

**Summary of Budget requests made by the District Attorneys
Association of the State of New York (DAASNY) to Governor
Kathy Hochul for Fiscal Year 2022-2023**

New York has seen fundamental changes in how crimes are reported, investigated, and prosecuted. Year after year, New York State was proud to be the safest large state in the nation. Unfortunately, we have seen an increase in certain crimes and especially gun crimes, most notably in our cities. New Yorkers deserve and expect a certain quality of life, and that includes an expectation of public safety. New Yorkers also demand a criminal justice system that is fair and humane. Meaningful efforts to prevent crime, build public trust, and create a more efficient and successful criminal justice system require investments by the state as well as ongoing examination of our current laws.

The everyday work of prosecutors is an integral part of maintaining and improving the quality of life for all New Yorkers and visitors. New York State continues to be a leader in public safety. The people of New York deserve a fair, efficient and effective criminal justice system. There are crucial costs associated with keeping the public safe and maintaining public trust in the criminal justice system. The attached letter explains in detail the budget priorities of the District Attorneys Association of the State of New York.

Key items of DAASNY's budget requests for Fiscal year 2022-2023 include:

- ◆ Increase funding for State Aid to Prosecution to \$15 million to support the enhanced prosecution of repeat violent and serious felony offenders.
- ◆ \$2.5 million to maintain services provided by the New York State Prosecutor's Training Institute (NYPTI). This includes assistance and training, a case management system to track cases, produce grant reports and facilitate electronic discovery. There is an additional request for \$375,000 to continue NYPTI's Witness Protection Program.
- ◆ Realistic and adequate funding for costs related to changes to New York State's discovery law which were passed as part of the budget process in 2019. The reimagining of the discovery process continues to require system-wide coordination, cooperation, and collaboration. Most of all it requires resources and staff that far exceed what prosecutor's offices have. There is also a request for \$1.5 million for the Prosecutors Case Management System and its companion Digital Evidence Management System.
- ◆ Funding for statewide pretrial services. Like discovery, drastic changes were made to New York State's bail laws , but resources were not provided to fund the sweeping new changes. This would include costs for pretrial services including reminders and monitoring to encourage court attendance for the increased number of people who are released at arraignment. This could also include screening and

referrals for services such as mental health and substance abuse treatment, housing assistance, vocational training and child care.

- ◆ Funding in initial amount of \$2.5 million for a pilot program to set up regional Crime Gun Intelligence Centers where detectives and prosecutors can investigate and link gun crimes, identify individuals involved in shootings and pinpoint where illegal guns originate.
- ◆ Grants to counties in the amount of \$16 million as part of Gun Involved Violence Elimination (GIVE) to assist in the reduction of firearm related homicides and shootings.
- ◆ Appropriation of Crimes Against Revenue (CARP) funds in the amount of \$15 million to recover funds from those who deliberately fail to pay taxes or commit Medicaid, welfare, unemployment and worker's compensation fraud.
- ◆ \$4 million for the Motor Vehicle Theft and Insurance Fraud Prevention Program to pay for enhanced enforcement, sting operations and specialized training for prosecutors, police officers and investigators.
- ◆ Reinstatement of \$1.5 million to Recruit and Retain Prosecutors to meet the contemporary needs of public service attorneys.

Please see the following letter for a more thorough description of DAASNY's requests.

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December 3, 2021

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Honorable Kathleen Hochul
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Executive Chamber
Albany, NY 11224

Dear Governor Hochul:

When your term as Governor began, you got to work immediately, assembling a new administration, and tackling many problems facing our state. You were quickly thrust into a state struggling from the collateral effects of the pandemic. On day one, you began to address the health and economic impacts facing our state related to COVID-19, including unemployment, homelessness, drug addiction, mental health, and many other societal issues that our state is grappling with. Our criminal justice system is also continually being examined at many levels and from varied perspectives. New York State's prosecutors want to work with you and your staff to find strategies and solutions to make New York safe while maintaining the public's trust in the criminal justice system.

The District Attorneys Association of the State of New York (DAASNY) represents the elected and appointed prosecutors of the 62 New York State District Attorney's Offices, the New York State Attorney General's Office, the Justice Center for the Protection of People with Special Needs, and the Office of the New York City Special Narcotics Prosecutor.

