

The Bronx Defenders

Redefining public defense.

**Written Comments of The Bronx Defenders in Support of Intro 736:
A Local Law to Establish the Office of Civil Justice
New York City Council Committee on Courts and Legal Services
April 15, 2015**

Good afternoon. My name is Kate Rubin and I am the Managing Director of the Civil Action Practice at The Bronx Defenders. I submit these comments in support of Intro 736 on behalf of The Bronx Defenders and thank the City Council and members of the Committee on Courts and Legal Services for the opportunity to testify.

The Bronx Defenders provides innovative, holistic, and client-centered criminal defense, family defense, civil legal services, and social work support to indigent people of the Bronx. Our staff of nearly 250 represents over 35,000 people each year and reaches thousands more through outreach programs and community legal education. We work in interdisciplinary teams to ensure that each client of The Bronx Defenders has seamless access to multiple advocates and services to meet his or her legal and non-legal needs. The primary goal of our holistic defense model is to address the underlying issues that drive people into the criminal justice system and mitigate the devastating impact of criminal justice involvement, such as deportation, eviction, removal of children from the home, or loss of employment, student loans, and public benefits. Instead of referring to these outcomes as “collateral consequences,” we use the term “enmeshed penalties,” which better reflects the grave risks and realities that our clients face from the moment of arrest.

The Bronx Defenders is also one of the three legal providers for the groundbreaking New York Immigrant Family Unity Project (NYIFUP), the first universal public defender program in the country for immigrants facing deportation. Created by the City Council through a pilot program in 2013 and expanded last year, NYIFUP provides free, high-quality legal representation to every detained indigent immigrant facing deportation in the City of New York.

Studies have found that that access to counsel can improve the chance of winning a deportation case by as much as 1000%.

In addition to the NYIFUP Consortium, The Bronx Defenders is also a member of LEAP, a legal advocacy network of 14 New York City civil legal service providers; the Association of New York State Civil Legal Services Organizations, where I sit on the Board of Directors; and the New York State Coalition of Reentry Advocates. We are active members of the Right to Counsel NYC Coalition and numerous other campaigns, coalitions, and partnerships whose mission is to expand access to justice for all New Yorkers.

We are in a truly exciting moment for civil legal services in New York City, exemplified by the achievements of Chief Judge Lippman's Task Force to Expand Access to Civil Legal Services; the extraordinary commitment of this City Council and the Mayor to continuing to expand access to counsel, especially in housing and immigration court; the formation of the Committee on Courts and Legal Services; the momentum of the Right to Counsel NYC campaign; the creation of new programs like Immigrant Justice Corps and Poverty Justice Solutions through public-private partnerships; and the establishment of the new statewide association of civil legal service providers.

Given ongoing developments and the multitude of stakeholders involved—including clients, communities, providers, advocates, funders, and the government—there is a crucial role for a robust Office of Civil Justice to coordinate city-level efforts and champion legal services in New York City for decades to come. We enthusiastically support the establishment of this role and we thank the Council for its leadership in creating it. We also echo our colleagues in the Right to Counsel Coalition of NYC in calling on the City Council to build on the vision of the Civil Justice Coordinator and move quickly to hold hearings on and enact Intro 214, which would ensure a fundamental, City-funded right to counsel in Housing Court.

Scope and Mandate

The Bronx Defenders supports Intro 736 because an Office of Civil Justice will help us serve our clients better. At the policy level, a Civil Justice Coordinator could bring together city agencies, the courts, and the City Council—collaborating closely with the Committee on Courts and Legal Services—to implement policy reforms that will both alleviate the need for and sustain the impact of civil legal services. Like the Mayor’s Office of Criminal Justice, the Office of Civil Justice could collect and share data from the courts and relevant agencies to inform policy decisions. Most importantly, the Civil Justice Coordinator would expand access to high quality civil legal services for low-income New Yorkers. The office would help ensure that providers are positioned to respond to the needs of communities as they change, not only in times of crisis and emergency but in response to opportunities, such as the President’s deferred action programs for immigrants.

