

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: CRIMINAL JUSTICE

DATE: JANUARY 31, 2011

COMMITTEE MEMBERS PRESENT: OTHERS PRESENT:

SUPERVISORS BENTLEY
GOODSPEED
VANNESS
KENNY
MONROE
MCCOY

KATE HOGAN, DISTRICT ATTORNEY
ROBERT IUSI, DIRECTOR OF THE PROBATION DEPARTMENT
JOHN WAPPETT, PUBLIC DEFENDER
MARCY FLORES, ASSISTANT PUBLIC DEFENDER
JOY LAFOUNTAIN, ASSIGNED COUNSEL ADMINISTRATOR
DANIEL G. STEC, CHAIRMAN OF THE BOARD
JOANN MCKINSTRY, ASSISTANT TO THE COUNTY ADMINISTRATOR

COMMITTEE MEMBER ABSENT:

SUPERVISOR STRAINER

AMY BARTLETT, FIRST ASSISTANT COUNTY ATTORNEY
JOAN SADY, CLERK OF THE BOARD
KEVIN GERAGHTY, BUDGET OFFICER
SUPERVISORS GIRARD
SOKOL
TAYLOR
THOMAS
WOOD
DON LEHMAN, *THE POST STAR*
CHARLENE DiRESTA, SR. LEGISLATIVE OFFICE SPECIALIST

Mr. Bentley called the meeting of the Criminal Justice Committee to order at 10:03 a.m.

Motion was made by Mr. Kenny, seconded by Mr. Monroe, and carried unanimously to approve the minutes from the previous Committee meeting, subject to correction by the Clerk of the Board.

Privilege of the floor was extended to Kate Hogan, District Attorney (DA), who distributed copies of the agenda to the Committee members; *a copy of the agenda is on file with the minutes.*

Commencing the agenda review, Ms. Hogan requested to renew the existing contract with Robert Lathrop for instructor services pertaining to the "Alive at 25" Program for a term commencing January 1, 2011 and terminating December 31, 2011, at no cost to the County. She opined that young drivers were most likely to be involved in fatal vehicle accidents. She explained that Margaret Sing Smith, Director of the Youth Bureau, had introduced the "Alive at 25" Program which had been implemented in Warren and Washington Counties. Ms. Hogan noted a fee was charged to the participants, a portion of which was allocated to the cost of the contract with the remaining funds being disbursed to the youth programs.

Motion was made by Mr. Monroe, seconded by Mr. McCoy and carried unanimously to authorize renewal of the existing contract with Robert Lathrop as outlined above. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the February 18, 2011 Board meeting.*

Ms. Hogan requested to amend the 2011 County budget to increase estimated revenues and appropriations in the amount of \$14,438 to reflect the receipt of Deferred Prosecution funds to be utilized to fund a temporary Investigator position. She explained the Manhattan DA had initiated an investigation into several large commercial retailers that had been selling knives which would lead to a charge of criminal possession of a weapon in the fourth degree. She further explained that he had subsequently offered the retailers a deferment of prosecution which allowed them to pay a substantial fine and cease the sale of said items in lieu of prosecution and he had offered to share

revenues generated by the fines to the smaller New York State Counties that were experiencing financial difficulties. She pointed out that a condition had been placed on the receipt of the Deferred Prosecution funds requiring that they be used in the aid of prosecution of criminal possession of weapons cases. To that end, she continued, the funds would be utilized to cover the salary of the part-time Investigator employed by the Department.

Motion was made by Mr. VanNess, seconded by Mr. Kenny and carried unanimously to approve the request to amend the 2011 County budget as outlined above and to forward same to the Finance Committee. *A copy of the resolution request form is on file with the minutes.*

Ms. Hogan requested a transfer of funds in the amount of \$5,150 to correct an error pertaining to a salary being allocated from an incorrect account. She reported that the salary was being paid out of a part-time salaries account instead of the correct full time salaries account.

Motion was made by Mr. Monroe, seconded by Mr. VanNess and carried unanimously to approve the request for a transfer of funds as outlined above. *A copy of the Request for Transfer of Funds form is on file with the minutes.*

Ms. Hogan requested authorization for out-of-state travel for Joy Savoie, Crime Victims Specialist, to attend the Domestic Violence Danger Assessment and Risk Management Training Conference on February 16-18, 2011 in Boston, Massachusetts, at no cost to the County. She noted the cost of the training was fully funded by the grant through the Office of Court Administration.

Motion was made by Mr. Kenny, seconded by Mr. Monroe and carried unanimously to authorize out-of-state travel to attend the Conference as outlined above. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the February 18, 2011 Board meeting.*

Ms. Hogan requested Committee approval to host a meeting for the Victim Assistance Program Mandated Reporter Training on March 1, 2011 for approximately 75 to 100 people at an estimated cost of \$300 for food and beverages. She noted there would be no cost to the County as the funds would be allocated from the Crime Victims Board grant.

