

STEBEN COUNTY PUBLIC SAFETY & CORRECTIONS COMMITTEE

Monday, October 1, 2018

9:00 a.m.

*Legislative Committee Room
Steuben County Office Building
Bath, New York*

COMMITTEE:	Aaron I. Mullen, Chair Frederick G. Potter	Kelly H. Fitzpatrick, Vice Chair Thomas J. Ryan	Steven P. Maio
STAFF:	Jack K. Wheeler Tina Goodwin Cheryl Crocker James Allard	Mitchell Alger Tim Marshall Andy Morse Shawn Sauro	Brenda Aston Alan Reed Brooks Baker
LEGISLATORS:	Joseph J. Hauryski John V. Malter Gary D. Swackhamer	Carol A. Ferratella Robert V. Nichols	K. Michael Hanna Gary B. Roush
OTHERS:	Kristin Klemenz, B & W Towing James Post, <i>The Leader</i> Mary Perham		

I. CALL TO ORDER

Mr. Mullen called the meeting to order at 9:00 a.m. and asked Mr. Ryan to lead the Pledge of Allegiance.

II. APPROVAL OF MINUTES

MOTION: APPROVING THE MINUTES OF THE SEPTEMBER 10, 2018, MEETING MADE BY MR. POTTER. SECONDED BY MS. FITZPATRICK. ALL BEING IN FAVOR. MOTION CARRIES 5-0.

III. DEPARTMENTAL REQUESTS

A. District Attorney

1. **Raise the Age Funding** – Mr. Baker stated he sent out a memo regarding his budget request. With Raise the Age taking effect October 1st, there will be increased off-hours contact between the District Attorney’s Office and law enforcement to cover these cases. To fill this need, he is proposing having two senior prosecutors on call; one as primary and the second as backup at all times to work with law enforcement and deal with arraignments as they arise. Given the issues involved, he will be one of the attorneys and he intends to appoint Senior Assistant District Attorney James Miller as the second. There will be no transportation costs associated with these as we both have vehicles. He is not seeking compensation for himself as his salary is set by statute; however, he is requesting to compensate Mr. Miller at a rate of \$50.00 per day. There are 92 days remaining in 2018 and he and Mr. Miller will be splitting the on-call times. He is requesting that Mr. Miller be compensated at a rate of \$50.00 per day for the 46 days that he will be on-call through the end of 2018, which will represent a total cost of \$2,300.

Mr. Mullen asked how many cases do you anticipate having? Mr. Baker replied we are anticipating up to 100 cases per year. As far as having to go out, we anticipate 5 or 6 cases per year. The cost for Mr. Miller is for his lifestyle change. Mr. Wheeler commented the costs are, theoretically under State law, reimbursable. Mr. Reed stated we estimate about 50 felony cases per year with possibly 5 – 15 going to arraignment.

Mr. Mullen asked does this per day rate for on-call include the arraignments? Mr. Baker replied yes. There is no hourly rate; just a flat \$50.00 per day rate.

Mr. Maio asked will the off-hours arraignment part result in extra costs? Mr. Baker replied there is no question it will. It depends how the plan looks at the end. We do not have to be in compliance with the after-hours arraignment portion until 2020. Mr. Maio asked is it likely that you would need someone on-call for the 530 part? Mr. Baker replied you will need additional staffing for that. Mr. Wheeler commented there will be more positions requested when you get to that point.

Mr. Reed stated one of the points that Judge Doran impressed was that defense counsel must be present currently at arraignments. Currently there has been quite a bit of pushback from the Office of Court Administration (OCA) to have defense counsel at arraignments. Mr. Baker stated we tried to create a piece meal plan and the State shot that down. They want it done their way.

Mr. Malter stated you are requesting \$9,100 for 2019. What is the projected cost for the remainder of this year? Mr. Baker replied it is roughly \$750 per month; so \$2,300 for 2018.

Mr. Potter asked where will the money for this come from? Mr. Wheeler replied under the *Administrative Code*, once the committee approves, the Commissioner of Finance and I have the authorization, if there is enough money in the Personal Services line overall for the county, to do this. If this committee and the Administration Committee approve, we can do that transfer. The other option is the Contingent Fund which would require a resolution. If you approve, we will budget the \$9,100 for 2019.

