

# **The County Perspective**

## **2018-19 Executive State Budget Proposal**

Testimony  
submitted by  
the

**New York State Association of Counties**  
*and the*  
**New York State County Executives Association**

To the Joint  
**Legislative Fiscal Committees**



*Monday, February 5, 2018*  
*LOB, Hearing Room B*

Hon. MaryEllen Odell, NYSAC President  
Stephen J. Acquario, Executive Director

Thank you Senator Young, Assemblywoman Weinstein, and the other members of the Joint Legislative Budget Committee. I am Stephen Acquario, Executive Director of the New York State Association of Counties and I appreciate the opportunity to testify today.

I am joined today by Westchester County Executive George Latimer, who last year sat on your side of this dais.

Given time constraints I will provide amended verbal remarks and the Committee can find more detail in the written testimony on these and other issues of importance for New York counties and New York City.

### **Overall Goals**

The key goals for counties in the current state budget include preserving the county resource base, preventing state costs shifts, and freezing growth in unfunded and underfunded state mandates. Over the longer term we need to implement policies that lower the cost of state mandates on counties which will help maintain downward pressure on property taxes. We should also all work together to lock in initiatives that have reduced property taxes. Locking in these savings will help to prevent property tax increases in the future. Counties cannot do this alone and we must continue to have a strong partner in the State.

### **Help Counties Preserve Scarce Resources**

Public policies that help counties lower costs and preserve their local revenue base are critically important. While recent state budgets have tried to limit the shifting of state costs onto counties, cost shifts still happen too often. In addition, other state laws enacted over the years have seriously eroded the county property and sales tax base. This has occurred through the enactment of hundreds of exemptions targeted to specific groups of individuals, industries, products and services; along with failing to update the state tax code to keep pace with changes in the economy. The preponderance of state promoted tax exemptions does not reduce the need to deliver services to the groups receiving tax breaks. It simply shifts the burden of paying for these critical public services to a narrower tax base.

### ***Modernize State Sales Tax Collections***

Counties support the proposal in the Governor's budget to update the state sales tax code in recognition of changes in the economy and retail marketplace. The Governor's Internet fairness conformity tax proposal

appropriately modernizes the state tax code and will help level the playing field between store owners in our communities and Internet-based retailers.

eCommerce continues to grow at about 15 percent per year according to the U.S. Census Bureau. In 2017, it is likely that eCommerce sales will exceed \$450 billion and account for more than 9 percent of all retail sales. According to the Division of Budget, \$140 million in local sales taxes owed under state law for Internet-based purchases are not collected. This equals more than 150 percent of the inflation adjusted property tax levy growth under the state property tax cap for 2018.

This update is long overdue, imposes no new taxes, injects more fairness into the retail marketplace, protects local jobs, and eases the sales tax collection process for vendors.

The proposal will also help preserve a key pillar of the county tax base as sales tax is the number one source of revenue for more than half of the counties. Overall, counties pass through 25 percent of sales tax revenues to other local governments to help them reduce property taxes and pay for local services.

#### *Review Current Sales Tax Exemptions*

Additionally, preserving the local sales tax base requires the Legislature and Governor to regularly review current exemptions to see if they should be continued. Each exemption results in lower sales tax revenue locally and puts more pressure on property taxes. The Governor proposes to eliminate a sales tax exemption for ESCOs that was implemented nearly 20 years ago. The change is expected to increase county sales tax collections by nearly \$80 million if adopted by the Legislature. This will help reduce pressure on local property taxes.

#### *State Medicaid Growth Cap Has Successfully Lowered County Property Taxes*

The Medicaid growth caps have been a huge benefit for property taxpayers. Without the three percent annual growth cap implemented in 2005, and the zero percent growth cap implemented in 2015 county property taxes would be much higher today. Counties have been able to keep property taxes low because of these mandate relief actions, which have allowed

counties to keep the average annual growth rate in county property taxes below the rate of inflation since 2006.

We are pleased that members of the Legislature continue to show a strong interest in a full state takeover of local Medicaid costs. We welcome these legislative proposals, and we look forward to working with our state partners in making this a reality. Local taxpayers should no longer be asked to pay more than \$7 billion each year for the State defined and controlled Medicaid program. New York State requires local taxpayers to pay more for Medicaid than all other states combined ask their taxpayers to fund with local tax dollars. New York's penchant for imposing unfunded mandates on local governments is a leading reason why property taxes are so high in this state.

As a first step in the longer-term plan for a full state takeover of Medicaid costs, counties would like to take out a county property taxpayer insurance policy to ensure federal changes do not force an increase in county property taxes.

Currently, under the Affordable Care Act counties and the state benefit from higher federal matching rates for certain Medicaid populations – with the federal match reaching 93 percent in 2019 and leveling off at 90 percent in 2020 and beyond.

