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

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JOINT LEGISLATIVE HEARING

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

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Hearing Room B
Legislative Office Building
Albany, New York

January 29, 2019
9:40 a.m.

PRESIDING:

Senator Liz Krueger
Chair, Senate Finance Committee

Assemblywoman Helene E. Weinstein
Chair, Assembly Ways & Means Committee

PRESENT:

Senator James L. Seward
Senate Finance Committee (RM)

Assemblyman William A. Barclay
Assembly Ways & Means Committee (RM)

Senator Brad Hoylman
Chair, Senate Committee on Judiciary

Assemblyman Jeffrey Dinowitz
Chair, Assembly Committee on Judiciary

Senator Jamaal T. Bailey
Chair, Senate Committee on Codes

Assemblyman Joseph Lentol
Chair, Assembly Committee on Codes
PRESENT: (Continued)

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

Assemblyman David I. Weprin
Chair, Assembly Committee on Correction

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

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

Senator Kevin Thomas
Chair, Senate Committee on Consumer Protection

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

Assemblyman Michael Montesano

Assemblyman Joseph M. Giglio

Senator Gustavo Rivera

Assemblyman Philip A. Palmesano

Senator Todd Kaminsky

Assemblyman Kenneth P. Zebrowski

Senator Elizabeth O'C. Little

Senator Brian Benjamin

Assemblywoman Patricia Fahy

Senator Zellnor Myrie
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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
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Michelle Esquenazi  
President  
Steve Zalewski  
Vice Chair  
NYS Bail Bondsman Association  
Jeffrey Clayton, Esq.  
Executive Director  
American Bail Coalition  
Ed Forchion  
Cannabis Rights and Free Speech Activist  
Thomas H. Mungeer  
President  
New York State Troopers PBA  
Christopher M. Quick  
President  
NYS Police Investigators Assn.  
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CHAIRWOMAN KRUEGER: Good morning, everyone. Thank you for being in attendance. Those of you who are in this room know that you got here before the snow hit Albany, and some of us will be here 13 hours or so. But just -- if you know that because of the weather it's not realistic for you to be staying, you should make that call for yourself. Your testimony will always be part of the record, and you've already submitted it.

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

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

I'm going to start out by introducing
the Senators who are here, and then Helene will introduce the Assemblymembers.

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

(Laughter.)

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

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

(Laughter.)

CHAIRWOMAN KRUEGER: You might need to move.

(Laughter.)

CHAIRWOMAN KRUEGER: I don't know, it's a new day in Albany. Who knows what
Senator Seward identifies as.

Helene?

CHAIRWOMAN WEINSTEIN: Thank you.

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

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Oh, I'm sorry.

And our ranker, Will Barclay, will introduce the Republican member.

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

CHAIRWOMAN KRUEGER: Thank you.

And just before we start, we also have a new clock timer system this year. So each of the government representatives, the first six testifiers, will have 10 minutes to testify. We're urging people not to read their testimony but, rather, highlight what they think are the crucial points. We all have full copies of the testimony in front of
us, and the full testimony will be available
online to the public.

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

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

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

Welcome to you, Judge.

CHIEF ADMIN. JUDGE MARKS: Thank you.

And good morning, Chairpersons Krueger and
Weinstein, Hoylman and Dinowitz, and good
morning to the other committee members here
today.

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

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

As has been the case for the past two
years, our budget request is designed to
support Chief Judge Janet DiFiore's
Excellence Initiative. The initiative, which
was begun in 2016 when Judge DiFiore first
took office, is a matter of the highest
priority for the state courts. It is a
comprehensive statewide effort to improve
court system operations and to ensure that
all who use our courts receive the highest
level of service and assistance.

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

Despite this progress, work on the
Excellence Initiative is far from done. Our
court system is large, and its challenges are
complex. Every day it serves 19 million people in 62 counties, over 60 cities, well over a thousand towns and villages and hundreds of courthouses across a physically large state. We are presented each year with millions of cases, ranging from small claims involving minor damages to major corporate litigation with many millions of dollars at stake. We must adjudicate minor traffic offenses and the most serious felonies. We must protect the welfare of the most vulnerable among us in Family Court, and we must do all this in communities of dramatically varying size and legal culture.

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

Our budget is built to meet these fundamental needs, but it also calls for the
funding necessary to continue, and in some
instances to expand, our long commitment to
many vital programs through which the
judiciary serves the community.

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

These organizations report that in the
last year they handled 483,000 cases
benefiting more than 2 million New Yorkers.
These cases included evictions, foreclosures
and other housing matters, domestic violence, consumer debt, personal safety, immigration, and transformative health, education and income support services.

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

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

In 2019-2020 we will also maintain our ongoing efforts to further access to justice by ensuring that persons without English
proficiency or limited English proficiency, or with physical disabilities, do not face barriers in their use of the courts.

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

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

Besides this increased staffing, with
the help of this year's capital projects funding, our commitment to public safety has included enhancements in the equipment relied upon by security personnel. With some of the capital projects funding we're requesting for 2019-2020, we'll implement further enhancements in the coming year.

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

Implementation of our commission's recommendations will naturally complement
New York City's landmark program assuring access to legal representation for all low-income persons facing eviction in the Housing Court.

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

This is why we are urging your support for our budget request. Well over 90 percent of the Judiciary budget is devoted to personnel costs. In fact, much of our request is needed simply to permit us to continue to replace court employees who leave service -- a matter of vital importance,
funding in 2019-2020, we will remain at lower staffing levels than we enjoyed before the budget cuts of 2011.

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

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

CHAIRWOMAN KRUEGER: Thirty seconds.

CHIEF ADMIN. JUDGE MARKS: Okay. With Raise the Age, Raise the Age has created
considerable burdens on the courts, particularly the Family Court. We're projecting 6,000 new cases when the legislation is fully implemented later this year. And we're not asking for additional money for Raise the Age in this budget request, but we've received assurances from the executive branch, which the current year received an appropriation of $100 million, of which we're getting 12 million. And we've received assurances -- at DOB's request we haven't included money in this budget request for additional Raise the Age money for the coming fiscal year because they've assured us that we will share in the appropriation that they expect to get from the Legislature for the coming fiscal year.

Just to conclude, as I noted at the outset, our 2019-2020 budget request is modest and straightforward. It asks for a 2 percent increase in our operating budget. The bulk of this increase will permit us to maintain staffing levels needed to realize the goals of the Excellence Initiative,
reduction in case backlogs, and faster
disposition of all cases filed with the
courts.

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

CHAIRWOMAN KRUEGER: Thank you.

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

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

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

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

CHIEF ADMIN. JUDGE MARKS: Good
morning.

SENATOR HOYLMAN: I really appreciate
the work that the Chief Judge has been taking
on in terms of her Excellence Initiative.
Could you just, for the benefit of my colleagues, give a brief summary of how the backlog in case administration has been proceeding since the Excellence Initiative has been launched?

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

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

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

SENATOR HOYLMAN: Where are the
problem areas still?

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

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

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

CHIEF ADMIN. JUDGE MARKS: Absolutely. And, you know, that's been our highest priority. We're fully committed to helping reduce the prisoner population at Rikers Island. And much of that population -- in fact most of it are people awaiting trial. And in many cases, some of them highlighted in the press, the delays have been much too
long, and that's something that we take very
seriously. And there's been substantial
progress, but there needs to be more
progress.

SENATOR HOYLMAN: Thank you.

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

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

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


CHIEF ADMIN. JUDGE MARKS: ICE has
historically always made arrests in the state
courthouses. This precedes the current
administration in Washington. And the uptick
actually started in 2016 and continued into
I'll explain kind of what's been happening lately. But to answer your direct question, ICE has made appearances in the state courthouses for a number of years, but it's accelerated since 2016 with the new administration in Washington.

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

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

And this has been, I would say, an ongoing problem for several years now. We
are concerned about the impact it may have on people being reluctant to come to court and of course we can't -- courts can't do the business that they're obligated to do unless people come to them: Litigants, witnesses and the like. So --

SENATOR HOYLMAN: How are you -- thank you. I appreciate that sentiment. I understand that ICE enforcement actions are spreading to other parts of the state -- Orange, Rensselaer, Fulton counties for the first time; towns and village courts in Westchester, Rockland, Columbia, Orange, Ulster, Albany.

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

CHIEF ADMIN. JUDGE MARKS: Yes, we are.

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

CHIEF ADMIN. JUDGE MARKS: I would say it's primarily an issue in New York City, but there's been incidents in courts out the
SENATOR HOYLMAN: Has the Chief Judge officially requested that ICE no longer conduct arrest operations at courthouses?

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

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

They have, however -- and we were instrumental in getting them to change their policy on a national level. Their focus is on criminal courthouses and criminal court
proceedings, not, fortunately, Family Court
or landlord-tenant court or, you know --

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

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

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

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

One of the issues, if I understand it
correctly, is the perimeter of a courthouse,
correct? You can request that they notify
the court officers about their presence
inside a courtroom, but they can hang around
the outside of a courthouse.
CHIEF ADMIN. JUDGE MARKS: Yeah, and that's a good point. Let me explain that.

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

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

SENATOR HOYLeman: Thank you.

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

SENATOR HOYLeman: Thank you, sir.
Yes, that's my point.

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

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

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

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

SENATOR HOYLMAN: Thank you, Judge.
Thank you, Madam Chair.

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

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

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

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

And Judge Marks, welcome again.

CHIEF ADMIN. JUDGE MARKS: Thank you.

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

As you know, in 2018 we now have 16-year-olds charged with misdemeanors sent directly to the Family Court, and many
charged with felonies removed from the youth part for the Family Court. And in October 2019, we'll fully implement the bill by taking care of the 17-year-olds as well.

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

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

It's going extraordinarily well. I mean, we have a -- one of the first things we did, we created an internal committee in the court system of judges and nonjudicial personnel to examine every aspect of the court system that would be impacted by Raise
the Age. And that resulted in development of
an operating manual for judges and court
staff involved in Raise the Age; exhaustive
training of judges and nonjudiciary personnel
on the new law; new technology and a new case
management program to keep track of the
cases, particularly the movement of cases
from criminal court to Family Court.

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

But I have to say, it's really --
there have been minimal if any problems.
We've worked very collaboratively with all
the other criminal justice agencies and
stakeholders who are involved in Raise the
Age. I think it's been kind of a textbook
example of -- particularly since we had the
time to sort of prepare for this -- how new
and significant and complicated law can be
implemented.

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

CHIEF ADMIN. JUDGE MARKS: Yes.

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

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

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

CHIEF ADMIN. JUDGE MARKS: I would say
so far it is, but it's -- we want to wait and
see what the impact is.

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

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

And I think your initial question was how many cases are being transferred from the criminal courts to the Family Courts. Because as you know, the misdemeanor cases for 16-year-olds and 17-year-olds go straight
to Family Court. The felony cases, all of them, first go into the criminal courts and then there's -- presumptively the nonviolent felonies will then be transferred over to Family Court and the violent felonies, some of them may stay in the criminal courts, some may be transferred to Family Court.

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

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

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

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

And --

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

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

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

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

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

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

So I appreciate your comments.

CHIEF ADMIN. JUDGE MARKS: Thank you.
CHAIRWOMAN WEINSTEIN: Thank you.

We've been joined by Assemblyman Colton.

CHAIRWOMAN KRUEGER: Thank you.

Senator Jamaal Bailey, chair of the Codes Committee.

SENATOR BAILEY: Good morning,

Your Honor.

CHIEF ADMIN. JUDGE MARKS: Good morning.

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

Thank you, Madam Chairs, for convening this hearing.

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

I have a few questions, first around pretrial detention in the Executive's Budget. And I've been long a proponent, as well as my colleague in the Assembly, Assemblyman
Lentol, as well as myself and my Senate Democratic colleagues, about pretrial reform, specifically discovery. How would discovery reform, as indicated in the Executive's Budget, impact the courts?

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

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

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

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

Other factors are attorneys not being ready. And I think, you know, the blame goes all around on that. I'm not just blaming prosecutors, I'm not just blaming defense lawyers. In some instances there are legitimate reasons why attorneys aren't ready
to go to trial. But lack of attorney readiness to go to trial is a major factor.

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

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

SENIOR BAILEY: So certainly, as you mentioned, readiness, and readiness is a major component of the Executive's speedy
trial proposal and my speedy trial proposal
and Assemblyman Aubry's speedy trial
proposal.

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

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

    SENATOR BAILEY:  Correct.

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

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

    CHIEF ADMIN. JUDGE MARKS:  Well, court
congestion -- it depends on the number of
hearings that the DAs would request, the
detention hearings. In the bill it's the hearings -- they're real hearings, as I understand it, with witnesses testifying. And the hearings have to be held very quickly, there's a very strict time period following arraignment where the hearing would have to be held.

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

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

CHIEF ADMIN. JUDGE MARKS: Well, let me just say that, you know, bail is an inherently discriminatory practice. I mean,
if you have money, you get out. If you don't have money, often you don't. And that's a problem. And I think it's obviously something that is an entirely legitimate subject for the Governor and the Legislature to be looking at.

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

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

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

In terms of the judges that you mentioned, will there be a commitment from OCA to retrain judges? If we have this new way of pretrial reform -- obviously we have
some of the best judges in -- we have the
best judges in the world in the State of
New York, I'm a little biased, specifically
in the Bronx.

(Laughter.)

SENATOR BAILEY:  -- in Mount Vernon --

CHIEF ADMIN. JUDGE MARKS:  Definitely
in the Bronx.

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

CHIEF ADMIN. JUDGE MARKS:  Look, these -- you're looking at, you know, major,
major reform of bail practice in this state
with that proposal, major, major reform of
criminal discovery practice, and significant
reform of speedy trial practice.  It -- we
will -- this will have serious -- and I'm not
saying this in a negative way, but this will
have a serious impact on the criminal justice
system and the process of cases in the
criminal courts across the state.  And if
these proposals, all of them or even some of
them are enacted, we're going to have to do
extensive training of our judges. So absolutely.

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

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

SENATOR BAILEY: No, my apologies.

CHIEF ADMIN. JUDGE MARKS: Assemblyman {sic} Joyner is --
SENATOR BAILEY: Yes, the Executive Budget does recommend eliminating the funding for the LEO program, yes. Assemblywoman Joyner -- I know you mentioned her last year as well in terms of her having more knowledge on the information. But I'm asking about what OCA's commitment is aside from the Assembly, to committing to diversity aside from the Assembly.

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

And we do a lot of outreach when we announce a test in communities. Our Human Resources Office, our Equal Employment Opportunity Office does a lot of work to get word out in the community about these tests. And, you know, these jobs are viewed as good jobs and good-paying jobs in many communities, in most communities, I would say.
And I think we've seen the results. When we graduate court officers -- when they come in, they have to go through our academy and they come out, and I go to these graduations. And the diversity of these classes that we graduate in recent years is extraordinarily impressive.

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

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

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

CHAIRWOMAN KRUEGER: Judge, I'm going to ask you to continue this with Senator Bailey off-testimony --
SENATOR BAILEY:  Certainly.  Thank you, Madam Chair.  Thank you, Judge Marks, for your remarks.

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

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

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

Assemblywoman Weinstein.

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

ASSEMBLYMAN DINOWITZ:  Good morning.

CHIEF ADMIN. JUDGE MARKS:  Good morning.

ASSEMBLYMAN DINOWITZ:  As you know, the foreclosure crisis, which began around a decade ago, is still going strong. In 2017, there were approximately 27,000 new cases filed and there were 50,000 cases pending. Do you know how many cases were filed in 2018 and how many are pending currently?
CHIEF ADMIN. JUDGE MARKS: The number -- you know, we had 90,000 pending foreclosure cases at one time. It was truly a crisis, and it's still a big challenge. But in terms of pending cases, it's closer to 40,000 now. I can get you the number of filings. And the filings are still significant.

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

But there hasn't been, you know, a drastic drop in foreclosures, and these cases still present a challenge for us. They're labor-intensive to adjudicate. But the
situation, I can tell you, is much, much better than it was 2010, 2011, 2012. But I can get you the exact numbers. We have that.

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

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

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

And it's a process we're committed to.

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

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

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

ASSEMBLYMAN DINOWITZ: So in 2012 the
AG's office Homeowner Protection Program was created, and it temporarily funded a network of 85 organizations to provide homeowners with free qualified mortgage assistance relief services across the state. That program is going to expire at the end of this fiscal year. Right now there's a campaign going on, known as Communities First, to secure funds to help continue this in every county around the state. I think right now about a fifth of the Supreme Court inventory consists of foreclosures.

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

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

I think that -- my understanding is that the funding is expiring because that came out of a settlement fund, the litigation that the AG was part of against the banking industry, and money was set aside for legal services for homeowners in foreclosure who
couldn't afford lawyers.

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

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

ASSEMBLYMAN DINOWITZ: Thank you.

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

Do you think that the creation of additional judges and of course the personnel
that would go along with that would be
something that would be -- that should be a
top priority?

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

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

ASSEMBLYMAN DINOWITZ: Especially the
Bronx, of course.

(Laughter.)

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

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

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

A few years ago in the city a program was created by the Council, signed by the mayor, to provide free counsel to people who have actions pending in Housing Court. And I don't believe it's fully phased in. My own belief is that that program will have a very
significant effect in tamping down on the
homelessness crisis which we continue to
face.

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

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

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

A lot of really the impetus for
creating that commission was the universal
access law in the city. That we knew that
over the next four or five years there are
going to be a lot more lawyers representing
tenants in Housing Court, which is a
wonderful development but will have
consequences and could lead to a lot more
litigation, a lot more motion practice.

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

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

ASSEMBLYMAN DINOWITZ: Yes. Okay,
thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator James Seward.

SENATOR SEWARD: Thank you, Madam Chair --

CHAIRWOMAN KRUEGER: And we've also just been joined by Senator John Liu.

Thank you.

SENATOR SEWARD: Thank you, Judge Marks, for being here and your testimony this morning.

CHIEF ADMIN. JUDGE MARKS: Good morning.

SENATOR SEWARD: I wanted to zero in on a couple of areas of your presentation, the first of which is the new capital plan, or the ongoing capital plan. Are there any specific projects in mind for this year's round? And where would they be located?

CHIEF ADMIN. JUDGE MARKS: Well, the money's used for a whole range of projects. The primary one is we have sort of a very sophisticated and vast statewide computer network that requires attention and service
and upgrades and maintenance, so money -- and
that's a statewide operation, so money will
be devoted to that.

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

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

We're also looking at more technology
in individual courtrooms, and this will be
rolled out over the years. But including
basic things like outlets where attorneys can
plug in and charge their cellphones, to
soundproofing of courtrooms, which is a
problem in a lot of the buildings, that it's
difficult to hear the proceedings for the
judge, for the lawyers, for the witnesses,
for the jurors. So we're going to be
soundproofing a lot of courtrooms. It's a
statewide undertaking that really virtually
every county in the state will benefit from.

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

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

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

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

I wanted to switch to the opioid
courts. Because last year I understand they
came into the Buffalo City Court, the Bronx
Criminal Court, and Suffolk County District
Court, and now we're looking to expand the
opioid courts statewide. I presume that in
the locations that were selected last year
it's working pretty well, if you want to go
statewide, and they are effective.

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

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

SENATOR SEWARD: So in terms of where
the new ones will go, in terms of going
statewide, in each judicial district will
each county -- I mean, I know -- I'm a
resident of the 6th Judicial District. There
are 10 counties; it's a sprawling area. I'm
sure there would be interest throughout that
district, you know, because of the distances
involved, of having more localized. Is this
what OCA envisions here or --

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

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

CHIEF ADMIN. JUDGE MARKS: Pardon me?

SENATOR SEWARD: The drug courts have
been highly successful.
CHIEF ADMIN. JUDGE MARKS: They have been highly successful. And we can piggyback opioid courts on top of the existing drug court structure.

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

CHAIRWOMAN KRUEGER: Thank you.
SENATOR SEWARD: Thank you.
CHIEF ADMIN. JUDGE MARKS: -- and that's what we hope to do.
CHAIRWOMAN KRUEGER: I know you're not supposed to cut off judges, but apparently that's my job today.
(Laughter.)
CHAIRWOMAN KRUEGER: Thank you.
Assembly.
CHAIRWOMAN WEINSTEIN: Assemblyman Barclay.
ASSEMBLYMAN BARCLAY: Thank you.
Good morning, Judge.

CHIEF ADMIN. JUDGE MARKS: Good morning.

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

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

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

ASSEMBLYMAN BARCLAY: And how's that work -- I'm just curious. How's that work out, then? Understanding it's formulaic, but what -- do you know how it is split up? Like how much does that result in New York City
getting versus Syracuse or Buffalo?

You may not know. If someone could just --

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

ASSEMBLYMAN BARCLAY: Thank you.

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

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

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

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

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

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

ASSEMBLYMAN BARCLAY: For this year?

CHIEF ADMIN. JUDGE MARKS: For this
fiscal year. And we'll be asking for more
than that for the upcoming fiscal year.

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

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

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

ASSEMBLYMAN BARCLAY: Right.

Thank you, Judge. Thank you,
Chairwoman.

CHAIRWOMAN WEINSTEIN: Senate.

CHAIRWOMAN KRUEGER: Thank you.

Luis Sepúlveda.
SENATOR SEPÚLVEDA: Good morning,
judge.

CHIEF ADMIN. JUDGE MARKS: Good
morning.

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

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

When I was a law student, I was a CLEO
fellow -- which I don't know if the federal
government still funds it, but it was very
similar to the LEO program. And I can tell
you that part of the reason I became an
attorney, and I've been one now for 29 years, was because of the CLEO program. It provided the financial assistance and knowhow and knowledge to help me succeed in law school.

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

CHIEF ADMIN. JUDGE MARKS: I mean, it's not a large program. I think there are about 20 participants, if I recall correctly. We -- well, first of all, at a minimum, we want to see it re-funded, because it's a successful program. We've been running it for a number of years. It's easy for us to run it again. We would want to run it again. It takes place at our Judicial Institute in White Plains. And it's a terrific program. You know, there's no downside at all to that program.

But it's not a panacea, certainly. It can make a modest improvement -- and these
are young people who are going to law school. So they're not even coming out of law school where we could hire them in the court system. But we do connect them with a mentor who stays with them throughout their law school career; it could be a judge or a lawyer. And, you know, the goal is that these people will be interested in public service and maybe even be interested in working in the court system when they graduate from law school.

So there's opportunity for more programs like that.

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

The reality is that at least the way the CLEO program ran -- and I believe it's not that much different from the LEO program -- the program actually put me in a position to succeed in law school. I mean, the first legal brief I ever did was at the
CLEO program. The first law class that I ever took was at the CLEO program. And they actually taught me methods, practicing tips. And I believe to some degree it put me ahead of other students who were starting law school from day one.

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

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

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

You know, I think the law schools could do more. And I'm not aware -- I could be wrong about this, but I'm not aware that
any of the 15 law schools in New York for admitted students, you know, who are going to be coming into their first year of law school after Labor Day, do they provide any additional support and resources for students who come from disadvantaged backgrounds?

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

You know, the results of some of these numbers -- our leader, Andrea Stewart-Cousins, and Chairman Hoylman created a subcommittee in the Senate on judicial diversity. I was fortunate enough to be named the chair of that subcommittee. And it's something that I'm -- over the years now, since I've been an elected official -- you know, I remember when I first stepped foot in the courthouse in Bronx County 20-something years ago. And the staff, the judges did not in any way, fashion or form reflect the population of the county.
And that -- some people don't understand the importance of that. But when you have common experiences in life, it certainly makes you a better judge. When you have staff, court attorneys, court personnel, that reflect the population of the county, it certainly makes for a better judicial system.

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

SENATOR SEPÚLVEDA: Okay.

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

SENATOR SEPÚLVEDA: Yes.

CHAIRWOMAN KRUEGER: So we can all continue this together.

SENATOR SEPÚLVEDA: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Thank you.

We're going to go to Assemblyman Epstein.

ASSEMBLYMAN EPSTEIN: Thank you, Judge
Marks, for being here today.

I just want to follow up on a question you heard earlier from Senator Hoylman around, you know, ICE in the courts. And I'm wondering -- I know you've asked ICE to protect the courts as a sensitive location. But since you own those buildings, there's a way to go a step further and just to protect the people who are inside.

I noticed in your testimony you said, on page 2, "We must protect the welfare of the most vulnerable among us." You said that. And so if -- the most vulnerable among us have to be people who are undocumented who are entering our court system. Shouldn't the court do more to protect those people who are going to their courts?

CHIEF ADMIN. JUDGE MARKS: Well, that's a very difficult question. And I can tell you the Chief Judge and I have spent hundreds of hours at meetings and discussions and thinking about this. And it's a very difficult question.

By the way, no other court system in
the country has done as much as we've done
with the protocols I described. And I know
that advocates feel that that hasn't been
enough. We've been asked to do everything
from prohibit ICE agents from coming into the
buildings, which I think would be
unconstitutional -- courthouses, or public
courthouses, I don't think we can bar people
from coming into the buildings even if we
wanted to do that.

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

Of course ICE, they generally have --
they have administrative warrants, they're
not judge-signed warrants. But federal law,
rightly or wrongly, authorizes them to make
these arrests with administrative warrants.
Other law enforcement agencies have
historically come into the courts and made
arrests. The NYPD does that probably every
day of the week.

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

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

ASSEMBLYMAN EPSTEIN: Thank you. I
appreciate your comments, and I look forward
to maybe you moving forward on that. I mean, we can all have conversations about private property and what -- you know, when people can have access.

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

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

I mean, I believe that the --

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

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

We need to make greater use of
nonlawyers. Nonlawyers can't go into court
and try cases on behalf of clients, but
there's a lot of things they can do helping
people fill out forms and pointing them in
the right direction and sharing information
with them. So addressing the justice gap problem, which is a serious, serious problem in this state and across the country, it needs to be a multipronged strategy.

CHAIRWOMAN WEINSTEIN: Thank you.

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

CHAIRWOMAN WEINSTEIN: Thank you, Judge.

Senator.

CHAIRWOMAN KRUEGER: Thank you.

Senator Zellnor Myrie.

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

(Laughter.)

SENATOR MYRIE: Thank you, Madam Chair.

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

I just have one question around New York City's Third Party Transfer Program. This is a program that has affected mostly
communities of color. As you might be aware, there were several houses in Brooklyn, the Bronx and Queens that were foreclosed on by the city. These properties were taken from the homeowners, and some homeowners were not given notice of this.

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

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

And I could revisit this and look at it again, but I think I recall our response
was, don't misinterpret this as indifference,
but that this involved a pending case and the
application of a law by an individual
design -- and there might have been several
judges involved in several cases -- and it
was difficult for us to intervene -- you
know, as administrators to intervene. And
that's why we have appellate courts.

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

So I don't know if that's a good
answer, but I think that's -- if I remember,
that was our response to the letter. But I
can take another look at it and talk to you
about it.
SENATOR MYRIE: Yeah, I'd greatly appreciate if you could do that. And I appreciate that you cannot comment on the substance or any of the substance of law that was administered.

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

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

SENATOR MYRIE: No, sir, these were privately owned. The city's Third Party Transfer Program purports to assist homeowners who are under financial duress by looking at tax bills and water bills. But
the problem with a number of the properties that were seized, one was the notice. And two, there were some erroneous records, and the city based these seizures on those erroneous records. And so people did not have -- they had their properties taken from them without them knowing, and improperly. And so this is something that the community has been very adamant about, and I really wanted to elevate this and bring it to your attention and urge you to --

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

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

CHIEF ADMIN. JUDGE MARKS: Okay.

SENATOR MYRIE: Thank you, Judge.

CHAIRWOMAN KRUEGER: Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Montesano.

ASSEMBLYMAN MONTESANO: Thank you,
Madam Chair.

Good morning, Judge.

CHIEF ADMIN. JUDGE MARKS: Good morning.

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

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

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

So the attrition with court -- you know, court officers, it's a civil service title, meaning they have to take a test and
be appointed off of a list. But it's a
unique title and position because if we
decide -- let's say we decide we needed
another clerk in Nassau District Court, we
can just go to the list and literally put the
person in the job the next day if we decide
to do that.

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

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

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

ASSEMBLYMAN MONTESANO: And a

follow-up to our conversation we had

yesterday, so there was a three-quarters bill

passed and I believe it went up to the

Governor and it wasn't supported by the

Governor, I think. What's the position,

though, of the Office of Court

Administration -- is there a position from

your office to the Governor regarding the

support of this bill?

CHIEF ADMIN. JUDGE MARKS: I'm glad

you asked that question, because in the past

we've taken no position on that bill. But

this year, or in December, when the bill was

on the Governor's desk, we wrote to the

Governor and expressed our strong support

for -- that he sign the bill. Which

unfortunately he didn't.

ASSEMBLYMAN MONTESANO: Will you be

able to support that bill now as it comes

forward again? Will you take the same

position?

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

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

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

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

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

ASSEMBLYMAN MONTESANO: Okay, thank you.

And just quickly on the enhancement of
court security, because I know you're asking for additional funding, what areas -- I know it differs from county to county. But like downstate, where would be the emphasis on the enhancements in court security?

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

ASSEMBLYMAN MONTESANO: What types of enhancements?

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

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

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN WEINSTEIN: Before we go to the Senate, we've been joined by Assemblywoman Buttenschon.
CHAIRWOMAN KRUEGER: Thank you.

Senator Kevin Thomas.

SENATOR THOMAS: Good morning, Judge.

CHIEF ADMIN. JUDGE MARKS: Good morning.

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

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

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

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

SENATOR THOMAS: Are you able to talk about Con Edison actually having a courtroom in the New York City civil courts and they adjudicate cases based off of defaulted
bills? Do you have any knowledge or idea about what's going on there?

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

SENATOR THOMAS: It's just a replevin part.

CHIEF ADMIN. JUDGE MARKS: This is in Manhattan?

SENATOR THOMAS: It's all over the city.

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

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

CHIEF ADMIN. JUDGE MARKS: Interpreters is a very, very important topic. It's really about access to justice. I mean, participants in court proceedings need to understand what's happening when they appear in court. And it's not even just in the courtroom, but in -- when they go to the
clerk's office and talk to people, they have
to be able to communicate.

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

You know, as we all know -- I don't
know what the number is, 150 different
languages are spoken in New York. We can't
employ our own staff interpreters for
150 languages, it just wouldn't be practical.

But we employ interpreters in the most
commonly spoken languages, which of course
can vary from one county to another. And for
other languages, we rely on what we call per
diem court interpreters. These are
essentially independent contractors who we do
test, and then they qualify. And we have
them in a registry, and when we need them --
and these are the less commonly spoken
languages -- we schedule them electronically,
and they help fill the need.

We also need to rely on remote
interpreting. It's not as good as having
someone, you know, a live interpreter standing next to you, but it's an option that we have to take advantage of, particularly in clerk's office situations and outside the courtroom, and we contract with several groups. One is well known, it's called Language Line, which has interpreters on call and on the spot who can provide interpreting over the phone.

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

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

CHIEF ADMIN. JUDGE MARKS: Yeah, there's ongoing work that's done to make forms that unrepresented people need to use
as easy to use and as intelligible as possible so that they're presented in plain language. We've done a lot of work on that. We need to do more. Very labor-intensive, obviously.

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

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

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

CHIEF ADMIN. JUDGE MARKS: We have done bias training, particularly implicit
SENATOR THOMAS: Yes.

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

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

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

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

CHAIRWOMAN KRUEGER: Judge, I'm going to cut you off on that. But I think that we
might actually, based on a number of my colleagues' questions, ask if the courts could provide both the Assembly and the Senate materials that are used on bias and issues dealing with people with language problems as well as race and gender.

So that would be great, to follow up with materials about what kind of trainings you're doing, or really the substance of the trainings.

CHIEF ADMIN. JUDGE MARKS: Sure.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We're back to the Senate.

CHAIRWOMAN KRUEGER: Okay, continuing with the Senate, our next testifier is Gustavo Rivera.

SENATOR RIVERA: Not testifier. We're here, not over there.

CHAIRWOMAN KRUEGER: Excuse me.

Questioner.

(Discussion off the record.)

SENATOR RIVERA: Good morning, Judge.
So I wanted to ask you about -- I want to go a little bit further into opioid courts. I wanted to know if OCA has either produced or if you could produce an analysis of outcomes, talk about mandated treatment, sentencing, numbers on recidivism, that type of stuff. Have you produced something or could you produce something?

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

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

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

Of course, the immediate goal and overriding goal in an opioid court is to save
lives.

SENATOR RIVERA: Agreed.

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

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

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

SENATOR RIVERA: And I certainly agree
with you. Could you provide my office with
those numbers?

CHIEF ADMIN. JUDGE MARKS: Of course.

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

CHIEF ADMIN. JUDGE MARKS: Sure.

SENATOR RIVERA: Thank you, Judge.

CHAIRWOMAN KRUEGER: Thank you.

Continuing with the Senate, Senator

Diane Savino.

SENATOR SAVINO: Thank you, Senator

Krueger.

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

So the Office of Children and Family
Services has said that they reimbursed
counties -- and I'm assuming they're reimbursing the court system. So as you spend money, you get money, under the amount of money that we've set aside.

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

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

But does that affect the courts? Or
does the money to the courts for Raise the Age, is it separate from the localities' pot? Is it all in one pot? Or is it broken down differently?

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

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

I do want to make a point about the -- your comment in your testimony about others who have suggested that you should ask for more money, I think you were talking about me. I ask you this every year: Why don't 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
15 CHIEF ADMIN. JUDGE MARKS: That's
16 correct.

17 SENATOR SAVINO: So if you were to
18 actually bring the court system up to the
19 levels it was prior to 2011, would this
20 2 percent increase, would that be able to
21 cover it?
22
23 CHIEF ADMIN. JUDGE MARKS: No,
24 absolutely not.

25 SENATOR SAVINO: That's good to know.
26
27 CHIEF ADMIN. JUDGE MARKS: Not even
SENATOR SAVINO: Right. That's good to know. Because again, I think that we're really shortchanging the people's justice with the requirement that agencies come in under the 2 percent spending cap. I don't think it helps you, I don't think it helps the people, and I'm continue to say this every budget hearing. We want to give you more money, I think you need more money -- and by the way, one final question.

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

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

CHIEF ADMIN. JUDGE MARKS: I don't want to answer that yet. Because we're
actually -- with all our unions, we're good until March 31, 2021. CSEA, which is our biggest union, I believe their contract ends the end of the upcoming fiscal year, March 31, 2020.

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

SENATOR SAVINO: Okay. Thank you.

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

And for quick second lightning rounds, Senator Brad Hoylman.

SENATOR HOYLMAN: Thank you.

Again, I agree with Senator Savino. The time to fix the leaky roof is when the sun is shining, as John F. Kennedy said. And I don't know why we haven't been fixing the leaky roof with the economy as it has been; we're recovering since 2011. But that's another issue.
But quickly, in November the Court of Appeals held, in People v. Suazo, that undocumented immigrants have a constitutional right to a jury trial even when faced with a B misdemeanor. This decision highlights a disparity in New York's laws in particular, in which there's a statutory right to a jury trial for those charged with B misdemeanors outside of New York City, but none for those people living in New York City.

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

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

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

CHIEF ADMIN. JUDGE MARKS: Well, not entirely. Because we had such gargantuan
backlogs in some of the counties in New York City that even an 80 percent reduction in the oldest cases, there's still a backlog.

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

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

I'm a little concerned -- and don't misunderstand me, I'm not indifferent to the rights of people in -- you know, the right to a jury trial. The U.S. Supreme Court says that, you know, you're not entitled to a jury trial, it's longstanding case law, unless you can get six months or more in jail if you're
convicted. And so for the B misdemeanors, the law has been in New York City -- and it's just New York City, not the rest of the state, because New York City has the very high volume.

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

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

And the last point I want to make, and I'll share this data with you, is that I've looked at this, there's not that much of a difference in outcome between misdemeanor cases that go to trial, whether it's a jury
trial or a bench trial. The acquittal rate is roughly the same.

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

CHAIRWOMAN KRUEGER: Thank you both.

Senator Seward for a lightning-round question.

SENATOR SEWARD: Yes, thank you. I wanted to zero in on three programs that are funded through the OCA budget but are not specifically lined out in the budget, and those three would be the Community Dispute Resolution Centers program, the Court-Connected Alternative Dispute Resolution program, and the Court-Appointed Special Advocate program, the CASA.

Can you tell us how much would be spent on these three programs? And how would that compare to last year's spending on those programs?
CHIEF ADMIN. JUDGE MARKS: Give me a second, because I don't want to speak off the top of my head. But the Community Dispute Resolution programs, which perform ADR services in criminal cases, smaller civil disputes, some Family Court disputes, is an invaluable program. We're trying to do more alternative dispute resolution in the court system as part of the Chief Judge's Excellence Initiative.

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

So the total amount is 7.3 million. It's about a -- I think about a 600, 700,000 overall increase from what they're getting in this year's budget.
The CASA program, CASA volunteers perform advocacy services for children in Family Court. You know, they're invaluable to judges, they work with families. It's a volunteer program. But the money goes to the nonprofits that administer these programs and train people. And we're giving them, I think, a $50,000 increase. The total amount is about 1.1 million for the CASA program, with a 50,000 increase. It includes a 2 percent COLA and then some additional money for them as well.

Was there a third --

SENATOR SEWARD: The Community Dispute Resolution program.

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

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

SENATOR SEWARD: The Court-Connected program, yeah.

CHIEF ADMIN. JUDGE MARKS: -- in the
court system in matrimonial cases in Family
Court and Surrogate's Court.

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

CHAIRWOMAN KRUEGER: Thank you. Thank
you both.

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN KRUEGER: And Senator
Jamaal Bailey to close.

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

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

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

SENATOR BAILEY: Yes.

CHIEF ADMIN. JUDGE MARKS: Well, I'm
not sure what we can do to bring the -- you
know, the town and village courts are part of the Unified Court System but they're not directly under our supervision. We don't fund them.

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

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

We try to give them equipment. A lot of the proceedings weren't being recorded a number of years ago in town and village
courts, which is a serious problem if you think about it. These are lower-level cases, but misdemeanor cases, civil cases. And the proceedings were not being recorded by a court reporter or a recording machine. We gave them free digital recording machines, with the requirement that they put all their proceedings on the record. We have a grant program, a modest grant program. We give them grants to do things like pay for benches and upgrade their facilities.

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

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

And I appreciate your candor and your answer, Judge.

CHAIRWOMAN KRUEGER: Thank you.

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

SENATOR SEPÚLVEDA: That's okay.

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

(Laughter.)

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

(Laughter.)

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

And also when you talked about
recruiting for personnel positions, civil
service and so forth, are you going to the
local colleges and the local law schools as
part of your recruiting efforts?

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

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

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

SENATOR SEPÚLVEDA: All right. But
you rely solely on the law schools to then
disseminate this information. You don't have
anything, any program or anything
specifically the OCA does to make sure that
this information is getting to the targeted
groups?

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

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

Thank you.

CHIEF ADMIN. JUDGE MARKS: Okay,
great.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: I think we're
finished.

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

CHIEF ADMIN. JUDGE MARKS: Thank you.

Appreciate it.

CHAIRWOMAN KRUEGER: I know there will
be a number of follow-ups from us.

Appreciate your time and your work.

Next up, New York State Commission on
Judicial Conduct.
Okay, as we transition, good morning. Feel free to start. Again, try not to read the testimony, which you don't even have in front of you --

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

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

Thank you for being with us.

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

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

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

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

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

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

So that while our responsibilities are
increasing, we are struggling to make do.
And I have requested of the Legislature what
I think is a relatively modest increase of
$359,000 over a budget of slightly under 5.7,
in what I hope is the first of a two-year
increment so that we can get back to what
should be our full funding, enough to support
a staff of 51 people and to deal with our
matters much more expeditiously.
The public should not have to wait longer than appropriate for the discipline of a judge, particularly if the judge is engaged in such egregious misbehavior as would warrant removal. And that happened twice last year. We also had 12 cases last year in which we negotiated the resignation of the judge with a commitment never to return to the bench again.

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

In New York, we happen to be a leader in the judicial disciplinary world. We have a larger caseload, we have a very sophisticated due process model that has been copied around the country. And in fact, our operations have been the model for two recently proposed and very significant pieces
of legislation: One, the Commission on Prosecutorial Conduct, which statutorily is modeled after us; and the second is Senator Krueger's bill and cosponsored by others of you to institute a new system of executive and legislative oversight which is literally based on the constitutional provision that creates the Commission on Judicial Conduct.

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

If our finances had simply kept pace with the rate of inflation, our $5.4 million budget from a decade ago would be worth almost $6.4 million today. I'm asking for a little under 6.1 just to be able to stanch the bleeding and to start regenerating some of our workforce so that we can fairly,
reasonably and expeditiously fulfill our constitutional mandate.

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

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

CHAIRWOMAN KRUEGER: Thank you very much for your time.

Our first questioner is the Judiciary chair, Brad Hoylman.

SENATOR HOYLMAN: Thank you, sir.

It's good to see you.

I think, you know, it's actually alarming and distressing to hear that the Commission on Judicial Conduct, representing what is the integrity of the third branch of government, is not fully operational. So I am really pleased that you're here to tell us that you're seeking from the Legislature an additional $359,000.
I will say that I think you suffer from your independence. The fact that you are not under the purview of any branch of government makes you, I think, vulnerable to these types of staff cuts.

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

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

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

ADMINISTRATOR TEMBECKJIAN: No, not
that. If a complaint has merit on its face, the commission will authorize an investigation and we will get to it. But we have to prioritize, under the financial realities under which we operate, as to which ones are going to get the most immediate attention.

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

ADMINISTRATOR TEMBECKJIAN: With slower than appropriate attention from our commission, yes. They will ultimately get the attention that is deserved, but not as quickly as justice demands. Where we have a very complicated case with multiple allegations of misconduct that might require two or three attorneys, that's time that those attorneys can't spend on some of the lesser -- but to the aggrieved, no less significant -- complaints that are taking second seat, so to speak.
If we had our full complement of 51 staff, I think our backlog, which has grown from about 170 at year's end to about 210, would be going in the opposite direction. We were able to cut back on it in 2007 when the Legislature made a serious commitment to the commission's resources. At that time, if you can imagine, in 2007 our budget was 2.8 million and the legislature gave us 2 million more, so we went up to 4.8 million 12 years ago. And it dramatically reduced our backlog to about 130 cases or so pending at year end. We're now up to over 200.

SENATOR HOYLMAN: Two hundred cases backlogged.

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

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

ADMINISTRATOR TEMBECKJIAN: That gets
slower than appropriate --

SENATOR HOYLMAN: That is unacceptable.

ADMINISTRATOR TEMBECKJIAN: -- yes.

SENATOR HOYLMAN: That is unacceptable.

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

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

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

Any sense of how pervasive that kind of blatant outward discrimination is among judges? And how many of those 200 cases involve that kind of unacceptable behavior?
ADMINISTRATOR TEMBECKJIAN: I would say that of the more than 200 cases that we currently have pending -- without getting into the specifics of them, because I'm bound by a confidentiality statute -- there are probably five or six that I think involve allegations of gender-inappropriate, homophobic or otherwise personally unacceptable and revolting allegations.

And we are prioritizing those, because they not only affect our view of that particular judge's capability or competence to be on the bench, but they also cause damage to the court community and to the public at large that come to know about these things. Even if we are bound by confidentiality from discussing a matter until it has been concluded and the judge has been disciplined, the legal community and the public in that area are going to know about it, or they're going to tend to know about it. And the longer it takes to render justice in those cases, the greater the likelihood that confidence in the court
system is going to be undermined.

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

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

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

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

But the number of complaints against town and village court justices tends to be fewer than those against full-time judges, which means statistically that a complaint against a town or village court justice is more likely to be investigated and is more
likely to result in discipline. And about 80 percent of the disciplines of town and village courts in our history have been those who are not attorneys.

SENATOR HOYLMAN: Eighty percent.

ADMINISTRATOR TEMBECKJIAN: Right.

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

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

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

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

SENATOR HOYLMAN: Well, thank you very much. I just want to echo, again, my colleagues' concerns about bias in the court system. Appreciate your attempt to address it, your request for more resources, and I'm really appreciative of the fact that you're
able to rattle off all those statistics
without a single shred of notes in front of
you.

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

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

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman
Dinowitz.

ADMINISTRATOR TEMBECKJIAN: Good
morning.

ASSEMBLYMAN DINOWITZ: Good morning.

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

ASSEMBLYMAN DINOWITZ: Good, how are
you?

ADMINISTRATOR TEMBECKJIAN: Very well,
thanks.

ASSEMBLYMAN DINOWITZ: I remember we
started to discuss this last year, of your --
well, first of all, I think you're right when
you say the budget falls short. But that is
the Executive Budget proposal.

ADMINISTRATOR TEMBECKJIAN: Correct.

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

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

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

I realize a lot of offices tend to be
in Manhattan, but my guess is if you were in
Bronx or Brooklyn or Queens or someplace
else -- I said Queens. I would never leave
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
120 in tax escalations.

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

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

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

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

A case that requires full investigation and ultimately a full-fledged disciplinary hearing can take a year and a half to two. Because we not only do the investigation -- which is the equivalent of, let's say, a grand jury or a district
attorney's criminal investigation -- but once that investigation is concluded and reasonable cause is found to move forward for potential discipline of the judge, we then start a full-fledged due process disciplinary hearing, formal charges are served -- it's like the indictment and then the petit trial.

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

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

That case, from the time she was first charged with DWI to the time that the commission removed her from office, took
almost two years. We lost about seven months
of time in the preparation of transcriptions
from court cases and our own proceedings in
that matter, and then of course we waited
until the conviction was final before
entering our own removal determination.

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

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

ASSEMBLYMAN DINOWITZ: Okay. That's
why I asked for an average. Okay.

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

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

(Laughter.)

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

ASSEMBLYMAN DINOWITZ: Let me move on,
though.

ADMINISTRATOR TEMBECKJIAN: Okay.

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

ADMINISTRATOR TEMBECKJIAN: Correct.

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

What percentage of the cases are
pursued by your office?

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

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

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

ADMINISTRATOR TEMBECKJIAN: From within New York City -- I could estimate that if we get 2,000 complaints a year, probably
ASSEMBLYMAN DINOWITZ: And so based on the percentages you previously mentioned, maybe you pursue 40 or so of them, and of them maybe 10 to 15 result in some sort of discipline, would that be pretty accurate?

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

ASSEMBLYMAN DINOWITZ: Okay.

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

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

CHAIRWOMAN WEINSTEIN: Thank you. Senate.

CHAIRWOMAN KRUEGER: Thank you. Senator Jamaal Bailey.

SENATOR BAILEY: Thank you, Madam Chair. I'll be very brief with my questions. Good afternoon -- well, still morning. So I have a question about the funding. And I agreed with my colleague Chairman Hoylman about the funding, that we should be increasing the funding. But if giving the appropriate funding -- would that allow you to have -- I mean -- well, I should ask first, do you have observers in courts?

ADMINISTRATOR TEMBECKJIAN: When there is a complaint involving a judge's demeanor, our staff as a matter of routine will sit in the spectator section and unobtrusively observe to get our own independent sense of whether the judge has a demeanor problem.

But we don't -- we don't have an army of volunteers, for example, that go out and then report back to us.
SENATOR BAILEY: Certainly, I understand that. But with increased funding, would that be -- and I'm just making a recommendation, because again, I believe that your commission is vitally important for the independence -- and again, by and large, what you said in your comments is true. Our judges, they do great work, but just like in any profession, you know, if you do something wrong, you should be punished.

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

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

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

Certainly the addition of resources to
let us hire more investigators would give us
more bodies -- legs, so to speak -- to get to
the courts to investigate those
demeanor-related complaints where court
observation is a very important part.

   SENATOR BAILEY: Excellent. And just
one final question.

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

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

   My sense is that if the judiciary is
more diverse, then judges are going to be as
a body more sensitive to certain cultural, ethnic and racial sensitivities that they might not otherwise have. It simply cannot hurt to be in a more diverse environment. You just learn more, you become more tolerant, and by having an opportunity to interact on a day-to-day regular basis with people who are from communities other than your own.

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

And I thank you for your time and your commentary.

ADMINISTRATOR TEMBECKJIAN: Thank you.
CHAIRWOMAN KRUEGER: Thank you.
Assembly.
CHAIRWOMAN WEINSTEIN: Assemblyman Weprin.
ASSEMBLYMAN WEPRIN: Thank you, Madam Chair.
Welcome, Mr. Tembeckjian.
ADMINISTRATOR TEMBECKJIAN: Thank you.

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

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

ADMINISTRATOR TEMBECKJIAN: That's right, I was.

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

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

ADMINISTRATOR TEMBECKJIAN: We would. We would hire a couple more attorneys, investigators, and we would contract or bring in stenographers to cut down the time that it takes us to produce transcripts. Those would
be our priorities. Two lawyers, one or two
more investigators, and stenographic
services.

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

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

We take the misconduct complaints as
we get them, whether they're against lawyers
or nonlawyers. And if I were to say, for
example, that all judges should be lawyers
and we were to discipline nonlawyer judges,
we'd be subject, perhaps, to criticism for
picking on those judges to make our
legislative point.

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

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

ADMINISTRATOR TEMBECKJIAN: I think
that's right. I don't think there were any
in the 20th century.
ASSEMBLYMAN WEPRIN: And following up on that, is there any other court in New York State other than town and village justices where there's no requirement to be a lawyer?

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

ASSEMBLYMAN WEPRIN: Okay, thank you.

ADMINISTRATOR TEMBECKJIAN: Thank you.

