

1 BEFORE THE NEW YORK STATE SENATE FINANCE
AND ASSEMBLY WAYS AND MEANS COMMITTEES

2 -----

3 JOINT LEGISLATIVE HEARING

4 In the Matter of the
2019-2020 EXECUTIVE BUDGET ON
5 PUBLIC PROTECTION

6 -----

7 Hearing Room B
Legislative Office Building
8 Albany, New York

9 January 29, 2019
10 9:40 a.m.

11 PRESIDING:

12 Senator Liz Krueger
Chair, Senate Finance Committee
13
14 Assemblywoman Helene E. Weinstein
Chair, Assembly Ways & Means Committee

15 PRESENT:

16 Senator James L. Seward
Senate Finance Committee (RM)
17
18 Assemblyman William A. Barclay
Assembly Ways & Means Committee (RM)
19
20 Senator Brad Hoylman
Chair, Senate Committee on Judiciary
21
22 Assemblyman Jeffrey Dinowitz
Chair, Assembly Committee on Judiciary
23
24 Senator Jamaal T. Bailey
Chair, Senate Committee on Codes
Assemblyman Joseph Lentol
Chair, Assembly Committee on Codes

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2 1-29-19

3 PRESENT: (Continued)

4 Senator Luis R. Sepúlveda
Chair, Senate Committee on Crime Victims,
5 Crime and Correction

6 Assemblyman David I. Weprin
Chair, Assembly Committee on Correction

7
8 Senator John E. Brooks
Chair, Senate Committee on Veterans,
Homeland Security and Military Affairs

9
10 Assemblywoman Michele R. Titus
Chair, Assembly Committee on Governmental
Operations

11
12 Senator Kevin Thomas
Chair, Senate Committee on Consumer Protection

13 Senator Diane J. Savino
Chair, Senate Committee on Internet and
14 Technology

15 Assemblyman Michael Montesano

16 Assemblyman Joseph M. Giglio

17 Senator Gustavo Rivera

18 Assemblyman Philip A. Palmesano

19 Senator Todd Kaminsky

20 Assemblyman Kenneth P. Zebrowski

21 Senator Elizabeth O'C. Little

22 Senator Brian Benjamin

23 Assemblywoman Patricia Fahy

24 Senator Zellnor Myrie

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4 Assemblyman Harvey Epstein

5 Senator John C. Liu

6 Assemblyman William Colton

7 Assemblywoman Marianne Buttenschon

8 Senator Robert E. Antonacci

9 Assemblywoman Nily Rozic

10 Assemblyman Thomas J. Abinanti

11 Senator Patrick Gallivan

12 Assemblywoman Diana C. Richardson

13 Assemblyman Edward P. Ra

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 20 NYS Office of Court
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1 CHAIRWOMAN KRUEGER: Good morning,
2 everyone. Thank you for being in attendance.

3 Those of you who are in this room know
4 that you got here before the snow hit Albany,
5 and some of us will be here 13 hours or so.
6 But just -- if you know that because of the
7 weather it's not realistic for you to be
8 staying, you should make that call for
9 yourself. Your testimony will always be part
10 of the record, and you've already submitted
11 it.

12 But if you do decide you're going to
13 attempt to escape our beautiful winter
14 wonderland, just let someone know at the
15 front so that we mark you off that you won't
16 be testifying. That will be helpful for us
17 in planning. But some of us are absolutely
18 planning to be here until every one of you
19 has an opportunity to testify.

20 This is the hearing on Public
21 Protection. I am Liz Krueger, Senator chair
22 of Finance, joined by Helene Weinstein, chair
23 of Ways and Means in the Assembly.

24 I'm going to start out by introducing

1 the Senators who are here, and then Helene
2 will introduce the Assemblymembers.

3 Starting in the front circle, we have
4 Senator Luis Sepúlveda, we have Senator Diane
5 Savino. We have Senator Gustavo Rivera at
6 the end, Senator Zellnor Myrie to his left,
7 Senator Kevin Thomas. To his left, Senator
8 John Brooks. To his left, Senator Brad
9 Hoylman. To his left -- it depends on
10 whether you're looking at me or facing out,
11 in fairness. Or maybe just the politics of
12 the --

13 (Laughter.)

14 CHAIRWOMAN KRUEGER: And I'm also
15 joined by Senator Seward, the ranker on
16 Finance.

17 SENATOR HOYLMAN: He's definitely not
18 on my left.

19 (Laughter.)

20 CHAIRWOMAN KRUEGER: You might need to
21 move.

22 (Laughter.)

23 CHAIRWOMAN KRUEGER: I don't know,
24 it's a new day in Albany. Who knows what

1 Senator Seward identifies as.

2 Helene?

3 CHAIRWOMAN WEINSTEIN: Thank you.

4 So we're joined here by Assemblyman
5 Lentol, Codes chair; Assemblyman Dinowitz,
6 chair of Judiciary; Assemblyman Weprin, chair
7 of Corrections; Assemblyman Epstein; and, on
8 the lower dais, Assemblyman Zebrowski.

9 CHAIRWOMAN KRUEGER: Thank you.

10 CHAIRWOMAN WEINSTEIN: Oh, I'm sorry.
11 And our ranker, Will Barclay, will introduce
12 the Republican member.

13 ASSEMBLYMAN BARCLAY: Thank you. Good
14 morning. We have Joe Giglio, the ranker on
15 Corrections.

16 CHAIRWOMAN KRUEGER: Thank you.

17 And just before we start, we also have
18 a new clock timer system this year. So each
19 of the government representatives, the first
20 six testifiers, will have 10 minutes to
21 testify. We're urging people not to read
22 their testimony but, rather, highlight what
23 they think are the crucial points. We all
24 have full copies of the testimony in front of

1 us, and the full testimony will be available
2 online to the public.

3 The lights, you'll notice, will start
4 off green when your 10 minutes starts, then
5 go to yellow when you have one minute left,
6 and then go to red and beep at you to let you
7 know your time is up. And we're actually
8 finding this quite effective to try to keep
9 ourselves on schedule.

10 In questioning, we also get a set
11 amount of time. Chairs for the relevant
12 government people get 10 minutes to go back
13 and forth, the questions and the answers.
14 And then we move to 5 minutes for -- if
15 you're not a chair of that relevant
16 committee. I think it will become a little
17 more obvious as we go along.

18 So our first testifier is the
19 Honorable Lawrence K. Marks, who's the chief
20 administrative judge of the New York State
21 court system.

22 Welcome to you, Judge.

23 CHIEF ADMIN. JUDGE MARKS: Thank you.

24 And good morning, Chairpersons Krueger and

1 Weinstein, Hoylman and Dinowitz, and good
2 morning to the other committee members here
3 today.

4 I'm Lawrence Marks. I'm chief
5 administrative judge of the Unified Court
6 System. And I'm very pleased to be here this
7 morning to discuss the Judiciary's budget
8 request for the 2019-2020 state fiscal year.

9 Our request this year is modest and
10 straightforward. It calls for an increase in
11 judiciary funding of just under \$45 million,
12 or 2 percent over the spending level in our
13 current operating budget. This is fully
14 consistent with the Governor's benchmark for
15 state agencies. Our budget request also
16 seeks \$24 million in capital appropriations
17 to address certain infrastructure technology,
18 security equipment and records management
19 tools and needs. And this is up from -- the
20 capital appropriation is up from 18 million
21 this year, and it is not part of our 2
22 percent requested increase in our operating
23 budget.

24 As has been the case for the past two

1 years, our budget request is designed to
2 support Chief Judge Janet DiFiore's
3 Excellence Initiative. The initiative, which
4 was begun in 2016 when Judge DiFiore first
5 took office, is a matter of the highest
6 priority for the state courts. It is a
7 comprehensive statewide effort to improve
8 court system operations and to ensure that
9 all who use our courts receive the highest
10 level of service and assistance.

11 Last year, in her State of our
12 Judiciary message, the Chief Judge detailed
13 the many successes since the Excellence
14 Initiative was inaugurated. In that year
15 since that address, we have seen further
16 success reducing case backlogs and expediting
17 disposition of the many cases filed in our
18 courts. And in her 2019 State of our
19 Judiciary message, to be delivered in a few
20 weeks, the Chief Judge will again provide a
21 detailed accounting of our progress.

22 Despite this progress, work on the
23 Excellence Initiative is far from done. Our
24 court system is large, and its challenges are

1 complex. Every day it serves 19 million
2 people in 62 counties, over 60 cities, well
3 over a thousand towns and villages and
4 hundreds of courthouses across a physically
5 large state. We are presented each year with
6 millions of cases, ranging from small claims
7 involving minor damages to major corporate
8 litigation with many millions of dollars at
9 stake. We must adjudicate minor traffic
10 offenses and the most serious felonies. We
11 must protect the welfare of the most
12 vulnerable among us in Family Court, and we
13 must do all this in communities of
14 dramatically varying size and legal culture.

15 We cannot meet these challenges
16 without adequate resources. In all the
17 state-funded courts, we need enough judges to
18 preside over the cases that are filed and
19 other court clerks, court officers and other
20 court personnel to support the work of the
21 judges. We also need modern technology to
22 facilitate their efforts.

23 Our budget is built to meet these
24 fundamental needs, but it also calls for the

1 funding necessary to continue, and in some
2 instances to expand, our long commitment to
3 many vital programs through which the
4 judiciary serves the community.

5 Foremost among these programs is our
6 Civil Legal Services Grants Program. Through
7 this program we seek to increase access to
8 justice by helping to ensure that
9 lower-income New Yorkers can secure needed
10 legal representation in civil cases. With
11 the support of the Governor and the
12 Legislature, we received \$85 million for the
13 program in 2018-2019, from which we have been
14 able to provide funding to 78 civil legal
15 services organizations serving lower-income
16 New Yorkers in every county in matters
17 involving life's essentials --
18 housing-related matters, family matters,
19 access to healthcare and education, and
20 subsistence income.

21 These organizations report that in the
22 last year they handled 483,000 cases
23 benefiting more than 2 million New Yorkers.
24 These cases included evictions, foreclosures

1 and other housing matters, domestic violence,
2 consumer debt, personal safety, immigration,
3 and transformative health, education and
4 income support services.

5 On top of the \$85 million entrusted to
6 us and distributed through our civil legal
7 services grants, we received 15 in 2018-2019
8 to be passed on to the IOLA fund, which also
9 is dedicated to supporting civil legal
10 services organizations for the disadvantaged.
11 In 2019-2020 we are again requesting a total
12 of \$100 million for these vital programs.

13 I also want to highlight our
14 continuing commitment to specialized courts.
15 And in the coming year we will focus
16 particularly on expanding our opioid courts
17 to judiciary districts statewide, our
18 veterans treatment courts and mental health
19 courts into a number of underserved upstate
20 areas, and our Human Trafficking Intervention
21 Courts into additional venues.

22 In 2019-2020 we will also maintain our
23 ongoing efforts to further access to justice
24 by ensuring that persons without English

1 proficiency or limited English proficiency,
2 or with physical disabilities, do not face
3 barriers in their use of the courts.

4 Also among our highest priorities is
5 the protection of judges, court staff, the
6 bar, and the public in our courthouses. The
7 significant budget cuts imposed on the
8 Judiciary in 2011 forced court staffing cuts,
9 included reductions in court security
10 staffing. But the security reductions were
11 proportionately less than reductions across
12 other titles in our nonjudicial workforce.

13 And since 2011, we have been able to
14 restore many of these positions, especially
15 in the past several years. As of today there
16 are 3,982 court employees in security titles
17 deployed throughout the state. This includes
18 129 graduates of our Court Officer Academy
19 last December. It does not include a new
20 class of 240 recruits scheduled to begin
21 training next month in our newly opened
22 state-of-the-art Court Officers Academy in
23 Brooklyn.

24 Besides this increased staffing, with

1 the help of this year's capital projects
2 funding, our commitment to public safety has
3 included enhancements in the equipment relied
4 upon by security personnel. With some of the
5 capital projects funding we're requesting for
6 2019-2020, we'll implement further
7 enhancements in the coming year.

8 Our budget request is also designed to
9 support new measures that are particularly
10 vital to the continuing success of the
11 Excellence Initiative. Among these are steps
12 recommended by the Chief Judge's Special
13 Commission on the Future of the New York City
14 Housing Court. They include changes in
15 judicial assignments and designation of court
16 parts, provision of more court staff and more
17 staff training, court calendar reforms,
18 implementation of staggered appearance times,
19 and use of help centers and volunteer court
20 navigators to assistance litigants, increased
21 use of technology to permit e-filing, and
22 reconfiguration of available court space.

23 Implementation of our commission's
24 recommendations will naturally complement

1 New York City's landmark program assuring
2 access to legal representation for all
3 low-income persons facing eviction in the
4 Housing Court.

5 Also, to further the Excellence
6 Initiative, we are seeking budgetary support
7 for expanded use of court-sponsored
8 Alternative Dispute Resolution throughout the
9 state. Our plans for the coming year include
10 support for pilot mediation programs in
11 non-domestic violence family-related and
12 matrimonial disputes, Surrogate's Court
13 matters, and New York City Housing Court
14 matters. Further, we are looking to increase
15 funding for the very successful Community
16 Dispute Resolution Centers program.

17 This is why we are urging your support
18 for our budget request. Well over 90 percent
19 of the Judiciary budget is devoted to
20 personnel costs. In fact, much of our
21 request is needed simply to permit us to
22 continue to replace court employees who leave
23 service -- a matter of vital importance,
24 since even with a 2 percent increase in

1 funding in 2019-2020, we will remain at lower
2 staffing levels than we enjoyed before the
3 budget cuts of 2011.

4 Because of this fact, some have
5 suggested that we should be asking for more
6 than a 2 percent increase, and it is tempting
7 to do so. But we are choosing not to ask for
8 more because our mission as the third branch
9 of government goes beyond just processing
10 cases. It is also to be as prudent and
11 vigilant as we can in spending the public's
12 money. To be fully responsible to the public
13 we serve, we must strike a fine balance. In
14 our view, a 2 percent increase will allow us
15 to continue to make the kind of progress
16 we've been making over the last several years
17 in addressing backlogs and delays, while at
18 the same time respecting the same fiscal
19 constraints that bind the rest of government.

20 One more minute, if I may, just to
21 wrap up.

22 CHAIRWOMAN KRUEGER: Thirty seconds.

23 CHIEF ADMIN. JUDGE MARKS: Okay. With
24 Raise the Age, Raise the Age has created

1 reduction in case backlogs, and faster
2 disposition of all cases filed with the
3 courts.

4 Thank you for your attention this
5 morning, and thank you for your support of
6 the Judiciary. And of course I'm happy to
7 answer any questions you may have.

8 CHAIRWOMAN KRUEGER: Thank you.

9 We have been joined by Senator Jamaal
10 Bailey, chair of the Codes Committee; Senator
11 Brian Benjamin; and Senator Todd Kaminsky.

12 And the first questioner will be
13 Senator Brad Hoylman, chair of the Judiciary
14 Committee.

15 SENATOR HOYLMAN: Thank you, Madam
16 Chair, and to my colleagues, both Assembly
17 and Senate.

18 Good morning, Judge Marks. Thank you
19 for being here.

20 CHIEF ADMIN. JUDGE MARKS: Good
21 morning.

22 SENATOR HOYLMAN: I really appreciate
23 the work that the Chief Judge has been taking
24 on in terms of her Excellence Initiative.

1 Could you just, for the benefit of my
2 colleagues, give a brief summary of how the
3 backlog in case administration has been
4 proceeding since the Excellence Initiative
5 has been launched?

6 CHIEF ADMIN. JUDGE MARKS: Well, we've
7 made progress in eliminating delays and
8 addressing backlogs in every level of court
9 throughout the state, and in Supreme Court,
10 both civil and criminal, in the County Courts
11 and the Surrogate's Courts, in the lower
12 criminal court, lower civil court, we've made
13 progress -- in some cases, dramatic progress.
14 We've reduced backlogs of older cases by over
15 80 percent in some jurisdictions.

16 Generally speaking, the progress has
17 been slower in the highest-volume courts,
18 including in New York City. But in those
19 courts as well -- in some we've made terrific
20 progress, but in all of the courts we've made
21 substantial progress.

22 There's a lot more to do. We're in
23 our third year of this undertaking, and --

24 SENATOR HOYLMAN: Where are the

1 problem areas still?

2 CHIEF ADMIN. JUDGE MARKS: The problem
3 areas I would say are in felony-level courts
4 in New York City, and in some but not all of
5 the civil term of Supreme Court in New York
6 City and some of the larger counties in the
7 state.

8 But Family Court, there's been
9 tremendous progress across the state. The
10 misdemeanor courts -- some of the most
11 significant progress has been in misdemeanor
12 courts in New York City.

13 SENATOR HOYLMAN: Would you agree that
14 because in a felony charge one's liberty is
15 at stake, that there needs to be special
16 attention to that in the next year?

17 CHIEF ADMIN. JUDGE MARKS: Absolutely.
18 And, you know, that's been our highest
19 priority. We're fully committed to helping
20 reduce the prisoner population at Rikers
21 Island. And much of that population -- in
22 fact most of it are people awaiting trial.
23 And in many cases, some of them highlighted
24 in the press, the delays have been much too

1 long, and that's something that we take very
2 seriously. And there's been substantial
3 progress, but there needs to be more
4 progress.

5 SENATOR HOYLMAN: Thank you.

6 A report that was published just
7 yesterday by the Immigrant Defense Project
8 says that U.S. Immigration and Customs
9 Enforcement operations -- ICE -- in and
10 around state court facilities increased
11 17 percent from 2017 to 2018 -- that's 172
12 arrests to 178 arrests -- and 17,000 percent,
13 17,000 percent, since 2016.

14 Prior to 2017, did OCA have any
15 reports of ICE arrests in New York State
16 courts? And if so, how many?

17 CHIEF ADMIN. JUDGE MARKS: Prior to
18 2017 or 2016?

19 SENATOR HOYLMAN: Prior to 2017.

20 CHIEF ADMIN. JUDGE MARKS: ICE has
21 historically always made arrests in the state
22 courthouses. This precedes the current
23 administration in Washington. And the uptick
24 actually started in 2016 and continued into

1 2017.

2 I'll explain kind of what's been
3 happening lately. But to answer your direct
4 question, ICE has made appearances in the
5 state courthouses for a number of years, but
6 it's accelerated since 2016 with the new
7 administration in Washington.

8 In response to that, we put in place
9 some protocols where when ICE appears in the
10 courthouse, they have to report to our court
11 officers why they're there, what case they're
12 interested in, and then the officers will
13 notify the judge in the courtroom where that
14 case is being called. And no arrests are
15 permitted in courtrooms themselves.

16 And then regardless of what happens,
17 whether there's an arrest or not, what we
18 call an unusual occurrence report will be
19 completed in every one of these cases. And
20 we collect these reports, they're circulated
21 to a high level group, including myself -- I
22 read these reports when they happen.

23 And this has been, I would say, an
24 ongoing problem for several years now. We

1 are concerned about the impact it may have on
2 people being reluctant to come to court and
3 of course we can't -- courts can't do the
4 business that they're obligated to do unless
5 people come to them: Litigants, witnesses
6 and the like. So --

7 SENATOR HOYLMAN: How are you -- thank
8 you. I appreciate that sentiment.

9 I understand that ICE enforcement
10 actions are spreading to other parts of the
11 state -- Orange, Rensselaer, Fulton counties
12 for the first time; towns and village courts
13 in Westchester, Rockland, Columbia, Orange,
14 Ulster, Albany.

15 Are you monitoring the spread of ICE
16 enforcement across the state?

17 CHIEF ADMIN. JUDGE MARKS: Yes, we
18 are.

19 SENATOR HOYLMAN: And you would agree
20 that it is now -- there is an expansion of
21 their activities.

22 CHIEF ADMIN. JUDGE MARKS: I would say
23 it's primarily an issue in New York City, but
24 there's been incidents in courts out the

1 city.

2 SENATOR HOYLMAN: Has the Chief Judge
3 officially requested that ICE no longer
4 conduct arrest operations at courthouses?

5 CHIEF ADMIN. JUDGE MARKS: We've asked
6 ICE -- on the national level and on the
7 regional level, we've had communications with
8 ICE officials. And we have -- as have some
9 chief justices in other states, we have asked
10 ICE to designate courthouses, our courthouses
11 as sensitive locations, meaning that they
12 treat courthouses the same as they treat
13 hospitals, schools, and places of worship,
14 where their policy is they will not go to
15 those places unless -- I think the policy is
16 they would say there's some extreme exigency.
17 Otherwise, they'll stay away from those.

18 And they've declined to adopt that
19 policy to designate courthouses as sensitive
20 locations.

21 They have, however -- and we were
22 instrumental in getting them to change their
23 policy on a national level. Their focus is
24 on criminal courthouses and criminal court

1 proceedings, not, fortunately, Family Court
2 or landlord-tenant court or, you know --

3 SENATOR HOYLMAN: But nothing would
4 prevent them from showing up at those courts
5 as well.

6 CHIEF ADMIN. JUDGE MARKS: Well, they
7 issued a directive about a year ago basically
8 designating those types of courthouses as
9 sensitive locations, without defining it that
10 way.

11 They are, fortunately, treating those
12 courthouses as -- and those types of
13 proceedings as sensitive locations. And they
14 haven't -- over the last two years, at
15 least -- appeared in those buildings.

16 SENATOR HOYLMAN: We have reports that
17 they are appearing in and around Family
18 Courts.

19 One of the issues, if I understand it
20 correctly, is the perimeter of a courthouse,
21 correct? You can request that they notify
22 the court officers about their presence
23 inside a courtroom, but they can hang around
24 the outside of a courthouse.

1 CHIEF ADMIN. JUDGE MARKS: Yeah, and
2 that's a good point. Let me explain that.

3 This problem, from our perspective,
4 has lessened greatly over the last -- I would
5 say eight months. There have been -- ICE
6 agents are appearing in courthouses, that's
7 continued. But they -- compared to the prior
8 period, going back to the early part of 2016,
9 over the last eight months ICE has made
10 virtually no arrests in our buildings unless
11 they have a judge-signed warrant.

12 Which the advocates community has
13 recognized and is not objecting to that. In
14 fact, they've called for that, for ICE to
15 come -- and usually they have administrative
16 warrants. But they have not made arrests
17 with -- you could probably count them on one
18 hand, in our buildings over the last eight
19 months.

20 SENATOR HOYLMAN: Thank you.

21 CHIEF ADMIN. JUDGE MARKS: But it's
22 not clear what's going on outside of the
23 building. And that's your point.

24 SENATOR HOYLMAN: Thank you, sir.

1 Yes, that's my point.

2 And then finally I want to ask you
3 about the Child Victims Act, which we passed
4 yesterday. As I think you know, there's a
5 six-month period before the one-year
6 look-back window is instituted.

7 How will OCA inform potential
8 litigants, plaintiffs, about the -- this
9 opportunity to seek redress in our civil
10 courts?

11 CHIEF ADMIN. JUDGE MARKS: That's a
12 good question. I haven't given that any
13 thought. We could discuss that with you.

14 Generally speaking, when statutes
15 change, new laws are enacted, the court
16 system itself generally doesn't do outreach
17 on that. There might be exceptions to that,
18 if I gave it some thought. But that
19 particular issue, I've not thought about.
20 But happy to talk to you about it and if
21 there's some appropriate outreach that we can
22 be doing, you know, we would seriously
23 consider that.

24 SENATOR HOYLMAN: Thank you, Judge.

1 Thank you, Madam Chair.

2 CHAIRWOMAN KRUEGER: Thank you. Thank
3 you. I think we don't have any new Senators.
4 Assembly?

5 CHAIRWOMAN WEINSTEIN: So we've been
6 joined by Assemblywoman Fahy, Assemblyman
7 Montesano, and Assemblywoman Titus, chair of
8 our Gov Ops Committee.

9 And we're going to go to Mr. Lentol
10 for some questions.

11 ASSEMBLYMAN LENTOL: Thank you, Madam
12 Chairs. I appreciate the opportunity to go
13 ahead of my colleague because I have to go to
14 a press conference at 10:30.

15 And Judge Marks, welcome again.

16 CHIEF ADMIN. JUDGE MARKS: Thank you.

17 ASSEMBLYMAN LENTOL: I listened to
18 your remarks very carefully about Raise the
19 Age. And I'm just wondering if you could
20 tell us a little bit more about what's going
21 on in the courts about that.

22 As you know, in 2018 we now have
23 16-year-olds charged with misdemeanors sent
24 directly to the Family Court, and many

1 charged with felonies removed from the youth
2 part for the Family Court. And in October
3 2019, we'll fully implement the bill by
4 taking care of the 17-year-olds as well.

5 So I'm wondering, first and foremost,
6 what percentage of eligible cases are moving
7 to the Family Court under this legislation.
8 And also the question about resources. Did
9 the OCA budget require a transfer of money
10 from the criminal court to the Family Court
11 to do that?

12 CHIEF ADMIN. JUDGE MARKS: First of
13 all, it's going very well. I mean, one of
14 the best things about the legislation when it
15 was enacted, it gave an 18-month period of
16 time to prepare for the first phase of the
17 implementation, which as you said was last
18 October 1st.

19 It's going extraordinarily well. I
20 mean, we have a -- one of the first things we
21 did, we created an internal committee in the
22 court system of judges and nonjudicial
23 personnel to examine every aspect of the
24 court system that would be impacted by Raise

1 the Age. And that resulted in development of
2 an operating manual for judges and court
3 staff involved in Raise the Age; exhaustive
4 training of judges and nonjudiciary personnel
5 on the new law; new technology and a new case
6 management program to keep track of the
7 cases, particularly the movement of cases
8 from criminal court to Family Court.

9 We transferred some judges from the
10 other courts into Family Court in
11 anticipation of the increased volume of
12 cases. We transferred and reassigned court
13 staff, court officers and court clerks, from
14 the other courts to Family Court to prepare
15 for this. And it's really gone -- again,
16 it's the first step, and the second step in
17 full implementation of the law will kick in
18 next October 1st.

19 But I have to say, it's really --
20 there have been minimal if any problems.
21 We've worked very collaboratively with all
22 the other criminal justice agencies and
23 stakeholders who are involved in Raise the
24 Age. I think it's been kind of a textbook

1 example of -- particularly since we had the
2 time to sort of prepare for this -- how new
3 and significant and complicated law can be
4 implemented.

5 ASSEMBLYMAN LENTOL: Have we been able
6 to establish youth parts in every county?

7 CHIEF ADMIN. JUDGE MARKS: Yes.

8 ASSEMBLYMAN LENTOL: And I don't know
9 if you said that, but how is that working?
10 Is it up and running? And are these people
11 doing the job that we expected them to do in
12 the youth part?

13 CHIEF ADMIN. JUDGE MARKS: We have
14 trained and carefully selected judges who sit
15 in the youth -- there's a youth part in every
16 one of the 62 counties of the state. And I
17 think you would --

18 ASSEMBLYMAN LENTOL: I guess the
19 question always is, if you could pull it into
20 your answer, whether or not the number of
21 Family Court judges is sufficient to satisfy
22 the needs for all these courts.

23 CHIEF ADMIN. JUDGE MARKS: I would say
24 so far it is, but it's -- we want to wait and

1 see what the impact is.

2 Look, a lot of the success of Raise
3 the Age will be determined by whether
4 probation departments across the state, who
5 have the authority under the law to adjust or
6 divert cases when they come in, so that an
7 actual Family Court proceeding is not filed
8 with the court. And if the adjustment
9 rates are high, which we expect that they
10 will be, that will very substantially lessen
11 the impact on the Family Courts, and we'll
12 see fewer cases.

13 But it's much too early to tell
14 whether that's going to happen and to what
15 extent that's going to happen. So in terms
16 of the need for more judges, we may well come
17 back to the Legislature and ask for
18 additional Family Court judgeships, but it's
19 too soon to tell.

20 And I think your initial question was
21 how many cases are being transferred from the
22 criminal courts to the Family Courts.
23 Because as you know, the misdemeanor cases
24 for 16-year-olds and 17-year-olds go straight

1 to Family Court. The felony cases, all of
2 them, first go into the criminal courts and
3 then there's -- presumptively the nonviolent
4 felonies will then be transferred over to
5 Family Court and the violent felonies, some
6 of them may stay in the criminal courts, some
7 may be transferred to Family Court.

8 At this point I believe 88 percent of
9 the felonies -- and this is for the first
10 three months of the new law, October,
11 November and December -- 88 percent of the
12 felonies have been transferred over to Family
13 Court. Which I think is a good number and
14 consistent with what the expectations for the
15 law were.

16 ASSEMBLYMAN LENTOL: Good. Let me
17 move to the sealing provisions in the bill.
18 As you know, it allows -- the Raise the Age
19 law included a new sealing provision that
20 allows a person of any age convicted of up to
21 two crimes, only no more than one of which
22 would be a felony, to apply to the court to
23 have their records sealed after 10 years. Of
24 course, that's not going to apply to current

1 people, but it applies to people
2 retroactively.

3 So I'm wondering if you can provide us
4 an update as to how many sealing applications
5 have been filed with the court to date.

6 CHIEF ADMIN. JUDGE MARKS: Yeah, I --
7 Assemblyman Lentol, I don't have the exact
8 number, but I can tell you it's very low.
9 And --

10 ASSEMBLYMAN LENTOL: What would you
11 suggest that -- how we handle this to do it
12 better?

13 CHIEF ADMIN. JUDGE MARKS: This goes
14 to Senator Hoylman's point, the statute of
15 limitations bill. There needs to be more
16 outreach on that. In fact, I was reading an
17 article about it the other day, that there's
18 -- the author of the article was crying out
19 for more outreach. People don't know about
20 this, and the word hasn't gotten out to
21 enough people about the opportunities for
22 sealing. And I think we need to think about
23 the best way to do that.

24 I mean, obviously the institutional

1 defender offices have to play a big role, but
2 they lose track of their former clients. And
3 it's a problem and a challenge, because the
4 law has been greatly underutilized, there's
5 no question about that. I'll get you the
6 numbers; I don't have them off the top of my
7 head. But it's another like very well
8 intentioned law that requires outreach. It's
9 not going to fulfill its potential if people
10 don't know about it.

11 ASSEMBLYMAN LENTOL: That's true. And
12 also, as you know, a hearing is not necessary
13 unless the DA has an objection to the
14 application for the sealing of the record.
15 Do you know how many hearings have been held
16 where the DA has not consented and required a
17 hearing?

18 CHIEF ADMIN. JUDGE MARKS: I don't.
19 But we could try to get that for you.

20 ASSEMBLYMAN LENTOL: Good. I think
21 I'll stop there and let somebody else take
22 over. I have to leave anyway.

23 So I appreciate your comments.

24 CHIEF ADMIN. JUDGE MARKS: Thank you.

1 CHAIRWOMAN WEINSTEIN: Thank you.

2 We've been joined by Assemblyman
3 Colton.

4 CHAIRWOMAN KRUEGER: Thank you.

5 Senator Jamaal Bailey, chair of the
6 Codes Committee.

7 SENATOR BAILEY: Good morning,
8 Your Honor.

9 CHIEF ADMIN. JUDGE MARKS: Good
10 morning.

11 SENATOR BAILEY: I'd like to thank you
12 for testifying.

13 Thank you, Madam Chairs, for convening
14 this hearing.

15 I'd like to thank your staff, first
16 and foremost, for always being responsive,
17 and Judge Edwina Richardson for being a
18 constituent and always being somebody that
19 does dispense work on your behalf, for your
20 office, quite well.

21 I have a few questions, first around
22 pretrial detention in the Executive's Budget.
23 And I've been long a proponent, as well as my
24 colleague in the Assembly, Assemblyman

1 Lentol, as well as myself and my Senate
2 Democratic colleagues, about pretrial reform,
3 specifically discovery. How would discovery
4 reform, as indicated in the Executive's
5 Budget, impact the courts?

6 CHIEF ADMIN. JUDGE MARKS: Well, I
7 think it would impact it very favorably. I
8 mean, I want to spend more time reading the
9 proposal, you know, in the Article VII bill.
10 But the court system as an institution has
11 supported broader and earlier criminal
12 discovery for over 25 years, and maybe
13 longer. Because our view is it's sort of a
14 truism, which is that if more information is
15 turned over and it's turned over earlier in
16 the case, that will lead to earlier
17 dispositions. And of course there have to be
18 protections in situations where witness
19 safety maybe at risk, and I know that the
20 Governor's proposal does address that.

21 But as a concept, from the court
22 system's perspective, earlier discovery and
23 broader discover is a good thing and will
24 help us in our effort to resolve cases more

1 expeditiously.

2 SENATOR BAILEY: Certainly. So in
3 addition to that, I imagine there are a
4 number of other factors that increase court
5 congestion, or I should say add to court
6 congestion. What would you say would be the
7 top indicators of -- well, the top reasons
8 why court congestion takes place?

9 CHIEF ADMIN. JUDGE MARKS: Well, I
10 would say the number-one factor is volume.
11 Even though violent crime is down, and
12 dramatically down, there's still -- there's a
13 lot of cases. And we're talking in
14 particular about New York City. If you look
15 at the number of felony indictments per judge
16 in New York City, it's much higher than other
17 parts of the state, much higher. So volume,
18 I would say, is the primary factor.

19 Other factors are attorneys not being
20 ready. And I think, you know, the blame goes
21 all around on that. I'm not just blaming
22 prosecutors, I'm not just blaming defense
23 lawyers. In some instances there are
24 legitimate reasons why attorneys aren't ready

1 to go to trial. But lack of attorney
2 readiness to go to trial is a major factor.

3 And thirdly, and this is the thing
4 that we're trying to change -- and I think we
5 have seen progress -- is judges need to be as
6 proactive and aggressive as possible in
7 getting these cases ready for trial, you
8 know, pinning the lawyers down to a trial
9 date and sending the case out for trial. And
10 of course most of the cases do not go to
11 trial, they're resolved by plea. But one of
12 the best ways to facilitate a plea
13 disposition is to send the case out for
14 trial. In some cases it will be tried, and
15 that's a good thing, because trials are
16 important, but most of the cases end up being
17 resolved through a plea disposition.

18 So I would say volume, lack of
19 attorney readiness, and the need for judges
20 to be as proactive and aggressive as possible
21 in pushing cases to plea or trial.

22 SENATOR BAILEY: So certainly, as you
23 mentioned, readiness, and readiness is a
24 major component of the Executive's speedy

1 trial proposal and my speedy trial proposal
2 and Assemblyman Aubry's speedy trial
3 proposal.

4 If the speedy trial proposal were
5 enacted, do you believe that that would
6 reduce court congestion?

7 CHIEF ADMIN. JUDGE MARKS: The speedy
8 trial proposal in the Article VII?

9 SENATOR BAILEY: Correct.

10 CHIEF ADMIN. JUDGE MARKS: Yeah, I
11 think that's a modest proposal. I think the
12 criminal discovery proposal, if enacted,
13 would have a greater impact on criminal
14 practice in high-volume courts. But I think
15 from what I've read about the speedy trial
16 proposal, it would have a positive impact.

17 SENATOR BAILEY: And let's skip to
18 cash bail. If we eliminate cash bail, as has
19 been proposed by the Senate and the
20 Executive, what effect would that have on
21 court congestion or OCA's operations, if any?

22 CHIEF ADMIN. JUDGE MARKS: Well, court
23 congestion -- it depends on the number of
24 hearings that the DAs would request, the

1 detention hearings. In the bill it's the
2 hearings -- they're real hearings, as I
3 understand it, with witnesses testifying.
4 And the hearings have to be held very
5 quickly, there's a very strict time period
6 following arraignment where the hearing would
7 have to be held.

8 So the impact on court congestion,
9 that's going to turn on how many cases
10 prosecutors ask for detention hearings. If
11 it's a limited, narrow number of cases, it
12 won't have a major impact on the courts and
13 court congestion. If it's a lot of cases, it
14 could lead to a lot of hearings, and that
15 will take up resources, court resources, for
16 sure.

17 SENATOR BAILEY: So in addition to
18 court congestion, do you see any other
19 impacts that the ending of cash bail would
20 have on OCA? In addition to the fact that
21 you just mentioned.

22 CHIEF ADMIN. JUDGE MARKS: Well, let
23 me just say that, you know, bail is an
24 inherently discriminatory practice. I mean,

1 if you have money, you get out. If you don't
2 have money, often you don't. And that's a
3 problem. And I think it's obviously
4 something that is an entirely legitimate
5 subject for the Governor and the Legislature
6 to be looking at.

7 In other states in the country -- not
8 a lot, but other states have eliminated bail
9 and the world hasn't come to an end in those
10 states and crime hasn't skyrocketed.

11 So I think that bail reform is a
12 worthy endeavor, certainly, but it needs to
13 be done very carefully, you know, with all of
14 the potential consequences seriously
15 considered.

16 SENATOR BAILEY: Certainly. It's
17 heartening to hear you say that bail reform
18 will not be the end of the world. I wanted
19 to make sure that we said that loud and
20 clear.

21 In terms of the judges that you
22 mentioned, will there be a commitment from
23 OCA to retrain judges? If we have this new
24 way of pretrial reform -- obviously we have

1 some of the best judges in -- we have the
2 best judges in the world in the State of
3 New York, I'm a little biased, specifically
4 in the Bronx.

5 (Laughter.)

6 SENATOR BAILEY: -- in Mount Vernon --

7 CHIEF ADMIN. JUDGE MARKS: Definitely
8 in the Bronx.

9 SENATOR BAILEY: But will there be a
10 commitment to retraining judges with these
11 new pretrial reforms?

12 CHIEF ADMIN. JUDGE MARKS: Look,
13 these -- you're looking at, you know, major,
14 major reform of bail practice in this state
15 with that proposal, major, major reform of
16 criminal discovery practice, and significant
17 reform of speedy trial practice. It -- we
18 will -- this will have serious -- and I'm not
19 saying this in a negative way, but this will
20 have a serious impact on the criminal justice
21 system and the process of cases in the
22 criminal courts across the state. And if
23 these proposals, all of them or even some of
24 them are enacted, we're going to have to do

1 extensive training of our judges. So
2 absolutely.

3 SENATOR BAILEY: My final question,
4 and a question that will be carried on by
5 another one of my colleagues, is about
6 diversity in OCA. Last year at this same
7 hearing we spoke about the LEO program and
8 you mentioned that the commitment was via the
9 Assembly. And while the LEO program -- my
10 understanding is that the funding has been
11 cut for that this year. In addition to the
12 LEO program, I would like to state what is
13 OCA doing to increase diversity throughout
14 the court system, not just entering law
15 school, but how do we get more court
16 attorneys to be diverse and reflect what New
17 York State really looks like? And what is
18 OCA's commitment to that?

19 CHIEF ADMIN. JUDGE MARKS: Well, the
20 LEO program -- the money for the LEO program
21 has been cut? Because that was always a --

22 SENATOR BAILEY: No, my apologies.

23 CHIEF ADMIN. JUDGE MARKS: Assemblyman
24 {sic} Joyner is --

1 SENATOR BAILEY: Yes, the Executive
2 Budget does recommend eliminating the funding
3 for the LEO program, yes. Assemblywoman
4 Joyner -- I know you mentioned her last year
5 as well in terms of her having more knowledge
6 on the information. But I'm asking about
7 what OCA's commitment is aside from the
8 Assembly, to committing to diversity aside
9 from the Assembly.

10 CHIEF ADMIN. JUDGE MARKS: Well, we do
11 a lot. You know, most of our employees are
12 civil service employees, meaning they take a
13 civil service test, they get on a list and,
14 you know, pursuant to fairly strict rules in
15 the civil service laws.

16 And we do a lot of outreach when we
17 announce a test in communities. Our Human
18 Resources Office, our Equal Employment
19 Opportunity Office does a lot of work to get
20 word out in the community about these tests.
21 And, you know, these jobs are viewed as good
22 jobs and good-paying jobs in many
23 communities, in most communities, I would
24 say.

1 And I think we've seen the results.
2 When we graduate court officers -- when they
3 come in, they have to go through our academy
4 and they come out, and I go to these
5 graduations. And the diversity of these
6 classes that we graduate in recent years is
7 extraordinarily impressive.

8 With court attorneys, while many of
9 the court attorneys are picked by judges when
10 they pick their own law clerk -- that's a
11 personal appointment that we can't control.
12 That's an individual decision by the judge.

13 But as our bench becomes more diverse,
14 you see more diversity. In the staff people
15 that the judges have authority to hire
16 themselves, those people become more diverse.

17 With our administrative judges and
18 supervising judges in the court system,
19 which, you know, we have control over who we
20 choose as the leaders of our different
21 courts, the supervising judges --

22 CHAIRWOMAN KRUEGER: Judge, I'm going
23 to ask you to continue this with
24 Senator Bailey off-testimony --

1 SENATOR BAILEY: Certainly. Thank
2 you, Madam Chair. Thank you, Judge Marks,
3 for your remarks.

4 CHIEF ADMIN. JUDGE MARKS: Be happy to
5 come and talk to you about it.

6 SENATOR BAILEY: Certainly, sir.
7 Thank you for your time.

8 CHAIRWOMAN KRUEGER: Thank you. We
9 have to try to be a little strict so that we
10 don't hit the 17-hour mark.

11 Assemblywoman Weinstein.

12 CHAIRWOMAN WEINSTEIN: Yes, we're
13 going to go now to Assemblyman Dinowitz, our
14 Judiciary chair.

15 ASSEMBLYMAN DINOWITZ: Good morning.

16 CHIEF ADMIN. JUDGE MARKS: Good
17 morning.

18 ASSEMBLYMAN DINOWITZ: As you know,
19 the foreclosure crisis, which began around a
20 decade ago, is still going strong. In 2017,
21 there were approximately 27,000 new cases
22 filed and there were 50,000 cases pending.
23 Do you know how many cases were filed in 2018
24 and how many are pending currently?

1 CHIEF ADMIN. JUDGE MARKS: The
2 number -- you know, we had 90,000 pending
3 foreclosure cases at one time. It was truly
4 a crisis, and it's still a big challenge.
5 But in terms of pending cases, it's closer to
6 40,000 now. I can get you the number of
7 filings. And the filings are still
8 significant.

9 You know, it's interesting because
10 particularly downstate, where the real estate
11 market has been pretty strong in the last few
12 years, you'd think that would -- I think that
13 has had a favorable impact on reducing the
14 number of foreclosures, but there's still a
15 lot of foreclosure cases that come in. But
16 the last couple of years -- and we look at
17 these numbers very closely. For the most
18 part, kind of month by month, there's been
19 sort of a slow but steady decline in
20 foreclosure filings.

21 But there hasn't been, you know, a
22 drastic drop in foreclosures, and these cases
23 still present a challenge for us. They're
24 labor-intensive to adjudicate. But the

1 situation, I can tell you, is much, much
2 better than it was 2010, 2011, 2012. But I
3 can get you the exact numbers. We have that.

4 ASSEMBLYMAN DINOWITZ: Okay. In
5 response to the crisis, in 2009 the
6 Legislature enacted protections for
7 homeowners threatened by foreclosure that
8 included mandated settlement conferences,
9 preforeclosure notices, and the strengthening
10 of the anti-predatory lending laws.

11 Do you know in New York how that --
12 what's your opinion of how that's been
13 working out?

14 CHIEF ADMIN. JUDGE MARKS: Well, we
15 implemented the mandatory settlement
16 conferences in accordance with the
17 legislation that was passed that year, I
18 guess it's been 10 years now, and we've done
19 that across the state. In some jurisdictions
20 judges themselves, usually the smaller
21 jurisdictions, preside over the settlement
22 conferences. In the larger jurisdictions we
23 have highly trained court attorney
24 referees -- you know, nonjudicial

1 personnel -- that preside over the settlement
2 conferences.

3 And it's a process we're committed to.
4 I think it's -- has it been fabulously
5 successful? No, I don't think it's been --
6 fabulously successful would be, you know, 80,
7 90 percent of the cases would be settled
8 during the settlement phase. But it's a
9 successful program. A lot of cases do get
10 settled. And we're committed to continuing
11 it and devoting the resources that, you know,
12 we need to devote to it to make it work.

13 ASSEMBLYMAN DINOWITZ: Do you know how
14 many homeowners are represented by counsel in
15 the foreclosure settlement conferences?

16 CHIEF ADMIN. JUDGE MARKS: It's very
17 high. It's in the neighborhood of
18 two-thirds, maybe a little higher. So it's
19 much higher than it was originally. But it's
20 -- it's not a hundred percent, but it's a
21 strong majority of homeowners have some sort
22 of representation during the settlement
23 conference phase.

24 ASSEMBLYMAN DINOWITZ: So in 2012 the

1 AG's office Homeowner Protection Program was
2 created, and it temporarily funded a network
3 of 85 organizations to provide homeowners
4 with free qualified mortgage assistance
5 relief services across the state. That
6 program is going to expire at the end of this
7 fiscal year. Right now there's a campaign
8 going on, known as Communities First, to
9 secure funds to help continue this in every
10 county around the state. I think right now
11 about a fifth of the Supreme Court inventory
12 consists of foreclosures.

13 If this program expires, how do you
14 think that's going to impact people around
15 the state?

16 CHIEF ADMIN. JUDGE MARKS: It's not
17 going to be a positive impact, that's for
18 sure.

19 I think that -- my understanding is
20 that the funding is expiring because that
21 came out of a settlement fund, the litigation
22 that the AG was part of against the banking
23 industry, and money was set aside for legal
24 services for homeowners in foreclosure who

1 couldn't afford lawyers.

2 And it has been very helpful. It's of
3 course much easier to settle a case if
4 there's a lawyer involved, a lawyer on both
5 sides, than when that's not true.

6 So that's not a positive development.
7 And if there's some way to identify money to
8 fill that gap, if the AG's money really is
9 drying up, you know, that would be money very
10 well spent.

11 ASSEMBLYMAN DINOWITZ: Thank you.

12 So last year, as you know, because of
13 the extreme overcrowding and backlogs in some
14 of our courts, I had made it a top priority
15 to try to add some additional judges. And
16 last year for the first time that I can think
17 of since I've been in office, and that's been
18 a while now, we added one Supreme Court judge
19 in the 9th, 10th, 11th, 12th and 13th
20 Judicial Districts, five judges altogether.
21 And that may sound like a lot, but I kind of
22 think it's just a -- it's a small start.

23 Do you think that the creation of
24 additional judges and of course the personnel

1 that would go along with that would be
2 something that would be -- that should be a
3 top priority?

4 CHIEF ADMIN. JUDGE MARKS: We could
5 use more judges, certainly. And not
6 everywhere, by the way, not every judicial
7 district or every county in the state. I
8 think -- in most places I believe we have a
9 sufficient number of judges. If you look at
10 the filings per judge, those numbers are
11 manageable.

12 But in the high-volume jurisdictions,
13 including I would say the districts that you
14 mentioned where there were -- there was a new
15 Supreme Court judgeship created in each of
16 those districts, we could always use more
17 judges, you know, for sure.

18 ASSEMBLYMAN DINOWITZ: Especially the
19 Bronx, of course.

20 (Laughter.)

21 CHIEF ADMIN. JUDGE MARKS: Of course
22 in the Bronx.

23 ASSEMBLYMAN DINOWITZ: And those other
24 jurisdictions.

1 CHIEF ADMIN. JUDGE MARKS: As you
2 know -- and we've talked about this --
3 there's a constitutional formula, an archaic
4 formula in Article 6 of the State
5 Constitution which dictates how many Supreme
6 Court judges there can be in every judicial
7 district. But there's a little bit of leeway
8 in some of these places to create more
9 judgeships. So it's something we'd be very
10 much interested in discussing with you.

11 ASSEMBLYMAN DINOWITZ: Okay. Good.
12 Because I believe there's a tremendous need
13 there, particularly in some areas -- and not
14 just in New York City. There were some
15 jurisdictions outside the city. I mean, two
16 of the districts I mentioned are Long Island
17 and then the suburbs north of New York City,
18 having the largest, huge backlogs.

19 A few years ago in the city a program
20 was created by the Council, signed by the
21 mayor, to provide free counsel to people who
22 have actions pending in Housing Court. And I
23 don't believe it's fully phased in. My own
24 belief is that that program will have a very

1 significant effect in tamping down on the
2 homelessness crisis which we continue to
3 face.

4 Do you have any feeling as to how this
5 program has been working out?

6 CHIEF ADMIN. JUDGE MARKS: Well, it's
7 being rolled out. It's a five-year phase-in,
8 and we're in the second year now. And
9 they're doing this by zip code.

10 And it's -- again, like in any case in
11 any court in the Unified Court System, it's
12 always better to have a lawyer on the case
13 representing each side. But there's no doubt
14 that when this is fully phased in, there's
15 going to be a lot more litigation in the
16 Housing Court. And we have been trying to
17 take steps to address that. As I mentioned
18 in my opening remarks, we have a Housing
19 Court Commission that issued a report last
20 year. We're busy implementing its
21 recommendations.

22 A lot of really the impetus for
23 creating that commission was the universal
24 access law in the city. That we knew that

1 over the next four or five years there are
2 going to be a lot more lawyers representing
3 tenants in Housing Court, which is a
4 wonderful development but will have
5 consequences and could lead to a lot more
6 litigation, a lot more motion practice.

7 At the same time there will be less
8 litigation, because there's a lot of
9 post-trial, post-judgment litigation that
10 take place when an eviction is ordered. And
11 the Housing Court judges are receptive to
12 adjudicating those issues because there's
13 always the greatest reluctance to evict
14 someone. And in fact there really aren't
15 that many evictions in the end that result
16 from Housing Court proceedings, given that
17 there are about 300,000 new Housing Court
18 cases filed every year.

19 But the arrival of additional lawyers,
20 increasing numbers of lawyers, is going to
21 have a dramatic impact on the Housing Court.
22 We're preparing for that as best we can. But
23 it's a good problem to have, of course.

24 ASSEMBLYMAN DINOWITZ: Yes. Okay,

1 thank you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 Senator James Seward.

4 SENATOR SEWARD: Thank you, Madam

5 Chair --

6 CHAIRWOMAN KRUEGER: And we've also

7 just been joined by Senator John Liu.

8 Thank you.

9 SENATOR SEWARD: Thank you, Judge

10 Marks, for being here and your testimony this

11 morning.

12 CHIEF ADMIN. JUDGE MARKS: Good

13 morning.

14 SENATOR SEWARD: I wanted to zero in

15 on a couple of areas of your presentation,

16 the first of which is the new capital plan,

17 or the ongoing capital plan. Are there any

18 specific projects in mind for this year's

19 round? And where would they be located?

20 CHIEF ADMIN. JUDGE MARKS: Well, the

21 money's used for a whole range of projects.

22 The primary one is we have sort of a very

23 sophisticated and vast statewide computer

24 network that requires attention and service

1 and upgrades and maintenance, so money -- and
2 that's a statewide operation, so money will
3 be devoted to that.

4 There's the -- every year -- things as
5 basic as judges' computers and law clerks'
6 computers have to be replaced, and that's a
7 statewide undertaking, so money will be
8 devoted to that.

9 Included in this capital appropriation
10 would be replacement of security equipment in
11 courthouses, which again is statewide.
12 Magnetometers have a shelf life, x-ray
13 machines and the like. The bulletproof vests
14 that our court officers wear have, I think, a
15 five-year life span, so every year they have
16 to be replaced.

17 We're also looking at more technology
18 in individual courtrooms, and this will be
19 rolled out over the years. But including
20 basic things like outlets where attorneys can
21 plug in and charge their cellphones, to
22 soundproofing of courtrooms, which is a
23 problem in a lot of the buildings, that it's
24 difficult to hear the proceedings for the

1 judge, for the lawyers, for the witnesses,
2 for the jurors. So we're going to be
3 soundproofing a lot of courtrooms. It's a
4 statewide undertaking that really virtually
5 every county in the state will benefit from.

6 SENATOR SEWARD: Just as a quick
7 follow-up, I noticed in the budget request
8 note there was reference to this would be the
9 third year of a multiyear plan, in terms of
10 modernizing many of the items I guess you
11 have just mentioned to us.

12 Could I have a copy of this multiyear
13 plan? I mean, does it exist?

14 CHIEF ADMIN. JUDGE MARKS: We can give
15 you a copy of the plan, yes. We'll do that.

16 SENATOR SEWARD: I appreciate that,
17 just so we can see where things are going
18 specifically.

19 I wanted to switch to the opioid
20 courts. Because last year I understand they
21 came into the Buffalo City Court, the Bronx
22 Criminal Court, and Suffolk County District
23 Court, and now we're looking to expand the
24 opioid courts statewide. I presume that in

1 the locations that were selected last year
2 it's working pretty well, if you want to go
3 statewide, and they are effective.

4 And how many additional opioid courts
5 does OCA expect to be initiated in the
6 upcoming fiscal year?

7 CHIEF ADMIN. JUDGE MARKS: We have 10
8 opioid courts. They're not all the same,
9 they can vary from place to place depending
10 on the legal culture. But our plan for the
11 upcoming fiscal year is to expand to 10 more
12 in jurisdictions across the state, where
13 there's an interest in doing this in
14 individual communities. You know, that's
15 obviously, you know, where this will work and
16 be most effective.

17 SENATOR SEWARD: So in terms of where
18 the new ones will go, in terms of going
19 statewide, in each judicial district will
20 each county -- I mean, I know -- I'm a
21 resident of the 6th Judicial District. There
22 are 10 counties; it's a sprawling area. I'm
23 sure there would be interest throughout that
24 district, you know, because of the distances

1 involved, of having more localized. Is this
2 what OCA envisions here or --

3 CHIEF ADMIN. JUDGE MARKS: Well, we're
4 not envisioning to have an opioid court in
5 all 62 counties over the next year. But if
6 it makes sense to implement an opioid court
7 in a county, we'll do that. And we did get
8 some federal grant money for this. But, you
9 know, this can be done -- opioid courts are
10 really not that different from drug courts.
11 The difference is that -- the immediacy of
12 it, that there's someone who literally can
13 die if the problem isn't addressed. So it's
14 early and immediate identification, and it's
15 early and immediate placement in a treatment
16 program, and then there's more intensive
17 oversight by the judge. So it's really a
18 drug court model, but an accelerated version
19 of the drug court model. So --

20 SENATOR SEWARD: The drug courts have
21 been highly successful --

22 CHIEF ADMIN. JUDGE MARKS: Pardon me?

23 SENATOR SEWARD: The drug courts have
24 been highly successful.

1 CHIEF ADMIN. JUDGE MARKS: They have
2 been highly successful. And we can piggyback
3 opioid courts on top of the existing drug
4 court structure.

5 So since we have drug courts -- we
6 don't have drug courts in 62 counties, but in
7 the overwhelming number of counties,
8 including in counties in the 6th Judicial
9 District. So I don't see any reason why we
10 can't layer on top of that, you know, an
11 opioid treatment process as well --

12 CHAIRWOMAN KRUEGER: Thank you.

13 SENATOR SEWARD: Thank you.

14 CHIEF ADMIN. JUDGE MARKS: -- and
15 that's what we hope to do.

16 CHAIRWOMAN KRUEGER: I know you're not
17 supposed to cut off judges, but apparently
18 that's my job today.

19 (Laughter.)

20 CHAIRWOMAN KRUEGER: Thank you.

21 Assembly.

22 CHAIRWOMAN WEINSTEIN: Assemblyman
23 Barclay.

24 ASSEMBLYMAN BARCLAY: Thank you.

1 Good morning, Judge.

2 CHIEF ADMIN. JUDGE MARKS: Good
3 morning.

4 ASSEMBLYMAN BARCLAY: I have what I
5 think is two quick questions.

6 In your testimony you talked about the
7 \$85 million that goes to the civil legal
8 services. How is that money divvied up
9 around the state?

10 CHIEF ADMIN. JUDGE MARKS: Good
11 question. And by the way, that money goes to
12 every county, goes to representing
13 New Yorkers in every one of the 62 counties.
14 It's a formula that's based on 200 percent of
15 the federal poverty level. And the
16 \$85 million is literally divided up
17 proportionally based on the county's
18 population that's under the 200 percent of
19 the federal poverty level.

20 ASSEMBLYMAN BARCLAY: And how's that
21 work -- I'm just curious. How's that work
22 out, then? Understanding it's formulaic, but
23 what -- do you know how it is split up? Like
24 how much does that result in New York City

1 getting versus Syracuse or Buffalo?

2 You may not know. If someone could
3 just --

4 CHIEF ADMIN. JUDGE MARKS: New York
5 City gets a sizable share of it. I mean, I
6 have the numbers with me. We can definitely
7 get you that very quickly.

8 ASSEMBLYMAN BARCLAY: Thank you.

9 Regarding Raise the Age -- and I may
10 have missed this. Do you feel now there's
11 enough Family Court judges in the system to
12 handle the increased caseload as a result of
13 Raise the Age?

14 CHIEF ADMIN. JUDGE MARKS: At the
15 moment. But we're watching it very
16 carefully. There are some variables, you
17 know, that we're watching.

18 And I mentioned before the -- that
19 probation -- when the case comes into
20 Family Court, before a case is actually filed
21 and commenced in Family Court, probation in
22 most instances can -- it's called adjustment,
23 it's really divert the case so that a
24 proceeding is actually not brought in

1 Family Court.

2 And that's a critical, critical
3 component, I think, to the success of Raise
4 the Age: To what extent are probation
5 departments across the state going to divert
6 these cases? And obviously, you know, they
7 have to do this very carefully and
8 professionally in making these
9 determinations. But the more cases that get
10 diverted, the more successful the Raise the
11 Age legislation will be and the less of an
12 impact it will have on the courts -- and the
13 less of a need there will be for more Family
14 Court judgeships.

15 ASSEMBLYMAN BARCLAY: So out of the
16 \$100 million that was allocated for Raise the
17 Age last year -- and I think it was proposed
18 to do 200 million -- you got 10 million?

19 CHIEF ADMIN. JUDGE MARKS: We got
20 10 million. We were promised 12. And, you
21 know, we expect to get the additional
22 2 million.

23 ASSEMBLYMAN BARCLAY: For this year?

24 CHIEF ADMIN. JUDGE MARKS: For this

1 fiscal year. And we'll be asking for more
2 than that for the upcoming fiscal year.

3 ASSEMBLYMAN BARCLAY: All right. So
4 out of the 200 million you're looking for --
5 I mean, it's double, is that what you're
6 looking for? And what's that money used for
7 by the Judiciary?

8 CHIEF ADMIN. JUDGE MARKS: It's used
9 for hiring staff, additional staff. It's
10 used for training costs. It's used for
11 technology that we've developed. It's used
12 for facilities' modifications, because there
13 are, under the law, sight and sound
14 requirements for separation of 16- and what
15 will be 17-year-olds from the rest of the --
16 from the adult population.

17 So it's a whole range of items that
18 cost us money.

19 ASSEMBLYMAN BARCLAY: Right.

20 Thank you, Judge. Thank you,
21 Chairwoman.

22 CHAIRWOMAN WEINSTEIN: Senate.

23 CHAIRWOMAN KRUEGER: Thank you.

24 Luis Sepúlveda.

1 SENATOR SEPÚLVEDA: Good morning,
2 judge.

3 CHIEF ADMIN. JUDGE MARKS: Good
4 morning.

5 SENATOR SEPÚLVEDA: So I want to take
6 you back to the issue of diversity in the
7 judicial system.

8 So we know that according to the
9 Bar Association, 52 percent of the population
10 of the state are women and 48 percent are
11 men, 67 percent of the population is white
12 and 32 percent is -- no, I stand corrected.
13 The state population is 67 percent white and
14 33 percent minority. But here are what the
15 numbers tell us: Less than 35 percent of
16 state judges are women, and less than
17 19 percent of communities of color have
18 judges representing them -- or are judges, I
19 should say.

20 When I was a law student, I was a CLEO
21 fellow -- which I don't know if the federal
22 government still funds it, but it was very
23 similar to the LEO program. And I can tell
24 you that part of the reason I became an

1 attorney, and I've been one now for 29 years,
2 was because of the CLEO program. It provided
3 the financial assistance and knowhow and
4 knowledge to help me succeed in law school.

5 Now, I know that you've indicated in
6 your past testimony that it's a good program,
7 it exists while the Assembly funds it. Is
8 there anything that OCA can do to make sure
9 that this program becomes well-funded and
10 viable?

11 CHIEF ADMIN. JUDGE MARKS: I mean,
12 it's not a large program. I think there are
13 about 20 participants, if I recall correctly.

14 We -- well, first of all, at a
15 minimum, we want to see it re-funded, because
16 it's a successful program. We've been
17 running it for a number of years. It's easy
18 for us to run it again. We would want to run
19 it again. It takes place at our Judicial
20 Institute in White Plains. And it's a
21 terrific program. You know, there's no
22 downside at all to that program.

23 But it's not a panacea, certainly. It
24 can make a modest improvement -- and these

1 are young people who are going to law school.
2 So they're not even coming out of law school
3 where we could hire them in the court system.
4 But we do connect them with a mentor who
5 stays with them throughout their law school
6 career; it could be a judge or a lawyer.
7 And, you know, the goal is that these people
8 will be interested in public service and
9 maybe even be interested in working in the
10 court system when they graduate from law
11 school.

12 So there's opportunity for more
13 programs like that.

14 SENATOR SEPÚLVEDA: But, I mean, I
15 have to respectfully disagree with you on --
16 if you believe that the success is just
17 recruiting or getting them to work in public
18 service.

19 The reality is that at least the way
20 the CLEO program ran -- and I believe it's
21 not that much different from the LEO
22 program -- the program actually put me in a
23 position to succeed in law school. I mean,
24 the first legal brief I ever did was at the

1 CLEO program. The first law class that I
2 ever took was at the CLEO program. And they
3 actually taught me methods, practicing tips.
4 And I believe to some degree it put me ahead
5 of other students who were starting law
6 school from day one.

7 So the impact of this program goes far
8 beyond just the ability of creating interest
9 in students to go into public service. It is
10 a fantastic program. And I believe -- it may
11 not be a panacea; I believe it's pretty close
12 for students in college that want to go to
13 law school.

14 Is it possible for OCA to establish a
15 surcharge of some sort on a per-case filing,
16 of 20 cents per case, to help fund it so that
17 the program is not solely dependent on
18 Assembly or Senate legislative budgets?

19 CHIEF ADMIN. JUDGE MARKS: Perhaps,
20 you know, that might be a possible source of
21 funding.

22 You know, I think the law schools
23 could do more. And I'm not aware -- I could
24 be wrong about this, but I'm not aware that

1 any of the 15 law schools in New York for
2 admitted students, you know, who are going to
3 be coming into their first year of law school
4 after Labor Day, do they provide any
5 additional support and resources for students
6 who come from disadvantaged backgrounds?

7 SENATOR SEPÚLVEDA: Well, I'm sure
8 that the law schools can do more. I mean,
9 there's no disagreement about that. But I'm
10 sure that OCA can do more also. And I want
11 to know if that's a priority for OCA.

12 You know, the results of some of these
13 numbers -- our leader, Andrea
14 Stewart-Cousins, and Chairman Hoylman created
15 a subcommittee in the Senate on judicial
16 diversity. I was fortunate enough to be
17 named the chair of that subcommittee. And
18 it's something that I'm -- over the years
19 now, since I've been an elected official --
20 you know, I remember when I first stepped
21 foot in the courthouse in Bronx County
22 20-something years ago. And the staff, the
23 judges did not in any way, fashion or form
24 reflect the population of the county.

1 And that -- some people don't
2 understand the importance of that. But when
3 you have common experiences in life, it
4 certainly makes you a better judge. When you
5 have staff, court attorneys, court personnel,
6 that reflect the population of the county, it
7 certainly makes for a better judicial system.

8 CHAIRWOMAN KRUEGER: Senator, I'm
9 going to have to cut you off. I cut off the
10 judge twice already.

11 SENATOR SEPÚLVEDA: Okay.

12 CHAIRWOMAN KRUEGER: But since you're
13 on a select committee -- is that what you
14 said?

15 SENATOR SEPÚLVEDA: Yes.

16 CHAIRWOMAN KRUEGER: So we can all
17 continue this together.

18 SENATOR SEPÚLVEDA: Thank you.

19 CHAIRWOMAN KRUEGER: Thank you.
20 Assembly.

21 CHAIRWOMAN WEINSTEIN: Thank you.
22 We're going to go to Assemblyman
23 Epstein.

24 ASSEMBLYMAN EPSTEIN: Thank you, Judge

1 the country has done as much as we've done
2 with the protocols I described. And I know
3 that advocates feel that that hasn't been
4 enough. We've been asked to do everything
5 from prohibit ICE agents from coming into the
6 buildings, which I think would be
7 unconstitutional -- courthouses, or public
8 courthouses, I don't think we can bar people
9 from coming into the buildings even if we
10 wanted to do that.

11 We've been asked to -- as a lesser
12 step than that, at least require that when
13 ICE comes into the building to arrest someone
14 that they have a judge-signed warrant.
15 That's something that we have considered, and
16 we haven't rejected it, but I can't say that
17 we've implemented that rule at this point.

18 Of course ICE, they generally have --
19 they have administrative warrants, they're
20 not judge-signed warrants. But federal law,
21 rightly or wrongly, authorizes them to make
22 these arrests with administrative warrants.
23 Other law enforcement agencies have
24 historically come into the courts and made

1 arrests. The NYPD does that probably every
2 day of the week.

3 So it's a very, very difficult,
4 difficult question for us. And we're the
5 court system, and we have to be neutral.
6 We're not the Legislature, we're not the
7 Governor, we're not an advocacy organization.
8 We have to be neutral on issues, whether
9 immigration policies are a good thing or a
10 bad thing. I have my own personal views
11 about that which I'd rather not share. But
12 they're probably similar to your views, I
13 would guess.

14 But as an institution we have to be
15 neutral, and it's difficult for us to -- and
16 probably unconstitutional for us to ban ICE
17 agents from coming into the courthouses. But
18 could we require that they -- when they come
19 in and they're interested in arresting
20 someone, that they produce a judge-signed
21 warrant? Maybe we could require that. We
22 haven't done that up to this point, though.

23 ASSEMBLYMAN EPSTEIN: Thank you. I
24 appreciate your comments, and I look forward

1 to maybe you moving forward on that. I mean,
2 we can all have conversations about private
3 property and what -- you know, when people
4 can have access.

5 I want to turn your attention to civil
6 legal services. I really want to applaud
7 your investment in civil legal services. And
8 I know this \$100 million is a huge -- has a
9 huge impact across the state. But as you
10 know, the majority of people who go into
11 civil courts in the State of New York are
12 still unrepresented. I'm wondering -- you
13 know, I know you want to stay within the
14 2 percent cap, but I'm wondering if there's
15 opportunities to increase those dollars
16 across the state, since so many New Yorkers
17 are still unrepresented.

18 CHIEF ADMIN. JUDGE MARKS: Yup,
19 perhaps. I mean, I'd like to -- and I think
20 I speak for the Chief Judge, we'd like to
21 increase that amount at some point. Of
22 course it's -- \$100 million is a lot of
23 money, but it's not nearly enough to provide
24 lawyers in civil cases for everyone who can't

1 afford a lawyer.

2 I mean, I believe that the --
3 addressing the justice gap in New York, it's
4 a multipronged strategy that's required.
5 It's more money for legal services offices,
6 it's -- the bar has to step up and do more
7 pro bono work, which I believe they've done.
8 I think law schools with law students need to
9 do more. And fourth, which I think it's
10 overlooked, but I think there's a bigger role
11 for nonlawyers in helping to address the
12 justice gap.

13 You walk into a physician's office
14 these days and usually the first person you
15 talk to is not a doctor, it's a physician
16 assistant. And sometimes they're more
17 helpful than the doctor is -- at least they
18 seem to have more time than the doctor.

19 We need to make greater use of
20 nonlawyers. Nonlawyers can't go into court
21 and try cases on behalf of clients, but
22 there's a lot of things they can do helping
23 people fill out forms and pointing them in
24 the right direction and sharing information

1 with them. So addressing the justice gap
2 problem, which is a serious, serious problem
3 in this state and across the country, it
4 needs to be a multipronged strategy.

5 CHAIRWOMAN WEINSTEIN: Thank you.

6 CHIEF ADMIN. JUDGE MARKS: Money being
7 a very important part of that strategy.

8 CHAIRWOMAN WEINSTEIN: Thank you,
9 Judge.

10 Senate.

11 CHAIRWOMAN KRUEGER: Thank you.

12 Senator Zellnor Myrie.

13 SENATOR RIVERA: We got new timers, we
14 should get new mics. I'm just saying.

15 (Laughter.)

16 SENATOR MYRIE: Thank you, Madam
17 Chair.

18 And thank you, Judge Marks. I want to
19 echo the sentiment of Chairman Bailey in my
20 appreciation for your remarks on bail reform
21 and its prudence.

22 I just have one question around
23 New York City's Third Party Transfer Program.
24 This is a program that has affected mostly

1 communities of color. As you might be aware,
2 there were several houses in Brooklyn, the
3 Bronx and Queens that were foreclosed on by
4 the city. These properties were taken from
5 the homeowners, and some homeowners were not
6 given notice of this.

7 Some of my colleagues sent a letter to
8 the Attorney General, as well as I believe
9 your office, to look into this program and
10 whether or not these foreclosures were being
11 conducted in a fair and adequate manner. And
12 so I just wanted to get your thoughts on
13 that, your response, if you received the
14 letter, and what action, if any, OCA could
15 take to help prevent these types of
16 foreclosures.

17 CHIEF ADMIN. JUDGE MARKS: Yeah, I do
18 remember the letter. I don't remember all
19 the specifics of the letter, but that
20 involved a case before a particular judge or
21 several judges interpreting the law, you
22 know, as they interpreted it.

23 And I could revisit this and look at
24 it again, but I think I recall our response

1 was, don't misinterpret this as indifference,
2 but that this involved a pending case and the
3 application of a law by an individual
4 judge -- and there might have been several
5 judges involved in several cases -- and it
6 was difficult for us to intervene -- you
7 know, as administrators to intervene. And
8 that's why we have appellate courts.