Most counties budget these federal ACA savings in full, meaning they assume the full savings will be realized and they keep their property tax levy lower as a result. Today, a typical counties' Medicaid expense is about 6.6 percent below their actual state Medicaid cap because of the ACA, this equals about \$550 million in lower costs for taxpayers (\$150 million ROS, \$400 million NYC).

Counties believe the Legislature and Governor should ensure that these ACA savings for local taxpayers are locked in by reducing the current county-by-county statutory Medicaid caps to the lower of what they will pay in 2019 (net of ACA savings) or what the ACA calculation provides. The ACA is under heavy assault in Washington today and there could be problems down the road in realizing the full benefits if it is further undermined or collapses due to additional federal actions. We think it is prudent for the state to take out this insurance policy now to protect county property taxpayers in case federal actions continue to undermine the fiscal

benefits of the law. As with most insurance policies, we hope we never have to use it, but it will pay huge dividends for local taxpayers if we do. We look forward to working with you and the Governor to make this happen.

### *Limit the Use of the “Dark Store Theory” in Tax Certiorari*

Finally, we must also preserve our property tax base from erosion. While not addressed in the Governor’s budget proposal we wanted to point out that the local governments property tax base is subject to significant erosion if the “dark store theory” gains further traction in New York. Under this theory, large mainly nationwide big box stores are fighting their property tax assessments under the argument that their assessment should be based on the value of their building as if it were an empty, non-income producing building. While this appears to conflict with most interpretations of NYS Real Property Tax, a few judges have ruled that this dark store theory is valid in some tax certiorari cases. Again, targeted exemptions or reductions in property taxes owed based on these arguments does not reduce the need for services to be delivered to these stores. It simply spreads the tax levy burden to homeowners and other small businesses in our communities. We want to work with the Legislature to correct this problem.

### *Oppose State Funding Cuts and Cost Shifts*

- Oppose Child Welfare Block Grant for New York City – NYSAC strongly opposes targeted cuts to New York City in child welfare programs. The Governor has strongly opposed federal proposals to block-grant funding for critical health and human services programs. Counties could not agree more; block-granting funding to New York City for child welfare programs is bad public policy and should not be adopted by the Legislature. The state continues to walk away from its constitutional requirement to care for the needy by shifting more and more costs to counties and New York City. These actions simply raise costs for local taxpayers at the end of the day.
- Oppose the Elimination of State Funding for the NYC Close to Home Initiative – NYSAC finds this proposal especially troubling and urges the Legislature to reject it. Close to Home is the precursor program to raising the age (RTA) of criminal responsibility – under RTA we have a promise of 100 percent state funding support to cover local costs incurred related to the new law. The Governor’s proposed funding cut creates a bad precedent for the state’s promise to fully fund all new

costs related to raise the age. Eliminating state funding support for Close to Home, in conjunction with a long history of the state renegeing on numerous funding promises, essentially nullifies the state funding promise of 100 percent support for RTA and will undermine implementation of that law.

- Oppose the Community College Funding Cuts – The Executive Budget proposes a reduction of \$24.4 million, or five percent. The Governor’s proposal to provide an FTE rate of \$2,747 is near the same level colleges received in 2007. This equates to a 2.7 percent increase over 11 years. We urge the Legislature to oppose this cut and provide a net funding increase for community colleges over last year’s budget. Training and retraining the current workforce to be able to fill increasingly more technically difficult jobs has never been more important, and our community colleges need the state to not just maintain their commitment, but increase it.
- Oppose Public Health Grant Consolidations and Funding Cuts – Counties oppose the Governor’s proposal to combine dozens of separate public health programs into four grant programs, while also cutting overall funding for the combined programs by 20 percent. The Governor has rightly opposed similar funding cuts at the federal level and we strongly urge the Legislature to reject this proposal. After years of funding cuts the state needs to restore funding to bolster local public health department readiness and prevention activities.
- Oppose the Authority to Withhold Homelessness Funds and Reimbursement to Counties – The Governor is proposing to provide OTDA with the authority to withhold homelessness grants or deny reimbursement to social service districts that fail to develop, submit or implement an approved homeless outreach plan or an approved homeless services plan, or to develop or submit homeless services outcome reports consistent with those requirements promulgated by OTDA. Counties view this proposal as Executive overreach and it undermines decades of partnership between county social service districts and the state. Counties work diligently to shelter the homeless population and work to prevent homelessness in the first instance. It is difficult to foster this relationship under the constant threat of withholding funds from counties in their efforts to battle homelessness. Counties believe a more effective approach to combat

homelessness is for the state to support “homelessness to permanency” efforts, not denying or withholding reimbursements.

- Oppose Reimbursement Cuts for the Transfer of State Ready Inmates – The Executive Budget proposes to eliminate reimbursement of local personal service costs for the transfer of state ready inmates, while retaining the reimbursement for related transportation costs. We ask the legislature to reject this proposal and recommend that the state transfer parole violators held in counties jails within ten days to a state facility, and pay reimbursement to counties for any costs they incur for housing state parole violators after 10 days in a local jail.
- Oppose the Elimination of Funding for Rural Transit Assistance – the State currently provides \$4 million in rural transit assistance in recognition of the unintended consequences that certain Medicaid non-emergency transportation contracts have on rural transit systems. These transit systems play a vital role for many New Yorkers and are vital for low-income people that rely on mass transit options to get to work, school and medical appointments.