ASSEMBLYMAN WEPRIN: Thank you, Madam Chair.

CHAIRWOMAN WEINSTEIN: Senate?

CHAIRWOMAN KRUEGER: Thank you.

Senator Diane Savino.

SENATOR SAVINO: Thank you.

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

ADMINISTRATOR TEMBECKJIAN: Thank you.

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

ADMINISTRATOR TEMBECKJIAN: Right.

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

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

ADMINISTRATOR TEMBECKJIAN: The footnote to that sentence indicates that the first year of the 10-year lease, by the way,
in which the increase was amortized -- so
that we're going to have -- basically it's
180,000 more, but that's fixed for five years
and then it jumps up for another five. So
that they tried to level out the pain over
the 10 years by keeping us essentially flat
for rent for the first five years.

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

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

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

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

ADMINISTRATOR TEMBECKJIAN: Yes.

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

ADMINISTRATOR TEMBECKJIAN: Well, I think the first two are exactly right. We do
a lot of outreach. It tends to generate a
lot of attention in the district where a
judge is publicly disciplined when the
commission does admonish or remove a judge
from office.

And also the public is far more
did back in 1978 when we started. The
internet alone, and our internet presence,
has raised our profile, and it's made us more
accessible to anyone who has a bad experience
in court or with a judge, on or off the
bench. It will not take more than a couple
of minutes of research to find out what they
can do about it. And I think that largely is
responsible for it.

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

ADMINISTRATOR TEMBECKJIAN: There are
about 490-some-odd inquiries and about 150 investigations as well.

SENATOR SAVINO: Right.

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

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

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

ADMINISTRATOR TEMBECKJIAN: Well, and that commission perhaps, as we certainly demonstrate, we absorb a lot of the hostility that might otherwise be directed to the judiciary by taking those complaints, giving the aggrieved individual individualized
attention, and explaining to them why their complaint really didn't allege an ethical violation and had to be dismissed.

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

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

SENATOR SAVINO: Thank you.

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

CHAIRWOMAN WEINSTEIN: Assemblyman Lentol.

ASSEMBLYMAN LENTOL: Thank you, Madam Chair.

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

ADMINISTRATOR TEMBECKJIAN: Thank you.

It's always a pleasure for me to come and talk to you too, by the way.

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

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

ADMINISTRATOR TEMBECKJIAN: We have discovery built into our statute, we have rules that have expanded on the statutory discovery, we have all kinds of notice and opportunity to be heard, requirements that we've promulgated ourselves, taking off on
the statute and the constitutional provision. We have provisions that permit representation by counsel at any and all stages, not just for the judge who is the subject of the complaint, but witnesses as well.

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

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

Ironically, for those judges who complain that the commission is a kangaroo court -- with which I would obviously vigorously disagree -- they more than I hold it in their authority to open the process up. The process is confidential by statute until
the commission renders a public discipline,
unless the respondent judge chooses to waive confidentiality and open it up.

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

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

ASSEMBLYMAN LENTOL: Thank you.
CHAIRWOMAN KRUEGER: Thank you.
Senator Zellnor Myrie.
SENATOR MYRIE: Thank you, Madam Chair.
And thank you for your testimony and commentary.

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

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

ADMINISTRATOR TEMBECKJIAN: Correct.

A little more than that, actually.

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

ADMINISTRATOR TEMBECKJIAN: Correct.

SENATOR MYRIE: And so is it possible that there are currently members of the judiciary who are under investigation and who are making decisions, like whether or not
someone can stay in their home -- is it
possible that they are remaining on the bench
solely because of budgetary constraints?

ADMINISTRATOR TEMBECKJIAN: Yes.

SENATOR MYRIE: Thank you.

CHAIRWOMAN KRUEGER: Assembly.

CHAIRWOMAN WEINSTEIN:

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

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

ADMINISTRATOR TEMBECKJIAN: Right. I
don't know who that spokesperson is, and I
don't know if he or she was accurately
quoted.

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

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

So I think by any stretch it's not
accurate to say that we have been getting our
increases on a regular basis. And I think you and Senator Krueger, who have had these kinds of conversations with me over the years, one on one and in this public forum, recognize the financial constraints under which we've been operating.

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

CHAIRWOMAN WEINSTEIN: Thank you for clarifying that to everyone.

ADMINISTRATOR TEMBECKJIAN: Thank you for asking.

CHAIRWOMAN KRUEGER: Thank you. I also want to thank you for testifying each year and highlighting the incredible work your commission does, and just to say on the record people do have complaints about judges, they are not all founded, but the only way for the State of New York to assure the public that our judiciary is one to be proud of and to believe can correctly protect the interests of all almost 20 million of us is to make sure that we have a commission
such as yours, and that we are providing you
the resources to get your job done.

So a lot of things are changing in
this town this year, and a lot of us have new
positions. And it sounds like you have a lot
of support here in this budget hearing to
make sure you have adequate resources.

So thank you for testifying.

ADMINISTRATOR TEMBECKJIAN: And thank
you very much, Senator, very, very much.
Thank you. Thank you all.

CHAIRWOMAN KRUEGER: Thank you.

And our next testifier, just for those
keeping track -- the snow doesn't seem to be
that bad yet, people, I've been checking --
the New York State Division of Homeland
Security and Emergency Services, Terence
O'Leary, executive deputy commissioner.

And I suppose if it was really bad
out, he would be on assignment at the moment,
so he can verify it's not that bad outside.

EX. DEP. COMMISSIONER O'LEARY: Good
afternoon.

CHAIRWOMAN KRUEGER: Good afternoon.
EX. DEP. COMMISSIONER O'LEARY: It's not that bad yet. Thankfully, it's snowing in the places where we like snow, where there are snowmobiles and recreational activities.

CHAIRWOMAN KRUEGER: Thank you.

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

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

It is an honor to share with you the accomplishments of the dedicated men and women of the division, who are charged with a tremendous responsibility — that is protecting New Yorkers from natural and man-made disasters through prevention, preparedness, response, and recovery efforts.
The Executive Budget provides the resources needed to accomplish our mission and enhance public safety. Total agency appropriations are $1.6 billion. Some notable items which the division will be administering include $25 million to continue the success of the Securing Communities Against Hate Crimes program and $5 million of capital funding to expand the State Preparedness Training Center.

I would like to provide an overview of the work we performed in 2018. Emergency management and response remains a priority for the agency. In 2018, the State Emergency Operations Center was activated to a Level 4 or higher 38 separate times. These activations required coordinating multi-agency responses with other state agencies and localities. Additionally, our staff continues to support our local partners through direct partnerships, training and, when necessary, support in local Emergency Operations Center activations. In 2018, we provided counties and municipalities with
staffing support for 48 emergency incidents. Among these events were the high-axle vehicle rescue in Fort Covington in the North Country, the building collapse in Poughkeepsie, and the Altona Flat Rock wildfire. During the August flooding in the Finger Lakes and the Southern Tier, the state partnered with local and county first responders to help evacuate residents caught in that flooding. In fact, staff from DHSES's own Office of Fire Prevention and Control swift water rescue teams evacuated over 80 people from the shores of Seneca Lake that morning.

This event demonstrates the danger of flooding and underscores the need for high-quality swift water training for both state and local first responders. Thanks to you, the state's Swift Water Flood Training facility was opened at the State Preparedness Training Center. This world-class training facility provides specialized training opportunities for New York State responders that they would otherwise be unable to
obtain. State and local first responders can now safely learn and practice the techniques necessary for fast-moving water and urban flooding rescues. And although the facility just opened in August, we have already trained 321 first responders in 13 different water rescue courses, and we plan an even more expansive training schedule for 2019.

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

The Executive Budget includes funding to further enhance the state-of-the-art training provided at the State Preparedness Training Center, using $5 million of capital funding to create new training venues. With
your partnership, we have made the SPTC a national model for first responder training, and the Governor's proposal will build upon that success.

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

The division also partnered with federal, state, and local law enforcement for operation NY-SECURE to conduct
counterterrorism and incident response
exercises along Amtrak routes and MTA
commuter lines. The division also looks
forward to implementing the recommendations
of the Governor's counterterrorism panel.
These recommendations, announced earlier this
month, will help make New York safer against
evolving threats.

The division continues to expand its
role in protecting the state against
cyberattacks. The new Cyber Incident
Response Team, or CIRT, is now fully
operational. In the past year, the CIRT has
provided incident response services to
multiple counties and municipalities across
the state. For the 2018 election, the CIRT
partnered with the State Board of Elections
and ITS to secure the state's election
infrastructure and serve as a go-to resource
for county boards of election. The CIRT
continues to work with the division's
Critical Infrastructure Protection Unit as
well, to strengthen the division's cyber
assistance and enhance cybersecurity for the
Our efforts to enhance the public's preparedness continue through the Governor's Citizen Preparedness Corps trainings. During 2018, with your assistance, we partnered with the National Guard and the Red Cross to train over 62,000 citizens. Since the program's inception, more than 277,000 New Yorkers have been trained in our all-hazards approach to prepare for and respond to any type of emergency situation.

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

CHAIRWOMAN KRUEGER: Thank you.

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

SENATOR BROOKS: Thank you, Madam
Chair.

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

(Discussion re microphone.)

SENATOR BROOKS: Hello? I will start over again.

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

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

On the good side, on the IMA program, you recently extended that program for another six months. But I'm not sure that
the folks in some of those homes are going to
be back in their homes in that next six month
period. Do you have plans to assist those
people additionally?

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

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

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

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

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

We're in a situation right now where many of the homeowners didn't understand the process. Probably most of them should have hired a general contractor to oversee the program. They didn't understand it. Documentation came that people were confused with. And we're in a situation now where those people, their ability to keep their home is very much in question.

So I had a number of questions that were addressed specifically with references that you made and the information that was provided in the budget. You know, I think we really have to take a hard look at where we are with the preparedness, recognize that we're in a situation with climate change, we're going to see more of these storms. We understand that. We've got a problem on the South Shore of much of Long Island and parts of the North Shore on Long Island where we're seeing more and more coastal flooding on minor storms.

In my community, the eye of the storm,
we had flooding that came up to the main part
of the village. We were evacuating people
all night long. They didn't see that coming.
And many of those homes, again, they're not
back in those homes.

You know, I'm disappointed that you
don't cover some of these areas and certainly
want to meet with you folks at a later time.
But the Executive Budget right now provides
$450 million for additional storm recovery.

Do you know how much of that is slated for
Hurricane Sandy-related issues?

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

The projects that the division
oversees are the larger public assistance
projects, which there are approximately 4,800
related to Hurricane Sandy. We also oversee
the Hazard Mitigation Grant Program dollars,
which as -- Senator, as you mentioned, with climate change, with these hundred-year storms happening more and more often, creating more resilient communities is something that we need to do. And that's what our Hazard Mitigation Grant Program is aimed at.

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

SENATOR BROOKS: Well, one of the things that's being discussed on Long Island, right, because we -- right now is the use of flood gates. And there's been a request made to the Army Corps of Engineers to investigate that potential if the -- there's a group that's spearheaded by one of our village mayors, and that shows a great deal of
potential, not only in a catastrophic storm, but managing, you know, if you will, a minor storm and preventing that flooding.

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

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

But putting that aside, I think you need to consider the establishment of a training program for disaster recovery management. Sandy, Katrina, all of the major storms we've seen, we have a major problem in managing the recovery and the claim process. We lose control of money. People don't understand what they're supposed to do. Contractors come in that don't have the
qualifications. Local governments and businesses are not in a position to manage the flood of permits that come in, and requests. They can't do the inspections on time.

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

So I think, again, we'd be well advised to recognize that we need to understand these storms are going to come again, people have to be trained in how the process works, people have to be trained in the difference between an SBA program and a state program. And we're in a situation now where so many people are being told they owe additional money because in the way they managed their claim -- let's say somebody said your repairs are going to be $400,000. The SBA said, we'll give you a $200,000 loan.
So they adjusted their state request to $200,000, and now they're being told, You got double payment here. They didn't get double payment, they were managing the claim as best they could.

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

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

EX. DEP. COMMISSIONER O'LEARY: I
appreciate your concerns, Senator. And I
would be more than happy to meet with you and
have our staff -- I think our staff does an
excellent job of working with the federal
government to expedite payments for public
assistance in HMGP projects. And we always
make ourselves available to any elected or
constituent who has specific questions. And
so if there are specific projects, we will be
happy to speak about those, but also the
program as an overview. Our staff does an
excellent job.

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

EX. DEP. COMMISSIONER O'LEARY:
Absolutely.

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

CHAIRWOMAN KRUEGER: Thank you. Thank
you, Senator.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Barclay.

ASSEMBLYMAN BARCLAY: Thank you, Chairwoman.

Good afternoon.

EX. DEP. COMMISSIONER O'LEARY: Good afternoon.

ASSEMBLYMAN BARCLAY: I had some specific questions on some of the line items in the proposed budget for your agency. Could you first tell me a little bit about the $1 million in new funding to reduce the risk of deployment of a nuclear weapon?

EX. DEP. COMMISSIONER O'LEARY: What's that?

ASSEMBLYMAN BARCLAY: Do you know much about the million dollar add to reduce the risk of deployment of a nuclear weapon? How's that work, and how's that -- is that funding for New York City, I presume, but --

EX. DEP. COMMISSIONER O'LEARY: The funding is partially for New York City. It's
part of the Securing the Cities program.

Without getting into specifics in a public
forum as to what that money actually pays
for, I think --

ASSEMBLYMAN BARCLAY:  I don't need
that --

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

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

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

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

ASSEMBLYMAN BARCLAY:  In your
testimony you mentioned $25 million for
securing communities against hate crimes.

Could you explain that program and why that is part of the homeland security agency's mission?

EX. DEP. COMMISSIONER O'LEARY: Sure.

So the money itself is actually out of the State Education Department, and an announcement first was made -- the first round was last year, after, thanks to the Assembly and the Senate, the bill was passed.

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

So the grant program the Governor announced and was passed by both houses was aimed at securing schools and others, as hate crimes become -- we read stories about them every day. And so this was aimed at helping
those types of facilities -- nonpublic
schools, daycare centers and cultural
museums.

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

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

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

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

And the applications put forth -- it's
a reimbursement program. The application
puts forth what the actual institution feels
they need to do. They very often partner
with local law enforcement in their
assessment. Sometimes they will use private
consultants to conduct that assessment. And
in the application itself it also states why
they would be susceptible to a hate crime.

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

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

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

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

Ten million dollars of it is for a
PSAP grant, or the individual 911 centers
throughout the state, which they can use to
improve the 911 center.

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

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

ASSEMBLYMAN BARCLAY: Is that the
primarily rural areas?

EX. DEP. COMMISSIONER O'LEARY: Yes.
So I don't have them off the top of my head, but I believe it was Herkimer, Hamilton, Jefferson, maybe there's one out west as well. I can get you the six initial awardees.

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

ASSEMBLYMAN BARCLAY: Thank you for your explanations. Thanks.

CHAIRWOMAN KRUEGER: Thank you.

Senator Seward.

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

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

EX. DEP. COMMISSIONER O'LEARY: Sure.

SENATOR SEWARD: Can you share with us where in the state the agency has responded
to weather-related events over the past year?

EX. DEP. COMMISSIONER O'LEARY: I think it would be easier to say where we haven't responded over the past year. Whenever there's an event, depending on what the type of event is, it will change the response. So with the incoming snowstorm -- or with the snowstorm last weekend, I found myself in the Southern Tier in Binghamton -- born and raised in the Southern Tier -- working with local governments as well as helping to coordinate state responses.

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

We have responded for snowstorms such as today, leading up to the snow that's going to come in. Obviously the Department of
Transportation, Thruway, DEC, Parks, anyone who may have a role -- coordination starts well in advance of when these events happen. There are also no-notice events, which are a little harder to handle.

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

SENATOR SEWARD: Would you say that the agency has been responding to more weather-related events in recent years? And if so, are more resources needed to adequately respond? If in fact there are
EX. DEP. COMMISSIONER O'LEARY: I can get you the number on the prior responses. Last year we deployed our swift water teams on multiple occasions, and they -- we actually, as part of the Swift Water Training Facility, in the budget it was approved for 17 new State Fire employees to help train local and first responders on swift water rescue. When they're not training, we actually use them as a swift water team and deploy them.

So it's fair to say that the tempo of deployments has certainly increased. However, one of the things that the division does as well is we go out to every single county in New York City and we partner with them through what we call the county assessment process, CEPA process. And we work with them to determine what are their top threats. And throughout the state the top threat, either natural or manmade, is flooding. It's almost unanimously flooding in every county.
We then work with them to evaluate what their resources are to respond. And then the ultimate goal is that leads to filling those gaps where they see a threat and the local resources may not be able to meet that threat should it come to fruition. So the state takes notice of that so that we can work with our local partners where they need our assistance. And some counties obviously are more resourced than other counties. But we also work with them in trainings, providing trainings, as well as providing best practices and better ways to work in terms of answering the threats.

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

EX. DEP. COMMISSIONER O'LEARY:

On-site the division does not have any resources, although we continue to work very closely with those who responded as well as the Puerto Rican Emergency Management Agency
as well as FEMA.

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

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

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

CHAIRWOMAN KRUEGER: Thank you.

Senator Savino.

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

SENATOR SAVINO: Thank you, Senator Krueger.

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

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

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

So the majority of cyber issues that we see are a lack of cyber hygiene, people not taking very basic steps to protect
themselves from cyberattack, whether it be
restarting your computer so that patches can
update the operating system to make sure that
new vulnerabilities are addressed, to people
using shared passwords -- very simple things
like that.

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

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

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

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

SENATOR SAVINO: And you help train the counties or the localities or wherever this breach occurred on how to prevent it and improve their practices? That's part of it?
SENATOR SAVINO: Are we seeing some of these problems extend to contractors with the county governments, people that they're doing business with, they're not necessarily on the government side? Or is there a risk to that?

EX. DEP. COMMISSIONER O'LEARY: There's absolutely a risk when you talk about the supply chain and the cyber supply chain. And that's something on the state level that OGS has been working with ITS on, to make sure that the vendors and contractors we work with are adhering to adequate levels of cybersecurity so that they don't threaten the state infrastructure.

Many of the counties and localities use OGS for purchasing purposes, so those best practices will be present in any contracting they do as well. But there are certain best practices that we will share. We obviously talk about know who they're contracting with, know what access they are giving to individuals who come in and are on their IT network.
SENATOR SAVINO: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

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

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

EX. DEP. COMMISSIONER O'LEARY: So emergency management takes the approach of an all-hazards approach. And to a certain extent it almost doesn't matter what caused the event, we still need to respond
appropriately. So whether it's a hurricane, whether it's a bomb going off in a crowded venue, or whether it's boats loose on the Hudson, we need to respond with the appropriate agencies and call on our state partners.

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

But we rely very heavily on our partners throughout state service to do -- to perform different functions. That does not come out of our budget. For instance, if we
are deploying generators, as was deployed
during Hurricane Sandy and other events, we
will rely upon those agencies that already
have the capability to transport large
objects -- so DOT or DOCCS we would use to
transport. So that wouldn't be in our
budget.

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

CHAIRWOMAN KRUEGER: And there's not a
breakdown of that $1.6 billion budget of what
percentage of that money is going to
categories of response?
EX. DEP. COMMISSIONER O'LEARY: No, not by categories of response. It's broken out -- we have personal service, NPS, Aid to Localities, and capital. But it's broken out to "the time was spent on this snowstorm."

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

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

Even this week, I have noticed in the Well that there are people advertising voting machines, and I guess that's because we're coming up on a time where counties may be scheduling to perhaps purchase new voting
machines. Is it possible for your agency to look into some of the security concerns about the types of voting machines that one might choose or not choose? I know it's a Board of Elections function, but it's actually -- the biggest risk to democracy is the possibility that someone can hack our voting system. And that's been brought to the attention on the national level but also here in the state.

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

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

We had our team on call during the general election in case there was any
incident that arose out of a cybersecurity
concern. Obviously there were other concerns
that came up during voting in the general
election. But on the cybersecurity side, our
Cyber Incident Response Team was ready to
respond, was in constant contact with the
State Board of Elections -- actually sat with
representatives from the State Board of
Elections during that time period.

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

CHAIRWOMAN KRUEGER: Thank you.

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

SENATOR BROOKS: I just had one.

CHAIRWOMAN KRUEGER: Okay. Senator
SENATOR SEWARD: Mr. O'Leary, I just wanted to get some more information regarding the $5 million capital request for the State Preparedness Training Center in Oriskany.

EX. DEP. COMMISSIONER O'LEARY: Yes.

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

EX. DEP. COMMISSIONER O'LEARY: Sure.

Thank you, Senator.

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

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

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

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

One of the things drones can do is help in hostage situations to provide surveillance that would not put a human being in danger. That's one of the possible uses. The uses for drones -- there are several of
them, and this would give localities an opportunity to expand that training.

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

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

CHAIRWOMAN KRUEGER: Thank you.

Okay, and to close, Senator John Brooks.
SENATOR BROOKS: Again, thank you for coming, and I will take you up on the meetings.

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

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

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

The approach that has been taken over the past -- under this administration is to create consortiums that can grow and counties can add on. And I think we've been very
successful in having those consortiums grow, in establishing governance through the State Interoperable Board, which our director of the Office of Interoperable Communications oversees, but has representation from state agencies as well as localities, first responders, both law enforcement and fire service and EMT.

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

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

I think we're doing a very, very good job. We were actually -- our director of interop was asked to present at the national homeland security conference last year on
what we're doing and the approach that we're taking. It's innovative, and it's addressed a problem that has dominated the discussion in every state. And the patient and persistent approach that we've taken with this interop funding is really starting to pay off.

SENATOR BROOKS: Okay, thank you.

CHAIRWOMAN KRUEGER: Thank you very much for your time with us today. You are relieved of being here with us.

EX. DEP. COMMISSIONER O'LEARY: Thank you very much.

CHAIRWOMAN KRUEGER: And our next testifier will be Michael Green, executive deputy commissioner, New York State Division of Criminal Justice Services.

And then for people watching who's up next, Michael will be followed by Anthony Annucci, acting commissioner, Department of Corrections and Community Supervision.

Good afternoon. Whenever you're comfortable.

EX. DEP. COMMISSIONER GREEN: Good
afternoon. Thank you.

Good afternoon, Chairwoman Krueger,
Chairwoman Weinstein, and distinguished
members of the Legislature. I'm Mike Green,
head of the Division of Criminal Justice
Services. Thank you for inviting me to
appear before you today.

New York continues to experience
reductions both in reported crime and its
prison population. Reported crime declined
for the fifth consecutive year in 2017, again
reaching an all-time low, and we maintain our
standing as the safest large state in the
nation. While numbers for this past year are
not yet final, preliminary data shows that
crime declined even further and 2018 will
mark another historic low. For the second
year in a row, there will be fewer than 600
homicides, a low that had not been achieved
since we started keeping statewide data 44
years ago.

Our Gun Involved Violence Elimination
initiative, SNUG street outreach program,
Crime Analysis Centers and strong
alternatives to incarceration network
contribute to this success, and these
programs continue to receive national
recognition for the results they have
achieved.

Our investment in proven practices to
reduce gun crimes and save lives is paying
dividends. Within our 17 GIVE counties,
shootings declined 8 percent in 2018, were
14 percent below the five-year average and
21 percent below the total reported in 2006,
when tracking began. And as you all know,
these aren't just numbers: 191 fewer
people -- and their loved ones and
communities -- had their lives impacted by
gun violence last year in those communities.

Governor Cuomo's proposed budget will
allow DCJS to continue supporting the
criminal justice system in communities across
the state, support evidence-based programs,
and develop and implement innovative programs
that continue to distinguish New York as a
national leader in effective public safety
policy.
Over the past two years, several major reforms were enacted: raising the age of criminal responsibility, extending the landmark Hurrell-Harring settlement, requiring video-recording of interrogations for serious offenses, and allowing properly conducted witness identification into evidence at trial.

Building on this success, Governor Cuomo has proposed reforms addressing bail, speedy trial, and discovery and gun safety laws that are cornerstones of his justice agenda.

The majority of people in New York’s jails are held because they cannot afford to post bail. This current system is unfair to those who lack financial resources. The Governor has proposed legislation requiring most individuals charged with a misdemeanor or nonviolent felony be released without cash bail and with the least restrictive conditions to ensure their appearance in court. The proposal would allow the court to order an individual held in jail pretrial,
upon motion of the People, in cases where the
person faces a crime of domestic violence or
a serious violent felony offense, or commits
a crime while on pretrial release, or fails
to appear in court.

New York has one of the nation's most
restrictive discovery rules, allowing
prosecutors to withhold basic evidence until
after a jury has been selected and before
opening statements. The Governor has
proposed legislation that would require the
prosecution and defense to automatically
share information in an incremental fashion
well in advance of trial. This will allow
defense attorneys to have information
necessary to represent their clients and will
provide prosecutors with tools they need to
protect the safety of witnesses.

This year's budget builds on the
state's strong gun laws, with several
proposals to keep New Yorkers safe from gun
violence. Governor Cuomo advanced
legislation to close existing statutory
loopholes to prohibit ownership or sale of
bump stocks, which serve no legitimate purpose, and extend the gun purchase background check waiting period to close the Charleston loophole.

The Governor also has reintroduced "red flag" legislation. Under this proposal, when teachers, family members or law enforcement report that someone they know poses a serious threat to themselves or others, authorities will have a process to obtain judicial review of the person's suitability to possess guns.

Implementation of the first phase of the state's landmark Raise the Age law was possible because of a successful collaboration with the Office of Court Administration and our state and local agency partners. Arrests continue to decline dramatically for those under 18 -- down 65 percent since 2010, with a decline of nearly 25 percent in the last year alone. Since the October 1st effective date, felony arrests for 16-year-olds fell an additional 40 percent.
To support full implementation of Raise the Age, the Governor has recommended $200 million for prevention, diversion, treatment and supervision services. Public safety is our highest priority. This 2019-2020 budget proposal will allow DCJS to continue its support for programs and initiatives that promote fairness, respect, and transparency in the state's criminal justice system, and keep New Yorkers safe. Your support of our work will allow the state to sustain its historic reductions in crime and continue to reduce the number of individuals who enter the criminal justice system.

Thank you for the opportunity to speak with you today.

CHAIRWOMAN KRUEGER: Thank you so much.

Our first questioner will be Jamaal Bailey.

SENATOR BAILEY: Mr. Green, thank you for once again testifying. I enjoyed your testimony last year, so I think a lot of what
I asked last year is still applicable in this year's Executive Budget concerning pretrial reform and how it affects the agency.

The Executive Budget includes $375,000 for operating expenses for county probation costs related to bail reform. How do you anticipate that this funding will be used?

EX. DEP. COMMISSIONER GREEN: I believe the money that you refer to is money that's in the General Fund that will be used for DCJS, similar to what we did with Raise the Age: DCJS provided training to probation departments across the state, provided support for probation departments and other service agencies. And I believe that money is to provide us with staff to provide the same level of support around pretrial release alternatives in connection with the bail reform.

SENATOR BAILEY: In relation to discovery reform, or the potential for discovery reform as outlined in the Executive's Budget, does DCJS have an opinion as to how that would -- how any discovery
reform would affect the agency?

EX. DEP. COMMISSIONER GREEN:

Certainly in terms of training, we partner with the New York Prosecutors Training Institute in regard to training of prosecutors. We do training of law enforcement. And I do anticipate that there would be an impact in both of those areas.

The Governor's proposal anticipates quick exchange of information between law enforcement and prosecutors and defense. And we'd do what we could to support that.

SENATOR BAILEY: Certainly.

The SNUG program, it's been a very successful program throughout the state, and specifically in my district and in adjoining districts. I see that the Executive has proposed $4.8 million in funding, which is flat from last year.

I'm of the belief that SNUG should get more money. What is the opinion of the agency?

EX. DEP. COMMISSIONER GREEN: I think
it's important to note the historical context. And if my recollection is correct, about five or six years ago the funding was between 1 and $1.2 million. Thanks to all of your support, it's grown every year to the $4.8 million that you referred to. That's allowed us to more than double the size of some of the programs in places like Buffalo, Rochester, and others that really need it.

Over the course of this past year, the latest expansion of the SNUG program that we're working on is in partnership with the Office of Victim Services and using funding from that agency. We're in the process of adding a social work component to each of the SNUG programs. So even though the Governor's budget, when you look at it, it would appear that the funding for SNUG programs remains flat, the reality is that with this partnership with the Office of Victim Services, there will be between an additional $1 and $2 million of resources added to those programs to add a social work component to each of the programs around the state.
And those social workers will support not only the street outreach workers actually out there doing the work and the trauma that they experience, but also the clients that they work with and helping deal with the trauma that they experience.

SENATOR BAILEY: I think it's important to know -- thank you for your answer. I think it's important to know that the SNUG program, at least in my district, specifically in the City of Mount Vernon, they do way more than just the violence prevention. They do a lot of community-based services. So I think that the program is very effective.

In your belief, do you believe that there are any other areas of the state that need a SNUG program that currently do not have one?

EX. DEP. COMMISSIONER GREEN: I think that there are areas that we are looking at, you know, with the potential for expansion. There's frankly one community I can think of where we tried a SNUG program and, you know,
because of administrative issues with the agency we were dealing with, it didn't work out. But I think there still could be a need.

So I -- you know, I think with your support we've done a great job of making sure that the major places that need it -- you know, Buffalo, Rochester, Syracuse, Albany, try, Yonkers, Mount Vernon, cities in Nassau, Suffolk, Jacobi and the Bronx, you know, Poughkeepsie now -- you know, clearly they need it and they've got good coverage.

You know, whether or not we could find other expansions -- the challenge, as I know you're all well aware, is this program is specifically geared towards shootings and preventing shootings, keeping people out of that type of activity. So in order to have a viable program, there has to be sufficient shooting activity. I know in the past we've discontinued at least one program because there just wasn't shooting activity in that jurisdiction to support the program.

SENATOR BAILEY: I guess I'm wrapping
up, but I see that there is $10 million in new funding from the General Fund concerning gang prevention. How does DCJS plan to use that $10 million?

EX. DEP. COMMISSIONER GREEN: The plan is to partner with the Office of Children and Family Services and target that money to activities within the communities that have the highest level of activity into programs that will keep youth out of crime. So, you know, everything from after-school support activities, mental health, Peer -- any of the evidence-based programs that have been proven to be effective in keeping youth properly supported and out of the criminal justice system.

And again, we intend to partner with OCFS, look at the data, and make sure we align the funding in the areas of the state that it's needed.

SENATOR BAILEY: Certainly. So as you mentioned, I think it's vitally important that we understand some of the root causes of how violence starts, and it starts with
children not having the appropriate locations
to go to for after-school programs and the
wraparound services that are necessary. So
I'm glad that is a component of that.

I believe that at least for the time
being, Madam Chair, that will be it for me.
If time allows, I will certainly have a
follow-up question. But I thank you,
Mr. Green, for your testimony and your
candor.

EX. DEP. COMMISSIONER GREEN: Thank
you for your questions and for your support
of the SNUG street outreach work. It's
greatly appreciated.

CHAIRWOMAN KRUEGER: Thank you.
Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman
Lentol.

ASSEMBLYMAN LENTOL: Good afternoon,
Mike.

EX. DEP. COMMISSIONER GREEN: Good
afternoon, Assemblymember.

ASSEMBLYMAN LENTOL: So I just wanted
to start out by asking you a simple question,
which is the Governor's recommendation for $200 million to support the Raise the Age program. I guess that's for the 16-year-olds and not the 17-year-olds that we expect to come online next October?

EX. DEP. COMMISSIONER GREEN: My recollection is that there was $100 million in last year's budget, and that was for the 16-year-olds that came on starting October 1st. And it's my understanding that the 200 million would reflect the fact that 17-year-olds will come under the coverage of the new statute October 1st of this year. And that 200 million would resource the system for both 16- and 17-year-olds.

ASSEMBLYMAN LENTOL: I want to talk a little bit about something that's not in your testimony, but concerns me a little bit regarding an article that appeared in the New York Times referring to DNA as a new so-called magic box that you may have seen, it's a new way of processing DNA.

EX. DEP. COMMISSIONER GREEN: I did see the article, yes.
ASSEMBLYMAN LENTOL: It's not the first article that's talked about the issue of DNA and how it's used or misused. And so in 2017, the federal government enacted the Rapid DNA Act, which would allow rapid DNA machines to upload DNA information to CODIS. And obviously there have been a lot of developments in science that are above me and above my scientific knowledge that I'd like to know a lot more about so that I can understand them.

But I'm wondering, first, how many DNA samples are now contained in our database, in the state's database?

EX. DEP. COMMISSIONER GREEN: I don't have an exact number, but I believe it's in the neighborhood of 500,000.

ASSEMBLYMAN LENTOL: And how many of those are volunteer samples or non-offender samples?

EX. DEP. COMMISSIONER GREEN: I believe it's a very small percentage.

ASSEMBLYMAN LENTOL: And are those -- I always wondered whether those are returned
after the investigation concludes, or are they maintained for a longer period of time?

EX. DEP. COMMISSIONER GREEN: In the state database, I don't believe there are samples that fall under the category you're referring to. I've read articles about local databases where police, in the course of an investigation, take a sample and then keep that in a local database.

The ones I was referring to in the state database are ones where as a condition of a plea, for example, or a condition of a sentence, a defendant agreed to give a DNA sample to be put in the state database.

Prior to the time where all-crimes DNA, which this legislature passed, took effect, it was a practice, I know, and there are samples in the database that fall into that.

But in terms of the investigative ones that you referred to, there are, to the best of my knowledge, no samples of that type in the state CODIS databank.

ASSEMBLYMAN LENTOL: So I think you
can -- you might remember back when the New York State Assembly Codes Committee held hearings on the Forensic Science Commission. And I was kind of puzzled, back in those days, to figure out a lot of different things about familial DNA. And it dawned on me that the original legislation that we passed authorizing DNA to be tested in the state was kind of a compromise. And even the forensic science commission was a compromise, where we had to satisfy both the needs of the DAs Association as well as the defense bar. Rather than, in my opinion, a forensic science commission should have been made up of scientists with no axe to grind and having no place where they wanted to see DNA used and just looked at the science to see how DNA would be used and determined by them in an impartial fashion.

But that hasn't been the case, I guess in my estimation, over the years. And I was really surprised when the forensic commission decided to use familial DNA, which I thought needed to be authorized by action of the
State Legislature before it could be done.

But they did it anyway, because maybe it was
too -- the commission was too top-heavy with
people on one side as opposed to the other.

Do you have any comments on that or
how you would expect to see a forensic
science commission operate with this
dangerous tool that we have? Which is a good
tool to convict the guilty, but we want it
also to be always used to protect the
innocent as well.

EX. DEP. COMMISSIONER GREEN: Sure, I
do. And thank you for the question.

In terms of impartiality of the
commission, I think it's important to note
that there are two defense attorneys on the
commission now, there's a judge of the
Appellate Division on the commission, there
are lab directors on the commission, there
are two prosecutors on the commission,
there's scientists on the commission. So,
you know, while I certainly respect your
opinion on this and all the matters that you
speak on, I would have to disagree with
regard to the impartiality of the commission.

In terms of a commission of strictly scientists, the DNA subcommittee in fact serves that role. The DNA subcommittee is made up of exclusively scientists who specialize in different areas of DNA work and who provide binding opinions to the Commission on Forensic Science in any DNA-related areas, including familial search.

With regard to familial search, you know, I certainly appreciate your comments about the spectrum and the need to balance along the spectrum. The commission engaged in what I thought was an extensive process. They did public hearings. And during the course of those public hearings we heard from everyone from folks on one end of the spectrum who said that it's dangerous and it shouldn't be done under any circumstances, to people at the other end of the spectrum -- police agencies in particular, a police agency in particular who said we should be able to do it whenever we want under any circumstances.
The commission and the DNA subcommittee spent a great deal of time evaluating not only all of the input we got in the course of that public hearing, but everything out there, and came up with what I thought was a very restrictive policy that balanced all of the concerns that were raised during the hearing -- and frankly all of the concerns that are out there in the literature -- in the policy that the commission came up with.

I think if you look at the history, in 1995 the Legislature granted the commission authority with regard to the DNA database. In 2010, under that grant of authority, the commission enacted partial match searching. As a result of that partial match searching, a double homicide in Suffolk County was solved, and ultimately someone was convicted because of that partial match information.

As a natural extension of that, just over a year ago the commission authorized, in very limited situations, familial search. So limited that in the course of a year, there
have only been three applications granted. So, you know, frankly we've as a commission received a lot of criticism that we came down far too restrictive and far too much on the side of the folks that said that it shouldn't be done at all. But I'm very comfortable with where we came down. I'm comfortable with the fact that all different viewpoints were represented, both in the hearings and on the commission, that the concerns were taken very seriously, and that safeguards were put in place to have the process done in a way that utilizes its value and yet safeguards against abuses.

ASSEMBLYMAN LENTOL: So I might agree with you, and I might be -- but I might be more comfortable if the commission were made up not of folks who had one philosophy or the other, but just scientists. That's what I'm trying to get at. I would have made up the commission much differently than what we were required to do back in the time when we passed the legislation.

And right now -- right now -- I just
want to say because the Legislature is considering important criminal justice reform, that we're embarking upon a new era in criminal justice reform, such as discovery that you talked about and other things. In your opinion, what do you think can be done to ensure that our forensic labs are reliably performing important tasks relating to examining evidence, for example?

EX. DEP. COMMISSIONER GREEN: I think there's two major areas I'd point to, and the first is the commission and the DNA subcommittee. And the DNA subcommittee, as I indicated, is made up exclusively of scientists who made a binding recommendation to the commission with regard to the familial search. And frankly, they do the same with regard to labs that want to do DNA testing.

Secondly, I think the discovery is a great example. I think if the system wants to make sure that DNA is done properly, one of the tools that's necessary is to make sure that the defense has all of the information about the lab and how the testing is done so
that those issues can be fully explored in the context of a trial.

ASSEMBLYMAN LENTOL: Thank you.
CHAIRWOMAN WEINSTEIN: Thank you.
CHAIRWOMAN KRUEGER: Thank you.

Senator Sepúlveda. I'm sorry, Senator, would you pronounce your name correctly for me?

SENATOR SEPÚLVEDA: It's Senator Se-PUL-veda.

CHAIRWOMAN KRUEGER: Thank you very much.

SENATOR SEPÚLVEDA: But I told you earlier I'm changing it to Sepulpowitz, so.

(Laughter.)

SENATOR SEPÚLVEDA: Thank you. Thank you for testifying.

A couple of questions on alternatives to incarceration and reentry programs. Last year you testified about how effective and useful a tool the alternatives are to the criminal justice system, yet the Executive has cut the budget 5.5 percent across the board for DCJS aid.
Can you try to explain to me why,
despite the fact that they're very effective
programs, we continue to cut the budget about
5.5 percent per year?

EX. DEP. COMMISSIONER GREEN: My
reading of that portion of the local
assistance budget for this year was that the
funding remains flat or constant from last
year's level. So, you know, if my reading is
wrong, I apologize, but I don't believe there
has been a cut this year.

I believe all of our alternative to
incarceration programs -- and I think they
fall under a number of umbrellas. As you
indicated, they fall under reentry, they fall
under some other umbrellas. But I think
within DCJS the total is roughly $25 million,
and I think that number is steady from where
it was last year.

SENATOR SEPÚLVEDA: Is that number a
sufficient amount for you to run an effective
program?

EX. DEP. COMMISSIONER GREEN: I
believe that we have used that money very
effectively to support programs across the state. We've looked at the data in terms of where programs are needed, we've looked at the different types of programs, we've aligned the funding around different types of programs. So, for example, there's an area of the funding aligned around reentry. There's an area of the funding aligned around employment services programs. There's an area of the funding that's aligned around case management, around pretrial alternatives.

So yeah, I think it is an amount that allows us to do some very effective work across the state.

SENATOR SEPÚLVEDA: All right. And then has DCJS looked into the level of a need for ATI and reentry programs around the state? And if so, how much would it cost to increase the funding for these services?

EX. DEP. COMMISSIONER GREEN: That's a tough question. Because when you look across I suppose not only my budget but every budget, you know, in an ideal world we could
all come up with huge numbers.

But, you know, when I started at DCJS I don't believe there was a dedicated funding stream for ATI. And I know there was no $25 million. So I'm sitting in a position now -- you know, thank you to the Legislature and the Governor -- where we have $25 million to support ATI programs. I think it's a huge improvement over what we had when I started here seven years ago, and I think it allows us to do some very effective work.

And when you look at the numbers, you know, as I indicated in my statement, we're hitting all-time lows in terms of number of reported crimes and violent crimes in the state year after year for the last several years. So, you know, it's hard to answer an abstract question like that. But the one thing I think I can say with certainty is that the funding that you have provided us over the last five or six years in this area has been used very effectively and has contributed significantly to our success.

SENATOR SEPÚLVEDA: All right, now
let's talk about the Shock program. In his
budget the Governor is assuming there's about
a $360,000 savings associated with allowing
certain people convicted of robbery and
burglary offenses to be eligible for Shock.

How many people does the Executive
foresee being eligible the first year?

EX. DEP. COMMISSIONER GREEN: I
think -- I hate to punt any questions, but I
think that would be something that would be
more appropriately addressed to the
commissioner of the Department of
Corrections. I think he'll be coming right
after me, if I'm not mistaken.

SENATOR SEPÚLVEDA: Okay. So then any
other relevant question I have about Shock,
you say I should preserve it for corrections?

EX. DEP. COMMISSIONER GREEN: I think
that would be more appropriate, yes. Thank
you.

SENATOR SEPÚLVEDA: All right, thank
you. No more questions.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.
CHAIRWOMAN WEINSTEIN: Assemblyman Barclay.

ASSEMBLYMAN BARCLAY: Thank you, Madam Chairwoman.

Thank you for being here. Good afternoon. I guess all my questions have to do more with policy and Article VII than actual budgetary issues.

The first question I have is maybe more theoretical; it's about the death penalty. Obviously we don't have it now because of the decisions by the Court of Appeals. But could you tell me, is it the Governor's position, then, no matter how bad the crime is, he doesn't believe in the death penalty at all, and is that what this proposal does for any crime, it doesn't allow the death penalty?

EX. DEP. COMMISSIONER GREEN: It's the position of the Executive, as reflected in this bill, that the death penalty is not something that we should be using our resources on and is not a tool that we should be spending our time or effort on.
I can tell you personally I tried two death penalty cases, I know what's involved in trying a case, and frankly I agree wholeheartedly with the Governor. I think there are so many other things that we could do in the criminal justice system, and I think life without parole is a very significant deterrent, it keeps the community safe.

And so yes, it's the Governor's position that we should not have a death penalty in the State of New York.

ASSEMBLYMAN BARCLAY: No matter how morally reprehensible the crime -- chemical weapons attack, nothing?

EX. DEP. COMMISSIONER GREEN: Correct.

ASSEMBLYMAN BARCLAY: Okay, thanks.

The second question I had which kind of stuck out for me is making journalists a protected class. What's the thinking behind why journalists versus I guess anyone else should be a protected class? I mean, obviously it serves an important societal purpose, but so do a lot of other professions
EX. DEP. COMMISSIONER GREEN: At a certain level I think we've made a decision that certain groups of people should get protection, and that's reflected in the statute that currently exists. The statute identifies different groups.

And I believe the thinking behind this is when you look at the groups that we've already made a decision should get the protection, journalists are equally deserving of the protection as the other groups in the statute.

ASSEMBLYMAN BARCLAY: How do you -- all right. Well, how do you define a journalist?

EX. DEP. COMMISSIONER GREEN: I'm sorry, I don't have the definition in front of me, but I can certainly get it to you.

ASSEMBLYMAN BARCLAY: All right, that would be helpful.

Regarding the bail reform and really the -- I guess pretrial reform, it allows police to provide appearance tickets for
low-level offenses. Could you explain what
the low-level offenses are? Because that
does include felonies too, doesn't it?

EX. DEP. COMMISSIONER GREEN: Sure.
And currently under statute, police have the
authority to provide appearance tickets on
misdemeanors and Class E felonies. So in
that regard, this is not a significant
expansion in terms of the cases that are
eligible.

And in fact, if you look across the
state, and certainly it varies greatly
jurisdiction to jurisdiction, but there are
many jurisdictions now that use appearance
tickets very liberally on misdemeanors and
Class E felony offenses. There are others
that don't use it as liberally.

The idea here would be if you have an
offense that's not a domestic violence
offense -- you know, and there's several
carve-outs. For example, if a police officer
believes there are mental health issues or
other issues which pose a threat to the
person or the community, if they believe an
order of protection is appropriate, if it's a
domestic violence case -- in those and other
situations, the officers can still make the
full custodial arrest and put the person in
jail until they are arraigned.

But in cases that don't fall into
those categories where that person is going
to be released the next morning, the thinking
is, you know, what are we accomplishing by
taking someone, putting them in jail
overnight, having the system churn tremendous
numbers of people through one night in jail,
only to be released when they show up in
front of a judge in the morning?

We will be much better off in those
instances doing what a number of
jurisdictions do already, and that is giving
people appearance tickets, having them show
up for court, having judges set conditions
for their release or ROR them, and avoid that
one night in jail.

ASSEMBLYMAN BARCLAY: So you're
already allowed to do it with Class E
felonies in New York?
EX. DEP. COMMISSIONER GREEN: Under current law, yes, under certain circumstances, police can do that.

ASSEMBLYMAN BARCLAY: So that's not an expansion of what they can do.

EX. DEP. COMMISSIONER GREEN: No. What the statute does is, unless the case falls under one of those exceptions, indicate that the police officer should do it. So it's putting more emphasis on issuing appearance tickets where it doesn't fall under one of those high-risk categories.

ASSEMBLYMAN BARCLAY: Okay. I can even agree with that. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

SENATOR HOYLMAN: Thank you. Good to see you. These past weeks have been a flurry of legislative activity. I noticed you mentioned in your testimony the Governor's support for a red flag law, that he's introduced legislation for extending background checks and to close statutory loopholes on the sale of bump stocks. But we
passed all those today, by the way, just so
you know.

In terms of the Legal Services
Assistance Fund, as you know, it's a special
revenue fund created in the State Finance Law
to provide a steady source of revenue for the
provision of civil legal services. It's not
created to support General Fund obligations.
Every year, though, the Executive attempts to
use it to support General Fund obligations
and to use the funds for purposes other than
supporting the provision of civil legal
services.

And this year the cuts in the
Executive Budget eliminate funding for civil
legal service grants, domestic violence, and
veterans legal services, and the indigent
parole program. Do you know, is the Governor
funding these programs with General Fund
dollars?

EX. DEP. COMMISSIONER GREEN: The
programs you specifically referred to I don't
recognize as programs that go through the
DCJS budget.
In terms of General Fund that you refer to, and the Legal Services Fund, I do know that some of that Legal Services Fund is used in the DCJS local assistance budget -- for example, to support aid to defense and aid to prosecution, and I believe to support some other funding that we provide.

SENATOR HOYLMAN: So the fact that you don't support them through the Executive Budget, does that mean -- I mean, isn't it a statement of your priorities that you would want to support them? Why do you always wait for the Legislature to add them? Why don't you support them up-front?

EX. DEP. COMMISSIONER GREEN: What I was indicating was -- and I think we have 140-something programs or more, and I don't recognize those, as you read them, as programs we support through our budget. I don't know if they're supported through a budget of another agency or somewhere else in the Executive Budget.

SENATOR HOYLMAN: They're legislative adds. And I guess my question is, shouldn't
the Executive be supporting these up-front?

EX. DEP. COMMISSIONER GREEN: To the extent you're asking about civil programs, I don't feel that I'm in a position to answer that.

If you're asking about programs that relate to the criminal justice system, I'm certainly happy to answer.

SENATOR HOYLMAN: Okay. Also last week we passed the Gender Expression Non-Discrimination Act, which for the first time would provide hate crime protections for transgender, gender nonconforming and nonbinary individuals in the State of New York.

Could you describe to me how you collect data on hate crimes as well as what kind of training you provide to local law enforcement to identify those hate crimes?

EX. DEP. COMMISSIONER GREEN: Sure.

So in terms of data -- and I think it's a good question, because I think there's confusion sometimes. Where DCJS gets our data on reported crimes from are from the
police departments around the state. So when
someone reports to the police department that
they've been the victim of a hate crime, the
department charges it as such, that gets
reported to us.

I think sometimes there's confusion
between hate incidents and actual reported
hate crimes. And all we get at DCJS are
actual reported hate crimes that have been
reported to a police agency, documented as
such by the agency, and then they get
reported to us.

In terms of training, we've worked
with the New York Prosecutors Training
Institute to put on extensive training for
prosecutors. We're working with the
Municipal Police Training Council. We've
developed both policy and training around
hate crimes. We're also in the final process
of redoing the basic training for police,
which hadn't been redone in over 20 years,
and we've completely overhauled it. And hate
crime training is included in that course.

SENATOR HOYLMAN: How often does a
member of a local police force receive hate

cries training? For example, will they be

informed, those who have already received the

training, that now transgender and gender

nonconforming people are protected by the

hate crimes law?

EX. DEP. COMMISSIONER GREEN: There's
two required trainings by law right now, and

those are the only required trainings. The

first is when you're hired as a police

officer, you have to go through the basic

training. And the second is a supervisor's

training. There is a hate crimes component

in each of those trainings.

But those are the only two required

trainings.

SENATOR HOYLMAN: But now that the law

has been updated, how will members of law

enforcement be informed that there's a new

class of individuals?

