

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

2 -----

3 JOINT LEGISLATIVE HEARING

4 In the Matter of the
5 2017-2018 EXECUTIVE BUDGET ON
6 PUBLIC PROTECTION

6 -----

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

9 January 31, 2017
10 9:38 a.m.

11 PRESIDING:

12 Senator Catharine M. Young
13 Chair, Senate Finance Committee

14 Assemblyman Herman D. Farrell, Jr.
15 Chair, Assembly Ways & Means Committee

16 PRESENT:

17 Senator Liz Krueger
18 Senate Finance Committee (RM)

19 Assemblyman Robert Oaks
20 Assembly Ways & Means Committee (RM)

21 Senator Diane Savino
22 Vice Chair, Senate Finance Committee
23 Vice Chair, Senate Codes Committee

24 Senator John J. Bonacic
Chair, Senate Committee on Judiciary

Assemblywoman Helene Weinstein
Chair, Assembly Committee on Judiciary

1 2017-2018 Executive Budget
Public Protection
2 1-31-17

3 PRESENT: (Continued)

4 Senator Patrick M. Gallivan
Chair, Senate Committee on Crime Victims,
5 Crime and Correction

6 Assemblyman Joseph Lentol
Chair, Assembly Committee on Codes
7

8 Senator Thomas D. Croci
Chair, Senate Committee on Veterans,
Homeland Security and Military Affairs
9

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

11 Assemblyman Michael Cusick

12 Senator Joseph P. Addabbo, Jr.

13 Assemblyman Phil Steck

14 Assemblyman Michael Montesano

15 Senator James N. Tedisco

16 Assemblyman Al Graf

17 Senator Velmanette Montgomery

18 Assemblyman Joseph M. Giglio

19 Senator Martin Golden

20 Assemblywoman Crystal Peoples-Stokes

21 Senator Brad Hoylman

22 Assemblywoman Earlene Hooper

23 Senator Jamaal Bailey

24 Assemblywoman Jo Anne Simon

1 2017-2018 Executive Budget
 Public Protection
 2 1-31-17

3 PRESENT: (Continued)

4 Senator Daniel Squadron

5 Assemblyman John T. McDonald III

6 Senator Gustavo Rivera

7 Assemblywoman Diana C. Richardson

8 Senator Leroy Comrie

9 Assemblywoman Patricia Fahy

10 Senator John DeFrancisco

11 Assemblywoman Latrice M. Walker

12 Senator Todd Kaminsky

13 Assemblywoman David Buchwald

14 Assemblyman Billy Jones

15

16

17 LIST OF SPEAKERS

18 STATEMENT QUESTIONS

19 Honorable Lawrence K. Marks
 Chief Administrative Judge

20 NYS Office of Court
 Administration

10

18

21

John P. Melville

22 Commissioner

NYS Division of Homeland Security

23 and Emergency Services

109

116

24

1 2017-2018 Executive Budget
 Public Protection
 2 1-30-17

3 LIST OF SPEAKERS, Cont.

4		STATEMENT	QUESTIONS
5	Michael C. Green		
	Executive Deputy Commissioner		
6	NYS Division of Criminal		
	Justice Services	180	184
7			
	Anthony J. Annucci		
8	Acting Commissioner		
	NYS Department of Corrections		
9	and Community Supervision	277	284
10	George Beach		
	Superintendent		
11	NYS Division of State Police	353	360
12	William J. Leahy		
	Director		
13	New York State Office of		
	Indigent Legal Services	400	413
14			
	Margaret Miller		
15	NYS Chief Information Officer		
	Director, NYS Office of		
16	Information Technology Services	451	459
17	Robert H. Tembeckjian		
	Administrator and Counsel		
18	New York State Commission on		
	Judicial Conduct	494	500
19			
	Thomas H. Mungeer		
20	President		
	New York State Troopers PBA	508	512
21			
	Christopher M. Quick		
22	President		
	NYS Police Investigators Assn.	524	531
23			
24			

1 2017-2018 Executive Budget
 Public Protection
 2 1-30-17

3 LIST OF SPEAKERS, Cont.

4		STATEMENT	QUESTIONS
5	Patrick Cullen		
	President		
6	NYS Supreme Court Officers Assn.	533	543
7	Billy Imandt		
	President		
8	Court Officers Benevolent		
	Assn. of Nassau County	548	553
9	William Dobbins		
10	President		
	Suffolk County Court		
11	Employees Association	555	
12	Michael B. Powers		
	President		
13	NYS Correctional Officers &		
	Police Benevolent Assn.	563	568
14	Jonathan E. Gradess		
15	Executive Director		
	Art Cody		
16	Deputy Director, Veterans		
	Defense Program		
17	NYS Defenders Association	589	599
18	Connie Neal		
	Executive Director		
19	NYS Coalition Against		
	Domestic Violence	601	

20

21

22

23

24

1 2017-2018 Executive Budget
 Public Protection
 2 1-30-17

3 LIST OF SPEAKERS, Cont.

4 STATEMENT QUESTIONS

5	Victor Antonio Perez		
	DOCCS		
6	Penny Howanski		
	OITS		
7	Steve Drake		
	Statewide Labor		
8	Management Chair		
	Nikki Brate		
9	Vice President		
	NYS Public Employees		
10	Federation (PEF)	610	625
11	Grant Cowles		
	Senior Policy & Advocacy		
12	Associate for Youth Justice		
	Citizens' Committee for		
13	Children	634	
14	Blair Horner		
	Executive Director		
15	New York Public Interest		
	Research Group (NYPIRG)	640	
16			
	Karen L. Murtagh		
17	Executive Director		
	Thomas Curran		
18	Board Member		
	Prisoners' Legal Services		
19	of New York	646	654
20	Charlotte Carter		
	Executive Director		
21	NYS Dispute Resolution Assn.		
	-and-		
22	Sarah Rudgers-Tysz		
	Executive Director		
23	Mediation Matters	661	

24

1 2017-2018 Executive Budget
Public Protection
2 1-31-17

3 LIST OF SPEAKERS, Cont.

4 STATEMENT QUESTIONS

5 Terry O'Neill
Director
6 The Constantine Institute 667

7 Elena Sassower
Director
8 Center for Judicial
Accountability 671
9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 CHAIRWOMAN YOUNG: Good morning. I'm
2 Senator Catharine Young. I'm chair of the
3 Senate Finance Committee.

4 And I am joined today by several of my
5 colleagues. We have Vice Chair Senator Diane
6 Savino, Senator John Bonacic, Senator Patrick
7 Gallivan, Senator James Tedisco, Senator Joe
8 Addabbo, Senator Brad Hoylman, Senator
9 Gustavo Rivera, Senator Leroy Comrie. And
10 did I miss somebody? Senator Jamaal Bailey,
11 my apologies.

12 And we're also joined by the Assembly
13 today. Would you like to announce your
14 members?

15 CHAIRMAN FARRELL: Yes, I would.

16 We are joined by Assemblyman Joe
17 Lentol, Assemblywoman Helene Weinstein,
18 Assemblyman Phil Steck, and Assemblyman
19 Michael Cusick.

20 ASSEMBLYMAN OAKS: And we're also
21 joined today by Assemblyman Joe Giglio,
22 Assemblyman Mike Montesano, and Assemblyman
23 Al Graf.

24 CHAIRWOMAN YOUNG: Thank you very

1 much.

2 Pursuant to the State Constitution and
3 Legislative Law, the fiscal committees of the
4 State Legislature are authorized to hold
5 hearings on the Executive Budget proposal.
6 Today's hearings will be limited to a
7 discussion of the Governor's recommendations
8 as they relate to public protection.

9 Following each presentation, there
10 will be some time allowed for questions from
11 the chairs of the fiscal committees and other
12 legislators.

13 So first up, I'd like to welcome the
14 Honorable Lawrence K. Marks, chief
15 administrative judge of the Office of Court
16 Administration. He will be followed by John
17 Melville, commissioner of the Division of
18 Homeland Security and Emergency Services;
19 Mr. Michael C. Green, executive deputy
20 commissioner of the Division of Criminal
21 Justice Services; Mr. Anthony Annucci, acting
22 commissioner of the Department of Corrections
23 and Community Supervision; Mr. George Beach,
24 superintendent of the Division of

1 State Police; Ms. Margaret Miller, chief
2 information officer of the New York State
3 Information Technology Services; and
4 Mr. William Leahy, director of the Office of
5 Indigent Legal Services. And then we look
6 forward to further testimony after that. It
7 is going to be a lengthy day.

8 So first, Chief Administrative Judge,
9 we are so happy to have you here today, and
10 we look forward to your testimony.

11 CHIEF ADMINISTRATIVE JUDGE MARKS: So
12 thank you. And good morning, Chairpersons
13 Young and Farrell, and good morning to the
14 other distinguished members of today's panel.

15 On behalf of Chief Judge Janet DiFiore
16 and the entire New York State court system,
17 thank you for the opportunity to speak with
18 you today about the Unified Court System's
19 budget request.

20 If I may, I'd like to offer some brief
21 remarks in support of our budget request, and
22 then of course I'd be happy to answer any
23 questions you may have.

24 I'd like to present my remarks in two

1 parts. First I will highlight for you the
2 key features of our budget request, and
3 second, I will briefly address the Chief
4 Judge's top priority, what we are calling the
5 Excellence Initiative, a comprehensive
6 statewide effort to achieve operational and
7 decisional excellence in everything we do in
8 the Judiciary.

9 By presenting my remarks in this
10 manner, I believe you will understand better
11 how the two are related, how our budget
12 request supports and promotes the goals of
13 the Excellence Initiative. So first, our
14 budget request.

15 Our proposed budget is fairly
16 straightforward. We are seeking a 2 percent
17 increase in our operating budget. That
18 represents a \$42.7 million increase over our
19 current-year operating budget. The 2 percent
20 increase is consistent with the benchmark set
21 by the Governor, and although it is a modest
22 increase, it will allow us to continue to
23 replace employees when they leave the court
24 system. For the most part, we were not able

1 to do that in the years when our budget was
2 cut or kept flat. But as has been true for
3 the last several years, our budget will
4 enable us to replace employees when they
5 leave as well as fill a number of additional
6 vacancies.

7 Our goal, under this proposed budget,
8 is to increase our staffing by approximately
9 200 positions over the current level. The
10 focus of that hiring will be on courtroom
11 titles -- court clerks, court officers, court
12 reporters, court interpreters, and
13 back-office staff that support the work done
14 in the courtrooms.

15 The proposed budget will also allow us
16 to begin to restore support for a number of
17 programs that were cut five to six years ago.
18 For example, we will expand evening hours in
19 Small Claims Court in New York City, which
20 will reduce delays in calendaring those cases
21 and provide greater convenience for
22 litigants; we will increase funding across
23 the state for community dispute resolution
24 centers, which recruit, train and supervise

1 volunteers who provide low-cost mediation and
2 alternative dispute resolution services in
3 court matters, for people who are unable to
4 pay for these services; we will increase
5 funding for the CASA program, which operates
6 statewide to recruit, train and supervise
7 volunteers appointed by the Family Court to
8 advocate for abused, neglected or at-risk
9 children. And we will also increase funding
10 for the Justice Court Assistance program,
11 which has played an important role in
12 improving the operations of the more than
13 1,200 town and village courts across the
14 state.

15 In addition to the 2 percent increase
16 we are seeking in our operating budget, we
17 are seeking a modest capital appropriation of
18 \$15 million. This money would be used to
19 support and build the court system's
20 infrastructure -- in particular, our
21 technology and our public safety
22 infrastructure, which have suffered in recent
23 years. The proposed capital appropriation
24 would be used for a number of important

1 projects, such as upgrading and modernizing
2 the court system's statewide computer
3 network, which connects every courthouse and
4 court office in the state and which, without
5 essential upgrading, will be reaching the end
6 of its expected life; for purchasing a case
7 management system for the state's town and
8 village courts -- and the privately owned
9 case management system, currently used by
10 over 95 percent of the justice courts, is
11 about to be sold, so purchase of the system
12 by the Judiciary will ensure continuity and
13 security for the justice Courts as well as
14 save local governments significant annual
15 licensing fees; for replacing outdated
16 courthouse metal detectors and other security
17 screening devices reaching the end of their
18 useful life; and for replacing bullet-proof
19 vests worn by our court officers, which are
20 also reaching the end of their effectiveness.

21 So those are the key features of our
22 budget request. Next I'd just like to offer
23 a few words about the Chief Judge's
24 Excellence Initiative.

1 The primary focus of this effort has
2 been on court fundamentals, the Judiciary's
3 core mission to fairly and promptly
4 adjudicate each of the millions of cases
5 filed in our courts every year. Over the
6 past year, and continuing this year, we have
7 been working closely with our administrative
8 judges and local court administrators across
9 the state, and with the bar, prosecutor's
10 offices, and other partners and stakeholders
11 in the justice community. We've undertaken
12 an extensive examination into the causes of
13 backlogs, bottlenecks and delays.

14 Based on this self-examination, we
15 have designed and implemented changes such as
16 restructuring how courts process cases,
17 redeploying judges and court personnel. And
18 increasing trial capacity -- all tailored to
19 the needs and circumstances of individual
20 courts and jurisdictions.

21 The Chief Judge will be addressing
22 this in greater detail in her State of the
23 Judiciary address later this month. But I
24 can report to you that we have made real

1 progress over the past year. Case backlogs
2 and delays have been reduced in courts
3 throughout the state at all levels. However,
4 we have a lot more work to do in trying to
5 change a culture in the justice community
6 that frankly has been far too tolerant than
7 it should be of delays and inefficiency.

8 And although there is much we can do
9 to address this problem that will not cost
10 additional money, there is no question that
11 approval of our budget request and the money
12 it will provide to hire additional people and
13 to bolster our infrastructure will enable us
14 to do more over the next year to build on the
15 progress we have made.

16 Finally, I want to briefly address
17 access to justice. Other than the Excellence
18 Initiative, if I had to identify a second top
19 priority in the court system right now, it
20 would be improving access to justice. We are
21 committed to continuing to expand access to
22 justice for the hundreds of thousands of
23 people who come into our courts each year
24 without the assistance of a lawyer. We are

1 addressing this enormous problem, which we
2 call the "justice gap," on multiple fronts.
3 We are encouraging the bar to perform more
4 pro bono work, we are urging law schools to
5 utilize law students to attack the problem,
6 we are even exploring how nonattorneys,
7 within the bounds of the law, can help. And
8 we have used our own funding in the Judiciary
9 Budget to award monetary grants to legal
10 service providers so they can hire additional
11 lawyers to represent people who can't afford
12 a lawyer.

13 Thanks to the support we've received
14 from the Legislature, funding for civil legal
15 services in our budget reached \$100 million
16 in this fiscal year, a goal that was set a
17 number of years ago. We are continuing that
18 amount in this budget request. But because
19 the goal has now been met -- and by the way,
20 that's not nearly enough money to provide a
21 lawyer for everyone who can't afford one.
22 But because the goal has now been met, we are
23 not now seeking additional money in this
24 proposed budget for civil legal services.

1 So those are the key points I wanted
2 to emphasize for you this morning. Thank you
3 very much for listening, and I'd be happy to
4 answer any questions you may have.

5 CHAIRWOMAN YOUNG: Thank you very
6 much, Judge. And we appreciate you coming in
7 and giving that testimony.

8 I know that our chair of the Senate
9 Judiciary Committee, Senator John Bonacic,
10 has some questions, and then I'll follow up.

11 SENATOR BONACIC: Judge Marks, how are
12 you doing?

13 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm
14 doing well, thank you.

15 SENATOR BONACIC: Okay, I just have a
16 few questions. But before I do, I've been
17 fortunate to have a good partner in Judiciary
18 in the Assembly with Helene Weinstein, and I
19 continue to look forward to work with her to
20 resolve the judicial issues that come before
21 us. Helene.

22 You know, I'm glad to see that, you
23 know, you're not putting more money into the
24 civil legal services and instead you're

1 making a priority of investing in the
2 efficiency of the courts throughout the state
3 and trying to improve your capital projects.
4 I think now you're getting your priorities a
5 little better.

6 So when I looked at your budget, you
7 talked of, number one, you would have more
8 money for community dispute resolutions, but
9 you don't say how much. Do you know now how
10 much you'd be investing in that program?

11 CHIEF ADMINISTRATIVE JUDGE MARKS:
12 Well, what we want to do, if our budget is
13 approved, that will provide us extra money
14 for that program, the Community Dispute
15 Resolution Centers, along with some of the
16 other programs that I mentioned in my
17 remarks.

18 And before we decide how much
19 additional money we can spend on that, we
20 want to do an evaluation and see how the
21 additional money can best be spent so that it
22 will increase services -- in that particular
23 respect, with community dispute resolution,
24 how we can increase services with the CASA

1 program -- and do an evaluation, once our
2 budget is approved, and then decide, you
3 know, where to spend the additional money and
4 which individual programs would get the
5 additional money.

6 But, you know, roughly -- we hope to
7 have roughly a million dollars in this
8 proposed budget that we can set aside to
9 provide additional money to the CDRC, the
10 program you mentioned, as well as the CASA
11 program and some of the other programs where
12 we'd like to begin to restore the funding
13 that was cut five, six years ago.

14 SENATOR BONACIC: Okay. As you know,
15 both the dispute resolution program and CASA
16 I think are close to my heart, I think
17 they're important. They're important because
18 if you can resolve disputes without letting
19 the dispute continue into the court system,
20 that's a good thing. So I would encourage
21 you, when you look at that, to beef up those
22 two programs as much as you can.

23 Now, when you talk about -- and I
24 thought this was wonderful -- you're adding

1 200 more positions throughout the court
2 system, how are you going to allocate those?
3 Where are they going to go? Do you have a
4 formula? I assume it's tied into caseload,
5 probably, for those counties, but --

6 CHIEF ADMINISTRATIVE JUDGE MARKS:

7 It's tied to caseload. It's tied to
8 backlogs. You know, security is obviously
9 always a top priority, and we can't
10 compromise on public safety in the
11 courthouses. But the focus -- I can't sit
12 here today and tell you exactly where we need
13 additional personnel. I mean frankly, we
14 need additional personnel pretty much
15 everywhere in the state.

16 But we will -- you know, if we're
17 fortunate enough to get this proposed budget
18 approved and signed into law, we'll do a very
19 quick analysis of where the needs are
20 greatest and allocate personnel to those
21 locations. But the focus will be, as I
22 mentioned before, on the courtroom needs, the
23 court clerks, court officers, interpreters,
24 court reporters and the like.

1 SENATOR BONACIC: I think that's all
2 good. But I would ask you to assume that
3 your Judiciary Budget would be approved,
4 since you're at the 2 percent cap, excluding
5 fringe benefits. I'd like to have -- if you
6 could get me a memo on how you're going to
7 allocate those resources throughout the
8 state. I think it's important for the
9 members to know that upstate is getting its
10 fair share proportionately to the
11 metropolitan area, always keeping in mind
12 where the heavy load is is where you have to
13 invest. Okay?

14 And I would make the same suggestion
15 for capital funding, if that's something you
16 could do.

17 CHIEF ADMINISTRATIVE JUDGE MARKS:
18 We're happy to consult with you on this and,
19 you know, keep you abreast of where we feel
20 our personnel needs are the greatest and
21 where we would allocate additional personnel,
22 you know, at the point where we're able to do
23 that.

24 SENATOR BONACIC: Okay.

1 And last but not least -- this is just
2 more for my enlightenment -- when we put,
3 what is it, over \$800 million in civil legal
4 services, that would include landlord-tenant,
5 it would include divorces, it would include
6 bankruptcy, it would include collection
7 items, the whole gamut of anything that's
8 deemed to be civil. Would I be correct?

9 CHIEF ADMINISTRATIVE JUDGE MARKS: It
10 pretty much runs the gamut, with the focus on
11 what we call the essentials of life, where
12 someone's home may be at risk, either in a
13 rental apartment or a home that's in
14 foreclosure. Victims of domestic violence
15 have benefited from this money, veterans have
16 benefited from the civil legal services money
17 that we distribute, senior citizens.

18 But the answer to your question is it
19 pretty much runs the gamut of all types of
20 civil cases where people come into our courts
21 without a lawyer because they can't afford
22 one.

23 SENATOR BONACIC: You mentioned
24 domestic violence. But wouldn't be that in

1 the criminal arena rather than the civil
2 arena?

3 CHIEF ADMINISTRATIVE JUDGE MARKS: It
4 would be more in the Family Court arena.

5 Critical criminal court, the -- as you
6 know, there's a -- defendants have a
7 constitutional right to a lawyer if they
8 can't afford one. There's no corollary right
9 on the civil side. So this is money that
10 goes to people who have cases in civil courts
11 and to some extent in the Family Court as
12 well.

13 SENATOR BONACIC: Okay. If you had a
14 bottomless pit of money, where would you like
15 that civil services budget to be to meet what
16 you perceive is the demand of people that are
17 not represented by an attorney in all of
18 these civil actions? Do you have a number or
19 a goal? I know you've been trying to bump it
20 up every year. And I'm not saying it's not a
21 worthy goal. I always thought it would be a
22 better priority to put it -- make the courts
23 more efficient.

24 So -- but do you have in your mind

1 what your goal would have been? I'm just
2 curious.

3 CHIEF ADMINISTRATIVE JUDGE MARKS:

4 Well, let me just say it's not -- it's not --
5 whatever that number is, it's not a number
6 that we could ever reach in the court
7 system's budget.

8 For example, despite this additional
9 expenditure of money that, you know, we've
10 added to our budget over the last five, six
11 years -- and we're not adding, as you pointed
12 out, additional money in this proposed budget
13 for civil legal services. But we've studied
14 the difference that's made in the legal
15 representation of people with civil matters
16 who otherwise wouldn't have lawyers but for
17 this money.

18 And in 2011, if we go back to 2011,
19 that's when we started to issue grants to
20 legal services providers, giving them money
21 from the Judiciary Budget. Approximately
22 20 percent of people with civil matters in
23 the civil courts of the state, approximately
24 20 percent had attorneys statewide.

1 Today -- and it's not easy to measure
2 this, and these are rough estimates, but
3 today, six years later, with the expenditure
4 of the \$100 million in our budget -- along
5 with other money that's available. The City
6 of New York has provided money for tenants
7 facing eviction, so there's been additional
8 money. There's been some federal money that
9 goes to civil legal service providers in
10 New York.

11 But the percentage of people, as best
12 we can measure it, who are represented by
13 lawyers in civil courts in the state is about
14 33 percent. So we've gone from 20 percent to
15 33 percent. That means two-thirds of the
16 people in the state are still unrepresented
17 by lawyers in civil cases.

18 On the other hand, it's a very
19 significant increase in hundreds of thousands
20 of additional people now have lawyers because
21 of the money that we've given out in our
22 budget.

23 So to answer your question how much
24 money would it require if it were -- like the

1 criminal courts were -- everyone charged with
2 a crime in the criminal courts has a lawyer,
3 how much money would that cost? It's hard to
4 say. But it would be hundreds of millions of
5 dollars, without question.

6 SENATOR BONACIC: And you would
7 provide this service whether it's an illegal
8 immigrant or a legal citizen, that you don't
9 distinguish in providing these civil services
10 to -- if there are illegals in the city who
11 want to take advantage -- you know, need a
12 defense, you don't make a distinction?

13 CHIEF ADMINISTRATIVE JUDGE MARKS: We
14 haven't made a distinction in that regard.
15 That's up to the legal service provider,
16 which people walk in -- which ones they
17 decide to represent and which ones they
18 don't.

19 SENATOR BONACIC: Okay. So basically
20 illegals also would be entitled to these
21 attorneys for civil matters.

22 CHIEF ADMINISTRATIVE JUDGE MARKS: In
23 the discretion of the legal service provider.

24 SENATOR BONACIC: And my last

1 question, do you have a sense of how many are
2 legal and how many illegal would be --

3 CHIEF ADMINISTRATIVE JUDGE MARKS: I
4 don't. I don't.

5 SENATOR BONACIC: Okay. Thank you,
6 Your Honor.

7 CHIEF ADMINISTRATIVE JUDGE MARKS:
8 Thank you.

9 CHAIRWOMAN YOUNG: Thank you, Judge.
10 Thank you, Senator Bonacic.

11 I did -- oh, I'm sorry. It's the
12 Assembly's turn, isn't it?

13 (Laughter.)

14 CHAIRMAN FARRELL: Yes, it is.

15 CHAIRWOMAN YOUNG: I'm sorry. I'm
16 champing at the bit here.

17 CHAIRMAN FARRELL: Yes, I'll get you
18 there as quickly as possible.

19 CHAIRWOMAN YOUNG: Chairman Farrell,
20 please go ahead.

21 CHAIRMAN FARRELL: We've been joined
22 by Assemblywoman Peoples-Stokes,
23 Assemblywoman Diana Richardson, and
24 Assemblyman McDonald.

1 And first to ask questions on our side
2 is Helene Weinstein.

3 ASSEMBLYWOMAN WEINSTEIN: Thank you,
4 Mr. Chairman.

5 And Judge Marks, I look forward to
6 this year working with you and my Senate
7 counterpart, John Bonacic, again this year as
8 we try and improve justice for all
9 New Yorkers.

10 Just following up a little bit on some
11 of the questions that the Senator was asking
12 about civil legal services, as you say in
13 your remarks, this year the request is flat
14 and that it's the continuation of last year's
15 request of the \$100 million. Could you talk
16 a little bit about what happens to the court
17 system when there are unrepresented litigants
18 and how having representation in fact helps
19 both the court system and the resolution of
20 the litigants' issues?

21 CHIEF ADMINISTRATIVE JUDGE MARKS:
22 Well, it does help the court system. It not
23 only helps people without lawyers, but it's
24 very beneficial to the court system. And I

1 can speak firsthand about this, because I sit
2 in the Supreme Court in New York City, and
3 when individuals are involved in cases and
4 they're unrepresented by a lawyer, it makes
5 it very difficult for the court -- remember,
6 the judge can't give legal advice to
7 litigants, that's not appropriate and raises
8 ethical issues for the judge.

9 So it's very difficult and burdensome
10 on the court, the judge, the court staff,
11 when people come into court unrepresented by
12 lawyers. And in Supreme Court, it's probably
13 less of a problem; you have a greater
14 percentage of people with lawyers who come
15 into Supreme Court. But in many of the other
16 courts -- Housing Court, lower civil court,
17 Family Court -- you have thousands and
18 thousands of litigants who don't have legal
19 representation.

20 And it makes it that much more
21 difficult for the court to adjudicate the
22 case. It can slow things down, it can lead
23 to backlogs. It's inconsistent with all the
24 things that we're trying to address and

1 improve on in the court system right now
2 under the Chief Judge's initiative.

3 So in our view it's not only a humane
4 exercise to provide lawyers to people who
5 can't afford them, but it's in the interest
6 of the court system, our own interest in
7 trying to alleviate backlogs and delays and
8 inefficiencies in how we adjudicate cases.

9 ASSEMBLYWOMAN WEINSTEIN: Thank you.
10 And over the past few years, there's been
11 increased interest in trying to assist
12 homeowners facing foreclosure. We've
13 instituted mandatory settlement conferences.
14 And do you have the numbers or a sense of how
15 many homeowners are represented in
16 foreclosure settlement conferences, and
17 specifically in that setting, the difference
18 of a lawyer versus an unrepresented
19 homeowner?

20 CHIEF ADMINISTRATIVE JUDGE MARKS:
21 Yeah, it's -- foreclosures is an area where
22 we've made really great progress, maybe
23 better than in other areas. If you go back
24 to 2011, there were roughly a third -- 32,

1 33 percent -- of the homeowners were
2 represented by counsel in the settlement
3 conferences in foreclosure cases. And today
4 it's about 62 percent are represented by
5 counsel in the settlement conferences.

6 Now, in foreclosures you do have
7 people who come in with their own lawyers,
8 who can afford to hire lawyers. So the
9 62 percent who come in with lawyers, that's
10 not all people who have been provided a
11 lawyer free of charge through a legal service
12 provider. But there's no question that our
13 legal services program has very, very
14 significantly increased the number of people,
15 homeowners in foreclosure cases who now have
16 a lawyer to represent them.

17 ASSEMBLYWOMAN WEINSTEIN: And moving
18 away from the legal services provisions, do
19 you have any initial thoughts on how the
20 remote access temporary order of protection
21 project is going? I know I was there for the
22 launch in the fall. Has it been operating?
23 Are there any kinks? Has it been helping
24 victims of domestic violence?

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Yeah, this is a program that -- pursuant to
3 legislation passed by the Legislature in the
4 past year or so -- allows for someone seeking
5 an order of protection in Family Court, who
6 may or most likely has been a victim of
7 domestic violence and is seeking an order of
8 protection from the court, to avoid the
9 necessity of going to court if going to court
10 would present a risk of danger to the victim
11 of domestic violence, or is inconvenient or
12 difficult logistically to get to court
13 physically.

14 So pursuant to the legislation, we've
15 set up -- we started a pilot project in
16 seven, eight counties in the state, in the
17 City and around the state, where a person
18 seeking an order of protection can go to a
19 social service center or a family justice
20 center and then file the petition for an
21 order of protection electronically, and then
22 appear by video through Skype and interact
23 with the judge and make the request for an
24 order of protection. And then the judge, in

1 the courtroom, can then issue and sign the
2 order of protection.