As you quickly began navigating your new role, you immediately embraced collaboration and teamwork. I commend you for reaching out to so many stakeholders across the state to make government work for all New Yorkers. We all know there is much more to be done.

In recent years, we have seen fundamental changes in how crimes are reported, investigated and prosecuted. Year after year, New York State was proud to be the safest large state in the nation. Unfortunately, we have seen an increase in certain crimes, especially gun crimes, most notably in our cities. A rise in shootings and murders instills fear in those who live and work in both urban and suburban areas. Public safety is not necessarily limited to reported facts and data. The ecosystem of public safety is also a perception. Rising crime, disorder, homelessness, and even graffiti contribute to a perception of fear. New Yorkers deserve and expect a certain quality of life, and that includes an expectation of public safety. New Yorkers also demand a criminal justice system that is fair and humane. Meaningful efforts to prevent crime, build public trust, and create a more efficient and successful criminal justice system require investments by the state as well as ongoing examination of our current laws.

As you continue to lead our state and manage multiple crises, while also creating a safe and more just system for all New Yorkers, DAASNY wants to be part of the planning and conversation and offer the collective perspective of our state's prosecutors. Your

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commitment to collaboration and teamwork with diverse stakeholders will be key to balancing peace and order while making sure those accused of crimes are treated fairly and those in need of services are able to get access to the help they need. Our residents, businesses and visitors are looking forward to better days ahead.

As you make important decisions regarding New York State's budget, I urge you to prioritize programs and initiatives that help stop violence and maintain public safety in addition to investing in programs that prevent crime and help those in need of assistance including drug and alcohol treatment and mental health services. I would like to suggest the following priorities for the FY 2022-2023 Executive Budget. These are crucial costs that help keep New York State's businesses, residents, and visitors safe, while also safeguarding the rights of those accused of crimes and treating victims and witnesses with the care they deserve.

State Aid to Prosecution

This essential aid is one of the most important components of the funding of District Attorney's offices, and provides money to support the enhanced prosecution of repeat, violent, and serious felony offenders in all 62 counties. However, the funding for the grant has been reduced significantly over the past decade. The reductions in Aid to Prosecution have come at a time when the responsibilities of prosecutors continue to increase dramatically. Prosecutors are increasingly expanding the duties of their staff, utilizing new technologies, adapting to new crime trends, and complying with new laws.

Funding for Aid to Prosecution must be restored to a more reasonable level. We strongly urge that funding for Fiscal Year 2022-2023 be increased to \$15 million.

New York Prosecutors Training Institute (NYPTI)

NYPTI provides critical training and resources for New York's prosecutors on the ever-evolving laws, ethics, and policies of our criminal justice system. For over 25 years, with a small but dedicated staff, NYPTI has served and continues to serve justice by launching new technology and Continuing Legal Education (CLE) programs that reflect the latest updates on New York laws, diversity, ethics, and other issues prosecutors need to know.

During the past 18 months, NYPTI has rapidly adjusted and expanded its programs to continue serving New York's prosecutors with the training and resources needed to carry out their responsibilities. In March 2020, when COVID-19 paused our state, NYPTI transformed in-person CLE classroom trainings into an online format and conducted many virtual programs to educate prosecutors on the Executive Orders, laws, and litigation that quickly arose during and directly from the pandemic. Since early 2020, NYPTI has conducted 75 online CLE programs that trained over 9,000 prosecutors from around the state.

Beyond training programs, New York prosecutors regularly contact NYPTI's experienced attorneys for practical advice and assistance on individual cases. NYPTI's array of online resources is available 24/7 and have been accessed more than one million times this year. From its public website, NYPTI provides CrimeTime, an online sentencing calculator relied on by judges, defense attorneys, and prosecutors. NYPTI's public website also includes searchable and continually updated compilations of criminal statutes, caselaw, and appellate decisions.

Critically, NYPTI also provides short-term emergency funds to assist threatened victims and witnesses statewide in mostly domestic violence and gang-related cases, with the basic needs of lodging, food, and, in some cases, moving expenses.