EX. DEP. COMMISSIONER GREEN: We put

out training on a regular basis. It's just

not required, there's no requirement that

anyone take it. But we put out both
in-person and online training, and we do it regularly to keep up with changes in legislation.

So, you know, we will be making sure that the training we put out will educate law enforcement on the new requirements.

SENATOR HOYLMAN: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: So I have a question.

So as you're well aware, as part of the SAFE Act in 2015, there was a requirement for an ammunition database. That was put on hold. And I was looking for an update as to where we are with that now. There was a media report that the Governor's counsel today said that there's -- it's being worked on. Can you update us on that?

EX. DEP. COMMISSIONER GREEN: I think that would have to be addressed to either the State Police or ITS or both.

CHAIRWOMAN WEINSTEIN: Okay. Well, we'll ask -- they'll be up soon. Thank you.
EX. DEP. COMMISSIONER GREEN: Thank you.

CHAIRWOMAN WEINSTEIN: Also, we've been joined by Assemblywoman Nily Rozic.

CHAIRWOMAN KRUEGER: Thank you.

Senator Seward.

SENATOR SEWARD: Thank you.

I had some questions regarding, you know, our response to the MS-13 gang matter on Long Island. I know in last year's state budget there was a $500,000 appropriation for prevention efforts regarding MS-13 on Long Island. And then there's another appropriation I think included in the Governor's proposal.

So I wanted to hear from you what kind of programs were supported by, you know, last year's appropriation and what do you foresee in terms of next year?

EX. DEP. COMMISSIONER GREEN: Sure.

So that $500,000 was split between Nassau and Suffolk County, and the language of the appropriation specifically directed that it go to police departments to support
youth programming. So $250,000 went to the Suffolk County Police Department to support youth programming. In Nassau, I believe the money, if I recall correctly, was split between the Nassau Police Department and the Hempstead Police Department to support youth programming in those areas.

In addition, as I indicated before, there is a new $10 million add in the Governor's budget that is specifically to support youth programming to keep youth out of gangs and crime. And working with OCFS, certainly some of that money we would intend to use for that same purpose on Long Island.

SENATOR SEWARD: So this year's money will go to continue to fund this --

EX. DEP. COMMISSIONER GREEN: My recollection is that the appropriation language for the 500,000 is the same as it was last year, and that it would go to police departments to support youth activity.

SENATOR SEWARD: You mentioned the 10 million for the youth gang violence prevention program. The appropriation
doesn't specifically list, you know, geographically where that would be directed. Where do you believe that it will be allocated?

EX. DEP. COMMISSIONER GREEN: We've tried to use data to inform all of our decisions where we have appropriations like this, and this would be no exception. We'll look at the crime data and try and make sure that we align the funding with the need based on the data.

SENATOR SEWARD: Okay. Is there any other ways that DCJS participates in the efforts to eradicate this MS-13?

EX. DEP. COMMISSIONER GREEN: Specifically with regard to MS-13, you know, I've personally been to the Suffolk County Police Department, the Nassau County Police Department, the Hempstead Police Department to meet with the leadership teams there, talk with them about what they're doing, look at whether or not there are ways we can support them.

We've worked with Suffolk County, for
example, you know, with our network of Crime Analysis Centers. They came and visited us at the Monroe Crime Analysis Center just so they could see what tools we had and what we were doing.

So there are many different ways that we try and support them. And we're not the only agency providing support; the State Police has been very engaged in other ways. So in a variety of different ways, whether it's youth funding, whether it's working with police departments and DA's offices, we try and provide the support that our local partners ask for and need.

SENATOR SEWARD: Okay, thank you.

I want to shift to some of the criminal justice reform proposals. The Governor's bail proposal is going to shift the responsibility of supervising these charged individuals from the local jails to a pretrial supervision entity. For many of the upstate counties, we're really talking, I'm assuming, about the county probation offices.

Is there any funding in the Executive
Budget to account for this transition and the additional costs associated at the county level in terms of the probation departments?

EX. DEP. COMMISSIONER GREEN: I don't believe there is any funding specifically designated for that. We provide about $44 million to probation departments across the state in aid to probation currently.

In addition, I would anticipate that as you have indicated there would be significant local jail savings as a result of this. And I think part of the anticipation would be that money saved from local jail costs would be used to support this.

But certainly I think you're right and I think it's something that we need to look at, is that, you know, there needs to be an agency responsible for that function, and it needs to be resourced. And, you know, we're happy to participate in those discussions.

SENIOR SEWARD: What I don't want to hear is those dreaded words "unfunded mandate."

I have a couple of other questions,
but we'll wait till a later round. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Zellnor Myrie.

SENATOR MYRIE: Thank you, Madam Chair.

And thank you for your testimony.

I have two questions related to policy in regard to the creation of the Office of Special Investigation. I believe that along with the creation of that office, the Executive Budget proposes that each police department be required to report any incident where a police officer discharges a firearm in the direction of another person.

And my question is whether or not the New York Police Department would be required to comply with this.

EX. DEP. COMMISSIONER GREEN: My understanding is that that requirement mirrors the federal use of force reporting requirement that went into effect the beginning of this year and would require that same information to be reported to New York
State through DCJS. So the same information that local police departments are supposed to be reporting to the feds would be reported to us as well.

And I'm not aware of any exemption or carve-out for NYPD in that.

SENATOR MYRIE: So does NYPD currently report that information to DCJS?

EX. DEP. COMMISSIONER GREEN: No, currently there's no requirement for any departments to report that type of use of force data to DCJS.

SENATOR MYRIE: And relatedly, there's also another policy implication. The Municipal Police Training Council would be required to establish a model use of force policy, and my question is the same, on whether or not this would apply to the NYPD.

EX. DEP. COMMISSIONER GREEN: So in fact they've already created the model use of force policy in the last several years. They would obviously go back and look at it to see if there's anything to do to update it.

Those policies aren't binding or
mandatory on any department. They're
basically guidelines, you know, for
departments or guidelines departments would
be expected to look at, but they're not -- so
when you say would it apply to NYPD,
certainly it's there for them to use. But
there's no legal requirement that any
department adopt that as their policy right
now.

SENATOR MYRIE: And so there would be
no consequences for failing to adhere to that
model use of force policy?

EX. DEP. COMMISSIONER GREEN: I think
that's -- it's hard to answer in that format.
Because, for example, you know, in a civil
lawsuit if there's a written MPTC policy out
there for departments to use and the
department willfully disregarded that policy,
you know, it's hard for me to sit here and
say no, there's no consequence. I think
that's an open question.

SENATOR MYRIE: So the NYPD -- this is
really a suggestive policy, it's nonbinding,
there's no consequence for not adhering to
it. And so in the event that the members of the NYPD have acted outside of the bounds of this model use policy, there's no reprieve for any potential victims?

EX. DEP. COMMISSIONER GREEN: There's nothing in statute that enables the MPTC that says, you know, for example, every department must follow this and, you know, you can't operate as a department if you don't.

But it is a written policy that's circulated to every law enforcement agency in the state.

SENATOR MYRIE: And my last question is, do you see DCJS basing this new -- or, rather, the Municipal Police Training Council basing this model use of force policy on any other national examples or any local examples?

EX. DEP. COMMISSIONER GREEN: We -- DCJS serves as the staff arm for the Municipal Police Training Council, and the council is comprised of two sheriffs, two police chiefs, a retired member of the SUNY system, I believe a criminal justice
professor, the superintendent of the State Police, and a representative from NYPD.

Any time we develop policies, we assemble subject matter expert teams. They could be, you know, practitioners from within the state, they could be academics, they could be subject matter experts from different parts of the country. And then that subject matter panel will put together a policy, we'll get feedback from different constituency groups -- you know, everything from the Antidefamation League to police departments and prosecutors.

And then based on that process, the policy will go to the council. Sometimes the council accepts them as they are, sometimes the council says we want changes and sends it back to continue that process.

SENATOR MYRIE: Thank you very much.
CHAIRWOMAN KRUEGER: Thank you.
Senator Gustavo Rivera.
SENATOR RIVERA: Thank you, Madam Chair.
I want to talk a little bit about
SNUG. I think it's an incredibly important program. It certainly has had a great impact in the Bronx -- but in the East Bronx. We certainly want to bring it to the West Bronx. We'll get to that in a second.

As I understand it, there is a total of 4.8 million in the budget that is currently allocated. Could you tell me how this is the -- because I believe it is not currently in the proposal line item, right, so there's no specific amounts attached to a particular program in a particular part of the state.

Could you tell me how the determination is made internally in DCJS about where that money is going to go?

EX. DEP. COMMISSIONER GREEN: And again, we look at the crime data. And specifically with regard to SNUG, we look at the shooting data. So that would be the number of shooting incidents, the number of shooting victims, the number of shooting homicides. And based on the shooting data, we make the appropriations.
SENATOR RIVERA: And the shooting data is -- tell me a little bit more about that. Is that done by zip code, by city, by town, by precinct? What is the -- how exactly do you determine that?

EX. DEP. COMMISSIONER GREEN: It's done outside of New York City by police department. So for example, Buffalo, we get the City of Buffalo. Rochester, we get the City of Rochester. Syracuse, Albany, the same.

In New York City we have precinct-level data.

SENATOR RIVERA: So you have precinct-level data and then you determine which precincts would be most in need?

EX. DEP. COMMISSIONER GREEN: No, New York City is different. New York City has a street outreach program of their own, and we don't believe that we should have competing street outreach programs in any area. I think, frankly, one, it's not a good use of our resources. But two, I think it's dangerous for the street outreach workers
themselves if they're out there competing to serve the same people or to respond to the same shooting. So in --

SENATOR RIVERA: And I would certainly agree. And I'm only interrupting because my time is short.

EX. DEP. COMMISSIONER GREEN: Oh, I'm sorry.

SENATOR RIVERA: So I would agree with that. But how about the enhancement of certain programs that have already been successful and have -- because as you probably know, there's many of these programs that obviously are limited geographically, right, so they have a catchment area.

And certainly the ones that are in the Bronx that are just outside of my district, like literally just outside of my district, have had an incredibly positive outcome in the days of non-shootings, like days and days. Like, you know, two and a half years, I think, in one of them before there was one shooting. And then there hasn't been one for -- I don't want to say the exact
date, because I don't remember. But the point is, they have been very successful.

But right outside the catchment area -- as a matter of fact, the shooting that happened after the two years or what have you when there was not a shooting was a result of a clash with a gang or a group of folks that were outside the catchment area. So I -- certainly I would make the argument, not only here but certainly during the budget process, that it should be -- that some of these programs that are successful and that should be expanded, certainly not competing groups, but expansions. And I certainly would think that the expansion to the West Bronx is more than warranted based on some of the data.

But I just wanted to get it kind of on the record how exactly you determine that. So if there is something like that, if there is a place where geographically -- and sometimes within the same precinct, but geographically the catchment area, because of the limitations of budget, are certain -- and
by the way, the one that I'm talking about is
actually not funded by state money, it is
funded by city money. But it is exactly the
same type of outreach program.

So outside of the catchment area, as
it goes west in the Bronx, there's a lot of
violence, there's a lot of shootings, and
sometimes it kind of, you know, kind of
spills over.

So how would you make a determination
internally about how to augment programs like
that that are funded, either state programs
that are already funded, to augment it -- and
I know I only have a minute, but I just want
to be sure to get this on the record -- and
then the ones that are by other means, like
city funding, and potentially having state
money to augment the work that they do.

EX. DEP. COMMISSIONER GREEN: And I
don't see -- when you use "augmenting" and
say the programs are exactly the same, I
guess I've got a different viewpoint.

In the programs that we support, we
have a statewide director who visits every
program every month and then holds video
conferences with the programs. We have a
statewide training director. We've developed
our own training curriculum. It's a New York
State SNUG-specific training curriculum and
it's different from Cure Violence and
different from others. We've hired a
director for social work, and we're embedding
social workers. You know, those things are
all different than the New York City program.
They're different than other programs. We
have data reporting requirements within each
of our programs.

So, you know, it's not a question for
us, at least, of just, you know, give some
money to somebody else. We run our programs
a certain way and that's different than the
way, for example, New York City runs their
programs.

But we do look at the data and where
we're not competing with New York City, for
example, in the Bronx, you know, we fund what
I think is a very successful -- not only
fund, but fund and support a very successful
street outreach program there.

SENATOR RIVERA: I will have more
follow-up on this at a later date. Thank
you. Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you.

I just have one quick question. So in
follow-up to one of my colleagues' questions
about the MS-13 funding in Nassau/Suffolk, I
know that I've read stories of some young
people caught up in criminal justice and then
actually quickly deported who were not in
fact members of any gang or committing any
crime. Some were -- as I recall, at least
one of them was sort of the superstar high
school student in the school he was in.

So, one, what are we doing to try to
make sure we're going after the right people?
And do you have metrics that show you whether
whatever is being done is being effective,
since you talked about putting more money
into this?

EX. DEP. COMMISSIONER GREEN: So the
data is a challenge for us because, you know,
when we get crime information reported to
us -- say, for example, arrest information --
it doesn't come with gang markers on it. So
we get demographic -- we can tell you age,
race, charge, but we don't have a good way of
measuring gang activity from a data
perspective.

So the information we get is from the
local level -- as I indicated, I've gone down
to Suffolk, Nassau, Hempstead -- and we rely
on their measurement in large part in terms
of what they're seeing.

You know, in terms of getting the
right people, we across the board, including
in our shooting and homicide and
violence-reduction programs, have tried to
make sure that we support evidence-based
efforts. So for example, we work with the
national network for safe communities and
John Jay, we work with other folks on a
national level to provide -- so when we
provide technical assistance to locals, it's
evidence-based technical assistance. And the
programs that we support all have a very
intensive research component to understand,
you know, at a very granular level who are
the people and who are the places that are
causing the issues.

CHAIRWOMAN KRUEGER: Thank you.

Senator Seward for a three-minute
lightning round.

SENATOR SEWARD: Yes, I've got three
questions, so we'll do it one minute each.

How's that?

EX. DEP. COMMISSIONER GREEN: Okay.

SENATOR SEWARD: I just wanted to go
back to the criminal justice reforms for a
moment. Can you tell me what percentage of
the currently pretrial incarcerated
population does the Executive believe will no
longer be held pretrial under the bail
proposal? Is there a --

EX. DEP. COMMISSIONER GREEN: It's
hard for me to give you a percentage that
way. But what I can tell you is that there
was over 20,000 people that were held on bail
for five days or more on low-level charges,
misdemeanor charges, because they couldn't
afford bail -- in a lot of cases, bail that
was $500 or less.

So it's hard for me to give you a percentage of people or say exactly how judges and prosecutors will react to a new law. But I can tell you when we look at the current data, you know, there appears to be a huge number of people being held on small amounts of bail on low-level charges because they can't post the bail. And it is our hope that that wouldn't happen under this new proposal.

SENATOR SEWARD: Shifting gears, could you explain what role that the DCJS will play if marijuana is legalized in the state? And specifically regarding the sealing process in terms of the record of the previous offenders.

EX. DEP. COMMISSIONER GREEN: So in terms of records, I know there is a provision that eliminates the three-year waiting period for sealing of marijuana records. You know, there are other proposals outside of the marijuana provisions dealing with sealing. And we would be ready to implement those
on -- you know, some of those we need to make sure that the effective dates are far enough out because some of this is automated, so we need to make sure we can build the systems.

But, you know, we're supportive of the sealing provisions and ready to carry them out.

SENATOR SEWARD: Do you believe that your agency would need additional resources to carry out the task?

EX. DEP. COMMISSIONER GREEN: No, not with regard to the sealing. You know, we'll need partnership with the State Information Technology Services to carry a lot of these out, but I don't believe we'll need additional resources.

SENATOR SEWARD: Okay. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: I just wanted to say that we're joined here on the dais by Assemblywoman Diana Richardson.

CHAIRWOMAN KRUEGER: Thank you.

And I believe we are done -- oh,
excuse me. Senator Hoylman, a quick
lightning-round question.

SENATOR HOYLMAN: I wanted to ask you
specifically about other gun violence
prevention ideas. And one that the
Legislature had looked at for years and I
believe had the Governor's support at one
time was microstamping guns.

Have you surveyed data, evidence in
other states, like California, that have such
requirements? And do you support such an
effort in New York State?

EX. DEP. COMMISSIONER GREEN: No, I
specifically have not looked at
microstamping. I can -- you know, we spend a
lot of effort on things like our gun-involved
violence elimination effort and
evidence-based proactive strategies like hot
spot policing, gun violence intervention
efforts, street outreach work, CPTED. We
spend a lot of resources and effort
supporting our SNUG programs across the
state, the same with the Crime Analysis
Centers, to make sure that law enforcement
partners and other partners have the right
data and the right information in terms of
the people and places who are involved.

But I have not specifically looked at
microstamping in terms of a tool to use in
those efforts.

SENATOR HOYLMAN: And which part of
your organization is charged with looking at
these ideas? Do we need a separate gun
violence data research entity in the State of
New York?

EX. DEP. COMMISSIONER GREEN: The gun
violence data that we have, as a condition of
what used to be IMPACT and now is a condition
of GIVE, we require those counties to report
shooting data. So we have shooting data from
the 17 GIVE counties. Most counties account
for somewhere over 80 percent of the violent
crime in the state outside of New York City.
And then we also have gun violence data from
New York City. We do not have it from the
entire state, because there's no reporting
requirement.

We have crime information -- so, for
example, we get homicides, we get assaults.  
But the assaults aren't broken down into  
which ones involve guns and which don't,  
outside of the GIVE jurisdiction.  

SENATOR HOYLMAN: So just to be clear,  
you don't have access to all gun violence  
data within the State of New York.  

EX. DEP. COMMISSIONER GREEN: In terms  
of crime, it's not reported to us. It's only  
the 17 GIVE jurisdictions and New York City  
where we get down as granular as shooting  
victim, shooting incident, shooting  
homicides.  

SENATOR HOYLMAN: Thank you.  

CHAIRWOMAN KRUEGER: Okay, thank you  
so much for your time with us today.  

EX. DEP. COMMISSIONER GREEN: Thank  
you.  

CHAIRWOMAN KRUEGER: We'll have some  
follow-up for you at a later time.  

We are now, up on deck, Anthony  
Annucci, acting commissioner, New York State  
Department of Corrections and Community  
Supervision.
And for people following the scorecard, the acting commissioner will be followed by Chris Fiore, deputy superintendent of the New York State Division of State Police.

And I still think we're doing okay with the snow outside.

Hi. Whenever you like.

ACTING COMMISSIONER ANNUCCI: Good afternoon, Chairwoman Krueger, Chairwoman Weinstein and other distinguished chairs and members of the Legislature. I am Anthony J. Annucci, acting commissioner for the Department of Corrections and Community Supervision. It is my honor to discuss some of the highlights of Governor Cuomo's Executive Budget plan.

Specifically, the proposed criminal justice agenda will continue the transformation of rehabilitation in the state and advance fundamental fairness for all New Yorkers. Since the Governor took office, the incarcerated population has decreased by nearly 10,000 people – representing a
17 percent reduction. The fact that New York continues to be the safest large state in the country, is proof that Governor Cuomo's smart, firm and fair criminal justice policies are fundamentally sound and working well.

Over the past two years, the Department has worked with state and local partners to implement the law raising the age of criminal responsibility, in stages, to eighteen. In 2018, we transitioned two facilities -- Hudson and Adirondack -- to serve the needs of adolescent offenders and provide age-appropriate services. This year, the department will finish renovations to a third and final facility, the Groveland Annex, to coincide with the full implementation of Raise the Age in October 2019.

The overall safety of our staff and the security of our facilities and offices remain a top priority. Last year, we increased our use of K-9s and expanded the use of pepper spray statewide. This year,
working with the unions, we will continue to explore technological solutions, training initiatives and policy modifications. We will also extend our first-in-the-nation body camera pilot beyond the five current facilities and continue the installation of fixed camera systems.

Under Governor Cuomo's leadership, we continue to implement the historic NYCLU settlement agreement, drastically reforming and reducing our use of special housing units, or SHUs. Last year we were able to close or convert more than 1,200 SHU beds, and this year we will open a 252-bed step-down unit at Southport. These efforts have significantly reduced the number of individuals serving an SHU sanction in SHU by 40 percent and shortened the average time spent in a SHU cell by 30 percent.

Building upon this success, the Executive Budget includes bold new legislation that would codify the parameters of the settlement agreement and establish new residential rehabilitation units, that will
allow individuals serving a disciplinary
sanction to receive ample out-of-cell
programming, address their underlying
misbehavior, and reinforce pro-social
behavior. When fully implemented, no
individual would serve more than 30 days in
SHU.

The proposal also requires specialized
training, both for staff assigned to the
various units and for our disciplinary
hearing officers. Through these reforms we
will successfully provide incarcerated
individuals with the services and treatment
they need, while continuing to keep staff,
the population, and visitors safe.

The population served by DOCCS is not
immune to the opioid epidemic plaguing
society at large. To counter this epidemic,
DOCCS has launched several programs over
recent years, including the widespread
training of both staff and the population in
Narcan and the provision of kits to those
being released. The department has also
established medication-assisted treatment --
MAT -- programs at six facilities to provide appropriate pharmaceuticals and counseling to individuals with substance use disorders and short periods of incarceration. This year's Executive Budget provides the resources to expand MAT programs to three additional facilities, ensuring a smooth continuity of care with community-based providers and reducing the likelihood of overdose.

For women in DOCCS custody, we recognize that their pathways into the criminal justice system are often different than their male counterparts. A significant number of incarcerated women have been victims of domestic violence, sexual abuse, or assault. While the department continues to provide the latest in trauma-informed care, the Governor has advanced legislation, the Domestic Violence Survivors Justice Act, to meaningfully reduce criminal sentences in certain circumstances and allow for some currently incarcerated survivors to apply for resentencing and earlier release, due to prior victimization.
The Executive Budget will build also upon previous reentry initiatives to improve outcomes for formerly incarcerated individuals. The Governor's four-point plan to ease unfair burdens, practices, and barriers will ensure that all returning individuals have the tools they need to succeed. Additionally, to address the aging prison population, compassionate release legislation has been advanced for certain individuals over 55 with incapacitating medical conditions that are exacerbated by their age.

The department's Community Supervision staff leverage evidence-based practices such as swift, certain and fair sanctions and use incentives and rewards to encourage positive behavior for individuals on parole, with the goal of reducing the number of violations and returns to prison. To that end, the department will work with the Board of Parole to implement revised regulations governing the parole revocation process and will partner with a community-based organization.
to further explore alternatives to incarceration for the parolee population. DOCCS will also continue to support the Board of Parole in all administrative activities, ensuring the members' ability to set the terms for successful reentry and reintegration into society.

In conclusion, this year will bring bold new reforms to improve our criminal justice and correction system, leading to greater fairness and equality. The Governor's budget positions the department to successfully implement these proposals, bringing a positive impact to the entire agency. None of this would be possible without our professional, well-trained and dedicated workforce, who perform their daily and oftentimes dangerous duties in an exemplary manner.

Every day, this department reaffirms its mission to operate safe and secure facilities, while providing incarcerated individuals and parolees with the programs and services they need to succeed.
Thank you, and I will be happy to answer any questions.

CHAIRWOMAN KRUEGER: Thank you so much. You get extra points for going under 10 minutes. Thank you.

Our first questioner is Senator Sepúlveda -- Sepulvawits --

(Laughter.)

CHAIRWOMAN KRUEGER: -- chair of Crime and Correction.

SENATOR SEPÚLVEDA: I think by the end of the hearings we'll get it right.

CHAIRWOMAN KRUEGER: I'm going to just keep making up names for you now.

SENATOR SEPÚLVEDA: It's Sepulvewitz, just to remind you.

(Laughter.)

SENATOR SEPÚLVEDA: Commissioner, is it afternoon? Good afternoon, yes. Glad I get to see you in person.

ACTING COMMISSIONER ANNUCCI: Yes, good to see you.

SENATOR SEPÚLVEDA: So I have several questions to ask. Let's start with Shock
reform. I tried to ask the person testifying before you, but he said to ask you.

The Governor's assuming a $360,000 savings associated with allowing individuals to be eligible for Shock. How many people does the Executive or your department foresee being eligible the first year?

 ACTING COMMISSIONER ANNUCCI: Under the Governor's proposal --

SENATOR SEPÚLVEDEA: Yes.

ACTING COMMISSIONER ANNUCCI: -- where we're expanding to allow judges to issue court-ordered Shock enrollment orders, if you're convicted under a particular subdivision of robbery in the second degree and burglary in the second degree, we estimated about 72.

And that is always hard to pin down, because, number one, we don't know exactly how many individuals come to us under those particular subdivisions. We changed the law in '95 to require the clerk to issue that, but they don't always do that. So I just know generically how many burg-2s are in the
system, how many robberies are in the system. Plus you have the element of plea bargaining.

So it's a best guesstimate at this point in time.

SENATOR SEPÚLVEDA: Okay. Now, there are about a thousand people that have been incarcerated after being arrested for one of these two charges that qualify under Shock. That represents about 16 percent of all those sentenced to prison for violent felonies in that year. Preventing a prison sentence for this population altogether would generate massive savings. Has DOCCS, your division, explored alternate options to completely avoid incarceration for people under this category?

ACTING COMMISSIONER ANNUNZI: Oh, absolutely, we do support alternatives to incarceration. And so many of the Governor's policies have helped reduce the prison population, including all of the back-end reforms. Which is why, in the last calendar year, there are 2800 less individuals incarcerated in state prison than there were
on December 31, 2017.

SENATOR SEPÚLVEDA: So recently we held hearings, public hearings on the issue of parole, and one of the big questions is why have we been stuck on 12 members on the board instead of 19. And is it accurate to say that 19 is the highest number of commissioners? Because I believe it's higher than 19.

ACTING COMMISSIONER ANNUCCI: I think that's set by statute, yes.

SENATOR SEPÚLVEDA: The 19 is set by statute, all right. So -- I mean, I know part of it was who had control -- or not control, but who was the majority party in the Senate as to why we don't have 19 members.

I believe the Governor did not include any additional funding to fund the Parole Board at 19 members. My question is why, and what is the intention or the plan to get us at 19?

ACTING COMMISSIONER ANNUCCI: Senator,
Division of Parole, the Legislature made it clear that as commissioner, I was to ensure they had all the resources they needed and required. But their decision making, and including that of the administrative law judges, was to be independent.

So my job is basically to make sure they have the resources that they need. And I'm not in a position to speak to what is or is not authorized for filling additional vacancies.

SENATOR SEPÚLVEDA: All right. Is I premature to ask about statistics for parole releases in 2018?

ACTING COMMISSIONER ANNUCCI: I'm sorry, could you say that again?

SENATOR SEPÚLVEDA: Is it too premature to ask for statistics on parole releases for 2018?

ACTING COMMISSIONER ANNUCCI: Yeah, I think it is a little premature at this point in time.

But bear in mind two things. One is the number of technical parole violators who
came back last year was the lowest in quite a number of years. It was definitely lower than the year before. The other thing is that we did collaborate with the Board of Parole. There are new proposed parole revocation guidelines. And when they were originally enacted in 1997 -- and that was when we viewed the world as either nonviolent or violent, and if you were a parolee for a violent crime, you paid a much stiffer penalty for violation of a rule.

This is now going to change that dramatically. We're focusing strictly on the actual underlying behavior without regard to what the actual original crime is. So we feel that this will further, if we get to implement it, reduce the number of technical violators returned to state prison.

SENATOR SEPÚLVEDA: Can you explain or let us know some of the provisions in the guideline that allow you to reduce the number of people that have violated on technicalities? Because apparently when people are returned to prison, their time
served is longer than some people are
actually convicted of a crime, because of
violations.

So what is it that the guideline is
doing to decrease these technical violations
and allow people to remain out of the system,
out of prison?

ACTING COMMISSIONER ANNUCCI: I do
know that there was a lot of time and effort
that was spent with the ALJs and with our
Community Supervision staff and our reentry
specialists and the parole revocation
specialists to come up with four different
categories for the technical parole
violators.

And a lot of the ALJs -- and what
we've already been doing, and this will
codify this, when you merged us, you wanted
us to enact graduated sanctions as a response
to technical parole violations. So even
though someone may have to come back to
prison for a brief time, rather than the
usual year and a half or year or whatever, we
have what's called parole diversion programs
in a number of facilities. These are 45-day programs. They're meant to try and intercede before behavior possibly becomes a crime. But we hold the incentive out that the individual that participates in that will not lose the ability to have an early merit discharge from their sentence.

So we're trying to balance a lot of things -- do what the Legislature wanted with graduated sanctions. And I have been specifically instructing parole officers, this is the new day. The old day was -- to use a football analogy, we're like the referee who knew what the rules were and he threw the flag for the appropriate infraction. Now you have to be more like the coach. You have to put people in a position to succeed.

We want all of our parolees to succeed. That means working with them, that means working with families. Today, for the first time, we are having an event in New York City, gathering the friends and families of parolees, just for them.
Parolees can come if they want, but we want to talk to them and tell them how important they also are in helping us to try and have parolees succeed while they're out there.

SENATOR SEPÚLVEDA: Thank you.

So I have a bill on solitary confinement, the HALT bill. And the Governor's proposal is unfortunately not anywhere near what we're attempting to establish with HALT. I'll give you some examples.

The proposal will only prohibit placement of adolescents in segregated confinement if they are in adolescent facilities. It would not restrict the placement in segregated confinement of individuals with mental health disabilities. The proposal has other elements of it that I think will not help us achieve where we want to be in terms of segregated confinement.

Can you opine about the Governor's proposal?

EX. DEP. COMMISSIONER GREEN: Sure, Senator.
First of all, let me say that both the Governor's agenda, my agenda, and your agenda, we have the same goals. Right? We don't want to have anybody suffer any consequences as a result of having to separate them from the population. My former colleague who's now retired from Colorado, Rick Raemisch, he uses the term "restrain, don't isolate." And very much that is what this proposal will do, would be able to separate, but build out the programs that we will need in order to be able to do this in an effective manner, to provide the individuals with the appropriate out-of-cell time programming.

We've basically -- this would be the third major phase of reforming our restricted housing units. The first one, which everybody is familiar with, is what we did for the seriously mentally ill, enacting the statute that -- where we built out what are called these RMHTUs, the BHU, the RMHU at Marcy and Five Points, the ICP, the IICPs, about a thousand therapeutic beds that we've
created to divert the seriously mentally ill
if they get a sanction and have to be
diverted from SHU.

The next phase that we did was the
current agreement, which we're still
implementing. All of those programs that we
built were meant to provide alternative
environments, such as at Mid-State, such as
at Lakeview, such as the stepdown units at
Green Haven and Wende -- and now the
centerpiece is going to be the 252-bed unit
at Southport -- all of which is designed to
provide an alternative environment for those
in SHU.

This next round, right, is a very
ambitious schedule. We're going to build --
because you have to physically build the
infrastructure at these places.
Unfortunately in the '90s when we didn't have
enough space, we just went cheap, we didn't
know what we know now. And had we known
then, we would have built them differently.
But the Governor's plan gives us a
responsible way forward.
And I strongly suggest that if there are specific concerns between the two bills, we can sit down, we can go over them, we can address them. We continue to meet with the advocates in the NYCLU; they're giving us feedback. We're looking at other changes to be made. Perhaps they could be incorporated into the bill and address your concerns.

SENATOR SEPÚLVEDA: Certainly I'd like to have continued discussion about that, because, you know, that's incredibly important to our communities. And the advocates have been discussing with us for a while, so I want to make sure that -- of course I'm not going to throw out the good for the perfect, but I also don't want to essentially water down something that I think is important to my committee and to people that are incarcerated.

CHAIRWOMAN KRUEGER: Thank you, Senator.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Weprin, chair of the Corrections Committee.
ASSEMBLYMAN WEPRIN: Good afternoon, Commissioner.

ACTING COMMISSIONER ANNUCCI: Good afternoon, Assemblyman.

ASSEMBLYMAN WEPRIN: I want to start off by saying this is the third year that we've been working together, and I appreciate the close relationship we have with DOCCS and with your office personally in the Assembly, and we hope that will continue.

I have a bill, as you know, on geriatric parole or compassionate parole, whatever you want to call it, and actually based on your testimony I think a couple of years ago, we changed that bill from 60 to 55, and I see the Governor is using that 55 as well.

One of the differences, though, is our bill, which would require somebody to be 55 and having served 15 years, so it's not somebody that just committed a crime, does not have some of these health restrictions. You know, we understand the health issues, but part of the problem is, you know, by the
time a lot of people -- and I know there are
a couple of those situations where someone's
in very bad medical condition, they often
pass away before they're granted parole.

So we would like to see the
eligibility and people actually getting
parole while they're still -- they may be
older, but they could still be healthy and
not as generally in bad health per se, other
than having spent 15 years incarcerated
obviously ages people.

Would you have an objection to that --
going in that direction?

ACTING COMMISSIONER ANNUCCI: Well,
Assemblyman, as you know, I can't comment on
pending legislation other than what's already
in the Governor's Article VII. I think we
share the same goals here.

What I can tell you that's different
about the Governor's compassionate release
compared to prior bills -- and this goes to
trying to speed the results -- is that the
initial determination that someone meets the
medical criteria does not require either my
doctor or myself to also make a determination
that that person, if released, is not going
to be a danger to society. That function is
now going to be reserved solely for the Board
of Parole, who make that after an interview.

So I no longer have to have physicians
worried about, gee, if I certify this guy as
being eligible for geriatric parole and if he
commits a crime, I'm going to be responsible
for that. We've removed that from them under
the wording of the Governor's bill, which I
think is a positive step forward.

ASSEMBLYMAN WEPRIN: Well, we're
getting closer. But can you tell me what the
average cost of incarcerating an older person
is?

ACTING COMMISSIONER ANNUCCI: It
depends on where they're housed. We happen
to have a number of individuals in other
settings other than what you might be
thinking of, which is our RNUs, our regional
medical units, where if you get to that stage
where you require nursing care, it's very
expensive, it's well over $100,000.
We also have a senior dorm which we recently opened at Ulster under the Governor's initiative a couple of years ago, where we're providing to this cohort age-appropriate programming, getting them involved in a lot of different things that are specific to their needs. I toured that a month or so ago, and it's going very well. We might replicate it elsewhere.

Other individuals are functioning, they could be severely arthritic, they could require wheelchairs -- they run the gamut. So it depends upon where they're located, what the level of care is. And I think the big key here is age. That is going to be one of the factors to guide the Board of Parole as to whether or not they're going to be dangerous or not if released.

ASSEMBLYMAN WEPRIN: I appreciate that.

Can you tell me statistically how many older people were granted and released on medical parole in 2018?

ACTING COMMISSIONER ANNUCCI: How many
older people?

ASSEMBLYMAN WEPRIN: Yeah, how many?

ACTING COMMISSIONER ANNUCCI: I'd have to go back and look at the age. I just know that the -- I don't know now, but --

ASSEMBLYMAN WEPRIN: If I told you eight people, would that sound like it's a valid statistic?

ACTING COMMISSIONER ANNUCCI: It sounds reasonable.

ASSEMBLYMAN WEPRIN: Okay. Well, we obviously would like to see more, and that's one of the reasons why I'm --

ACTING COMMISSIONER ANNUCCI: Yeah, and in general we want everybody who's worthy of medical parole to be considered in due course.

And one of the things I've done, separate and apart from the Governor's bill, is I had televideo conferences with all of our staff at our regional medical units where a lot of these individuals are, under the former chief doctor, Dr. Carl Koenigsmann -- he's since retired. But what we stress to
them is similar to what this bill would do:

Do not worry about whether the individual poses a risk. Let the board make that determination. We simply want you to make the medical diagnosis, tell us what the current state is, tell us what they're capable of doing. And in the case of terminal cases, try and predict in advance, even if today they may be somewhat functional, that the normal progression -- because there are time limits built into the statute. I have to send out the 30-day notices or the 15-day notices if it's terminal, et cetera, I have to wait for responses back from the courts, and then you have to set up the interview. So we told them back it up a little bit so you can build in those bureaucratic steps and we can have individuals considered and approved in an appropriate manner.

ASSEMBLYMAN WEPRIN: Okay, thank you.

I want to show my agreement with my Senate counterpart, Senator Sepúlvowitz --

(Laughter.)
ASSEMBLYMAN WEPRIN: -- his comments
on increasing the Shock incarceration
eligibility as well as the SHU reform. So I
don't want to repeat it, but I just want to
reiterate my support as well.

And particularly on trying to bring
the parole commissioners up to 19, which of
course is the statutory allowance. And there
have been so many problems with people
getting parole because of a shortage of
commissioners. And you know, one of my
staffers from the Assembly, Tana Agostini,
went over to the parole commission; I think
she's doing a great job.

We'd like to see the full commission
up to 19 because we know the parole
commissioners are overworked, they're	raveling all around the state, people are
waiting a long time to get a hearing. And I
think part of the problem is that we were
always short parole commissioners.

So I want to reiterate what my
counterpart in the Senate mentioned because
we'd like to try to see the full commission
up to 19. If you could convey that back to
the Governor on behalf of both houses, that
would be appreciated.

I would like to touch on something
else that I've been contacted about, which I
didn't bring up before. DOCCS acquired a
voice recognition program from Securus
Technologies that gathers voice prints on
most of the inmate population. Are you
familiar with that?

ACTING COMMISSIONER ANNUCCI: Yes.

ASSEMBLYMAN WEPRIN: Can you explain
how it works? And are the voice prints being
collected from people outside of the prison,
like friends, family, et cetera?

ACTING COMMISSIONER ANNUCCI: No, it's
not from the outside, it's strictly for the
population, that they register when they use
the phones. And the purpose is so that we
can have better intelligence on potentially
nefarious activities.

The Phone Home program is very
important to us, because it's a means by
which the individuals can stay in touch with
their families and with their relatives. But it's also a means by which crimes can be plotted, conspiracies, et cetera. So it's also an important source of intelligence for us.

We do, by the way, have among the lowest phone call rates in the country, which I believe right now, under the new contract, is .043 cents.

ASSEMBLYMAN WEPRIN: They've gotten better. And we've discussed that, and I appreciate that, going there.

An issue that was raised to me was are inmates -- first let me ask the question. Are inmates mandated to enroll in the voice recognition program in order to use the telephone?

ACTING COMMISSIONER ANNUCCI: In order to register, yes, they have to agree to that.

ASSEMBLYMAN WEPRIN: See, that could be a problem, because there are some inmates that did not want to register with the program for fear of, you know, monitoring and possible unnecessary monitoring. And at that
I'd like to, you know, see some kind of provision if someone has a legitimate concern about being monitored, that they should not be denied phone privileges. Can you look into that?

ACTING COMMISSIONER ANNUCCI: Well, for an individual that wants to have a confidential conversation with their lawyer, we set that up all the time. We have arranged a special system where they can have a call, if it's required -- and we don't just willy-nilly grant it, but they can have a separate call with their lawyer or a government official or whomever.

So that's outside of the existing network.

ASSEMBLYMAN WEPRIN: Okay. And I'm running out of time, but I just want to touch on one other subject. And we had the chancellors from SUNY and CUNY here, and you and I agree -- and I know the Governor agrees -- on expanding educational programs in our state correctional facilities. And I
know you and I have personally participated in John Jay College's graduation and programs at many facilities, as well as at Otisville, we were together on a number of occasions. And Mohawk Valley Community College has a program, Bard has a program, Cornell has a program.

I'd like to see an expansion of the amount of institutions, particularly at the SUNY level, because there are so many SUNY facilities that are near state correctional facilities. Would you support that type of expansion?

ACTING COMMISSIONER ANNUCCI: Oh, I support all expansion of college programs. We right now have it in 29 different correctional facilities. I've been attending the graduations for the first time at facilities like Greene, a couple of weeks ago I went to Mohawk, I went to Bare Hill, we had one at Franklin. And I think the documentary, when it's released in October of this year, which is done under the auspices of Ken Burns -- and he really does a good job
when he produces a documentary -- I think that's going to tell the whole country the value of higher education in a correctional facility setting and what it means.

CHAIRWOMAN WEINSTEIN: Thank -- thank you.

ASSEMBLYMAN WEPRIN: I think I'm out of time. Thank you, Madam Chair.

CHAIRWOMAN WEINSTEIN: Thank you.

Senate?

CHAIRWOMAN KRUEGER: Thank you.

Let's see, we've been joined by Senator Robert Antonacci, by Senator Gallivan, I think Senator Brian Benjamin. Some we have returning from other events. But next up is Senator Jamaal Bailey, chair of the Codes Committee.

SENATOR BAILEY: Thank you, Madam Chair.

Good afternoon, Commissioner.

ACTING COMMISSIONER ANNUCCI: Good afternoon, Senator.

SENATOR BAILEY: I appreciate your testimony, and I associate myself with the
comments of both Chairman Weprin and Chairman Sepúlveda concerning the educational aspects, the full fill of the Parole Board, and the SHU issues.

But I want to talk about opioids. You know, long before this opioid crisis was something that we heard of, opioids were long rampant. And I won't editorialize about that and about why it's a crisis now, but I'm glad it's being recognized. And I appreciate that there have been steps taken towards more treatment of opioids. And my understanding is that now six facilities offer a form of medical assisted treatment, is that accurate?

ACTING COMMISSIONER ANNUCCI: Yes.

SENATOR BAILEY: So I have a piece of legislation, Bill No. 2161, that would provide comprehensive access to medication. Has the Executive or has the agency taken a position on that legislation?

ACTING COMMISSIONER ANNUCCI: Well, again, I don't comment on specific bills. But, Senator, I'll tell you, again, we share the same goals. We want to provide the
treatment that is needed that will get the
most bang for the buck.

The opioid crisis is horrific. The
carnage in this country is horrific. And we
in New York State want to do everything
possible.

The next thing we're doing, even
separate and aside from what's announced in
the budget, is what we're doing under the
existing budget. And before this fiscal year
is out, we are going to the next correctional
facility, which is Elmira, a maximum-security
facility. We've already got New York City
lined up for this. And through this program
they've agreed they're going to give us a
supply of methadone for a newly sentenced
inmate who's already on MAT, they'll give us
the supply, transport him to Downstate, we
have the outside provider lined up.

Then we're going to go to transport
that individual to Elmira, where they'll
continue on MAT. And again, we have a

So that this now opens up a whole new
avenue, a significant avenue with possibilities. Because Elmira is a reception center. Which means it not only can now accept newly sentenced individuals from New York City, but down the road, as we expand, other counties -- and this is where we hope it will happen significantly, jails providing more MAT to individuals.

And if they do that, then the individuals that are on MAT and get a short sentence, and with -- we're just now playing with a two years or less time to earliest release date, but technical parole violators who are on MAT.

And for the three facilities beyond that, we can possibly expand it, possibly out west, where a county like Monroe might be embracing this.

So we are very grateful the Governor has given these resources, and we are ready to significantly expand and get the most value for our investment, which is those individuals who are short-termers who are turning around. And we can always build from
SENATOR BAILEY: I am appreciative of those comments and of the Executive's desire, as well as mine and many of my colleagues in the State Legislature, to ensure that people who are suffering from addiction get the treatment that they need despite their status of incarceration. So it's heartening to hear that.

I just have a couple of more questions. One is more about promulgation of certain rules. Let's say an individual is representing somebody in an immigration matter. Are there settings concerning the confidentiality? Because certain attorneys that I've spoken to that represent individuals in removal proceedings have had concerns about the confidentiality of their ability to counsel their clients in said proceedings.

Are there specific rules around that?

ACTING COMMISSIONER ANNUNCI: I do know that in the immigration court it is considered a public courtroom, so that if
outsiders want to come in, they can.

I also know that we try and accord the attorney-client privilege so if someone needs to be able to meet with their client and talk confidentially before on the record.

I also know, by the way, that PLS reached out to me for support in getting funding so that they could have an attorney provide representation. And I wrote a letter of support for them so that they could get the outside funding to provide representation to individuals in pending immigration matters in the immigration court. And I think they even have one or two items devoted to that, and we continue to cooperate and schedule phone calls or meetings with them so that they can provide the necessary representation.

SENATOR BAILEY: Sure. And just last, it's a hybrid comment/question. Senator Sepúlveda, Senator Rivera, Senator Gallivan and I were at a -- we'll call it a quasi hearing, right, Senator Sepúlveda -- late last year, where we had individuals that came
back concerning reentry. And they spoke
about a couple of issues. And I guess the
issue that I would bring up would be JPay and
some of the issues with the fees and the
sliding scales, your familiarity with JPay
and any of the concerns about some of the
fees that are initiated on the parolees.

ACTING COMMISSIONER ANNUNZIATA: We are
looking forward to rolling out the tablet
program. We think that that's going to be
transformative for the whole system. We're
going to start with the female offenders
because that's a much smaller unit to work
with, at the end of the month. We're going
to have them in our SHUs.

The basic programming will be free for
everyone. But we're also continuing to
monitor what other costs are elsewhere in the
country. So if we see that some other state
has got a lower rate on a particular service
that they're providing, we're certainly going
to pick up the phone and say, Wait a minute,
you have to treat us comparably in that area.

So I've always been very, very mindful
of the population -- limited means, limited means of their family, and not to in any way charge them more than anything beyond what has to be the case.

SENATOR BAILEY: Thank you. And my final question is related to some of the rules concerning parolees. You know, our economy has changed since, you know, these initial rules came in. And having to check in with the officer is understandable. I believe there should be check-ins.

But in the expansive digital economy where people have to maybe leave on a more frequent basis, this often prevents people from legitimate opportunities for income. And I -- less of a question and more of a statement and commentary, I would urge DOCCS to look at these rules that could possibly prevent people who have paid their debt to society, they have done what we've asked them to do, they are trying to do the best that they can for their families, and they are still limited in the incomes that they can receive. I would urge us all just to take a
look at the rules and how we can possibly
have more flexibility for people based upon
their profession.

    ACTING COMMISSIONER ANNUCCI: Yes,
    absolutely, Senator.

    SENATOR BAILEY: Thank you,
    Commissioner. I appreciate your time.

    CHAIRWOMAN KRUEGER: Thank you.
    Assembly.

    CHAIRWOMAN WEINSTEIN: Assemblywoman Rozic.

    ASSEMBLYWOMAN ROZIC: Hi,
    Commissioner.

    ACTING COMMISSIONER ANNUCCI: Hi,
    Assemblywoman.

    ASSEMBLYWOMAN ROZIC: I have a lot of
    questions, and it bounces around, so bear
    with me.

    I wanted to also talk about the Parole
    Board a little bit. I agree that we should
    be trying to fill those seven spots that are
    empty. Can you tell us if there's a timeline
    or describe the process by which you're
    trying to engage people out in the community
and get candidates for the Parole Board?

    ACTING COMMISSIONER ANNUCCI: If I understood your question correctly, you're asking about the preparation of individuals who are appearing before the Board of Parole?

    ASSEMBLYWOMAN ROZIC: No, I'm asking what are you doing in order to fill the --

    ACTING COMMISSIONER ANNUCCI: Oh, I'm sorry, I misunderstood the question. My apologies.

    ASSEMBLYWOMAN ROZIC: That's okay.

    ACTING COMMISSIONER ANNUCCI: I can't speak to a timeline to fill parole vacancies. That's between the administration and the Board of Parole.

    ASSEMBLYWOMAN ROZIC: Okay. I know that also DOCCS has a long-term plan for a single digital database for the Parole Board when they're doing their video hearings. I know that that has been an issue.

    So can you describe or tell us whether or not there's money in this budget in order to have digitized copies of records of each prisoner?
ACTING COMMISSIONER ANNUCCI: Okay.

We are at the initial stages of exploring the possibilities for electronic records. And we've had a meeting with our ITS and we're exploring that and also for our health records.

Right now we've worked very closely with the Board of Parole. Our staff prepare the files for them. And they prepare them in such a way that each commissioner will know exactly which section of the file will have the information he or she is looking for, whether it's program participation, disciplinary records, et cetera. Then after every parole interview session, there's a writeup and they give us feedback as to what worked well, what didn't work well, televideo, et cetera.

Another initiative that we've done for the population -- and we've worked with the parole commissioners on this -- we created a DVD where we have formerly incarcerated individuals, parolees, as well as parole commissioners, explaining to them what the
process will be like, what they can expect, so that they're at ease, they know what to expect, they can talk about their plans in their own words and the Board of Parole will consider that.

ASSEMBLYWOMAN ROZIC: Okay. I'm going to cut you off only because I don't have that much time.

I also reiterate that I agree with the Governor's take on restrictions on special housing units and solitary. My understanding is that the proposed changes don't include people on keeplock. So I'm wondering if you could tell us how many people on any given day how many people are currently in keeplock or in any given year how many people are in keeplock.

ACTING COMMISSIONER ANNUCCI: I have those numbers. I don't have them off the top of my head.

I can tell you that part of the reform that we just implemented did require us to provide a lot more amenities to fixed keeplock units like recreation, et cetera.
But that is a matter that we're prepared to also look at as we discuss these issues.

ASSEMBLYWOMAN ROZIC: Great. And a quick follow-up to Chairman Weprin's question about the data, the phone call recordings. What happens when an inmate -- their sentence finishes? What do you do with that data? Are you selling that data? I'd like to know a little bit more about that.

ACTING COMMISSIONER ANNUCCI: No. No. Absolutely not.

ASSEMBLYWOMAN ROZIC: Okay, but what are you doing when the sentence finishes, with that data?

ACTING COMMISSIONER ANNUCCI: They're preserved for 12 months, and then they're cut off.

ASSEMBLYWOMAN ROZIC: Cut off as in destroyed or -- okay. We'll follow up on that.

