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## **Counties aim at indigent defense, other mandates**

By Mike Murphy

One of 51 recommendations aimed at relieving New York counties of cost burdens mandated by state government includes a plan for local control of paying attorneys in indigent defense programs. Though some in this legal field believe a problem exists, they don't necessarily believe in the proposed solutions.

The request for relief in this area is not all that unusual, according to Monroe County Public Defender Tim Donaher.

"I certainly agree the state needs to increase money for indigent defense," Donaher said. "For too long, the state has shirked its responsibility. "

But, Donaher said, the state, through the lead of the Office of Indigent Legal Service, is improving and he is hopeful the trend continues.

County leaders believe shifting some of the payment control of indigent defense programs from the state to local municipalities would result in a cost savings, according to a report issued earlier this week by the New York State Association of Counties.

A law enacted in 1965 required counties to establish a plan to provide counsel for indigent defendants, and outlined several options of doing so. The problem, according to counties, a significant financial burden was created.

New York state counties contribute \$300 million of the overall \$370 million cost of indigent defense programs, the report states.

The Monroe County Public Defender's Office has a budget of approximately \$7.9 million for the year.

In 2000, the state contributed \$858,000, but aid has significantly and steadily declined in the years since then, Donaher said. The state contributed about \$400,000 for Monroe County for the current year.

Rates payable to individual assigned attorneys and others should fluctuate based on where an attorney is practicing, according to the top recommendation in the report. Counties should be allowed to set the pay rate for assigned counsel because the cost of living varies from county to county, according to the report.

The state has set a salary rate of \$75 an hour for attorneys who work for the indigent on felony cases, which Donaher said is significantly below the average hourly rate for attorneys.

The goal is to provide the same quality of level of service no matter if a person is in Manhattan or the poorest village in the state, said William J. Leahy, director of the state office of Indigent Legal

Services.

Lowering the rate may hinder a county's ability to recruit attorneys and sets up other problems.

"That's not going to lead to better representation," Leahy said.

The counties also propose having discretion when hiring conflict defenders should attorney conflicts arise. In counties where such conflicts are prevalent, counties may need to create a conflict defender's office instead of paying fees to assigned 18-b attorneys.

The state is working with the counties on this through the creation of regional centers that will assist counties in training, legal advice and other services, which rural or poorer counties may not be able to afford, Leahy said.

The Indigent Legal Services office, which Donaher said was set up in recognition that the state needs to do more to meet its responsibilities, successfully secured more funding in the last year to help reduce caseloads, Donaher said.

"It helps, but it's certainly not going to solve the problem," Donaher said. "But it's a good first step."

Eighteen months into the implementation of the office, seeds for better meeting the mandate and providing for better representation have been planted, although much more work is needed to "fix this mess," Leahy said.

The office next week will be submitting a \$91 million budget for the next fiscal year, an increase of \$10 million from the current spending plan, Leahy said. About \$3 million of the proposed increase would help counties meet standards of assigned counsel performance, as well as build on reducing caseloads and providing counsel at first court appearances for clients.

It's not realistic to expect full compliance with standards without providing the funding to do so, Leahy said.

"Some of this is accomplished, and some is to be accomplished," Leahy said. "We're trying to move the ball forward on all fronts."

Of course, mandate relief as it applies to indigent relief is a drop in the budget when it comes to the overall savings counties say could be realized by implementing other recommendations.

For example, counties pay \$7.57 billion of the Medicaid program's \$54 billion cost now, with the state contributing \$21.8 billion and federal government paying \$27 billion, according to the report.

The poor economic climate is leading to a projected cumulative fiscal gap of more than \$10 billion over the next five years for all of the counties, and the cost of government needs to be lowered to address the problem, the counties say.

"Counties are doing their part to lower the costs they can control, but they have no ability to reduce the costs handed down by Albany," Stephen Acquario, executive director of the organization, said in a

statement.