MOTION: APPROVING THE DISTRICT ATTORNEY'S REQUEST TO COMPENSATE SENIOR ASSISTANT DISTRICT ATTORNEY JAMES MILLER \$50.00 PER DAY FOR ON-CALL DUTY RELATIVE TO RAISE THE AGE FOR THE REMAINDER OF 2018, NOT TO EXCEED \$2,300 AND FOR 2019 NOT TO EXCEED \$9,100 MADE BY MR. POTTER. SECONDED BY MS. FITZPATRICK. ALL BEING IN FAVOR. MOTION CARRIES 5-0.

B. Public Defender

1. **Counsel at First Appearance/Centralized Off-Hour Arraignment Plan** – Mr. Sauro informed the committee that we put the Counsel at First Appearance/Centralized Off-Hour Arraignment Plan in front of the Magistrate's Association and they have approved it. There may be a wrinkle in this plan with regard to Judge Coddington, but flexibility was built into this as staffing changes. Judge Doran and OCA are insistent on at least getting the plan in place so when the funding comes and the Jail is ready, we can move ahead.

Mr. Mullen asked why didn't we get a chance to see this before it was sent out to everyone for approval? He feels we are behind the eight ball. What chance are we going to have for input and how far behind will we be if we do not approve? The last plan we saw was half the size of this and that was several months ago. Mr. Sauro replied what we are looking at here is Judge Pirro, who is in charge of the magistrates, and that is why it went to them first. We have not had approval of the plan from anyone else. This is being driven by Judges Doran and Pirro. Mr. Wheeler commented from our end, this is an OCA driven thing.

Mr. Mullen asked was this plan developed by OCA? Mr. Sauro replied they took the base format we had originally. A lot of this did come out after Judge Pirro spoke with all of the parties one on one. The practical piece is the funding component. He stated he has had a number of meetings and we need to enter into a contract with the State to get that funded. He has submitted the budget plan. Mr. Wheeler clarified this is for both Hurrell-Harring and counsel at arraignment. Mr. Sauro stated there are three pieces and this was part of the global funding that they need to take some sort of action. He does not see the funding coming in until next year.

Mr. Mullen stated he would like to see an analysis of the positions that will be added and costs. He understands this is covered by OCA, but this plan almost seems worse than if we added more Public Defender positions. When he read through it, it sounds like we will need extra space, extra Sheriff's deputies; basically extra positions that have anything to do with this. The problem I thought we were looking to fix adds costs from having counsel at arraignment. We are adding multiple layers. These are the questions I have with it. Mr. Sauro replied he cannot disagree. From the Public Defender's end, how do we solve it? We are adding staff. The issue here is we

tried to work this plan out in a number of different ways and the State requirement is that we be at every first arraignment. With a county of this size and the number of public defenders, he does not think that is tenable. If we need to have counsel at arraignment twenty-four hours a day; to have that many people on call and traveling, is certainly not ideal. At the very least this plan localizes things. It keeps the numbers down in terms of how many staff we need. The question is how to forecast that for other departments.

Mr. Baker stated we have had these meetings and the State wants to manage it and told us to create a plan. With input from the various departments, we had the State come back in and say they are not paying. Under this plan, we would have saved money and they said they were not paying. We ended up winnowing the plan back and the State then took the ball and said this is what they would pay for. We did not have a tremendous amount of input. This is being driven by OCA and has been a very frustrating process for us. This has put everyone in a very difficult position and has been inflicted upon us.

Mr. Sauro stated he had proposed to OCA to let us do a test run of counsel at first appearance at Hornell since we had a holding cell and they flat out said no. Either do it all or none. They said to do it their way if they are going to pay for it. Then Judge Pirro took the next step. Mr. Reed commented our input on this plan was extremely limited and this is the net result of those discussions. Mr. Mullen asked what is the issue with Judge Coddington? Mr. Baker explained he is part-time and we were asking him to do full-time work. It has thrown a wrench into this in terms of how this will work.

Mr. Potter commented when he went to a recent town board meeting, the town justice was upset as the town needed to put more money in the contract account for them for the expenses for travel to go to Bath for arraignments. He stated his understanding is that the magistrates will rotate and be on call one week per year and be paid a per diem rate of \$200 per hour by the State. Mr. Sauro replied the original plan was the city court judges would do the 5:30 p.m. slot and the magistrates would cover the remainder. Judge Pirro is advising that the magistrates can structure this how they want. It is anticipated that each judge, over the course of a year, would only be on call and in court for one session. Mr. Potter stated most of the magistrates are only part-time. Mr. Reed replied they all are part-time. Mr. Potter stated they have other jobs and have to sign up for a time that will be convenient for them. Mr. Reed stated the schedule will be determined by participation. It could be very fluid. Mr. Wheeler commented or it will be determined by the pressure they get from OCA. The rate per appearance will be \$125.00. If a judge sits for two session they will receive up to \$250.00.