And my last question is knowing that sheriffs have a lot of leeway on this, what is your opinion or do you know how many
county jails are currently offering space or sharing facilities with ICE?

ACTING COMMISSIONER ANNUCCI: I couldn't answer that. I think that's a question that perhaps the State Commission of Correction could provide information on.

ASSEMBLYWOMAN ROZIC: They are not here on the list today, so I was hoping that you could offer some --

ACTING COMMISSIONER ANNUCCI: No.

ASSEMBLYWOMAN ROZIC: Okay. Thank you, Madam Chairman.

CHAIRWOMAN KRUEGER: Thank you. Senator Gustavo Rivera.

SENATOR RIVERA: Thank you, Madam Chair.

Hello, Commissioner. So the first thing I'll say is just a statement. It is obvious, as you made very clear earlier, that when the merger between DOCCS and Parole happened, that your responsibility is to provide them with all the resources they need, but you cannot speak on their behalf. I understand that perfectly.
It is disappointing and unfortunate that the administration did not choose to have a representative of the Parole Board here. Obviously, there's a lot of things that you can't really answer, as you made clear before on issues of policy, what happens with the Parole Board, et cetera.

I'll just certainly add my voice to what many of my colleagues have said, that we need as many members of the Parole Board as possible. We can have statutorily up to 19. As many as we can would be best. So I speak to the administration now and say that we have -- you know, I am hopeful because certainly there has been some resistance in the past from some of our Republican colleagues, but they are no longer running the show over in our house, so we would love to see a group of people coming to us as nominees so that we can make sure that we can move them. So I would suggest certainly this is -- you know, you can carry the message, but I'm sure they are listening.

ACTING COMMISSIONER ANNUCCI: Yes, I
will do that, Senator.

SENATOR RIVERA: But I wanted to talk a little bit about solitary confinement and actually -- so define something for me. This is a term that I did not know about. What is keeplock? What does that refer to?

ACTING COMMISSIONER ANNUCCI: Keeplock is -- I'll compare our system to the penal law. In penal law the offense covers violations, misdemeanors and felonies. So we have a three-tiered system. Tier 1 is like the equivalent of a violation. You did something wrong, but it's not part of your permanent record. A Tier 2 offense is like a misdemeanor. The punishment for a misdemeanor could be up to a year in jail, but you can't go to state prison. Similarly, with a Tier 2, you can get a keeplock sentence, but you can't get placed in SHU, you can't get a recommended loss of good time. So it's like the middle level of possible misconduct.

And so one of the advantages of a keeplock sentence, like in a general
confinement facility or maximum security facilities, the individual doesn't get removed from the facility. He or she will serve their keeplock sentence, they'll have --

SENATOR RIVERA: So since my time is limited, I want to actually ask more specifics about what exactly it entails. So when you're saying keeplock, what exactly happens to the incarcerated person? Because if you're talking about a SHU, right, the person gets removed from their particular cell --

ACTING COMMISSIONER ANNUCCI: Right.

SENATOR RIVERA: -- and then placed in solitary confinement someplace in the facility, but by themselves for a while.

ACTING COMMISSIONER ANNUCCI: Right.

SENATOR RIVERA: What happens in a keeplock? What does that mean?

ACTING COMMISSIONER ANNUCCI: In keeplock they remain in their cell for 23 hours a day, but they get one hour of outdoor recreation.
SENATOR RIVERA: Is there anybody else with them in the cell?

ACTING COMMISSIONER ANNUCCI: I'm sorry?

SENATOR RIVERA: Is there anybody else with them -- are they allowed interaction with other people while they're in their cell?

ACTING COMMISSIONER ANNUCCI: Oh, they're allowed to interact with people on their unit. They can have conversations. There's not that isolation issue.

SENATOR RIVERA: Okay. And there's no -- so there isn't that isolation issue.

ACTING COMMISSIONER ANNUCCI: It's considered restrictive housing as well, in the general sense of the term. That's where the ACA and everybody else is moving. All of us are trying to make changes in this area, every system in the country.

SENATOR RIVERA: How many people in DOCCS are currently -- on any given day, how many people are on keeplock on a given day?

ACTING COMMISSIONER ANNUCCI: I can
get you that number, Senator. I don't have
it off the top of my head.

SENATOR RIVERA: So we would -- I
would really appreciate it if you could get
us that number.

ACTING COMMISSIONER ANNUCCI: Sure.

SENATOR RIVERA: The concern that many
of us have is that maybe there's a -- we're
basically, since it's not categorized in the
same way, since as you are aware -- and you
can't comment on legislation, which I get.
But there's many of us that have been very
much pushing to get rid of solitary
confinement and to change the way that that
works, and so we would be concerned that
there's just a change in categorization of
where people are kept.

And last but not least, two years ago
I asked you whether you remembered a guy
named Rick Raemisch.

ACTING COMMISSIONER ANNUCCI: Yes.

He's retired now.

SENATOR RIVERA: Yes. And I asked you
then, for those folks that do not know, this
is a former Colorado DOCS commissioner who
slept overnight on a solitary confinement
facility.

And when I asked you that -- and it
was a great moment, I'm not going to deny
that. But when I asked you whether you would
be willing to do the same thing, whether you
would be willing to stay overnight on a
solitary confinement cell, your response was,
"Senator, it would be one of the best nights
of sleep that I've had in my life."

Ha, ha, ha. It's a good joke. It's a
good one. I can't take it away from you.
I'm going to ask you again, I'm going to ask
you to take it seriously this time.

Considering that there's many of us who
believe that this is torture and it has been,
you know, determined that in other instances,
certainly in war, my question to you is,
would you be willing to do that? You only
have 5 seconds, but --

ACTING COMMISSIONER ANNUCCI: Yeah, of
course, Senator. If this will advance the
agenda, if we will sit down and end up with
legislation that we both think is prudent and
in the best interests of New Yorkers, I'd be
willing to do that.

And Senator, I wasn't in any way
trying to diminish or poke humor at SHU.
It's a very serious issue. I was making fun
of myself, because my phone rings at every
hour of the night. And if I'm in a
correctional facility, anywhere in a
correctional facility, I can't have a
cellphone, I can't have a pager, no
electronic devices. So anywhere in a
correctional facility, I'm removed from any
of the pressures.

SENATOR RIVERA: Thank you,
Commissioner. Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you.
Assembly.

ASSEMBLYMAN LENTOL: Assemblyman
Barclay.

ASSEMBLYMAN BARCLAY: Thank you,
Chairman.

Commissioner, I had two questions.
The first is regarding a budget question.
The Governor is proposing a 69 million
increase for the improvements to
rehabilitation programs. Is that increase,
is that going to go towards residential
rehabilitation units and step-down units?

ACTING COMMISSIONER ANNUCCI: Yes,
it's all for those units.

ASSEMBLYMAN BARCLAY: The whole
69 million. All right. Well, that's easy
enough.

Have you watched "Escape from
Dannemora"?

ACTING COMMISSIONER ANNUCCI: I've
seen most of it, not all of it.

ASSEMBLYMAN BARCLAY: Could you just
go through kind of what the process --
because I think DOCCS initially was not going
to allow filming at the facility, and then
maybe the Governor got involved and now, you
know, there was filming there.

ACTING COMMISSIONER ANNUCCI:
Assemblyman, we have a long tradition in this
state of cooperating with film projects. In
fact, if you remember the classic films with
James Cagney, out of Sing Sing -- Warner

Brothers actually donated, built a gym at

Sing Sing because of all the films that were
made there and cooperated with.

There was a little hesitancy on our
part initially because actually to film with

that large a number of individuals coming

into the facility, there were some concerns.

So we just wanted to explore different

things -- including, by the way, the

population was going to be affected. We had
to close off access to the yard for the

filming.

So in order to do that, and the film

outfit agreed to do this, as a means of

ameliorating that, everybody got, I believe,
a gallon of ice cream. And I was surprised

at the flavor they picked; apparently Panda

Paw is the flavor that they like up there. I

think the second time they got a chicken

meal.

But we were able to do that. We

cooperated with the making of the film. It's

entirely consistent with what we do. And for
many, many years now -- and this Governor is all about being open for business in New York State.

ASSEMBLYMAN BARCLAY: I'm not really opining whether it was appropriate or not. What I found interesting is the fact that it seemed to be pretty strongly against the filming there, and then that opinion changed 180 degrees. So be it. And what kind of ice cream was that? I didn't --

ACTING COMMISSIONER ANNUCCI: Panda Paw.

ASSEMBLYMAN BARCLAY: Oh, Panda Paw. All right. Thank you, Commissioner.

ASSEMBLYMAN LENTOL: Is that a Ben & Jerry's ice cream?

ACTING COMMISSIONER ANNUCCI: I don't know.

CHAIRWOMAN KRUEGER: I'm going to assume no real pandas were used in the making of this movie.

(Laughter.)

CHAIRWOMAN KRUEGER: Are you done?

ASSEMBLYMAN BARCLAY: I am.
CHAIRWOMAN KRUEGER: Senator Seward.

SENATOR SEWARD: Thank you.

Commissioner, it's good to see you.

ACTING COMMISSIONER ANNUCCI: Thank you, Senator.

SENATOR SEWARD: Last year, to help address the problem, the issue of contraband, DOCCS had started the -- a secure vendor package pilot program, which was canceled. Can you share with us what if anything DOCCS has started in terms of another program aimed at reducing contraband?

ACTING COMMISSIONER ANNUCCI: There's a lot of things that we're doing and continue to do to reduce contraband. We've expanded our K-9 units, and they are very, very effective at detecting drugs.

We have two new devices that we've introduced, one -- I'll get the technical name wrong, but I'll just tell you it's a device that's going to screen mail. We've purchased two of them. And once you run mail through these things, they can detect any number of drugs that are present in the mail.
So if that is as successful as we think it is, we are going to make that -- go statewide with that.

We also have another device that is able to get into areas, I think it's called a borescope, areas that are hard to get to, hard to see visually. It's like radiators and cell tracks where individuals might hide contraband, like certain types of blades.

So those are the things that we are pursuing right now as well.

SENATOR SEWARD: Why was the secure vendor package, the pilot program, why was that canceled?

ACTING COMMISSIONER ANNUCCI: Well, we learned the hard way that there were things we hadn't carefully thought of. And even though it's been placed on hold, it's not totally terminated. We've used this opportunity to learn from the advocates, we've used this opportunity to get feedback from our superintendents.

It is something that we would explore down the road. But as I said last year,
there's so many things that we as an agency are doing, all right, so many things in the transformation to the tablets, the programs that were initiated, the SHU, the expansion of the college programs, all kinds of mental health programs that we're running online, concerns about wellness for staff. We don't need an additional one if we're not ready for it. And that's something that -- we'll cross that bridge at the appropriate time.

SENATOR SEWARD: Can you describe any other efforts DOCCS has undertaken in the last year to make the facilities safer for both the inmates and the employees?

ACTING COMMISSIONER ANNUCCI: Yes. The other big thing we're doing is we're spending millions on fixed-camera systems. We're about to complete the one at Clinton, and we've got about seven or eight facilities that they're going to go out to bid and then they'll be ready in two years.

We also have body cameras. We have the biggest body camera initiative in the country. We just completed Taconic, and I
think before then they were something like 650. And we've got a grant of about $800,000 from the feds to expand this body camera pilot. So that is going to be something that we're going to rely upon to help make our system safer.

It helps keep everybody in their lane, so to speak, the fixed-camera systems as well as the body cameras.

SENATOR SEWARD: Now, is there any legislation that you would recommend us to pass that would help make the facilities safer? Is there anything statutorily that's --

ACTING COMMISSIONER ANNUCCI: Pass the Governor's Article VII as is.

(Laughter.)

SENATOR SEWARD: Okay. And my final question, following up on Assemblyman Barclay's question, what did you think of the series "Escape at Dannemora?" I did watch the entire show.

ACTING COMMISSIONER ANNUCCI: Senator, respectfully, that's a pool of water I'm not
going to wade in, for the following reason.

Two of the principal individuals that the story was about are still serving their sentences with this agency. And even though they didn't get to see it, people visited them and told them what it was about, and both of them have come out very strongly disputing what was in the film.

So rather than add another controversy to my list that I have plenty of, I will not weigh in on that issue.

SENATOR SEWARD: I was giving you a chance to be a film critic.

(Laughter.)

SENATOR SEWARD: Thank you.

CHAIRWOMAN KRUEGER: Thank you very much. Assembly?

ASSEMBLYMAN LENTOL: Assemblymember Palmesano.

ASSEMBLYMAN PALMESANO: Yes, thank you, commissioner, for being here. Appreciate it.

ACTING COMMISSIONER ANNUCCI: Hi, Assemblyman.
ASSEMBLYMAN PALMESANO: I have some questions to talk on. I've been, as you know, pretty critical of the administration and what's going on at the Department of Corrections for a number of issues. I think probably one of the most serious issues that are going on in our correctional facilities today is the dramatic rise in assaults on our staff and on inmates.

Since 2013 -- I know the Governor's talked about all the prisons he's closed. I think that's helped lead to a powder keg environment. Since 2013, there's been a 66 percent increase in assaults on staff statewide, a 65 percent increase of inmate on inmate assaults -- just 82 percent in the past year. That's a dramatic problem that's not being addressed because I think of the powder keg environment that we see.

Drugs is certainly a part of that process. I know you talked about some issues that you're trying to deal with the address of that issue. I know last year I asked for your statistics on the positive drug tests.
You provided that. I mean, thousands of people testing positive for drugs in our prisons. That's unacceptable.

So why not provide more tools to help address that issue? You mentioned drug dogs. Are we using them at every single one of our 54 correctional facilities? And if not, why not?

ACTING COMMISSIONER ANNUCCI: Well, first of all, canines are expensive and they do require a lot of staff. We're getting a lot of bang for our buck with what we're using now.

Going back on the random drug tests, we tested 1 percent of the population last year, which is almost a thousand. And only 5 percent or just under 5 percent were positive. So I don't agree with your characterization that drugs are rampant throughout our system or that there's a powder keg aspect there.

I'm very concerned about assaults, as everybody is, rightfully so. One assault is one too many. But the assault in the
department is completely different from an
assault in the Penal Law. Any attack is
defined as an assault. An inmate brushes up,
bumps the shoulder of a correction officer,
that's an assault. You'd be laughed out of
court if you tried to prosecute something in
the community with an assistant district
attorney.

So our population is going down, and
we have a lot of vacancies in our system.
And compared to where we were when we used to
house 90 inmates in dormitories and
double-bunk and double-cell, it's a totally
different landscape right now.

ASSEMBLYMAN PALMESANO: With regard to
the double-cell and double-bunking, I'm aware
that obviously there's 6800 top beds that
exist in double-bunk situations throughout
the state. Now, the administration and you
constantly talk about how many excess beds
aren't being utilized. So in that situation,
double-celling has two inmates in close
confines, whether it's in a dormitory setting
or a maximum-security facility. That is a
powder keg environment. It's a powder keg
environment for other inmates, it's certainly
a powder keg environment for our correctional
officers who do a dangerous job.

So if you have all these excess beds
that you claim and we have 6800 top-bed
double bunks, why not remove the top bunks,
double bunks altogether, make that part of
your investment. Because you're doing a lot
of investment on reconstruction in other
areas. That should be the first thing you
do, get rid of the double bunks and double
cells. Let each individual -- give them a
little dignity, let them be in their own
individual space, which will also create a
better, safer environment for our correction
officers and our professionals working there,
and also a safer environment for other
inmates.

Because that's part of the powder keg
environment I'm talking about, Commissioner,
that I think is being ignored by this
administration. The drug tests that we
talked about, you said 1 percent. I think
from the numbers I have from '15, '16, '17, about 5,000 or 6,000 positive test results. That's 5,000 or 6,000 too many. That shouldn't be happening.

We should be -- and if drug dogs are really expensive -- but we're talking about a public safety issue. You know, we're putting money in all these other places, why not the money into the drug dogs? Because we know they're successful. There should be one at every correctional facility in this state. Let's make the investment. Let's make our corrections officers safe. Let's make the other inmates safe who are just trying to do their time, and penalize people who are trying to get drugs in these facilities. Because they're doing it, they're being successful at it. We need to provide tools to our correction officers so they can do the job that they want to do to keep us safe.

ACTING COMMISSIONER ANNUCCI:

Assemblyman, you said a lot of different things there. Let me just sort out the double-celling, double-bunking argument.
Double-celling is what you find in our maximum-security facilities. And way back in '95 when we were very pressed for space, we converted about 5 percent of the cells in 16 of our male maximum-security facilities. And we were very stressed to do that.

I've basically taken all of them down, and my predecessor as well. There's only a very small number that are left of those original cells that were built for one-person use. They're in Auburn and I think a few at Downstate. Auburn for the depot, because it helps with the movement, and Downstate because it helps with the program. Otherwise, they've all come down.

There are other double cells where the cell was built to hold two individuals. They have at least 105 square feet. All of our S blocks have 105 square feet -- five points, 105 square feet in Upstate. So there's two in a cell there, but they were built to hold two individuals.

The double-bunking that you describe in our mediums, in a prototype dorm there are
60 individuals where we used to hold 90. The back 10 are double-bunked, two. But that's consistent with the State Commission of Corrections' rules and regulations that allow as many as 60 in a multiple-occupancy unit.

So I am aware of nothing -- and we look at grievances and we look at a lot of difference things -- that that specific housing arrangement causes tension in our medium-security general confinement facilities.

I agree with you, I'm troubled with the increasing number of assaults, and we're looking at a lot of different things. But at the end of the day, you know, investing in things like college, you know, that creates an environment that leads individuals to follow examples of the classroom leader versus the gang leader.

CHAIRWOMAN KRUEGER: Thank you.

Senator --

ASSEMBLYMAN LENTOL: Excuse me.

I just want to say, Commissioner, that although I agree with my colleague that there
are a lot of problems in our prisons, I have
to say that I think you've done an excellent
job as acting commissioner. And the only
thing I hope for is that now you can become
the actual commissioner, now that you've
gotten a raise. Thank you.

ACTING COMMISSIONER ANNUNZIATI: Thank
you, Assemblyman.

CHAIRWOMAN KRUEGER: Senator Zellnor

SENATOR ZELLNOR: Thank you, Madam
Chair.

And thank you, Commissioner. I just
want to reiterate Chairman Weprin's sentiment
on prisoner education. I had the honor of
teaching constitutional law at Auburn
Correctional Facility, and it's something
that's very important to me. And I'm glad to
hear that it's something you are supportive
of as well.

I am also heartened to see that DOCCS
is really supportive of parolees and their
success, and I wanted to get your thoughts
and very brief analysis. The Governor signed
an executive order last year granting parolees the right to vote, and I wanted to see what the successes and failures of that program is, if you had any stats on how many people have taken advantage of the new right, and just to get your general thoughts on that.

ACTING COMMISSIONER ANNUCCI: Well, first of all, I think the Governor's action was entirely consistent with the fundamental change in the Penal Law that was made years ago when we said, in addition to everything else, it's a fundamental purpose to promote the successful reentry of individuals into society. And getting them civically involved is certainly one important way to do that.

I should point out that there was already a law on the books going back to 2010 that the Legislature enacted. It's codified in Correction Law Section 75, and it specifies that every individual who maxes out of a prison -- right? So there's no parole time to serve. But when that person maxes out of a correctional facility, the
obligation was placed upon me to give them a voter application form, to give them a form from the Board of Education that explains the importance of voting, and one other thing in relation to voting.

And I'm not aware of any single problem that ever came about as a result of that. And last year, to give you some numbers, 2100 individuals maxed out of our correctional facilities. So that many individuals, under the statute, had to be given all of those voter forms explaining how to register, where they would go, et cetera, et cetera.

The Governor's pardon initiative was simply an extension of that. We gave them the list of the people that were released on parole, they determined who was worthy to get the conditional pardon. We ensured that the individual got the conditional pardon. I have no way of knowing how many of them chose to exercise their right to vote. I'm not aware of any problems. But I think it's entirely consistent with where we're moving.
as a state to get people locally involved in
their civic participation as a means of
rehabilitation.

SENATOR MYRIE: Thank you for that.
And I wasn't asking -- of course it would be
really difficult for you to ascertain who
actually voted, given that we have a secret
ballot in this country. But I think that it
is -- what I wanted to know was who was
taking advantage of the conditional pardons.
Right?

I think that in our body we have
legislation that would make it less onerous.
I think there are a lot of parolees who are
still unaware of their right. And right now
they have to take an extra step, albeit I
think a very important first step as enacted
by the Governor. But I think the -- you
know, we are considering granting rights just
by virtue of them being out of incarceration.

And so I just wanted to know if the
administration had stats on who -- how many
conditional pardons were issued for the
purposes of them voting.
ACTING COMMISSIONER ANNUCCI: Yeah, I -- I -- we do have the stats on that. I know it was many thousands that were issued. And I know that when they were issued we had a process in place to make sure that when they met with their parole officer, they were actually given the conditional pardon, they were given all the necessary forms to explain.

I can get you the exact number, I don't have it off the top of my head, but it was many thousands.

SENATOR MYRIE: Great. And I know you have said several times today that you don't comment on pending legislation, but would it be fair to say that DOCCS is supportive of parolees being civically engaged and having as many opportunities to do so as possible.

ACTING COMMISSIONER ANNUCCI: Oh, yeah, absolutely.

SENATOR MYRIE: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

We've been joined by Senator Betty Little. I didn't recognize her earlier.
Assembly.

ASSEMBLYMAN LENTOL: Assemblymember Weprin.

ASSEMBLYMAN WEPRIN: Thank you, Mr. Chairman.

We've had a lot of discussion about SHU reform and money for SHU reform. Just a specific question about the 69 million that's in DOCCS capital for the DOCCS SHU reform proposal. Does that include the money from the New York Civil Liberties Union settlement?

ACTING COMMISSIONER ANNUCCI: No, this would be entirely different. Because basically in the '90s, as I said, when we had the problem with a lot of disruptive individuals, we had to quickly build these S blocks. And that is where we would have to spend the money to actually convert them to these RR units so that we can have the out-of-cell programming in the office space.

To just give you some comparison, the Marcy S block where we now have the RMHTU, we built a separate program building. Anybody
that's toured that facility where we treat
the seriously mentally ill I'm sure would
agree we did not spare any expense. They
have big, wide-open areas for classroom
participation, they have areas for group
recreation. We did it right. And that's
what we would plan to do with this group
going forward.

ASSEMBLYMAN WEPRIN: So are we going
to need more money to complete the NYCLU
settlement? Would it be necessary to have
more money other than besides that
69 million?

ACTING COMMISSIONER ANNUCCI: Well, we
have to staff the 252-bed unit. So the
budget -- there's money in the budget if you
approve it as-is for us to open the South
port 252-bed unit.

ASSEMBLYMAN WEPRIN: Okay. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Gallivan.

SENATOR GALLIVAN: Thank you, Madam
Chair.

Good afternoon, Commissioner.
SENATOR GALLIVAN: I'd like to follow-up on a couple of things that we've already discussed, and I'll start with the Secure Vendor Program. I was going to ask the status, and you indicated that it's not a lost cause, so to speak. But what is the actual status? Are you actively looking at the programs with that? Is it somewhere in line on trying to implement?

ACTING COMMISSIONER ANNUCCI: We're continuing to get feedback from our superintendents. We've looked at what we've done wrong. But as we do that, we're looking at what we're also providing to the population, and the next steps. So that, you know, where we might be reevaluating this after we've gone systemwide with the tablets and how that might play out is something that we're weighing and balancing.

So you're right, it's not a lost cause. It is something that we're still considering and taking feedback should we
decide to revisit it at a point down the road.

SENATOR GALLIVAN: We know that contraband continues to be a problem, and you've talked about the -- some of the measures that you're taking to try to limit contraband.

But I recall our conversations over the years about the promise of the Secure Vendor Program and being able to control what comes in. And absent data that shows that we're doing a significantly better job of controlling the contraband and then what follows, the violence, I would hope that that is something -- it's been successful in other states -- that you continue to actively look at.

So let's follow to the safety and security. I know you have testified to certain things Senator Seward and Assemblyman Palmesano talked about -- and he mentioned in particular some statistics, one that I -- if I calculated correctly, that combined assaults, assaults on staff and
inmate -- inmate on staff, inmate on inmate
is up 42 percent since the NYCLU settlement
regarding special housing units.

Is there a correlation, in your mind,
between the two, the 40 percent fewer people
in SHU since that settlement and a 42 percent
increase in assaults?

ACTING COMMISSIONER ANNUCCI: No, I
don't see that.

And I know that one of the categories
I think we're down, and that's the inmate on
inmate assaults. I'll have to double-check.
But I don't see a correlation with that,
Senator.

SENATOR GALLIVAN: Well, perhaps down
year to year. But we have -- if we go back
three years, five years, eight years, we're
still significantly high.

I agree with Assemblyman Lentol. I
know that you've made efforts, you're very
sincere and concerned for your people in
ensuring safe facilities. The job that your
staff does, they have a tremendous challenge,
there's no question about it. And it's an
enormous agency, and every single thing that you do I recognize, whether it's training or equipment, costs an incredible amount of money.

But I think we owe it to the staff and the citizens of the state to do the best we can in properly equipping and training them.

And similarly, we owe it to the inmates who are there, and their families and the communities. Because obviously if they can't be safe, how can they be rehabilitated if they're afraid to go to programs or participate?

So I know over the years the different measures that you've taken, and I won't ask you again to repeat the things that you've said. But are you able to tie statistics to anything? Like, for instance, the use of K-9s and correlate it that we have reduced contraband by X percent, the use of body cameras and this has reduced assaults by X percent, the use of fixed cameras.

And, I mean, have you done that at all? Because then we can focus -- we can
look at some of the things that work to
reduce the violence and contribute to our
safety instead of -- again, I fully respect
the enormity of the job that you have, and
all these new ideas that come along and you
having to look at because of the whims of the
Executive or members of the Legislature, 87
different things to implement. But are you
using data to implement any of these things?

ACTING COMMISSIONER ANNUCCI: Oh,
yeah, we're using a lot of different data in
many ways. I think it's very hard to get
down into the weeds like that and pinpoint
cause and effect on different things.

Backing up to the assault numbers,
while they're up, the number of injuries way
down. It's something close to 90 percent had
either -- or higher -- had no injury or minor
injury. Only a very small number had
moderate injury. I'm not belittling that.
Any injury, moderate, is bad. And serious
injury, we had no severe injuries, because
we've broken it down. So even though the
assault numbers are up and it's concerning,
staff aren't getting injured. And certainly
the pepper spray that we've used can really
allow staff to intervene, break up a serious
fight without having to resort to batons or
rolling around, many times.

And I've required all my staff,
including myself, to undergo what pepper
spray is like, and it is very debilitating.
So if -- anything to increase staff safety
like that and keep the population safe, we
will continue to pursue.

SENATOR GALLIVAN: Love to continue
the conversation, but out of time. Thank
you, Commissioner.

CHAIRWOMAN KRUEGER: Thank you. Thank
you, Commissioner.

Assembly.

ASSEMBLYMAN LENTOL: Yes.

Assemblymember Palmesano again.

ASSEMBLYMAN PALMESANO: Thank you,
Commissioner, again. Just -- I don't have --
really one question, but just a couple of
things. I'm going to write on an issue that
I hope you can respond relative to the
bedding issue. I have some information I
would like you to clarify.

Also, on the number of positive drug
tests, I know you gave me statistics from
before. I'd like to see the statistics from
last year as well.

Also, I want to just comment on this
SHU reform. I'm very concerned about it,
quite frankly. I think what -- the
settlement, and what we see being proposed by
the Governor and what I've seen on
legislation being proposed will take a very
important safety tool away from our
corrections officers who do a very dangerous
job.

I think that -- you know, what
incentive is there going to be for -- and
we've got to admit, there's some very, very
dangerous people in our prisons. What
incentive is there for a prisoner to not
assault or try to kill another inmate or
another corrections officer because they
think, well, I can sit out 15 days or 30 days
in a SHU. What incentive is there -- I mean,
that needs to be an important disciplinary tool used. If someone is bringing drugs in there and dealing drugs in the prisons, what incentive is there for them to not do it, because I can handle 15 days or I can handle 30 days?

We're taking very important tools away from our corrections officers who do a very dangerous job. And as part of that powder keg environment, I think it's making it dangerous for our corrections officers, it's making it dangerous for other inmates that are in these facilities. I really wish you'd put the brakes on this type of reform, because you're -- or also at least try to provide some other tools and resources, more staffing, better-trained staffing and more resources to them, because they have a tough job. And I don't think sometimes the administration, the Governor, takes that into consideration.

And I think if you talk to some of the corrections officers, I don't feel like they feel like the administration has their backs,
and their morale is down on some of the things that we see in the pipeline. And I really wish we'd take that into consideration.

And remember, these brave men and women who work in those facilities go to work each day in a place where no one wants to know what goes on behind those walls, they just want people to stay there. But they risk their lives each and every day, and we continue to take away resources. And that's why we continue to see these rise in assaults. And they're substantial rises.

And with the prison closures, I think that's led to it, the drug problem. You know, we need to be more aggressive on that front to make sure the men and women who are in our facilities working there are safe. So I would encourage you to please hit the brakes on some of this SHU reform because it's dangerous. Because there's proposals that will be coming through the Legislature that would even -- I think make it even worse. So I hope you take that into
consideration as we move forward.

ACTING COMMISSIONER ANNUCCI:

Assemblyman, let me just say a few things very quickly.

If the Governor's proposal is enacted as is, it's not going to have somebody in SHU for 30 days and back in general confinement. It's going to be something very similar to what we do with the seriously mentally ill. They're going to be transferred to an area where they can still be separated and safely secured. They're going to come out in restraints, they're going to have to earn a sentence. So safety is not going to be compromised in that way.

The other thing I will say is this. I don't know too many sitting governors that would walk through a maximum-security cell block without any advance warning, and he did that at Great Meadow because he wanted to see firsthand what a lockdown was about. And we talked to the superintendent to get the feedback on what we were doing.

He also went to Clinton. He also went
to Greene, to the S block there. And when he was first elected and before he was sworn in, he went to Sing Sing. So he cares about what's going on.

He's also charged me -- and every other corrections commissioner in this country is working on this -- it's staff wellness. Because the stress of the job is taking its toll. And so I've convened a committee of people to work on programs that we can help find constructive ways to reduce the stress.

There's no question working in a tough environment, especially in a maximum-security facility, is very stressful. And I don't want to see people get high blood pressure, turn to alcohol, have their marriages break up, or any of the other normal things. I want to be able to intervene and give them a safe environment and give them practical means by which their life and health can get better. Because they do do a great, great job.

I think we have the most progressive
corrections system in the country. And all
the things that we're able to do with the
thousands of volunteers that come in, all the
program partnerships we have, only work
because of the staff we have.

CHAIRWOMAN KRUEGER: Commissioner, I
have to stop you, but I want to thank you for
that long explanation. And just on behalf of
all the people who are going to be testifying
at 11 o'clock tonight, just because of their
high blood pressure and marital issues and
other things.
(Laughter.)

CHAIRWOMAN KRUEGER: Senator Diane
Savino.

SENATOR SAVINO: Thank you.

I just want to -- Commissioner, first,
good to see you again. And I just want to --
at least we don't have to talk about overtime
and we don't have to talk about the shortage
of nurses. But I do want to follow up on
this issue of inmates and corrections
officers, the levels of assaults going up.

And it's amazing, because in spite of
all of the efforts that you guys have put in -- the training, the deescalation training, the pepper spray training, cameras, body cameras, the Cellsense program -- we're still seeing almost a doubling of assaults.

And I know that you just recently said that you're talking to other commissioners in other states. So is this a problem as well in other places where they've instituted a segregation plan similar to the one that the state has adopted with the New York Civil Liberties Union?

ACTING COMMISSIONER ANNUNZI: I don't see them as connected, Senator.

But I belong to an association. We create surveys, we share information, we get together. I can ask them if they're seeing similar rises.

I can tell you that everybody in general has their own gang issues, right? Whatever part of the country you're in, gangs may be different, but you're always trying to battle, keep them from getting control of things. Every time there's been a lockdown,
almost invariably it was related to one gang
trying to assert control over the phones or
getting too pushy and then getting pushed
back.

So we try and introduce all of the
prosocial things for meaningful involvement
among the population. That's why I have
thousands of volunteers who have the status
of unpaid employees to deliver all these
additional programs. That's why I have
Rehabilitation through the Arts, that's why I
have Puppies Behind Bars, that's why I bring
in an entire symphony orchestra to perform at
a maximum-security facility. All of these
things are helpful in reducing tensions.

But I'll be in touch with my
colleagues across the country to see what
their experience is as well.

SENATOR SAVINO: Perhaps maybe a study
to look at what's best practices in other
states, to see if there's something that
we're not capturing here.

And again, I will say this. You guys
have done an amazing job of training and
putting in technology, but yet and still
we're seeing this result. And the safety and
security of the workforce and the inmates is
of paramount importance when you are the
caretaker of human beings.

So, you know, we want to be helpful
too. I know that in the Governor's Executive
Budget he proposes eliminating a
million-dollar legislative grant that goes
towards facility safety measures. I'm sure
he's going to ask us to buy it back. But I
think that's the kind of stuff we should be
increasing, not decreasing.

And finally on one thing. Because you
have inmates who are also patients, some of
them would qualify under the state's medical
marijuana program for either treatment of an
underlying condition or, if they are addicted
to opioids, we added medical marijuana as a
medical treatment similar to methadone,
Vivitrol, Suboxone, as an alternative during
a medical treatment program.

Has DOCCS started utilizing? Are any
inmates requesting to become patients? Have
you had any interaction with that yet at all?

ACTING COMMISSIONER ANNUCCI: I'm not aware that anybody has asked for that treatment as of yet, Senator. But I have a group working and studying all aspects of the law and how we're going to have to adjust to whatever the final law is that's implemented.

I also understand that in a separate health presentation they'll try and answer all questions related to the cannabis initiative.

SENNATOR SAVINO: But you do have inmates who would qualify as patients under the medical marijuana program because they have a qualifying medical condition. I'm just curious, are any of them utilizing it? And if not, is it because they don't know about it or because they can't afford it, that might be an issue?

ACTING COMMISSIONER ANNUCCI: I'm not aware of them using it, but I know we use other treatment modalities to deal with pain and anything else they might be experiencing.

SENNATOR SAVINO: I'm not sure who in
your administration would be involved in
this, but I would actually like to know, like
to have a conversation with them. It could
be the cost of the medication is prohibitive
for inmates. And if that's the case, maybe
there's something we can do about that.

But thank you.

ACTING COMMISSIONER ANNUCCI: Okay.
I'll follow up on that, Senator.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

They've got some more. You're never
getting out.

ASSEMBLYMAN LENTOL: Assemblymember
Colton.

ASSEMBLYMAN COLTON: Thank you,
Commissioner. There was a couple of
questions that I just wanted to ask in terms
of some statistics.

In the facilities that you have in
New York, do you know approximately how many
deaths have occurred while people have been
in custody?

ACTING COMMISSIONER ANNUCCI: Yeah, I
have that number. I don't remember off the
top of my head.

There's a number of natural deaths
every year. We follow all of obviously that.

Every time there's a death, regardless of
whether it appears to be natural causes or
not, there's a requirement by the county law
that there must be an autopsy. And I know
the State Commission of Correction follows up
on them as well.

So for any death, there's always an
official report that's done, an autopsy and a
report by the State Commission of Correction.
And I get their final reports and review them
as well.

I can get you the number, if you're
looking for calendar year 2018.

ASSEMBLYMAN COLTON: Yes, if you'd
could do that, I would appreciate that.

Also, how many deaths have been

suicide, if there are any?

ACTING COMMISSIONER ANNUCCI: Last

year we had 13. One is one too many. And

it's a serious challenge because of its
unpredictability. You don't know what the final thing is in someone's life that may cause them to decide this is it. It could be the wife saying I can't do this anymore, I want a divorce because you're away; our 13-year-old child got pregnant; whatever the challenges are.

So we are constantly looking at how to get better at trying to spot the factors. My associate commissioner in charge of mental health is always looking at issues, we're working with our Office of Mental Health. We're looking at what other state agencies are doing. We're reinforcing -- it's not just the mental health practitioners, it could be the program rec leader, it could be the chaplain, that someone in trouble might be comfortable talking to.

So we put signs in our visiting rooms for families: If you've had a visit and you've given somebody bad news, let us know in advance.

So we're successful a lot of times at keeping an attempted suicide an attempt
because staff are there to cut somebody down, et cetera. But 13 was the number we had last year. And it's always a tragedy when they occur.

ASSEMBLYMAN COLTON: What was the total number of inmates that are in the system?

ACTING COMMISSIONER ANNUCCI: The population today is 47,152.

ASSEMBLYMAN COLTON: Okay. Also, did any of the deaths occur while confined to a SHU unit?

ACTING COMMISSIONER ANNUCCI: They occur in different areas. Sometimes they've occurred when someone was in what we call a residential crisis treatment cell, an observation cell, then they get -- they think they're cleared and they get released. They could commit suicide there. They could commit suicide in general confinement. I'm sure of the 13, if I go back and look, maybe some number of them were in SHU. It all depends. They're all over the map.

ASSEMBLYMAN COLTON: Okay. So do you
have an estimate of how many might have --
whether they were by suicide or otherwise,
you know, died in a SHU unit?

ACTING COMMISSIONER ANNUCCI:  I don't
remember the number off the top of my head.
But I will get that for you.

ASSEMBLYMAN COLTON:  Okay, thank you.
And when an inmate passes away, is
there a particular protocol by which the
family is notified?  And how quickly, you
know, is that done?

ACTING COMMISSIONER ANNUCCI:  Yeah,
that's -- there's a whole set of protocols in
place.  It's a very difficult job that we do.
We ask our chaplains to be the people that
call up the family and give them the terrible
news, and make sure they're informed as
quickly as possible.

ASSEMBLYMAN COLTON:  I think -- you
know, basically I think that's it.  If you
could get us the statistics in terms of the
number of suicides and also the deaths that
have occurred in the SHU units, that would be
helpful.
ACTING COMMISSIONER ANNUCCI: Sure.

ASSEMBLYMAN COLTON: All right, thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Brian Benjamin.

SENATOR BENJAMIN: Thank you, Madam Chair. Thank you, Mr. Commissioner.

I wanted to talk a little bit about technical parole violations. But before, let me give you a little bit of context. I'm very passionate about us closing Rikers Island, sooner than later. And it's come to my attention that one of the fastest-growing populations on Rikers are those who are there for technical parole violations.

And so I wanted to ask you about the review that your department did, along with the Board of Parole and the Reentry Council, and get a sense from you, was bringing an individual before a judge for a hearing after there was a violation, is that part of the revisions that you're making or that you have made?
ACTING COMMISSIONER ANNUCCI: Well, what we're looking at, which is the guidelines, which is basically kind of like the grid that a sentencing judge would follow -- here, these would be what the ALJs would follow for a particular infraction.

So we're also -- we're looking at a lot of ways to try and streamline the process. I have my counsel looking at different things. The statute sets out a preliminary hearing, a final hearing, is there flexibility there.

We certainly don't want to have people waste away locally. We want them to have the quickest hearing possible. And where possible, we agree there's a lot of dispositions where it's revoke and restore.

The ALJ will say, Okay, what you did was wrong, but we're going to restore you to community supervision but you need to go to a program.

Many of the individuals that are parole violators are absconders. And so that's the challenge, because they've already
absconded from supervision, then we finally
take them into custody, and so now they're
lodged on Rikers Island.

SENATOR BENJAMIN: I'm sorry, I'm
sorry, I should have been more specific. I'm
talking about before you actually take them
to Rikers Island, having a hearing by a judge
before they are taken into custody. That was
the question.

ACTING COMMISSIONER ANNUCCI: That's a
pending legislation that you have?

SENATOR BENJAMIN: That is the pending
legislation that I have, that's right.

ACTING COMMISSIONER ANNUCCI:
Therefore I can't comment.

SENATOR BENJAMIN: You're paying
attention, yes.

CHAIRWOMAN KRUEGER: Thank you.

Assembly?

SENATOR BENJAMIN: I'm sorry. Oh, I'm
sorry --

CHAIRWOMAN KRUEGER: Excuse me.

SENATOR BENJAMIN: I'm sorry. I was
asking you, do you have any reservations
about the pending legislation that I have on
that front?

ACTING COMMISSIONER ANNUCCI: Senator,
I always am mindful of what the bureaucratic
steps would be, the practical considerations,
whatever they would require.

I have the same general goals that you
have. I don't want to needlessly have people
swept up if they don't present a risk and
they can continue to comply with the
conditions of supervision. But I can't weigh
in on what you're contemplating and whether
that would present a lot of bureaucratic
challenges or not.

SENIOR BENJAMIN: Can I ask you this?
The types of violations that you most see,
would you say that those violations, in your
estimation, require custody?

ACTING COMMISSIONER ANNUCCI: Require
confinement?

SENIOR BENJAMIN: Confinement, yes.
I mean -- yeah, I'll leave it at that.

ACTING COMMISSIONER ANNUCCI: I think
we've bought into the graduated sanctions
that -- and it's not a question of even, you
know, what my parole revocation specialist --
the ALJ makes the final decision. They hear
the evidence, the individual is represented
by a lawyer. The people that work for me are
in effect the prosecutors. But the ALJs are
independent, they work for the Board of
Parole, they work for the chairwoman. And so
they're the ones that make the final
decision.

Sometimes we disagree with their
decision. Sometimes we think, look, this
individual has done three or four different
things and they're not getting the message,
and maybe the ALJ will say, well, I'm going
to give them one more chance, we're going to
put them back into the community.

I think it's a complex issue. But I
do think the guidelines going forward are
going to be a big change in who comes back
and how long they come back for.

SENATOR BENJAMIN: One last quick
question. What is the average timeline of
someone in confinement after a technical
parole violation, on average?

ACTING COMMISSIONER ANNUCCI: How long they're held locally?

SENATOR BENJAMIN: How long are they held until they actually --

ACTING COMMISSIONER ANNUCCI: It varies for different regions of the state. And I know that I have the number for New York City, but I don't want to guess wrong. I can get it for you.

SENATOR BENJAMIN: I heard it was in the 77-day range. If you can find out for me --

ACTING COMMISSIONER ANNUCCI: Thirty-something days is about what I'm --

SENATOR BENJAMIN: Thirty something? I heard it was more than that.

ACTING COMMISSIONER ANNUCCI: I think it's either 39, 40, 42 days, something like that --

CHAIRWOMAN KRUEGER: Commissioner, will you agree to get the Senator the answer?

ACTING COMMISSIONER ANNUCCI: Yes, I will. I'll get you that.
CHAIRWOMAN KRUEGER: Thank you.

SENATOR BENJAMIN: Thank you. Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

ASSEMBLYMAN LENTOL: Yes, Assemblymember Barclay.

CHAIRWOMAN KRUEGER: Second round.

ASSEMBLYMAN BARCLAY: Thank you, Chairman.

Commissioner, just hearing your little testimony from before, I just want to follow up on the double-bunking thing.

How do you decide when an inmate -- who's in the double bunks versus a single bed?

ACTING COMMISSIONER ANNUCCI: Basically, it's where the vacancy is. So -- and usually, you know, if you just arrive at a correctional facility and you get assigned to a dorm -- and I have a classification and movement unit that identifies where the vacancies are in the system and whether a particular individual can go to a particular
facility -- if there are no known enemies, what their mental health level is, and what their medical requirements are -- and then they would go to where the vacancies are.

And we can continually move people. You know, somebody that's been in a double bunk for some period of time, if there's a single-cell vacancy, they get moved, and then the double bunk in the back of the dorm can then get filled.

ASSEMBLYMAN BARCLAY: Do the inmates sign a waiver to be on that, essentially?

ACTING COMMISSIONER ANNUCCI: No. No.

ASSEMBLYMAN BARCLAY: They don't have to sign --

ACTING COMMISSIONER ANNUCCI: No. I think you're thinking of what we used to do with double-celling when we had that in effect. Because inmates would go down -- there was a general SCOC ruling that you couldn't be in a double cell for more than 60 days unless you signed a waiver. So some individuals would get closer to home, they'd be in Green Haven, they'd sign the waiver --
because you'd have to agree to stay longer
than 60 days to ultimately end up in a vacant
cell, single cell in Green Haven. So that
was a rule from a long time ago. But since
we've taken down all those double cells, it's
no longer applicable.

ASSEMBLYMAN BARCLAY: Okay, thank you.
Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Betty Little.

SENATOR LITTLE: Thank you. Thank
you, Commissioner.

So a couple of quick questions in
regard to some of the facilities, the nine
facilities I have. In Adirondack, I
understand that you're pretty close or maybe
you've started inmates getting there.

ACTING COMMISSIONER ANNUCCI: Oh, yes.
It's up and running, yes.

SENATOR LITTLE: Right. And that's
really going to be a very effective facility,
my understanding of it is. So I'd like to
visit that soon.

ACTING COMMISSIONER ANNUCCI: Yes.
SENATOR LITTLE: The second one is Moriah Shock. You know -- and I know Shock is something very important to you, since you authored the whole program in the beginning.

In the budget I understand you have some increases in eligibility. Could you explain that so people could understand that, and our chances?

ACTING COMMISSIONER ANNUCCI: The budget proposes allowing a judge to issue a court-ordered enrollment order for someone who is convicted either of robbery in the second degree, in the particular subdivision where you are aided by another actually present, as opposed to the weapon or causing physical injury. So for that cohort, as well as for burglary in the second degree, where you enter a building unlawfully with the intent to commit a crime but the building is a dwelling.

So for example, there are so many low-level individuals that commit those crimes, technically it's a violent felony offense, technically you're not eligible
under current law. But we're creating the
opportunity for the judge to issue a Shock
enrollment order because it simply could be
two kids that said, Give me your, you know,
candy bar, or whatever, and that's robbery in
the second degree. It could be somebody sees
the cellar door open, goes in and grabs, you
know, a pair of roller skates, and they're
still convicted of a serious crime.

But the Shock program, which we
strongly believe in, and we're very enamored
of Moriah in particular -- it wasn't that
long ago I went to a graduation. And if
there is a single facility where everybody's
so together, they are so married to the
program and they want everybody to be
successful. And if you ever go to a
graduation --

SENATOR LITTLE: I have.

ACTING COMMISSIONER ANNUCCI: -- and
you see the platoons come out --

SENATOR LITTLE: I have.

ACTING COMMISSIONER ANNUCCI: -- it's
like, you know, Parris Island for the Marine
And then you see in the education buildings all the artwork that they've done, to draw pictures of historical figures in civil rights movements. So they really -- it's a great, great program. It was even featured on German television.

I strongly support -- and if this law is enacted, I'll work with OCA to make sure all the judges know about this, and I'll also ensure that our district attorneys throughout the state know of this option as well.

SENATOR LITTLE: Thank you. Because we know we have more capacity at Moriah, and we would really like to see it filled. I don't know if not having a fence makes a difference, but I said if so, I'll say build a fence.

But the other thing is I just read that Vermont was sending inmates and contracting with prisons in Pennsylvania. And, you know, if we have capacity in a place like Moriah, right on the Vermont border -- other than Lake Champlain -- would that ever
be something that we would look at?

ACTING COMMISSIONER ANNUCCI: I've not been approached by the commissioner of Vermont about that possibility. I'm not sure which kind of individuals they're looking to -- I believe -- I'd have to double-check with my counsel -- it might be legally possible.

And certainly if it's legally possible and it makes fiscal sense, we'd consider it, I guess. But with a lot of caveats.

SENATOR LITTLE: If it's an idea worth pursuing, maybe we could make it legislatively, legally possible as well.

But thank you for all you do there and throughout the system. And it certainly has a lot of stress and a lot of complications, but I appreciate all the work you do. And thank you for appreciating Moriah Shock as much as I do.

ACTING COMMISSIONER ANNUCCI: Thank you for your friendship to me and to this department, Senator. I appreciate it.

SENATOR LITTLE: Thank you.
CHAIRWOMAN KRUEGER: Thank you.

Assembly for the last, and then one more in the Senate.

ASSEMBLYMAN LENTOL: Assemblymember Fahy.

ASSEMBLYWOMAN FAHY: Thank you. Thank you, Mr. Chair.

And welcome, Commissioner, it's a pleasure to have you here today.

I want to start by saying just a thanks in general to you and your office and to Mr. Kelly. Every time I have to -- I don't say this to every agency that comes before us, but yours has been one of the most responsive, even if you can't always give us the answer we're looking for. But often we are dealing with very emotional issues and families involved in care for their loved ones who may be incarcerated, and your agency has been tremendously responsive.

I also just want to say that I appreciate your implementation and aggressiveness in trying to work with the Raise the Age legislation that was so
important to many of us up here in the Legislature, along with the changes on the SHU, the single housing units.

I still share some of the concerns that were mentioned about assaults, assaults on workers, so I just want to echo some of those comments.

And then I have two questions. One, I appreciated your comments about the opioids and really some of the newer programs that you have, including the MAT program, in a number of your facilities. But I just wondered, is there more that we can be doing? Especially because I've heard a number of concerns raised about the after-care, that as inmates are released that we are seeing overdoses within those first few weeks.

And is there more that we can do to make sure that we are transitioning those who may have drug addictions and problems with after-care to make sure that they're getting the right treatment as they exit?

ACTING COMMISSIONER ANNUCCI: Well,
in connection with the Narcan program. It's part of what we call Phase 3 of transitional services, preparing individuals for release. We not only teach them how to use a Narcan kit, we teach them about the risks that are out there should somebody use again. So we drill that message into them as part of Phase 3. And when they also report the first time, if they're going out on supervision, to their parole officer.

