

# JUSTICE & PUBLIC SAFETY

**Chair:** Barb Lewis, Delaware County Commissioner

**Vice Chair:** Marilyn Brown, Franklin County Commissioner

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## COMMITTEE PRIORITIES

### INDIGENT DEFENSE

**THE FUNDAMENTAL RIGHT TO COUNSEL IS "MADE OBLIGATORY UPON THE STATES BY THE FOURTEENTH AMENDMENT."**

**- GIDEON V. WAINWRIGHT (1963)**

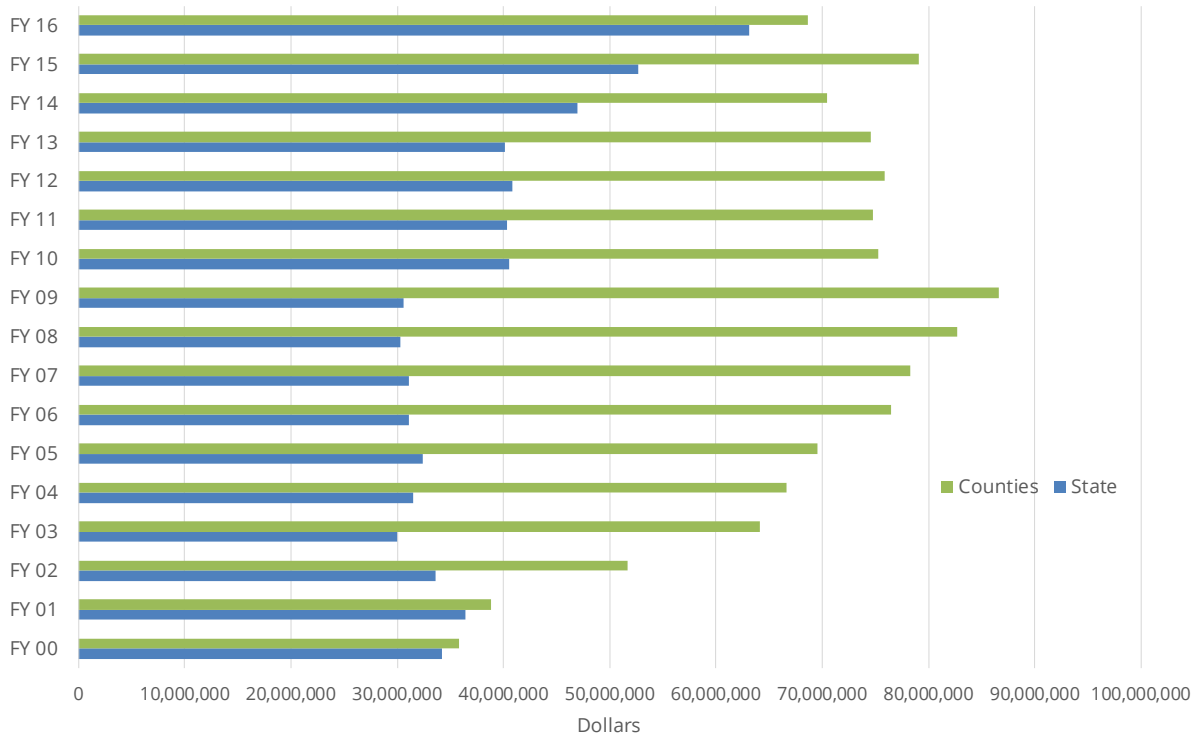
In response to *Gideon*, Ohio opted to require counties to provide indigent defense, with the state reimbursing counties for 50 percent of the cost of delivering this constitutionally mandated service. The state funded its reimbursement by utilizing revenue deposited into the state general fund from a statewide court cost established by the General Assembly. However, in 1979, when the revenue from the court cost became less than the amount required to provide the state's 50 percent reimbursement, the state modified its

funding commitment by establishing the concept of "proportional reduction." Under this concept the state simply appropriates an amount for reimbursement and then proportionally reduces the reimbursement rate to counties.

### **Ensure funding to support a 50 percent reimbursement rate**

Restoring the reimbursement rate to 50 percent has been a primary focus of CCAO. The additional funding provided by the legislature in the FY 16/17 biennial budget bill attempts to reach that goal. CCAO is sincerely appreciative of that effort which received strong bipartisan support. We ask the state to solidify this commitment and provide language and funding in the FY 18/19 state budget that guarantees counties will be reimbursed for at least 50 percent of their costs incurred for providing indigent counsel.