3 So it's a great idea. It addresses,
4 you know, what had been a problem of victims
5 of domestic violence of being fearful of
6 going to court to get an order of protection
7 or being incapable of getting there
8 physically. And as I said, we're piloting
9 this now in seven or eight counties around
10 the state, and so far so good. And, you
11 know, we're very optimistic that this will be
12 a successful program, at which point we'll
13 expand it everywhere in the state.

14 ASSEMBLYWOMAN WEINSTEIN: Thank you.

15 And could you just expand, lastly, on
16 how the purchase of the case management
17 system will -- for the town and village
18 courts will save those localities funds not
19 only this year but going forward?

20 CHIEF ADMINISTRATIVE JUDGE MARKS:

21 Well, the town and village courts -- you
22 know, we have 1200 town and village courts
23 across the state. We have a lot of town and
24 village courts. And they're -- for those of

1 you not familiar with this, they're the only
2 courts in the state that are not
3 state-financed. They're locally financed.

4 And -- but the state court system,
5 where it can, we've tried to help the town
6 and village courts with resources as best we
7 can, and we have given them grants over the
8 years and tried to support them as best we
9 can, because they're not always adequately
10 financed by their local municipalities.

11 And every town and village court has a
12 case management system, an automated case
13 management system, which you need to run the
14 court. That's all the data is entered, the
15 calendars, the list of cases is generated by
16 the case management system. Orders can be
17 printed out. And it's sort of how courts in
18 modern times function, through automated case
19 management systems.

20 And the current case management system
21 that's used by over 95 percent of the state's
22 town and village courts is privately owned.
23 And it was created and it's owned by a guy
24 who's up in the Rochester area who was a

1 former town judge himself and worked in the
2 computer business and created this very
3 effective and useful case management system
4 that has now been picked up by, as I said,
5 over 95 percent of the town and village
6 courts.

7 But they have to pay for it. There's
8 an initial cost to purchase it, and there's
9 an annual subscription fee that every town
10 and village has to pay.

11 And that's been fine all along, but
12 he's now retiring and he's going to sell his
13 product. And so we, in this capital
14 appropriation that we're seeking in our
15 budget request, we would use a portion of
16 that to purchase this case management system
17 from this gentleman who's retiring, and we
18 would then provide it -- well, that would
19 serve several purposes. One, if it sold to
20 someone else, whoever sells it might not have
21 the best interests of the town and village
22 courts in mind and the system could become
23 less useful, less effective for the courts.
24 If we purchase it, that won't happen.

1 And secondly, we would purchase it and
2 we wouldn't charge, of course we wouldn't
3 charge the village and town courts a fee. So
4 the municipalities would get this product for
5 free.

6 So it's something we very much want to
7 do. Not surprisingly, the State Magistrates
8 Association is very supportive of this
9 effort. And if we get the money in our
10 budget to do that, you know, we fully plan to
11 go ahead and purchase the case management
12 system.

13 ASSEMBLYWOMAN WEINSTEIN: Great.
14 Thank you so much, Judge. Look forward to
15 continuing to work with you as the session
16 goes on.

17 CHIEF ADMINISTRATIVE JUDGE MARKS:
18 Thank you.

19 CHAIRMAN FARRELL: Thank you. We've
20 been joined by Earlene Hooper and Jo Anne
21 Sayam -- Simone -- Simon -- I'll speak
22 English soon -- as Assemblypeople.

23 CHAIRWOMAN YOUNG: We've been joined
24 by Senator Tom Croci.

1 So, Judge, thank you so much for your
2 answers so far. And just following up on
3 what the Assemblywoman was asking about with
4 the local courts -- and we had a good
5 discussion yesterday about this issue. Just
6 one real quick question. Would there be an
7 ongoing cost to the state after the
8 \$4.5 million was used to buy the system? Are
9 there other costs that we should anticipate
10 in the future?

11 CHIEF ADMINISTRATIVE JUDGE MARKS:
12 It's really a one-time cost to purchase the
13 product. And over time, it may require
14 periodic upgrades, but we would do that
15 internally with our own technology people.
16 So essentially it's a one-time cost.

17 CHAIRWOMAN YOUNG: Thank you.

18 You talked about the cuts that were
19 sustained five or six years ago, and I agree
20 with you that those cuts need to be restored.
21 And one of the proposals that you're talking
22 about is increasing hours for Small Claims
23 Court. And that's strictly New York City;
24 correct?

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 It's strictly New York City where we've had
3 the biggest problem. Because of delays in
4 calendaring the cases, it can take months and
5 months when somebody files a small claim in
6 New York City. It can take -- because of the
7 enormous backlog, because we had to cut back
8 the evening hours during the week, a very
9 substantial backlog has grown.

10 So the point I mentioned, the focus is
11 just on New York City, but -- my
12 understanding is that the problem is most
13 acute in New York City, but we could look
14 elsewhere around the state if this is a --

15 CHAIRWOMAN YOUNG: Do you know what --
16 yeah, Judge, do you know what the cost would
17 be to do what you're proposing? Do you know
18 how much more it would cost to have those
19 evening hours?

20 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm
21 sorry, I should know that. I don't have that
22 number off the top of my head, but I can get
23 it for you.

24 CHAIRWOMAN YOUNG: It would be really

1 helpful. If you could get it to the
2 Legislature, that would be good.

3 CHIEF ADMINISTRATIVE JUDGE MARKS:

4 Sure.

5 CHAIRWOMAN YOUNG: And are you looking
6 at any other courts to expand into evening
7 hours?

8 CHIEF ADMINISTRATIVE JUDGE MARKS: Not
9 at the moment. Evening hours are costly
10 because -- you know, since we do have
11 challenges with staffing and, you know, we do
12 have fewer personnel than ideally we would
13 like and that we had at one time, evening
14 operations are paid through overtime. And
15 overtime is expensive.

16 And, you know, we've tried to contain
17 overtime costs in recent years, and we've
18 been fairly successful in doing that. But
19 just, for example, the Small Claims Court
20 expansion in New York City, that would be
21 paid through overtime.

22 And by the way, it just occurred to
23 me -- I'm recalling now -- and I'll check
24 this -- but the cost is in the neighborhood

1 of \$3 million, \$3.5 million to partially
2 restore the evening hours of Small Claims
3 Court in New York City. I believe it's about
4 \$3 million, \$3.5 million. Which is all
5 overtime. You know, that's the problem and
6 that's the challenge, it's overtime costs.

7 CHAIRWOMAN YOUNG: Thank you.

8 The Governor has included the Raise
9 the Age proposal in his budget, and I was
10 wondering how that would impact the
11 judiciary.

12 CHIEF ADMINISTRATIVE JUDGE MARKS:

13 Well, we -- I should say we're supportive of
14 the raising the age of criminal
15 responsibility. As I think everybody knows,
16 we're one of only two states in the country
17 that sets the age of criminal responsibility
18 at 16.

19 And we've been very involved in this.
20 The prior chief judge introduced legislation
21 a number of years ago to Raise the Age in
22 New York. The Governor, as I think you all
23 know, established a commission --
24 coincidentally I was a member of that

1 commission prior to my being chief
2 administrative judge, and the chief judge was
3 a member of that commission when she was the
4 Westchester County district attorney. So we
5 have a very keen interest in this proposal.

6 And in terms of the impact it would
7 have on the courts, basically the cases
8 involving 16- and 17-year-olds would be
9 handled in the Family Court, at least most of
10 the cases. The most violent felony cases
11 would remain in the adult courts, although it
12 would be treated in separate court parts in
13 the adult courts. But most of the cases, the
14 great percentage of the cases would be
15 handled in Family Court, just as cases are
16 for youth under 16 now and just as they are,
17 as I said, in 48 states around the country;
18 the 16- and 17-year-old cases, except for the
19 most violent, would be handled in Family
20 Court.

21 So that would create some additional
22 burdens on Family Court. But we -- I can
23 tell you this very confidently, that's a
24 problem that we're happy to take on. It

1 would not -- let me put it this way. It
2 wouldn't create an increased number of cases
3 in the court system. It's the same number of
4 cases, it's just moving cases from one part
5 of the court system to the other, from the
6 adult criminal courts to the Family Court.

7 So we could accommodate that. You
8 know, it would require some planning. And
9 every bill that I've seen would have like,
10 you know, a very advanced effective date, so
11 there would be full opportunity to plan for
12 this. But we can move resources from one
13 court to another court. We did get, thanks
14 to the Legislature, a couple of years ago we
15 did get 25 new Family Court judgeships, which
16 would be very helpful.

17 The arrests -- we followed this very
18 carefully. Arrests of 16- and 17-year-olds
19 over the last seven, eight years have
20 plummeted. They're a fraction of what they
21 used to be. And there are a variety of
22 reasons for that. But the caseload involving
23 16- and 17-year-olds is much less than it
24 once was.

1 And in Family Court, there are more
2 opportunities for diversion of cases, so that
3 the cases never actually end up in court. So
4 that also would reduce the number of cases
5 that would end up in Family Court that are
6 not there now.

7 CHAIRWOMAN YOUNG: Right. And, you
8 know, Judge, I would say, though, there are
9 still some crimes on the list that I have
10 deep concerns about, things like criminally
11 negligent homicide, vehicular manslaughter,
12 aggravated sexual abuse. I think we need to
13 look at the list as to what would qualify
14 under Youth Court. Because if anybody is
15 violent, I don't think that they should
16 qualify for the Raise the Age proposal.

17 But you talk about the additional
18 Family Court judges, and we worked very hard
19 to get those in place. As you know,
20 Chautauqua County, for example, was able to
21 get one.

22 But do you see any money included in
23 your budget proposal that would be used
24 toward Raise the Age?

1 CHIEF ADMINISTRATIVE JUDGE MARKS: I
2 don't think we would be seeking additional
3 money for Raise the Age legislation.

4 But, you know, let me say it would
5 require, if it were -- for Raise the Age to
6 be successful, it would require additional
7 state money for programs and services.
8 Because, you know, Family Court relies
9 heavily on programs and services, more so
10 than the adult courts, for obvious reasons.
11 And Raise the Age would certainly have a
12 price tag, and that would primarily be for
13 programs and services.

14 CHAIRWOMAN YOUNG: Okay. Do you
15 anticipate additional judges being needed?

16 CHIEF ADMINISTRATIVE JUDGE MARKS:
17 Yes. Yeah.

18 CHAIRWOMAN YOUNG: Do you have a
19 ballpark figure?

20 CHIEF ADMINISTRATIVE JUDGE MARKS: I
21 don't, because we'd have to know the issue
22 you raised -- you know, which crimes. And
23 that would need to be negotiated, which
24 crimes would go to Family Court, which would

1 stay in the adult courts. That would impact
2 the volume of cases. And we would need
3 additional judicial resources.

4 But remember, if cases are moving from
5 criminal court to Family Court, that reduces
6 the burden on the criminal courts, increases
7 the burden on the Family Courts, and we can
8 shift judges from court to court. So that's
9 one example of how we would accommodate a
10 change in the law.

11 CHAIRWOMAN YOUNG: Okay. Thank you.

12 CHAIRMAN FARRELL: Thank you.

13 Assemblyman Joe Lentol.

14 ASSEMBLYMAN LENTOL: Thank you,
15 Mr. Chairman.

16 Good morning, Judge.

17 CHIEF ADMINISTRATIVE JUDGE MARKS:

18 Good morning.

19 ASSEMBLYMAN LENTOL: And thank you for
20 coming before us today. And thank you for
21 the work that you've been doing since you've
22 been appointed. I'm really appreciative of
23 the hard work that you've put in as the chief
24 administrative judge.

1 Is this working, this microphone?

2 Okay.

3 So I was going to ask you a lot of
4 questions about Raise the Age, and I'm not,
5 because Senator Young asked you a lot of
6 questions. But I know that there's been a
7 great deal of talk around the Capitol in the
8 aftermath of last session about caseloads in
9 the criminal matters involving those counties
10 that are non-Hurrell-Harring counties. And
11 I'm not going to ask you about that either,
12 because I wanted to ask you about the impact
13 that civil legal service money provided by
14 the judiciary -- I guess it's about \$100
15 million last year -- has done, or what impact
16 it's had on civil caseloads in the court
17 system.

18 CHIEF ADMINISTRATIVE JUDGE MARKS:

19 Well, it's had a very positive impact. And
20 not to say that there still aren't, you know,
21 many, many people who come into the civil
22 courts without a lawyer. But the money that
23 the Legislature has authorized and that we've
24 given out in grants to some 70 to 75 civil

1 legal service providers across the state --
2 that's money that, by the way, goes to every
3 one of the state's 62 counties -- it's had an
4 enormous impact on people's lives. All kinds
5 of people -- poor people, working people who
6 can't afford a lawyer, veterans, senior
7 citizens, victims of domestic violence,
8 really across the board. It's had a dramatic
9 impact on the lives of thousands and
10 thousands of people.

11 But -- I can't sit here today and tell
12 you that it's solved the problem of the
13 justice gap in this state, but it's been a
14 major step forward, a major progress for the
15 state, and an achievement that everyone in
16 this room can take pride in and take credit
17 for.

18 ASSEMBLYMAN LENTOL: Can you tell us
19 which cases are -- needs are unmet right now?
20 I mean, I know we've met a lot of needs in
21 the community out there for civil legal
22 services, but who has not been served?

23 CHIEF ADMINISTRATIVE JUDGE MARKS:
24 There's still -- a majority of people in

1 eviction proceedings still don't have an
2 attorney. A substantial number of people
3 facing foreclosure don't have an attorney. A
4 very substantial number of people who are
5 being sued over consumer debt default don't
6 have an attorney. You know, and there are
7 other examples of that. Those are kind of
8 the three top examples that come to mind.

9 ASSEMBLYMAN LENTOL: Thank you.

10 I was very interested in the questions
11 asked by Senator Young about Raise the Age.
12 And I know in my heart that there's little
13 appetite in some places in the Legislature
14 for violent felony offenders or people who
15 are not low-level nonviolent offenders, that
16 we ought to maybe do that first. And I
17 understand the reason for it. But isn't it
18 appropriate -- or do you think that it's
19 those offenders who are violent that need the
20 services of the Family Court more than those
21 who we are putting in the Family Court for
22 purposes of prosecution? We're putting in
23 the nonviolent offenders, who may not
24 necessarily need the services that the

1 Family Court -- probation services as well as
2 any technical services that could be provided
3 in the Family Court that are not provided
4 anywhere now.

5 CHIEF ADMINISTRATIVE JUDGE MARKS:

6 Well, one could make that argument. And I
7 know there are political considerations that
8 impact this.

9 But I would say it depends on the
10 individual. I mean, you could have an
11 individual charged with a very serious crime
12 who could benefit greatly from more of a
13 Family Court approach to the case in programs
14 and services. And you could have someone
15 charged with a lesser offense who might not
16 be a good candidate for programs and
17 services.

18 So I guess it's somewhat arbitrary to
19 sort of draw the line and say, you know, this
20 category of offenses would go to Family Court
21 and this category of offenses would stay in
22 the criminal courts. But, you know, when
23 you're legislating, sometimes, you know, the
24 lines have to be drawn and sometimes they can

1 be arbitrary.

2 But my answer to your question would
3 be it depends on the individual and who the
4 individual is. And the problems and the
5 needs of the individual are probably more
6 important than the particular crime that's
7 being charged in the case.

8 ASSEMBLYMAN LENTOL: I mean, I haven't
9 looked at all of the states and how they
10 treat violent felony offenders, the ones that
11 have raised the age of criminal
12 responsibility. But I'm pretty sure that
13 most of them take into account that these are
14 violent felons in some way, shape or form,
15 but want to provide them services and get
16 them those services in the Family Court. And
17 if they need punishment, there's also
18 punishment that's available in the juvenile
19 court as well.

20 CHIEF ADMINISTRATIVE JUDGE MARKS:
21 Yeah, and let me just say, not to -- I don't
22 mean to denigrate the criminal courts in any
23 way, because there are programs available and
24 services available to judges and offenders in

1 criminal court cases as well. But the
2 orientation in the criminal courts is very
3 different from Family Court. Family Court is
4 all about addressing the needs of -- the best
5 needs and the best interests of the youth in
6 the case before the judge. And that's what
7 Family Court has been all about. That's
8 Family Court's orientation.

9 And there are programs available, you
10 know, for offenders in the criminal courts,
11 but it's not the primary focus. And it's a
12 different orientation in the criminal courts
13 than what you have in Family Court.

14 ASSEMBLYMAN LENTOL: Thank you, Judge.
15 Next.

16 CHAIRWOMAN YOUNG: Thank you,
17 Assemblyman.

18 Our next speaker is -- oh, where did
19 he go? Okay. We'll go to Brad Hoylman.

20 SENATOR HOYLMAN: Thank you. Nice to
21 see you, Judge. Thank you for being here.
22 It's interesting to see another branch of
23 government have to go to another and seek
24 funding.

1 You mentioned the essentials of life
2 in terms of our civil litigation system, and
3 I find it kind of shocking that we have to
4 keep the essentials of life at a 2 percent
5 cap every budget.

6 But in terms of that \$100 million --
7 and I think this question was asked maybe in
8 a different way -- and your statement that
9 it's not nearly enough to provide a lawyer
10 for everyone who can't afford one, what is
11 that figure, in your estimation?

12 CHIEF ADMINISTRATIVE JUDGE MARKS:
13 Yeah, I think Senator Bonacic asked me that
14 question. And I don't have that number here
15 with me today. It's an enormous amount of
16 money, unfortunately.

17 SENATOR HOYLMAN: Don't you think,
18 sir -- and the reason I ask it again --

19 CHIEF ADMINISTRATIVE JUDGE MARKS:
20 It's not an amount that I could ever see
21 being met through the Judiciary's budget.
22 And let me just say it's unusual -- I mean, I
23 go to conferences of my counterparts in
24 states around the country, and there's no

1 other state doing what we're doing here in
2 New York. That's why I think that everyone
3 here, you know, can take a lot of credit for
4 the fact that we have that much money in the
5 Judiciary Budget given to civil legal service
6 providers so they can hire attorneys to
7 represent people who can't afford an
8 attorney.

9 SENATOR HOYLMAN: At the same time, if
10 I can interject --

11 CHIEF ADMINISTRATIVE JUDGE MARKS: But
12 it's unusual that that money is in the
13 Judiciary Budget. You don't find that in
14 many other states in the country. You
15 certainly don't find the amount that we have
16 in our budget in any other state in the
17 country at this point.

18 So I don't -- whatever that number
19 is -- and I can't tell you what that number
20 is. I can tell you it's an enormous amount
21 of money. And it's not an amount that I
22 could envision ever being met in the
23 Judiciary Budget alone.

24 SENATOR HOYLMAN: Well, in New York

1 City Housing Court, 70 percent of low-income
2 tenants go without lawyers. Do you have any
3 understanding of what the outcomes are for
4 those litigants who go unrepresented in
5 Housing Court? Have you analyzed what the
6 outcomes are for those individuals who do not
7 have lawyers and have to face the bench
8 pro se without any knowledge of the law,
9 without any legal understanding, and without,
10 frankly, the wherewithal or resources to
11 defend themselves against a landlord who may
12 have multiple attorneys at his or her
13 disposal?

14 CHIEF ADMINISTRATIVE JUDGE MARKS:

15 Well, it's daunting, to say the least. And
16 the playing field is far from level.

17 And it's self-evident that someone who
18 goes into court, in Housing court or
19 anywhere, for that matter, without a lawyer
20 is at an extraordinary disadvantage going up
21 against an adversary who's represented by a
22 lawyer. I mean, that's self-evident.

23 SENATOR HOYLMAN: Do you not think
24 it's part of your responsibility to put a

1 dollar figure on what it would be to provide
2 our fellow citizens legal representation, or
3 at the very least analyze those cases where
4 individuals, when it comes to the essentials
5 of life, are unrepresented and determine what
6 the outcomes of those cases were?

7 CHIEF ADMINISTRATIVE JUDGE MARKS:

8 There has been some research done on that. I
9 can tell you, interestingly, there was a
10 recent study I saw that addressed the
11 efficacy of nonlawyers.

12 We have a program that we implemented
13 a couple of years ago where we use
14 nonlawyers -- community college students, for
15 example -- who assist unrepresented people in
16 housing court in the lower civil court in
17 New York City. These are nonlawyers. They
18 can't advise people on the law, but they can
19 help them fill out forms, they can try to
20 answer questions for them without crossing
21 the line of advising them in the law, which
22 they can't do. They provide moral support
23 for people who don't have lawyers.

24 And there was a recent study that

1 looked at the outcome of those cases where
2 these nonlawyers were being used, and the
3 results were more favorable. I can get you
4 that report.

5 SENATOR HOYLMAN: I'll just share with
6 you that in my Senate district there is a
7 crisis, and particularly housing cases, where
8 rapacious landlords are using the legal
9 system to harass tenants and attempt to evict
10 them -- and in many if not most instances,
11 they are successful.

12 Tenants call my office seeking
13 guidance. We try to send them to, you know,
14 the appropriate legal services agency. They
15 are more often than not unable to help them,
16 due to their caseload. And we're not seeking
17 any more funds to address this problem. Nor,
18 it seems to me, do we have a real
19 understanding of how deep of a problem it is.

20 CHIEF ADMINISTRATIVE JUDGE MARKS:
21 Well, we know it's a deep problem. And --

22 SENATOR HOYLMAN: But we can't put a
23 figure on it. And we don't even know the
24 number of individuals who are going

1 unrepresented.

2 CHIEF ADMINISTRATIVE JUDGE MARKS:

3 Well, we -- I can go back and try to get more
4 information for you on this. I don't know
5 that there's complete information on those
6 questions, but there's more information out
7 there, and I can try to get that for you.

8 But we know it's an enormous problem.

9 And I think what we've tried to do in the
10 New York State court system -- it is
11 unprecedented. I can tell you there's no
12 other court system in the country that's
13 taken the steps that we've taken in our own
14 budget with support from the Legislature.
15 It's unprecedented.

16 But as I said, I can't sit here today
17 and tell you that, you know, we've solved the
18 problem. We haven't. There's a long, long
19 way to go before that problem is solved.

20 SENATOR HOYLMAN: Well, I do
21 appreciate your service. I think you should
22 be asking more of us, candidly. And I look
23 forward to devising strategies to help you do
24 that.

1 CHAIRWOMAN YOUNG: Thank you.

2 CHIEF ADMINISTRATIVE JUDGE MARKS:

3 Thank you.

4 CHAIRWOMAN YOUNG: Thank you, Senator.

5 We've been joined by Senator Todd

6 Kaminsky.

7 And Chairman?

8 CHAIRMAN FARRELL: Assemblyman Graft

9 {sic}.

10 ASSEMBLYMAN GRAF: Judge, how are you?

11 CHIEF ADMINISTRATIVE JUDGE MARKS:

12 Good morning, how are you?

13 ASSEMBLYMAN GRAF: We had

14 conversations last year, and I know that you

15 left and that you made a lot of changes down

16 in the court as far as the backlog, because

17 as we talked about, there was a 3½-year time

18 period for us to get a hearing, and it took

19 me five years to get a trial on a

20 misdemeanor.

21 And I know you went to the judges and

22 you talked about standards and goals, but one

23 of the biggest problems we have is your lack

24 of staff and your lack of staffing. So, I

1 mean, we're talking about hiring more judges
2 here, all right? But we can hire judges --
3 if you don't have the staff to staff the
4 courtrooms, if you don't have the staff that
5 does the stuff in the back, the people that
6 keep the trains moving and everything else,
7 we're still stuck in neutral. It's kind of
8 like having a brand-new car but no engine.

9 So when we're looking at staffing, how
10 much are you down from five years ago, six
11 years ago, staffwise? You're telling me
12 you're going to hire 200. How many are we
13 down, 1,000?

14 CHIEF ADMINISTRATIVE JUDGE MARKS: No,
15 at the worst point in -- I believe it was
16 2013 -- to compare 2013 to 2009, when I think
17 our -- 2009-2010, when our employment level
18 hit its highest point probably ever, and
19 2013, where we hit our lowest point since the
20 budget challenges going back to 2011. In
21 2013, we were down approximately 2,000
22 employees. Today we are down approximately
23 1,700 employees from where we were in
24 2009-2010.

1 So if our budget is approved, then our
2 goal is to hire -- to be able to continue to
3 replace people when they leave and not suffer
4 any worse attrition. But also, in addition
5 to that, to add 200 more employees over the
6 next fiscal year. Then we would be down to
7 about 1,500 fewer employees statewide from
8 where we were in 2009-2010.

9 ASSEMBLYMAN GRAF: And you would agree
10 that's causing big delays, because if I go
11 into Nassau County or I go into Suffolk
12 County and I look at the logjam -- so for
13 instance, we have all of these houses that
14 are in foreclosure. They have a whole room
15 filled with cases that have been there three,
16 four, five years. But they don't have the
17 employees. All they're waiting for is a
18 summary judgement, and they don't have the
19 employees to process it.

20 So wouldn't you agree, by not hiring
21 these employees that we so badly need, we're
22 slowing down the processes in the court, and
23 we're actually costing ourselves money in the
24 long run?

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Look, I think you're stating this as well as
3 I could. And I know you practice in the
4 courts, so you see this firsthand, and I
5 respect what you're saying.

6 But let me say we can do a lot even
7 without more money, and we have over the past
8 year. And the foreclosure backlog is down
9 significantly, but it's still a very
10 formidable backlog in Suffolk County --
11 which, by the way, has the most foreclosure
12 cases of any county in the state.

13 But having said that, we absolutely
14 could use more employees. We can use --

15 ASSEMBLYMAN GRAF: Yeah, I'm not
16 beating you up here, Judge.

17 CHIEF ADMINISTRATIVE JUDGE MARKS: No,
18 no, no, we're in agreement on this.

19 ASSEMBLYMAN GRAF: Yeah. I'm trying
20 to communicate with my colleagues.

21 CHIEF ADMINISTRATIVE JUDGE MARKS:
22 Yeah.

23 ASSEMBLYMAN GRAF: I'm trying to
24 communicate with the Governor, okay? That

1 he's stepping over a dollar to pick up a
2 dime. Because it's actually costing us money
3 by not pushing these cases and not having the
4 employees to do these cases.

5 You know, there's an old saying,
6 justice delayed is justice denied, and I
7 think that is what we're doing. I have a
8 limited amount of time, but I think we have
9 to ask that they bring the staffing level up,
10 because we're at a point now where the courts
11 are struggling.

12 The last thing, because they're
13 limiting my time here, is the Raise the Age.
14 And I want to make one point perfectly clear.
15 We keep talking about the rights of the
16 defendant and how we want to help the
17 defendant and, you know, we want to coddle
18 them. Nobody's talking about the victim
19 here.

20 Nobody's talking about if I have a
21 4-year-old child that's molested by a kid one
22 day short of his 18th birthday, he can wind
23 up in Family Court, adjudicated in
24 Family Court, and he wouldn't have to submit

1 DNA, and he wouldn't have to turn around and
2 be on the sex offender registry list.

3 So some of these crimes are horrific.
4 And as I'm reading this bill, the way it's
5 written, if somebody was to go out and murder
6 a police officer, they would be able -- it
7 goes to the court, and there is a mechanism
8 to put it in Family Court. It may never
9 happen, but it's in the bill.

10 So I mean, I think the bill is
11 horrific. I think we don't take into
12 consideration the victim, right? And the
13 bottom line, it's a touchy-feely approach,
14 but it's -- there's a lot more to it. And I
15 think this bill is poorly drafted, poorly
16 written, and I think the Governor should back
17 off here a little bit. Because what they
18 call Raise the Age, I call the Gang
19 Recruitment Act.

20 So any comments on that?

21 CHIEF ADMINISTRATIVE JUDGE MARKS:

22 Well, just the only comment -- obviously, I
23 don't agree with you completely in what you
24 said. But the case you cited, that horrific

1 case, I think under the Governor's bill I
2 believe it could go to Family Court. It
3 would start out in the criminal courts and
4 could go to Family Court, but the district
5 attorney would have to agree to that, I
6 believe, as the bill is drafted.

7 ASSEMBLYMAN GRAF: Well, there's a
8 clause in the bill, later on, where it says
9 that the defendant can move for the court to
10 move it into Family Court. And the way it's
11 drafted, we're taking the DA's consent out of
12 it, okay? Where all of a sudden, if there's
13 a motion from the defendant, the court can
14 decide to move it to Family Court, which cuts
15 the DAs out of it.

16 There's nothing in there saying that
17 if the DA says no at that point, right, that
18 the motion has to be denied. But we give the
19 opportunity for the defendant to make a
20 motion to move it to Family Court.

21 Drafting is very important when you're
22 writing a bill. You know, you may have a
23 concept of what you want to do, all right,
24 but the language has got to be in there, and

1 it has got to be clear. And in this case,
2 it's anything but.

3 CHAIRMAN FARRELL: Thank you.

4 CHAIRWOMAN YOUNG: Thank you very
5 much.

6 Our next speaker is Senator Pat
7 Gallivan.

8 SENATOR GALLIVAN: Thank you,
9 Chairwoman.

10 Good morning, Judge.

11 CHIEF ADMINISTRATIVE JUDGE MARKS:
12 Good morning.

13 SENATOR GALLIVAN: I'd like to ask a
14 couple of questions about the raise in the
15 age of criminal responsibility as well.