9 And I don't know if the decisions of
10 the judges who handled those cases -- I don't
11 know if there was an appeal filed, but we
12 thought that was the proper course, rather
13 than for us to intervene administratively,
14 which can be very dicey sometimes. We're --
15 you know, we're loath to interfere with how
16 individual judges decide individual cases,
17 you know, based on how they're applying the
18 law. That's really why we have appellate
19 courts.

20 So I don't know if that's a good
21 answer, but I think that's -- if I remember,
22 that was our response to the letter. But I
23 can take another look at it and talk to you
24 about it.

1 SENATOR MYRIE: Yeah, I'd greatly
2 appreciate if you could do that. And I
3 appreciate that you cannot comment on the
4 substance or any of the substance of law that
5 was administered.

6 On the administrative side, I think my
7 biggest concern was the notice and whether or
8 not these property owners were given proper
9 notice. And I understand that that can also
10 be a legal question. But I would urge you,
11 please, to revisit this issue. It's
12 disproportionately affecting communities of
13 color and our homeowners, who are really the
14 backbones of our communities, particularly in
15 areas that are gentrifying. This is a very,
16 very serious concern in our communities, and
17 I would urge you to take a look at that.

18 CHIEF ADMIN. JUDGE MARKS: These were
19 city-owned properties?

20 SENATOR MYRIE: No, sir, these were
21 privately owned. The city's Third Party
22 Transfer Program purports to assist
23 homeowners who are under financial duress by
24 looking at tax bills and water bills. But

1 the problem with a number of the properties
2 that were seized, one was the notice. And
3 two, there were some erroneous records, and
4 the city based these seizures on those
5 erroneous records. And so people did not
6 have -- they had their properties taken from
7 them without them knowing, and improperly.

8 And so this is something that the
9 community has been very adamant about, and I
10 really wanted to elevate this and bring it to
11 your attention and urge you to --

12 CHIEF ADMIN. JUDGE MARKS: Were
13 complaints made to the city administration?

14 SENATOR MYRIE: Yes. And so this -- I
15 believe the city -- the letter that my
16 colleagues wrote -- this was before I
17 arrived -- was also sent to some of the
18 proper city agencies.

19 CHIEF ADMIN. JUDGE MARKS: Okay.

20 SENATOR MYRIE: Thank you, Judge.

21 CHAIRWOMAN KRUEGER: Assembly.

22 CHAIRWOMAN WEINSTEIN: Assemblyman
23 Montesano.

24 ASSEMBLYMAN MONTESANO: Thank you,

1 Madam Chair.

2 Good morning, Judge.

3 CHIEF ADMIN. JUDGE MARKS: Good
4 morning.

5 ASSEMBLYMAN MONTESANO: Judge, just a
6 couple of questions. In your testimony on
7 page 3, where you talk about what are the
8 highest priorities, and rightfully so, is the
9 protections of the judges, court staff, and
10 the public in the courthouse. I see last
11 December there was 129 new graduates of court
12 officers, and then you indicated that there
13 will be 240 recruits scheduled for training
14 next month. So that gives us about 369 new
15 court officers.

16 What's been the attrition rate in
17 relation to this hiring number?

18 CHIEF ADMIN. JUDGE MARKS: There are
19 actually 75 more going into our upstate class
20 in April. So over 400 new court officers
21 coming online over the next six months.

22 So the attrition with court -- you
23 know, court officers, it's a civil service
24 title, meaning they have to take a test and

1 be appointed off of a list. But it's a
2 unique title and position because if we
3 decide -- let's say we decide we needed
4 another clerk in Nassau District Court, we
5 can just go to the list and literally put the
6 person in the job the next day if we decide
7 to do that.

8 Court officers, they have to go
9 through a class. And there's a lot of work
10 that goes into vetting and qualifying people
11 to go into --

12 ASSEMBLYMAN MONTESANO: No, I
13 understand that, I'm just -- I'm limited for
14 time because I have a follow-up question.
15 But are we keeping pace or are we gaining?
16 Are we able to get more court officers on
17 than we're losing in attrition?

18 CHIEF ADMIN. JUDGE MARKS: We feel
19 with -- and I think our unions, who made --
20 engaged in a lot of volume about this, to put
21 it mildly, I think acknowledge that there's a
22 lot of court officers coming online now, and
23 that will go a long way towards addressing
24 the problems that have resulted from not

1 having a sufficient number of court officers.

2 ASSEMBLYMAN MONTESANO: And a
3 follow-up to our conversation we had
4 yesterday, so there was a three-quarters bill
5 passed and I believe it went up to the
6 Governor and it wasn't supported by the
7 Governor, I think. What's the position,
8 though, of the Office of Court
9 Administration -- is there a position from
10 your office to the Governor regarding the
11 support of this bill?

12 CHIEF ADMIN. JUDGE MARKS: I'm glad
13 you asked that question, because in the past
14 we've taken no position on that bill. But
15 this year, or in December, when the bill was
16 on the Governor's desk, we wrote to the
17 Governor and expressed our strong support
18 for -- that he sign the bill. Which
19 unfortunately he didn't.

20 ASSEMBLYMAN MONTESANO: Will you be
21 able to support that bill now as it comes
22 forward again? Will you take the same
23 position?

24 CHIEF ADMIN. JUDGE MARKS: I'm sure we

1 would.

2 ASSEMBLYMAN MONTESANO: And that would
3 be the position of the Chief Judge?

4 CHIEF ADMIN. JUDGE MARKS: It's the
5 position of the court system as an
6 institution, yes.

7 ASSEMBLYMAN MONTESANO: Right. And
8 just so everybody understands it, how does
9 the Office of Court Administration -- in
10 matters like that, when they send a letter,
11 does it go from the judge directly, or does
12 it go from counsel to the Governor or the
13 Governor's counsel? How does that interplay
14 take place?

15 CHIEF ADMIN. JUDGE MARKS: It's --
16 it's -- the way we notify the Governor about
17 our position on a bill -- including one of
18 our own bills, for that matter, but on other
19 bills of interest to us -- is our legislative
20 counsel writes to the Governor's counsel.
21 That's the way it's been done for decades.

22 ASSEMBLYMAN MONTESANO: Okay, thank
23 you.

24 And just quickly on the enhancement of

1 court security, because I know you're asking
2 for additional funding, what areas -- I know
3 it differs from county to county. But like
4 downstate, where would be the emphasis on the
5 enhancements in court security?

6 CHIEF ADMIN. JUDGE MARKS: You mean
7 particular locations, or what types of
8 enhancements?

9 ASSEMBLYMAN MONTESANO: What types of
10 enhancements?

11 CHIEF ADMIN. JUDGE MARKS: Because the
12 equipment, as I was saying before, has a
13 shelf life -- magnetometers, x-ray machines,
14 security cameras, bulletproof vests. Sort of
15 the whole range of court security equipment
16 and devices that need to be replaced, you
17 know, on an ongoing basis.

18 ASSEMBLYMAN MONTESANO: Okay. All
19 right, thank you very much. Thank you, Madam
20 Chair.

21 CHIEF ADMIN. JUDGE MARKS: Thank you.

22 CHAIRWOMAN WEINSTEIN: Before we go to
23 the Senate, we've been joined by
24 Assemblywoman Buttenschon.

1 Senate?

2 CHAIRWOMAN KRUEGER: Thank you.

3 Senator Kevin Thomas.

4 SENATOR THOMAS: Good morning, Judge.

5 CHIEF ADMIN. JUDGE MARKS: Good
6 morning.

7 SENATOR THOMAS: I have about five
8 questions. I'll try to run through this very
9 quickly. The first deals with replevin
10 actions. Are you able to speak to them about
11 utility companies coming into court and
12 filing these replevin cases?

13 CHIEF ADMIN. JUDGE MARKS: Utility
14 companies coming into court and filing --

15 SENATOR THOMAS: Replevin cases, where
16 they try to take the meter from the
17 household.

18 CHIEF ADMIN. JUDGE MARKS: I have to
19 say I don't have any familiarity with those
20 cases.

21 SENATOR THOMAS: Are you able to talk
22 about Con Edison actually having a courtroom
23 in the New York City civil courts and they
24 adjudicate cases based off of defaulted

1 bills? Do you have any knowledge or idea
2 about what's going on there?

3 CHIEF ADMIN. JUDGE MARKS: You're
4 saying there's a dedicated court part for
5 those types of cases?

6 SENATOR THOMAS: It's just a replevin
7 part.

8 CHIEF ADMIN. JUDGE MARKS: This is in
9 Manhattan?

10 SENATOR THOMAS: It's all over the
11 city.

12 CHIEF ADMIN. JUDGE MARKS: The city?
13 I'll have to look into that.

14 SENATOR THOMAS: Okay. Second
15 question, interpreters. Can you talk about
16 the shortage of court interpreters and what's
17 being done about that?

18 CHIEF ADMIN. JUDGE MARKS:
19 Interpreters is a very, very important topic.
20 It's really about access to justice. I mean,
21 participants in court proceedings need to
22 understand what's happening when they appear
23 in court. And it's not even just in the
24 courtroom, but in -- when they go to the

1 clerk's office and talk to people, they have
2 to be able to communicate.

3 I can tell you this is a challenging,
4 challenging issue across the country. I go
5 to national meetings on court administration
6 issues; this is always one of the top issues.

7 You know, as we all know -- I don't
8 know what the number is, 150 different
9 languages are spoken in New York. We can't
10 employ our own staff interpreters for
11 150 languages, it just wouldn't be practical.
12 But we employ interpreters in the most
13 commonly spoken languages, which of course
14 can vary from one county to another. And for
15 other languages, we rely on what we call per
16 diem court interpreters. These are
17 essentially independent contractors who we do
18 test, and then they qualify. And we have
19 them in a registry, and when we need them --
20 and these are the less commonly spoken
21 languages -- we schedule them electronically,
22 and they help fill the need.

23 We also need to rely on remote
24 interpreting. It's not as good as having

1 someone, you know, a live interpreter
2 standing next to you, but it's an option that
3 we have to take advantage of, particularly in
4 clerk's office situations and outside the
5 courtroom, and we contract with several
6 groups. One is well known, it's called
7 Language Line, which has interpreters on call
8 and on the spot who can provide interpreting
9 over the phone.

10 But it's a critically, critically
11 important issue. It's very challenging for
12 us to meet the need for language access, but
13 it's something that we're wholeheartedly
14 committed to and, you know, working at very
15 hard to meet the need.

16 SENATOR THOMAS: Okay, next question,
17 pro se forms. What are you doing to update
18 these forms for the public, the
19 do-it-yourself desk? You know, are you
20 constantly trying to update these forms in
21 order for the public to present to the judge?

22 CHIEF ADMIN. JUDGE MARKS: Yeah,
23 there's ongoing work that's done to make
24 forms that unrepresented people need to use

1 as easy to use and as intelligible as
2 possible so that they're presented in plain
3 language. We've done a lot of work on that.
4 We need to do more. Very labor-intensive,
5 obviously.

6 We also need to have forms in multiple
7 languages, going back to your first question.
8 And it can't be done in 150 languages, but
9 certainly in the most commonly spoken
10 languages.

11 So that's an important aspect, because
12 as I mentioned before, we still have a
13 justice gap. We still have way too many
14 people who come into court, the civil courts
15 in particular, without a lawyer, and they
16 need to be able to fill out forms easily and
17 they have to be able to understand what
18 they're filling out. So it's also a
19 priority.

20 SENATOR THOMAS: One last question.
21 What are you doing about bias training for
22 judges?

23 CHIEF ADMIN. JUDGE MARKS: We have
24 done bias training, particularly implicit

1 bias training --

2 SENATOR THOMAS: Yes.

3 CHIEF ADMIN. JUDGE MARKS: -- for
4 judges -- we -- I can't do exact -- but at
5 the summer seminars we --

6 SENATOR THOMAS: Do you have anything
7 that goes on every year? Is there something
8 quarterly that you do with judges?

9 CHIEF ADMIN. JUDGE MARKS: We've done
10 implicit bias training for the judges. I'm
11 not sure if we've done it every single year.
12 But I think most of the judges, if not all,
13 have had some form of implicit bias training.

14 But I can check that and see if we're
15 doing it every year. We do summer judicial
16 seminars for all the judges. You know, 98
17 percent of the judges attend. We split them
18 up, a third of the judges one week, a third
19 the next week, the final third the third
20 week. So we're not, you know, getting them
21 all at once, because then the courts would be
22 closed for that week, but --

23 CHAIRWOMAN KRUEGER: Judge, I'm going
24 to cut you off on that. But I think that we

1 So I wanted to ask you about -- I want
2 to go a little bit further into opioid
3 courts. I wanted to know if OCA has either
4 produced or if you could produce an analysis
5 of outcomes, talk about mandated treatment,
6 sentencing, numbers on recidivism, that type
7 of stuff. Have you produced something or
8 could you produce something?

9 CHIEF ADMIN. JUDGE MARKS: Yeah, there
10 have been extensive studies that have been
11 done on drug courts and the outcomes and
12 recidivism, following people for a few years
13 afterwards. And that is --

14 SENATOR RIVERA: I'm sorry to
15 interrupt, Judge, but since I have such
16 limited time. This is in general or you're
17 saying specifically about the ones that are
18 studies in New York?

19 CHIEF ADMIN. JUDGE MARKS: I'm saying
20 we've done that for drug courts in general.
21 I have not seen an analysis like that for
22 opioid courts.

23 Of course, the immediate goal and
24 overriding goal in an opioid court is to save

1 lives.

2 SENATOR RIVERA: Agreed.

3 CHIEF ADMIN. JUDGE MARKS: And
4 wherever we've done this, it is absolutely to
5 save lives.

6 But in terms of recidivism and sort of
7 the usual factors that are looked at when
8 drug courts in general are studied, that
9 hasn't happened yet. But I believe that the
10 first -- you know, the first opioid court in
11 the country was in the Buffalo City Court,
12 opened in 2017. And I believe there's a
13 study that's in -- there was federal money
14 that was provided for that court, and I
15 believe there's a study component of that,
16 which I haven't -- and I would have seen it
17 had it been released yet. So that would
18 probably be the first really kind of academic
19 study of the success of the opioid court.

20 But in terms of saving lives, we've
21 tracked that very carefully. And opioid
22 courts have saved lives, you know, many
23 lives.

24 SENATOR RIVERA: And I certainly agree

1 with you. Could you provide my office with
2 those numbers?

3 CHIEF ADMIN. JUDGE MARKS: Of course.

4 SENATOR RIVERA: Just generally
5 speaking. I just want to get a sense of how
6 exactly it's been -- how effective it has
7 been.

8 CHIEF ADMIN. JUDGE MARKS: Sure.

9 SENATOR RIVERA: Thank you, Judge.

10 CHAIRWOMAN KRUEGER: Thank you.

11 Continuing with the Senate, Senator
12 Diane Savino.

13 SENATOR SAVINO: Thank you, Senator
14 Krueger.

15 Thank you, Judge Marks. So some of
16 the things I was going to ask you have
17 already been asked, so I'm not going to
18 reiterate them. But I want to go back to the
19 issue of Raise the Age, the full
20 implementation of it, because I was confused
21 about what happened last week at the Human
22 Service Budget Hearing.

23 So the Office of Children and Family
24 Services has said that they reimbursed

1 counties -- and I'm assuming they're
2 reimbursing the court system. So as you
3 spend money, you get money, under the amount
4 of money that we've set aside.

5 But they took the position and they
6 maintain this position, it was written into
7 the original statute, that only counties or
8 localities that comply with the 2 percent
9 property tax cap will be eligible for
10 reimbursement of expenses associated with
11 Raise the Age. Which essentially cuts the
12 City of New York out, because they are not
13 compliant with the 2 percent property tax
14 cap, and they can't be compliant with it
15 because it doesn't apply to them.

16 And so -- and they also have to submit
17 a plan, every county has to submit a plan of
18 how they're going to spend the money. So
19 they're on the verge of submitting a plan,
20 but by virtue of the fact that they're not
21 compliant with the 2 percent property tax
22 cap, their plan will be out of compliance and
23 they won't be eligible for reimbursement.

24 But does that affect the courts? Or

1 does the money to the courts for Raise the
2 Age, is it separate from the localities' pot?
3 Is it all in one pot? Or is it broken down
4 differently?

5 CHIEF ADMIN. JUDGE MARKS: Well, we
6 get money -- it's all one pot. There's
7 100 million in this year's budget. And we've
8 gotten, I think I said before, 10 million,
9 and we expect to get 12 million. But it's
10 not impacted by whether or not the City of
11 New York gets money. It's sort of based on
12 our own independent need for the money.

13 SENATOR SAVINO: Okay. And that's
14 important because if you were tied to the
15 city in terms of reimbursement, then OCA and
16 the City of New York wouldn't get any money,
17 and that's where the bulk of the cases are.
18 So that's actually helpful to know.

19 I do want to make a point about the --
20 your comment in your testimony about others
21 who have suggested that you should ask for
22 more money, I think you were talking about
23 me. I ask you this every year: Why don't
24 you guys ask for more money? And I'm happy

1 to see you're requesting more for the
2 administration of the court system. I do
3 think, though, that -- I still think you need
4 more money. Because in your own testimony
5 you reference that while you're backfilling
6 and you're hiring more court officers,
7 because Raise the Age, all of the changes
8 that we're proposing are going to have an
9 effect on the court system and affect court
10 congestion. We're still at the lowest level
11 since 2011. We've never really recovered
12 from the cuts and the early retirement in
13 2011. Is that correct?

14 CHIEF ADMIN. JUDGE MARKS: That's
15 correct.

16 SENATOR SAVINO: So if you were to
17 actually bring the court system up to the
18 levels it was prior to 2011, would this
19 2 percent increase, would that be able to
20 cover it?

21 CHIEF ADMIN. JUDGE MARKS: No,
22 absolutely not.

23 SENATOR SAVINO: That's good to know.

24 CHIEF ADMIN. JUDGE MARKS: Not even

1 close.

2 SENATOR SAVINO: Right. That's good
3 to know. Because again, I think that we're
4 really shortchanging the people's justice
5 with the requirement that agencies come in
6 under the 2 percent spending cap. I don't
7 think it helps you, I don't think it helps
8 the people, and I'm continue to say this
9 every budget hearing. We want to give you
10 more money, I think you need more money --
11 and by the way, one final question.

12 Over the last few years you had
13 several bargaining units where you had not
14 settled contracts. I think they're all
15 settled now. But I'm going to assume, the
16 way collective bargaining contracts usually
17 operate, you're probably already beginning
18 the next round of bargaining.

19 If you were to settle with all of the
20 court unions, would you have sufficient
21 resources to be able to do that? Or would
22 you have to come back to us?

23 CHIEF ADMIN. JUDGE MARKS: I don't
24 want to answer that yet. Because we're

1 actually -- with all our unions, we're good
2 until March 31, 2021. CSEA, which is our
3 biggest union, I believe their contract ends
4 the end of the upcoming fiscal year,
5 March 31, 2020.

6 So of all the things I have to think
7 about in my job, I'm not quite thinking about
8 that yet. But before you know it, we will be
9 back at the bargaining table. And whether we
10 have to come to the Legislature and ask for
11 more money or not, it's too early to tell.

12 SENATOR SAVINO: Okay. Thank you.

13 CHIEF ADMIN. JUDGE MARKS: Thank you.

14 CHAIRWOMAN KRUEGER: Thank you.

15 And for quick second lightning rounds,
16 Senator Brad Hoylman.

17 SENATOR HOYLMAN: Thank you.

18 Again, I agree with Senator Savino.
19 The time to fix the leaky roof is when the
20 sun is shining, as John F. Kennedy said. And
21 I don't know why we haven't been fixing the
22 leaky roof with the economy as it has been;
23 we're recovering since 2011. But that's
24 another issue.

1 But quickly, in November the Court of
2 Appeals held, in *People v. Suazo*, that
3 undocumented immigrants have a constitutional
4 right to a jury trial even when faced with a
5 B misdemeanor. This decision highlights a
6 disparity in New York's laws in particular,
7 in which there's a statutory right to a jury
8 trial for those charged with B misdemeanors
9 outside of New York City, but none for those
10 people living in New York City.

11 I've introduced legislation to close
12 that loophole. And my question is, how would
13 extending the right to a jury trial to people
14 charged with B misdemeanors in New York City
15 impact court operations?

16 CHIEF ADMIN. JUDGE MARKS: Well, to be
17 honest, I'm a little concerned about that, if
18 that bill passed, although I understand the
19 good intentions behind it.

20 SENATOR HOYLMAN: You said earlier
21 that you've recovered in the misdemeanor
22 areas in terms of backlogs.

23 CHIEF ADMIN. JUDGE MARKS: Well, not
24 entirely. Because we had such gargantuan

1 backlogs in some of the counties in New York
2 City that even an 80 percent reduction in the
3 oldest cases, there's still a backlog.

4 For example, in Bronx County, which
5 was the epicenter for misdemeanor backlogs,
6 it still has more one-year-and-older
7 misdemeanor cases than the other four
8 boroughs.

9 And, you know, my own view is that
10 there should be no one-year-and-older
11 misdemeanor cases. And don't misunderstand
12 me -- that the people in the Bronx, they've
13 done an extraordinary, extraordinary job.
14 The supervising judge there, the judges, the
15 DA's office and the defense bar, they've
16 really done a great job. But there's still
17 over 300 one-year-and-older cases.

18 I'm a little concerned -- and don't
19 misunderstand me, I'm not indifferent to the
20 rights of people in -- you know, the right to
21 a jury trial. The U.S. Supreme Court says
22 that, you know, you're not entitled to a jury
23 trial, it's longstanding case law, unless you
24 can get six months or more in jail if you're

1 convicted. And so for the B misdemeanors,
2 the law has been in New York City -- and it's
3 just New York City, not the rest of the
4 state, because New York City has the very
5 high volume.

6 I'm a little concerned that if jury
7 trials are required in all misdemeanor cases,
8 including the B misdemeanors, that the
9 backlogs may grow again. It's much easier
10 for judges to conduct bench trials than jury
11 trials. A judge can have three bench trials
12 going on at the same time. That can't be
13 true with a jury trial.

14 I'm also concerned that -- in many
15 cases now we have B bench trials, because
16 prosecutors have agreed to reduce the top
17 charge, the A misdemeanor, to a B
18 misdemeanor. They'd be reluctant to do that
19 now.

20 And the last point I want to make, and
21 I'll share this data with you, is that I've
22 looked at this, there's not that much of a
23 difference in outcome between misdemeanor
24 cases that go to trial, whether it's a jury

1 trial or a bench trial. The acquittal rate
2 is roughly the same.

3 So at any rate, that's food for
4 thought. I'm very interested in talking to
5 you further about this. And your proposal on
6 its face makes a lot of sense. I'm concerned
7 about what might be some of the unintended
8 consequences of it, though.

9 CHAIRWOMAN KRUEGER: Thank you both.
10 Senator Seward for a lightning-round
11 question.

12 SENATOR SEWARD: Yes, thank you.

13 I wanted to zero in on three programs
14 that are funded through the OCA budget but
15 are not specifically lined out in the budget,
16 and those three would be the Community
17 Dispute Resolution Centers program, the
18 Court-Connected Alternative Dispute
19 Resolution program, and the Court-Appointed
20 Special Advocate program, the CASA.

21 Can you tell us how much would be
22 spent on these three programs? And how would
23 that compare to last year's spending on those
24 programs?

1 CHIEF ADMIN. JUDGE MARKS: Give me a
2 second, because I don't want to speak off the
3 top of my head. But the Community Dispute
4 Resolution programs, which perform ADR
5 services in criminal cases, smaller civil
6 disputes, some Family Court disputes, is an
7 invaluable program. We're trying to do more
8 alternative dispute resolution in the court
9 system as part of the Chief Judge's
10 Excellence Initiative.

11 And that budget was slashed in the
12 2011 budget cuts. They used to get
13 \$10 million from us, and they were slashed to
14 \$5 million. We're proposing an increase this
15 year that will take them up to 7.3 million.
16 It would include a 2 percent COLA,
17 annualizing the increase we gave them in the
18 current-year budget that the Legislature
19 approved, and then an additional \$400,000 for
20 new programs in the coming fiscal year.

21 So the total amount is 7.3 million.
22 It's about a -- I think about a 600, 700,000
23 overall increase from what they're getting in
24 this year's budget.

1 The CASA program, CASA volunteers
2 perform advocacy services for children in
3 Family Court. You know, they're invaluable
4 to judges, they work with families. It's a
5 volunteer program. But the money goes to the
6 nonprofits that administer these programs and
7 train people. And we're giving them, I
8 think, a \$50,000 increase. The total amount
9 is about 1.1 million for the CASA program,
10 with a 50,000 increase. It includes a
11 2 percent COLA and then some additional money
12 for them as well.

13 Was there a third --

14 SENATOR SEWARD: The Community Dispute
15 Resolution program.

16 CHIEF ADMIN. JUDGE MARKS: Well,
17 that's the first that I mentioned to you, the
18 ADR.

19 And we're also doing some Court
20 Connects Alternative Dispute Resolution
21 projects --

22 SENATOR SEWARD: The Court-Connected
23 program, yeah.

24 CHIEF ADMIN. JUDGE MARKS: -- in the

1 court system in matrimonial cases in Family
2 Court and Surrogate's Court.

3 And these cases cost some money, but
4 not that much money, because we rely on
5 volunteer mediators, we rely on court
6 employees who have a skill at mediating
7 cases. And it's a very modest, minimal cost
8 to expanding these court-connected ADR
9 programs.

10 CHAIRWOMAN KRUEGER: Thank you. Thank
11 you both.

12 CHIEF ADMIN. JUDGE MARKS: Thank you.

13 CHAIRWOMAN KRUEGER: And Senator
14 Jamaal Bailey to close.

15 SENATOR BAILEY: Very brief. The
16 closer, wow. That means I have to be brief.

17 Part-time local courts, local and town
18 courts. What can OCA do to help bring some
19 of those caseloads down?

20 CHIEF ADMIN. JUDGE MARKS: Caseloads
21 in the town and village courts?

22 SENATOR BAILEY: Yes.

23 CHIEF ADMIN. JUDGE MARKS: Well, I'm
24 not sure what we can do to bring the -- you

1 know, the town and village courts are part of
2 the Unified Court System but they're not
3 directly under our supervision. We don't
4 fund them.

5 The entire rest of the court system is
6 state-funded and state-managed. And when the
7 state took over the funding and management of
8 the court system that used to be locally run
9 and locally financed, the state took over the
10 financing and management of the court system
11 in the mid-1970s. The town and village
12 courts were left with the localities, so
13 they're not directly under our control. We
14 don't directly manage them, and we certainly
15 don't finance them.

16 But we try to help them as best we
17 can, and we do training for them, a lot of
18 training every year. Because as I'm sure you
19 know, most of them are not lawyers. But even
20 the ones who are lawyers still get training,
21 and we do extensive training with them.

22 We try to give them equipment. A lot
23 of the proceedings weren't being recorded a
24 number of years ago in town and village

1 courts, which is a serious problem if you
2 think about it. These are lower-level cases,
3 but misdemeanor cases, civil cases. And the
4 proceedings were not being recorded by a
5 court reporter or a recording machine. We
6 gave them free digital recording machines,
7 with the requirement that they put all their
8 proceedings on the record. We have a grant
9 program, a modest grant program. We give
10 them grants to do things like pay for benches
11 and upgrade their facilities.

12 But in terms of helping them with
13 their backlogs, we don't have direct control
14 over that but we -- through training that we
15 conduct with them every year, we can train
16 them in using better case management
17 practices and ways in which they can address
18 backlogs and delays.

19 SENATOR BAILEY: All right, excellent.
20 I just wanted to make sure I asked that
21 question. I'm a guy from the five boroughs,
22 but, you know, a lot of my colleagues, you
23 know, they serve in places who are not
24 necessarily -- don't have plentiful courts.

1 So I just wanted to make sure that we speak
2 for all courts.

3 And I appreciate your candor and your
4 answer, Judge.

5 CHAIRWOMAN KRUEGER: Thank you.

6 And I actually do have one follow-up
7 from Senator Spu -- Sepúlveda. I apologize.

8 SENATOR SEPÚLVEDA: That's okay.

9 I just did a DNA test that says I'm
10 about 19 percent Sephardic Jewish, so you can
11 call me Sepulvowitz if it makes it easier for
12 you.

13 (Laughter.)

14 CHAIRWOMAN KRUEGER: I'll screw up
15 that also. Thank you.

16 (Laughter.)

17 SENATOR SEPÚLVEDA: Just getting back
18 to the diversity question and the LEO
19 program, you never responded -- I know we got
20 cut off -- whether you can make a commitment
21 to establish either a surcharge or, if
22 possible, use some of the IOLA funds to make
23 sure that this maintains a viable program.

24 And also when you talked about

1 recruiting for personnel positions, civil
2 service and so forth, are you going to the
3 local colleges and the local law schools as
4 part of your recruiting efforts?

5 CHIEF ADMIN. JUDGE MARKS: We -- I
6 know we go to community colleges, we do
7 outreach for some of the civil service
8 positions.

9 For attorney positions, we do post
10 and, you know, send employment notices to law
11 schools when we are filling court attorney
12 positions. Remember, a lot of the attorneys
13 who work in the court system are hired
14 directly by the judges. That's a personal
15 appointment on the part of the judge, and
16 that's under the judge's control.

17 We do have court attorneys who work in
18 what we call law departments and we do -- we
19 do reach out to law schools to -- you know,
20 with notices when we're going to be hiring
21 law department court attorneys.

22 SENATOR SEPÚLVEDA: All right. But
23 you rely solely on the law schools to then
24 disseminate this information. You don't have

1 anything, any program or anything
2 specifically the OCA does to make sure that
3 this information is getting to the targeted
4 groups?

5 CHIEF ADMIN. JUDGE MARKS: I'll have
6 to check on that. I'm not sure.

7 SENATOR SEPÚLVEDA: Okay. I'll have a
8 follow-up conversation with you about this.

9 Thank you.

10 CHIEF ADMIN. JUDGE MARKS: Okay,
11 great.

12 CHAIRWOMAN KRUEGER: Thank you.
13 Assembly.

14 CHAIRWOMAN WEINSTEIN: I think we're
15 finished.

16 CHAIRWOMAN KRUEGER: Good. Thank you
17 very much, Judge, for your time this morning.

18 CHIEF ADMIN. JUDGE MARKS: Thank you.
19 Appreciate it.

20 CHAIRWOMAN KRUEGER: I know there will
21 be a number of follow-ups from us.
22 Appreciate your time and your work.

23 Next up, New York State Commission on
24 Judicial Conduct.

1 Okay, as we transition, good morning.
2 Feel free to start. Again, try not to read
3 the testimony, which you don't even have in
4 front of you --

5 ADMINISTRATOR TEMBECKJIAN: I don't
6 have it in front of me.

7 CHAIRWOMAN KRUEGER: -- because you
8 have a 10-minute limit.

9 Thank you for being with us.

10 ADMINISTRATOR TEMBECKJIAN: Thank you.
11 Thank you, Senator Krueger and Assemblywoman
12 Weinstein and members of the joint committee.

13 My name is Robert Tembeckjian. I'm
14 the administrator and counsel to the New York
15 State Commission on Judicial Conduct.

16 Public confidence in the courts
17 requires a judiciary that is not only
18 independent and impartial but accountable for
19 its misconduct. And in seeking to fulfill
20 that function in New York, which is mandated
21 in the State Constitution, the Judicial
22 Conduct Commission endeavors to investigate
23 complaints of misconduct against judges and
24 to publicly discipline them where appropriate

1 for violations of the Code of Judicial
2 Conduct.

3 And our budgetary story is relatively
4 simple. For the last decade or so, our
5 caseload has increased by 25 percent at the
6 same time that our staff has decreased by
7 25 percent. That is largely due to the fact
8 that for eight of the last nine years, the
9 Executive Budget has recommended a flat
10 budget for the commission, a zero dollar
11 increase. And although on two of those
12 occasions the Legislature supplemented the
13 Executive recommendation for the commission,
14 it hasn't been enough for us to keep pace.

15 Literally, when you're operating on
16 the same dollar amount every year, it's
17 regressive financing, because the only way we
18 can meet our increasing responsibilities for
19 rent and salaries and contractual services on
20 the same dollar amount every year is to
21 reduce our staff. And the deleterious effect
22 that that has on our operations is evident in
23 our statistics.

24 It's not only that our caseload has

1 gone up while our staff has gone down, but
2 the time it takes us to resolve our matters
3 has increased, in part because we don't have
4 the resources for certain fundamental things
5 such as transcription services. In the
6 course of investigations and hearings
7 throughout the year, we generate about 12,000
8 pages of testimony -- but we don't have the
9 funding for stenographic services, and so we
10 produce those transcripts in-house by
11 converting audio recordings in slower than
12 realtime to paper. And that adds anywhere up
13 to six months to the resolution time or the
14 disposition time of one of our complaints.

15 So that while our responsibilities are
16 increasing, we are struggling to make do.
17 And I have requested of the Legislature what
18 I think is a relatively modest increase of
19 \$359,000 over a budget of slightly under 5.7,
20 in what I hope is the first of a two-year
21 increment so that we can get back to what
22 should be our full funding, enough to support
23 a staff of 51 people and to deal with our
24 matters much more expeditiously.

1 The public should not have to wait
2 longer than appropriate for the discipline of
3 a judge, particularly if the judge is engaged
4 in such egregious misbehavior as would
5 warrant removal. And that happened twice
6 last year. We also had 12 cases last year in
7 which we negotiated the resignation of the
8 judge with a commitment never to return to
9 the bench again.

10 At the same time, the judge who is
11 exonerated of misconduct allegations, the
12 innocent judge, shouldn't have to wait longer
13 than is fair or reasonable to be let off the
14 hook. That serves neither the judge nor the
15 public, and ultimately I think it undermines
16 confidence in the viability and the vibrancy
17 of the disciplinary system.

18 In New York, we happen to be a leader
19 in the judicial disciplinary world. We have
20 a larger caseload, we have a very
21 sophisticated due process model that has been
22 copied around the country. And in fact, our
23 operations have been the model for two
24 recently proposed and very significant pieces

1 of legislation: One, the Commission on
2 Prosecutorial Conduct, which statutorily is
3 modeled after us; and the second is Senator
4 Krueger's bill and cosponsored by others of
5 you to institute a new system of executive
6 and legislative oversight which is literally
7 based on the constitutional provision that
8 creates the Commission on Judicial Conduct.

9 Everyone wants to copy us. And
10 everyone supports us. But when it comes time
11 to putting the money where the sentiment is,
12 we tend to fall short. And I'm hoping that
13 this joint committee will be able to work
14 with the Governor to at least make the first
15 down payment on what I hope is a two-year
16 plan to increase our funding back to the
17 point where we can be fully operational.

18 If our finances had simply kept pace
19 with the rate of inflation, our \$5.4 million
20 budget from a decade ago would be worth
21 almost \$6.4 million today. I'm asking for a
22 little under 6.1 just to be able to stanch
23 the bleeding and to start regenerating some
24 of our workforce so that we can fairly,

1 reasonably and expeditiously fulfill our
2 constitutional mandate.

3 I'm hoping Senator Savino might ask me
4 why I didn't ask for me. And that's sort of
5 my answer to that question.

6 I've met with some of you; I have
7 meetings scheduled or in the works with
8 others of you. And I'm obviously available
9 at any time, and certainly to answer your
10 questions now.

11 CHAIRWOMAN KRUEGER: Thank you very
12 much for your time.

13 Our first questioner is the Judiciary
14 chair, Brad Hoylman.

15 SENATOR HOYLMAN: Thank you, sir.
16 It's good to see you.

17 I think, you know, it's actually
18 alarming and distressing to hear that the
19 Commission on Judicial Conduct, representing
20 what is the integrity of the third branch of
21 government, is not fully operational. So I
22 am really pleased that you're here to tell us
23 that you're seeking from the Legislature an
24 additional \$359,000.

1 I will say that I think you suffer
2 from your independence. The fact that you
3 are not under the purview of any branch of
4 government makes you, I think, vulnerable to
5 these types of staff cuts.

6 And just to be clear, if you could
7 restate, what would your budget be if it were
8 kept at pre-recession levels and was in line
9 with inflation?

10 ADMINISTRATOR TEMBECKJIAN: It would
11 today be \$6.4 million. It is now a little
12 under 5.7. And I'm asking for a little under
13 6.1. I'd certainly take more if you could
14 find it.

15 SENATOR HOYLMAN: And could you just
16 help us understand what that means in
17 practical terms of the matters you hear?
18 Does that mean that there are cases involving
19 the conduct of our judges that aren't being
20 heard, investigations that aren't undertaken,
21 that there are judges on the bench that
22 should be investigated and removed? Is that
23 what you're telling us?

24 ADMINISTRATOR TEMBECKJIAN: No, not

1 that. If a complaint has merit on its face,
2 the commission will authorize an
3 investigation and we will get to it. But we
4 have to prioritize, under the financial
5 realities under which we operate, as to which
6 ones are going to get the most immediate
7 attention.

8 SENATOR HOYLMAN: So there are judges
9 perhaps languishing on the bench without
10 attention from your commission because they
11 can't be made a priority given your budgetary
12 limitations.

13 ADMINISTRATOR TEMBECKJIAN: With
14 slower than appropriate attention from our
15 commission, yes. They will ultimately get
16 the attention that is deserved, but not as
17 quickly as justice demands. Where we have a
18 very complicated case with multiple
19 allegations of misconduct that might require
20 two or three attorneys, that's time that
21 those attorneys can't spend on some of the
22 lesser -- but to the aggrieved, no less
23 significant -- complaints that are taking
24 second seat, so to speak.

1 If we had our full complement of 51
2 staff, I think our backlog, which has grown
3 from about 170 at year's end to about 210,
4 would be going in the opposite direction. We
5 were able to cut back on it in 2007 when the
6 Legislature made a serious commitment to the
7 commission's resources. At that time, if you
8 can imagine, in 2007 our budget was
9 2.8 million and the legislature gave us
10 2 million more, so we went up to 4.8 million
11 12 years ago. And it dramatically reduced
12 our backlog to about 130 cases or so pending
13 at year end. We're now up to over 200.

14 SENATOR HOYLMAN: Two hundred cases
15 backlogged.

16 ADMINISTRATOR TEMBECKJIAN: Yes,
17 right. Two hundred cases pending at year
18 end.

19 SENATOR HOYLMAN: So there are 200
20 judges currently hearing cases that are under
21 some sort of scrutiny by your commission, but
22 yet no action has been able to be taken
23 because of your shortage of resources.

24 ADMINISTRATOR TEMBECKJIAN: That gets

1 slower than appropriate --

2 SENATOR HOYLMAN: That is
3 unacceptable.

4 ADMINISTRATOR TEMBECKJIAN: -- yes.

5 SENATOR HOYLMAN: That is
6 unacceptable.

7 ADMINISTRATOR TEMBECKJIAN: I would
8 heartily agree. And I think that's the point
9 that the commission tries to make in its
10 annual reports and in its presentations to
11 you.

12 SENATOR HOYLMAN: Well, we hear you
13 loudly and clearly. You've heard about the
14 concerns from my colleagues on bias in the
15 court system.

16 Just to take one example, in December
17 a town court justice in Jefferson County
18 resigned after being investigated by the
19 commission for making homophobic remarks and
20 gestures to an attorney.

21 Any sense of how pervasive that kind
22 of blatant outward discrimination is among
23 judges? And how many of those 200 cases
24 involve that kind of unacceptable behavior?

1 system is going to be undermined.

2 SENATOR HOYLMAN: And given what is
3 coming from Washington, I think this is a
4 three-alarm -- four-alarm, five-alarm fire in
5 our need to make certain that we provide
6 adequate resources.

7 Do you have any sense that the
8 complaints to the commission regarding town
9 and village courts are greater than in other
10 courts across the state?

11 ADMINISTRATOR TEMBECKJIAN: There are
12 a couple of relevant statistics on that.

13 Over the course of the commission's
14 40-year history, it has rendered 849 public
15 disciplines. Seventy percent of those have
16 been against town or village court justices,
17 who make up not quite 70 percent of the
18 overall state judiciary.

19 But the number of complaints against
20 town and village court justices tends to be
21 fewer than those against full-time judges,
22 which means statistically that a complaint
23 against a town or village court justice is
24 more likely to be investigated and is more

1 likely to result in discipline. And about 80
2 percent of the disciplines of town and
3 village courts in our history have been those
4 who are not attorneys.

5 SENATOR HOYLMAN: Eighty percent.

6 ADMINISTRATOR TEMBECKJIAN: Right.

7 SENATOR HOYLMAN: That's very
8 interesting. Why do you think? What's the
9 connection?

10 ADMINISTRATOR TEMBECKJIAN: I think
11 there is an advantage to being trained in the
12 law if you're going to be a judge, beyond the
13 obvious. And --

14 SENATOR HOYLMAN: Yeah, it would seem
15 to be a straightforward conclusion.

16 ADMINISTRATOR TEMBECKJIAN: I probably
17 don't have to say any more than that, I think
18 you get it.

19 SENATOR HOYLMAN: Well, thank you very
20 much. I just want to echo, again, my
21 colleagues' concerns about bias in the court
22 system. Appreciate your attempt to address
23 it, your request for more resources, and I'm
24 really appreciative of the fact that you're

1 able to rattle off all those statistics
2 without a single shred of notes in front of
3 you.

4 ADMINISTRATOR TEMBECKJIAN: Well,
5 thank you very much, Senator.

6 SENATOR HOYLMAN: So thank you for
7 your expertise and for your service.

8 CHAIRWOMAN KRUEGER: Thank you.
9 Assembly.

10 CHAIRWOMAN WEINSTEIN: Assemblyman
11 Dinowitz.

12 ADMINISTRATOR TEMBECKJIAN: Good
13 morning.

14 ASSEMBLYMAN DINOWITZ: Good morning.

15 ADMINISTRATOR TEMBECKJIAN: Yes,
16 still. Good morning again, Assemblyman. How
17 are you?

18 ASSEMBLYMAN DINOWITZ: Good, how are
19 you?

20 ADMINISTRATOR TEMBECKJIAN: Very well,
21 thanks.

22 ASSEMBLYMAN DINOWITZ: I remember we
23 started to discuss this last year, of your --
24 well, first of all, I think you're right when

1 you say the budget falls short. But that is
2 the Executive Budget proposal.

3 ADMINISTRATOR TEMBECKJIAN: Correct.

4 ASSEMBLYMAN DINOWITZ: How much of
5 that 5.7 million involves rent?

6 ADMINISTRATOR TEMBECKJIAN: It's about
7 1.2 million on a new lease that OGS just
8 negotiated for us that takes effect on
9 April -- March -- February 1st. Two years of
10 this fiscal year, and then it starts the next
11 fiscal year.

12 ASSEMBLYMAN DINOWITZ: I remember we
13 discussed this last year, and my recollection
14 was -- it struck me that the rent -- it was
15 like a huge increase, there was a lot of
16 money, and why do you have to be in
17 Manhattan? That was my reaction to that.
18 Because that is a significant portion of the
19 budget.

20 I realize a lot of offices tend to be
21 in Manhattan, but my guess is if you were in
22 Bronx or Brooklyn or Queens or someplace
23 else -- I said Queens. I would never leave
24 out Queens. I left out Staten Island -- or

1 Staten Island, it would be much less, leaving
2 you more funds to do the good work that you
3 do.

4 Was that ever considered?

5 ADMINISTRATOR TEMBECKJIAN: It was.

6 And when we went through a pretty significant
7 and serious cost analysis with OGS, which of
8 course is the landlord -- we are the client
9 agent, but OGS negotiates all the leases --
10 and I think the fair and reasonable
11 interpretation was that the cost of moving
12 and building out courtroom space for us would
13 have eaten up any of the benefits over the
14 course of that new lease.

15 And so we decided for the calm of our
16 operations, obviously not disrupting our
17 current operations and not incurring what
18 would be the significant cost of building out
19 new space, that we pretty much got a very
20 good deal. The increase is about 180,000,
21 the first year of which we're only going to
22 be responsible for 60, because the first year
23 doesn't include any rent escalations or tax
24 escalations -- and last year we paid about

1 120 in tax escalations.

2 So the calculation that OGS walked us
3 through was ultimately what we relied upon,
4 and I think it was the least disruptive to
5 us.

6 ASSEMBLYMAN DINOWITZ: Hmm. Well, I'm
7 sure that over time going to one of the other
8 boroughs probably would have made more sense,
9 but okay.

10 So what's the average time it takes to
11 resolve one of these cases, the ones that you
12 actually take up?

13 ADMINISTRATOR TEMBECKJIAN: It will
14 vary. An incoming complaint that will -- for
15 which we'll undertake an initial review and
16 inquiry, we hope and aim to get to the
17 commission and resolved within three months.
18 It's taking us up to about five.

19 A case that requires full
20 investigation and ultimately a full-fledged
21 disciplinary hearing can take a year and a
22 half to two. Because we not only do the
23 investigation -- which is the equivalent of,
24 let's say, a grand jury or a district

1 attorney's criminal investigation -- but once
2 that investigation is concluded and
3 reasonable cause is found to move forward for
4 potential discipline of the judge, we then
5 start a full-fledged due process disciplinary
6 hearing, formal charges are served -- it's
7 like the indictment and then the petit trial.

8 And there are all kinds of due process
9 obligations, statutorily and by rule and by
10 common law development, that requires notice
11 of hearing -- notice and opportunity to be
12 heard and so forth.

13 An example of how long it can take and
14 what the detrimental effect of this lack of
15 funding or inadequate funding is for us is
16 the case in which we removed a city court
17 judge of Rochester, Leticia Astacio, whose
18 original offense was driving while
19 intoxicated, and then she violated a
20 condition of her release and then failed to
21 show up for a court-ordered blood testing.

22 That case, from the time she was first
23 charged with DWI to the time that the
24 commission removed her from office, took

1 almost two years. We lost about seven months
2 of time in the preparation of transcriptions
3 from court cases and our own proceedings in
4 that matter, and then of course we waited
5 until the conviction was final before
6 entering our own removal determination.

7 Had we been more fully funded, we
8 could easily have shaved off six months of
9 time on that case, which was a cause célèbre
10 in Rochester. And that was the subject of
11 questioning last year because the case hadn't
12 been decided at the time that I was
13 testifying, but it was a few months later.

14 That's the kind of slowdown that an
15 appropriate, fully funded commission could
16 avoid. So the literal answer to your
17 question is it can be anywhere from three to
18 five months to two years, depending on the
19 complexity of the case, the number of
20 witnesses, how much work intensity is
21 involved, such as producing transcripts. An
22 Astacio case is at the far end of the extreme
23 and --

24 ASSEMBLYMAN DINOWITZ: Okay. That's

1 why I asked for an average. Okay.

2 ADMINISTRATOR TEMBECKJIAN: It's hard
3 to -- it's hard to make an average, but --

4 ASSEMBLYMAN DINOWITZ: No, you take
5 the total number, you add it up, and you
6 divide by the number. That's how you make an
7 average.

8 (Laughter.)

9 ADMINISTRATOR TEMBECKJIAN: That I can
10 do, but I think it will be --

11 ASSEMBLYMAN DINOWITZ: Let me move on,
12 though.

13 ADMINISTRATOR TEMBECKJIAN: Okay.

14 ASSEMBLYMAN DINOWITZ: And I don't
15 want to repeat anything said. So I guess
16 there are two major types, either there are
17 matters which you pursue or there are matters
18 which you don't pursue.

19 ADMINISTRATOR TEMBECKJIAN: Correct.

20 ASSEMBLYMAN DINOWITZ: And the ones
21 you don't pursue are either frivolous or they
22 just haven't presented enough to rise to the
23 level where you think you can pursue.

24 What percentage of the cases are

1 pursued by your office?

2 ADMINISTRATOR TEMBECKJIAN: We get
3 about 2,000 complaints a year. We conduct
4 about 500 preliminary inquiries. And of
5 those, about 150 to 160 full-fledged
6 investigations.

7 So that's about a third of the matters
8 that come in get some serious and
9 time-consuming attention. And about
10 two-thirds, with relatively quick analysis,
11 are dismissed because they're either
12 frivolous or otherwise don't rise to a level
13 of misconduct, even if the allegation is
14 true.

15 ASSEMBLYMAN DINOWITZ: Okay. You had
16 mentioned earlier 70-plus percent of the
17 cases were against town and village judges,
18 many of whom are not attorneys. Do you have
19 any idea of how many of the cases that -- how
20 many of the complaints that come in are from
21 within New York City?

22 ADMINISTRATOR TEMBECKJIAN: From
23 within New York City -- I could estimate that
24 if we get 2,000 complaints a year, probably

1 150 might involve judges in New York City.

2 ASSEMBLYMAN DINOWITZ: And so based on
3 the percentages you previously mentioned,
4 maybe you pursue 40 or so of them, and of
5 them maybe 10 to 15 result in some sort of
6 discipline, would that be pretty accurate?

7 ADMINISTRATOR TEMBECKJIAN: Fewer.
8 Fewer than 10 a year would result in public
9 discipline, yes.

10 ASSEMBLYMAN DINOWITZ: Okay.

11 ADMINISTRATOR TEMBECKJIAN: Going by
12 the statistics, in New York City, where all
13 the judges are well-trained -- in fact, they
14 have to be lawyers for 10 years before they
15 can serve on the bench -- the percentage of
16 complaints literally involving New York City,
17 the five-borough judges, is less than their
18 percentage of the overall judiciary, I would
19 say.

20 ASSEMBLYMAN DINOWITZ: Well, that's --
21 that's very comforting. And perhaps it says
22 something about how judges are picked in
23 New York City, even. But okay, thank you so
24 much.

1 ADMINISTRATOR TEMBECKJIAN: Okay.

2 CHAIRWOMAN WEINSTEIN: Thank you.

3 Senate.

4 CHAIRWOMAN KRUEGER: Thank you.

5 Senator Jamaal Bailey.

6 SENATOR BAILEY: Thank you, Madam

7 Chair. I'll be very brief with my questions.

8 Good afternoon -- well, still morning.

9 So I have a question about the funding. And

10 I agreed with my colleague Chairman Hoylman

11 about the funding, that we should be

12 increasing the funding. But if giving the

13 appropriate funding -- would that allow you

14 to have -- I mean -- well, I should ask

15 first, do you have observers in courts?

16 ADMINISTRATOR TEMBECKJIAN: When there

17 is a complaint involving a judge's demeanor,

18 our staff as a matter of routine will sit in

19 the spectator section and unobtrusively

20 observe to get our own independent sense of

21 whether the judge has a demeanor problem.

22 But we don't -- we don't have an army

23 of volunteers, for example, that go out and

24 then report back to us.

1 SENATOR BAILEY: Certainly, I
2 understand that. But with increased funding,
3 would that be -- and I'm just making a
4 recommendation, because again, I believe that
5 your commission is vitally important for the
6 independence -- and again, by and large, what
7 you said in your comments is true. Our
8 judges, they do great work, but just like in
9 any profession, you know, if you do something
10 wrong, you should be punished.

11 And would an increase in funding lead
12 to potentially creating a more expansive
13 observer program?

14 ADMINISTRATOR TEMBECKJIAN: It would.
15 Those on our staff who tend to do the court
16 observations are investigators. We currently
17 have six investigators on staff. We have, by
18 the way, three offices, in New York City,
19 Albany and in Rochester. And we at the
20 moment have two investigators in each.

21 At our high water mark 10 years ago,
22 we had three investigators per office and at
23 an earlier time we had even more than that.

24 Certainly the addition of resources to

1 let us hire more investigators would give us
2 more bodies -- legs, so to speak -- to get to
3 the courts to investigate those
4 demeanor-related complaints where court
5 observation is a very important part.

6 SENATOR BAILEY: Excellent. And just
7 one final question.

8 In the testimony previous to you we
9 spoke about -- we questioned Chief Judge
10 Marks about the lack of diversity and issues
11 and concerns that are within our state -- and
12 I'm not going to repeat the numbers that
13 Senator Sepúlveda said earlier, but is it
14 your belief -- is it the opinion of the
15 commission or yourself that the lack of
16 diversity could contribute to some discipline
17 issues that you're having?

18 ADMINISTRATOR TEMBECKJIAN: I think it
19 could certainly in the case that Senator
20 Hoylman raised and in other cases involving
21 gender and ethnic and racial epithetic
22 comments.

23 My sense is that if the judiciary is
24 more diverse, then judges are going to be as

1 a body more sensitive to certain cultural,
2 ethnic and racial sensitivities that they
3 might not otherwise have. It simply cannot
4 hurt to be in a more diverse environment.
5 You just learn more, you become more
6 tolerant, and by having an opportunity to
7 interact on a day-to-day regular basis with
8 people who are from communities other than
9 your own.

10 SENATOR BAILEY: I would
11 wholeheartedly agree. I think that the law
12 is the law, but who interprets the law is
13 something that we should be looking at with a
14 serious laser focus in this state.

15 And I thank you for your time and your
16 commentary.

17 ADMINISTRATOR TEMBECKJIAN: Thank you.

18 CHAIRWOMAN KRUEGER: Thank you.
19 Assembly.

20 CHAIRWOMAN WEINSTEIN: Assemblyman
21 Weprin.

22 ASSEMBLYMAN WEPRIN: Thank you, Madam
23 Chair.

24 Welcome, Mr. Tembeckjian.

1 ADMINISTRATOR TEMBECKJIAN: Thank you.

2 Can I tell your colleagues that I
3 think you're probably the only member of the
4 panel who's actually practiced before us back
5 in your younger days, back in your earlier
6 days?

7 ASSEMBLYMAN WEPRIN: Correct. When
8 you were Deputy General Stern at the time --

9 ADMINISTRATOR TEMBECKJIAN: That's
10 right, I was.

11 ASSEMBLYMAN WEPRIN: And I appreciate
12 your survival over all these years, and I
13 agree that your budget is underfunded and
14 should be funded fully.

15 If you were to receive the funding
16 you're requesting, what would -- would you
17 plan on hiring additional personnel? And
18 what personnel would you hire if you had to
19 hire additional personnel?

20 ADMINISTRATOR TEMBECKJIAN: We would.
21 We would hire a couple more attorneys,
22 investigators, and we would contract or bring
23 in stenographers to cut down the time that it
24 takes us to produce transcripts. Those would

1 be our priorities. Two lawyers, one or two
2 more investigators, and stenographic
3 services.

4 ASSEMBLYMAN WEPRIN: Okay. And you
5 brought up the issue of town justices and a
6 lot of complaints against them. I know
7 there's been legislation over the years, and
8 I was just conferring with my colleague the
9 Judiciary chair, and I don't think there's
10 anything pending now. But would you support
11 legislation to have only lawyers serve as
12 town justices?

13 ADMINISTRATOR TEMBECKJIAN: Well, the
14 commission hasn't taken a position on that.
15 And I think, with all due respect, I should
16 not either, for this reason. I would not
17 want any interpretation of a commission
18 discipline to be seen through the prism of my
19 view of whether or not a judge in a town or
20 village court should or shouldn't be a
21 lawyer.

22 We take the misconduct complaints as
23 we get them, whether they're against lawyers
24 or nonlawyers. And if I were to say, for

1 example, that all judges should be lawyers
2 and we were to discipline nonlawyer judges,
3 we'd be subject, perhaps, to criticism for
4 picking on those judges to make our
5 legislative point.

6 You might be able to infer from my
7 public comments, both here and elsewhere,
8 that I do have a view on the subject, but as
9 an official proposition the commission
10 hasn't, and I don't think it will say what
11 the system ought to look like, so that
12 there'd be no question of potential taint in
13 the determinations that we render.

14 ASSEMBLYMAN WEPRIN: Yes, I know the
15 qualifications for the United States Supreme
16 Court -- it's probably one of the only courts
17 that doesn't require you to be a lawyer.
18 Although I don't think there's been a
19 nonlawyer appointed to the United States
20 Supreme Court in maybe a hundred years. Is
21 that accurate?

22 ADMINISTRATOR TEMBECKJIAN: I think
23 that's right. I don't think there were any
24 in the 20th century.

1 ASSEMBLYMAN WEPRIN: And following up
2 on that, is there any other court in New York
3 State other than town and village justices
4 where there's no requirement to be a lawyer?

5 ADMINISTRATOR TEMBECKJIAN: No. No,
6 that's the only -- that's the only level of
7 court where one can be an attorney or a
8 nonattorney. And the attorneys who preside
9 part-time can practice law. Obviously the
10 nonlawyer judges, who also serve part-time,
11 are typically engaged in other nonlegal
12 professions.

13 ASSEMBLYMAN WEPRIN: Okay, thank you.

14 ADMINISTRATOR TEMBECKJIAN: Thank you.

15 ASSEMBLYMAN WEPRIN: Thank you, Madam
16 Chair.

17 CHAIRWOMAN WEINSTEIN: Senate?

18 CHAIRWOMAN KRUEGER: Thank you.

19 Senator Diane Savino.

20 SENATOR SAVINO: Thank you.

21 You're right, you should ask for more
22 money.

23 ADMINISTRATOR TEMBECKJIAN: Thank you.

24 SENATOR SAVINO: But in your

1 testimony, on page 4, after you -- in
2 previous pages you talked about the
3 reductions that you made to try and
4 accomplish the spending ability that you had.
5 But there's an interesting piece on page 4
6 where you mention that the lease for your
7 New York City office is going up by \$180,000
8 in the coming fiscal year.

9 ADMINISTRATOR TEMBECKJIAN: Right.

10 SENATOR SAVINO: And so I'm curious,
11 since you're only asking for \$359,000 more
12 above the budget, half of it's going to be
13 eaten by the cost of rent, or it appears that
14 way in your testimony.

15 And so I'm just curious, like why is
16 your rent going up that much, number one?
17 That's an extraordinary amount of money for a
18 one-year lease renewal. But have you
19 explored moving to find cheaper
20 accommodations for your offices in an effort
21 to avoid that big hit?

22 ADMINISTRATOR TEMBECKJIAN: The
23 footnote to that sentence indicates that the
24 first year of the 10-year lease, by the way,

1 in which the increase was amortized -- so
2 that we're going to have -- basically it's
3 180,000 more, but that's fixed for five years
4 and then it jumps up for another five. So
5 that they tried to level out the pain over
6 the 10 years by keeping us essentially flat
7 for rent for the first five years.

8 But the first year is the base year of
9 a 10-year lease in terms of rent escalations.
10 Our current year, which was the last year of
11 a 10-year lease, was the top year in rent
12 escalations or tax escalations. And so last
13 year we paid \$120,000 in tax escalations that
14 we will not have to pay next year. So that
15 \$180,000 increase is only going to cost us 60
16 in terms of actual dollars in Year No. 1.

17 And then, because we're staying in the
18 same place and because there was no need
19 either in terms of disruption to our
20 operations or the quality of the carpeting --
21 we basically gave up new carpeting, and we're
22 going to save some money that way, so that
23 the landlord doesn't -- if the first bite is
24 reduced a little bit by our making a

1 concession on facility.

2 We've tried very hard to save dollars
3 and cents wherever we can, and that's an
4 example of it.

5 SENATOR SAVINO: And one other
6 question that's not related to the budget. I
7 was looking at -- actually, it is
8 budget-related. If you look on the last page
9 where you list the annual budgets by year and
10 then the number of new complaints,
11 preliminary inquiries, new investigations,
12 there's an extraordinary jump in -- if you go
13 back to 1978 where you only had 641
14 complaints filed. And now, looking at the
15 most recent year, although it's slightly down
16 from last year, it's 2,000 new complaints.

17 ADMINISTRATOR TEMBECKJIAN: Yes.

18 SENATOR SAVINO: So how do you account
19 for that? Is it greater outreach? Are
20 people more aware that they can file
21 complaints? Or are we just really electing
22 really bad judges? How is this happening?

23 ADMINISTRATOR TEMBECKJIAN: Well, I
24 think the first two are exactly right. We do

1 a lot of outreach. It tends to generate a
2 lot of attention in the district where a
3 judge is publicly disciplined when the
4 commission does admonish or remove a judge
5 from office.

6 And also the public is far more
7 sophisticated now and they have a lot more
8 tools available to them to research than they
9 did back in 1978 when we started. The
10 internet alone, and our internet presence,
11 has raised our profile, and it's made us more
12 accessible to anyone who has a bad experience
13 in court or with a judge, on or off the
14 bench. It will not take more than a couple
15 of minutes of research to find out what they
16 can do about it. And I think that largely is
17 responsible for it.

18 SENATOR SAVINO: I think what I'm a
19 little concerned about is so you had -- in
20 2018 you had 2,000 new complaints, which led
21 to only 497 inquiries. Does that mean the
22 other 1500 were dismissed without any further
23 inquiry?

24 ADMINISTRATOR TEMBECKJIAN: There are

1 about 490-some-odd inquiries and about 150
2 investigations as well.

3 SENATOR SAVINO: Right.

4 ADMINISTRATOR TEMBECKJIAN: Which
5 means that two-thirds of the complaints that
6 we receive on initial analysis were dismissed
7 either as being frivolous or alleging
8 behavior that, even if true, would not be an
9 ethical violation by the judge.

10 And as you might imagine, most of
11 those are from litigants who lost their cases
12 and are very passionate about it and can't
13 imagine that they lost on the merits, and so
14 they make a complaint.

15 SENATOR SAVINO: Which, by the way, is
16 the argument that the District Attorneys
17 Association had about the prosecutorial
18 misconduct --

19 ADMINISTRATOR TEMBECKJIAN: Well, and
20 that commission perhaps, as we certainly
21 demonstrate, we absorb a lot of the hostility
22 that might otherwise be directed to the
23 judiciary by taking those complaints, giving
24 the aggrieved individual individualized

1 attention, and explaining to them why their
2 complaint really didn't allege an ethical
3 violation and had to be dismissed.

4 And I think probably the kind of
5 correspondence that most pleases me is that
6 from the individual whose complaint is
7 dismissed who appreciates the explanation and
8 thanks us for the time and for --

9 CHAIRWOMAN KRUEGER: Thank you,
10 Robert. I need to cut you off there --

11 SENATOR SAVINO: Thank you.

12 CHAIRWOMAN KRUEGER: -- and pass it to
13 the Assembly.

14 CHAIRWOMAN WEINSTEIN: Assemblyman
15 Lentol.

16 ASSEMBLYMAN LENTOL: Thank you, Madam
17 Chair.

18 Thank you, Mr. Tembeckjian, for your
19 service and for the fine work that you've
20 done over the years.

21 ADMINISTRATOR TEMBECKJIAN: Thank you.
22 It's always a pleasure for me to come and
23 talk to you too, by the way.

24 ASSEMBLYMAN LENTOL: Thank you.

1 So in this year and -- well, first of
2 all, in my career I've been an advocate for a
3 long time in criminal justice reform, civil
4 justice reform, administrative law reform.
5 And I wonder if -- you know, some of the
6 judges sometimes come up to me and say that
7 it's a kangaroo court, that they can't get
8 justice at the Commission on Judicial
9 Conduct.

10 And I say, well, maybe I should ask
11 the question and find out from the chief what
12 you think of the due process that goes on at
13 the commission and why we should consider
14 that a model not only for the Commission on
15 Prosecutorial Conduct but a model for other
16 things -- unlike what I think about the
17 administrative law process, where you can't
18 get justice.

19 ADMINISTRATOR TEMBECKJIAN: We have
20 discovery built into our statute, we have
21 rules that have expanded on the statutory
22 discovery, we have all kinds of notice and
23 opportunity to be heard, requirements that
24 we've promulgated ourselves, taking off on

1 the statute and the constitutional provision.
2 We have provisions that permit representation
3 by counsel at any and all stages, not just
4 for the judge who is the subject of the
5 complaint, but witnesses as well.

6 It isn't easy, and frankly it
7 shouldn't be easy to publicly discipline a
8 judge. And my staff and I, in making our
9 recommendation to the commission that a judge
10 should be disciplined, have to go through
11 substantial due process requirements in order
12 to come to that point.

13 It should be that way. And I think
14 that anyone who has either been a lawyer or
15 even a respondent in one of our proceedings
16 can only come away from it appreciating how
17 protected in terms of the rights of the
18 accused our procedures are.

19 Ironically, for those judges who
20 complain that the commission is a kangaroo
21 court -- with which I would obviously
22 vigorously disagree -- they more than I hold
23 it in their authority to open the process up.
24 The process is confidential by statute until

1 the commission renders a public discipline,
2 unless the respondent judge chooses to waive
3 confidentiality and open it up.

4 If you are concerned that the process
5 is unfair, sunshine is going to be the best
6 revelation as to whether or not it is or it
7 isn't. So I would invite anyone who as a
8 respondent complains that the process is
9 unfair to exercise their power to open it up
10 and show the world precisely how fair and
11 rigorous and demanding it actually is. I
12 think we would stand up to any kind of
13 scrutiny under such circumstances.

14 And by the way, 839 or 849 public
15 disciplines over 40 years, 10 judges have
16 waived confidentiality before the process has
17 ended. It's not something that when push
18 comes to shove, I think that they're willing
19 to do. Because the process is -- it's fair.

20 ASSEMBLYMAN LENTOL: Thank you.

21 CHAIRWOMAN KRUEGER: Thank you.

22 Senator Zellnor Myrie.

23 SENATOR MYRIE: Thank you, Madam

24 Chair.

1 And thank you for your testimony and
2 commentary.

3 The previous testifier spoke to the
4 foreclosure issue that is happening in my
5 district and all over the city. And, you
6 know, echoing the sentiments of Chairman
7 Hoylman, it is very disheartening to hear
8 that there are slower than appropriate
9 actions being taken against, potentially,
10 misconduct in the judiciary.

11 I just wanted some points of clarity.
12 You mentioned that there are 200 cases
13 pending currently?

14 ADMINISTRATOR TEMBECKJIAN: Correct.
15 A little more than that, actually.

16 SENATOR MYRIE: Okay. And you also
17 mentioned a case in which had you had the
18 adequate funding, you could have shaved off
19 about six months off of the investigation.

20 ADMINISTRATOR TEMBECKJIAN: Correct.

21 SENATOR MYRIE: And so is it possible
22 that there are currently members of the
23 judiciary who are under investigation and who
24 are making decisions, like whether or not

1 someone can stay in their home -- is it
2 possible that they are remaining on the bench
3 solely because of budgetary constraints?

4 ADMINISTRATOR TEMBECKJIAN: Yes.

5 SENATOR MYRIE: Thank you.

6 CHAIRWOMAN KRUEGER: Assembly.

7 CHAIRWOMAN WEINSTEIN:

8 Mr. Tembeckjian, I have a quick question for
9 you. I'm sure you're aware that today's Post
10 has an article that talks about the
11 commission -- the title, "State judges being
12 punished by commission on chump change." And
13 it quotes from your testimony here that you
14 presented today about the dire fiscal
15 situation the commission faces.

16 The last line of this rather short
17 article says: "A spokesman for the governor
18 said the commission has received regular
19 increases." I just -- I know you've talked
20 about it, but I just would like you to
21 clarify that comment that isn't attributed
22 to -- that line in the article, which isn't
23 attributed to a particular spokesperson.

24 ADMINISTRATOR TEMBECKJIAN: Right. I

1 don't know who that spokesperson is, and I
2 don't know if he or she was accurately
3 quoted.

4 I can hope that it was a misquote,
5 because the truth is we have not received
6 regular increases. And I think that the
7 record is very clear. In eight of the last
8 nine years, the Executive Budget has
9 recommended zero increase, not a penny more.
10 And in two of those years, the Legislature
11 has added a total of \$178,000 to our budget.
12 Which is how we went from 5.4 ten years ago
13 to just a little under 5.7 today. That
14 certainly is not a regular increase. Losing
15 25 percent of my staff is not a sign of a
16 regular increase.

17 The total dollar amount of money that
18 we have gone up in the last 10 years, that --
19 round it off and say \$300,000 -- is less than
20 the rent we've paid over that same period of
21 time. The increases in rent in that 10 years
22 have been \$400,000.

23 So I think by any stretch it's not
24 accurate to say that we have been getting our

1 increases on a regular basis. And I think
2 you and Senator Krueger, who have had these
3 kinds of conversations with me over the
4 years, one on one and in this public forum,
5 recognize the financial constraints under
6 which we've been operating.

7 So again, my hope is that the
8 Governor's office was misquoted by the Post.
9 It wouldn't be the first time.

10 CHAIRWOMAN WEINSTEIN: Thank you for
11 clarifying that to everyone.

12 ADMINISTRATOR TEMBECKJIAN: Thank you
13 for asking.

14 CHAIRWOMAN KRUEGER: Thank you. I
15 also want to thank you for testifying each
16 year and highlighting the incredible work
17 your commission does, and just to say on the
18 record people do have complaints about
19 judges, they are not all founded, but the
20 only way for the State of New York to assure
21 the public that our judiciary is one to be
22 proud of and to believe can correctly protect
23 the interests of all almost 20 million of us
24 is to make sure that we have a commission

1 EX. DEP. COMMISSIONER O'LEARY: It's
2 not that bad yet. Thankfully, it's snowing
3 in the places where we like snow, where there
4 are snowmobiles and recreational activities.

5 CHAIRWOMAN KRUEGER: Thank you.

6 EX. DEP. COMMISSIONER O'LEARY: Thank
7 you. Good morning. Thank you, Chairwoman
8 Krueger, Chairwoman Weinstein, and
9 distinguished members of the joint committee.

10 My name is Terence O'Leary, the
11 executive deputy commissioner for the
12 Division of Homeland Security and Emergency
13 Services. Thank you for the opportunity to
14 discuss the excellent work of the division
15 over the past year, as well as a few
16 highlights from the Governor's public
17 protection budget.