#### *Automatic Budget Rescission Authority*

Counties oppose the Governor’s proposal to continue his authority to rescind state appropriations if federal Medicaid funding falls by more than \$850 million, or if other federal funding is cut by a similar amount. How the Governor would define and trigger this process is highly subjective and not transparent. While the current authority does provide that the Legislature may provide an alternative plan, counties believe a more open and deliberative process should be utilized when significant mid-year funding cuts are enacted. It should be a completely open legislative process.

The Governor is also proposing a second automatic budget cutting authorization in an instance where the state’s revenue projections fall \$500 million or more below what was budgeted. In this case there is no provision for the State Legislature to be involved at all in deciding how these funding cuts would be imposed. Also, considering that the state has lowered their own revenue projections six times in the last two years by a cumulative \$4.2 billion, the likelihood of this unilateral Executive budget authority being triggered is more likely than people might think. For the same reasons stated above, counties oppose this proposal in the Governor’s budget.

## **Agriculture**

Counties support the Governor's proposal to increase the reimbursement schools receive for lunches from the current 5.9 cents per meal to 25 cents per meal for any district that purchases at least 30 percent of their ingredients from New York farms. This increase will benefit both students and New York State's agricultural economy.

We also thank the Governor for proposing to launch phase two of the New York State Grown & Certified program. This \$27 million investment will help farmers to take advantage of the growing demand for locally grown, high-quality food.

Finally, we support the Governor's proposal to strengthen economic opportunities for New York's farmers through the Taste NY program and enhanced marketing to promote local agritourism. Counties appreciate your continued efforts to brand and expand New York's food and beverage industry.

### *Local Assistance Agricultural Grants*

The Governor's budget fails to fully fund a wide variety of agricultural assistance programs that the Legislature has long supported. We strongly encourage the Legislature to restore full funding for these many important agriculture assistance programs.

## **Criminal Justice System**

### *Elimination of Monetary Bail for Certain Charges & Amend Civil Asset Forfeiture/Seizure Policies*

The bail reform and civil asset forfeiture proposals are worthy of consideration as a matter of public policy. We recognize that there may be circumstances where an individual should not be incarcerated when unable to afford making bail. We also recognize the current civil asset forfeiture procedure could be studied and improved. Counties look forward to improving the criminal justice system in the best interests of society and that of the individual. NYSAC requests that when the State is working on the details of this criminal justice reform that they include input from the county officials that work directly on these issues so the ramifications of proposed reforms can be fully understood. County District Attorneys, Public Defenders, Probation and Sheriffs all have unique insights to the



current system. By best understanding the current system, we can create a better one and one that does not have unexpected results or costs.

### *Mandatory District Attorney Salary Increase*

For the third year in a row the State's required increase to District Attorney salaries that, under state law is tied to the state judge salaries, are not included in the budget. This mandatory salary level, to a county employee, will increase again in 2018. This State inaction costs counties over \$2 million per year. We strongly encourage the Legislature to fully fund this state mandated salary increase in the final budget. While this may not seem to be a large amount when in comparison to the State's \$160 billion budget, in some counties this increase alone equaled almost one-third of their entire annual allowable tax cap growth last year.

### **Children with Special Needs**

#### *Early Intervention*

Counties support the Governor's reforms to the early intervention program that seek to boost third-party insurance billings to ensure costs that should be paid by private insurance and Medicaid are in fact paid. Since the implementation of the statewide fiscal agent it has been the responsibility of the providers to exhaust third party insurance billing before seeking reimbursement from counties and the state. These third-party collections continue to lag expected levels.

#### *Preschool Special Education – Streamlining with Universal Prekindergarten*

Counties remain concerned that New York State is not achieving the desired goals and outcomes of the Individuals with Disabilities Education Act (IDEA), which calls for students of all learning abilities to be in the same classroom and among their peers. New York State has eight separate prekindergarten programs with just as many separate funding sources. The Governor' budget proposes a small \$15 million grant program as part of its universal prekindergarten initiative with the goal of helping high need school districts to streamline prekindergarten classrooms so children of all learning abilities can be educated with their peers. NYSAC believes this investment must be increased dramatically and that the many silos that still exist for prekindergarten programs are broken down and funding sources are streamlined with the state becoming the primary funding source over time.

## **Elections**

Counties operate the election system in New York for all levels of government, with few exceptions. While we take pride in providing our residents with this crucial service, it is still a costly mandate imposed on counties.

