I. **CALL TO ORDER**

Mr. Van Etten called the meeting to order at 9:00 a.m. and asked Ms. Fitzpatrick to lead the Pledge of Allegiance.

II. **APPROVAL OF MINUTES**

**MOTION:** APPROVING THE MINUTES OF THE JANUARY 4, 2021, AND JANUARY 25, 2021, MEETINGS MADE BY MR. POTTER, SECONDED BY MR. MULLEN. ALL BEING IN FAVOR, MOTION CARRIES 4-0.

III. **DEPARTMENTAL REPORTS**

A. **Emergency Management Office**

1. **Our Lady of Lourdes Contract Update** – Mr. Marshall stated he received a new invoice with new pricing. He stated he contacted them as we have a contract for a certain price. They acknowledged there was a mistake and they will honor the contract pricing and there will be no increase to the price.

2. **RFP Generator Maintenance** – Mr. Marshall stated this item was actually approved by committee in November, so no action is needed.

B. **District Attorney’s Office**

1. **Traffic Diversion Update** – Mr. Baker stated most of the inter-municipal agreements have been signed and we are waiting for a few more. We are now working on the payouts. Mr. Terwilliger stated the payouts are in process and we have paid out about 50 percent of them. He distributed a handout showing a breakdown of the payouts for 2020. For 2020 they paid out $124,152.75.

Mr. Potter stated I sent out an email at the end of last week notifying you of two towns in my district that said they did not receive the contract document that you had emailed. You may need to reach out to them again. Mr. Terwilliger stated I did get your email and I am in the process of sending the contracts back out to those municipalities. We had sent the contracts out by email and I know some did not receive them as their email was not valid. I will be following up this week to make sure those municipalities want to participate in this program.
Mr. Terwilliger stated the total amount collected in January 2021 as of midnight last night, was $70,625. After this first month, we are on track for what we have anticipated in the budget. Mr. Van Etten asked of the total payout, what was the amount the County retained? Mr. Terwilliger replied we collected $459,000 and paid out $124,000. We also paid $30,000 - $40,000 to the company that is managing the program, $35,000 was paid out to Law Enforcement and the remaining amount went to the County’s general fund.

2. **Major Equipment** – Mr. Terwilliger stated last year we had budgeted $3,900 to purchase a radio and undercover antenna. The radio is $3,700 and the antenna is $150. Mr. Van Etten asked was this in the original budget for 2020? Mr. Terwilliger replied yes. I had included it with the vehicle and did not break it out. Mr. Mullen asked why are you taking it out of the 2020 budget? Mr. Terwilliger explained originally I had included the radio and antenna in the cost of the vehicle. We were going to present this request at the end of December, but there were some additional questions and we tabled it. Mr. Van Etten stated the vehicle and equipment was budgeted in 2020. The vehicle was purchased and there was money remaining in Major Equipment to purchase the radio. Mr. Mullen stated I don’t understand how that works. The 2020 funds would have already been rolled into the general fund. Mr. Wheeler explained departments can encumber funds. Those encumbered funds do not get rolled over. The 2020 budget will be closed out at the end of February.

**MOTION: AUTHORIZING THE DISTRICT ATTORNEY TO PURCHASE A NEW RADIO WITH COVERT ANTENNA IN THE AMOUNT OF $3,900 FROM THE 2020 MAJOR EQUIPMENT LINE MADE BY MR. MULLEN, SECONDED BY MR. POTTER, ALL BEING IN FAVOR. MOTION CARRIES 4-0.**

3. **Forfeiture Funds Purchase** – Mr. Terwilliger explained there are two forfeiture accounts; one for the District Attorney’s Office and one for the New York State Police. Recently the District Attorney was at a motor vehicle accident in the Wayland area and the State Police did not have cameras. Five years ago we did purchase cameras for the Bath barracks. Mr. Terwilliger requested authorization to purchase ten cameras and SD cards for a total cost of $750. The cameras are about $70 each.

Mr. Baker explained this is actually an agreement with the New York State Police; we keep their share of the forfeiture moneys in a separate account. We use those funds locally in the County and this has been in place for almost twenty years now. Mr. Swackhamer commented this was set up twenty years ago so we could keep the forfeiture money in the County and we have purchased printers and others things for the State Police, using those funds, when they could not afford to do so.