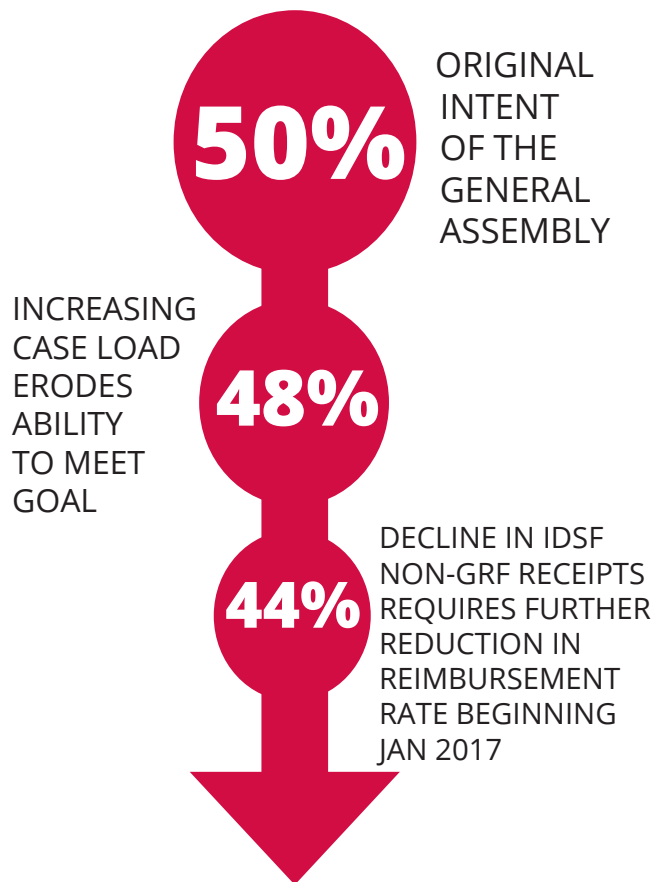
**Indigent Defense Cost: State & County Funding History**



# JUSTICE & PUBLIC SAFETY

Without additional funding beyond the FY 16/17 levels reimbursement is estimated to be around 43 percent for FY 18 and 42 percent for FY 19. Increasing caseloads and the decline in revenues deposited into the Indigent Defense Support Fund (IDSF) also have implications for the FY 18/19 state budget. Given these compounding factors, the State Public Defender indicates that the final budget appropriations will have to be adjusted upward beyond his initial estimates of \$9.6 million in FY 18 and \$11.8 million in FY 19 in order to achieve 50 percent reimbursement.

## CHALLENGES UNDERMINED FY 16/17 GOAL OF RESTORING THE PARTNERSHIP



### Cover all costs in capital cases

Legislation passed last year gives the capital case attorney fee council, comprised of five sitting judges of the courts of appeals, the unilateral power to establish the rate counties must pay for lawyers who represent defendants in capital (death penalty) cases. The rates set by this council are significantly higher than the rates previously

established by the county commissioners for capital case representation. The council's action amounts to an unfunded mandate for which the counties should be compensated. Because of this action CCAO believes that the General Assembly should fully reimburse counties for all costs of capital cases instead of providing one general rate of reimbursement for all cases.

### Constitutional compliance requires systemic reform

CCAO firmly believes that Ohio's current system of providing indigent defense is at risk of a constitutional challenge. Transitioning the delivery of indigent defense services must be made by shifting the obligation from the counties to the State as *Gideon* held. CCAO notes the following three points supporting this transition as the most appropriate course of action:

- Report upon report has concluded that Ohio's system for providing counsel to indigent defendants is inefficient and ineffective. Moreover, it is in need of significant improvements and that an excessive portion of the burden for providing indigent defense has been placed upon and is being borne by the counties.
- This is an issue of right-sizing government. The state is the most appropriate government to be responsible for the statewide provision of indigent defense representation.
- Under the current system, each of Ohio's 88 counties operates its own indigent defense system, which has created discrepancies in the quality, efficiency and cost of representation.