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55 of New York's 62 counties depend on NYPTI's Prosecutors Case Management System (PCMS) and its companion Digital Evidence Management System (DEMS) to meet the discovery requirements of Criminal Procedure Law Article 245. PCMS/DEMS is a web-based system, that connects prosecutors, the police agencies, and defense attorneys:

- **Prosecutors** manage documents, review body camera/surveillance videos, photos, and most digital evidence.
- **Police Agencies** provide data feeds and case files, and upload multimedia evidence directly to District Attorneys.
- **Defense attorneys** access an easy-to-use, nearly state-wide portal to receive discovery materials from prosecutors.

Beyond discovery, prosecutors and courts rely on PCMS to track information, automatically generate required notices, track discovery, and generate documents. PCMS receives arrest data from police agencies and the courts.

NYPTI has **not** received a funding increase in over a decade, despite significant cost increases and reliance on NYPTI services. To maintain current services, DAASNY requests an appropriation of \$2.5 million for NYPTI and \$375,000 to continue NYPTI's witness protection program. DAASNY also requests continuing NYPTI's \$1.5 million allocation for costs related to cloud processing, storage, and maintenance of PCMS and DEMS.

Discovery

New York's discovery law was overhauled in 2019, after years of discussion on how to make the system fairer to those accused of committing a crime. As part of last year's budget, minor changes were made to the law, providing some additional time to retrieve, prepare, and exchange discovery. District Attorney's offices spent a lot of time establishing new mechanisms for discovery storage and exchange. Funding continues to be needed for new and updated technology, expanded storage capabilities, and staff training. A reimagining of the discovery process continues to require system-wide coordination, cooperation, and collaboration. Most of all it requires resources that far exceed what prosecutors' offices have.

For 55 of New York's 62 counties, discovery is accomplished in part by utilizing NYPTI's PCMS and DEMS. NYPTI's web-based systems are proven tools for the counties using PCMS/DEMS to deliver timely discovery to the defense. By connecting prosecutors with police agencies, body worn camera systems, courts, crime analysis centers, labs, and defense attorneys, DEMS is an efficient, secure solution for meeting a portion of discovery obligations. Prosecutors manage documents, review body worn camera footage, surveillance videos, photos, and almost any digital evidence and make the files directly accessible to defense attorneys. Funding NYPTI's PCMS/DEMS cloud-based platform, software, staffing, and training addresses part of the technological requirements for discovery compliance and will maintain an efficient and secure exchange of required discovery.

Regardless of the technological solution used by an individual office, the changes to discovery placed a tremendous strain on District Attorney Office staffing needs. In April 2020, as part of the enacted FY2021 budget a "Criminal Justice Discovery Compensation Fund" was created. That fund required the Manhattan District Attorney's Office to transfer \$40 million from state-sanctioned deferred prosecution agreements, to be used in counties outside New York City for expenses related to discovery reform implementation, including "digital evidence transmission technology, administrative support, computers, hardware and operating software, data

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connectivity,” and other costs, including pretrial services. While that funding is welcome and we certainly appreciate the acknowledgement that additional money is needed for prosecutors to comply with the new discovery requirements, the amount of money falls far short of the funding required for adequate and efficient statewide discovery mechanisms.

Further, that fund is risky and puts the success of discovery reform on a shaky stream of funding from deferred prosecution agreements which are not steady or predictable year after year. For Fiscal Year 2021, the amount dedicated to the fund fell far short of the \$40 million that was originally budgeted. The Manhattan District Attorney’s Office was unable to contribute \$40 million to the fund this year. Additionally, the provision of law that allows for deferred prosecution agreements, CPL 95.00, is scheduled to sunset on March 31, 2022.

The success of New York’s discovery law will continue to depend on the attention, planning, and resources we devote to discovery exchange at all levels. DAASNY has estimated that costs related to discovery, additional staff, technology, and storage will top \$100 million statewide, and has repeatedly communicated that to your office and to the Legislature.

