery of indigent defense services in New York State.

Counties should submit a proposal that is developed through consultation with representatives of each of the County Law Article 18-B criminal defense providers in the county, including the person with administrative responsibility for overseeing the assigned counsel program.

No county may submit more than one proposal.

Proposals that rely for their implementation on statutory changes concerning arraignment procedures or jurisdiction *will not be funded.*

Proposals that include contracts with private law firms or individual lawyers *will not be funded.*

Funding of this proposal is limited to the provision of Article 18-B services. Specifically, proposals are sought for the provision of direct, continuous representation to eligible persons that would continue and expand effective existing programs funded under the Office's first Counsel at First Appearance Demonstration Grant, enhance existing services or create new and innovative approaches which address counsel at first appearance by means such as:

- *Provide lawyer at first appearance:* Proposals should provide for the physical presence of counsel with the client in court.
- *Procedures for effective advocacy:* Proposals that describe procedures that will not only place a lawyer at a client's side before the arraignment court, but will ensure that the lawyer has the opportunity to effectively advocate on the client's behalf. Such procedures may relate to, for example, allowing adequate time for counsel to obtain and use information from the client, charging documents, criminal history, and other available sources on the client's behalf with regard to entry of a not-guilty plea, bail/pretrial detention, and any other matter arising at arraignment.
- *Facilitate pre-arraignment representation:* Proposals that include ways to facilitate pre-arraignment representation are encouraged, including consulting with the defendant while detained in a holding facility or jail.
- *Continue or expand existing programs:* The continuation or expansion of existing counsel at first appearance pilot programs, including programs previously funded by the Office, is encouraged, where those programs can demonstrate their effectiveness.
- *Improve investigation:* Proposals that make investigation services promptly available for pretrial detention issues are encouraged.
- *Collaborate with other agencies:* Proposals that demonstrate collaboration among agencies and entities involved in any facet of the arraignment practice (such as courts, the law enforcement agency/agencies responsible for ensuring the presence of the person being arraigned, pretrial detention services, and investigative services) are encouraged. No specific entity must be included, nor do those entities noted here constitute an exclusive list.
- *Increase staffing:* Proposals that involve increasing defender staffing in order to increase the number of attorneys available to attend arraignment sessions are encouraged.

The purpose of this RFP is to begin or continue or expand existing effective programs for meeting the requirement that counsel routinely be provided at arraignment and to explore the most efficient and effective ways of meeting that requirement in the varied jurisdictions across the state – counties need not propose county-wide, all-courts solutions. Arraignments in city courts, as well as in town or village courts, may be included. Applicants should state

the bases upon which the determination was made to select the courts that were chosen in the proposal, such as high volume of arraignments or pretrial detention of persons arraigned, geographic considerations, or amenability to collaboration among the criminal justice entities involved in the proposal. No one specific basis is required nor do the bases noted here constitute an exclusive list.

Funding and Contract Period

The total available funds for award are \$17,220,834 (\$5,740,278 per year for each of three years). The total available funds will not necessarily be divided equally, nor will selected applicants be guaranteed the entire amount requested. Budget proposals will be evaluated on efficient use of funds and overall cost-effectiveness.

The maximum amount to be awarded to any one county is \$250,000.00 per year for three years. Counties may submit proposals either at or less than the maximum amount. If additional funds become available, the Office reserves the right to approve additional projects under the authority of this funding announcement.

Grants will be issued for a period of three years. The Office reserves the right to adjust the award amount of any application based on reasons that include but are not limited to: cost effectiveness and reasonableness of proposed budget, demonstrated need, or inconsistent appropriation levels.

Who Is Eligible To Apply for This Request for Proposals

Only New York State counties other than counties wholly encompassed by a city, are eligible to apply for funds. In addition, the five counties participating in the Hurrell-Harring Settlement are ineligible to apply for funds. Proposals should be submitted by an authorized county official or employee. There is no match or any other cost to the counties to participate in this project.

Instructions for Completing This Request for Proposals

The RFP is available online at www.ils.ny.gov. Requests for the RFP may be made by e-mail to CAFA2@ils.ny.gov or by telephone at (518) 486-9713 or (518) 486-2028.

No responses will be provided to inquiries made by telephone other than to request an RFP.

RFP Questions and Updates

The Office will respond to questions that are submitted until the “*Questions Due By*” date shown on the cover of this document. Questions may be submitted in writing to QA@ils.ny.gov to the attention of Jennifer Colvin.

No responses will be provided to inquiries made by telephone other than to request an RFP.

When corresponding by e-mail, clearly indicate the subject as: *Second Counsel at First Appearance RFP*. The name of the party submitting the question will not be posted.

Questions and answers will be posted on the RFP “*Questions Posted By*” date as stated on the cover of this RFP at the following URL address: <http://www.ils.ny.gov/content/counsel-first-appearance> .

Instructions for Completing This Request for Proposals

Application Submission (mail, hand delivery, electronic)

All submissions must contain the complete application.