### Transitional legislative steps

Recognizing that a successful transition cannot occur overnight, the focus of reforming the indigent defense system is upon transitioning responsibility and funding from the counties to the state over a period of time. However, CCAO believes that two immediate legislative steps would vastly improve the provision of indigent defense:

**1. Counties should be relieved of providing counsel in capital cases**

– As noted above, the legislature recently created a panel of appellate court judges who are unilaterally empowered to establish the rate of compensation that a county must pay to attorneys representing indigent clients in capital (death penalty) cases. While the legislature expressed concern that the expertise required to represent these individuals is not being adequately compensated, the counties will bear the burden of the resulting increase in cost. CCAO suggests that the better course of action is for the Office of the Ohio Public Defender to assume and the State to fund the defense of all death penalty cases.

**2. Eliminating jail sanctions**

– CCAO believes that there are opportunities to modify various non-violent criminal offenses to eliminate the jail sanction, thereby reducing the number of offenses that entitle an indigent individual to counsel. This includes reclassifying most traffic offenses to minor misdemeanors or administrative violations dealt with by the BMV and not in the courts.

CCAO also wishes to express concern that several current system management practices hinder the efficient delivery of indigent defense:

- **Abuse of assigned counsel selection** – The Office of the Ohio Public Defender should have the authority to reduce reimbursement for counties that have non-compliant delivery models in order to incentivize effectiveness and efficiency. Where appointments do not meet standards as passed by the Ohio Public Defender Commission, the Ohio Public Defender should have the authority to reduce the reimbursement to the county. Presently, all counties are mandated to receive equal percentages of reimbursement without any measure of quality or efficiency. This means inefficient, expensive per-case counties are using a disproportionate share of the available reimbursement dollars.

- **Court scheduling practices** – Many judges schedule in conflict with each other, both within their own courts, and with other courts within the same county. These scheduling conflicts cost significant amounts of money for other justice agencies like the prosecutors, sheriffs and public defenders who must staff these schedules. This practice must be eliminated. Courts should be required to create cross-agency justice boards that determine optimal scheduling to reduce conflicts and waste.
- **Verification of indigency** - One area that the counties continue to grapple with is the verification of indigency. Although it is the courts’ responsibility to determine an applicant’s indigency or eligibility for a reimbursement, recoupment, contribution or partial payment program pursuant to Rule 22 of the Supreme Court Rules of Superintendence, we find the courts lax in accepting and fulfilling this responsibility. Commissioners are without power to ensure the courts comply with their obligations and consequently are frustrated in their belief that the system costs are greater than they should be and look to the legislature for a remedy to this issue.

**EMERGENCY 9-1-1 FUNDING AND MANAGEMENT**

The Statewide Emergency Services Internet Protocol Network Steering Committee (ESINet) is tasked with moving Ohio to a Next Generation 9-1-1 (NG9-1-1) system that supports digital communications and can leverage future advances in technology for emergency responders to effectively protect and efficiently respond to calls from the public for emergency assistance. The technology associated with this system is extremely expensive and cannot be borne by counties alone. This system must be adequately funded to ensure that the public’s expectations are met.

**A universal device fee must be enacted**

The next biennial budget should include provisions establishing a Universal Device Fee,

which is a permanent, statewide, uniform monthly charge against all numbers/addresses that are capable of accessing 9-1-1, to fund Ohio's 9-1-1 system. The revenue from the monthly charge should be utilized to adequately support both the state's provision of ESINet and 9-1-1 services and local governments' public safety answering point (PSAP) operations centers.

### **The universal device fee must support local PSAP operations**

Funding allocated to the PSAP operations centers should support the acquisition of the necessary hardware, software, and technology upgrades and annual maintenance of the system; underwrite the costs of mandatory training requirements; and establish a reserve for funding the major system technology advances that will occur over time. The state should also consider providing specific incentives which assist counties in completing last mile connectivity; maintaining their Ohio Location Based Response System which provides address, street and location data; and effectively consolidating PSAPs.

### **Counties should manage PSAP operations**

The State NG9-1-1 system and the PSAPs it supports will eventually replace the existing 9-1-1 systems throughout the State. CCAO recommends that PSAP management become the responsibility of commissioners as a county department. CCAO recommends that all calls to 9-1-1 be received at a single centralized PSAP location within the county, complimented with appropriate redundancy, for dispatch to the public safety/service provider covering the area where the call originates. There is also a need to clearly distinguish between the PSAP 9-1-1 call receipt function and the dispatch function and insure that a political subdivision that provides dispatch services for another subdivision can contract for and fully recover their costs in providing that service.