**MOTION: AUTHORIZING THE DISTRICT ATTORNEY TO PURCHASE TEN CAMERAS AND SD CARDS FOR A TOTAL OF $750.00 USING NYSP FORFEITURE FUNDS MADE BY MR. POTTER, SECONDED BY MR. RYAN. ALL BEING IN FAVOR. MOTION CARRIES 4-0.**

4. **Report of Drug Cases** – Mr. Terwilliger stated the narcotics unit assisted with 50 cases in 2020. Approximately 40 percent of those cases were drug purchases or pharmaceuticals; 20 percent were Heroin and 13 percent were Cocaine. We also assisted in the seizure of two illegally possessed handguns from Pennsylvania. He stated he will email that report out to the Legislators.

Mr. Van Etten asked is that an increase over 2019? Mr. Terwilliger replied in 2019 we had 72 cases. From the end of March through June, our unit was sidelined and there was not a lot of work. When the first round of stimulus checks came out, things started to pick up.

Mr. Maio asked over the past ten years, what has been the overall trend with drug arrests in the county? Has there been an increase or decrease in drug use, or has it remained flat? Mr. Baker replied there has been an overall increase in our cases. Last year we saw fewer cases because of COVID. There has been more of an uptick as people are being arrested multiple times with bail reform. Drug cases tend to be trending upward and the numbers have been staying the same or going up year over year. Our drug initiative has been extremely effective; however, I am not sure if that is a function of the drug problem or increased enforcement.
Ms. Fitzpatrick asked how much harder is it to do that job and get them to court? Mr. Baker replied there are two things that affect this. The first is bail reform. Traditionally we depend on cooperative citizens helping us out and that has been harder to get with bail reform. The other issue is discovery reform. There is a higher likelihood of confidential informant information being released and it has been harder to find confidential informants. We did catch up on our cases by doing two grand juries during the months of October through December, and with that we were right about where we should have been and were getting cases indicted and moving. Then the courts were shut down again. We do not have trial dates yet. I did speak with the Chief Administrative Judge and nobody knows what will happen with trials as the court system has been shut down.

Mr. Terwilliger stated as an investigator, this has been a learning curve for us. We are a small unit and we act on actionable information. With bail reform, the confidential informants on the street are not as willing to give us actionable intelligence and they don’t want to cut ties with the dealers/sellers within the drug community.

5. **Contract Renewal with Finger Lakes Paralegal** – Mr. Baker informed the committee the contractor is Pam Aini. One component of the contract has been training; she has trained staff in the Discovery process. Additionally she has also been working on a couple of projects, one of those being the records project. She has been developing a program and protocol for auto disposal of records. She has also been working with us on developing training for local court judges and is creating a program for virtual CAP. Mr. Baker stated he would like to finish the records project and make sure that staff is trained. He also would like to have the ability to have Ms. Aini train the local court judges if we decide to go with virtual CAP.

Mr. Mullen commented this contract has been extended since I have been on the Board. Mr. Baker replied the contract has been extended a couple of times. Ms. Aini created our forfeiture program and we did renew the contract a couple of times. She has also stepped in to train new staff to do the forfeitures. Additionally, Ms. Aini has stepped in to help us with discovery reform and has created our answer for the 245 and our system is the best in the State, from what we have heard. She has the skill set that others do not. The contract renewal that I am asking for today deals with records retention. Ms. Aini has a history with our office going back to 1985; we are using her institutional knowledge right now. We have used her services less and less over time. The purpose of this contract is to finish up our records project and if appropriate, training for virtual CAP.

Ms. Prossick commented this contract renews every six months and allows the District Attorney to use Ms. Aini for the purposes of training his staff. The training of court staff is not included in the contract and that would be a change in scope. The discussion within the Seventh Judicial District is that the State is training their employees. That is still in discussion.

Mr. Van Etten asked what is the annual cost of the contract? Mr. Baker replied the cost varies year to year. When she was helping us with the Discovery, the cost was higher as that was a huge project. Right now, for this year, the cost would be nominal to finish up the records program. Her rate is $75.00 per hour and that has not changed. I would not expect this renewal to be more than $1,000 - $2,000.

**MOTION:** AUTHORIZING THE DISTRICT ATTORNEY TO RENEW THE CONTRACT WITH FINGER LAKES PARALEGAL SERVICES FOR A SIX MONTH PERIOD ENDING JUNE 30, 2021, TO COMPLETE THE TRAINING FOR THE RECORDS DISPOSAL PROGRAM AT A RATE OF $75.00 PER HOUR MADE BY MR. POTTER. SECONDED BY MR. RYAN FOR DISCUSSION.

Mr. Maio commented with the records, I can’t tell you how many records accumulate and I think that is a great idea. However, it seems strange to me that someone working under the auspices of the District Attorney’s Office would be training judges in law. Mr. Baker clarified it is not legal training, it is technology training. Ms. Aini would be working with the local court judges to teach them how to make the computer interface work for virtual CAP. Mr. Maio stated that is not our role as a County; that should be the State. Mr. Baker stated our hope is the State will provide that training and that is why we are not changing the contract to include that component now.

