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, for too many years, New York State passed their constitutional responsibility of providing all indigent defense services, and 83 percent of the costs, to counties and the local property taxpayer. However, in 2017, following the State’s settled a lawsuit brought by the American Civil Liberties Union (Hurrell-Harring) arguing the state’s program was unconstitutional and detrimental to the rights of the accused, the State passed in their budget a promise to expand and pay for indigent defense services.

LAST YEAR’S STATE BUDGET
Last Year’s State Budget included a promise of more uniformity in the future for this program. At that time only five counties were subject to a settlement between plaintiffs and the State that provided 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. Last year’s State Budget expanded these indigent defense programs to the remaining 52 counties by way of a 7-year phase in. Included in the law was language that in no event shall a county and NYC be obligated to undertake any steps to implement these expanded services until funds have been appropriated by the state for such purpose.

2018/2019 STATE BUDGET
The State Budget included $57 million more for counties to perform expanded indigent defense services, this is in addition to the $81 million the State currently provides for program costs. Arraignment coverage is expected be part of the first wave of expanded services in 2018. Already OCA has approved plans to consolidate arraignment court services in four counties to help with this process. This system will eventually provide 24-hour arraignment courts where Public Defenders will be representing clients, DA’s may also be present to making the People’s case for bail recommendations in order to ensure public safety.

COUNTY SOLUTION
While counties support this increase in State funding for enhanced services, we point out that this funding only makes counties whole for their expanded program. This does not address the nearly $400 million annual mandate the system places on county taxpayers for current and continual services. To provide for a better system and to provide for true property taxpayer savings, the State needs to reimburse counties for this $400 million annual cost.

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