16 But going back to your earlier
17 testimony, I think you mentioned or testified
18 to the fact that the caseload of 16- and
19 17-year-olds entering the criminal courts is
20 significantly down. Do you know what those
21 numbers are? The numbers that typically we
22 have access to lag a little bit behind. So
23 I'm just curious what are those numbers.

24 CHIEF ADMINISTRATIVE JUDGE MARKS:

1 Those numbers are available.

2 I know that in recent years the number
3 of arrests of 16- and 17-year-olds in this
4 state -- and this is a trend across the
5 country, not just New York -- are down
6 dramatically. And I'll have to get that for
7 you.

8 SENATOR GALLIVAN: Okay, if you could,
9 please.

10 CHIEF ADMINISTRATIVE JUDGE MARKS:
11 Sure.

12 SENATOR GALLIVAN: And we can follow
13 up.

14 The other thing, right along those
15 lines, do you know, approximately, what is
16 the percentage of -- the 16- and 17-year-olds
17 in the criminal courts, what percentage is
18 that of the total caseload, approximately?

19 CHIEF ADMINISTRATIVE JUDGE MARKS:
20 It's -- I don't know, I'll have to -- those
21 numbers are available as well. It's a fairly
22 low percentage, but I don't want to speak off
23 the top of my head. But we'll definitely get
24 you those numbers.

1 SENATOR GALLIVAN: All right, if you
2 could follow up on those, we would appreciate
3 that.

4 CHIEF ADMINISTRATIVE JUDGE MARKS:
5 Sure.

6 SENATOR GALLIVAN: If I understand
7 correctly, that the Governor has not included
8 any additional funding regarding the
9 judiciary for this fiscal year for his Raise
10 the Age proposal. But what I'm interested
11 in -- the reason I'm interested in those
12 numbers is talking about -- if the proposal
13 was to go forward the way that it is, and you
14 have testified about -- it would be the same
15 number, approximate same number of cases,
16 just shifted to another case -- the local
17 criminal courts still have a caseload to
18 handle.

19 And what I'm trying to get at is,
20 without comment on agreeing or disagreeing
21 with the proposal, is how can we accurately
22 look at and determine what the cost might be?
23 Because if it's only a small percentage of
24 the caseload, those criminal court judges

1 have to stay behind to handle the rest of it.

2 But nonetheless, if you could get us
3 those numbers, we'd appreciate it.

4 CHIEF ADMINISTRATIVE JUDGE MARKS:
5 Absolutely.

6 SENATOR GALLIVAN: We do have a
7 hearing on that issue next week. If you're
8 able to get it to us this week, it'd be
9 great, and we'd appreciate it.

10 CHIEF ADMINISTRATIVE JUDGE MARKS:
11 Sure, yeah. We'll do that.

12 SENATOR GALLIVAN: Thank you.

13 Thank you, Chairwoman.

14 CHAIRWOMAN YOUNG: Thank you very
15 much.

16 CHAIRMAN FARRELL: Thank you.

17 We've been -- with us is Assemblyman
18 Weprin and Assemblyman Giglio.

19 Next to testify is Crystal
20 Peoples-Stokes.

21 ASSEMBLYWOMAN PEOPLES-STOKES: Thank
22 you, Mr. Chairman.

23 And thank you very much, I appreciate
24 all you shared with us today -- I've been

1 here for a minute.

2 I do want to ask for just a little
3 more clarification on how the statewide
4 implementation of Hurrell-Harring will impact
5 local counties, counties outside of New York
6 City, and outside of the ones that were
7 covered in the case.

8 CHIEF ADMINISTRATIVE JUDGE MARKS:

9 Well, Hurrell-Harring -- in terms of
10 Hurrell-Harring, if expanded statewide, it
11 would be a very positive thing, in our view,
12 because it would set some of the caseloads of
13 public defenders in some places around the
14 state.

15 Not in New York City, by the way; we
16 have caseload limits on the number of cases
17 that individual public defenders can handle
18 in New York City.

19 But outside of New York City, there
20 are no such limits and there clearly -- there
21 are individual public defenders that are
22 handling way too many cases. That's bad for
23 their clients, it's bad for the court system
24 because it can lead to delays and too many

1 adjournments, and trials getting adjourned
2 indefinitely.

3 So if that -- that's one of the terms
4 of the Hurrell-Harring settlement. If that
5 were expanded statewide, that would be a very
6 positive thing, from our perspective, in the
7 court system.

8 Another term of the Hurrell-Harring
9 settlement was to ensure that defendants are
10 represented by counsel at arraignment, and
11 that's been a problem that's plagued the
12 court system, particularly in the town and
13 village courts, which arraign -- do the first
14 arraignment of anyone charged with a crime
15 outside of cities in our state.

16 So that's a lot of arraignments,
17 including not just misdemeanor arraignments
18 but felony arraignments. If the crime is
19 charged -- it's taking place outside of a
20 city, then the arraignment takes place in a
21 town or village court.

22 ASSEMBLYWOMAN PEOPLES-STOKES: So is
23 that a part of the justice gap that you speak
24 of?

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Yeah, absolutely. Yeah, yeah, and that
3 violates the Constitution. That's why the
4 case was settled, because people have a right
5 under the federal Constitution to a lawyer to
6 represent them, including at the first
7 appearance, which is the arraignment, which
8 can be a very important appearance in the
9 case. Bail decisions are being made.

10 And that was one of the terms of the
11 Hurrell-Harring settlement. So obviously
12 that would be advantageous to everyone if
13 that were applied throughout the state.

14 And along with the other terms of the
15 settlements, it would be a very positive
16 development if those improvements could be
17 made not just in the five counties that were
18 involved in the lawsuit, but in the remaining
19 counties of the state.

20 ASSEMBLYWOMAN PEOPLES-STOKES: So
21 would you -- well, I agree, and I'm glad
22 that -- being from Erie County, it's clearly
23 something that we're very interested in
24 there.

1 But would you say that the Governor's
2 proposed budget around this topic closes the
3 justice gap, or does it get us closer to
4 closing it?

5 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm
6 sorry, is it -- what about the justice gap?

7 ASSEMBLYWOMAN PEOPLES-STOKES: The
8 justice gap. Does the proposed budget get us
9 closer to closing that gap, or does it close
10 it?

11 CHIEF ADMINISTRATIVE JUDGE MARKS: It
12 does not close it.

13 ASSEMBLYWOMAN PEOPLES-STOKES: Could
14 they?

15 CHIEF ADMINISTRATIVE JUDGE MARKS: It
16 hopefully gets us closer, but as I said
17 before, there's a long way to go.

18 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
19 Thank you, sir.

20 CHAIRWOMAN YOUNG: Thank you.
21 Senator Jamaal Bailey.

22 SENATOR BAILEY: Thank you, Madam
23 Chair.

24 Judge Marks, thank you for coming

1 today. My question is concerning -- also
2 along the lines of Member People-Stokes,
3 about the access to justice. And I truly
4 commend you for that and your commitment to
5 pro bono work. However, as a former student
6 at a public interest law school, sometimes
7 it's difficult for these law students to
8 appropriately attack these problems.

9 Does OCA have any consideration for
10 assisting students with bar preparation?

11 CHIEF ADMINISTRATIVE JUDGE MARKS:

12 Actually, we do have a program, it's
13 interesting that you mention that. It's
14 called the Legal Education Opportunity
15 program. It's funded by the Legislature. I
16 don't know if you're aware of that. And
17 students who have been admitted to law
18 school, students from economically
19 disadvantaged backgrounds, can apply to
20 attend a program at our Judicial Institute,
21 the Court Assistance Judicial Institute in
22 Albany. And there are law professors and
23 instructors there who spend six weeks in the
24 summer before the students will start law

1 school to prepare them for law school.

2 And it's a terrific program. It's not
3 a large program; I think it's limited to
4 maybe 20-25 students. But it's funded by the
5 Legislature, and it's a very good program.

6 SENATOR BAILEY: Sure. And one
7 follow-up question. You mentioned that
8 you're urging law schools to utilize law
9 students to attack the problem. Is there any
10 support in funding for law school clinics?
11 Because law school clinics, especially
12 third-year clinics that have a good amount of
13 experience, practical experience, and they're
14 ready to assist clients -- I was going to say
15 constituents -- clients. Especially in this
16 day and age, you have immigration clinics who
17 may need extra assistance.

18 What exact financial considerations do
19 you have for this problem?

20 CHIEF ADMINISTRATIVE JUDGE MARKS:
21 Well, yeah, law schools can be a great
22 resource in providing assistance to people
23 who don't have attorneys. You know, the law
24 students will do that and are authorized to

1 do that under practice orders issued by the
2 appellate divisions around the state. And
3 they're supervised by lawyers, law
4 professors, and we actually -- in the money
5 in our budget, we do fund a few law school
6 civil legal service programs around the
7 state, and they were not the sole source of
8 that funding. They get funding from
9 elsewhere. The law schools themselves
10 provide funding for these clinics. And
11 they're a great resource, and they've done a
12 lot to help the problem.

13 SENATOR BAILEY: All right. Thank
14 you, Judge Marks.

15 CHAIRWOMAN YOUNG: Thank you.

16 CHAIRMAN FARRELL: Thank you.

17 Assemblyman Montesano.

18 ASSEMBLYMAN MONTESANO: Thank you,
19 Mr. Chairman.

20 Judge, just a couple of points to
21 cover, and I'm sorry, I'm going to revisit
22 one of them again. You talk about asking for
23 about 200 positions in this budget, and they
24 would consist of court clerks, I believe,

1 court officers, you know, backroom
2 operations. Now -- and that's for the entire
3 state, am I correct?

4 CHIEF ADMINISTRATIVE JUDGE MARKS:

5 Yes.

6 ASSEMBLYMAN MONTESANO: Okay. And not
7 to be greedy, but I would think on
8 Long Island and Nassau and Suffolk we could
9 absorb the 200 positions very quickly at this
10 juncture, considering the numbers that we
11 have a deficit in.

12 And I'm not suggesting that be the
13 case, but isn't it more realistic that OCA
14 would ask for more positions at this point?
15 I mean, we have such a dire reduction of
16 personnel due to promotions, and they leave
17 the county to take another position due in a
18 promotional exam, they leave for retirement
19 or illness, whatever the case, and those
20 positions haven't even been filled.

21 I mean, I know in our Surrogate's
22 Court we're 30-plus positions down as we sit
23 here today, and that's just one court in the
24 county. And Suffolk has the same issues

1 there too, because the cases have increased
2 dramatically and the nature of the cases in
3 the criminal courts have become so
4 substantial that it results in controversy in
5 the courtrooms between media and families
6 clashing and so on and so forth

7 So why is OCA so reluctant to ask for
8 more positions -- you know, for funding for
9 more positions when the need is so dire?

10 CHIEF ADMINISTRATIVE JUDGE MARKS:
11 Well, because we're trying to be pragmatic
12 and realistic. But, you know, we could
13 benefit from even more money than we're
14 asking, but we're trying to -- we're being
15 very pragmatic and realistic in what we're
16 asking for.

17 I mean, we're limiting the request for
18 the increase in our operating budget to
19 2 percent, and we didn't just kind of pick
20 that percentage out of thin air. I mean, I
21 think we're all familiar with that benchmark
22 that's been set in this state for a number of
23 years now.

24 So we're really doing the best we can,

1 we're trying to be pragmatic and realistic in
2 our budget request. There is some additional
3 money we're seeking, which I described in
4 terms of a capital appropriation, so that
5 will be very helpful.

6 But look, I'm not suggesting that we
7 can get back to where we have to be
8 overnight. I think in the last years we've
9 made slow but steady progress, and if our
10 budget is approved, this coming fiscal year
11 will be another step in that direction. And
12 it's going to take us, I'm sure, a number of
13 years to get back to where we were.

14 And by the way, I don't think we ever
15 have to get back to the employment level that
16 I mentioned, where we were in 2009-2010. I
17 think we -- out of necessity, we've made
18 ourselves more efficient and kind of leaner
19 and meaner, if you will.

20 But we do need to hire back additional
21 people, you know, I agree with you completely
22 about that. And that's what we're trying to
23 do steadily -- not in one fell swoop, but
24 steadily each year.

1 ASSEMBLYMAN MONTESANO: Just -- so my
2 time is limited. I have a two-part question
3 for you.

4 Would the \$100 million that's been
5 spent, you know, giving grants to these
6 not-for-profits to provide indigent civil
7 legal services -- is there any accountability
8 to these not-for-profits? Do they have to
9 account back to OCA as to how they're
10 spending this money, how they're allocating
11 the money?

12 Because I'm just getting feedback, at
13 least from Nassau County, especially over at
14 Family Court, that people are not being
15 provided services by some of these
16 organizations.

17 So is there any accountability, or is
18 this money just given out?

19 CHIEF ADMINISTRATIVE JUDGE MARKS: No,
20 no, absolutely --

21 ASSEMBLYMAN MONTESANO: And the second
22 part, just so you can incorporate it, is --
23 you indicated before that this is a landmark
24 type of situation, where in this state the

1 Court Administration budget provides for
2 this. Would you -- what would your opinion
3 be if the state took over this task and it
4 funded or gave grants to not-for-profit
5 organizations, instead of the Office of Court
6 Administration doing it?

7 CHIEF ADMINISTRATIVE JUDGE MARKS: Let
8 me answer the second question first, if I
9 may.

10 I think the state should add money and
11 do that in other areas, in other -- you know,
12 above and beyond the Judiciary Budget. I
13 would urge that the money that we have in our
14 budget -- and we've reached the goal that was
15 set five, six years ago -- that it remain in
16 our budget, because I can assure you and
17 everyone here that we will protect that money
18 if it's in our budget.

19 You know, we'll advocate for the
20 money, we're closer to this than maybe
21 anyone. I mean, we see this in our
22 courtrooms every day, the consequences of
23 hundreds of thousands of people coming into
24 courts without a lawyer and what that means

1 for the quality of justice in this state. So
2 I think we need more money for civil legal
3 services, and I think that's something the
4 Legislature should consider.

5 But I have to say, I would be opposed
6 to the money in our budget being transferred
7 to another budget, because I would be worried
8 that wherever it is transferred, it wouldn't
9 be as protected and as secure and watched as
10 carefully as we are with respect to the money
11 that we have in our budget.

12 And to answer your first question,
13 absolutely. We have very extensive oversight
14 of these grants that we give out. We have a
15 unit within the Office of Court
16 Administration that oversees these grants and
17 receives reports and audits programs and is
18 on top of and ensures that the money that
19 we're giving out -- which is real money, it's
20 a substantial amount of money, it's the
21 public's money, and we do carefully -- and we
22 expect accountability from the recipients of
23 these grants in terms of how they're spending
24 the money.

1 And just the example you raised where
2 people are saying they're being turned away,
3 unfortunately I'm not surprised to hear that.
4 Because, you know, it's not the amount of
5 money -- it's not -- as we talked about
6 before, it's not enough to solve the whole
7 problem. It's a substantial step in the
8 right direction. But unfortunately, even
9 with the money that we give out in grants to
10 legal service providers, the providers can't
11 represent everyone who walks in their doors.

12 CHAIRMAN FARRELL: Thank you.

13 ASSEMBLYMAN MONTESANO: Thank you,
14 Judge.

15 CHIEF ADMINISTRATIVE JUDGE MARKS:
16 Thank you.

17 CHAIRWOMAN YOUNG: Thank you.
18 Senator Croci.

19 SENATOR CROCI: Thank you, Madam
20 Chair.

21 Thank you, Judge, for your appearance
22 here today.

23 A couple of questions. In your
24 testimony you mentioned that the caseloads

1 for 16- and 17-year-olds have decreased. Is
2 there a metric to suggest why that is, or is
3 there anecdotal evidence in your mind that
4 you've seen to suggest why that is?

5 CHIEF ADMINISTRATIVE JUDGE MARKS:

6 Well, I think that crime, at least violent
7 crime, has gone down year after year in
8 New York. And I think that's a national
9 trend, although there are exceptions to that,
10 you know, which we read about in the papers.
11 And some jurisdictions in the country,
12 Chicago and elsewhere, I'm sure you've read
13 the stories about violent crime waves in some
14 other jurisdictions.

15 Fortunately, we haven't seen that in
16 New York. I mean, there's still crime,
17 obviously, there's still violent crime, but
18 in jurisdictions throughout the state, you
19 know, fortunately crime has dropped,
20 particularly violent crime.

21 And I think you see that in the
22 decline in arrests of 16- and 17-year-olds.
23 Is that a trend that will sustain itself over
24 the coming years? Let's hope so, but who

1 knows. You know, crime historically can ebb
2 and flow. So I think it's just -- that
3 reflects overall crime trends in this state,
4 in many parts of the state at least.

5 And in addition to that, I don't
6 know -- I mean, it would be a question for
7 police departments, for law enforcement. Are
8 they -- have policies changed with regard to
9 young people, 16- and 17-year-olds? Are they
10 consciously not arresting people, as many 16-
11 and 17-year-olds as they once did? Is that a
12 change in policy, or is that a subtle
13 transition within law enforcement agencies,
14 perhaps -- I mean, I can't tell you that for
15 sure. But that may explain part of that as
16 well.

17 SENATOR CROCI: Interesting. In your
18 testimony and as we discuss the Raise the Age
19 debate, there is a nexus now between this
20 part of the budget and, in my mind, the ELFA
21 bill in the Executive's Budget, that
22 beginning on 1 January, 2019, the
23 superintendent of a school would be required to
24 refer students under the age of 17, 16- and

1 17-year-olds who violate the Gun-Free Schools
2 Act -- that is bringing a weapon to campus --
3 refer them for a juvenile delinquency
4 proceeding rather than charging them as an
5 adult.

6 Does this suggest that -- does it in
7 your mind suggest that a 17-year-old who
8 brought a weapon to school, a gun, would not
9 be held criminally responsible?

10 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm
11 not familiar with that proposed legislation,
12 but as you described it, it sounds like a
13 partial approach to raising the age of
14 criminal responsibility in New York, as you
15 described it.

16 But I haven't seen it, I would have to
17 take a look at it. You know --

18 SENATOR CROCI: Well, my --

19 CHIEF ADMINISTRATIVE JUDGE MARKS: You
20 know, there are other categories of offenses
21 that you could -- you might argue -- if it
22 were going to be done piecemeal, and I'm not
23 suggesting that it should, but if you were
24 raising the age of criminal responsibility

1 piecemeal, step by step, you could -- there's
2 a multitude of opinions on how to do that,
3 you know, which types of offenses you would
4 start with.

5 Personally, if it were up to me, would
6 I start with that group? Maybe not, but --
7 and I would have to know more about it.

8 SENATOR CROCI: Well, that's what's
9 being proposed in the budget.

10 So if there's no criminal charge, and
11 it's considered to be a juvenile delinquency
12 proceeding, then parents would never know in
13 that school district if there was someone who
14 came to school with a gun, because there'd be
15 no criminal charge.

16 And years later, if that individual
17 then went and applied for college, there
18 would be no way or no requirement for that
19 individual to indicate on their college
20 application that they were ever charged. So
21 there could be campuses that have individuals
22 who brought a gun to school in New York State
23 when they were 16 or 17, and that would never
24 be known to a graduate institution.

1 Is that an accurate reading, in your
2 opinion?

3 CHIEF ADMINISTRATIVE JUDGE MARKS:

4 Again, I'd have to read the bill.

5 But, you know, that may be a potential
6 problem of that proposal that you pointed
7 out.

8 In terms of parent notification, if I
9 understand this, that the 17-year-old would
10 be charged as a juvenile delinquent in
11 Family Court --

12 SENATOR CROCI: Right.

13 CHIEF ADMINISTRATIVE JUDGE MARKS: --
14 rather than as a criminal defendant in an
15 adult criminal court, the parent or guardian
16 would absolutely know that.

17 SENATOR CROCI: Right. But the
18 school, the other parents in the school might
19 not know that.

20 CHIEF ADMINISTRATIVE JUDGE MARKS:

21 Maybe not.

22 SENATOR CROCI: Because it's a
23 juvenile delinquency proceeding.

24 CHIEF ADMINISTRATIVE JUDGE MARKS:

1 Yeah.

2 SENATOR CROCI: So this is a concern,
3 certainly, because I'm told that much of this
4 act -- and the SAFE Act, indeed, was designed
5 to protect our young people, our most
6 vulnerable population, students in schools,
7 and this seems to be the exact opposite of
8 that. And long term, I would think the
9 academic institutions, both public and
10 private, would like to know.

11 So this is something that's
12 concerning. I welcome any comments, you
13 know, in writing or otherwise as to your
14 opinion and the judiciary's opinion on this
15 matter, and I think we'll be raising it in
16 future sessions here.

17 Thank you, Madam Chair. And thank
18 you, Judge, for your appearance here today.

19 CHAIRWOMAN YOUNG: Thank you.

20 CHIEF ADMINISTRATIVE JUDGE MARKS:

21 Thank you.

22 CHAIRWOMAN YOUNG: Thank you, Senator.

23 We also have Senator Comrie who had
24 some questions.

1 SENATOR COMRIE: Yes, thank you,
2 Madam Chair.

3 Thank you, Judge Marks, for being here
4 this morning.

5 In your testimony you spoke about a
6 lot of things, but you didn't mention
7 anything that the Office of Court
8 Administration is doing to deal with the
9 backlog of foreclosure cases.

10 I represent Southeast Queens, which
11 has one of the highest foreclosure issues in
12 the country, and I'm concerned about the
13 issues of foreclosure and the fact that we
14 have many cases that are still being stuck in
15 the courts.

16 And when the clients oftentimes go
17 back for the second or third hearing, which
18 takes a while -- the cases on the plaintiff's
19 side, or the bank's side, they continue to
20 lose the paperwork or change the attorney,
21 and the case gets stuck. And in the
22 meantime, these constituents are being
23 harassed and put into a situation where they
24 don't know where first base is anymore,

1 because they can't get the case heard, they
2 can't get the adjudication verified.

3 Can you give me some idea on what
4 OCA's doing to address that backlog?

5 CHIEF ADMINISTRATIVE JUDGE MARKS:

6 Well, one of the problems is in the -- this
7 is the legislatively mandated settlement
8 conference phase that you have to have in
9 every homeowner foreclosure case. Which is a
10 good idea, by the way, to mandate a
11 settlement process before the case can
12 proceed further towards foreclosure.

13 And one of the problems at the outset
14 of the settlement conference process, which I
15 think was mandated by legislation going back
16 to -- starting in 2009, was that too many of
17 the homeowners were showing up without legal
18 assistance, without a lawyer. And we talked
19 about that earlier, what a great disadvantage
20 that is, the playing field is unlevel.

21 So thanks to money in the Judiciary
22 Budget for civil legal services and other
23 money available in other programs, close to
24 two-thirds of homeowners are now represented

1 by counsel in the settlement conference
2 process. And that can make all the
3 difference in the world. But that still
4 leaves a lot of cases where they're not
5 represented.

6 And look, the foreclosures have been
7 an enormous challenge for the court system
8 since the foreclosure crisis began. The
9 number of cases has been gargantuan, and we
10 have tried to devote as much resources as we
11 can to the foreclosure process, the
12 settlement conferences in the post-settlement
13 conference. And fortunately I can tell you
14 that foreclosures -- I think we're seeing the
15 light at the end of the tunnel, because
16 foreclosure filings last year declined by
17 20 percent. So I think we're seeing kind of
18 a -- finally a diminution in the foreclosure
19 crisis.

20 So it's never, unfortunately, going to
21 be a perfect system, particularly where you
22 still have many homeowners appearing in court
23 without a lawyer -- although, as I said,
24 many, many more are appearing with a lawyer.

1 But I think the combination of more
2 homeowners appearing with a lawyer in court
3 and a decline in the number of new
4 foreclosure cases, I think things are
5 improving and will continue to improve in the
6 coming year.

7 SENATOR COMRIE: I would hope so. I
8 would hope that there would also be some
9 focus on the fact that a lot of the banks are
10 still not meeting their obligations when they
11 come to the hearings, so the cases die or the
12 cases get pushed back.

13 And they have a lot of homeowners, as
14 I said, that are stuck in the beginning
15 because they can't get to first base.

16 So I would hope that the court system
17 would work to, you know, follow through and
18 punish these banks that are deliberately
19 playing games with the system and
20 deliberately not moving the cases forward so
21 that they can harass the homeowners on the
22 back end. And I hope we can work together to
23 resolve that as well.

24 CHIEF ADMINISTRATIVE JUDGE MARKS:

1 Your point is well taken.

2 SENATOR COMRIE: Thank you. And
3 this -- on the \$15 million for capital, is
4 there any of that capital going to fix the
5 courts in Queens that are pretty old and need
6 some rehab and some TLC?

7 CHIEF ADMINISTRATIVE JUDGE MARKS:
8 Well, the capital appropriation is for
9 technology, not for the buildings themselves.

10 I think you may know that it's a
11 state-financed court system in New York, but
12 when the state took over the financing of the
13 court system -- it used to be locally
14 financed, but in the mid-'70s the state took
15 over the financing of the court system but
16 didn't take over the financing of everything.

17 The town and village courts upstate
18 were left to be financed by local governments
19 and courthouses around the state.

20 Courthouses where state court proceedings
21 take place, those courthouses are not owned
22 by the state, they're owned and maintained by
23 local governments.

24 So in Queens, the courthouses in

1 Queens are New York City buildings, they're
2 not state-owned and -maintained buildings.
3 And I have to say, over the years it's been a
4 constant struggle to get localities -- and
5 there's been a lot of progress, and we've had
6 good relationships with the City of New York,
7 and there have been new courthouses built
8 over the years, there have been courthouses
9 renovated.

10 But there's still problems in some of
11 the buildings. They're deficient in many
12 ways. They're not large enough, they're
13 not -- they haven't been modernized to meet
14 the needs of a modern court system, and
15 sometimes they're not always maintained at
16 the level they should be maintained in. It
17 is a constant struggle. And, you know, it's
18 something that we devote a lot of time and
19 attention to. And for the most part I think
20 we succeed, but not always.

21 CHAIRWOMAN YOUNG: Thank you, Judge.

22 SENATOR COMRIE: Thank you. I know my
23 time is up, but if you could just detail us
24 those issues so maybe we can work together

1 with the city and look at it as a statewide
2 project to upgrade the facilities, because
3 not having modern facilities inhibits the
4 speed of the court to get things done.

5 CHIEF ADMINISTRATIVE JUDGE MARKS: I
6 agree with you completely.

7 SENATOR COMRIE: Thank you.

8 Thank you, Madam Chair.

9 CHAIRWOMAN YOUNG: Thank you, Senator.
10 Senator Savino.

11 SENATOR SAVINO: Thank you, Senator
12 Young.

13 Thank you, Judge Marks. I'm actually
14 going to pick up where Senator Comrie left
15 off. And while I definitely understand the
16 challenges that OCA has with dealing with the
17 local government, particularly New York
18 City -- and DCAS controls the properties --
19 access to justice, as you know, begins with
20 the doorway that you walk through.

21 In Staten Island we finally, after
22 several years, were able to open up a
23 brand-new courthouse and, as you know, five
24 minutes after the door opened, we had

1 outgrown that courthouse. Part of the plan
2 for the replacement of the Staten Island
3 courts was to consolidate the Family Court
4 into the Supreme Court at 18 Richmond
5 Terrace, and in the Criminal Court, which was
6 at Targee Street, there was a desire on the
7 part of most of the elected officials to keep
8 that building open and operational.

9 Unfortunately, that building is
10 closed, and moving everything now to the new
11 courthouse is creating some backlogs there.
12 But now we're even told that the plan that
13 was to move our Family Court, which is -- we
14 are the only borough that has not gotten a
15 new Family Court, out of all of the five
16 boroughs -- but that dilapidated building,
17 which essentially consists of two
18 courthouses, you know --

19 CHIEF ADMINISTRATIVE JUDGE MARKS:

20 Yeah.

21 SENATOR SAVINO: -- you know the
22 conditions that litigants and families and
23 attorneys and -- it's just awful.

24 That plan to move them to 18 Richmond

1 Terrace is now not going to happen. So we
2 have a real concern. And while, again, you
3 don't build the buildings and you don't
4 control the properties, it would be very
5 helpful to us if OCA would make the case that
6 you're not able to administer justice
7 appropriately to the citizens of
8 Richmond County because of the City of
9 New York's failure to recognize that the
10 property that they own, they are not
11 maintaining correctly, and they're not
12 planning for it. To allow a sitting
13 courthouse to just close the doors and rot,
14 in my opinion, is negligent to the people of
15 the City of New York, and we need you and OCA
16 to step up and say that that's just the wrong
17 way to go about it.

18 So we're hoping that you will join us
19 in our demand that the city revisit this
20 decision to close Targee Street and shut off
21 what should be a viable courthouse for the
22 delivery of justice to the people of
23 Richmond County. So I'm hoping I can count
24 on you for that.

1 CHIEF ADMINISTRATIVE JUDGE MARKS: You
2 can count on us.

3 You could make the argument that the
4 Family Court situation in Staten Island is
5 the number-one facilities priority that we
6 have in the court system in the city today.