The Executive Budget proposes to institute automatic voter registration and early voting in all special, primary, and general elections. These proposals will increase local election costs for the coming year by an estimated \$6.4 million, according to the State Division of Budget's recent analysis. These costs stem from the necessary additional oversight, printing, staffing, and maintenance of polling stations for early voting. If the State enacts voting reforms, any resulting cost increases to counties (direct or indirect) should be paid for by the State to help reduce the impact on local property taxes.

## **Environment**

### *Food Diversion*

Counties support the changes made to the Governor's food diversion proposal. In particular, we appreciate the exemption for elementary and high schools, the more clearly defined process for obtaining a temporary waiver, the allocation of funds to support investment needed for mandated food donation, and the reduction of the "50 mile" designation for distance to an organics recycler to 40 miles.

### *Paint Stewardship*

We were disappointed to see that the Executive Budget did not propose the creation of a statewide paint stewardship program. Local governments bear the costly burden of collecting and disposing of most of the 3.9 million gallons of paint that go unused in New York State each year. If this responsibility was transferred to paint manufacturers through the implementation of a statewide paint stewardship program, local governments would save approximately \$25 million annually. Such a program would provide relief to property taxpayers, create local jobs, and encourage environmentally sound recycling and disposal of unused paint.

NYSAC supports the framework laid out in S881 (O'Mara)/A1038 (Stirpe) and recommends that this language be added to the final budget. This

legislation has also drawn the support of a range of environmental advocacy organizations, paint industry representatives, and municipal agencies.

### *Clean Water Infrastructure Act*

We support the continued funding of the Clean Water Infrastructure Act to support drinking water, wastewater, and source water protection initiatives. However, county governments will struggle with the implementing the Act without additional support. To facilitate the septic system upgrades subsidized by the \$75 million Septic System Replacement Fund (Public Authorities Law § 1285-u), we request that a \$2 million administrative allocation be added to the Budget. Our county health departments, particularly environmental health programs, face ongoing pressure on limited local resources due to increases in workload necessitated by emerging public health threats and state regulatory and statutory changes. Some counties may be unable to administer a replacement program without administrative funding. We would also like to request that the Septic System Replacement Fund statute be amended to allow for septic to sewer district connection projects, which are not eligible for funding under the Act as it is written.

### *Harmful Algal Blooms (HABs)*

Counties commend the Governor for proposing a \$65 million initiative to combat harmful algal blooms in Upstate New York waterbodies. These blooms can negatively impact tourism, economic development, real estate values, rental businesses, and tax revenues in many of our communities. We support making all counties affected by HABs eligible for grant funding for monitoring and treatment technologies. Like the 12 priority lakes identified by the Governor (and Lawson Lake, which was added after the Executive Budget was released), Canandaigua Lake, Keuka Lake, and Seneca Lake are critical sources of drinking water and vital tourism drivers that have been affected by HABs. These waterbodies and others should be added to the program.

## **Gaming**

### *Native American Gaming*

As the Governor has stated, New York State is now in the gaming and casino business. Over the past few decades the State has authorized gaming on Indian reservations through compacts and legalized private casinos through legislation. These businesses are now directly or indirectly part of every county in New York. Under State law the gaming entities, including

Native American operated casinos, pay the State a percentage of gaming earnings and the State passes a portion of that revenue on to the Counties and the host communities. This funding is vital to meet the increased infrastructure, public safety, and social service needs that can accompany the expansion of legalized gambling. This system can and does work as long as a balance remains: that the gaming facilities are profitable and the local governments are properly funded to meet the resident services caused by the gaming entities.

Unfortunately, this balance has toppled in 16 western counties of New York. These 16 counties receive over \$50 million annually from the State's portion of Seneca Nation gaming revenue. Early in 2017 a dispute between the Seneca Nation and the State arose over the language within the compact, leading the Nation to stop revenue sharing payments to the State. The State in turn stopped allocating any of the \$50 million to the counties. However, the need for county government services remain. With a State-imposed property tax cap this lack of funding is putting an unnecessary strain on county government and their residents.

With the decision by the Seneca Nation and the State to try to resolve this issue through arbitration, this strain on our resources could last months or years.

NYSAC calls on the State of New York and the Seneca Nation to expeditiously resolve their differences and reach an agreement to avoid catastrophic harm to public safety and county service. NYSAC also calls on the State to make counties whole for past and current losses caused by this negotiation process, so that local services and the residents that rely on those services are not impacted.

### *Sports Betting*

In the next few months the United States Supreme Court will make a ruling in *Christie v. National Collegiate Athletic Association*. This ruling will change the future of gaming in this state. At issue is the Federal Professional and Amateur Sports Protection Act of 1992, which restricts sports gambling and sports gambling operations to four states (Nevada, Oregon, Delaware, and Montana). If the Supreme Court rules in favor of the plaintiffs, New York may permit sports gambling.

Under current New York law, and through regulation of the Gaming Commission, commercial casinos and Native American casinos could have sports betting operational within 180 days of the Supreme Court case outcome. No one knows how much revenue this could produce because no one knows how much illegal sports betting is occurring in the State today. However, all experts agree this change would involve billions, not millions, in wagers placed in New York alone.

