



# **PUBLIC DEFENDER'S OFFICE FOLLOW-UP AUDIT**

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**Office of the  
Ulster County Comptroller  
March S. Gallagher**





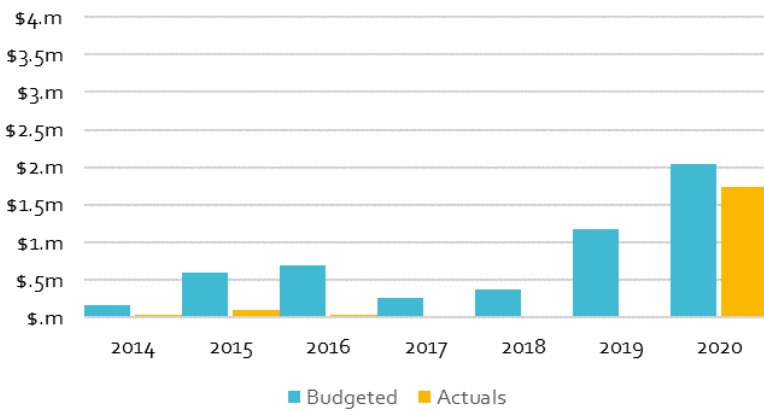
# ULSTER COUNTY OFFICE OF THE COMPTROLLER

## Public Defender Follow-Up Audit Snapshot

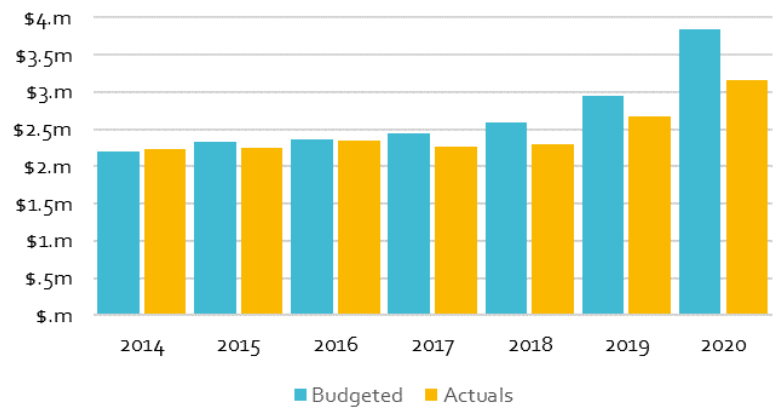
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The Ulster County Comptroller's 2019 audit of grants management in the Public Defender's Office recommended strengthening grant oversight and monitoring to maximize the utilization of available grant funds. This follow-up audit found enhanced grant monitoring and utilization, but there are additional opportunities for improvement. Better alignment between budgeted revenues and expenditures as well as greater budget documentation, would identify revenues not received and increase the budget transparency and oversight for the County as a whole.

Public Defender's Office Revenues



Public Defender's Office Expenditures



The Ulster County Public Defender's Office never fully utilized the funding sources awarded and made available by NYS Office of Indigent Legal Services (NYS OILS) to expand and improve services. The Office was awarded a total of \$3,100,355 consisting of \$604,776 in grant funding as well as \$2,202,720 in Distribution funding. The Public Defender expended \$1,744,411, or approximately 56% of the funding awarded. A total of \$1.356 million in funding made available to Ulster County was ultimately forgone and unable to be reimbursed.

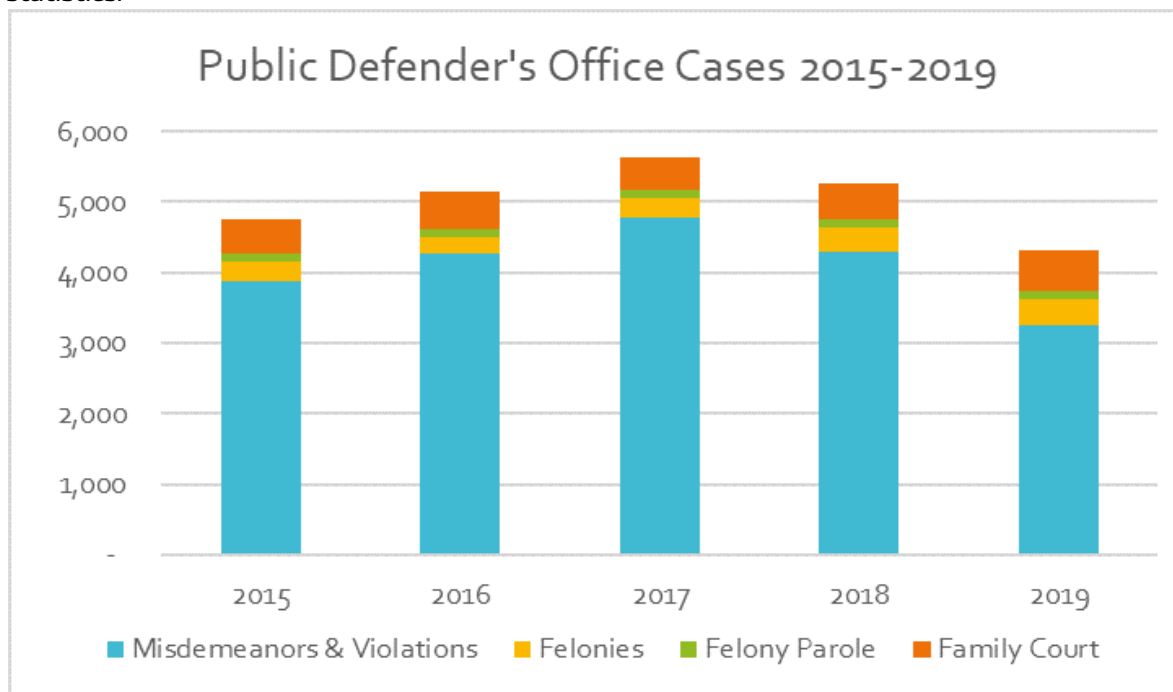
Increasing revenues were budgeted without the expenditures necessary to draw down those revenues. Without requested reimbursable positions and resources added to the Public Defender's budget, Ulster County could not attain NYS OILS reimbursement revenue. The Public Defender's budget contained variances between budgeted and actual revenues that increased as a percentage of budget each year. The growing variance shows that the Office was having trouble fully expending and submitting reimbursements for the budgeted funds.