7 There's a city architect, an architect
8 that the city has retained. We're expecting
9 to see some proposals coming from this
10 architect very shortly, and the community
11 will absolutely be involved in the decision
12 making process. I promise you that I will
13 work closely with you and will be a strong
14 advocate for coming up with a plan that makes
15 the most sense for Staten Island.

16 SENATOR SAVINO: And I'm not going to
17 belabor too much the Raise the Age issue,
18 because we are going to have a hearing on it
19 next week, so it will be totally examined by
20 the Senate.

21 But one of the questions that comes up
22 from time to time is if we transfer these
23 cases to Family Court, that Family Court
24 judges are not equipped to handle cases

1 around that. And I try and remind people
2 that Family Court judges now deal with, you
3 know, young people who are juvenile
4 delinquents, who would be prosecuted for some
5 of these things if they were just over the
6 age of 16.

7 Can you talk about some of the types
8 of cases that Family Court judges do deal
9 with, with juvenile delinquent cases?

10 CHIEF ADMINISTRATIVE JUDGE MARKS:

11 Well, Family Court deals with a whole range
12 of crime, from the least significant
13 misdemeanor to in some instances the most
14 serious violent felony. And there's
15 concurrent jurisdiction with the criminal
16 courts, the adult courts, with the most
17 serious homicide and the most serious felony
18 cases, but they handle some of those cases
19 themselves.

20 Family Court judges are equipped to
21 handle the whole gamut of crimes and the
22 range of criminal offenses that we have in
23 our penal laws in New York.

24 SENATOR SAVINO: Thank you for that.

1 And finally, in 2015 and in 2016, the
2 Senate and the Assembly passed unanimously a
3 piece of legislation that would extend
4 three-quarter disability benefits to court
5 officers if they were injured on the job in
6 defense of a judge or lawyers in the
7 courtroom.

8 Currently, as you know, if they are
9 injured on the job -- if a chandelier falls
10 on their head, right -- they're entitled to a
11 three-quarter disability benefit. But they
12 weren't if they were defending, you know, a
13 judge or an attorney or a litigant in the
14 court. So we felt we should extend that
15 benefit to them, passing it unanimously in
16 both houses two years in a row.

17 The Governor vetoed it twice, and his
18 reasoning was that being injured on the job
19 in protection of a judge or an attorney or a
20 litigant is an inherent risk of their job and
21 therefore they shouldn't be extended this
22 protection. Obviously, the Legislature
23 disagrees, we're prepared to take it up
24 again.

1 And I'm just curious -- do you think,
2 you know, as the chief administrative judge,
3 if this is something that we should correct
4 for these officers?

5 CHIEF ADMINISTRATIVE JUDGE MARKS:

6 Well, we --

7 SENATOR SAVINO: The same way we do
8 for corrections officers or police officers
9 or anyone else.

10 CHIEF ADMINISTRATIVE JUDGE MARKS:

11 Personally --

12 SENATOR SAVINO: And I understand the
13 position you're in, but what do you think?

14 CHIEF ADMINISTRATIVE JUDGE MARKS:

15 Personally, I can see the argument for that.

16 Institutionally, we have not opposed
17 that. We've -- formally, in a letter to the
18 Governor's counsel, we have taken no
19 objection to the signing of the bill.

20 So as I said, personally you could
21 probably convince me there's great merit to
22 that proposal. Institutionally, we've taken
23 no position and -- we've expressed no
24 objection, which is actually a little bit

1 stronger than taking no position.

2 SENATOR SAVINO: Right.

3 CHIEF ADMINISTRATIVE JUDGE MARKS: In
4 the end, I don't know. If we had
5 affirmatively supported it, would that have
6 made a difference? I don't know. That's
7 something we can think about, though.

8 SENATOR SAVINO: I think there was a
9 concern that it might be a very costly
10 benefit. But the truth is it happens so
11 rarely, it might be two or three cases in a
12 10-year period of time. It just seems like
13 it's the right and just thing to do.

14 And, you know, this Legislature rarely
15 acts unanimously, so to have done so two
16 years in a row sends a signal. So we would
17 appreciate if we can get your support on this
18 effort as we move it again.

19 So thank you, Judge Marks.

20 CHIEF ADMINISTRATIVE JUDGE MARKS:

21 You're welcome.

22 CHAIRWOMAN YOUNG: Thank you, Senator.

23 ASSEMBLYMAN OAKS: Assemblyman Steck.

24 ASSEMBLYMAN STECK: Thank you.

1 Judge, I apologize, I had to leave --

2 ASSEMBLYMAN OAKS: Mic?

3 ASSEMBLYMAN STECK: Oh, the mic.

4 Okay. So I have three topics that I'd
5 like to address. I've been listening to your
6 testimony, and there are obviously quite a
7 lot of needs in the court system, but I was
8 wondering whether there's a maldistribution
9 of existing resources within the court
10 system.

11 One of the judges in the Third
12 Judicial District gave me some statistics
13 which show that, on average, there are about
14 650 new filings per year in Supreme Court in
15 the Third Judicial District -- this is
16 statistics from OCA -- and 15 trials per
17 year, on average. So clearly, at least in
18 our judicial district, it's not like the
19 system is overwhelmed with trial-type work.

20 So what do those statistics say to you
21 about where the resources should be going?

22 CHIEF ADMINISTRATIVE JUDGE MARKS:

23 Well, it's very difficult to answer that
24 question out of context and in isolation.

1 There may well be areas of the state that
2 are -- well, I would say most areas of the
3 state could use more resources, and some
4 could use more resources more than other
5 parts of the state could use more resources.
6 But pretty much everywhere, we could use more
7 resources.

8 But the numbers you mentioned --

9 ASSEMBLYMAN STECK: I think we could
10 use more resources too, I think. That's kind
11 of beside the point.

12 CHIEF ADMINISTRATIVE JUDGE MARKS: No,
13 no. If the pie is what it is, you want to be
14 able to slice it up fairly and equitably. So
15 I agree with you on that.

16 And it's not a simple thing. It's
17 hard to take judges in Buffalo and put them
18 in the Bronx. And actually, we've done that
19 on occasion, but it's not an easy thing to
20 do. It's actually costly, because you have
21 to then put them up in a hotel and pay for
22 their travel expenses and so on. And, you
23 know --

24 ASSEMBLYMAN STECK: Of course, we have

1 judges of the Court of Claims who are sitting
2 down -- whose chambers are down in the
3 New York City metropolitan area who are
4 coming up to Albany to decide cases in the
5 Third Judicial District. It would not appear
6 that the emergency that created that system
7 would still exist, based on the statistics I
8 just cited.

9 CHIEF ADMINISTRATIVE JUDGE MARKS:

10 Well, the number of trials -- and I'd have to
11 take a look at that, it sounds -- that sounds
12 off.

13 But let's assume, for the sake of
14 argument, that's accurate. Trials aren't
15 necessarily the most valid indicator of the
16 workload of a court, a judicial jurisdiction.
17 What judges that handle civil cases in
18 Supreme Courts spend most of their time doing
19 is deciding motions. It's a very
20 motion-intensive court. I can speak to that
21 firsthand, from my experience sitting on
22 civil cases in the Supreme Court.

23 But trials -- there are fewer trials
24 than there used to be. I mean, that's a

1 phenomenon we see in New York in both civil
2 and criminal cases, and it's a phenomenon
3 that you see in courts around the country,
4 and there are a lot of reasons for that, one
5 of which is inadequate court system
6 resources, no question. That's a problem
7 we've had here in New York, and it's a
8 problem that I know that court systems around
9 the country have struggled with.

10 But there are other reasons why trials
11 have dropped, the number of trials have
12 dropped. Dispositions haven't dropped, but
13 we've seen a trend in recent years where the
14 percentage, the breakdown between cases being
15 resolved by settlement and cases being
16 resolved by trial has changed, with more
17 cases being resolved by settlement and fewer
18 cases being resolved by trial.

19 And it's a complicated question as to
20 why that's happening. A lot of that has to
21 do with the dynamics and the economics of law
22 practice today, where in certain types of
23 cases it's very difficult for the lawyers to
24 take a case to trial. It's expensive and

1 difficult for lawyers and their clients to
2 take a case to trial. That's had a lot to do
3 with it.

4 But the bottom line is there's no
5 question, and I could not sit here and tell
6 you today that there is a perfect
7 distribution of judges and nonjudicial
8 personnel and other resources, that there's a
9 perfect distribution of those resources
10 everywhere in the state. But I can tell you
11 it's something that we look at, we spend a
12 lot of time looking at, we work with
13 administrative judges around the state and we
14 try as best we can to distribute judges and
15 nonjudicial resources as fairly as we can to
16 meet the needs of individual courts and
17 jurisdictions.

18 CHAIRWOMAN YOUNG: Okay. Thank you.
19 Thank you very much.

20 I think that concludes, Judge, all of
21 the speakers today. So again, sincerely,
22 thank you so much for your patience, for your
23 thorough answers, and we look forward to
24 working with you in the future.

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Okay. Thank you very much.

3 CHAIRWOMAN YOUNG: Thank you, Judge.

4 Our next speaker is Commissioner John
5 P. Melville from the New York State Division
6 of Homeland Security and Emergency Services.

7 We'd like to keep things moving along.
8 Could I have some order in the house, please?
9 We have a very lengthy agenda today, a lot of
10 speakers, a lot of interest in the topics at
11 hand.

12 So welcome, Commissioner. We're glad
13 to have you here.

14 COMMISSIONER MELVILLE: Thank you,
15 Senator.

16 CHAIRWOMAN YOUNG: But could everyone
17 please take their seats? Okay, thank you.

18 Please proceed.

19 COMMISSIONER MELVILLE: Thank you,
20 Senator.

21 Good morning. Thank you, Chairwoman
22 Young, Chairwoman Savino -- who I see stepped
23 out, Chairman Farrell stepped out -- and
24 distinguished members of the Joint Committee.

1 I am John Melville, commissioner of the
2 Division of Homeland Security and Emergency
3 Services. I appreciate the opportunity to
4 discuss with you today some of the great work
5 of the agency over the past year as well as a
6 few of the highlights of Governor Cuomo's
7 public safety budget.

8 The division is charged with an
9 enormous responsibility which includes an
10 all-hazards prevention, preparedness,
11 response and recovery mission. The
12 Governor's budget provides the resources
13 needed to accomplish our mission and protect
14 public safety. Total appropriations are
15 \$1.6 billion, up \$58 million over last year.
16 The increases include \$1.3 million to support
17 a new Cyber Incident Response Team,
18 \$3 million to provide transportation security
19 training to civilian employees at airports;
20 \$500,000 to support swift-water training at
21 the State Preparedness Training Center, and
22 \$3 million in capital financing for health
23 and safety improvements and preservation of
24 Montour Falls and the State Preparedness

1 Training Center. Taken together, these
2 proposals will strengthen our all-hazards
3 approach to prevention, preparedness,
4 response and recovery.

5 A key recommendation in the Governor's
6 fiscal year 2018 budget is the proposed
7 Cyber Incident Response Team, which will
8 serve as a resource to local governments,
9 public authorities and non-executive agencies
10 in better protecting their information
11 technology assets, critical operating
12 systems, and data from cyberattacks, malware
13 and ransomware. The team will conduct
14 vulnerability assessments, network scans, and
15 reviews of cybersecurity policies to ensure
16 local governments and state entities have the
17 appropriate plans, procedures, and
18 cyber infrastructure in place.

19 This initiative will include a single
20 number to call to report cyber incidents,
21 streamlining response efforts. The team will
22 be supported by members including the
23 National Guard, the State Police, and the
24 Office of Information Technology Services.

1 The division's focus on preparedness
2 and response training will be greatly
3 enhanced through the proposed transportation
4 security and swift-water training initiatives
5 in the Governor's Executive Budget.

6 The response to mistaken reports of
7 active shooters in several terminals at John
8 F. Kennedy Airport this past summer resulted
9 in panic and the self-evacuation of thousands
10 of travelers and employees. The Governor, as
11 a result of recommendations outlined by a
12 joint state and federal multi-agency team
13 reviewing the incident, ordered the division
14 to develop a new mandatory training to
15 civilian airport workers to provide them with
16 the skills necessary to assist passengers
17 during emergencies and with the skills for
18 increased awareness and the identification of
19 and reporting of suspicious activities
20 related to terrorism. As proposed in the
21 Governor's Executive Budget, the division
22 will provide this critical, full-day training
23 to civilian airport workers across the State.

24 The State Preparedness Training

1 Center, or SPTC, is a state-of-the-art
2 multidisciplinary facility in Oneida County
3 that supports training to over 16,000 state,
4 local, and federal emergency first responders
5 on an annual basis. The swift-water rescue
6 simulator is slated to be completed by spring
7 of 2018, and the Executive Budget includes
8 resources to support this one-of-a-kind
9 training for swift-water rescue missions.
10 Staff will be brought on in the fourth
11 quarter of the 2018 fiscal year, enabling
12 training to first responders as soon as the
13 facility is complete.

14 In the upcoming budget year, the
15 division will provide regionally focused
16 active-shooter scenario courses at the SPTC.
17 The key objective of this course is to
18 integrate emergency medical services into
19 law enforcement's response to an active
20 shooter situation. The new regional model
21 requires the law enforcement and EMS
22 participants to be from the same city or
23 county departments, so the techniques and the
24 concepts learned can be better leveraged in

1 emergencies.

2 Finally, at the Governor's direction,
3 the division will work with the New York
4 State Emergency Management Association to
5 develop an accreditation program for local
6 emergency management offices in the upcoming
7 budget year. It will be the first state-led
8 initiative in the nation designed
9 specifically for local emergency management
10 offices, leading advancements in emergency
11 management and the protection of the people
12 of this state.

13 These Executive Budget recommendations
14 build upon the work of the division over the
15 past year.

16 In 2016, the Governor directed the
17 division to increase the number of Red Team
18 exercises across the state to determine if
19 businesses detected and promptly reported
20 unannounced suspicious activity. This past
21 year, the division significantly increased
22 the number of Red Team exercises, evaluating
23 and enhancing the state's overall
24 counter-terrorism posture. Through the end

1 of December, Red Team exercises had been
2 conducted in all of the 16 counterterrorism
3 zones, across over 600 locations and
4 businesses, in conjunction with over 100
5 law enforcement agencies.

6 As a target-rich state, New York
7 continues to rely on federal Homeland
8 Security funding. In 2016, New York State
9 received over \$262 million from the Homeland
10 Security Grant Program, which has been used
11 in communities throughout the state to
12 prevent, protect and prepare for terrorism
13 and other catastrophic events.

14 I'd like to quickly touch upon a few
15 ongoing initiatives.

16 Launched in 2015, NY Responds is a
17 single, unified online electronic
18 comprehensive incident management system.
19 This transformative approach to disaster
20 management connects every county across
21 New York State with the State Emergency
22 Operations Center.

23 The Governor's vision related to
24 public safety and emergency preparedness

1 education is rapidly becoming a reality
2 through the College of Emergency
3 Preparedness, Homeland Security, and
4 Cybersecurity at UAlbany. I am happy to
5 report that the college's major, which began
6 being offered in the fall semester, now has
7 300 declared students. Another 350 students
8 have declared the minor. The enthusiasm for
9 the program has far exceeded expectations.

10 With respect to citizen preparedness
11 training, in conjunction with the National
12 Guard, the Red Cross, and our partners in the
13 Legislature, we have been able to train over
14 140,000 residents.

15 I appreciate the opportunity to appear
16 before you today, and am pleased to answer
17 any questions you may have.

18 CHAIRWOMAN YOUNG: Thank you,
19 Commissioner Melville. And certainly you
20 have one of the most important duties in the
21 state, and that's to keep our citizens safe.
22 So I appreciate everything that you do.

23 We'll start out with questions from
24 Senator Tom Croci, who is chair of the

1 Homeland Security Committee in the State
2 Senate.

3 COMMISSIONER MELVILLE: Thank you,
4 Senator.

5 SENATOR CROCI: Thank you, Chairwoman.
6 Commissioner Melville, thank you again
7 for your appearance here today.

8 COMMISSIONER MELVILLE: Thanks.

9 SENATOR CROCI: I want to start off by
10 saying what a pleasure it's been to work with
11 you in the last few years, getting to know
12 you and getting an opportunity to see the
13 kind of talent that you have on your staff.
14 I know that many of them are here today. So
15 it's been a great pleasure, and I appreciate
16 the increasing openness with information.

17 And I also want to thank you for your
18 continued service to the state. It's not a
19 time for the faint of heart in the law
20 enforcement, intelligence, or emergency
21 management professions, and your willingness
22 to remain in public service at this time is
23 certainly something that the people of
24 New York should be very grateful for. So

1 thank you for your service.

2 COMMISSIONER MELVILLE: Thank you,
3 Senator.

4 SENATOR CROCI: With that said, some
5 of the questions I'll be asking today are
6 directed at the budget, specifically, and at
7 the Executive. So I don't want you to
8 misinterpret our concerns as something that
9 you're not executing well, because from my
10 estimation, you and your team are doing a
11 tremendous job.

12 I've looked at this several times now,
13 and to me this a political document. I've
14 done three budgets in this Senate, and I can
15 tell you that it's decreasingly a process by
16 which we are determining what's best for the
17 various regions in the state, and it becomes
18 more of a political document. And the way it
19 was rolled out this year is evidence of that.

20 So I'm increasingly skeptical of some
21 of the different -- some of the language that
22 we see in the current budget. Hopefully this
23 process, the legislative process which we do
24 in the light of day, is going to be something

1 that creates a budget where the Assembly and
2 the Senate and the Executive can come
3 together and create a truly governmental
4 document.

5 I'm looking at certain sections, and
6 I'm noticing that the budget calls for
7 \$475 million in funding for county public
8 interoperability efforts. This is something
9 that those of us who have seen the effects of
10 both September 11th, Superstorm Sandy, and
11 the problems that they had in the 2015 prison
12 break at Clinton Correctional Facility are
13 very familiar with -- the hampered
14 communications, the interoperability
15 problems.

16 Can you provide just an update on the
17 progress that the department's made in the
18 interoperability of communications between
19 state and local authorities?

20 COMMISSIONER MELVILLE: Sure, Senator.
21 I'd be happy to.

22 Interoperability is a hard process in
23 New York State. I think we've made great
24 strides in the last six years through the

1 appropriation. Through the Office of
2 Emergency Communications, we have provided
3 over \$440 million to the counties to become
4 interoperable. Interoperable doesn't really
5 mean that someone in Long Island can talk to
6 someone in Buffalo, it means that a fire
7 chief from Long Island who happens to go to
8 Buffalo can talk with the police in Buffalo
9 and the EMS from Syracuse, all together in
10 the same spot.

11 We are close. This year's budget
12 provides for another \$75 million into
13 interoperability. Ten million of that is for
14 a PSAT program, 45 million of that is a
15 targeted -- excuse me, a formula grant, which
16 all counties receive based on their volume of
17 911 calls, their area, and their population.

18 And an important distinction, I think,
19 this year is that \$20 million of that 75 is
20 going to be targeted at the areas around the
21 state that still do not have
22 interoperability. In the past it had been a
23 competitive grant that we put out and
24 counties competed for and won, rightfully so,

1 but we have chosen this year to try and close
2 the loop on this interoperability by using
3 this \$20 million to target those areas of the
4 state that still need help. I may be
5 optimistic, but I am hoping by the end of
6 2017 we can declare New York State to be
7 interoperable.

8 SENATOR CROCI: Thank you. And we
9 look forward to supporting you in any way.

10 Do I still have additional questions?
11 Very good.

12 So, Commissioner, two years ago the
13 Governor transferred out, much to the
14 disappointment and objection of the
15 Legislature -- or, anyway, our committee and
16 the majority in the Senate -- transferred
17 responsibility of cybersecurity out of your
18 department and all over to the Office of
19 Information Technology. I regret that
20 decision; I think at the time I said that
21 that would probably have to be revisited
22 because it didn't fit with the best practices
23 federally.

24 And I didn't think we'd be back again

1 talking about it so soon, but the Governor
2 wants to propose a new Cyber Incident
3 Response Team, now back in your department as
4 opposed to the Office of Information
5 Technology. What would be the benefits of
6 this consolidation?

7 And if it's being proposed now back in
8 your department, why isn't this going to go
9 to the Office of Information Technology
10 Services? Why is he reversing course at this
11 point?

12 COMMISSIONER MELVILLE: There is
13 \$1.3 million in the budget to fund this
14 Cyber Incident Response Team. It is
15 conceptual at this point. We plan on hiring
16 eight people to work underneath the Office of
17 Counterterrorism within the Division of
18 Homeland Security Emergency Services.

19 I see the Cyber Incident Response Team
20 targeting a different audience in New York
21 State. Its main mission will be to assist
22 local governments, public authorities, and
23 the hospital that gets struck by ransomware.
24 The ITS function with respect to

1 cybersecurity is really designed to protect
2 the state's infrastructure in the executive
3 agencies of the state.

4 So the Cyber Incident Response Team
5 will be another resource to New Yorkers, to
6 local governments, to villages, towns, and
7 small cities that don't have the benefit of
8 ITS response. I think conceptually it's a
9 really good idea. There's certainly a niche
10 for it. And I think it will be successful
11 and very busy.

12 SENATOR CROCI: Well, I would concur.
13 I'm just wondering why it wasn't proposed
14 three years ago, as opposed to this year, and
15 why now we're retransferring these
16 responsibilities, at least partially, back to
17 your department, if the Governor's initial
18 thought to move it to OITS, to Technology
19 Services, was the right move.

20 So I'm skeptical that you shouldn't
21 have the responsibility of cybersecurity for
22 the state under one hat and one rubric,
23 because it makes the most sense and it's in,
24 I believe, alignment with best federal

1 practices. But I'm just concerned that right
2 now we -- you know, it's like a little kids'
3 soccer game, we're just kicking the ball all
4 over and trying to figure out -- no strategy,
5 no vision.

6 And hopefully we can work together in
7 this budget cycle to ensure that we know in
8 the State of New York who has overall
9 responsibility for cybersecurity -- and, if
10 it's going to be broken out into pieces, that
11 that is also evident within the budget.

12 COMMISSIONER MELVILLE: Another part
13 of the cyber that DHSES has, Senator, and I
14 know that you're aware of this, is that we
15 have critical infrastructure assessment teams
16 that go throughout the state and assess our
17 critical infrastructure. And we have added
18 also a six-member cyber component to those
19 teams, so --

20 SENATOR CROCI: Under DHSES?

21 COMMISSIONER MELVILLE: Under DHSES,
22 under the Office of Counterterrorism. ITS
23 used to assist our critical infrastructure
24 team with that. We thought it was

1 appropriate that we handle those duties
2 ourselves, and we have six very-well-
3 qualified cybersecurity experts that work
4 within our critical infrastructure assessment
5 team now and accompany them and make that
6 cyber a part of their assessment.

7 SENATOR CROCI: One additional
8 question, Madam Chair.

9 Commissioner, last year the Governor
10 also transferred the intelligence and
11 analysis unit out of your department to the
12 State Police. Can you describe to me what if
13 any effect the transfers had on intelligence
14 reports in the state, and your reporting
15 responsibilities?

16 COMMISSIONER MELVILLE: Essentially,
17 it's had no impact. The analysts that were
18 transferred, for the most part, that were
19 members of the Division of Homeland Security
20 and Emergency Services are sitting in the
21 same exact seats that they sat in when they
22 were in our agency. They're located at the
23 NYSEOC with the State Police.

24 The information flow has been

1 seamless. We have set up liaisons that work
2 with the NYSEOC and report to us through our
3 office of the director of the Office of
4 Counterterrorism.

5 They were wonderful employees, I was
6 sorry to see them go to the State Police, but
7 in actuality I thought it was the right move,
8 because they need the information first. We
9 get it almost simultaneously.

10 I still am the Homeland Security
11 advisor, I still report and brief you,
12 Senator, and the other committees. So I
13 don't really see that it's made any
14 difference to us. And in fact, it's an
15 improvement, in the sense that the responders
16 who need that information most rapidly get it
17 first.

18 SENATOR CROCI: And is the Governor
19 receiving this intelligence on a regular
20 basis?

21 COMMISSIONER MELVILLE: Yes, he is.

22 SENATOR CROCI: Okay. And is he
23 requesting this information on a regular
24 basis?

1 COMMISSIONER MELVILLE: Yes. I'm in
2 constant contact with his office and the
3 chamber with respect to any significant
4 incidents that occur in the state and,
5 realistically, worldwide.

6 SENATOR CROCI: Including threat
7 reporting?

8 COMMISSIONER MELVILLE: I'm sorry,
9 Senator?

10 SENATOR CROCI: Including threat
11 reporting?

12 COMMISSIONER MELVILLE: Yes.

13 SENATOR CROCI: The Executive is being
14 made aware of that?

15 COMMISSIONER MELVILLE: Yes, he is.

16 SENATOR CROCI: And the last question
17 I had was overall, now we've been doing this
18 for -- sitting across from each other for
19 three years, I have seen the steady
20 progression of intelligence flow to the
21 Legislature, including Senator Addabbo and I
22 both receiving the briefing.

23 Are we -- going back over three years
24 now, are we better prepared, are we as

1 prepared, or are we less prepared to prevent
2 and then be prepared to deal with a potential
3 terrorist attack in the State of New York?

4 COMMISSIONER MELVILLE: I would
5 absolutely say that we are better prepared.
6 We constantly evaluate the threat picture,
7 posture, landscape, throughout the state and
8 the world. We adjust our priorities
9 accordingly. I think we direct our
10 Homeland Security funds in the right
11 direction. I see how they're used, I see the
12 results.

13 The world is a changing place and a
14 dangerous place, and we can never say we can
15 certainly guarantee that we can prevent
16 another terrorist attack. I would almost say
17 that there's a guarantee that we can't. But
18 as far as preparation goes, there's really
19 not a lot more that I can see, from my
20 perspective, that we could be doing.

21 SENATOR CROCI: Well, I appreciate
22 that. Coming from you, that should make
23 New Yorkers feel comfortable.

24 CHAIRWOMAN YOUNG: Thank you.

1 SENATOR CROCI: And I want to thank
2 the chairwoman for the time.

3 Thank you, Commissioner.

4 COMMISSIONER MELVILLE: Thank you,
5 Senator.

6 CHAIRWOMAN YOUNG: Thank you.

7 We've been joined by Senator John
8 DeFrancisco and Senator Velmanette
9 Montgomery.

10 Chairman?

11 CHAIRMAN FARRELL: Yes. Next, Crystal
12 People-Stokes, chair of the Government
13 Operations Committee, to question.

14 ASSEMBLYWOMAN PEOPLES-STOKES: Thank
15 you, Mr. Chairman.

16 And thank you, Commissioner. It's
17 nice to see you again so soon.

18 COMMISSIONER MELVILLE: Same here,
19 Assemblywoman.

20 ASSEMBLYWOMAN PEOPLES-STOKES: I --
21 just in response to the Senator's last
22 question, I feel completely confident that we
23 are more safe in New York State than we've
24 been in a very long time. So I want to thank

1 you and your entire team for making that
2 possible.

3 COMMISSIONER MELVILLE: Thank you.

4 ASSEMBLYWOMAN PEOPLES-STOKES: I think
5 my first question is going to be around your
6 comments and your testimony regarding the
7 amount of dollars that we have received from
8 the federal government for the purposes of
9 homeland security. And you said that was
10 \$262 million.

11 And I don't know if that's been
12 announced yet or not, how much we will
13 receive for the 2017 year, but I wonder if
14 there will be any negative impacts to the
15 most recent executive order from the
16 President regarding immigration and
17 immigrants.

18 COMMISSIONER MELVILLE: Well, it has
19 not been announced yet. We are hoping that,
20 at worst, our funding remains the same.

21 With respect to the executive orders
22 that the President has recently issued, we
23 are studying them. Smarter people than me
24 are trying to figure out how that may affect

1 our funding. I am hopeful that it has no
2 impact on us.

3 There is a clause within the executive
4 order that calls for law enforcement to be
5 excluded from any effect that the executive
6 order might have, but at this point it's
7 really too soon to tell. Too soon to tell,
8 really, in both ways. There's a continuing
9 resolution, I guess, in Congress, so funds
10 had not been appropriated for this coming
11 budget year anyway. And then the executive
12 order came out. So on both fronts, I'm
13 optimistic that our funds will not be
14 affected in a negative way.

15 I'm certainly confident that we use
16 the money wisely. New York is a target-rich
17 state, as we all know, and I think it would
18 be -- personally, I think it would be
19 irresponsible to affect the funding.

20 ASSEMBLYWOMAN PEOPLES-STOKES: Thank
21 you. We certainly are a target-rich state,
22 and as such, I'm really just glad to hear
23 that you're at least doing some preliminary
24 look at how you could, you know, make sure

1 that we speak to the new administration in a
2 way that they understand that we can't afford
3 to have cuts in an area like homeland
4 security. So thank you very much for that.

5 COMMISSIONER MELVILLE: Thank you.

6 ASSEMBLYWOMAN PEOPLES-STOKES: On the
7 issue of cybersecurity, I mean, there are
8 many people I think across this country and
9 in the state as well, particularly in the
10 business community, who are really kind of
11 looking at spyware and all those sorts of
12 things as a new white-collar crime. And that
13 there are literally people sitting in offices
14 not far from folks who they're stealing their
15 whole server opportunities and asking them
16 for money, and they're getting it.