With the Supreme Court case pending and its related ramifications, the state should begin to consider a framework that protects resident and government interests. For example, the current State revenue sharing structure must be reviewed and possibly changed. Where and how sports betting would be allowed in New York State has wide implications for existing Native American gaming compacts, commercial gaming facilities and overall revenue sharing for the state, schools and counties.

NYSAC would support a system that allows existing gaming facilities (OTB's, racinos, horse and harness tracks, and casinos) to host sports betting. This would spread out the revenue and promote local jobs. We are already seeing a cannibalization where new gaming entities are taking business from another, if sports betting is not allowed at all current gaming entities, those left out will have their business viability and local jobs placed in jeopardy.

### **Indigent Defense**

NYSAC supports Governor Cuomo's Budget proposal to include \$50 million in new funding to begin the phase in of enhanced services for indigent defense to the remaining 52 counties not covered by the initial Hurrell-Harring settlement. This should serve as blueprint for all state legislation that requires and expansion of services in state mandated programs -- find the need, pre-fund the service, and the county can and will provide effective and efficient services to the people of New York.

### ***Background***

Last year's State Budget required the State to extend the provisions of the Hurrell-Harring settlement to the rest of the State (52 counties and New York City). This expansion includes public defender caseload caps, as well as off-hour arraignment coverage. Counties appreciate that under this plan, the State will fund one hundred percent of the costs and that in no event shall a county or the City of New York be obligated to undertake any steps

to implement these expanded services until funds have been appropriated by the state for such purpose.

While it is not spelled out what portion of extra funding will be used for arraignment or case caps, arraignment coverage is expected to be within this first wave of expanded services in 2018. Already OCA has approved plans to consolidate arraignment court services in four counties. Counties appreciate the extra funding going towards criminal defense.

However, we need to point out, as expanded arraignment coverage becomes reality, there will be unexpected costs borne by counties that were likely not contemplated in the expansion of base services under the Hurrell-Harring settlement. One such unintended increase we are aware of is the uptick in District Attorney work needed in new 24-hour arraignment court systems. During this process both arraignment and bail can be set by the court. With 24-hour arraignment courts where Public Defenders will be representing clients, DA's will also need to be present to state the public's case for bail recommendations in order to ensure public safety. We ask that either increased costs to DA offices are met by the State or in the alternative, allow for DA's to teleconference during this stage of the criminal case.

### **Judgement Interest Rate**

NYSAC fully supports the Governor's proposal that links State and County judgment interest rates to federal rates which are currently below two percent. The current judgement interest rate in New York is set in law at nine percent as it was established in the 1970's during a period of very high interest rates.

Flash forwarded to today—interest rates are below two percent and it can take years before an appeal is heard. In cases where a county believes on merit of the law they can win on appeal, the county must be mindful of the taxpayer with nine percent interest running for years until appeal is heard, and there is almost no choice but to forfeit an appeal. This is especially true in a wrongful death suit where interest begins under state law at time of death and not time of judgement. This issue has been overlooked for too long and we support the Governor's proposal to bring our rates in line with the rest of the county.

### **Public Health**

*Increase State Support of Core Public Health Services*

Reject the proposed funding pools and restore the proposed 20% reduction in funds and compensate, within the 2018-19 Executive Budget and subsequent budget years, for significant state funding cuts to local health departments since 2010 by taking the following steps in the Article 6 State Aid for General Public Health Work base grants and reimbursement rates:

- Instruct the Division of Budget and NYSDOH to end administrative actions that will result in further erosion of state aid to local health departments;
- Increase the base grants that ensure more of the public health services are eligible for 100 percent reimbursement of local expenditures: a) Increase the base grant to Full Service LHDs (i.e. those with environmental health units) from \$650,000 to \$750,000; b) Increase the base grant to Partial Service LHDs (i.e. those with environmental health units) from \$500,000 to \$550,000; c) Increase the per capita rate for the largest counties from 65 cents per resident to \$1.30.
- Increase the beyond-base-grant state aid reimbursement rate from 36% to 38%.
- Provide 100% reimbursement for the first full year of any new and/or significantly expanded mandates emerging from law, rule or regulation; and

The prevention and population health activities of county health departments and New York City are essential to the overall health of the state's residents and communities. However, the state has reduced its annual appropriations for Article 6 Public Health spending by 40% over the last several years. In 2011 the State also eliminated the allowance of state aid for so-called "optional services" by local health departments, eliminating funding for early intervention administration, medical examiners, dental health services, some environmental health activities, certified home health agencies, and more.