18 It is an honor to share with you the
19 accomplishments of the dedicated men and
20 women of the division, who are charged with a
21 tremendous responsibility – that is
22 protecting New Yorkers from natural and
23 man-made disasters through prevention,
24 preparedness, response, and recovery efforts.

1 The Executive Budget provides the
2 resources needed to accomplish our mission
3 and enhance public safety. Total agency
4 appropriations are \$1.6 billion. Some
5 notable items which the division will be
6 administering include \$25 million to continue
7 the success of the Securing Communities
8 Against Hate Crimes program and \$5 million of
9 capital funding to expand the State
10 Preparedness Training Center.

11 I would like to provide an overview of
12 the work we performed in 2018. Emergency
13 management and response remains a priority
14 for the agency. In 2018, the State Emergency
15 Operations Center was activated to a Level 4
16 or higher 38 separate times. These
17 activations required coordinating
18 multi-agency responses with other state
19 agencies and localities. Additionally, our
20 staff continues to support our local partners
21 through direct partnerships, training and,
22 when necessary, support in local Emergency
23 Operations Center activations. In 2018, we
24 provided counties and municipalities with

1 staffing support for 48 emergency incidents.
2 Among these events were the high-axle vehicle
3 rescue in Fort Covington in the North
4 Country, the building collapse in
5 Poughkeepsie, and the Altona Flat Rock
6 wildfire. During the August flooding in the
7 Finger Lakes and the Southern Tier, the state
8 partnered with local and county first
9 responders to help evacuate residents caught
10 in that flooding. In fact, staff from
11 DHSES's own Office of Fire Prevention and
12 Control swift water rescue teams evacuated
13 over 80 people from the shores of Seneca Lake
14 that morning.

15 This event demonstrates the danger of
16 flooding and underscores the need for
17 high-quality swift water training for both
18 state and local first responders. Thanks to
19 you, the state's Swift Water Flood Training
20 facility was opened at the State Preparedness
21 Training Center. This world-class training
22 facility provides specialized training
23 opportunities for New York State responders
24 that they would otherwise be unable to

1 obtain. State and local first responders can
2 now safely learn and practice the techniques
3 necessary for fast-moving water and urban
4 flooding rescues. And although the facility
5 just opened in August, we have already
6 trained 321 first responders in 13 different
7 water rescue courses, and we plan an even
8 more expansive training schedule for 2019.

9 The division also launched another new
10 training program at the State Preparedness
11 Training Center -- the Complex Coordinated
12 Terrorist Attack program. This program works
13 with upstate urban areas, specifically
14 Buffalo, Rochester, Syracuse, and the Capital
15 Region, to enhance planning and response to
16 complex and coordinated attacks. This year
17 we are also coordinating a capstone exercise
18 that will involve responders from these
19 multiple upstate urban areas.

20 The Executive Budget includes funding
21 to further enhance the state-of-the-art
22 training provided at the State Preparedness
23 Training Center, using \$5 million of capital
24 funding to create new training venues. With

1 your partnership, we have made the SPTC a
2 national model for first responder training,
3 and the Governor's proposal will build upon
4 that success.

5 The division's counterterrorism
6 efforts continue to expand and adapt to
7 address the latest threats. During the last
8 year the division's Office of
9 Counterterrorism increased the number of
10 Red Team assessments across the state by
11 conducting exercises at over 1,000 locations.
12 More than 400 people representing over 100
13 federal, state, and local law enforcement
14 agencies worked together to evaluate and
15 enhance New York's counterterrorism posture.
16 These efforts allow us to assess the
17 effectiveness of suspicious activity
18 reporting and strengthen the relationships
19 between law enforcement, businesses, and the
20 public. This year's Executive Budget
21 proposes to further expand these efforts.

22 The division also partnered with
23 federal, state, and local law enforcement for
24 operation NY-SECURE to conduct

1 counterterrorism and incident response
2 exercises along Amtrak routes and MTA
3 commuter lines. The division also looks
4 forward to implementing the recommendations
5 of the Governor's counterterrorism panel.
6 These recommendations, announced earlier this
7 month, will help make New York safer against
8 evolving threats.

9 The division continues to expand its
10 role in protecting the state against
11 cyberattacks. The new Cyber Incident
12 Response Team, or CIRT, is now fully
13 operational. In the past year, the CIRT has
14 provided incident response services to
15 multiple counties and municipalities across
16 the state. For the 2018 election, the CIRT
17 partnered with the State Board of Elections
18 and ITS to secure the state's election
19 infrastructure and serve as a go-to resource
20 for county boards of election. The CIRT
21 continues to work with the division's
22 Critical Infrastructure Protection Unit as
23 well, to strengthen the division's cyber
24 assistance and enhance cybersecurity for the

1 state as a whole.

2 Our efforts to enhance the public's
3 preparedness continue through the Governor's
4 Citizen Preparedness Corps trainings. During
5 2018, with your assistance, we partnered with
6 the National Guard and the Red Cross to train
7 over 62,000 citizens. Since the program's
8 inception, more than 277,000 New Yorkers have
9 been trained in our all-hazards approach to
10 prepare for and respond to any type of
11 emergency situation.

12 While it is not possible to cover all
13 the great work of the division during my
14 testimony, I hope I have provided you with a
15 brief overview and our priorities for the
16 next fiscal year. I appreciate the
17 opportunity to testify before you today and
18 to answer any of your questions.

19 CHAIRWOMAN KRUEGER: Thank you.

20 Our first questioner will be the chair
21 of Homeland Security and Emergency
22 Services -- I think that's the right title of
23 the committee -- John Brooks.

24 SENATOR BROOKS: Thank you, Madam

1 Chair.

2 And good afternoon, Commissioner. I
3 have a number of questions about the program,
4 but I really want to --

5 (Discussion re microphone.)

6 SENATOR BROOKS: Hello? I will start
7 over again.

8 Good afternoon, Commissioner. I have
9 a number of questions about the program, but
10 I really want to concentrate on the disaster
11 and emergency preparedness, in particular to
12 Hurricane Sandy or Superstorm Sandy, because
13 I think it tells us so much of where we are
14 and where we have to go.

15 The storm itself was over six years
16 ago, and right now, all across the region, we
17 have homes that haven't even started on the
18 repairs yet. We have homes that are up in
19 the air and the contractors left. We have
20 people that have been out of their homes for
21 six years plus.

22 On the good side, on the IMA program,
23 you recently extended that program for
24 another six months. But I'm not sure that

1 the folks in some of those homes are going to
2 be back in their homes in that next six month
3 period. Do you have plans to assist those
4 people additionally?

5 EX. DEP. COMMISSIONER O'LEARY: So the
6 division's role in recovery and FEMA,
7 pass-through for FEMA dollars, does not
8 actually involve individual assistance under
9 Hurricane Sandy. And a lot of the money and
10 assistance given to individual homeowners is
11 administered either by New York City but, on
12 the state level, the Governor's Office of
13 Storm Recovery. We work with them closely on
14 some joint programs, but the division itself
15 for working with individual homeowners.

16 SENATOR BROOKS: Okay, so much of the
17 report you gave in the budget section
18 addresses the storm and the programs that you
19 have associated with the storm, and the
20 difficulties that are there. And I think it
21 is very much a part of the management
22 function of your operation to prepare for
23 those disasters.

24 We're in a situation where we saw a

1 major hurricane that has crushed many of
2 those communities, we're six years after
3 that, we're in a situation where the overall
4 management of that program and the confusion
5 between the state and federal government into
6 how these programs will be applied has left
7 people in a very difficult position.

8 I have one family whose home -- they
9 owned their home free and clear. They're now
10 \$450,000 in debt, and the federal government
11 is trying to claw back \$200,000 more because
12 of the way the programs were administered,
13 because of the confusion.

14 If we're going to prepare for
15 disasters, we're going to have to understand
16 that things like permits through local
17 government and the communication goes on.
18 The governments weren't prepared. People
19 were waiting for permits, people were waiting
20 for extensions. We brought in contractors
21 that really weren't capable of performing the
22 repairs. Some of them left. Some
23 contractors signed on 30, 40, 50, 60, 80
24 jobs; they didn't have the capacity to do

1 we had flooding that came up to the main part
2 of the village. We were evacuating people
3 all night long. They didn't see that coming.
4 And many of those homes, again, they're not
5 back in those homes.

6 You know, I'm disappointed that you
7 don't cover some of these areas and certainly
8 want to meet with you folks at a later time.
9 But the Executive Budget right now provides
10 \$450 million for additional storm recovery.
11 Do you know how much of that is slated for
12 Hurricane Sandy-related issues?

13 EX. DEP. COMMISSIONER O'LEARY: So
14 within our budget, there's approximately
15 \$650 million, which is an appropriation for
16 the pass-through for any federal dollars that
17 may come to us. We currently have already
18 paid out approximately \$7.8 billion related
19 to Hurricane Sandy.

20 The projects that the division
21 oversees are the larger public assistance
22 projects, which there are approximately 4,800
23 related to Hurricane Sandy. We also oversee
24 the Hazard Mitigation Grant Program dollars,

1 which as -- Senator, as you mentioned, with
2 climate change, with these hundred-year
3 storms happening more and more often,
4 creating more resilient communities is
5 something that we need to do. And that's
6 what our Hazard Mitigation Grant Program is
7 aimed at.

8 There's the Bay Park Project to make
9 the Great South Bay more resilient, to the
10 build up the wetland so that it can absorb
11 storms. We also have programs in New York
12 City to make public housing more resilient
13 for the next storm, improving generator
14 systems, elevating boilers, and creating some
15 flood walls in Coney Island, for instance.
16 So --

17 SENATOR BROOKS: Well, one of the
18 things that's being discussed on Long Island,
19 right, because we -- right now is the use of
20 flood gates. And there's been a request made
21 to the Army Corps of Engineers to investigate
22 that potential if the -- there's a group
23 that's spearheaded by one of our village
24 mayors, and that shows a great deal of

1 potential, not only in a catastrophic storm,
2 but managing, you know, if you will, a minor
3 storm and preventing that flooding.

4 From what I understand, the federal
5 government is more than dragging their feet
6 on that and may well have transferred the
7 responsibility to a different area, out of
8 the region. But I think that's something we
9 have to look at.

10 I also think -- you know, and I looked
11 at the training programs that you have within
12 the budget, which are great. And I'm a first
13 responder, and I understand that. And we do
14 need flooding training for Long Island as
15 well. It's different than fast water.

16 But putting that aside, I think you
17 need to consider the establishment of a
18 training program for disaster recovery
19 management. Sandy, Katrina, all of the major
20 storms we've seen, we have a major problem in
21 managing the recovery and the claim process.
22 We lose control of money. People don't
23 understand what they're supposed to do.
24 Contractors come in that don't have the

1 qualifications. Local governments and
2 businesses are not in a position to manage
3 the flood of permits that come in, and
4 requests. They can't do the inspections on
5 time.

6 After Hurricane Sandy, we ended up
7 having a number of firemen trained to go into
8 houses to make the inspection so they could
9 restore the gas services. We're not prepared
10 for a storm. We didn't handle the claim
11 process well. People can't account for where
12 money is. That problem continues.

13 So I think, again, we'd be well
14 advised to recognize that we need to
15 understand these storms are going to come
16 again, people have to be trained in how the
17 process works, people have to be trained in
18 the difference between an SBA program and a
19 state program. And we're in a situation now
20 where so many people are being told they owe
21 additional money because in the way they
22 managed their claim -- let's say somebody
23 said your repairs are going to be \$400,000.
24 The SBA said, we'll give you a \$200,000 loan.

1 So they adjusted their state request to
2 \$200,000, and now they're being told, You got
3 double payment here. They didn't get double
4 payment, they were managing the claim as best
5 they could.

6 So, you know, I'm sorry that, you
7 know, to an extent you're not the right
8 person to ask some of these questions, but I
9 think we have to sit down and take a good
10 hard look at what's happened in Sandy,
11 recognize it's going to happen again, it's
12 going to happen in other regions of this
13 state, and right now, six years plus after
14 the storm, there are people still waiting to
15 start to make that repair.

16 So again, I appreciate that those
17 funds were allocated for the Mortgage
18 Assistance Program. I think more is going to
19 have to be done there. And I think we have a
20 lot of work to do when it comes to preparing
21 for and managing disaster recovery. And I
22 think more attention has to be given to that
23 in the budget.

24 EX. DEP. COMMISSIONER O'LEARY: I

1 appreciate your concerns, Senator. And I
2 would be more than happy to meet with you and
3 have our staff -- I think our staff does an
4 excellent job of working with the federal
5 government to expedite payments for public
6 assistance in HMGP projects. And we always
7 make ourselves available to any elected or
8 constituent who has specific questions. And
9 so if there are specific projects, we will be
10 happy to speak about those, but also the
11 program as an overview. Our staff does an
12 excellent job.

13 SENATOR BROOKS: Well, we'll take you
14 up on that offer, and we'd like you to also
15 sit down and talk with us about the flood
16 gates, because the potential there is very
17 significant.

18 EX. DEP. COMMISSIONER O'LEARY:
19 Absolutely.

20 SENATOR BROOKS: And I think we have
21 to allocate additional funds for this
22 recovery, because we're still a long way from
23 getting people back into their homes.

24 CHAIRWOMAN KRUEGER: Thank you. Thank

1 you, Senator.

2 Assembly.

3 CHAIRWOMAN WEINSTEIN: Assemblyman

4 Barclay.

5 ASSEMBLYMAN BARCLAY: Thank you,

6 Chairwoman.

7 Good afternoon.

8 EX. DEP. COMMISSIONER O'LEARY: Good

9 afternoon.

10 ASSEMBLYMAN BARCLAY: I had some

11 specific questions on some of the line items

12 in the proposed budget for your agency.

13 Could you first tell me a little bit about

14 the \$1 million in new funding to reduce the

15 risk of deployment of a nuclear weapon?

16 EX. DEP. COMMISSIONER O'LEARY: What's

17 that?

18 ASSEMBLYMAN BARCLAY: Do you know much

19 about the million dollar add to reduce the

20 risk of deployment of a nuclear weapon?

21 How's that work, and how's that -- is that

22 funding for New York City, I presume, but --

23 EX. DEP. COMMISSIONER O'LEARY: The

24 funding is partially for New York City. It's

1 part of the Securing the Cities program.
2 Without getting into specifics in a public
3 forum as to what that money actually pays
4 for, I think --

5 ASSEMBLYMAN BARCLAY: I don't need
6 that --

7 EX. DEP. COMMISSIONER O'LEARY: -- a
8 separate forum might be better.

9 But it's to help detect utilizing
10 potential vulnerabilities, making sure that
11 local law enforcement is in tune with state
12 and federal law enforcement, and also has
13 certain technologies that will help detect
14 the presence of a nuclear device.

15 ASSEMBLYMAN BARCLAY: I mean, it makes
16 sense to me it would be based in New York
17 City. Clearly that's probably the biggest --
18 would be the biggest target. But is that
19 exclusively for New York, or is it for the
20 whole state or --

21 EX. DEP. COMMISSIONER O'LEARY: It is
22 not just for New York City.

23 ASSEMBLYMAN BARCLAY: In your
24 testimony you mentioned \$25 million for

1 securing communities against hate crimes.
2 Could you explain that program and why that
3 is part of the homeland security agency's
4 mission?

5 EX. DEP. COMMISSIONER O'LEARY: Sure.
6 So the money itself is actually out of the
7 State Education Department, and an
8 announcement first was made -- the first
9 round was last year, after, thanks to the
10 Assembly and the Senate, the bill was passed.

11 The grant allows for nonpublic
12 schools, daycare centers and cultural
13 museums, as defined in State Education
14 Department law, to apply for grants for
15 target-hardening -- cameras, fences, other
16 types of physical security -- if their
17 organization can establish that based upon
18 their belief or ideology, that they are
19 susceptible to a hate crime.

20 So the grant program the Governor
21 announced and was passed by both houses was
22 aimed at securing schools and others, as hate
23 crimes become -- we read stories about them
24 every day. And so this was aimed at helping

1 those types of facilities -- nonpublic
2 schools, daycare centers and cultural
3 museums.

4 So after the first round, over 200
5 applicants were awarded, approximately \$15
6 million was issued. Round 2, we received
7 multiple applications as well, which will
8 spend out the rest of the additional -- the
9 first round of \$25 million.

10 So this would continue that program
11 with another \$25 million appropriation.

12 ASSEMBLYMAN BARCLAY: All right, I
13 appreciate it. I guess the securing
14 communities against hate crimes will -- this
15 is really money that's going to security
16 cameras, maybe, you know, barriers or
17 whatever else you need to secure the actual
18 physical facilities.

19 EX. DEP. COMMISSIONER O'LEARY: It's
20 target-hardening. Yes, it's hardening the
21 facility.

22 And the applications put forth -- it's
23 a reimbursement program. The application
24 puts forth what the actual institution feels

1 they need to do. They very often partner
2 with local law enforcement in their
3 assessment. Sometimes they will use private
4 consultants to conduct that assessment. And
5 in the application itself it also states why
6 they would be susceptible to a hate crime.

7 So these are scored and, based upon
8 the scoring, they're checked for -- they have
9 to get past the initial threshold. And if
10 they do, then we award up to \$50,000 per
11 location to the applicants.

12 ASSEMBLYMAN BARCLAY: Okay, thanks.
13 That's a very helpful explanation.

14 The last question I had was the
15 \$25 million for the interoperable
16 communication proposal. How is that going to
17 be distributed? Is that on a grant basis to
18 the counties, or how's that disbursed?

19 EX. DEP. COMMISSIONER O'LEARY: Our
20 proposal is actually \$75 million for
21 interoperable and emergency communications,
22 in three separate grants.

23 Ten million dollars of it is for a
24 PSAP grant, or the individual 911 centers

1 throughout the state, which they can use to
2 improve the 911 center.

3 Forty-five million of it is
4 formula-based and goes to each and every
5 county, and the county can use it to improve
6 the actual radio system to make sure that not
7 only does the call come into the 911 center,
8 but that first responders can communicate to
9 each other with separate agencies as well.

10 And then the last \$20 million of the
11 \$75 million is for our targeted grant
12 program, which is a new program we started
13 administering last year which looks at those
14 portions of the state that do not have the
15 infrastructure, the radio infrastructure that
16 the rest of the state has. It's actually a
17 program that we devised, and after we did it,
18 we worked with the Office of the Comptroller
19 to review it. They were very pleased with
20 what we did, and we just made the initial
21 round of grants this year --

22 ASSEMBLYMAN BARCLAY: Is that the
23 primarily rural areas?

24 EX. DEP. COMMISSIONER O'LEARY: Yes.

1 So I don't have them off the top of my head,
2 but I believe it was Herkimer, Hamilton,
3 Jefferson, maybe there's one out west as
4 well. I can get you the six initial
5 awardees.

6 But the next round will be to continue
7 that so that we can create -- make sure that
8 first responders, regardless of where they
9 are in the state, their radios will talk to
10 each other and communicate back to the 911
11 centers and the command centers.

12 ASSEMBLYMAN BARCLAY: Thank you for
13 your explanations. Thanks.

14 CHAIRWOMAN KRUEGER: Thank you.

15 Senator Seward.

16 SENATOR SEWARD: Thank you, Madam
17 Chair and Commissioner O'Leary.

18 On a day like today when weather is on
19 everyone's mind, I had a couple of questions
20 regarding weather-related responses by your
21 agency.

22 EX. DEP. COMMISSIONER O'LEARY: Sure.

23 SENATOR SEWARD: Can you share with us
24 where in the state the agency has responded

1 to weather-related events over the past year?

2 EX. DEP. COMMISSIONER O'LEARY: I
3 think it would be easier to say where we
4 haven't responded over the past year.

5 Whenever there's an event, depending
6 on what the type of event is, it will change
7 the response. So with the incoming
8 snowstorm -- or with the snowstorm last
9 weekend, I found myself in the Southern Tier
10 in Binghamton -- born and raised in the
11 Southern Tier -- working with local
12 governments as well as helping to coordinate
13 state responses.

14 Every response where the state is
15 engaged is run out of the State Emergency
16 Operations Center, which is here in the
17 Albany area. And within the division there's
18 the Office of Emergency Management; they
19 oversee operations, and they coordinate the
20 response of all state agencies, working very
21 closely with the Governor's office.

22 We have responded for snowstorms such
23 as today, leading up to the snow that's going
24 to come in. Obviously the Department of

1 Transportation, Thruway, DEC, Parks, anyone
2 who may have a role -- coordination starts
3 well in advance of when these events happen.
4 There are also no-notice events, which are a
5 little harder to handle.

6 But in terms of prestaging, when we
7 know something's going to happen before --
8 the storms that flooded Seneca Lake as well
9 as the Southern Tier back in August, I was in
10 Binghamton before Kirkwood and Conklin
11 flooded that night, and we had state assets
12 prestaged with local assets as well -- swift
13 water teams. They were also prestaged in the
14 Finger Lakes region as well. And we had our
15 Office of Fire Prevention and Control on-site
16 at Seneca Lake. Although they originate out
17 of Albany, they were actually on-site in Lodi
18 by 8:30 that morning and were one of the
19 first responding agencies.

20 SENATOR SEWARD: Would you say that
21 the agency has been responding to more
22 weather-related events in recent years? And
23 if so, are more resources needed to
24 adequately respond? If in fact there are

1 more.

2 EX. DEP. COMMISSIONER O'LEARY: I can
3 get you the number on the prior responses.

4 Last year we deployed our swift water
5 teams on multiple occasions, and they -- we
6 actually, as part of the Swift Water Training
7 Facility, in the budget it was approved for
8 17 new State Fire employees to help train
9 local and first responders on swift water
10 rescue. When they're not training, we
11 actually use them as a swift water team and
12 deploy them.

13 So it's fair to say that the tempo of
14 deployments has certainly increased.
15 However, one of the things that the division
16 does as well is we go out to every single
17 county in New York City and we partner with
18 them through what we call the county
19 assessment process, CEPA process. And we
20 work with them to determine what are their
21 top threats. And throughout the state the
22 top threat, either natural or manmade, is
23 flooding. It's almost unanimously flooding
24 in every county.

1 We then work with them to evaluate
2 what their resources are to respond. And
3 then the ultimate goal is that leads to
4 filling those gaps where they see a threat
5 and the local resources may not be able to
6 meet that threat should it come to fruition.

7 So the state takes notice of that so
8 that we can work with our local partners
9 where they need our assistance. And some
10 counties obviously are more resourced than
11 other counties. But we also work with them
12 in trainings, providing trainings, as well as
13 providing best practices and better ways to
14 work in terms of answering the threats.

15 Obviously the agency was very heavily
16 involved in New York State's response to the
17 very devastating Hurricane Maria down in
18 Puerto Rico. Does the division continue to
19 have resources on-site there?

20 EX. DEP. COMMISSIONER O'LEARY:
21 On-site the division does not have any
22 resources, although we continue to work very
23 closely with those who responded as well as
24 the Puerto Rican Emergency Management Agency

1 as well as FEMA.

2 As you're aware, New York sent a great
3 deal of resources down there to assist and in
4 fact were some of the first individuals on
5 the island after the storm came through.
6 That was all done through the Emergency
7 Management Assistance Compact. It was all
8 documented. And the infrastructure, the
9 administrative infrastructure that I was
10 talking with Senator Brooks about actually
11 makes sure any costs are documented and that
12 we can track everything that New York did,
13 and at the end of the day ultimately we will
14 look for PREMA to seek reimbursement from
15 FEMA for all of this.

16 SENATOR SEWARD: That was my next
17 question, about reimbursements. Thank you.

18 EX. DEP. COMMISSIONER O'LEARY: We
19 spend a great deal of time making sure that
20 we document everything that all agencies did
21 and other partners from New York State. And
22 the ultimate goal of all those activities is
23 so that through the EMAC process New York
24 State will be reimbursed for those

1 activities.

2 CHAIRWOMAN KRUEGER: Thank you.

3 Senator Savino.

4 The Assembly is done, by the way;
5 we're not skipping them unintentionally.

6 SENATOR SAVINO: Thank you, Senator
7 Krueger.

8 I just have one quick question for
9 you, Mr. O'Leary. You mentioned the role
10 that your agency is helping localities deal
11 with cyberattacks. And I think in the past
12 year there have been multiple interactions
13 with some of the counties.

14 Can you speak a bit about what's
15 happening at the county level? What are you
16 seeing -- is it about training them, how to
17 prevent it, or are you helping them respond
18 to attacks?

19 EX. DEP. COMMISSIONER O'LEARY: Yes,
20 yes, and yes. So it's a little bit of each,
21 right?

22 So the majority of cyber issues that
23 we see are a lack of cyber hygiene, people
24 not taking very basic steps to protect

1 themselves from cyberattack, whether it be
2 restarting your computer so that patches can
3 update the operating system to make sure that
4 new vulnerabilities are addressed, to people
5 using shared passwords -- very simple things
6 like that.

7 So the Cyber Incident Response Team
8 has worked to prepare materials that we can
9 share with local and county governments. And
10 we partner with ITS as well. ITS has the
11 role of protecting the state's -- the
12 Executive agencies' infrastructure. But as
13 you know, they interface with county and
14 local governments at countless touch points.

15 What the CIRT does, the individuals
16 that work within the division, is they serve
17 as an on-site response resource and I believe
18 on 15 or 16 occasions in the past calendar
19 year they've actually gone to counties and
20 municipalities and, in one instance, a school
21 district, where they've fallen prey to
22 malware, where their computers are locked up,
23 where they don't know where to turn. And
24 obviously some counties are better resourced

1 with IT departments than others.

2 So we have individuals with an IT
3 background who can go and do the forensic
4 work to determine what is the attack and what
5 are the next best steps to mitigate the
6 attack and to recover normal operations.

7 So that's happened on about 15 or 16
8 occasions. Obviously when we go out and our
9 staff sees this, we're in constant contact
10 with ITS, and we also work very closely with
11 the State Police Cyber Analysis Unit. They
12 talk on a daily basis, and they share what
13 they're seeing. So what then happens is they
14 prepare documents and advisories that are
15 shared with our partners in the state. It's
16 also shared with the Center for Internet
17 Security, which runs the multistate ISAC and
18 will push out some of these best practices
19 and advisories, not only to our partners in
20 the state but throughout the country.

21 SENATOR SAVINO: And you help train
22 the counties or the localities or wherever
23 this breach occurred on how to prevent it and
24 improve their practices? That's part of it?

1 EX. DEP. COMMISSIONER O'LEARY: Yes.

2 SENATOR SAVINO: Are we seeing some of
3 these problems extend to contractors with the
4 county governments, people that they're doing
5 business with, they're not necessarily on the
6 government side? Or is there a risk to that?

7 EX. DEP. COMMISSIONER O'LEARY:

8 There's absolutely a risk when you talk about
9 the supply chain and the cyber supply chain.
10 And that's something on the state level that
11 OGS has been working with ITS on, to make
12 sure that the vendors and contractors we work
13 with are adhering to adequate levels of
14 cybersecurity so that they don't threaten the
15 state infrastructure.

16 Many of the counties and localities
17 use OGS for purchasing purposes, so those
18 best practices will be present in any
19 contracting they do as well. But there are
20 certain best practices that we will share.
21 We obviously talk about know who they're
22 contracting with, know what access they are
23 giving to individuals who come in and are on
24 their IT network.

1 SENATOR SAVINO: Thank you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 Hi, I'm going to take some questions
4 for you.

5 So I think the role of emergency
6 management response is really radically
7 changing in our time. You've already heard
8 people ask you about weather and about
9 cybersecurity and about nuclear armaments.
10 Can you give me an approximation -- and I'm
11 going to define weather now as climate
12 change, because I think it is -- the
13 emergencies are growing because of climate
14 change. Can you give me an evaluation of how
15 your budget and time breaks down between
16 those three categories -- climate change
17 emergencies, cybersecurity, and perhaps the
18 more traditional visualization of, you know,
19 terrorism and crime?

20 EX. DEP. COMMISSIONER O'LEARY: So
21 emergency management takes the approach of an
22 all-hazards approach. And to a certain
23 extent it almost doesn't matter what caused
24 the event, we still need to respond

1 appropriately. So whether it's a hurricane,
2 whether it's a bomb going off in a crowded
3 venue, or whether it's boats loose on the
4 Hudson, we need to respond with the
5 appropriate agencies and call on our state
6 partners.

7 To put an exact number on how much
8 money we spend is tough, because the Office
9 of Emergency Management serves as the
10 quarterback. They make sure that people are
11 ready before the event happens, whatever that
12 event may be, using the all-hazards approach.
13 And in the Executive Law is the Disaster
14 Preparedness Commission, those 29 state
15 agencies that because of their mission will
16 probably have some role in an emergency that
17 may face New York. And depending on that
18 emergency, like I was talking about, whether
19 it be flooding or snow on the roads, it's
20 going to vary.

21 But we rely very heavily on our
22 partners throughout state service to do -- to
23 perform different functions. That does not
24 come out of our budget. For instance, if we

1 are deploying generators, as was deployed
2 during Hurricane Sandy and other events, we
3 will rely upon those agencies that already
4 have the capability to transport large
5 objects -- so DOT or DOCCS we would use to
6 transport. So that wouldn't be in our
7 budget.

8 So to give you an exact number of how
9 that spells out, I can tell you off the top
10 of my head for some of the offices, for the
11 Cyber Incident Response Team, that's
12 approximately a \$1.3 million appropriation.
13 However, whenever the State EOC is activated,
14 it is not staffed only by the Office of
15 Emergency Management. Our disaster recovery
16 folks, they will be there as well. We will
17 also bring in folks from the Office of
18 Counterterrorism, even if it's a weather
19 event, so that it's an all-hands-on-deck
20 approach.

21 CHAIRWOMAN KRUEGER: And there's not a
22 breakdown of that \$1.6 billion budget of what
23 percentage of that money is going to
24 categories of response?

1 EX. DEP. COMMISSIONER O'LEARY: No,
2 not by categories of response. It's broken
3 out -- we have personal service, NPS, Aid to
4 Localities, and capital. But it's broken out
5 to "the time was spent on this snowstorm."

6 We do that if we are seeking federal
7 reimbursement. If there's a disaster
8 declaration under the Stafford Act, we'll
9 account for the costs at that point. But in
10 terms of day-to-day operation, we don't do
11 that.

12 CHAIRWOMAN KRUEGER: So we have a new
13 Committee on Cybersecurity -- actually
14 Senator Savino, who just asked you questions,
15 is the chair. And a lot of us are very
16 concerned about the impact of attacks on
17 ourselves or our democracy, in a computer
18 sense as opposed to a somebody shooting us on
19 the streets.

20 Even this week, I have noticed in the
21 Well that there are people advertising voting
22 machines, and I guess that's because we're
23 coming up on a time where counties may be
24 scheduling to perhaps purchase new voting

1 machines. Is it possible for your agency to
2 look into some of the security concerns about
3 the types of voting machines that one might
4 choose or not choose? I know it's a Board of
5 Elections function, but it's actually -- the
6 biggest risk to democracy is the possibility
7 that someone can hack our voting system. And
8 that's been brought to the attention on the
9 national level but also here in the state.

10 And I think that -- I feel very
11 strongly that we have to be more vigilant
12 than we were in the past about making sure
13 that we're not buying into technology that
14 makes it too easy for someone other than
15 ourselves to be adding up the ballot count.

16 EX. DEP. COMMISSIONER O'LEARY: We
17 absolutely share your concern. And in the
18 past year our Cyber Incident Response Team
19 worked extremely closely with the State Board
20 of Elections as well as ITS to provide
21 support to the county boards of elections in
22 both the -- in all the elections during 2018.

23 We had our team on call during the
24 general election in case there was any

1 incident that arose out of a cybersecurity
2 concern. Obviously there were other concerns
3 that came up during voting in the general
4 election. But on the cybersecurity side, our
5 Cyber Incident Response Team was ready to
6 respond, was in constant contact with the
7 State Board of Elections -- actually sat with
8 representatives from the State Board of
9 Elections during that time period.

10 One of the things that we reiterate
11 is, again, basic cyber hygiene. There are
12 certain things to take into account when
13 you're purchasing a new machine. We can
14 answer technical questions. We obviously
15 don't want to usurp any of the
16 responsibilities of the State Board of
17 Elections, but we are serving as a resource
18 on cyber concerns should they have any
19 questions.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Senator Seward, you had a follow-up
22 question? You also?

23 SENATOR BROOKS: I just had one.

24 CHAIRWOMAN KRUEGER: Okay. Senator

1 Seward and then Senator Brooks.

2 SENATOR SEWARD: Mr. O'Leary, I just
3 wanted to get some more information regarding
4 the \$5 million capital request for the State
5 Preparedness Training Center in Oriskany.

6 EX. DEP. COMMISSIONER O'LEARY: Yes.

7 SENATOR SEWARD: Can you go into any
8 further detail in terms of what projects the
9 agency intends to fund with this \$5 million
10 at Oriskany? And how have recent projects
11 fared there at that facility?

12 EX. DEP. COMMISSIONER O'LEARY: Sure.

13 Thank you, Senator.

14 The most recent capital project at the
15 SPTC was the Swift Water Training Facility,
16 which if you haven't seen it, it's the first
17 in the nation for first responders. It's a
18 gorgeous facility, thanks to a \$10 million
19 approp approved by the Legislature. And it
20 gives us the opportunity to train first
21 responders in actual swift water without
22 having to put them into rushing water in a
23 river that can't be controlled. Should
24 something go awry, they can turn off the

1 water immediately.

2 So I would encourage you to come out
3 and visit and see the Swift Water Facility,
4 which was the most recent capital add.

5 What we're looking to do, we want to
6 be responsive to what first responders in the
7 state -- the training that they want and the
8 training that they cannot get at home. So a
9 few of the things that we're looking at is to
10 increase our drone training offerings. We
11 currently provide classes on how to operate a
12 drone and concerns around the operation and
13 use of drones and the threats they may pose.

14 One of the things we're looking at
15 doing is creating a drone training facility
16 where pilots could come, with FAA
17 authorization, once they have their COAs,
18 they can fly and learn how to fly in tight
19 spaces.

20 One of the things drones can do is
21 help in hostage situations to provide
22 surveillance that would not put a human being
23 in danger. That's one of the possible uses.
24 The uses for drones -- there are several of

1 them, and this would give localities an
2 opportunity to expand that training.

3 Another thing that we're looking at
4 expanding is the ability to create a
5 cul-de-sac, almost like what the FBI has with
6 Hogan's Alley. We currently have one already
7 on-site. It's an indoor cityscape, an urban
8 re-creation of stores, a courtroom, where
9 training can take place. We would look to
10 create a more suburban setting as well,
11 something that we see in active shooter and
12 other types of incidents. But it may be very
13 difficult for local first responders to get
14 that training in their own jurisdictions
15 without asking people to clear out of the
16 neighborhood.

17 SENATOR SEWARD: You know, the
18 Oriskany facility is right next door to my
19 district, and I certainly will take you up on
20 the invitation to stop by and see the good
21 work that's being done there. Thank you.

22 CHAIRWOMAN KRUEGER: Thank you.

23 Okay, and to close, Senator John
24 Brooks.

1 SENATOR BROOKS: Again, thank you for
2 coming, and I will take you up on the
3 meetings.

4 Just a quick question. In the capital
5 funds and some of the additional funds, part
6 of the objective was to improve
7 communications between the various agencies
8 in the state and improve the response from
9 the local governments. So could you just
10 give us a quick overview of where you think
11 we are on a statewide basis in terms of the
12 ability to communicate with all the
13 communities and agencies?

14 EX. DEP. COMMISSIONER O'LEARY: Yes.
15 Thank you, Senator.

16 Every year we get closer to true
17 interoperability throughout the state. In
18 prior administrations the approach was to try
19 and create one statewide network, and it was
20 not successful.

21 The approach that has been taken over
22 the past -- under this administration is to
23 create consortiums that can grow and counties
24 can add on. And I think we've been very

1 successful in having those consortiums grow,
2 in establishing governance through the State
3 Interoperable Board, which our director of
4 the Office of Interoperable Communications
5 oversees, but has representation from state
6 agencies as well as localities, first
7 responders, both law enforcement and fire
8 service and EMT.

9 So I think each time we put out this
10 \$65 million that goes towards interop, we get
11 closer and closer to being able to have a
12 first responder from Montauk show up and be
13 able to talk over land mobile radio with a
14 first responder from Buffalo.

15 There's still work to do, and part of
16 the move to doing targeted grants last year
17 and continuing this year is to work on those
18 parts of the state where we have particular
19 issues. And usually they're the more rural
20 areas that don't have the resources.

21 I think we're doing a very, very good
22 job. We were actually -- our director of
23 interop was asked to present at the national
24 homeland security conference last year on

1 what we're doing and the approach that we're
2 taking. It's innovative, and it's addressed
3 a problem that has dominated the discussion
4 in every state. And the patient and
5 persistent approach that we've taken with
6 this interop funding is really starting to
7 pay off.

8 SENATOR BROOKS: Okay, thank you.

9 CHAIRWOMAN KRUEGER: Thank you very
10 much for your time with us today. You are
11 relieved of being here with us.

12 EX. DEP. COMMISSIONER O'LEARY: Thank
13 you very much.

14 CHAIRWOMAN KRUEGER: And our next
15 testifier will be Michael Green, executive
16 deputy commissioner, New York State Division
17 of Criminal Justice Services.

18 And then for people watching who's up
19 next, Michael will be followed by Anthony
20 Annucci, acting commissioner, Department of
21 Corrections and Community Supervision.

22 Good afternoon. Whenever you're
23 comfortable.

24 EX. DEP. COMMISSIONER GREEN: Good

1 afternoon. Thank you.

2 Good afternoon, Chairwoman Krueger,
3 Chairwoman Weinstein, and distinguished
4 members of the Legislature. I'm Mike Green,
5 head of the Division of Criminal Justice
6 Services. Thank you for inviting me to
7 appear before you today.

8 New York continues to experience
9 reductions both in reported crime and its
10 prison population. Reported crime declined
11 for the fifth consecutive year in 2017, again
12 reaching an all-time low, and we maintain our
13 standing as the safest large state in the
14 nation. While numbers for this past year are
15 not yet final, preliminary data shows that
16 crime declined even further and 2018 will
17 mark another historic low. For the second
18 year in a row, there will be fewer than 600
19 homicides, a low that had not been achieved
20 since we started keeping statewide data 44
21 years ago.

22 Our Gun Involved Violence Elimination
23 initiative, SNUG street outreach program,
24 Crime Analysis Centers and strong

1 alternatives to incarceration network
2 contribute to this success, and these
3 programs continue to receive national
4 recognition for the results they have
5 achieved.

6 Our investment in proven practices to
7 reduce gun crimes and save lives is paying
8 dividends. Within our 17 GIVE counties,
9 shootings declined 8 percent in 2018, were
10 14 percent below the five-year average and
11 21 percent below the total reported in 2006,
12 when tracking began. And as you all know,
13 these aren't just numbers: 191 fewer
14 people -- and their loved ones and
15 communities -- had their lives impacted by
16 gun violence last year in those communities.

17 Governor Cuomo's proposed budget will
18 allow DCJS to continue supporting the
19 criminal justice system in communities across
20 the state, support evidence-based programs,
21 and develop and implement innovative programs
22 that continue to distinguish New York as a
23 national leader in effective public safety
24 policy.

1 Over the past two years, several major
2 reforms were enacted: raising the age of
3 criminal responsibility, extending the
4 landmark Hurrell-Harring settlement,
5 requiring video-recording of interrogations
6 for serious offenses, and allowing properly
7 conducted witness identification into
8 evidence at trial.

9 Building on this success, Governor
10 Cuomo has proposed reforms addressing bail,
11 speedy trial, and discovery and gun safety
12 laws that are cornerstones of his justice
13 agenda.

14 The majority of people in New York's
15 jails are held because they cannot afford to
16 post bail. This current system is unfair to
17 those who lack financial resources. The
18 Governor has proposed legislation requiring
19 most individuals charged with a misdemeanor
20 or nonviolent felony be released without cash
21 bail and with the least restrictive
22 conditions to ensure their appearance in
23 court. The proposal would allow the court to
24 order an individual held in jail pretrial,

1 upon motion of the People, in cases where the
2 person faces a crime of domestic violence or
3 a serious violent felony offense, or commits
4 a crime while on pretrial release, or fails
5 to appear in court.

6 New York has one of the nation's most
7 restrictive discovery rules, allowing
8 prosecutors to withhold basic evidence until
9 after a jury has been selected and before
10 opening statements. The Governor has
11 proposed legislation that would require the
12 prosecution and defense to automatically
13 share information in an incremental fashion
14 well in advance of trial. This will allow
15 defense attorneys to have information
16 necessary to represent their clients and will
17 provide prosecutors with tools they need to
18 protect the safety of witnesses.

19 This year's budget builds on the
20 state's strong gun laws, with several
21 proposals to keep New Yorkers safe from gun
22 violence. Governor Cuomo advanced
23 legislation to close existing statutory
24 loopholes to prohibit ownership or sale of

1 bump stocks, which serve no legitimate
2 purpose, and extend the gun purchase
3 background check waiting period to close the
4 Charleston loophole.

5 The Governor also has reintroduced
6 "red flag" legislation. Under this proposal,
7 when teachers, family members or
8 law enforcement report that someone they know
9 poses a serious threat to themselves or
10 others, authorities will have a process to
11 obtain judicial review of the person's
12 suitability to possess guns.

13 Implementation of the first phase of
14 the state's landmark Raise the Age law was
15 possible because of a successful
16 collaboration with the Office of Court
17 Administration and our state and local agency
18 partners. Arrests continue to decline
19 dramatically for those under 18 -- down
20 65 percent since 2010, with a decline of
21 nearly 25 percent in the last year alone.
22 Since the October 1st effective date, felony
23 arrests for 16-year-olds fell an additional
24 40 percent.

1 To support full implementation of
2 Raise the Age, the Governor has recommended
3 \$200 million for prevention, diversion,
4 treatment and supervision services.

5 Public safety is our highest priority.
6 This 2019-2020 budget proposal will allow
7 DCJS to continue its support for programs and
8 initiatives that promote fairness, respect,
9 and transparency in the state's criminal
10 justice system, and keep New Yorkers safe.
11 Your support of our work will allow the state
12 to sustain its historic reductions in crime
13 and continue to reduce the number of
14 individuals who enter the criminal justice
15 system.

16 Thank you for the opportunity to speak
17 with you today.

18 CHAIRWOMAN KRUEGER: Thank you so
19 much.

20 Our first questioner will be Jamaal
21 Bailey.

22 SENATOR BAILEY: Mr. Green, thank you
23 for once again testifying. I enjoyed your
24 testimony last year, so I think a lot of what

1 I asked last year is still applicable in this
2 year's Executive Budget concerning pretrial
3 reform and how it affects the agency.

4 The Executive Budget includes \$375,000
5 for operating expenses for county probation
6 costs related to bail reform. How do you
7 anticipate that this funding will be used?

8 EX. DEP. COMMISSIONER GREEN: I
9 believe the money that you refer to is money
10 that's in the General Fund that will be used
11 for DCJS, similar to what we did with Raise
12 the Age: DCJS provided training to probation
13 departments across the state, provided
14 support for probation departments and other
15 service agencies. And I believe that money
16 is to provide us with staff to provide the
17 same level of support around pretrial release
18 alternatives in connection with the bail
19 reform.

20 SENATOR BAILEY: In relation to
21 discovery reform, or the potential for
22 discovery reform as outlined in the
23 Executive's Budget, does DCJS have an opinion
24 as to how that would -- how any discovery

1 reform would affect the agency?

2 EX. DEP. COMMISSIONER GREEN:

3 Certainly in terms of training, we partner
4 with the New York Prosecutors Training
5 Institute in regard to training of
6 prosecutors. We do training of law
7 enforcement. And I do anticipate that there
8 would be an impact in both of those areas.

9 The Governor's proposal anticipates
10 quick exchange of information between law
11 enforcement and prosecutors and prosecutors
12 and defense. And we'd do what we could to
13 support that.

14 SENATOR BAILEY: Certainly.

15 The SNUG program, it's been a very
16 successful program throughout the state, and
17 specifically in my district and in adjoining
18 districts. I see that the Executive has
19 proposed \$4.8 million in funding, which is
20 flat from last year.

21 I'm of the belief that SNUG should get
22 more money. What is the opinion of the
23 agency?

24 EX. DEP. COMMISSIONER GREEN: I think

1 it's important to note the historical
2 context. And if my recollection is correct,
3 about five or six years ago the funding was
4 between 1 and \$1.2 million. Thanks to all of
5 your support, it's grown every year to the
6 \$4.8 million that you referred to. That's
7 allowed us to more than double the size of
8 some of the programs in places like Buffalo,
9 Rochester, and others that really need it.

10 Over the course of this past year, the
11 latest expansion of the SNUG program that
12 we're working on is in partnership with the
13 Office of Victim Services and using funding
14 from that agency. We're in the process of
15 adding a social work component to each of the
16 SNUG programs. So even though the Governor's
17 budget, when you look at it, it would appear
18 that the funding for SNUG programs remains
19 flat, the reality is that with this
20 partnership with the Office of Victim
21 Services, there will be between an additional
22 \$1 and \$2 million of resources added to those
23 programs to add a social work component to
24 each of the programs around the state.

1 And those social workers will support
2 not only the street outreach workers actually
3 out there doing the work and the trauma that
4 they experience, but also the clients that
5 they work with and helping deal with the
6 trauma that they experience.

7 SENATOR BAILEY: I think it's
8 important to know -- thank you for your
9 answer. I think it's important to know that
10 the SNUG program, at least in my district,
11 specifically in the City of Mount Vernon,
12 they do way more than just the violence
13 prevention. They do a lot of community-based
14 services. So I think that the program is
15 very effective.

16 In your belief, do you believe that
17 there are any other areas of the state that
18 need a SNUG program that currently do not
19 have one?

20 EX. DEP. COMMISSIONER GREEN: I think
21 that there are areas that we are looking at,
22 you know, with the potential for expansion.
23 There's frankly one community I can think of
24 where we tried a SNUG program and, you know,

1 up, but I see that there is \$10 million in
2 new funding from the General Fund concerning
3 gang prevention. How does DCJS plan to use
4 that \$10 million?

5 EX. DEP. COMMISSIONER GREEN: The plan
6 is to partner with the Office of Children and
7 Family Services and target that money to
8 activities within the communities that have
9 the highest level of activity into programs
10 that will keep youth out of crime. So, you
11 know, everything from after-school support
12 activities, mental health, Peer -- any of the
13 evidence-based programs that have been proven
14 to be effective in keeping youth properly
15 supported and out of the criminal justice
16 system.

17 And again, we intend to partner with
18 OCFS, look at the data, and make sure we
19 align the funding in the areas of the state
20 that it's needed.

21 SENATOR BAILEY: Certainly. So as you
22 mentioned, I think it's vitally important
23 that we understand some of the root causes of
24 how violence starts, and it starts with

1 children not having the appropriate locations
2 to go to for after-school programs and the
3 wraparound services that are necessary. So
4 I'm glad that is a component of that.

5 I believe that at least for the time
6 being, Madam Chair, that will be it for me.
7 If time allows, I will certainly have a
8 follow-up question. But I thank you,
9 Mr. Green, for your testimony and your
10 candor.

11 EX. DEP. COMMISSIONER GREEN: Thank
12 you for your questions and for your support
13 of the SNUG street outreach work. It's
14 greatly appreciated.

15 CHAIRWOMAN KRUEGER: Thank you.
16 Assembly.

17 CHAIRWOMAN WEINSTEIN: Assemblyman
18 Lentol.

19 ASSEMBLYMAN LENTOL: Good afternoon,
20 Mike.

21 EX. DEP. COMMISSIONER GREEN: Good
22 afternoon, Assemblymember.

23 ASSEMBLYMAN LENTOL: So I just wanted
24 to start out by asking you a simple question,

1 which is the Governor's recommendation for
2 \$200 million to support the Raise the Age
3 program. I guess that's for the
4 16-year-olds and not the 17-year-olds that we
5 expect to come online next October?

6 EX. DEP. COMMISSIONER GREEN: My
7 recollection is that there was \$100 million
8 in last year's budget, and that was for the
9 16-year-olds that came on starting
10 October 1st. And it's my understanding that
11 the 200 million would reflect the fact that
12 17-year-olds will come under the coverage of
13 the new statute October 1st of this year.
14 And that 200 million would resource the
15 system for both 16- and 17-year-olds.

16 ASSEMBLYMAN LENTOL: I want to talk a
17 little bit about something that's not in your
18 testimony, but concerns me a little bit
19 regarding an article that appeared in the
20 New York Times referring to DNA as a new
21 so-called magic box that you may have seen,
22 it's a new way of processing DNA.

23 EX. DEP. COMMISSIONER GREEN: I did
24 see the article, yes.

1 ASSEMBLYMAN LENTOL: It's not the
2 first article that's talked about the issue
3 of DNA and how it's used or misused. And so
4 in 2017, the federal government enacted the
5 Rapid DNA Act, which would allow rapid DNA
6 machines to upload DNA information to CODIS.
7 And obviously there have been a lot of
8 developments in science that are above me and
9 above my scientific knowledge that I'd like
10 to know a lot more about so that I can
11 understand them.

12 But I'm wondering, first, how many DNA
13 samples are now contained in our database, in
14 the state's database?

15 EX. DEP. COMMISSIONER GREEN: I don't
16 have an exact number, but I believe it's in
17 the neighborhood of 500,000.

18 ASSEMBLYMAN LENTOL: And how many of
19 those are volunteer samples or non-offender
20 samples?

21 EX. DEP. COMMISSIONER GREEN: I
22 believe it's a very small percentage.

23 ASSEMBLYMAN LENTOL: And are those --
24 I always wondered whether those are returned

1 after the investigation concludes, or are
2 they maintained for a longer period of time?

3 EX. DEP. COMMISSIONER GREEN: In the
4 state database, I don't believe there are
5 samples that fall under the category you're
6 referring to. I've read articles about local
7 databases where police, in the course of an
8 investigation, take a sample and then keep
9 that in a local database.

10 The ones I was referring to in the
11 state database are ones where as a condition
12 of a plea, for example, or a condition of a
13 sentence, a defendant agreed to give a DNA
14 sample to be put in the state database.

15 Prior to the time where all-crimes
16 DNA, which this legislature passed, took
17 effect, it was a practice, I know, and there
18 are samples in the database that fall into
19 that.

20 But in terms of the investigative ones
21 that you referred to, there are, to the best
22 of my knowledge, no samples of that type in
23 the state CODIS databank.

24 ASSEMBLYMAN LENTOL: So I think you

1 can -- you might remember back when the New
2 York State Assembly Codes Committee held
3 hearings on the Forensic Science Commission.
4 And I was kind of puzzled, back in those
5 days, to figure out a lot of different things
6 about familial DNA. And it dawned on me that
7 the original legislation that we passed
8 authorizing DNA to be tested in the state was
9 kind of a compromise. And even the forensic
10 science commission was a compromise, where we
11 had to satisfy both the needs of the DAs
12 Association as well as the defense bar.
13 Rather than, in my opinion, a forensic
14 science commission should have been made up
15 of scientists with no axe to grind and having
16 no place where they wanted to see DNA used
17 and just looked at the science to see how DNA
18 would be used and determined by them in an
19 impartial fashion.

20 But that hasn't been the case, I guess
21 in my estimation, over the years. And I was
22 really surprised when the forensic commission
23 decided to use familial DNA, which I thought
24 needed to be authorized by action of the

1 State Legislature before it could be done.
2 But they did it anyway, because maybe it was
3 too -- the commission was too top-heavy with
4 people on one side as opposed to the other.

5 Do you have any comments on that or
6 how you would expect to see a forensic
7 science commission operate with this
8 dangerous tool that we have? Which is a good
9 tool to convict the guilty, but we want it
10 also to be always used to protect the
11 innocent as well.

12 EX. DEP. COMMISSIONER GREEN: Sure, I
13 do. And thank you for the question.

14 In terms of impartiality of the
15 commission, I think it's important to note
16 that there are two defense attorneys on the
17 commission now, there's a judge of the
18 Appellate Division on the commission, there
19 are lab directors on the commission, there
20 are two prosecutors on the commission,
21 there's scientists on the commission. So,
22 you know, while I certainly respect your
23 opinion on this and all the matters that you
24 speak on, I would have to disagree with

1 regard to the impartiality of the commission.

2 In terms of a commission of strictly
3 scientists, the DNA subcommittee in fact
4 serves that role. The DNA subcommittee is
5 made up of exclusively scientists who
6 specialize in different areas of DNA work and
7 who provide binding opinions to the
8 Commission on Forensic Science in any
9 DNA-related areas, including familial search.

10 With regard to familial search, you
11 know, I certainly appreciate your comments
12 about the spectrum and the need to balance
13 along the spectrum. The commission engaged
14 in what I thought was an extensive process.
15 They did public hearings. And during the
16 course of those public hearings we heard from
17 everyone from folks on one end of the
18 spectrum who said that it's dangerous and it
19 shouldn't be done under any circumstances, to
20 people at the other end of the spectrum --
21 police agencies in particular, a police
22 agency in particular who said we should be
23 able to do it whenever we want under any
24 circumstances.

1 The commission and the DNA
2 subcommittee spent a great deal of time
3 evaluating not only all of the input we got
4 in the course of that public hearing, but
5 everything out there, and came up with what I
6 thought was a very restrictive policy that
7 balanced all of the concerns that were raised
8 during the hearing -- and frankly all of the
9 concerns that are out there in the
10 literature -- in the policy that the
11 commission came up with.

12 I think if you look at the history, in
13 1995 the Legislature granted the commission
14 authority with regard to the DNA database.
15 In 2010, under that grant of authority, the
16 commission enacted partial match searching.
17 As a result of that partial match searching,
18 a double homicide in Suffolk County was
19 solved, and ultimately someone was convicted
20 because of that partial match information.

21 As a natural extension of that, just
22 over a year ago the commission authorized, in
23 very limited situations, familial search. So
24 limited that in the course of a year, there

1 have only been three applications granted.
2 So, you know, frankly we've as a commission
3 received a lot of criticism that we came down
4 far too restrictive and far too much on the
5 side of the folks that said that it shouldn't
6 be done at all. But I'm very comfortable
7 with where we came down. I'm comfortable
8 with the fact that all different viewpoints
9 were represented, both in the hearings and on
10 the commission, that the concerns were taken
11 very seriously, and that safeguards were put
12 in place to have the process done in a way
13 that utilizes its value and yet safeguards
14 against abuses.

15 ASSEMBLYMAN LENTOL: So I might agree
16 with you, and I might be -- but I might be
17 more comfortable if the commission were made
18 up not of folks who had one philosophy or the
19 other, but just scientists. That's what I'm
20 trying to get at. I would have made up the
21 commission much differently than what we were
22 required to do back in the time when we
23 passed the legislation.

24 And right now -- right now -- I just

1 want to say because the Legislature is
2 considering important criminal justice
3 reform, that we're embarking upon a new era
4 in criminal justice reform, such as discovery
5 that you talked about and other things. In
6 your opinion, what do you think can be done
7 to ensure that our forensic labs are reliably
8 performing important tasks relating to
9 examining evidence, for example?

10 EX. DEP. COMMISSIONER GREEN: I think
11 there's two major areas I'd point to, and the
12 first is the commission and the DNA
13 subcommittee. And the DNA subcommittee, as I
14 indicated, is made up exclusively of
15 scientists who made a binding recommendation
16 to the commission with regard to the familial
17 search. And frankly, they do the same with
18 regard to labs that want to do DNA testing.

19 Secondly, I think the discovery is a
20 great example. I think if the system wants
21 to make sure that DNA is done properly, one
22 of the tools that's necessary is to make sure
23 that the defense has all of the information
24 about the lab and how the testing is done so

1 that those issues can be fully explored in
2 the context of a trial.

3 ASSEMBLYMAN LENTOL: Thank you.

4 CHAIRWOMAN WEINSTEIN: Thank you.

5 CHAIRWOMAN KRUEGER: Thank you.

6 Senator Sepúlveda. I'm sorry,
7 Senator, would you pronounce your name
8 correctly for me?

9 SENATOR SEPÚLVEDA: It's Senator
10 Se-PUL-veda.

11 CHAIRWOMAN KRUEGER: Thank you very
12 much.

13 SENATOR SEPÚLVEDA: But I told you
14 earlier I'm changing it to Sepulvowitz, so.

15 (Laughter.)

16 SENATOR SEPÚLVEDA: Thank you. Thank
17 you for testifying.

18 A couple of questions on alternatives
19 to incarceration and reentry programs. Last
20 year you testified about how effective and
21 useful a tool the alternatives are to the
22 criminal justice system, yet the Executive
23 has cut the budget 5.5 percent across the
24 board for DCJS aid.

1 Can you try to explain to me why,
2 despite the fact that they're very effective
3 programs, we continue to cut the budget about
4 5.5 percent per year?

5 EX. DEP. COMMISSIONER GREEN: My
6 reading of that portion of the local
7 assistance budget for this year was that the
8 funding remains flat or constant from last
9 year's level. So, you know, if my reading is
10 wrong, I apologize, but I don't believe there
11 has been a cut this year.

12 I believe all of our alternative to
13 incarceration programs -- and I think they
14 fall under a number of umbrellas. As you
15 indicated, they fall under reentry, they fall
16 under some other umbrellas. But I think
17 within DCJS the total is roughly \$25 million,
18 and I think that number is steady from where
19 it was last year.

20 SENATOR SEPÚLVEDA: Is that number a
21 sufficient amount for you to run an effective
22 program?

23 EX. DEP. COMMISSIONER GREEN: I
24 believe that we have used that money very

1 effectively to support programs across the
2 state. We've looked at the data in terms of
3 where programs are needed, we've looked at
4 the different types of programs, we've
5 aligned the funding around different types of
6 programs. So, for example, there's an area
7 of the funding aligned around reentry.
8 There's an area of the funding aligned around
9 employment services programs. There's an
10 area of the funding that's aligned around
11 case management, around pretrial
12 alternatives.

13 So yeah, I think it is an amount that
14 allows us to do some very effective work
15 across the state.

16 SENATOR SEPÚLVEDA: All right. And
17 then has DCJS looked into the level of a need
18 for ATI and reentry programs around the
19 state? And if so, how much would it cost to
20 increase the funding for these services?

21 EX. DEP. COMMISSIONER GREEN: That's a
22 tough question. Because when you look across
23 I suppose not only my budget but every
24 budget, you know, in an ideal world we could

1 all come up with huge numbers.

2 But, you know, when I started at
3 DCJS I don't believe there was a dedicated
4 funding stream for ATI. And I know there was
5 no \$25 million. So I'm sitting in a position
6 now -- you know, thank you to the Legislature
7 and the Governor -- where we have \$25 million
8 to support ATI programs. I think it's a huge
9 improvement over what we had when I started
10 here seven years ago, and I think it allows
11 us to do some very effective work.

12 And when you look at the numbers, you
13 know, as I indicated in my statement, we're
14 hitting all-time lows in terms of number of
15 reported crimes and violent crimes in the
16 state year after year for the last several
17 years. So, you know, it's hard to answer an
18 abstract question like that. But the one
19 thing I think I can say with certainty is
20 that the funding that you have provided us
21 over the last five or six years in this area
22 has been used very effectively and has
23 contributed significantly to our success.

24 SENATOR SEPÚLVEDA: All right, now

1 let's talk about the Shock program. In his
2 budget the Governor is assuming there's about
3 a \$360,000 savings associated with allowing
4 certain people convicted of robbery and
5 burglary offenses to be eligible for Shock.

6 How many people does the Executive
7 foresee being eligible the first year?

8 EX. DEP. COMMISSIONER GREEN: I
9 think -- I hate to punt any questions, but I
10 think that would be something that would be
11 more appropriately addressed to the
12 commissioner of the Department of
13 Corrections. I think he'll be coming right
14 after me, if I'm not mistaken.

15 SENATOR SEPÚLVEDA: Okay. So then any
16 other relevant question I have about Shock,
17 you say I should preserve it for corrections?

18 EX. DEP. COMMISSIONER GREEN: I think
19 that would be more appropriate, yes. Thank
20 you.

21 SENATOR SEPÚLVEDA: All right, thank
22 you. No more questions.

23 CHAIRWOMAN KRUEGER: Thank you.
24 Assembly.

1 CHAIRWOMAN WEINSTEIN: Assemblyman
2 Barclay.

3 ASSEMBLYMAN BARCLAY: Thank you, Madam
4 Chairwoman.

5 Thank you for being here. Good
6 afternoon. I guess all my questions have to
7 do more with policy and Article VII than
8 actual budgetary issues.

9 The first question I have is maybe
10 more theoretical; it's about the death
11 penalty. Obviously we don't have it now
12 because of the decisions by the Court of
13 Appeals. But could you tell me, is it the
14 Governor's position, then, no matter how bad
15 the crime is, he doesn't believe in the death
16 penalty at all, and is that what this
17 proposal does for any crime, it doesn't allow
18 the death penalty?

19 EX. DEP. COMMISSIONER GREEN: It's the
20 position of the Executive, as reflected in
21 this bill, that the death penalty is not
22 something that we should be using our
23 resources on and is not a tool that we should
24 be spending our time or effort on.

1 I can tell you personally I tried two
2 death penalty cases, I know what's involved
3 in trying a case, and frankly I agree
4 wholeheartedly with the Governor. I think
5 there are so many other things that we could
6 do in the criminal justice system, and I
7 think life without parole is a very
8 significant deterrent, it keeps the community
9 safe.

10 And so yes, it's the Governor's
11 position that we should not have a death
12 penalty in the State of New York.

13 ASSEMBLYMAN BARCLAY: No matter how
14 morally reprehensible the crime -- chemical
15 weapons attack, nothing?

16 EX. DEP. COMMISSIONER GREEN: Correct.

17 ASSEMBLYMAN BARCLAY: Okay, thanks.

18 The second question I had which kind
19 of stuck out for me is making journalists a
20 protected class. What's the thinking behind
21 why journalists versus I guess anyone else
22 should be a protected class? I mean,
23 obviously it serves an important societal
24 purpose, but so do a lot of other professions

1 too.

2 EX. DEP. COMMISSIONER GREEN: At a
3 certain level I think we've made a decision
4 that certain groups of people should get
5 protection, and that's reflected in the
6 statute that currently exists. The statute
7 identifies different groups.

8 And I believe the thinking behind this
9 is when you look at the groups that we've
10 already made a decision should get the
11 protection, journalists are equally deserving
12 of the protection as the other groups in the
13 statute.

14 ASSEMBLYMAN BARCLAY: How do you --
15 all right. Well, how do you define a
16 journalist?

17 EX. DEP. COMMISSIONER GREEN: I'm
18 sorry, I don't have the definition in front
19 of me, but I can certainly get it to you.

20 ASSEMBLYMAN BARCLAY: All right, that
21 would be helpful.

22 Regarding the bail reform and really
23 the -- I guess pretrial reform, it allows
24 police to provide appearance tickets for

1 low-level offenses. Could you explain what
2 the low-level offenses are? Because that
3 does include felonies too, doesn't it?

4 EX. DEP. COMMISSIONER GREEN: Sure.
5 And currently under statute, police have the
6 authority to provide appearance tickets on
7 misdemeanors and Class E felonies. So in
8 that regard, this is not a significant
9 expansion in terms of the cases that are
10 eligible.

11 And in fact, if you look across the
12 state, and certainly it varies greatly
13 jurisdiction to jurisdiction, but there are
14 many jurisdictions now that use appearance
15 tickets very liberally on misdemeanors and
16 Class E felony offenses. There are others
17 that don't use it as liberally.

18 The idea here would be if you have an
19 offense that's not a domestic violence
20 offense -- you know, and there's several
21 carve-outs. For example, if a police officer
22 believes there are mental health issues or
23 other issues which pose a threat to the
24 person or the community, if they believe an

1 order of protection is appropriate, if it's a
2 domestic violence case -- in those and other
3 situations, the officers can still make the
4 full custodial arrest and put the person in
5 jail until they are arraigned.

6 But in cases that don't fall into
7 those categories where that person is going
8 to be released the next morning, the thinking
9 is, you know, what are we accomplishing by
10 taking someone, putting them in jail
11 overnight, having the system churn tremendous
12 numbers of people through one night in jail,
13 only to be released when they show up in
14 front of a judge in the morning?

15 We will be much better off in those
16 instances doing what a number of
17 jurisdictions do already, and that is giving
18 people appearance tickets, having them show
19 up for court, having judges set conditions
20 for their release or ROR them, and avoid that
21 one night in jail.

22 ASSEMBLYMAN BARCLAY: So you're
23 already allowed to do it with Class E
24 felonies in New York?

1 EX. DEP. COMMISSIONER GREEN: Under
2 current law, yes, under certain
3 circumstances, police can do that.

4 ASSEMBLYMAN BARCLAY: So that's not an
5 expansion of what they can do.

6 EX. DEP. COMMISSIONER GREEN: No.
7 What the statute does is, unless the case
8 falls under one of those exceptions, indicate
9 that the police officer should do it. So
10 it's putting more emphasis on issuing
11 appearance tickets where it doesn't fall
12 under one of those high-risk categories.

13 ASSEMBLYMAN BARCLAY: Okay. I can
14 even agree with that. Thank you.

15 CHAIRWOMAN KRUEGER: Thank you.
16 Senator Brad Hoylman.

17 SENATOR HOYLMAN: Thank you. Good to
18 see you. These past weeks have been a flurry
19 of legislative activity. I noticed you
20 mentioned in your testimony the Governor's
21 support for a red flag law, that he's
22 introduced legislation for extending
23 background checks and to close statutory
24 loopholes on the sale of bump stocks. But we

1 passed all those today, by the way, just so
2 you know.

3 In terms of the Legal Services
4 Assistance Fund, as you know, it's a special
5 revenue fund created in the State Finance Law
6 to provide a steady source of revenue for the
7 provision of civil legal services. It's not
8 created to support General Fund obligations.
9 Every year, though, the Executive attempts to
10 use it to support General Fund obligations
11 and to use the funds for purposes other than
12 supporting the provision of civil legal
13 services.

14 And this year the cuts in the
15 Executive Budget eliminate funding for civil
16 legal service grants, domestic violence, and
17 veterans legal services, and the indigent
18 parole program. Do you know, is the Governor
19 funding these programs with General Fund
20 dollars?

21 EX. DEP. COMMISSIONER GREEN: The
22 programs you specifically referred to I don't
23 recognize as programs that go through the
24 DCJS budget.

1 In terms of General Fund that you
2 refer to, and the Legal Services Fund, I do
3 know that some of that Legal Services Fund is
4 used in the DCJS local assistance budget --
5 for example, to support aid to defense and
6 aid to prosecution, and I believe to support
7 some other funding that we provide.

8 SENATOR HOYLMAN: So the fact that you
9 don't support them through the Executive
10 Budget, does that mean -- I mean, isn't it a
11 statement of your priorities that you would
12 want to support them? Why do you always wait
13 for the Legislature to add them? Why don't
14 you support them up-front?

15 EX. DEP. COMMISSIONER GREEN: What I
16 was indicating was -- and I think we have
17 140-something programs or more, and I don't
18 recognize those, as you read them, as
19 programs we support through our budget. I
20 don't know if they're supported through a
21 budget of another agency or somewhere else in
22 the Executive Budget.

23 SENATOR HOYLMAN: They're legislative
24 adds. And I guess my question is, shouldn't

1 the Executive be supporting these up-front?

2 EX. DEP. COMMISSIONER GREEN: To the
3 extent you're asking about civil programs, I
4 don't feel that I'm in a position to answer
5 that.

6 If you're asking about programs that
7 relate to the criminal justice system, I'm
8 certainly happy to answer.

9 SENATOR HOYLMAN: Okay. Also last
10 week we passed the Gender Expression
11 Non-Discrimination Act, which for the first
12 time would provide hate crime protections for
13 transgender, gender nonconforming and
14 nonbinary individuals in the State of
15 New York.

16 Could you describe to me how you
17 collect data on hate crimes as well as what
18 kind of training you provide to local law
19 enforcement to identify those hate crimes?

20 EX. DEP. COMMISSIONER GREEN: Sure.

21 So in terms of data -- and I think
22 it's a good question, because I think there's
23 confusion sometimes. Where DCJS gets our
24 data on reported crimes from are from the

1 police departments around the state. So when
2 someone reports to the police department that
3 they've been the victim of a hate crime, the
4 department charges it as such, that gets
5 reported to us.

6 I think sometimes there's confusion
7 between hate incidents and actual reported
8 hate crimes. And all we get at DCJS are
9 actual reported hate crimes that have been
10 reported to a police agency, documented as
11 such by the agency, and then they get
12 reported to us.

13 In terms of training, we've worked
14 with the New York Prosecutors Training
15 Institute to put on extensive training for
16 prosecutors. We're working with the
17 Municipal Police Training Council. We've
18 developed both policy and training around
19 hate crimes. We're also in the final process
20 of redoing the basic training for police,
21 which hadn't been redone in over 20 years,
22 and we've completely overhauled it. And hate
23 crime training is included in that course.

24 SENATOR HOYLMAN: How often does a

1 member of a local police force receive hate
2 crimes training? For example, will they be
3 informed, those who have already received the
4 training, that now transgender and gender
5 nonconforming people are protected by the
6 hate crimes law?

7 EX. DEP. COMMISSIONER GREEN: There's
8 two required trainings by law right now, and
9 those are the only required trainings. The
10 first is when you're hired as a police
11 officer, you have to go through the basic
12 training. And the second is a supervisor's
13 training. There is a hate crimes component
14 in each of those trainings.

15 But those are the only two required
16 trainings.

17 SENATOR HOYLMAN: But now that the law
18 has been updated, how will members of law
19 enforcement be informed that there's a new
20 class of individuals?