**VOTE ON PREVIOUS MOTION:** ALL BEING IN FAVOR. MOTION CARRIES 4-0.
6. **Status of Cases Held Up by COVID** – Mr. Baker informed the committee that COVID has held everything up. When we break loose for trials, things will be crazy and there will be costs associated with that. Since the onset of COVID, we have not hired expert witnesses. We currently have ten homicide cases pending in Steuben County; 1 arson, 4 vehicular manslaughters, 3 standard murders and 2 drug overdoses. Some will require expert witnesses. We have already received notice on a murder case that there will be a psychological defense and that will require an expert witness. There is an indication that the State may send down visiting judges due to the number of cases we have. Right now, cases are not moving. He anticipates that once the courts open up we will be looking at a two-year delay. Mr. Baker stated he may be coming back to committee to ask for additional money to pay for expert witnesses. He commented that he has made application to impanel a new grand jury for February.

Mr. Van Etten asked if there has not been any activity for three quarters of 2020, that money that you would have used would have been rolled into the General Fund? Mr. Terwilliger replied I believe so and that would have been $16,000 - $20,000. Mr. Van Etten commented so for us it would be a timing issue. Mr. Baker stated we did not expend those funds last year and we are facing more major cases this year. We will try to manage our expert witness costs, but sometimes you have to hire someone else. I just wanted to forewarn you. This is an anomaly for us.

7. **Discovery Unit Update** – Mr. Baker stated our Discovery Unit is doing a phenomenal job. They are working remotely and there have been no complaints about the speed in which the items have been turned over. The virtual discovery program is working great. The unit consists of two paralegals and two attorneys; it is running smoothly and we are doing it with less people than projected. Thank you for your support in getting this unit together.

8. **Virtual CAP** – Mr. Van Etten asked for an update on virtual CAP. Mr. Baker stated we have held a couple of meetings with the State. They wanted us to get everyone to agree that we would do it. The local court judges are on board with the idea and in theory, the district court in Rochester is as well. In the current State budget, virtual CAP is included. We had originally talked about doing it as a pilot program. The groundwork is in place and OCA (Office of Court Administration) is saying we can do it if the legislation is passed. We are back to virtual CAP right now because of COVID restrictions and that will continue for the foreseeable future. My hope is that since we are prepared, able and doing well, that we will continue to do it.

Mr. Van Etten asked for an update on CAP court for 2020, including statistics and costs. Mr. Baker stated he will work with the Sheriff to provide that.

C. **Conflict Defender**

1. **Distribution #11** – Mr. Sauro stated that this is a time sensitive request. They are requesting authorization to apply for and receive Indigent Legal Services Distribution #11. This is the continuation of a prior distribution. There was #5, #8 and now #11. This would be a new three-year contract totaling $421,794 and would be split into $140,000 increments across each of the three years. This funding will pay the salary of one full-time Conflict Defender and one part-time Conflict Defender. It is important that we continue to have those costs covered. That application to the State has to be in by February 12, 2021.

**MOTION:** AUTHORIZING THE CONFLICT DEFENDER TO APPLY FOR AND RECEIVE INDIGENT LEGAL SERVICES DISTRIBUTION #11 IN THE AMOUNT OF $421,794 OVER THREE YEARS MADE BY MR. MULLEN, SECONDED BY MR. POTTER. ALL BEING IN FAVOR. MOTION CARRES 4-0.

IV. **OTHER BUSINESS**

A. **Second Amendment Ordinance** – Mr. Van Etten stated Mr. Wheeler and I had received a request from the Second Amendment group and he asked Ms. Prossick to review the request. Ms. Prossick stated the Second Amendment group provided us with the preservation act to review. This second round that they presented is what they had presented a year ago. The Chairman, Mr. Wheeler and I met with them and expressed our concerns after they submitted their first round and this is their second attempt, however, some of the same issues still exist. In a nutshell, I think a lot of the
concern that I had with the first round and with this one is it is written under the premise that your Second Amendment right is unlimited, which is not true. So it is the starting point that kind of fails to launch any sort of act in my mind. That was the same with this one. Also, when you read a constitutional amendment such as the Second Amendment, you cannot read that in a vacuum by itself because what this does is it ignores other clauses that you still have to abide by. If you just look at the Second Amendment language, it is very clear; a well-regulated militia being necessary to secure a free state; the right of the people to bear and keep arms shall not be ignored. That is what the Second Amendment says, but that is not what it means when you look at the rest of the Constitution and then all of the case law that references the Second Amendment. So my recommendation is it is not something that we can entertain without violating other parts of the Constitution and probably most importantly, to all of us personally, our oaths of office to uphold the Constitution. That is where we get jammed up.