These reductions have increased the need for local budget cuts, including staff reductions that compromise the capacity of local governments to ensure the provision of the core services necessary to protect the public's health

**Public Safety**  
*Parole Violators*

New York State counties incur substantial costs to construct and maintain jail facilities for inmate populations in accordance with standards set by the New York State Commission of Correction. The incarceration of parole violators in county jails is an unfunded State mandate on counties. In the 2009-10 State Budget, the State eliminated reimbursements to counties for the cost of housing parole violators in county jails. Counties are mandated to pay for medical, hospital, and dental expenses of parole violators incarcerated in county jails. The sheriff's department also incurs expenses for transport costs of parole violators and court appearances.

The Executive Budget proposal includes language to amend the correction law that currently provides for reimbursement to counties for both travel costs and a portion of salary costs for the transportation of state ready inmates. This legislation would eliminate reimbursements related to personal service costs, however the Department of Corrections and Community Supervision would continue to reimburse transportation costs.

We ask the legislature to reject this proposal and recommend that the state transfer parole violators held in counties jails within ten days to a state facility, and pay reimbursement to counties for any costs they incur for housing state parole violators after 10 days in a local jail.

### *Jail Based Restoration Programs*

The Executive Budget proposal includes establishing jail-based restoration programs for felony-level defendants. The Office of Mental Health (OMH) will work with participating counties to develop restoration units for felony-level defendants while they are restored to competency as they await trial.

The restoration units are envisioned to operate in counties that volunteer to participate, and will be maintained as separate residential treatment units within the jail.

Counties appreciate the option to participate, but without additional financial support from the state to get such an initiative started we remain concerned about how many counties will have the capacity to participate.

### *911 Background*

Counties operate and maintain 9-1-1 functions. The funding mechanism used today to help operate, maintain, and upgrade 9-1-1 system capability and performance is out of date and does not correspond well to recent



technology and marketplace changes. In addition, too much funding is diverted by the State for non 9-1-1 purposes. As a result, the system does not direct sufficient revenue to allow counties to properly maintain existing systems, while also preparing to implement the next generation of 9-1-1 technology required under federal law.

Under current law, for the last two budget years, \$10 million is authorized and targeted directly to PSAPs and up to \$65 million is set aside for the provision of grants and reimbursements to counties administered by the State Interoperable Communications Grants (SICG) program, administered by the Division of Homeland Security. A total of \$150 million has been authorized for county 9-1-1 purposes, but only \$20 million has been released (\$20 million for PSAPS over the two years and \$45 million authorized purposes from the SFY 2016-17 budget under a new formula based methodology, while identified, has not been made available to draw down yet).

NYSAC is asking that the state release all funds authorized so far and ensure that future authorizations are released in full in the budget year they are appropriated. Another request is for the state to include language that clarified this funding should be provided to counties annually. Getting these funding obligations on a regular schedule will provide certainty and build continuity as we upgrade and maintain existing systems and prepare for NextGen 9-1-1 development and roll out at the county level.

The goal of upgraded 9-1-1 systems is to make sure that all devices capable of connecting to the system can do so using voice, text, video images and other data formats to better inform the emergency responders to the situation they will be entering. In addition, upgraded systems will be able to better pinpoint an emergency caller that may be in a remote area of the state or skyscraper in New York City. Knowing a more precise location of those needing emergency services will improve outcomes and save lives. This cannot be accomplished without consistent and timely funding from the state.

### **Raise the Age (RTA)**

NYSAC has been working closely with the Governor's office and the other agencies involved with Raising the Age since this historic law was signed into law. And we are supportive of the Executive Budget proposal that

includes \$100 million to implement RTA. However, we need further clarification on how this money will be appropriated.

In addition, the state should de-link adherence to the state property tax cap as an eligibility requirement for full state reimbursement of costs incurred to implement the new state mandate. The State should also consider, rather than reimbursing counties for their future debt service for newly constructed or renovated specialized secure detention facilities, to fully fund the capital costs of these facilities up front through the dormitory authority or other state capital programs including design and construction services.

While there has been consistent outreach by the Executive, the regulations are still not final which has hampered the construction or renovation of these new facilities. Counties remain highly concerned about the ability to have the necessary number of new beds available across the state in the next eight months. The state must seriously consider modifications to state procurement law, including the use of design build and other waivers, to expedite construction of these facilities.

In order to make the implementation of this law successful and to ensure that diversion first, rather than detention first, can succeed the state must invest in a myriad of prevention services, including:

- Remove fiscal caps for foster care and youth detention;
- Restore the 65 percent state match for child welfare;
- Maintain PINS state fiscal support;
- Restore prior state funding cuts for Supervision and Treatment Services for Juveniles Program (STSJP) and provide necessary increases in state funding support beyond the previous level;
- Provide a clear service needs plan and capital investment strategy to ensure there is sufficient provider capacity and detention space in all areas of the state;
- Bolster outreach and require engagement of the K-12 school system as a partner in these systemic reforms;
- Ensure judges receive appropriate training on alternatives that may be available in communities; and
- Develop a waiver process in the early transition years in regard to finding appropriate placement options for youth and families, especially in regard to the new specialized secure detention facilities

for adolescent offenders (AOs) that may not be fully operational by October 1, 2018.

