



2017

# Budget Priority

## INDIGENT LEGAL DEFENSE SERVICES

### THE PROBLEM

The United States Supreme Court held in the landmark decision in Gideon v. Wainwright all criminal defendants had the right to be represented by counsel regardless of their ability to afford an attorney. This constitutional mandate was then charged to all states to carry out and finance. Unfortunately, New York State has passed their constitutional responsibility of providing all indigent defense services, and nearly 83 percent of the costs, to counties and the local property taxpayer. Recently, the state settled a lawsuit brought by the American Civil Liberties Union arguing the state's program was unconstitutional and detrimental to the rights of the accused. However, the settlement terms apply to five counties only, leaving unequal access to justice.

### 2017 EXECUTIVE BUDGET PROPOSAL

The Executive Budget expands the settlement to the remaining 52 counties. Currently only five counties are subject to the settlement that provides 100 percent state financial support to cover expanded services such as off-hour arraignment counsel and capping the number of cases assigned to each public defender. Unfortunately, this proposal does not establish a more uniform system of justice among the counties and does not address eligibility and how the program will be funded. The Executive proposal relies on counties to upfront the costs, subject to partial state reimbursement.

### 2017 LEGISLATIVE BUDGET PROPOSALS

*The Assembly's Budget* provides the same funding as the Executive. However, the Assembly provides language for a future fiscal state takeover of county criminal indigent defense service costs. This fiscal takeover would be over 7 years and start in 2018. This proposal is for criminal county service costs and not family or surrogate related indigent defense costs. Accordingly, this plan would not alleviate counties of the entire \$370 million they currently spend, but it is a positive step in the right direction. The Assembly agrees with the Governor's plan to expand services to the (case cap loads and off-hour arraignment coverage) but rejects the Governor's Division of Budget oversight.

*The Senate's Budget* also agrees with the Governor's proposal and provides no additional mandate relief for current county costs. The Senate agrees with the Governor's plan to expand services, but rejects the Governor's Division of Budget oversight. Importantly, on the expansion of eligibility, the Senate budget only expands services to an individual at or below one hundred fifty percent of the federal poverty level.

### COUNTY SOLUTION

Counties support the enhanced services only if the state provides full upfront fiscal support for the expansion. We do not support the Governor's budget proposal because it does not address the underlying \$400 million annual mandate the current system places on county taxpayers, and requires the counties to upfront the state expansion.

Counties continue to support the full takeover vetoed last year by the Governor, but we view the Assembly proposal as a positive step in eventually attaining that goal so we support movement in that direction as part of the final budget agreement. The language in last year's bi-partisan bill S.8114 (DeFrancisco) /A.107061 (Fahy)) would have provided mandate relief by requiring the State, over a 7-year period, to pick up all costs associated with indigent defense services. Funding for current costs must be included in the budget as counties cannot continue to provide appropriate levels of indigent defense services when faced with growing mandated costs and the fiscal restraints imposed by the state property tax cap.

On income eligibility, we prefer the Senate approach because it recognizes that the costs of a public defense vary dramatically across the state, and the state should implement income threshold guidelines to correspond to local costs.

*For more information on the county position regarding this issue, visit [www.nysac.org/intergovernment](http://www.nysac.org/intergovernment) or call 518-465-1473 to speak to Patrick Cummings, NYSAC Counsel.*