### **DRUG EPIDEMIC IMPACTS ON COUNTY JAILS**

The state took great strides in the 131st General Assembly to address the "opiate epidemic." However, the state must keep in mind that the

jails' mission is not to treat or house the mentally ill or addicted. Jails are not designed to be treatment facilities, and jail staff are neither envisioned nor trained to be treatment providers. The state must accept responsibility for the management and care for the mentally ill and addicted population and get them out of the jails.

# 70+%

OF THE JAIL INMATES SUFFER FROM ADDICTION OR MENTAL HEALTH ISSUES.

The continued incarceration of mentally ill and addicted individuals in county jails places an undue burden of risk and of cost upon these facilities and is clearly outside the purpose for county jails. Jail employees are not trained to manage or treat individuals suffering from mental illness or addiction. This population is at high risk for injuring themselves or others. The health care costs for these individuals are excessive, and the housing of these individuals in a jail threatens public safety by taking up scarce bed space that was designed for and should be used for housing real criminals.

CCAO recommends that the state take the following actions specifically designed to assist county jails in managing and caring for the mentally ill and addicted population:

- Establish and fund a program managed by the local county behavioral health boards that utilizes Medicaid managed care providers and local providers to assess and treat jail inmates and, upon release, continue treatment under traditional Medicaid coverage. This program will provide a continuity of care for mental health and addiction services that are so critical for many of the individuals incarcerated in our jails.
- Establish a statewide behavioral health triage program that provides regional centers that law enforcement can take individuals to who have been taken into custody or are incarcerated which:

- ◇ Serve as a drop-off center and provide crisis beds for crisis intervention
- ◇ Conduct immediate forensic evaluations
- ◇ Manage detoxification
- Require the Department of Mental Health and Addiction Services' Central Pharmacy to provide all psychotropic drugs prescribed for county jail inmates.

## **Adopt a risk based system to establish bail for defendants**

Bail refers to the process of releasing a defendant from jail with conditions that reasonably protect public safety and ensure the defendant will show up for court. Ohio law defines bail as security for the accused to appear in court (ORC Section 2937.22). Usually there is a bond schedule established by the court for the various types of offenses, and if the individual can post the monetary amount required, they are released from jail. Risk of flight or the impact of the individual's release upon public safety, the true purposes for bail, are not taken into consideration under this methodology. If the individual can provide the money, they gain release from jail.

However, the ability to pay a bail bond is impossible for too many of the people expected to pay it, and, as a result, our county jails house many pre-trial individuals who present no reasonable risk to the public safety but remain incarcerated simply because they don't have the money required to gain their release.

The Ohio Criminal Sentencing Commission has established an Ad Hoc Committee on Bail and Pretrial Services which is evaluating the need to adopt a risk-based system to establish bail for defendants. Considering that over 60 percent of our counties' average daily jail populations are unsentenced individuals who could not post bail, CCAO believes a risk based system to establish bail would help reduce our county jail population.

## **COMMITTEE RECOMMENDATIONS**

### **SAFETY CAPITAL GRANT PROGRAM**

The Safety Capital Grant is a new program that was established in House Bill 64, the last biennial budget bill, which appropriated \$10 million for FY 16 and \$10 million for FY 17. The grants are to be awarded to local governments to provide funding to purchase items to enhance the public safety of a community's residents. Individual political subdivisions could receive up to \$100,000 in grant funding while applications from multiple jurisdictions could receive up to \$500,000.

With over 800 grant applications received during the FY 17 funding round, the program clearly shows the pent-up demand for needed emergency services equipment and strongly suggests that the General Assembly ought to continue this program in the next biennium and significantly increase the funding appropriated for the program.

### **ELIMINATION OF MARCS USER FEES**

The state has committed a significant investment to upgrade the Multi-Agency Radio Communication System (MARCS) radio system to provide interoperability among local responders' communications equipment. One of the challenges to local governments wanting to utilize MARCS, however, is the cost prohibitive monthly user fee the state currently charges local responders for use of the system.

The FY 14/15 budget made grant funding available to rural fire departments to help them pay the monthly MARCS user fee. The FY 16/17 budget continued this funding and also provided GRF funding to subsidize \$10 of the \$20 monthly MARCS subscriber fees paid by political subdivisions during the FY 16/17 biennium. This subsidy should be continued and increased in the next biennium.