17 What sort of strategies do you -- are
18 we going to have to deal with that issue?
19 Because it's real, and it's not only
20 impacting, you know, businesses and banks but
21 schools and hospitals, et cetera. And, you
22 know, I think that there's a responsibility
23 for us as government to figure out a way, how
24 do we protect our citizens who want to use

1 the internet to do their business?

2 COMMISSIONER MELVILLE: I couldn't
3 agree with you more, Assemblywoman. I think
4 that's what this Cyber Incident Response Team
5 that we've proposed in the budget will be
6 targeting. It will be targeting local
7 government and it will be targeting schools,
8 it will be targeting hospitals. And there is
9 an outreach component to it that we envision,
10 that they will go and talk about best
11 practices, talk about cyberhygiene, talk about
12 things that those institutions and local
13 governments can do to protect themselves from
14 attacks, cyberattacks.

15 Another component of that team will be
16 to respond and to assess what the issue is.
17 I don't know if we will have people that will
18 actually fix those types of problems once
19 they occur, but I think we'll be able to
20 direct those entities to the resources that
21 they need to help themselves.

22 ASSEMBLYWOMAN PEOPLES-STOKES: So I
23 did have a chance to meet some of your
24 cybersecurity experts. They're very well

1 informed gentlemen. So I'm wondering if they
2 would develop a strategy that -- one that
3 works for schools, one that works for banks,
4 one that works for a private business? Or
5 would there be strategy that everybody would
6 necessarily follow?

7 COMMISSIONER MELVILLE: I think it
8 would be more across the board, a
9 best-practices type of strategy. The
10 simplest things: Don't leave your computer
11 on, have two-factor authentication, don't
12 give out certain information, don't open
13 certain emails if you don't know -- that's
14 the kind of outreach effort that's kind of
15 basic, but believe it or not, there's a lot
16 of people out there that really don't follow
17 them. So I think there's certainly a niche
18 for this type of training for the general
19 public.

20 ASSEMBLYWOMAN PEOPLES-STOKES: Okay,
21 thank you on that.

22 On the whole issue of providing
23 security around airports, can you talk a
24 little bit more about how that will be

1 provided? And would it just be for airports
2 in New York City, or would it be for
3 airports, say, near the Canadian border, like
4 Buffalo?

5 COMMISSIONER MELVILLE: Sure. We've
6 piloted this security training now -- I think
7 we've given it three times. It has been at
8 JFK so far. But the proposal is to train all
9 civilian airport workers throughout the state
10 at every airport. Our best guesstimate --

11 ASSEMBLYWOMAN PEOPLES-STOKES: So that
12 TSA workers --

13 COMMISSIONER MELVILLE: Excuse me?

14 ASSEMBLYWOMAN PEOPLES-STOKES: TSA
15 workers?

16 COMMISSIONER MELVILLE: Not TSA --

17 ASSEMBLYWOMAN PEOPLES-STOKES: Not
18 TSA.

19 COMMISSIONER MELVILLE: -- but your --
20 the person who works at the baggage check,
21 the person who works in Cinnabon, at Hudson
22 News, at -- anybody who works in an airport,
23 any civilian employee, will get this training
24 so they know what to do in a situation, or

1 they know what they should do in a situation
2 where, like what happened at JFK, when panic
3 results from an incident that, really, it
4 shouldn't.

5 Our best guesstimate is that there's
6 probably 50,000 of these civilian workers
7 throughout the state that we would have to
8 train. The course is an eight-hour course
9 given by the proposal members of our staff.
10 And we would start out slow, I think 275
11 trainings the first year and gradually
12 increase to maybe 32,000 the second year and
13 hopefully 50,000 by the third year.

14 ASSEMBLYWOMAN PEOPLES-STOKES: Okay,
15 and that's not including the other
16 preparedness training. The preparedness
17 training is just for citizens, is that right?

18 COMMISSIONER MELVILLE: Yes. Totally
19 different training. That preparedness
20 training is given in partnership with the
21 National Guard, it's given all over the state
22 to civilians who sign up for it, and it's
23 really how to prepare yourself and respond
24 and be ready for any type of an emergency.

1 Not related to an airport.

2 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.

3 Well, I do appreciate your response to the
4 questions, and I thank you for your diligence
5 in keeping us safe.

6 And I have to tell you I'm very
7 excited about the number of students who are
8 accessing the opportunity to be trained in
9 cybersecurity at UAlbany. And I don't know
10 how many of those students are necessarily
11 veterans, but I do think that it would be a
12 great idea if we would do a special outreach
13 to veterans to encourage them to participate
14 in these sorts of services, because I think
15 often they don't necessarily find their niche
16 when they get home, and this could very well
17 be their niche. It works well in Florida,
18 and I believe it could work well in New York
19 State as well.

20 COMMISSIONER MELVILLE: I agree.

21 ASSEMBLYWOMAN PEOPLES-STOKES: So
22 thank you again, Commissioner.

23 COMMISSIONER MELVILLE: Thank you,
24 Assemblywoman.

1 CHAIRMAN FARRELL: Thank you.

2 Senator?

3 CHAIRWOMAN YOUNG: Thank you.

4 Commissioner, I'm glad to hear you
5 talk about interoperable communications. And
6 could you tell us where the areas are that
7 you would focus on this year to finally get
8 the communications system in place?

9 COMMISSIONER MELVILLE: I wish I
10 could, Senator. There are certain pockets
11 throughout the state that still are not
12 interoperable. There's a lot of consortiums
13 throughout the state that are. I personally
14 don't know where those areas are; I think
15 they're out west, and I think they're in the
16 North Country.

17 CHAIRWOMAN YOUNG: Probably west of my
18 area.

19 COMMISSIONER MELVILLE: Yeah. And I
20 just don't want to misinform you, but I
21 certainly have people that know that
22 information, and I can get that right to you.

23 CHAIRWOMAN YOUNG: If you could get
24 that to the Legislature, I think we all would

1 be very interested in taking a look at it
2 just so we fully understand. And then, when
3 we come back here again next year, we'll be
4 able to hopefully celebrate the fact that all
5 of those areas are covered. So I appreciate
6 that.

7 I'm so happy to hear that the Governor
8 is proposing cybersecurity additional
9 measures, and I think that's sorely needed.
10 Unfortunately, in my estimation, the answers
11 that we got last year from the IT department
12 were unsatisfactory and raised a lot of
13 concerns among our colleagues, because there
14 didn't seem to be a basic understanding of
15 certain security issues. So I'm very happy
16 to actually see that in the Governor's
17 proposal.

18 You talked about the proposal, but
19 could you expand on it a little bit more as
20 to how this will work? Because I think you
21 talk about interagency cooperation and the
22 fact that you're going to get everybody on
23 the same page; I think that needs to happen.
24 But how high is the cybersecurity threat to

1 New Yorkers?

2 COMMISSIONER MELVILLE: I think it's
3 high. You know, it's the days we live in. I
4 mean, it can be anything from your home
5 personal computer to the ransomware that
6 certain entities throughout the state have
7 received and paid, because their systems
8 become locked up and they don't have access
9 to their information and their only way to
10 get it is to pay the ransom.

11 The Cyber Incident Response Team, as
12 it is envisioned, will start locally in terms
13 of best practices from anywhere, from
14 households -- but I really see it targeted at
15 local governments, public authorities,
16 agencies that are in dire need of that type
17 of education and a number to call when they
18 have an issue.

19 If a village in upstate New York has
20 an issue with some type of cybersecurity,
21 they really don't get a lot of response from
22 the FBI if they call as to how to fix it. It
23 might not be a crime, even.

24 But those are the types of things, and

1 if we get that, if this team gets it and it
2 is a crime -- you know, we're not the police,
3 we're not the FBI, we're not DHS, we're not
4 going to do those investigations, but we will
5 steer those people in the right direction.
6 So I think it's really, the way I envision
7 it, a resource to help those who really don't
8 have that type of support now. Whether
9 that's --

10 CHAIRWOMAN YOUNG: What about private
11 entities? For example, we have a big problem
12 in the state where a major health insurance
13 plan had its records breached over the past
14 year or two, and everyone's information was
15 exposed because of that fact.

16 So would this be a resource not only
17 for local governments and citizens but also
18 for companies and that sort of thing?
19 Because when a company's security is
20 breached, it impacts so many residents across
21 the state and it can have very, very
22 consequential and devastating impacts.

23 COMMISSIONER MELVILLE: I agree. And
24 we have discussed that, Senator. But this

1 team is proposed to be eight people to start,
2 and I don't think we can be everything to
3 everyone. So those private entities and
4 corporations or even local governments, it's
5 really incumbent upon them to secure their
6 own systems. But a lot of them don't.

7 There's a lot of private institutions
8 that have wonderful cybersecurity, much
9 better than we could probably talk to them
10 about. But at least initially, I would say
11 that private entities would not be included
12 in this. It's eight people, and I wouldn't
13 want to take on more than we were able to
14 handle. I'd like to be able to get this team
15 up and running and do things right and not be
16 overwhelmed at the start.

17 CHAIRWOMAN YOUNG: Thank you very
18 much, Commissioner.

19 Now I want to switch to
20 counterterrorism. And obviously there's a
21 proposal by the Governor regarding the
22 Red Teams and so on, but what's the breakdown
23 of activity by the Red Teams of upstate
24 versus downstate now? You gave some helpful

1 information in your presentation about, I
2 believe, 600 locations had exercises over the
3 past year, is that correct?

4 COMMISSIONER MELVILLE: Yes.

5 CHAIRWOMAN YOUNG: Okay. So what is
6 the breakdown, though?

7 COMMISSIONER MELVILLE: The state is
8 broken up into 16 counterterrorism zones
9 geographically. Some zones might be three or
10 four counties, some might be two.

11 What our office did was go to the
12 leadership in every one of those
13 counterterrorism zones, meet with them,
14 discuss what their threat posture was in
15 their particular area, and come up with a
16 plan to decide what to target.

17 So maybe out in Western New York we
18 targeted colleges, mass gatherings, Walmarts,
19 stores like that. And when I say "targeted,"
20 we would go in and we'd go into a Walmart and
21 try to buy five pressure cookers and some
22 ball bearings and duct tape and see if people
23 would get raised up about that and call their
24 police. And then we would see what the

1 police response was to the call from Walmart.

2 So as far as a breakdown, we have all
3 that information. It's pretty equal across
4 the state. Some counterterrorism zone
5 leadership may have been more welcoming than
6 others, but they all like the idea, they all
7 participated. But I would say it's pretty
8 equal across the state where we conducted and
9 how many exercises.

10 CHAIRWOMAN YOUNG: Commissioner, you
11 raised some very interesting scenarios. When
12 you went into Walmart, for example, are you
13 seeing that people did raise a red flag? Or
14 is there more work to do as far as ensuring
15 that people are up to speed, they have that
16 education and that thought in mind that this
17 may be a suspicious activity? So I'm just
18 curious about what results you actually
19 found.

20 COMMISSIONER MELVILLE: They were
21 mixed, and I'll preface -- just say that
22 before we went into that Walmart or any
23 facility that we went to, we did outreach
24 prior to -- talked about what to look for,

1 what suspicious activity is, how do you
2 report it, who do you report it to -- and
3 then we let it lay for a while.

4 So any of these places that we went to
5 had been visited before, and many of them
6 reported very well, some did not. The end
7 result was we got some very favorable
8 feedback, but there's more work to do and
9 more places to look into.

10 CHAIRWOMAN YOUNG: Thank you. With
11 the Cyber Incident Response Team, how do you
12 see that coordination going forward with the
13 Red Teams? Is there going to be some
14 communication?

15 COMMISSIONER MELVILLE: I don't see
16 that really connecting with the Red Teams,
17 Senator. I mean, they're both going to come
18 under our Office of Counterterrorism. We
19 have the cyber component attached to our
20 critical infrastructure assessment teams that
21 could cross maybe a little bit more with the
22 Red Teams, but I don't really see the
23 Cyber Incident Response -- it's an outreach,
24 first, to educate and then to respond to see

1 what problems are and then to see if we can
2 help people recover, but not really along the
3 same lines as our Red Teams operate.

4 CHAIRWOMAN YOUNG: I'm glad to see
5 that you're taking action in regards to the
6 Transportation Security Training program and
7 the false-alarm incident that occurred at JFK
8 last August. But we're looking at more
9 training, we're looking at more resources.
10 But basically, what did you learn from that
11 day?

12 COMMISSIONER MELVILLE: Personally, I
13 learned that people are on edge in a lot of
14 situations, especially around transportation
15 facilities at times. I don't --

16 CHAIRWOMAN YOUNG: Justifiably so,
17 correct?

18 COMMISSIONER MELVILLE: I don't think
19 it has been absolutely confirmed, but what
20 really triggered that incident was the --
21 Usain Bolt had won the gold medal, and there
22 were a lot of people watching, and a big
23 commotion ensued after he won. And people
24 thought somehow that that -- there was an

1 active shooter, and that's what started it.
2 And people panicked, and people started
3 running.

4 So this team that was put together to
5 review the incident, they came up with a
6 number of different recommendations as a
7 result of what happened at JFK that day. And
8 I think the bottom line is we need to better
9 communicate with people faster in these types
10 of facilities. We need to have a more
11 cohesive public safety entity.

12 In JFK, every terminal is like a
13 separate airport, so even though the
14 Port Authority police really are the police
15 on -- each terminal has their own security.
16 One terminal can't talk to the other
17 terminal, one terminal doesn't really know
18 what the other -- in the worst-case scenario.

19 So we learned a lot of lessons from
20 that. And JFK may be an aberration just
21 because of its size, but -- so we're working
22 on it. We've had a lot of meetings with the
23 Port Authority, with TSA, with our partners
24 in public safety, and I think we're moving

1 towards better reaction to an incident like
2 that.

3 CHAIRWOMAN YOUNG: And finally, I'd
4 like to ask, how would you characterize the
5 communication between the federal, the state,
6 and the local authorities in regards to
7 counterterrorism and all the issues that you
8 work on?

9 COMMISSIONER MELVILLE: I would have
10 to say it's excellent. I've been in public
11 safety for a long time, and I've seen the
12 trends, and I don't think it's ever been
13 better. I can pick up the phone and call the
14 head of the JTTF in New York City, and he
15 doesn't hesitate to talk to me and give me
16 information.

17 It's gotten so much better, Senator,
18 and I think we're all on the same page. And
19 we realize we have to be if we're going to
20 succeed.

21 CHAIRWOMAN YOUNG: Thank you. Thank
22 you for that.

23 We've been joined by Senator Marty
24 Golden.

1 Chairman Farrell?

2 CHAIRMAN FARRELL: Thank you.

3 Assemblyman Montesano. We'll try
4 again. Assemblyman Buchwald.

5 ASSEMBLYMAN BUCHWALD: Thank you very
6 much, Mr. Chairman.

7 And thank you, Commissioner, for your
8 service and for the work you and your
9 division do.

10 COMMISSIONER MELVILLE: Thanks.

11 ASSEMBLYMAN BUCHWALD: My question is
12 simply about one particular project that your
13 division oversees, which is the Spectra AIM
14 Pipeline risk assessment, which as I
15 understand it is being done by an outside
16 architectural engineering firm. The cost is
17 approximately \$250,000, and their assessment
18 was at least set to be completed by
19 December 31st of this past year.

20 I'm wondering if you could enlighten
21 us as to the state of completion of that
22 assessment, and whether either us as
23 legislators or members of the public should
24 expect access to that assessment in the

1 not-too-distant future, since obviously it
2 concerns public safety.

3 COMMISSIONER MELVILLE: The report I'm
4 familiar with, the report -- it has not been
5 finalized. I have not read it.

6 I know there were some delays in
7 starting the report only because we had to
8 find a firm that didn't have some type of a
9 conflict of interest. OGS did that, went to
10 contract with them. I think the report is in
11 its final stages, Assemblyman, but I have not
12 seen it yet. I look forward to seeing it
13 also.

14 ASSEMBLYMAN BUCHWALD: Do you have a
15 sense as to what the process will be when it
16 is completed? The contract, which -- it was
17 originally set for, I believe, an August or
18 September date, was then modified and
19 expanded with a December 31, 2016, completion
20 date.

21 But in any case, when the assessment
22 is complete and obviously you and your
23 division have had a chance to review it, what
24 would be the process for being able to inform

1 members of the public who want to understand
2 what this new pipeline will mean in their
3 neighborhoods?

4 COMMISSIONER MELVILLE: The honest
5 answer to that question, Assemblyman, is I
6 don't know. I don't know what the process
7 will be with respect to when the public gets
8 to see that report or how it's released. I
9 don't.

10 ASSEMBLYMAN BUCHWALD: Are you in a
11 position to be able to commit to the
12 Legislature that once that report is received
13 that, first of all, you'll be able to tell us
14 of the report, that it has been completed,
15 and at that time be able to inform us as to
16 what process you think might be appropriate?

17 COMMISSIONER MELVILLE: I don't think
18 I'm in that position to give that information
19 at this point. I certainly will check into
20 it, Assemblyman. I just really don't know.

21 ASSEMBLYMAN BUCHWALD: Thank you very
22 much, Commissioner.

23 COMMISSIONER MELVILLE: Okay, sir.

24 ASSEMBLYMAN BUCHWALD: Thank you,

1 Mr. Chair.

2 CHAIRWOMAN YOUNG: Thank you.

3 Senator Kaminsky.

4 SENATOR KAMINSKY: Hi. Good
5 afternoon, Commissioner. How are you?

6 COMMISSIONER MELVILLE: I'm fine,
7 thank you, Senator.

8 SENATOR KAMINSKY: Good.

9 One of the communities I'm proud to
10 represent is Island Park, and as you know,
11 your agency is overseeing a multi-million-
12 dollar FEMA project to deal with flooding
13 after Hurricane Sandy.

14 What I'd like to let you know is that
15 after -- now we're four years gone, the
16 flooding in Island Park is still pretty
17 atrocious, and what I'd like to do is show
18 you a photograph of a school -- I don't have
19 long enough arms to do this -- of a school
20 that has persistent flooding where parents
21 have literally handed their children -- this
22 is right-side up, right? -- where parents
23 have handed their children through the car
24 window to the school educators there because

1 there's no way to pass through.

2 And this was not after a hurricane.

3 This happens in nor'easters, of course, but
4 also heavy rains and tidal flooding. And
5 it's gotten to a point where people are just
6 exasperated and don't think anyone is going
7 to come and help them.

8 So in light of what we're seeing
9 there, I would just love to hear from you
10 about the progress that you're making on
11 this, and urge you to please devote all
12 resources necessary towards accomplishing it,
13 because frankly, when you drive down the
14 street in Island Park, some wouldn't be crazy
15 to confuse it with, you know, flooding that
16 happens in much less developed countries, and
17 it's a shame that we have to have this in
18 Long Island.

19 COMMISSIONER MELVILLE: I understand,
20 Senator, and I sympathize. There were
21 probably almost 5,000 public assistance
22 projects that came as a result of Hurricane
23 Sandy, Island Park being one of them.

24 I know a little about most of them.

1 What I do know about Island Park -- I think
2 it's a \$40 million project, and \$1.8 million,
3 I think, has been released for the design and
4 the study. March is the deadline for that to
5 be submitted to FEMA, and in March FEMA will
6 decide if that project is worthy of the
7 release of the rest of the \$40 million.

8 SENATOR KAMINSKY: Okay.

9 COMMISSIONER MELVILLE: So it's close,
10 we've got a couple of months, and I'm not
11 sure how long -- but I think it has to be to
12 FEMA in March, and they will decide shortly
13 thereafter.

14 SENATOR KAMINSKY: Okay. You know,
15 your agency is also one of a number that have
16 concurrent but overlapping, to an extent,
17 projects in Island Park dealing with
18 flooding. And frankly, your local agency
19 representatives have been very open in
20 working with us, and I appreciate that. I
21 would love to have your commitment to work
22 and help get GOSR and some of the other
23 agencies involved to come to the community
24 and just let people know what's going on.

1 You know, they saw last week more
2 flooding; obviously, I showed you the picture
3 of this school. They would just like to know
4 what's happening. And I think more
5 information is certainly better than less,
6 and I would love for you to work with us on
7 that.

8 COMMISSIONER MELVILLE: Thank you,
9 Senator. I appreciate it.

10 Our recovery staff, they take a
11 beating sometimes because things take so
12 long. And a big reason for that is that in a
13 lot of these projects, the work has to be
14 done before FEMA will reimburse. But our
15 people in our recovery section, they work
16 hard, they advocate for their constituents,
17 they can be right there with FEMA every day,
18 day in and day out, fighting for New Yorkers.

19 We've actually thought enough of that
20 program to remove it -- it used to come under
21 the Office of Emergency Management, but when
22 we redesigned the Division of Homeland
23 Security and Emergency Services, we made
24 Recovery its own entity. We have a deputy

1 commissioner who runs it, and it's really a
2 complicated process.

3 I knew nothing about it before I came
4 to this agency. I've learned a little bit;
5 I'm certainly no expert. But what I do know
6 is they work hard and they do a good job and
7 they advocate for New Yorkers.

8 SENATOR KAMINSKY: Okay, well, thank
9 you for your responsiveness, and I agree with
10 you. Let's just please keep Island Park on
11 the front burner, and let's please work to
12 educate and inform the residents of Island
13 Park as to the work you're doing and what's
14 to come.

15 COMMISSIONER MELVILLE: Thank you,
16 Senator.

17 SENATOR KAMINSKY: Thank you all.

18 CHAIRWOMAN YOUNG: Thank you, Senator.
19 Chairman Farrell.

20 CHAIRMAN FARRELL: Thank you.
21 Helene Weinstein, chair.

22 ASSEMBLYWOMAN WEINSTEIN: Thanks,
23 Mr. Chairman.

24 A quick question, Commissioner. I

1 wanted to know if you could give me some
2 status about the Cybersecurity Advisory
3 Board. I'm not sure if it's within Homeland
4 Security, I know it was -- I assume there's
5 some participation.

6 COMMISSIONER MELVILLE: I have
7 attended a number of meetings with the
8 Cybersecurity Advisory Board.

9 It is not within the Division of
10 Homeland Security and Emergency Services. We
11 consider it an important partner in the
12 cybersecurity mission. Then, the Multistate
13 ISAC, the Center for Internet Security, the
14 State Police, ITS kind of work together as
15 one to try and deal with the cyber issue in
16 New York State. But the advisory board,
17 although a wonderful partner, does not fall
18 within DHSES.

19 ASSEMBLYWOMAN WEINSTEIN: And it
20 actively -- it's a board that actively meets?

21 COMMISSIONER MELVILLE: Yes.

22 ASSEMBLYWOMAN WEINSTEIN: Since it was
23 established --

24 COMMISSIONER MELVILLE: Yes.

1 ASSEMBLYWOMAN WEINSTEIN: -- in 2013.

2 COMMISSIONER MELVILLE: Yes, because I
3 go to the meetings, and I'm in awe at the
4 knowledge that they provide, and the
5 experience. The Cybersecurity Advisory Board
6 has been good to us.

7 ASSEMBLYWOMAN WEINSTEIN: Thank you.

8 CHAIRMAN FARRELL: Senator?

9 CHAIRWOMAN YOUNG: Senator Addabbo.

10 SENATOR ADDABBO: Thank you. Thank
11 you, Madam Chair.

12 And thank you, Commissioner, for your
13 time and testimony today. And I too want to
14 also express my appreciation for your role in
15 the efforts in protecting our residents
16 throughout this state.

17 Before I get to a question on
18 infrastructure, I just want to expand the
19 conversation a little bit about the
20 active-shooter allocation. You mentioned in
21 your testimony the August event that happened
22 at JFK. We saw how actually fatal and
23 chaotic the situation can be January 6th in
24 Fort Lauderdale, in Florida, in that

1 active-shooter situation.

2 And I'm happy to see the broad
3 definition of what an airport worker would
4 be. But can you envision that during the
5 course of this training, what would happen if
6 a structural deficiency in the airport would
7 be revealed -- you know, an exit problem or
8 some other passageway problem?

9 If your training results in finding
10 out shortcomings in the structural layout of
11 an airport, what would happen? Do you think
12 that the training, the information gathered
13 there will then result in some other change,
14 maybe structurally, to any of the airports?

15 COMMISSIONER MELVILLE: I'm not sure,
16 Senator. I mean, this training is going to
17 be targeted, it's going to be classroom
18 training, eight hours going through scenarios
19 of how to react in an emergency situation,
20 how to assist passengers and travellers in
21 that situation, and also how to detect
22 suspicious activity in an airport.

23 I really don't think it's going to be
24 designed at the structural components -- it

1 won't be in the airport, it'll be in a
2 classroom. But I'm not sure if I'm answering
3 your question.

4 SENATOR ADDABBO: But if an employee,
5 while in that class, reveals that they in the
6 past have had a problem with an exit or some
7 other situation at the airport, I'm sure the
8 training, although giving information to the
9 airport employee, can also be receptive to
10 any common problem the employees would have
11 in terms of safety and active-shooter
12 situations. True?

13 COMMISSIONER MELVILLE: Absolutely.

14 SENATOR ADDABBO: Okay.

15 COMMISSIONER MELVILLE: And the same
16 in probably any classroom. You know, the
17 teacher can learn a lot from their students.

18 SENATOR ADDABBO: Excellent.

19 And lastly, my main question was about
20 protecting the infrastructure. The budget
21 allocation for protecting bridges and tunnels
22 and the resources that the state would use --
23 troopers, State Police -- could you just
24 briefly go into that a little bit?

1 COMMISSIONER MELVILLE: Sure.

2 I know of it just because I know of
3 it. It really doesn't involve the Division
4 of Homeland Security and Emergency Services
5 from a budget perspective or a personnel
6 perspective, but I know of it because of our
7 partners in the Bridge and Tunnel Authority
8 and the State Police and the DMNA who will be
9 staffing that.

10 I think Superintendent Beach will be
11 testifying later today; he'll be able to give
12 you a much better perspective as far as what
13 resources and how they're being deployed
14 and -- I'm aware of it, but not intimately
15 involved in it.

16 SENATOR ADDABBO: Thank you,
17 Commissioner.

18 Thank you, Madam Chair.

19 COMMISSIONER MELVILLE: Thank you,
20 Senator.

21 CHAIRWOMAN YOUNG: Thank you, Senator.

22 I think that the Assembly is done, but
23 we are not on the Senate side. So Senator
24 Comrie has some questions.

1 SENATOR COMRIE: Yes. Commissioner,
2 good morning.

3 COMMISSIONER MELVILLE: Good morning,
4 Senator.

5 SENATOR COMRIE: I just wanted to ask
6 a question about your training. You talked
7 about the JFK situation and the preparedness
8 that would be necessary to train --

9 CHAIRWOMAN YOUNG: Can you get the
10 microphone a little closer to you?

11 SENATOR COMRIE: Sorry.

12 I just wanted to know who are you
13 training in that situation, and what kind of
14 training are you giving them, for the
15 personnel. Because my understanding of the
16 situation was that there was a rapid response
17 and they responded as quickly as possible,
18 but because of the overwhelming people that
19 were just running, there was a confusion in
20 the terminal about what actually happened.

21 And so I was getting -- inquiring as
22 to who you're training for that situation,
23 how do you see that situation evolving any
24 differently if there's a general panic that's

1 happening, and how you could detail that?
2 Because if I was an unarmed person, I'd be
3 running too.

4 COMMISSIONER MELVILLE: No, and I get
5 it. And I know how it unfolds and how it can
6 happen and how it can snowball.

7 To answer your question -- and let me
8 just preface my answer with this training is
9 by no means any indication that the police
10 response was inadequate, or the emergency
11 services personnel that were at the airport
12 that day -- I think they did what they were
13 supposed to do when they were supposed to do
14 it.

15 This training is targeted at civilian
16 employees who work in businesses within the
17 airport, who work as ticket agents, who work
18 in the Budget Rent-A-Car, whatever, so they
19 know or they can better respond if in fact
20 one of these panic-type situations occurs.

21 The police can't be everywhere.
22 They're not everywhere. The people who work
23 there are, and at least they would be able to
24 be told what to do in the best-case scenario

1 in terms of how to deal with a situation like
2 this.

3 So it's really not targeted at
4 emergency personnel at all, Senator. It's
5 targeted at civilian employees who really get
6 no training with respect to emergency
7 situations in airports. Some people do that
8 are on the other side of security. They get
9 the SITA training, whatever -- it's a
10 two-hour block. But this is just to
11 reinforce best practices and how to deal with
12 a situation and how not to exacerbate it.

13 SENATOR COMRIE: Well, thank you for
14 your response.

15 Has that training started? And have
16 you worked on a collaboration with the other
17 entities out at the airport, both airports,
18 to make sure that that happens, and in light
19 of all the construction that's going on in
20 both JFK and LaGuardia? Is that being
21 considered as well?

22 COMMISSIONER MELVILLE: We have worked
23 with the TSA, the FBI, our partners at the
24 Port Authority, and the State Police. We

1 have -- and it was designed, this training
2 was designed in conjunction with the College
3 of Emergency Preparedness, Homeland Security
4 and Cybersecurity, so it was a team effort.
5 Everybody's aware of it, people have had
6 input into how it's delivered and what the
7 actual training is, so it -- I'm sure it will
8 modify as we go along, but we have rolled it
9 out initially and expect to continue.