Let me say we are also in constant contact with our partners at OASAS, and they've been fantastic at helping us get our feet wet and now expanding our program. So anything that they can tell us or point us to -- certainly there are individuals who will continue to require drug treatment in the program, so we connect them to drug treatment programs when that's established as a condition of their supervision.

But we'll get further guidance from OASAS if there's other things that we should be looking at, because we agree there is a release -- there is a risk when somebody is
released. But our initiative now with those
on MAT that are coming back as technical
parole violators, the short-sentenced
individuals from Elmira and the additional
facilities that we're going to expand to, and
taking in others from the counties, will
create in effect a continuous loop of MAT.
We're looking for that to be a helpful, big
recurring initiative.

ASSEMBLYWOMAN FAHY: Thank you,
Commissioner. I look forward to hearing more
on that as we continue to tackle this
horrific drug crisis, opioid crisis in this
state.

Last question. The Parole Board, I
understand that there are still a number of
vacancies. I'm told there are seven
vacancies still. Can you give us any update
on that and the timeliness of these -- I
understand that that does hinder the
timeliness of having parole meetings and
hearings. Can you tell us where we are with
the vacancies and give us any update on that?

ACTING COMMISSIONER ANNUCCI: No,
unfortunately I can't, Assemblywoman. The Board of Parole is independent, and the decision when and whether to fill additional vacancies is with the Chamber. So I don't control any of that.

But I appreciate and I'll certainly relay your concerns and everyone else who has raised that concern.

ASSEMBLYWOMAN FAHY: Okay. Thank you again, Commissioner. I appreciate your work very much, so thank you.

Thank you, Mr. Chair.

CHAIRWOMAN KRUEGER: Thank you, Commissioner. I think we've actually run out of people to ask you questions. Appreciate very much your being here today.

I should be careful -- don't come into the audience now and say "I want to ask questions."

I do appreciate your time and the work you do for the state. Thank you very much.

ASSEMBLYMAN LENTOL: Thank you.

ACTING COMMISSIONER ANNUCCI: Thank you very much, Senator and Assemblyman.
CHAIRWOMAN KRUEGER: And we will next have the New York State Division of State Police, Chris Fiore, deputy superintendent.

And just to keep people on track, and then we will have the New York State Office of Indigent Legal Services and the New York State Office of Information Technology Services.

Good afternoon.

DEP. SUPT. FIORE: Good afternoon.

ASSEMBLYMAN LENTOL: Good afternoon.

CHAIRWOMAN KRUEGER: I have no idea what time we told you, but we lied.

(Laughter; comments off the record.)

DEP. SUPT. FIORE: Thank you, Chair Krueger, and distinguished members of the joint committee, for the opportunity to discuss Governor Cuomo's Executive Budget for the Division of State Police. I am Chris Fiore, deputy superintendent of administration. I have served as a Trooper for more than 29 years, and my prior assignment was first deputy superintendent.
I would also like to take this opportunity to thank the Legislature for recognizing our agency's critical mission, for your ongoing support of the New York State Police. Your unwavering support enables the State Police to continue to be one of the leading law enforcement agencies in the nation.

For more than a century, the State Police has consistently provided professional public service through its core missions, while adapting our priorities for evolving societal needs. We strive for continuous improvement in every aspect of our public service.

Our mission priorities remain improving highway safety, providing professional police services and investigative support, preparing for and responding to emergencies and disasters, and detecting and preventing terrorism.

The Governor and the State Police recognize the dynamic nature of terrorism around the world and the persistent threats
within New York State. Our ever-increasing role in the state's counterterrorism efforts help provide a wide range of counterterrorism initiatives and capabilities, enabling New York to remain one of the safest states in the country.

Nonetheless, New York City remains the number-one terrorist target in the world. Our increased presence in New York City, particularly as it relates to mass transportation hubs and bridge and tunnel crossings, has enhanced efforts to detect and deter terrorism, as well as to build and maintain the capability to respond to a terrorist attack.

This mission has enhanced the counterterrorism efforts of our agency as well as those of our partner agencies in the metropolitan area. Our highest priority continues to be the safety of the public and our Troopers who protect them. Toward that end, the Executive Budget provides our Troopers with the necessary equipment, training and other valuable resources to
achieve the best levels of safety in the performance of their duties.

During the past year, with your support, we outfitted our members with new Glock firearms and associated equipment, including weapon-mounted lights and new patrol rifles and Tasers, as well as the necessary equipment for our Special Operations Response Team, our K-9 Unit, our Bomb Disposal Unit, and the Underwater Recovery Team.

In 2019, we will conduct two Academy classes to meet the current and future needs of the State Police. These new Troopers will allow the agency to perform our mission priorities while ensuring the professional law enforcement response that New Yorkers deserve. The State Police is unique as the only law enforcement agency within New York State with the ability to deploy large numbers of professionally trained police officers anywhere within the state and beyond, on short notice, in response to emergencies or natural disasters.
In addition to our traditional investigative law enforcement responses, we continue our partnership with the Division of Homeland Security and Emergency Services' Office of Emergency Management, to enhance disaster preparedness and response readiness. This partnership has enabled the State Police to better coordinate with state agencies and provide support to local communities following significant events.

Illegal drug use and its impact plague our nation and the citizens of New York. The availability of heroin, opioids and synthetic drugs such as Fentanyl, along with the toll they inflict upon the abuser and their families, remain a critical public safety issue. Building on the resources and training provided over the past few years, the State Police will aggressively investigate drug-related offenses, particularly criminal trafficking, and assist local police agencies with their investigations whenever requested.

Gang activity and related violence
also remains a critical public safety concern. The State Police remain committed to disrupting gang activity, particularly the violent crime associated with the MS-13 gang. Our members remain actively engaged with local police partners on Long Island to combat MS-13 and counter its scourge on our neighborhoods. Across the state, our Troopers and Investigators also continue their partnership with large counties and cities through the gun-involved violence elimination initiative, also known as GIVE.

Lastly, New Yorkers expect effective public service from a stable, professional and adequately resourced State Police. I am proud to say New Yorkers can be confident their expectations are being met. It is the integrity, knowledge, dedication and quality of our men and women that distinguishes the New York State Police. I am honored and privileged to be a part of this agency as we move forward in our second century of service to the public and this great state.

Thank you for your support of the
State Police and the opportunity to address you this afternoon. I welcome any questions that you may have.

CHAIRWOMAN WEINSTEIN: Thank you.

We're going to go to Senator Kaminsky.

SENATOR KAMINSKY: Thank you, Chairwoman.

Good afternoon, Deputy Superintendent.

Thanks for all your hard work and the work of the men and women who sacrifice for us every day.

My concern is about the effects of drug legalization, especially marijuana legalization, on road safety. And I'm wondering if you could tell me whether there are any resources that are in this budget that will help prepare us for the necessary manpower and technology resources that will come with people being able to have to detect people who are driving high on our roads should legalization come to pass.

DEP. SUPT. FIORE: Thank you for that question.

First I'd like to say that the
Division of State Police did have input into the Department of Health's report, as well as the proposed legislation.

New York State has been a national leader in traffic safety for a long time. We are one of the safest states in the country in terms of traffic safety. And naturally that is a major concern for us, as traffic safety is one of our agency's highest priorities. We're very proud of the involvement that we've had in making our roadways so safe in New York State.

To that end, one of the concerns that we do have is possible increases in impaired driving. Other states have experienced that. But we feel that we're prepared to address it. The budget I believe has the resources to help us finance programs such as our Drug Recognition Expert Program, where we're going to require additional drug recognition experts who --

SENATOR KAMINSKY: So this budget has money to add more DREs than currently --

DEP. SUPT. FIORE: I believe that will
be addressed in this budget, yes.

SENATOR KAMINSKY: Okay. Do you know where that is? Because I've been looking for it.

DEP. SUPT. FIORE: I can't say specifically, no.

SENATOR KAMINSKY: And how many DREs are currently working throughout our state?

DEP. SUPT. FIORE: I don't have a solid number. I believe we have about 70 at this time. But I can get you an exact number.

SENATOR KAMINSKY: Okay. And how many do you think will be necessary if legal sales come to pass in our state?

DEP. SUPT. FIORE: We would like to increase that number significantly.

SENATOR KAMINSKY: Do you have a ballpark? Do you have what that might be?

DEP. SUPT. FIORE: At least by 50 percent, or even a hundred.

SENATOR KAMINSKY: Okay. And you would agree that would be millions of dollars in training and backfilling local departments
who have to make up demand, power, et cetera?

DEP. SUPT. FIORE: I can't really give you a figure on the costs on that.

SENATOR KAMINSKY: Okay. What about the technology to detect roadside driving? Where is your department on the use of oral fluid tests, Breathalyzers for marijuana? Have you field-tested it or have any idea of whether you're going to be requesting such technology be introduced into your law enforcement toolkit?

DEP. SUPT. FIORE: You know, as far as I know, there is not an equivalent instrument to measure the level of intoxication with marijuana as there is with, say, breath-testing instruments for alcohol. Which again leads to the need for the drug recognition experts. Because you can recognize the effects of impairment and, you know, our troopers and police officers are trained to be able to do that. So, you know, the DRE is a critical component of that enforcement strategy.

SENATOR KAMINSKY: Sure. You know,
there are other states and localities here
that are field-testing oral fluid tests,
companies are trying to market their cannabis
Breathalyzer-type machines. So I would
really urge the department to look into that
and see how fast it could be implemented and
how sound the technology is, in your
estimation, to be used on a routine basis.

DEP. SUPT. FIORE: Can you repeat that
question?

SENATOR KAMINSKY: I guess it's not a
question. I'm just -- there are other states
that are experimenting with oral fluid tests
or other technology to assist officers at the
roadside. I would just ask that you look
into that, because they're critical tools
that at some point will become the norm. And
the sooner they're there, the more people
will be able to detect driving under the
influence.

DEP. SUPT. FIORE: Yeah, I agree with
that.

SENATOR KAMINSKY: Okay. I will just
end with the following statement.
I am extremely concerned that our state is on the one hand getting ready to take the revenue and sell legal marijuana -- and there are very compelling reasons for that that we're all talking about. I do think our state is far from ready when it comes to road safety.

And I come from Long Island, which has two counties that have the highest DWI fatality rates in the state.

I think the need for drug recognition experts, for technology, for lab technology is woefully underfunded, not addressed adequately in this budget. And in the next few weeks I really hope we can get down to brass tacks and address that to make sure that when we consider legalization we're considering road safety at the same time.

CHAIRWOMAN WEINSTEIN: Thank you, Senator.

I have a question. Were you here when I asked Mike Green about the ammunition database?

DEP. SUPT. FIORE: Yes, I was.
CHAIRWOMAN WEINSTEIN: Okay. So I wonder if you could help answer that question, then. To sort of paraphrase the question, as part of the SAFE Act the requirement for an ammunition database was put on hold following that enactment. And I was hoping we can get an update. The Governor's counsel today is reported in a news story saying that there's some work going on to get to that, so I'd like an update of where we are.

DEP. SUPT. FIORE: Well, I would just start by saying that, you know, at this time there still has not been a solution, a technological solution presented that would fulfill the requirements of that database. What I will say is that, you know, we meet regularly with our partner agency, ITS, and it's a high priority for both agencies. But there are -- and I'm not an IT person, so I can't really speak to the technological hurdles to it, other than that it's proven to be a daunting problem. And I think the issues, if I understand them correctly, are
it's connectivity issues, it's the size of the state, the remoteness of some of the locations, the sheer number of sellers and retailers of ammunition. And some of them are very small retailers, which prohibits some of the ideas of the technology. It can't be too prohibitively expensive that they wouldn't be able to afford it.

So I think those are some of the issues that go into it. So as I said, I can't say that we have a solution, but I can say that it is being discussed and it is a priority.

CHAIRWOMAN WEINSTEIN: So it's being discussed now more than it was when it was technically on hold?

DEP. SUPT. FIORE: We meet regularly with ITS and -- addressing any of our technology projects on a routine basis. And this is one of the projects in the portfolio. And it's -- again, it's being discussed and -- but I don't -- at this point we still have not been presented with that option.

CHAIRWOMAN WEINSTEIN: Okay. So maybe
we'll try and get a clarification. Because it's not a direct quote, but as was reported earlier today by Nick Reisman, that after we passed some gun -- some of the additional gun legislation, gun control legislation in both houses, it says that Alphonso David indicated on Tuesday the state was moving forward with developing the technology for the database.

So what you're saying is you're still looking to see if we can get technology, developing technology is maybe a step further down the road?

DEP. SUPT. FIORE: Again, I'm not the technology developer so it's hard for me to answer that question.

CHAIRWOMAN WEINSTEIN: They'll be here soon.

DEP. SUPT. FIORE: But like I said, we -- it is a priority for us.

CHAIRWOMAN WEINSTEIN: Okay. And to shift gears, could you provide an update on the State Police efforts to eliminate the backlog of sexual offense evidence kits that are pending in the state?
DEP. SUPT. FIORE: So the -- that legislation required two things. We're -- being a law enforcement agency and also having a crime lab, we were required to ensure that our submissions on the law enforcement side were timely, according to the legislation, and on the crime lab end of it that they were processed quickly.

The -- what we saw -- we expected a 100 percent increase in the amount of submissions to the lab when this legislation was passed. What we saw was quite a bit higher -- I believe it was upwards of 160 percent. So the result was, you know, a lot more work than originally anticipated.

But we had been preparing for it. We have -- at this point we've hired 30 new scientists. We've freed up some lab space in the lab. We've moved some units out of the lab to allow room for them to work. The issue with scientists is the selection process -- hiring and training is a lengthy process, to get them up to speed where they're trained and able to function, testify
in court and those types of things.

I believe by the end of the summer all
of those 30 technicians will be -- I mean,
most of them are already trained and
operational. So I feel like we have a pretty
good handle on this at this point.

CHAIRWOMAN WEINSTEIN: And it may be
too early to tell, but do you have a -- how
long do you anticipate it would take before
the backlog is eliminated?

DEP. SUPT. FIORE: You know, I really
can't speak to that at this point. I just
know that we're doing everything we can.

Actually, I failed to mention one of
the other initiatives taken by the people at
the Forensic Investigation Center, they
actually developed a process that allowed us
to process these kits more efficiently and
quickly too. So progress is being made.

CHAIRWOMAN WEINSTEIN: Good. That's
good to hear.

Now we're going to move on to the
Senate. Senator Savino.

SENATOR SAVINO: Thank you,
Assemblywoman.

Superintendent, I want to go back to the discussion that Senator Kaminsky had with you about the likely development of the legalization of marijuana for adult use and the concerns raised about traffic and DUIs, et cetera.

So I know that there are people who actually think that nobody smokes marijuana in New York State right now, but we know they do. And so walk me through, what does a -- how do you handle someone who is driving now and you suspect that they are driving under the influence of marijuana? What steps does an officer take?

DEP. SUPT. FIORE: So on a -- just to explain how a traffic stop like that would work. So a trooper or a police officer observes a vehicle operating with some signs of impairment, whether they're having a hard time staying in the lane -- there's something that leads them to believe that the person may be impaired. Stops the vehicle, speaks with the driver. What generally happens with
an impaired stop is that there ends up being no actual alcohol or a very low amount of alcohol in the system. Since the person is still exhibiting signs of impairment and it's clearly not alcohol, that gives us reasonable suspicion to believe or probable cause to believe that this person is impaired by some other substance.

At that point, we would bring a drug recognition expert to put the person through tests. And they're trained to actually not only document and determine that they are in fact impaired on the substance, but they can also -- they have the ability to figure out which type of substance is most likely causing the impairment. And then subsequently, it's followed up with a chemical test.

SENATOR SAVINO: So not to cut you off -- see, I already knew the answer to that question. What I was trying to have you illustrate to people is that there's already a process in place for how to deal with this.

The fact remains that there is no hard
and fast test, the way we have with the BAC test, to determine when a person used marijuana. It could be in their system, but as we know, it could be up to 30 days. There are federal researchers that have grants from the federal government to study this; they can't come up with it yet. But 10 other states have legalized marijuana for adult use, and their police departments -- I've visited most of them -- their police departments have had to figure out how do we increase the drug recognition experts, how many more do we need, how do we protect public safety.

And so the question I have -- I have two questions. One, have you or anyone on your team had the opportunity to visit those states or interact with those police departments there to see what their experience is and see how we can implement it here?

And the second question is, what is the cost of a drug recognition expert? How much does it cost to train them? What's the
training that goes into it? And how many do
you think we would need if we were to operate
this?

That's two questions, and a third one.

Since we have medical marijuana in place and
we've had it now operational for minimally
three years, we now have 90,000 patients in
New York State who use medical marijuana. To
your knowledge, have any of them been cited
for impaired driving as a result of the use
of their medication?

DEP. SUPT. FIORE: That's a lot of
questions.

SENATOR SAVINO: I know.

DEP. SUPT. FIORE: So let's start with
the first one. I can say that we have in
fact been in contact with agencies in other
states, and they have seen an increase in the
number of impaired drivers that they're
encountering. That has happened.

As far as training a drug recognition
expert, I don't have that information in
front of me, how much it costs. What I can
say is it's an involved training process
because it's not just teaching somebody out of a book how to do this, they have to do trials with people that are actually under the influence. And, you know, that can only be done in a controlled environment in certain places. Often we have to send people to facilities out of state to be able to do that.

So that there's -- you know, there is an expense to that. I couldn't -- sitting here, I can't give you a figure on that.

But -- I'm trying to think of the next question.

SENATOR SAVINO: How many do you think we would need? And finally, have any medical marijuana patients been cited for impaired driving?

DEP. SUPT. FIORE: As I said earlier, you know, I think we -- we're looking at at least 50 to maybe double, 50 percent more to double that number that we currently have.

And your third question?

SENATOR SAVINO: The medical marijuana users, have they exhibited any instances of
driving while ability impaired or under the
influence of their legal medication?

DEP. SUPT. FIORE: Honestly, I don't
have an answer to that. But I can find that
out for you if you'd like.

SENATOR SAVINO: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Thank you, Senator.

CHAIRWOMAN WEINSTEIN: Assemblyman
Lentol.

ASSEMBLYMAN LENTOL: Yes, thank you,
Madam Chair.

So I want to follow up on
Assemblywoman Weinstein's inquiry and just
change it a little bit. Because last year we
enacted a law that allows law enforcement to
remove firearms from people charged with
domestic violence offenses, and the courts to
revoke or suspend their firearms license.

And the information is then reported
to the State Police and DCJS, presumably for
inclusion in the statewide license and record
database established in the same SAFE Act
that she spoke about.
However, it's my understanding that this license and the record database, like the ammunition sales database, is still not operational -- and, in the case of the ammunition, five years after it was established in law. Is this true?

DEP. SUPT. FIORE: The database currently has -- we have, I believe, over 360,000 records in the pistol permit -- in our database at the State Police.

When the -- for recertifications, we send out approximately 415,000 mailings. And this is from the universe of pistol permit owners that we believe to be in existence. This came from our own records and from the local licensing authority records. We came up with approximately 415,000 records.

The problem with this is these were mostly paper records. You know, some of them could be very old. We really don't know how many of those were actually legitimately pistol permit holders. So -- which is really one of the intents of the act, was to get a handle on and get a good database on who
actually owns a pistol in this state, or a firearm.

So from that we've put over 360,000 records into the system. It takes some time to actually process those records, but they are available. The system is running, and those records are in there. I mean, you know, there's some quality control processes that we have to perform on those records because, as I said, some of these were very old and they were kept in a variety of different ways. But we do have an operational database of 360,000 records.

ASSEMBLYMAN LENTOL: So do we know whether or not anyone who might have been convicted of domestic violence had their weapon taken from them as a result of the passage of the act and the database up and running?

DEP. SUPT. FIORE: I'm not exactly sure I understand your question.

In the case of where there's an order to take away somebody's firearms, that generally goes to the licensing authority,
which is usually at a county level. And then a police department -- it could be the New York State Police, it could be the county sheriff's office -- is directed to seize the weapons.

ASSEMBLYMAN LENTOL: I guess I -- if I'm not mistaken -- it wasn't my bill, so -- but if I'm not mistaken, I think this was a measure that was not only initiated by us in the Assembly, but also by the Governor, because that system wasn't working and there were a lot of people who were convicted of domestic violence who had permits and continued to be a threat or a possible threat to their domestic partner.

And we enacted this process in order to get the weapons away from them so at least the domestic partner wouldn't have been shot with that. And that's what I'm talking about.

And so the actual bill was to be reported to the -- required that the information be reported, it's my understanding, to the State Police and DCJS,
presumably for inclusion in the statewide license and record database.

DEP. SUPT. FIORE: Right. I mean, again, if -- it sounds to me that that would -- if we're talking about a domestic violence incident where a judge has ordered the weapons taken away from the pistol permit owner, that would be done at the local level. And the licensing authority, we would get the information and then put that into our database.

ASSEMBLYMAN LENTOL: So do you know if the state database is up and running to record the conviction?

DEP. SUPT. FIORE: Well, as I said, the database is operational and has over 350,000 records in it.

ASSEMBLYMAN LENTOL: This -- it just seems like a very important thing that I ask that you look into, because we don't want the worst thing to happen.

DEP. SUPT. FIORE: And I will. I will check into it.

CHAIRWOMAN KRUEGER: Thank you.
Senator Jamaal Bailey.

SENATOR BAILEY: Thank you, Madam Chair.

Just a very brief question. Thank you for testifying today.

I know it's very early to comment on the effects of the legislation that was just passed today by Senator Shelley Mayer about the gun buyback, permitting the State Police to promulgate those statewide. But I was just wondering what was your current experience with gun buyback programs, if any, at the State Police level.

DEP. SUPT. FIORE: To date, the State Police has not been engaged in any gun buyback programs.

SENATOR BAILEY: Okay.

DEP. SUPT. FIORE: And I wasn't -- thank you for making me aware that this law was passed today, because I've been sitting in the back here.

SENATOR BAILEY: Well, I like to break news, you know.

(Laughter.)
SENATOR BAILEY: No, but I didn't want to ask you to comment on it because, again, it was just passed today. It hasn't been chaptered by the Governor, so it is a little premature to speak about it being a law.

DEP. SUPT. FIORE: Okay.

SENATOR BAILEY: But I just -- in context with that, I just wanted to ask you about the gun buybacks, and you've answered my question sufficiently.

And Madam Chair, I don't have anything else.

CHAIRWOMAN KRUEGER: Thank you.

I believe Assemblymember Barclay is last on the Assembly list.

ASSEMBLYMAN BARCLAY: Thank you.

And thank you for your testimony. I have just one question.

My colleagues in the past have tried to get information about how much money the troopers are spending on the SAFE Act, SAFE Act enforcement, how many full-time employees are dedicated to the enforcement of the SAFE Act. Can you provide any light to
the question how much money we're spending on that?

DEP. SUPT. FIORE: You know, I think the -- as far as enforcement of the provisions of the SAFE Act, if we're talking about the law enforcement, the troopers and investigators out in the field that would enforce any of those types of provisions, those are our existing troopers.

Where we have additional positions is in our headquarters in our records section or our pistol permit section.

ASSEMBLYMAN BARCLAY: Correct.

DEP. SUPT. FIORE: And unfortunately, I did not bring those records with me.

But I can tell you how many people that -- how much of our staff is involved in that. I mean, we had an existing pistol permit section with an existing command structure. We had to add mostly non-sworn civilian personnel for mostly clerical positions to --

ASSEMBLYMAN BARCLAY: That would be terrific, if I could find out how many
full-time employees and how much money is
dedicated to those -- I don't need
individuals. But, you know, the aggregate
amount that we spend on that, that would be
very helpful.

Thank you.

CHAIRWOMAN KRUEGER: And to close,
Senator Antonacci. And the Assembly -- oh,
I'm so sorry.

Excuse me. Excuse me. It was Senator
Seward first, then Senator Antonacci.

And the Assembly didn't go on strike,
they got called into a debate. I don't know
whether you want to join them or not.

ASSEMBLYMAN BARCLAY: No, I don't want
to be there. I'm happy to represent the
Assembly --

(Laughter.)

ASSEMBLYMAN BARCLAY: I'm sure they're
happy with my representation.

(Laughter.)

CHAIRWOMAN KRUEGER: Okay, sorry.

We're going to go back to Senator
Antonacci first.
SENATOR ANTONACCI: Oh, thank you.

Thank you, Deputy Superintendent. I represent a district that houses the New York State Fair, and we enjoy having the men and women or the troopers as temporary citizens of Onondaga County. They do a great job. And please let them know we appreciate their work. Couldn't pull it off without them.

My question is this. Do the state troopers have a formal opinion on the marijuana law? Have they advocated for it or done anything in like a memorandum of support?

DEP. SUPT. FIORE: Well, thank you for your kind words about the troopers. I appreciate that.

As I said earlier, we did have input in the Department of Health report and the proposed legislation. It's inappropriate for me to comment on pending legislation.

SENATOR ANTONACCI: Thank you. Do you know of any legitimate law enforcement agency that has advocated or supported the legalization of commercial or recreational
marijuana?

DEP. SUPT. FIORE: I can't answer that question.

SENATOR ANTONACCI: Will this have an adverse affect on the K-9 unit? I'm a big fan of the K-9s. As a former comptroller, I loved our sheriff's program. Will this retire K-9s earlier if the marijuana law is passed?

DEP. SUPT. FIORE: You know, this is one of the issues that we've discussed with other states. The -- at this point I couldn't say either way.

You know, as to whether or not our K-9s may need to be retrained, it's kind of premature to -- until we see how this is operationalized, to really know that.

SENATOR ANTONACCI: Okay, thank you. Today the Senate passed a gun buyback law. Was the State Police consulted on this gun buyback law, proposal, by any members of the Senate, or anybody in the executive branch consulted on this gun buyback program?

DEP. SUPT. FIORE: I can't say that I
was personally consulted. But we do -- you
know, as an agency we are typically consulted
on this type of legislation or proposal.

SENATOR ANTONACCI: Has the State

Police ever conducted a gun buyback program

before?

DEP. SUPT. FIORE: We have not.

SENATOR ANTONACCI: I think that's it.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Seward to close.

SENATOR SEWARD: Thank you, Deputy

Superintendent.

You know, I come from the Cooperstown

area, where the Baseball Hall of Fame is

located. And following up on Senator

Antonacci's comments in terms of the State

Fair, the big event in my rural area is the

Baseball Hall of Fame induction weekend. And

there's always a heavy State Police presence

there, and we appreciate that.

But I wanted to zero in on the

State Police presence in the City of

New York. As you know, the 2018 enacted
budget provided for an additional 150 State Police officers to be in New York City. What capacity do these troopers serve in the City of New York?

DEP. SUPT. FIORE: So the -- you know, for many years we've had a Troop New York City. It was made up of exclusively investigators, BCI members. Going back -- and, you know, as you said, we have deployed uniformed members in New York City. Our current authorized strength I believe is 207 uniform.

Their assignments, what they're assigned to do down there, are exclusively patrolling state-owned facilities. So the nine Metropolitan Transit Authority bridges and tunnels, the -- we have troopers assigned to the two airports, John F. Kennedy and LaGuardia Airport. We have troopers on the train platforms at Penn Station and Grand Central and the 9/11 Memorial. So, you know, these facilities are actually patrolled by state-level law enforcement, and we supplement those patrols.
You know, they perform a variety of functions. But, you know, New York City being the number-one terrorism target in the country, one of the main functions they serve down there is to help with the counterterrorism effort in New York City.

SENATOR SEWARD: As a follow-up, does the State Police use any metrics to measure the presence of troopers in the City of New York is a worthy expenditure? I mean, is there -- what was -- prior to 2018 were these state facilities guarded by other agencies?

DEP. SUPT. FIORE: What I can say is they are doing excellent work down there. The troopers assigned down there are representing the agency extremely well. They're active in enforcement, both in highway safety and getting drivers off the road that are either suspended or -- sometimes, you know, they're making criminal arrests as well on -- encountering people that are wanted or committing crimes in the areas that they are patrolling.

So I feel they're doing an outstanding
job down there.

SENATOR SEWARD: As another follow-up, for the last couple of years the National Guard has been spending approximately $50 million a year to provide the counterterrorism in bridge and tunnel security in the city as well. There is not a new $50 million item in the proposed budget for next year. Do you feel that there's going to be any increased pressure on the State Police to fill this void?

DEP. SUPT. FIORE: You're speaking about an appropriation for the Guard, is that --

SENATOR SEWARD: Right. If there's no appropriation for the Guard, will you feel pressure for the State Police to fill the void in terms of what the National Guard members are doing in the city?

DEP. SUPT. FIORE: Well, again, the National Guard, they also do a phenomenal job, but they are not police officers. So there really isn't a crossover for what we're doing and what the Guard is doing. So I
don't see why there would be an impact.

SENATOR SEWARD: I just wanted to just get your reaction to this. The reason I'm asking questions about the New York City presence of the State Police is I'm coming from a rural upstate area. Are you able to assure my constituents that even though these additional resources are going to the State Police to have a heavier presence in the City of New York, that the rural parts of our state are not being shortchanged in terms of the number of State Police officers in some of these counties that -- sometimes n the middle of the night it's one car for a whole county.

DEP. SUPT. FIORE: What I'll say on that is, you know, it's my understanding from the former superintendent that the Governor made a commitment to him that any troopers that were assigned to New York City were not going to come at the expense of upstate.

We're -- we actually have a class of 250 recruits that just started in January, on January 14th. Two hundred fifty is the
maximum class that we can put in our academy.
So that's really as good as it gets.

What we have experienced over the last several years is an unusually high rate of attrition. This wasn't unexpected. Our attrition rate is generally around 195 to 197 a year. Over the five-year average, it's been closer to about 225. And if you go back to just the start of this fiscal year, the first nine months, and project it out to what it will be in 12 months, if that continues, we're up around 275 this year. Which is a lot of attrition.

You know, there's a variety of reasons, the main reason being we had a real upsurge in hiring in the middle to late '80s. Those troopers are reaching 32 years of service, and 32 years is when we max out on our retirement. Plus many troopers reached a retirement age at that point.

Combine that with the younger troopers seem to be retiring younger. We're seeing more troopers retiring with 20 years or -- you know, between 20, 23 years of service.
So in answer to your question, the troopers in New York City are not at the expense of upstate, but we still need more troopers. And we're doing -- like I said, with a class of 250, that's as good as it gets. And hopefully we'll continue that. We're expecting two classes this year.

SENATOR SEWARD: Thank you for your response.

CHAIRWOMAN KRUEGER: And thank you for your testimony and your service. And we're letting you go for this evening. Thank you.

DEP. SUPT. FIORE: Thank you.

CHAIRWOMAN KRUEGER: Appreciate it.

All right, next up to testify is William Leahy of the New York State Office of Indigent Legal Services, soon to be followed by the chief information officer for the Office of Information Technology Services, Robert Samson.

And for getting ready, these last two testifiers will end the representatives of state government, and then I'll be explaining a slightly different process for the
remainder of the people here today.

So welcome.

DIRECTOR LEAHY: Thank you, Chair Krueger, and congratulations on your position.

CHAIRWOMAN KRUEGER: Please summarize your testimony, don't read it. Thank you.

DIRECTOR LEAHY: I guess I should say Chair Krueger and members of the Senate.

(Laughter.)

DIRECTOR LEAHY: So it's a pleasure to be here and to report some very good news to you and also to seek your assistance on aspects of the budget.

As many if not most of you know, our agency was created to try to improve the quality of mandated legal representation throughout the State of New York. We've been in business now for just about eight years. And that mandated representation consists of about 75 percent adult criminal defense representation and about 25 percent representation of parents, primarily in Family Court.
Now, three years or so ago I was here to tell you about a tale of two states. Why did I do that? This was in the aftermath of the settlement of the Hurrell-Harring class-action litigation between the State of New York and the plaintiff class. And as a result of that, five counties -- Onondaga, Ontario, Schuyler, Suffolk and Washington -- benefited with dramatically reduced caseloads, a guarantee of counsel at arraignment, and the guarantee of the provision of adequate support services for the lawyers who represent the clients to whom they were assigned. And by support services I mean things like investigators and social workers and adequate staff.

The caseload standards that were then implemented in those five counties I'm proud to say were created by my office with great assistance from our fantastic research staff. They are the lowest, best, most supportive caseload standards -- funded caseload standards -- anywhere in the United States. And that was a tremendous achievement.
So why was I talking about a tale of two states? Because what about the other 52 counties and New York City, which were left out then. And I was sorry to see Pat Fahy leave a few minutes ago, because she's one of the heroes -- the Fahy-DeFrancisco bill was passed which addressed all of the issues across all of mandated representation. It was vetoed, but then came the Governor's proposal and the support of the Legislature for statewide expansion of the Hurrell-Harring reforms.

And what is very, very good news in this Executive Budget, and which I urge you to support, is the second full year of statewide funding for what is to be a five-year program culminating in full compliance by April 1, 2023, with all of the reforms I previously mentioned to you.

Now, I should also say, because we're about three and a half years or so into the reform in the five counties under the lawsuit settlement, we will have reached compliance by the deadline of April 30th of this year,
2019, with those caseload standards in the
five lawsuit counties and also with the other
provisions in that settlement. That
settlement still has a few years to run, but
compliance will have been achieved.

Now, that's the good news. The
criminal defendant component of our
responsibilities is accomplishing something
that no other state that has a county-based
public defense system has been able to do,
and that is to elevate the level of
representation so that there is high-quality
representation for every client charged with
a crime throughout the State of New York.

And I should mention to those of you
who have responsibilities with New York City
that New York City is very much a part of
these reforms. And we'll work very closely
with the mayor's Office of Criminal Justice,
with the presiding judges of the two
appellate departments, and of course with the
providers. So that's the very good news. I
have a staff working on the five counties and
a staff working on statewide.
So the other good news in the budget is in the current-year budget and in the budget coming forward to you is that we are building up our grants unit so that we can keep up with the tremendously increased nature of our responsibilities.

And the further good news is that when we proposed on December 2017, pursuant to your legislation, plans to the Division of Budget to implement this reform, we added two things, we put two things in. One is the need for data collection, uniform, consistent data collection and funding for each county and the city to hire a data officer. That is well underway. We're making great progress there. And secondly is a plan for regional support centers. And we're also pleased that in this budget there is a provision for transfer of appropriation from local aid to state operations, which we will utilize to build our first of what we hope ultimately will be a statewide network of regional support centers, which will help the counties and the city to implement these tremendous
reforms.

Now, that's all the good news.

I mentioned at the outset we have two separate responsibilities, criminal defense and parent representation. So now this year I come to you not with a tale of two states, but with a tale of two responsibilities. Because not enough has happened yet with respect to parental representation. And I do want to say that we were very disappointed in the omission of a $3 million request that we made in this year's Executive Budget request for -- what we're trying to do with that $3 million is to do what we did with the $4 million grant that the Governor and the Legislature approved before the Hurrell-Harring settlement was approved back in 2014, to reduce caseloads and provide adequate services in the area of parent representation.

Now, why do I think that that is such a big deal? Three reasons. One, the need is dire. It's dire and it's immediate. We are receiving repeated questions from everywhere
from Suffolk County on Long Island to Niagara County, from Cattaraugus County in the southwest up to St. Lawrence County in the North Country, for some assistance -- an additional lawyer to reduce excessive caseloads, a social worker to work with parents to comply with their responsibilities and to keep their child or have their child returned to them.

The second reason is that we've done this before with that $4 million several years ago with respect to criminal defense. That $4 million went to 47 counties. And yes, it's only maybe an additional personnel or two additional personnel in each county. It made a tremendous difference. Even before the lawsuit was settled, we reduced caseloads upstate. They were still horrendously excessive, but we reduced them by around 20 percent.

So you can do a lot upstate with a little. And I don't mean to suggest 3 million is a little, but comparatively speaking with some of numbers we've heard
today.

The third reason, and it's a powerful reason, is that this $3 million, this beginning seedling of reform for parent representation will bridge the time until Chief Judge DiFiore's Commission on Parental Legal Representation -- which you may recall she announced it last February in her State of the Judiciary speech. That commission, under the leadership of former Presiding Judge Karen Peters, has been holding public hearings. I had the privilege of testifying at one. They have heard an abundance of evidence from judges, from providers, from county officials. And we anticipate that their recommendations will be coming out in the coming weeks.

And we're really looking forward to that, but we know that systemic statewide reform takes time to implement. And so this $3 million will get us started. That can start April 1st with funding.

Now, we are seeking reconsideration by the Executive. I hope we don't -- I hope
it's not left to the Legislature. But if it is, I hope you will step up and I hope you will provide that $3 million in funding. Now, we are doing everything we can with the Executive, believe me. There is still time for that to be reconsidered. But if it is not, we will rely upon the Legislature to begin parental representation reform.

Going back to the statewide reform, just briefly, there's a little -- every year there's a little matter of language. And this year there is a provision in there that is of great concern to us and to the counties and to the city. And that is that, you know, setting a one-year deadline and there would be no payments, no reimbursements if that deadline isn't met. So that's something we're working on. Again, I don't -- hope and don't think we'll have to come back to the Legislature with that, but we'll be in touch you with over the next month or so to let you know about that.

CHAIRWOMAN KRUEGER: Thank you.

DIRECTOR LEAHY: Finally, Susan Bryant
will ultimately get to testify, the deputy
director of the New York State Defenders
Association. They're our indispensable
partner in statewide reform, training, data
collection. Please heed her request.

CHAIRWOMAN KRUEGER: Thank you.

Senator Jamaal Bailey, chair of Codes.

SENATOR BAILEY: Thank you, Director

Leahy. I will be brief.

One, I wanted to thank you for coming
down to the district office and having a
collection with me about the work that
you're doing.

And I won't comment so much about the
budgetary request, but I wanted to ask your
position on pretrial reforms as indicated in
the Executive Budget and how they would
relate to not only defense caseloads but how
they would -- do you believe that they would
assist in lowering caseloads of prosecutors
as well?

DIRECTOR LEAHY: Well, I think I'll

echo some of the previous speakers on that

regard, Senator. I think discovery reform,
bail reform -- I mean, we have a particular
perspective on bail reform upstate. It's
actually the frequency with which people are
held pretrial on those small bails is really
quite excessive upstate on these
relatively -- relatively -- minor issues.

And in terms of discovery, I mean,
I -- you know, my career before I came here
was in Massachusetts where they reformed
discovery rules in 1979. The horror stories
that you hear about what will happen if you
have true discovery, they don't happen,
because prosecutors and judges do their jobs
and defense counsel do their jobs.

So I think the reforms -- you know,
the devil is always in the details, but the
reforms are solid, they're progressive, we
support them.

SENATOR BAILEY: Well, I'm glad to
hear that you believe that the sky will not
fall if we do the reforms that we need to do.

Thank you, Director Leahy.

CHAIRWOMAN KRUEGER: Thank you.

Assembly? No?
Okay. Senator Seward.

SENATOR SEWARD: Thank you, Madam Chair and Director Leahy.

I wanted to ask some questions regarding the statewide indigent legal defense plan. As you know, the 2017-2018 enacted State Budget -- that's when we moved forward with the statewide plan --

(Calls of "mic.")

SENATOR SEWARD: Okay, is that better?

DIRECTOR LEAHY: Yes. Yeah, thank you.

SENATOR SEWARD: Were you able to hear what I had to say?

DIRECTOR LEAHY: Yes, I did.

SENATOR SEWARD: Okay, good.

Have any of the counties that submitted their plans -- they were required to by December 2017 -- have any of them actually moved forward with implementing those plans?

DIRECTOR LEAHY: Well, we have to get to contract. We have five contracts that we have agreed to with counties and are being
reviewed by the Executive right now, then
they'll go to the Comptroller. We have 24,
total, that are agreed to in principle. So
we're well along. We're getting there.

This statewide process -- when I
mentioned earlier that no other state is
doing this, I mean, they're in early stages
of less comprehensive reforms. This is
really a transformational reform. It's
requiring counties that for 50 years have
essentially gotten along on their own with no
direction or support from the state, and now
they're getting both.

So -- and so -- but I'd say about half
the counties were well along with New York
City. And, you know, we're going to get
there with everybody.

SENATOR SEWARD: So none of the
counties, then, have actually vouchered for
reimbursement?

DIRECTOR LEAHY: No, they can't
voucher yet because we haven't gotten to
contract yet. It has to go through the whole
State Comptroller process. It will be a few
SENATOR SEWARD: Do you feel that the estimated $250 million in terms of the full expansion by I think it's 2022, will that -- is that number accurate in terms of being able to do the program on --

DIRECTOR LEAHY: Yeah, that's the number we came up with. It was actually -- it might have been 249, but on our December 1, 2017, plan. Now, that was based on 2016 data. So I remember writing in the cover letter "Criminal justice is volatile. Arrest rates, prosecution practices, judicial plea bargaining practices, quality of defense counsel -- all of these things impact --

yeah.

So, you know, should circumstances change over the five-year period -- and when do they not? -- we will be on that. We have a terrific team of researchers led by Andy Davies, our director of research. And we will also be studying and analyzing the impact. We're looking at a couple of possibilities of ways to study and report on
what difference does it make to have a good lawyer. You know, it makes a lot of difference to the client, I think, but does it make a difference to the outcome? We're going to be studying both.

SENATOR SEWARD: The Executive Budget proposal, as you pointed out, includes funding for two additional employees and staff with your unit.

Do you envision, as we move toward full implementation by that 2022-2023 time frame, do you envision that more employees will need to be hired in order to fully implement the program?

DIRECTOR LEAHY: Yes, there definitely will be more employees hired. Of course counties still retain the ability to move -- you know, move their mix. They can from more assigned counsel to more staff attorneys or vice versa. A couple of counties that have been relying exclusively on assigned counsel programs are now moving towards a public defender system. And conversely, some counties that have never had an assigned
counsel program are now creating assigned counsel programs.

SENATOR SEWARD: So it's somewhat of a moving target, is that what you're saying?

DIRECTOR LEAHY: It's a period of great creativity. Counties now can work with us and decide their direction without being constrained by a lack of state financial support.

SENATOR SEWARD: Thank you, Director.

DIRECTOR LEAHY: Thank you very much.

CHAIRWOMAN KRUEGER: Thank you. Thank you for the time. Appreciate it.


I feel like saying "now for something completely different" after endless police and courtroom issues.

OITS CIO SAMSON: I admire your stamina, for starters. Thank you for that.

It's good to see you. It is snowing outside. So let's get started.

Good afternoon, Chairwoman Krueger,
it's good to see you again.

CHAIRWOMAN KRUEGER: Nice to see you.

OITS CIO SAMSON: I don't see Assemblywoman Weinstein, but my best to her.

CHAIRWOMAN KRUEGER: The Assembly did not go on strike, they were needed back in the Assembly chambers for debate.

OITS CIO SAMSON: Well, as you mentioned, my name is Bob Samson, and I am the chief information offer for the State of New York, working at the Office of Information Technology Services.

Before getting into the details of ITS's proposed budget, I'd like to present some context to the world we find ourselves in. Information and services are available anytime, anywhere. People now expect an immediate response from whomever they interact with -- certainly from the Googles and Apples and Amazons of the world. And citizens have come to expect the same from their government.

Consider the things that government does. We respond to people in distress. We
respond to public safety threats. We help
our children. We protect our food and milk
supply. We focus on improving healthcare and
the environment. The services government
delivers are life-and-death critical, making
government's level of responsiveness even
more significant. So how is New York State
government meeting these expectations? Quite
frankly, the same way Google, Apple and
Amazon does -- with technology.

This phenomenon, leveraging technology
to meet demands, cuts across all industries.
As a result, technology is clearly critical
infrastructure. Just as we maintain our
roads, bridges and highways by keeping them
free of snow, ice and potholes and enforcing
regulation with speeding laws and a dedicated
police force, we must do the same with our IT
roads and bridges.

The Executive Budget for this coming
fiscal year does just that. It includes
$583 million in General Fund support for ITS
to maintain the critical technology
infrastructure that more than 40 executive
branch agencies rely on to meet the
expectations and needs of residents and
businesses in New York. It also includes
$96 million in capital funds for technology
modernization projects.

My purpose here today is to explain
how ITS will use that budget to empower
New York through technology. ITS is in the
position to do that because of the bold and
progressive vision of Governor Cuomo. He saw
this coming phenomenon and prepared for it in
2012 by transforming New York's siloed,
shackled, and incomprehensible IT makeup into
a defined, shared, statewide IT delivery
organization called the Office of Information
Technology Services.

Today, through ITS, New York State
operates the state's technology
infrastructure at scale, and New York is the
only state that can say that. What does this
"scale" look like? ITS manages 1,600 miles
of fiber network for broadband and voice
connectivity to more than 5,000 agency sites.
It securely manages more than 17 million
New York resident and business accounts for
government services such as DMV
registrations, tax filings and business and
recreational licensing. ITS processes
roughly 50 million transactions every day.
It maintains and secures approximately 4,500
web, mobile and business applications and
more than 10,000 servers and 4,000 databases
that support applications, and it backs up
approximately 25 petabytes of data every
night.

By creating an organization at this
level of scale and sophistication, the state
is better equipped to use technology to meet
the increasing demands of constituents. Just
how is the state going to leverage this
technology? At ITS we see this occurring
through five overarching technology trends
that are critically important.

The first is ubiquitous computing.
The world is increasingly becoming
instrumented, interconnected and, as a
result, intelligent. This instrumentation is
now making processes and the physical having
an intelligence that it never had before.

   One example of this is the Mario M. Cuomo Bridge, which in addition to making
desperately needed physical improvements,
includes sensors and other technology that
measure the health and safety of the bridge
at all times, making it the most intelligent
bridge in the world. These types of
technologies, this ubiquitous computing,
protect investments made in the physical
bridge by enabling the state to check its
health in realtime and make adjustments and
improvements throughout its lifetime.

   Another example of this ubiquity is
happening right now today as snowplows are
instrumented with microprocessors that detect
the temperature of the pavement and how much
salt to put down on the road.

   The second trend is data -- which, as
a metaphor, is the "new oil." In New York
State, data is growing at a rate of 30 to
40 percent annually, largely due to the
ubiquitous computing I just described.
New York collects data on public safety,
agriculture, transportation, healthcare, child welfare, and more. But the true value lies not in the amount and types of the data we collect, but in the extraction, refinement, analysis, and visualization, where data is truly wisdom yet to be revealed. ITS is the technology platform from which the state can extract real value from its wealth of data and solve the grandest of our challenges.

The third trend is cloud computing. Cloud computing is now more than a place to store data and run applications. It's a place to rapidly and securely build and extend technology solutions to meet accelerating citizen demands. In 2018, ITS introduced the Excelsior Cloud, a first-in-the-nation, state-run, private cloud platform specifically designed for New York government entities to run applications and store sensitive information in a highly secure environment. ITS also leverages other cloud technologies in a pragmatic way.

The fourth trend is that all IT is
cyber. Cybersecurity must be built into our business processes, and our technology solutions, from the ground up. As the state's IT service delivery organization, cybersecurity is our overarching core mission, and we invest approximately 10 percent of the agency's budget in cybersecurity.

If you'd like a more detailed briefing on cyber, I would be happy to provide it in a closed session.

Finally, the fifth and perhaps most important is the trend towards innovation that is accelerating because of these other megatrends that I mentioned. These trends are interconnected and drive this acceleration of innovation.

New Yorkers are engaging with their government online at an unprecedented rate. For example, New York State websites experience nearly 400 million page views annually. The public has embraced the digital world, and this creates the digital imperative to which ITS and the state must
respond. You don't have to look far to see
this acceleration of innovation in New York
State to realize why we are leading. For
example, we have announced a
first-in-the-nation virtual hearing for
workers' compensation; a first-in-the-nation
New York State Business Express to allow
businesses to form quickly and efficiently; a
first-in-the-nation plant inspection mobile
application; a first-in-the-nation New York
State Mentoring Program Portal; and a
first-in-the-nation Disaster Preparedness
Asset Tracker -- and there are many, many
more.

In the end, technology touches every
aspect of what government does, and true
innovation occurs at the intersection of
process, talented people, and technology.
Our vision as an agency is innovation that
matters for all New Yorkers. Our operating
priorities are to be client-centric, focused
on our agency clients; skills-based, placing
our people at the center of everything we do;
and process-driven, ensuring consistency and
predictable execution.

This is how we deliver on our commitment to help government serve all New Yorkers and continue to lead New York State ever upward.

Thank you for this opportunity to be here with you, and now I'd welcome any questions.

CHAIRWOMAN WEINSTEIN: Thank you.

OITS CIO SAMSON: Assemblywoman Weinstein, it's good to see you. I recognized you when I first came here.

CHAIRWOMAN WEINSTEIN: Thank you.

So we'll go first to Senator Savino.

SENATOR SAVINO: Thank you, Assemblywoman.

Commissioner, it's good to see again.

OITS CIO SAMSON: Good to see you again, Senator.

SENATOR SAVINO: Nice to see you last week at the Business Council, where we both talked about the future of IT in all of its aspects.

I want to just briefly focus on a
couple of points. In your testimony you
talked about the trends -- you know, we have
to get used to all these new terms:
ubiquitous computing, artificial
intelligence, you know, the gig economy -- it
goes on and on. But you talked about
something that is very important, which is
the collection of data and data security.

So in your own testimony, New York
State, the ITS system manages 17 million
residence and business accounts, processes
about 50 million transactions daily, through
all sorts of state agencies. And earlier
today the acting commissioner of Homeland
Security talked about how they have had to
respond to several counties around the state
where there have been data breaches and help
them more adequately secure their cyber. So,
you know, addressing issues of cybersecurity
and leaks.