21 EX. DEP. COMMISSIONER GREEN: We put
22 out training on a regular basis. It's just
23 not required, there's no requirement that
24 anyone take it. But we put out both

1 in-person and online training, and we do it
2 regularly to keep up with changes in
3 legislation.

4 So, you know, we will be making sure
5 that the training we put out will educate
6 law enforcement on the new requirements.

7 SENATOR HOYLMAN: Thank you.

8 CHAIRWOMAN KRUEGER: Thank you.
9 Assembly.

10 CHAIRWOMAN WEINSTEIN: So I have a
11 question.

12 So as you're well aware, as part of
13 the SAFE Act in 2015, there was a requirement
14 for an ammunition database. That was put on
15 hold. And I was looking for an update as to
16 where we are with that now. There was a
17 media report that the Governor's counsel
18 today said that there's -- it's being worked
19 on. Can you update us on that?

20 EX. DEP. COMMISSIONER GREEN: I think
21 that would have to be addressed to either the
22 State Police or ITS or both.

23 CHAIRWOMAN WEINSTEIN: Okay. Well,
24 we'll ask -- they'll be up soon. Thank you.

1 EX. DEP. COMMISSIONER GREEN: Thank
2 you.

3 CHAIRWOMAN WEINSTEIN: Also, we've
4 been joined by Assemblywoman Nily Rozic.

5 CHAIRWOMAN KRUEGER: Thank you.
6 Senator Seward.

7 SENATOR SEWARD: Thank you.

8 I had some questions regarding, you
9 know, our response to the MS-13 gang matter
10 on Long Island. I know in last year's state
11 budget there was a \$500,000 appropriation for
12 prevention efforts regarding MS-13 on
13 Long Island. And then there's another
14 appropriation I think included in the
15 Governor's proposal.

16 So I wanted to hear from you what kind
17 of programs were supported by, you know, last
18 year's appropriation and what do you foresee
19 in terms of next year?

20 EX. DEP. COMMISSIONER GREEN: Sure.

21 So that \$500,000 was split between
22 Nassau and Suffolk County, and the language
23 of the appropriation specifically directed
24 that it go to police departments to support

1 youth programming. So \$250,000 went to the
2 Suffolk County Police Department to support
3 youth programming. In Nassau, I believe the
4 money, if I recall correctly, was split
5 between the Nassau Police Department and the
6 Hempstead Police Department to support youth
7 programming in those areas.

8 In addition, as I indicated before,
9 there is a new \$10 million add in the
10 Governor's budget that is specifically to
11 support youth programming to keep youth out
12 of gangs and crime. And working with OCFS,
13 certainly some of that money we would intend
14 to use for that same purpose on Long Island.

15 SENATOR SEWARD: So this year's money
16 will go to continue to fund this --

17 EX. DEP. COMMISSIONER GREEN: My
18 recollection is that the appropriation
19 language for the 500,000 is the same as it
20 was last year, and that it would go to police
21 departments to support youth activity.

22 SENATOR SEWARD: You mentioned the
23 10 million for the youth gang violence
24 prevention program. The appropriation

1 doesn't specifically list, you know,
2 geographically where that would be directed.
3 Where do you believe that it will be
4 allocated?

5 EX. DEP. COMMISSIONER GREEN: We've
6 tried to use data to inform all of our
7 decisions where we have appropriations like
8 this, and this would be no exception. We'll
9 look at the crime data and try and make sure
10 that we align the funding with the need based
11 on the data.

12 SENATOR SEWARD: Okay. Is there any
13 other ways that DCJS participates in the
14 efforts to eradicate this MS-13?

15 EX. DEP. COMMISSIONER GREEN:
16 Specifically with regard to MS-13, you know,
17 I've personally been to the Suffolk County
18 Police Department, the Nassau County Police
19 Department, the Hempstead Police Department
20 to meet with the leadership teams there, talk
21 with them about what they're doing, look at
22 whether or not there are ways we can support
23 them.

24 We've worked with Suffolk County, for

1 Budget to account for this transition and the
2 additional costs associated at the county
3 level in terms of the probation departments?

4 EX. DEP. COMMISSIONER GREEN: I don't
5 believe there is any funding specifically
6 designated for that. We provide about
7 \$44 million to probation departments across
8 the state in aid to probation currently.

9 In addition, I would anticipate that
10 as you have indicated there would be
11 significant local jail savings as a result of
12 this. And I think part of the anticipation
13 would be that money saved from local jail
14 costs would be used to support this.

15 But certainly I think you're right and
16 I think it's something that we need to look
17 at, is that, you know, there needs to be an
18 agency responsible for that function, and it
19 needs to be resourced. And, you know, we're
20 happy to participate in those discussions.

21 SENATOR SEWARD: What I don't want to
22 hear is those dreaded words "unfunded
23 mandate."

24 I have a couple of other questions,

1 but we'll wait till a later round. Thank
2 you.

3 CHAIRWOMAN KRUEGER: Thank you.

4 Senator Zellnor Myrie.

5 SENATOR MYRIE: Thank you, Madam
6 Chair.

7 And thank you for your testimony.

8 I have two questions related to policy
9 in regard to the creation of the Office of
10 Special Investigation. I believe that along
11 with the creation of that office, the
12 Executive Budget proposes that each police
13 department be required to report any incident
14 where a police officer discharges a firearm
15 in the direction of another person.

16 And my question is whether or not the
17 New York Police Department would be required
18 to comply with this.

19 EX. DEP. COMMISSIONER GREEN: My
20 understanding is that that requirement
21 mirrors the federal use of force reporting
22 requirement that went into effect the
23 beginning of this year and would require that
24 same information to be reported to New York

1 State through DCJS. So the same information
2 that local police departments are supposed to
3 be reporting to the feds would be reported to
4 us as well.

5 And I'm not aware of any exemption or
6 carve-out for NYPD in that.

7 SENATOR MYRIE: So does NYPD currently
8 report that information to DCJS?

9 EX. DEP. COMMISSIONER GREEN: No,
10 currently there's no requirement for any
11 departments to report that type of use of
12 force data to DCJS.

13 SENATOR MYRIE: And relatedly, there's
14 also another policy implication. The
15 Municipal Police Training Council would be
16 required to establish a model use of force
17 policy, and my question is the same, on
18 whether or not this would apply to the NYPD.

19 EX. DEP. COMMISSIONER GREEN: So in
20 fact they've already created the model use of
21 force policy in the last several years. They
22 would obviously go back and look at it to see
23 if there's anything to do to update it.

24 Those policies aren't binding or

1 mandatory on any department. They're
2 basically guidelines, you know, for
3 departments or guidelines departments would
4 be expected to look at, but they're not -- so
5 when you say would it apply to NYPD,
6 certainly it's there for them to use. But
7 there's no legal requirement that any
8 department adopt that as their policy right
9 now.

10 SENATOR MYRIE: And so there would be
11 no consequences for failing to adhere to that
12 model use of force policy?

13 EX. DEP. COMMISSIONER GREEN: I think
14 that's -- it's hard to answer in that format.
15 Because, for example, you know, in a civil
16 lawsuit if there's a written MPTC policy out
17 there for departments to use and the
18 department willfully disregarded that policy,
19 you know, it's hard for me to sit here and
20 say no, there's no consequence. I think
21 that's an open question.

22 SENATOR MYRIE: So the NYPD -- this is
23 really a suggestive policy, it's nonbinding,
24 there's no consequence for not adhering to

1 it. And so in the event that the members of
2 the NYPD have acted outside of the bounds of
3 this model use policy, there's no reprieve
4 for any potential victims?

5 EX. DEP. COMMISSIONER GREEN: There's
6 nothing in statute that enables the MPTC that
7 says, you know, for example, every department
8 must follow this and, you know, you can't
9 operate as a department if you don't.

10 But it is a written policy that's
11 circulated to every law enforcement agency in
12 the state.

13 SENATOR MYRIE: And my last question
14 is, do you see DCJS basing this new -- or,
15 rather, the Municipal Police Training Council
16 basing this model use of force policy on any
17 other national examples or any local
18 examples?

19 EX. DEP. COMMISSIONER GREEN: We --
20 DCJS serves as the staff arm for the
21 Municipal Police Training Council, and the
22 council is comprised of two sheriffs, two
23 police chiefs, a retired member of the SUNY
24 system, I believe a criminal justice

1 professor, the superintendent of the
2 State Police, and a representative from NYPD.

3 Any time we develop policies, we
4 assemble subject matter expert teams. They
5 could be, you know, practitioners from within
6 the state, they could be academics, they
7 could be subject matter experts from
8 different parts of the country. And then
9 that subject matter panel will put together a
10 policy, we'll get feedback from different
11 constituency groups -- you know, everything
12 from the Antidefamation League to police
13 departments and prosecutors.

14 And then based on that process, the
15 policy will go to the council. Sometimes the
16 council accepts them as they are, sometimes
17 the council says we want changes and sends it
18 back to continue that process.

19 SENATOR MYRIE: Thank you very much.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Senator Gustavo Rivera.

22 SENATOR RIVERA: Thank you, Madam

23 Chair.

24 I want to talk a little bit about

1 SNUG. I think it's an incredibly important
2 program. It certainly has had a great impact
3 in the Bronx -- but in the East Bronx. We
4 certainly want to bring it to the West Bronx.
5 We'll get to that in a second.

6 As I understand it, there is a total
7 of 4.8 million in the budget that is
8 currently allocated. Could you tell me how
9 this is the -- because I believe it is not
10 currently in the proposal line item, right,
11 so there's no specific amounts attached to a
12 particular program in a particular part of
13 the state.

14 Could you tell me how the
15 determination is made internally in DCJS
16 about where that money is going to go?

17 EX. DEP. COMMISSIONER GREEN: And
18 again, we look at the crime data. And
19 specifically with regard to SNUG, we look at
20 the shooting data. So that would be the
21 number of shooting incidents, the number of
22 shooting victims, the number of shooting
23 homicides. And based on the shooting data,
24 we make the appropriations.

1 SENATOR RIVERA: And the shooting data
2 is -- tell me a little bit more about that.
3 Is that done by zip code, by city, by town,
4 by precinct? What is the -- how exactly do
5 you determine that?

6 EX. DEP. COMMISSIONER GREEN: It's
7 done outside of New York City by police
8 department. So for example, Buffalo, we get
9 the City of Buffalo. Rochester, we get the
10 City of Rochester. Syracuse, Albany, the
11 same.

12 In New York City we have
13 precinct-level data.

14 SENATOR RIVERA: So you have
15 precinct-level data and then you determine
16 which precincts would be most in need?

17 EX. DEP. COMMISSIONER GREEN: No,
18 New York City is different. New York City
19 has a street outreach program of their own,
20 and we don't believe that we should have
21 competing street outreach programs in any
22 area. I think, frankly, one, it's not a good
23 use of our resources. But two, I think it's
24 dangerous for the street outreach workers

1 themselves if they're out there competing to
2 serve the same people or to respond to the
3 same shooting. So in --

4 SENATOR RIVERA: And I would certainly
5 agree. And I'm only interrupting because my
6 time is short.

7 EX. DEP. COMMISSIONER GREEN: Oh, I'm
8 sorry.

9 SENATOR RIVERA: So I would agree with
10 that. But how about the enhancement of
11 certain programs that have already been
12 successful and have -- because as you
13 probably know, there's many of these programs
14 that obviously are limited geographically,
15 right, so they have a catchment area.

16 And certainly the ones that are in the
17 Bronx that are just outside of my district,
18 like literally just outside of my district,
19 have had an incredibly positive outcome in
20 the days of non-shootings, like days and days
21 and days. Like, you know, two and a half
22 years, I think, in one of them before there
23 was one shooting. And then there hasn't been
24 one for -- I don't want to say the exact

1 date, because I don't remember. But the
2 point is, they have been very successful.

3 But right outside the catchment
4 area -- as a matter of fact, the shooting
5 that happened after the two years or what
6 have you when there was not a shooting was a
7 result of a clash with a gang or a group of
8 folks that were outside the catchment area.
9 So I -- certainly I would make the argument,
10 not only here but certainly during the budget
11 process, that it should be -- that some of
12 these programs that are successful and that
13 should be expanded, certainly not competing
14 groups, but expansions. And I certainly
15 would think that the expansion to the West
16 Bronx is more than warranted based on some of
17 the data.

18 But I just wanted to get it kind of on
19 the record how exactly you determine that.
20 So if there is something like that, if there
21 is a place where geographically -- and
22 sometimes within the same precinct, but
23 geographically the catchment area, because of
24 the limitations of budget, are certain -- and

1 by the way, the one that I'm talking about is
2 actually not funded by state money, it is
3 funded by city money. But it is exactly the
4 same type of outreach program.

5 So outside of the catchment area, as
6 it goes west in the Bronx, there's a lot of
7 violence, there's a lot of shootings, and
8 sometimes it kind of, you know, kind of
9 spills over.

10 So how would you make a determination
11 internally about how to augment programs like
12 that that are funded, either state programs
13 that are already funded, to augment it -- and
14 I know I only have a minute, but I just want
15 to be sure to get this on the record -- and
16 then the ones that are by other means, like
17 city funding, and potentially having state
18 money to augment the work that they do.

19 EX. DEP. COMMISSIONER GREEN: And I
20 don't see -- when you use "augmenting" and
21 say the programs are exactly the same, I
22 guess I've got a different viewpoint.

23 In the programs that we support, we
24 have a statewide director who visits every

1 program every month and then holds video
2 conferences with the programs. We have a
3 statewide training director. We've developed
4 our own training curriculum. It's a New York
5 State SNUG-specific training curriculum and
6 it's different from Cure Violence and
7 different from others. We've hired a
8 director for social work, and we're embedding
9 social workers. You know, those things are
10 all different than the New York City program.
11 They're different than other programs. We
12 have data reporting requirements within each
13 of our programs.

14 So, you know, it's not a question for
15 us, at least, of just, you know, give some
16 money to somebody else. We run our programs
17 a certain way and that's different than the
18 way, for example, New York City runs their
19 programs.

20 But we do look at the data and where
21 we're not competing with New York City, for
22 example, in the Bronx, you know, we fund what
23 I think is a very successful -- not only
24 fund, but fund and support a very successful

1 street outreach program there.

2 SENATOR RIVERA: I will have more
3 follow-up on this at a later date. Thank
4 you. Thank you, Madam Chair.

5 CHAIRWOMAN KRUEGER: Thank you.

6 I just have one quick question. So in
7 follow-up to one of my colleagues' questions
8 about the MS-13 funding in Nassau/Suffolk, I
9 know that I've read stories of some young
10 people caught up in criminal justice and then
11 actually quickly deported who were not in
12 fact members of any gang or committing any
13 crime. Some were -- as I recall, at least
14 one of them was sort of the superstar high
15 school student in the school he was in.

16 So, one, what are we doing to try to
17 make sure we're going after the right people?
18 And do you have metrics that show you whether
19 whatever is being done is being effective,
20 since you talked about putting more money
21 into this?

22 EX. DEP. COMMISSIONER GREEN: So the
23 data is a challenge for us because, you know,
24 when we get crime information reported to

1 us -- say, for example, arrest information --
2 it doesn't come with gang markers on it. So
3 we get demographic -- we can tell you age,
4 race, charge, but we don't have a good way of
5 measuring gang activity from a data
6 perspective.

7 So the information we get is from the
8 local level -- as I indicated, I've gone down
9 to Suffolk, Nassau, Hempstead -- and we rely
10 on their measurement in large part in terms
11 of what they're seeing.

12 You know, in terms of getting the
13 right people, we across the board, including
14 in our shooting and homicide and
15 violence-reduction programs, have tried to
16 make sure that we support evidence-based
17 efforts. So for example, we work with the
18 national network for safe communities and
19 John Jay, we work with other folks on a
20 national level to provide -- so when we
21 provide technical assistance to locals, it's
22 evidence-based technical assistance. And the
23 programs that we support all have a very
24 intensive research component to understand,

1 you know, at a very granular level who are
2 the people and who are the places that are
3 causing the issues.

4 CHAIRWOMAN KRUEGER: Thank you.

5 Senator Seward for a three-minute
6 lightning round.

7 SENATOR SEWARD: Yes, I've got three
8 questions, so we'll do it one minute each.
9 How's that?

10 EX. DEP. COMMISSIONER GREEN: Okay.

11 SENATOR SEWARD: I just wanted to go
12 back to the criminal justice reforms for a
13 moment. Can you tell me what percentage of
14 the currently pretrial incarcerated
15 population does the Executive believe will no
16 longer be held pretrial under the bail
17 proposal? Is there a --

18 EX. DEP. COMMISSIONER GREEN: It's
19 hard for me to give you a percentage that
20 way. But what I can tell you is that there
21 was over 20,000 people that were held on bail
22 for five days or more on low-level charges,
23 misdemeanor charges, because they couldn't
24 afford bail -- in a lot of cases, bail that

1 was \$500 or less.

2 So it's hard for me to give you a
3 percentage of people or say exactly how
4 judges and prosecutors will react to a new
5 law. But I can tell you when we look at the
6 current data, you know, there appears to be a
7 huge number of people being held on small
8 amounts of bail on low-level charges because
9 they can't post the bail. And it is our hope
10 that that wouldn't happen under this new
11 proposal.

12 SENATOR SEWARD: Shifting gears, could
13 you explain what role that the DCJS will play
14 if marijuana is legalized in the state? And
15 specifically regarding the sealing process in
16 terms of the record of the previous
17 offenders.

18 EX. DEP. COMMISSIONER GREEN: So in
19 terms of records, I know there is a provision
20 that eliminates the three-year waiting period
21 for sealing of marijuana records. You know,
22 there are other proposals outside of the
23 marijuana provisions dealing with sealing.
24 And we would be ready to implement those

1 on -- you know, some of those we need to make
2 sure that the effective dates are far enough
3 out because some of this is automated, so we
4 need to make sure we can build the systems.

5 But, you know, we're supportive of the
6 sealing provisions and ready to carry them
7 out.

8 SENATOR SEWARD: Do you believe that
9 your agency would need additional resources
10 to carry out the task?

11 EX. DEP. COMMISSIONER GREEN: No, not
12 with regard to the sealing. You know, we'll
13 need partnership with the State Information
14 Technology Services to carry a lot of these
15 out, but I don't believe we'll need
16 additional resources.

17 SENATOR SEWARD: Okay. Thank you.

18 CHAIRWOMAN KRUEGER: Thank you.
19 Assembly.

20 CHAIRWOMAN WEINSTEIN: I just wanted
21 to say that we're joined here on the dais by
22 Assemblywoman Diana Richardson.

23 CHAIRWOMAN KRUEGER: Thank you.

24 And I believe we are done -- oh,

1 excuse me. Senator Hoylman, a quick
2 lightning-round question.

3 SENATOR HOYLMAN: I wanted to ask you
4 specifically about other gun violence
5 prevention ideas. And one that the
6 Legislature had looked at for years and I
7 believe had the Governor's support at one
8 time was microstamping guns.

9 Have you surveyed data, evidence in
10 other states, like California, that have such
11 requirements? And do you support such an
12 effort in New York State?

13 EX. DEP. COMMISSIONER GREEN: No, I
14 specifically have not looked at
15 microstamping. I can -- you know, we spend a
16 lot of effort on things like our gun-involved
17 violence elimination effort and
18 evidence-based proactive strategies like hot
19 spot policing, gun violence intervention
20 efforts, street outreach work, CPTED. We
21 spend a lot of resources and effort
22 supporting our SNUG programs across the
23 state, the same with the Crime Analysis
24 Centers, to make sure that law enforcement

1 partners and other partners have the right
2 data and the right information in terms of
3 the people and places who are involved.

4 But I have not specifically looked at
5 microstamping in terms of a tool to use in
6 those efforts.

7 SENATOR HOYLMAN: And which part of
8 your organization is charged with looking at
9 these ideas? Do we need a separate gun
10 violence data research entity in the State of
11 New York?

12 EX. DEP. COMMISSIONER GREEN: The gun
13 violence data that we have, as a condition of
14 what used to be IMPACT and now is a condition
15 of GIVE, we require those counties to report
16 shooting data. So we have shooting data from
17 the 17 GIVE counties. Most counties account
18 for somewhere over 80 percent of the violent
19 crime in the state outside of New York City.
20 And then we also have gun violence data from
21 New York City. We do not have it from the
22 entire state, because there's no reporting
23 requirement.

24 We have crime information -- so, for

1 example, we get homicides, we get assaults.
2 But the assaults aren't broken down into
3 which ones involve guns and which don't,
4 outside of the GIVE jurisdiction.

5 SENATOR HOYLMAN: So just to be clear,
6 you don't have access to all gun violence
7 data within the State of New York.

8 EX. DEP. COMMISSIONER GREEN: In terms
9 of crime, it's not reported to us. It's only
10 the 17 GIVE jurisdictions and New York City
11 where we get down as granular as shooting
12 victim, shooting incident, shooting
13 homicides.

14 SENATOR HOYLMAN: Thank you.

15 CHAIRWOMAN KRUEGER: Okay, thank you
16 so much for your time with us today.

17 EX. DEP. COMMISSIONER GREEN: Thank
18 you.

19 CHAIRWOMAN KRUEGER: We'll have some
20 follow-up for you at a later time.

21 We are now, up on deck, Anthony
22 Annucci, acting commissioner, New York State
23 Department of Corrections and Community
24 Supervision.

1 And for people following the
2 scorecard, the acting commissioner will be
3 followed by Chris Fiore, deputy
4 superintendent of the New York State Division
5 of State Police.

6 And I still think we're doing okay
7 with the snow outside.

8 Hi. Whenever you like.

9 ACTING COMMISSIONER ANNUCCI: Good
10 afternoon, Chairwoman Krueger, Chairwoman
11 Weinstein and other distinguished chairs and
12 members of the Legislature. I am Anthony J.
13 Annucci, acting commissioner for the
14 Department of Corrections and Community
15 Supervision. It is my honor to discuss some
16 of the highlights of Governor Cuomo's
17 Executive Budget plan.

18 Specifically, the proposed criminal
19 justice agenda will continue the
20 transformation of rehabilitation in the state
21 and advance fundamental fairness for all
22 New Yorkers. Since the Governor took office,
23 the incarcerated population has decreased by
24 nearly 10,000 people – representing a

1 17 percent reduction. The fact that New York
2 continues to be the safest large state in the
3 country, is proof that Governor Cuomo's
4 smart, firm and fair criminal justice
5 policies are fundamentally sound and working
6 well.

7 Over the past two years, the
8 Department has worked with state and local
9 partners to implement the law raising the age
10 of criminal responsibility, in stages, to
11 eighteen. In 2018, we transitioned two
12 facilities -- Hudson and Adirondack -- to
13 serve the needs of adolescent offenders and
14 provide age-appropriate services. This year,
15 the department will finish renovations to a
16 third and final facility, the Groveland
17 Annex, to coincide with the full
18 implementation of Raise the Age in October
19 2019.

20 The overall safety of our staff and
21 the security of our facilities and offices
22 remain a top priority. Last year, we
23 increased our use of K-9s and expanded the
24 use of pepper spray statewide. This year,

1 working with the unions, we will continue to
2 explore technological solutions, training
3 initiatives and policy modifications. We
4 will also extend our first-in-the-nation body
5 camera pilot beyond the five current
6 facilities and continue the installation of
7 fixed camera systems.

8 Under Governor Cuomo's leadership, we
9 continue to implement the historic NYCLU
10 settlement agreement, drastically reforming
11 and reducing our use of special housing
12 units, or SHUs. Last year we were able to
13 close or convert more than 1,200 SHU beds,
14 and this year we will open a 252-bed
15 step-down unit at Southport. These efforts
16 have significantly reduced the number of
17 individuals serving an SHU sanction in SHU by
18 40 percent and shortened the average time
19 spent in a SHU cell by 30 percent.

20 Building upon this success, the
21 Executive Budget includes bold new
22 legislation that would codify the parameters
23 of the settlement agreement and establish new
24 residential rehabilitation units, that will

1 allow individuals serving a disciplinary
2 sanction to receive ample out-of-cell
3 programming, address their underlying
4 misbehavior, and reinforce pro-social
5 behavior. When fully implemented, no
6 individual would serve more than 30 days in
7 SHU.

8 The proposal also requires specialized
9 training, both for staff assigned to the
10 various units and for our disciplinary
11 hearing officers. Through these reforms we
12 will successfully provide incarcerated
13 individuals with the services and treatment
14 they need, while continuing to keep staff,
15 the population, and visitors safe.

16 The population served by DOCCS is not
17 immune to the opioid epidemic plaguing
18 society at large. To counter this epidemic,
19 DOCCS has launched several programs over
20 recent years, including the widespread
21 training of both staff and the population in
22 Narcan and the provision of kits to those
23 being released. The department has also
24 established medication-assisted treatment --

1 MAT -- programs at six facilities to provide
2 appropriate pharmaceuticals and counseling to
3 individuals with substance use disorders and
4 short periods of incarceration. This year's
5 Executive Budget provides the resources to
6 expand MAT programs to three additional
7 facilities, ensuring a smooth continuity of
8 care with community-based providers and
9 reducing the likelihood of overdose.

10 For women in DOCCS custody, we
11 recognize that their pathways into the
12 criminal justice system are often different
13 than their male counterparts. A significant
14 number of incarcerated women have been
15 victims of domestic violence, sexual abuse,
16 or assault. While the department continues
17 to provide the latest in trauma-informed
18 care, the Governor has advanced legislation,
19 the Domestic Violence Survivors Justice Act,
20 to meaningfully reduce criminal sentences in
21 certain circumstances and allow for some
22 currently incarcerated survivors to apply for
23 resentencing and earlier release, due to
24 prior victimization.

1 The Executive Budget will build also
2 upon previous reentry initiatives to improve
3 outcomes for formerly incarcerated
4 individuals. The Governor's four-point plan
5 to ease unfair burdens, practices, and
6 barriers will ensure that all returning
7 individuals have the tools they need to
8 succeed. Additionally, to address the aging
9 prison population, compassionate release
10 legislation has been advanced for certain
11 individuals over 55 with incapacitating
12 medical conditions that are exacerbated by
13 their age.

14 The department's Community Supervision
15 staff leverage evidence-based practices such
16 as swift, certain and fair sanctions and use
17 incentives and rewards to encourage positive
18 behavior for individuals on parole, with the
19 goal of reducing the number of violations and
20 returns to prison. To that end, the
21 department will work with the Board of Parole
22 to implement revised regulations governing
23 the parole revocation process and will
24 partner with a community-based organization

1 to further explore alternatives to
2 incarceration for the parolee population.

3 DOCCS will also continue to support
4 the Board of Parole in all administrative
5 activities, ensuring the members' ability to
6 set the terms for successful reentry and
7 reintegration into society.

8 In conclusion, this year will bring
9 bold new reforms to improve our criminal
10 justice and correction system, leading to
11 greater fairness and equality. The
12 Governor's budget positions the department to
13 successfully implement these proposals,
14 bringing a positive impact to the entire
15 agency. None of this would be possible
16 without our professional, well-trained and
17 dedicated workforce, who perform their daily
18 and oftentimes dangerous duties in an
19 exemplary manner.

20 Every day, this department reaffirms
21 its mission to operate safe and secure
22 facilities, while providing incarcerated
23 individuals and parolees with the programs
24 and services they need to succeed.

1 reform. I tried to ask the person testifying
2 before you, but he said to ask you.

3 The Governor's assuming a \$360,000
4 savings associated with allowing individuals
5 to be eligible for Shock. How many people
6 does the Executive or your department foresee
7 being eligible the first year?

8 ACTING COMMISSIONER ANNUCCI: Under
9 the Governor's proposal --

10 SENATOR SEPÚLVEDA: Yes.

11 ACTING COMMISSIONER ANNUCCI: -- where
12 we're expanding to allow judges to issue
13 court-ordered Shock enrollment orders, if
14 you're convicted under a particular
15 subdivision of robbery in the second degree
16 and burglary in the second degree, we
17 estimated about 72.

18 And that is always hard to pin down,
19 because, number one, we don't know exactly
20 how many individuals come to us under those
21 particular subdivisions. We changed the law
22 in '95 to require the clerk to issue that,
23 but they don't always do that. So I just
24 know generically how many burg-2s are in the

1 system, how many rob-2s are in the system.
2 Plus you have the element of plea bargaining.

3 So it's a best guesstimate at this
4 point in time.

5 SENATOR SEPÚLVEDA: Okay. Now, there
6 are about a thousand people that have been
7 incarcerated after being arrested for one of
8 these two charges that qualify under Shock.
9 That represents about 16 percent of all those
10 sentenced to prison for violent felonies in
11 that year. Preventing a prison sentence for
12 this population altogether would generate
13 massive savings. Has DOCCS, your division,
14 explored alternate options to completely
15 avoid incarceration for people under this
16 category?

17 ACTING COMMISSIONER ANNUCCI: Oh,
18 absolutely, we do support alternatives to
19 incarceration. And so many of the Governor's
20 policies have helped reduce the prison
21 population, including all of the back-end
22 reforms. Which is why, in the last calendar
23 year, there are 2800 less individuals
24 incarcerated in state prison than there were

1 on December 31, 2017.

2 SENATOR SEPÚLVEDA: So recently we
3 held hearings, public hearings on the issue
4 of parole, and one of the big questions is
5 why have we been stuck on 12 members on the
6 board instead of 19. And is it accurate to
7 say that 19 is the highest number of
8 commissioners? Because I believe it's higher
9 than 19.

10 ACTING COMMISSIONER ANNUCCI: I think
11 that's set by statute, yes.

12 SENATOR SEPÚLVEDA: The 19 is set by
13 statute, all right. So -- I mean, I know
14 part of it was who had control -- or not
15 control, but who was the majority party in
16 the Senate as to why we don't have 19
17 members.

18 I believe the Governor did not include
19 any additional funding to fund the Parole
20 Board at 19 members. My question is why, and
21 what is the intention or the plan to get us
22 at 19?

23 ACTING COMMISSIONER ANNUCCI: Senator,
24 when the department was merged with the

1 Division of Parole, the Legislature made it
2 clear that as commissioner, I was to ensure
3 they had all the resources they needed and
4 required. But their decision making, and
5 including that of the administrative law
6 judges, was to be independent.

7 So my job is basically to make sure
8 they have the resources that they need. And
9 I'm not in a position to speak to what is or
10 is not authorized for filling additional
11 vacancies.

12 SENATOR SEPÚLVEDA: All right. Is I
13 premature to ask about statistics for parole
14 releases in 2018?

15 ACTING COMMISSIONER ANNUCCI: I'm
16 sorry, could you say that again?

17 SENATOR SEPÚLVEDA: Is it too
18 premature to ask for statistics on parole
19 releases for 2018?

20 ACTING COMMISSIONER ANNUCCI: Yeah, I
21 think it is a little premature at this point
22 in time.

23 But bear in mind two things. One is
24 the number of technical parole violators who

1 came back last year was the lowest in quite a
2 number of years. It was definitely lower
3 than the year before. The other thing is
4 that we did collaborate with the Board of
5 Parole. There are new proposed parole
6 revocation guidelines. And when they were
7 originally enacted in 1997 -- and that was
8 when we viewed the world as either nonviolent
9 or violent, and if you were a parolee for a
10 violent crime, you paid a much stiffer
11 penalty for violation of a rule.

12 This is now going to change that
13 dramatically. We're focusing strictly on the
14 actual underlying behavior without regard to
15 what the actual original crime is. So we
16 feel that this will further, if we get to
17 implement it, reduce the number of technical
18 violators returned to state prison.

19 SENATOR SEPÚLVEDA: Can you explain or
20 let us know some of the provisions in the
21 guideline that allow you to reduce the number
22 of people that have violated on
23 technicalities? Because apparently when
24 people are returned to prison, their time

1 served is longer than some people are
2 actually convicted of a crime, because of
3 violations.

4 So what is it that the guideline is
5 doing to decrease these technical violations
6 and allow people to remain out of the system,
7 out of prison?

8 ACTING COMMISSIONER ANNUCCI: I do
9 know that there was a lot of time and effort
10 that was spent with the ALJs and with our
11 Community Supervision staff and our reentry
12 specialists and the parole revocation
13 specialists to come up with four different
14 categories for the technical parole
15 violators.

16 And a lot of the ALJs -- and what
17 we've already been doing, and this will
18 codify this, when you merged us, you wanted
19 us to enact graduated sanctions as a response
20 to technical parole violations. So even
21 though someone may have to come back to
22 prison for a brief time, rather than the
23 usual year and a half or year or whatever, we
24 have what's called parole diversion programs

1 in a number of facilities. These are 45-day
2 programs. They're meant to try and
3 intercede before behavior possibly becomes a
4 crime. But we hold the incentive out that
5 the individual that participates in that will
6 not lose the ability to have an early merit
7 discharge from their sentence.

8 So we're trying to balance a lot of
9 things -- do what the Legislature wanted with
10 graduated sanctions. And I have been
11 specifically instructing parole officers,
12 this is the new day. The old day was -- to
13 use a football analogy, we're like the
14 referee who knew what the rules were and he
15 threw the flag for the appropriate
16 infraction. Now you have to be more like the
17 coach. You have to put people in a position
18 to succeed.

19 We want all of our parolees to
20 succeed. That means working with them, that
21 means working with families. Today, for the
22 first time, we are having an event in
23 New York City, gathering the friends and
24 families of parolees, just for them.

1 Parolees can come if they want, but we want
2 to talk to them and tell them how important
3 they also are in helping us to try and have
4 parolees succeed while they're out there.

5 SENATOR SEPÚLVEDA: Thank you.

6 So I have a bill on solitary
7 confinement, the HALT bill. And the
8 Governor's proposal is unfortunately not
9 anywhere near what we're attempting to
10 establish with HALT. I'll give you some
11 examples.

12 The proposal will only prohibit
13 placement of adolescents in segregated
14 confinement if they are in adolescent
15 facilities. It would not restrict the
16 placement in segregated confinement of
17 individuals with mental health disabilities.
18 The proposal has other elements of it that I
19 think will not help us achieve where we want
20 to be in terms of segregated confinement.

21 Can you opine about the Governor's
22 proposal?

23 EX. DEP. COMMISSIONER GREEN: Sure,
24 Senator.

1 First of all, let me say that both the
2 Governor's agenda, my agenda, and your
3 agenda, we have the same goals. Right? We
4 don't want to have anybody suffer any
5 consequences as a result of having to
6 separate them from the population. My former
7 colleague who's now retired from Colorado,
8 Rick Raemisch, he uses the term "restrain,
9 don't isolate." And very much that is what
10 this proposal will do, would be able to
11 separate, but build out the programs that we
12 will need in order to be able to do this in
13 an effective manner, to provide the
14 individuals with the appropriate out-of-cell
15 time programming.

16 We've basically -- this would be the
17 third major phase of reforming our restricted
18 housing units. The first one, which
19 everybody is familiar with, is what we did
20 for the seriously mentally ill, enacting the
21 statute that -- where we built out what are
22 called these RMHTUs, the BHU, the RMHU at
23 Marcy and Five Points, the ICP, the IICPs,
24 about a thousand therapeutic beds that we've

1 created to divert the seriously mentally ill
2 if they get a sanction and have to be
3 diverted from SHU.

4 The next phase that we did was the
5 current agreement, which we're still
6 implementing. All of those programs that we
7 built were meant to provide alternative
8 environments, such as at Mid-State, such as
9 at Lakeview, such as the stepdown units at
10 Green Haven and Wende -- and now the
11 centerpiece is going to be the 252-bed unit
12 at Southport -- all of which is designed to
13 provide an alternative environment for those
14 in SHU.

15 This next round, right, is a very
16 ambitious schedule. We're going to build --
17 because you have to physically build the
18 infrastructure at these places.
19 Unfortunately in the '90s when we didn't have
20 enough space, we just went cheap, we didn't
21 know what we know now. And had we known
22 then, we would have built them differently.
23 But the Governor's plan gives us a
24 responsible way forward.

1 And I strongly suggest that if there
2 are specific concerns between the two bills,
3 we can sit down, we can go over them, we can
4 address them. We continue to meet with the
5 advocates in the NYCLU; they're giving us
6 feedback. We're looking at other changes to
7 be made. Perhaps they could be incorporated
8 into the bill and address your concerns.

9 SENATOR SEPÚLVEDA: Certainly I'd like
10 to have continued discussion about that,
11 because, you know, that's incredibly
12 important to our communities. And the
13 advocates have been discussing with us for a
14 while, so I want to make sure that -- of
15 course I'm not going to throw out the good
16 for the perfect, but I also don't want to
17 essentially water down something that I think
18 is important to my committee and to people
19 that are incarcerated.

20 CHAIRWOMAN KRUEGER: Thank you,
21 Senator.

22 Assembly.

23 CHAIRWOMAN WEINSTEIN: Assemblyman
24 Weprin, chair of the Corrections Committee.

1 ASSEMBLYMAN WEPRIN: Good afternoon,
2 Commissioner.

3 ACTING COMMISSIONER ANNUCCI: Good
4 afternoon, Assemblyman.

5 ASSEMBLYMAN WEPRIN: I want to start
6 off by saying this is the third year that
7 we've been working together, and I appreciate
8 the close relationship we have with DOCCS and
9 with your office personally in the Assembly,
10 and we hope that will continue.

11 I have a bill, as you know, on
12 geriatric parole or compassionate parole,
13 whatever you want to call it, and actually
14 based on your testimony I think a couple of
15 years ago, we changed that bill from 60 to
16 55, and I see the Governor is using that 55
17 as well.

18 One of the differences, though, is our
19 bill, which would require somebody to be 55
20 and having served 15 years, so it's not
21 somebody that just committed a crime, does
22 not have some of these health restrictions.
23 You know, we understand the health issues,
24 but part of the problem is, you know, by the

1 time a lot of people -- and I know there are
2 a couple of those situations where someone's
3 in very bad medical condition, they often
4 pass away before they're granted parole.

5 So we would like to see the
6 eligibility and people actually getting
7 parole while they're still -- they may be
8 older, but they could still be healthy and
9 not as generally in bad health per se, other
10 than having spent 15 years incarcerated
11 obviously ages people.

12 Would you have an objection to that --
13 going in that direction?

14 ACTING COMMISSIONER ANNUCCI: Well,
15 Assemblyman, as you know, I can't comment on
16 pending legislation other than what's already
17 in the Governor's Article VII. I think we
18 share the same goals here.

19 What I can tell you that's different
20 about the Governor's compassionate release
21 compared to prior bills -- and this goes to
22 trying to speed the results -- is that the
23 initial determination that someone meets the
24 medical criteria does not require either my

1 doctor or myself to also make a determination
2 that that person, if released, is not going
3 to be a danger to society. That function is
4 now going to be reserved solely for the Board
5 of Parole, who make that after an interview.

6 So I no longer have to have physicians
7 worried about, gee, if I certify this guy as
8 being eligible for geriatric parole and if he
9 commits a crime, I'm going to be responsible
10 for that. We've removed that from them under
11 the wording of the Governor's bill, which I
12 think is a positive step forward.

13 ASSEMBLYMAN WEPRIN: Well, we're
14 getting closer. But can you tell me what the
15 average cost of incarcerating an older person
16 is?

17 ACTING COMMISSIONER ANNUCCI: It
18 depends on where they're housed. We happen
19 to have a number of individuals in other
20 settings other than what you might be
21 thinking of, which is our RNUs, our regional
22 medical units, where if you get to that stage
23 where you require nursing care, it's very
24 expensive, it's well over \$100,000.

1 We also have a senior dorm which we
2 recently opened at Ulster under the
3 Governor's initiative a couple of years ago,
4 where we're providing to this cohort
5 age-appropriate programming, getting them
6 involved in a lot of different things that
7 are specific to their needs. I toured that a
8 month or so ago, and it's going very well.
9 We might replicate it elsewhere.

10 Other individuals are functioning,
11 they could be severely arthritic, they could
12 require wheelchairs -- they run the gamut.
13 So it depends upon where they're located,
14 what the level of care is. And I think the
15 big key here is age. That is going to be one
16 of the factors to guide the Board of Parole
17 as to whether or not they're going to be
18 dangerous or not if released.

19 ASSEMBLYMAN WEPRIN: I appreciate
20 that.

21 Can you tell me statistically how many
22 older people were granted and released on
23 medical parole in 2018?

24 ACTING COMMISSIONER ANNUCCI: How many

1 older people?

2 ASSEMBLYMAN WEPRIN: Yeah, how many?

3 ACTING COMMISSIONER ANNUCCI: I'd have
4 to go back and look at the age. I just know
5 that the -- I don't know now, but --

6 ASSEMBLYMAN WEPRIN: If I told you
7 eight people, would that sound like it's a
8 valid statistic?

9 ACTING COMMISSIONER ANNUCCI: It
10 sounds reasonable.

11 ASSEMBLYMAN WEPRIN: Okay. Well, we
12 obviously would like to see more, and that's
13 one of the reasons why I'm --

14 ACTING COMMISSIONER ANNUCCI: Yeah,
15 and in general we want everybody who's worthy
16 of medical parole to be considered in due
17 course.

18 And one of the things I've done,
19 separate and apart from the Governor's bill,
20 is I had televideo conferences with all of
21 our staff at our regional medical units where
22 a lot of these individuals are, under the
23 former chief doctor, Dr. Carl Koenigsmann --
24 he's since retired. But what we stress to

1 them is similar to what this bill would do:
2 Do not worry about whether the individual
3 poses a risk. Let the board make that
4 determination. We simply want you to make
5 the medical diagnosis, tell us what the
6 current state is, tell us what they're
7 capable of doing. And in the case of
8 terminal cases, try and predict in advance,
9 even if today they may be somewhat
10 functional, that the normal progression --
11 because there are time limits built into the
12 statute. I have to send out the 30-day
13 notices or the 15-day notices if it's
14 terminal, et cetera, I have to wait for
15 responses back from the courts, and then you
16 have to set up the interview. So we told
17 them back it up a little bit so you can build
18 in those bureaucratic steps and we can have
19 individuals considered and approved in an
20 appropriate manner.

21 ASSEMBLYMAN WEPRIN: Okay, thank you.

22 I want to show my agreement with my
23 Senate counterpart, Senator Sepúlveda --

24 (Laughter.)

1 ASSEMBLYMAN WEPRIN: -- his comments
2 on increasing the Shock incarceration
3 eligibility as well as the SHU reform. So I
4 don't want to repeat it, but I just want to
5 reiterate my support as well.

6 And particularly on trying to bring
7 the parole commissioners up to 19, which of
8 course is the statutory allowance. And there
9 have been so many problems with people
10 getting parole because of a shortage of
11 commissioners. And you know, one of my
12 staffers from the Assembly, Tana Agostini,
13 went over to the parole commission; I think
14 she's doing a great job.

15 We'd like to see the full commission
16 up to 19 because we know the parole
17 commissioners are overworked, they're
18 traveling all around the state, people are
19 waiting a long time to get a hearing. And I
20 think part of the problem is that we were
21 always short parole commissioners.

22 So I want to reiterate what my
23 counterpart in the Senate mentioned because
24 we'd like to try to see the full commission

1 up to 19. If you could convey that back to
2 the Governor on behalf of both houses, that
3 would be appreciated.

4 I would like to touch on something
5 else that I've been contacted about, which I
6 haven't brought up before. DOCCS acquired a
7 voice recognition program from Securus
8 Technologies that gathers voice prints on
9 most of the inmate population. Are you
10 familiar with that?

11 ACTING COMMISSIONER ANNUCCI: Yes.

12 ASSEMBLYMAN WEPRIN: Can you explain
13 how it works? And are the voice prints being
14 collected from people outside of the prison,
15 like friends, family, et cetera?

16 ACTING COMMISSIONER ANNUCCI: No, it's
17 not from the outside, it's strictly for the
18 population, that they register when they use
19 the phones. And the purpose is so that we
20 can have better intelligence on potentially
21 nefarious activities.

22 The Phone Home program is very
23 important to us, because it's a means by
24 which the individuals can stay in touch with

1 their families and with their relatives. But
2 it's also a means by which crimes can be
3 plotted, conspiracies, et cetera. So it's
4 also an important source of intelligence for
5 us.

6 We do, by the way, have among the
7 lowest phone call rates in the country, which
8 I believe right now, under the new contract,
9 is .043 cents.

10 ASSEMBLYMAN WEPRIN: They've gotten
11 better. And we've discussed that, and I
12 appreciate that, going there.

13 An issue that was raised to me was are
14 inmates -- first let me ask the question.
15 Are inmates mandated to enroll in the voice
16 recognition program in order to use the
17 telephone?

18 ACTING COMMISSIONER ANNUCCI: In order
19 to register, yes, they have to agree to that.

20 ASSEMBLYMAN WEPRIN: See, that could
21 be a problem, because there are some inmates
22 that did not want to register with the
23 program for fear of, you know, monitoring and
24 possible unnecessary monitoring. And at that

1 point they're not allowed to use the phone.

2 I'd like to, you know, see some kind
3 of provision if someone has a legitimate
4 concern about being monitored, that they
5 should not be denied phone privileges. Can
6 you look into that?

7 ACTING COMMISSIONER ANNUCCI: Well,
8 for an individual that wants to have a
9 confidential conversation with their lawyer,
10 we set that up all the time. We have
11 arranged a special system where they can have
12 a call, if it's required -- and we don't just
13 willy-nilly grant it, but they can have a
14 separate call with their lawyer or a
15 government official or whomever.

16 So that's outside of the existing
17 network.

18 ASSEMBLYMAN WEPRIN: Okay. And I'm
19 running out of time, but I just want to touch
20 on one other subject. And we had the
21 chancellors from SUNY and CUNY here, and you
22 and I agree -- and I know the Governor
23 agrees -- on expanding educational programs
24 in our state correctional facilities. And I

1 know you and I have personally participated
2 in John Jay College's graduation and programs
3 at many facilities, as well as at Otisville,
4 we were together on a number of occasions.
5 And Mohawk Valley Community College has a
6 program, Bard has a program, Cornell has a
7 program.

8 I'd like to see an expansion of the
9 amount of institutions, particularly at the
10 SUNY level, because there are so many SUNY
11 facilities that are near state correctional
12 facilities. Would you support that type of
13 expansion?

14 ACTING COMMISSIONER ANNUCCI: Oh, I
15 support all expansion of college programs.
16 We right now have it in 29 different
17 correctional facilities. I've been attending
18 the graduations for the first time at
19 facilities like Greene, a couple of weeks ago
20 I went to Mohawk, I went to Bare Hill, we had
21 one at Franklin. And I think the
22 documentary, when it's released in October of
23 this year, which is done under the auspices
24 of Ken Burns -- and he really does a good job

1 when he produces a documentary -- I think
2 that's going to tell the whole country the
3 value of higher education in a correctional
4 facility setting and what it means.

5 CHAIRWOMAN WEINSTEIN: Thank -- thank
6 you.

7 ASSEMBLYMAN WEPRIN: I think I'm out
8 of time. Thank you, Madam Chair.

9 CHAIRWOMAN WEINSTEIN: Thank you.
10 Senate?

11 CHAIRWOMAN KRUEGER: Thank you.

12 Let's see, we've been joined by
13 Senator Robert Antonacci, by Senator
14 Gallivan, I think Senator Brian Benjamin.
15 Some we have returning from other events.

16 But next up is Senator Jamaal Bailey,
17 chair of the Codes Committee.

18 SENATOR BAILEY: Thank you, Madam
19 Chair.

20 Good afternoon, Commissioner.

21 ACTING COMMISSIONER ANNUCCI: Good
22 afternoon, Senator.

23 SENATOR BAILEY: I appreciate your
24 testimony, and I associate myself with the

1 comments of both Chairman Weprin and Chairman
2 Sepúlveda concerning the educational aspects,
3 the full fill of the Parole Board, and the
4 SHU issues.

5 But I want to talk about opioids. you
6 know, long before this opioid crisis was
7 something that we heard of, opioids were long
8 rampant. And I won't editorialize about that
9 and about why it's a crisis now, but I'm glad
10 it's being recognized. And I appreciate that
11 there have been steps taken towards more
12 treatment of opioids. And my understanding
13 is that now six facilities offer a form of
14 medical assisted treatment, is that accurate?

15 ACTING COMMISSIONER ANNUCCI: Yes.

16 SENATOR BAILEY: So I have a piece of
17 legislation, Bill No. 2161, that would
18 provide comprehensive access to medication.
19 Has the Executive or has the agency taken a
20 position on that legislation?

21 ACTING COMMISSIONER ANNUCCI: Well,
22 again, I don't comment on specific bills.
23 But, Senator, I'll tell you, again, we share
24 the same goals. We want to provide the

1 treatment that is needed that will get the
2 most bang for the buck.

3 The opioid crisis is horrific. The
4 carnage in this country is horrific. And we
5 in New York State want to do everything
6 possible.

7 The next thing we're doing, even
8 separate and aside from what's announced in
9 the budget, is what we're doing under the
10 existing budget. And before this fiscal year
11 is out, we are going to the next correctional
12 facility, which is Elmira, a maximum-security
13 facility. We've already got New York City
14 lined up for this. And through this program
15 they've agreed they're going to give us a
16 supply of methadone for a newly sentenced
17 inmate who's already on MAT, they'll give us
18 the supply, transport him to Downstate, we
19 have the outside provider lined up.

20 Then we're going to go to transport
21 that individual to Elmira, where they'll
22 continue on MAT. And again, we have a
23 separate provider on the outside.

24 So that this now opens up a whole new

1 avenue, a significant avenue with
2 possibilities. Because Elmira is a reception
3 center. Which means it not only can now
4 accept newly sentenced individuals from New
5 York City, but down the road, as we expand,
6 other counties -- and this is where we hope
7 it will happen significantly, jails providing
8 more MAT to individuals.

9 And if they do that, then the
10 individuals that are on MAT and get a short
11 sentence, and with -- we're just now playing
12 with a two years or less time to earliest
13 release date, but technical parole violators
14 who are on MAT.

15 And for the three facilities beyond
16 that, we can possibly expand it, possibly out
17 west, where a county like Monroe might be
18 embracing this.

19 So we are very grateful the Governor
20 has given these resources, and we are ready
21 to significantly expand and get the most
22 value for our investment, which is those
23 individuals who are short-termers who are
24 turning around. And we can always build from

1 there.

2 SENATOR BAILEY: I am appreciative of
3 those comments and of the Executive's desire,
4 as well as mine and many of my colleagues in
5 the State Legislature, to ensure that people
6 who are suffering from addiction get the
7 treatment that they need despite their status
8 of incarceration. So it's heartening to hear
9 that.

10 I just have a couple of more
11 questions. One is more about promulgation of
12 certain rules. Let's say an individual is
13 representing somebody in an immigration
14 matter. Are there settings concerning the
15 confidentiality? Because certain attorneys
16 that I've spoken to that represent
17 individuals in removal proceedings have had
18 concerns about the confidentiality of their
19 ability to counsel their clients in said
20 proceedings.

21 Are there specific rules around that?

22 ACTING COMMISSIONER ANNUCCI: I do
23 know that in the immigration court it is
24 considered a public courtroom, so that if

1 outsiders want to come in, they can.

2 I also know that we try and accord the
3 attorney-client privilege so if someone needs
4 to be able to meet with their client and talk
5 confidentially before on the record.

6 I also know, by the way, that PLS
7 reached out to me for support in getting
8 funding so that they could have an attorney
9 provide representation. And I wrote a letter
10 of support for them so that they could get
11 the outside funding to provide representation
12 to individuals in pending immigration matters
13 in the immigration court. And I think they
14 even have one or two items devoted to that,
15 and we continue to cooperate and schedule
16 phone calls or meetings with them so that
17 they can provide the necessary
18 representation.

19 SENATOR BAILEY: Sure. And just last,
20 it's a hybrid comment/question. Senator
21 Sepúlveda, Senator Rivera, Senator Gallivan
22 and I were at a -- we'll call it a quasi
23 hearing, right, Senator Sepúlveda -- late
24 last year, where we had individuals that came

1 back concerning reentry. And they spoke
2 about a couple of issues. And I guess the
3 issue that I would bring up would be JPay and
4 some of the issues with the fees and the
5 sliding scales, your familiarity with JPay
6 and any of the concerns about some of the
7 fees that are initiated on the parolees.

8 ACTING COMMISSIONER ANNUCCI: We are
9 looking forward to rolling out the tablet
10 program. We think that that's going to be
11 transformative for the whole system. We're
12 going to start with the female offenders
13 because that's a much smaller unit to work
14 with, at the end of the month. We're going
15 to have them in our SHUs.

16 The basic programming will be free for
17 everyone. But we're also continuing to
18 monitor what other costs are elsewhere in the
19 country. So if we see that some other state
20 has got a lower rate on a particular service
21 that they're providing, we're certainly going
22 to pick up the phone and say, Wait a minute,
23 you have to treat us comparably in that area.

24 So I've always been very, very mindful

1 of the population -- limited means, limited
2 means of their family, and not to in any way
3 charge them more than anything beyond what
4 has to be the case.

5 SENATOR BAILEY: Thank you. And my
6 final question is related to some of the
7 rules concerning parolees. You know, our
8 economy has changed since, you know, these
9 initial rules came in. And having to check
10 in with the officer is understandable. I
11 believe there should be check-ins.

12 But in the expansive digital economy
13 where people have to maybe leave on a more
14 frequent basis, this often prevents people
15 from legitimate opportunities for income.
16 And I -- less of a question and more of a
17 statement and commentary, I would urge DOCCS
18 to look at these rules that could possibly
19 prevent people who have paid their debt to
20 society, they have done what we've asked them
21 to do, they are trying to do the best that
22 they can for their families, and they are
23 still limited in the incomes that they can
24 receive. I would urge us all just to take a

1 look at the rules and how we can possibly
2 have more flexibility for people based upon
3 their profession.

4 ACTING COMMISSIONER ANNUCCI: Yes,
5 absolutely, Senator.

6 SENATOR BAILEY: Thank you,
7 Commissioner. I appreciate your time.

8 CHAIRWOMAN KRUEGER: Thank you.
9 Assembly.

10 CHAIRWOMAN WEINSTEIN: Assemblywoman
11 Rozic.

12 ASSEMBLYWOMAN ROZIC: Hi,
13 Commissioner.

14 ACTING COMMISSIONER ANNUCCI: Hi,
15 Assemblywoman.

16 ASSEMBLYWOMAN ROZIC: I have a lot of
17 questions, and it bounces around, so bear
18 with me.

19 I wanted to also talk about the Parole
20 Board a little bit. I agree that we should
21 be trying to fill those seven spots that are
22 empty. Can you tell us if there's a timeline
23 or describe the process by which you're
24 trying to engage people out in the community

1 and get candidates for the Parole Board?

2 ACTING COMMISSIONER ANNUCCI: If I
3 understood your question correctly, you're
4 asking about the preparation of individuals
5 who are appearing before the Board of Parole?

6 ASSEMBLYWOMAN ROZIC: No, I'm asking
7 what are you doing in order to fill the --

8 ACTING COMMISSIONER ANNUCCI: Oh, I'm
9 sorry, I misunderstood the question. My
10 apologies.

11 ASSEMBLYWOMAN ROZIC: That's okay.

12 ACTING COMMISSIONER ANNUCCI: I can't
13 speak to a timeline to fill parole vacancies.
14 That's between the administration and the
15 Board of Parole.

16 ASSEMBLYWOMAN ROZIC: Okay. I know
17 that also DOCCS has a long-term plan for a
18 single digital database for the Parole Board
19 when they're doing their video hearings. I
20 know that that has been an issue.

21 So can you describe or tell us whether
22 or not there's money in this budget in order
23 to have digitized copies of records of each
24 prisoner?

1 ACTING COMMISSIONER ANNUCCI: Okay.

2 We are at the initial stages of exploring the
3 possibilities for electronic records. And
4 we've had a meeting with our ITS and we're
5 exploring that and also for our health
6 records.

7 Right now we've worked very closely
8 with the Board of Parole. Our staff prepare
9 the files for them. And they prepare them in
10 such a way that each commissioner will know
11 exactly which section of the file will have
12 the information he or she is looking for,
13 whether it's program participation,
14 disciplinary records, et cetera. Then after
15 every parole interview session, there's a
16 writeup and they give us feedback as to what
17 worked well, what didn't work well,
18 televideo, et cetera.

19 Another initiative that we've done for
20 the population -- and we've worked with the
21 parole commissioners on this -- we created a
22 DVD where we have formerly incarcerated
23 individuals, parolees, as well as parole
24 commissioners, explaining to them what the

1 process will be like, what they can expect,
2 so that they're at ease, they know what to
3 expect, they can talk about their plans in
4 their own words and the Board of Parole will
5 consider that.

6 ASSEMBLYWOMAN ROZIC: Okay. I'm going
7 to cut you off only because I don't have that
8 much time.

9 I also reiterate that I agree with the
10 Governor's take on restrictions on special
11 housing units and solitary. My understanding
12 is that the proposed changes don't include
13 people on keeplock. So I'm wondering if you
14 could tell us how many people on any given
15 day how many people are currently in keeplock
16 or in any given year how many people are in
17 keeplock.

18 ACTING COMMISSIONER ANNUCCI: I have
19 those numbers. I don't have them off the top
20 of my head.

21 I can tell you that part of the reform
22 that we just implemented did require us to
23 provide a lot more amenities to fixed
24 keeplock units like recreation, et cetera.

1 But that is a matter that we're
2 prepared to also look at as we discuss these
3 issues.

4 ASSEMBLYWOMAN ROZIC: Great. And a
5 quick follow-up to Chairman Weprin's question
6 about the data, the phone call recordings.
7 What happens when an inmate -- their sentence
8 finishes? What do you do with that data?
9 Are you selling that data? I'd like to know
10 a little bit more about that.

11 ACTING COMMISSIONER ANNUCCI: No. No.
12 Absolutely not.

13 ASSEMBLYWOMAN ROZIC: Okay, but what
14 are you doing when the sentence finishes,
15 with that data?

16 ACTING COMMISSIONER ANNUCCI: They're
17 preserved for 12 months, and then they're cut
18 off.

19 ASSEMBLYWOMAN ROZIC: Cut off as in
20 destroyed or -- okay. We'll follow up on
21 that.

22 And my last question is knowing that
23 sheriffs have a lot of leeway on this, what
24 is your opinion or do you know how many

1 county jails are currently offering space or
2 sharing facilities with ICE?

3 ACTING COMMISSIONER ANNUCCI: I
4 couldn't answer that. I think that's a
5 question that perhaps the State Commission of
6 Correction could provide information on.

7 ASSEMBLYWOMAN ROZIC: They are not
8 here on the list today, so I was hoping that
9 you could offer some --

10 ACTING COMMISSIONER ANNUCCI: No.

11 ASSEMBLYWOMAN ROZIC: Okay. Thank
12 you, Madam Chairman.

13 CHAIRWOMAN KRUEGER: Thank you.

14 Senator Gustavo Rivera.

15 SENATOR RIVERA: Thank you, Madam
16 Chair.

17 Hello, Commissioner. So the first
18 thing I'll say is just a statement. It is
19 obvious, as you made very clear earlier, that
20 when the merger between DOCCS and Parole
21 happened, that your responsibility is to
22 provide them with all the resources they
23 need, but you cannot speak on their behalf.
24 I understand that perfectly.

1 It is disappointing and unfortunate
2 that the administration did not choose to
3 have a representative of the Parole Board
4 here. Obviously, there's a lot of things
5 that you can't really answer, as you made
6 clear before on issues of policy, what
7 happens with the Parole Board, et cetera.

8 I'll just certainly add my voice to
9 what many of my colleagues have said, that we
10 need as many members of the Parole Board as
11 possible. We can have statutorily up to 19.
12 As many as we can would be best. So I speak
13 to the administration now and say that we
14 have -- you know, I am hopeful because
15 certainly there has been some resistance in
16 the past from some of our Republican
17 colleagues, but they are no longer running
18 the show over in our house, so we would love
19 to see a group of people coming to us as
20 nominees so that we can make sure that we can
21 move them. So I would suggest certainly this
22 is -- you know, you can carry the message,
23 but I'm sure they are listening.

24 ACTING COMMISSIONER ANNUCCI: Yes, I

1 will do that, Senator.

2 SENATOR RIVERA: But I wanted to talk
3 a little bit about solitary confinement and
4 actually -- so define something for me. This
5 is a term that I did not know about. What is
6 keeplock? What does that refer to?

7 ACTING COMMISSIONER ANNUCCI: Keeplock
8 is -- I'll compare our system to the penal
9 law. In penal law the offense covers
10 violations, misdemeanors and felonies. So we
11 have a three-tiered system. Tier 1 is like
12 the equivalent of a violation. You did
13 something wrong, but it's not part of your
14 permanent record. A Tier 2 offense is like a
15 misdemeanor. The punishment for a
16 misdemeanor could be up to a year in jail,
17 but you can't go to state prison. Similarly,
18 with a Tier 2, you can get a keeplock
19 sentence, but you can't get placed in SHU,
20 you can't get a recommended loss of good
21 time. So it's like the middle level of
22 possible misconduct.

23 And so one of the advantages of a
24 keeplock sentence, like in a general

1 confinement facility or maximum security
2 facilities, the individual doesn't get
3 removed from the facility. He or she will
4 serve their keeplock sentence, they'll
5 have --

6 SENATOR RIVERA: So since my time is
7 limited, I want to actually ask more
8 specifics about what exactly it entails. So
9 when you're saying keeplock, what exactly
10 happens to the incarcerated person? Because
11 if you're talking about a SHU, right, the
12 person gets removed from their particular
13 cell --

14 ACTING COMMISSIONER ANNUCCI: Right.

15 SENATOR RIVERA: -- and then placed in
16 solitary confinement someplace in the
17 facility, but by themselves for a while.

18 ACTING COMMISSIONER ANNUCCI: Right.

19 SENATOR RIVERA: What happens in a
20 keeplock? What does that mean?

21 ACTING COMMISSIONER ANNUCCI: In
22 keeplock they remain in their cell for
23 23 hours a day, but they get one hour of
24 outdoor recreation.

1 SENATOR RIVERA: Is there anybody else
2 with them in the cell?

3 ACTING COMMISSIONER ANNUCCI: I'm
4 sorry?

5 SENATOR RIVERA: Is there anybody else
6 with them -- are they allowed interaction
7 with other people while they're in their
8 cell?

9 ACTING COMMISSIONER ANNUCCI: Oh,
10 they're allowed to interact with people on
11 their unit. They can have conversations.
12 There's not that isolation issue.

13 SENATOR RIVERA: Okay. And there's
14 no -- so there isn't that isolation issue.

15 ACTING COMMISSIONER ANNUCCI: It's
16 considered restrictive housing as well, in
17 the general sense of the term. That's where
18 the ACA and everybody else is moving. All of
19 us are trying to make changes in this area,
20 every system in the country.

21 SENATOR RIVERA: How many people in
22 DOCCS are currently -- on any given day, how
23 many people are on keeplock on a given day?

24 ACTING COMMISSIONER ANNUCCI: I can

1 get you that number, Senator. I don't have
2 it off the top of my head.

3 SENATOR RIVERA: So we would -- I
4 would really appreciate it if you could get
5 us that number.

6 ACTING COMMISSIONER ANNUCCI: Sure.

7 SENATOR RIVERA: The concern that many
8 of us have is that maybe there's a -- we're
9 basically, since it's not categorized in the
10 same way, since as you are aware -- and you
11 can't comment on legislation, which I get.
12 But there's many of us that have been very
13 much pushing to get rid of solitary
14 confinement and to change the way that that
15 works, and so we would be concerned that
16 there's just a change in categorization of
17 where people are kept.

18 And last but not least, two years ago
19 I asked you whether you remembered a guy
20 named Rick Raemisch.

21 ACTING COMMISSIONER ANNUCCI: Yes.
22 He's retired now.

23 SENATOR RIVERA: Yes. And I asked you
24 then, for those folks that do not know, this

1 is a former Colorado DOCS commissioner who
2 slept overnight on a solitary confinement
3 facility.

4 And when I asked you that -- and it
5 was a great moment, I'm not going to deny
6 that. But when I asked you whether you would
7 be willing to do the same thing, whether you
8 would be willing to stay overnight on a
9 solitary confinement cell, your response was,
10 "Senator, it would be one of the best nights
11 of sleep that I've had in my life."

12 Ha, ha, ha. It's a good joke. It's a
13 good one. I can't take it away from you.
14 I'm going to ask you again, I'm going to ask
15 you to take it seriously this time.
16 Considering that there's many of us who
17 believe that this is torture and it has been,
18 you know, determined that in other instances,
19 certainly in war, my question to you is,
20 would you be willing to do that? You only
21 have 5 seconds, but --

22 ACTING COMMISSIONER ANNUCCI: Yeah, of
23 course, Senator. If this will advance the
24 agenda, if we will sit down and end up with

1 legislation that we both think is prudent and
2 in the best interests of New Yorkers, I'd be
3 willing to do that.

4 And Senator, I wasn't in any way
5 trying to diminish or poke humor at SHU.
6 It's a very serious issue. I was making fun
7 of myself, because my phone rings at every
8 hour of the night. And if I'm in a
9 correctional facility, anywhere in a
10 correctional facility, I can't have a
11 cellphone, I can't have a pager, no
12 electronic devices. So anywhere in a
13 correctional facility, I'm removed from any
14 of the pressures.

15 SENATOR RIVERA: Thank you,
16 Commissioner. Thank you, Madam Chair.

17 CHAIRWOMAN KRUEGER: Thank you.
18 Assembly.

19 ASSEMBLYMAN LENTOL: Assemblyman
20 Barclay.

21 ASSEMBLYMAN BARCLAY: Thank you,
22 Chairman.

23 Commissioner, I had two questions.
24 The first is regarding a budget question.

1 The Governor is proposing a 69 million
2 increase for the improvements to
3 rehabilitation programs. Is that increase,
4 is that going to go towards residential
5 rehabilitation units and step-down units?

6 ACTING COMMISSIONER ANNUCCI: Yes,
7 it's all for those units.

8 ASSEMBLYMAN BARCLAY: The whole
9 69 million. All right. Well, that's easy
10 enough.

11 Have you watched "Escape from
12 Dannemora"?

13 ACTING COMMISSIONER ANNUCCI: I've
14 seen most of it, not all of it.

15 ASSEMBLYMAN BARCLAY: Could you just
16 go through kind of what the process --
17 because I think DOCCS initially was not going
18 to allow filming at the facility, and then
19 maybe the Governor got involved and now, you
20 know, there was filming there.

21 ACTING COMMISSIONER ANNUCCI:
22 Assemblyman, we have a long tradition in this
23 state of cooperating with film projects. In
24 fact, if you remember the classic films with

1 James Cagney, out of Sing Sing -- Warner
2 Brothers actually donated, built a gym at
3 Sing Sing because of all the films that were
4 made there and cooperated with.

5 There was a little hesitancy on our
6 part initially because actually to film with
7 that large a number of individuals coming
8 into the facility, there were some concerns.
9 So we just wanted to explore different
10 things -- including, by the way, the
11 population was going to be affected. We had
12 to close off access to the yard for the
13 filming.

14 So in order to do that, and the film
15 outfit agreed to do this, as a means of
16 ameliorating that, everybody got, I believe,
17 a gallon of ice cream. And I was surprised
18 at the flavor they picked; apparently Panda
19 Paw is the flavor that they like up there. I
20 think the second time they got a chicken
21 meal.

22 But we were able to do that. We
23 cooperated with the making of the film. It's
24 entirely consistent with what we do. And for

1 many, many years now -- and this Governor is
2 all about being open for business in New York
3 State.

4 ASSEMBLYMAN BARCLAY: I'm not really
5 opining whether it was appropriate or not.
6 What I found interesting is the fact that it
7 seemed to be pretty strongly against the
8 filming there, and then that opinion changed
9 180 degrees. So be it. And what kind of ice
10 cream was that? I didn't --

11 ACTING COMMISSIONER ANNUCCI: Panda
12 Paw.

13 ASSEMBLYMAN BARCLAY: Oh, Panda Paw.
14 All right. Thank you, Commissioner.

15 ASSEMBLYMAN LENTOL: Is that a Ben &
16 Jerry's ice cream?

17 ACTING COMMISSIONER ANNUCCI: I don't
18 know.

19 CHAIRWOMAN KRUEGER: I'm going to
20 assume no real pandas were used in the making
21 of this movie.

22 (Laughter.)

23 CHAIRWOMAN KRUEGER: Are you done?

24 ASSEMBLYMAN BARCLAY: I am.

1 CHAIRWOMAN KRUEGER: Senator Seward.

2 SENATOR SEWARD: Thank you.

3 Commissioner, it's good to see you.

4 ACTING COMMISSIONER ANNUCCI: Thank
5 you, Senator.

6 SENATOR SEWARD: Last year, to help
7 address the problem, the issue of contraband,
8 DOCCS had started the -- a secure vendor
9 package pilot program, which was canceled.
10 Can you share with us what if anything DOCCS
11 has started in terms of another program aimed
12 at reducing contraband?

13 ACTING COMMISSIONER ANNUCCI: There's
14 a lot of things that we're doing and continue
15 to do to reduce contraband. We've expanded
16 our K-9 units, and they are very, very
17 effective at detecting drugs.

18 We have two new devices that we've
19 introduced, one -- I'll get the technical
20 name wrong, but I'll just tell you it's a
21 device that's going to screen mail. We've
22 purchased two of them. And once you run mail
23 through these things, they can detect any
24 number of drugs that are present in the mail.

1 So if that is as successful as we think it
2 is, we are going to make that -- go statewide
3 with that.

4 We also have another device that is
5 able to get into areas, I think it's called a
6 borescope, areas that are hard to get to,
7 hard to see visually. It's like radiators
8 and cell tracks where individuals might hide
9 contraband, like certain types of blades.