Funding Source	Amount Awarded	Amount Claimed	Utilization Percentage	Unused Amount
CAFA	\$ 604,776	\$ 63,645	11%	\$ 541,131
Upstate Quality	\$ 292,859	\$ -	0%	\$ 292,859
Distribution #4	\$ 440,544	\$ 420,894	96%	\$ 19,650
Distribution #6	\$ 440,544	\$ 330,025	75%	\$ 110,519
Distribution #7	\$ 440,544	\$ 249,269	57%	\$ 191,275
Distribution #8	\$ 881,088	\$ 680,578	77%	\$ 200,510
<b>Totals</b>	<b>\$ 3,100,355</b>	<b>\$ 1,744,411</b>	<b>56%</b>	<b>\$ 1,355,944</b>

### BACKGROUND

Defendants have a right to counsel regardless of their ability to pay. In New York State, the state shares that cost with the counties. The funding and provision of indigent legal services have been the subject of much litigation in New York State. Historically, New York State has provided support to the County for indigent legal services for many years, through a variety of State funded programs, which have changed over time. All of these funding sources came with a caveat that the funds must supplement existing expenditures to increase and improve services rather than supplanting existing budgeted and expended funds for the provision of counsel and expert, investigative and other services at the county level. Funds used to supplant would be required to be returned.

The number of budgeted staff in the Public Defender's Office remained at 25 for the years 2015, 2016 and 2017. In 2018, an additional position was budgeted, and in 2019 the total budgeted positions were brought to 32. It is important to note however, that figures reported as "budgeted positions" include administrative staff and part-time attorneys, that may not improve caseload statistics.



Cases per attorney and weighted cases per attorney (a calculation recommended by the state where each felony is treated as 2.67 cases) were not routinely tracked by the Public Defender's Office in the past. For our analysis, we have estimated cases and weighted cases per attorney using total attorney hours in our payroll system and assuming a 37.5 work week and 50 weeks per year as per the Hurrell-Harring Settlement. The reduction in caseload is driven both by increased attorney hours and a reduction in cases overall.

Ulster County Public Defender Staffing Data					
	2015	2016	2017	2018	2019
<b>Budgeted Total Employee Count</b>	25	25	25	26	32
<b>Annual Attorney Hours</b>	28,295	27,486	27,070	28,709	31,067
<b>Attorney Hours per case</b>	5.94	5.34	4.81	5.46	7.22
<b>Attorney Positions (37.50 hours/50 weeks)</b>	15.09	14.66	14.44	15.31	16.57
<b>Cases per attorney</b>	336	375	416	366	277
<b>Ulster County Weighted Cases/Attorney</b>	706	777	866	774	595

### RECOMMENDATIONS

The Budget Division of the Department of Finance should not budget reimbursement grant revenues without the corresponding grant expenditures needed to draw those revenues. Ulster County should adopt a formal grant monitoring and budgeting procedure to ensure that revenue grant funds are fully utilized, and the goals of funding streams are achieved. The Budget Division should perform quarterly revenue analysis to gauge whether the actuals are on target for achieving budgeted amounts, and proactively address variances as necessary. We recommend the Budget Division implement a budget workflow process within the County's Financial Management system to improve budget related documentation and budget analysis ability. The Public Defender's Office should annually identify, collect and report the metrics by case type and per full-time equivalent attorney in accordance with the Hurrell-Harring caseload standards to better measure the impact of additional funding for indigent legal services.

**\$1.36M**

in forgone grant revenues

**7.22**

hours spent per case in 2019

**16.57**

full-time equivalent attorneys in 2019

**\$1.15M**

variance between budgeted and actual 2019 revenues

**\$0.31M**

variance between budgeted and actual 2020 revenues

# ULSTER COUNTY OFFICE OF THE COMPTROLLER

March S. Gallagher, Esq.  
Comptroller



Alicia DeMarco, CPA  
Deputy Comptroller

April 2021

Dear County Executive Ryan, Legislative Chairman Donaldson, Public Defender Boyer, Budget Director Gulnick, Deputy Director Kelly & Fellow Taxpayers:

The Ulster County Comptroller's Office has completed a follow-up audit of the Public Defender's Office.

The goal of our audit was to follow up on the recommendations from our previous audit, determine the extent to which new funding streams have been utilized, monitor reimbursement submissions, and ascertain how much funding has ultimately been foregone.

Our findings were that grants management in the Public Defender's Office has improved substantially. Ulster County was able to seek reimbursement for \$1.75 million while unfortunately, an additional \$1.4 million in grant funding was ultimately forgone. Although Ulster County budgeted revenues associated with these state funding streams, we did not budget the full amount of expenditures required to seek reimbursements. In the future, Ulster County should only budget grant revenues if the necessary expenditures to achieve those revenues are also budgeted. Additionally, we recommend that the Budget Division do quarterly revenue analysis of grant revenues so that variances can be addressed. Improved recordkeeping within the budget process as well as transparency regarding those decisions would improve fiscal accountability countywide.

The Public Defender's Office is moving towards improved caseload recordkeeping which is imperative for measuring the impact of increased funding on indigent legal services. Ulster County will be receiving significantly more funding for indigent legal services under the Hurrell-Harring Settlement, so our office applauds the efforts to better budget, monitor and track these resources and their impacts for the people of Ulster County.

I thank Ulster County Public Defender, Budget Director and Deputy Director for their assistance in facilitating this audit.

If we can be of assistance to you, or if you have any questions concerning this report, please feel free to contact us.

Respectfully submitted,

A handwritten signature in blue ink that reads 'March S. Gallagher'.