10 SENATOR COMRIE: Thank you.

11 Thank you, Madam Chair.

12 COMMISSIONER MELVILLE: Thank you,
13 Senator.

14 CHAIRWOMAN YOUNG: Thank you.

15 Senator Krueger.

16 SENATOR KRUEGER: Good morning,
17 Commissioner, or afternoon. I'm not sure
18 without a clock.

19 CHAIRWOMAN YOUNG: Good afternoon.

20 SENATOR KRUEGER: Good afternoon,
21 Commissioner.

22 COMMISSIONER MELVILLE: Good
23 afternoon, Senator.

24 SENATOR KRUEGER: So your budget is

1 about \$1.57 billion, but there's no
2 breakdown. Can you tell me a little bit
3 about how you spend the money? What
4 percentage of it is personnel, how many
5 personnel?

6 COMMISSIONER MELVILLE: Sure. About
7 \$70 million of it is for state operations.
8 The bulk of my budget, \$1.45 billion, is Aid
9 to Localities. That's all our funding from
10 the federal government, it's really what we
11 give out. And we have a small capital budget
12 that I believe is \$58 million -- \$3 million
13 for the airport training, \$1.3 million for
14 the cyber response, we have the \$3 million
15 capital that's for Montour Falls and the
16 SPTC, just for safety improvements and health
17 and preservation, and there's a \$50 million
18 amount that is really -- it's for capital,
19 it's for funds that had been appropriated in
20 the interop for previous years that's just
21 getting moved over to capital.

22 SENATOR KRUEGER: So the vast majority
23 is federal pass-through money. And is there
24 a master list of how that money goes out to

1 whom?

2 COMMISSIONER MELVILLE: I don't know
3 about a master list. I mean, we certainly
4 account for every dollar of who gets what and
5 why.

6 SENATOR KRUEGER: But it's not lined
7 out in the budget somewhere, it's --

8 COMMISSIONER MELVILLE: No, because a
9 lot of that -- for example, Oneida County
10 this year might get X number of dollars and
11 next year no, depending on what their project
12 is, depending on what funding we get. So we
13 really can't do that, we can't line it out
14 until we know what we're going to get and we
15 know what awards we give.

16 SENATOR KRUEGER: But it doesn't -- it
17 does or it doesn't include those FEMA funds
18 as was just being discussed by my colleague
19 around the Island Park issue? Those are
20 separate?

21 COMMISSIONER MELVILLE: It includes
22 that as allocations that we can -- you know,
23 we have the authority to allocate that money
24 if and when we receive it.

1 SENATOR KRUEGER: So when you talked
2 about there being 5,000 projects based on
3 Hurricane Sandy, monies being paid out if
4 FEMA approves them is actually part of that
5 \$1.57 billion?

6 COMMISSIONER MELVILLE: Yes. It's the
7 authority to appropriate that money.

8 SENATOR KRUEGER: Okay. So can you
9 tell me -- so we heard of the frustrations of
10 Island Park. Of the 5,000 projects, how many
11 of them have been completed, or what
12 percentage?

13 COMMISSIONER MELVILLE: You know, I
14 can't give you a percentage of the number
15 that have been completed. Many have been.
16 We have passed out over \$5 billion in the
17 public assistance grants to localities. I
18 believe the allocation, or at least what FEMA
19 originally told us, was about \$14 billion.
20 So five of 14.

21 SENATOR KRUEGER: So we still have a
22 lot -- we have a long way to go.

23 COMMISSIONER MELVILLE: We have a long
24 way to go.

1 That's why when I mentioned that
2 recovery section being cordoned off into its
3 own entity, it's -- there's a lot of work
4 there.

5 SENATOR KRUEGER: Do you have any
6 concern that for so many years away from the
7 actual storm that the federal government
8 could say to us "You can't really need it any
9 more, it's been so many years"?

10 COMMISSIONER MELVILLE: No. I have no
11 concern --

12 SENATOR KRUEGER: You don't think that
13 that's a concern.

14 COMMISSIONER MELVILLE: No.

15 SENATOR KRUEGER: Good. I'm glad.

16 And I know that you do an enormous
17 amount of work with many different agencies,
18 both state agencies and local and county --
19 including much around counterterrorism, as
20 there's been discussion by many of my
21 colleagues. How do you interact with
22 New York's -- I'm from New York City -- from
23 New York City's various counterterrorism
24 efforts, and how do you interact with them

1 and the State Police? Because they also get
2 assigned, quote, unquote, counterterrorism --
3 I'm always a little confused about who's
4 doing what when and what the chain of command
5 is.

6 COMMISSIONER MELVILLE: I have an
7 office in New York City, I spend a lot of
8 time there. I interact with the PD, the
9 NYPD, a lot, mostly with the chief of the
10 Office of Counterterrorism.

11 And there are people that handle the
12 money that the Office of Management and
13 Budget -- we talk about priorities, we talk
14 about funding.

15 The New York area gets a lot of money
16 through the UASI program, and they spend it
17 well and wisely, and they need it. So most
18 of my interaction with the NYPD comes around
19 funding issues and how we can assist them.

20 I certainly speak with Superintendent
21 Beach and other members of the PD with
22 respect to counterterrorism efforts, but the
23 agency that I'm involved with, we really have
24 no boots on the ground. I don't have police

1 officers on the street doing counterterrorism
2 work. We try to funnel the money to where it
3 needs to go and do the -- try to allocate
4 it --

5 SENATOR KRUEGER: You talked in your
6 testimony about the importance of police and
7 EMS being from the same municipality or
8 counties and training together, and that
9 makes total sense to me.

10 You weren't referencing New York City.
11 That already happens for us in New York City,
12 is that correct?

13 COMMISSIONER MELVILLE: That happens,
14 and we train people from New York City at the
15 SPTC. What I was really getting to in a
16 nutshell, Senator, is we have these courses,
17 one is called the A2S2 course, it's really --
18 it's our premier course. It's about
19 active-shooter scenarios, prolonged
20 active-shooter scenarios where, for example,
21 back in Mumbai in 2008 you did -- it could go
22 for a long time. And previously in those
23 types of situations, EMS was pretty much held
24 off on the side: You can't come in until

1 this thing is over with and the police have
2 resolved it.

3 What we're trying to do is change that
4 model with this course where, if we have
5 those types of prolonged active-shooter
6 situations, which unfortunately they happen,
7 we can integrate EMS into what they call
8 "warm zones," where the police will control
9 the situation to a certain extent, but we can
10 bring EMS in to get wounded out and
11 eventually save lives.

12 The part that I was referring to in
13 the testimony about from the same county --
14 we've run this course, and there's 60 people
15 at a time that take the course. In the past,
16 we could have, between fire, EMS, and
17 police -- in the past they could have been
18 from 60 different agencies, the way we were
19 running them.

20 We think that it's a better design to
21 have them from the same agency or the same
22 county, because if you have one of these
23 incidents in your area, you're not getting
24 one person from six counties away to come.

1 We need to train together to respond to it.
2 So even if, say, a police department in a
3 town can't send 30 people, we're going to
4 take people from the surrounding towns and
5 the sheriff's department and the State Police
6 in that area that will likely respond to an
7 incident like that and train them in this
8 scenario of, you know, active shooter.

9 SENATOR KRUEGER: And a final quick
10 question, I see the clock is out.

11 It's actually in the State Police
12 budget, not in your budget, but it's for
13 counterterrorism and it's to put State Police
14 into New York City. Why?

15 COMMISSIONER MELVILLE: I believe that
16 the State Police are already in New York City
17 in the transportation facilities at Penn
18 Station and Grand Central. The Governor has
19 put them on bridges and tunnels. He's trying
20 to beef up the counterterrorism efforts in
21 New York City and is using the State Police
22 to do so. I think his thought process is
23 they're the State Police, and New York City
24 is part of New York State.

1 SENATOR KRUEGER: Well, I certainly
2 know New York City is part of New York State.

3 COMMISSIONER MELVILLE: I don't mean
4 it that way. It's just --

5 SENATOR KRUEGER: I know, I know.

6 And, you know, it's \$50 million out of
7 the budget, and I suspect my colleagues from
8 some of the other -- I believe you described
9 16 counterterrorism zones, so I'm assuming
10 New York City is one zone?

11 COMMISSIONER MELVILLE: Yes.

12 SENATOR KRUEGER: So I would assume
13 that people from the other 15 zones might
14 think more State Police support in their
15 zones would be important.

16 And I keep asking this question at
17 home, and nobody gives me an answer about why
18 we think it actually is valuable to us in
19 New York City to have this additional police
20 presence which are then not a coordinated
21 part of NYPD, FDNY, EMS, and Office of
22 Emergency Management.

23 From an efficiency perspective,
24 personally I would like to see the

1 State Police and that money go to other areas
2 that I think are begging for them, and I
3 don't think my city is. So it's more a -- my
4 opinion, not asking you necessarily for
5 yours.

6 COMMISSIONER MELVILLE: Yeah, I get
7 it. And I appreciate the comments. And
8 again, I don't want to speak for
9 Superintendent Beach, but that's my
10 understanding of it. I really don't -- you
11 know, our agency has not been involved,
12 although I am aware of it.

13 SENATOR KRUEGER: Thank you.

14 CHAIRWOMAN YOUNG: Thank you, Senator.
15 Senator Squadron.

16 SENATOR SQUADRON: Thank you very
17 much.

18 Thank you, Commissioner, nice to see
19 you.

20 COMMISSIONER MELVILLE: Hi, Senator.
21 How are you?

22 SENATOR SQUADRON: Good.

23 Briefly, very briefly, with your
24 predecessor and FDNY we had worked on trying

1 to better coordinate state buildings in
2 New York City not under the New York City
3 building code, including with an actual embed
4 in FDNY, to make it easier to make sure that
5 firefighters are fully safe and have all the
6 information they need when they go into state
7 buildings or buildings under state oversight.
8 Does that program continue?

9 COMMISSIONER MELVILLE: I couldn't
10 hear the --

11 SENATOR SQUADRON: Does that program
12 continue? Is there -- how does that
13 coordination look, briefly?

14 COMMISSIONER MELVILLE: The
15 coordination level is excellent. I mean, we
16 have some outstanding issues that are still
17 being litigated, I believe, between who's
18 responsible for state-owned buildings in the
19 city, whether -- is it FDNY or is it our
20 OFPC?

21 The boots on the ground get along just
22 fine. They talk, they invite each other to
23 any inspection, they share information. But
24 I think that that whole issue is still being

1 litigated.

2 SENATOR SQUADRON: Are there any state
3 officials at FDNY headquarters to help
4 coordinate when there are major events, (A)?
5 And (B), have all the building plans of state
6 buildings been shared with FDNY?

7 COMMISSIONER MELVILLE: I believe so,
8 yes.

9 SENATOR SQUADRON: Great. It would be
10 great to confirm that, because that was an
11 initiative we started three and a half, four
12 years ago.

13 COMMISSIONER MELVILLE: Yeah, we spoke
14 about it last year --

15 SENATOR SQUADRON: Yeah.

16 COMMISSIONER MELVILLE: -- we did, and
17 I checked. I was unaware of it last year,
18 and you educated me. I went back and looked,
19 and as far as I know, we've handled
20 everything except the litigation.

21 SENATOR SQUADRON: Great. Good.
22 That's great news. And that makes our first
23 responders a whole lot more safe, which I
24 know is a priority for both of us.

1 The other issue is you've heard about
2 a small community in Long Island; I represent
3 a small community at the southern tip of
4 another island, Manhattan, off Lower
5 Manhattan. And I've been working very
6 closely with your team and the Governor's
7 office and GOSR and HCR on this. So I want
8 to say thank you for this and just make sure
9 that it continues to be a top priority that
10 the state also participates, either through
11 federal funds, like the hazard mitigation
12 funds, or otherwise, in securing lower
13 Manhattan from the next Sandy or flood event.

14 It is in many ways the economic engine
15 of the entire state. It's also a place where
16 50,000 to 75,000 people live. And today we
17 are no more protected on the coast of Lower
18 Manhattan than we were the day before Sandy
19 hit.

20 I really appreciated the partnership
21 with folks, and transparency from folks at
22 your agency. I just want to thank you for
23 that, retrospectively and prospectively, and
24 make sure that your commitment to make sure

1 we do have state participation in building
2 that flood barrier continues.

3 COMMISSIONER MELVILLE: You can be
4 assured of that, Senator. I know that we
5 have spoken to you about the seawall project,
6 and we might even be meeting soon about it
7 again. It's a priority. The people that
8 really need to know about it and know the
9 ins-and-outs of that are on it, and as well
10 as you are, I know. So you can rest assured
11 that we will be cooperating with you all the
12 way.

13 SENATOR SQUADRON: Great. And I do
14 want to thank your team for your partnership
15 on that. Thank you as well, Commissioner.

16 CHAIRWOMAN YOUNG: Thank you,
17 Commissioner.

18 That concludes our speakers for the
19 day, so we want to let you off the hook. And
20 thank you very much again for joining us, and
21 looking forward to working with you in the
22 future.

23 COMMISSIONER MELVILLE: Thank you,
24 Senator. Thank you, Senator. I didn't mean

1 anything by that.

2 CHAIRWOMAN YOUNG: Our next speaker is
3 Executive Deputy Commissioner Michael C.
4 Green, New York State Division of Criminal
5 Justice Services.

6 Welcome, Deputy Commissioner Green.
7 It's great to see you again.

8 EX. DEP. COMMISSIONER GREEN: Good to
9 see you. Thank you.

10 CHAIRWOMAN YOUNG: Can I have some
11 order in the house, please.

12 Okay, let's begin.

13 EX. DEP. COMMISSIONER GREEN: Good
14 afternoon, Chairwoman Young, members of the
15 panel. I'm Mike Green, head of the State
16 Division of Criminal Justice Services. Thank
17 you for inviting me to appear before you
18 today.

19 Governor Cuomo's proposed budget for
20 fiscal year 2017-2018 will allow DCJS to
21 continue to support the criminal justice
22 system in communities across the state,
23 support evidence-based programs proven to be
24 effective and cost-efficient, and develop

1 innovative programs that position New York as
2 a national leader in effective public safety
3 policy.

4 New York continues to experience
5 reductions in crime and the prison
6 population. Reported crime reached an
7 all-time low in 2015, and we maintain our
8 standing as the safest large state in the
9 nation. New York also has the lowest
10 imprisonment rate of any large state.

11 In addition to reintroducing
12 legislation to raise the age of criminal
13 responsibility, Governor Cuomo has proposed a
14 wide range of other reforms to enhance the
15 fairness and effectiveness of our criminal
16 justice system and build trust between law
17 enforcement agencies and communities.

18 The Governor is committed to reforming
19 New York's bail statute. New York is one of
20 only four states prohibiting judges from
21 considering risk to public safety as a factor
22 when setting bail. A commonsense amendment
23 will allow judges to consider that risk when
24 setting bail or allowing release, and permit

1 them to use proven risk assessments to aid in
2 pre-trial release decisions. This will not
3 only enhance public safety but also minimize
4 the impact of financial status in making
5 detention and release decisions.

6 All citizens accused of a crime are
7 guaranteed the right to a speedy trial.
8 Despite legal and constitutional protections,
9 many defendants are currently held in custody
10 for long periods or, when not in custody,
11 cases often languish for months or years
12 before disposition, causing disruption to
13 defendants and victims alike.

14 This year, the Governor will advance
15 legislation to reduce unnecessary delays and
16 adjournments in criminal court proceedings.

17 Governor Cuomo has advanced
18 legislation to reform identification
19 procedures and requiring video recording of
20 interrogations in serious cases. The
21 evidence-based reforms to identification
22 procedures will bring New York in line with
23 49 other states that allow properly conducted
24 photo array identifications to be brought

1 into evidence at trial. Law enforcement
2 agencies across the state have embraced video
3 recording of interrogations, and DCJS has
4 provided more than \$3.5 million to local
5 agencies to purchase and install the
6 recording technology. The Innocence Project,
7 the New York State Bar Association, and the
8 District Attorneys' Association support these
9 concepts; it's time they became law.

10 The Governor has introduced a
11 sentencing reform proposal to modernize
12 sentencing laws by eliminating indeterminate
13 sentences for nonviolent felonies in favor of
14 determinate sentences, as we have done for
15 violent felonies, sex felonies and drug
16 felonies. It also calls for the elimination
17 of mandatory prison sentences for second D
18 and E felons where a judge finds a prison
19 sentence would be unduly harsh.

20 DCJS currently funds and administers
21 11 street outreach, or SNUG, programs across
22 the state. The Governor's budget proposal
23 increases funding for street outreach work to
24 nearly \$5 million, an increase of

1 \$1.5 million when compared to last year.

2 Street outreach work is an evidence-based
3 strategy proven to be an important part of a
4 comprehensive effort to address shootings and
5 homicides.

6 This 2017-2018 budget proposal will
7 allow DCJS to continue supporting our local
8 partners. Our evidence-based initiatives are
9 designed to promote fairness, respect and
10 transparency in the state's criminal justice
11 system. But our highest priority is public
12 safety. We are confident that with your
13 continued support, we will continue the
14 historic reductions in crime we have
15 achieved, while continuing to reduce the
16 number of individuals who enter the criminal
17 justice system.

18 Thank you for the opportunity to speak
19 with you today. I'm prepared to take your
20 questions.

21 CHAIRWOMAN YOUNG: Thank you, Deputy
22 Commissioner.

23 Our first speaker would be Senator
24 Patrick Gallivan, who chairs the Crime and

1 Corrections Committee in the Senate.

2 SENATOR GALLIVAN: Thank you, Madam
3 Chair.

4 Good afternoon now, Commissioner.

5 EX. DEP. COMMISSIONER GREEN: Good
6 afternoon, Senator.

7 SENATOR GALLIVAN: I'd like to briefly
8 touch on three areas of your testimony, and
9 I'll take them right in the order that you
10 had testified to.

11 You had testified about reforming the
12 bail and reducing pretrial detention. But
13 specifically, there's a proposal to establish
14 a bail reform risk assessment tool. Can you
15 talk about that?

16 EX. DEP. COMMISSIONER GREEN: Part of
17 the bail reform that the Governor has
18 discussed is the fact that we are one of four
19 states that do not allow judges to consider
20 the concept of the risk that someone proposes
21 when they stand in front of the judge and the
22 judge is supposed to make a release decision.

23 So 46 other states and the federal
24 government allow the judges to consider that.

1 We don't.

2 In connection with that consideration,
3 many states -- and the Arnold Foundation has
4 done some very good work here -- use risk
5 assessment tools that give judges objective
6 feedback when they're making those decisions.
7 The Arnold tool in particular -- which has
8 been used, I think, very effectively, some of
9 the initial studies indicate -- looks at the
10 risk that someone will commit a crime if
11 they're released, looks at the likelihood
12 that that person will return to court, and
13 also looks at the risk that that person will
14 commit a violent felony.

15 The most effective risk-assessment
16 tools in terms of use are ones that are
17 generated automatically. If you think about
18 it, we have about 500,000 arraignments a
19 year, criminal court arraignments that take
20 place across the state. You know, to have a
21 risk assessment in the hands of every judge
22 prior to the time they do arraignment, that's
23 the only practical way to do it.

24 So the idea would be to use the good

1 work that the Arnold Foundation has done, to
2 work with the partners that would be involved
3 in this process across the state, and develop
4 a New York-specific instrument. You know, at
5 least in my mind, the instrument would be
6 one -- all the data points in the Arnold
7 instrument are information contained within a
8 criminal history database. And so the
9 concept would be right now we get a
10 fingerprint in, that fingerprint triggers us
11 sending a criminal history back to the
12 arraignment court. There's no reason we
13 couldn't use that fingerprint to trigger a
14 risk assessment instrument to be created with
15 the information from the database, have that
16 sent back at the same time.

17 So the budget appropriation is to work
18 with, you know, whether it's the Arnold
19 Foundation or others, work with the
20 stakeholders in the state, develop a risk
21 assessment instrument so that if we get the
22 reform we need to the bail statute and we
23 allow our judges to consider, among other
24 things, the risk that someone poses, they'll

1 have a validated risk-assessment instrument
2 to use in connection with that.

3 SENATOR GALLIVAN: Would the
4 Governor's proposal require its use or simply
5 provide it as an additional tool?

6 EX. DEP. COMMISSIONER GREEN: The
7 existing budget contains an appropriation for
8 DCJS to develop that risk-assessment tool.
9 The language of the proposal has not been put
10 forward yet. And certainly I would
11 anticipate that's something that we'd want to
12 work with all of you on.

13 In my mind, you know, you at least --
14 you know, I don't think you would ever want
15 to have the result driven strictly off of
16 that. Judges always need to be able to use
17 their experience and their expertise.

18 On the other hand, I think it makes
19 sense to at least require a judge to review
20 and consider the information in the risk
21 assessment.

22 SENATOR GALLIVAN: Thank you.

23 We'll move on to the next part of your
24 testimony. You talked about ensuring the

1 right to a speedy trial. I know that the
2 Governor has called to do something about
3 this. We've seen some news accounts. But I
4 haven't seen any data that points to this
5 being a problem.

6 Now, we do have anecdotal information
7 out there about some specific cases that
8 clearly went on too long. My question is, do
9 you have data that's available to support the
10 proposal --

11 EX. DEP. COMMISSIONER GREEN: I don't
12 have it in front of me, but just yesterday I
13 was reviewing data that was published in news
14 reports looking at the average length of time
15 it takes to get a felony case to disposition
16 in New York City. And again, I don't have it
17 at my fingertips, but it was bordering on I
18 believe two years -- this is average time --
19 two years in the Bronx, I think it was 15
20 months in Manhattan, and the others were some
21 time in between there.

22 But if you think about the average
23 time is two years, in some cases they're
24 being resolved quickly by pleas. That means

1 the cases on the other hand are going from
2 three to five years before people get their
3 cases disposed. And this data was in
4 connection with a newspaper article about a
5 young man who at 17 years old was arrested,
6 bail was set, he couldn't afford the bail, he
7 sat in Rikers. He sat in Rikers for five
8 years --

9 SENATOR GALLIVAN: I am familiar with
10 that case.

11 EX. DEP. COMMISSIONER GREEN: -- until
12 his case was dismissed.

13 So to me, whether you have one person
14 or a thousand people, if that one person was
15 my son, one case, for me, is too many. We
16 shouldn't have people sitting for five years
17 waiting for their case to go to trial, being
18 held on bail.

19 SENATOR GALLIVAN: Understood. Let's
20 just move just a touch past that.

21 The data that you have, where you have
22 that two-year wait, does that indicate what
23 caused the wait? I mean, was it -- was the
24 delay on the part of the people of the State

1 of New York, or was it because of defense
2 motions? All I'm asking, can you provide
3 that data to us, what you have? I know
4 you're not going to be able to recite all of
5 it --

6 EX. DEP. COMMISSIONER GREEN: Sure.
7 DCJS puts out felony case processing reports.
8 They're published as part of our open data.
9 But I can certainly get you that information.

10 But you're right, it doesn't -- you
11 know, that's data that just looks at how much
12 time. It doesn't drill into each case. And
13 I think we both know from our experience that
14 all of those things you listed in various
15 cases cause delay. And I think the idea
16 here, at least from our perspective, is not
17 to point the finger at anyone and say it's
18 your fault, but to say how can we bring
19 everybody together and come up with a
20 solution. Whoever's fault it is, whatever
21 the reasons are, you know, we've got to be
22 better than this.

23 SENATOR GALLIVAN: Well, my reason to
24 want the data to look at it is to see is

1 there a problem and try to identify what the
2 problem is.

3 Certainly there's some individual
4 cases that you can highlight that are
5 problematic. But is it systemic. And that's
6 why I'm asking for the data. So if you can
7 provide it --

8 EX. DEP. COMMISSIONER GREEN: We'll
9 get you the data.

10 SENATOR GALLIVAN: -- appreciate that.

11 The final area has to do with your
12 testimony regarding the video recording of
13 interrogations and identification procedures.
14 You testified about the Innocence Project,
15 State Bar Association, DAs Association
16 supporting the concept of making some of
17 these changes. And I am familiar with some
18 of those discussions that went on.

19 My understanding, if I recall
20 correctly, they were close and agreed -- all
21 parties had agreed to some legislation. And
22 I think some of the police groups as well --

23 EX. DEP. COMMISSIONER GREEN: You
24 passed that, the Senate passed the

1 legislation I believe two years ago.

2 SENATOR GALLIVAN: Yeah. My
3 understanding now is -- you make mention of
4 the Innocence Project, and I've been told
5 that they essentially backed away from an
6 agreement. Do you know if that's true or not
7 true?

8 EX. DEP. COMMISSIONER GREEN: In
9 conversations that my office has had with
10 them in the last month or two, I do not
11 believe they backed away from it. I believe
12 they still support it. I've talked to the
13 chiefs, who supported it. I've talked to the
14 sheriffs, who supported it, the DAs, who
15 supported it. So I think there's agreement
16 on these concepts.

17 SENATOR GALLIVAN: And finally, along
18 the same topic lines, with the notion that
19 DCJS will create a protocol for the police
20 departments to administrator the blind
21 identification, it's potentially cumbersome
22 for the smaller departments. Have you taken
23 that into consideration? And how will you
24 deal with that?

1 EX. DEP. COMMISSIONER GREEN:

2 Actually, we worked with the Municipal Police
3 Training Council. And Sheriff Spike from
4 Yates County is the chair of that, so I think
5 certainly he clearly brings that smaller
6 department perspective to the discussion.

7 And the Municipal Police Training
8 Council about a year ago actually came out
9 with a model policy that I think -- you know,
10 and we got input from the Innocence Project
11 in developing that model policy, we tried to
12 bring all the stakeholders together. So I
13 think the blueprint for that protocol is
14 already there.

15 And I actually think that this
16 proposal will help the smaller departments,
17 because right now they do a photo array and
18 that cannot get into evidence at trial. If
19 they want something that can get into
20 evidence at trial, they actually have to do a
21 lineup. And for a small department to try
22 and pull together a lineup, as you know, is
23 almost impossible.

24 This legislation will give them a way

1 to conduct a photo-array identification
2 procedure, which they have the ability to do,
3 in a way that will allow the results of that
4 to be admissible at trial.

5 SENATOR GALLIVAN: Thank you,
6 Commissioner.

7 EX. DEP. COMMISSIONER GREEN: Thank
8 you, Senator, and appreciate the assistance.

9 SENATOR GALLIVAN: And we will of
10 course follow up.

11 EX. DEP. COMMISSIONER GREEN: Thank
12 you.

13 CHAIRWOMAN YOUNG: Thank you.
14 Chairman Lentol.

15 ASSEMBLYMAN LENTOL: Thank you,
16 Senator.

17 Thank you, Commissioner Green. I'm
18 sorry I stepped out and missed your comments,
19 but I read them, and I'm glad you presented
20 short remarks.

21 EX. DEP. COMMISSIONER GREEN: It's
22 good to see you again too.

23 ASSEMBLYMAN LENTOL: The microphone is
24 on. Can you hear me now?

1 In any event, Commissioner, as you
2 know, New York ranks second in the nation in
3 the number of persons exonerated of crimes
4 for which they have been wrongfully
5 convicted. And studies have shown that false
6 confessions and eyewitness misidentifications
7 are among the leading cause of that.

8 So two reforms that really have proven
9 effective are recording of interrogations,
10 which I'm glad that you've put in the budget,
11 that the Governor has put in the budget, and
12 the modernization of eyewitness
13 identification procedures that incorporate
14 advances in eyewitness memory science.

15 So in any event, as you may know, the
16 Innocence Project -- although the Innocence
17 Project is in support of this proposal, we
18 have received strong opposition from certain
19 aspects of the language in the bill from many
20 in the defense community. Therefore, my
21 question really is simply this. Is the
22 Executive willing to be flexible in
23 discussing this proposal with us, the details
24 of this proposal, in order to address those

1 concerns that we and others have expressed?

2 EX. DEP. COMMISSIONER GREEN: I
3 believe that the Executive would always be
4 willing to listen and certainly welcome any
5 input or feedback as to these proposals.

6 I think the thing to keep in mind,
7 though, you know, my experience is anytime
8 you put a proposal out, there's such a broad
9 spectrum of constituencies that -- you know,
10 I've heard a lot of feedback from one end,
11 you know, indicating it goes too far. I hear
12 feedback from the other end indicating it
13 doesn't go far enough.

14 And for me, the reality is we need to
15 do something here. We can't continue to be
16 the only state in the country that doesn't
17 allow what the science says is the best
18 identification to be heard by a jury. But
19 instead we let someone walk into court a year
20 and a half, two, three, four years later and
21 pick out the person at the defense table and
22 say that's the person who did it.

23 You know, so I hear what you're
24 saying. And yes, I think it's great that we

1 talk about it. But at the end of the day, I
2 think this is the year that we really need to
3 get something done.

4 ASSEMBLYMAN LENTOL: And I agree. And
5 the people want us to do something, and I
6 understand that. And I've been around long
7 enough that what happens is we don't know
8 whether or not if we do something that really
9 doesn't go far enough, whether that's the end
10 or whether it's good to take it and hope that
11 you got your foot in the door and you can get
12 more later. And so you always have to
13 wrestle with that proposition when it comes
14 to legislation.