In performing these duties, especially when evaluating civil legal services needs and gaps in existing services, it is critical that the Civil Justice Coordinator recognize the role played by the full community of providers in meeting the wide-ranging needs of low-income New Yorkers. This includes small programs with deep ties to specific neighborhoods; new and innovative models; and citywide programs that successfully serve clients in multiple boroughs even without physical offices, saving overhead costs and maintaining flexible intake systems by partnering with community-based organizations and elected officials. A city as large, diverse, and rapidly changing as ours needs a broad array of civil legal services providers with the capacity, expertise, and flexibility to meet the needs of low-income New Yorkers.

The Bronx Defenders Model: Early, Efficient, and Effective Intervention

At The Bronx Defenders, we have built a dynamic model for meeting the acute needs of individuals and families whose arrest, incarceration, or family court involvement have triggered complex and intertwined civil legal problems. With 35 full-time advocates who practice in housing, immigration, public benefits, employment, and other substantive areas of law, the Civil Action Practice has pioneered a model of a high-quality, cost-effective and comprehensive civil

legal services practice operating *within* a city-funded criminal and family defense office. Our unique model bridges the gaps between legal, social, and community services to address the problems that drive many of our clients into the criminal justice and family court systems. Fully integrated with the Criminal and Family Defense Practices at The Bronx Defenders, Civil Action Practice advocates are uniquely poised to assess client needs, collaborate across practices, and implement winning strategies.

Catherine K., one of the first clients served by the Civil Action Practice more than a decade ago, perfectly illustrates the cycle of poverty and crime that traps so many New Yorkers, especially in the Bronx. Catherine had been in a Drug Treatment Court program for over a year when we met her because she had just been re-arrested for drug steering. She had been in jail overnight and she was, understandably, beside herself. She had just given birth to a baby, and the week before her arrest her public benefits had been randomly cut off and she had been served with eviction papers. She desperately needed money, so she agreed to point anyone who asked for drugs in the direction of a street-level dealer. With a promise that the Civil Action Practice would handle the eviction and public assistance issues, the judge agreed not to remand Catherine for more jail time. Two eviction cases and one public benefits fair hearing later, Catherine finished her program and was stably housed with her children in a new Section 8 apartment.

Fast forward nearly fifteen years to Ritchie M. Mr. M became a client of The Bronx Defenders when he was wrongfully accused of violating the terms of his probation. He had recently lost his job and despite his technology training and experience, he could not find employment because of his criminal record. As a result, he fell behind in his rent and faced imminent eviction. Additionally, as a direct consequence of the criminal court allegations, a family court case was filed against Mr. M, putting him at risk of losing legal custody of his young daughter. The Civil Action Practice prolonged Mr. M's non-payment eviction proceeding for over 18 months while he applied for public benefits and an ongoing rental subsidy. With the assistance of our Family Defense Practice, Mr. M spent those months fighting his case in family court, ultimately getting both the family and criminal cases dismissed. Finally, after nearly two years of litigation, Mr. M also resolved his housing court case and saved his home for himself and his daughter. Since then, Mr. M became a leader of The Bronx Defenders Organizing

Project, a client-led community organizing group, and he recently returned to work as a part-time graphic designer.

Just as the incredible stresses of poverty can drive our clients into criminal and family court, so too can the crises of court involvement trigger new legal obstacles for our clients. Damasia C. was arrested for prostitution after she and her boyfriend were stopped by the NYPD, who searched her purse and found \$2,599. Also in Damasia's purse was paperwork confirming her tax return of \$2,599 and a check cashing receipt. But that did not matter—Damasia was arrested for prostitution. Her criminal case was dismissed on her first court date, but in the meantime the NYPD had marked the \$2,599 first as arrest evidence and then for civil forfeiture. In the nearly six months that it took for our Civil Action Practice to retrieve Damasia's money from the NYPD property clerk, she was served with eviction papers in her own apartment.