Bail

Like discovery, drastic changes were made to New York State’s bail laws, but resources were not provided by the state to fund the sweeping new changes. Again, the goals of these new laws are laudable, as they seek to make the system fairer to those accused of crimes. However, we must continue to examine the impact of those laws, both positive and negative, and be open to a dialogue on further improvements. The release of many more individuals at arraignment creates a

need for adequate supervision, court reminders, and access to social services such as housing, job training, and mental health services. In many instances individuals need services that can help make sure they are connected to the resources they need to be successful and not re-offend, but the services are not available.

I urge you to consider the formation of a statewide pretrial services agency like New York City’s Criminal Justice Agency (CJA). This agency could provide referrals for services including housing, child-care, vocational training, mental health and substance abuse treatment. It could also provide reminders to those accused of crimes who are released pending the disposition of their criminal cases. This would encourage court attendance for the increased number of people who are released at arraignment.

Further, most, if not all states that have eliminated or reduced the use of cash bail have invested heavily in pretrial services. If more individuals are being released pretrial and are not provided with supervision and meaningful resources, they are being set up for failure, a reality that we have witnessed across the state.

Gun Violence

Our communities are experiencing gun violence at horrific rates, especially in our cities. Recent reports show that communities all across America are also experiencing a staggering increase in shootings. The violence stemming from illegal guns is occurring at a frequency that is bringing our criminal justice system to the breaking point. Innocent bystanders, youth, and children are among the intended targets and unintended victims. New York State must reflect on, and reckon with, its response to illegal gun violence.

I encourage you to make investments of both time and energy to explore the creation of regional

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Crime Gun Intelligence Centers (CGIC). The Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has developed the most comprehensive and effective CGIC in the nation, which is already being used by the New York City Police Department. The process uses the National Integrated Ballistics Information Network (NIBIN) where detectives and prosecutors can link crimes, identify groups involved in shootings, and pinpoint where illegal guns are coming from. Through a three-step process, shell casings are recovered from a crime scene or a seized weapon and analyzed quickly, providing investigators with actionable intelligence. The subsequent report reflects the date when the weapon was purchased, where it was purchased, and by whom; providing meaningful leads assisting law enforcement in reducing gun violence.

New York State should establish a CGIC in every region of the State through DCJS. Linking data cross the state would allow communities to understand the size and scale of the marketplace for illegal guns, and enable law enforcement to pursue cases against irresponsible gun dealers and straw purchasers.

DAASNY recommends an initial amount of \$2.5 million for a pilot program to set up regional CGICs in regions in the state. That money would go towards the purchase of instruments that trace shell casings, such as BrassTRAX machines, costing approximately \$250,000 each; and MATCHPOINT machines, costing approximately \$50,000 each. Qualified staff would also need to be hired and trained in the use of those systems.

Gun-Involved Violence Elimination (GIVE)

The Gun-Involved Violence Elimination (GIVE) program is an evidence-based initiative that utilizes a coordinated, multi-agency approach to target and prevent violent gun crimes in 20 police departments in the 17 counties that collectively report 85% of violent crime outside of New York City. The GIVE strategy focuses on preventive and enforcement efforts directed at top offenders as well as hot spots involving shootings and homicides. The program aligns existing resources and engages stakeholders in communities to coordinate support for violence reduction efforts.

This program has been very successful in both reducing gun violence and in enhancing gun-involved crime reduction strategies. The program integrates hot spots policing, focused deterrence, street outreach, crime prevention through environmental design, procedural justice, and problem-oriented policing.

Despite the program's success and New York's leadership in gun safety, this program has, unfortunately, seen repeated cuts in funding over the past decade. From a high of \$15.6 million in 2010-2011, GIVE received \$14.39 million in last year's budget. This shortfall will continue to impact the success of GIVE.

With rising gun violence in cities all over New York, DAASNY recommends an appropriation of \$16 million for GIVE for FY 2022-2023.

Crimes Against Revenue

The Crimes Against Revenue Program (CARP) was initiated in 2004 to hold accountable those who deliberately fail to pay state tax obligations or who commit Medicaid, welfare, labor law, workers compensation, and unemployment fraud. This program assists prosecutors in investigating and prosecuting those who cheat the system.

The best part about CARP is that it is self-sustaining; it generates revenue back to the state

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through fines and restitution. In the first five years of the program's operation, approximately \$26.7 million was invested by the state in the program, resulting in the recovery of \$84.2 million in revenue.