Ulster County Comptroller

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## Objectives

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The overall objective of this follow-up audit is to analyze the Public Defender's Office grants and distribution awards from New York State Office of Indigent Legal Services (OILS). Specifically, the audit sought to:

- Follow up on the status of the findings related to our original audit of the Counsel at First Appearance (CAFA) & Upstate Quality Improvement and Caseload Reduction Grant awards;
- Analyze Distributions 4, 6, 7 & 8 and determine the extent to which funds were utilized in relation to goals and performance measures outlined in the contract agreements;
- Review expenses submitted for reimbursement to NYS OILS for accuracy and completeness regarding eligibility; and
- Ascertain how much, if any, of the funding made available to Ulster County was forgone and unable to be claimed for reimbursement.

## Executive Summary

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Previously in 2019, the Ulster County Comptroller's Office published an audit on the grant management in the Public Defender's Office. That audit recommended strengthening grant oversight and monitoring to maximize the utilization of available grant funds. The 2019 recommendation to hire a Grants Specialist was implemented and has increased the quality of service provided to Ulster County residents at no additional cost to the County.

This follow-up audit has revealed that while grant monitoring and utilization have improved, there are additional opportunities for improvement. **Better alignment between budgeted revenues and expenditures, as well as documenting budget submissions and modifications, would enable the capture of additional grant funds by identifying revenues that were budgeted and not received and would increase the budget transparency and oversight for the County as a whole.**

We regret to note that a lack of cooperation from County departments stymied our audit which was requested by the Executive. During the audit, numerous requests for information were sidestepped, and documentation was withheld from the Comptroller, requiring the issuance of a subpoena. Lack of cooperation inhibits the audit staff from performing an efficient and thorough audit and forestalls interdepartmental cooperation and improvements in County operations.

The lack of budget documentation and record of departmental requests leave us unable to determine how the Executive's budget was developed and hinders the effectiveness of budgetary analysis. Improved record retention and more effective use of the County's financial software would improve the transparency related to budget decisions made and the ability to analyze and address variances between budgeted and actual amounts as they occur. We understand that there is a sensitive nature to budget decisions made prior to the release of the Executive's budget, but the documentation related to the methodology behind budgetary decisions should be maintained for review when required. This

documentation should be shared with the County Legislature, Comptroller’s Office, and other interested parties at an appropriate time to allow oversight by the Legislature in advance of budget adoption.

Again, we would like to note that the grant funding reviewed in this report is only utilized to offset expenditures. As some of the awarded funds were not spent, quality improvement goals may not have been achieved, negatively impacting the quality of services available to indigent citizens receiving these services. Additionally, since the County has staffed a Grants Specialist to address the issues regarding the monitoring of grant revenues, the Public Defender’s Office has been able to recoup a large portion of the previously forgone grant funding. While a portion of the available funding will not be recouped, the Public Defender’s Office is now in an improved position to continue to seek and monitor grant funding opportunities in the future to offset costs and improve services for County residents.

## Findings

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### Finding 1: Lack of oversight and monitoring resulted in underutilization of available grants and distributions.

**Condition** – The Ulster County Public Defender’s Office never fully utilized the funding sources awarded and made available by NYS OILS to expand and improve services. The Office was awarded a total of \$3,100,355 consisting of \$604,776 in grant funding for the Counsel at First Appearance (CAFA) grant, \$292,859 in grant funding for Quality Improvement as well as \$2,202,720 in Distribution funding. The Public Defender’s Office expended \$1,744,411, or approximately 56% of the funding awarded. The amount of each funding source Ulster County has utilized can be seen below:

Funding Source	Amount Awarded	Amount Claimed	Utilization Percentage	Unused Amount
CAFA	\$ 604,776	\$ 63,645	11%	\$ 541,131
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<b>Totals</b>	<b>\$ 3,100,355</b>	<b>\$ 1,744,411</b>	<b>56%</b>	<b>\$ 1,355,944</b>

**Effect** – A total of \$1.356 million in funding made available to Ulster County was ultimately forgone and unable to be reimbursed. Because the grant was for the reimbursement of supplemental expenditures that were not ultimately made, there was a limited monetary impact at the County level from not receiving the grant revenues, however, the quality of indigent legal services provided to the County taxpayers could have been further improved if the Office utilized all

available resources. The goals and objectives of the grants, which included hiring additional staff and providing additional resources to relieve office staff from heavy workloads, and the collection and reporting of data to evaluate project outcomes, were not achieved. Furthermore, only a portion of the budgeted grant revenues were expended on computer equipment and technology upgrade purchases to increase efficiency and accessibility.

**Cause** – Analysis of the annual budgets indicates that the Hein Administration did not plan for increasing expenditures in the Public Defender’s Office, which would have been necessary to fully claim the revenues allotted from the state. If the County did not intend to satisfy the requirements of the grant which included increased expenditures outlined under the provisions of the grants and distributions, then the related grant revenues should not have been budgeted. Due to contracts not being finalized prior to 2020, the revenues received for Distributions 4-8 were not reflected in the Office’s actual revenue figures until 2020.

**Criteria** – Each of the grant awards were accompanied by an associated budget and performance metric reporting requirements established by NYS OILS. The expectation was that the budgeted funds would be utilized to improve defender-based advocacy in Ulster County as outlined. GFOA best practices recommend the establishment of formal and well documented processes for budget monitoring. (<https://www.gfoa.org/materials/budget-monitoring>).

**Recommendation 1** – The Budget Division of the Finance Department should perform quarterly revenue analysis to gauge whether the actuals are on target for achieving budgeted amounts, and proactively address variances as necessary. Additionally, the Budget Division should require that departments outline a plan for achieving goals related to significant budget increases and substantial organizational changes. The Public Defender’s Office Grants Specialist should advise on the budget formulation process to ensure budget inclusion of both revenues and expenditures for grant and distribution amounts awarded. Expenditures should be applied to the first available funding source to maximize the usage of funding available, preserving later available funding for later expenditures.

**Recommendation 2** – Ulster County should adopt a formal grant monitoring and budgeting procedure or policy to ensure that revenue grant funds are fully utilized, and the goals of funding streams are achieved. The grant policy should speak to budgeting for grant revenues where contracts for those revenues are anticipated but not yet signed. If necessary, budgets must anticipate future and timely contract execution and contract management must be expedited to ensure the ability to obtain funds.

