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# **New York State Senate**

## **Committee on Finance**

# **New York State Assembly**

## **Committee on Ways and Means**

Public Hearing on the 2007-2008 Executive Budget  
Public Protection

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**Michael G. Breslin, Albany County Executive**  
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My name is Michael Breslin and I am the Albany County Executive. Thank you for this opportunity to speak to you today. As you know, the legal obligation to provide defense counsel to lower income people has roots dating back over 40 years to the case of *Gideon v. Wainwright*. It was in that case that the United States Supreme Court rightly focused on the issue of access to, and quality of, legal representation in all cases in which there is a right to counsel – regardless of ability to pay. Indeed, that case marked a cornerstone of American jurisprudence to which I am personally and professionally deeply committed.

As County Executive of Albany County, I have tried for many years to honor the *Gideon* mandate and am currently in the process of attempting once again to improve public defense services as I seek to move from a part-time to a full-time system. My efforts, I fear, will once again be tempered by the challenges confronting all counties on a daily basis – challenges that stem from New York State’s original, and ill-conceived, approach to the provision of public defense services.

In the aftermath of *Gideon*, the majority of states in this country appropriately recognized the indigent defense mandate as a state responsibility. Many states created public defense commissions to oversee and ensure quality and independence in the delivery of public defense services. New York, in contrast, passed legislation in 1965 imposing the fiscal obligation of the *Gideon* mandate on counties, as well as the responsibility for decisions as to methods of service delivery.

I don’t need to tell you what happened next as localities stretched limited resources to provide the competing services that residents demand. Quickly, what began properly as a demand for access and quality devolved into a battle over available resources, heightened by the fact that localities viewed defense services as “someone else’s” primary responsibility. Calls for “mandate relief” trumped those for “access to justice”. The result has been a patchwork of systems throughout the state that ensure neither access nor quality of legally-mandated representation.

The costs of this unfunded mandate on local property taxpayers continues to grow. In the 12 years I have been in office our annual expenses for indigent legal defense have risen from \$1.2 million in 1995 to more than \$4.3 million last year. The cost to counties around the State was a collective \$245 million in 2005. We expect the State figures for 2006 to be released by the State Comptroller next month. The comptroller administers a special indigent legal services fund that offsets some of that burden, amounting to just over \$700,000 in Albany County in 2006. But it is clear that the continuing conflict between budgetary pressures and the constitutionally guaranteed right to an effective defense regardless of a defendant’s ability to pay is intolerable.

For these reasons, I am urging the legislature to include start-up moneys totaling \$6 million from the indigent legal services fund to create an independent public defense commission that would establish the infrastructure necessary for state takeover, including the promulgation of much-needed standards to ensure quality and independence in the delivery of defense services to lower income people throughout the state.

Such a system is essential both to relieve counties of an unfunded mandate and guarantee defendants, no matter what their economic status, the effective and high-quality defense services they are guaranteed under the federal and state constitutions.