Ultimately, in order to make the system a viable option for counties and other local governments' communication needs, the monthly MARCS

user fee must be eliminated. For those political subdivisions that have negotiated equipment acquisition or sharing arrangements in order to reduce their user fee obligation, these agreements should be subject to renegotiation if the fee is permanently reduced or eliminated.

### **STATUTORY COURT COSTS**

Clerk of court fees (ORC Section 2303.20) were last increased in 1992, and probate court fees (ORC Sections 2101.16 and 2101.17) have not been increased since 1976. These fees help offset the cost of the operation of the clerk of courts office and probate court. CCAO asks that these fees be increased significantly to offset the gross depreciation in their value resulting from inflation.

### **MUNICIPAL CHARGING PATTERNS**

CCAO must express its frustration regarding current municipal charging patterns. Presently, municipalities can choose whether to charge a misdemeanor criminal case under a local municipal ordinance or under the Ohio Revised Code. This decision holds great significance as it relates to whether it is the city or the county who will pay for the costs of detention, mental health evaluations and public defense expenses and which will benefit when fee or fines are collected. While municipalities are understandably authorized under their home rule authority to establish a criminal code and exercise police powers, this power should not extend to shifting costs to the state via counties by citing an individual under the Ohio Revised Code when the individual case offers no financial incentives for the municipality to prosecute the case under its municipal ordinance authority.

### **COMMISSIONERS USE OF OUTSIDE LEGAL COUNSEL**

The board of commissioners may employ an attorney other than the prosecuting attorney to represent it on either a particular matter or on an annual basis. However, the total compensation paid in any year for outside counsel cannot exceed the total annual compensation of the county prosecuting attorney. CCAO asks that this

artificial spending cap imposed by ORC Section 309.09(C) be eliminated.

### **STATE SUBSIDY FOR HOUSING CERTAIN PRISONERS IN COUNTY JAILS**

State laws and policies have contributed to the significant increase in county jail population. State funds should be appropriated to reimburse counties for the costs of housing prisoners in county jails that are doing any of the following:

- Serving sentences for a felony conviction.
- Being held by the Adult Parole Authority pending a parole revocation hearing.
- Being incarcerated pursuant to the provisions of the Domestic Violence Preferred Arrest Law (House Bill 335).
- Serving mandatory jail sentences under the state's OMVI laws.

### **COVERAGE FOR MEDICAL COSTS OF UNSENTENCED JAIL INMATES**

CCAO asks that the state encourage Congress to remove the so-called "inmate exception" that prevents federal medical benefits from being paid for people in jail whether or not they have been convicted of a crime. Current federal benefits rules that must be followed by the states leave counties solely responsible for the medical expenses of jailed individuals. As a result, qualified individuals who have been jailed are automatically stripped of their federal benefits before they have been convicted. This appears to be a direct contradiction of the basic presumption of innocence, which is the foundation of the American criminal justice system. The state also could assist counties by amending its Medicaid plan to both continue eligibility to and provide benefits for a Medicaid eligible individual during their incarceration in a county jail. While federal law prohibits federal reimbursement for medical services provided to incarcerated individuals, it does not prohibit the state from spending state dollars at the Medicaid rates for such services which, if paid, would help subsidize the county's cost.

## **SHERIFF DEPUTY TRAINING REQUIREMENTS**

The SFY 2016-2017 budget bill directed the Ohio Peace Officer Training Commission to require every police agency, including the county sheriff, to have their appointed peace officers complete a total of 11 hours of continuing professional training in calendar year 2016, and a total of 20 hours of continuing professional training in calendar year 2017. The previous requirement was four hours per year.

While the county will receive reimbursement from the state for the actual training, left unfunded for the county to pick up is the officer in training's regular salary and the covering officer's salary at time and a half. The state needs to recognize that it is failing to compensate the counties for the most significant cost of deputy training – deputy salaries - and provide additional funding to ensure that the county recovers the entire cost of mandatory training imposed by the state.

## **COURT SYSTEM RESTRUCTURING AND MANAGEMENT**

While CCAO recognizes and respects the court system as an independent third branch of government, several issues involving the judicial system are impacting counties' efforts to increase efficiency performance and contain costs.

- The current system of county and municipal courts is Balkanized, functions inefficiently and ineffectively, and, consequently, costs local government more than it should to operate. A complete review and restructuring of the misdemeanor court system should take place.
- The state should begin moving toward the assumption of full responsibility for the operation and management of the common pleas court system in the state, thereby fostering a more collaborative and unified system.
- There is an increased incidence of courts demanding funding of budget requests which are neither pragmatic nor responsible,

and that exceed funding parameters imposed upon other county officials and challenge resource allocation.