- The state should consider using current state facility(ies) to house AO until counties facilities can be built and fully staffed as required under state regulations.

*Authorize DASNY to provide capital construction services to counties*

The Executive Budget proposal includes language to authorize the Dormitory Authority of the State of New York (DASNY) to provide capital design and construction services to OCFS for youth facility system comprised of buildings across the state, many of which are old and require regular capital improvements/maintenance to remain functional and safe.

We believe the budget should include language to authorize DASNY to provide capital design and construction services to counties. The state should consider fully funding the entire capital costs of these new facilities up front (rather than through covering future county debt costs related to these facilities). The state has more flexibility and debt financing capabilities than many counties and could likely move more quickly through some of its State Authorities to secure debt, at better rates/terms, and with greater access to certified contractors including MWBE entities. Additionally, having the assurance of the full funding up front could increase the number of counties interested in building and maintaining these facilities for decades to come. More importantly it will likely increase the number of possible assets (existing buildings) that counties could bring to the table that could be modified to meet the standards. Any project requiring land acquisition, related environmental reviews and local zoning/NIMBY issues will most certainly not be completed in the timeframes specified.

It would also be beneficial to provide counties and New York City (NYC) with Design Build authority for construction projects to expedite this process and move them along a lot quicker than current state law allows. The state has effectively used design build authority to increase the speed of project completion while lowering overall costs.

Given the tight timelines, counties are concerned about the state pre-approval requirement in the emergency regulation regarding building plans for these facilities and subsequent change orders. Safeguards need to be in place to ensure this extra step in the procurement process does not slow

down the approval process. Today, under current state and local procurement laws, in most counties with legal requirements necessary to appropriate funds and provide public notice, and approving major contracts related to the construction or major renovation of a building, it takes six to nine months to get to the point where actual physical construction can begin. We remain concerned that these emergency regulations do not provide a path to streamline this process.

### **Countywide Shared Services Initiative**

Counties are pleased about the \$225 million included in the Executive Budget as state matching funds for the taxpayer savings generated by county-wide shared services panels.

We request that the Governor and Legislature work to eliminate existing barriers to shared services. The Executive Budget proposal related to town justice courts and the State of the State proposal related to health insurance consortiums are a good start. We encourage additional statutory changes and administrative reforms based on the barriers identified in the plans submitted to the Department of State.

We support the inclusion of fire districts and fire protection districts in future iterations of the Shared Services Initiative. Going forward, school districts, which levy over 60 percent of the property taxes collected in New York State, should be more incentivized or required to participate on any state-imposed local shared service panel. The State should also be required to participate on any service sharing panel, since they have resources and assets that could be drawn upon to help reduce the costs, and therefore property tax burden, in each of our counties. Shared service proposals could involve the State sharing its prison space, office buildings, equipment, information technology, records management systems, publicly-generated electricity, and any other resources they may have available in our communities. This would help to achieve more significant property tax savings than local partnerships alone can accomplish.

For example, Allegany County recently entered into a multi-year shared services agreement with the state Department of Transportation (DOT) that provides an avenue for sharing or lending equipment between the county and DOT. This example demonstrates that it can be both cost effective and mutually beneficial for the State to share services with local governments.

Finally, the state should consider modifications to arcane requirements within the state's property tax cap calculation that places barriers to the most comprehensive shared services reforms when functions are fully transferred from one level of government to another. Currently, the one-size-fits all approach of cutting the property tax levy base of the entity that loses a function does not consider local budget circumstances and the ability of smaller jurisdictions to absorb the loss of the tax cap growth. The cap adjustment in these situations should allow entities that have given up a function to retain at least half of the value of the function transfer.

*Easing restrictions for creating health insurance consortiums*

Health insurance costs are growing well above 2 percent a year, the rate at which property tax levy increases are capped. At the same time, other revenues have been flat in many areas of the state, and Assistance and Incentives for Municipalities (AIM) has not kept pace with inflation.

Now the state is requiring localities to develop plans and strategies to work together to reduce costs at the local level. Despite this context, municipalities have limited options under state law to find ways to reduce health insurance costs, which continue to grow each year unabated.

Currently, localities have two primary options for health insurance. First, they can buy health insurance with premiums set according to the size of the plan. Local government employers with fewer than 100 employees must, by law, be community rated. Employers with more than 100 can be experienced rated, based on recent claims. Or the local government can have a self-funded health insurance plan, which is either self-administered or through a third-party administrator (TPA). These self-funded plans often purchase stop loss insurance to protect themselves against catastrophic illnesses and accident claims. These self-funded plans are not subject to DFS oversight or federal ERISA regulations.

Several counties have been exploring the viability of creating health consortiums to increase the numbers of covered lives and lower costs to local taxpayers, but they have been stymied by state law and regulation. When two or more municipalities come together for the purpose of providing employee health insurance, they are subject to Article 47 of County Insurance Law, which has extremely prohibitive requirements governed by the Department of Financial Services (DFS). Only one county

has been able to start a consortium in the 30 years since Article 47 was adopted.