10 So those are the things that we are
11 pursuing right now as well.

12 SENATOR SEWARD: Why was the secure
13 vendor package, the pilot program, why was
14 that canceled?

15 ACTING COMMISSIONER ANNUCCI: Well, we
16 learned the hard way that there were things
17 we hadn't carefully thought of. And even
18 though it's been placed on hold, it's not
19 totally terminated. We've used this
20 opportunity to learn from the advocates,
21 we've used this opportunity to get feedback
22 from our superintendents.

23 It is something that we would explore
24 down the road. But as I said last year,

1 there's so many things that we as an agency
2 are doing, all right, so many things in the
3 transformation to the tablets, the programs
4 that were initiated, the SHU, the expansion
5 of the college programs, all kinds of mental
6 health programs that we're running online,
7 concerns about wellness for staff. We don't
8 need an additional one if we're not ready for
9 it. And that's something that -- we'll cross
10 that bridge at the appropriate time.

11 SENATOR SEWARD: Can you describe any
12 other efforts DOCCS has undertaken in the
13 last year to make the facilities safer for
14 both the inmates and the employees?

15 ACTING COMMISSIONER ANNUCCI: Yes.
16 The other big thing we're doing is we're
17 spending millions on fixed-camera systems.
18 We're about to complete the one at Clinton,
19 and we've got about seven or eight facilities
20 that they're going to go out to bid and then
21 they'll be ready in two years.

22 We also have body cameras. We have
23 the biggest body camera initiative in the
24 country. We just completed Taconic, and I

1 think before then they were something like
2 650. And we've got a grant of about \$800,000
3 from the feds to expand this body camera
4 pilot. So that is going to be something that
5 we're going to rely upon to help make our
6 system safer.

7 It helps keep everybody in their lane,
8 so to speak, the fixed-camera systems as well
9 as the body cameras.

10 SENATOR SEWARD: Now, is there any
11 legislation that you would recommend us to
12 pass that would help make the facilities
13 safer? Is there anything statutorily
14 that's --

15 ACTING COMMISSIONER ANNUCCI: Pass the
16 Governor's Article VII as is.

17 (Laughter.)

18 SENATOR SEWARD: Okay. And my final
19 question, following up on Assemblyman
20 Barclay's question, what did you think of the
21 series "Escape at Dannemora?" I did watch
22 the entire show.

23 ACTING COMMISSIONER ANNUCCI: Senator,
24 respectfully, that's a pool of water I'm not

1 going to wade in, for the following reason.
2 Two of the principal individuals that the
3 story was about are still serving their
4 sentences with this agency. And even though
5 they didn't get to see it, people visited
6 them and told them what it was about, and
7 both of them have come out very strongly
8 disputing what was in the film.

9 So rather than add another controversy
10 to my list that I have plenty of, I will not
11 weigh in on that issue.

12 SENATOR SEWARD: I was giving you a
13 chance to be a film critic.

14 (Laughter.)

15 SENATOR SEWARD: Thank you.

16 CHAIRWOMAN KRUEGER: Thank you very
17 much. Assembly?

18 ASSEMBLYMAN LENTOL: Assemblymember
19 Palmesano.

20 ASSEMBLYMAN PALMESANO: Yes, thank
21 you, commissioner, for being here.
22 Appreciate it.

23 ACTING COMMISSIONER ANNUCCI: Hi,
24 Assemblyman.

1 ASSEMBLYMAN PALMESANO: I have some
2 questions to talk on. I've been, as you
3 know, pretty critical of the administration
4 and what's going on at the Department of
5 Corrections for a number of issues. I think
6 probably one of the most serious issues that
7 are going on in our correctional facilities
8 today is the dramatic rise in assaults on our
9 staff and on inmates.

10 Since 2013 -- I know the Governor's
11 talked about all the prisons he's closed. I
12 think that's helped lead to a powder keg
13 environment. Since 2013, there's been a
14 66 percent increase in assaults on staff
15 statewide, a 65 percent increase of inmate on
16 inmate assaults -- just 82 percent in the
17 past year. That's a dramatic problem that's
18 not being addressed because I think of the
19 powder keg environment that we see.

20 Drugs is certainly a part of that
21 process. I know you talked about some issues
22 that you're trying to deal with the address
23 of that issue. I know last year I asked for
24 your statistics on the positive drug tests.

1 You provided that. I mean, thousands of
2 people testing positive for drugs in our
3 prisons. That's unacceptable.

4 So why not provide more tools to help
5 address that issue? You mentioned drug dogs.
6 Are we using them at every single one of our
7 54 correctional facilities? And if not, why
8 not?

9 ACTING COMMISSIONER ANNUCCI: Well,
10 first of all, canines are expensive and they
11 do require a lot of staff. We're getting a
12 lot of bang for our buck with what we're
13 using now.

14 Going back on the random drug tests,
15 we tested 1 percent of the population last
16 year, which is almost a thousand. And only 5
17 percent or just under 5 percent were
18 positive. So I don't agree with your
19 characterization that drugs are rampant
20 throughout our system or that there's a
21 powder keg aspect there.

22 I'm very concerned about assaults, as
23 everybody is, rightfully so. One assault is
24 one too many. But the assault in the

1 department is completely different from an
2 assault in the Penal Law. Any attack is
3 defined as an assault. An inmate brushes up,
4 bumps the shoulder of a correction officer,
5 that's an assault. You'd be laughed out of
6 court if you tried to prosecute something in
7 the community with an assistant district
8 attorney.

9 So our population is going down, and
10 we have a lot of vacancies in our system.
11 And compared to where we were when we used to
12 house 90 inmates in dormitories and
13 double-bunk and double-cell, it's a totally
14 different landscape right now.

15 ASSEMBLYMAN PALMESANO: With regard to
16 the double-cell and double-bunking, I'm aware
17 that obviously there's 6800 top beds that
18 exist in double-bunk situations throughout
19 the state. Now, the administration and you
20 constantly talk about how many excess beds
21 aren't being utilized. So in that situation,
22 double-celling has two inmates in close
23 confines, whether it's in a dormitory setting
24 or a maximum-security facility. That is a

1 powder keg environment. It's a powder keg
2 environment for other inmates, it's certainly
3 a powder keg environment for our correctional
4 officers who do a dangerous job.

5 So if you have all these excess beds
6 that you claim and we have 6800 top-bed
7 double bunks, why not remove the top bunks,
8 double bunks altogether, make that part of
9 your investment. Because you're doing a lot
10 of investment on reconstruction in other
11 areas. That should be the first thing you
12 do, get rid of the double bunks and double
13 cells. Let each individual -- give them a
14 little dignity, let them be in their own
15 individual space, which will also create a
16 better, safer environment for our correction
17 officers and our professionals working there,
18 and also a safer environment for other
19 inmates.

20 Because that's part of the powder keg
21 environment I'm talking about, Commissioner,
22 that I think is being ignored by this
23 administration. The drug tests that we
24 talked about, you said 1 percent. I think

1 from the numbers I have from '15, '16, '17,
2 about 5,000 or 6,000 positive test results.
3 That's 5,000 or 6,000 too many. That
4 shouldn't be happening.

5 We should be -- and if drug dogs are
6 really expensive -- but we're talking about a
7 public safety issue. You know, we're putting
8 money in all these other places, why not the
9 money into the drug dogs? Because we know
10 they're successful. There should be one at
11 every correctional facility in this state.
12 Let's make the investment. Let's make our
13 corrections officers safe. Let's make the
14 other inmates safe who are just trying to do
15 their time, and penalize people who are
16 trying to get drugs in these facilities.
17 Because they're doing it, they're being
18 successful at it. We need to provide tools
19 to our correction officers so they can do the
20 job that they want to do to keep us safe.

21 ACTING COMMISSIONER ANNUCCI:
22 Assemblyman, you said a lot of different
23 things there. Let me just sort out the
24 double-celling, double-bunking argument.

1 Double-celling is what you find in our
2 maximum-security facilities. And way back in
3 '95 when we were very pressed for space, we
4 converted about 5 percent of the cells in 16
5 of our male maximum-security facilities. And
6 we were very stressed to do that.

7 I've basically taken all of them down,
8 and my predecessor as well. There's only a
9 very small number that are left of those
10 original cells that were built for one-person
11 use. They're in Auburn and I think a few at
12 Downstate. Auburn for the depot, because it
13 helps with the movement, and Downstate
14 because it helps with the program.
15 Otherwise, they've all come down.

16 There are other double cells where the
17 cell was built to hold two individuals. They
18 have at least 105 square feet. All of our S
19 blocks have 105 square feet -- five points,
20 105 square feet in Upstate. So there's two
21 in a cell there, but they were built to hold
22 two individuals.

23 The double-bunking that you describe
24 in our mediums, in a prototype dorm there are

1 60 individuals where we used to hold 90. The
2 back 10 are double-bunked, two. But that's
3 consistent with the State Commission of
4 Corrections' rules and regulations that allow
5 as many as 60 in a multiple-occupancy unit.

6 So I am aware of nothing -- and we
7 look at grievances and we look at a lot of
8 difference things -- that that specific
9 housing arrangement causes tension in our
10 medium-security general confinement
11 facilities.

12 I agree with you, I'm troubled with
13 the increasing number of assaults, and we're
14 looking at a lot of different things. But at
15 the end of the day, you know, investing in
16 things like college, you know, that creates
17 an environment that leads individuals to
18 follow examples of the classroom leader
19 versus the gang leader.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Senator --

22 ASSEMBLYMAN LENTOL: Excuse me.

23 I just want to say, Commissioner, that
24 although I agree with my colleague that there

1 are a lot of problems in our prisons, I have
2 to say that I think you've done an excellent
3 job as acting commissioner. And the only
4 thing I hope for is that now you can become
5 the actual commissioner, now that you've
6 gotten a raise. Thank you.

7 ACTING COMMISSIONER ANNUCCI: Thank
8 you, Assemblyman.

9 CHAIRWOMAN KRUEGER: Senator Zellnor
10 Myrie.

11 SENATOR MYRIE: Thank you, Madam
12 Chair.

13 And thank you, Commissioner. I just
14 want to reiterate Chairman Weprin's sentiment
15 on prisoner education. I had the honor of
16 teaching constitutional law at Auburn
17 Correctional Facility, and it's something
18 that's very important to me. And I'm glad to
19 hear that it's something you are supportive
20 of as well.

21 I am also heartened to see that DOCCS
22 is really supportive of parolees and their
23 success, and I wanted to get your thoughts
24 and very brief analysis. The Governor signed

1 an executive order last year granting
2 parolees the right to vote, and I wanted to
3 see what the successes and failures of that
4 program is, if you had any stats on how many
5 people have taken advantage of the new right,
6 and just to get your general thoughts on
7 that.

8 ACTING COMMISSIONER ANNUCCI: Well,
9 first of all, I think the Governor's action
10 was entirely consistent with the fundamental
11 change in the Penal Law that was made years
12 ago when we said, in addition to everything
13 else, it's a fundamental purpose to promote
14 the successful reentry of individuals into
15 society. And getting them civically involved
16 is certainly one important way to do that.

17 I should point out that there was
18 already a law on the books going back to 2010
19 that the Legislature enacted. It's codified
20 in Correction Law Section 75, and it
21 specifies that every individual who maxes out
22 of a prison -- right? So there's no parole
23 time to serve. But when that person maxes
24 out of a correctional facility, the

1 obligation was placed upon me to give them a
2 voter application form, to give them a form
3 from the Board of Education that explains the
4 importance of voting, and one other thing in
5 relation to voting.

6 And I'm not aware of any single
7 problem that ever came about as a result of
8 that. And last year, to give you some
9 numbers, 2100 individuals maxed out of our
10 correctional facilities. So that many
11 individuals, under the statute, had to be
12 given all of those voter forms explaining how
13 to register, where they would go, et cetera,
14 et cetera.

15 The Governor's pardon initiative was
16 simply an extension of that. We gave them
17 the list of the people that were released on
18 parole, they determined who was worthy to get
19 the conditional pardon. We ensured that the
20 individual got the conditional pardon. I
21 have no way of knowing how many of them chose
22 to exercise their right to vote. I'm not
23 aware of any problems. But I think it's
24 entirely consistent with where we're moving

1 as a state to get people locally involved in
2 their civic participation as a means of
3 rehabilitation.

4 SENATOR MYRIE: Thank you for that.
5 And I wasn't asking -- of course it would be
6 really difficult for you to ascertain who
7 actually voted, given that we have a secret
8 ballot in this country. But I think that it
9 is -- what I wanted to know was who was
10 taking advantage of the conditional pardons.
11 Right?

12 I think that in our body we have
13 legislation that would make it less onerous.
14 I think there are a lot of parolees who are
15 still unaware of their right. And right now
16 they have to take an extra step, albeit I
17 think a very important first step as enacted
18 by the Governor. But I think the -- you
19 know, we are considering granting rights just
20 by virtue of them being out of incarceration.

21 And so I just wanted to know if the
22 administration had stats on who -- how many
23 conditional pardons were issued for the
24 purposes of them voting.

1 ACTING COMMISSIONER ANNUCCI: Yeah,
2 I -- I -- we do have the stats on that. I
3 know it was many thousands that were issued.
4 And I know that when they were issued we had
5 a process in place to make sure that when
6 they met with their parole officer, they were
7 actually given the conditional pardon, they
8 were given all the necessary forms to
9 explain.

10 I can get you the exact number, I
11 don't have it off the top of my head, but it
12 was many thousands.

13 SENATOR MYRIE: Great. And I know you
14 have said several times today that you don't
15 comment on pending legislation, but would it
16 be fair to say that DOCCS is supportive of
17 parolees being civically engaged and having
18 as many opportunities to do so as possible.

19 ACTING COMMISSIONER ANNUCCI: Oh,
20 yeah, absolutely.

21 SENATOR MYRIE: Thank you.

22 CHAIRWOMAN KRUEGER: Thank you.

23 We've been joined by Senator Betty
24 Little. I didn't recognize her earlier.

1 Assembly.

2 ASSEMBLYMAN LENTOL: Assemblymember
3 Weprin.

4 ASSEMBLYMAN WEPRIN: Thank you,
5 Mr. Chairman.

6 We've had a lot of discussion about
7 SHU reform and money for SHU reform. Just a
8 specific question about the 69 million that's
9 in DOCCS capital for the DOCCS SHU reform
10 proposal. Does that include the money from
11 the New York Civil Liberties Union
12 settlement?

13 ACTING COMMISSIONER ANNUCCI: No, this
14 would be entirely different. Because
15 basically in the '90s, as I said, when we had
16 the problem with a lot of disruptive
17 individuals, we had to quickly build these
18 S blocks. And that is where we would have to
19 spend the money to actually convert them to
20 these RR units so that we can have the
21 out-of-cell programming in the office space.

22 To just give you some comparison, the
23 Marcy S block where we now have the RMHTU, we
24 built a separate program building. Anybody

1 that's toured that facility where we treat
2 the seriously mentally ill I'm sure would
3 agree we did not spare any expense. They
4 have big, wide-open areas for classroom
5 participation, they have areas for group
6 recreation. We did it right. And that's
7 what we would plan to do with this group
8 going forward.

9 ASSEMBLYMAN WEPRIN: So are we going
10 to need more money to complete the NYCLU
11 settlement? Would it be necessary to have
12 more money other than besides that
13 69 million?

14 ACTING COMMISSIONER ANNUCCI: Well, we
15 have to staff the 252-bed unit. So the
16 budget -- there's money in the budget if you
17 approve it as-is for us to open the South
18 port 252-bed unit.

19 ASSEMBLYMAN WEPRIN: Okay. Thank you.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Senator Gallivan.

22 SENATOR GALLIVAN: Thank you, Madam
23 Chair.

24 Good afternoon, Commissioner.

1 ACTING COMMISSIONER ANNUCCI: Good
2 afternoon, Senator.

3 SENATOR GALLIVAN: I'd like to
4 follow-up on a couple of things that we've
5 already discussed, and I'll start with the
6 Secure Vendor Program. I was going to ask
7 the status, and you indicated that it's not a
8 lost cause, so to speak. But what is the
9 actual status? Are you actively looking at
10 the programs with that? Is it somewhere in
11 line on trying to implement?

12 ACTING COMMISSIONER ANNUCCI: We're
13 continuing to get feedback from our
14 superintendents. We've looked at what we've
15 done wrong. But as we do that, we're looking
16 at what we're also providing to the
17 population, and the next steps. So that, you
18 know, where we might be reevaluating this
19 after we've gone systemwide with the tablets
20 and how that might play out is something that
21 we're weighing and balancing.

22 So you're right, it's not a lost
23 cause. It is something that we're still
24 considering and taking feedback should we

1 decide to revisit it at a point down the
2 road.

3 SENATOR GALLIVAN: We know that
4 contraband continues to be a problem, and
5 you've talked about the -- some of the
6 measures that you're taking to try to limit
7 contraband.

8 But I recall our conversations over
9 the years about the promise of the Secure
10 Vendor Program and being able to control what
11 comes in. And absent data that shows that
12 we're doing a significantly better job of
13 controlling the contraband and then what
14 follows, the violence, I would hope that that
15 is something -- it's been successful in other
16 states -- that you continue to actively look
17 at.

18 So let's follow to the safety and
19 security. I know you have testified to
20 certain things Senator Seward and
21 Assemblyman Palmesano talked about -- and he
22 mentioned in particular some statistics, one
23 that I -- if I calculated correctly, that
24 combined assaults, assaults on staff and

1 inmate -- inmate on staff, inmate on inmate
2 is up 42 percent since the NYCLU settlement
3 regarding special housing units.

4 Is there a correlation, in your mind,
5 between the two, the 40 percent fewer people
6 in SHU since that settlement and a 42 percent
7 increase in assaults?

8 ACTING COMMISSIONER ANNUCCI: No, I
9 don't see that.

10 And I know that one of the categories
11 I think we're down, and that's the inmate on
12 inmate assaults. I'll have to double-check.
13 But I don't see a correlation with that,
14 Senator.

15 SENATOR GALLIVAN: Well, perhaps down
16 year to year. But we have -- if we go back
17 three years, five years, eight years, we're
18 still significantly high.

19 I agree with Assemblyman Lentol. I
20 know that you've made efforts, you're very
21 sincere and concerned for your people in
22 ensuring safe facilities. The job that your
23 staff does, they have a tremendous challenge,
24 there's no question about it. And it's an

1 enormous agency, and every single thing that
2 you do I recognize, whether it's training or
3 equipment, costs an incredible amount of
4 money.

5 But I think we owe it to the staff and
6 the citizens of the state to do the best we
7 can in properly equipping and training them.

8 And similarly, we owe it to the
9 inmates who are there, and their families and
10 the communities. Because obviously if they
11 can't be safe, how can they be rehabilitated
12 if they're afraid to go to programs or
13 participate?

14 So I know over the years the different
15 measures that you've taken, and I won't ask
16 you again to repeat the things that you've
17 said. But are you able to tie statistics to
18 anything? Like, for instance, the use of
19 K-9s and correlate it that we have reduced
20 contraband by X percent, the use of body
21 cameras and this has reduced assaults by
22 X percent, the use of fixed cameras.

23 And, I mean, have you done that at
24 all? Because then we can focus -- we can

1 look at some of the things that work to
2 reduce the violence and contribute to our
3 safety instead of -- again, I fully respect
4 the enormity of the job that you have, and
5 all these new ideas that come along and you
6 having to look at because of the whims of the
7 Executive or members of the Legislature, 87
8 different things to implement. But are you
9 using data to implement any of these things?

10 ACTING COMMISSIONER ANNUCCI: Oh,
11 yeah, we're using a lot of different data in
12 many ways. I think it's very hard to get
13 down into the weeds like that and pinpoint
14 cause and effect on different things.

15 Backing up to the assault numbers,
16 while they're up, the number of injuries way
17 down. It's something close to 90 percent had
18 either -- or higher -- had no injury or minor
19 injury. Only a very small number had
20 moderate injury. I'm not belittling that.
21 Any injury, moderate, is bad. And serious
22 injury, we had no severe injuries, because
23 we've broken it down. So even though the
24 assault numbers are up and it's concerning,

1 staff aren't getting injured. And certainly
2 the pepper spray that we've used can really
3 allow staff to intervene, break up a serious
4 fight without having to resort to batons or
5 rolling around, many times.

6 And I've required all my staff,
7 including myself, to undergo what pepper
8 spray is like, and it is very debilitating.
9 So if -- anything to increase staff safety
10 like that and keep the population safe, we
11 will continue to pursue.

12 SENATOR GALLIVAN: Love to continue
13 the conversation, but out of time. Thank
14 you, Commissioner.

15 CHAIRWOMAN KRUEGER: Thank you. Thank
16 you, Commissioner.

17 Assembly.

18 ASSEMBLYMAN LENTOL: Yes.
19 Assemblymember Palmesano again.

20 ASSEMBLYMAN PALMESANO: Thank you,
21 Commissioner, again. Just -- I don't have --
22 really one question, but just a couple of
23 things. I'm going to write on an issue that
24 I hope you can respond relative to the

1 bedding issue. I have some information I
2 would like you to clarify.

3 Also, on the number of positive drug
4 tests, I know you gave me statistics from
5 before. I'd like to see the statistics from
6 last year as well.

7 Also, I want to just comment on this
8 SHU reform. I'm very concerned about it,
9 quite frankly. I think what -- the
10 settlement, and what we see being proposed by
11 the Governor and what I've seen on
12 legislation being proposed will take a very
13 important safety tool away from our
14 corrections officers who do a very dangerous
15 job.

16 I think that -- you know, what
17 incentive is there going to be for -- and
18 we've got to admit, there's some very, very
19 dangerous people in our prisons. What
20 incentive is there for a prisoner to not
21 assault or try to kill another inmate or
22 another corrections officer because they
23 think, well, I can sit out 15 days or 30 days
24 in a SHU. What incentive is there -- I mean,

1 that needs to be an important disciplinary
2 tool used. If someone is bringing drugs in
3 there and dealing drugs in the prisons, what
4 incentive is there for them to not do it,
5 because I can handle 15 days or I can handle
6 30 days?

7 We're taking very important tools away
8 from our corrections officers who do a very
9 dangerous job. And as part of that powder
10 keg environment, I think it's making it
11 dangerous for our corrections officers, it's
12 making it dangerous for other inmates that
13 are in these facilities. I really wish you'd
14 put the brakes on this type of reform,
15 because you're -- or also at least try to
16 provide some other tools and resources, more
17 staffing, better-trained staffing and more
18 resources to them, because they have a tough
19 job. And I don't think sometimes the
20 administration, the Governor, takes that into
21 consideration.

22 And I think if you talk to some of the
23 corrections officers, I don't feel like they
24 feel like the administration has their backs,

1 and their morale is down on some of the
2 things that we see in the pipeline. And I
3 really wish we'd take that into
4 consideration.

5 And remember, these brave men and
6 women who work in those facilities go to work
7 each day in a place where no one wants to
8 know what goes on behind those walls, they
9 just want people to stay there. But they
10 risk their lives each and every day, and we
11 continue to take away resources. And that's
12 why we continue to see these rise in
13 assaults. And they're substantial rises.

14 And with the prison closures, I think
15 that's led to it, the drug problem. You
16 know, we need to be more aggressive on that
17 front to make sure the men and women who are
18 in our facilities working there are safe. So
19 I would encourage you to please hit the
20 brakes on some of this SHU reform because
21 it's dangerous. Because there's proposals
22 that will be coming through the Legislature
23 that would even -- I think make it even
24 worse. So I hope you take that into

1 consideration as we move forward.

2 ACTING COMMISSIONER ANNUCCI:

3 Assemblyman, let me just say a few things
4 very quickly.

5 If the Governor's proposal is enacted
6 as is, it's not going to have somebody in SHU
7 for 30 days and back in general confinement.
8 It's going to be something very similar to
9 what we do with the seriously mentally ill.
10 They're going to be transferred to an area
11 where they can still be separated and safely
12 secured. They're going to come out in
13 restraints, they're going to have to earn a
14 sentence. So safety is not going to be
15 compromised in that way.

16 The other thing I will say is this. I
17 don't know too many sitting governors that
18 would walk through a maximum-security cell
19 block without any advance warning, and he did
20 that at Great Meadow because he wanted to see
21 firsthand what a lockdown was about. And we
22 talked to the superintendent to get the
23 feedback on what we were doing.

24 He also went to Clinton. He also went

1 to Greene, to the S block there. And when he
2 was first elected and before he was sworn in,
3 he went to Sing Sing. So he cares about
4 what's going on.

5 He's also charged me -- and every
6 other corrections commissioner in this
7 country is working on this -- it's staff
8 wellness. Because the stress of the job is
9 taking its toll. And so I've convened a
10 committee of people to work on programs that
11 we can help find constructive ways to reduce
12 the stress.

13 There's no question working in a tough
14 environment, especially in a maximum-security
15 facility, is very stressful. And I don't
16 want to see people get high blood pressure,
17 turn to alcohol, have their marriages break
18 up, or any of the other normal things. I
19 want to be able to intervene and give them a
20 safe environment and give them practical
21 means by which their life and health can get
22 better. Because they do do a great, great
23 job.

24 I think we have the most progressive

1 corrections system in the country. And all
2 the things that we're able to do with the
3 thousands of volunteers that come in, all the
4 program partnerships we have, only work
5 because of the staff we have.

6 CHAIRWOMAN KRUEGER: Commissioner, I
7 have to stop you, but I want to thank you for
8 that long explanation. And just on behalf of
9 all the people who are going to be testifying
10 at 11 o'clock tonight, just because of their
11 high blood pressure and marital issues and
12 other things.

13 (Laughter.)

14 CHAIRWOMAN KRUEGER: Senator Diane
15 Savino.

16 SENATOR SAVINO: Thank you.

17 I just want to -- Commissioner, first,
18 good to see you again. And I just want to --
19 at least we don't have to talk about overtime
20 and we don't have to talk about the shortage
21 of nurses. But I do want to follow up on
22 this issue of inmates and corrections
23 officers, the levels of assaults going up.

24 And it's amazing, because in spite of

1 all of the efforts that you guys have put
2 in -- the training, the deescalation
3 training, the pepper spray training, cameras,
4 body cameras, the Cellsense program -- we're
5 still seeing almost a doubling of assaults.

6 And I know that you just recently said
7 that you're talking to other commissioners in
8 other states. So is this a problem as well
9 in other places where they've instituted a
10 segregation plan similar to the one that the
11 state has adopted with the New York Civil
12 Liberties Union?

13 ACTING COMMISSIONER ANNUCCI: I don't
14 see them as connected, Senator.

15 But I belong to an association. We
16 create surveys, we share information, we get
17 together. I can ask them if they're seeing
18 similar rises.

19 I can tell you that everybody in
20 general has their own gang issues, right?
21 Whatever part of the country you're in, gangs
22 may be different, but you're always trying to
23 battle, keep them from getting control of
24 things. Every time there's been a lockdown,

1 almost invariably it was related to one gang
2 trying to assert control over the phones or
3 getting too pushy and then getting pushed
4 back.

5 So we try and introduce all of the
6 prosocial things for meaningful involvement
7 among the population. That's why I have
8 thousands of volunteers who have the status
9 of unpaid employees to deliver all these
10 additional programs. That's why I have
11 Rehabilitation through the Arts, that's why I
12 have Puppies Behind Bars, that's why I bring
13 in an entire symphony orchestra to perform at
14 a maximum-security facility. All of these
15 things are helpful in reducing tensions.

16 But I'll be in touch with my
17 colleagues across the country to see what
18 their experience is as well.

19 SENATOR SAVINO: Perhaps maybe a study
20 to look at what's best practices in other
21 states, to see if there's something that
22 we're not capturing here.

23 And again, I will say this. You guys
24 have done an amazing job of training and

1 putting in technology, but yet and still
2 we're seeing this result. And the safety and
3 security of the workforce and the inmates is
4 of paramount importance when you are the
5 caretaker of human beings.

6 So, you know, we want to be helpful
7 too. I know that in the Governor's Executive
8 Budget he proposes eliminating a
9 million-dollar legislative grant that goes
10 towards facility safety measures. I'm sure
11 he's going to ask us to buy it back. But I
12 think that's the kind of stuff we should be
13 increasing, not decreasing.

14 And finally on one thing. Because you
15 have inmates who are also patients, some of
16 them would qualify under the state's medical
17 marijuana program for either treatment of an
18 underlying condition or, if they are addicted
19 to opioids, we added medical marijuana as a
20 medical treatment similar to methadone,
21 Vivitrol, Suboxone, as an alternative during
22 a medical treatment program.

23 Has DOCCS started utilizing? Are any
24 inmates requesting to become patients? Have

1 you had any interaction with that yet at all?

2 ACTING COMMISSIONER ANNUCCI: I'm not
3 aware that anybody has asked for that
4 treatment as of yet, Senator. But I have a
5 group working and studying all aspects of the
6 law and how we're going to have to adjust to
7 whatever the final law is that's implemented.

8 I also understand that in a separate
9 health presentation they'll try and answer
10 all questions related to the cannabis
11 initiative.

12 SENATOR SAVINO: But you do have
13 inmates who would qualify as patients under
14 the medical marijuana program because they
15 have a qualifying medical condition. I'm
16 just curious, are any of them utilizing it?
17 And if not, is it because they don't know
18 about it or because they can't afford it,
19 that might be an issue?

20 ACTING COMMISSIONER ANNUCCI: I'm not
21 aware of them using it, but I know we use
22 other treatment modalities to deal with pain
23 and anything else they might be experiencing.

24 SENATOR SAVINO: I'm not sure who in

1 your administration would be involved in
2 this, but I would actually like to know, like
3 to have a conversation with them. It could
4 be the cost of the medication is prohibitive
5 for inmates. And if that's the case, maybe
6 there's something we can do about that.

7 But thank you.

8 ACTING COMMISSIONER ANNUCCI: Okay.
9 I'll follow up on that, Senator.

10 CHAIRWOMAN KRUEGER: Thank you.

11 Assembly.

12 They've got some more. You're never
13 getting out.

14 ASSEMBLYMAN LENTOL: Assemblymember
15 Colton.

16 ASSEMBLYMAN COLTON: Thank you,
17 Commissioner. There was a couple of
18 questions that I just wanted to ask in terms
19 of some statistics.

20 In the facilities that you have in
21 New York, do you know approximately how many
22 deaths have occurred while people have been
23 in custody?

24 ACTING COMMISSIONER ANNUCCI: Yeah, I

1 have that number. I don't remember off the
2 top of my head.

3 There's a number of natural deaths
4 every year. We follow all of obviously that.
5 Every time there's a death, regardless of
6 whether it appears to be natural causes or
7 not, there's a requirement by the county law
8 that there must be an autopsy. And I know
9 the State Commission of Correction follows up
10 on them as well.

11 So for any death, there's always an
12 official report that's done, an autopsy and a
13 report by the State Commission of Correction.
14 And I get their final reports and review them
15 as well.

16 I can get you the number, if you're
17 looking for calendar year 2018.

18 ASSEMBLYMAN COLTON: Yes, if you'd
19 could do that, I would appreciate that.

20 Also, how many deaths have been
21 suicide, if there are any?

22 ACTING COMMISSIONER ANNUCCI: Last
23 year we had 13. One is one too many. And
24 it's a serious challenge because of its

1 unpredictability. You don't know what the
2 final thing is in someone's life that may
3 cause them to decide this is it. It could be
4 the wife saying I can't do this anymore, I
5 want a divorce because you're away; our
6 13-year-old child got pregnant; whatever the
7 challenges are.

8 So we are constantly looking at how to
9 get better at trying to spot the factors. My
10 associate commissioner in charge of mental
11 health is always looking at issues, we're
12 working with our Office of Mental Health.
13 We're looking at what other state agencies
14 are doing. We're reinforcing -- it's not
15 just the mental health practitioners, it
16 could be the program rec leader, it could be
17 the chaplain, that someone in trouble might
18 be comfortable talking to.

19 So we put signs in our visiting rooms
20 for families: If you've had a visit and
21 you've given somebody bad news, let us know
22 in advance.

23 So we're successful a lot of times at
24 keeping an attempted suicide an attempt

1 because staff are there to cut somebody down,
2 et cetera. But 13 was the number we had last
3 year. And it's always a tragedy when they
4 occur.

5 ASSEMBLYMAN COLTON: What was the
6 total number of inmates that are in the
7 system?

8 ACTING COMMISSIONER ANNUCCI: The
9 population today is 47,152.

10 ASSEMBLYMAN COLTON: Okay. Also, did
11 any of the deaths occur while confined to a
12 SHU unit?

13 ACTING COMMISSIONER ANNUCCI: They
14 occur in different areas. Sometimes they've
15 occurred when someone was in what we call a
16 residential crisis treatment cell, an
17 observation cell, then they get -- they think
18 they're cleared and they get released. They
19 could commit suicide there. They could
20 commit suicide in general confinement. I'm
21 sure of the 13, if I go back and look, maybe
22 some number of them were in SHU. It all
23 depends. They're all over the map.

24 ASSEMBLYMAN COLTON: Okay. So do you

1 have an estimate of how many might have --
2 whether they were by suicide or otherwise,
3 you know, died in a SHU unit?

4 ACTING COMMISSIONER ANNUCCI: I don't
5 remember the number off the top of my head.
6 But I will get that for you.

7 ASSEMBLYMAN COLTON: Okay, thank you.

8 And when an inmate passes away, is
9 there a particular protocol by which the
10 family is notified? And how quickly, you
11 know, is that done?

12 ACTING COMMISSIONER ANNUCCI: Yeah,
13 that's -- there's a whole set of protocols in
14 place. It's a very difficult job that we do.
15 We ask our chaplains to be the people that
16 call up the family and give them the terrible
17 news, and make sure they're informed as
18 quickly as possible.

19 ASSEMBLYMAN COLTON: I think -- you
20 know, basically I think that's it. If you
21 could get us the statistics in terms of the
22 number of suicides and also the deaths that
23 have occurred in the SHU units, that would be
24 helpful.

1 ACTING COMMISSIONER ANNUCCI: Sure.

2 ASSEMBLYMAN COLTON: All right, thank
3 you.

4 CHAIRWOMAN KRUEGER: Thank you.

5 Senator Brian Benjamin.

6 SENATOR BENJAMIN: Thank you, Madam
7 Chair. Thank you, Mr. Commissioner.

8 I wanted to talk a little bit about
9 technical parole violations. But before, let
10 me give you a little bit of context. I'm
11 very passionate about us closing
12 Rikers Island, sooner than later. And it's
13 come to my attention that one of the
14 fastest-growing populations on Rikers are
15 those who are there for technical parole
16 violations.

17 And so I wanted to ask you about the
18 review that your department did, along with
19 the Board of Parole and the Reentry Council,
20 and get a sense from you, was bringing an
21 individual before a judge for a hearing after
22 there was a violation, is that part of the
23 revisions that you're making or that you have
24 made?

1 ACTING COMMISSIONER ANNUCCI: Well,
2 what we're looking at, which is the
3 guidelines, which is basically kind of like
4 the grid that a sentencing judge would
5 follow -- here, these would be what the ALJs
6 would follow for a particular infraction.

7 So we're also -- we're looking at a
8 lot of ways to try and streamline the
9 process. I have my counsel looking at
10 different things. The statute sets out a
11 preliminary hearing, a final hearing, is
12 there flexibility there.

13 We certainly don't want to have people
14 waste away locally. We want them to have the
15 quickest hearing possible. And where
16 possible, we agree there's a lot of
17 dispositions where it's revoke and restore.
18 The ALJ will say, Okay, what you did was
19 wrong, but we're going to restore you to
20 community supervision but you need to go to a
21 program.

22 Many of the individuals that are
23 parole violators are absconders. And so
24 that's the challenge, because they've already

1 absconded from supervision, then we finally
2 take them into custody, and so now they're
3 lodged on Rikers Island.

4 SENATOR BENJAMIN: I'm sorry, I'm
5 sorry, I should have been more specific. I'm
6 talking about before you actually take them
7 to Rikers Island, having a hearing by a judge
8 before they are taken into custody. That was
9 the question.

10 ACTING COMMISSIONER ANNUCCI: That's a
11 pending legislation that you have?

12 SENATOR BENJAMIN: That is the pending
13 legislation that I have, that's right.

14 ACTING COMMISSIONER ANNUCCI:
15 Therefore I can't comment.

16 SENATOR BENJAMIN: You're paying
17 attention, yes.

18 CHAIRWOMAN KRUEGER: Thank you.
19 Assembly?

20 SENATOR BENJAMIN: I'm sorry. Oh, I'm
21 sorry --

22 CHAIRWOMAN KRUEGER: Excuse me.

23 SENATOR BENJAMIN: I'm sorry. I was
24 asking you, do you have any reservations

1 about the pending legislation that I have on
2 that front?

3 ACTING COMMISSIONER ANNUCCI: Senator,
4 I always am mindful of what the bureaucratic
5 steps would be, the practical considerations,
6 whatever they would require.

7 I have the same general goals that you
8 have. I don't want to needlessly have people
9 swept up if they don't present a risk and
10 they can continue to comply with the
11 conditions of supervision. But I can't weigh
12 in on what you're contemplating and whether
13 that would present a lot of bureaucratic
14 challenges or not.

15 SENATOR BENJAMIN: Can I ask you this?
16 The types of violations that you most see,
17 would you say that those violations, in your
18 estimation, require custody?

19 ACTING COMMISSIONER ANNUCCI: Require
20 confinement?

21 SENATOR BENJAMIN: Confinement, yes.
22 I mean -- yeah, I'll leave it at that.

23 ACTING COMMISSIONER ANNUCCI: I think
24 we've bought into the graduated sanctions

1 that -- and it's not a question of even, you
2 know, what my parole revocation specialist --
3 the ALJ makes the final decision. They hear
4 the evidence, the individual is represented
5 by a lawyer. The people that work for me are
6 in effect the prosecutors. But the ALJs are
7 independent, they work for the Board of
8 Parole, they work for the chairwoman. And so
9 they're the ones that make the final
10 decision.

11 Sometimes we disagree with their
12 decision. Sometimes we think, look, this
13 individual has done three or four different
14 things and they're not getting the message,
15 and maybe the ALJ will say, well, I'm going
16 to give them one more chance, we're going to
17 put them back into the community.

18 I think it's a complex issue. But I
19 do think the guidelines going forward are
20 going to be a big change in who comes back
21 and how long they come back for.

22 SENATOR BENJAMIN: One last quick
23 question. What is the average timeline of
24 someone in confinement after a technical

1 parole violation, on average?

2 ACTING COMMISSIONER ANNUCCI: How long
3 they're held locally?

4 SENATOR BENJAMIN: How long are they
5 held until they actually --

6 ACTING COMMISSIONER ANNUCCI: It
7 varies for different regions of the state.
8 And I know that I have the number for
9 New York City, but I don't want to guess
10 wrong. I can get it for you.

11 SENATOR BENJAMIN: I heard it was in
12 the 77-day range. If you can find out for
13 me --

14 ACTING COMMISSIONER ANNUCCI: Thirty-
15 something days is about what I'm --

16 SENATOR BENJAMIN: Thirty something?
17 I heard it was more than that.

18 ACTING COMMISSIONER ANNUCCI: I think
19 it's either 39, 40, 42 days, something like
20 that --

21 CHAIRWOMAN KRUEGER: Commissioner,
22 will you agree to get the Senator the answer?

23 ACTING COMMISSIONER ANNUCCI: Yes, I
24 will. I'll get you that.

1 CHAIRWOMAN KRUEGER: Thank you.

2 SENATOR BENJAMIN: Thank you. Thank
3 you, Madam Chair.

4 CHAIRWOMAN KRUEGER: Thank you.
5 Assembly.

6 ASSEMBLYMAN LENTOL: Yes,
7 Assemblymember Barclay.

8 CHAIRWOMAN KRUEGER: Second round.

9 ASSEMBLYMAN BARCLAY: Thank you,
10 Chairman.

11 Commissioner, just hearing your little
12 testimony from before, I just want to follow
13 up on the double-bunking thing.

14 How do you decide when an inmate --
15 who's in the double bunks versus a single
16 bed?

17 ACTING COMMISSIONER ANNUCCI:
18 Basically, it's where the vacancy is. So --
19 and usually, you know, if you just arrive at
20 a correctional facility and you get assigned
21 to a dorm -- and I have a classification and
22 movement unit that identifies where the
23 vacancies are in the system and whether a
24 particular individual can go to a particular

1 facility -- if there are no known enemies,
2 what their mental health level is, and what
3 their medical requirements are -- and then
4 they would go to where the vacancies are.

5 And we can continually move people.
6 You know, somebody that's been in a double
7 bunk for some period of time, if there's a
8 single-cell vacancy, they get moved, and then
9 the double bunk in the back of the dorm can
10 then get filled.

11 ASSEMBLYMAN BARCLAY: Do the inmates
12 sign a waiver to be on that, essentially?

13 ACTING COMMISSIONER ANNUCCI: No. No.

14 ASSEMBLYMAN BARCLAY: They don't have
15 to sign --

16 ACTING COMMISSIONER ANNUCCI: No. I
17 think you're thinking of what we used to do
18 with double-celling when we had that in
19 effect. Because inmates would go down --
20 there was a general SCOC ruling that you
21 couldn't be in a double cell for more than
22 60 days unless you signed a waiver. So some
23 individuals would get closer to home, they'd
24 be in Green Haven, they'd sign the waiver --

1 because you'd have to agree to stay longer
2 than 60 days to ultimately end up in a vacant
3 cell, single cell in Green Haven. So that
4 was a rule from a long time ago. But since
5 we've taken down all those double cells, it's
6 no longer applicable.

7 ASSEMBLYMAN BARCLAY: Okay, thank you.
8 Thank you.

9 CHAIRWOMAN KRUEGER: Thank you.
10 Senator Betty Little.

11 SENATOR LITTLE: Thank you. Thank
12 you, Commissioner.

13 So a couple of quick questions in
14 regard to some of the facilities, the nine
15 facilities I have. In Adirondack, I
16 understand that you're pretty close or maybe
17 you've started inmates getting there.

18 ACTING COMMISSIONER ANNUCCI: Oh, yes.
19 It's up and running, yes.

20 SENATOR LITTLE: Right. And that's
21 really going to be a very effective facility,
22 my understanding of it is. So I'd like to
23 visit that soon.

24 ACTING COMMISSIONER ANNUCCI: Yes.

1 under current law. But we're creating the
2 opportunity for the judge to issue a Shock
3 enrollment order because it simply could be
4 two kids that said, Give me your, you know,
5 candy bar, or whatever, and that's robbery in
6 the second degree. It could be somebody sees
7 the cellar door open, goes in and grabs, you
8 know, a pair of roller skates, and they're
9 still convicted of a serious crime.

10 But the Shock program, which we
11 strongly believe in, and we're very enamored
12 of Moriah in particular -- it wasn't that
13 long ago I went to a graduation. And if
14 there is a single facility where everybody's
15 so together, they are so married to the
16 program and they want everybody to be
17 successful. And if you ever go to a
18 graduation --

19 SENATOR LITTLE: I have.

20 ACTING COMMISSIONER ANNUCCI: -- and
21 you see the platoons come out --

22 SENATOR LITTLE: I have.

23 ACTING COMMISSIONER ANNUCCI: -- it's
24 like, you know, Parris Island for the Marine

1 Corps.

2 And then you see in the education
3 buildings all the artwork that they've done,
4 to draw pictures of historical figures in
5 civil rights movements. So they really --
6 it's a great, great program. It was even
7 featured on German television.

8 I strongly support -- and if this law
9 is enacted, I'll work with OCA to make sure
10 all the judges know about this, and I'll also
11 ensure that our district attorneys throughout
12 the state know of this option as well.

13 SENATOR LITTLE: Thank you. Because
14 we know we have more capacity at Moriah, and
15 we would really like to see it filled. I
16 don't know if not having a fence makes a
17 difference, but I said if so, I'll say build
18 a fence.

19 But the other thing is I just read
20 that Vermont was sending inmates and
21 contracting with prisons in Pennsylvania.
22 And, you know, if we have capacity in a place
23 like Moriah, right on the Vermont border --
24 other than Lake Champlain -- would that ever

1 be something that we would look at?

2 ACTING COMMISSIONER ANNUCCI: I've not
3 been approached by the commissioner of
4 Vermont about that possibility. I'm not sure
5 which kind of individuals they're looking
6 to -- I believe -- I'd have to double-check
7 with my counsel -- it might be legally
8 possible.

9 And certainly if it's legally possible
10 and it makes fiscal sense, we'd consider it,
11 I guess. But with a lot of caveats.

12 SENATOR LITTLE: If it's an idea worth
13 pursuing, maybe we could make it
14 legislatively, legally possible as well.

15 But thank you for all you do there and
16 throughout the system. And it certainly has
17 a lot of stress and a lot of complications,
18 but I appreciate all the work you do. And
19 thank you for appreciating Moriah Shock as
20 much as I do.

21 ACTING COMMISSIONER ANNUCCI: Thank
22 you for your friendship to me and to this
23 department, Senator. I appreciate it.

24 SENATOR LITTLE: Thank you.

1 CHAIRWOMAN KRUEGER: Thank you.
2 Assembly for the last, and then one more in
3 the Senate.

4 ASSEMBLYMAN LENTOL: Assemblymember
5 Fahy.

6 ASSEMBLYWOMAN FAHY: Thank you. Thank
7 you, Mr. Chair.

8 And welcome, Commissioner, it's a
9 pleasure to have you here today.

10 I want to start by saying just a
11 thanks in general to you and your office and
12 to Mr. Kelly. Every time I have to -- I
13 don't say this to every agency that comes
14 before us, but yours has been one of the most
15 responsive, even if you can't always give us
16 the answer we're looking for. But often we
17 are dealing with very emotional issues and
18 families involved in care for their loved
19 ones who may be incarcerated, and your agency
20 has been tremendously responsive.

21 I also just want to say that I
22 appreciate your implementation and
23 aggressiveness in trying to work with the
24 Raise the Age legislation that was so

1 important to many of us up here in the
2 Legislature, along with the changes on the
3 SHU, the single housing units.

4 I still share some of the concerns
5 that were mentioned about assaults, assaults
6 on workers, so I just want to echo some of
7 those comments.

8 And then I have two questions. One, I
9 appreciated your comments about the opioids
10 and really some of the newer programs that
11 you have, including the MAT program, in a
12 number of your facilities. But I just
13 wondered, is there more that we can be doing?
14 Especially because I've heard a number of
15 concerns raised about the after-care, that as
16 inmates are released that we are seeing
17 overdoses within those first few weeks.

18 And is there more that we can do to
19 make sure that we are transitioning those who
20 may have drug addictions and problems with
21 after-care to make sure that they're getting
22 the right treatment as they exit?

23 ACTING COMMISSIONER ANNUCCI: Well,
24 one of the things that we are doing now, it's

1 in connection with the Narcan program. It's
2 part of what we call Phase 3 of transitional
3 services, preparing individuals for release.

4 We not only teach them how to use a
5 Narcan kit, we teach them about the risks
6 that are out there should somebody use again.
7 So we drill that message into them as part of
8 Phase 3. And when they also report the first
9 time, if they're going out on supervision, to
10 their parole officer.

11 Let me say we are also in constant
12 contact with our partners at OASAS, and
13 they've been fantastic at helping us get our
14 feet wet and now expanding our program. So
15 anything that they can tell us or point us
16 to -- certainly there are individuals who
17 will continue to require drug treatment in
18 the program, so we connect them to drug
19 treatment programs when that's established as
20 a condition of their supervision.

21 But we'll get further guidance from
22 OASAS if there's other things that we should
23 be looking at, because we agree there is a
24 release -- there is a risk when somebody is

1 released. But our initiative now with those
2 on MAT that are coming back as technical
3 parole violators, the short-sentenced
4 individuals from Elmira and the additional
5 facilities that we're going to expand to, and
6 taking in others from the counties, will
7 create in effect a continuous loop of MAT.
8 We're looking for that to be a helpful, big
9 recurring initiative.

10 ASSEMBLYWOMAN FAHY: Thank you,
11 Commissioner. I look forward to hearing more
12 on that as we continue to tackle this
13 horrific drug crisis, opioid crisis in this
14 state.

15 Last question. The Parole Board, I
16 understand that there are still a number of
17 vacancies. I'm told there are seven
18 vacancies still. Can you give us any update
19 on that and the timeliness of these -- I
20 understand that that does hinder the
21 timeliness of having parole meetings and
22 hearings. Can you tell us where we are with
23 the vacancies and give us any update on that?

24 ACTING COMMISSIONER ANNUCCI: No,

1 unfortunately I can't, Assemblywoman. The
2 Board of Parole is independent, and the
3 decision when and whether to fill additional
4 vacancies is with the Chamber. So I don't
5 control any of that.

6 But I appreciate and I'll certainly
7 relay your concerns and everyone else who has
8 raised that concern.

9 ASSEMBLYWOMAN FAHY: Okay. Thank you
10 again, Commissioner. I appreciate your work
11 very much, so thank you.

12 Thank you, Mr. Chair.

13 CHAIRWOMAN KRUEGER: Thank you,
14 Commissioner. I think we've actually run out
15 of people to ask you questions. Appreciate
16 very much your being here today.

17 I should be careful -- don't come into
18 the audience now and say "I want to ask
19 questions."

20 I do appreciate your time and the work
21 you do for the state. Thank you very much.

22 ASSEMBLYMAN LENTOL: Thank you.

23 ACTING COMMISSIONER ANNUCCI: Thank
24 you very much, Senator and Assemblyman.

1 Thank you.

2 CHAIRWOMAN KRUEGER: And we will next
3 have the New York State Division of State
4 Police, Chris Fiore, deputy superintendent.

5 And just to keep people on track, and
6 then we will have the New York State Office
7 of Indigent Legal Services and the New York
8 State Office of Information Technology
9 Services.

10 Good afternoon.

11 DEP. SUPT. FIORE: Good afternoon.

12 ASSEMBLYMAN LENTOL: Good afternoon.

13 CHAIRWOMAN KRUEGER: I have no idea
14 what time we told you, but we lied.

15 (Laughter; comments off the record.)

16 DEP. SUPT. FIORE: Thank you,
17 Chair Krueger, and distinguished members of
18 the joint committee, for the opportunity to
19 discuss Governor Cuomo's Executive Budget for
20 the Division of State Police. I am Chris
21 Fiore, deputy superintendent of
22 administration. I have served as a Trooper
23 for more than 29 years, and my prior
24 assignment was first deputy superintendent.

1 I would also like to take this
2 opportunity to thank the Legislature for
3 recognizing our agency's critical mission,
4 for your ongoing support of the New York
5 State Police. Your unwavering support
6 enables the State Police to continue to be
7 one of the leading law enforcement agencies
8 in the nation.

9 For more than a century, the State
10 Police has consistently provided professional
11 public service through its core missions,
12 while adapting our priorities for evolving
13 societal needs. We strive for continuous
14 improvement in every aspect of our public
15 service.

16 Our mission priorities remain
17 improving highway safety, providing
18 professional police services and
19 investigative support, preparing for and
20 responding to emergencies and disasters, and
21 detecting and preventing terrorism.

22 The Governor and the State Police
23 recognize the dynamic nature of terrorism
24 around the world and the persistent threats

1 within New York State. Our ever-increasing
2 role in the state's counterterrorism efforts
3 help provide a wide range of counterterrorism
4 initiatives and capabilities, enabling
5 New York to remain one of the safest states
6 in the country.

7 Nonetheless, New York City remains the
8 number-one terrorist target in the world.
9 Our increased presence in New York City,
10 particularly as it relates to mass
11 transportation hubs and bridge and tunnel
12 crossings, has enhanced efforts to detect and
13 deter terrorism, as well as to build and
14 maintain the capability to respond to a
15 terrorist attack.

16 This mission has enhanced the
17 counterterrorism efforts of our agency as
18 well as those of our partner agencies in the
19 metropolitan area. Our highest priority
20 continues to be the safety of the public and
21 our Troopers who protect them. Toward that
22 end, the Executive Budget provides our
23 Troopers with the necessary equipment,
24 training and other valuable resources to

1 achieve the best levels of safety in the
2 performance of their duties.

3 During the past year, with your
4 support, we outfitted our members with new
5 Glock firearms and associated equipment,
6 including weapon-mounted lights and new
7 patrol rifles and Tasers, as well as the
8 necessary equipment for our Special
9 Operations Response Team, our K-9 Unit, our
10 Bomb Disposal Unit, and the Underwater
11 Recovery Team.

12 In 2019, we will conduct two Academy
13 classes to meet the current and future needs
14 of the State Police. These new Troopers will
15 allow the agency to perform our mission
16 priorities while ensuring the professional
17 law enforcement response that New Yorkers
18 deserve. The State Police is unique as the
19 only law enforcement agency within New York
20 State with the ability to deploy large
21 numbers of professionally trained police
22 officers anywhere within the state and
23 beyond, on short notice, in response to
24 emergencies or natural disasters.

1 In addition to our traditional
2 investigative law enforcement responses, we
3 continue our partnership with the Division of
4 Homeland Security and Emergency Services'
5 Office of Emergency Management, to enhance
6 disaster preparedness and response readiness.
7 This partnership has enabled the State Police
8 to better coordinate with state agencies and
9 provide support to local communities
10 following significant events.

11 Illegal drug use and its impact plague
12 our nation and the citizens of New York. The
13 availability of heroin, opioids and synthetic
14 drugs such as Fentanyl, along with the toll
15 they inflict upon the abuser and their
16 families, remain a critical public safety
17 issue. Building on the resources and
18 training provided over the past few years,
19 the State Police will aggressively
20 investigate drug-related offenses,
21 particularly criminal trafficking, and assist
22 local police agencies with their
23 investigations whenever requested.

24 Gang activity and related violence

1 also remains a critical public safety
2 concern. The State Police remain committed
3 to disrupting gang activity, particularly the
4 violent crime associated with the MS-13 gang.
5 Our members remain actively engaged with
6 local police partners on Long Island to
7 combat MS-13 and counter its scourge on our
8 neighborhoods. Across the state, our
9 Troopers and Investigators also continue
10 their partnership with large counties and
11 cities through the gun-involved violence
12 elimination initiative, also known as GIVE.

13 Lastly, New Yorkers expect effective
14 public service from a stable, professional
15 and adequately resourced State Police. I am
16 proud to say New Yorkers can be confident
17 their expectations are being met. It is the
18 integrity, knowledge, dedication and quality
19 of our men and women that distinguishes the
20 New York State Police. I am honored and
21 privileged to be a part of this agency as we
22 move forward in our second century of service
23 to the public and this great state.

24 Thank you for your support of the

1 State Police and the opportunity to address
2 you this afternoon. I welcome any questions
3 that you may have.

4 CHAIRWOMAN WEINSTEIN: Thank you.

5 We're going to go to Senator Kaminsky.

6 SENATOR KAMINSKY: Thank you,
7 Chairwoman.

8 Good afternoon, Deputy Superintendent.
9 Thanks for all your hard work and the work of
10 the men and women who sacrifice for us every
11 day.

12 My concern is about the effects of
13 drug legalization, especially marijuana
14 legalization, on road safety. And I'm
15 wondering if you could tell me whether there
16 are any resources that are in this budget
17 that will help prepare us for the necessary
18 manpower and technology resources that will
19 come with people being able to have to detect
20 people who are driving high on our roads
21 should legalization come to pass.

22 DEP. SUPT. FIORE: Thank you for that
23 question.

24 First I'd like to say that the

1 Division of State Police did have input into
2 the Department of Health's report, as well as
3 the proposed legislation.

4 New York State has been a national
5 leader in traffic safety for a long time. We
6 are one of the safest states in the country
7 in terms of traffic safety. And naturally
8 that is a major concern for us, as traffic
9 safety is one of our agency's highest
10 priorities. We're very proud of the
11 involvement that we've had in making our
12 roadways so safe in New York State.

13 To that end, one of the concerns that
14 we do have is possible increases in impaired
15 driving. Other states have experienced that.
16 But we feel that we're prepared to address
17 it. The budget I believe has the resources
18 to help us finance programs such as our Drug
19 Recognition Expert Program, where we're going
20 to require additional drug recognition
21 experts who --

22 SENATOR KAMINSKY: So this budget has
23 money to add more DREs than currently --

24 DEP. SUPT. FIORE: I believe that will

1 be addressed in this budget, yes.

2 SENATOR KAMINSKY: Okay. Do you know
3 where that is? Because I've been looking for
4 it.

5 DEP. SUPT. FIORE: I can't say
6 specifically, no.

7 SENATOR KAMINSKY: And how many DREs
8 are currently working throughout our state?

9 DEP. SUPT. FIORE: I don't have a
10 solid number. I believe we have about 70 at
11 this time. But I can get you an exact
12 number.

13 SENATOR KAMINSKY: Okay. And how many
14 do you think will be necessary if legal sales
15 come to pass in our state?

16 DEP. SUPT. FIORE: We would like to
17 increase that number significantly.

18 SENATOR KAMINSKY: Do you have a
19 ballpark? Do you have what that might be?

20 DEP. SUPT. FIORE: At least by
21 50 percent, or even a hundred.

22 SENATOR KAMINSKY: Okay. And you
23 would agree that would be millions of dollars
24 in training and backfilling local departments

1 who have to make up demand, power, et cetera?

2 DEP. SUPT. FIORE: I can't really give
3 you a figure on the costs on that.

4 SENATOR KAMINSKY: Okay. What about
5 the technology to detect roadside driving?
6 Where is your department on the use of oral
7 fluid tests, Breathalyzers for marijuana?
8 Have you field-tested it or have any idea of
9 whether you're going to be requesting such
10 technology be introduced into your law
11 enforcement toolkit?

12 DEP. SUPT. FIORE: You know, as far as
13 I know, there is not an equivalent instrument
14 to measure the level of intoxication with
15 marijuana as there is with, say,
16 breath-testing instruments for alcohol.
17 Which again leads to the need for the drug
18 recognition experts. Because you can
19 recognize the effects of impairment and, you
20 know, our troopers and police officers are
21 trained to be able to do that. So, you know,
22 the DRE is a critical component of that
23 enforcement strategy.

24 SENATOR KAMINSKY: Sure. You know,

1 there are other states and localities here
2 that are field-testing oral fluid tests,
3 companies are trying to market their cannabis
4 Breathalyzer-type machines. So I would
5 really urge the department to look into that
6 and see how fast it could be implemented and
7 how sound the technology is, in your
8 estimation, to be used on a routine basis.

9 DEP. SUPT. FIORE: Can you repeat that
10 question?

11 SENATOR KAMINSKY: I guess it's not a
12 question. I'm just -- there are other states
13 that are experimenting with oral fluid tests
14 or other technology to assist officers at the
15 roadside. I would just ask that you look
16 into that, because they're critical tools
17 that at some point will become the norm. And
18 the sooner they're there, the more people
19 will be able to detect driving under the
20 influence.

21 DEP. SUPT. FIORE: Yeah, I agree with
22 that.

23 SENATOR KAMINSKY: Okay. I will just
24 end with the following statement.

1 I am extremely concerned that our
2 state is on the one hand getting ready to
3 take the revenue and sell legal marijuana --
4 and there are very compelling reasons for
5 that that we're all talking about. I do
6 think our state is far from ready when it
7 comes to road safety.

8 And I come from Long Island, which has
9 two counties that have the highest DWI
10 fatality rates in the state.

11 I think the need for drug recognition
12 experts, for technology, for lab technology
13 is woefully underfunded, not addressed
14 adequately in this budget. And in the next
15 few weeks I really hope we can get down to
16 brass tacks and address that to make sure
17 that when we consider legalization we're
18 considering road safety at the same time.

19 CHAIRWOMAN WEINSTEIN: Thank you,
20 Senator.

21 I have a question. Were you here when
22 I asked Mike Green about the ammunition
23 database?

24 DEP. SUPT. FIORE: Yes, I was.

1 CHAIRWOMAN WEINSTEIN: Okay. So I
2 wonder if you could help answer that
3 question, then. To sort of paraphrase the
4 question, as part of the SAFE Act the
5 requirement for an ammunition database was
6 put on hold following that enactment. And I
7 was hoping we can get an update. The
8 Governor's counsel today is reported in a
9 news story saying that there's some work
10 going on to get to that, so I'd like an
11 update of where we are.

12 DEP. SUPT. FIORE: Well, I would just
13 start by saying that, you know, at this time
14 there still has not been a solution, a
15 technological solution presented that would
16 fulfill the requirements of that database.

17 What I will say is that, you know, we
18 meet regularly with our partner agency, ITS,
19 and it's a high priority for both agencies.
20 But there are -- and I'm not an IT person, so
21 I can't really speak to the technological
22 hurdles to it, other than that it's proven to
23 be a daunting problem. And I think the
24 issues, if I understand them correctly, are

1 we'll try and get a clarification. Because
2 it's not a direct quote, but as was reported
3 earlier today by Nick Reisman, that after we
4 passed some gun -- some of the additional gun
5 legislation, gun control legislation in both
6 houses, it says that Alphonso David indicated
7 on Tuesday the state was moving forward with
8 developing the technology for the database.

9 So what you're saying is you're still
10 looking to see if we can get technology,
11 developing technology is maybe a step further
12 down the road?

13 DEP. SUPT. FIORE: Again, I'm not the
14 technology developer so it's hard for me to
15 answer that question.

16 CHAIRWOMAN WEINSTEIN: They'll be here
17 soon.

18 DEP. SUPT. FIORE: But like I said,
19 we -- it is a priority for us.

20 CHAIRWOMAN WEINSTEIN: Okay. And to
21 shift gears, could you provide an update on
22 the State Police efforts to eliminate the
23 backlog of sexual offense evidence kits that
24 are pending in the state?

1 DEP. SUPT. FIORE: So the -- that
2 legislation required two things. We're --
3 being a law enforcement agency and also
4 having a crime lab, we were required to
5 ensure that our submissions on the law
6 enforcement side were timely, according to
7 the legislation, and on the crime lab end of
8 it that they were processed quickly.

9 The -- what we saw -- we expected a
10 100 percent increase in the amount of
11 submissions to the lab when this legislation
12 was passed. What we saw was quite a bit
13 higher -- I believe it was upwards of
14 160 percent. So the result was, you know, a
15 lot more work than originally anticipated.

16 But we had been preparing for it. We
17 have -- at this point we've hired 30 new
18 scientists. We've freed up some lab space in
19 the lab. We've moved some units out of the
20 lab to allow room for them to work. The
21 issue with scientists is the selection
22 process -- hiring and training is a lengthy
23 process, to get them up to speed where
24 they're trained and able to function, testify

1 in court and those types of things.

2 I believe by the end of the summer all
3 of those 30 technicians will be -- I mean,
4 most of them are already trained and
5 operational. So I feel like we have a pretty
6 good handle on this at this point.

7 CHAIRWOMAN WEINSTEIN: And it may be
8 too early to tell, but do you have a -- how
9 long do you anticipate it would take before
10 the backlog is eliminated?

11 DEP. SUPT. FIORE: You know, I really
12 can't speak to that at this point. I just
13 know that we're doing everything we can.

14 Actually, I failed to mention one of
15 the other initiatives taken by the people at
16 the Forensic Investigation Center, they
17 actually developed a process that allowed us
18 to process these kits more efficiently and
19 quickly too. So progress is being made.

20 CHAIRWOMAN WEINSTEIN: Good. That's
21 good to hear.

22 Now we're going to move on to the
23 Senate. Senator Savino.

24 SENATOR SAVINO: Thank you,

1 Assemblywoman.

2 Superintendent, I want to go back to
3 the discussion that Senator Kaminsky had with
4 you about the likely development of the
5 legalization of marijuana for adult use and
6 the concerns raised about traffic and DUIs,
7 et cetera.

8 So I know that there are people who
9 actually think that nobody smokes marijuana
10 in New York State right now, but we know they
11 do. And so walk me through, what does a --
12 how do you handle someone who is driving now
13 and you suspect that they are driving under
14 the influence of marijuana? What steps does
15 an officer take?

16 DEP. SUPT. FIORE: So on a -- just to
17 explain how a traffic stop like that would
18 work. So a trooper or a police officer
19 observes a vehicle operating with some signs
20 of impairment, whether they're having a hard
21 time staying in the lane -- there's something
22 that leads them to believe that the person
23 may be impaired. Stops the vehicle, speaks
24 with the driver. What generally happens with

1 an impaired stop is that there ends up being
2 no actual alcohol or a very low amount of
3 alcohol in the system. Since the person is
4 still exhibiting signs of impairment and it's
5 clearly not alcohol, that gives us reasonable
6 suspicion to believe or probable cause to
7 believe that this person is impaired by some
8 other substance.

9 At that point, we would bring a drug
10 recognition expert to put the person through
11 tests. And they're trained to actually not
12 only document and determine that they are in
13 fact impaired on the substance, but they can
14 also -- they have the ability to figure out
15 which type of substance is most likely
16 causing the impairment. And then
17 subsequently, it's followed up with a
18 chemical test.

19 SENATOR SAVINO: So not to cut you
20 off -- see, I already knew the answer to that
21 question. What I was trying to have you
22 illustrate to people is that there's already
23 a process in place for how to deal with this.

24 The fact remains that there is no hard

1 and fast test, the way we have with the BAC
2 test, to determine when a person used
3 marijuana. It could be in their system, but
4 as we know, it could be up to 30 days. There
5 are federal researchers that have grants from
6 the federal government to study this; they
7 can't come up with it yet. But 10 other
8 states have legalized marijuana for adult
9 use, and their police departments -- I've
10 visited most of them -- their police
11 departments have had to figure out how do we
12 increase the drug recognition experts, how
13 many more do we need, how do we protect
14 public safety.

15 And so the question I have -- I have
16 two questions. One, have you or anyone on
17 your team had the opportunity to visit those
18 states or interact with those police
19 departments there to see what their
20 experience is and see how we can implement it
21 here?

22 And the second question is, what is
23 the cost of a drug recognition expert? How
24 much does it cost to train them? What's the

1 training that goes into it? And how many do
2 you think we would need if we were to operate
3 this?

4 That's two questions, and a third one.
5 Since we have medical marijuana in place and
6 we've had it now operational for minimally
7 three years, we now have 90,000 patients in
8 New York State who use medical marijuana. To
9 your knowledge, have any of them been cited
10 for impaired driving as a result of the use
11 of their medication?

12 DEP. SUPT. FIORE: That's a lot of
13 questions.

14 SENATOR SAVINO: I know.

15 DEP. SUPT. FIORE: So let's start with
16 the first one. I can say that we have in
17 fact been in contact with agencies in other
18 states, and they have seen an increase in the
19 number of impaired drivers that they're
20 encountering. That has happened.

21 As far as training a drug recognition
22 expert, I don't have that information in
23 front of me, how much it costs. What I can
24 say is it's an involved training process

1 because it's not just teaching somebody out
2 of a book how to do this, they have to do
3 trials with people that are actually under
4 the influence. And, you know, that can only
5 be done in a controlled environment in
6 certain places. Often we have to send people
7 to facilities out of state to be able to do
8 that.

9 So that there's -- you know, there is
10 an expense to that. I couldn't -- sitting
11 here, I can't give you a figure on that.

12 But -- I'm trying to think of the next
13 question.

14 SENATOR SAVINO: How many do you think
15 we would need? And finally, have any medical
16 marijuana patients been cited for impaired
17 driving?

18 DEP. SUPT. FIORE: As I said earlier,
19 you know, I think we -- we're looking at at
20 least 50 to maybe double, 50 percent more to
21 double that number that we currently have.

22 And your third question?

23 SENATOR SAVINO: The medical marijuana
24 users, have they exhibited any instances of

1 driving while ability impaired or under the
2 influence of their legal medication?

3 DEP. SUPT. FIORE: Honestly, I don't
4 have an answer to that. But I can find that
5 out for you if you'd like.

6 SENATOR SAVINO: Thank you.

7 CHAIRWOMAN KRUEGER: Thank you.

8 Thank you, Senator.

9 CHAIRWOMAN WEINSTEIN: Assemblyman
10 Lentol.

11 ASSEMBLYMAN LENTOL: Yes, thank you,
12 Madam Chair.

13 So I want to follow up on
14 Assemblywoman Weinstein's inquiry and just
15 change it a little bit. Because last year we
16 enacted a law that allows law enforcement to
17 remove firearms from people charged with
18 domestic violence offenses, and the courts to
19 revoke or suspend their firearms license.

20 And the information is then reported
21 to the State Police and DCJS, presumably for
22 inclusion in the statewide license and record
23 database established in the same SAFE Act
24 that she spoke about.

1 However, it's my understanding that
2 this license and the record database, like
3 the ammunition sales database, is still not
4 operational -- and, in the case of the
5 ammunition, five years after it was
6 established in law. Is this true?

7 DEP. SUPT. FIORE: The database
8 currently has -- we have, I believe, over
9 360,000 records in the pistol permit -- in
10 our database at the State Police.

11 When the -- for recertifications, we
12 send out approximately 415,000 mailings. And
13 this is from the universe of pistol permit
14 owners that we believe to be in existence.
15 This came from our own records and from the
16 local licensing authority records. We came
17 up with approximately 415,000 records.

18 The problem with this is these were
19 mostly paper records. You know, some of them
20 could be very old. We really don't know how
21 many of those were actually legitimately
22 pistol permit holders. So -- which is really
23 one of the intents of the act, was to get a
24 handle on and get a good database on who

1 actually owns a pistol in this state, or a
2 firearm.

3 So from that we've put over 360,000
4 records into the system. It takes some time
5 to actually process those records, but they
6 are available. The system is running, and
7 those records are in there. I mean, you
8 know, there's some quality control processes
9 that we have to perform on those records
10 because, as I said, some of these were very
11 old and they were kept in a variety of
12 different ways. But we do have an
13 operational database of 360,000 records.

14 ASSEMBLYMAN LENTOL: So do we know
15 whether or not anyone who might have been
16 convicted of domestic violence had their
17 weapon taken from them as a result of the
18 passage of the act and the database up and
19 running?