The CARP program has been increasing and expanding every year, but funding has been decreasing. Last year's budget, Fiscal Year 2021-2022, provided for \$13.5 million for CARP. The cost of investigating CARP matters continues to increase. Based on the recommendation of the Division of Criminal Justice Services (DCJS) and the New York State Department of Taxation and Finance, the CARP program was expanded to allow all counties to participate in the program. The number of District Attorney's offices taking part in CARP has expanded from 13 to 22.

We propose the appropriation of CARP funds be set at \$15 million in Fiscal Year 2022-2023.

Prosecutor Recruitment and Retention

District Attorney's offices all over the state are increasingly challenged with recruiting and retaining qualified and diverse staff. Well-trained, experienced prosecutors are desperately needed, but attorneys burdened by student loans and the rising costs of living expenses are forced to leave the public sector for higher-paying jobs in the private sector, or even in public defenders' offices.

In 2008, \$1.5 million was provided in the Executive Budget for district attorneys outside of New York City to recruit and retain prosecutors. This program enabled district attorneys to retain prosecutors with trial skills, legal experience, and familiarity with their communities.

The appropriation of this program has been completely defunded. DAASNY strongly recommends reinstating the program at the previous funding level of \$1.5 million to help towards recruitment and retention.

Crime Laboratories

Crime laboratories utilize modern technology and expertise to help police and prosecutors solve crime. Analysts working in the labs provide invaluable data, analysis of information, and access to modern technological resources.

New York State's discovery law requires prosecutors to turn over all discovery in their possession no later than 20 days after a defendant's arraignment if the defendant is held in custody, and no later than 35 days if the defendant is not in custody. That includes any forensic or lab reports, including scientific tests, reports, electronic raw data, and bench notes, as soon as they are completed. The law also restricts prosecutors from stating that they are ready for trial until the materials are provided to defense counsel. While changes to the law now allow for extensions in certain situations, the prosecution still risks preclusion of those materials by the court if they are not turned over timely.

The law also requires the exchange of data provided by crime labs in all cases, not just cases that are going to trial. That information must be completed and exchanged for all cases where a plea is taken. In addition, lab protocols, audit reports, and "pre-decisional" findings must be turned over in all cases. Laboratory nonconformities and proficiency examination summaries for each testifying analyst must also be turned over, and are particularly time-consuming to organize.

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Prosecutors all over the state are faced with crime labs that are overwhelmed and backlogged with work. They need additional staff as well as more space for workstations. Last year's budget provided \$6.2 million for laboratory services.

DAASNY requests an additional \$3 million, for a total of \$9.2 million, so that laboratories can handle the additional and expedited testing and exchange of information.

Motor Vehicle Theft and Insurance Fraud Protection

Motor vehicle theft and motor vehicle insurance fraud cost New York State's law-abiding motor vehicle owners and insurance policyholders hundreds of millions of dollars in higher insurance rates. The New York Motor Vehicle Theft and Insurance Fraud Prevention Demonstration Program (MVTIFP) was created in 1994, and targets theft and fraud.

In recent years, great strides have been made in reducing motor vehicle theft in New York State. In 2016, there were 14,255 motor vehicles stolen in New York State, the lowest since the MVTIFP program began. However, since 2020, motor vehicle thefts have been on the rise in counties all over the state. Although the cause of the rise in motor vehicle thefts is not immediately clear, the sheer increase in auto thefts points to a need for money for the MVTIFP program.

The budget for Fiscal Year 2021-2022 allocated \$3.7 million for services and expenses related to local anti-auto theft programs.

DAASNY requests \$4 million for this important program to combat motor vehicle theft statewide.

As you move forward and identify budget priorities for the upcoming fiscal year, I encourage you to have meaningful conversations with District Attorneys from all parts of our state. Together, we can continue to ensure a safe, fair, and efficient criminal justice system for all New Yorkers.

Sincerely,



J. Anthony Jordan
President, DAASNY
Washington County District Attorney

CC:

Robert Mujica, Budget Director
Elizabeth Fine, Counsel to the Governor
Hon. Andrea Stewart-Cousins, NYS Senate Majority Leader
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