Do you work directly with Homeland
Security on those issues?

OITS CIO SAMSON: Yes, we do.

So cyber is the ultimate team sport.
And we have, between DHSES and State Police and ISAC and ITS -- we have, in ITS, 60 dedicated professionals, thereabouts. We have the New York State Cyber Command Center, which is part of ITS. So we work collaboratively. We've done this at several counties, a number of counties. We've actually worked with about half of the counties in New York State on cyber, some more dramatic than others in terms of the remediation that had to occur. But we work very, very closely together with those other entities.

SENATOR SAVINO: And as you know from previous discussions, I think -- it's about seven years or so ago -- no, more than that -- eight or nine years ago that we passed the legislation to do IT insourcing so that the state could develop a workforce of IT experts.

So how well have we done on implementing that? And my concern always about it was that the competition from the private sector was going to be so
overwhelming for these experts that they
wouldn't want to stay in the public sector.
So have we seen an ability to attract quality
talent and, most importantly, keep them?

OITS CIO SAMSON: That is a great
question.

So for starters, we have about 150
interns that work in our agency. So we've
done a very good job of at least recruiting
interns on campuses as far south as Marist
College and certainly in this local area as
well.

So the first thing is to attract the
next-generation workforce. Often they come
to work for us because the work is
compelling. While we can't compete with how
much money we pay, it has to be a compelling
place to work. And to get them involved in
these projects where you're really creating
an innovative solution to a problem, you're
beginning to help solve grand challenges that
we face, that makes it a compelling place for
them to come and work.

The second thing is to attract a
workforce, particularly in cyber, which is probably the more difficult one, the state's chief information security officer is Deb Snyder, she is an adjunct professor at SUNY Albany. That gives us wonderful proximity to the next generation of cyber warriors there. So we've really built a strong cyber team off of the relationships and quite frankly the capability that Deb Snyder brings to the table.

The last thing is our organization, as I mentioned, is focused on our clients but skills-based. So in the last fiscal year we've doubled our skills budget for training our employees. We'll double it again this year. You cannot have an IT service delivery organization where people are not at the center of everything that you do -- building their skills, investing in their talents and capabilities in a profound way. And that's where we spend a good deal of our budget doing that.

SENATOR SAVINO: So two other points I want to make. You heard me speak the other
day about the issue of cyber liability.
Because we know how important cybersecurity is. And the reality is most businesses, if they were hit with a breach, many of them wind up going bankrupt within six months because they cannot afford the recovery -- not just the financial recovery, but the reputational recovery.

So we're looking to explore whether or not requiring companies over a certain size to carry cyber insurance might not be a beneficial thing. There's two schools of thought: One, that if you make them carry insurance, they'll be even more risky with their systems because they'll think the insurance will cover it.

But I'm just curious as to your opinion. Do you think that that might be a solution for companies to secure themselves, because the threat of cyber losses is so large?

OITS CIO SAMSON: I think the first order is to -- particularly for smaller businesses, because we've actually been
involved with a number of small businesses that have had cyber incidents. So the first thing is to give them tools, training, perspective, context on how to manage their cyber sort of architecture. We have a cyber toolkit we've created, we can give that to small business. We've given it to local governments, we've given it to school districts. So it's a toolkit to begin the process of examining their cyber -- not just their hygiene, but 20 different characteristics around cyber that they can go execute on. That's the first thing.

Whether or not they get insurance or not -- you know, you raise a fair point that it might make them -- well, I'm insured for that, so I don't have to really worry about it. The first thing, we have to get them worried about it. This is especially true for local governments, where we have spent an enormous amount of time working with local governments, with toolkits, education, training. We run the largest state-run cyber conference here in New York. We'll have
close to 2,000 people attend that this year.
It's in June, June 4th and 5th.

We have separate tracks for school
districts, separate tracks for local
governments, and separate tracks for small
businesses to come and learn. That's sort of
like the first order of things that we can
do.

The next thing is when there's an
issue, it's very often, for local
governments, who do they call? And they call
us. They call the state. And for us, our
state systems are often connected to these
local government systems. So to the first
order, to protect our state systems, we need
to make sure that we're doing all the right
things, remediating and protecting any
connections that those local governments have
to the state. And that's the first priority
we have when we arrive at one of these cyber
incidents.

SENATOR SAVINO: Thank you.

In the few minutes I have left, I'm
going to switch to my usual favorite topic,
which is always of course the workforce.

I've been saying this for years now, the
world is changing and we're not going to be
able to turn the clock back. The Brookings
Institute just recently put out a report that
showed that because of automation and
artificial intelligence, there are going to
be whole sectors of our economy the
essentially disappear from the workforce,
where humans will no longer perform those
functions. They tend to be the lowest-paid
jobs in the retail industry, in the food
service industry, and in the clerical system.
So there are whole sections of the state
workforce that are entry-level positions; the
likelihood is they will disappear in a few
years because automation will replace the
human function.

So do you work at all with GOER, which
is the Governor's Office of Employee
Relations, and the Office of Civil Service to
talk about changing or maybe retraining
people for the future workforce or developing
opportunities for people as those low-level
entry jobs disappear in these various sectors?

OITS CIO SAMSON: It's a great question. So for GOER specifically -- let me just back up for a moment.

When I talk about innovation accelerating, we do a number of things with our agency clients, one of which is a thing called an innovation summit, where we leave technology outside the door and we talk about the challenge inside that particular agency's mission and then how technology might be able to help them and accelerate them.

We actually have an innovation summit next week with GOER to begin addressing issues like this. It will be our first innovation summit with Mike and his team to begin examining what we might do.

I will also add that artificial intelligence, the fuel for artificial intelligence is data. I mentioned data before. Data scientists and data science presents a whole new frontier for careers in one dimension. But AI also offers the
potential to really begin solving some of the
grand challenges we face in government,
because it is a way to take data that we have
and analyze it and do predictive kinds of
analytics around it to literally change the
world and some of the missions that agencies
have responsibility for.

To your point, at our innovation
summit, I welcome you if you'd like to come.
It's next week, I think it's the 4th or 5th,
with Mike and his team, to begin having a
summit around topics like this -- what are
the implications of artificial intelligence,
what does it mean to our workforce. It's a
critical path for us to educate our workforce
on artificial intelligence.

We just started off a track for things
like quantum computing. I know that's not
something everybody necessarily is totally
familiar with, but it is the next generation
of technology that will be here in next three
to five years. So we need to begin investing
in our workforce now to have proximity and
knowledge about that, and that's what we're
doing.

SENATOR SAVINO: Thank you. If you could have someone share the information about that meeting next week. If I'm available, I would love to be there.

OITS CIO SAMSON: I would love to have you come. It would be great.

SENATOR SAVINO: If not, I certainly have enough staff I can send one of them.

Thank you.

OITS CIO SAMSON: And thank you for your passion for our workforce too, by the way.

SENATOR SAVINO: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you. We're going to go to Assemblyman Barclay.

ASSEMBLYMAN BARCLAY: Thank you.

OITS CIO SAMSON: Hello, Assemblyman.

Good to see you.

ASSEMBLYMAN BARCLAY: Good to see you.

Thanks for your testimony.

I was just going to ask you a little bit about data, one of the things you mentioned in your -- the four points you made
about technology going forward.

   Does the state have any processes or
   anything in place as far as protecting, you
   know, whatever big data or data you collect
   from our citizens to make sure that that
   isn't used for other purposes than what maybe
   the citizen thought that they were giving
   that data for to the state?

   OITS CIO SAMSON: Another great
   question. So let me just back up for a
   moment.

   We have now successfully consolidated
   53 of the state's data centers into one
   place. So if you can imagine, just six short
   years ago, before the Governor announced we
   were going to be consolidating IT into ITS,
   we had 53 different data centers, multiple
   databases spread out all over the place.
   Your ability to protect that is very limited,
   that data, quite frankly.

   So the first thing is to consolidate
   it. It now is in our Excelsior Cloud that I
   mentioned in my testimony. The Excelsior
   Cloud is the home of the state's data. It is
secure, it is protected, it is centralized. And we use some of the latest technology to begin encrypting it. So encrypted data is the way to protect it, because if it ever gets stolen, it's just a brick that nobody can do anything with. So encrypting data, both at rest and in transit as it goes through our system, is another critical path to it.

So the first step, though, is the consolidation. That work is now done. I would love to invite any member here that would like to come see the Excelsior Cloud. It's not too far from here. It's in a zero-energy building at the College of Nanoscale Science and Engineering. It is something that quite honestly no other state has. So I would encourage you to come and see it. You'll see where that data is, how it's protected and the technologies we have around it, and how we're beginning to encrypt it.

ASSEMBLYMAN BARCLAY: We don't have to take a plane or anything to see that cloud,
huh? Look up in the sky.

OITS CIO SAMSON: Would you like to come?

ASSEMBLYMAN BARCLAY: Maybe.

OITS CIO SAMSON: Come see it.

ASSEMBLYMAN BARCLAY: I appreciate it.

But that -- I appreciate the cybersecurity on that data. But my concern is the sharing of the data among different governmental agencies or -- you know. Is there any -- my tax returns, for example, if I file those electronically.

OITS CIO SAMSON: Tax and Finance is very, very protective of that data, as you can imagine.

ASSEMBLYMAN BARCLAY: Right.

OITS CIO SAMSON: So we are in the process of working on building a state data strategy. As it exists right now, we do not have one. That requires multiple agencies to participate with us.

There are tools and techniques now where you can use data to affect decision-making better, but it's anonymized
so you really don't know individuals or people that you're looking at, but more just the results of what the data is yielding to you.

So that data strategy is work underway. We're actually working with the Center for Technology in Government at SUNY Albany to help us build a statewide strategy.

I would tell you there is no state in the nation that has a data strategy, because they suffer from the problem that we had seven years ago with the data spread all over the place, in different agencies, different systems. And now that we've got it consolidated, we can begin building a data strategy around that -- not just how we protect it, because we're good at doing that, but how we leverage it and use it more effectively.

ASSEMBLYMAN BARCLAY: Yeah, that's (unintelligible) -- how you protect the actual citizens of New York and not use it for something they didn't realize. Any idea of a timeline on when that strategy will
OITS CIO SAMSON: We've just kicked off the data strategy work. We hope to conclude at least our first pass over that in the next several months, in the springtime. It's something we'll be happy to share with you if you'd like to see it.

Data strategy has multiple elements to it. It's, first, having data governance inside agencies: How do you manage your own data? What is your data governance policy? Begin to examine those, having commissioners -- we'll work jointly with them to do that.

But at the end of the day, the data we have and being able to use it, as I mentioned in my testimony, visualize it and use it more effectively is an opportunity to solve many of the grand challenges that we have. Data sharing. It's protected, anonymized, we're not in it -- but the ability to share it, make better decision-making, begin attacking some of the grand challenges that we have, it presents a wonderful opportunity for us.
ASSEMBLYMAN BARCLAY: Yeah, I don't --
I agree, there is a lot of positive and
beneficial things about sharing the data, but
there's also a lot of negative too. So as
long as there's a strategy and a policy in
place, I think that's a good start. So thank
you.

Thank you, Madam Chair.

OITS CIO SAMSON: Thank you,
Assemblyman.

CHAIRWOMAN WEINSTEIN: Thank you.

Senator Seward.

SENATOR SEWARD: Thank you. Thank you
very much.

OITS CIO SAMSON: Hi, Senator. I
spend a good deal of time down in your area,
down in the Hall of Fame.

SENATOR SEWARD: Okay, great. I
thought I felt an uptick in the economy.

(Laughter.)

SENATOR SEWARD: You used the word
"strategy" several times, and I just wanted
to follow up on that. What strategies are
currently identified by ITS to ensure that
the individual state agencies provide the
most cost-effective and improved IT services
for the residents that they serve? And also
strategies for identifying the legacy IT
infrastructure that has been in place and
replacing or upgrading in a cost-effective
manner?

OITS CIO SAMSON: So the first thing,
on strategies, my point of view on strategies
are strategies without execution are
meaningless. You can have the most
wonderful, elegant strategy but if you don't
execute around the strategy and then
 operationalize it, then it's meaningless.

So a couple of things on that strategy
piece. The first one is we work
collaboratively with our agency partners. I
mentioned the information summits that we've
had where we leave technology at the door and
we speak to the challenges, in some cases the
grand challenges, that those agencies have.
And is technology a player to help them begin
resolving that and helping them architect
their own strategy for how they do work
differently in the environment that we find ourselves in, as described by the trends that I discussed earlier -- ubiquitous computing, data as the new oil, cloud computing, all IT is cyber -- around that framework. So begin constructing a strategy with them.

The second piece of that is modernizing systems that are aging quickly. Those are DMV -- DMV systems, some of those are 30-plus years old, as an example. The welfare management system in the state is close to 40 years old. And these systems are currently in the queue for modernization efforts. So it's modernizing these systems. We're doing the same thing at the Department of Labor for unemployment insurance. So these modernization efforts are upgrading systems that are in some sense aging out.

I would say part of the strategy is not to find ourselves in modernization sort of -- the modernization world, but more continuous improvement over time. And the nice advantage of having an organization like ITS is you can begin doing that, that you
don't wait for 30 years before you modernize something, you begin doing it proactively as an ongoing and continuous improvement model. And that's a part of the strategy and the execution that we have with our workforce.

SENATOR SEWARD: Thank you. Could you explain how the responsibility of protecting the Executive's agencies' IT infrastructure is split between the various state agencies and ITS?

OITS CIO SAMSON: Well, here's the good news. Protecting the cybersecurity for state agencies sits in one place. It sits here. It sits here. So the cyber team, as I mentioned before, under Governor Cuomo's leadership we have increased our cyber spend 50X over what it was six years ago. 50X. Because we have a responsibility that you have legislatively authorized ITS to be the protector of the state's infrastructure, its technology infrastructure, and that's what we do. So it's one place. That's the good news.

The other part of this that's
critically important is just -- some people might call it -- it's not the technology stuff, it's the hygiene part of this. It's again with agencies making sure that cyber is part of their own critical process for examining how they educate. So we've done lots of education of the state workforce:
Don't open that email, don't open that fishing expedition, be careful. Just normal hygiene. Use a 14-character password. Be more specific and more disciplined on how you use the systems that you're authorized to use.

To this date, we've not had a breach in the State of New York. This is good news. Although cyber is always a moving target, it's a continuous investment over time. There are threats that are occurring by hundreds of thousands a day to New York State's infrastructure. But this agency is chartered with protecting the New York State IT infrastructure.

And that's the final thing I would say, is it is our number-one priority.
SENATOR SEWARD: Thank you.

CHAIRWOMAN KRUEGER: Assembly.

CHAIRWOMAN WEINSTEIN: So I have a question that I've asked before. I'm not sure if you were here to hear it. It keeps getting passed to the next person to -- perhaps to answer. So I think you're the end of the line, so hopefully you have the answer.

As part of the SAFE Act, there was the requirement of setting up an ammunition database in New York. It was put on hold for a number of years. And I would like an update on that. There was an indication from one of the Governor's -- the Governor's counsel today that it was something that was being developed, and I'd like to know where we stand with that.

OITS CIO SAMSON: Okay. So I think as the State Police mentioned -- because I was here -- in their testimony, there are multiple dimensions to the ammo database thing. One is -- certainly technology is one part of it, a database, as the name would
imply, an ammo database. I think it
simplifies it a little bit when you just look
at it as a database. It includes geography,
small businesses, citizens. There's multiple
dimensions to it.

So I think also as the State Police
mentioned in their testimony, we're working
collaboratively with them on developing a
number of options to begin getting this
problem solved. So it's a collaborative
effort. It's not just technology, it's these
other dimensions that are as complex,
although even the technology aspect of it
isn't a complex issue as much as it is
complicated by the other dimensions.

CHAIRWOMAN WEINSTEIN: So what kind of
a timetable would you have, since this was
passed in -- it's five years now. Where do
you think we are, and when can we expect
this -- well, I guess six years since we
passed it, five years since it's been on
hold.

OITS CIO SAMSON: We've developed a
number of options. I think it's now get
those completed, collaborating with State
Police, and we can come and share those with
you if you'd like, and then see where we go
from there.

But we've got -- as I mentioned, the
complexity is not necessarily purely
technology, it's the other aspects of it. So
we'll put together a number of options and
then share those with you if you'd like.

CHAIRWOMAN WEINSTEIN: Great. Thank
you.

CHAIRWOMAN KRUEGER: I just have --
CHAIRWOMAN WEINSTEIN: Yes. Senate.
OITS CIO SAMSON: Hey, Senator, good
to see you again.

CHAIRWOMAN KRUEGER: Hi, how are you?
I apologize, I got called out to a meeting
while you were reading your testimony.

OITS CIO SAMSON: Oh, no problem.
CHAIRWOMAN KRUEGER: So I'm glad
Helene Weinstein just asked the question I
was going to ask you about the ammunition
database. Because I agree with you, a
database is a database.
OITS CIO SAMSON: Yeah.

CHAIRWOMAN KRUEGER: But you mentioned the older technologies that need to be dealt with, and you mentioned a DMV and WMS. And I certainly agree. But you know that the question I always have is are we going to ever see modernization of the department -- excuse me, the -- it's not -- no longer the department. Housing -- oh, my gosh, why am I blanking on the name? The housing agency.

UNIDENTIFIED LEGISLATOR: HCR?

CHAIRWOMAN KRUEGER: Thank you.

OITS CIO SAMSON: HCR?

CHAIRWOMAN KRUEGER: HCR. Are we ever going to see computerization of HCR?

OITS CIO SAMSON: You know, I am embarrassed I didn't mention HCR in that modernization effort, and I apologize for that.

As you know, we've been through some vendor issues with that early on. Here's what's happening. So we've completed creating a date warehouse. And in that -- this is where we get back to data again,
Assemblywoman Weinstein -- a data warehouse.
And in that data warehouse we have 35 years of renter data. That is new, we've got that worked on. We've now remediated 60,000 different records in that 35 years of renter database. So that's just a data warehouse. It really doesn't mean a lot to the public. You can't go out and say to the public, I've got a data warehouse. They don't really care.

So within the next several days we'll turn on a renters portal for them to be able to go there and actually construct and do work with HCR. Into that portal we'll add more and more capability over time as we both continue cleaning up the data warehouse to give them capability as a place to go.

I thought we were going to turn it on on Monday, but there were some -- not technical issues, it was more of a timing issue. It should be turned on probably no later than the end of this week or early next week. And that will be the HCR portal.

Which, since you've been through this
a great deal and you've worked on this really
hard, this is a big deal to start with. It's
a starting place for us. It's a landing
place, the HCR portal.

CHAIRWOMAN KRUEGER: And then earlier
today I asked the Office of Emergency
Services, in relationship to their
cybersecurity side of them, were they doing
anything to assist and ensure that as the
State Board of Elections and the local boards
of elections were potentially purchasing new
equipment or transitioning the kinds of
voting machines and voting books they use,
was there somebody making sure that we are
using the highest standards of cybersecurity
so that no one can hack elections through
electronic machinery for our elections.

OITS CIO SAMSON: That is another
great question. And I will tell you, we have
the capability to examine whatever
hardware -- working collaboratively with the
Board of Elections, obviously, whatever they
choose -- to evaluate the hardware and the
software.
There's two dimensions of this, right?

One is the hardware. Was that hardware manufactured in a facility that is a trusted foundry? Because you do not want to have chips that come from other places of the world that might have components in them that do nefarious things.

The second part of this is the software. And we can examine both of those together in our forensic lab to make sure whatever they choose, that those systems are deployed with the highest levels of security.

So the answer, at least from our perspective, is we can do the vulnerable testing, we can assess the hardware, assess the software, look for any vulnerabilities that might exist and weaknesses in both the hardware and the software platforms, and we can do that collaboratively with the BOE. We have a forensic lab in New York State, and it's a place for us to go do that work.

CHAIRWOMAN KRUEGER: So can I ask you to reach out to the Board of Elections and share that information with them?
CHAIRWOMAN KRUEGER: Because we're often, too often siloed into our different units, and I want to make sure -- because I've seen people trying to sell new voting machines in the Well this week, which reflects to me, oh, that problem again. So it's very -- I think today we understand, far more than we did the first generation that we updated our machines, how much trouble you can get in if you pick the wrong hardware and software.

OITS CIO SAMSON: Okay, I will do that.

CHAIRWOMAN KRUEGER: Thank you.

OITS CIO SAMSON: I'll reach out to BOE. We worked closely with them on that last election, with DHSES, in protecting the last election cycle. So I will reach out to them, and we'll do that. Thank you.

CHAIRWOMAN KRUEGER: Thank you very much.

OITS CIO SAMSON: Good to see you.

Any other questions?
CHAIRWOMAN WEINSTEIN: We do, in the Assembly. Assemblyman Lentol.

ASSEMBLYMAN LENTOL: Thank you very much, Madam Chair.

Sorry that I got here late and missed your testimony. But I'm very interested in this -- everything that you've just said in the answers to the other questions.

And the thought occurred to me that we're embarking upon an election system now, and I'm glad we talked about the Board of Elections, which could be a disaster. And I'm speaking about early voting.

And I don't know if that is part of your mission to try and get up and running a system of early voting that can actually work for the citizens of the State of New York. Because I can't envision it actually working without some sort of computerization that we don't have, and technology that we don't have presently.

We just passed a bill out of committee, and it may be on the floor, to authorize computer voter books. Which is the
absolute minimum, I believe, in order to put into effect a database for accomplishing an early voting system.

So I wonder if you have any thoughts about how we can actually make this work. Because I can't envision going to a place in Brooklyn where they have 3,000 voter books and they figure out who votes in which voting district.

OITS CIO SAMSON: By the way, I was born in Brooklyn, so I can appreciate that comment.

So I do not -- we do not have responsibility, direct executive-branch responsibility for BOE. As you know, it's separate. But we advise and give them as much advice and help as we possibly can.

And so the simple answer to that is yes, we do, but it is not part of what our mission is. Our mission is to help and assist, to provide advice and counsel, and that's what we do for the BOE.

There are other emerging technologies that might help facilitate what your desire
is for either early voting or absentee voting.

When I was discussing the world of cloud computing, people imagined rooms and buildings full of machines and storage devices and all that, and all of that is true. But the underpinnings of cloud computing, one of those underpinnings is a technology called blockchain. It's a new way to have secure transactions between two parties, is a simple way to look at it.

And in West Virginia, the first state in the nation to do this, they actually allowed military that were deployed remotely to vote in absentee ballots using blockchain, so their votes could be counted at the time the election was being held, versus sending in an absentee ballot that might get there weeks and weeks later. And they had no issues with that, it was very successful.

But my point is some of these new technologies like that can be applied to that, whether it's early voting, absentee ballots, those kinds of things. That's one
of the underpinnings in this cloud sort of trend that I mentioned, is that blockchain idea.

So we can talk with the Board of Elections about that; we've given them as much advice and counsel as we can. But sort of constitutionally, we don't have responsibility for managing what they do other than to help them as much as we possibly can.

ASSEMBLYMAN LENTOL: So I wish you would, because I'm a little worried that we're going to set in motion a system that's unworkable without some sort of a guidepost. Because the bills that we've passed in both the Senate and the Assembly really give the job to the Board of Elections to roll out a plan, and that's it, with no plan in the bill itself.

OITS CIO SAMSON: Okay. We'll work with them as closely as we will. And we have, actually, quite frankly.

ASSEMBLYMAN LENTOL: I think they need the help, especially in New York City.
CHAIRWOMAN WEINSTEIN: And the last questioner for the Assembly, Assemblyman Abinanti. Tom?

ASSEMBLYMAN ABINANTI: Oh, thank you. Thank you for your comments. Through the wonders of technology, I was able to watch you and hear your presentation while I was over at the Capitol.

But I'm intrigued by what you were saying about the collection of data and the consolidation, and I'd like to pursue that. I know my colleagues asked you some questions, but you went off talking in general about the big picture. I think where some of them were going is where I'd like to go. I'd like to talk about the strategy, the rules, the requirements, the restrictions about sharing.

You -- if I hear you correctly, you now know more about an individual person in the State of New York than Google does. You've got health data, the welfare department, rental, motor vehicle -- anything
you wanted to know about a citizen of New York, you've got somewhere in your cloud.

OITS CIO SAMSON: Yes, we do.

ASSEMBLYMAN ABINANTI: Okay. Do you also handle the authorities, the state authorities?

OITS CIO SAMSON: No, we do not handle state authorities. We provide advice and counsel, but we do not manage them.

ASSEMBLYMAN ABINANTI: Where would I find in the law the restrictions on what you can do with data?

OITS CIO SAMSON: I do not know the answer to that, but I could probably find that out.

ASSEMBLYMAN ABINANTI: Do you have rules and regulations dealing with what you can do with data?

OITS CIO SAMSON: You're talking about with authorities, you mean?

ASSEMBLYMAN ABINANTI: No, for yourself.

OITS CIO SAMSON: Oh, for dealing with authorities or for --
ASSEMBLYMAN ABINANTI: No, no, I'm back to the data that you've already collected. You have how many millions of pieces of data. What prevents you from taking data from the Health Department and giving it to Social Services or to somewhere else?

OITS CIO SAMSON: Well, in the legislation that created ITS, ITS has the responsibility for a couple of things that I think are big sort of animal pictures. One is cyber, protecting the state assets. The second is data, having responsibility for protecting the data.

ASSEMBLYMAN ABINANTI: Right. But I'm talking about the use of that data.

OITS CIO SAMSON: The use of that data is guided by a number of different regulations. Some are federal. Some federal guidelines actually do not allow you to share certain data that they have collected in health systems. So there's different elements of that --

ASSEMBLYMAN ABINANTI: But does
New York have anything that restricts your sharing of that data from one department to another?

OITS CIO SAMSON: Well, I follow whatever regulations are around that data. If it's federal data, we don't share it. I can't share it.

ASSEMBLYMAN ABINANTI: But what about New York data?

OITS CIO SAMSON: By the way, I can't tell an agency to share -- I'm not the data sharer, the agency is. So the agency decides. So if there's data to be shared by an agency, then that agency decides that that data can be shared.

ASSEMBLYMAN ABINANTI: Well, see, the reason I'm concerned is the state has entered into contracts through the Thruway Authority with an entity called Conduent. Do you deal with them at all, or is that just the Thruway Authority?

OITS CIO SAMSON: Conduent?

ASSEMBLYMAN ABINANTI: Conduent.

OITS CIO SAMSON: What are they doing
for the Thruway Authority?

    ASSEMBLYMAN ABINANTI: They collect --
they take data of people who cross the --
let's say a bridge, or go through a Thruway
toll, and they read the -- yeah, it's
cashless tolling. It's license plate --

    OITS CIO SAMSON: Okay, sure.

    ASSEMBLYMAN ABINANTI: We're dealing
with a third-party vendor. Their contract
specifically says that they're not to share
the data. But newspaper reports and TV
reports have documented that they have in
fact sold the data to third-party
investigators. So we've got data collected
on behalf of the State of New York being used
for other purposes.

    And I'm trying to see what regulations
there are, what restrictions there are, what
we can do to make sure that the same thing is
not happening with other agencies within the
state.

    OITS CIO SAMSON: Right. I don't know
the Thruway Authority example. I would
ask -- I just don't know. I don't know what
their --

ASSEMBLYMAN ABINANTI: Well, how can we be sure that the same thing is not happening with state agencies that you work with?

OITS CIO SAMSON: We are the house of the data, the protector of the data. The sharing of the data and who it is shared with is an agency responsibility.

ASSEMBLYMAN ABINANTI: So every one of these agencies can make their own decisions.

OITS CIO SAMSON: They have their own -- they make decisions around what data they can share, absolutely. I can't -- I can't decide in the morning that I want to share Tax and Finance data with somebody. We protect it, we store it, but that's a Tax and Finance decision.

ASSEMBLYMAN ABINANTI: Right. But are there rules and regulations out there that you can put your hands on that --

OITS CIO SAMSON: Every agency has their own rules and regulations around their data.
ASSEMBLYMAN ABINANTI: Okay. All right.

OITS CIO SAMSON: That's how it works.

ASSEMBLYMAN ABINANTI: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Before we -- you can leave. We're finished. I just -- I neglected to announce that Assemblyman Ra, the ranker on Codes, had joined us a while ago.

CHAIRWOMAN KRUEGER: Thank you. Thank you so much for your time tonight.

OITS CIO SAMSON: Good to see you.

Thank you.

CHAIRWOMAN KRUEGER: Good seeing you.

OITS CIO SAMSON: Oh, by the way, thank you for your service to New York, all of you.

CHAIRWOMAN KRUEGER: Thank you for your service.

Okay. Next up we have the League of Women Voters of New York State, who will be followed by New York Public Interest Research Group.
And for the remainder of this hearing,
people will be allowed to testify for five
minutes, and questioners will get three
minutes, okay, for the gentleman on the
clock.

(Off the record.)

CHAIRWOMAN KRUEGER: Hi.

MS. WILSON: Good evening.

CHAIRWOMAN KRUEGER: Feel free to
start.

MS. WILSON: Great. Thank you for
allowing me the opportunity to testify today.
And thank you especially for letting me be
the first public interest group to testify.
Normally we are last on this list.

So I'm going to be as brief as
possible. I'm a superfast talker, so I'm
going to try and keep it at two minutes.

I'm glad that the last testimony ended
with some talk about voting, which we haven't
heard much today, even though elections is of
course included in the Public Protections
Committee. My testimony today is
predominantly about early voting and the
funding of early voting.

We want to once again thank the Legislature for passing that package of voting reforms the Governor recently signed. We could not be more thrilled about it. Of course, the most exciting reform to us is the early voting, nine days of early voting.

At this point there is no funding in the Executive Budget to cover the costs of early voting, and in fact the State Board of Elections actually gets a cut to their budget this year related to lost funding for cybersecurity. So you can imagine how dismayed we are that not only is there no funding for early voting, but there's even less money for cybersecurity, which, as Assemblymember Lentol pointed out, is hugely important right now.

We estimate that it will cost about $9.3 million to implement early voting, and that does not include machinery upgrades, including electronic poll books. We cited five hard costs -- poll sites, training and staff, machinery and technology, and
security. And I've laid out with charts in
the written testimony kind of how those costs
break down specifically related to this
proposal for early voting that has recently
been passed.

The one thing that I really do want to
highlight is one of the biggest costs is
voter education, which I failed to mention in
my five hard costs. Voter education will
cost about $5 million -- that's an estimate
directly from the State Board of Elections --
and that's predominantly related to mailings
to individuals. Those will be large card
mailings. That's quite a huge cost, but it
will only occur one time. So in the future,
early voting will be a lot cheaper than it is
this year.

I also want to point out that there is
potential for a lot of cost savings related
to the primary consolidation. But not this
year, unfortunately, because traditionally
this year is a single-primary election year,
so there won't be any cost savings this year.
But the state board did estimate that up to
$25 million in savings will occur statewide in those years when we traditionally had three-plus primaries.

I feel like I've covered pretty much everything. And like I said, I want to be mindful of the other testifiers here. Everything is laid out in here, and I'd be happy to answer any questions.

(Inaudible comment.)

MS. WILSON: I said I'm a fast talker.

(Laughter.)

CHAIRWOMAN KRUEGER: The lack of questions is not lack of interest, it's just everyone looking at clocks and the number of people left to testify.

MS. WILSON: And to my own credit, I feel like I've done a very thorough job of laying out the cost breakdown.

And I hope, Assemblymember Lentol, that we can work together on getting some of these technology upgrades, because they are crucially important this year when this is implemented.

CHAIRWOMAN KRUEGER: Thank you.
MS. WILSON: Thank you.

CHAIRWOMAN KRUEGER: Thank you very much to the League.

And our next is Blair Horner of New York Public Interest Research Group.

And Blair, it's like "Name That Tune" -- see if you can do it in less than two and a half minutes.

CHAIRWOMAN WEINSTEIN: There will be an award.

(Laughter.)

MR. HORNER: Good evening. My name is Blair Horner. I am director of NYPIRG, New York Public Interest Research Group.

You all have a copy of our written testimony. I will give, as fast as I can -- I don't know if I can beat Jennifer on this -- but as best as I can a cover of sort of the waterfront of the good government issues in the Governor's proposed budget.

We broke down the budget, the Governor's reform recommendations, into six categories: Government openness, which we cover first because it's in the Public
Protection and Good Government Article VII

bill; voting and elections; contracting

ethics; lobbying; campaign finance -- what

I'll do for my testimony is just sort of
touch on some of the key ones and then get
ready to go deal with the snow.

Part BB of the Public Protection and
General Government budget bill expands the
state's Freedom of Information Law
requirements to the Legislature. We support
that. But, we argue, why stop there? The
Committee on Open Government has offered a
number of reforms to improve the state's
Freedom of Information Law, and we believe
that FOIL needs to be dramatically
strengthened in its oversight of the
executive branch.

The use of state-controlled
not-for-profits, for example, was an end run
around public oversight and has led to
serious scandal. So it's clear that the
scandals that were found, for example, in the
Buffalo Billion situation argue for more
accountability.
And so we urge you to review the Committee on Open Government's annual report, particularly the requirement that these not-for-profit entities created by the government be subject to FOIL as well as the JCOPE, the Joint Commission on Public Ethics, and should also be covered by the Freedom of Information and Open Meetings laws.

Second is voting. We, like the League of Women Voters, applaud the actions of the Legislature and the Governor to make some substantial progress in improving the state's voting laws. There's no doubt about it, it's been a long time coming. New York hopefully will be moving from somewhere in the caboose category towards the engine in terms of voting.

We like the idea of automatic voter registration at the state agency level. We think that what happens at DMV, for example, should be applied for all state agencies and that we should make it as simple as possible for people to be registered to vote.

Contracting. The Governor proposes to
ban campaign contributions from those seeking
government contracts. We like that idea as
well. Certainly the U.S. Attorney's
investigations underscore the need for action
in that area. And while we support the idea,
we think the Governor's proposal leaves a
loophole that really narrowly focuses on the
donations from those seeking contracts to the
individual who controls the contracting
process, let's say the Governor, but allows
campaign contributions to the state political
parties -- which would end run around that,
because as we all know, the Governor has
tremendous input into what happens at the
state political party.

So we urge you to take a look at the
New Jersey law, which actually has been on
the books now for decades, that restricts
campaign contributions for contractors and
covers both state and local offices.

In terms of independent oversight of
government contracting, we've long held the
view that there's a reason for a separately
elected Comptroller, and the point of that is
to keep an eye on the executive branch. We
were dismayed by the efforts to cut back the
powers of the Comptroller, and we believe
that he needs to have his powers restored.

We applaud the Governor's announcement
that he's reached an agreement with the
Comptroller -- we haven't seen any bill
language yet, but we would like to see that
that happens and that the Comptroller's
powers be restored. We also support a
so-called database of deals to be included, a
database looking at contracts.

On ethics, much of what we see in the
Governor's Good Government Article VII budget
legislation is worthy of support. The most
glaring example of what is not included is
the need to establish independent ethics
oversight.

One note before I get into any
comments on that. The Governor's proposals
contemplate a lot of changes in terms of
oversight of ethics and lobbying, and he
gives no additional resources to JCOPE. I'm
not quite sure how that will work. We think
that that's an issue that the committee
should look at.

    We really strongly believe that the
Joint Commission on Public Ethics and the
Legislative Ethics Commission are constructed
on a fatally flawed premise, and that the
fatally flawed premise is that they shouldn't
be independent of those who are their
appointing authorities.

    And so we urge you to look at the
Commission on Judicial Conduct as a template.
Legislation has been introduced in both
houses to do that, to create an independent
ethics oversight entity.

    Five, lobbying. The Governor's budget
advances changes to lobbying oversight, some
that will significantly increase the
regulatory burden of JCOPE. And my time is
almost up, so let me mention just a couple
quick things.

    There are some constitutional issues
with regard to what the Governor's proposing.
The idea that you can't be a political
consultant and a lobbyist -- lobbying is a
protected activity under the constitution. Also, in the Lobbyist Code of Conduct it says that you have to be -- a lobbyist has to have respectful behavior toward the government institutions that he or she interacts with. Who interprets what "respectful" is? I mean, I think we all try to be respectful to each other, but who makes that interpretation? Lastly, in the area of campaign finance, we applaud the Governor's decision to advance a public financing proposal. We think that that would dramatically change campaign finance in New York, and we applaud your activities to shrink the limited liability company loophole.

Thank you.

CHAIRWOMAN KRUEGER: All right.


SENATOR ANTONACCI: Thank you, Madam Chair.

A couple questions on FOIL. As a former county comptroller, I had a very liberal FOIL policy. If a reporter called
me, I tried to get it to him as fast as I
could. The only time we really looked for a
FOIL document -- I mean, if there was some
type of sensitivity or personal information,
we wanted to make sure we were doing the
right thing. We actually posted our FOILs
during one campaign, which I was -- I was
very proud of the effort.

But -- I have no problem with the
Legislature being subject to the FOIL, but
would we still be part of the exemption of
internal communications and things like that?
And what exactly would be FOILable?

MR. HORNER: As I understand the
Governor's proposal, it basically would have
the same exemptions that currently apply for
the executive branch, it would be applied to
the legislative branch, and in addition
correspondence with constituents would be
exempt from FOIL.

SENATOR ANTONACCI: Would be exempt.

MR. HORNER: That would be my
understanding from reading it.

SENATOR ANTONACCI: Ethics laws. I'm,
in my own mind -- and I had a very high-profile battle with my county executive.

I believe she weaponized her local board of ethics.

Do you believe in an executive at any level of government -- local municipality, even the governor -- should have appointment power over a board of ethics? My theory is most of the board of ethics are overseeing the administrative branch. Do you have any theories on removing those rights of appointment from an executive?

MR. HORNER: Our view is that though the appointing authority should not be the people -- or the majority of the appointments should not be made by people who are regulated by the commission itself, which we think is the reason or one of the reasons why we criticize JCOPE now -- it's not about the people, it's the structure.

The proposal that's been advanced in both houses of the Legislature is one that says that the majority of the appointees will be done by the judicial branch, not by the
Executive or the Legislature, and we think
that makes more sense.

SENATOR ANTONACCI: Okay. And lastly,
I participated against the gentleman -- Tom
DiNapoli in 2014, in the run for State
Comptroller, and I proudly tried to qualify
for campaign financing. I believe it is a
way to fight corruption. I'm in the minority
in my conference, I believe, and certainly in
the Republican Party and the Conservative
Party. I'm a fan of it.

You don't have a specific proposal in
there -- do you have any specific proposals
of what could work? I mean, I've got my
ideas, but do you?

MR. HORNER: We support the -- I mean,
you know, all this stuff is always -- you
have to figure out as things play out. But
we support the Governor's approach. We think
that there's areas that need to be improved
in it, particularly in the area of the
administration. That the Board of Elections
is still running it under the Governor's
proposal, we think that that needs to be
cleaned up.

But generally speaking, the idea of saying that you're going to have -- you're going to encourage candidates to reach out to people of average means to make donations because they get a six-to-one match under the Governor's proposal, we think that is a good approach. It encourages candidates to deal with regular folks all the time to raise money, and it creates a pool of money that's not the normal people that have business before the government people.

And yes, I would have loved to have seen what you would have been able to do had you had a little more advance notice that that law was going to happen.

CHAIRWOMAN WEINSTEIN: Assemblyman Abinanti.

ASSEMBLYMAN ABINANTI: Thank you for your fine suggestions. I agree with most of them; I have some difficulties with some of them.

One of the things I'd like your comment on is I was concerned when the
Governor said that the Comptroller would get to see some contracts, but that his department would get to see the Comptroller's contracts. Is that not a kind of a --

MR. HORNER: It's always -- as you all know, you've all been here -- some less time, some a long time -- until you see the bill language, you really don't know what you're dealing with. And so to some extent, it's sort of hard to comment on a ghost.

But certainly we believe the Comptroller's job is pretty clear why there's a separately elected Comptroller, and that's to have an independent set of eyeballs on the executive branch. Now, how that is all going to work out with the oversight of the Comptroller, I don't know. But again, we'll have to see the language.

ASSEMBLYMAN ABINANTI: Would it not be better to have a separate oversight of the Comptroller, rather than the people being reviewed by the Comptroller reviewing the Comptroller?

MR. HORNER: That's a very good point.
A very good point. I can't wait to see the language.

ASSEMBLYMAN ABINANTI: Okay. Also, you mentioned in your comments here Fort Schuyler Management Corporation not -- ignoring FOIL requests. Did the Comptroller ever have the power to review something as far down the food chain as Fort Schuyler?

MR. HORNER: I'm not sure. I don't believe so. I think that these --

ASSEMBLYMAN ABINANTI: Well, isn't that where the problem is? Why are we going to stop with the Comptroller?

MR. HORNER: No, I -- again, we think that when the government creates a not-for-profit company, a corporation to do the government's business, it's a government agency and should be subject to all of the oversight that's required of any other agency. The absence of that creates an environment of secrecy and can lead to scandal.

And we've seen gigantic, significant, unbelievable scandals in the executive branch
and the legislative branch over the last number of years, and it's important to deal with that.

And so again, the Comptroller is not -- we don't have a -- we don't think that's a silver bullet, but we think the Comptroller's oversight of contracting creates an environment where somebody's looking at things, people behave differently --

ASSEMBLYMAN ABINANTI: Has your agency ever looked at outside income of the executive branch? There's been a whole lot of talk about outside income by legislators who are supposed to be technically part-time, not reliant on the pay that they get from the Legislature, but in fact put in almost 100 percent of their time -- and yet the executive branch hires people who are supposed to be full-time and yet they come into budget hearings and talk about their experience in the field in which they're governing as a qualification to be the commissioner. And yet I can't find any
restrictions on the outside income of commissioners.

Is there any you know of, and have you looked at that?

MR. HORNER: Well, generally speaking, the executive branch members are all supposed to be full-time. And if they're going to make money, let's say on some sort of outside consulting work, they're supposed to get approval by JCOPE, which I think underscores the need for independent oversight.

ASSEMBLYMAN ABINANTI: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

I think that's it for the Senate.

MR. HORNER: Okay. Thank you.

CHAIRWOMAN KRUEGER: Thank you very much for your testimony.

CHAIRWOMAN WEINSTEIN: Thank you.

CHAIRWOMAN KRUEGER: Next testifier, Prisoners' Legal Services, Karen Murtagh and Thomas Curran.

Good evening, and you have five minutes between you. So, nice to see you again.
And then just to take note, the next is a panel of four, and you also have 10 minutes for the four of you, so you might work that out amongst yourselves.

Hi.

MR. CURRAN: Hi.

MS. MURTAGH: Good evening.

CHAIRWOMAN KRUEGER: Good evening.

MR. CURRAN: I'm Tom Curran, I'm the vice chair of Prisoners' Legal Services. It is very much my pleasure to be addressing you, particularly before 9, 10 o'clock at night. I appreciate that particularly.

My passion is nowhere near Karen's, but it is really my pleasure to be here to talk about Prisoners' Legal Services. These are great lawyers doing great things, and they do it on a shoestring. Every dollar that you give them is taken to its maximum use on behalf of the indigent residents of our prisons, perhaps the most forgotten group in our society. They've been doing it since 1976, in the aftermath of the Attica uprisings, and they've been doing a great
job.

And each year we come up here and we prevail upon your generosity. This year the ask, with the Assembly, 750,000, and we're looking for parity from the Senate, also 750,000. You won't regret any money you give to this, I promise you.

MS. MURTAGH: Good evening, Madam Chairwoman Krueger, Madam Chairwoman Weinstein, Assemblyman Weprin, and the other members of the committee. Thank you for allowing PLS to testify before you today.

Before I start, I want to thank specifically Assemblyman Weprin for all that you've done for Prisoners' Legal Services since you've been chair of Corrections, and the Assembly itself for pretty much keeping PLS alive for the last 40 years. If it wasn't for the funding that you've provided, our doors would have been closed many years ago.

As Tom mentioned, we're here today with an ask, and the ask is that the Senate match what the Assembly gives us. Last year
the Assembly put us in the budget for 750,000. We're asking for a match, so 1.5 million from the Legislature to supplement what the Governor put us in for, 2.2. It would be a total budget of 3.7 million.

I think most of you know what PLS does. Our mission is to protect and defend the constitutional and civil rights of incarcerated New Yorkers. Currently there's over 47,000 of those individuals in 54 prisons across New York State. We receive over 10,000 requests for assistance every year. We answer every single letter. We deal with issues of solitary confinement, medical and mental health care, jail and sentencing time issues, disciplinary excessive use of force, parole, immigration, and the list goes on.

I'd like to just give a few highlights of the work we did this past year. We were able to expunge 44 years of solitary confinement from people's sentences. Twenty years of good time was restored to people's
sentences, and 14 years of jail time was credited to their sentences.

Our work on behalf of children, youth, anyone under 18 in prison resulted in us discovering that DOCCS did not have any directive or regulation about corrections officers and other DOCCS staff being mandated reporters to report alleged child abuse or mistreatment. We worked with DOCCS, and a directive was enacted two months ago that provides direction on what all DOCCS employees must do if an allegation of child abuse or neglect is brought to their attention.

We prevailed in a discrimination case where an individual with a disability was removed from temporary release even though he could have done temporary release, but he was removed solely because of his disability, and they took away his merit time. We sued in federal court, and just last week a judge ordered that he be immediately reinstated for his merit time and that he be put before the Parole Board for parole consideration.
We also filed a federal case for damages for an individual who was held in solitary confinement for 293 days unlawfully. And we recently received a monetary judgment for that client, in an attempt to make him whole, even though no person could be made whole after spending 293 days in solitary.

And we successfully helped a number of clients prepare for their parole hearings and subsequent release on parole.

But there's still a huge unmet need. Despite all that we've done, the complaints continue to rise despite the declining population. Complaints about parole and jail time and sentencing time have increased, and even though disciplinary and brutality complaints have decreased, they have not decreased proportionally to the decrease of the population.

I brought this folder here because I wanted you to see this. Two weeks ago, our Pro Se Magazine went into the prisons and in it was a questionnaire that asked about educational and vocational programs in
prison. And in two weeks we've received over
400 letters from people that are
incarcerated. And they didn't just fill out
the questionnaire, they wrote pages and pages
about what they need to be rehabilitated in
prison.

And I've sat here before -- I think
this is the eighth year I've testified -- and
I've said how PLS is a voice for incarcerated
people. Well, they have their own voice.

And if you fund PLS, it allows us to continue
this trust relationship that we have with
people that are incarcerated so they tell us
what's wrong, what needs to be fixed.

They tell us we need more college
education programs, we need updated
vocational programs. We had one client say
that he had a vocational program -- you get
one every 10 years when you're in DOCCS --
and it was lawn mower repair. And then he
was paroled to New York City. And he
commented that finding a job in lawn mower
repair in New York City is like trying to
sell sandals in Antarctica.
There's so much that needs to be done.

PLS is the organization that can help bring these issues to your attention and to the attention of New York State, and I urge you to properly and adequately fund PLS this year.

MR. CURRAN: As vice chair, it was really refreshing to hear Acting Commissioner Annucci mention PLS in a favorable way. To the extent you all do not know, you should know that Karen enjoys a very close and proactive relationship -- as well as the adversarial one, where necessary and appropriate -- but very collaborative and proactive with DOCCS, in such a way that it makes our budget much more effective because we don't have fights that don't need to be had.

But we do have the fights, and we do fight them when they need to be had, and we're looking for your help in doing so.

CHAIRWOMAN KRUEGER: Thank you.

Senator Jamaal Bailey.

SENATOR BAILEY: Thank you,
Madam Chair.

I just wanted to say thank you for sticking it out with us and testifying, and your work is invaluable. And I just wanted to -- less of a question and more of a thank you for the work that you've been able to do on behalf of my constituents, your being able to -- a gentleman denied parole multiple times who had committed a crime at the age of 17, denied four times, had multiple sclerosis, had secured a job on the outside pending his release already, had obtained an associate's degree and a ministry certificate while incarcerated -- and I'm not going to mention his name for, you know, confidentiality purposes, but this individual, they had reached out by way of a sister and they had lost hope. And I just wanted to thank you for continuing to advocate in securing his successful parole.

You know, we're not saying that everybody that has committed a crime should be released without the proper due process, but somebody like that who had done
everything possible to avail themselves of
everything available to them while
incarcerated, that's an individual, if you
look at the record, that should have been on
parole, and there's been no recidivism since.

And so I wanted to thank you for the
work that you do, and I appreciate I guess
what you bring to the table. And I'll just
say I'm in support of an increase of funding
for your organization.

That will be all, thank you.

MR. CURRAN: Thank you, Senator.

MS. MURTAGH: Thank you, Senator.

I want to thank you for referring that
case to us, and I would like everyone here in
the entire Legislature to know that we are
here for those referrals. We receive
hundreds of referrals a year from members of
the Legislature, constituents, family members
that are concerned about their loved ones in
prison.

And the client you're speaking of had
been in prison -- he went to prison at 17, he
was in prison for 26 years. He saw the board
four times, he kept on being denied. When we looked at his case, we appealed it, we filed an Article 78, and we were unsuccessful. But we then took the case to help prepare his parole packet for his next board appearance, and because of our work on that case he was paroled. So thank you so much for sending him our way.

SENATOR BAILEY: My pleasure.

CHAIRWOMAN KRUEGER: Assembly?

CHAIRWOMAN WEINSTEIN: Assemblyman Weprin.

ASSEMBLYMAN WEPRIN: Thank you, Madam Chair.