20 DEP. SUPT. FIORE: I'm not exactly
21 sure I understand your question.

22 In the case of where there's an order
23 to take away somebody's firearms, that
24 generally goes to the licensing authority,

1 which is usually at a county level. And then
2 a police department -- it could be the
3 New York State Police, it could be the county
4 sheriff's office -- is directed to seize the
5 weapons.

6 ASSEMBLYMAN LENTOL: I guess I -- if
7 I'm not mistaken -- it wasn't my bill, so --
8 but if I'm not mistaken, I think this was a
9 measure that was not only initiated by us in
10 the Assembly, but also by the Governor,
11 because that system wasn't working and there
12 were a lot of people who were convicted of
13 domestic violence who had permits and
14 continued to be a threat or a possible threat
15 to their domestic partner.

16 And we enacted this process in order
17 to get the weapons away from them so at least
18 the domestic partner wouldn't have been shot
19 with that. And that's what I'm talking
20 about.

21 And so the actual bill was to be
22 reported to the -- required that the
23 information be reported, it's my
24 understanding, to the State Police and DCJS,

1 presumably for inclusion in the statewide
2 license and record database.

3 DEP. SUPT. FIORE: Right. I mean,
4 again, if -- it sounds to me that that
5 would -- if we're talking about a domestic
6 violence incident where a judge has ordered
7 the weapons taken away from the pistol permit
8 owner, that would be done at the local level.
9 And the licensing authority, we would get the
10 information and then put that into our
11 database.

12 ASSEMBLYMAN LENTOL: So do you know if
13 the state database is up and running to
14 record the conviction?

15 DEP. SUPT. FIORE: Well, as I said,
16 the database is operational and has over
17 350,000 records in it.

18 ASSEMBLYMAN LENTOL: This -- it just
19 seems like a very important thing that I ask
20 that you look into, because we don't want the
21 worst thing to happen.

22 DEP. SUPT. FIORE: And I will. I will
23 check into it.

24 CHAIRWOMAN KRUEGER: Thank you.

1 Senator Jamaal Bailey.

2 SENATOR BAILEY: Thank you, Madam
3 Chair.

4 Just a very brief question. Thank you
5 for testifying today.

6 I know it's very early to comment on
7 the effects of the legislation that was just
8 passed today by Senator Shelley Mayer about
9 the gun buyback, permitting the State Police
10 to promulgate those statewide. But I was
11 just wondering what was your current
12 experience with gun buyback programs, if any,
13 at the State Police level.

14 DEP. SUPT. FIORE: To date, the State
15 Police has not been engaged in any gun
16 buyback programs.

17 SENATOR BAILEY: Okay.

18 DEP. SUPT. FIORE: And I wasn't --
19 thank you for making me aware that this law
20 was passed today, because I've been sitting
21 in the back here.

22 SENATOR BAILEY: Well, I like to break
23 news, you know.

24 (Laughter.)

1 SENATOR BAILEY: No, but I didn't want
2 to ask you to comment on it because, again,
3 it was just passed today. It hasn't been
4 chapters by the Governor, so it is a little
5 premature to speak about it being a law.

6 DEP. SUPT. FIORE: Okay.

7 SENATOR BAILEY: But I just -- in
8 context with that, I just wanted to ask you
9 about the gun buybacks, and you've answered
10 my question sufficiently.

11 And Madam Chair, I don't have anything
12 else.

13 CHAIRWOMAN KRUEGER: Thank you.

14 I believe Assemblymember Barclay is
15 last on the Assembly list.

16 ASSEMBLYMAN BARCLAY: Thank you.

17 And thank you for your testimony. I
18 have just one question.

19 My colleagues in the past have tried
20 to get information about how much money the
21 troopers are spending on the SAFE Act,
22 SAFE Act enforcement, how many full-time
23 employees are dedicated to the enforcement of
24 the SAFE Act. Can you provide any light to

1 the question how much money we're spending on
2 that?

3 DEP. SUPT. FIORE: You know, I think
4 the -- as far as enforcement of the
5 provisions of the SAFE Act, if we're talking
6 about the law enforcement, the troopers and
7 investigators out in the field that would
8 enforce any of those types of provisions,
9 those are our existing troopers.

10 Where we have additional positions is
11 in our headquarters in our records section or
12 our pistol permit section.

13 ASSEMBLYMAN BARCLAY: Correct.

14 DEP. SUPT. FIORE: And unfortunately,
15 I did not bring those records with me.

16 But I can tell you how many people
17 that -- how much of our staff is involved in
18 that. I mean, we had an existing pistol
19 permit section with an existing command
20 structure. We had to add mostly non-sworn
21 civilian personnel for mostly clerical
22 positions to --

23 ASSEMBLYMAN BARCLAY: That would be
24 terrific, if I could find out how many

1 full-time employees and how much money is
2 dedicated to those -- I don't need
3 individuals. But, you know, the aggregate
4 amount that we spend on that, that would be
5 very helpful.

6 Thank you.

7 CHAIRWOMAN KRUEGER: And to close,
8 Senator Antonacci. And the Assembly -- oh,
9 I'm so sorry.

10 Excuse me. Excuse me. It was Senator
11 Seward first, then Senator Antonacci.

12 And the Assembly didn't go on strike,
13 they got called into a debate. I don't know
14 whether you want to join them or not.

15 ASSEMBLYMAN BARCLAY: No, I don't want
16 to be there. I'm happy to represent the
17 Assembly --

18 (Laughter.)

19 ASSEMBLYMAN BARCLAY: I'm sure they're
20 happy with my representation.

21 (Laughter.)

22 CHAIRWOMAN KRUEGER: Okay, sorry.

23 We're going to go back to Senator
24 Antonacci first.

1 SENATOR ANTONACCI: Oh, thank you.

2 Thank you, Deputy Superintendent. I
3 represent a district that houses the New York
4 State Fair, and we enjoy having the men and
5 women or the troopers as temporary citizens
6 of Onondaga County. They do a great job.
7 And please let them know we appreciate their
8 work. Couldn't pull it off without them.

9 My question is this. Do the state
10 troopers have a formal opinion on the
11 marijuana law? Have they advocated for it or
12 done anything in like a memorandum of
13 support?

14 DEP. SUPT. FIORE: Well, thank you for
15 your kind words about the troopers. I
16 appreciate that.

17 As I said earlier, we did have input
18 in the Department of Health report and the
19 proposed legislation. It's inappropriate for
20 me to comment on pending legislation.

21 SENATOR ANTONACCI: Thank you. Do you
22 know of any legitimate law enforcement agency
23 that has advocated or supported the
24 legalization of commercial or recreational

1 marijuana?

2 DEP. SUPT. FIORE: I can't answer that
3 question.

4 SENATOR ANTONACCI: Will this have an
5 adverse affect on the K-9 unit? I'm a big
6 fan of the K-9s. As a former comptroller, I
7 loved our sheriff's program. Will this
8 retire K-9s earlier if the marijuana law is
9 passed?

10 DEP. SUPT. FIORE: You know, this is
11 one of the issues that we've discussed with
12 other states. The -- at this point I
13 couldn't say either way.

14 You know, as to whether or not our
15 K-9s may need to be retrained, it's kind of
16 premature to -- until we see how this is
17 operationalized, to really know that.

18 SENATOR ANTONACCI: Okay, thank you.

19 Today the Senate passed a gun buyback
20 law. Was the State Police consulted on this
21 gun buyback law, proposal, by any members of
22 the Senate, or anybody in the executive
23 branch consulted on this gun buyback program?

24 DEP. SUPT. FIORE: I can't say that I

1 was personally consulted. But we do -- you
2 know, as an agency we are typically consulted
3 on this type of legislation or proposal.

4 SENATOR ANTONACCI: Has the State
5 Police ever conducted a gun buyback program
6 before?

7 DEP. SUPT. FIORE: We have not.

8 SENATOR ANTONACCI: I think that's it.
9 Thank you.

10 CHAIRWOMAN KRUEGER: Thank you.

11 Senator Seward to close.

12 SENATOR SEWARD: Thank you, Deputy
13 Superintendent.

14 You know, I come from the Cooperstown
15 area, where the Baseball Hall of Fame is
16 located. And following up on Senator
17 Antonacci's comments in terms of the State
18 Fair, the big event in my rural area is the
19 Baseball Hall of Fame induction weekend. And
20 there's always a heavy State Police presence
21 there, and we appreciate that.

22 But I wanted to zero in on the
23 State Police presence in the City of
24 New York. As you know, the 2018 enacted

1 budget provided for an additional 150
2 State Police officers to be in New York City.
3 What capacity do these troopers serve in the
4 City of New York?

5 DEP. SUPT. FIORE: So the -- you know,
6 for many years we've had a Troop
7 New York City. It was made up of exclusively
8 investigators, BCI members. Going back --
9 and, you know, as you said, we have deployed
10 uniformed members in New York City. Our
11 current authorized strength I believe is
12 207 uniform.

13 Their assignments, what they're
14 assigned to do down there, are exclusively
15 patrolling state-owned facilities. So the
16 nine Metropolitan Transit Authority bridges
17 and tunnels, the -- we have troopers assigned
18 to the two airports, John F. Kennedy and
19 LaGuardia Airport. We have troopers on the
20 train platforms at Penn Station and
21 Grand Central and the 9/11 Memorial. So, you
22 know, these facilities are actually patrolled
23 by state-level law enforcement, and we
24 supplement those patrols.

1 You know, they perform a variety of
2 functions. But, you know, New York City
3 being the number-one terrorism target in the
4 country, one of the main functions they serve
5 down there is to help with the
6 counterterrorism effort in New York City.

7 SENATOR SEWARD: As a follow-up, does
8 the State Police use any metrics to measure
9 the presence of troopers in the City of
10 New York is a worthy expenditure? I mean, is
11 there -- what was -- prior to 2018 were these
12 state facilities guarded by other agencies?

13 DEP. SUPT. FIORE: What I can say is
14 they are doing excellent work down there.
15 The troopers assigned down there are
16 representing the agency extremely well.
17 They're active in enforcement, both in
18 highway safety and getting drivers off the
19 road that are either suspended or --
20 sometimes, you know, they're making criminal
21 arrests as well on -- encountering people
22 that are wanted or committing crimes in the
23 areas that they are patrolling.

24 So I feel they're doing an outstanding

1 job down there.

2 SENATOR SEWARD: As another follow-up,
3 for the last couple of years the
4 National Guard has been spending
5 approximately \$50 million a year to provide
6 the counterterrorism in bridge and tunnel
7 security in the city as well. There is not a
8 new \$50 million item in the proposed budget
9 for next year. Do you feel that there's
10 going to be any increased pressure on the
11 State Police to fill this void?

12 DEP. SUPT. FIORE: You're speaking
13 about an appropriation for the Guard, is
14 that --

15 SENATOR SEWARD: Right. If there's no
16 appropriation for the Guard, will you feel
17 pressure for the State Police to fill the
18 void in terms of what the National Guard
19 members are doing in the city?

20 DEP. SUPT. FIORE: Well, again, the
21 National Guard, they also do a phenomenal
22 job, but they are not police officers. So
23 there really isn't a crossover for what we're
24 doing and what the Guard is doing. So I

1 don't see why there would be an impact.

2 SENATOR SEWARD: I just wanted to just
3 get your reaction to this. The reason I'm
4 asking questions about the New York City
5 presence of the State Police is I'm coming
6 from a rural upstate area. Are you able to
7 assure my constituents that even though these
8 additional resources are going to the
9 State Police to have a heavier presence in
10 the City of New York, that the rural parts of
11 our state are not being shortchanged in terms
12 of the number of State Police officers in
13 some of these counties that -- sometimes n
14 the middle of the night it's one car for a
15 whole county.

16 DEP. SUPT. FIORE: What I'll say on
17 that is, you know, it's my understanding from
18 the former superintendent that the Governor
19 made a commitment to him that any troopers
20 that were assigned to New York City were not
21 going to come at the expense of upstate.

22 We're -- we actually have a class of
23 250 recruits that just started in January, on
24 January 14th. Two hundred fifty is the

1 maximum class that we can put in our academy.
2 So that's really as good as it gets.

3 What we have experienced over the last
4 several years is an unusually high rate of
5 attrition. This wasn't unexpected. Our
6 attrition rate is generally around 195 to 197
7 a year. Over the five-year average, it's
8 been closer to about 225. And if you go back
9 to just the start of this fiscal year, the
10 first nine months, and project it out to what
11 it will be in 12 months, if that continues,
12 we're up around 275 this year. Which is a
13 lot of attrition.

14 You know, there's a variety of
15 reasons, the main reason being we had a real
16 upsurge in hiring in the middle to late '80s.
17 Those troopers are reaching 32 years of
18 service, and 32 years is when we max out on
19 our retirement. Plus many troopers reached a
20 retirement age at that point.

21 Combine that with the younger troopers
22 seem to be retiring younger. We're seeing
23 more troopers retiring with 20 years or --
24 you know, between 20, 23 years of service.

1 So in answer to your question, the
2 troopers in New York City are not at the
3 expense of upstate, but we still need more
4 troopers. And we're doing -- like I said,
5 with a class of 250, that's as good as it
6 gets. And hopefully we'll continue that.
7 We're expecting two classes this year.

8 SENATOR SEWARD: Thank you for your
9 response.

10 CHAIRWOMAN KRUEGER: And thank you for
11 your testimony and your service. And we're
12 letting you go for this evening. Thank you.

13 DEP. SUPT. FIORE: Thank you.

14 CHAIRWOMAN KRUEGER: Appreciate it.

15 All right, next up to testify is
16 William Leahy of the New York State Office of
17 Indigent Legal Services, soon to be followed
18 by the chief information officer for the
19 Office of Information Technology Services,
20 Robert Samson.

21 And for getting ready, these last two
22 testifiers will end the representatives of
23 state government, and then I'll be explaining
24 a slightly different process for the

1 remainder of the people here today.

2 So welcome.

3 DIRECTOR LEAHY: Thank you, Chair
4 Krueger, and congratulations on your
5 position.

6 CHAIRWOMAN KRUEGER: Please summarize
7 your testimony, don't read it. Thank you.

8 DIRECTOR LEAHY: I guess I should say
9 Chair Krueger and members of the Senate.

10 (Laughter.)

11 DIRECTOR LEAHY: So it's a pleasure to
12 be here and to report some very good news to
13 you and also to seek your assistance on
14 aspects of the budget.

15 As many if not most of you know, our
16 agency was created to try to improve the
17 quality of mandated legal representation
18 throughout the State of New York. We've been
19 in business now for just about eight years.
20 And that mandated representation consists of
21 about 75 percent adult criminal defense
22 representation and about 25 percent
23 representation of parents, primarily in
24 Family Court.

1 Now, three years or so ago I was here
2 to tell you about a tale of two states. Why
3 did I do that? This was in the aftermath of
4 the settlement of the Hurrell-Harring
5 class-action litigation between the State of
6 New York and the plaintiff class. And as a
7 result of that, five counties -- Onondaga,
8 Ontario, Schuyler, Suffolk and Washington --
9 benefited with dramatically reduced
10 caseloads, a guarantee of counsel at
11 arraignment, and the guarantee of the
12 provision of adequate support services for
13 the lawyers who represent the clients to whom
14 they were assigned. And by support services
15 I mean things like investigators and social
16 workers and adequate staff.

17 The caseload standards that were then
18 implemented in those five counties I'm proud
19 to say were created by my office with great
20 assistance from our fantastic research staff.
21 They are the lowest, best, most supportive
22 caseload standards -- funded caseload
23 standards -- anywhere in the United States.
24 And that was a tremendous achievement.

1 So why was I talking about a tale of
2 two states? Because what about the other 52
3 counties and New York City, which were left
4 out then. And I was sorry to see Pat Fahy
5 leave a few minutes ago, because she's one of
6 the heroes -- the Fahy-DeFrancisco bill was
7 passed which addressed all of the issues
8 across all of mandated representation. It
9 was vetoed, but then came the Governor's
10 proposal and the support of the Legislature
11 for statewide expansion of the
12 Hurrell-Harring reforms.

13 And what is very, very good news in
14 this Executive Budget, and which I urge you
15 to support, is the second full year of
16 statewide funding for what is to be a
17 five-year program culminating in full
18 compliance by April 1, 2023, with all of the
19 reforms I previously mentioned to you.

20 Now, I should also say, because we're
21 about three and a half years or so into the
22 reform in the five counties under the lawsuit
23 settlement, we will have reached compliance
24 by the deadline of April 30th of this year,

1 2019, with those caseload standards in the
2 five lawsuit counties and also with the other
3 provisions in that settlement. That
4 settlement still has a few years to run, but
5 compliance will have been achieved.

6 Now, that's the good news. The
7 criminal defendant component of our
8 responsibilities is accomplishing something
9 that no other state that has a county-based
10 public defense system has been able to do,
11 and that is to elevate the level of
12 representation so that there is high-quality
13 representation for every client charged with
14 a crime throughout the State of New York.

15 And I should mention to those of you
16 who have responsibilities with New York City
17 that New York City is very much a part of
18 these reforms. And we'll work very closely
19 with the mayor's Office of Criminal Justice,
20 with the presiding judges of the two
21 appellate departments, and of course with the
22 providers. So that's the very good news. I
23 have a staff working on the five counties and
24 a staff working on statewide.

1 So the other good news in the budget
2 is in the current-year budget and in the
3 budget coming forward to you is that we are
4 building up our grants unit so that we can
5 keep up with the tremendously increased
6 nature of our responsibilities.

7 And the further good news is that when
8 we proposed on December 2017, pursuant to
9 your legislation, plans to the Division of
10 Budget to implement this reform, we added two
11 things, we put two things in. One is the
12 need for data collection, uniform, consistent
13 data collection and funding for each county
14 and the city to hire a data officer. That is
15 well underway. We're making great progress
16 there. And secondly is a plan for regional
17 support centers. And we're also pleased that
18 in this budget there is a provision for
19 transfer of appropriation from local aid to
20 state operations, which we will utilize to
21 build our first of what we hope ultimately
22 will be a statewide network of regional
23 support centers, which will help the counties
24 and the city to implement these tremendous

1 reforms.

2 Now, that's all the good news.

3 I mentioned at the outset we have two
4 separate responsibilities, criminal defense
5 and parent representation. So now this year
6 I come to you not with a tale of two states,
7 but with a tale of two responsibilities.
8 Because not enough has happened yet with
9 respect to parental representation. And I do
10 want to say that we were very disappointed in
11 the omission of a \$3 million request that we
12 made in this year's Executive Budget request
13 for -- what we're trying to do with that
14 \$3 million is to do what we did with the
15 \$4 million grant that the Governor and the
16 Legislature approved before the
17 Hurrell-Harring settlement was approved back
18 in 2014, to reduce caseloads and provide
19 adequate services in the area of parent
20 representation.

21 Now, why do I think that that is such
22 a big deal? Three reasons. One, the need is
23 dire. It's dire and it's immediate. We are
24 receiving repeated questions from everywhere

1 from Suffolk County on Long Island to Niagara
2 County, from Cattaraugus County in the
3 southwest up to St. Lawrence County in the
4 North Country, for some assistance -- an
5 additional lawyer to reduce excessive
6 caseloads, a social worker to work with
7 parents to comply with their responsibilities
8 and to keep their child or have their child
9 returned to them.

10 The second reason is that we've done
11 this before with that \$4 million several
12 years ago with respect to criminal defense.
13 That \$4 million went to 47 counties. And
14 yes, it's only maybe an additional personnel
15 or two additional personnel in each county.
16 It made a tremendous difference. Even before
17 the lawsuit was settled, we reduced caseloads
18 upstate. They were still horrendously
19 excessive, but we reduced them by around
20 20 percent.

21 So you can do a lot upstate with a
22 little. And I don't mean to suggest
23 3 million is a little, but comparatively
24 speaking with some of numbers we've heard

1 today.

2 The third reason, and it's a powerful
3 reason, is that this \$3 million, this
4 beginning seedling of reform for parent
5 representation will bridge the time until
6 Chief Judge DiFiore's Commission on Parental
7 Legal Representation -- which you may recall
8 she announced it last February in her State
9 of the Judiciary speech. That commission,
10 under the leadership of former Presiding
11 Judge Karen Peters, has been holding public
12 hearings. I had the privilege of testifying
13 at one. They have heard an abundance of
14 evidence from judges, from providers, from
15 county officials. And we anticipate that
16 their recommendations will be coming out in
17 the coming weeks.

18 And we're really looking forward to
19 that, but we know that systemic statewide
20 reform takes time to implement. And so this
21 \$3 million will get us started. That can
22 start April 1st with funding.

23 Now, we are seeking reconsideration by
24 the Executive. I hope we don't -- I hope

1 will ultimately get to testify, the deputy
2 director of the New York State Defenders
3 Association. They're our indispensable
4 partner in statewide reform, training, data
5 collection. Please heed her request.

6 CHAIRWOMAN KRUEGER: Thank you.

7 Senator Jamaal Bailey, chair of Codes.

8 SENATOR BAILEY: Thank you, Director
9 Leahy. I will be brief.

10 One, I wanted to thank you for coming
11 down to the district office and having a
12 conversation with me about the work that
13 you're doing.

14 And I won't comment so much about the
15 budgetary request, but I wanted to ask your
16 position on pretrial reforms as indicated in
17 the Executive Budget and how they would
18 relate to not only defense caseloads but how
19 they would -- do you believe that they would
20 assist in lowering caseloads of prosecutors
21 as well?

22 DIRECTOR LEAHY: Well, I think I'll
23 echo some of the previous speakers on that
24 regard, Senator. I think discovery reform,

1 bail reform -- I mean, we have a particular
2 perspective on bail reform upstate. It's
3 actually the frequency with which people are
4 held pretrial on those small bails is really
5 quite excessive upstate on these
6 relatively -- relatively -- minor issues.

7 And in terms of discovery, I mean,
8 I -- you know, my career before I came here
9 was in Massachusetts where they reformed
10 discovery rules in 1979. The horror stories
11 that you hear about what will happen if you
12 have true discovery, they don't happen,
13 because prosecutors and judges do their jobs
14 and defense counsel do their jobs.

15 So I think the reforms -- you know,
16 the devil is always in the details, but the
17 reforms are solid, they're progressive, we
18 support them.

19 SENATOR BAILEY: Well, I'm glad to
20 hear that you believe that the sky will not
21 fall if we do the reforms that we need to do.

22 Thank you, Director Leahy.

23 CHAIRWOMAN KRUEGER: Thank you.

24 Assembly? No?

1 Okay. Senator Seward.

2 SENATOR SEWARD: Thank you, Madam
3 Chair and Director Leahy.

4 I wanted to ask some questions
5 regarding the statewide indigent legal
6 defense plan. As you know, the 2017-2018
7 enacted State Budget -- that's when we moved
8 forward with the statewide plan --

9 (Calls of "mic.")

10 SENATOR SEWARD: Okay, is that better?

11 DIRECTOR LEAHY: Yes. Yeah, thank
12 you.

13 SENATOR SEWARD: Were you able to hear
14 what I had to say?

15 DIRECTOR LEAHY: Yes, I did.

16 SENATOR SEWARD: Okay, good.

17 Have any of the counties that
18 submitted their plans -- they were required
19 to by December 2017 -- have any of them
20 actually moved forward with implementing
21 those plans?

22 DIRECTOR LEAHY: Well, we have to get
23 to contract. We have five contracts that we
24 have agreed to with counties and are being

1 reviewed by the Executive right now, then
2 they'll go to the Comptroller. We have 24,
3 total, that are agreed to in principle. So
4 we're well along. We're getting there.

5 This statewide process -- when I
6 mentioned earlier that no other state is
7 doing this, I mean, they're in early stages
8 of less comprehensive reforms. This is
9 really a transformational reform. It's
10 requiring counties that for 50 years have
11 essentially gotten along on their own with no
12 direction or support from the state, and now
13 they're getting both.

14 So -- and so -- but I'd say about half
15 the counties were well along with New York
16 City. And, you know, we're going to get
17 there with everybody.

18 SENATOR SEWARD: So none of the
19 counties, then, have actually vouchered for
20 reimbursement?

21 DIRECTOR LEAHY: No, they can't
22 voucher yet because we haven't gotten to
23 contract yet. It has to go through the whole
24 State Comptroller process. It will be a few

1 more months.

2 SENATOR SEWARD: Do you feel that the
3 estimated \$250 million in terms of the full
4 expansion by I think it's 2022, will that --
5 is that number accurate in terms of being
6 able to do the program on --

7 DIRECTOR LEAHY: Yeah, that's the
8 number we came up with. It was actually --
9 it might have been 249, but on our
10 December 1, 2017, plan. Now, that was based
11 on 2016 data. So I remember writing in the
12 cover letter "Criminal justice is volatile.
13 Arrest rates, prosecution practices, judicial
14 plea bargaining practices, quality of defense
15 counsel -- all of these things impact --
16 yeah.

17 So, you know, should circumstances
18 change over the five-year period -- and when
19 do they not? -- we will be on that. We have
20 a terrific team of researchers led by Andy
21 Davies, our director of research. And we
22 will also be studying and analyzing the
23 impact. We're looking at a couple of
24 possibilities of ways to study and report on

1 what difference does it make to have a good
2 lawyer. You know, it makes a lot of
3 difference to the client, I think, but does
4 it make a difference to the outcome? We're
5 going to be studying both.

6 SENATOR SEWARD: The Executive Budget
7 proposal, as you pointed out, includes
8 funding for two additional employees and
9 staff with your unit.

10 Do you envision, as we move toward
11 full implementation by that 2022-2023 time
12 frame, do you envision that more employees
13 will need to be hired in order to fully
14 implement the program?

15 DIRECTOR LEAHY: Yes, there definitely
16 will be more employees hired. Of course
17 counties still retain the ability to move --
18 you know, move their mix. They can from more
19 assigned counsel to more staff attorneys or
20 vice versa. A couple of counties that have
21 been relying exclusively on assigned counsel
22 programs are now moving towards a public
23 defender system. And conversely, some
24 counties that have never had an assigned

1 counsel program are now creating assigned
2 counsel programs.

3 SENATOR SEWARD: So it's somewhat of a
4 moving target, is that what you're saying?

5 DIRECTOR LEAHY: It's a period of
6 great creativity. Counties now can work with
7 us and decide their direction without being
8 constrained by a lack of state financial
9 support.

10 SENATOR SEWARD: Thank you, Director.

11 DIRECTOR LEAHY: Thank you very much.

12 CHAIRWOMAN KRUEGER: Thank you. Thank
13 you for the time. Appreciate it.

14 Our next testifier, Robert Samson,
15 New York Office of Information Technology
16 Services.

17 I feel like saying "now for something
18 completely different" after endless police
19 and courtroom issues.

20 OITS CIO SAMSON: I admire your
21 stamina, for starters. Thank you for that.

22 It's good to see you. It is snowing
23 outside. So let's get started.

24 Good afternoon, Chairwoman Krueger,

1 it's good to see you again.

2 CHAIRWOMAN KRUEGER: Nice to see you.

3 OITS CIO SAMSON: I don't see
4 Assemblywoman Weinstein, but my best to her.

5 CHAIRWOMAN KRUEGER: The Assembly did
6 not go on strike, they were needed back in
7 the Assembly chambers for debate.

8 OITS CIO SAMSON: Well, as you
9 mentioned, my name is Bob Samson, and I am
10 the chief information officer for the State of
11 New York, working at the Office of
12 Information Technology Services.

13 Before getting into the details of
14 ITS's proposed budget, I'd like to present
15 some context to the world we find ourselves
16 in. Information and services are available
17 anytime, anywhere. People now expect an
18 immediate response from whomever they
19 interact with -- certainly from the Googles
20 and Apples and Amazons of the world. And
21 citizens have come to expect the same from
22 their government.

23 Consider the things that government
24 does. We respond to people in distress. We

1 respond to public safety threats. We help
2 our children. We protect our food and milk
3 supply. We focus on improving healthcare and
4 the environment. The services government
5 delivers are life-and-death critical, making
6 government's level of responsiveness even
7 more significant. So how is New York State
8 government meeting these expectations? Quite
9 frankly, the same way Google, Apple and
10 Amazon does -- with technology.

11 This phenomenon, leveraging technology
12 to meet demands, cuts across all industries.
13 As a result, technology is clearly critical
14 infrastructure. Just as we maintain our
15 roads, bridges and highways by keeping them
16 free of snow, ice and potholes and enforcing
17 regulation with speeding laws and a dedicated
18 police force, we must do the same with our IT
19 roads and bridges.

20 The Executive Budget for this coming
21 fiscal year does just that. It includes
22 \$583 million in General Fund support for ITS
23 to maintain the critical technology
24 infrastructure that more than 40 executive

1 branch agencies rely on to meet the
2 expectations and needs of residents and
3 businesses in New York. It also includes
4 \$96 million in capital funds for technology
5 modernization projects.

6 My purpose here today is to explain
7 how ITS will use that budget to empower
8 New York through technology. ITS is in the
9 position to do that because of the bold and
10 progressive vision of Governor Cuomo. He saw
11 this coming phenomenon and prepared for it in
12 2012 by transforming New York's siloed,
13 shackled, and incomprehensible IT makeup into
14 a defined, shared, statewide IT delivery
15 organization called the Office of Information
16 Technology Services.

17 Today, through ITS, New York State
18 operates the state's technology
19 infrastructure at scale, and New York is the
20 only state that can say that. What does this
21 "scale" look like? ITS manages 1,600 miles
22 of fiber network for broadband and voice
23 connectivity to more than 5,000 agency sites.
24 It securely manages more than 17 million

1 New York resident and business accounts for
2 government services such as DMV
3 registrations, tax filings and business and
4 recreational licensing. ITS processes
5 roughly 50 million transactions every day.
6 It maintains and secures approximately 4,500
7 web, mobile and business applications and
8 more than 10,000 servers and 4,000 databases
9 that support applications, and it backs up
10 approximately 25 petabytes of data every
11 night.

12 By creating an organization at this
13 level of scale and sophistication, the state
14 is better equipped to use technology to meet
15 the increasing demands of constituents. Just
16 how is the state going to leverage this
17 technology? At ITS we see this occurring
18 through five overarching technology trends
19 that are critically important.

20 The first is ubiquitous computing.
21 The world is increasingly becoming
22 instrumented, interconnected and, as a
23 result, intelligent. This instrumentation is
24 now making processes and the physical having

1 an intelligence that it never had before.

2 One example of this is the Mario M.
3 Cuomo Bridge, which in addition to making
4 desperately needed physical improvements,
5 includes sensors and other technology that
6 measure the health and safety of the bridge
7 at all times, making it the most intelligent
8 bridge in the world. These types of
9 technologies, this ubiquitous computing,
10 protect investments made in the physical
11 bridge by enabling the state to check its
12 health in realtime and make adjustments and
13 improvements throughout its lifetime.

14 Another example of this ubiquity is
15 happening right now today as snowplows are
16 instrumented with microprocessors that detect
17 the temperature of the pavement and how much
18 salt to put down on the road.

19 The second trend is data -- which, as
20 a metaphor, is the "new oil." In New York
21 State, data is growing at a rate of 30 to
22 40 percent annually, largely due to the
23 ubiquitous computing I just described.
24 New York collects data on public safety,

1 agriculture, transportation, healthcare,
2 child welfare, and more. But the true value
3 lies not in the amount and types of the data
4 we collect, but in the extraction,
5 refinement, analysis, and visualization,
6 where data is truly wisdom yet to be
7 revealed. ITS is the technology platform
8 from which the state can extract real value
9 from its wealth of data and solve the
10 grandest of our challenges.

11 The third trend is cloud computing.
12 Cloud computing is now more than a place to
13 store data and run applications. It's a
14 place to rapidly and securely build and
15 extend technology solutions to meet
16 accelerating citizen demands. In 2018, ITS
17 introduced the Excelsior Cloud, a first-in-
18 the-nation, state-run, private cloud platform
19 specifically designed for New York government
20 entities to run applications and store
21 sensitive information in a highly secure
22 environment. ITS also leverages other cloud
23 technologies in a pragmatic way.

24 The fourth trend is that all IT is

1 cyber. Cybersecurity must be built into our
2 business processes, and our technology
3 solutions, from the ground up. As the
4 state's IT service delivery organization,
5 cybersecurity is our overarching core
6 mission, and we invest approximately
7 10 percent of the agency's budget in
8 cybersecurity.

9 If you'd like a more detailed briefing
10 on cyber, I would be happy to provide it in a
11 closed session.

12 Finally, the fifth and perhaps most
13 important is the trend towards innovation
14 that is accelerating because of these other
15 megatrends that I mentioned. These trends
16 are interconnected and drive this
17 acceleration of innovation.

18 New Yorkers are engaging with their
19 government online at an unprecedented rate.
20 For example, New York State websites
21 experience nearly 400 million page views
22 annually. The public has embraced the
23 digital world, and this creates the digital
24 imperative to which ITS and the state must

1 respond. You don't have to look far to see
2 this acceleration of innovation in New York
3 State to realize why we are leading. For
4 example, we have announced a
5 first-in-the-nation virtual hearing for
6 workers' compensation; a first-in-the-nation
7 New York State Business Express to allow
8 businesses to form quickly and efficiently; a
9 first-in-the-nation plant inspection mobile
10 application; a first-in-the-nation New York
11 State Mentoring Program Portal; and a
12 first-in-the-nation Disaster Preparedness
13 Asset Tracker -- and there are many, many
14 more.

15 In the end, technology touches every
16 aspect of what government does, and true
17 innovation occurs at the intersection of
18 process, talented people, and technology.
19 Our vision as an agency is innovation that
20 matters for all New Yorkers. Our operating
21 priorities are to be client-centric, focused
22 on our agency clients; skills-based, placing
23 our people at the center of everything we do;
24 and process-driven, ensuring consistency and

1 predictable execution.

2 This is how we deliver on our
3 commitment to help government serve all
4 New Yorkers and continue to lead New York
5 State ever upward.

6 Thank you for this opportunity to be
7 here with you, and now I'd welcome any
8 questions.

9 CHAIRWOMAN WEINSTEIN: Thank you.

10 OITS CIO SAMSON: Assemblywoman
11 Weinstein, it's good to see you. I
12 recognized you when I first came here.

13 CHAIRWOMAN WEINSTEIN: Thank you.

14 So we'll go first to Senator Savino.

15 SENATOR SAVINO: Thank you,
16 Assemblywoman.

17 Commissioner, it's good to see again.

18 OITS CIO SAMSON: Good to see you
19 again, Senator.

20 SENATOR SAVINO: Nice to see you last
21 week at the Business Council, where we both
22 talked about the future of IT in all of its
23 aspects.

24 I want to just briefly focus on a

1 couple of points. In your testimony you
2 talked about the trends -- you know, we have
3 to get used to all these new terms:
4 ubiquitous computing, artificial
5 intelligence, you know, the gig economy -- it
6 goes on and on. But you talked about
7 something that is very important, which is
8 the collection of data and data security.

9 So in your own testimony, New York
10 State, the ITS system manages 17 million
11 residence and business accounts, processes
12 about 50 million transactions daily, through
13 all sorts of state agencies. And earlier
14 today the acting commissioner of Homeland
15 Security talked about how they have had to
16 respond to several counties around the state
17 where there have been data breaches and help
18 them more adequately secure their cyber. So,
19 you know, addressing issues of cybersecurity
20 and leaks.

21 Do you work directly with Homeland
22 Security on those issues?

23 OITS CIO SAMSON: Yes, we do.

24 So cyber is the ultimate team sport.

1 And we have, between DHSES and State Police
2 and ISAC and ITS -- we have, in ITS, 60
3 dedicated professionals, thereabouts. We
4 have the New York State Cyber Command Center,
5 which is part of ITS. So we work
6 collaboratively. We've done this at several
7 counties, a number of counties. We've
8 actually worked with about half of the
9 counties in New York State on cyber, some
10 more dramatic than others in terms of the
11 remediation that had to occur. But we work
12 very, very closely together with those other
13 entities.

14 SENATOR SAVINO: And as you know from
15 previous discussions, I think -- it's about
16 seven years or so ago -- no, more than
17 that -- eight or nine years ago that we
18 passed the legislation to do IT insourcing so
19 that the state could develop a workforce of
20 IT experts.

21 So how well have we done on
22 implementing that? And my concern always
23 about it was that the competition from the
24 private sector was going to be so

1 overwhelming for these experts that they
2 wouldn't want to stay in the public sector.
3 So have we seen an ability to attract quality
4 talent and, most importantly, keep them?

5 OITS CIO SAMSON: That is a great
6 question.

7 So for starters, we have about 150
8 interns that work in our agency. So we've
9 done a very good job of at least recruiting
10 interns on campuses as far south as Marist
11 College and certainly in this local area as
12 well.

13 So the first thing is to attract the
14 next-generation workforce. Often they come
15 to work for us because the work is
16 compelling. While we can't compete with how
17 much money we pay, it has to be a compelling
18 place to work. And to get them involved in
19 these projects where you're really creating
20 an innovative solution to a problem, you're
21 beginning to help solve grand challenges that
22 we face, that makes it a compelling place for
23 them to come and work.

24 The second thing is to attract a

1 workforce, particularly in cyber, which is
2 probably the more difficult one, the state's
3 chief information security officer is Deb
4 Snyder, she is an adjunct professor at SUNY
5 Albany. That gives us wonderful proximity to
6 the next generation of cyber warriors there.
7 So we've really built a strong cyber team off
8 of the relationships and quite frankly the
9 capability that Deb Snyder brings to the
10 table.

11 The last thing is our organization, as
12 I mentioned, is focused on our clients but
13 skills-based. So in the last fiscal year
14 we've doubled our skills budget for training
15 our employees. We'll double it again this
16 year. You cannot have an IT service delivery
17 organization where people are not at the
18 center of everything that you do -- building
19 their skills, investing in their talents and
20 capabilities in a profound way. And that's
21 where we spend a good deal of our budget
22 doing that.

23 SENATOR SAVINO: So two other points I
24 want to make. You heard me speak the other

1 day about the issue of cyber liability.
2 Because we know how important cybersecurity
3 is. And the reality is most businesses, if
4 they were hit with a breach, many of them
5 wind up going bankrupt within six months
6 because they cannot afford the recovery --
7 not just the financial recovery, but the
8 reputational recovery.

9 So we're looking to explore whether or
10 not requiring companies over a certain size
11 to carry cyber insurance might not be a
12 beneficial thing. There's two schools of
13 thought: One, that if you make them carry
14 insurance, they'll be even more risky with
15 their systems because they'll think the
16 insurance will cover it.

17 But I'm just curious as to your
18 opinion. Do you think that that might be a
19 solution for companies to secure themselves,
20 because the threat of cyber losses is so
21 large?

22 OITS CIO SAMSON: I think the first
23 order is to -- particularly for smaller
24 businesses, because we've actually been

1 involved with a number of small businesses
2 that have had cyber incidents. So the first
3 thing is to give them tools, training,
4 perspective, context on how to manage their
5 cyber sort of architecture. We have a cyber
6 toolkit we've created, we can give that to
7 small business. We've given it to local
8 governments, we've given it to school
9 districts. So it's a toolkit to begin the
10 process of examining their cyber -- not just
11 their hygiene, but 20 different
12 characteristics around cyber that they can go
13 execute on. That's the first thing.

14 Whether or not they get insurance or
15 not -- you know, you raise a fair point that
16 it might make them -- well, I'm insured for
17 that, so I don't have to really worry about
18 it. The first thing, we have to get them
19 worried about it. This is especially true
20 for local governments, where we have spent an
21 enormous amount of time working with local
22 governments, with toolkits, education,
23 training. We run the largest state-run cyber
24 conference here in New York. We'll have

1 close to 2,000 people attend that this year.

2 It's in June, June 4th and 5th.

3 We have separate tracks for school
4 districts, separate tracks for local
5 governments, and separate tracks for small
6 businesses to come and learn. That's sort of
7 like the first order of things that we can
8 do.

9 The next thing is when there's an
10 issue, it's very often, for local
11 governments, who do they call? And they call
12 us. They call the state. And for us, our
13 state systems are often connected to these
14 local government systems. So to the first
15 order, to protect our state systems, we need
16 to make sure that we're doing all the right
17 things, remediating and protecting any
18 connections that those local governments have
19 to the state. And that's the first priority
20 we have when we arrive at one of these cyber
21 incidents.

22 SENATOR SAVINO: Thank you.

23 In the few minutes I have left, I'm
24 going to switch to my usual favorite topic,

1 which is always of course the workforce.
2 I've been saying this for years now, the
3 world is changing and we're not going to be
4 able to turn the clock back. The Brookings
5 Institute just recently put out a report that
6 showed that because of automation and
7 artificial intelligence, there are going to
8 be whole sectors of our economy the
9 essentially disappear from the workforce,
10 where humans will no longer perform those
11 functions. They tend to be the lowest-paid
12 jobs in the retail industry, in the food
13 service industry, and in the clerical system.
14 So there are whole sections of the state
15 workforce that are entry-level positions; the
16 likelihood is they will disappear in a few
17 years because automation will replace the
18 human function.

19 So do you work at all with GOER, which
20 is the Governor's Office of Employee
21 Relations, and the Office of Civil Service to
22 talk about changing or maybe retraining
23 people for the future workforce or developing
24 opportunities for people as those low-level

1 entry jobs disappear in these various
2 sectors?

3 OITS CIO SAMSON: It's a great
4 question. So for GOER specifically -- let me
5 just back up for a moment.

6 When I talk about innovation
7 accelerating, we do a number of things with
8 our agency clients, one of which is a thing
9 called an innovation summit, where we leave
10 technology outside the door and we talk about
11 the challenge inside that particular agency's
12 mission and then how technology might be able
13 to help them and accelerate them.

14 We actually have an innovation summit
15 next week with GOER to begin addressing
16 issues like this. It will be our first
17 innovation summit with Mike and his team to
18 begin examining what we might do.

19 I will also add that artificial
20 intelligence, the fuel for artificial
21 intelligence is data. I mentioned data
22 before. Data scientists and data science
23 presents a whole new frontier for careers in
24 one dimension. But AI also offers the

1 potential to really begin solving some of the
2 grand challenges we face in government,
3 because it is a way to take data that we have
4 and analyze it and do predictive kinds of
5 analytics around it to literally change the
6 world and some of the missions that agencies
7 have responsibility for.

8 To your point, at our innovation
9 summit, I welcome you if you'd like to come.
10 It's next week, I think it's the 4th or 5th,
11 with Mike and his team, to begin having a
12 summit around topics like this -- what are
13 the implications of artificial intelligence,
14 what does it mean to our workforce. It's a
15 critical path for us to educate our workforce
16 on artificial intelligence.

17 We just started off a track for things
18 like quantum computing. I know that's not
19 something everybody necessarily is totally
20 familiar with, but it is the next generation
21 of technology that will be here in next three
22 to five years. So we need to begin investing
23 in our workforce now to have proximity and
24 knowledge about that, and that's what we're

1 doing.

2 SENATOR SAVINO: Thank you. If you
3 could have someone share the information
4 about that meeting next week. If I'm
5 available, I would love to be there.

6 OITS CIO SAMSON: I would love to have
7 you come. It would be great.

8 SENATOR SAVINO: If not, I certainly
9 have enough staff I can send one of them.
10 Thank you.

11 OITS CIO SAMSON: And thank you for
12 your passion for our workforce too, by the
13 way.

14 SENATOR SAVINO: Thank you.

15 CHAIRWOMAN WEINSTEIN: Thank you.
16 We're going to go to Assemblyman Barclay.

17 ASSEMBLYMAN BARCLAY: Thank you.

18 OITS CIO SAMSON: Hello, Assemblyman.
19 Good to see you.

20 ASSEMBLYMAN BARCLAY: Good to see you.
21 Thanks for your testimony.

22 I was just going to ask you a little
23 bit about data, one of the things you
24 mentioned in your -- the four points you made

1 about technology going forward.

2 Does the state have any processes or
3 anything in place as far as protecting, you
4 know, whatever big data or data you collect
5 from our citizens to make sure that that
6 isn't used for other purposes than what maybe
7 the citizen thought that they were giving
8 that data for to the state?

9 OITS CIO SAMSON: Another great
10 question. So let me just back up for a
11 moment.

12 We have now successfully consolidated
13 53 of the state's data centers into one
14 place. So if you can imagine, just six short
15 years ago, before the Governor announced we
16 were going to be consolidating IT into ITS,
17 we had 53 different data centers, multiple
18 databases spread out all over the place.
19 Your ability to protect that is very limited,
20 that data, quite frankly.

21 So the first thing is to consolidate
22 it. It now is in our Excelsior Cloud that I
23 mentioned in my testimony. The Excelsior
24 Cloud is the home of the state's data. It is

1 secure, it is protected, it is centralized.
2 And we use some of the latest technology to
3 begin encrypting it. So encrypted data is
4 the way to protect it, because if it ever
5 gets stolen, it's just a brick that nobody
6 can do anything with. So encrypting data,
7 both at rest and in transit as it goes
8 through our system, is another critical path
9 to it.

10 So the first step, though, is the
11 consolidation. That work is now done. I
12 would love to invite any member here that
13 would like to come see the Excelsior Cloud.
14 It's not too far from here. It's in a
15 zero-energy building at the College of
16 Nanoscale Science and Engineering. It is
17 something that quite honestly no other state
18 has. So I would encourage you to come and
19 see it. You'll see where that data is, how
20 it's protected and the technologies we have
21 around it, and how we're beginning to encrypt
22 it.

23 ASSEMBLYMAN BARCLAY: We don't have to
24 take a plane or anything to see that cloud,

1 huh? Look up in the sky.

2 OITS CIO SAMSON: Would you like to
3 come?

4 ASSEMBLYMAN BARCLAY: Maybe.

5 OITS CIO SAMSON: Come see it.

6 ASSEMBLYMAN BARCLAY: I appreciate it.
7 But that -- I appreciate the cybersecurity on
8 that data. But my concern is the sharing of
9 the data among different governmental
10 agencies or -- you know. Is there any -- my
11 tax returns, for example, if I file those
12 electronically.

13 OITS CIO SAMSON: Tax and Finance is
14 very, very protective of that data, as you
15 can imagine.

16 ASSEMBLYMAN BARCLAY: Right.

17 OITS CIO SAMSON: So we are in the
18 process of working on building a state data
19 strategy. As it exists right now, we do not
20 have one. That requires multiple agencies to
21 participate with us.

22 There are tools and techniques now
23 where you can use data to affect
24 decision-making better, but it's anonymized

1 so you really don't know individuals or
2 people that you're looking at, but more just
3 the results of what the data is yielding to
4 you.

5 So that data strategy is work
6 underway. We're actually working with the
7 Center for Technology in Government at SUNY
8 Albany to help us build a statewide strategy.

9 I would tell you there is no state in
10 the nation that has a data strategy, because
11 they suffer from the problem that we had
12 seven years ago with the data spread all over
13 the place, in different agencies, different
14 systems. And now that we've got it
15 consolidated, we can begin building a data
16 strategy around that -- not just how we
17 protect it, because we're good at doing that,
18 but how we leverage it and use it more
19 effectively.

20 ASSEMBLYMAN BARCLAY: Yeah, that's
21 {unintelligible} -- how you protect the
22 actual citizens of New York and not use it
23 for something they didn't realize. Any idea
24 of a timeline on when that strategy will

1 be --

2 OITS CIO SAMSON: We've just kicked
3 off the data strategy work. We hope to
4 conclude at least our first pass over that in
5 the next several months, in the springtime.
6 It's something we'll be happy to share with
7 you if you'd like to see it.

8 Data strategy has multiple elements to
9 it. It's, first, having data governance
10 inside agencies: How do you manage your own
11 data? What is your data governance policy?
12 Begin to examine those, having
13 commissioners -- we'll work jointly with them
14 to do that.

15 But at the end of the day, the data we
16 have and being able to use it, as I mentioned
17 in my testimony, visualize it and use it more
18 effectively is an opportunity to solve many
19 of the grand challenges that we have. Data
20 sharing. It's protected, anonymized, we're
21 not in it -- but the ability to share it,
22 make better decision-making, begin attacking
23 some of the grand challenges that we have, it
24 presents a wonderful opportunity for us.

1 ASSEMBLYMAN BARCLAY: Yeah, I don't --
2 I agree, there is a lot of positive and
3 beneficial things about sharing the data, but
4 there's also a lot of negative too. So as
5 long as there's a strategy and a policy in
6 place, I think that's a good start. So thank
7 you.

8 Thank you, Madam Chair.

9 OITS CIO SAMSON: Thank you,
10 Assemblyman.

11 CHAIRWOMAN WEINSTEIN: Thank you.
12 Senator Seward.

13 SENATOR SEWARD: Thank you. Thank you
14 very much.

15 OITS CIO SAMSON: Hi, Senator. I
16 spend a good deal of time down in your area,
17 down in the Hall of Fame.

18 SENATOR SEWARD: Okay, great. I
19 thought I felt an uptick in the economy.

20 (Laughter.)

21 SENATOR SEWARD: You used the word
22 "strategy" several times, and I just wanted
23 to follow up on that. What strategies are
24 currently identified by ITS to ensure that

1 the individual state agencies provide the
2 most cost-effective and improved IT services
3 for the residents that they serve? And also
4 strategies for identifying the legacy IT
5 infrastructure that has been in place and
6 replacing or upgrading in a cost-effective
7 manner?

8 OITS CIO SAMSON: So the first thing,
9 on strategies, my point of view on strategies
10 are strategies without execution are
11 meaningless. You can have the most
12 wonderful, elegant strategy but if you don't
13 execute around the strategy and then
14 operationalize it, then it's meaningless.

15 So a couple of things on that strategy
16 piece. The first one is we work
17 collaboratively with our agency partners. I
18 mentioned the information summits that we've
19 had where we leave technology at the door and
20 we speak to the challenges, in some cases the
21 grand challenges, that those agencies have.
22 And is technology a player to help them begin
23 resolving that and helping them architect
24 their own strategy for how they do work

1 differently in the environment that we find
2 ourselves in, as described by the trends that
3 I discussed earlier -- ubiquitous computing,
4 data as the new oil, cloud computing, all IT
5 is cyber -- around that framework. So begin
6 constructing a strategy with them.

7 The second piece of that is
8 modernizing systems that are aging quickly.
9 Those are DMV -- DMV systems, some of those
10 are 30-plus years old, as an example. The
11 welfare management system in the state is
12 close to 40 years old. And these systems are
13 currently in the queue for modernization
14 efforts. So it's modernizing these systems.
15 We're doing the same thing at the Department
16 of Labor for unemployment insurance. So
17 these modernization efforts are upgrading
18 systems that are in some sense aging out.

19 I would say part of the strategy is
20 not to find ourselves in modernization sort
21 of -- the modernization world, but more
22 continuous improvement over time. And the
23 nice advantage of having an organization like
24 ITS is you can begin doing that, that you

1 don't wait for 30 years before you modernize
2 something, you begin doing it proactively as
3 an ongoing and continuous improvement model.
4 And that's a part of the strategy and the
5 execution that we have with our workforce.

6 SENATOR SEWARD: Thank you. Could you
7 explain how the responsibility of protecting
8 the Executive's agencies' IT infrastructure
9 is split between the various state agencies
10 and ITS?

11 OITS CIO SAMSON: Well, here's the
12 good news. Protecting the cybersecurity for
13 state agencies sits in one place. It sits
14 here. It sits here. So the cyber team, as I
15 mentioned before, under Governor Cuomo's
16 leadership we have increased our cyber spend
17 50X over what it was six years ago. 50X.
18 Because we have a responsibility that you
19 have legislatively authorized ITS to be the
20 protector of the state's infrastructure, its
21 technology infrastructure, and that's what we
22 do. So it's one place. That's the good
23 news.

24 The other part of this that's

1 critically important is just -- some people
2 might call it -- it's not the technology
3 stuff, it's the hygiene part of this. It's
4 again with agencies making sure that cyber is
5 part of their own critical process for
6 examining how they educate. So we've done
7 lots of education of the state workforce:
8 Don't open that email, don't open that
9 fishing expedition, be careful. Just normal
10 hygiene. Use a 14-character password. Be
11 more specific and more disciplined on how you
12 use the systems that you're authorized to
13 use.

14 To this date, we've not had a breach
15 in the State of New York. This is good news.
16 Although cyber is always a moving target,
17 it's a continuous investment over time.
18 There are threats that are occurring by
19 hundreds of thousands a day to New York
20 State's infrastructure. But this agency is
21 chartered with protecting the New York State
22 IT infrastructure.

23 And that's the final thing I would
24 say, is it is our number-one priority.

1 SENATOR SEWARD: Thank you.

2 CHAIRWOMAN KRUEGER: Assembly.

3 CHAIRWOMAN WEINSTEIN: So I have a
4 question that I've asked before. I'm not
5 sure if you were here to hear it. It keeps
6 getting passed to the next person to --
7 perhaps to answer. So I think you're the end
8 of the line, so hopefully you have the
9 answer.

10 As part of the SAFE Act, there was the
11 requirement of setting up an ammunition
12 database in New York. It was put on hold for
13 a number of years. And I would like an
14 update on that. There was an indication from
15 one of the Governor's -- the Governor's
16 counsel today that it was something that was
17 being developed, and I'd like to know where
18 we stand with that.

19 OITS CIO SAMSON: Okay. So I think as
20 the State Police mentioned -- because I was
21 here -- in their testimony, there are
22 multiple dimensions to the ammo database
23 thing. One is -- certainly technology is one
24 part of it, a database, as the name would

1 imply, an ammo database. I think it
2 simplifies it a little bit when you just look
3 at it as a database. It includes geography,
4 small businesses, citizens. There's multiple
5 dimensions to it.

6 So I think also as the State Police
7 mentioned in their testimony, we're working
8 collaboratively with them on developing a
9 number of options to begin getting this
10 problem solved. So it's a collaborative
11 effort. It's not just technology, it's these
12 other dimensions that are as complex,
13 although even the technology aspect of it
14 isn't a complex issue as much as it is
15 complicated by the other dimensions.

16 CHAIRWOMAN WEINSTEIN: So what kind of
17 a timetable would you have, since this was
18 passed in -- it's five years now. Where do
19 you think we are, and when can we expect
20 this -- well, I guess six years since we
21 passed it, five years since it's been on
22 hold.

23 OITS CIO SAMSON: We've developed a
24 number of options. I think it's now get

1 those completed, collaborating with State
2 Police, and we can come and share those with
3 you if you'd like, and then see where we go
4 from there.

5 But we've got -- as I mentioned, the
6 complexity is not necessarily purely
7 technology, it's the other aspects of it. So
8 we'll put together a number of options and
9 then share those with you if you'd like.

10 CHAIRWOMAN WEINSTEIN: Great. Thank
11 you.

12 CHAIRWOMAN KRUEGER: I just have --

13 CHAIRWOMAN WEINSTEIN: Yes. Senate.

14 OITS CIO SAMSON: Hey, Senator, good
15 to see you again.

16 CHAIRWOMAN KRUEGER: Hi, how are you?
17 I apologize, I got called out to a meeting
18 while you were reading your testimony.

19 OITS CIO SAMSON: Oh, no problem.

20 CHAIRWOMAN KRUEGER: So I'm glad
21 Helene Weinstein just asked the question I
22 was going to ask you about the ammunition
23 database. Because I agree with you, a
24 database is a database.

1 OITS CIO SAMSON: Yeah.

2 CHAIRWOMAN KRUEGER: But you mentioned
3 the older technologies that need to be dealt
4 with, and you mentioned a DMV and WMS. And I
5 certainly agree. But you know that the
6 question I always have is are we going to
7 ever see modernization of the department --
8 excuse me, the -- it's not -- no longer the
9 department. Housing -- oh, my gosh, why am I
10 blanking on the name? The housing agency.

11 UNIDENTIFIED LEGISLATOR: HCR?

12 CHAIRWOMAN KRUEGER: Thank you.

13 OITS CIO SAMSON: HCR?

14 CHAIRWOMAN KRUEGER: HCR. Are we ever
15 going to see computerization of HCR?

16 OITS CIO SAMSON: You know, I am
17 embarrassed I didn't mention HCR in that
18 modernization effort, and I apologize for
19 that.

20 As you know, we've been through some
21 vendor issues with that early on. Here's
22 what's happening. So we've completed
23 creating a data warehouse. And in that --
24 this is where we get back to data again,

1 Assemblywoman Weinstein -- a data warehouse.
2 And in that data warehouse we have 35 years
3 of renter data. That is new, we've got that
4 worked on. We've now remediated 60,000
5 different records in that 35 years of renter
6 database. So that's just a data warehouse.
7 It really doesn't mean a lot to the public.
8 You can't go out and say to the public, I've
9 got a data warehouse. They don't really
10 care.

11 So within the next several days we'll
12 turn on a renters portal for them to be able
13 to go there and actually construct and do
14 work with HCR. Into that portal we'll add
15 more and more capability over time as we both
16 continue cleaning up the data warehouse to
17 give them capability as a place to go.

18 I thought we were going to turn it on
19 on Monday, but there were some -- not
20 technical issues, it was more of a timing
21 issue. It should be turned on probably no
22 later than the end of this week or early next
23 week. And that will be the HCR portal.

24 Which, since you've been through this

1 a great deal and you've worked on this really
2 hard, this is a big deal to start with. It's
3 a starting place for us. It's a landing
4 place, the HCR portal.

5 CHAIRWOMAN KRUEGER: And then earlier
6 today I asked the Office of Emergency
7 Services, in relationship to their
8 cybersecurity side of them, were they doing
9 anything to assist and ensure that as the
10 State Board of Elections and the local boards
11 of elections were potentially purchasing new
12 equipment or transitioning the kinds of
13 voting machines and voting books they use,
14 was there somebody making sure that we are
15 using the highest standards of cybersecurity
16 so that no one can hack elections through
17 electronic machinery for our elections.

18 OITS CIO SAMSON: That is another
19 great question. And I will tell you, we have
20 the capability to examine whatever
21 hardware -- working collaboratively with the
22 Board of Elections, obviously, whatever they
23 choose -- to evaluate the hardware and the
24 software.

1 There's two dimensions of this, right?

2 One is the hardware. Was that hardware
3 manufactured in a facility that is a trusted
4 foundry? Because you do not want to have
5 chips that come from other places of the
6 world that might have components in them that
7 do nefarious things.

8 The second part of this is the
9 software. And we can examine both of those
10 together in our forensic lab to make sure
11 whatever they choose, that those systems are
12 deployed with the highest levels of security.

13 So the answer, at least from our
14 perspective, is we can do the vulnerable
15 testing, we can assess the hardware, assess
16 the software, look for any vulnerabilities
17 that might exist and weaknesses in both the
18 hardware and the software platforms, and we
19 can do that collaboratively with the BOE. We
20 have a forensic lab in New York State, and
21 it's a place for us to go do that work.

22 CHAIRWOMAN KRUEGER: So can I ask you
23 to reach out to the Board of Elections and
24 share that information with them?

1 OITS CIO SAMSON: I will, sure.

2 CHAIRWOMAN KRUEGER: Because we're
3 often, too often siloed into our different
4 units, and I want to make sure -- because
5 I've seen people trying to sell new voting
6 machines in the Well this week, which
7 reflects to me, oh, that problem again. So
8 it's very -- I think today we understand, far
9 more than we did the first generation that we
10 updated our machines, how much trouble you
11 can get in if you pick the wrong hardware and
12 software.

13 OITS CIO SAMSON: Okay, I will do
14 that.

15 CHAIRWOMAN KRUEGER: Thank you.

16 OITS CIO SAMSON: I'll reach out to
17 BOE. We worked closely with them on that
18 last election, with DHSES, in protecting the
19 last election cycle. So I will reach out to
20 them, and we'll do that. Thank you.

21 CHAIRWOMAN KRUEGER: Thank you very
22 much.

23 OITS CIO SAMSON: Good to see you.

24 Any other questions?

1 CHAIRWOMAN WEINSTEIN: We do, in the
2 Assembly. Assemblyman Lentol.

3 ASSEMBLYMAN LENTOL: Thank you very
4 much, Madam Chair.

5 Sorry that I got here late and missed
6 your testimony. But I'm very interested in
7 this -- everything that you've just said in
8 the answers to the other questions.

9 And the thought occurred to me that
10 we're embarking upon an election system now,
11 and I'm glad we talked about the Board of
12 Elections, which could be a disaster. And
13 I'm speaking about early voting.

14 And I don't know if that is part of
15 your mission to try and get up and running a
16 system of early voting that can actually work
17 for the citizens of the State of New York.
18 Because I can't envision it actually working
19 without some sort of computerization that we
20 don't have, and technology that we don't have
21 presently.

22 We just passed a bill out of
23 committee, and it may be on the floor, to
24 authorize computer voter books. Which is the

1 absolute minimum, I believe, in order to put
2 into effect a database for accomplishing an
3 early voting system.

4 So I wonder if you have any thoughts
5 about how we can actually make this work.
6 Because I can't envision going to a place in
7 Brooklyn where they have 3,000 voter books
8 and they figure out who votes in which voting
9 district.

10 OITS CIO SAMSON: By the way, I was
11 born in Brooklyn, so I can appreciate that
12 comment.

13 So I do not -- we do not have
14 responsibility, direct executive-branch
15 responsibility for BOE. As you know, it's
16 separate. But we advise and give them as
17 much advice and help as we possibly can.

18 And so the simple answer to that is
19 yes, we do, but it is not part of what our
20 mission is. Our mission is to help and
21 assist, to provide advice and counsel, and
22 that's what we do for the BOE.

23 There are other emerging technologies
24 that might help facilitate what your desire

1 is for either early voting or absentee
2 voting.

3 When I was discussing the world of
4 cloud computing, people imagined rooms and
5 buildings full of machines and storage
6 devices and all that, and all of that is
7 true. But the underpinnings of cloud
8 computing, one of those underpinnings is a
9 technology called blockchain. It's a new way
10 to have secure transactions between two
11 parties, is a simple way to look at it.

12 And in West Virginia, the first state
13 in the nation to do this, they actually
14 allowed military that were deployed remotely
15 to vote in absentee ballots using blockchain,
16 so their votes could be counted at the time
17 the election was being held, versus sending
18 in an absentee ballot that might get there
19 weeks and weeks later. And they had no
20 issues with that, it was very successful.

21 But my point is some of these new
22 technologies like that can be applied to
23 that, whether it's early voting, absentee
24 ballots, those kinds of things. That's one

1 of the underpinnings in this cloud sort of
2 trend that I mentioned, is that blockchain
3 idea.

4 So we can talk with the Board of
5 Elections about that; we've given them as
6 much advice and counsel as we can. But sort
7 of constitutionally, we don't have
8 responsibility for managing what they do
9 other than to help them as much as we
10 possibly can.

11 ASSEMBLYMAN LENTOL: So I wish you
12 would, because I'm a little worried that
13 we're going to set in motion a system that's
14 unworkable without some sort of a guidepost.
15 Because the bills that we've passed in both
16 the Senate and the Assembly really give the
17 job to the Board of Elections to roll out a
18 plan, and that's it, with no plan in the bill
19 itself.

20 OITS CIO SAMSON: Okay. We'll work
21 with them as closely as we will. And we
22 have, actually, quite frankly.

23 ASSEMBLYMAN LENTOL: I think they need
24 the help, especially in New York City.

1 OITS CIO SAMSON: Okay.

2 CHAIRWOMAN WEINSTEIN: And the last
3 questioner for the Assembly, Assemblyman
4 Abinanti. Tom?

5 ASSEMBLYMAN ABINANTI: Oh, thank you.

6 Thank you for your comments. Through
7 the wonders of technology, I was able to
8 watch you and hear your presentation while I
9 was over at the Capitol.

10 But I'm intrigued by what you were
11 saying about the collection of data and the
12 consolidation, and I'd like to pursue that.
13 I know my colleagues asked you some
14 questions, but you went off talking in
15 general about the big picture. I think where
16 some of them were going is where I'd like to
17 go. I'd like to talk about the strategy, the
18 rules, the requirements, the restrictions
19 about sharing.

20 You -- if I hear you correctly, you
21 now know more about an individual person in
22 the State of New York than Google does.
23 You've got health data, the welfare
24 department, rental, motor vehicle -- anything

1 you wanted to know about a citizen of
2 New York, you've got somewhere in your cloud.

3 OITS CIO SAMSON: Yes, we do.

4 ASSEMBLYMAN ABINANTI: Okay. Do you
5 also handle the authorities, the state
6 authorities?

7 OITS CIO SAMSON: No, we do not handle
8 state authorities. We provide advice and
9 counsel, but we do not manage them.

10 ASSEMBLYMAN ABINANTI: Where would I
11 find in the law the restrictions on what you
12 can do with data?

13 OITS CIO SAMSON: I do not know the
14 answer to that, but I could probably find
15 that out.

16 ASSEMBLYMAN ABINANTI: Do you have
17 rules and regulations dealing with what you
18 can do with data?

19 OITS CIO SAMSON: You're talking about
20 with authorities, you mean?

21 ASSEMBLYMAN ABINANTI: No, for
22 yourself.

23 OITS CIO SAMSON: Oh, for dealing with
24 authorities or for --

1 ASSEMBLYMAN ABINANTI: No, no, I'm
2 back to the data that you've already
3 collected. You have how many millions of
4 pieces of data. What prevents you from
5 taking data from the Health Department and
6 giving it to Social Services or to somewhere
7 else?

8 OITS CIO SAMSON: Well, in the
9 legislation that created ITS, ITS has the
10 responsibility for a couple of things that I
11 think are big sort of animal pictures. One
12 is cyber, protecting the state assets. The
13 second is data, having responsibility for
14 protecting the data.

15 ASSEMBLYMAN ABINANTI: Right. But I'm
16 talking about the use of that data.

17 OITS CIO SAMSON: The use of that data
18 is guided by a number of different
19 regulations. Some are federal. Some federal
20 guidelines actually do not allow you to share
21 certain data that they have collected in
22 health systems. So there's different
23 elements of that --

24 ASSEMBLYMAN ABINANTI: But does

1 New York have anything that restricts your
2 sharing of that data from one department to
3 another?

4 OITS CIO SAMSON: Well, I follow
5 whatever regulations are around that data.
6 If it's federal data, we don't share it. I
7 can't share it.

8 ASSEMBLYMAN ABINANTI: But what about
9 New York data?

10 OITS CIO SAMSON: By the way, I can't
11 tell an agency to share -- I'm not the data
12 sharer, the agency is. So the agency
13 decides. So if there's data to be shared by
14 an agency, then that agency decides that that
15 data can be shared.

16 ASSEMBLYMAN ABINANTI: Well, see, the
17 reason I'm concerned is the state has entered
18 into contracts through the Thruway Authority
19 with an entity called Conduent. Do you deal
20 with them at all, or is that just the Thruway
21 Authority?

22 OITS CIO SAMSON: Conduent?

23 ASSEMBLYMAN ABINANTI: Conduent.

24 OITS CIO SAMSON: What are they doing

1 for the Thruway Authority?

2 ASSEMBLYMAN ABINANTI: They collect --
3 they take data of people who cross the --
4 let's say a bridge, or go through a Thruway
5 toll, and they read the -- yeah, it's
6 cashless tolling. It's license plate --

7 OITS CIO SAMSON: Okay, sure.

8 ASSEMBLYMAN ABINANTI: We're dealing
9 with a third-party vendor. Their contract
10 specifically says that they're not to share
11 the data. But newspaper reports and TV
12 reports have documented that they have in
13 fact sold the data to third-party
14 investigators. So we've got data collected
15 on behalf of the State of New York being used
16 for other purposes.

17 And I'm trying to see what regulations
18 there are, what restrictions there are, what
19 we can do to make sure that the same thing is
20 not happening with other agencies within the
21 state.

22 OITS CIO SAMSON: Right. I don't know
23 the Thruway Authority example. I would
24 ask -- I just don't know. I don't know what

1 their --

2 ASSEMBLYMAN ABINANTI: Well, how can
3 we be sure that the same thing is not
4 happening with state agencies that you work
5 with?

6 OITS CIO SAMSON: We are the houser of
7 the data, the protector of the data. The
8 sharing of the data and who it is shared with
9 is an agency responsibility.

10 ASSEMBLYMAN ABINANTI: So every one of
11 these agencies can make their own decisions.

12 OITS CIO SAMSON: They have their
13 own -- they make decisions around what data
14 they can share, absolutely. I can't -- I
15 can't decide in the morning that I want to
16 share Tax and Finance data with somebody. We
17 protect it, we store it, but that's a Tax and
18 Finance decision.

19 ASSEMBLYMAN ABINANTI: Right. But are
20 there rules and regulations out there that
21 you can put your hands on that --

22 OITS CIO SAMSON: Every agency has
23 their own rules and regulations around their
24 data.

1 ASSEMBLYMAN ABINANTI: Okay. All
2 right.

3 OITS CIO SAMSON: That's how it works.

4 ASSEMBLYMAN ABINANTI: Thank you.

5 CHAIRWOMAN KRUEGER: Thank you.

6 CHAIRWOMAN WEINSTEIN: Thank you.

7 Before we -- you can leave. We're
8 finished. I just -- I neglected to announce
9 that Assemblyman Ra, the ranker on Codes, had
10 joined us a while ago.

11 CHAIRWOMAN KRUEGER: Thank you. Thank
12 you so much for your time tonight.

13 OITS CIO SAMSON: Good to see you.
14 Thank you.

15 CHAIRWOMAN KRUEGER: Good seeing you.

16 OITS CIO SAMSON: Oh, by the way,
17 thank you for your service to New York, all
18 of you.

19 CHAIRWOMAN KRUEGER: Thank you for
20 your service.

21 Okay. Next up we have the League of
22 Women Voters of New York State, who will be
23 followed by New York Public Interest Research
24 Group.

1 funding of early voting.

2 We want to once again thank the
3 Legislature for passing that package of
4 voting reforms the Governor recently signed.
5 We could not be more thrilled about it. Of
6 course, the most exciting reform to us is the
7 early voting, nine days of early voting.