Mr. Van Etten stated I would agree. I am probably as much of a guns rights person as anyone in this group, but we also gave an oath of office pledge when we took these jobs and to begin not enforcing State laws I think is just reckless. Especially with the Governor that we have, I could see where all sorts of consequences could impact the County and all of the residents of the County if we did something like that. I am not in favor at all with moving forward with this in the way that it was presented to us.

Mr. Mullen stated I agree in part and disagree in part with what has been discussed. I think that the Second Amendment means what it says and I fully believe that New York State has gone too far in its regulation. But, we also have fundamental principles that are constitutional, that make it so that we as a county cannot override what the State has enacted, as Attorney Prossick has mentioned, with the preemption doctrine. So, just as I don’t think in San Francisco they should have sanctuary city laws that override immigration statutes, I don’t think that we as a county can override what the State as done. I think our recourse is to not put our local officials in an impossible position where they either have to obey the County Law or obey the State Law when the county really doesn’t have authority to override the State anyhow. I think our only recourse is to join in with others that have sued the State, and there have been lawsuits where we have had the opportunity to be amicus and we have not joined as a county. I know we have joined other lawsuits as amicus over immigration issues. I am a little frustrated that we end up on the opposite end of things where I would like to be politically, but I completely agree that this is not something that we should pass and we don’t have the authority to pass it. For the Sheriff, District Attorney and others who would have to abide by this as law enforcement officials, they would be in an absolutely impossible position.

Ms. Prossick stated it violates other things in standing; it gives individuals the right to sue any other individual if they enforce a State law or don’t abide by a local law, so there are just problems of that nature also. Then that lawsuit gets heard in State Court, which a local law cannot go through State Court. There are a lot of legal technical issues.

Mr. Van Etten commented the interesting thing is that Ms. Prossick, Mr. Wheeler and I had three different meetings with Mr. Peterson last year and I had said that we needed to pull back on the legal advice. We had encouraged them to get legal counsel of their own and I don’t believe they did that.

Mr. Ryan commented I respect Ms. Prossick’s opinion on this, but I would like to see us get off our hands and move forward. The State does not seem to abide by the Constitution with the things they throw down to us. In my opinion we should move it forward and let the court make the decision.

Mr. Maio commented you would be surprised where I stand on the Second Amendment but regardless, this will put us where we will be in a position to be brought into court by the Attorney General and you will end up having to defend the indefensible. Like it or not, we are beholden to the State and we are a creation of the State of New York. I don’t want us to be the South Carolina of 1861 when it comes to us trying to nullify a law. The prospect of us succeeding in passing this law is probably much less than it was in 1861. We are just wasting our time. We have made the point twice since I have been on the Legislature, reaffirming our belief in the Second Amendment. The courts, from the State up to the Supreme Court, have passed on what the Second Amendment means since I have been on the Legislature. This is just going to set us up to incur a bunch of legal costs defending something that we ultimately will be unsuccessful on.
Mr. Van Etten stated I think they should take this to the State level versus bringing it to a subordinate of the State. Ms. Prossick stated we did mention that when we met with them.

**MOTION: TO ADJOURN REGULAR SESSION AND RECONVENE IN EXECUTIVE SESSION PURSUANT TO PUBLIC OFFICERS’ LAW, ARTICLE 7§ 105.1.D. DISCUSSIONS REGARDING PROPOSED, PENDING OR CURRENT LITIGATION MADE BY MR. MULLEN. SECONDED BY MR. POTTER. ALL BEING IN FAVOR. MOTION CARRIES 4-0.**

**MOTION: TO ADJOURN EXECUTIVE SESSION AND RECONVENE IN REGULAR SESSION MADE BY MR. POTTER. SECONDED BY MR. MULLEN. ALL BEING IN FAVOR. MOTION CARRIES 4-0.**

**MOTION: TO ADJOURN MADE BY MR. MULLEN. SECONDED BY MR. RYAN. ALL BEING IN FAVOR. MOTION CARRIES 5-0.**

Respectfully Submitted by

Amanda L. Chapman
Deputy Clerk
Steuben County Legislature

**NEXT MEETING SCHEDULED FOR**
Monday, March 1, 2021
Legislative Chambers
9:00 a.m.

Please send agenda items to the Clerk of the Legislature’s Office
NO LATER THAN NOON
Monday, February 22, 2021