And I want to vouch for PLS and Karen and Tom and the great work they do. I've personally -- and my staff have referred them a number of cases, and I certainly will talk to my counterparts in the Senate, the new chair and the chair of Senate Finance, to accede to that request. It seems very reasonable to me.

I also want to thank you for your efforts in fighting with us on the seven-day
visitation, which was my first battle I had coming in as chair three years ago, where the Governor had proposed cutting visitation from seven days to three days, as you know, in maximum-security facilities. And of course we wanted to encourage familial ties and ties to families which would help in preventing recidivism, and you were an important part of that battle.

And you always act for the right reasons, and I personally appreciate that. And I would be saying that even if I wasn't a recipient of the John Dunne Award, the Justice Award.

(Laughter.)

ASSEMBLYMAN WEPRIN: But thank you for all the work you do. Keep it up. And I will advocate for your budget request.

MS. MURTAGH: Thank you so much, Assemblyman. And thank you for leading the fight on the visitation.

CHAIRWOMAN KRUEGER: Hi. Thank you again, every year, for coming to testify and for your work.
Earlier today there was a discussion of the prison system having started a voice recognition program that's required if you, I guess, want to take calls from the outside. Have you had any experience with it, or do you have a position on it?

MS. MURTAGH: We have not had -- it just was instituted. We haven't had any experience.

We don't use that system for attorney-client confidential calls. We're able to set up separate confidential calls. I do have an issue with the limitation on those, because the DOCCS directive only allows one attorney-client call a month for a maximum of 30 minutes. And for some of our cases, that really hinders our ability to work with our clients, especially in any immigration cases where we have to see our clients quite a few times before we go to a hearing. And instead of being able to just make a phone call, we have to drive all the way out to Attica to interview them.

But the system they're putting in
right now, the voice recognition system, will be separate and apart from any confidential calling from attorneys.

CHAIRWOMAN KRUEGER: So since you raised another issue, why would there be a 30-minutes-per-month one-call rule? Is there a shortage of telephones or places to sit the prisoner when talking to you on the phone?

MS. MURTAGH: I don't know the answer to that. I would surmise that it would be a staffing issue, a resource issue, because they would have to take a person to a room, stand outside the room while the phone call occurs, and bring them back. But it is an issue I've been meaning to raise with the commissioner.

CHAIRWOMAN KRUEGER: I hope you do.

MS. MURTAGH: Yes, I will.

CHAIRWOMAN KRUEGER: There was a New York Times story maybe a week ago, maybe more than a week ago, about the number of prisoners in New York State being held in prison longer than the time they are required to serve because they are defined as
suffering from some kind of mental illness,
and there is no place for DOCCS to release
them to.

Now, I know for a fact in my district,
or Brad Hoylman's and my border district, the
Bellevue Men's Shelter is where many people
leaving prison with nowhere to go end up
being deposited. And that's just the
opposite of a good policy. But it was very
disturbing that we were keeping prisoners in
prison longer than we were legally allowed to
because we don't have a Plan B.

I was wondering whether you were
dealing with that in some way.

MS. MURTAGH: Yes, we are. We are in
litigation on that issue, together with the
Legal Aid Society and the private law firm of
Willkie Farr. We filed a lawsuit a couple of
years ago, the Alcantara lawsuit. It was
stayed for a while while another case, the
Gonzalez case, went up to the Court of
Appeals to discuss Parole's duty in trying to
find housing. And that case has now been
decided, and we're moving forward on
Alcantara.

And the case you're referring to was recently filed by Disability Rights New York. Our case is a little more global, in that it's whoever you're holding past their max date or their CR date, and they should be released. And we sued both DOCCS and New York City Housing because there aren't any places for people to be released to.

CHAIRWOMAN KRUEGER: Correct. Thank you.

Assembly?

CHAIRWOMAN WEINSTEIN: Assemblyman Lentol.

ASSEMBLYMAN LENTOL: Yes, I just wanted to add my voice and thank you for the years of perseverance that you have put in, Karen.

I remember when Prisoners' Legal Services got no funding at all. People didn't recognize the good that you do, not only for the prisoners but also for the correctional system, because you keep peace in the prisons. And nobody realized that
that's a very worthy cause, especially for those correctional officers who seem to consistently have gotten assaulted when maybe the grievance was not with them, but with the system itself, because they had no outlet for legal help that they wanted to obtain and there was no Prisoners' Legal Services yet available.

So I have to say that like Saint Jude, you've been the patron saint of lost causes for a lot of years. And I too want to give a shout out to John Dunne, because without his efforts and lobbying the legislature and the governor at the time wouldn't have recognized the value that you do to criminal justice reform in this state.

Thank you very much.

MS. MURTAGH: Thank you so much, Assemblyman.

CHAIRWOMAN KRUEGER: Thank you for your time tonight.

MS. MURTAGH: Thank you.

MR. CURRAN: Thanks. Thanks very much.
CHAIRWOMAN KRUEGER: Thank you.

All right, the next panel. Michelle Esquenazi, Steve Zalewski -- I apologize for destroying your names -- Jeffrey Clayton, and Ed Forchion, all representing the New York State Bail Bondsman Association. One person is {inaudible}. So again, you could do this as 2 1/2 minutes each or some other breakout of 10 minutes.

MR. CLAYTON: Two of us are going to cede our time to two speakers.

CHAIRWOMAN KRUEGER: Very good. Thank you.

MR. CLAYTON: You're welcome.

Good evening. My name is Jeff Clayton, and I'm the executive director of the American Bail Coalition. Thanks for having me today; I'm a proud graduate of the University of Rochester.

I've traveled to 35, probably 40 states working on this issue. I am the national expert on it. I've recently published a peer-reviewed article on bail reform in the UCLA Criminal Law Review. It's
worth a reading -- at least I think so.

I'd like to make a couple of points on
the bail reform package presented by the
administration.

First, I think the New York system is
different. You need to recognize that. The
affordability of bail is different in New
York than elsewhere, largely because
dangerousness is not a consideration and has
not been a consideration in New York ever.
The average felony bail in New York City is
$5,000. The average felony bail nationally
is $10,000. The average bail in California
is $50,000, to give you an idea.

The other thing is we don't see the
due process issues in New York that we see
elsewhere. There's no bail schedules,
there's no sitting and rotting waiting to see
a judge. And I presented the New York second
de novo hearing as a policy idea to many
other policymakers around the country as an
example of good due process.

Second, the proposal that's been
submitted will be extremely costly to the
state. We've submitted a cost study and
other information we encourage you to review
which we're in the process of updating right
now. But, you know, you could look at
upwards of a couple hundred million dollars,
depending on how the estimates turn out, and
that's primarily going to hit local
governments.

The third point I'd like to make is
that no major reform of this size has
happened in any state that I've worked in
without a major study of the system. And
every time we go through one of these
studies, what we learn is that there's unique
issues in each state that we need to deal
with.

So for example, there's been no
process in front of the sentencing
commission, there's been no blue ribbon
legislative panel, there's been no Governor's
study panel, there's been no panel of the
Supreme Court. And I would encourage you to
do that before you do a reform of this size.

The next point is I would say that the
package relies heavily on the use of criminal risk assessment algorithms, which are problematic. One hundred civil rights groups in New York State issued a letter to the administration in November of 2017 when they said, quote: We, the undersigned organizations, are united in the belief that we do not have to add dangerousness to New York's bail statute to reduce our pretrial detention population. The use of risk assessment instruments to predict dangerousness will further exacerbate racial bias in our criminal justice system, and the use of these instruments will likely lead to increases in pretrial detention across the state.

On December 8th, the Robert F. Kennedy Foundation and the 137 other civil rights groups similarly sent a letter and they said, quote: We cannot abide legislation that maintains other for-profit influences or replaces money bail with mass community surveillance, racially biased risk assessment instruments, or the expansion of preventative
detention -- which, candidly, is on the table here.

Also, 110 national civil rights groups, including the Leadership Conference on Civil Rights, have said don't use pretrial risk assessment algorithms because, quote, These tools can worsen racial disparities and allow for further incarceration.

And at a broader 38,000-foot level, I think the use of these algorithms has led to generational mass incarceration. Agreeing with me is Dr. Robert Werth from Rice University who said, quote: I would contend that risk assessment has to this point helped organize the penal state and fortified its legitimacy, and the rise of the historically unprecedented legal-penal complex has occurred alongside and in interaction with the proliferation of risk knowledges, discourses and technologies.

No trial can ever exonerate someone who has been labeled as dangerous under these tools, and so I think that's a major problem here.
The next point is I think speedy trial reform would be a better answer. That was argued when the federal Bail Reform Act was passed. It's the most bipartisan, cleanest, best way to get it done, which is just shorten the process. It's better for everybody.

One state attorney general recommended, and it may be worth considering, is maybe there's a faster trial track for the in-custodies. And I would advocate for that. If you can't afford the whole banana, at least give the people in custody a speedier process.

The final point, when I read this package, I was stunned. I was stunned that anybody would come into this State Capitol Building and advocate for the expansion of preventative detention, which has largely not been allowed in New York, which the State of New York has rejected since 1984 when the federal government went in this direction, and I was just stunned to see it in there. I don't think it's a good idea.
The article that I present -- and certainly the data backs it up -- the federal government has tripled pretrial incarcerations since they went to a system of preventative detention. Maryland tried it, jail population went up 20 percent in Baltimore City in the first year. And in New Jersey, a majority of all cases are getting a motion to detain, which is the story that you're going to hear from my colleague sitting next to me.

There's also been very little benefit shown in terms of preventative detention as a crime control measure.

And finally, I would just end with a quote from Thurgood Marshall. While perhaps Justice Rehnquist and a majority of the Supreme Court gave this Legislature and this government the power to preventatively detain people, that doesn't mean it's a good policy idea. "Throughout the world today, there are men, women, and children interned indefinitely, awaiting trials which may never come or which may be a mockery of the word,
because their governments believe them to be dangerous. Our Constitution, whose construction began two centuries ago, can shelter us forever from the evils of such unchecked power. Over 200 years it has slowly, through our efforts, grown more durable, more expansive, and more just. But it cannot protect us if we lack the courage, and the self-restraint, to protect ourselves. Today a majority of the Court applies itself to an ominous exercise in demolition. Theirs is truly a decision which will go forth without authority, and come back without respect."

And that is exactly what happened, is that pretrial detention tripled. And I would encourage you to not go into this ominous exercise in demolition.

MR. FORCHION: Good evening. My name is Edward Forchion, and I wanted to present my issue with this bail reform.

As a New Jersey resident, I became a victim of the New Jersey Bail Reform Act, and I definitely want to give that perspective
and why I'm opposed to your eradication of
the Eighth Amendment -- basically, the right
to bail.

For 230 years this country has had
bail. It's always been a right, it's been
treated as a right. And, you know, a couple
of years ago I was working as a columnist for
a newspaper, The Trentonian, in Trenton,
New Jersey. And as a columnist, I picked on
politicians. I called them names, I said
little things that I probably couldn't get
away with at a dinner table with my mom, you
know, but -- you know, and I antagonized
people. But totally free speech.

And then I got into a dispute,
basically, with the local police department
and the prosecutor's office, and I ended up
getting hit with like 40-something tickets.
Indictments, charges, whatever. And
basically it was all fake. It was all phony.
It was because I had, you know, used my
mouth.

I've been a nonviolent person my
entire life. I've had no violence charges --
yes, I've been arrested for marijuana a few

1 times, I've been a public advocate for the

legalization of marijuana, but I present

2 myself as a peaceful, proud, patriotic

pothead. And when the -- you know, when the

3 Bail Reform Act was being discussed by

Governor Christie, just reading it and

4 realizing that a judge -- at the end of the

day it was up to a judge, I knew that I would

5 become a victim of the bail reform. I mean,

6 I joked about it and said I was a

7 Weedstrodamus, because one day I'm going to

8 be a victim.

9 And sure enough, within three months

10 of the enactment of the Bail Reform Act, I

11 was singled out with phony charges and

12 charged. And this is what I think that --

13 these type of arguments are never presented.

14 When I read about people talking about the

15 Bail Reform Act, it's always talked about in

16 this way, that it's going to help minorities

17 and this, that and the other.

18 I was in a jail, and everyone detained

19 were minorities, to be honest with you. But
the Bail Reform Act can be used as a tool or
as a weapon by prosecutors or malicious
police officers. In the case of police
officers, they've learned really quickly what
to write on their tickets and in their
reports, you know? They label you as a
danger to the community.

That's what I was labeled as, as a
danger to the community. I was labeled as
somebody who would obstruct justice. You
know, that's the Minority Report right there,
future crime. But these are the arguments
that were presented for my detention.
Nothing about violence, nothing about, you
know, any violent crime I had did or was
accused of doing.

I was accused of witness tampering
because I called somebody a "rat" on
Facebook. Repeatedly, but I called him a
"rat." And they were a rat, you know, and I
don't think that that was what bail reform
was supposed to be about. Because vendettas,
political imprisonments can happen because
you've lost the right to bail.
The right to bail was put in place by the founding fathers of this country because they had already went through it with the king. You know, they totally understood that if you can just lock somebody up, throw them in a dungeon, you know, you can force plea bargains, you can get punishment without a conviction.

And we know that Ben Franklin and several of the founding fathers all used the same quote, that they would rather a hundred guilty men be free than one innocent to be jailed. And trust me, I did 447 days detained, and the very first day I walked in there I was an innocent man. And I wasn't the only one. I happened to have a little fame, and it got -- my entire case was covered.

But the fact of the matter is, right now in New Jersey there are hundreds of people, hundreds of innocent people in jail, and they're all in jail as victims of the Bail Reform Act.

And you people are about ready to vote
on the same thing here in the State of New York, you know? You know, you have in your power right now to not let what just happened to me happen in the State of New York.

And this I don't really think is really -- like, I'm not a real oddball in this system. There's like 4,000 people in the State of New Jersey who were detained, and I'd say probably half of them were not violent people.

Thank you.

CHAIRWOMAN KRUEGER: Senator Rivera.

SENATOR RIVERA: Thank you.

Actually, this question is for Ms. Esquenazi.

Hello, ma'am. It's been a while since we've seen each other. I figured that the positions on this document from the New York State Bail Bondsman Association is -- obviously expresses your positions as well.

MS. ESQUENAZI: That's correct.

SENATOR RIVERA: There's one -- I just wanted to ask, because I remember vividly the
conversation that we had in my office --
which again, I thank you for coming to my
office when we talked about the bill that I
passed back in 2011 on charitable bail.

And I remember very specifically
that -- the harsh criticism that you gave to
the piece of legislation, and I just --
you've obviously -- you folks have obviously
changed your mind, which I'm very thankful
for, since I'm a big believer in charitable
bail. I also believe that we should get rid
of bail fully, but that's a different
question.

I just wanted to figure out what --
I'm thankful that you changed your opinion,
and I wanted to see why that was the case.

MS. ESQUENAZI: Are you asking a
question, Senator?

SENATOR RIVERA: Yes, ma'am, I am.

MS. ESQUENAZI: Please go ahead.

SENATOR RIVERA: Why did you change --
how did you change your position --

MS. ESQUENAZI: In terms of what
specific subject, sir?
SENATOR RIVERA: On charitable bail.

Back in 2011, I passed a bill to create charitable bail --

MS. ESQUENAZI: Can you read whatever it is that you're referring to to me so that I can be educated as to what you're speaking of?

SENATOR RIVERA: Yes, ma'am. The "Facts about Bail Reform," the document you just handed to us, has claims and facts.

"Claim No. 6: Charitable bail is the enemy of the bail bond.

"Fact: The bail bond industry is 100 percent in support of charitable bail. These organizations provide an essential and effective means of ensuring that truly indigent people are afforded the same opportunity to be free as those who are more fortunate."

I could not agree more. I just wanted to know the position -- which is the one that you have now, which I'm very thankful for -- how did you reach this conclusion?

MR. CLAYTON: Senator, if it's all
right, may I answer?

MS. ESQUENAZI: No, I'm going to answer.

SENATOR RIVERA: Certainly. Anyone can answer.

MR. CLAYTON: I'll cede to my associate.

MS. ESQUENAZI: Okay. So the fact of the matter is, under Section 6805 of the Insurance Law --

SENATOR RIVERA: Please use the microphone.

MS. ESQUENAZI: I'm sorry. Under Section 6805 of the Insurance Law, charitable bail is supposed to operate within the realm of indigency. It doesn't happen as we speak, and I said that to you when we met in the Bronx, and I'll say that to you again.

I don't think that indigent people should be incarcerated. I never have. In 25 years I've never thought that it helped tons and tons of people over the past 25 years.

But the fact of the matter is, when
you walk into the office to get food stamps
or a charitable piece of anything in the
State of New York, you have to have some sort
of proof of indigency, Senator. So the fact
of the matter is I don't disagree with you
that charitable bail does have a role in the
bail system. I just think that it should
operate within the realm of Section 6805.
That's my answer.

SENATOR RIVERA: All right. It's
different than what I just read, though.

MR. CLAYTON: Senator, if I may.

SENATOR RIVERA: Well, my time is up,
actually. But thank you for your time. I
yield back --

CHAIRWOMAN KRUEGER: Senator Diane
Savino.

SENATOR SAVINO: Thank you,
Senator Krueger.

So I want to ask Mr. Forchion -- so
if -- so Governor Christie signed the Bail
Reform Act, and that eliminated cash bail
across the state. And I remember at the time
there was also some concern about the state
did not give funding to the localities who were supposed to deal with either pretrial, tracking, or detention. But what I'm really disturbed about is if what I'm hearing from you is correct, because cash bail wasn't an option and you were obviously the victim of -- it sounds likes a political vendetta -- you were detained pretrial detention for 447 days? MR. FORCHION: For 447 days. Then I represented myself. It was a ridiculous charge, it was a phony charge, everyone knew it was a phony charge. And I represented myself, and the jurors practically laughed me into not guilty. But I spent 447 days. I appealed it twice. I appealed the detention to the state appellate court, but the way the law was written, the judge had every right to do what he did. SENATOR SAVINO: And there was no -- MR. FORCHION: But the ironic thing was I was a columnist for a newspaper, and I wrote about that two years before it happened.
to me, that the fact that a judge can make
this arbitrary decision that, like -- who
cares if you have bail. Now you have -- you
can have political imprisonment. And then it
happened to me.

And it happens in other ways too.
Just a guy on the street gets into some sort
of beef with a police officer. You know,
when he writes his ticket, he writes it in a
way or whatever -- he writes whatever his
charges -- maybe it happens a couple of weeks
later, but he writes it in a way that the
prosecutor now gets it like dog whistling:
Oh, this guy, they want him. And she
presents that argument, or they present that
argument to the judge, and the judge
rubber-stamps it with the detention.

And now when you're detained now, the
way the law is written, your time doesn't
even start until you're indicted, which can
take 90 days. So it's like those 90 days
didn't count. And then they have 270 days to
prosecute you. So there you go, you're right
at a year now, and you -- you've been charged
with a crime. If you're an innocent person, that year -- I will say this also, I went to prison before. I went to prison for 18 months for a marijuana charge, and I did it, I had it, whatever. And I did those whole 18 months no problem.

This charge, I was an innocent man. I was in there with other innocent people. And it was all because of the Bail Reform Act. I pulled hair out, I was so mad and angry. I'm still feeling it, because I'm mad about it. Like, that's not the America I grew up in.

And I tell you what, like I did my time -- a lot of people don't even know it -- I did my time in the Marine Corps, the Army, and the United States Army. You know, I always thought that I had a right -- the Constitution applied to me. I always -- I know the Constitution. I know the first ten constitutional rights off the top of my head. And the Eighth Amendment was absolutely -- has been eradicated by bail reform.

And this isn't the argument that, say, the bail reform people are going to say. I
mean, they're going to say it, but it's --
but from the point of the defendant, the --
it could happen to you or your kid. You can
get charged with something, and then the
judge says, Hey, I'm going to detain you.
And now you're working off of these numbers
that the legislature comes up with for your
speedy trial, which isn't really that speedy
if you're locked up. It's like -- it's at
least a year away. And in my case, 447 days,
a couple of days short of 16 months.

SENATOR SAVINO: Thank you.

SENATOR KRUEGER: Senator Antonacci.

SENATOR ANTONACCI: Thank you.

To the gentleman in the middle, I'm
very sorry to hear your story. I haven't
practiced criminal law, but I appreciate the
fact that we have those rights. Probably
some of those politicians you spoke of
probably deserved it as well, knowing
New Jersey.

But is this -- maybe this is for the
other members of the panel. Are you saying
that if -- and I haven't gotten up to speed
on this, and I know it's coming down the pike
with this cash bail -- are you saying the
elimination of cash bail will adversely
affect defendants' rights to get out
pretrial?

MR. CLAYTON: Yes, because this
proposal relies on the very preventative
detention that held this gentleman in jail.

That's the solution, is that we will
decide who is dangerous, and under this
proposal -- one of the proposals -- a mere
preponderance of the evidence of a risk of
flight will be sufficient, which is a low
bar. And I've never seen any state go that
low.

SENATOR ANTONACCI: But wouldn't a
defendant have a right to post a bond? Not
on this proposal?

MR. CLAYTON: No.

MR. FORCHION: No. New Jersey
eliminated it. They basically --

MR. CLAYTON: Forty-four bonds were
posted last year.

SENATOR ANTONACCI: Okay.
MR. CLAYTON: In this particular instance, the new proposal calls for no posting of bonds under any circumstances. It's either release program or remit.

SENATOR ANTONACCI: Yeah, and I promise to get up to speed on this, but I guess I actually thought we'd have people saying, What are you, nuts? We want to have a cash bail so defendants aren't getting out that may be dangerous, et cetera. But his is interesting.

And as far as speedy trial goes, don't we have plenty of those rules on the books about speedy trials? Isn't that kind of your -- you've got to have a -- not that you've got to have a good lawyer, but --

MR. FORCHION: Yes. But in New Jersey it was 270 days.

SENATOR ANTONACCI: Okay.

MR. FORCHION: Now, I was indicted prior to my arrest. So my -- that 90 days for me was already taken up. The day I was arrested, my days started.

There are other people -- I've been
out now seven months. There are other people who got arrested after me that they are cruising in on two years now because they were denied bail. And I could have made bail. I absolutely could have made bail. But I was denied bail. And I sat there for 16 months for a ridiculous case, and it was a vendetta.

MR. ZALEWSKI: One of the proposals in the pending legislation calls for desk appearance tickets in some instances, provided you can produce I.D. One of the problems with that is that it circumvents the speedy trial rule, because speedy trial doesn't start until the person is actually arraigned. In this instance they're claiming that it's going to be a 20-day period between arrest and your appearance on a desk appearance ticket.

I've been a criminal defense attorney for 30 years. The time between a DAT and appearance in court is about two and-a-half months. So all of that time now is no longer going to be charged as speedy trial time.
So it's going to have an adverse
effect on speedy trial if some of these
provisions are put through.

SENATOR ANTONACCI: Okay. Thank you.

MR. FORCHION: Can I say one thing on
that?

SENATOR ANTONACCI: That's up to the
chair. You've got 20 seconds, so go ahead.

MR. FORCHION: Out of that 447 days,
134 of those days also didn't count because I
filed a motion. And when you file a motion,
according to the New Jersey bail reform law,
you get -- the judge has up to 60 days to
decide. And those 60 days are excludable
time, is what they call it.

But when you're in jail and they say
this is excludable time, that you wait
60 days like it didn't count -- it did count.
Every 134 of those days I remember.

CHAIRWOMAN KRUEGER: Thank you.

Assembly?

CHAIRWOMAN WEINSTEIN: Assemblyman
Lentol.

ASSEMBLYMAN LENTOL: Thank you.
I just wanted to say that I guess you've seen the bill that was proposed by the Assembly, first of all, that's different from the budget bill that the Governor has proposed. And the bill of last year is a lot different.

And I just wanted to tell you that it wasn't 1984 that preventive detention was rejected. It was rejected as early as 1965 when we had -- I wasn't here yet when we had a Republican legislature at the time and we had a Republican governor and we had a commission to overhaul the Penal Law, and the subject of bail was one of the most difficult subjects and still today is the hardest part of the criminal justice reform, as far as I'm concerned.

But in those days they considered for hours and hours the question of preventative detention, and it was rejected. And it wasn't by a progressive governor, a progressive mayor, or a progressive legislature. It was rejected by a Republican legislature and a Republican governor,
because it doesn't work.

    And we understand that in our bill.

And we still provide for cash bail for
violent felons without preventative
detention. And I think that's the way this
system should work. If we provide no bail
for people who are misdemeanants and for
people who are nonviolent felons -- I don't
know if you agree if with that, but that's a
system I think I could work with and support
philosophically.

    And I don't know how you feel about
it, but I think you could be part of the
solution if you could help us with proposing
a bail reform system that actually works.

    MR. CLAYTON: Just briefly, I would
agree with you, and I appreciate the history
on that. I need to go do some more research
on New York specifically.

    I agree, preventative detention is not
an answer. Can we be a part of the solution?
I think so.

    On our website there's a thing called
"The 4th Generation of Bail Reform." Give it
a read. And certainly we'll do everything we can to be whatever part of the system that New Yorkers want us to be a part of.

MS. ESQUENAZI: Assemblyman Lentol, I just want to thank you for your comments. You know that I've been coming to see you about this issue long before it got popular with many of the younger generation here -- since 2013, sir. So I do think that we have a lot to offer in terms of expertise, and we look forward to working with the Assembly and the Senate in that specific regard.

ASSEMBLYMAN LENTOL: Thank you.

CHAIRWOMAN KRUEGER: Thank you. Senator Zellnor Myrie.

SENATOR MYRIE: Thank you, Madam Chair.

Let me just say I think reasonable minds can disagree on the substance of how we reform bail. I think having a debate and a discussion is healthy.

What I think is not allowable is conjecture, misinformation, and mockery of
what is a very serious issue. And I think
some of what we've seen today is a disgrace
to people who have been criminalized because
they are poor. People have died because they
cannot afford bail. This is not an issue to
play games with this. This is not something
that we should take lightly.

And I think some of the conversation
and the discussion today has been highly
unacceptable. It is not based in fact. And
I think we have a duty and a responsibility
to speak up when we see that.

There are a number of things that have
been mentioned about this bill that I think
we don't have enough time to correct. But I
wanted to go on the record to say that some
of the things put forward are just simply not
factual.

And, you know, the citing of
New Jersey I think is fine, but it is my
understanding that we are in the New York
State Legislature and that it is our
responsibility to legislate for the people of
this state. So I want to underscore -- and
this is a comment, not a question -- that we
are going to take this very seriously.

And again, we can disagree on the
substance, but what I've seen today is
unacceptable. And this mockery of the
process and this taking it lightly -- I
cannot stand idly by and listen to it.

So I look forward to working with my
colleagues in the Assembly as well as my
colleagues in the Senate. But this is an
issue that is too serious to have what we've
seen today occur.

Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: No, we're done.

CHAIRWOMAN KRUEGER: Oh, you're done.

CHAIRWOMAN WEINSTEIN: Yes.

CHAIRWOMAN KRUEGER: Okay. Then
we're done. Thank you very much for your
time.

MR. ZALEWSKI: Thank you.

MR. CLAYTON: Thank you.

CHAIRWOMAN KRUEGER: The next --
MR. FORCHION: I don't think 447 days is a mockery.

CHAIRWOMAN KRUEGER: The next is a panel of New York State Troopers Police Benevolent Association, New York State Police Investigators Association, and Police Benevolent Association of New York State.

And I see a fourth -- let me see if I'm -- is it an additional group that I didn't get to --

PRESIDENT MUNGEER: No, I think you've covered it all.

CHAIRWOMAN KRUEGER: We've covered you all?

PRESIDENT MUNGEER: Right. It's kind of a mish-mosh, but we're here.

CHAIRWOMAN KRUEGER: Well, nice to see the mish-mosh.

(Laughter.)

PRESIDENT MUNGEER: Well, I'll start off.

Madam Chair, Senator Krueger, members of the committee, this is actually my 10th time testifying before you. I represent
7,000 uniformed State Troopers -- retired, active. My name is Tom Munger, and I'm president of the Troopers PBA.

The first thing I want to do is thank everybody up here in the committee. Last night -- I don't know if you had heard about it, I know you're busy all day -- we had a police-related shooting up in Binghamton. A trooper pulled over a car, the subject got out and opened fire with a semiautomatic rifle upon my trooper, right through the windshield of his car and into the car door. My trooper was able to get his gun out and return fire and stop the subject, and he actually -- my trooper went home to his family with just a minor wound.

The one thing I want to thank you for is that a couple of those rounds that perpetrator shot were stopped in the car door by ballistic panels that this committee okayed a couple of years ago that we testified for. So I have a trooper upstate right now, because of what you've done, he was able to go home to his family. So I
thank you. He is not the 30th trooper I've
lost since 2006. That number stays at 29,
and I want to thank you.

I'm going to hit on just a couple of
things that I believe that we need with the
State Police to ensure my members' safety.
One simply is manpower. My first deputy
superintendent did testify before that we
have 250 recruits in the academy. It appears
we have another 250 to be hired this year.

I have been very vocal over the last
couple of years that we need, back-to-back in
the fiscal year, two classes of 250. So I
need an additional 250 troopers so upstate
will not lag behind with all the initiatives
that the Governor has had us do. By all
means, whatever is thrown our way we'll do,
but we do need the manpower. The men and
women who wear that gray uniform out on the
roadways all over New York State need that
backup.

The other thing is patrol vehicles,
simply put. Right now in the State Police
budget there's $15 million for patrol
vehicles. We need an additional $10 million
to make sure that those cars are turned over
adequately, a quarter of the fleet every
year.

What happens is that our orders get
lagged behind, and my troopers are out there
driving at high speeds -- as you know, zero
to 100 and back down to zero again -- or
going to emergencies backing other troopers
up, and their cars sometimes have 180,000 to
200,000 miles on them. It's not your typical
family car, where it's driven 55 miles per
hour, preferably; this is high-speed
emergency response.

So simply put, I need another 250
troopers in the budget. I need another
$10 million for vehicles.

And I will take any questions, or
we'll do that at the end.

CHAIRWOMAN KRUEGER: Let's do all of
you and then we'll take questions.

PRESIDENT MUNGEER: Absolutely. I'll
go to my counterpart from the Investigators
Association.
PRESIDENT QUICK: Christopher Quick, president of the New York State Police Investigators Association. We're the union that represents the 1200 active members in the BCI.

To piggyback off of Tom, I'd like to say ditto on what he said as far as the cars and the manpower. The manpower for the BCI flows from the manpower of the troopers, so if the manpower for the troopers isn't available, the BCI is not going to have the available means to do their jobs.

We were at a high of 1,350 prior to 2010. With the hiring freezes, we went down as low as 1,030 members, and we've climbed up to -- current today -- 1,197. Budget has authorized the division for us to be at around 1,206, so we're almost there.

I know time is limited, and I'm going to sum -- in summation, two important points that I'd like to share with the committee here.

One is undercover vehicles for our members. You know, I testified before about
the criminals doing their homework, and they actually take note of what kind of cars the police that are doing undercover operations drive. So we're constantly wishing for a diversity in the cars that the division is able to purchase through the state bids. And it's very important that that be considered by the committee.

The other important issue that members of the BCI have is we're not issued uniforms. We go to work either in a suit and a tie, if you're working in a back-room detail, or if you're in an undercover operation, you usually wear clothing that fits the detail or the community that you're working in.

But there are often times when we are called to duties such as the manhunt up in the Adirondacks for Matt and Sweat, or called to duties for emergencies such as the hurricanes like Hurricane Sandy, and we need to be identified as police officers.

Most of the time our members are responding in either casual clothes, whether they're jeans or a t-shirt or flannel
shirts -- but you can only imagine that our members that were searching through the woods up there in the Adirondacks, if they stepped in the backyard of some person that was home, whether it was a single mother at home by herself or just a male waiting who's on high alert, waiting for somebody to step out of the woods, it could have been Matt or Sweat, and it was one of my members -- thankfully nothing happened, but the potential is there.

Versus when we're working emergency, we need to be identified because people need help. If they don't identify us as a police officer, they're going to look the other way because they're going to continue looking for a police officer.

So those are the points that I want to get over that are very important to relate to you tonight.

CHAIRWOMAN KRUEGER: Thank you.

Gentlemen?

PRESIDENT MARCISZEWSKI: Good evening, ladies and gentlemen on the committee.

My name is Scott Marciszewski. I'm
the president of the Police Benevolent Association of New York State. I represent approximately 1200 dedicated men and women that work as State University Police Officers, State Park Police Officers, Environmental Conservation Police Officers, and Forest Rangers.

I'm here tonight to ask -- I'm here to thank the Legislature for passing our three-quarter disability legislation and the heart presumption legislation for SUNY police officers. Unfortunately, the Governor vetoed that legislation, so I'm asking if this committee would consider adding that legislation into the budget process.

And the reason for that is parity. We face the same dangers as every other police officer across the state. In 2016, Environmental Conservation Officer James Davy was shot responding to a call of individuals hunting in the evening, and he was shot. So I would ask that you will consider putting this legislation back into the budget.

And I'm also asking for geographic
area of legislation for SUNY police officers. As our campuses expand, our officers are all across the state. They come upon instances where people need help from the police. And if we are not in our jurisdiction, we are not able to help people.

When you need help, when you need the police, you don't care what the side of the police car looks like, you need a police officer. We're fully trained police officers, we receive police certificates, but due to an error in the law we're not able to help people if we're off the campus or outside our jurisdiction.

There is no cost to this legislation. In my view, this is a no-brainer. Give us the ability to help people throughout New York that need help from a police officer.

I know we're running out of time; I'll take questions at the end. Thank you.

VICE PRESIDENT VILAR: Hello. Thank you, Madam Chairwoman and the rest of the committee, for having us today.
My name is Manny Vilar. I'm actually the founding president of the Police Benevolent Association of New York State. I'm also a sergeant and 35-year veteran in the New York State Park Police.

I'm here to advocate for the New York State Park Police. Due to a recruitment/retention problem at the New York State Park Police, we have a 53 percent attrition rate. The State of New York is spending, on average, $3 million to $5 million a year to train State Park Police officers with no gain. In the last 20 years we've hired over 450 State Park Police officers to maintain a police force of 250. We've lost over 253 of those officers to other agencies -- over 100-and-some of them went over to Tom's people, over in the State Troopers.

So what we're advocating for is an immediate takeover of the New York State Park Police by the Division of State Police to try and stem the constant attrition that we're having at the New York State Park Police.

In the last 20 years, the State of
New York has spent up to $80 million in training police officers. That's money that's been wasted that could have otherwise been used to provide for more troopers, more park police, more police officers to provide for the safety and well being of patrons in state parks.

State Parks has received over 71 million visitors last year, patrolled thousands of miles of state roads and parkways, snowmobile trails, waterways. They're trained to the same level as the State Trooper.

We believe the legislation that we have before you to merge the two agencies would eliminate that attrition. We know that it would eliminate that attrition, and it would also provide sufficient funding and resources to cover any expenses that may occur and to hire more and additional troopers as we go on year after year, as opposed to training them and losing them.

CHAIRWOMAN KRUEGER: Thank you.

VICE PRESIDENT VILAR: Thank you.
CHAIRWOMAN KRUEGER: Senator Diane Savino.

SENATOR SAVINO: Thank you, Senator Krueger.

Thank you, gentlemen. As always, thank you for your service.

And, you know, I think I've been sitting at this table so many years now I could actually give your testimony, because a lot of it hasn't changed -- the size of the workforce, the condition of the vehicles.

So as you said, I think it was five years ago was the first time we put money in to address the issue of these vehicles. Some of them had more than 200,000 miles on them. They were supposed to buy some new ones. Are we still -- or have we just gone through the new ones now, is that the problem?

PRESIDENT MUNGEER: Well, yeah, Senator, we appreciate it. Thank you for your support over the years.

It's a constant thing. We put a lot of miles, these cars are run almost 24 hours a day, seven days a week, 365 days a year.
So the miles really do add up quite a bit.
So every year it's approximately $15 million
that is budgeted already, but again, we're
falling behind. We need some additional
funds.

So it's never going to be a problem
that's solved. We're always going to need to
replace the police cars. I have a car right
now up in Binghamton that's got about
20 holes in it that can't be driven any time
soon.

SENATOR SAVINO: Obviously.

PRESIDENT MUNGEER: So it's not so
much the high mileage, it's just the constant
wear and tear of being a police vehicle. They
get over --

SENATOR SAVINO: I don't want to cut
you off, Tom --

PRESIDENT MUNGEER: Sure.

SENATOR SAVINO: -- but I want to ask
you a question, because you might -- you were
able to answer this when the Superintendent
of Police wasn't able to answer it.

So there's a lot of concern with the
implementation or adoption of legal marijuana in New York State and how that will affect traffic safety. And there's been this request that we need to have more drug recognition experts. So I asked the superintendent the question earlier: How many do you think we need, how much does it cost, what goes into training someone to be a drug recognition expert?

PRESIDENT MUNGEER: Well, it's funny you should ask. I am a drug recognition expert.

SENATOR SAVINO: I know. That's why I'm asking.

PRESIDENT MUNGEER: It's been a while since I did it. But for over 20 years now, I would say we're definitely understaffed. I would say with the two-platoon system we would probably need upwards of 400 DREs statewide.

You'd have to -- as far as cost per DRE, that is one question I cannot answer. But you need the proper coverage. You would need probably two per station per platoon, so
that puts -- in a perfect world, around 400.

The training -- very, very intense
when I went through it. It was a couple
weeks long, plus add on to that the field
training we did back then. We went down to
the Bronx and did our field training down
there for DRE, but it actually is one of the
tougher schools that you attend within the
police community.

SENATOR SAVINO: Thank you. And
again, I thank all of you. We are well aware
of your issues and, you know, we're going to
continue to fight for them. Hopefully we'll
get some of these pension laws in the budget,
since the Governor continues to veto them
since they're budgetary issues.

PRESIDENT MUNGEER: Thank you,

Senator.

SENATOR SAVINO: Thank you.

CHAIRWOMAN KRUEGER: Senator -- oh,
Assembly. Excuse me.

CHAIRWOMAN WEINSTEIN: Assemblyman Ra.

ASSEMBLYMAN RA: Thank you very much.

Thank you, gentlemen, for being here
and certainly for what you and your members
do to keep our state safe. And in particular
we send our best to Officer Conklin and hope
he's well again soon. And we're very
thankful that, you know, those resources were
there to protect him in this situation.

PRESIDENT MUNGEER: Thank you, sir. I
appreciate that.

ASSEMBLYMAN RA: I just want to ask
about something you mentioned in your letter,
because as many people are aware, we did a
major package of gun bills today in the
Legislature. But one of the things that I
think is missing is that dedication to SROs,
and you mentioned it here. And I think
that's not just -- it's certainly a great
thing for safety, but it's so much more than
that in terms of establishing a relationship
with a student population and being there for
everything from bullying situations and all
of that.

So, number one, that 500 additional
troopers, would that fit into being able to
staff that type of program, or would that
require additional personnel?

PRESIDENT MUNGEER: Yeah, as I stated before, the Governor has greatly expanded our duties over the last number of years, and the deputy superintendent did testify to that down in New York City and what have you.

One of the big casualties of the previous -- a couple of previous administrations' hiring freeze was that they had to cut out the school resource officer program. And I did not touch on that in my spoken testimony, but it is in my written testimony.

I've been a big advocate of that. You get out in the rural areas, the nearest police officer -- not only trooper -- might be miles and miles away. And as a father of four children, two of them are still in high school, you know, that peace of mind, knowing that there's a police officer nearby -- and I do not want to have some other tragedy that you read about other places in the country visit New York State.

And I think one of the things that we
can do is be proactive and put police officers, troopers, whether it's local police officers or troopers into schools to help buttress the security. Those 500 troopers I mentioned, they can come at -- the SRO program can come out of that, although any other additional troopers are more than welcome.

ASSEMBLYMAN RA: Thank you.
CHAIRWOMAN KRUEGER: Thank you.

Senator Antonacci.

SENATOR ANTONACCI: Thank you, Madam Chair.

Thank you to all your members for their service. It's a dangerous job. With regard to the troopers, as I said earlier to the superintendent, deputy superintendent, the New York State Fair couldn't function without the men and women that help that fair.

I'm also a member of an organization where we memorialize any troopers that are killed in the line of duty with a brick at the Horticulture Building. It's a very
well-done ceremony -- we'd like to not have it, but unfortunately that happens.

I realize that the deputy superintendent is more management and you represent the men and women that are out there every night. Do you guys have an opinion, does your organization have an opinion on the commercialization of marijuana?

PRESIDENT MUNGEER: I guess being the head of the union, this esteemed body -- you pass the laws, we enforce them.

I will ask that the one thing that I believe that we do need is some sort of monies within this law for DREs, for manpower and everything else, so we can perform our duties. Some of the -- I belong to national organizations. Colorado, I do know that, you know, they are claiming that their fatality rates go up and what have you. I know there's different statistics out there. But we're going to need some more money to ensure that the men and women out there can perform their duties.
You know, the one thing the deputy superintendent touched on, which I believe --
you know, our dog program, from what I understand, all those drug dogs will have to
be immediately retired and replaced with new drug dogs. So just one little thing.
So as far as my personal opinion,
that's something else. We will enforce the laws that this esteemed body does pass.

SENATOR ANTONACCI: Okay, thank you.
To the other topic, I think I could support more jurisdiction of SUNY Police. I drive by a community college campus -- I live literally about a mile away. I guess I have a heavy foot, so I'm not a big fan of someone being out there with speed traps. But certainly if there's an accident or a need for an emergency service, I don't know why we wouldn't agree to that.

PRESIDENT MARCISZEWSKI: The purpose is not more enforcement. The purpose is when jurisdictions call us for help. When I'm at the University of Buffalo, our campus is expanding into downtown Buffalo, we go from
building to building -- when we go from building to building, we lose a certain part
of our jurisdiction. And when we get "Help, help, help" we should be able to help. I'm
not there to write you a ticket, but I'd love to help you.

SENATOR ANTONACCI: I would think, right, yeah. I think I can support that.

Last question, I've got about 30 seconds. I talked to the commissioner of DEC about this issue that I've been advised about with Environmental Conservation Police Officers and Forest Rangers. You can get back to me at another time on this, but I certainly wouldn't want to pit members of your service against each other, but there does seem to be some clear differences in duties, and I'm sensitive to pay structure. If there's anything, you know, you want to reach out to me privately on, I would appreciate that.

PRESIDENT MARCISZEWSKI: Yeah, we can certainly do that, follow up.

SENATOR ANTONACCI: Thank you.
CHAIRWOMAN KRUEGER: Thank you.

Senator Antonacci, keep your foot off the speed pedal.

(Laughter.)

CHAIRWOMAN KRUEGER: And Assembly.

SENATOR ANTONACCI: I will.

CHAIRWOMAN WEINSTEIN: Except if you could help us speed through the hearing, that wouldn't be bad.

But we'll go to Assemblyman Lentol.

ASSEMBLYMAN LENTOL. Thank you. Thank you, Madam Chair. Thank you.

Just more of a statement, I don't have a question. But maybe I do have a question. But I just wanted to say at the outset that -- thanking you for your service to the State of New York. I believe that you folks, all of you, Tom and everybody else, are held with a great deal of respect in the State of New York, and certainly among us in the State Legislature. We hold you in very high regard, and we want to see that you have the resources to do your job even more effectively.
But I wondered as you spoke about the legalization of marijuana, Tom, whether or not -- I know that there was a time -- maybe before your time, but I don't think so -- that we were able to conduct tests without equipment like Breathalyzers to determine whether somebody lacked sobriety on the streets of New York State, where we could conduct coordination tests for alcohol as well as drug-related offenses.

PRESIDENT MUNGEER: That's incorporated in the drug recognition expert protocol. That's just one part of it.

You know, as again the deputy superintendent testified earlier today, that the reason you're pulling over that vehicle is because you witnessed some sort of impairment, most likely. And from that point on, your investigation continues.

So if it's bringing that individual out of the vehicle and then conducting tests -- from there, you might have to bring them back to a station or a barracks and perform additional tests as a drug
recognition expert. But there are a certain number that you can use. It is a little tougher from alcohol; alcohol is usually very noticeable from smell. But Assemblyman, that is part of the -- field sobriety testing is part of that process.

ASSEMBLYMAN LENTOL: But the question still remains, we don't have a Breathalyzer test where somebody who smokes marijuana --

PRESIDENT MUNGEER: No.

ASSEMBLYMAN LENTOL: Nor do we have a DNA test to determine -- or any other kind of scientific test.

Are we on the brink of establishing a test that may help us when we want to enforce someone who's driving under the influence of drugs?

PRESIDENT MUNGEER: Yeah, I do not believe so. And again, I am not going to speak to the science of it. I can speak to what I am trained. I received training in recognizing if somebody is impaired by certain drugs, including alcohol, but other recreational drugs. That I can testify to.
So what I will say is that as Senator Savino stated, it's an intensive course to learn that. And we're going to need a lot more of them in order to go out there.

Again, if the laws are passed as it looks like they are going to, the one thing I'll ask from all of you is that -- give me some help within that law to give us funding so we can protect the people of New York State more adequately.

ASSEMBLYMAN LENTOL: Thank you.

PRESIDENT MUNGEER: So I appreciate your support over the years. It means a lot.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

It's not a question, I'm just going to throw out a comment as a sponsor of the marijuana legalization bill.

So we won't necessarily have more people using marijuana and driving because everybody's using marijuana now, it's just illegal. So it's not actually expected that we'll see an increase.

But I do completely agree -- and in
the bill that Crystal Peoples-Stokes and I carry in the Assembly and the Senate, there is a commitment of funds to get you those specialized officers because of the recognition that specially trained officers can in fact determine whether the driver is driving inebriated based on observation, because we don't yet have a field sobriety test from an equipment perspective, although several states and countries are piloting projects for mobile devices.

Now, that's my minute. I end my time.

And now may I go to John Liu?

SENATOR LIU: Thank you, Madam Chair.

I want to thank you, this panel and your members, for what you do for the residents of our state. I have some related questions which I will offer to you. If you'd like to discuss them more in private, I'd be happy to do so.

But along the lines of what we are about to do, and what I think and what you apparently also think is about to happen in the State of New York decriminalizing the use
of cannabis -- and so you've answered
questions about recognizing people who might
be under the influence of these drugs.

What about the idea that there are
some people who believe that marijuana is a
gateway drug, a gateway drug to -- you know,
other drugs that people might consider more
serious, more dangerous? Is there any kind
of position that any of your associations
have taken, or if there's an informal opinion
you might wish to offer on the record?

PRESIDENT MUNGEER: I'll offer my
opinion. And again, I walk that tightrope
with my personal opinion and also the opinion
based on what you give me for laws to
enforce.

I represent the people -- you give
them the laws, my people have to go out there
and enforce these laws. So we have to brush
aside all our personal opinions. You might
agree or disagree with that law out there,
but once that law is on the books, we have to
enforce it.

So as far as a gateway drug, again,
that comes down to a personal opinion. So again, from what I see coming, and reading and what have you, it sounds like it's going in that direction. So Tom Mungeer's personal opinion really doesn't matter.

Again, I just ask you for that help on, you know, the monetary side so my people can do their job more adequately. And our ultimate goal is to protect the men and women and children of New York State.

SENATOR LIU: I will say that some of the literature that I've read or have been given indicates that the science and medical community doesn't necessarily see marijuana as a gateway drug.

But from the point of view of enforcing current laws and also keeping communities and people safe, it is possible that some of your members have made observations that may not be scientific or medical in nature but speak to the behavior of people in our communities on our streets.

And you can't answer this question right now, obviously, but if there's any
information or any kinds of anecdotal
evidence or surveys among your members that
you could provide, I think that would be very
helpful to inform our debate.

PRESIDENT MUNGEER: Thank you, Senator.

CHAIRWOMAN WEINSTEIN: Assemblyman Weprin.

ASSEMBLYMAN WEPRIN: Thank you.

And I want to also thank the panel for
all your service to the State of New York.
And as you can see from the statements of my
colleagues, you have bipartisan support.
Anything we can do to help you keep us all
safe -- and of course, thank God that that
trooper is okay, and hopefully he'll make a
full recovery.

And thank you, Tom, for your years of
service, and all of you for keeping us all
safe.

PRESIDENT MUNGEER: Thank you, sir.

PRESIDENT MARCISZEWSKI: Thank you, sir.

CHAIRWOMAN KRUEGER: Senator Jamaal
SENATOR BAILEY: Thank you, Madam Chair.

I would also echo those sentiments. I'm glad that the officer is safe and we are passing gun control laws so that we can get dangerous guns out of the hands of individuals whose hands they shouldn't be in.

And one of the bills that we actually passed today was related to gun buyback. And I know that it's fresh, and I'm not going to ask you to opine on legislation that has been just passed today, but I want you to think about whether these gun buybacks that we're looking to -- that you have the option, I should say, the State Police has the option of doing throughout the state, will have any adverse effect on membership, what it takes away from personpower, as opposed to manpower, or will it take away from the officers doing tasks that they're required?

I would just like to -- whether you have an opinion on that right now or not.

PRESIDENT MUNGEER: Well, for any task
that they give us, whether it's patrolling New York City or putting a detail in Puerto Rico or the Virgin Islands, it takes away manpower from the everyday patrol duties.

So the gun buyback, I don't believe we've ever participated in anything like that. I know local cities, local jurisdictions do. So whenever you do an initiative like that, it does take manpower. So yes, it's going to take resources and it's going to take other things away.