8 At this point there is no funding in
9 the Executive Budget to cover the costs of
10 early voting, and in fact the State Board of
11 Elections actually gets a cut to their budget
12 this year related to lost funding for
13 cybersecurity. So you can imagine how
14 dismayed we are that not only is there no
15 funding for early voting, but there's even
16 less money for cybersecurity, which, as
17 Assemblymember Lentol pointed out, is hugely
18 important right now.

19 We estimate that it will cost about
20 \$9.3 million to implement early voting, and
21 that does not include machinery upgrades,
22 including electronic poll books. We cited
23 five hard costs -- poll sites, training and
24 staff, machinery and technology, and

1 security. And I've laid out with charts in
2 the written testimony kind of how those costs
3 break down specifically related to this
4 proposal for early voting that has recently
5 been passed.

6 The one thing that I really do want to
7 highlight is one of the biggest costs is
8 voter education, which I failed to mention in
9 my five hard costs. Voter education will
10 cost about \$5 million -- that's an estimate
11 directly from the State Board of Elections --
12 and that's predominantly related to mailings
13 to individuals. Those will be large card
14 mailings. That's quite a huge cost, but it
15 will only occur one time. So in the future,
16 early voting will be a lot cheaper than it is
17 this year.

18 I also want to point out that there is
19 potential for a lot of cost savings related
20 to the primary consolidation. But not this
21 year, unfortunately, because traditionally
22 this year is a single-primary election year,
23 so there won't be any cost savings this year.
24 But the state board did estimate that up to

1 \$25 million in savings will occur statewide
2 in those years when we traditionally had
3 three-plus primaries.

4 I feel like I've covered pretty much
5 everything. And like I said, I want to be
6 mindful of the other testifiers here.
7 Everything is laid out in here, and I'd be
8 happy to answer any questions.

9 (Inaudible comment.)

10 MS. WILSON: I said I'm a fast talker.

11 (Laughter.)

12 CHAIRWOMAN KRUEGER: The lack of
13 questions is not lack of interest, it's just
14 everyone looking at clocks and the number of
15 people left to testify.

16 MS. WILSON: And to my own credit, I
17 feel like I've done a very thorough job of
18 laying out the cost breakdown.

19 And I hope, Assemblymember Lentol,
20 that we can work together on getting some of
21 these technology upgrades, because they are
22 crucially important this year when this is
23 implemented.

24 CHAIRWOMAN KRUEGER: Thank you.

1 MS. WILSON: Thank you.

2 CHAIRWOMAN KRUEGER: Thank you very
3 much to the League.

4 And our next is Blair Horner of
5 New York Public Interest Research Group.

6 And Blair, it's like "Name That
7 Tune" -- see if you can do it in less than
8 two and a half minutes.

9 CHAIRWOMAN WEINSTEIN: There will be
10 an award.

11 (Laughter.)

12 MR. HORNER: Good evening. My name is
13 Blair Horner. I am director of NYPIRG,
14 New York Public Interest Research Group.

15 You all have a copy of our written
16 testimony. I will give, as fast as I can --
17 I don't know if I can beat Jennifer on
18 this -- but as best as I can a cover of sort
19 of the waterfront of the good government
20 issues in the Governor's proposed budget.

21 We broke down the budget, the
22 Governor's reform recommendations, into six
23 categories: Government openness, which we
24 cover first because it's in the Public

1 Protection and Good Government Article VII
2 bill; voting and elections; contracting
3 ethics; lobbying; campaign finance -- what
4 I'll do for my testimony is just sort of
5 touch on some of the key ones and then get
6 ready to go deal with the snow.

7 Part BB of the Public Protection and
8 General Government budget bill expands the
9 state's Freedom of Information Law
10 requirements to the Legislature. We support
11 that. But, we argue, why stop there? The
12 Committee on Open Government has offered a
13 number of reforms to improve the state's
14 Freedom of Information Law, and we believe
15 that FOIL needs to be dramatically
16 strengthened in its oversight of the
17 executive branch.

18 The use of state-controlled
19 not-for-profits, for example, was an end run
20 around public oversight and has led to
21 serious scandal. So it's clear that the
22 scandals that were found, for example, in the
23 Buffalo Billion situation argue for more
24 accountability.

1 And so we urge you to review the
2 Committee on Open Government's annual report,
3 particularly the requirement that these
4 not-for-profit entities created by the
5 government be subject to FOIL as well as the
6 JCOPE, the Joint Commission on Public Ethics,
7 and should also be covered by the Freedom of
8 Information and Open Meetings laws.

9 Second is voting. We, like the League
10 of Women Voters, applaud the actions of the
11 Legislature and the Governor to make some
12 substantial progress in improving the state's
13 voting laws. There's no doubt about it, it's
14 been a long time coming. New York hopefully
15 will be moving from somewhere in the caboose
16 category towards the engine in terms of
17 voting.

18 We like the idea of automatic voter
19 registration at the state agency level. We
20 think that what happens at DMV, for example,
21 should be applied for all state agencies and
22 that we should make it as simple as possible
23 for people to be registered to vote.

24 Contracting. The Governor proposes to

1 ban campaign contributions from those seeking
2 government contracts. We like that idea as
3 well. Certainly the U.S. Attorney's
4 investigations underscore the need for action
5 in that area. And while we support the idea,
6 we think the Governor's proposal leaves a
7 loophole that really narrowly focuses on the
8 donations from those seeking contracts to the
9 individual who controls the contracting
10 process, let's say the Governor, but allows
11 campaign contributions to the state political
12 parties -- which would end run around that,
13 because as we all know, the Governor has
14 tremendous input into what happens at the
15 state political party.

16 So we urge you to take a look at the
17 New Jersey law, which actually has been on
18 the books now for decades, that restricts
19 campaign contributions for contractors and
20 covers both state and local offices.

21 In terms of independent oversight of
22 government contracting, we've long held the
23 view that there's a reason for a separately
24 elected Comptroller, and the point of that is

1 to keep an eye on the executive branch. We
2 were dismayed by the efforts to cut back the
3 powers of the Comptroller, and we believe
4 that he needs to have his powers restored.

5 We applaud the Governor's announcement
6 that he's reached an agreement with the
7 Comptroller -- we haven't seen any bill
8 language yet, but we would like to see that
9 that happens and that the Comptroller's
10 powers be restored. We also support a
11 so-called database of deals to be included, a
12 database looking at contracts.

13 On ethics, much of what we see in the
14 Governor's Good Government Article VII budget
15 legislation is worthy of support. The most
16 glaring example of what is not included is
17 the need to establish independent ethics
18 oversight.

19 One note before I get into any
20 comments on that. The Governor's proposals
21 contemplate a lot of changes in terms of
22 oversight of ethics and lobbying, and he
23 gives no additional resources to JCOPE. I'm
24 not quite sure how that will work. We think

1 that that's an issue that the committee
2 should look at.

3 We really strongly believe that the
4 Joint Commission on Public Ethics and the
5 Legislative Ethics Commission are constructed
6 on a fatally flawed premise, and that the
7 fatally flawed premise is that they shouldn't
8 be independent of those who are their
9 appointing authorities.

10 And so we urge you to look at the
11 Commission on Judicial Conduct as a template.
12 Legislation has been introduced in both
13 houses to do that, to create an independent
14 ethics oversight entity.

15 Five, lobbying. The Governor's budget
16 advances changes to lobbying oversight, some
17 that will significantly increase the
18 regulatory burden of JCOPE. And my time is
19 almost up, so let me mention just a couple
20 quick things.

21 There are some constitutional issues
22 with regard to what the Governor's proposing.
23 The idea that you can't be a political
24 consultant and a lobbyist -- lobbying is a

1 protected activity under the constitution.
2 Also, in the Lobbyist Code of Conduct it says
3 that you have to be -- a lobbyist has to have
4 respectful behavior toward the government
5 institutions that he or she interacts with.
6 Who interprets what "respectful" is? I mean,
7 I think we all try to be respectful to each
8 other, but who makes that interpretation?

9 Lastly, in the area of campaign
10 finance, we applaud the Governor's decision
11 to advance a public financing proposal. We
12 think that that would dramatically change
13 campaign finance in New York, and we applaud
14 your activities to shrink the limited
15 liability company loophole.

16 Thank you.

17 CHAIRWOMAN KRUEGER: All right.

18 Senators? Okay. Senator Bob
19 Antonacci.

20 SENATOR ANTONACCI: Thank you,
21 Madam Chair.

22 A couple questions on FOIL. As a
23 former county comptroller, I had a very
24 liberal FOIL policy. If a reporter called

1 me, I tried to get it to him as fast as I
2 could. The only time we really looked for a
3 FOIL document -- I mean, if there was some
4 type of sensitivity or personal information,
5 we wanted to make sure we were doing the
6 right thing. We actually posted our FOILs
7 during one campaign, which I was -- I was
8 very proud of the effort.

9 But -- I have no problem with the
10 Legislature being subject to the FOIL, but
11 would we still be part of the exemption of
12 internal communications and things like that?
13 And what exactly would be FOILable?

14 MR. HORNER: As I understand the
15 Governor's proposal, it basically would have
16 the same exemptions that currently apply for
17 the executive branch, it would be applied to
18 the legislative branch, and in addition
19 correspondence with constituents would be
20 exempt from FOIL.

21 SENATOR ANTONACCI: Would be exempt.

22 MR. HORNER: That would be my
23 understanding from reading it.

24 SENATOR ANTONACCI: Ethics laws. I'm,

1 in my own mind -- and I had a very
2 high-profile battle with my county executive.
3 I believe she weaponized her local board of
4 ethics.

5 Do you believe in an executive at any
6 level of government -- local municipality,
7 even the governor -- should have appointment
8 power over a board of ethics? My theory is
9 most of the board of ethics are overseeing
10 the administrative branch. Do you have any
11 theories on removing those rights of
12 appointment from an executive?

13 MR. HORNER: Our view is that though
14 the appointing authority should not be the
15 people -- or the majority of the appointments
16 should not be made by people who are
17 regulated by the commission itself, which we
18 think is the reason or one of the reasons why
19 we criticize JCOPE now -- it's not about the
20 people, it's the structure.

21 The proposal that's been advanced in
22 both houses of the Legislature is one that
23 says that the majority of the appointees will
24 be done by the judicial branch, not by the

1 Executive or the Legislature, and we think
2 that makes more sense.

3 SENATOR ANTONACCI: Okay. And lastly,
4 I participated against the gentleman -- Tom
5 DiNapoli in 2014, in the run for State
6 Comptroller, and I proudly tried to qualify
7 for campaign financing. I believe it is a
8 way to fight corruption. I'm in the minority
9 in my conference, I believe, and certainly in
10 the Republican Party and the Conservative
11 Party. I'm a fan of it.

12 You don't have a specific proposal in
13 there -- do you have any specific proposals
14 of what could work? I mean, I've got my
15 ideas, but do you?

16 MR. HORNER: We support the -- I mean,
17 you know, all this stuff is always -- you
18 have to figure out as things play out. But
19 we support the Governor's approach. We think
20 that there's areas that need to be improved
21 in it, particularly in the area of the
22 administration. That the Board of Elections
23 is still running it under the Governor's
24 proposal, we think that that needs to be

1 cleaned up.

2 But generally speaking, the idea of
3 saying that you're going to have -- you're
4 going to encourage candidates to reach out to
5 people of average means to make donations
6 because they get a six-to-one match under the
7 Governor's proposal, we think that is a good
8 approach. It encourages candidates to deal
9 with regular folks all the time to raise
10 money, and it creates a pool of money that's
11 not the normal people that have business
12 before the government people.

13 And yes, I would have loved to have
14 seen what you would have been able to do had
15 you had a little more advance notice that
16 that law was going to happen.

17 CHAIRWOMAN WEINSTEIN: Assemblyman
18 Abinanti.

19 ASSEMBLYMAN ABINANTI: Thank you for
20 your fine suggestions. I agree with most of
21 them; I have some difficulties with some of
22 them.

23 One of the things I'd like your
24 comment on is I was concerned when the

1 Governor said that the Comptroller would get
2 to see some contracts, but that his
3 department would get to see the Comptroller's
4 contracts. Is that not a kind of a --

5 MR. HORNER: It's always -- as you all
6 know, you've all been here -- some less time,
7 some a long time -- until you see the bill
8 language, you really don't know what you're
9 dealing with. And so to some extent, it's
10 sort of hard to comment on a ghost.

11 But certainly we believe the
12 Comptroller's job is pretty clear why there's
13 a separately elected Comptroller, and that's
14 to have an independent set of eyeballs on the
15 executive branch. Now, how that is all going
16 to work out with the oversight of the
17 Comptroller, I don't know. But again, we'll
18 have to see the language.

19 ASSEMBLYMAN ABINANTI: Would it not be
20 better to have a separate oversight of the
21 Comptroller, rather than the people being
22 reviewed by the Comptroller reviewing the
23 Comptroller?

24 MR. HORNER: That's a very good point.

1 A very good point. I can't wait to see the
2 language.

3 ASSEMBLYMAN ABINANTI: Okay. Also,
4 you mentioned in your comments here
5 Fort Schuyler Management Corporation not --
6 ignoring FOIL requests. Did the Comptroller
7 ever have the power to review something as
8 far down the food chain as Fort Schuyler?

9 MR. HORNER: I'm not sure. I don't
10 believe so. I think that these --

11 ASSEMBLYMAN ABINANTI: Well, isn't
12 that where the problem is? Why are we going
13 to stop with the Comptroller?

14 MR. HORNER: No, I -- again, we think
15 that when the government creates a
16 not-for-profit company, a corporation to do
17 the government's business, it's a government
18 agency and should be subject to all of the
19 oversight that's required of any other
20 agency. The absence of that creates an
21 environment of secrecy and can lead to
22 scandal.

23 And we've seen gigantic, significant,
24 unbelievable scandals in the executive branch

1 and the legislative branch over the last
2 number of years, and it's important to deal
3 with that.

4 And so again, the Comptroller is
5 not -- we don't have a -- we don't think
6 that's a silver bullet, but we think the
7 Comptroller's oversight of contracting
8 creates an environment where somebody's
9 looking at things, people behave
10 differently --

11 ASSEMBLYMAN ABINANTI: Has your agency
12 ever looked at outside income of the
13 executive branch? There's been a whole lot
14 of talk about outside income by legislators
15 who are supposed to be technically part-time,
16 not reliant on the pay that they get from the
17 Legislature, but in fact put in almost
18 100 percent of their time -- and yet the
19 executive branch hires people who are
20 supposed to be full-time and yet they come
21 into budget hearings and talk about their
22 experience in the field in which they're
23 governing as a qualification to be the
24 commissioner. And yet I can't find any

1 restrictions on the outside income of
2 commissioners.

3 Is there any you know of, and have you
4 looked at that?

5 MR. HORNER: Well, generally speaking,
6 the executive branch members are all supposed
7 to be full-time. And if they're going to
8 make money, let's say on some sort of outside
9 consulting work, they're supposed to get
10 approval by JCOPE, which I think underscores
11 the need for independent oversight.

12 ASSEMBLYMAN ABINANTI: Thank you.

13 CHAIRWOMAN KRUEGER: Thank you.

14 I think that's it for the Senate.

15 MR. HORNER: Okay. Thank you.

16 CHAIRWOMAN KRUEGER: Thank you very
17 much for your testimony.

18 CHAIRWOMAN WEINSTEIN: Thank you.

19 CHAIRWOMAN KRUEGER: Next testifier,
20 Prisoners' Legal Services, Karen Murtagh and
21 Thomas Curran.

22 Good evening, and you have five
23 minutes between you. So, nice to see you
24 again.

1 And then just to take note, the next
2 is a panel of four, and you also have
3 10 minutes for the four of you, so you might
4 work that out amongst yourselves.

5 Hi.

6 MR. CURRAN: Hi.

7 MS. MURTAGH: Good evening.

8 CHAIRWOMAN KRUEGER: Good evening.

9 MR. CURRAN: I'm Tom Curran, I'm the
10 vice chair of Prisoners' Legal Services. It
11 is very much my pleasure to be addressing
12 you, particularly before 9, 10 o'clock at
13 night. I appreciate that particularly.

14 My passion is nowhere near Karen's,
15 but it is really my pleasure to be here to
16 talk about Prisoners' Legal Services. These
17 are great lawyers doing great things, and
18 they do it on an shoestring. Every dollar
19 that you give them is taken to its maximum
20 use on behalf of the indigent residents of
21 our prisons, perhaps the most forgotten group
22 in our society. They've been doing it since
23 1976, in the aftermath of the Attica
24 uprisings, and they've been doing a great

1 job.

2 And each year we come up here and we
3 prevail upon your generosity. This year the
4 ask, with the Assembly, 750,000, and we're
5 looking for parity from the Senate, also
6 750,000. You won't regret any money you give
7 to this, I promise you.

8 MS. MURTAGH: Good evening, Madam
9 Chairwoman Krueger, Madam Chairwoman
10 Weinstein, Assemblyman Weprin, and the other
11 members of the committee. Thank you for
12 allowing PLS to testify before you today.

13 Before I start, I want to thank
14 specifically Assemblyman Weprin for all that
15 you've done for Prisoners' Legal Services
16 since you've been chair of Corrections, and
17 the Assembly itself for pretty much keeping
18 PLS alive for the last 40 years. If it
19 wasn't for the funding that you've provided,
20 our doors would have been closed many years
21 ago.

22 As Tom mentioned, we're here today
23 with an ask, and the ask is that the Senate
24 match what the Assembly gives us. Last year

1 the Assembly put us in the budget for
2 750,000. We're asking for a match, so
3 1.5 million from the Legislature to
4 supplement what the Governor put us in for,
5 2.2. It would be a total budget of
6 3.7 million.

7 I think most of you know what PLS
8 does. Our mission is to protect and defend
9 the constitutional and civil rights of
10 incarcerated New Yorkers. Currently there's
11 over 47,000 of those individuals in
12 54 prisons across New York State. We receive
13 over 10,000 requests for assistance every
14 year. We answer every single letter. We
15 deal with issues of solitary confinement,
16 medical and mental health care, jail and
17 sentencing time issues, disciplinary
18 excessive use of force, parole, immigration,
19 and the list goes on.

20 I'd like to just give a few highlights
21 of the work we did this past year. We were
22 able to expunge 44 years of solitary
23 confinement from people's sentences. Twenty
24 years of good time was restored to people's

1 sentences, and 14 years of jail time was
2 credited to their sentences.

3 Our work on behalf of children, youth,
4 anyone under 18 in prison resulted in us
5 discovering that DOCCS did not have any
6 directive or regulation about corrections
7 officers and other DOCCS staff being mandated
8 reporters to report alleged child abuse or
9 mistreatment. We worked with DOCCS, and a
10 directive was enacted two months ago that
11 provides direction on what all DOCCS
12 employees must do if an allegation of child
13 abuse or neglect is brought to their
14 attention.

15 We prevailed in a discrimination case
16 where an individual with a disability was
17 removed from temporary release even though he
18 could have done temporary release, but he was
19 removed solely because of his disability, and
20 they took away his merit time. We sued in
21 federal court, and just last week a judge
22 ordered that he be immediately reinstated for
23 his merit time and that he be put before the
24 Parole Board for parole consideration.

1 We also filed a federal case for
2 damages for an individual who was held in
3 solitary confinement for 293 days unlawfully.
4 And we recently received a monetary judgment
5 for that client, in an attempt to make him
6 whole, even though no person could be made
7 whole after spending 293 days in solitary.

8 And we successfully helped a number of
9 clients prepare for their parole hearings and
10 subsequent release on parole.

11 But there's still a huge unmet need.
12 Despite all that we've done, the complaints
13 continue to rise despite the declining
14 population. Complaints about parole and jail
15 time and sentencing time have increased, and
16 even though disciplinary and brutality
17 complaints have decreased, they have not
18 decreased proportionally to the decrease of
19 the population.

20 I brought this folder here because I
21 wanted you to see this. Two weeks ago, our
22 Pro Se Magazine went into the prisons and in
23 it was a questionnaire that asked about
24 educational and vocational programs in

1 prison. And in two weeks we've received over
2 400 letters from people that are
3 incarcerated. And they didn't just fill out
4 the questionnaire, they wrote pages and pages
5 about what they need to be rehabilitated in
6 prison.

7 And I've sat here before -- I think
8 this is the eighth year I've testified -- and
9 I've said how PLS is a voice for incarcerated
10 people. Well, they have their own voice.
11 And if you fund PLS, it allows us to continue
12 this trust relationship that we have with
13 people that are incarcerated so they tell us
14 what's wrong, what needs to be fixed.

15 They tell us we need more college
16 education programs, we need updated
17 vocational programs. We had one client say
18 that he had a vocational program -- you get
19 one every 10 years when you're in DOCCS --
20 and it was lawn mower repair. And then he
21 was paroled to New York City. And he
22 commented that finding a job in lawn mower
23 repair in New York City is like trying to
24 sell sandals in Antarctica.

1 There's so much that needs to be done.
2 PLS is the organization that can help bring
3 these issues to your attention and to the
4 attention of New York State, and I urge you
5 to properly and adequately fund PLS this
6 year.

7 MR. CURRAN: As vice chair, it was
8 really refreshing to hear Acting Commissioner
9 Annucci mention PLS in a favorable way. To
10 the extent you all do not know, you should
11 know that Karen enjoys a very close and
12 proactive relationship -- as well as the
13 adversarial one, where necessary and
14 appropriate -- but very collaborative and
15 proactive with DOCCS, in such a way that it
16 makes our budget much more effective because
17 we don't have fights that don't need to be
18 had.

19 But we do have the fights, and we do
20 fight them when they need to be had, and
21 we're looking for your help in doing so.

22 CHAIRWOMAN KRUEGER: Thank you.

23 Senator Jamaal Bailey.

24 SENATOR BAILEY: Thank you,

1 Madam Chair.

2 I just wanted to say thank you for
3 sticking it out with us and testifying, and
4 your work is invaluable. And I just wanted
5 to -- less of a question and more of a
6 thank you for the work that you've been able
7 to do on behalf of my constituents, your
8 being able to -- a gentleman denied parole
9 multiple times who had committed a crime at
10 the age of 17, denied four times, had
11 multiple sclerosis, had secured a job on the
12 outside pending his release already, had
13 obtained an associate's degree and a ministry
14 certificate while incarcerated -- and I'm not
15 going to mention his name for, you know,
16 confidentiality purposes, but this
17 individual, they had reached out by way of a
18 sister and they had lost hope. And I just
19 wanted to thank you for continuing to
20 advocate in securing his successful parole.

21 You know, we're not saying that
22 everybody that has committed a crime should
23 be released without the proper due process,
24 but somebody like that who had done

1 everything possible to avail themselves of
2 everything available to them while
3 incarcerated, that's an individual, if you
4 look at the record, that should have been on
5 parole, and there's been no recidivism since.

6 And so I wanted to thank you for the
7 work that you do, and I appreciate I guess
8 what you bring to the table. And I'll just
9 say I'm in support of an increase of funding
10 for your organization.

11 That will be all, thank you.

12 MR. CURRAN: Thank you, Senator.

13 MS. MURTAGH: Thank you, Senator.

14 I want to thank you for referring that
15 case to us, and I would like everyone here in
16 the entire Legislature to know that we are
17 here for those referrals. We receive
18 hundreds of referrals a year from members of
19 the Legislature, constituents, family members
20 that are concerned about their loved ones in
21 prison.

22 And the client you're speaking of had
23 been in prison -- he went to prison at 17, he
24 was in prison for 26 years. He saw the board

1 four times, he kept on being denied. When we
2 looked at his case, we appealed it, we filed
3 an Article 78, and we were unsuccessful. But
4 we then took the case to help prepare his
5 parole packet for his next board appearance,
6 and because of our work on that case he was
7 paroled. So thank you so much for sending
8 him our way.

9 SENATOR BAILEY: My pleasure.

10 CHAIRWOMAN KRUEGER: Assembly?

11 CHAIRWOMAN WEINSTEIN: Assemblyman
12 Weprin.

13 ASSEMBLYMAN WEPRIN: Thank you,
14 Madam Chair.

15 And I want to vouch for PLS and Karen
16 and Tom and the great work they do. I've
17 personally -- and my staff have referred them
18 a number of cases, and I certainly will talk
19 to my counterparts in the Senate, the new
20 chair and the chair of Senate Finance, to
21 accede to that request. It seems very
22 reasonable to me.

23 I also want to thank you for your
24 efforts in fighting with us on the seven-day

1 visitation, which was my first battle I had
2 coming in as chair three years ago, where the
3 Governor had proposed cutting visitation from
4 seven days to three days, as you know, in
5 maximum-security facilities. And of course
6 we wanted to encourage familial ties and ties
7 to families which would help in preventing
8 recidivism, and you were an important part of
9 that battle.

10 And you always act for the right
11 reasons, and I personally appreciate that.
12 And I would be saying that even if I wasn't a
13 recipient of the John Dunne Award, the
14 Justice Award.

15 (Laughter.)

16 ASSEMBLYMAN WEPRIN: But thank you for
17 all the work you do. Keep it up. And I will
18 advocate for your budget request.

19 MS. MURTAGH: Thank you so much,
20 Assemblyman. And thank you for leading the
21 fight on the visitation.

22 CHAIRWOMAN KRUEGER: Hi. Thank you
23 again, every year, for coming to testify and
24 for your work.

1 Earlier today there was a discussion
2 of the prison system having started a voice
3 recognition program that's required if you, I
4 guess, want to take calls from the outside.
5 Have you had any experience with it, or do
6 you have a position on it?

7 MS. MURTAGH: We have not had -- it
8 just was instituted. We haven't had any
9 experience.

10 We don't use that system for
11 attorney-client confidential calls. We're
12 able to set up separate confidential calls.
13 I do have an issue with the limitation on
14 those, because the DOCCS directive only
15 allows one attorney-client call a month for a
16 maximum of 30 minutes. And for some of our
17 cases, that really hinders our ability to
18 work with our clients, especially in any
19 immigration cases where we have to see our
20 clients quite a few times before we go to a
21 hearing. And instead of being able to just
22 make a phone call, we have to drive all the
23 way out to Attica to interview them.

24 But the system they're putting in

1 right now, the voice recognition system, will
2 be separate and apart from any confidential
3 calling from attorneys.

4 CHAIRWOMAN KRUEGER: So since you
5 raised another issue, why would there be a
6 30-minutes-per-month one-call rule? Is there
7 a shortage of telephones or places to sit the
8 prisoner when talking to you on the phone?

9 MS. MURTAGH: I don't know the answer
10 to that. I would surmise that it would be a
11 staffing issue, a resource issue, because
12 they would have to take a person to a room,
13 stand outside the room while the phone call
14 occurs, and bring them back. But it is an
15 issue I've been meaning to raise with the
16 commissioner.

17 CHAIRWOMAN KRUEGER: I hope you do.

18 MS. MURTAGH: Yes, I will.

19 CHAIRWOMAN KRUEGER: There was a
20 New York Times story maybe a week ago, maybe
21 more than a week ago, about the number of
22 prisoners in New York State being held in
23 prison longer than the time they are required
24 to serve because they are defined as

1 suffering from some kind of mental illness,
2 and there is no place for DOCCS to release
3 them to.

4 Now, I know for a fact in my district,
5 or Brad Hoylman's and my border district, the
6 Bellevue Men's Shelter is where many people
7 leaving prison with nowhere to go end up
8 being deposited. And that's just the
9 opposite of a good policy. But it was very
10 disturbing that we were keeping prisoners in
11 prison longer than we were legally allowed to
12 because we don't have a Plan B.

13 I was wondering whether you were
14 dealing with that in some way.

15 MS. MURTAGH: Yes, we are. We are in
16 litigation on that issue, together with the
17 Legal Aid Society and the private law firm of
18 Willkie Farr. We filed a lawsuit a couple of
19 years ago, the Alcantara lawsuit. It was
20 stayed for a while while another case, the
21 Gonzalez case, went up to the Court of
22 Appeals to discuss Parole's duty in trying to
23 find housing. And that case has now been
24 decided, and we're moving forward on

1 Alcantara.

2 And the case you're referring to was
3 recently filed by Disability Rights New York.
4 Our case is a little more global, in that
5 it's whoever you're holding past their max
6 date or their CR date, and they should be
7 released. And we sued both DOCCS and
8 New York City Housing because there aren't
9 any places for people to be released to.

10 CHAIRWOMAN KRUEGER: Correct. Thank
11 you.

12 Assembly?

13 CHAIRWOMAN WEINSTEIN: Assemblyman
14 Lentol.

15 ASSEMBLYMAN LENTOL: Yes, I just
16 wanted to add my voice and thank you for the
17 years of perseverance that you have put in,
18 Karen.

19 I remember when Prisoners' Legal
20 Services got no funding at all. People
21 didn't recognize the good that you do, not
22 only for the prisoners but also for the
23 correctional system, because you keep peace
24 in the prisons. And nobody realized that

1 that's a very worthy cause, especially for
2 those correctional officers who seem to
3 consistently have gotten assaulted when maybe
4 the grievance was not with them, but with the
5 system itself, because they had no outlet for
6 legal help that they wanted to obtain and
7 there was no Prisoners' Legal Services yet
8 available.

9 So I have to say that like Saint Jude,
10 you've been the patron saint of lost causes
11 for a lot of years. And I too want to give a
12 shout out to John Dunne, because without his
13 efforts and lobbying the legislature and the
14 governor at the time wouldn't have recognized
15 the value that you do to criminal justice
16 reform in this state.

17 Thank you very much.

18 MS. MURTAGH: Thank you so much,
19 Assemblyman.

20 CHAIRWOMAN KRUEGER: Thank you for
21 your time tonight.

22 MS. MURTAGH: Thank you.

23 MR. CURRAN: Thanks. Thanks very
24 much.

1 CHAIRWOMAN KRUEGER: Thank you.

2 All right, the next panel. Michelle
3 Esquenazi, Steve Zalewski -- I apologize for
4 destroying your names -- Jeffrey Clayton, and
5 Ed Forchion, all representing the New York
6 State Bail Bondsman Association. One person
7 is {inaudible}. So again, you could do this
8 as 2 1/2 minutes each or some other breakout
9 of 10 minutes.

10 MR. CLAYTON: Two of us are going to
11 cede our time to two speakers.

12 CHAIRWOMAN KRUEGER: Very good. Thank
13 you.

14 MR. CLAYTON: You're welcome.

15 Good evening. My name is Jeff
16 Clayton, and I'm the executive director of
17 the American Bail Coalition. Thanks for
18 having me today; I'm a proud graduate of the
19 University of Rochester.

20 I've traveled to 35, probably 40
21 states working on this issue. I am the
22 national expert on it. I've recently
23 published a peer-reviewed article on bail
24 reform in the UCLA Criminal Law Review. It's

1 worth a reading -- at least I think so.

2 I'd like to make a couple of points on
3 the bail reform package presented by the
4 administration.

5 First, I think the New York system is
6 different. You need to recognize that. The
7 affordability of bail is different in New
8 York than elsewhere, largely because
9 dangerousness is not a consideration and has
10 not been a consideration in New York ever.
11 The average felony bail in New York City is
12 \$5,000. The average felony bail nationally
13 is \$10,000. The average bail in California
14 is \$50,000, to give you an idea.

15 The other thing is we don't see the
16 due process issues in New York that we see
17 elsewhere. There's no bail schedules,
18 there's no sitting and rotting waiting to see
19 a judge. And I presented the New York second
20 de novo hearing as a policy idea to many
21 other policymakers around the country as an
22 example of good due process.

23 Second, the proposal that's been
24 submitted will be extremely costly to the

1 state. We've submitted a cost study and
2 other information we encourage you to review
3 which we're in the process of updating right
4 now. But, you know, you could look at
5 upwards of a couple hundred million dollars,
6 depending on how the estimates turn out, and
7 that's primarily going to hit local
8 governments.

9 The third point I'd like to make is
10 that no major reform of this size has
11 happened in any state that I've worked in
12 without a major study of the system. And
13 every time we go through one of these
14 studies, what we learn is that there's unique
15 issues in each state that we need to deal
16 with.

17 So for example, there's been no
18 process in front of the sentencing
19 commission, there's been no blue ribbon
20 legislative panel, there's been no Governor's
21 study panel, there's been no panel of the
22 Supreme Court. And I would encourage you to
23 do that before you do a reform of this size.

24 The next point is I would say that the

1 package relies heavily on the use of criminal
2 risk assessment algorithms, which are
3 problematic. One hundred civil rights groups
4 in New York State issued a letter to the
5 administration in November of 2017 when they
6 said, quote: We, the undersigned
7 organizations, are united in the belief that
8 we do not have to add dangerousness to
9 New York's bail statute to reduce our
10 pretrial detention population. The use of
11 risk assessment instruments to predict
12 dangerousness will further exacerbate racial
13 bias in our criminal justice system, and the
14 use of these instruments will likely lead to
15 increases in pretrial detention across the
16 state.

17 On December 8th, the Robert F. Kennedy
18 Foundation and the 137 other civil rights
19 groups similarly sent a letter and they said,
20 quote: We cannot abide legislation that
21 maintains other for-profit influences or
22 replaces money bail with mass community
23 surveillance, racially biased risk assessment
24 instruments, or the expansion of preventative

1 detention -- which, candidly, is on the table
2 here.

3 Also, 110 national civil rights
4 groups, including the Leadership Conference
5 on Civil Rights, have said don't use pretrial
6 risk assessment algorithms because, quote,
7 These tools can worsen racial disparities and
8 allow for further incarceration.

9 And at a broader 38,000-foot level, I
10 think the use of these algorithms has led to
11 generational mass incarceration. Agreeing
12 with me is Dr. Robert Werth from
13 Rice University who said, quote: I would
14 contend that risk assessment has to this
15 point helped organize the penal state and
16 fortified its legitimacy, and the rise of the
17 historically unprecedented legal-penal
18 complex has occurred alongside and in
19 interaction with the proliferation of risk
20 knowledges, discourses and technologies.

21 No trial can ever exonerate someone
22 who has been labeled as dangerous under these
23 tools, and so I think that's a major problem
24 here.

1 The next point is I think speedy trial
2 reform would be a better answer. That was
3 argued when the federal Bail Reform Act was
4 passed. It's the most bipartisan, cleanest,
5 best way to get it done, which is just
6 shorten the process. It's better for
7 everybody.

8 One state attorney general
9 recommended, and it may be worth considering,
10 is maybe there's a faster trial track for the
11 in-custodies. And I would advocate for that.
12 If you can't afford the whole banana, at
13 least give the people in custody a speedier
14 process.

15 The final point, when I read this
16 package, I was stunned. I was stunned that
17 anybody would come into this State Capitol
18 Building and advocate for the expansion of
19 preventative detention, which has largely not
20 been allowed in New York, which the State of
21 New York has rejected since 1984 when the
22 federal government went in this direction,
23 and I was just stunned to see it in there. I
24 don't think it's a good idea.

1 The article that I present -- and
2 certainly the data backs it up -- the federal
3 government has tripled pretrial
4 incarcerations since they went to a system of
5 preventative detention. Maryland tried it,
6 jail population went up 20 percent in
7 Baltimore City in the first year. And in
8 New Jersey, a majority of all cases are
9 getting a motion to detain, which is the
10 story that you're going to hear from my
11 colleague sitting next to me.

12 There's also been very little benefit
13 shown in terms of preventative detention as a
14 crime control measure.

15 And finally, I would just end with a
16 quote from Thurgood Marshall. While perhaps
17 Justice Rehnquist and a majority of the
18 Supreme Court gave this Legislature and this
19 government the power to preventatively detain
20 people, that doesn't mean it's a good policy
21 idea. "Throughout the world today, there are
22 men, women, and children interned
23 indefinitely, awaiting trials which may never
24 come or which may be a mockery of the word,

1 because their governments believe them to be
2 dangerous. Our Constitution, whose
3 construction began two centuries ago, can
4 shelter us forever from the evils of such
5 unchecked power. Over 200 years it has
6 slowly, through our efforts, grown more
7 durable, more expansive, and more just. But
8 it cannot protect us if we lack the courage,
9 and the self-restraint, to protect ourselves.
10 Today a majority of the Court applies itself
11 to an ominous exercise in demolition. Theirs
12 is truly a decision which will go forth
13 without authority, and come back without
14 respect."

15 And that is exactly what happened, is
16 that pretrial detention tripled. And I would
17 encourage you to not go into this ominous
18 exercise in demolition.

19 MR. FORCHION: Good evening. My name
20 is Edward Forchion, and I wanted to present
21 my issue with this bail reform.

22 As a New Jersey resident, I became a
23 victim of the New Jersey Bail Reform Act, and
24 I definitely want to give that perspective

1 and why I'm opposed to your eradication of
2 the Eighth Amendment -- basically, the right
3 to bail.

4 For 230 years this country has had
5 bail. It's always been a right, it's been
6 treated as a right. And, you know, a couple
7 of years ago I was working as a columnist for
8 a newspaper, The Trentonian, in Trenton,
9 New Jersey. And as a columnist, I picked on
10 politicians. I called them names, I said
11 little things that I probably couldn't get
12 away with at a dinner table with my mom, you
13 know, but -- you know, and I antagonized
14 people. But totally free speech.

15 And then I got into a dispute,
16 basically, with the local police department
17 and the prosecutor's office, and I ended up
18 getting hit with like 40-something tickets.
19 Indictments, charges, whatever. And
20 basically it was all fake. It was all phony.
21 It was because I had, you know, used my
22 mouth.

23 I've been a nonviolent person my
24 entire life. I've had no violence charges --

1 yes, I've been arrested for marijuana a few
2 times, I've been a public advocate for the
3 legalization of marijuana, but I present
4 myself as a peaceful, proud, patriotic
5 pothead. And when the -- you know, when the
6 Bail Reform Act was being discussed by
7 Governor Christie, just reading it and
8 realizing that a judge -- at the end of the
9 day it was up to a judge, I knew that I would
10 become a victim of the bail reform. I mean,
11 I joked about it and said I was a
12 Weedstrodamus, because one day I'm going to
13 be a victim.

14 And sure enough, within three months
15 of the enactment of the Bail Reform Act, I
16 was singled out with phony charges and
17 charged. And this is what I think that --
18 these type of arguments are never presented.
19 When I read about people talking about the
20 Bail Reform Act, it's always talked about in
21 this way, that it's going to help minorities
22 and this, that and the other.

23 I was in a jail, and everyone detained
24 were minorities, to be honest with you. But

1 the Bail Reform Act can be used as a tool or
2 as a weapon by prosecutors or malicious
3 police officers. In the case of police
4 officers, they've learned really quickly what
5 to write on their tickets and in their
6 reports, you know? They label you as a
7 danger to the community.

8 That's what I was labeled as, as a
9 danger to the community. I was labeled as
10 somebody who would obstruct justice. You
11 know, that's the Minority Report right there,
12 future crime. But these are the arguments
13 that were presented for my detention.
14 Nothing about violence, nothing about, you
15 know, any violent crime I had did or was
16 accused of doing.

17 I was accused of witness tampering
18 because I called somebody a "rat" on
19 Facebook. Repeatedly, but I called him a
20 "rat." And they were a rat, you know, and I
21 don't think that that was what bail reform
22 was supposed to be about. Because vendettas,
23 political imprisonments can happen because
24 you've lost the right to bail.

1 The right to bail was put in place by
2 the founding fathers of this country because
3 they had already went through it with the
4 king. You know, they totally understood that
5 if you can just lock somebody up, throw them
6 in a dungeon, you know, you can force plea
7 bargains, you can get punishment without a
8 conviction.

9 And we know that Ben Franklin and
10 several of the founding fathers all used the
11 same quote, that they would rather a hundred
12 guilty men be free than one innocent to be
13 jailed. And trust me, I did 447 days
14 detained, and the very first day I walked in
15 there I was an innocent man. And I wasn't
16 the only one. I happened to have a little
17 fame, and it got -- my entire case was
18 covered.

19 But the fact of the matter is, right
20 now in New Jersey there are hundreds of
21 people, hundreds of innocent people in jail,
22 and they're all in jail as victims of the
23 Bail Reform Act.

24 And you people are about ready to vote

1 on the same thing here in the State of
2 New York, you know? You know, you have in
3 your power right now to not let what just
4 happened to me happen in the State of
5 New York.

6 And this I don't really think is
7 really -- like, I'm not a real oddball in
8 this system. There's like 4,000 people in
9 the State of New Jersey who were detained,
10 and I'd say probably half of them were not
11 violent people.

12 Thank you.

13 CHAIRWOMAN KRUEGER: Senator Rivera.

14 SENATOR RIVERA: Thank you.

15 Actually, this question is for
16 Ms. Esquenazi.

17 Hello, ma'am. It's been a while since
18 we've seen each other. I figured that the
19 positions on this document from the New York
20 State Bail Bondsman Association is --
21 obviously expresses your positions as well.

22 MS. ESQUENAZI: That's correct.

23 SENATOR RIVERA: There's one -- I just
24 wanted to ask, because I remember vividly the

1 conversation that we had in my office --
2 which again, I thank you for coming to my
3 office when we talked about the bill that I
4 passed back in 2011 on charitable bail.

5 And I remember very specifically
6 that -- the harsh criticism that you gave to
7 the piece of legislation, and I just --
8 you've obviously -- you folks have obviously
9 changed your mind, which I'm very thankful
10 for, since I'm a big believer in charitable
11 bail. I also believe that we should get rid
12 of bail fully, but that's a different
13 question.

14 I just wanted to figure out what --
15 I'm thankful that you changed your opinion,
16 and I wanted to see why that was the case.

17 MS. ESQUENAZI: Are you asking a
18 question, Senator?

19 SENATOR RIVERA: Yes, ma'am, I am.

20 MS. ESQUENAZI: Please go ahead.

21 SENATOR RIVERA: Why did you change --
22 how did you change your position --

23 MS. ESQUENAZI: In terms of what
24 specific subject, sir?

1 SENATOR RIVERA: On charitable bail.
2 Back in 2011, I passed a bill to create
3 charitable bail --

4 MS. ESQUENAZI: Can you read whatever
5 it is that you're referring to to me so that
6 I can be educated as to what you're speaking
7 of?

8 SENATOR RIVERA: Yes, ma'am. The
9 "Facts about Bail Reform," the document you
10 just handed to us, has claims and facts.
11 "Claim No. 6: Charitable bail is the enemy
12 of the bail bond.

13 "Fact: The bail bond industry is
14 100 percent in support of charitable bail.
15 These organizations provide an essential and
16 effective means of ensuring that truly
17 indigent people are afforded the same
18 opportunity to be free as those who are more
19 fortunate."

20 I could not agree more. I just wanted
21 to know the position -- which is the one that
22 you have now, which I'm very thankful for --
23 how did you reach this conclusion?

24 MR. CLAYTON: Senator, if it's all

1 right, may I answer?

2 MS. ESQUENAZI: No, I'm going to
3 answer.

4 SENATOR RIVERA: Certainly. Anyone
5 can answer.

6 MR. CLAYTON: I'll cede to my
7 associate.

8 MS. ESQUENAZI: Okay. So the fact of
9 the matter is, under Section 6805 of the
10 Insurance Law --

11 SENATOR RIVERA: Please use the
12 microphone.

13 MS. ESQUENAZI: I'm sorry. Under
14 Section 6805 of the Insurance Law, charitable
15 bail is supposed to operate within the realm
16 of indigency. It doesn't happen as we speak,
17 and I said that to you when we met in the
18 Bronx, and I'll say that to you again.

19 I don't think that indigent people
20 should be incarcerated. I never have. In
21 25 years I've never thought that it helped
22 tons and tons of people over the past
23 25 years.

24 But the fact of the matter is, when

1 you walk into the office to get food stamps
2 or a charitable piece of anything in the
3 State of New York, you have to have some sort
4 of proof of indigency, Senator. So the fact
5 of the matter is I don't disagree with you
6 that charitable bail does have a role in the
7 bail system. I just think that it should
8 operate within the realm of Section 6805.
9 That's my answer.

10 SENATOR RIVERA: All right. It's
11 different than what I just read, though.

12 MR. CLAYTON: Senator, if I may.

13 SENATOR RIVERA: Well, my time is up,
14 actually. But thank you for your time. I
15 yield back --

16 CHAIRWOMAN KRUEGER: Senator Diane
17 Savino.

18 SENATOR SAVINO: Thank you,
19 Senator Krueger.

20 So I want to ask Mr. Forchion -- so
21 if -- so Governor Christie signed the Bail
22 Reform Act, and that eliminated cash bail
23 across the state. And I remember at the time
24 there was also some concern about the state

1 did not give funding to the localities who
2 were supposed to deal with either pretrial,
3 tracking, or detention.

4 But what I'm really disturbed about is
5 if what I'm hearing from you is correct,
6 because cash bail wasn't an option and you
7 were obviously the victim of -- it sounds
8 likes a political vendetta -- you were
9 detained pretrial detention for 447 days?

10 MR. FORCHION: For 447 days.

11 Then I represented myself. It was a
12 ridiculous charge, it was a phony charge,
13 everyone knew it was a phony charge. And I
14 represented myself, and the jurors
15 practically laughed me into not guilty.

16 But I spent 447 days. I appealed it
17 twice. I appealed the detention to the state
18 appellate court, but the way the law was
19 written, the judge had every right to do what
20 he did.

21 SENATOR SAVINO: And there was no --

22 MR. FORCHION: But the ironic thing
23 was I was a columnist for a newspaper, and I
24 wrote about that two years before it happened

1 to me, that the fact that a judge can make
2 this arbitrary decision that, like -- who
3 cares if you have bail. Now you have -- you
4 can have political imprisonment. And then it
5 happened to me.

6 And it happens in other ways too.
7 Just a guy on the street gets into some sort
8 of beef with a police officer. You know,
9 when he writes his ticket, he writes it in a
10 way or whatever -- he writes whatever his
11 charges -- maybe it happens a couple of weeks
12 later, but he writes it in a way that the
13 prosecutor now gets it like dog whistling:
14 Oh, this guy, they want him. And she
15 presents that argument, or they present that
16 argument to the judge, and the judge
17 rubber-stamps it with the detention.

18 And now when you're detained now, the
19 way the law is written, your time doesn't
20 even start until you're indicted, which can
21 take 90 days. So it's like those 90 days
22 didn't count. And then they have 270 days to
23 prosecute you. So there you go, you're right
24 at a year now, and you -- you've been charged

1 with a crime. If you're an innocent person,
2 that year -- I will say this also, I went to
3 prison before. I went to prison for
4 18 months for a marijuana charge, and I did
5 it, I had it, whatever. And I did those
6 whole 18 months no problem.

7 This charge, I was an innocent man. I
8 was in there with other innocent people. And
9 it was all because of the Bail Reform Act. I
10 pulled hair out, I was so mad and angry. I'm
11 still feeling it, because I'm mad about it.
12 Like, that's not the America I grew up in.

13 And I tell you what, like I did my
14 time -- a lot of people don't even know it --
15 I did my time in the Marine Corps, the Army,
16 and the United States Army. You know, I
17 always thought that I had a right -- the
18 Constitution applied to me. I always -- I
19 know the Constitution. I know the first ten
20 constitutional rights off the top of my head.
21 And the Eighth Amendment was absolutely --
22 has been eradicated by bail reform.

23 And this isn't the argument that, say,
24 the bail reform people are going to say. I

1 mean, they're going to say it, but it's --
2 but from the point of the defendant, the --
3 it could happen to you or your kid. You can
4 get charged with something, and then the
5 judge says, Hey, I'm going to detain you.
6 And now you're working off of these numbers
7 that the legislature comes up with for your
8 speedy trial, which isn't really that speedy
9 if you're locked up. It's like -- it's at
10 least a year away. And in my case, 447 days,
11 a couple of days short of 16 months.

12 SENATOR SAVINO: Thank you.

13 SENATOR KRUEGER: Senator Antonacci.

14 SENATOR ANTONACCI: Thank you.

15 To the gentleman in the middle, I'm
16 very sorry to hear your story. I haven't
17 practiced criminal law, but I appreciate the
18 fact that we have those rights. Probably
19 some of those politicians you spoke of
20 probably deserved it as well, knowing
21 New Jersey.

22 But is this -- maybe this is for the
23 other members of the panel. Are you saying
24 that if -- and I haven't gotten up to speed

1 on this, and I know it's coming down the pike
2 with this cash bail -- are you saying the
3 elimination of cash bail will adversely
4 affect defendants' rights to get out
5 pretrial?

6 MR. CLAYTON: Yes, because this
7 proposal relies on the very preventative
8 detention that held this gentleman in jail.

9 That's the solution, is that we will
10 decide who is dangerous, and under this
11 proposal -- one of the proposals -- a mere
12 preponderance of the evidence of a risk of
13 flight will be sufficient, which is a low
14 bar. And I've never seen any state go that
15 low.

16 SENATOR ANTONACCI: But wouldn't a
17 defendant have a right to post a bond? Not
18 on this proposal?

19 MR. CLAYTON: No.

20 MR. FORCHION: No. New Jersey
21 eliminated it. They basically --

22 MR. CLAYTON: Forty-four bonds were
23 posted last year.

24 SENATOR ANTONACCI: Okay.

1 MR. CLAYTON: In this particular
2 instance, the new proposal calls for no
3 posting of bonds under any circumstances.
4 It's either release program or remit.

5 SENATOR ANTONACCI: Yeah, and I
6 promise to get up to speed on this, but I
7 guess I actually thought we'd have people
8 saying, What are you, nuts? We want to have
9 a cash bail so defendants aren't getting out
10 that may be dangerous, et cetera. But his is
11 interesting.

12 And as far as speedy trial goes, don't
13 we have plenty of those rules on the books
14 about speedy trials? Isn't that kind of
15 your -- you've got to have a -- not that
16 you've got to have a good lawyer, but --

17 MR. FORCHION: Yes. But in New Jersey
18 it was 270 days.

19 SENATOR ANTONACCI: Okay.

20 MR. FORCHION: Now, I was indicted
21 prior to my arrest. So my -- that 90 days
22 for me was already taken up. The day I was
23 arrested, my days started.

24 There are other people -- I've been

1 out now seven months. There are other people
2 who got arrested after me that they are
3 cruising in on two years now because they
4 were denied bail. And I could have made
5 bail. I absolutely could have made bail.
6 But I was denied bail. And I sat there for
7 16 months for a ridiculous case, and it was a
8 vendetta.

9 MR. ZALEWSKI: One of the proposals in
10 the pending legislation calls for desk
11 appearance tickets in some instances,
12 provided you can produce I.D. One of the
13 problems with that is that it circumvents the
14 speedy trial rule, because speedy trial
15 doesn't start until the person is actually
16 arraigned. In this instance they're claiming
17 that it's going to be a 20-day period between
18 arrest and your appearance on a desk
19 appearance ticket.

20 I've been a criminal defense attorney
21 for 30 years. The time between a DAT and
22 appearance in court is about two and-a-half
23 months. So all of that time now is no longer
24 going to be charged as speedy trial time.

1 So it's going to have an adverse
2 effect on speedy trial if some of these
3 provisions are put through.

4 SENATOR ANTONACCI: Okay. Thank you.

5 MR. FORCHION: Can I say one thing on
6 that?

7 SENATOR ANTONACCI: That's up to the
8 chair. You've got 20 seconds, so go ahead.

9 MR. FORCHION: Out of that 447 days,
10 134 of those days also didn't count because I
11 filed a motion. And when you file a motion,
12 according to the New Jersey bail reform law,
13 you get -- the judge has up to 60 days to
14 decide. And those 60 days are excludable
15 time, is what they call it.

16 But when you're in jail and they say
17 this is excludable time, that you wait
18 60 days like it didn't count -- it did count.
19 Every 134 of those days I remember.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Assembly?

22 CHAIRWOMAN WEINSTEIN: Assemblyman
23 Lentol.

24 ASSEMBLYMAN LENTOL: Thank you.

1 I just wanted to say that I guess
2 you've seen the bill that was proposed by the
3 Assembly, first of all, that's different from
4 the budget bill that the Governor has
5 proposed. And the bill of last year is a lot
6 different.

7 And I just wanted to tell you that it
8 wasn't 1984 that preventive detention was
9 rejected. It was rejected as early as 1965
10 when we had -- I wasn't here yet when we had
11 a Republican legislature at the time and we
12 had a Republican governor and we had a
13 commission to overhaul the Penal Law, and the
14 subject of bail was one of the most difficult
15 subjects and still today is the hardest part
16 of the criminal justice reform, as far as I'm
17 concerned.

18 But in those days they considered for
19 hours and hours the question of preventative
20 detention, and it was rejected. And it
21 wasn't by a progressive governor, a
22 progressive mayor, or a progressive
23 legislature. It was rejected by a Republican
24 legislature and a Republican governor,

1 because it doesn't work.

2 And we understand that in our bill.

3 And we still provide for cash bail for

4 violent felons without preventative

5 detention. And I think that's the way this

6 system should work. If we provide no bail

7 for people who are misdemeanants and for

8 people who are nonviolent felons -- I don't

9 know if you agree if with that, but that's a

10 system I think I could work with and support

11 philosophically.

12 And I don't know how you feel about

13 it, but I think you could be part of the

14 solution if you could help us with proposing

15 a bail reform system that actually works.

16 MR. CLAYTON: Just briefly, I would

17 agree with you, and I appreciate the history

18 on that. I need to go do some more research

19 on New York specifically.

20 I agree, preventative detention is not

21 an answer. Can we be a part of the solution?

22 I think so.

23 On our website there's a thing called

24 "The 4th Generation of Bail Reform." Give it

1 a read. And certainly we'll do everything we
2 can to be whatever part of the system that
3 New Yorkers want us to be a part of.

4 MS. ESQUENAZI: Assemblyman Lentol, I
5 just want to thank you for your comments.

6 You know that I've been coming to see
7 you about this issue long before it got
8 popular with many of the younger generation
9 here -- since 2013, sir. So I do think that
10 we have a lot to offer in terms of expertise,
11 and we look forward to working with the
12 Assembly and the Senate in that specific
13 regard.

14 ASSEMBLYMAN LENTOL: Thank you.

15 CHAIRWOMAN KRUEGER: Thank you.

16 Senator Zellnor Myrie.

17 SENATOR MYRIE: Thank you,
18 Madam Chair.

19 Let me just say I think reasonable
20 minds can disagree on the substance of how we
21 reform bail. I think having a debate and a
22 discussion is healthy.

23 What I think is not allowable is
24 conjecture, misinformation, and mockery of

1 what is a very serious issue. And I think
2 some of what we've seen today is a disgrace
3 to people who have been criminalized because
4 they are poor. People have died because they
5 cannot afford bail. This is not an issue to
6 play games with this. This is not something
7 that we should take lightly.

8 And I think some of the conversation
9 and the discussion today has been highly
10 unacceptable. It is not based in fact. And
11 I think we have a duty and a responsibility
12 to speak up when we see that.

13 There are a number of things that have
14 been mentioned about this bill that I think
15 we don't have enough time to correct. But I
16 wanted to go on the record to say that some
17 of the things put forward are just simply not
18 factual.

19 And, you know, the citing of
20 New Jersey I think is fine, but it is my
21 understanding that we are in the New York
22 State Legislature and that it is our
23 responsibility to legislate for the people of
24 this state. So I want to underscore -- and

1 this is a comment, not a question -- that we
2 are going to take this very seriously.

3 And again, we can disagree on the
4 substance, but what I've seen today is
5 unacceptable. And this mockery of the
6 process and this taking it lightly -- I
7 cannot stand idly by and listen to it.

8 So I look forward to working with my
9 colleagues in the Assembly as well as my
10 colleagues in the Senate. But this is an
11 issue that is too serious to have what we've
12 seen today occur.

13 Thank you, Madam Chair.

14 CHAIRWOMAN KRUEGER: Thank you.
15 Assembly.

16 CHAIRWOMAN WEINSTEIN: No, we're done.

17 CHAIRWOMAN KRUEGER: Oh, you're done.

18 CHAIRWOMAN WEINSTEIN: Yes.

19 CHAIRWOMAN KRUEGER: Okay. Then
20 we're done. Thank you very much for your
21 time.

22 MR. ZALEWSKI: Thank you.

23 MR. CLAYTON: Thank you.

24 CHAIRWOMAN KRUEGER: The next --

1 MR. FORCHION: I don't think 447 days
2 is a mockery.

3 CHAIRWOMAN KRUEGER: The next is a
4 panel of New York State Troopers Police
5 Benevolent Association, New York State Police
6 Investigators Association, and Police
7 Benevolent Association of New York State.

8 And I see a fourth -- let me see if
9 I'm -- is it an additional group that I
10 didn't get to --

11 PRESIDENT MUNGEER: No, I think you've
12 covered it all.

13 CHAIRWOMAN KRUEGER: We've covered you
14 all?

15 PRESIDENT MUNGEER: Right. It's kind
16 of a mish-mosh, but we're here.

17 CHAIRWOMAN KRUEGER: Well, nice to see
18 the mish-mosh.

19 (Laughter.)

20 PRESIDENT MUNGEER: Well, I'll start
21 off.

22 Madam Chair, Senator Krueger, members
23 of the committee, this is actually my
24 10th time testifying before you. I represent

1 7,000 uniformed State Troopers -- retired,
2 active. My name is Tom Mungeer, and I'm
3 president of the Troopers PBA.

4 The first thing I want to do is thank
5 everybody up here in the committee. Last
6 night -- I don't know if you had heard about
7 it, I know you're busy all day -- we had a
8 police-related shooting up in Binghamton. A
9 trooper pulled over a car, the subject got
10 out and opened fire with a semiautomatic
11 rifle upon my trooper, right through the
12 windshield of his car and into the car door.
13 My trooper was able to get his gun out and
14 return fire and stop the subject, and he
15 actually -- my trooper went home to his
16 family with just a minor wound.

17 The one thing I want to thank you for
18 is that a couple of those rounds that
19 perpetrator shot were stopped in the car door
20 by ballistic panels that this committee
21 okayed a couple of years ago that we
22 testified for. So I have a trooper upstate
23 right now, because of what you've done, he
24 was able to go home to his family. So I

1 thank you. He is not the 30th trooper I've
2 lost since 2006. That number stays at 29,
3 and I want to thank you.

4 I'm going to hit on just a couple of
5 things that I believe that we need with the
6 State Police to ensure my members' safety.
7 One simply is manpower. My first deputy
8 superintendent did testify before that we
9 have 250 recruits in the academy. It appears
10 we have another 250 to be hired this year.

11 I have been very vocal over the last
12 couple of years that we need, back-to-back in
13 the fiscal year, two classes of 250. So I
14 need an additional 250 troopers so upstate
15 will not lag behind with all the initiatives
16 that the Governor has had us do. By all
17 means, whatever is thrown our way we'll do,
18 but we do need the manpower. The men and
19 women who wear that gray uniform out on the
20 roadways all over New York State need that
21 backup.

22 The other thing is patrol vehicles,
23 simply put. Right now in the State Police
24 budget there's \$15 million for patrol

1 vehicles. We need an additional \$10 million
2 to make sure that those cars are turned over
3 adequately, a quarter of the fleet every
4 year.

5 What happens is that our orders get
6 lagged behind, and my troopers are out there
7 driving at high speeds -- as you know, zero
8 to 100 and back down to zero again -- or
9 going to emergencies backing other troopers
10 up, and their cars sometimes have 180,000 to
11 200,000 miles on them. It's not your typical
12 family car, where it's driven 55 miles per
13 hour, preferably; this is high-speed
14 emergency response.

15 So simply put, I need another 250
16 troopers in the budget. I need another
17 \$10 million for vehicles.

18 And I will take any questions, or
19 we'll do that at the end.

20 CHAIRWOMAN KRUEGER: Let's do all of
21 you and then we'll take questions.

22 PRESIDENT MUNGEER: Absolutely. I'll
23 go to my counterpart from the Investigators
24 Association.

1 PRESIDENT QUICK: Christopher Quick,
2 president of the New York State Police
3 Investigators Association. We're the union
4 that represents the 1200 active members in
5 the BCI.

6 To piggyback off of Tom, I'd like to
7 say ditto on what he said as far as the cars
8 and the manpower. The manpower for the BCI
9 flows from the manpower of the troopers, so
10 if the manpower for the troopers isn't
11 available, the BCI is not going to have the
12 available means to do their jobs.

13 We were at a high of 1,350 prior to
14 2010. With the hiring freezes, we went down
15 as low as 1,030 members, and we've climbed up
16 to -- current today -- 1,197. Budget has
17 authorized the division for us to be at
18 around 1,206, so we're almost there.

19 I know time is limited, and I'm going
20 to sum -- in summation, two important points
21 that I'd like to share with the committee
22 here.

23 One is undercover vehicles for our
24 members. You know, I testified before about

1 the criminals doing their homework, and they
2 actually take note of what kind of cars the
3 police that are doing undercover operations
4 drive. So we're constantly wishing for a
5 diversity in the cars that the division is
6 able to purchase through the state bids. And
7 it's very important that that be considered
8 by the committee.

9 The other important issue that members
10 of the BCI have is we're not issued uniforms.
11 We go to work either in a suit and a tie, if
12 you're working in a back-room detail, or if
13 you're in an undercover operation, you
14 usually wear clothing that fits the detail or
15 the community that you're working in.

16 But there are often times when we are
17 called to duties such as the manhunt up in
18 the Adirondacks for Matt and Sweat, or called
19 to duties for emergencies such as the
20 hurricanes like Hurricane Sandy, and we need
21 to be identified as police officers.

22 Most of the time our members are
23 responding in either casual clothes, whether
24 they're jeans or a t-shirt or flannel

1 shirts -- but you can only imagine that our
2 members that were searching through the woods
3 up there in the Adirondacks, if they stepped
4 in the backyard of some person that was home,
5 whether it was a single mother at home by
6 herself or just a male waiting who's on high
7 alert, waiting for somebody to step out of
8 the woods, it could have been Matt or Sweat,
9 and it was one of my members -- thankfully
10 nothing happened, but the potential is there.

11 Versus when we're working emergency,
12 we need to be identified because people need
13 help. If they don't identify us as a police
14 officer, they're going to look the other way
15 because they're going to continue looking for
16 a police officer.

17 So those are the points that I want to
18 get over that are very important to relate to
19 you tonight.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Gentlemen?

22 PRESIDENT MARCISZEWSKI: Good evening,
23 ladies and gentlemen on the committee.

24 My name is Scott Marciszewski. I'm

1 the president of the Police Benevolent
2 Association of New York State. I represent
3 approximately 1200 dedicated men and women
4 that work as State University Police
5 Officers, State Park Police Officers,
6 Environmental Conservation Police Officers,
7 and Forest Rangers.

8 I'm here tonight to ask -- I'm here to
9 thank the Legislature for passing our
10 three-quarter disability legislation and the
11 heart presumption legislation for SUNY police
12 officers. Unfortunately, the Governor vetoed
13 that legislation, so I'm asking if this
14 committee would consider adding that
15 legislation into the budget process.

16 And the reason for that is parity. We
17 face the same dangers as every other police
18 officer across the state. In 2016,
19 Environmental Conservation Officer James Davy
20 was shot responding to a call of individuals
21 hunting in the evening, and he was shot. So
22 I would ask that you will consider putting
23 this legislation back into the budget.

24 And I'm also asking for geographic

1 area of legislation for SUNY police officers.
2 As our campuses expand, our officers are all
3 across the state. They come upon instances
4 where people need help from the police. And
5 if we are not in our jurisdiction, we are not
6 able to help people.

7 When you need help, when you need the
8 police, you don't care what the side of the
9 police car looks like, you need a police
10 officer. We're fully trained police
11 officers, we receive police certificates, but
12 due to an error in the law we're not able to
13 help people if we're off the campus or
14 outside our jurisdiction.

15 There is no cost to this legislation.
16 In my view, this is a no-brainer. Give us
17 the ability to help people throughout
18 New York that need help from a police
19 officer.

20 I know we're running out of time; I'll
21 take questions at the end. Thank you.

22 VICE PRESIDENT VILAR: Hello. Thank
23 you, Madam Chairwoman and the rest of the
24 committee, for having us today.

1 My name is Manny Vilar. I'm actually
2 the founding president of the Police
3 Benevolent Association of New York State.
4 I'm also a sergeant and 35-year veteran in
5 the New York State Park Police.

6 I'm here to advocate for the New York
7 State Park Police. Due to a recruitment/
8 retention problem at the New York State Park
9 Police, we have a 53 percent attrition rate.
10 The State of New York is spending, on
11 average, \$3 million to \$5 million a year to
12 train State Park Police officers with no
13 gain. In the last 20 years we've hired over
14 450 State Park Police officers to maintain a
15 police force of 250. We've lost over 253 of
16 those officers to other agencies -- over
17 100-and-some of them went over to Tom's
18 people, over in the State Troopers.

19 So what we're advocating for is an
20 immediate takeover of the New York State Park
21 Police by the Division of State Police to try
22 and stem the constant attrition that we're
23 having at the New York State Park Police.

24 In the last 20 years, the State of

1 New York has spent up to \$80 million in
2 training police officers. That's money
3 that's been wasted that could have otherwise
4 been used to provide for more troopers, more
5 park police, more police officers to provide
6 for the safety and well being of patrons in
7 state parks.

8 State Parks has received over
9 71 million visitors last year, patrolled
10 thousands of miles of state roads and
11 parkways, snowmobile trails, waterways.
12 They're trained to the same level as the
13 State Trooper.

14 We believe the legislation that we
15 have before you to merge the two agencies
16 would eliminate that attrition. We know that
17 it would eliminate that attrition, and it
18 would also provide sufficient funding and
19 resources to cover any expenses that may
20 occur and to hire more and additional
21 troopers as we go on year after year, as
22 opposed to training them and losing them.

23 CHAIRWOMAN KRUEGER: Thank you.

24 VICE PRESIDENT VILAR: Thank you.

1 CHAIRWOMAN KRUEGER: Senator Diane
2 Savino.

3 SENATOR SAVINO: Thank you,
4 Senator Krueger.

5 Thank you, gentlemen. As always,
6 thank you for your service.

7 And, you know, I think I've been
8 sitting at this table so many years now I
9 could actually give your testimony, because a
10 lot of it hasn't changed -- the size of the
11 workforce, the condition of the vehicles.

12 So as you said, I think it was five
13 years ago was the first time we put money in
14 to address the issue of these vehicles. Some
15 of them had more than 200,000 miles on them.
16 They were supposed to buy some new ones. Are
17 we still -- or have we just gone through the
18 new ones now, is that the problem?

19 PRESIDENT MUNGEER: Well, yeah,
20 Senator, we appreciate it. Thank you for
21 your support over the years.

22 It's a constant thing. We put a lot
23 of miles, these cars are run almost 24 hours
24 a day, seven days a week, 365 days a year.

1 implementation or adoption of legal marijuana
2 in New York State and how that will affect
3 traffic safety. And there's been this
4 request that we need to have more drug
5 recognition experts. So I asked the
6 superintendent the question earlier: How
7 many do you think we need, how much does it
8 cost, what goes into training someone to be a
9 drug recognition expert?

10 PRESIDENT MUNGEER: Well, it's funny
11 you should ask. I am a drug recognition
12 expert.

13 SENATOR SAVINO: I know. That's why
14 I'm asking.

15 PRESIDENT MUNGEER: It's been a while
16 since I did it. But for over 20 years now, I
17 would say we're definitely understaffed. I
18 would say with the two-platoon system we
19 would probably need upwards of 400 DREs
20 statewide.

21 You'd have to -- as far as cost per
22 DRE, that is one question I cannot answer.
23 But you need the proper coverage. You would
24 need probably two per station per platoon, so

1 that puts -- in a perfect world, around 400.

2 The training -- very, very intense
3 when I went through it. It was a couple
4 weeks long, plus add on to that the field
5 training we did back then. We went down to
6 the Bronx and did our field training down
7 there for DRE, but it actually is one of the
8 tougher schools that you attend within the
9 police community.

10 SENATOR SAVINO: Thank you. And
11 again, I thank all of you. We are well aware
12 of your issues and, you know, we're going to
13 continue to fight for them. Hopefully we'll
14 get some of these pension laws in the budget,
15 since the Governor continues to veto them
16 since they're budgetary issues.

17 PRESIDENT MUNGEER: Thank you,
18 Senator.

19 SENATOR SAVINO: Thank you.

20 CHAIRWOMAN KRUEGER: Senator -- oh,
21 Assembly. Excuse me.

22 CHAIRWOMAN WEINSTEIN: Assemblyman Ra.

23 ASSEMBLYMAN RA: Thank you very much.

24 Thank you, gentlemen, for being here

1 and certainly for what you and your members
2 do to keep our state safe. And in particular
3 we send our best to Officer Conklin and hope
4 he's well again soon. And we're very
5 thankful that, you know, those resources were
6 there to protect him in this situation.

7 PRESIDENT MUNGEER: Thank you, sir. I
8 appreciate that.

9 ASSEMBLYMAN RA: I just want to ask
10 about something you mentioned in your letter,
11 because as many people are aware, we did a
12 major package of gun bills today in the
13 Legislature. But one of the things that I
14 think is missing is that dedication to SROs,
15 and you mentioned it here. And I think
16 that's not just -- it's certainly a great
17 thing for safety, but it's so much more than
18 that in terms of establishing a relationship
19 with a student population and being there for
20 everything from bullying situations and all
21 of that.

22 So, number one, that 500 additional
23 troopers, would that fit into being able to
24 staff that type of program, or would that

1 can do is be proactive and put police
2 officers, troopers, whether it's local police
3 officers or troopers into schools to help
4 buttress the security. Those 500 troopers I
5 mentioned, they can come at -- the SRO
6 program can come out of that, although any
7 other additional troopers are more than
8 welcome.

9 ASSEMBLYMAN RA: Thank you.

10 CHAIRWOMAN KRUEGER: Thank you.

11 Senator Antonacci.

12 SENATOR ANTONACCI: Thank you,

13 Madam Chair.

14 Thank you to all your members for
15 their service. It's a dangerous job. With
16 regard to the troopers, as I said earlier to
17 the superintendent, deputy superintendent,
18 the New York State Fair couldn't function
19 without the men and women that help that
20 fair.