If submitting an application by mail or hand delivery, this RFP requires the submission of **one (1) original, and four (4) copies (for a total of five)**.

All applications must be delivered to:

By mail:

Jennifer Colvin, Grants Manager
Office of Indigent Legal Services
80 S. Swan Street, Suite 1147
Albany, NY 12210

Hand delivery:

Please call the Office of Indigent Legal Services in advance to arrange for building security clearance (518-486-2028 or 518-486-9713).

Office of Indigent Legal Services
Alfred E. Smith Building (directly behind the State Capitol Building)
11th Floor, Suite 1147
80 South Swan Street
Albany, NY 12210

Electronic applications:

Electronic copies will be accepted.

Submit to CAFA2@ils.ny.gov. Indicate in the *Subject* area of the electronic transmission that the submission is for the “Second Counsel at First Appearance Grant.”

Application format:

The following components must be included in the application in order for the submission to be complete:

1. Project Summary (less than one page)
2. Proposal Narrative (less than 10 pages)
3. Budget Summary (less than 4 pages)

4. Budget Justification (1-2 pages)

All applications must be received by Friday, February 24, 2017 by 5:00 p.m. Eastern Standard Time (EST). Late applications will not be considered.

Only complete applications will be reviewed and evaluated.

Proposal Application

I. PROJECT SUMMARY (not scored)

Please provide:

- Identification of the county requesting funds;
- Contact person, telephone, fax and email for this grant;
- Fiscal intermediary name and address (identify the department and/or individual responsible for fiscal reporting for this project);
- Amount of funding requested; and
- A one or two paragraph description of the proposed project.

II. PROPOSAL NARRATIVE

A. Plan of Action (50 points)

Please address every item listed and do so in the order and format in which they are presented, i.e., responses should be made in the same order as requested and each response should identify the specific item being addressed. Applicants will be evaluated on the information they provide. *Please do not submit any information that was not specifically requested.*

Project Rationale

1. Describe the problem that is being addressed for counsel at first appearance in court(s) identified within the county.
2. Document the nature and extent of the problem.

Quality of Representation

3. Describe how you propose to deliver quality indigent legal services at first appearance that includes the physical presence of counsel with the client in court.
4. The Office prefers continuous representation of a client by the same attorney or provider from the start of a criminal case to its conclusion. How would your proposal meet this objective? Would the attorney who represented the defendant at first appearance represent the defendant through the remainder of the case? If not, what process would you implement to ensure that information obtained at first appearance is made available to the attorney representing the client for the remainder of the case, and that no gaps in representation occur?
5. How would you assure effective representation for clients whose cases are resolved prior to trial?

6. Describe how you would assign attorneys to work in the court(s) included in your proposal and how you would supervise their performance.
7. Describe how support staff, including investigators (if applicable), will be used to provide support to attorneys.
8. Describe the qualifications and training required of attorneys providing representation under this initiative.
9. Describe your plan for accommodating the needs of non-English speaking clients and non-citizens.

Client Contact

10. Describe how you would ensure that attorneys have sufficient time to provide effective representation at first appearance, including consulting with clients.

B. Data Collection, Performance Measurement, and Evaluation (20 points)

11. Describe how you plan to track relevant data on individual cases in ways that are accurate and reliable, including any existing software or record-keeping system you employ (if applicable), and who typically inputs data.
12. Describe how and when staff from your office would be able to gather critical information on individual cases including the presence or absence of attorneys at arraignment, bail outcomes, time client spent in jail, and the time from arraignment to disposition.
13. Describe the present state of information collected by your program, including whether ‘baseline’ information on the presence or absence of attorneys at arraignment, bail outcomes, time spent in jail, and the time from arraignment to disposition, are already available for past cases.
14. Describe any changes you would need to make to track required data, and how these would be accomplished.

C. Applicant Capability and Personnel (10 points)

15. Who will be the lead person(s) responsible for project implementation?
16. Describe how and to what extent you consulted with the leader of each provider of criminal defense representation under Article 18-B of the County Law.
17. Identify the extent of collaboration with other stakeholders in the criminal justice system in this initiative. To the extent necessary, provide evidence of the willingness of other agencies to cooperate in the implementation of the program.

D. Budget and Cost (20 points)

Grant applications will be evaluated and rated on efficient use of funds and overall cost-effectiveness, which includes budget plans that are consistent with the proposed action plan, administrative costs, justification for each requested budget line, cost benefit, and highest potential for successful outcomes. Complete the attached Budget Form and return with the proposal, being sure to address the following:

18. Provide a detailed, **annualized three-year budget** containing reasonable and necessary costs. The budget for the proposed project must be consistent with the terms of the RFP and provide a justification for all expenses.
19. Describe whether you intend to subcontract with another service provider in order to complete the terms described in this RFP.
20. Include a brief narrative for **each** budget line justifying the budget request and relating the requested line budget amount to the plan of action and expected results. The narrative should be mathematically sound and correspond with the information and figures provided in the Budget Form.
21. The budget narrative must also describe how the county will monitor expenditures during the life of the grant to ensure that the project stays within the budget.