- A periodic review of the number of judgeships required in the various courts based upon population and caseloads should be undertaken.

## **DRC COMMUNITY CORRECTIONS PROGRAMS**

The Department of Rehabilitation and Corrections (DRC) and the Department of Mental Health and Addiction Services (MHAS) have begun to work cooperatively to develop and fund programs to support a continuum of community corrections programs that provide drug and alcohol counseling and treatment and services for the mentally ill in the county jails. CCAO strongly supports this collaboration and encourages a much greater level of reinvestment in the communities to support these goals.

The Department of Rehabilitation and Corrections' "Community Corrections Act" programs should continue to be used as the foundation upon which to build this infrastructure. These highly successful programs are developed through evidence-based analysis, and best practices models are funded through the Division of Parole and Community Services. Community Corrections Act (CCA) line items support felony prison diversion and misdemeanor jail diversion programs in the local communities.

In addition, the SFY 2016-2017 biennium budget, significantly increases funding for misdemeanor jail diversion 408 line item programs and felony prison diversion 407 line item programs. The additional 407 line item funding is designed to support expansions of the Probation Improvement and Probation Incentive Grant programs as well as SMART Ohio Grants and to provide new funding for alternative prison incarceration options for low level, non-violent, drug dependent felony offenders.

Funding for these CCA programs should continue to be increased and new program options developed to support the local communities as best practices become identified.

### **DYS JUVENILE JUSTICE FUNDING**

Support for local juvenile justice programming has been ignored for over a decade. It is well past time for the state to significantly increase funding through the Department of Youth Services for juvenile detention services.

RECLAIM Ohio and the Youth Services Grant (510 line item) are the major components for juvenile justice funding and absolutely are critical funding programs for Ohio's juvenile courts, accounting for approximately 33 percent of their operating budgets. Annual RECLAIM Ohio funding has remained at approximately \$30 million per year since FY 2010. The Youth Services Grant also continues to be flat funded, as it has been since FY 2003, at \$18.6 million per year. Together, these line items have seen almost a 10 percent reduction in funding from the FY 2002 appropriation levels.

Failure to fund these line items adequately will lead to increased commitments to DYS institutions because the resources will no longer be available locally to serve these youth in their communities.

### **COMMUNITY BASED CORRECTIONS FACILITIES**

Community Based Corrections Facilities (CBCFs) are secure residential facilities that house individuals who have been diverted from the state's prison system in order to provide them with intensive programming and rehabilitation services that will lead them to choose not to reoffend. CBCFs are created by the common pleas courts through the establishment of a judicial advisory board and are managed by a local facility governing board comprised of individuals appointed by the judicial advisory board and the county commissioners of the member counties. CBCF funding is provided through grants administered by the Department of Rehabilitation and Correction. An expansion of the current funding would allow for the diversion of more individuals from prison into the CBCF programming.

State law limits the time an individual can stay in a CBCF to a period of six months or less. However,

new research and empirical analysis suggests that programming objectives and results are more effective and successful if treatment is extended beyond six months. CCAO recommends that the legislature work with the Department of Rehabilitation and Correction to determine if state law should be amended to allow for a longer maximum stay in a CBCF and whether CBCF programming could effectively provide addiction and mental health rehabilitative services.

### **STATE FUNDING OF THE LEADS SYSTEM**

With the advent of the Statewide Emergency Services Internet Protocol Network (ESINet) Steering Committee, the administration of the state's Law Enforcement Automated Data System (LEADS) should be merged into the ESINet to eliminate the need for county contributions for maintaining the system and should provide a funding mechanism to local jurisdictions to cover the cost of hardware and software upgrades required by new technology applications.

### **PROSECUTION OF CRIMES OCCURRING ON STATE PROPERTY**

The state should provide a biennial appropriation line item to pay 100 percent of the costs incurred by counties for prosecuting offenders who commit crimes at state institutions, such as state prisons, or on state-owned property.

### **VOLUNTEER FIRST RESPONDERS TRAINING**

The number of hours required for a volunteer to become certified and maintain certification as a fireman or emergency medical service responder has become onerous. The state should reevaluate the training requirements for these volunteer positions.