15 EX. DEP. COMMISSIONER GREEN: You
16 know, I know these are issues that you've
17 been focused on for some time and certainly
18 appreciate your concern.

19 ASSEMBLYMAN LENTOL: Thank you.

20 And I'm a little concerned about the
21 pretrial detention and reform proposal,
22 simply because I've read a lot about these
23 risk-assessment certificates or whatever we
24 call them. I remember when we went to the

1 Sentencing Commission together, we talked a
2 lot about risk assessments. And I saw
3 articles that said that these were racially
4 problematic, that they were discriminatory,
5 and I wondered if you could comment on that.

6 EX. DEP. COMMISSIONER GREEN: I guess
7 two things -- well, three. One, I think it's
8 a very valid concern.

9 Secondly, I think if you are going to
10 use any risk-assessment instrument, it would
11 need to be validated, and part of that
12 validation would have to be taking that
13 instrument and running it against a
14 historical segment of cases from the DCJS
15 criminal history database and the OCA
16 information with regard to bail, to look at
17 what impact that instrument would have had in
18 those cases and also to look at racial
19 disparity issues.

20 And the last thing I'll say is, you
21 know, while I'm aware of some of the studies
22 with other instruments that you referred to,
23 I've also read literature from scientists who
24 have studied this issue who will tell you

1 that the greatest racial disparity comes from
2 unbridled discretion. And that when you have
3 unbridled discretion in decisionmakers, you
4 get your greatest racial disparity.

5 So I think there is a very valid
6 argument from the science that if you have an
7 objective, validated risk-assessment
8 instrument that is validated for racial
9 disparity issues, you will reduce racial
10 disparity.

11 ASSEMBLYMAN LENTOL: Okay. Now, some
12 of my colleagues in Brooklyn who received
13 SNUG funding last year were put into an RFP
14 process, the way I understand it, or there
15 was an RFP process regarding SNUG funding?

16 EX. DEP. COMMISSIONER GREEN: No,
17 we -- last year there was a -- and the exact
18 amount escapes me right now, but I think it
19 was roughly a million dollars added --
20 actually, there was \$600,000 that went to
21 Brooklyn, there was \$300,000 that went to
22 Manhattan, \$300,000 that went to Queens, and
23 \$150,000 that went to Staten Island.

24 That money was added by the

1 Legislature last year that went to New York
2 City. And we did not do an RFP, we gave that
3 money to the New York City Department of
4 Health. And the reason is the New York City
5 Department of Health is already running
6 street outreach programs in those boroughs,
7 and we did not feel it was appropriate to
8 have competing street outreach programs.

9 So the Bronx, there's \$600,000 that
10 goes to Jacobi, and that was a program that
11 was DCJS-supported. But then there was this
12 additional pot of money that went to the
13 boroughs, and that was not by RFP. We gave
14 the money to the New York City Department of
15 Health for them to use to augment their
16 existing programs, because we didn't want to
17 have competing programs.

18 ASSEMBLYMAN LENTOL: So if I
19 understand you correctly -- well, let me not
20 try to understand you correctly. Are we in
21 Brooklyn going to get SNUG money this year?

22 EX. DEP. COMMISSIONER GREEN: From
23 last year's budget, there was \$600,000 for
24 Brooklyn. And it's my understanding that

1 right now we're in the process of finalizing
2 the contract with the New York City
3 Department of Health for that money to go to
4 them.

5 ASSEMBLYMAN LENTOL: Okay. How much
6 time do I have?

7 Lastly, you know, we in the Assembly
8 have a long history of supporting
9 Alternatives to incarceration, and they've
10 been really critical for the state's success
11 in reducing crime, reducing the prison
12 population, and saving taxpayers many
13 millions of dollars. Unfortunately, the DCJS
14 budget includes across-the-board cuts. And
15 how will you ensure that these programs can
16 continue to operate and provide the vital
17 services that criminal justice systems depend
18 on to reduce recidivism and improve reentry
19 outcomes?

20 EX. DEP. COMMISSIONER GREEN: Again, I
21 appreciate the question. The budget does
22 include across-the-board cuts to many of our
23 local assistance programs of about
24 5.5 percent, and the ATI -- many of the ATI

1 funding streams fall into that.

2 I'm very proud of the work together
3 that we've done in this area. You know,
4 we've increased the funding year after year
5 for these programs. I think we're at about
6 \$25 million now. The Pew Foundation just
7 recently put out a report recognizing the
8 fact that New York is the only state in the
9 country where more than half of our criminal
10 justice ATI funds go to support
11 evidence-based programs that are proven to be
12 effective in getting results for the
13 population.

14 So I think we do great work here. I
15 think that the funding has increased
16 tremendously over the past five or six years.
17 Not only has it increased, but with your help
18 we've established a dedicated consistent
19 funding stream which never existed before.
20 In the past, these programs were founded, you
21 know, at one point through ARRA funding and
22 through other streams that weren't dedicated
23 or established funds.

24 So I think financially we're in a much

1 better position than we were before. You
2 know, certainly the cut is not ideal. But in
3 this budget climate, I think it was a
4 relatively small cut. And we will look at
5 the programs, we'll look at the data, and
6 we'll try to administer those cuts in a way
7 that minimizes the harm that they would do.

8 ASSEMBLYMAN LENTOL: Thank you.

9 My office has recently received a lot
10 of complaints from constituents throughout
11 the state about how long it takes for them to
12 get a copy of their own criminal histories
13 from your division. Many individuals who
14 have had prior arrests or convictions will
15 request their own criminal record to ensure
16 that it is accurate, and they will often make
17 requests before applying for employment.
18 However, we have heard that it takes almost
19 three months or more for these requests to be
20 fulfilled. Is it true that it takes that
21 long? And if so, how can it be remedied?

22 EX. DEP. COMMISSIONER GREEN: I don't
23 believe it does. And I can tell we
24 recently -- the largest unit in my office was

1 the unit that dealt with fingerprints and
2 criminal histories. We recently split that
3 unit in half and split the recordkeeping
4 function out. We're very focused on the
5 accuracy of our records. I think we do a
6 better job than anyone else in the country,
7 but we're very focused on continuing to
8 improve it.

9 What I'd ask you to do is if you have
10 complaints like that, please send them
11 directly to me and I will make sure we
12 address them, because it shouldn't take that
13 much time to get a record.

14 ASSEMBLYMAN LENTOL: Thank you. My
15 time is up, so I'll call on Assemblywoman --
16 the Senate goes, I'm sorry.

17 CHAIRWOMAN YOUNG: Right, Senate goes.

18 So thank you, Deputy Commissioner.
19 And I had a few follow-up questions.

20 The Executive proposes a \$21 million
21 reduction in various criminal justice
22 programs, and you started to address that
23 with Assemblyman Lentol. And I share his
24 concerns about these reductions. And I'm not

1 sure I heard the rationale behind making
2 these changes, because these are very
3 important programs that a lot of New Yorkers
4 need to be safe.

5 EX. DEP. COMMISSIONER GREEN: In terms
6 of the rationale, I'm not sure I'm the best
7 person to answer that from an overall
8 New York State budget perspective. You know,
9 I know there has been conversation about the
10 difficult budget year and about challenges on
11 the revenue side.

12 You know, from the criminal justice
13 perspective, the largest cuts are basically
14 5.5 percent cuts. Several programs were
15 spared those cuts. You know, so in a number
16 of our program areas in a very difficult
17 budget year, we were able to stay flat.
18 Other programs, like the SNUG program, we
19 actually had a \$1.5 million increase in
20 funding for street outreach work this year in
21 the budget. And then in some other areas, as
22 you indicated, there were relatively small
23 cuts, about 5.5 percent. I think the largest
24 cut was the cut with regard to the

1 Westchester policing funding.

2 CHAIRWOMAN YOUNG: I was just going to
3 ask you about that.

4 EX. DEP. COMMISSIONER GREEN: You
5 know, and that cut, if you look at the
6 history of that money, that money was put
7 into the budget in either the '94 or '95
8 budget, and it was the result of an agreement
9 to eliminate tolls on certain roads in
10 Westchester. And in exchange for eliminating
11 the tolls, it's my understanding there was a
12 commitment that there would be decreasing
13 funding from that year through the 2000-2001
14 budget year, and the money would end in the
15 2000-2001 budget year.

16 In spite of that, this
17 appropriation -- with the exception of one
18 year when Governor Paterson vetoed it, I
19 believe -- has been carried either by the
20 Executive or the Legislature year after year.
21 So we're now about 15 years past the date
22 that funding was supposed to sunset, and
23 we're still carrying it. There's no county
24 in the state where we provide this type of

1 money for that, and the justification for it
2 has long since passed.

3 So again, if you look at the pot of
4 money available for criminal justice work,
5 you know, and say should we use it to
6 continue to fund something that was supposed
7 to expire 15 years ago or should we use it to
8 give to probation departments and district
9 attorneys and ATI programs -- you know, I
10 think the decision that's made in this budget
11 to put it toward ATI programs and probation
12 departments and police departments and
13 prosecutors was the right decision.

14 CHAIRWOMAN YOUNG: Thank you. I'm
15 asking these questions on behalf of my
16 colleague Senator Terrence Murphy, who
17 represents Westchester County, and he's
18 chairing an Investigations hearing right now,
19 so he regrets that he could not be here.

20 But it's a \$2.3 million cut for this
21 county policing program. So who will assume
22 the costs of the patrol, and will it be the
23 State Police?

24 EX. DEP. COMMISSIONER GREEN: I

1 believe that the roads will be patrolled in
2 the same way every other road in Westchester
3 is patrolled. And yes, the State Police
4 patrol some of the roads, and I believe they
5 will continue. I think it would probably be
6 more appropriate to ask the superintendent
7 that, for a definitive answer. You know, and
8 I believe as they do with the other roads in
9 Westchester, the police in Westchester will
10 patrol as well.

11 CHAIRWOMAN YOUNG: Thank you.

12 One area of concern that we all care
13 about is the Rape Crisis Centers funding.
14 And the Executive maintains a million dollars
15 in the Department of Health and \$2.8 million
16 in the Office of Victim Services. However,
17 the division's funding for Rape Crisis
18 Centers is reduced from \$2.7 million to
19 \$2.5 million, which is a \$147,000 decrease
20 from this past year's level. So what is the
21 rationale behind that reduction?

22 EX. DEP. COMMISSIONER GREEN: When the
23 funding is given out, the three pots of money
24 are actually combined. And the money from

1 the Office of Victim Services this year will
2 more than make up for that funding. So at
3 the end of the day, we actually are going to
4 have -- even though there's a relatively
5 small cut, as you indicated, in the DCJS
6 portion of the money, when you look at the
7 pot that's made up from the three agencies,
8 when it actually comes time to administer
9 that money, we will have more money in that
10 fund to administrator than we had last year
11 because the OVS share is increasing.

12 CHAIRWOMAN YOUNG: Has the funding
13 allocation of \$2.7 million been awarded from
14 this past year? Has that money gone out?

15 EX. DEP. COMMISSIONER GREEN: I
16 believe it has, yes.

17 CHAIRWOMAN YOUNG: Okay, we'll check
18 on that.

19 The Executive Budget includes funding
20 for two new items, and one is \$300,000 for
21 the development and creation of a bail reform
22 risk assessment tool, and \$100,000 for
23 research and development to ensure a
24 citizen's right to a speedy trial, as we

1 discussed previously. However, the Executive
2 Budget does not include any language to go
3 along with that.

4 So can you provide us with the details
5 on the funding and how the agency plans to
6 administer it?

7 EX. DEP. COMMISSIONER GREEN: Yes.
8 The \$300,000 was part of the conversation I
9 was having with Senator Gallivan, and that is
10 specifically for the purpose of developing a
11 risk-assessment instrument.

12 The risk-assessment instruments look
13 at the risk of reoffending, among other
14 things; also the risk of returning to court,
15 the risk of reoffending with a violent
16 felony.

17 Before they can actually be used,
18 there obviously needs to be a change to our
19 statutory language to allow our judges to
20 consider that risk.

21 So the idea is that, you know, the
22 Executive, the Legislature, obviously
23 relevant stakeholders, need to weigh in. And
24 the Executive is going to introduce a bill

1 with language, but we want to get input from
2 relevant stakeholders before we come out with
3 that language.

4 The same in the speedy trial areas.
5 We discussed, you know, this isn't to point
6 the finger at anybody. There's a lot of
7 different people involved in the system. The
8 delay comes from a lot of different places.
9 And the \$100,000 appropriation is for DCJS
10 and the Office of Court Administration to
11 work together to bring all of the
12 stakeholders together and come up with both
13 legislative solutions and administrative
14 solutions.

15 So there will be legislation
16 forthcoming, but we want to work with all of
17 the relevant stakeholders to make sure that
18 that legislation reflects the true challenges
19 that exist and has, you know, real solutions.

20 CHAIRWOMAN YOUNG: We're firm
21 believers in getting stakeholder input. And
22 it makes sense to get this information from
23 people on the front lines who have to deal
24 with this every day. But the question is on

1 the timing. So we have the clock ticking, we
2 have a budget that is due on April 1st. And
3 I'm glad that you're going to convene
4 stakeholders, but what is the time schedule
5 for that? Because it would be helpful to
6 have that proposed legislation, what the
7 details are, prior to the budget being passed
8 so if there are any changes that need to be
9 made to the funding amount or to the
10 language, the Legislature would have the
11 opportunity to do so in the appropriate time
12 period.

13 EX. DEP. COMMISSIONER GREEN: I think
14 that's the reason they were not put in the
15 budget as Article VII bills. Rather, the
16 intention is to introduce them as program
17 bills later. Because I think given the short
18 time frame, I don't think it's reasonable to
19 say that, you know, in the next four weeks
20 that can be done.

21 So I think the idea is that by doing
22 it as a program bill, there will be more time
23 to do that, do it in a more thoughtful way.
24 And if need be, whether it's the bail piece

1 or whether it's the speedy trial piece,
2 effective dates could be put into those bills
3 so that if there are funding issues, they can
4 be addressed in subsequent budget years.

5 CHAIRWOMAN YOUNG: Thank you for that.

6 Would we see a program bill before the
7 end of session?

8 EX. DEP. COMMISSIONER GREEN: That's
9 our goal, yes.

10 CHAIRWOMAN YOUNG: It's your goal, but
11 do you think that you can tell us today that
12 we will see one?

13 EX. DEP. COMMISSIONER GREEN: I'm not
14 great at predicting the future, but certainly
15 our goal is that, and we're going to work
16 toward it.

17 You know, as you know, in any process
18 where you engage, as I talked about, the
19 spectrum of stakeholders that we have in the
20 criminal justice system, and trying to make
21 sure that you get input and build
22 consensus -- you know, we'll work at it and
23 we'll do it as quickly as possible in a way
24 that we think will produce the best result

1 possible. And we're certainly aiming to get
2 a program bill before the end of session.

3 CHAIRWOMAN YOUNG: Thank you very
4 much, Deputy Commissioner. And I know that
5 the Legislature in general feels that it's
6 helpful to have the information beforehand
7 rather than having these open-ended questions
8 or pools of money out there that are
9 undefined. So the more that you can do to
10 give us that information, the better.

11 EX. DEP. COMMISSIONER GREEN: Thank
12 you.

13 CHAIRWOMAN YOUNG: Thank you.

14 CHAIRMAN FARRELL: Next, Crystal
15 Peoples-Stokes.

16 ASSEMBLYWOMAN PEOPLES-STOKES: Thank
17 you so much, sir, for being here today.

18 Just a couple of questions. I
19 listened to Mr. Lentol mention that we are
20 one of the states in the country that has the
21 highest rates of incarcerating people who
22 weren't guilty. That's astounding for the
23 Empire State. So it's impressive that the
24 Governor has put in his proposed budget some

1 things to deal with that.

2 And so I'm wondering, how did you
3 decide on which crimes would be videoed and
4 which would not be videoed?

5 EX. DEP. COMMISSIONER GREEN: First of
6 all, just to correct that, I believe what he
7 said is that we've had more exonerations. I
8 don't know that it necessary follows that we
9 have incarcerated people who aren't guilty.
10 We may just be better at rooting those cases
11 out than others as well. So I think it's an
12 important distinction.

13 ASSEMBLYWOMAN PEOPLES-STOKES: Okay,
14 I'll take that.

15 EX. DEP. COMMISSIONER GREEN: But
16 secondly, the crimes in this bill that would
17 be covered, it would cover murders, it would
18 cover -- basically A felonies that are not
19 drug crimes. So things like murder and
20 kidnapping that are A felonies.

21 It would cover B violent felonies that
22 fall under Article 125 or 130. So things
23 like manslaughter in the first degree, rape
24 in the first degree.

1 And then there's two crimes under
2 Section 130.90, sex crimes. But again,
3 they're serious -- B violent felony or above.
4 I think those ones actually may be A
5 felonies.

6 So it's the type of crimes that
7 traditionally people who get convicted get
8 sentenced to long period of times in prison.
9 They're the type of cases where we've had the
10 exonerations come from. And I think that
11 group of cases came from a lot of discussion
12 and compromise that took place both I think
13 on the Justice Task Force, the Sentencing
14 Commission, and in discussions between the
15 Innocence Project, district attorneys, trying
16 to balance practical concerns that police
17 departments had about their ability to do it
18 with fairness concerns about the need to do
19 it.

20 ASSEMBLYWOMAN PEOPLES-STOKES: Okay, I
21 think I heard it mentioned a few times here,
22 and I am pretty sure it's in the Governor's
23 budget, that there are going to be some
24 across-the-board reductions in criminal

1 justice programs, with the exclusion of SNUG;
2 is that right?

3 EX. DEP. COMMISSIONER GREEN: SNUG
4 actually got a \$1.5 million increase in the
5 proposed budget.

6 ASSEMBLYWOMAN PEOPLES-STOKES: Okay,
7 so SNUG added.

8 For those programs that are going to
9 be cut, is there any recommendations for what
10 could they be replaced with?

11 EX. DEP. COMMISSIONER GREEN: There's
12 no -- other than the Westchester policing
13 program, there's no funding stream that's cut
14 completely. Generally the cuts are about
15 5.5 percent. And you know, we will look at
16 the data, we'll look at the programs, and
17 we'll try and make the cuts in those areas in
18 a way that will have the smallest possible
19 impact. But there's no programs that would
20 be eliminated.

21 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
22 As it relates to SNUG, there is a SNUG
23 initiative in Buffalo. I have to say and,
24 you know, commend the administration because

1 it works very well. Their staff lines were
2 reclassified by the State Insurance Fund.
3 Are you familiar with that issue?

4 EX. DEP. COMMISSIONER GREEN: Yes.
5 I'm very familiar with the program. I
6 actually visited the program in July and
7 spent time with all the outreach workers.
8 And you know, they do phenomenal work. I'm
9 aware of the issue that you had. I forwarded
10 it to the deputy secretary's office so they
11 could make the Governor's office aware of it.

12 ASSEMBLYWOMAN PEOPLES-STOKES: So
13 perhaps, then, you were able to help them
14 figure out how to get reclassified again back
15 to their original classification. Because as
16 you know, the new classification is literally
17 costing them \$45,000, which they don't have
18 resources to provide for that. They have
19 resources to provide the services to the
20 community. So --

21 EX. DEP. COMMISSIONER GREEN:
22 Unfortunately, the insurance questions are
23 far outside my area of expertise. I think
24 I'm fairly good with criminal justice, but

1 when to comes to insurance -- you know,
2 obviously that classification issue that
3 they're going through is something that is
4 outside my area of control. So I did forward
5 it to the deputy secretary's office, you
6 know, and I know they're looking into it.

7 ASSEMBLYWOMAN PEOPLES-STOKES: Fair
8 enough. But could you tell me if the other
9 SNUG programs throughout the state have their
10 employees classified as detectives even
11 though they're mentors?

12 EX. DEP. COMMISSIONER GREEN: This is
13 the only program that I'm aware of that's had
14 that issue.

15 ASSEMBLYWOMAN PEOPLES-STOKES: Thank
16 you. I think that's it, sir. Thank you very
17 much.

18 EX. DEP. COMMISSIONER GREEN: Thank
19 you.

20 CHAIRWOMAN YOUNG: Thank you.
21 Senator Comrie.

22 SENATOR COMRIE: Thank you, Madam
23 Chair.

24 I wanted to follow up on the SNUG

1 program. Last year we got Queens back in the
2 budget for \$300,000 for SNUG, but I haven't
3 gotten any information from your office on
4 where that went to. I heard in your previous
5 testimony that it all went to the New York
6 City Department of Health for each borough,
7 but I haven't gotten any outreach from any
8 groups in Queens or how it was used.

9 I would like to get some details on
10 it. And I would also -- I have outreached to
11 your office about two of the original
12 programs that were in SNUG and had a
13 successful run in SNUG but they were now
14 deemed noncompliant. And I really wanted to
15 be able to sit with someone from your office
16 to try to figure that out. To my chagrin,
17 that hasn't happened. So I would hope that I
18 get a promise from you today that your office
19 can sit down with my office so that I can at
20 least find out why these groups can't get to
21 be compliant and, number two, where is this
22 money being spent in Queens now?

23 EX. DEP. COMMISSIONER GREEN: We'd be
24 happy to sit down with you. I'll make sure

1 someone arranges that.

2 In terms of the money, as I indicated,
3 the Department of Health is running a street
4 outreach program in Queens right now. We do
5 not want to be in a situation where we have
6 competing street outreach programs. When you
7 have a shooting and you've got two different
8 groups of street outreach workers, you know,
9 racing to respond and compete with each other
10 for those cases, I think it's a very
11 dangerous model and a very inefficient model.

12 So for that reason, where the
13 Department of Health had established
14 programs, we made the decision to give the
15 funding to the Department of Health for them
16 to use to support the existing street
17 outreach programs they have. And that's
18 what's happening in Queens. We're in the
19 process of negotiating a contract with them
20 now. But we'd be happy to meet with you on
21 it.

22 SENATOR COMRIE: With all due respect,
23 Commissioner, I don't have any visual of that
24 happening in Queens at all. I don't know

1 what programs they may and may not be
2 running. I appreciate the noncompete idea
3 that you have, but on the ground I don't see
4 any evidence of it. So I would really like
5 to know what programs are being done.

6 Also, you know, to work, try to get
7 programs that are locally based that have
8 some expertise and are actually in the --
9 that started the program, I think it's only
10 appropriate that we give them an opportunity
11 to find out what they could do better, so
12 that they could qualify to at least do
13 training for the programs for the new people
14 that are coming in from the Department of
15 Health, because there are no existing
16 programs in the community that I know that
17 they're working with.

18 So I would hope that that can get
19 resolved quickly so that at least I can
20 inform my community of what programs are
21 being utilized in Queens.

22 Secondly, also, the Governor announced
23 a \$10 million fund to do reentry services
24 throughout New York. But there's no county

1 reentry task force program in Queens. Could
2 you explain to me why there's not one in
3 Queens and there's one in every other borough
4 but not the Governor's home borough?

5 EX. DEP. COMMISSIONER GREEN:

6 Actually, there is a reentry task force in
7 Queens. With the money in last year's
8 budget, a -- there's 19 around the state,
9 there was 19 around the state. And with the
10 money in last year's budget that was added, a
11 20th task force was started in Queens. So
12 that's in the process of being stood up.

13 And again, you know, we'd be happy to
14 meet with you and give the information on the
15 task force as well.

16 SENATOR COMRIE: Okay. Because I
17 pulled some information on a list of
18 available task forces in Queens, and it's not
19 on the list, so --

20 EX. DEP. COMMISSIONER GREEN: It's the
21 newest one.

22 SENATOR COMRIE: Well, I'd like to
23 know where that is also and how I could link
24 up from them and how I can actually have some

1 people that want to be on the task force as
2 board members to participate as well.

3 Have those boards been put together
4 yet?

5 EX. DEP. COMMISSIONER GREEN: I don't
6 know exactly where they are in terms of
7 putting the board together, but I know
8 they've had, you know, at least preliminary
9 meetings with the task force. And as I said,
10 we can follow up and I'll get you information
11 on who's involved. I know the district
12 attorney's office is involved, I know there's
13 others involved. And we'll get you that
14 information.

15 SENATOR COMRIE: Okay. I have people
16 that would like to volunteer to serve in a
17 volunteer capacity to try to be helpful as
18 well.

19 As you may know, the precincts that
20 are in my district are some of the highest
21 gun violence precincts in the borough -- in
22 the city, actually. And I really want to
23 make sure that we can do everything, working
24 together, to make that happen.

1 And not knowing of any groups that are
2 working on SNUG, even when we allocated and
3 pushed to get that extra \$300,000 in the
4 budget, concerns me. So I would really like
5 to work with your office in a cooperative way
6 to make sure that that's taken care of and
7 those monies and resources are being spent in
8 a way that can be helpful.

9 EX. DEP. COMMISSIONER GREEN: We will
10 definitely reach out to you. Thank you.

11 SENATOR COMRIE: Thank you.

12 Thank you, Madam Chair.

13 CHAIRWOMAN YOUNG: Thank you.

14 CHAIRMAN FARRELL: Assemblyman Graf.

15 ASSEMBLYMAN GRAF: Hi, how are you?

16 EX. DEP. COMMISSIONER GREEN: Good.

17 How are you?

18 ASSEMBLYMAN GRAF: Good.

19 Couple of questions. When we're
20 looking at speedy trial, okay, what we had,
21 we had the administrative judge come before
22 us, and they're looking at hiring 200 new
23 employees, court officers and court
24 personnel. And what we're being told from

1 three years ago, they're down 1700. So
2 what's happening is the congestion in the
3 court, right, and the lack of court personnel
4 are making it where the court is actually
5 closing down because they can't get prisoners
6 to come up, right, or else they'll only have
7 one court officer in the courtroom and it's
8 unsafe, they have to close down. And if you
9 look in the back, the paperwork, it's so
10 piled up because they don't have the clerks
11 to prepare it.

12 So one of the biggest things with
13 30/30 that we run into with speedy trial is,
14 you know, court time, court congestion.
15 Right? And they don't have the employees in
16 order to speed this up.

17 So one of the things I'd ask is that
18 when you go back to the Governor, you say,
19 Look, we're at a point right now where we're
20 stepping over a dollar to pick up a dime.
21 Right? The process is getting so slowed down
22 right now, right, that it's actually costing
23 us more money than it would if we hired the
24 appropriate number of people.

1 So that's one thing, especially if you
2 want to deal with the issues of right to a
3 speedy trial, that has to be dealt with right
4 now. We've cut court staff to the bone. So,
5 I mean, that's one thing you have to look at.
6 And if you don't fix that, you're not going
7 to fix this. All right?

8 The other thing is you said we haven't
9 cut any programs. However, according to the
10 information that I have, right, there's
11 elimination of local criminal justice
12 programs. And one would be that we're
13 eliminating the crime control and prevention
14 programs by \$2.8 million. Then we have the
15 defendant screening services locally by
16 \$1 million that we used to fund. Domestic
17 violence programs locally, we're cutting
18 \$1.6 million. And payments to counties for
19 costs associated with legal assistance for
20 indigent parolees, we're cutting that by
21 \$600,000.

22 So we may not have cut, on the state
23 level, programs we're doing, but we're
24 cutting funding from local programs. Is that

1 true?

2 EX. DEP. COMMISSIONER GREEN: I'd have
3 to see the list you're referring to. It
4 sounds like you may be referring to items
5 that were legislative adds in previous years.

6 What I was referring to is programs
7 that were funded under the Executive Budget
8 from last year, DCJS-funded programs. The
9 only one of those that I'm aware of that's
10 being eliminated is the Westchester Special
11 Police funds. The rest of them -- you know,
12 SNUG increased, many of them were held
13 harmless, some of them had a roughly
14 5.5 percent decrease.

15 But I'm not aware of any of the
16 Executive-funded programs being cut out.

17 ASSEMBLYMAN GRAF: If you could check
18 on that. We could check with our Ways and
19 Means, they'll give you a list. Okay?

20 EX. DEP. COMMISSIONER GREEN: Okay, we
21 will.

22 ASSEMBLYMAN GRAF: And the last thing
23 is I keep hearing something about the
24 Governor with the bail. And whether this is

1 true or not, you can clarify it for me. I'm
2 being told that the Governor wants the
3 counties to put up pots of money so that they
4 can pay bail for certain people. Is that
5 true?

6 EX. DEP. COMMISSIONER GREEN: No, I
7 have not heard any proposal from the
8 Executive. I think I believe you're
9 referring to a concept similar to something
10 done in the Bronx with the Bronx defender,
11 where there's basically a community fund, as
12 I understand it, to post bail in some cases.

13 I have not heard of any conversation
14 about an Executive proposal along those
15 lines.

16 ASSEMBLYMAN GRAF: Okay. All right,
17 thank you very much.

18 EX. DEP. COMMISSIONER GREEN: Thank
19 you.

20 CHAIRWOMAN YOUNG: Thank you.
21 Senator Croci.

22 SENATOR CROCI: Thank you, Madam
23 Chair.

24 Thank you, Commissioner, for your

1 appearance here today.

2 I was struck by one of the phrases you
3 used in your testimony. It regarded a
4 different subject, certainly, but you said
5 unbridled discretion in decision-making,
6 which for many of us here certainly describes
7 this document, the Executive Budget.