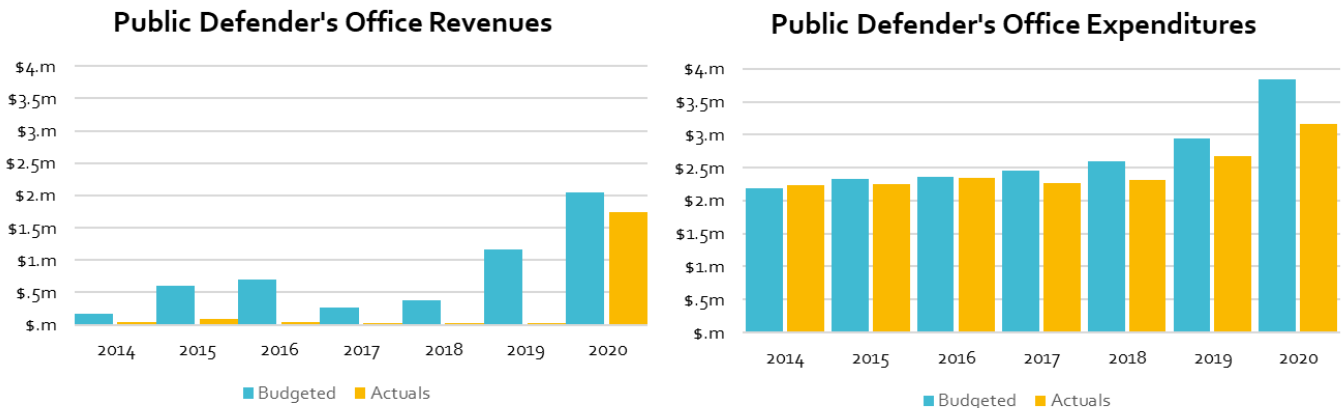
**Finding 2: The Administration did not budget expenditures necessary to achieve budgeted grant revenues and did not document budget deviations from requests.**

**Condition** – Documentation obtained by subpoena disclosed that the Public Defender submitted for reimbursable positions in his 2017, 2018 and 2019 budget requests. Furthermore, in 2016 the budget worksheets lack any notes, but there was a requested salary and contractual increase that,



if budgeted, would have been eligible for reimbursement from the grants and distributions. However, during the budget process most of the requested expenditure increases were not approved while the revenues linked to those expenditures were approved. Increases in miscellaneous contractual expenditures were budgeted at times, but there is no documentation available to verify the purpose of those funds.

**Effect** – Without requested reimbursable positions and resources added to the Public Defender’s budget, Ulster County could not attain NYS OILS reimbursement revenue. The Public Defender’s budget contained variances between budgeted and actual revenues that increased as a percentage of budget each year, indicating that the gap between budgeted and actual revenues was growing. The growing variance shows that the Office was having trouble fully expending and submitting reimbursements the budgeted funds.



**Cause** – Review of budget worksheets indicated the Public Defender’s Office sought additional positions each year, but the materials contained no follow-up comment from the Budget Division explaining deviation from the requests, considering revenue increases. The lag time between funding award and contract execution may have impacted budgeting expenditures but documentation lacks such an explanation.

**Criteria** – Included in every Ulster County contract and subsequent program budget with NYS OILS, was the specific goal “to improve the quality of services” to indigent populations. Specifically, the stated the purpose of the grant was to provide funding of salary and fringe benefits for additional positions with definitive titles and roles. The specific personnel requirements varied by grant and are illustrated in the table in Appendix A. Public Defender budget requests visible in Level 1 Budget Worksheets made available to the Comptroller’s Office under subpoena document positions requested in 2017, 2018 and 2019; however, it is unknown if requests were made in 2016 due to a lack of documentation for that year. All amounts presented for each position include salary and benefits.

The Ulster County Charter requires that department heads, when developing the ensuing years budget, submit in writing, estimates with supporting information that are open to public

inspection.<sup>1</sup> The County Executive’s Office has taken the position under both the Hein and Ryan Administrations that “departmental estimates” are the Executive’s budget as it is publicly presented each year, and generally do not make available the budget worksheets submitted by departments during the development of the Executive’s budget. The Ulster County Legislature is seeking to clarify the definition of the term in a resolution this year. Budget worksheets submitted by the Public Defender’s Office that were reviewed repeatedly requested new personnel which were not ultimately included in the Executive’s budget. Furthermore, GFOA Best Practice and NYS OSC guidance on achieving a structurally balanced budget, highlight the importance of accurate and realistic budget estimates when developing a municipal budget. When it was clear the Public Defender’s Office was not increasing expenditures to access the revenue awarded, it should have been highlighted in the annual budget review process in the following years’ budgets, before budgeting continual increases to revenue that would not be obtained.

**Recommendation 1** – The Budget Division should not budget reimbursement grant revenues without the corresponding grant expenditures needed to draw those revenues. Setting clear expectations for department heads and their role in grant monitoring could assist the Administration in identifying specific units overseeing County programs that need assistance with financial tasks.

**Recommendation 2** – We recommend the Budget Division implement a budget workflow process within the County’s Financial Management system to improve budget related documentation and budget analysis ability. This process should explain deviations from department requests (especially where expenditures are necessary to secure revenue), and proposed budgeted amounts, as well as highlight expenditures that will be funded by budgeted grant revenues.

**Finding 3: The Public Defender’s Office did not collect data metrics to assess indigent legal services improvements.**

**Condition:** Funding sources provided by NYS OILS were designed to improve several aspects of the local delivery of public legal defense services to indigent populations. Furthermore, once the Hurrell-Harring Settlement was implemented, NYS OILS specifically highlighted key areas to address, which were: to ensure counsel at first arraignment, accomplish caseload relief, spur initiatives and innovative ways to improve the quality of indigent defense and having local level providers craft eligibility standards for representation.