21 I'm also a member of an organization
22 where we memorialize any troopers that are
23 killed in the line of duty with a brick at
24 the Horticulture Building. It's a very

1 well-done ceremony -- we'd like to not have
2 it, but unfortunately that happens.

3 I realize that the deputy
4 superintendent is more management and you
5 represent the men and women that are out
6 there every night. Do you guys have an
7 opinion, does your organization have an
8 opinion on the commercialization of
9 marijuana?

10 PRESIDENT MUNGEER: I guess being the
11 head of the union, this esteemed body -- you
12 pass the laws, we enforce them.

13 I will ask that the one thing that I
14 believe that we do need is some sort of
15 monies within this law for DREs, for manpower
16 and everything else, so we can perform our
17 duties. Some of the -- I belong to national
18 organizations. Colorado, I do know that, you
19 know, they are claiming that their fatality
20 rates go up and what have you. I know
21 there's different statistics out there. But
22 we're going to need some more money to ensure
23 that the men and women out there can perform
24 their duties.

1 You know, the one thing the deputy
2 superintendent touched on, which I believe --
3 you know, our dog program, from what I
4 understand, all those drug dogs will have to
5 be immediately retired and replaced with new
6 drug dogs. So just one little thing.

7 So as far as my personal opinion,
8 that's something else. We will enforce the
9 laws that this esteemed body does pass.

10 SENATOR ANTONACCI: Okay, thank you.

11 To the other topic, I think I could
12 support more jurisdiction of SUNY Police. I
13 drive by a community college campus -- I live
14 literally about a mile away. I guess I have
15 a heavy foot, so I'm not a big fan of someone
16 being out there with speed traps. But
17 certainly if there's an accident or a need
18 for an emergency service, I don't know why we
19 wouldn't agree to that.

20 PRESIDENT MARCISZEWSKI: The purpose
21 is not more enforcement. The purpose is when
22 jurisdictions call us for help. When I'm at
23 the University of Buffalo, our campus is
24 expanding into downtown Buffalo, we go from

1 building to building -- when we go from
2 building to building, we lose a certain part
3 of our jurisdiction. And when we get "Help,
4 help, help" we should be able to help. I'm
5 not there to write you a ticket, but I'd love
6 to help you.

7 SENATOR ANTONACCI: I would think,
8 right, yeah. I think I can support that.

9 Last question, I've got about
10 30 seconds. I talked to the commissioner of
11 DEC about this issue that I've been advised
12 about with Environmental Conservation Police
13 Officers and Forest Rangers. You can get
14 back to me at another time on this, but I
15 certainly wouldn't want to pit members of
16 your service against each other, but there
17 does seem to be some clear differences in
18 duties, and I'm sensitive to pay structure.
19 If there's anything, you know, you want to
20 reach out to me privately on, I would
21 appreciate that.

22 PRESIDENT MARCISZEWSKI: Yeah, we can
23 certainly do that, follow up.

24 SENATOR ANTONACCI: Thank you.

1 CHAIRWOMAN KRUEGER: Thank you.

2 Senator Antonacci, keep your foot off
3 the speed pedal.

4 (Laughter.)

5 CHAIRWOMAN KRUEGER: And Assembly.

6 SENATOR ANTONACCI: I will.

7 CHAIRWOMAN WEINSTEIN: Except if you
8 could help us speed through the hearing, that
9 wouldn't be bad.

10 But we'll go to Assemblyman Lentol.

11 ASSEMBLYMAN LENTOL. Thank you. Thank
12 you, Madam Chair. Thank you.

13 Just more of a statement, I don't have
14 a question. But maybe I do have a question.
15 But I just wanted to say at the outset
16 that -- thanking you for your service to the
17 State of New York. I believe that you folks,
18 all of you, Tom and everybody else, are held
19 with a great deal of respect in the State of
20 New York, and certainly among us in the State
21 Legislature. We hold you in very high
22 regard, and we want to see that you have the
23 resources to do your job even more
24 effectively.

1 But I wondered as you spoke about the
2 legalization of marijuana, Tom, whether or
3 not -- I know that there was a time -- maybe
4 before your time, but I don't think so --
5 that we were able to conduct tests without
6 equipment like Breathalyzers to determine
7 whether somebody lacked sobriety on the
8 streets of New York State, where we could
9 conduct coordination tests for alcohol as
10 well as drug-related offenses.

11 PRESIDENT MUNGEER: That's
12 incorporated in the drug recognition expert
13 protocol. That's just one part of it.

14 You know, as again the deputy
15 superintendent testified earlier today, that
16 the reason you're pulling over that vehicle
17 is because you witnessed some sort of
18 impairment, most likely. And from that point
19 on, your investigation continues.

20 So if it's bringing that individual
21 out of the vehicle and then conducting
22 tests -- from there, you might have to bring
23 them back to a station or a barracks and
24 perform additional tests as a drug

1 recognition expert. But there are a certain
2 number that you can use. It is a little
3 tougher from alcohol; alcohol is usually very
4 noticeable from smell. But Assemblyman, that
5 is part of the -- field sobriety testing is
6 part of that process.

7 ASSEMBLYMAN LENTOL: But the question
8 still remains, we don't have a Breathalyzer
9 test where somebody who smokes marijuana --

10 PRESIDENT MUNGEER: No.

11 ASSEMBLYMAN LENTOL: Nor do we have a
12 DNA test to determine -- or any other kind of
13 scientific test.

14 Are we on the brink of establishing a
15 test that may help us when we want to enforce
16 someone who's driving under the influence of
17 drugs?

18 PRESIDENT MUNGEER: Yeah, I do not
19 believe so. And again, I am not going to
20 speak to the science of it. I can speak to
21 what I am trained. I received training in
22 recognizing if somebody is impaired by
23 certain drugs, including alcohol, but other
24 recreational drugs. That I can testify to.

1 So what I will say is that as Senator
2 Savino stated, it's an intensive course to
3 learn that. And we're going to need a lot
4 more of them in order to go out there.

5 Again, if the laws are passed as it
6 looks like they are going to, the one thing
7 I'll ask from all of you is that -- give me
8 some help within that law to give us funding
9 so we can protect the people of New York
10 State more adequately.

11 ASSEMBLYMAN LENTOL: Thank you.

12 PRESIDENT MUNGEER: So I appreciate
13 your support over the years. It means a lot.
14 Thank you.

15 CHAIRWOMAN KRUEGER: Thank you.

16 It's not a question, I'm just going to
17 throw out a comment as a sponsor of the
18 marijuana legalization bill.

19 So we won't necessarily have more
20 people using marijuana and driving because
21 everybody's using marijuana now, it's just
22 illegal. So it's not actually expected that
23 we'll see an increase.

24 But I do completely agree -- and in

1 the bill that Crystal Peoples-Stokes and I
2 carry in the Assembly and the Senate, there
3 is a commitment of funds to get you those
4 specialized officers because of the
5 recognition that specially trained officers
6 can in fact determine whether the driver is
7 driving inebriated based on observation,
8 because we don't yet have a field sobriety
9 test from an equipment perspective, although
10 several states and countries are piloting
11 projects for mobile devices.

12 Now, that's my minute. I end my time.

13 And now may I go to John Liu?

14 SENATOR LIU: Thank you, Madam Chair.

15 I want to thank you, this panel and
16 your members, for what you do for the
17 residents of our state. I have some related
18 questions which I will offer to you. If
19 you'd like to discuss them more in private,
20 I'd be happy to do so.

21 But along the lines of what we are
22 about to do, and what I think and what you
23 apparently also think is about to happen in
24 the State of New York decriminalizing the use

1 of cannabis -- and so you've answered
2 questions about recognizing people who might
3 be under the influence of these drugs.

4 What about the idea that there are
5 some people who believe that marijuana is a
6 gateway drug, a gateway drug to -- you know,
7 other drugs that people might consider more
8 serious, more dangerous? Is there any kind
9 of position that any of your associations
10 have taken, or if there's an informal opinion
11 you might wish to offer on the record?

12 PRESIDENT MUNGEER: I'll offer my
13 opinion. And again, I walk that tightrope
14 with my personal opinion and also the opinion
15 based on what you give me for laws to
16 enforce.

17 I represent the people -- you give
18 them the laws, my people have to go out there
19 and enforce these laws. So we have to brush
20 aside all our personal opinions. You might
21 agree or disagree with that law out there,
22 but once that law is on the books, we have to
23 enforce it.

24 So as far as a gateway drug, again,

1 that comes down to a personal opinion. So
2 again, from what I see coming, and reading
3 and what have you, it sounds like it's going
4 in that direction. So Tom Mungeer's personal
5 opinion really doesn't matter.

6 Again, I just ask you for that help
7 on, you know, the monetary side so my people
8 can do their job more adequately. And our
9 ultimate goal is to protect the men and women
10 and children of New York State.

11 SENATOR LIU: I will say that some of
12 the literature that I've read or have been
13 given indicates that the science and medical
14 community doesn't necessarily see marijuana
15 as a gateway drug.

16 But from the point of view of
17 enforcing current laws and also keeping
18 communities and people safe, it is possible
19 that some of your members have made
20 observations that may not be scientific or
21 medical in nature but speak to the behavior
22 of people in our communities on our streets.

23 And you can't answer this question
24 right now, obviously, but if there's any

1 information or any kinds of anecdotal
2 evidence or surveys among your members that
3 you could provide, I think that would be very
4 helpful to inform our debate.

5 PRESIDENT MUNGEER: Thank you,
6 Senator.

7 CHAIRWOMAN WEINSTEIN: Assemblyman
8 Weprin.

9 ASSEMBLYMAN WEPRIN: Thank you.

10 And I want to also thank the panel for
11 all your service to the State of New York.
12 And as you can see from the statements of my
13 colleagues, you have bipartisan support.
14 Anything we can do to help you keep us all
15 safe -- and of course, thank God that that
16 trooper is okay, and hopefully he'll make a
17 full recovery.

18 And thank you, Tom, for your years of
19 service, and all of you for keeping us all
20 safe.

21 PRESIDENT MUNGEER: Thank you, sir.

22 PRESIDENT MARCISZEWSKI: Thank you,
23 sir.

24 CHAIRWOMAN KRUEGER: Senator Jamaal

1 Bailey.

2 SENATOR BAILEY: Thank you,
3 Madam Chair.

4 I would also echo those sentiments.
5 I'm glad that the officer is safe and we are
6 passing gun control laws so that we can get
7 dangerous guns out of the hands of
8 individuals whose hands they shouldn't be in.

9 And one of the bills that we actually
10 passed today was related to gun buyback. And
11 I know that it's fresh, and I'm not going to
12 ask you to opine on legislation that has been
13 just passed today, but I want you to think
14 about whether these gun buybacks that we're
15 looking to -- that you have the option, I
16 should say, the State Police has the option
17 of doing throughout the state, will have any
18 adverse effect on membership, what it takes
19 away from personpower, as opposed to
20 manpower, or will it take away from the
21 officers doing tasks that they're required?
22 I would just like to -- whether you have an
23 opinion on that right now or not.

24 PRESIDENT MUNGEER: Well, for any task

1 through your commitment and your excellence
2 throughout the state. I just wanted to make
3 sure I got that on the record. And that's
4 the reason why I wanted to ask the question,
5 so that we can make sure we're mindful of
6 these things going forward.

7 Thank you for your time tonight.

8 PRESIDENT MUNGEER: I appreciate that,
9 sir. Thank you.

10 SENATOR BAILEY: Absolutely.

11 CHAIRWOMAN WEINSTEIN: I just want to
12 take a moment also to thank all of you and
13 your members for the service to our state.
14 And I was honored at -- to be at the PBA
15 dinner this last June, and the Signal 30
16 benefit dinner. And I just wanted to say --
17 I didn't have an opportunity then -- but it
18 was a very moving experience, especially
19 relating to the families of fallen officers.

20 So thank you for your service.

21 PRESIDENT MUNGEER: The troopers have
22 enjoyed the support of -- bipartisan support,
23 and we appreciate that, and we -- it will
24 continue. And thank you for everything.

1 CHAIRWOMAN KRUEGER: Thank you all
2 very much for being here so late.

3 PRESIDENT MUNGEER: Thank you.

4 PRESIDENT MARCISZEWSKI: Thank you for
5 having us.

6 PRESIDENT QUICK: Thank you.

7 VICE PRESIDENT VILAR: Thank you for
8 having us.

9 CHAIRWOMAN KRUEGER: Next is Tracie
10 Gardner of the Legal Action Center.

11 She left. You are not Tracie Gardner
12 of the Legal Action Center.

13 Brian Sullivan, is he here? Oh,
14 there -- Brian Sullivan?

15 MR. VISCUSI: No, he was not -- he was
16 unable to make it. He had to tend to a union
17 issue in Nassau. He asked me to speak on his
18 behalf.

19 CHAIRWOMAN KRUEGER: Okay. Sure.

20 And you'll introduce yourself when you
21 get here, and then just let the next speakers
22 know that, Michael Powers and Tammy Sawchuk
23 of the New York State Correctional Officers
24 and Police Benevolent Association.

1 And you are?

2 MR. VISCUSI: Good evening, Madam
3 Chair, and members of the Senate and
4 Assembly. Thank you for allowing me to speak
5 this evening.

6 My name is Louis Viscusi. I'm the
7 president of the Suffolk County Correction
8 Officers Association. I'm also member of an
9 informal group of downstate corrections
10 officers which include Suffolk, Nassau,
11 New York City, and Westchester.

12 I was hesitant about speaking on the
13 issue of bail reform, because many will think
14 that my concern is solely based on the theory
15 of more inmates equals more jobs. Actually,
16 the concern that I have is that we continue
17 to release repeat offenders back into the
18 community without getting them the help for
19 their problems which have led them down this
20 path. What we're doing is a disservice to
21 the accused offender and society. We need to
22 work together to treat these issues and make
23 them less likely to reoffend.

24 I am a correction officer, but aside

1 from my career, I'm also a Suffolk County
2 resident and a proud parent to my 14-year-old
3 son and my 11-year-old daughter. I am by no
4 means an expert on bail reform in New York
5 State. However, I would like to explain what
6 I do know from my experience as a correction
7 officer working in Suffolk County.

8 I spent the majority of my 20 years as
9 a corrections officer in the booking area.
10 We would book inmates upon admission and
11 discharge them when they are released for
12 various reasons. All court appointments went
13 through my work area as well.

14 In Suffolk County, I feel the system
15 works. I'm not saying it's a written policy,
16 but from my experience, if an individual is
17 arrested for the first time on a nonviolent
18 crime, they almost always are ROR'd. And I
19 agree that they should be. Sometimes good
20 people make bad decisions.

21 But sometimes an individual is in a
22 bad way and continues their criminal ways.
23 That same individual is then arrested for
24 additional crimes in a short period of time,

1 and their chances of ROR are lessened.

2 Either way, if an individual is
3 remanded, they have court dates fairly
4 quickly in Suffolk County. Depending on the
5 crime, most bails will be reduced with each
6 court date or the inmate may be ROR'd on one
7 of those future court dates.

8 Inmates new to the system would often
9 ask me, when they were going to court, What
10 do you think will happen in court today?
11 Nearly every time I can look at their charge,
12 their bail, their priors, and tell them
13 fairly accurately they will be either ROR'd
14 or what their bail could be reduced to,
15 because what we had worked.

16 If there are isolated cases and
17 systems that need to be addressed around the
18 state, then I feel that should be done.
19 Maybe certain municipalities need to change
20 the way they operate.

21 But at some point, I feel that public
22 safety needs to be taken into consideration.
23 I know that was not the original intent of
24 cash bail. But we as private citizens have a

1 right to public safety, and you as elected
2 officials have a duty to ensure it. If bail
3 reform needs to be enacted, there needs to
4 also be an avenue for the courts to weigh out
5 the risk to public safety for perpetual
6 offenders. We owe that to the law-abiding
7 citizens, and we owe a path to a better
8 lifestyle for the repeat offenders.

9 Even if someone is only committing
10 nonviolent crimes, they are still -- they
11 still affect our neighborhoods, our property,
12 and our families. We need our children to
13 see that people who repeatedly commit these
14 crimes do have some consequences.

15 Most of the crimes being committed
16 today are drug-related. You can Google the
17 newspaper articles and see so many people say
18 "I would be dead if I wasn't put in jail."
19 That's because they need to get clean before
20 they even have the chance to make some good
21 decisions moving forward.

22 Taking a repeat offender with a drug
23 addiction and giving them another appearance
24 ticket or RORing them again will just put

1 them back out onto the streets to continue
2 their life of crime. It may be nonviolent;
3 it may be the person who just breaks into
4 your car, maybe it's the person who waits for
5 you to leave and climbs through your window
6 and steals your jewelry box. Either way,
7 this person needs an avenue to get clean and
8 access to programs.

9 Sometimes jail is the only viable
10 solution for them. Many people have a
11 Hollywood view of jail and prison because
12 that's all they know is what they see on TV.
13 Again, I can only speak from my experience in
14 Suffolk County, but it's nothing like TV.

15 We have many programs and specialty
16 housing areas to assist the inmate population
17 and give them a fighting chance to being
18 productive members of society when they
19 leave. We have specialty housing for our
20 elderly inmates that are 55 and over, veteran
21 inmates, younger population, and we have
22 alcohol and substance abuse programs for
23 inmates. We have vocational programs so
24 inmates can learn a trade and be gainfully

1 employed when their time is served. We have
2 a library and church services and the ability
3 to earn your GED while incarcerated.

4 I admit that there may be problems in
5 the system, and if there are, then we should
6 look for those problem areas and fix them.
7 Start using our jails as their real title,
8 correctional facilities. I can speak for
9 Suffolk County only, not on a departmental
10 level, but as far as my officers, I've seen
11 recidivism drop. We used to have an average
12 count of 1800 inmates up until about seven
13 years ago, when we started enacting these
14 programs. Now we average about 1200 inmates
15 per day.

16 If we have areas that are already
17 doing that, leave it. I know that everyone
18 speaks about Kalief Browder, and I agree that
19 any loss of human life is tragic. But he
20 didn't die in jail. He died two years after
21 he was released because of untreated mental
22 illness. If there were missteps in that
23 case, let's do what we can to prevent those
24 missteps from reoccurring. But let's do it

1 without putting our families in danger.

2 I was fairly young during the '80s,
3 but I saw how New York State emptied most of
4 the psychiatric hospitals to save some money.
5 I think we can all agree that that backfired.
6 Let's not make the same mistake here.

7 Thank you for your time.

8 CHAIRWOMAN KRUEGER: Thanks for your
9 testimony.

10 Senator Jamaal Bailey.

11 SENATOR BAILEY: So I would like to
12 thank you for your testimony and your
13 approach to this very important matter, and
14 Senator Myrie, in contrast with some of the
15 things that we've heard earlier.

16 I understand the job is a rough one.
17 And I understand that the reality is -- but
18 from my perspective and where I sit and where
19 I've been, growing up where I've grown up,
20 some of the things about cash bail that I
21 individually, as a State Senator and a
22 person, find troubling is that we are
23 detaining people solely predicated upon their
24 wealth or lack thereof. If you are

1 Harvey Weinstein, you can get out the same
2 day. But there are people who can't afford
3 \$300 to get out.

4 A lot of the public policy behind why
5 I believe that we should be looking to reform
6 our bail system -- and again, I am open to
7 listening to any opinion from any person
8 about how we can change things. But I
9 strongly believe that we should not be
10 looking at wealth as a way to continue
11 detention. And those are my opinions.

12 And again, I thank you for the job
13 that you do. It's less of a question but
14 just more of a statement in response to what
15 you did. And I respect your view, and I
16 appreciate it.

17 MR. VISCUSI: I actually agree. I've
18 read some isolated cases that I think, you
19 know, have been excessive, how some people
20 have been incarcerated on a low amount of
21 bail for a very minor crime for a long period
22 of time.

23 I can't speak for every county. I
24 don't know every judicial system. All I know

1 is how we do things in Suffolk County, and I
2 think that is pretty fair.

3 SENATOR BAILEY: And I appreciate
4 that. I'm a Bronx County resident my whole
5 life, and I -- in the Kalief Browder issue,
6 you're right, he committed suicide two years
7 later. But again, the bail that was set --
8 if he and his family were not unable to pay,
9 he's able to get out on a charge that he
10 ultimately beats. So I understand the
11 comparison.

12 But, you know, if we didn't have cash
13 bail or we had a different bail system,
14 somebody like Kalief who was in jail for
15 something that he didn't do, he might not
16 have been there. He wouldn't have had to go
17 through the mental anguish and the issues and
18 concerns that he went through.

19 MR. VISCUSI: I don't disagree with
20 you. I feel like in Suffolk County, I think
21 we have like this unwritten credit system.
22 They look at what you're charged with. If
23 it's something that you're only going to get
24 60 days for anyway and you're in for 21 days

1 for your next court date, I know you're going
2 to get ROR'd, because the ultimate outcome is
3 not going to be much longer than that anyway.

4 And I think there were missteps in
5 that case as well as several others. And I
6 think that there definitely needs to be some
7 corrections. But I don't think totally
8 eliminating -- I think public safety needs to
9 become a factor.

10 SENATOR BAILEY: Well, I appreciate
11 your testimony and your time and your candor.

12 MR. VISCUSI: Thank you, sir.

13 SENATOR BAILEY: Thank you.

14 CHAIRWOMAN KRUEGER: Thank you very
15 much for your testimony tonight. Appreciate
16 it.

17 MR. VISCUSI: Thank you.

18 CHAIRWOMAN KRUEGER: And now up,
19 Michael Powers, New York State Correctional
20 Officers and PBA. Is he here? We have his
21 testimony, but perhaps he's tried to return
22 home in the snow.

23 Okay, then we're going to go to Public
24 Employees Federation: Steven Drake, Adreina

1 Adams, and Ricardo Cruz, or some combination
2 therein.

3 Good evening.

4 MR. DRAKE: Good evening.

5 CHAIRWOMAN KRUEGER: We're just doing
6 a little reorganizing.

7 Hi. Start, please.

8 MR. DRAKE: Good evening,
9 Chairs Krueger, Weinstein, and Weprin, and
10 other distinguished members of the Senate and
11 Assembly. My name is Steven Drake, and I'm a
12 vocational supervisor at Mohawk Correctional
13 Facility and have worked for the Department
14 of Correction for over 26 years.

15 The New York State Public Employees
16 Federation represents nearly 5,000 DOCCS
17 members, including those who work in the
18 communities in the Division of Community
19 Supervision. It also includes those who work
20 within the prison health system,
21 rehabilitative services, education,
22 vocational training, drug treatment and many
23 other titles that provide programs and
24 services to inmates. These are all areas

1 critical to help DOCCS fulfill its mission.

2 The first concern that we'd like to
3 talk to you about is the delay in creating
4 and implementing a vendor-based package
5 program within the facilities. It poses
6 increased dangers for the staff with the
7 knowledge that drugs and other contraband are
8 introduced into the facility through package
9 rooms.

10 This issue continues to be a high
11 priority to protect our members. With recent
12 legislation changes, the prison population
13 overall has decreased. What is left is a
14 population more violent than ever before.
15 While the department has responded with
16 increased development and uses of programs
17 such as the SDU, reduction in SHU time, and
18 use of pepper spray, our staff is left to
19 deal with a more violent type of inmate.

20 I appreciate the Governor and
21 Legislature and their efforts to reform
22 solitary confinement issues. However, we
23 have some concerns about the proposed
24 changes. Therefore, the proposed legislation

1 such as the HALT bill poses additional
2 dangers to our staff, the main concern being
3 our staff's inability to have a robust and
4 corrective course of sanctions without these
5 measures in place. The window is open for
6 inmates to develop more manipulative skills.

7 We have seen how direct programming
8 benefits not only the inmate, but increased
9 safety for staff and other inmates. By
10 front-loading programs such as ART and ASAT
11 and education at the start of the inmate's
12 incarceration, versus towards the end, it
13 would allow for inmates to put the skills he
14 or she has learned to use to make better
15 choices throughout their incarceration.

16 Increased programs, early
17 intervention, and a stronger use of a
18 progressive disciplinary system allows for a
19 proactive approach for staff and
20 accountability on the inmates' behalf. The
21 proposed limitation of sanctions, such as
22 15 days of SHU time in the HALT legislation,
23 may lead to increased inmate manipulation of
24 the system and the development of an "only

1 the strong will survive" type of environment
2 for the inmates.

3 The next concern would be -- another
4 area of great concern is the alarming
5 shortages in vacancy rates among nursing,
6 dental, and pharmacy positions, with rates in
7 some facilities hovering at 50 percent or
8 more. The medical staff, especially nurses,
9 are not only tasked with the care of inmates
10 but of staff as well. With an increase in
11 violence and drug use, nursing staff are
12 called upon to assess and treat both inmates
13 and responding staff involved in a variety of
14 emergency situations. While geographic pay
15 differentials have helped, it is only a
16 short-term fix.

17 A collaborative union effort has
18 helped educate staff on safety procedures and
19 risk identification. Through this
20 collaboration it has become even more
21 imperative that the department upgrade our
22 outdated personal alarm system. While we
23 understand the department's recent budget
24 allocations, such as the AO facilities and

1 the NYCLU lawsuit, we still ask how to
2 quantify the cost of a negative life-changing
3 event.

4 I'd like to thank you at this time.

5 Any questions?

6 CHAIRWOMAN KRUEGER: Senate?

7 Assembly?

8 Certainly, Assemblymember.

9 ASSEMBLYMAN BARCLAY: Thank you.

10 Good evening, and thanks for your
11 testimony.

12 It was asked of the acting
13 commissioner this morning about the violence
14 that's increasing over the last decade in
15 prisoner-on-staff and prisoner-on-prisoner
16 violence. Is that affecting your members,
17 and do you have an understanding of why that
18 increase is happening?

19 MR. DRAKE: It affects everybody that
20 works within the department. It's just the
21 change in the direction that inmates are
22 given with the change of how they're -- the
23 disciplinary system is handled. So there's
24 less time given to inmates, so they return

1 back into the program service areas a lot
2 faster because of the way the tiering of the
3 system has happened.

4 So therefore the inmate may become
5 more empowered because he hasn't received as
6 much penalty in that time frame. So then
7 we're -- you know, it could be where before
8 they might have been put out of the program
9 for 15 days, now they might return back to
10 the program within one to two days or five
11 days because of the type of sanction that
12 they were given.

13 ASSEMBLYMAN BARCLAY: Thank you.

14 CHAIRWOMAN KRUEGER: I do have a
15 question. Thank you so much for your time.

16 So I think part of the testimony you
17 didn't have a chance to get to --

18 MR. DRAKE: Sure.

19 CHAIRWOMAN KRUEGER: -- was after the
20 healthcare shortages, which are certainly a
21 real concern and I think new for some of us
22 today. I don't think that was cited in other
23 people's testimony, so I appreciate that.

24 But then you go on to say you're

1 concerned about the geriatric parole proposal
2 because it would let people out, by
3 definition, sooner. And that you were
4 talking about that you thought that might
5 increase the problems for probation and
6 returns to prison.

7 But have you seen the data I have seen
8 that people, when released from 55 up,
9 basically don't continue criminal activity?

10 MR. DRAKE: I haven't seen all of that
11 data. So I mean most of the information that
12 we've given to you is information that we've
13 shared through the community supervision
14 piece, getting feedback from our members in
15 regards to placement of these people and how
16 we supervise those people after release, and
17 the burden that falls back onto the
18 communities for their medical needs and
19 things of that nature.

20 CHAIRWOMAN KRUEGER: And jumping back
21 to the health -- oh, I'm sorry, did you want
22 to say something also?

23 MR. AMAROSI: I'm sorry, Senator, I
24 was -- I probably could have just addressed

1 you guys instead of leaning over to him.

2 I think the general -- I'm Greg
3 Amarosi, by the way. I'm the legislative
4 director. I am not Ricardo Cruz, even
5 though ...

6 I think we have a general concern just
7 for overall -- just for the caseloads on our
8 parole officers. So for us, it's almost like
9 a tipping-point argument. We have -- our
10 officers are stretched pretty thin already.

11 And again, to your point, I don't
12 think we're worried so much about a crime
13 wave of senior citizen parolees. It's just
14 more -- again, it's just we view it as more
15 work for our officers who are already
16 stretched pretty thin.

17 CHAIRWOMAN KRUEGER: And just jumping
18 back to the healthcare staff shortage, my
19 understanding was that at least DOCCS
20 contracts some of the healthcare services
21 out. Are these state workers in the prisons,
22 or is this some kind of contract with
23 healthcare agencies?

24 MR. DRAKE: It's contracts with

1 healthcare agencies to backfill open items
2 across the board.

3 And we're still -- even with those
4 contracts in place, we still continue to run
5 large shortages in many of our facilities.
6 In Cape Vincent alone, we're at 75 percent
7 plus in shortage.

8 CHAIRWOMAN KRUEGER: So I don't know
9 if you know the answer because they're not
10 PEF workers. But if we're contracting for
11 some rate of healthcare workers per prison or
12 per, I don't know, ratio of prisoners, why
13 are we suffering from shortages? Are they
14 not delivering under their contract?

15 MR. DRAKE: The inability to actually
16 have bodies in place to fulfill those
17 contracts. So even though our facilities are
18 short and we have contract vendors on hand,
19 even the contractors are having, you know, a
20 hard time placing nurses in those holes for
21 us to help. So we're still running large
22 volumes of overtime and mandatories --
23 continue to have mandatory overtime for our
24 members.

1 CHAIRWOMAN KRUEGER: Thank you.

2 And thank you for your time tonight.

3 Was there any other questions? I

4 didn't want to cut anyone off. Nope?

5 It's just the hour is getting later.

6 Thank you so much.

7 MR. DRAKE: Thank you very much.

8 MR. AMAROSI: Thank you.

9 CHAIRWOMAN KRUEGER: Hope you don't
10 get trapped in the snow. Thank you.

11 Okay. Next up, New York Legal
12 Services Coalition. And for people keeping
13 track, after them, her, we have New York
14 State Defenders Association.

15 MS. ERICKSON: Good evening.

16 CHAIRWOMAN KRUEGER: Good evening.

17 MS. ERICKSON: My name is Anne
18 Erickson. I'm president and CEO of the
19 Empire Justice Center.

20 CHAIRWOMAN KRUEGER: I knew you
21 weren't Maha Syed.

22 MS. ERICKSON: You knew I wasn't Maha.
23 She had to head home in the snow, and I
24 thought it was worth sticking around and

1 making sure we got on the record.

2 So thank you very much. I know this
3 has been a very long day.

4 So Madam Chair Krueger and Madam Chair
5 Weinstein, very nice to see you. I'm here
6 tonight on behalf of the Legal Services
7 Coalition, which is a coalition of 50 legal
8 services organizations from around New York
9 State.

10 We cover every county in the state.
11 We provide civil legal services to those in
12 need, primarily folks living under
13 200 percent of poverty, by and large. We
14 provide civil legal services in areas
15 commonly referred to as the essentials of
16 life -- the roof over one's head, healthcare,
17 education, immigrant benefits, benefits for
18 public assistance -- things that are going to
19 help keep families housed and in good order.

20 We're here on two particular issues
21 tonight. One is to urge your support of the
22 OCA budget. As you know, starting under
23 then-Chief Judge Jonathan Lippman, there were
24 allocations made for civil legal services for

1 the first time in the OCA budget. That
2 allocation has grown to \$85 million for civil
3 legal services and \$15 million which was
4 allocated to the IOLA fund that is in the
5 budget, as proposed by Chief Judge
6 Janet DiFiore and presented to you by the
7 Governor. We urge you to support that in
8 full.

9 We are concerned, however, about the
10 Legal Services Assistance Fund. This is a
11 fund actually started in the Assembly in
12 1993, the very first time that New York State
13 supported civil legal services in a general
14 way and really started us on a path to
15 addressing access to justice.

16 Those funds in the Legal Services
17 Assistance Fund, which was actually created
18 to support civil legal services -- none of
19 the funds in the budget this year are going
20 to support civil legal services. They're
21 going to aid to prosecution, aid to
22 defense -- you know, worthy causes --
23 prisoner legal services -- of course, we
24 totally support a loan forgiveness program.

1 But the allocation for civil legal
2 services, which was about 4.4 million in all
3 of the last budget, is eliminated. So we
4 would urge that that get restored and the
5 funding items get restored to the budget in
6 full.

7 I just wanted to very quickly touch
8 on -- I know you guys know all of the
9 incredible impact that civil legal services
10 has across the state. We handled over
11 483,000 cases between 2017 and 2018. That's
12 up from 385,000 cases in 2013. So the
13 investments that are being made across the
14 board really do have an impact.

15 When we started this effort with
16 Judge Lippman, 2.3 million people were
17 showing up in civil court unrepresented.
18 That is now down to 1.8 million people
19 showing up in civil court unrepresented. We
20 still have a very long way to go. When we
21 started these efforts, about 20 percent of
22 the unmet legal needs of low-income
23 New Yorkers was being met. We are now
24 reaching about 37 percent of the needs for

1 civil legal services. That means we still
2 have 63 percent of a justice gap between the
3 need -- the civil legal needs of low-income
4 New Yorkers and what we are actually able to
5 provide.

6 The financial impact of the Chief
7 Judge's task force, of which I'm honored to
8 be a member -- it does data collection every
9 year, and financial calculations. They
10 estimate that civil legal services returns
11 \$10 to every dollar invested. So whether
12 you're talking about people, the impact on
13 people's lives, the impact on our courts, the
14 impact on the state fisc, it's a great
15 investment.

16 We thank you, and we urge its
17 continuation -- of course, support.

18 Thank you very much.

19 CHAIRWOMAN KRUEGER: Thank you.

20 Senator Hoylman.

21 SENATOR HOYLMAN: Thank you.

22 Good evening, and thank you for being
23 here --

24 MS. ERICKSON: Thank you.

1 SENATOR HOYLMAN: -- and for
2 everything you do.

3 Question. The -- so just to restate
4 it, the Governor's Executive Budget
5 completely zeroes out your funding?

6 MS. ERICKSON: Correct.

7 SENATOR HOYLMAN: Are you outraged?
8 I'm outraged.

9 MS. ERICKSON: I -- yes. You know, it
10 really -- it is so frustrating. This --

11 SENATOR HOYLMAN: I mean, let's just
12 say, does it not like state the Executive's
13 priorities in a way that is so astounding?

14 MS. ERICKSON: It is. You know, he --
15 the Executive's budget for the last number of
16 years has included that funding. So going
17 back to when we first started the funding for
18 civil legal services in the early '90s, the
19 Legislature would put it in and the Executive
20 would take it out. The Legislature would put
21 it in, the Executive would take it out.

22 And we literally, every single year --
23 and Helene has been here through the thick
24 and thin of all of it, along with

1 Chair Lentol, who has been a complete
2 champion. And for the last number of years,
3 Governor Cuomo has actually kept that
4 allocation in the budget.

5 I don't know why this year it was
6 taken out. It was absolutely stunning to us
7 that that particular amount of funding was
8 eliminated.

9 Generally the Legal Services
10 Assistance Fund overall is about 14 million,
11 somewhere between 14.2 and 14.8 each year
12 that it gets put in the budget. This year
13 it's taken down to 10, and the allocation for
14 the civil legal services component is not
15 there.

16 SENATOR HOYLMAN: Let's say we don't
17 restore it. Describe to us that nightmare
18 scenario so we all here can understand what
19 that means for the thousands of individuals
20 who without means would not be represented by
21 you. What does that mean for them?

22 MS. ERICKSON: Well, what that would
23 mean is that we will be turning away even
24 more people than we turn away today. And I

1 think part of the challenge is that because
2 the OCA investment has been significant over
3 the last couple of years, there may be a
4 perception that the need is not bad.

5 We are still turning away two and
6 three people for every one person we can
7 represent collectively across the state. It
8 means people are not going to get represented
9 in their fair hearings when their food
10 stamps, their public benefits, their housing
11 ability is at risk.

12 It means they won't be represented
13 when their kids need special ed help at
14 representation in special ed cases. It means
15 victims of domestic violence will not get the
16 legal assistance that they need when they're
17 seeking orders of protection or the ancillary
18 work that goes along with that.

19 It means immigrants are not going to
20 be represented when they are trying to figure
21 out how to stay in this country, or to get
22 family members in or to get their green card.
23 One of the things that the permanent
24 Commission on Access to Justice did the last

1 two years was to look at the impact of legal
2 services on immigrants' ability to work and
3 the impact that has on the state's economy.

4 It just means we'll continue to be in
5 chaos, and we'll continue to be turning
6 people away. And quite frankly, we may then
7 be also laying off staff, which -- you know,
8 they're not the most wonderfully paying jobs,
9 but to be a legal services attorney in
10 New York State is a decent job --

11 SENATOR HOYLMAN: It's a noble
12 profession. Thank you.

13 MS. ERICKSON: Thank you for asking.

14 CHAIRWOMAN WEINSTEIN: Thank you,
15 Anne, for being here and all the work that
16 Empire Justice does, but also all the member
17 organizations of the Legal Services
18 Coalition.

19 I too find it very frustrating that
20 after we put the LSAF funding in place that
21 it has -- the Governor has taken money out of
22 that for other purposes. And then we never
23 get a chance to grow that money, because we
24 have to sort of backfill it. But hopefully

1 this year we can get us at least back to
2 where we were last year and see if we can't
3 expand the funding.

4 MS. ERICKSON: That would be
5 incredible. And of course we're always here
6 to do everything we can to work with you and
7 the member agencies. And we just cannot
8 thank you enough for the leadership that
9 you've provided.

10 CHAIRWOMAN WEINSTEIN: And Senator
11 Myrie? Yes.

12 SENATOR MYRIE: Thank you,
13 Assemblywoman.

14 And thank you for sticking it out
15 tonight. I wanted to ask about the Homeowner
16 Protection Program.

17 MS. ERICKSON: Sure.

18 SENATOR MYRIE: And it is my
19 understanding that many of the service
20 providers in your coalition are funded by
21 HOP?

22 MS. ERICKSON: Yes.

23 SENATOR MYRIE: And it is also my
24 understanding that in the Executive Budget

1 the funding for 20 million has been
2 eliminated?

3 MS. ERICKSON: Correct.

4 SENATOR MYRIE: Can you tell us
5 whether or not these organizations that are
6 funded by HOP would be able to continue the
7 work that they do around foreclosure
8 presentation without this funding?

9 MS. ERICKSON: They will not. I can
10 tell you that they will not.

11 The foreclosure prevention -- again,
12 another amazing program that was put
13 together, as you know, through the settlement
14 funds that came into New York State, and it
15 was really New York being ahead of the curve.

16 We were seeing the foreclosure crisis
17 come across the state. We at Empire Justice
18 did a lot of data analysis down to the
19 zip-code level so that we could show, county
20 by county, where things were actually
21 happening, that it wasn't just a Queens
22 problem or it wasn't just a Brooklyn problem.
23 Everybody kept saying it's just downstate; we
24 could show it was statewide.

1 That \$20 million funds a network of
2 legal services and housing counseling
3 agencies working together to represent
4 homeowners -- both to counsel them, to
5 represent them, to see if they can afford to
6 stay in a home, to figure out what we can do
7 to help make that happen. If they can't stay
8 in a home, counseling them out of the home
9 and figuring out how to put other things in
10 place for them. It has been an incredible
11 collaboration.

12 And that too, we understand this had
13 not been General Fund money supporting it in
14 the budget for the last number of years. But
15 it is a critical state investment, and we
16 were disappointed that there was nothing in
17 the Executive Budget to kind of keep that
18 afloat.

19 We are working, as you know, with a
20 coalition of Communities First initiative to
21 see if we can't get something in the 30-day
22 amendments. So we are trying every avenue we
23 can.

24 SENATOR MYRIE: And what will the

1 impact be if this is not funded?

2 MS. ERICKSON: Well, if it's not
3 funded -- I mean, you heard Judge Marks
4 testify earlier today that the impact on
5 having lawyers in the settlement conferences
6 is absolutely critical.

7 It will mean we'll be laying off legal
8 service attorneys around the state who have
9 been doing this work. We'll be losing
10 housing counselors that have been doing this
11 work. We'll lose an infrastructure we have
12 created in New York State.

13 But the bottom line is families will
14 be losing their home without any
15 representation. They will lose their day in
16 court. And that's why this started, because
17 the banks and the services are taking
18 advantage of people, foreclosing on them when
19 they shouldn't have, and not giving them a
20 fair shake. We're now giving them a fair
21 shake, and we're going to take that away.

22 SENATOR MYRIE: Thank you very much
23 for your service and testimony.

24 CHAIRWOMAN WEINSTEIN: Thank you.

1 Assemblyman Lentol?

2 ASSEMBLYMAN LENTOL: Yes, thank you,
3 Madam Chair.

4 Thank you, Anne.

5 But I just want to say I too believe,
6 like Senator Hoylman, that this is
7 outrageous.

8 But the answer to the question is
9 really obvious. It's to have the Assembly
10 pay for it, and now that we have a Democratic
11 Senate, they expect them to pay for it too.
12 So I get what's going on here.

13 MS. ERICKSON: Yup.

14 ASSEMBLYMAN LENTOL: It's pretty
15 simple to figure out. And the Governor can
16 then spend his money someplace else, because
17 he knows that we're going to spend it. And
18 we are going to spend it. But he should know
19 that we're going to spend it knowing that he
20 wants to spend the money someplace else.

21 Thank you.

22 MS. ERICKSON: Thank you, Assemblyman.

23 CHAIRWOMAN WEINSTEIN: Senator Bailey.

24 SENATOR BAILEY: Yes, thank you very

1 much, Madam Chair.

2 I just wanted to I guess echo the
3 sentiments of Senator Hoylman and also thank
4 you, since you mentioned Judge Marks, thank
5 you for sticking it out here with us. This
6 is as important to us as it is to you, and
7 I'm glad to -- I was very heartened to hear
8 that.

9 As a former practicing civil attorney,
10 I know how important it is to make sure you
11 have access to funds so that you can pursue
12 justice for those who can least afford it.
13 We support justice not just in the actual
14 literal context, but figuratively, in that
15 they can't afford to miss that rent payment,
16 that they would have to purchase -- that they
17 would have to consult a private attorney.

18 So the work that you're doing is very
19 important. And as my colleagues here are all
20 saying, I stand in solidarity with you and I
21 understand the importance of the work that
22 you do. And I'm sure we're going to put our
23 heads together and figure something out.

24 Thank you.

1 MS. ERICKSON: Yeah. And you know,
2 it's -- and I'm sure you know, but with so
3 many of our clients, the issues cascade. You
4 know, they may come in with an eviction, but
5 it's because their public benefits got
6 screwed up or because there was a medical
7 emergency or because their insurance got
8 messed up. You know, so it's literally the
9 fundamentals of life.

10 And people don't understand, you don't
11 have a right to an attorney if you're losing
12 your home or if your income has been cut off
13 or if your healthcare is denied that's going
14 to save your kid's life. You don't have a
15 right to an attorney. And yet what is at
16 risk? It's just -- it's stunning.

17 So I really appreciate the new energy
18 on this side, and of course the ongoing
19 commitment that we've just had.

20 SENATOR BAILEY: And it's really
21 important. I just wanted to -- because when
22 constituents come to any of our district
23 offices or any of our offices, they generally
24 don't come with one issue.

1 MS. ERICKSON: Right.

2 SENATOR BAILEY: It's generally a
3 litany of issues that are compounded. If you
4 have a job problem, you may have a housing
5 problem, you may have a public assistance
6 problem.

7 MS. ERICKSON: Exactly.

8 SENATOR BAILEY: So it's never just
9 one thing, it's a totality of circumstance-
10 based approach when we're dealing with our
11 constituents.

12 And coming from one of the hardest-hit
13 districts by the foreclosure crisis, which
14 it's still reeling from the effects of the
15 foreclosure crisis --

16 MS. ERICKSON: Yes, it is.

17 SENATOR BAILEY: -- in the
18 northeast Bronx and the City of Mount Vernon,
19 we need civil legal services so that people
20 can remain in their homes.

21 You talk about the path to home
22 ownership and how we should aspire to buy a
23 house and we -- you have folks who come --
24 they come to this country, many from

1 immigrant backgrounds, in search of a dream.
2 And the dream is deferred because they didn't
3 understand the contract language that they
4 signed.

5 MS. ERICKSON: Right.

6 SENATOR BAILEY: And services like
7 yours are invaluable, and I just wanted to
8 once again say thank you.

9 MS. ERICKSON: Thank you. Thank you
10 very much.

11 CHAIRWOMAN WEINSTEIN: Thank you
12 again, Anne.

13 MS. ERICKSON: Thank you very much.

14 CHAIRWOMAN WEINSTEIN: Our next
15 witness, New York State Defenders
16 Association, Susan Bryant, deputy director.

17 MS. BRYANT: Thank you very much,
18 Assemblywoman Weinstein and the other members
19 of the Senate and the Assembly that stayed
20 here all this time. I appreciate the
21 opportunity to testify before you.

22 I am Susan Bryant, I'm the deputy
23 director of the New York State Defenders
24 Association. We have been supported by the

1 Legislature and the Executive to some extent
2 for almost four decades now, and we are
3 grateful for that support, and we are back
4 asking for support again.

5 The Public Defense Backup Center, if
6 you're not familiar with us, provides support
7 to public defenders, Legal Aid attorneys, and
8 assigned-counsel lawyers around New York
9 State. We provide training, we provide legal
10 research assistance, publications, we have a
11 public defense case management system that is
12 in 46 counties in New York, as well as other
13 support services. We are really the backbone
14 of public defense.

15 And we appreciate -- we're asking --
16 we're coming to you because the Executive has
17 funded us with \$1,030,000, which is just
18 under half of our base operating budget that
19 we have had for a number of years now. So we
20 are asking the Legislature for a \$1,059,000
21 appropriation to bring us to that base
22 funding level.

23 We are also here to ask for an
24 additional \$400,000 in order for us to have a

1 new program which would include Raise the Age
2 training for public defenders representing
3 individuals, 16- and 17 year-olds, in the
4 Youth Part, as well as to help with
5 recruitment of social workers, which is all
6 part of the Hurrell-Harring statewide
7 expansion, and to train social workers and
8 sentencing mitigation specialists on how to
9 be a part of the defense team, the
10 alternatives to incarceration, how to get
11 services for clients. So we ask for your
12 support on that as well.

13 Before the Human Services Committee
14 last week, our Veterans Defense Program,
15 which is also part of the New York State
16 Defenders Association, was here to testify,
17 so I won't go into that testimony. But I'm
18 more than happy to answer questions about
19 that funding as well.

20 With regard to other defense funding,
21 we certainly are thrilled to see that the
22 Governor has continued the support of the
23 Hurrell-Harring statewide expansion with a
24 \$100 million appropriation. As Bill Leahy

1 spoke to you earlier, we are concerned about
2 the language that would restrict
3 appropriations. The reimbursement to
4 12 months, it's counterproductive, and we're
5 hopeful that it won't come to the Legislature
6 to have to determine that and maybe the
7 Executive will take it out.

8 But that is a huge concern. Counties
9 are already hesitant to take money that
10 they're afraid is going to be taken back, and
11 all of the promises that have been made over
12 the years for different funding.

13 We are also -- Hurrell-Harring
14 expansion is very important, but we also
15 believe that the Legislature should support
16 the \$3 million appropriation that the
17 Indigent Legal Services Office has asked for
18 for Family Court. Family Court is a huge
19 part of public defense. Most public defense
20 offices upstate do both criminal and Family
21 Court, and now you have lawyers that are
22 doing the criminal defense representation
23 that are getting their caseloads reduced,
24 which is wonderful to see, but the Family

1 Court attorneys, their colleagues, have no
2 support at all.

3 Three million dollars is certainly a
4 lot, but it's just a little investment. And
5 as mentioned before, we expect that there
6 will be even more coming down with the
7 Chief Judge's Commission on Parental
8 Representation.

9 Finally, Aid to Defense, which has
10 been mentioned -- that has been cut
11 5 percent. So we are asking for it to be
12 restored, because any defense funding -- the
13 assumption is that the money appropriated for
14 the statewide expansion is based on the
15 existing funding remaining. So we ask for
16 that to be restored.

17 The Indigent Parolee Program, which is
18 often put in by the Senate, we ask for an
19 appropriation for \$600,000 for the
20 representation of parolees -- which is really
21 a state function, but it has been left to the
22 counties because of the lack of funding.

23 And I thank you for your time, and I
24 would be happy to answer any questions.

1 CHAIRWOMAN WEINSTEIN: Senator Bailey.

2 SENATOR BAILEY: Yes, thank you.

3 I guess I wanted to -- I saw it
4 briefly in your written testimony -- and I
5 thank you for testifying and sticking it out
6 with us once again. I saw briefly in your
7 testimony that I guess you -- I would ask,
8 what is your opinion on the Executive's
9 pretrial reform -- on the pretrial reform
10 that has been put forth by the Executive in
11 his budget?

12 MS. BRYANT: We are still looking at
13 it. It is a very complicated issue. We
14 certainly have supported the Assembly
15 proposal that was done last year that
16 Assemblymember Cook had proposed. And we
17 certainly appreciate the Governor's attempt
18 to make a better version of what last year
19 was -- we absolutely opposed.

20 But there's a lot of detail to it, and
21 it's something that we are considering, we're
22 examining, we're talking with public
23 defenders around the state as to what the
24 impact of it will be.

1 I'd be more than happy to talk in more
2 detail with you in the coming weeks.

3 SENATOR BAILEY: I would certainly
4 appreciate that, and I will leave my comments
5 at that. Thank you for your testimony.

6 MS. BRYANT: Thank you.

7 CHAIRWOMAN WEINSTEIN: Thank you for
8 the work that defenders do around our state.
9 Thank you.

10 MS. BRYANT: Thank you very much.

11 CHAIRWOMAN WEINSTEIN: Next we have
12 Communities United for Police Reform.
13 Carolyn Martinez-Class was here earlier but
14 doesn't appear to be still here.

15 If you do have a witness list, the
16 next handful of people have canceled.

17 So is Dave George and Jose Saldana
18 here? Release Aging People in Prison
19 Campaign and Campaign for Alternatives to
20 Isolated Confinement. Okay. Oh, and also
21 Victor Pate will be -- we're doing this as a
22 panel, I realize.

23 MR. VAN ZANDT: Taking the place of
24 Victor Pate is Doug Van Zandt.

1 CHAIRWOMAN WEINSTEIN: Okay. At this
2 hour, that's -- substitutes are allowed.

3 MR. GEORGE: So I'm Dave George. I'm
4 the associate director of the Release Aging
5 People in Prison Campaign. I'm here on
6 behalf of myself and Mr. Saldana, who is less
7 of a glutton for punishment than most of us
8 in the cheap seats are, and went home to
9 New York City.

10 We at the Release Aging People in
11 Prison Campaign, to our knowledge, are the
12 only criminal justice reform campaign in the
13 country with the central focus of releasing
14 older and aging people from prison and
15 promoting public safety and racial justice as
16 a means to end mass incarceration.

17 I'd like to just talk briefly about
18 what we see as the crisis of aging and older
19 people in our state prison system in
20 New York, touch a little bit about what's
21 included and what's not included in the
22 Governor's Executive Budget proposal, and
23 then talk about what we see as the clear path
24 forward to safely and fairly release older

1 and aging people from prison.

2 Aging in prison is the inevitable
3 result of long prison sentences and frequent
4 parole denials after people have been inside
5 for decades. Like those of us in the outside
6 community, people in prison age over time,
7 and so when they're given 25 years to life
8 and serve 25 years and then frequently are
9 denied parole over years and decades, they
10 like the rest of us get old. And some of
11 them die in prison.

12 So in New York City we have the
13 fifth-highest number of life sentences in the
14 entire country. Of roughly 9,000 people
15 serving a life sentence, roughly 1,000 of
16 those people are sentenced to life without
17 parole or virtual life without parole. They
18 will never appear in front of a parole board,
19 and short of clemency will never be released
20 from prison until they die.

21 And when those people don't have any
22 fair, meaningful opportunities for release
23 based on who they are today, they age inside
24 and the result is what we have today. And

1 that is 10,000 older and aging people in
2 prison -- 10,000 great-grandmothers and
3 grandfathers, sisters and brothers who are
4 away from their families, many of whom have
5 been away from their families and communities
6 for decades.

7 And unfortunately, the Governor's
8 Executive Budget proposal does not get at any
9 of these issues or crises. And there are two
10 relevant components. The first is something
11 that I believe was addressed earlier in the
12 hearing, and I was pleased to hear it was
13 addressed about, which is staffing of the
14 State Parole Board.

15 So in the Governor's Executive Budget
16 proposal there is money allocated for only up
17 to 16 parole commissioners, not a fully
18 staffed Parole Board of 19. As most if not
19 all of you know, our Parole Board is woefully
20 understaffed. At this moment we have
21 12 Parole Board commissioners who see
22 12,000 parole applicants every year. That
23 leads to serious issues that I don't have to
24 go into here, and I'm sure you all can

1 understand. But ultimately we need an extra
2 \$305,000 in the Executive Budget so that we
3 can have a fully-staffed parole board of
4 19 commissioners.

5 And the second relevant component in
6 the budget is the Governor's Compassionate
7 Parole proposal. I detail an analysis and
8 recommendations for that proposal that I
9 won't get into right now. I'll just say it
10 is, in summary, a small, narrow, and
11 exclusionary extension of the state's medical
12 parole program for older people who are
13 super-sick. I don't believe that at all it
14 gets to the crisis of aging in prison.

15 And the truth is even if we cleaned up
16 the medical parole program and statute in
17 New York State -- which I think we should do,
18 and I hope to work with you all on -- it
19 wouldn't get at the crisis of older and aging
20 people in prison, because most are not
21 deathly ill and dying inside. Most have some
22 chronic condition but wouldn't be qualifying
23 for this sort of program.

24 And that's why we need broader parole

1 reforms. And for us, that means a threefold
2 process. One is fully staffing the
3 Parole Board with commissioners who actually
4 believe in the concept of rehabilitation and
5 come from professional backgrounds that allow
6 them to assess it.

7 Two is Senator Gustavo Rivera's Fair
8 and Timely Parole bill that would change the
9 parole release process to ensure that it's
10 not exclusively based on the nature of the
11 crime, but instead is based on rehabilitation
12 and who a person is today.

13 And three is Senator Hoylman and
14 Assemblyman Weprin's Elder Parole bill to
15 establish a consideration of parole release
16 for older people who have served 15 or more
17 years.

18 A reasonable person might say those
19 sound pretty easy. We should just do those.
20 I think fundamentally what we all have to
21 grapple with as advocates, as a state, as
22 legislators is that these issues
23 fundamentally butt up against the question of
24 violence. And if we're serious about ending

1 mass incarceration in New York State, we need
2 to talk critically and seriously and
3 differently about violence. And not just
4 because of our value set, not just because we
5 believe in redemption and compassion and
6 mercy, but also for three reasons that I
7 think we don't talk about enough.

8 One is locking people up and throwing
9 away the key. It does not keep us safer. We
10 have decades of evidence that shows that the
11 death penalty and life without parole does
12 not deter crime, does not keep us safer.

13 Two is for most victims and survivors
14 of crime, the "lock them up and throw away
15 the key" approach doesn't work. It doesn't
16 promote healing, it doesn't promote
17 accountability, it doesn't give most victims
18 and survivors what they want, and there is
19 national research to back that up.

20 Three is practically two-thirds of our
21 state prison system have been convicted of
22 some form of violence. I think by most
23 measures, mass incarceration -- ending mass
24 incarceration means reducing the state prison

1 population by more than a third. If we're
2 serious about that, from a number and
3 practical perspective, we have to grapple
4 with this question of violence.

5 So I think it is incumbent upon all of
6 us in this new political moment to grapple
7 with these questions together, to move
8 forward with the proposals that we just
9 presented, and the proposals that I outlined
10 in our testimony. And I look forward to
11 working with you all this session and having
12 a productive year.

13 Thank you.

14 MR. VAN ZANDT: Good evening. My name
15 is Doug Van Zandt. As I said earlier, I'm
16 with the New York Campaign for Alternatives
17 to Isolated Confinement.

18 Four years ago, my son died in a
19 New York State prison. He hanged himself
20 while in solitary confinement. He was the
21 victim of a horrible disease, mental illness.
22 He suffered from severe depression -- we did
23 not know about that. But he was put into
24 prison after starting a fire in a building,

1 and once he was put on the psychotropic
2 medications, he was stabilized and we had
3 hopes for his recovery.

4 The prison system chewed him up and
5 killed him, in my opinion. My wife and I
6 lost our only son. And it is just a horrible
7 thing. Within a year of him being in prison,
8 he was sexually assaulted, and as a result he
9 was put into solitary confinement.

10 DOCCS did not follow the SHU exclusion
11 law. They were to limit the amount of
12 solitary confinement that he was in. Even
13 though he shouldn't have been in solitary
14 confinement at all, they sentenced him to
15 70 days. But thankfully, due to legislators
16 like yourselves who we asked for help, he was
17 limited and taken out of solitary
18 confinement.

19 He was moved to a different facility
20 where he was put in a unit for the mentally
21 ill. He was put back into the general
22 population. He was accosted by gang members,
23 made to transport drugs. He ended up going
24 to Fishkill Correctional Facility, where he

1 was assaulted by corrections officers.

2 He was re-diagnosed as a young man with
3 a personality disorder instead of a serious
4 mental illness, and he was taken off his
5 psychotropic medications cold turkey. He was
6 then accused of fighting, which he'd never
7 been in a fight in his life. He was put into
8 solitary confinement. And he saw absolutely
9 no hope, and he hanged himself.

10 I'd like to talk about the problem of
11 solitary confinement. As you all know, this
12 is all -- we've talked about this before.
13 Three to 4,000 New Yorkers are in solitary
14 confinement on a given day. Most of them are
15 minorities -- African-American, Latinx -- and
16 many of them have mental illnesses.

17 It's commonly said that if you don't
18 have a mental illness when you go into
19 solitary confinement, you will develop one.
20 And that is absolutely true. And my son had
21 a mental illness to begin with. And not only
22 that, he was -- his mind was abused by being
23 taken off the psychotropic medications.

24 The cure for solitary confinement is

1 the HALT bill, Humane Alternatives to
2 Long Term Solitary Confinement. It does not
3 eliminate solitary confinement, but it limits
4 it to 15 days maximum.

5 Solitary confinement was started by
6 the Quakers several hundred years ago, who
7 soon found out that solitary confinement did
8 absolutely no good. But somehow it had
9 continued, and it is now a tool that is used
10 by the corrections officers.

11 The -- we also, in the HALT bill, we
12 ban certain vulnerable groups. One of them
13 is those with mental illnesses, diagnosed
14 mental illnesses. Other groups such as the
15 very old, the very young and other groups are
16 also prohibited from being in solitary
17 confinement. It's just common sense.

18 The main part of the HALT bill is it
19 provides alternatives that result in
20 rehabilitation and treatment. They look at
21 the underlying causes. The main part of the
22 HALT bill will be the RHUs, rehabilitation
23 units, which the incarcerated will go to
24 instead of solitary confinement, so the

1 damage will not be any further.

2 Governor Cuomo has proposed his own
3 HALT bill, which is basically the same
4 language as ours, but it is completely
5 watered down. It is -- I don't think I need
6 to go much further, but --

7 CHAIRWOMAN KRUEGER: No, actually you
8 can't, because your time is up.

9 MR. VAN ZANDT: D'oh!

10 CHAIRWOMAN KRUEGER: So we just have
11 time for questions.

12 MR. VAN ZANDT: Okay. Thank you very
13 much.

14 CHAIRWOMAN KRUEGER: So, I don't know
15 if you were expecting to speak, but you ran
16 out of time.

17 UNIDENTIFIED WOMAN: Okay.

18 (Discussion off the record.)

19 CHAIRWOMAN KRUEGER: Which
20 organization are you with?

21 UNIDENTIFIED WOMAN: I'm with the
22 #HALTsolitary Campaign.

23 CHAIRWOMAN KRUEGER: Okay. Thanks.

24 All right, so let's jump to questions,

1 then. Senator Hoylman.

2 SENATOR HOYLMAN: Thank you, everyone,
3 for being here. It's a pleasure to see you.
4 I hope your advocacy day was successful.

5 On RAPP, the bill that I carry with
6 Assemblyman Weprin, and I'll be working
7 closely with Senator Sepúlveda on it, could
8 you just share with us the cost estimates of
9 what the legislation to end elder parole
10 would save the taxpayers in New York?

11 MR. GEORGE: Yeah, sure.

12 So a couple things. We have the
13 highest state prison cost per incarcerated
14 person per year in the country, \$60,000 a
15 year to incarcerate a person of any age in
16 New York State every year. For older people,
17 that's two times more, so it's \$120,000 to
18 \$240,000 a year to incarcerate an older and
19 aging person in prison.

20 If we release just 10 more older
21 people, we'd save a million bucks. And we
22 can reinvest that money in any of the
23 programs or policies you are pushing, which
24 would probably do your constituents and your

1 districts a ton of good.

2 CHAIRWOMAN KRUEGER: Any other
3 questions, Senate?

4 Oh. Senator Jamaal Bailey.

5 SENATOR BAILEY: There we go.

6 I just wanted to say thank you for
7 sticking it out with us this long, and thank
8 you for your advocacy on your legislation.
9 And I just wanted to say, you know, I
10 certainly stand in solidarity with you in
11 terms of how we should fully staff the
12 Parole Board, as we've discussed at length.

13 We have so many issues and concerns
14 with people who are overworked. And whether
15 you agree with their decisions always or not,
16 we have to keep in mind that these are people
17 and they're not machines, despite what we
18 might think of them to be sometimes.

19 And I certainly stand with your
20 statements that we should be fully staffing
21 the Parole Board. And I don't want to
22 continue to belabor points, but I just wanted
23 to say thank you.

24 CHAIRWOMAN KRUEGER: Thank you.

1 Senator Zellnor Myrie.

2 SENATOR MYRIE: Thank you,
3 Madam Chair.

4 I would like to echo what
5 Senator Bailey said. Thank you for sticking
6 it out.

7 I think it is really fortunate that we
8 do not have the death penalty on the books
9 here in New York, but in effect that's what
10 we are doing to folks. And I think it's
11 important to say that and get that on the
12 record, because we are sentencing people to
13 death by not being gracious in how we release
14 folks as they age.

15 And I'd also like to say that solitary
16 confinement is cruel and unusual, and it's
17 something that I was proud to vote on in the
18 Codes Committee and look forward to
19 supporting going forward -- in the Crimes
20 Victims Committee, my apologies.

21 So thank you very much for your
22 advocacy, and we look forward to working with
23 you.

24 CHAIRWOMAN KRUEGER: Thank you.

1 Thank you all for being here tonight
2 and spending the day with us.

3 And reminding people that many people
4 did decide to go home because of the snow and
5 the hour. But we have everyone's testimony,
6 even if they didn't get to give it in full,
7 and it will be up and publicly accessible for
8 everyone.

9 Next up, Center for Court Innovation,
10 Dipal Shah.

11 MR. SHAH: Good evening, members. My
12 name is Dipal Shah, from the Center for Court
13 Innovation. I thank all of you chairpersons
14 as well as the members here today for
15 sticking it out with me.

16 So I'm here to ask you to double down
17 and reaffirm your commitment to justice
18 reform. The Center for Court Innovation has
19 been around for close to 25 years, and we run
20 operating programs throughout the city and
21 the state. Many think of us as very large,
22 but in fact we are a connection of many small
23 operating programs in your backyard, serving
24 your constituents, and we are tied together

1 on shoestring budgets within those tiny
2 operating programs.

3 What I'm asking for here today is --
4 last year we received \$150,000 through the
5 legislative budget process for one of our
6 programs, Neighbors in Action, formerly known
7 as the Crown Heights Community Remediation
8 Center. This year we are asking for a total
9 ask, between the Assembly and the Senate, of
10 \$750,000 to specifically target eight of our
11 programs that are the most underresourced,
12 which would include a continuation of the
13 funding of Crown Heights Community
14 Remediation Center.

15 Now let me dig a little bit deeper
16 into what the Center for Court Innovation
17 does. Today I've heard a lot about youth
18 programming and Raise the Age and violence
19 prevention, anti-gun violence, supervised
20 release programs for a bail system as well as
21 opiate treatment programs and civil legal
22 empowerment. We do all of that. And the
23 programs that you would support through
24 reaffirming your support for us would go

1 toward that.

2 We serve about 75,000 New Yorkers
3 every year. Those are youth, those are
4 LGBT-identifying people, women, people of
5 color, and they are all in need of additional
6 support through our social workers, through
7 our community engagement activists, through
8 our Credible Messenger program, as well as
9 those who are working firsthand in our
10 Legal Hand site providing civil legal
11 empowerment to neighbors in their own
12 communities.

13 I have seen, through our statistics --
14 for example, our reentry program in Harlem
15 reduced recidivism by 19 percent, and
16 75 percent were employed within a year of
17 release. In the South Bronx and at Neighbors
18 in Action, our SOS programs have reduced
19 shootings by 63 percent. Our Syracuse
20 programs upstate have made safer dozens of
21 city blocks in Syracuse. And our Bronx
22 Community Solutions opiate program has
23 treated over 100 individuals in the past year
24 who have been addicted to opioids and who are

1 now off the drug.

2 So what I would like to say is that
3 we're effective and we need your support.
4 Our communities need it. And I'm happy to
5 take any questions that you have.

6 CHAIRWOMAN KRUEGER: Senator Zellnor
7 Myrie.

8 SENATOR MYRIE: Thank you,
9 Madam Chair.

10 I just wanted to say thank you for the
11 work that you do. A lot of your programs are
12 in my district. And I also want to just give
13 a special shout-out to the Brownsville
14 Community Justice Center. It does incredible
15 work for our community.

16 And so thank you for the work that you
17 do.

18 MR. SHAH: Thank you very much,
19 Senator.

20 CHAIRWOMAN KRUEGER: Thank you again.
21 We appreciate your testimony.

22 And then I believe our last testifier
23 tonight is Nicole Porter, The Sentencing
24 Project.

1 MS. PORTER: Good evening.

2 CHAIRWOMAN KRUEGER: Good evening.

3 MS. PORTER: Thank you for having me.

4 And thank you for hosting this hearing this
5 evening.

6 I am with The Sentencing Project,
7 which is a national group headquartered in
8 Washington, D.C. We do research in advocacy
9 and were founded in the mid-'80s. For them I
10 am the advocacy director, and my focus is on
11 state advocacy.

12 And I'm here in support of the Release
13 Aging People in Prison Campaign, whom I have
14 worked with for several years and have been
15 state partners in our work around ending mass
16 incarceration and addressing the United
17 States' punitive criminal justice system.

18 At the end of the last year we
19 launched a national campaign to end life
20 imprisonment. And the work that RAPP is
21 doing here in New York and the priorities
22 they highlighted earlier are key policy
23 recommendations and at the forefront of a
24 national conversation around ending punitive

1 sentencing and addressing life imprisonment.

2 And we are here in full support of
3 their recommendations, including the work
4 that you all can do in this committee to
5 fully fund the Parole Commission and other
6 work that this committee has the capacity to
7 take on.

8 You know, given that this is a budget
9 hearing and there were savings that were
10 highlighted earlier if the parole
11 recommendations are fully implemented, I want
12 to highlight that if decarceration is
13 achieved, if mass incarceration is reduced,
14 that will free up resources that can fully
15 fund and support the other issues that have
16 been surfaced during the hearing this
17 afternoon. And so I hope that as budget
18 leaders that you all also consider how
19 reducing mass incarceration and scaling back
20 punitiveness can free up those resources.

21 As a national organization, we often
22 highlight New York because it is among a
23 handful of states that has decreased its rate
24 of incarceration by more than 30 percent

1 since the late '90s, when the state prison
2 population peaked, and that is important.

3 But as you all also heard, New York
4 has one of the highest populations of people
5 sentenced to life prison terms. And in fact,
6 even though the state has reduced its rate of
7 incarceration by more than 30 percent since
8 the late '90s, the rate of incarceration --
9 the people who are in prison -- is still more
10 than double where it was in the early 1980s.

11 So even though New York is at the top
12 of the list in terms of decarceration, the
13 levels of incarceration in 2019 are still far
14 higher than they were in the early '80s when
15 at that time nationally the United States
16 still had the highest rate of incarceration
17 when compared to other Western nations.

18 So in order for the state to fully
19 challenge mass incarceration, move the needle
20 back to the early '80s -- which is still
21 something that far exceeded where other
22 Western nations were -- really looking at
23 long imprisonment and life in prison and
24 addressing parole can help further efforts

1 around mass incarceration and in reducing
2 levels of incarceration here in New York, and
3 hopefully help center that part of the
4 conversation in terms of these efforts
5 nationally.

6 It's my hope that if we're successful,
7 if New York can further decarcerate, if that
8 can influence the national conversation in
9 other parts of the country, that this will
10 free up resources and other public monies can
11 be directed into efforts to prevent crime to
12 begin with, and certainly to reduce returns
13 to prison for justice-involved residents who
14 are released not just after long prison
15 terms, but even after short stays in jail or
16 prison.

17 The Sentencing Project is a national
18 organization, as I shared earlier. We're
19 here to be a resource, not just to our state
20 partners with the Release Aging People from
21 Prison Campaign, but also we work often with
22 state lawmakers as well. And if you all have
23 any questions, even following this session,
24 I'm happy to be connected to you and provide

1 our Public Protection hearing. And thank
2 you, all of you who stayed.

3 We start again tomorrow morning at
4 9:30, same room. The topic is
5 Transportation. Thank you.

6 (Whereupon, the budget hearing concluded
7 at 8:08 p.m.)

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