So again, if these laws -- and this one was passed -- that again, I need the resources in order to carry out the mission, if you have it. And right now we're just on the cutting -- you know, a cutting edge that -- we're just keeping up with attrition. And with these other initiatives, we're definitely going to need more manpower to -- my people will -- whatever you throw their way, they will -- they'll do, but we need the resources.

SENIOR BAILEY: As has been proven
through your commitment and your excellence throughout the state. I just wanted to make sure I got that on the record. And that's the reason why I wanted to ask the question, so that we can make sure we're mindful of these things going forward.

Thank you for your time tonight.

PRESIDENT MUNGEER: I appreciate that, sir. Thank you.

SENATOR BAILEY: Absolutely.

CHAIRWOMAN WEINSTEIN: I just want to take a moment also to thank all of you and your members for the service to our state. And I was honored at -- to be at the PBA dinner this last June, and the Signal 30 benefit dinner. And I just wanted to say -- I didn't have an opportunity then -- but it was a very moving experience, especially relating to the families of fallen officers.

So thank you for your service.

PRESIDENT MUNGEER: The troopers have enjoyed the support of -- bipartisan support, and we appreciate that, and we -- it will continue. And thank you for everything.
CHAIRWOMAN KRUEGER: Thank you all very much for being here so late.

PRESIDENT MUNGEER: Thank you.

PRESIDENT MARCISZEWSKI: Thank you for having us.

PRESIDENT QUICK: Thank you.

VICE PRESIDENT VILAR: Thank you for having us.

CHAIRWOMAN KRUEGER: Next is Tracie Gardner of the Legal Action Center. She left. You are not Tracie Gardner of the Legal Action Center.

Brian Sullivan, is he here? Oh, there -- Brian Sullivan?

MR. VISCUSI: No, he was not -- he was unable to make it. He had to tend to a union issue in Nassau. He asked me to speak on his behalf.

CHAIRWOMAN KRUEGER: Okay. Sure. And you'll introduce yourself when you get here, and then just let the next speakers know that, Michael Powers and Tammy Sawchuk of the New York State Correctional Officers and Police Benevolent Association.
And you are?

MR. VISCUSI: Good evening, Madam Chair, and members of the Senate and Assembly. Thank you for allowing me to speak this evening.

My name is Louis Viscusi. I'm the president of the Suffolk County Correction Officers Association. I'm also member of an informal group of downstate corrections officers which include Suffolk, Nassau, New York City, and Westchester.

I was hesitant about speaking on the issue of bail reform, because many will think that my concern is solely based on the theory of more inmates equals more jobs. Actually, the concern that I have is that we continue to release repeat offenders back into the community without getting them the help for their problems which have led them down this path. What we're doing is a disservice to the accused offender and society. We need to work together to treat these issues and make them less likely to reoffend.

I am a correction officer, but aside
from my career, I'm also a Suffolk County resident and a proud parent to my 14-year-old son and my 11-year-old daughter. I am by no means an expert on bail reform in New York State. However, I would like to explain what I do know from my experience as a correction officer working in Suffolk County.

I spent the majority of my 20 years as a corrections officer in the booking area. We would book inmates upon admission and discharge them when they are released for various reasons. All court appointments went through my work area as well.

In Suffolk County, I feel the system works. I'm not saying it's a written policy, but from my experience, if an individual is arrested for the first time on a nonviolent crime, they almost always are ROR'd. And I agree that they should be. Sometimes good people make bad decisions.

But sometimes an individual is in a bad way and continues their criminal ways. That same individual is then arrested for additional crimes in a short period of time,
and their chances of ROR are lessened.

Either way, if an individual is remanded, they have court dates fairly quickly in Suffolk County. Depending on the crime, most bails will be reduced with each court date or the inmate may be ROR'd on one of those future court dates.

Inmates new to the system would often ask me, when they were going to court, What do you think will happen in court today? Nearly every time I can look at their charge, their bail, their priors, and tell them fairly accurately they will be either ROR'd or what their bail could be reduced to, because what we had worked.

If there are isolated cases and systems that need to be addressed around the state, then I feel that should be done. Maybe certain municipalities need to change the way they operate.

But at some point, I feel that public safety needs to be taken into consideration. I know that was not the original intent of cash bail. But we as private citizens have a
right to public safety, and you as elected
officials have a duty to ensure it. If bail
reform needs to be enacted, there needs to
also be an avenue for the courts to weigh out
the risk to public safety for perpetual
offenders. We owe that to the law-abiding
citizens, and we owe a path to a better
lifestyle for the repeat offenders.

Even if someone is only committing
nonviolent crimes, they are still -- they
still affect our neighborhoods, our property,
and our families. We need our children to
see that people who repeatedly commit these
crimes do have some consequences.

Most of the crimes being committed
today are drug-related. You can Google the
newspaper articles and see so many people say
"I would be dead if I wasn't put in jail."
That's because they need to get clean before
they even have the chance to make some good
decisions moving forward.

Taking a repeat offender with a drug
addiction and giving them another appearance
ticket or RORing them again will just put
them back out onto the streets to continue
their life of crime. It may be nonviolent;
it may be the person who just breaks into
your car, maybe it's the person who waits for
you to leave and climbs through your window
and steals your jewelry box. Either way,
this person needs an avenue to get clean and
access to programs.

Sometimes jail is the only viable
solution for them. Many people have a
Hollywood view of jail and prison because
that's all they know is what they see on TV.
Again, I can only speak from my experience in
Suffolk County, but it's nothing like TV.

We have many programs and specialty
housing areas to assist the inmate population
and give them a fighting chance to being
productive members of society when they
leave. We have specialty housing for our
elderly inmates that are 55 and over, veteran
inmates, younger population, and we have
alcohol and substance abuse programs for
inmates. We have vocational programs so
inmates can learn a trade and be gainfully
employed when their time is served. We have
a library and church services and the ability
to earn your GED while incarcerated.

I admit that there may be problems in
the system, and if there are, then we should
look for those problem areas and fix them.
Start using our jails as their real title,
correctional facilities. I can speak for
Suffolk County only, not on a departmental
level, but as far as my officers, I've seen
recidivism drop. We used to have an average
count of 1800 inmates up until about seven
years ago, when we started enacting these
programs. Now we average about 1200 inmates
per day.

If we have areas that are already
doing that, leave it. I know that everyone
speaks about Kalief Browder, and I agree that
any loss of human life is tragic. But he
didn't die in jail. He died two years after
he was released because of untreated mental
illness. If there were missteps in that
case, let's do what we can to prevent those
missteps from reoccurring. But let's do it
without putting our families in danger.

I was fairly young during the '80s, but I saw how New York State emptied most of the psychiatric hospitals to save some money. I think we can all agree that that backfired. Let's not make the same mistake here.

Thank you for your time.

CHAIRWOMAN KRUEGER: Thanks for your testimony.

Senator Jamaal Bailey.

SENATOR BAILEY: So I would like to thank you for your testimony and your approach to this very important matter, and Senator Myrie, in contrast with some of the things that we've heard earlier.

I understand the job is a rough one. And I understand that the reality is -- but from my perspective and where I sit and where I've been, growing up where I've grown up, some of the things about cash bail that I individually, as a State Senator and a person, find troubling is that we are detaining people solely predicated upon their wealth or lack thereof. If you are
Harvey Weinstein, you can get out the same day. But there are people who can't afford $300 to get out.

A lot of the public policy behind why I believe that we should be looking to reform our bail system -- and again, I am open to listening to any opinion from any person about how we can change things. But I strongly believe that we should not be looking at wealth as a way to continue detention. And those are my opinions.

And again, I thank you for the job that you do. It's less of a question but just more of a statement in response to what you did. And I respect your view, and I appreciate it.

MR. VISCUSI: I actually agree. I've read some isolated cases that I think, you know, have been excessive, how some people have been incarcerated on a low amount of bail for a very minor crime for a long period of time.

I can't speak for every county. I don't know every judicial system. All I know
is how we do things in Suffolk County, and I
think that is pretty fair.

SENATOR BAILEY: And I appreciate
that. I'm a Bronx County resident my whole
life, and I -- in the Kalief Browder issue,
you're right, he committed suicide two years
later. But again, the bail that was set --
if he and his family were not unable to pay,
he's able to get out on a charge that he
ultimately beats. So I understand the
comparison.

But, you know, if we didn't have cash
bail or we had a different bail system,
somebody like Kalief who was in jail for
something that he didn't do, he might not
have been there. He wouldn't have had to go
through the mental anguish and the issues and
contains that he went through.

MR. VISCUSI: I don't disagree with
you. I feel like in Suffolk County, I think
we have like this unwritten credit system.
They look at what you're charged with. If
it's something that you're only going to get
60 days for anyway and you're in for 21 days
for your next court date, I know you're going
to get ROR'd, because the ultimate outcome is
not going to be much longer than that anyway.

And I think there were missteps in
that case as well as several others. And I
think that there definitely needs to be some
corrections. But I don't think totally
eliminating -- I think public safety needs to
become a factor.

SENATOR BAILEY: Well, I appreciate
your testimony and your time and your candor.

MR. VISCUSI: Thank you, sir.

SENATOR BAILEY: Thank you.

CHAIRWOMAN KRUEGER: Thank you very
much for your testimony tonight. Appreciate
it.

MR. VISCUSI: Thank you.

CHAIRWOMAN KRUEGER: And now up,
Michael Powers, New York State Correctional
Officers and PBA. Is he here? We have his
testimony, but perhaps he's tried to return
home in the snow.

Okay, then we're going to go to Public
Employees Federation: Steven Drake, Adreina
Adams, and Ricardo Cruz, or some combination therein.

Good evening.

MR. DRAKE: Good evening.

CHAIRWOMAN KRUEGER: We're just doing a little reorganizing.

Hi. Start, please.

MR. DRAKE: Good evening,

Chairs Krueger, Weinstein, and Weprin, and other distinguished members of the Senate and Assembly. My name is Steven Drake, and I'm a vocational supervisor at Mohawk Correctional Facility and have worked for the Department of Correction for over 26 years.

The New York State Public Employees Federation represents nearly 5,000 DOCCS members, including those who work in the communities in the Division of Community Supervision. It also includes those who work within the prison health system, rehabilitative services, education, vocational training, drug treatment and many other titles that provide programs and services to inmates. These are all areas
critical to help DOCCS fulfill its mission.

The first concern that we'd like to
talk to you about is the delay in creating
and implementing a vendor-based package
program within the facilities. It poses
increased dangers for the staff with the
knowledge that drugs and other contraband are
introduced into the facility through package
rooms.

This issue continues to be a high
priority to protect our members. With recent
legislation changes, the prison population
overall has decreased. What is left is a
population more violent than ever before.
While the department has responded with
increased development and uses of programs
such as the SDU, reduction in SHU time, and
use of pepper spray, our staff is left to
deal with a more violent type of inmate.

I appreciate the Governor and
Legislature and their efforts to reform
solitary confinement issues. However, we
have some concerns about the proposed
changes. Therefore, the proposed legislation
such as the HALT bill poses additional dangers to our staff, the main concern being our staff's inability to have a robust and corrective course of sanctions without these measures in place. The window is open for inmates to develop more manipulative skills.

We have seen how direct programming benefits not only the inmate, but increased safety for staff and other inmates. By front-loading programs such as ART and ASAT and education at the start of the inmate's incarceration, versus towards the end, it would allow for inmates to put the skills he or she has learned to use to make better choices throughout their incarceration.

Increased programs, early intervention, and a stronger use of a progressive disciplinary system allows for a proactive approach for staff and accountability on the inmates' behalf. The proposed limitation of sanctions, such as 15 days of SHU time in the HALT legislation, may lead to increased inmate manipulation of the system and the development of an "only
the strong will survive" type of environment for the inmates.

The next concern would be -- another area of great concern is the alarming shortages in vacancy rates among nursing, dental, and pharmacy positions, with rates in some facilities hovering at 50 percent or more. The medical staff, especially nurses, are not only tasked with the care of inmates but of staff as well. With an increase in violence and drug use, nursing staff are called upon to assess and treat both inmates and responding staff involved in a variety of emergency situations. While geographic pay differentials have helped, it is only a short-term fix.

A collaborative union effort has helped educate staff on safety procedures and risk identification. Through this collaboration it has become even more imperative that the department upgrade our outdated personal alarm system. While we understand the department's recent budget allocations, such as the AO facilities and
the NYCLU lawsuit, we still ask how to quantify the cost of a negative life-changing event.

I'd like to thank you at this time. Any questions?

CHAIRWOMAN KRUEGER: Senate? Assembly?

Certainly, Assemblymember.

ASSEMBLYMAN BARCLAY: Thank you.

Good evening, and thanks for your testimony.

It was asked of the acting commissioner this morning about the violence that's increasing over the last decade in prisoner-on-staff and prisoner-on-prisoner violence. Is that affecting your members, and do you have an understanding of why that increase is happening?

MR. DRAKE: It affects everybody that works within the department. It's just the change in the direction that inmates are given with the change of how they're -- the disciplinary system is handled. So there's less time given to inmates, so they return
back into the program service areas a lot faster because of the way the tiering of the system has happened.

So therefore the inmate may become more empowered because he hasn't received as much penalty in that time frame. So then we're -- you know, it could be where before they might have been put out of the program for 15 days, now they might return back to the program within one to two days or five days because of the type of sanction that they were given.

ASSEMBLYMAN BARCLAY: Thank you.

CHAIRWOMAN KRUEGER: I do have a question. Thank you so much for your time. So I think part of the testimony you didn't have a chance to get to --

MR. DRAKE: Sure.

CHAIRWOMAN KRUEGER: -- was after the healthcare shortages, which are certainly a real concern and I think new for some of us today. I don't think that was cited in other people's testimony, so I appreciate that.

But then you go on to say you're
concerned about the geriatric parole proposal because it would let people out, by definition, sooner. And that you were talking about that you thought that might increase the problems for probation and returns to prison.

But have you seen the data I have seen that people, when released from 55 up, basically don't continue criminal activity?

MR. DRAKE: I haven't seen all of that data. So I mean most of the information that we've given to you is information that we've shared through the community supervision piece, getting feedback from our members in regards to placement of these people and how we supervise those people after release, and the burden that falls back onto the communities for their medical needs and things of that nature.

CHAIRWOMAN KRUEGER: And jumping back to the health -- oh, I'm sorry, did you want to say something also?

MR. AMAROSI: I'm sorry, Senator, I was -- I probably could have just addressed
you guys instead of leaning over to him.

I think the general -- I'm Greg Amarosi, by the way. I'm the legislative director. I am not Ricardo Cruz, even though ...

I think we have a general concern just for overall -- just for the caseloads on our parole officers. So for us, it's almost like a tipping-point argument. We have -- our officers are stretched pretty thin already.

And again, to your point, I don't think we're worried so much about a crime wave of senior citizen parolees. It's just more -- again, it's just we view it as more work for our officers who are already stretched pretty thin.

CHAIRWOMAN KRUEGER: And just jumping back to the healthcare staff shortage, my understanding was that at least DOCCS contracts some of the healthcare services out. Are these state workers in the prisons, or is this some kind of contract with healthcare agencies?

MR. DRAKE: It's contracts with
healthcare agencies to backfill open items across the board.

And we're still -- even with those contracts in place, we still continue to run large shortages in many of our facilities. In Cape Vincent alone, we're at 75 percent plus in shortage.

CHAIRWOMAN KRUEGER: So I don't know if you know the answer because they're not PEF workers. But if we're contracting for some rate of healthcare workers per prison or per, I don't know, ratio of prisoners, why are we suffering from shortages? Are they not delivering under their contract?

MR. DRAKE: The inability to actually have bodies in place to fulfill those contracts. So even though our facilities are short and we have contract vendors on hand, even the contractors are having, you know, a hard time placing nurses in those holes for us to help. So we're still running large volumes of overtime and mandatories -- continue to have mandatory overtime for our members.
CHAIRWOMAN KRUEGER: Thank you.

And thank you for your time tonight.

Was there any other questions? I didn't want to cut anyone off. Nope?

It's just the hour is getting later.

Thank you so much.

MR. DRAKE: Thank you very much.

MR. AMAROSI: Thank you.

CHAIRWOMAN KRUEGER: Hope you don't get trapped in the snow. Thank you.

Okay. Next up, New York Legal Services Coalition. And for people keeping track, after them, her, we have New York State Defenders Association.

MS. ERICKSON: Good evening.

CHAIRWOMAN KRUEGER: Good evening.

MS. ERICKSON: My name is Anne Erickson. I'm president and CEO of the Empire Justice Center.

CHAIRWOMAN KRUEGER: I knew you weren't Maha Syed.

MS. ERICKSON: You knew I wasn't Maha.

She had to head home in the snow, and I thought it was worth sticking around and
making sure we got on the record.

So thank you very much. I know this has been a very long day.

So Madam Chair Krueger and Madam Chair Weinstein, very nice to see you. I'm here tonight on behalf of the Legal Services Coalition, which is a coalition of 50 legal services organizations from around New York State.

We cover every county in the state. We provide civil legal services to those in need, primarily folks living under 200 percent of poverty, by and large. We provide civil legal services in areas commonly referred to as the essentials of life -- the roof over one's head, healthcare, education, immigrant benefits, benefits for public assistance -- things that are going to help keep families housed and in good order.

We're here on two particular issues tonight. One is to urge your support of the OCA budget. As you know, starting under then-Chief Judge Jonathan Lippman, there were allocations made for civil legal services for
the first time in the OCA budget. That allocation has grown to $85 million for civil legal services and $15 million which was allocated to the IOLA fund that is in the budget, as proposed by Chief Judge Janet DiFiore and presented to you by the Governor. We urge you to support that in full.

We are concerned, however, about the Legal Services Assistance Fund. This is a fund actually started in the Assembly in 1993, the very first time that New York State supported civil legal services in a general way and really started us on a path to addressing access to justice.

Those funds in the Legal Services Assistance Fund, which was actually created to support civil legal services -- none of the funds in the budget this year are going to support civil legal services. They're going to aid to prosecution, aid to defense -- you know, worthy causes -- prisoner legal services -- of course, we totally support a loan forgiveness program.
But the allocation for civil legal services, which was about 4.4 million in all of the last budget, is eliminated. So we would urge that that get restored and the funding items get restored to the budget in full.

I just wanted to very quickly touch on -- I know you guys know all of the incredible impact that civil legal services has across the state. We handled over 483,000 cases between 2017 and 2018. That's up from 385,000 cases in 2013. So the investments that are being made across the board really do have an impact.

When we started this effort with Judge Lippman, 2.3 million people were showing up in civil court unrepresented. That is now down to 1.8 million people showing up in civil court unrepresented. We still have a very long way to go. When we started these efforts, about 20 percent of the unmet legal needs of low-income New Yorkers was being met. We are now reaching about 37 percent of the needs for
civil legal services. That means we still have 63 percent of a justice gap between the need -- the civil legal needs of low-income New Yorkers and what we are actually able to provide.

The financial impact of the Chief Judge's task force, of which I'm honored to be a member -- it does data collection every year, and financial calculations. They estimate that civil legal services returns $10 to every dollar invested. So whether you're talking about people, the impact on people's lives, the impact on our courts, the impact on the state fisc, it's a great investment.

We thank you, and we urge its continuation -- of course, support.

Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

Senator Hoylman.

SENATOR HOYLMAN: Thank you.

Good evening, and thank you for being here --

MS. ERICKSON: Thank you.
SENATOR HOYLMAN: -- and for everything you do.

Question. The -- so just to restate it, the Governor's Executive Budget completely zeroes out your funding?

MS. ERICKSON: Correct.

SENATOR HOYLMAN: Are you outraged?

I'm outraged.

MS. ERICKSON: I -- yes. You know, it really -- it is so frustrating. This --

SENATOR HOYLMAN: I mean, let's just say, does it not like state the Executive's priorities in a way that is so astounding?

MS. ERICKSON: It is. You know, he -- the Executive's budget for the last number of years has included that funding. So going back to when we first started the funding for civil legal services in the early '90s, the Legislature would put it in and the Executive would take it out. The Legislature would put it in, the Executive would take it out.

And we literally, every single year -- and Helene has been here through the thick and thin of all of it, along with
Chair Lentol, who has been a complete champion. And for the last number of years, Governor Cuomo has actually kept that allocation in the budget.

I don't know why this year it was taken out. It was absolutely stunning to us that that particular amount of funding was eliminated.

Generally the Legal Services Assistance Fund overall is about 14 million, somewhere between 14.2 and 14.8 each year that it gets put in the budget. This year it's taken down to 10, and the allocation for the civil legal services component is not there.

SENATOR HOYLMAN: Let's say we don't restore it. Describe to us that nightmare scenario so we all here can understand what that means for the thousands of individuals who without means would not be represented by you. What does that mean for them?

MS. ERICKSON: Well, what that would mean is that we will be turning away even more people than we turn away today. And I
think part of the challenge is that because
the OCA investment has been significant over
the last couple of years, there may be a
perception that the need is not bad.

We are still turning away two and
three people for every one person we can
represent collectively across the state. It
means people are not going to get represented
in their fair hearings when their food
stamps, their public benefits, their housing
ability is at risk.

It means they won't be represented
when their kids need special ed help at
representation in special ed cases. It means
victims of domestic violence will not get the
legal assistance that they need when they're
seeking orders of protection or the ancillary
work that goes along with that.

It means immigrants are not going to
be represented when they are trying to figure
out how to stay in this country, or to get
family members in or to get their green card.
One of the things that the permanent
Commission on Access to Justice did the last
two years was to look at the impact of legal services on immigrants' ability to work and the impact that has on the state's economy.

It just means we'll continue to be in chaos, and we'll continue to be turning people away. And quite frankly, we may then be also laying off staff, which -- you know, they're not the most wonderfully paying jobs, but to be a legal services attorney in New York State is a decent job --

SENATOR HOYLMAN: It's a noble profession. Thank you.

MS. ERICKSON: Thank you for asking.

CHAIRWOMAN WEINSTEIN: Thank you, Anne, for being here and all the work that Empire Justice does, but also all the member organizations of the Legal Services Coalition.

I too find it very frustrating that after we put the LSAF funding in place that it has -- the Governor has taken money out of that for other purposes. And then we never get a chance to grow that money, because we have to sort of backfill it. But hopefully
this year we can get us at least back to
where we were last year and see if we can't
expand the funding.

MS. ERICKSON: That would be
incredible. And of course we're always here
to do everything we can to work with you and
the member agencies. And we just cannot
thank you enough for the leadership that
you've provided.

CHAIRWOMAN WEINSTEIN: And Senator
Myrie? Yes.

SENATOR MYRIE: Thank you,
Assemblywoman.

And thank you for sticking it out
tonight. I wanted to ask about the Homeowner
Protection Program.

MS. ERICKSON: Sure.

SENATOR MYRIE: And it is my
understanding that many of the service
providers in your coalition are funded by
HOP?

MS. ERICKSON: Yes.

SENATOR MYRIE: And it is also my
understanding that in the Executive Budget
the funding for 20 million has been
eliminated?

MS. ERICKSON: Correct.

SENATOR MYRIE: Can you tell us
whether or not these organizations that are
funded by HOP would be able to continue the
work that they do around foreclosure
presentation without this funding?

MS. ERICKSON: They will not. I can
tell you that they will not.

The foreclosure prevention -- again,
another amazing program that was put
together, as you know, through the settlement
funds that came into New York State, and it
was really New York being ahead of the curve.

We were seeing the foreclosure crisis
come across the state. We at Empire Justice
did a lot of data analysis down to the
zip-code level so that we could show, county
by county, where things were actually
happening, that it wasn't just a Queens
problem or it wasn't just a Brooklyn problem.
Everybody kept saying it's just downstate; we
could show it was statewide.
That $20 million funds a network of legal services and housing counseling agencies working together to represent homeowners -- both to counsel them, to represent them, to see if they can afford to stay in a home, to figure out what we can do to help make that happen. If they can't stay in a home, counseling them out of the home and figuring out how to put other things in place for them. It has been an incredible collaboration.

And that too, we understand this had not been General Fund money supporting it in the budget for the last number of years. But it is a critical state investment, and we were disappointed that there was nothing in the Executive Budget to kind of keep that afloat.

We are working, as you know, with a coalition of Communities First initiative to see if we can't get something in the 30-day amendments. So we are trying every avenue we can.

SENATOR MYRIE: And what will the
impact be if this is not funded?

MS. ERICKSON: Well, if it's not funded -- I mean, you heard Judge Marks testify earlier today that the impact on having lawyers in the settlement conferences is absolutely critical.

It will mean we'll be laying off legal service attorneys around the state who have been doing this work. We'll be losing housing counselors that have been doing this work. We'll lose an infrastructure we have created in New York State.

But the bottom line is families will be losing their home without any representation. They will lose their day in court. And that's why this started, because the banks and the services are taking advantage of people, foreclosing on them when they shouldn't have, and not giving them a fair shake. We're now giving them a fair shake, and we're going to take that away.

SENATOR MYRIE: Thank you very much for your service and testimony.

CHAIRWOMAN WEINSTEIN: Thank you.
Assemblyman Lentol?

ASSEMBLYMAN LENTOL: Yes, thank you, Madam Chair.

Thank you, Anne.

But I just want to say I too believe, like Senator Hoylman, that this is outrageous.

But the answer to the question is really obvious. It's to have the Assembly pay for it, and now that we have a Democratic Senate, they expect them to pay for it too. So I get what's going on here.

MS. ERICKSON: Yup.

ASSEMBLYMAN LENTOL: It's pretty simple to figure out. And the Governor can then spend his money someplace else, because he knows that we're going to spend it. And we are going to spend it. But he should know that we're going to spend it knowing that he wants to spend the money someplace else.

Thank you.

MS. ERICKSON: Thank you, Assemblyman.

CHAIRWOMAN WEINSTEIN: Senator Bailey.

SENATOR BAILEY: Yes, thank you very
much, Madam Chair.

I just wanted to I guess echo the sentiments of Senator Hoylman and also thank you, since you mentioned Judge Marks, thank you for sticking it out here with us. This is as important to us as it is to you, and I'm glad to -- I was very heartened to hear that.

As a former practicing civil attorney, I know how important it is to make sure you have access to funds so that you can pursue justice for those who can least afford it. We support justice not just in the actual literal context, but figuratively, in that they can't afford to miss that rent payment, that they would have to purchase -- that they would have to consult a private attorney.

So the work that you're doing is very important. And as my colleagues here are all saying, I stand in solidarity with you and I understand the importance of the work that you do. And I'm sure we're going to put our heads together and figure something out.

Thank you.
MS. ERICKSON: Yeah. And you know, it's -- and I'm sure you know, but with so many of our clients, the issues cascade. You know, they may come in with an eviction, but it's because their public benefits got screwed up or because there was a medical emergency or because their insurance got messed up. You know, so it's literally the fundamentals of life.

And people don't understand, you don't have a right to an attorney if you're losing your home or if your income has been cut off or if your healthcare is denied that's going to save your kid's life. You don't have a right to an attorney. And yet what is at risk? It's just -- it's stunning.

So I really appreciate the new energy on this side, and of course the ongoing commitment that we've just had.

SENATOR BAILEY: And it's really important. I just wanted to -- because when constituents come to any of our district offices or any of our offices, they generally don't come with one issue.
It's generally a litany of issues that are compounded. If you have a job problem, you may have a housing problem, you may have a public assistance problem.

Exactly.

So it's never just one thing, it's a totality of circumstance-based approach when we're dealing with our constituents.

And coming from one of the hardest-hit districts by the foreclosure crisis, which it's still reeling from the effects of the foreclosure crisis --

Yes, it is.

-- in the northeast Bronx and the City of Mount Vernon, we need civil legal services so that people can remain in their homes.

You talk about the path to home ownership and how we should aspire to buy a house and we -- you have folks who come -- they come to this country, many from
immigrant backgrounds, in search of a dream. And the dream is deferred because they didn't understand the contract language that they signed.

MS. ERICKSON: Right.

SENATOR BAILEY: And services like yours are invaluable, and I just wanted to once again say thank you.

MS. ERICKSON: Thank you. Thank you very much.

CHAIRWOMAN WEINSTEIN: Thank you again, Anne.

MS. ERICKSON: Thank you very much.

CHAIRWOMAN WEINSTEIN: Our next witness, New York State Defenders Association, Susan Bryant, deputy director.

MS. BRYANT: Thank you very much, Assemblywoman Weinstein and the other members of the Senate and the Assembly that stayed here all this time. I appreciate the opportunity to testify before you.

I am Susan Bryant, I'm the deputy director of the New York State Defenders Association. We have been supported by the
Legislature and the Executive to some extent for almost four decades now, and we are grateful for that support, and we are back asking for support again.

The Public Defense Backup Center, if you're not familiar with us, provides support to public defenders, Legal Aid attorneys, and assigned-counsel lawyers around New York State. We provide training, we provide legal research assistance, publications, we have a public defense case management system that is in 46 counties in New York, as well as other support services. We are really the backbone of public defense.

And we appreciate -- we're asking -- we're coming to you because the Executive has funded us with $1,030,000, which is just under half of our base operating budget that we have had for a number of years now. So we are asking the Legislature for a $1,059,000 appropriation to bring us to that base funding level.

We are also here to ask for an additional $400,000 in order for us to have a
new program which would include Raise the Age training for public defenders representing individuals, 16- and 17 year-olds, in the Youth Part, as well as to help with recruitment of social workers, which is all part of the Hurrell-Harring statewide expansion, and to train social workers and sentencing mitigation specialists on how to be a part of the defense team, the alternatives to incarceration, how to get services for clients. So we ask for your support on that as well.

Before the Human Services Committee last week, our Veterans Defense Program, which is also part of the New York State Defenders Association, was here to testify, so I won't go into that testimony. But I'm more than happy to answer questions about that funding as well.

With regard to other defense funding, we certainly are thrilled to see that the Governor has continued the support of the Hurrell-Harring statewide expansion with a $100 million appropriation. As Bill Leahy
spoke to you earlier, we are concerned about
the language that would restrict
appropriations. The reimbursement to
12 months, it's counterproductive, and we're
hopeful that it won't come to the Legislature
to have to determine that and maybe the
Executive will take it out.

But that is a huge concern. Counties
are already hesitant to take money that
they're afraid is going to be taken back, and
all of the promises that have been made over
the years for different funding.

We are also -- Hurrell-Harring
expansion is very important, but we also
believe that the Legislature should support
the $3 million appropriation that the
Indigent Legal Services Office has asked for
for Family Court. Family Court is a huge
part of public defense. Most public defense
offices upstate do both criminal and Family
Court, and now you have lawyers that are
doing the criminal defense representation
that are getting their caseloads reduced,
which is wonderful to see, but the Family
Court attorneys, their colleagues, have no support at all.

Three million dollars is certainly a lot, but it's just a little investment. And as mentioned before, we expect that there will be even more coming down with the Chief Judge's Commission on Parental Representation.

Finally, Aid to Defense, which has been mentioned -- that has been cut 5 percent. So we are asking for it to be restored, because any defense funding -- the assumption is that the money appropriated for the statewide expansion is based on the existing funding remaining. So we ask for that to be restored.

The Indigent Parolee Program, which is often put in by the Senate, we ask for an appropriation for $600,000 for the representation of parolees -- which is really a state function, but it has been left to the counties because of the lack of funding.

And I thank you for your time, and I would be happy to answer any questions.
CHAIRWOMAN WEINSTEIN: Senator Bailey.

SENATOR BAILEY: Yes, thank you.

I guess I wanted to -- I saw it briefly in your written testimony -- and I thank you for testifying and sticking it out with us once again. I saw briefly in your testimony that I guess you -- I would ask, what is your opinion on the Executive's pretrial reform -- on the pretrial reform that has been put forth by the Executive in his budget?

MS. BRYANT: We are still looking at it. It is a very complicated issue. We certainly have supported the Assembly proposal that was done last year that Assemblymember Cook had proposed. And we certainly appreciate the Governor's attempt to make a better version of what last year was -- we absolutely opposed.

But there's a lot of detail to it, and it's something that we are considering, we're examining, we're talking with public defenders around the state as to what the impact of it will be.
I'd be more than happy to talk in more detail with you in the coming weeks.

SENATOR BAILEY: I would certainly appreciate that, and I will leave my comments at that. Thank you for your testimony.

MS. BRYANT: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you for the work that defenders do around our state. Thank you.

MS. BRYANT: Thank you very much.

CHAIRWOMAN WEINSTEIN: Next we have Communities United for Police Reform. Carolyn Martinez-Class was here earlier but doesn't appear to be still here.

If you do have a witness list, the next handful of people have canceled.

So is Dave George and Jose Saldana here? Release Aging People in Prison Campaign and Campaign for Alternatives to Isolated Confinement. Okay. Oh, and also Victor Pate will be -- we're doing this as a panel, I realize.

MR. VAN ZANDT: Taking the place of Victor Pate is Doug Van Zandt.
CHAIRWOMAN WEINSTEIN: Okay. At this hour, that's -- substitutes are allowed.

MR. GEORGE: So I'm Dave George. I'm the associate director of the Release Aging People in Prison Campaign. I'm here on behalf of myself and Mr. Saldana, who is less of a glutton for punishment than most of us in the cheap seats are, and went home to New York City.

We at the Release Aging People in Prison Campaign, to our knowledge, are the only criminal justice reform campaign in the country with the central focus of releasing older and aging people from prison and promoting public safety and racial justice as a means to end mass incarceration.

I'd like to just talk briefly about what we see as the crisis of aging and older people in our state prison system in New York, touch a little bit about what's included and what's not included in the Governor's Executive Budget proposal, and then talk about what we see as the clear path forward to safely and fairly release older
and aging people from prison.

Aging in prison is the inevitable result of long prison sentences and frequent parole denials after people have been inside for decades. Like those of us in the outside community, people in prison age over time, and so when they're given 25 years to life and serve 25 years and then frequently are denied parole over years and decades, they like the rest of us get old. And some of them die in prison.

So in New York City we have the fifth-highest number of life sentences in the entire country. Of roughly 9,000 people serving a life sentence, roughly 1,000 of those people are sentenced to life without parole or virtual life without parole. They will never appear in front of a parole board, and short of clemency will never be released from prison until they die.

And when those people don't have any fair, meaningful opportunities for release based on who they are today, they age inside and the result is what we have today. And
that is 10,000 older and aging people in prison -- 10,000 great-grandmothers and grandfathers, sisters and brothers who are away from their families, many of whom have been away from their families and communities for decades.

And unfortunately, the Governor's Executive Budget proposal does not get at any of these issues or crises. And there are two relevant components. The first is something that I believe was addressed earlier in the hearing, and I was pleased to hear it was addressed about, which is staffing of the State Parole Board.

So in the Governor's Executive Budget proposal there is money allocated for only up to 16 parole commissioners, not a fully staffed Parole Board of 19. As most if not all of you know, our Parole Board is woefully understaffed. At this moment we have 12 Parole Board commissioners who see 12,000 parole applicants every year. That leads to serious issues that I don't have to go into here, and I'm sure you all can
understand. But ultimately we need an extra
$305,000 in the Executive Budget so that we
can have a fully-staffed parole board of
19 commissioners.

And the second relevant component in
the budget is the Governor's Compassionate
Parole proposal. I detail an analysis and
recommendations for that proposal that I
won't get into right now. I'll just say it
is, in summary, a small, narrow, and
exclusionary extension of the state's medical
parole program for older people who are
super-sick. I don't believe that at all it
gets to the crisis of aging in prison.

And the truth is even if we cleaned up
the medical parole program and statute in
New York State -- which I think we should do,
and I hope to work with you all on -- it
wouldn't get at the crisis of older and aging
people in prison, because most are not
deathly ill and dying inside. Most have some
chronic condition but wouldn't be qualifying
for this sort of program.

And that's why we need broader parole
reforms. And for us, that means a threefold process. One is fully staffing the Parole Board with commissioners who actually believe in the concept of rehabilitation and come from professional backgrounds that allow them to assess it.

Two is Senator Gustavo Rivera's Fair and Timely Parole bill that would change the parole release process to ensure that it's not exclusively based on the nature of the crime, but instead is based on rehabilitation and who a person is today.

And three is Senator Hoylman and Assemblyman Weprin's Elder Parole bill to establish a consideration of parole release for older people who have served 15 or more years.

A reasonable person might say those sound pretty easy. We should just do those. I think fundamentally what we all have to grapple with as advocates, as a state, as legislators is that these issues fundamentally butt up against the question of violence. And if we're serious about ending
mass incarceration in New York State, we need
to talk critically and seriously and
differently about violence. And not just
because of our value set, not just because we
believe in redemption and compassion and
mercy, but also for three reasons that I
think we don't talk about enough.

One is locking people up and throwing
away the key. It does not keep us safer. We
have decades of evidence that shows that the
death penalty and life without parole does
not deter crime, does not keep us safer.

Two is for most victims and survivors
of crime, the "lock them up and throw away
the key" approach doesn't work. It doesn't
promote healing, it doesn't promote
accountability, it doesn't give most victims
and survivors what they want, and there is
national research to back that up.

Three is practically two-thirds of our
state prison system have been convicted of
some form of violence. I think by most
measures, mass incarceration -- ending mass
incarceration means reducing the state prison
population by more than a third. If we're serious about that, from a number and practical perspective, we have to grapple with this question of violence.

So I think it is incumbent upon all of us in this new political moment to grapple with these questions together, to move forward with the proposals that we just presented, and the proposals that I outlined in our testimony. And I look forward to working with you all this session and having a productive year.

Thank you.

MR. VAN ZANDT: Good evening. My name is Doug Van Zandt. As I said earlier, I'm with the New York Campaign for Alternatives to Isolated Confinement.

Four years ago, my son died in a New York State prison. He hanged himself while in solitary confinement. He was the victim of a horrible disease, mental illness. He suffered from severe depression -- we did not know about that. But he was put into prison after starting a fire in a building,
and once he was put on the psychotropic medications, he was stabilized and we had hopes for his recovery.

The prison system chewed him up and killed him, in my opinion. My wife and I lost our only son. And it is just a horrible thing. Within a year of him being in prison, he was sexually assaulted, and as a result he was put into solitary confinement.

DOCCS did not follow the SHU exclusion law. They were to limit the amount of solitary confinement that he was in. Even though he shouldn't have been in solitary confinement at all, they sentenced him to 70 days. But thankfully, due to legislators like yourselves who we asked for help, he was limited and taken out of solitary confinement.

He was moved to a different facility where he was put in a unit for the mentally ill. He was put back into the general population. He was accosted by gang members, made to transport drugs. He ended up going to Fishkill Correctional Facility, where he
was assaulted by corrections officers.

He was rediagnosed as a young man with a personality disorder instead of a serious mental illness, and he was taken off his psychotropic medications cold turkey. He was then accused of fighting, which he'd never been in a fight in his life. He was put into solitary confinement. And he saw absolutely no hope, and he hanged himself.

I'd like to talk about the problem of solitary confinement. As you all know, this is all -- we've talked about this before. Three to 4,000 New Yorkers are in solitary confinement on a given day. Most of them are minorities -- African-American, Latinx -- and many of them have mental illnesses.

It's commonly said that if you don't have a mental illness when you go into solitary confinement, you will develop one. And that is absolutely true. And my son had a mental illness to begin with. And not only that, he was -- his mind was abused by being taken off the psychotropic medications.

The cure for solitary confinement is
the HALT bill, Humane Alternatives to
Long Term Solitary Confinement. It does not
eliminate solitary confinement, but it limits
it to 15 days maximum.

Solitary confinement was started by
the Quakers several hundred years ago, who
soon found out that solitary confinement did
absolutely no good. But somehow it had
continued, and it is now a tool that is used
by the corrections officers.

The -- we also, in the HALT bill, we
ban certain vulnerable groups. One of them
is those with mental illnesses, diagnosed
mental illnesses. Other groups such as the
very old, the very young and other groups are
also prohibited from being in solitary
confinement. It's just common sense.

The main part of the HALT bill is it
provides alternatives that result in
rehabilitation and treatment. They look at
the underlying causes. The main part of the
HALT bill will be the RHUs, rehabilitation
units, which the incarcerated will go to
instead of solitary confinement, so the
damage will not be any further.

  Governor Cuomo has proposed his own
HALT bill, which is basically the same
language as ours, but it is completely
watered down. It is -- I don't think I need
to go much further, but --

  CHAIRWOMAN KRUEGER: No, actually you
can't, because your time is up.

  MR. VAN ZANDT: D'oh!

  CHAIRWOMAN KRUEGER: So we just have
time for questions.

  MR. VAN ZANDT: Okay. Thank you very
much.

  CHAIRWOMAN KRUEGER: So, I don't know
if you were expecting to speak, but you ran
out of time.

  UNIDENTIFIED WOMAN: Okay.

  (Discussion off the record.)

  CHAIRWOMAN KRUEGER: Which
organization are you with?

  UNIDENTIFIED WOMAN: I'm with the
#HALTsolitary Campaign.

  CHAIRWOMAN KRUEGER: Okay. Thanks.

  All right, so let's jump to questions,
then. Senator Hoylman.

SENATOR HOYLMAN: Thank you, everyone, for being here. It's a pleasure to see you. I hope your advocacy day was successful.

On RAPP, the bill that I carry with Assemblyman Weprin, and I'll be working closely with Senator Sepúlveda on it, could you just share with us the cost estimates of what the legislation to end elder parole would save the taxpayers in New York?

MR. GEORGE: Yeah, sure.

So a couple things. We have the highest state prison cost per incarcerated person per year in the country, $60,000 a year to incarcerate a person of any age in New York State every year. For older people, that's two times more, so it's $120,000 to $240,000 a year to incarcerate an older and aging person in prison.

If we release just 10 more older people, we'd save a million bucks. And we can reinvest that money in any of the programs or policies you are pushing, which would probably do your constituents and your
districts a ton of good.

CHAIRWOMAN KRUEGER: Any other questions, Senate?

Oh. Senator Jamaal Bailey.

SENATOR BAILEY: There we go.

I just wanted to say thank you for sticking it out with us this long, and thank you for your advocacy on your legislation. And I just wanted to say, you know, I certainly stand in solidarity with you in terms of how we should fully staff the Parole Board, as we've discussed at length.

We have so many issues and concerns with people who are overworked. And whether you agree with their decisions always or not, we have to keep in mind that these are people and they're not machines, despite what we might think of them to be sometimes.

And I certainly stand with your statements that we should be fully staffing the Parole Board. And I don't want to continue to belabor points, but I just wanted to say thank you.

CHAIRWOMAN KRUEGER: Thank you.
Senator Zellnor Myrie.

SENATOR MYRIE: Thank you, Madam Chair.

I would like to echo what Senator Bailey said. Thank you for sticking it out.

I think it is really fortunate that we do not have the death penalty on the books here in New York, but in effect that's what we are doing to folks. And I think it's important to say that and get that on the record, because we are sentencing people to death by not being gracious in how we release folks as they age.

And I'd also like to say that solitary confinement is cruel and unusual, and it's something that I was proud to vote on in the Codes Committee and look forward to supporting going forward -- in the Crimes Victims Committee, my apologies.

So thank you very much for your advocacy, and we look forward to working with you.

CHAIRWOMAN KRUEGER: Thank you.
Thank you all for being here tonight
and spending the day with us.

And reminding people that many people
did decide to go home because of the snow and
the hour. But we have everyone's testimony,
even if they didn't get to give it in full,
and it will be up and publicly accessible for
everyone.

Next up, Center for Court Innovation,
Dipal Shah.

MR. SHAH: Good evening, members. My
name is Dipal Shah, from the Center for Court
Innovation. I thank all of you chairpersons
as well as the members here today for
sticking it out with me.

So I'm here to ask you to double down
and reaffirm your commitment to justice
reform. The Center for Court Innovation has
been around for close to 25 years, and we run
operating programs throughout the city and
the state. Many think of us as very large,
but in fact we are a connection of many small
operating programs in your backyard, serving
your constituents, and we are tied together
on shoestring budgets within those tiny operating programs.

What I'm asking for here today is -- last year we received $150,000 through the legislative budget process for one of our programs, Neighbors in Action, formerly known as the Crown Heights Community Remediation Center. This year we are asking for a total ask, between the Assembly and the Senate, of $750,000 to specifically target eight of our programs that are the most underresourced, which would include a continuation of the funding of Crown Heights Community Remediation Center.

Now let me dig a little bit deeper into what the Center for Court Innovation does. Today I've heard a lot about youth programming and Raise the Age and violence prevention, anti-gun violence, supervised release programs for a bail system as well as opiate treatment programs and civil legal empowerment. We do all of that. And the programs that you would support through reaffirming your support for us would go
toward that.

We serve about 75,000 New Yorkers every year. Those are youth, those are LGBT-identifying people, women, people of color, and they are all in need of additional support through our social workers, through our community engagement activists, through our Credible Messenger program, as well as those who are working firsthand in our Legal Hand site providing civil legal empowerment to neighbors in their own communities.

I have seen, through our statistics — for example, our reentry program in Harlem reduced recidivism by 19 percent, and 75 percent were employed within a year of release. In the South Bronx and at Neighbors in Action, our SOS programs have reduced shootings by 63 percent. Our Syracuse programs upstate have made safer dozens of city blocks in Syracuse. And our Bronx Community Solutions opiate program has treated over 100 individuals in the past year who have been addicted to opioids and who are
now off the drug.

So what I would like to say is that we're effective and we need your support. Our communities need it. And I'm happy to take any questions that you have.

CHAIRWOMAN KRUEGER: Senator Zellnor Myrie.

SENATOR MYRIE: Thank you, Madam Chair.

I just wanted to say thank you for the work that you do. A lot of your programs are in my district. And I also want to just give a special shout-out to the Brownsville Community Justice Center. It does incredible work for our community.

And so thank you for the work that you do.

MR. SHAH: Thank you very much, Senator.

CHAIRWOMAN KRUEGER: Thank you again. We appreciate your testimony.

And then I believe our last testifier tonight is Nicole Porter, The Sentencing Project.
MS. PORTER: Good evening.

CHAIRWOMAN KRUEGER: Good evening.

MS. PORTER: Thank you for having me.

And thank you for hosting this hearing this evening.

I am with The Sentencing Project, which is a national group headquartered in Washington, D.C. We do research in advocacy and were founded in the mid-'80s. For them I am the advocacy director, and my focus is on state advocacy.

And I'm here in support of the Release Aging People in Prison Campaign, whom I have worked with for several years and have been state partners in our work around ending mass incarceration and addressing the United States' punitive criminal justice system.

At the end of the last year we launched a national campaign to end life imprisonment. And the work that RAPP is doing here in New York and the priorities they highlighted earlier are key policy recommendations and at the forefront of a national conversation around ending punitive
sentencing and addressing life imprisonment.

And we are here in full support of their recommendations, including the work that you all can do in this committee to fully fund the Parole Commission and other work that this committee has the capacity to take on.

You know, given that this is a budget hearing and there were savings that were highlighted earlier if the parole recommendations are fully implemented, I want to highlight that if decarceration is achieved, if mass incarceration is reduced, that will free up resources that can fully fund and support the other issues that have been surfaced during the hearing this afternoon. And so I hope that as budget leaders that you all also consider how reducing mass incarceration and scaling back punitiveness can free up those resources.

As a national organization, we often highlight New York because it is among a handful of states that has decreased its rate of incarceration by more than 30 percent.
since the late '90s, when the state prison population peaked, and that is important.

But as you all also heard, New York has one of the highest populations of people sentenced to life prison terms. And in fact, even though the state has reduced its rate of incarceration by more than 30 percent since the late '90s, the rate of incarceration -- the people who are in prison -- is still more than double where it was in the early 1980s.

So even though New York is at the top of the list in terms of decarceration, the levels of incarceration in 2019 are still far higher than they were in the early '80s when at that time nationally the United States still had the highest rate of incarceration when compared to other Western nations.

So in order for the state to fully challenge mass incarceration, move the needle back to the early '80s -- which is still something that far exceeded where other Western nations were -- really looking at long imprisonment and life in prison and addressing parole can help further efforts
around mass incarceration and in reducing levels of incarceration here in New York, and hopefully help center that part of the conversation in terms of these efforts nationally.

It's my hope that if we're successful, if New York can further decarcerate, if that can influence the national conversation in other parts of the country, that this will free up resources and other public monies can be directed into efforts to prevent crime to begin with, and certainly to reduce returns to prison for justice-involved residents who are released not just after long prison terms, but even after short stays in jail or prison.

The Sentencing Project is a national organization, as I shared earlier. We're here to be a resource, not just to our state partners with the Release Aging People from Prison Campaign, but also we work often with state lawmakers as well. And if you all have any questions, even following this session, I'm happy to be connected to you and provide
any answers to any questions that you may have.

So I'll wrap up my comments there. Thank you all for hosting this hearing, and I was glad to sit through it and learn a little bit more of New York. This is my first time in Albany, and so --

CHAIRWOMAN KRUEGER: Welcome.

MS. PORTER: -- you know, it was interesting to sit here this afternoon and learn a little bit more about New York while I was listening to the other folks participate in the hearing. So thank you all for hosting it.

CHAIRWOMAN KRUEGER: Thank you. You might not get out as easily as you think.

(Laughter.)

MS. PORTER: I know. Luckily I rented a hotel room, so I'll be okay.

CHAIRWOMAN KRUEGER: Any Senators have any questions? Assembly?

Well, then, thank you very much for your testimony.

And I believe this brings to a close
our Public Protection hearing. And thank you, all of you who stayed.

We start again tomorrow morning at 9:30, same room. The topic is Transportation. Thank you.

(Whereupon, the budget hearing concluded at 8:08 p.m.)