Mr. Maio commented when it came to all the meetings taking place, he thinks it would have been a good idea to have one of the members of this committee appointed as part of that group. Why did we need to build another courtroom at the Jail when we have courts in the Village of Bath and the Bath Courthouse? Mr. Wheeler replied the State is not willing to consider any other option other than the Jail as a holding facility. Mr. Maio asked why do we need to do this? Mr. Wheeler replied a holding cell in this building presents issues as there is no segregation from the rest of the building. We do have building security provided by Securitas, but OCA will not pay to have a Deputy here. They also said no to the option of the Village of Bath.

Mr. Maio commented being arraigned at the Jail looks like the deck is already stacked against the defendant. He is not comfortable with that. What is the plan for Hornell City Court? Mr. Sauro stated Hornell is equipped to do counsel at first appearance as they have a holding cell. Mr. Baker replied the State will not allow them to do arraignments there even though they have the capacity to do them. They will have to be transported to Bath.

Mr. Maio stated his hope is that this is just the first step in the process to consolidate where to do arraignments and in being able to consolidate the number of tribunals we have in this county. Mr. Mullen stated he would like to see information on what this will do to the departments.

Mr. Maio asked is there a timetable on this? Mr. Wheeler replied if the State certifies the Jail as a holding facility, they will want the plan sooner and will have to attach the funding. Overall, for the Hurrell-Harring settlement, they have planned a five year evolution and you are seeing the first year plan. This is a component of that. Mr. Maio stated even if we approve this, it is still not funded and we can deal with it during the budget. Mr. Wheeler

stated we will not implement the plan until the State agrees to pay and the Jail becomes a holding facility. When OCA sees the costs and the logistical problems, this will become fluid. You have overall input approving the budget and staffing. You will be dealing with this constantly over the next five years. Mr. Maio asked are we approving the theory of the plan? Mr. Wheeler replied OCA wants to show that they have a plan in Steuben County.

Mr. Baker stated we do not have a plan and we are three or four steps behind other counties. Mr. Maio asked do you need a motion from us to approve this plan? Mr. Sauro replied yes. Mr. Wheeler stated if you want, you can wait until next month.

Mr. Mullen stated they should be on notice of exactly what our expectations are going to be with regard to staffing. We should have that staffing information and related costs before we approve the plan. Mr. Hauryski commented for every Legislator in here, he has come to the realization that Raise the Age and Indigent Defense will cost us money and OCA will tell you what it will be. You will have not a choice as they will tell you. You need to get off the dime and make a decision and get moving.

Sheriff Allard stated this plan is very similar to the plans in Livingston, Monroe and other counties within the 7th Judicial District. The opportunity to change it is very slim. They have cookie cutter plans that they are using in every county. Mr. Mullen asked what will these requirements mean for your department? Sheriff Allard replied if we get approved as a holding facility, they will come in and tell us what cells we can use and the costs to staff. The unseen cost is transportation. One of the questions is whether we will have to enter into agreements with police departments to bring individuals in. He is sure that the police departments will be looking for assistance from the County. The other side pertains to lockup as what will be different is that the individual cannot be visibly intoxicated, have mental health issues, etc. When they are remanded, we have to take them. Some police departments will have to take people to treatment before they can come to the Jail.

Mr. Baker stated what we are being told is we can have input in creating the plan, or they can just give us a plan. If we do not pick a plan by a predetermined date, they will tell us what to do. They are designing the plan for a county like Monroe, not us. Ms. Fitzpatrick asked if we identify those costs, is the State responsible for those, or us? Mr. Wheeler replied theoretically, they are. For the Public Defender, Assigned Counsel and Conflict Defender, the State is supposed to pick up those costs. We can show you the five-year plan and the State has not approved it yet. Mr. Reed commented the County needs to be able to establish a baseline before we go into this.

MOTION: APPROVING THE COUNSEL AT FIRST ARRAIGNMENT/CENTRALIZED OFF-HOUR ARRAIGNMENT PLAN AS PRESENTLY CONSTITUTED AND PRESENTED BY THE PUBLIC DEFENDER AND AUTHORIZING THE PUBLIC DEFENDER TO ACKNOWLEDGE SAID APPROVAL TO THE OFFICE OF COURT ADMINISTRATION MADE BY MR. MAIO. SECONDED BY MS. FITZPATRICK. MOTION CARRIES 4-1. (MR. MULLEN OPPOSED)

Mr. Wheeler stated we will send the committee the draft five-year plan that encompasses this. Mr. Mullen commented we also need to be working on all of the added positions and costs. When he was looking over the plan, he thought a lot more costs should be added to the Sheriff. Mr. Wheeler stated those costs are unknown, and the costs for Raise the Age are yet to be determined.