Complete the attached Budget Form and return with the proposal.

Review and Selection Process

The Office will conduct a two-level review process for all submitted proposals:

- The first level entails a Pass/Fail review, conducted by Office staff, of the submitted proposals to ensure that the application is responsive to the conditions set forth in the RFP. The Office will reject any applications that do not clearly and specifically address the purposes of this funding opportunity and/or fail to meet any of the following criteria:
 1. The RFP was submitted within the designated time frames;
 2. The RFP was submitted consistent with the format requested by the Office;
 3. The applicant is an eligible entity as specified within the RFP;
 4. The proposal purpose is for that intended by the RFP;
 5. The proposal included a budget submission.
- The second level consists of a scored comprehensive proposal review that involves a thorough review of the submitted proposal specifically related to the project work plan, performance measurement and evaluation, organizational capability, overall strength of plan, and the budget and corresponding budget narrative. The proposal review and rating will be conducted using the criteria stated in this Funding Announcement. The Office will typically use staff, and others with expertise in the RFP topic area, to comprise the proposal review team. Each reviewer will assign a score up to a maximum of 100 points to each application; individual scores will be averaged to determine the applicant's score. The Office reserves the right to conduct follow-up discussions with applicants to clarify information in the submitted proposal. In addition, in the event there are any remaining funds after making awards in accordance with the Review and Selection Process, the Office reserves the right to allocate the grant funds in a manner that best suits program needs as determined by the Office. Such a plan will be subject to review and approval by the Office of the State Comptroller.

Awarding of Grants

Contract Development Process

It is anticipated that applications will be reviewed and that successful applicants will be notified of funding decisions on or about April 2017. All commitments are subject to the availability of state funds. The final total applicant score will be the cumulative total of the second level review.

The proposal review team will recommend to the Office the highest ranked proposal(s) that fully meet the terms of the RFP. Awards will be made in rank order from the highest to the lowest proposal scores. The contract process and final contracts are subject to the approval of the State Attorney General and the Office of State Comptroller (OSC). Upon such approvals, the grant process will begin, and all terms of the contract become public information.

As part of the grant award process, the grantee and the Office will establish a mutually agreed upon final budget and work plan, which become the contract deliverables.

As part of the contract with the Office, grantees will be required to collect and report data that reflects basic information about the grantee's proposed project. Programs will be obliged to report to the Office accurate data on activities such as:

- whether defendants are provided with counsel at arraignment;
- whether they are granted and post bail;
- how much time they spend in jail; and
- amount of time to the next scheduled appearance and ultimately to dispose cases.

The Office will be available to assist grant recipients with how to best collect these data in ways that are convenient to the program's capabilities, clearly assess the goals of the project, and assure the collection of information that is of the highest possible quality. The Office may suggest the use of a specific data collection protocol, or work with programs to employ existing, in-house case tracking software to produce data.

Grantees will also be required to report on successes achieved, obstacles encountered during implementation, and efforts to overcome these obstacles, in annual progress reports, according to individual program goals and objectives.

The Office reserves the right to:

- Reject any applications that do not meet the intent of this RFP;
- Negotiate with applicants regarding work plans, budget line levels, and other issues raised within the RFP review to achieve maximum impact from the grant award and serve the best interests of New York State and ensure that budgets are consistent with proposed action plans, and
- If unable to negotiate the contract with the selected applicants within 60 days, the Office may begin contract negotiations with the next highest scoring qualified applicant(s).

Payment

Grantees may receive 25% of the total first year's award as a budget advance following contract

approval by the Attorney General and the State Comptroller. Thereafter, each county will be reimbursed for expenses incurred pursuant to grant related activities including salary, benefits, travel, and related expenses. No payments will be made until the contract is fully executed and approved by the State Attorney General and the State Comptroller.

Funding Requirements

Indigent Legal Services funds distributed by the Office of Indigent Legal Services are intended to supplement county resources for supplying indigent defense services and to ensure proper legal representation for indigent defendants pursuant to Article 18-B of the County Law.

Supplanting is prohibited: Any funds awarded to a county pursuant to this RFP shall be used to supplement and not supplant any local funds, as defined in paragraph (c) of subdivision 2 of section 98-b of the State Finance Law, or state funding, which such County would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to Article 18-B of the County Law.

The issuance of this request for proposals does not obligate the Office of Indigent Legal Services to award grants.

Budget Form

County	
Budget Contact Person's Name	
Phone	
E-mail address	

Line Item	Year 1	Year 2	Year 3
Personal Service: Position (specify) Salary: Fringe Benefits:			
Personal Service Subtotal			
Contractual Services			
Contractual Subtotal			
Equipment (specify)			
Equipment Subtotal			
Other Than Personal Service (OTPS) (specify)			
OTPS Subtotal			
Miscellaneous			
Miscellaneous Subtotal			
TOTAL			
TOTAL THREE-YEAR BUDGET			