Since The Bronx Defenders has expanded to provide institutional defense in family and immigration court, we have seen the power of holistic defense to address enmeshed civil penalties beyond the criminal context. For our clients facing placement of their children in foster care because of abuse or neglect allegations, housing and benefits are implicated in nearly every case. Children may be initially removed by Administration for Children's Services (ACS) because of unsafe conditions in the apartment and forced to remain in foster care because of delays in repairs. Once children have been removed from the home, parents face reductions in public assistance budgets and frequently fall into rental arrears. By the same token, immigrant families often fall behind on rent when the breadwinner is detained in removal proceedings.

In each of these situations, our comprehensive, client-centered services allow us to identify issues early and work collaboratively to address them. Clients are not bounced between providers or even departments; all of their advocates work together on interdisciplinary teams that include social workers, parent advocates, investigators, and paralegals, as well as criminal defense, family defense, and civil attorneys. This approach allows us to build on existing relationships with clients and intervene to solve problems before they reach crisis proportions. It has also allowed us to develop expertise in specific areas of law, including immigration consequences of criminal convictions, drug holdover proceedings in housing court, public

housing and Section 8 terminations for non-desirability, civil forfeiture proceedings, and statutory bars to employment.

As The Bronx Defenders has grown, we have continued to expand the definition of holistic defense. As a community-based provider, we remain committed to a flexible intake system: anyone can walk in on any day of the week and meet with a Community Intake Advocate for screening. When we cannot offer full representation, we provide general legal information and a high quality referral to another organization. Programs like Healthy Mothers, Healthy Babies and Focus on Fathers provide ongoing peer support with the aim of reducing the harm of contact with the system before it occurs.. The Bronx Defenders Organizing Project helps current and former clients to develop leadership skills and become advocates for systemic reform. We reach hundreds of people through “Know Your Rights” trainings each year, and we partner with dozens of organizations, elected officials, and city agencies in the Bronx and citywide at annual events like our Youth Justice Summit and Community Block Party.

Lessons from Holistic Practice

The Bronx Defenders is just one of many examples of innovative and effective legal services models built to respond directly to specific client needs. We are enthusiastic about the potential of the Office of Civil Justice to strengthen civil legal services across New York City by building on the experiences of providers and marshaling crucial resources. To that end, we offer the following lessons we have learned from holistic practice:

- *Legal services providers must be equipped to serve individuals and families with criminal histories.* The Division of Criminal Justice Services reports that over seven million New Yorkers have criminal records,¹ and we know that the vast majority are concentrated in poor communities of color that are the traditional consumers of civil legal services.

¹ As of December 31, 2012, there were 7,379,600 individuals with criminal background information reported in the New York state criminal history file.

- *Individuals with criminal records are a large legal services population with unique needs.* The future of civil legal services in New York City must include funding priorities for outreach efforts aimed at serving this group. Innovative models of civil legal services practices co-located in public defender offices *and* specialized projects in civil legal services offices must be supported and expanded.
- *Most clients will seek services first where they have received them before.* Because of our existing relationships with clients, many come to our office first when their public benefits are terminated or when they receive a letter suspending an employment license or a notice from a landlord.
- *Early intervention can avoid crises and mitigate more severe consequences down the road.* For a client with an open criminal case, a simple plea consult with a legal services provider can prevent deportation, preserve an employment license, or guard against eviction. Fixing a criminal record error or obtaining a Certificate of Relief from Disabilities while the client has a relationship with a public defender and a case before a Judge can mean a much more rapid return to work after the end of a criminal case.
- *No one advocate can deal with every situation, but teams working closely together with individual advocates who are experts in selected areas are well poised to help clients in any matter.* We have had tremendous success pairing clients with interdisciplinary teams. Because each member of The Bronx Defenders staff is trained differently, each advocate focuses on issues that an attorney in isolation might miss or undervalue.