Mrs. Ferratella commented at the NYSAC Conference they held a workshop about Raise the Age and talked about how 24 plans have been submitted to the State and none have been approved. Someone asked the question about how long it would take to get the reimbursement from the State and they committed to 30 days. Mrs. Crocker commented we were told to book quarterly and wait for the money.

C. Sheriff's Office

1. **Raise the Age** – Sheriff Allard stated he can put together what he anticipates to be additional costs and reimbursement, but it will just be an estimate until the Commission of Corrections comes in.

2. **Create Capital Project for Fencing** – Sheriff Allard stated he has funding in his Major Equipment line for fencing around the Jail. The initial estimate one year ago was \$26,300. We just rebid and it came in at \$39,975 due in large part to increases in the cost of materials. We still have money available in that line item. He requested authorization to create a capital project and budget for this project next year and have it done in early spring.

MOTION: AUTHORIZING THE COMMISSIONER OF FINANCE TO CREATE A CAPITAL PROJECT FOR THE FENCING OF THE JAIL AND TRANSFERRING \$26,300 FROM THE 2018 JAIL MAJOR EQUIPMENT INTO SAID CAPITAL PROJECT MADE BY MS. FITZPATRICK. SECONDED BY MR. RYAN FOR DISCUSSION. Resolution Required.

Mr. Mullen asked do you need to rebid this? Sheriff Allard replied no, we already bid and this price is good until March.

VOTE ON PREVIOUS MOTION: ALL BEING IN FAVOR. MOTION CARRIES 5-0.

3. **Approve Second Phase of Water Line Project** – Sheriff Allard informed the committee that they have been working on replacing the water lines in the Jail as there has been significant erosion and failures. We are doing the project over the course of three years. He requested authorization to start the second phase of the project next year. The second phase will cost \$91,972.88 and they have money available in the capital project.

MOTION: AUTHORIZING THE SHERIFF TO PROCEED WITH THE SECOND PHASE OF THE WATER LINE PROJECT IN 2019 MADE BY MS. FITZPATRICK. SECONDED BY MR. MAIO. ALL BEING IN FAVOR. MOTION CARRIES 5-0.

4. **Accept Legislative Initiative Grant - \$8,000** – Sheriff Allard requested authorization to accept a Legislative Initiative Grant in the amount of \$8,000 from Senator O'Mara. This funding will be used to purchase steel plate carriers for the Deputies.

MOTION: AUTHORIZING THE SHERIFF TO ACCEPT LEGISLATIVE INITIATIVE GRANT FUNDS IN THE AMOUNT OF \$8,000 FROM SENATOR O'MARA TO BE USED FOR THE PURCHASE OF STEEL PLATE CARRIERS MADE BY MR. RYAN. SECONDED BY MS. FITZPATRICK. ALL BEING IN FAVOR. MOTION CARRIES 5-0.

5. **Accept Legislative Initiative Grant - \$15,000** – Sheriff Allard requested authorization to accept a Legislative Initiative Grant in the amount of \$15,000 from Senator O'Mara. This funding will be used to purchase a second License Plate Reader System.

MOTION: AUTHORIZING THE SHERIFF TO ACCEPT LEGISLATIVE INITIATIVE GRANT FUNDS IN THE AMOUNT OF \$15,000 FROM SENATOR O'MARA TO BE USED FOR THE PURCHASE OF A LICENSE PLATE READER SYSTEM MADE BY MR. POTTER. SECONDED BY MS. FITZPATRICK. ALL BEING IN FAVOR. MOTION CARRIES 5-0.

MOTION: TO ADJOURN MADE BY MR. MAIO. SECONDED BY MR. POTTER. ALL BEING IN FAVOR. MOTION CARRIES 5-0.

Respectfully Submitted by Amanda L. Chapman, Deputy Clerk, Steuben County Legislature

****NEXT MEETING SCHEDULED FOR****

Monday, November 5, 2018

9:00 a.m.

PLEASE PROVIDE AGENDA ITEMS

NO LATER THAN NOON

Monday, October 29, 2018.