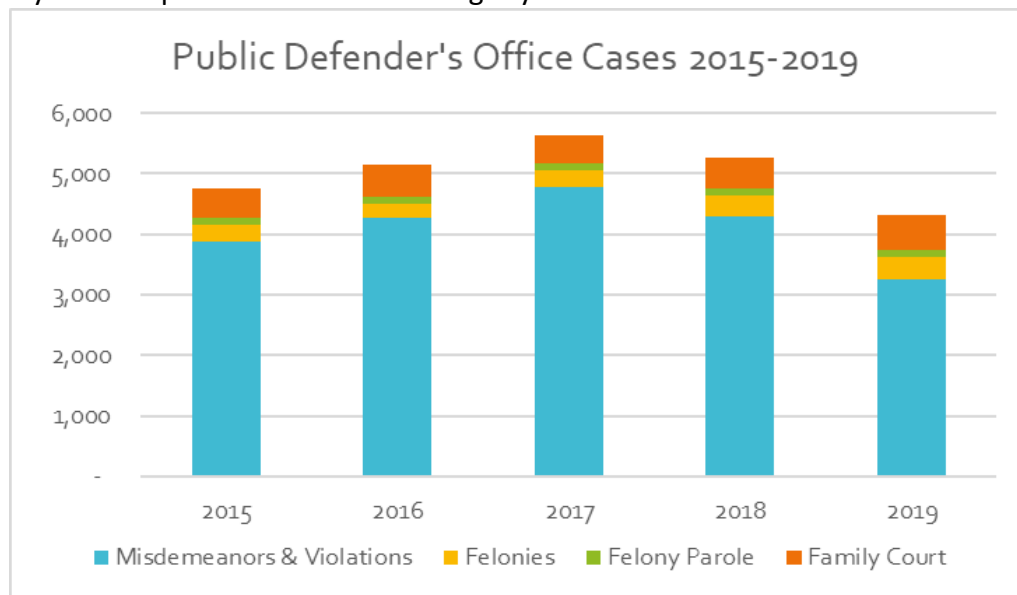
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<sup>1</sup> Ulster County Charter §33: “The head of each department, agency, office or unit of County government shall submit to the County Executive, in writing, and through such channels and processes as specified by him or her, an overall estimate for that department . . . A copy of said estimates from each department, agency, office, or unit shall be simultaneously submitted to the Clerk of the Legislature. These estimates shall be called "departmental estimates" and shall be organized with proposed grand totals of expenses and revenues for personnel services and other than personnel services for the department, agency, office or unit and proposed subtotal appropriations for personnel services and other than personnel services for each program within each department, agency, office or unit. A statement of actual expenses and actual revenues for the immediately preceding completed fiscal year, budgeted expenditures and revenues for the current fiscal year, and expenditures and revenues to date for the current fiscal year shall be included in departmental submission, prepared in the same specified format for comparison purposes. Each departmental estimate of expenses and revenue by program shall be supported by such other detail and other supporting information concerning the economy, efficiency, and effectiveness of departmental performance as the County Executive shall require. Departmental estimates shall be public records and shall at all reasonable times be open to public inspection.”

**Effect:** The lack of goals and established metrics hampered the evaluation of whether improvements to the quality of legal services to indigent populations have been achieved.

**Cause:** The Public Defender’s Office tracked referrals of new felonies, felony parole violations, misdemeanors and violations and family court matters, but this is insufficient data to analyze if the NYS OILS and Public Defender’s Office collective goals are being achieved. While the funding distributions spoke to qualitative improvement of service goals, they did not provide any numerical goals to be achieved. They merely stipulated additional spending. The Public Defender’s Office did not track caseload or dispositions figures, nor did the Office use the categories recommended by the Hurrell-Harring Settlement which recognize that felony cases and appeals take more time than misdemeanors and violations.<sup>2</sup>

Overall, the number of cases at the Public Defender’s Office went from 4,760 to 4,304 between 2015 and 2019 with a peak of 5,628 in 2017. Thus, caseloads per attorney dropped because of fewer cases, not necessarily increased staffing. During this same period, budgeted revenues increased significantly while expenditures increased slightly.



Caseload Data	2015	2016	2017	2018	2019
Misdemeanors & Violations	3,865	4,273	4,774	4,291	3,242
Felonies	280	230	278	358	379
Felony Parole	115	115	118	98	116
Family Court	500	530	458	512	567
<b>Total</b>	<b>4,760</b>	<b>5,148</b>	<b>5,628</b>	<b>5,259</b>	<b>4,304</b>

<sup>2</sup> In gathering information during this audit, we would like to note that although the Public Defender’s Office had not tracked performance metrics the Office acknowledged this requirement of the Hurrell-Harring Settlement and has indicated they have begun to collect data.

The number of budgeted staff in the Public Defender’s Office remained at 25 for the years 2015, 2016 and 2017. In 2018 an additional position was budgeted, and in 2019 the total budgeted positions were brought to 32. It is important to note however, that figures reported as “budgeted positions” include administrative staff and part-time attorneys, that may not improve caseload statistics.

Cases per attorney and weighted cases per attorney (a calculation recommended by NYS OILS where each felony is treated as 2.67 cases) were not calculated, maintained, or reported anywhere. For our analysis, we have estimated cases and weighted cases per attorney using total attorney hours in our payroll system and assuming a 37.5 work week and 50 weeks of work per year as per the Hurrell-Harring Settlement.<sup>3</sup>

<b>Ulster County Public Defender Staffing Data</b>					
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
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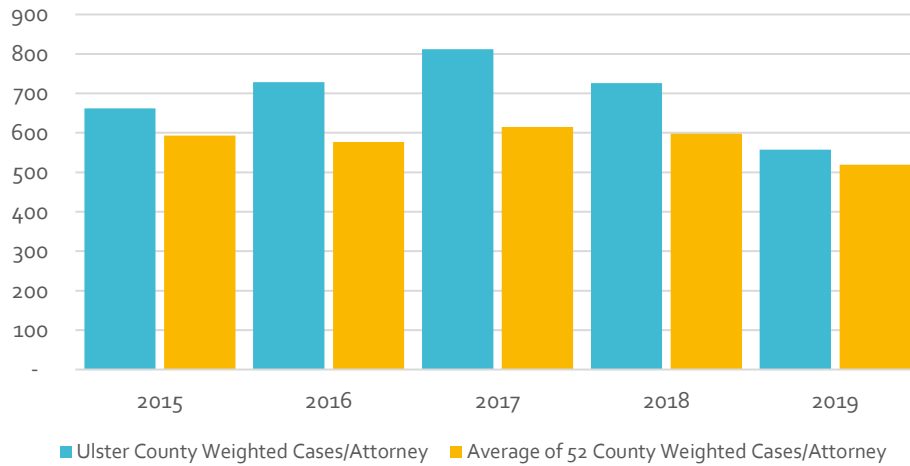
Our analysis shows that there was a significant drop in both the cases and weighted cases per attorney in 2019, and that the number of hours dedicated to each case increased by nearly two hours per case.