Motion was made by Mr. VanNess, seconded by Mr. Kenny and carried unanimously to approve the request to host a training meeting as outlined above. *A copy of the Request to Host Meeting or Conference form is on file with the minutes.*

Privilege of the floor was extended to Robert Iusi, Director of the Probation Department, who distributed copies of the agenda to the Committee members; *a copy of the agenda is on file with the minutes.*

Commencing with the agenda review, Mr. Iusi requested to extend the existing contract with the New York State Division of Criminal Justice Services (NYS DCJS), Office of Probation and Correctional Alternatives for eligible funding in an amount not to exceed \$21,319 for a term commencing January 1, 2011 and terminating December 31, 2011.

Motion was made by Mr. VanNess, seconded by Mr. Monroe and carried unanimously to authorize extension of the existing contract as outlined above. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the February 18, 2011 Board meeting.*

Mr. Iusi requested to extend the existing contract with the Warren-Hamilton Counties Acting Communities for Economic Opportunities, Inc. for the Alternative Sentencing Program for adults in Warren County for a term commencing January 1, 2011 and terminating December 31, 2011 in an amount not to exceed \$27,000 in addition to the estimated \$6,000 anticipated to be received from the New York State Division of Probation and Correctional Alternatives.

Mr. Goodspeed entered the meeting at 10:13 a.m.

Motion was made by Mr. Monroe, seconded by Mr. McCoy and carried unanimously to authorize extension of the existing contract as outlined above. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the February 18, 2011 Board meeting.*

Mr. Iusi requested to extend the Memorandum of Understanding (MOU) with the Warren County Department of Social Services for Preventative Services for a term commencing January 1, 2011 and terminating December 31, 2011 in an amount not to exceed \$60,000. He noted the MOU pertained to work completed in conjunction with the PINS (Persons in Need of Supervision) Program and funded the salary of one of the Juvenile Probation Officer positions.

Motion was made by Mr. VanNess, seconded by Mr. Goodspeed and carried unanimously to authorize extension of the MOU as outlined above. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the February 18, 2011 Board meeting.*

Mr. Iusi requested authorization for out-of-state travel to attend the American Probation and Parole Winter Training Institute on February 27, 2011 through March 2, 2011 in Orlando, Florida with funding from the New York State Council of Probation Administrators.

Motion was made by Mr. McCoy, seconded by Mr. VanNess and carried unanimously to authorize out-of-state travel for Mr. Iusi to attend the Training as outlined above. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the February 18, 2011 Board meeting.*

Pertaining to old business, Mr. Iusi updated the Committee on the costs associated with the Ignition Interlock Plan by announcing that the State grant had been approved and would reimburse the County for every DWI (Driving While Intoxicated) case. He explained that originally the intent had been to only reimburse for cases which resulted in the installation of an ignition interlock device; however, he added, it was decided that reimbursement shall be provided for each DWI case regardless of whether it resulted in a CD (conditional discharge), probation or the installation of an ignition interlock device. He advised the rate of reimbursement was \$114 per case and Warren County's allocation for 2010 was approximately \$26,000.

Mr. Iusi reported that an unofficial study of the costs of the Ignition Interlock Plan had been conducted in the Probation Department and it was determined there had been 23 DWI cases in the last quarter of 2010, 20 of which did not result in the installation of an ignition interlock. He said for those 20 cases, the Probation Supervisor spent an average of two additional hours of work for each case. Mr. Iusi explained that the Warren County Probation Department handled DWI cases involving repeat offenders and the right to possess a driver's licence was suspended until it was earned back. Although the DWI offenders driving privileges were suspended, he continued, if an ignition interlock was ordered and they owned a vehicle, it was mandatory that they install the device. He advised that the majority of the offenders were finding ways to avoid installing the device, such as

transferring ownership of the vehicle. Mr. Iusi apprised that the three cases that did include ignition interlock devices required an additional 10 to 12 hours of employee time to conclude. He estimated the Ignition Interlock Plan had cost the Probation Department approximately \$3,500 for the last quarter of 2010. Brief discussion ensued.

Mr. Iusi distributed copies of a handout entitled NYSAC (New York State Association of Counties) Mandate Relief Initiatives Survey to the Committee members; *a copy of same is on file with the minutes*. He said the Probation Department had worked in conjunction with Paul Dusek, County Attorney/Administrator and JoAnn McKinstry, Assistant to the County Administrator, in order to complete the survey. He noted the survey mentioned that Warren County fully supported the Office of Court Administration in its endeavor to take over the oversight and funding of Probation. Mrs. McKinstry stated that Mr. Dusek intended to distribute the entire NYSAC Survey to all of the Supervisors upon completion.

Privilege of the floor was extended to Joy LaFountain, Assigned Counsel Administrator.

Mrs. LaFountain reported she had an additional \$72,000 in unpaid vouchers pertaining to the 2010 County budget. Joan Sady, Clerk of the Board, advised the 2010 Budget had been closed and therefore, the departmental budget would close with a negative balance. Mr. VanNess asked if the assigned attorneys were meeting the time guidelines which had been imposed and Mrs. LaFountain replied affirmatively. Mr. Geraghty asked if the vouchers pertained to defendants who were indigent and could not afford counsel and Mrs. LaFountain replied affirmatively. Mr. Geraghty questioned the latitude given to the County in determining that the defendants had been honest about their resources. Mrs. LaFountain responded that researching the backgrounds of the defendants would require a full time Investigator. Mr. VanNess asked if the current research was merely a few phone calls to determine employment and Mrs. LaFountain replied affirmatively and added in some cases disgruntled persons on the opposing side of the case would call and report an untruth presented by a defendant. She advised that defendants that misrepresent their finances on the application were prosecuted.