Counties have asked NYSAC to continue advocating for amendments to Article 47 or an ease to its restrictive requirements. In his State of the State, Governor Cuomo said he directed DFS to develop guidelines that will make it easier for counties and local governments to create health insurance consortia. These new guidelines are expected to be released this month. Depending on the outcome of this exercise, there still may be a need for legislative action. In the meantime, among the provisions counties are looking to amend include:

- The number of covered lives that can be combined to create a consortium, from 2,000 to 1,000.
- Lower the amount of surplus funds reserve or allow for flexibility (such as a state-backed short term loan) to achieve the surplus funds reserve requirements.
- Lower the IBNR reserve requirement commensurate with the true risk associated with the payment of the terminal liability of the Plan.
- The ability for municipal employers with fewer than 100 employees to combine with larger employers for the purposes of buying stop-loss and becoming self-insured.
- Allow flexibility with regard to labor representation (must be agreed upon by union reps) on any consortium governing board.
- Allow for the waving of the then Aggregate Stop-Loss once a consortium is fully reserved.
- Expand the membership eligibility to include governmental entities agencies or authorities that receive more than 50% of their funding from municipal corporations and/or governments.

At the very least, we believe that the State should allow municipalities to join county self-insured health programs and allow county self-insured plans to buy stop loss coverage for all municipalities within their plan, even those under 100 covered employees.

### **Substance Use Disorders**

The State should increase funding to support the treatment and transition services to individuals with substance use disorders (SUD) who are incarcerated in county jails.

New York State is engaged in a significant effort to address the rising rate of substance use disorders, including the epidemic of opioid and heroin addiction and the increasing number of deaths due to overdose.

Over the years the state has also had rapid expansion of community-based treatment and support services to create a continuum of care to support the individual and family in their recovery. However, there remains a significant gap in the treatment and support in the continuum of care being developed by the state and that is available in local jails.

More often than not individuals who suffer from substance use disorders frequently come into contact with the criminal justice system. The link between offending and SUDs is well established, bringing significant numbers of individuals suffering from addiction into NYS jails. Alcohol and drugs are implicated in roughly 80 percent of offenses, including domestic violence, DWIs, property offenses, drug offenses, and public order offenses. According to a recent report conducted by Policy Research Associates on behalf of the NYS Conference of Local Mental Hygiene Directors, that surveyed County Sheriff's indicated that of the individuals detained in their jail on drug-related charges, 68 percent had been in their jail before. Jail incarceration provides a unique opportunity to offer treatment supports during periods when people are clean and sober.

Today, in NYS, counties bear the sole burden for supporting substance use disorders services in jails, and it is an ever-increasing burden with substantial unmet need. In our state 51 percent of jails have no funding for substance use disorder treatment services despite strong evidence that these services reduce crime, save money, and save lives and 53 percent of jails do not have the capacity to directly transition addicted inmates to community treatment programs upon re-entry; and

Counties are requesting funding of \$12.8 million annually to the county mental health local government units to address the existing gap in the SUD treatment continuum and support efforts to reduce the human cost of the heroin/opioid epidemic on New Yorkers, and reduce recidivism and victimization.

## **Veterans**

Counties support our military veterans in a variety of ways including through county veteran affairs offices throughout the State that provide direct services to those that have sacrificed so much. NYSAC commends the governor for recognizing the need to expand services to our veterans in this bill. The Governor's Budget continues funding for New York State's Justice for Heroes grants. These provide \$50,000 to each of five law schools offering innovative proposals to address veterans' unmet legal needs. The funding allows law schools to provide free legal assistance to veterans and their family members in practice areas, including foreclosure prevention and other consumer protection matters, family law assistance, discharge upgrade cases, and complex appeals regarding VA benefits.

NYSAC requests we do even more and asks the Executive office to consider the following proposals during the upcoming budget amendment process.

- *Expand Veteran Court availability throughout the State.* Currently, New York has 29 veterans' treatment courts, but not all of New York's veterans live in a jurisdiction that has such a court. In support of our veterans, NYSAC believes we need to expand these courts to all counties. Veterans' Courts are diversion courts that understand many returning from combat have a difficult time readjusting to civilian life. It is for these individuals that perhaps counseling and other assistance is a better option than criminal punishment. We strongly encourage the Legislature to increase funding to expand these veterans' courts.
- *Improve Job Placement and Recruitment Options for Veterans –* Veterans gain valuable work skills and work ethic while serving, we need to expand services for veterans to help them find the right job fit once they leave the military. Additionally, we need to promote to employers why a veteran is a valuable workforce asset while providing State incentives to do so. These goals can be met by providing more state funding to current programs done by county veteran offices and work force training centers as well as continue and increase amounts placed in the State's Hire a Veteran Credit program.