NYS OILS issued a report on Defense System Caseloads in 52 Upstate Counties and New York City, in October 2020. This report is useful for comparing Ulster County attorney caseload to other counties. Ulster County Public Defender attorneys consistently carry more than the average number of cases based on this report, and this remains true even after adding staff in 2019.

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<sup>3</sup> A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement (December 8, 2016), available at <https://www.ils.ny.gov/files/ILS%20Handouts%20For%20CAASNY%20Meeting%20052217.pdf> (accessed March 15, 2021).

## Ulster County Public Defender Attorney Weighted Caseload versus 52 County Average



**Criteria:** The CAFA grant required measuring the number of clients who received legal representation at first court appearance and the amount of time between arrest and first client interview and to maintain data collection on the results of the project.<sup>4</sup> The Hurrell-Harring Settlement provides for key performance measures including tracking the number of attorneys hired, number of new cases opened, number of non-attorneys hired and providing descriptions of how the Public Defender’s Office activities have reduced caseloads.

**Recommendation:** We recommend that the Public Defender’s Office annually identify, state, collect and report the metrics by case type and per attorney FTE in accordance with the caseload standard identified in the Hurrell-Harring Settlement. We further recommend that the Office begin collecting and reporting caseload and disposition data that they feel best identifies their efforts at improving indigent legal services in the County. These results should be reported on the County’s website and in the Annual Report of the Executive.

### **Finding 4: Delay in providing materials requested in the audit cost county taxpayer resources.**

**Condition:** In the October 2020 audit letter, the Comptroller’s Office requested various grant related documents, including requests to fill positions, as well as “documentation that may have been provided with the Department’s budget request for each of these years.” The initial set of documents provided did not include budget requests regarding grant funded positions. A detailed timeline of our requests during the audit are included in the attached addendum.

<sup>4</sup> Contract 2013-002, Attachment C, Work Plan, Office of Indigent Legal Services Counsel at First Appearance, June 1, 2013- May 31, 2016, Tasks #1-4.

**Effect:** Due to a lack of cooperation regarding the availability of documents relating to audit materials, the Department of Finance hindered auditors' progress by delaying access to pertinent information and providing contradictory statements regarding the existence of such information. Transparency and accountability are the foundation of good government and the Comptroller's Office lacks confidence and objectivity that we have received all related information regarding this matter due to a lack of collaboration.

**Cause:** Since the adoption of the Charter form of government the Legislature and Executive have debated whether departmental budget worksheet request data should be available to the public, the Comptroller's Office, and the County Legislature. We believe that newfound information indicating the Public Defender did request some increased personnel expenditures during County Executive Hein's Administration has relevance. The Hein Administration did elect to fund requested positions for the Conflict Defender program during the same period but not the other grant and distribution funded positions. See Appendix A for the grant funded positions table.

**Criteria:** Review of all documents relating to an audit is required to provide a thorough analysis and conclusion. The Ulster County Charter permits the Comptroller to "verify all books, records and accounts kept by the administrative units, office and officials." Additionally, Section C-33 of the Charter states that "departmental estimates shall be public records and shall at all reasonable times be open to public inspection." Even further, to complete the County Executive requested audit, the Comptroller would need all documents available relating to the Public Defender's Office forgone grant revenues.

**Recommendation 1:** All documentation should be submitted upon an original audit request. Any additional documentation (even broadly fitting the description of requested materials) that would have a direct impact on the audit area, should be submitted as well. This language will be added to future audit letters. Communication between the auditee and the Comptroller's office should be improved and if the department is unclear as to the nature of a specific audit request, clarification should be requested in a timely way. The existence of additional information that may be pertinent to the audit should be disclosed by the department to improve operational efficiencies and audit effectiveness. The County Executive should direct departments under executive purview to cooperate with the audit function as mandated by the County Charter.

**Recommendation 2:** Using the budgetary tools included with the County's Financial Management Software, New World Systems, the Comptroller's Office should be granted access to review the budget submissions and modifications made for the purpose of analyzing and monitoring variances between actual and budgeted amounts. More complete and consistent use of the documentation function within the New World budget tool to identify reasons for deviations from departmental budget requests would improve the availability of historical information for the purpose of subsequent review. Continual review of budget performance metrics, and an increase in the training for staff utilizing the software would also improve the County's ability to proactively address budgetary anomalies and any issues as they arise. Furthermore, requirements in the Ulster County Charter that stipulate that departmental budget estimates be publicly available should be clarified and enforced.

## Background

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Defendants have a right to counsel regardless of their ability to pay. In New York State, the state shares that cost with the counties. The funding and provision of indigent legal services have been the subject of much litigation in New York State. Historically, New York State has provided support to the County for indigent legal services for many years, through a variety of State funded programs, which have changed over time. All of these funding sources came with a caveat that the funds must supplement existing expenditures to increase and improve services rather than supplanting existing budgeted and expended funds for the provision of counsel and expert, investigative and other services at the county level. Funds used to supplant would be required to be returned.<sup>5</sup>

Amounts of state offered funding have been increased in recent years through a variety of grants and distributions. Now, with a settlement of litigation (known as “the Hurrell-Harring Settlement”) between ACLU and five NYS counties, a substantial increase in the amount of state funded indigent legal services is available. Ulster County has not expended the full allotment of funding under previous grants and distributions and has additionally received grant funding of \$9.98 million in Hurrell-Harring funding from the state over five years.