Mr. Geraghty presented an example of a drug dealer apprehended with \$50,000 on his person and asked if this individual would be entitled to representation by Assigned Counsel. Mrs. LaFountain replied affirmatively and added one of the problems was that the defendants were not allowed access to their funds while they were incarcerated. Mr. Monroe suggested the Sheriff's Office could assign an employee to complete this type of investigation. Mr. Goodspeed apprised if a Judge appointed Assigned Counsel from the bench there was nothing that could be done to challenge the appointment. Mr. Geraghty opined the system was flawed if it allowed the taxpayers to absorb the burden of counsel for defendants who could afford to pay.

Mr. VanNess apprised the 2010 Assigned Counsel budget had been \$200,000 and an additional \$50,000 had been appropriated. He added that with the additional \$72,000 in vouchers presented today the 2010 budget was \$322,000. He advised that the hiring of a part-time Investigator in the DSS (Department of Social Services) had reduced the amount of fraud and it would be a good idea to repeat the process with Assigned Counsel. Mr. VanNess questioned if the County could take the assets of a defendant if they were found to have lied on their Assigned Counsel application and Mrs. LaFountain replied affirmatively. Mrs. LaFountain explained that in 2010 there had been twelve defendants who had misrepresented their finances on the application, three of whom had been arrested.

Mr. Goodspeed apprised that a defendant could only be incarcerated without a felony hearing for six days and if they appeared at their arraignment without an attorney, the Judge assigned counsel from the bench. He opined the decision was made at that time based on the Constitution and not

financial need. Mr. VanNess asked if these were cases with conflicts of interest to the Public Defender's (PD's) Office and Mrs. LaFountain replied affirmatively.

Mr. Goodspeed questioned the status of Warren County implementing an alternate PD's Office system and Amy Bartlett, First Assistant County Attorney, responded the issue was still under investigation by the Warren County Bar Association. Mr. Monroe stated that Essex, Clinton and Franklin Counties covered each others cases when there was a conflict. Ms. Bartlett mentioned a case where it was stated that the alternate PD's Office had to be specified by a Bar Association. Mrs. LaFountain advised that the conflict defenders had saved Warren County money while they were utilized. Mr. Goodspeed questioned the possibility of an Intermunicipal Agreement between Essex and Warren Counties. Ms. Bartlett noted that when a Judge appointed counsel from the bench, they seldom asked any questions.

Mr. Monroe suggested the County pursue the issue of an alternate PD's Office and the possibility of an Intermunicipal Agreement which would provide coverage when there were conflicts of interest. Mr. VanNess stated that the part-time Investigator for the DSS had been hired on a temporary basis and it had been required that reports be submitted to show that the position had generated a savings over and above the cost of the salary for the position. Mrs. LaFountain noted that any of the fraud cases which were discovered by the part-time Investigator for the DSS which were for claims under \$5,000 ultimately ended up applying for Assigned Counsel. Mr. VanNess apprised that people who were caught submitting fraudulent claims to the DSS could not reapply for 18 months.

In answer to a question pertaining to the savings generated when the County had conflict defenders under contract, Mrs. LaFountain replied the savings had been significant; however, she continued, when it was time to renew the contracts, the Legislation had changed and no longer allowed contracted conflict defenders. Mr. Geraghty asked for clarification on the change in Legislation and Ms. Bartlett explained that last year there had been case law adopted which required that everything go through the Bar Association for approval. Mr. Goodspeed said the law had been in place for over 40 years stating that indigent counsel could be provided by an alternate PD Plan, a Public Defender, Assigned Counsel, the Bar Association or a Legal Aid Society. Ms. Bartlett noted the County had continued their contract with the Legal Aid Society of Saratoga who handled the family court cases; however, she added, they did not handle the criminal cases. Mr. Goodspeed said that the contracted conflict defenders were not included as one of the five alternatives in the current law.

Chairman Stec advised that an Intermunicipal Agreement with a neighboring county should be investigated. He said that the issue should also be added to the NYSAC Mandate Relief Initiative Survey which had been requested. He suggested that Ms. Bartlett work with Mr. Dusek to draft a letter pertaining to the hardship of the costs associated with indigent counsel.

Following further discussion on the matter, it was the consensus of the Committee to refer the issue to the Legislative & Rules Committee to urge the Legislators to amend the Law pertaining to conflict defenders/indigent counsel.

Mrs. McKinstry stated she would discuss the possibility of hiring a part-time Investigator to pursue fraudulent Assigned Counsel applications with the County Administrator.

There being no further business to come before the Criminal Justice Committee, on motion made by Mr. VanNess and seconded by Mr. Kenny, Mr. Bentley adjourned the meeting at 10:53 a.m.

Respectfully submitted,
Charlene DiResta, Sr. Legislative Office Specialist