In January 2019 the Ulster County Comptroller’s Office issued an audit report documenting grant management issues in the Public Defender’s Office that resulted in Ulster County receiving only \$53,869 of an available \$900,000 in competitive grants. The Comptroller’s Audit called for additional grant oversight by filling a newly created position of Grant Specialist. This position would be responsible for working more closely with the Finance Department and providing appropriate paperwork to the NYS OILS to extend the grants and obtain appropriate reimbursements. Recommendations from our audit on the CAFA and the Upstate Quality grants were implemented, and a Grants Specialist was hired.

The goals and objectives of the CAFA and Upstate Quality Improvement grants, included hiring a programmer and purchasing tablets to provide information services support, hiring an evaluator to implement a collaborative regional approach to overnight arraignment, hiring a part time assistant public defender to reduce felony caseloads, hiring a receptionist/data entry clerk to relieve office staff workloads, and the collection and reporting of data to evaluate project outcomes. These goals and outcomes were not achieved as the funding sources were not spent.

In consultation with NYS OILS, the Public Defender’s Office has conceded any remaining outstanding balances of these two funding streams since there was no additional spending that the County was able to recoup, and both contracts have expired.

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<sup>5</sup> CAFA, Distribution #4, Distribution #5, Distribution #7 and Distribution #8 all came with identical language as follows: “The amounts paid to County by ILS pursuant to this Agreement 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, which such County would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to article eighteen-B of the County Law. In the event funds are used to supplant local funds, such funds actually provided by ILS shall be returned to ILS by County.”

Due to the sensitive nature of pending litigation, discussion pertaining to the employment status of the former Public Defender is not included in this audit.

Under the Distribution funding streams NYS OILS allowed and reimbursed Ulster County for personnel costs including benefits, computer equipment, software licensing, expert services, and continuing education. These reimbursements totaling \$1.68 million were sought in 2020 for expenditures made in 2015 through 2020. Additionally, Ulster County was awarded \$9.98 million in Hurrell-Harring funding for the period April 1, 2018 through March 31, 2023.

**\*\*Management's Response**

Management's response has been included in Appendix C.



Appendix A  
Grant Funded Positions Table

Source	Position	Years	Grant Budgeted Amount	PD Requested Budget	Ulster County submitted this position to NYS OILS for reimbursement	Amount Reimbursed
Distribution 4	Criminal Court Attorney - Conflict Defender's Program	2016	\$ 111,889	C	distribution 4 for years 2014 and 2015	\$ 200,172
Distribution 6	Criminal Court Attorney - Conflict Defender's Program	2018	\$ 120,180	C	distribution 6 for years 2016 and 2017	\$ 205,524
Distribution 7	Criminal Court Attorney - Conflict Defender's Program	2019	\$ 120,187	C	distribution 7 for 2018	\$ 71,402
Distribution 8	Criminal Court Attorney - Conflict Defender's Program	2020	\$ 120,180	C	distribution 8 for 2019 and 2020	\$ 247,616
Distribution 6	Family Court Attorney - Conflict Defender's Program	2018	\$ 121,993	RG	distribution 6 for 2018	\$ 103,921
Distribution 7	Family Court Attorney - Conflict Defender's Program	2019	\$ 124,390	C	distribution 7 for 2019	\$ 117,299
Distribution 8	Family Court Attorney - Conflict Defender's Program	2020	\$ 121,955	C	distribution 8 for 2020	\$ 130,214
Distribution 6	Legal Aide - Family Court - Conflict Defender's Program	2018	\$ 6,493	C	distribution 6 for 2018	\$ 18,580
Distribution 8	Legal Aide - Family Court - Conflict Defender's Program	2019	\$ 83,198	C	distribution 8 for 2019 and 2020	\$ 58,772
Distribution 4	FT Assistant Public Defender - Felony level cases	2015	\$ 125,910			\$ -
Upstate	FT Assistant Public Defender - Felony level cases	2014-2016	\$ 170,639			\$ -
Distribution 6	FT Assistant Public Defender - Felony level cases	2017	\$ 138,909	RD	request says upstate despite expiration	\$ -
Distribution 8	FT Assistant Public Defender - Felony level cases	2018	\$ 124,390	RD	request says ILS grants should fund	\$ -
Distribution 8	FT Assistant Public Defender - Family Court	2019	\$ 121,955			\$ -
Distribution 8	FT Legal Aide - Family Court	2019	\$ 112,188			\$ -
Distribution 4	PT Assistant Public Defender - Felony level cases	2016	\$ 65,942			\$ -
Distribution 6	PT Assistant Public Defender - Felony level cases	2018	\$ 47,569			\$ -
Distribution 8	PT Assistant Public Defender - Felony level cases	2020	\$ 70,808			\$ -
Distribution 7	PT Assistant Public Defender - town and village court	2018	\$ 23,256	R	request says ILS grants should fund	\$ -
Distribution 7	PT Assistant Public Defender - town and village court	2019	\$ 70,808			\$ -
CAFA	Public Defenders	2013-2016	\$ 340,000			\$ -
Upstate	Receptionist/ Data Clerk	2014-2016	\$ 122,220			\$ -
Distribution 8	Salary Increase - Assistant PD After Hour Arraignment	2018	\$ 11,160			\$ -
Distribution 8	Salary Increase - Assistant PD After Hour Arraignment	2018	\$ 9,500			\$ -
	<b>Total</b>		<b>\$ 2,485,719</b>			<b>\$ 1,153,500</b>

\*Grant Budgeted Amounts and Amount Reimbursed include both Salary and Fringe amounts related to each position.

Legend	
C	Carryover from prior year budget
RG	Requested and Granted
RD	Requested and Denied

## Appendix B Audit Materials and Events Timeline

February 14, 2020 – Ulster County Executive issued a press release calling upon the Comptroller’s Office to “conduct a comprehensive review of the past six years of the Public Defender’s finances.”

October 7, 2020 – The Comptroller’s Office issued a Notice of Audit announcing a Public Defender’s Grants & Distribution Follow-Up Audit and requesting initial documentation including “All request to fill vacancies for the years 2014 – 2020, including documentation that may have been provided with the Department’s budget request for each of these years.”

October 2, 2020 – The Deputy Budget Director on behalf of the Administration provide initial documents responsive to the request. The cover memorandum stated, “No documentation exists for ‘requests to fill’ with regards to the Budget requests in the abovementioned years.”

December 4, 2020 – After we reviewed documentation received, a meeting was held between the Comptroller’s Office, the newly appointed Public Defender, a Deputy County Executive, and Finance Department and Budget Division personnel. During this meeting, the Comptroller’s Office asked budget-related questions, including, “Did the Public Defender’s Office request verbally or in writing any additional personnel to draw down grant funding?” The verbal response during the December meeting from Finance personnel stated that while “requests may have been made” there is nothing documented that could be provided to show that new positions were in fact requested.

January 15, 2021 – After receiving and reviewing additional documents, a follow-up email from the Comptroller’s office to Finance personnel asks for clarification that there was in fact “no documentation or backup that the former Public Defender would have provided to the budget department for 2014 through 2019 while submitting his budget request for the upcoming year such as departmental budget worksheets.” And specifically asked “Can you please send us the Public Defender’s Office budget worksheets from that time period?”

January 27, 2021 – After no response a follow-up email was sent from the Comptroller’s Office to the Finance Department to bump the email back into queue, and an additional request for the financial system budget worksheets for the Public Defender’s Office from 2014 through 2019 was made. On the same day, a response from Finance was received indicating “As the County Executive is in charge of operations and besides other elective officials, the department budget request would be the County Executive Budget.”

January 28, 2021 – The Comptroller reached out to the County Executive indicating that the Comptroller’s Office had “run into a roadblock on The Public Defender’s Office . . .” The County Comptroller and the County Executive spoke by phone that afternoon and the County Executive expressed a preference that the request be made as a subpoena.

January 29, 2021 – After internal discussions, the Comptroller’s Office elected to subpoena the Finance Department for budget related documents for the periods originally requested.

February 4, 2021 – A portion of requested documents revealed that documentation was available regarding Public Defender’s Office budget requests, which had not been previously supplied.

# ULSTER COUNTY DEPARTMENT OF BUDGET

P.O. Box 1800, 244 Fair Street, Kingston, New York 12402

Telephone (845) 340-3633 Fax (845) 334-5724

Burton Gulnick Jr.  
*Budget Director*





Christopher J. Kelly  
*Deputy Budget Director*

## MEMORANDUM

To: March Gallagher, Ulster County Comptroller

CC: John Milgrim, Deputy County Executive, Ruth Boyer, Public Defender

From:  Burt Gulnick Jr., Commissioner of Finance/Budget Director,  Chris Kelly, Deputy Budget Director

Date: April 26, 2021

**RE: Public Defender's Audit**

We wanted to thank you and your staff for taking the time to review the activities surrounding the Public Defender's office and their management of grants during the previous seven years.

County Executive Ryan recognizes the need for strong oversight, providing exceptional services to indigent legal clients, and for maximizing available resources to continually enhance those services. His administration has corrected longstanding issues regarding the historic inability of the Office of the Public Defender to enter into grant contracts with the State Office of Indigent Legal Services and appropriately claim for eligible expenses, as well as other basic and critical functions of the Office. Since taking office, the administration has recovered nearly \$1.75 million in funds that were available to the County since 2014 but were never previously collected.

The County has already taken steps to ensure that we limit the variances between budgeted expenses versus actual expenses. We have also worked with the Office of the Public Defender to ensure proper and consistent claiming of expenses moving forward.

During the years covered by this audit, nearly \$1.75 million was spent on items such as rent, equipment, and staff positions that all should have been claimed for by the Public Defender's Office against State grant funding. During this time period, instead of receiving the revenues from the State to support these expenditures, the burden of those costs was shifted to County taxpayers and did indeed have a significant fiscal impact on County finances.

We are gratified your audit identified the “underutilization of available grants” during prior years as your primary finding, and we note for clarity that the ultimate recovery of the \$1.75 million was spearheaded by our Budget division. We also concur with your finding that the Public Defender’s Office is now in a vastly improved position to monitor and utilize grant funding while improving legal services for its clients.

In addition, we are compelled to note that there seems to be some confusion in the audit regarding the annual County budgeting process and would simply point to the very first page of the Public Defender Office’s budget estimate, as published publicly each year, where the current year anticipated grant revenues and prior year actual collections on those revenues are clearly labeled. See “State Aid” in the “Revenue” column.

In financial and legal matters, precision in language and an understanding of specific requirements are critical functions for the efficient operations of a responsible government, or most any other organization for that matter. A clearer understanding of specific State grant requirements could have increased revenue collections from the State and decreased the immediate and direct burden on County taxpayers in prior years.

In a similar vein, proper requests for specific information should always be complied with expeditiously and pursuant to all statutes and regulations. We again are compelled to clarify that it was this administration that requested your issuance of a subpoena to obtain documents that may otherwise not be disclosed pursuant to law. That is clearly proper government process.

Documentation that simply does not exist cannot be provided pursuant to a request and will not be conjured out of thin air. We thank you for taking the time to produce a subpoena, as requested, and note that any available materials specific to the request were provided from the administration once they were located and their veracity was ascertained, all within a two-week period. Attempting to construe any prior request “broadly”, as suggested, would be akin to trying to broadly determine what a State grant’s requirements may be as opposed to its specific requirements. Responsible governing, as your audit seeks to promote, requires nothing less.

At the same time, we acknowledge and concur that consistent record keeping with regards to the Budget process is critical, and remain committed to always working to improve that process, as well as the public’s understanding and awareness of how their tax money is managed.

We thank you again and look forward to thoroughly reviewing all of your recommendations and working with you and your office to continue improving County government and putting our residents first.