8 But I'm looking at a specific section
9 of the budget in which the Governor seeks to
10 require that a 16- or 17-year-old who brings
11 a gun to school, in violation of the Gun-Free
12 Schools Act, his own act, would be
13 mandatorily referred to a juvenile
14 proceeding. Meaning parents, teachers, other
15 children, students in that school, would not
16 know that that individual ever brought a
17 weapon to school.

18 Can you tell me whether or not you
19 believe that this is the right message to
20 send? And whether or not 16- or 17-year-olds
21 who bring a weapon to school should be held
22 to a juvenile proceeding, which would then
23 prevent the public from knowing?

24 EX. DEP. COMMISSIONER GREEN: I don't

1 read that the same way you do. While that
2 certainly, as I read it, provides a reporting
3 mechanism, I don't read anything in that that
4 gives that person immunity from prosecution
5 or prevents them from being prosecuted.

6 If a 16- or 17-year-old, under current
7 law, possesses a gun, if it's a functional
8 operational gun, you know, at a minimum it
9 would be a misdemeanor. If it's a loaded
10 gun, it would be a felony. If it's on school
11 grounds, it may be an elevated crime.

12 You know, so whether it's under
13 existing law or whether it's under Raise the
14 Age, I don't see anything in there that
15 immunizes or insulates that person from
16 prosecution in adult court or, under the
17 Raise the Age proposal, in a special youth
18 part of adult court.

19 So yes, you know, there's a provision
20 that that person be referred to Family Court
21 that you've referred to, but I don't read
22 that as divesting the police or prosecutors
23 or the courts of any other jurisdiction that
24 they have by law.

1 SENATOR CROCI: Well, my reading of
2 the Article VII language in the LFA section
3 directs a superintendent of the school --
4 he's now required to refer students under the
5 age of 17 who violate the Gun-Free Schools
6 Act, for a juvenile delinquency proceeding.

7 Which not only denies that local
8 public school in New York or private school
9 in New York, but also in future years, if
10 that individual were to go off to college --
11 and we've seen enough gun violence at our
12 colleges, the college would have no way of
13 knowing because now this individual is not
14 required to put that on their college
15 application.

16 So this is what happens when budgets
17 are created in the dark of night in this town
18 and contradict their own stated policy goals.
19 I don't understand, if a superintendent is
20 directed to institute a juvenile proceeding
21 instead of a criminal proceeding with law
22 enforcement, how on earth the public is going
23 to know that there was someone in the school
24 who had a weapon and how that is consistent

1 with providing safe schools.

2 EX. DEP. COMMISSIONER GREEN: Yes,
3 there's a lot of assumptions in your
4 question, the first of which I don't agree
5 with.

6 There's nothing that prevents that
7 person from being prosecuted under existing
8 laws. Even if they're prosecuted under
9 existing laws, though, if they're a 16- or
10 17-year-old right now, there's youthful
11 offender provisions that may well prevent
12 that information from being disclosed anyhow.
13 So you're assuming that it would get out but
14 for that provision, which I also think is not
15 a good assumption.

16 So, you know, I'm not reading that
17 provision the same way you do. I don't see
18 that it divests the courts of the power that
19 they currently have to prosecute a 16- or
20 17-year-old. But even with those powers, the
21 assumption you're making that any results of
22 that prosecution would then be public and be
23 available to schools in the future, for
24 example, I don't think is supported by

1 current reality.

2 SENATOR CROCI: Well, I disagree with
3 your reading of it, certainly. But from a
4 superintendent's perspective or an educator's
5 perspective who is confronted with this
6 situation at 8 o'clock in the morning on a
7 school day, and then instead of calling 911,
8 which is what would be their normal response,
9 they now have to institute a juvenile
10 proceeding instead of calling law enforcement
11 to come and respond to it.

12 Juvenile proceedings, according to the
13 last witness -- two witnesses ago, Judge
14 Marks, would in most cases not be required to
15 be made public. And that individual, when
16 they reach the age of 18 and applied for
17 college, wouldn't then have to indicate it on
18 a college application.

19 So I don't know if --

20 EX. DEP. COMMISSIONER GREEN: Wouldn't
21 that be the same result you get as a 16- or
22 17-year-old now as a youthful offender?

23 SENATOR CROCI: -- there's some
24 alternate reality that I'm living in when I

1 read it.

2 I'm sorry, sir, I didn't hear you
3 because I was --

4 EX. DEP. COMMISSIONER GREEN: Wouldn't
5 that be the same result you get right now
6 with a 16- or 17-year-old who gets charged in
7 adult court, gets adjudicated a youthful
8 offender? Aren't you in the exact same spot?

9 SENATOR CROCI: Well, you're taking
10 the discretion out of the local
11 administrator, the person who knows the
12 families of the individuals who go to that
13 school, and you're directing them one way or
14 the other. And I thought what we wanted to
15 do in education is give our educators and the
16 people who take care of our kids every day
17 that option.

18 I just think that this is misguided
19 and, if nothing else, in flat contradiction
20 to the Governor's own stated goals. So I
21 just -- I guess you don't agree.

22 EX. DEP. COMMISSIONER GREEN: I don't.

23 SENATOR CROCI: Okay. Very good.

24 Thank you.

1 CHAIRWOMAN YOUNG: Thank you.

2 CHAIRMAN FARRELL: Assemblyman Weprin.

3 ASSEMBLYMAN WEPRIN: Thank you,
4 Mr. Chairman.

5 Commissioner Green, I'm a little
6 confused about part of your testimony. Under
7 the sentencing reform part, you talk about
8 determinate sentencing for nonviolent
9 offenses. But when determinate sentences
10 were created for violent felons, the result
11 ended up being that inmates stayed in prison,
12 on an average, two years longer. And upstate
13 judges tend to hand down longer sentences
14 than downstate judges.

15 I'm not clear what the intent is
16 behind proposing determinate sentencing for
17 nonviolent felons. That's the first part of
18 the question. And the second part is, is
19 there going to be any attempt to make
20 sentencing more uniform statewide to deal
21 with the upstate/downstate situation?

22 EX. DEP. COMMISSIONER GREEN: First of
23 all, you know, while you may be right for
24 some of the violent felonies, if you look at

1 sentencing practice and prison populations,
2 starting in 1995 we as a state made the
3 decision to start moving away from
4 indeterminate sentencing and toward
5 determinate. First it was the violent
6 felonies, then certain sex felonies.
7 Ultimately, the decision was made, you know,
8 in the 2000s to take drug crimes and move
9 those to determinate.

10 And at the same time, our prison
11 population has gone from about a peak of I
12 think 72,000, or over 72,000 in 1999 down to
13 about 52,000 today. So we've moved from
14 indeterminate to determinate in every other
15 area, and our prison population has declined,
16 you know, remarkably, I think. We have the
17 lowest imprisonment rate of any large state
18 in the country.

19 But if you look at why move this --
20 you know, basically there's two groups left
21 that have indeterminate sentences, your Class
22 A felonies -- your murders, your kidnapping
23 1st, and then these nonviolent felonies --
24 you know, burg 3rd is a large part of them,

1 forgery, grand larceny.

2 Why move those to determinate
3 sentencing? I think there's a number of
4 reasons why. I think the first is that if
5 you look at indeterminate sentencing and you
6 take your worst offenders, someone who gets 2
7 1/3 to 7 for a burg 3rd, and they commit
8 every infraction they can in prison and they
9 get held for the full term -- so this is, you
10 know, your worst offenders -- gets held to
11 seven years, get released at the end of seven
12 years with no supervision whatsoever -- so
13 the worst offender, who arguably needs
14 supervision more than anybody when they're
15 released is being dropped out the door under
16 this current scheme.

17 If you go to determinate sentencing,
18 everyone gets a determinate sentence and
19 everyone gets a term of post-release
20 supervision. So if you're that same
21 offender, you do your full determinate
22 sentence because you don't qualify for any
23 good time, you don't qualify for any merit
24 time -- you serve your sentence, you still

1 have that period of post-release supervision
2 that you have to have.

3 So from a public safety perspective,
4 this move would ensure that we have a period
5 of post-release supervision for everyone.

6 The second consideration deals with
7 merit time. Right now you have someone who
8 gets sentenced for a burg 3rd, they get 2 to
9 6 or, you know, 1 1/2 to 4 1/2, whatever they
10 get. They go in and they want to
11 rehabilitate themselves, and they enroll in a
12 merit time program, they complete that merit
13 time program, they're supposed to get credit
14 for that. What they get is an earlier
15 appearance in front of the Parole Board. And
16 when they get denied parole by the Parole
17 Board, they wind up getting no credit for
18 that merit time.

19 If you move to a determinate scheme,
20 that person who goes in, who wants to
21 rehabilitate himself, who completes a merit
22 time program, doesn't then have to go before
23 the Parole Board to see whether or not they
24 get credit for that; they automatically get

1 credit for it.

2 And I think another consideration has
3 to do with reentry. When you talk about
4 reentry planning, if I get 2 1/3 to 7 and
5 you're trying to work with your reentry task
6 force and you're trying to work with the
7 Department of Corrections and Community
8 Supervision staff and you're trying to work
9 with the family and the community -- do I
10 start that planning for the 2 1/3 date? Do I
11 start it for 5 years? Do I start it from 7?
12 Nobody knows.

13 With a determinate sentence, you have
14 a much firmer date where everyone knows this
15 is the date we're shooting for, we need to do
16 our reentry planning around this date, and we
17 can be much more successful.

18 And as a former prosecutor, I'd
19 suggest the last reason it makes sense is
20 trying to explain to victims -- and, frankly,
21 trying to explain to defendants who are
22 trying to decide whether or not to take
23 pleas -- what 8 1/3 to 25 means, as opposed
24 to what a 10-year sentence means. You know,

1 I had victims looking at me like I had three
2 heads by the time I got done explaining to
3 them, you know, what a 2 1/3 to 7 or a 5 to
4 15 meant and when someone might get out and
5 when they might not and what all the
6 different variables were.

7 So in terms of transparency and
8 ability to understand the system, I think the
9 move also makes sense.

10 ASSEMBLYMAN WEPRIN: Well, I
11 appreciate that. And I appreciate the credit
12 for merit time and other things. So I'm
13 willing to, you know, see how it works. But
14 if we could get some kind of follow-up if it
15 is enacted as to, you know, what the effect
16 is by changing from the indeterminate
17 sentences to the determinate sentences for
18 nonviolent felonies.

19 EX. DEP. COMMISSIONER GREEN: You
20 know, and I -- just as a kind of a high-level
21 comment, you know, we are very proud of the
22 fact that we're the safest large state in the
23 country, but we're also very proud of the
24 fact that we have the lowest imprisonment

1 rate of any large state. You know, and
2 everything that we do is focused on trying to
3 continue both of those trends, not just one
4 or the other, but both at the same time.

5 ASSEMBLYMAN WEPRIN: Okay. Thank you,
6 Commissioner.

7 Thank you, Mr. Chairman.

8 CHAIRMAN FARRELL: Thank you.
9 Senator?

10 CHAIRWOMAN YOUNG: Thank you.
11 Senator Bailey.

12 SENATOR BAILEY: Thank you, Madam
13 Chair.

14 Good afternoon, Deputy Commissioner
15 Green.

16 EX. DEP. COMMISSIONER GREEN: Good
17 afternoon.

18 SENATOR BAILEY: So a couple of
19 points.

20 I represent a district in the
21 North Bronx and the City of Mount Vernon, and
22 gun violence is an issue, to echo some of the
23 sentiments of my colleagues concerning SNUG.
24 And I'm happy to see that there is an

1 increase in that. But are there any
2 additional programs being considered for
3 SNUG, or is it just an increase to supplement
4 the programs that currently exist?

5 EX. DEP. COMMISSIONER GREEN: To
6 supplement the existing programs. And I'm
7 not sure with your district, but is the
8 Jacobi SNUG program in your district?

9 SENATOR BAILEY: Slightly outside the
10 confines. But it serves a lot of the same
11 constituency, the individuals in my district.

12 EX. DEP. COMMISSIONER GREEN: I think
13 that's certainly one of our flagship programs
14 in terms of the work they do and the results
15 they've gotten.

16 SENATOR BAILEY: Yes, with Jay
17 Gooding. A very good man.

18 Concerning the cuts to the Westchester
19 Police Department, also along the same lines,
20 in the City of Mount Vernon, we are having
21 some issues there. Can you tell me
22 specifically how the City of Mount Vernon
23 would be supplemented by the State Police or
24 other law enforcement organizations,

1 considering those cuts?

2 EX. DEP. COMMISSIONER GREEN: I would
3 have to look to make sure, but I don't
4 believe any of that funding was for the City
5 of Mount Vernon. It was for patrolling a
6 parkway, you know, one -- well, I think it
7 was two specific parkways in Westchester. I
8 don't believe any of that funding was funding
9 that was supposed to go for patrolling the
10 City of Mount Vernon.

11 SENATOR BAILEY: Okay. And my final
12 question, concerning video recording of
13 interrogations. And this is seemingly a
14 hot-button topic. But what would your
15 specific role be in the interrogation
16 process, the video interrogation process?

17 EX. DEP. COMMISSIONER GREEN: The bill
18 that's proposed would require law enforcement
19 to record, in certain crimes, the crimes that
20 I mentioned a short time ago, serious
21 offenses where generally long sentences are
22 put out. There are exceptions in there if,
23 you know, good faith, the equipment
24 malfunctions or something along those lines.

1 But generally speaking, it would be required.

2 What DCJS's role has been is twofold.
3 Working with the Municipal Police Training
4 Council, we've already had the council put
5 out model policies for law enforcement in
6 terms of how the videotaping should be
7 conducted. And secondly, funding. We've put
8 out about \$3.5 million in funding so far for
9 police departments and DA's offices across
10 the state.

11 We've actually given a grant to a
12 police department in every one of the
13 counties in the state, so there should be
14 recording equipment everywhere in the state
15 right now. And our intention would be to
16 continue to support law enforcement that way
17 and make sure they have the tools they need
18 so they can record interviews.

19 SENATOR BAILEY: Thank you. Nothing
20 further.

21 Thank you, Madam Chair.

22 CHAIRWOMAN YOUNG: Thank you, Senator.

23 CHAIRMAN FARRELL: Helene Weinstein,
24 Senator -- Assemblyman -- Assemblywoman.

1 ASSEMBLYWOMAN WEINSTEIN: Thank you.

2 I just want to follow up with a
3 question that I guess both Senator Young and
4 Assemblyman Graf asked about the reduction in
5 the local assistance monies. So I did hear
6 you say that most of those reductions
7 represent legislative adds that were added in
8 last year's budget, is that correct?

9 EX. DEP. COMMISSIONER GREEN: I think
10 there's two different issues.

11 One, the list that Assemblyman Graf
12 read me, I didn't recognize those as
13 Executive programs. So I'll follow up with
14 him and I'll get that list. My sense is they
15 might be what we refer to as legislative
16 adds.

17 But as to our programs, there are some
18 5.5 percent cuts. So for example, Aid to
19 Prosecution has a 5.5 percent cut. As
20 Assemblyman Lentol pointed out, some of the
21 ATI funding streams have a 5.5 percent cut.
22 So there is a relatively small cut to some of
23 our local assistance programs -- not
24 elimination, but a small cut.

1 ASSEMBLYWOMAN WEINSTEIN: Well, if
2 those programs were functioning well and
3 doing their job, and I think some of us would
4 say were at the higher levels underfunded,
5 won't those cuts have an impact on safety in
6 communities around our state?

7 EX. DEP. COMMISSIONER GREEN: With,
8 you know, the ATI programs, for example, I
9 certainly believe they are functioning well.
10 The Pew Foundation has done reports pointing
11 to us as a national example of how you should
12 administer the funding and support the
13 program. So, you know, I do think they're
14 very effective. I think the money is being
15 used very wisely.

16 You know, the best I can tell you is
17 that we will look at the available pot of
18 money, we'll look at the 5.5 percent
19 reduction and we'll try and make sure we
20 administer it in a way that minimizes any
21 potential harm.

22 ASSEMBLYWOMAN WEINSTEIN: Thank you.

23 CHAIRWOMAN YOUNG: Thank you.

24 Senator DeFrancisco.

1 SENATOR DeFRANCISCO: Yes, what role
2 if any did you play in the drafting of the
3 language concerning Raise the Age?

4 EX. DEP. COMMISSIONER GREEN: I was
5 not on the commission that developed the
6 original proposal. I was interviewed by
7 commission members, I did provide them input.
8 You know, and I've done the same thing since
9 then. You know, I've provided input to --
10 you know, so I haven't actually sat down and
11 drafted any of it. But when asked, I provide
12 input or feedback.

13 SENATOR DeFRANCISCO: Did this
14 commission continue to do business after the
15 first Raise the Age proposal was sent up last
16 year?

17 EX. DEP. COMMISSIONER GREEN: Not that
18 I'm aware of, no.

19 SENATOR DeFRANCISCO: All right, so
20 you're just talking about the initial
21 commission action. Do you know generally if
22 the bill that's being proposed this year is
23 the same as the one that was proposed to the
24 Legislature last year?

1 EX. DEP. COMMISSIONER GREEN: There
2 are some differences. You know, I think -- I
3 think in terms of the implementation dates,
4 obviously the implementation dates have been
5 moved back to 2019 and 2020.

6 There was feedback that was received
7 from a number of constituency groups, and
8 there were some changes made based on that
9 feedback. So, for example, specific crimes.
10 At one point aggravated criminal contempt was
11 covered; now a part of that is covered. If
12 it's the part that deals with serious
13 physical injury, then those cases would still
14 be handled in adult court.

15 I believe there were some changes to
16 the language around risk assessments,
17 allowing parents to be present with juveniles
18 when those risk assessments were done.

19 SENATOR DeFRANCISCO: Was there any --
20 thank you. It will probably take too long
21 to go --

22 EX. DEP. COMMISSIONER GREEN: There's
23 others too, yeah.

24 SENATOR DeFRANCISCO: No, I

1 understand. But I was unclear.

2 Are there changes in the procedure? A
3 kid is arrested. Where's Step 1, Step 2,
4 what happens with transfers of courts?
5 Procedurally, as far as it's administered, do
6 you know if there's any major changes?

7 EX. DEP. COMMISSIONER GREEN: I don't
8 know if there's major changes. I think the
9 general structure is that it would raise the
10 age, ultimately, so 16- and 17-year-olds,
11 with the exception of serious crimes, would
12 go to Family Court.

13 Now, with the serious crimes it
14 creates a youth part in adult court. So it's
15 adult court, but it's staffed by a specially
16 trained Superior Court judge in a special
17 youth part that would hear the serious cases
18 with 16- and 17-year-olds.

19 SENATOR DeFRANCISCO: Okay, let's -- a
20 16-year-old is arrested. This bill passes, a
21 16-year-old is arrested and he is accused of
22 beating up his girlfriend. Where is the
23 first stop -- a police officer comes, arrests
24 the individual. And it's a felony, a felony

1 assault. What does the police officer do at
2 that point?

3 EX. DEP. COMMISSIONER GREEN: Again,
4 it depends on the specific charge. But if
5 the charge is a violent felony assault in the
6 second degree, that person would then be
7 treated as a juvenile offender, under this
8 bill, and the case would be heard in adult
9 court, Superior Court, in a youth part.

10 The first step would be to be
11 arraigned in a court with a judge that had
12 been specially trained to handle those
13 arraignments.

14 SENATOR DeFRANCISCO: So in Family
15 Court.

16 EX. DEP. COMMISSIONER GREEN: No, not
17 Family Court.

18 SENATOR DeFRANCISCO: Since it's a
19 violent felony, it goes to criminal court.

20 EX. DEP. COMMISSIONER GREEN: Correct.

21 SENATOR DeFRANCISCO: Now, what
22 consideration does that criminal court judge
23 have as to whether it stays there?

24 EX. DEP. COMMISSIONER GREEN: There

1 are new removal provisions added. It's
2 Sections 722.20, subdivision 4. And
3 basically the initial removal rules are the
4 same as they are now.

5 But once a case has been indicted,
6 basically there's two ways that that case can
7 get removed, depending on the seriousness of
8 the case. One requires the consent of the
9 district attorney, the other has to be on
10 motion of the district attorney.

11 So right now, if you're a juvenile
12 offender, you're 14 or 15 and you commit one
13 of those crimes for which you can be charged
14 as a juvenile offender, unless it's a -- you
15 know, one of the most serious crimes. So
16 murder, rape in the first degree, those
17 crimes require the DA's consent for removal.
18 Other crimes do not right now for that 14-,
19 15-year-old.

20 So this bill actually puts in new
21 removal provisions in the section I cited to
22 you, and both of them either require the DA's
23 consent or a motion by the DA to remove.

24 SENATOR DeFRANCISCO: All right. Does

1 the judge -- okay. It requires DA consent,
2 obviously. Without the consent, they can't
3 be removed.

4 If it requires a DA's motion, it's
5 still up to the judge whether it gets removed
6 to juvenile court?

7 EX. DEP. COMMISSIONER GREEN: Yes, but
8 the DA has to make the motion. So if the DA
9 is opposed to removal, it's not going to get
10 removed.

11 SENATOR DeFRANCISCO: Okay, let me
12 take the example that Senator Croci gave. A
13 gun is found on someone, and it's loaded.
14 Okay? Is that considered a serious offense
15 under this bill, first of all?

16 EX. DEP. COMMISSIONER GREEN: It's a
17 violent felony offense. So yes, it would be
18 -- if the person is 16 or 17 years old, these
19 provisions have kicked in, that is a violent
20 felony offense and would subject that
21 person -- they'd be a juvenile offender,
22 they'd be handled in an adult court in one of
23 these youth parts with a specially trained
24 judge.

1 SENATOR DeFRANCISCO: So I'm a
2 principal, they find the gun in the kid's
3 hands, I'm required to file a juvenile
4 delinquency proceeding but the police can
5 arrest him and bring him to adult court?

6 EX. DEP. COMMISSIONER GREEN:
7 Depending on the circumstances. For example,
8 if it's a loaded, functional gun --

9 SENATOR DeFRANCISCO: Yeah.

10 EX. DEP. COMMISSIONER GREEN: -- my
11 reading of it is yes, it does not preclude
12 the police from doing that.

13 SENATOR DeFRANCISCO: So how does a
14 principal then bring a juvenile delinquency
15 proceeding if the police officer is bringing
16 them first to jail, then to adult court?

17 EX. DEP. COMMISSIONER GREEN: You
18 know, practically, I'm not familiar with the
19 juvenile proceedings. My experience was all
20 in Family Court. So I don't know if I can
21 give you a good answer to that.

22 SENATOR DeFRANCISCO: All right. So
23 it would be dilemma, somewhat of a dilemma,
24 for a principal to decide which way they're

1 going to go with this particular offense;
2 correct?

3 EX. DEP. COMMISSIONER GREEN: It may
4 be.

5 SENATOR DeFRANCISCO: All right. So
6 it should be cleared up, do you think?

7 EX. DEP. COMMISSIONER GREEN: I
8 certainly will take a look at -- as I said,
9 that section is a little bit out of my area.
10 I've spent a lot of time on the Raise the
11 Age. I know that. I'll take a look at this
12 and --

13 SENATOR DeFRANCISCO: Okay, one last
14 question. I want to stay as close to time as
15 I can.

16 The last question is with respect to
17 the youthful offender status, you had
18 mentioned you don't see it as -- it's a
19 different situation. Just consider this and
20 see where I'm wrong. If I'm a principal and
21 I bring the juvenile delinquency proceedings,
22 then something is going to have to happen
23 there to remove it to a adult court, I would
24 think, if that's where it starts, if it's a

1 serious enough offense.

2 The difference with the youthful
3 offender is first you go to criminal court,
4 and then you have to make an application to
5 become held a juvenile -- in other words, the
6 presumption is that you're going to be
7 treated as an adult. It's a benefit from
8 that point forward to get youthful offender
9 status.

10 On the other hand, if you're
11 automatically going to go to Family Court
12 with a juvenile delinquency, it's a little
13 different burden. Does that make sense?

14 EX. DEP. COMMISSIONER GREEN: It does.
15 But again, it depends on the facts of each
16 case. And for example, if that gun case is a
17 misdemeanor gun case, possession of a weapon
18 in the fourth degree, then -- and you have no
19 prior convictions, it's an automatic youthful
20 offender.

21 So, you know, I just think in some
22 instances your example would accurately
23 reflect what happens, in other instances it
24 wouldn't. And I think they're driven by the

1 facts of each case.

2 SENATOR DeFRANCISCO: Okay, thank
3 you.

4 CHAIRWOMAN YOUNG: Thank you, Senator.

5 CHAIRMAN FARRELL: Mr. Graf.

6 ASSEMBLYMAN GRAF: Getting back to the
7 Raise the Age part here, now what happens is
8 if a person gets arrested -- and there's
9 different dates. So at one time they just
10 increase it to 16, and then by 2020 they
11 increase it to 17. But the mechanism here is
12 if you have a youthful offender type of
13 incident, it goes to the youth part or the
14 youth court; correct?

15 EX. DEP. COMMISSIONER GREEN: Again, I
16 think this is where the terminology comes in.
17 Technically it's a juvenile offender, if
18 you're a juvenile offender, which means
19 you've committed a violent felony or one of
20 the other serious cases, then yes, it would
21 go to a youth part. But that's adult court.
22 It's not Family Court.

23 ASSEMBLYMAN GRAF: Now, have you read
24 the bill that the Governor has put forward?

1 EX. DEP. COMMISSIONER GREEN: I've
2 read most of the bill, yes.

3 ASSEMBLYMAN GRAF: Okay. And there's
4 a part there that those crimes, where it's a
5 serious crime and it goes -- it's called a
6 youth part in the bill -- the DA and the
7 judge can agree, even though it's a violent
8 felony -- and these are some horrific crimes,
9 when you look at it -- they can send it to
10 Family Court, correct?

11 EX. DEP. COMMISSIONER GREEN: In some
12 instances, with the consent of the DA. In
13 other instances, the DA has to affirmatively
14 move.

15 And then there's a list of criteria.
16 In some instances, with the most serious
17 cases, judges would be required to hold
18 hearings and actually make findings before
19 they can do it.

20 But yes, there is a mechanism, with
21 the consent or on motion of the DA, and with
22 the judge agreeing that the circumstances
23 exist that would justify sending it to
24 Family Court, that can be done.

1 And I think it's important to point
2 out, you know, that's no different -- if you
3 have someone right now who's charged with
4 rape in the first degree or murder in the
5 second degree and they're 15 years old, there
6 are provisions that allow those cases to be
7 removed to Family Court right now from adult
8 court when they're charged as a juvenile
9 offender. So it's not a new or a novel
10 concept.

11 So what this bill adds is the
12 requirement that anytime a 16- or 17-year-old
13 wants to have their case removed from adult
14 court to Family Court, you either need the
15 consent of the DA or it has to be on motion
16 of the DA.

17 ASSEMBLYMAN GRAF: Yeah, but in this
18 case we're actually talking about if a person
19 is one day short of their 18th birthday and
20 commits a crime.

21 But there's another section, when you
22 start reading into it, where they put in
23 there that upon motion of the defendant,
24 right, and they don't mention consent of the

1 DA. So that can be interpreted that upon
2 motion of the defendant, the court, on its
3 own initiative, can send this to Family
4 Court.

5 EX. DEP. COMMISSIONER GREEN: And I
6 just got done reading -- it's 722.20,
7 subdivision 4. And, you know, given my
8 reading of the bill and my reading of that
9 provision, I don't agree -- you know, as I
10 read it, for 16- and 17-year-olds, those
11 provisions, to me at least, make clear that
12 it would require either the consent of or
13 motion of the DA to remove.

14 You know, but if you read it
15 differently, I'm happy -- if you've got a
16 particular section you think contradicts
17 that, I'm happy to take a look at it.

18 ASSEMBLYMAN GRAF: Yeah, I have a
19 bunch of sections.

20 But the thing is we have to look at,
21 when we write a bill, the different ways it
22 can be interpreted. You'd agree with that?

23 EX. DEP. COMMISSIONER GREEN: And I
24 have read this and, you know, given my

1 reading of the bill, you know, my
2 understanding and my reading of it is that it
3 requires the DAs acquiescence in some form
4 before a 16- or 17-year-old can have their
5 case removed.

6 One exception would be if there's an
7 arrest, there's a preliminary hearing, and a
8 judge finds there's no evidence to support
9 the felony that got the case into court in
10 the first place. So, you know, that's a
11 different scenario.

12 But, you know, where the evidence
13 supports the charge, the case can't be
14 removed without the DA's acquiescence.

15 ASSEMBLYMAN GRAF: And some of the
16 things that we're talking about here is
17 tampering -- the things that wouldn't put it
18 into that category is tampering with a
19 witness, gang assault, there are various sex
20 crimes that are in there -- that what they're
21 going to do, they can move that right to
22 Family Court. I mean, there's a lot of
23 crimes in there that we haven't -- that are
24 serious that we haven't hit.

1 EX. DEP. COMMISSIONER GREEN: I
2 believe the crimes you just listed are crimes
3 that someone would be charged as a juvenile
4 offender for and go to the special youth
5 part, as opposed to Family Court.

6 ASSEMBLYMAN GRAF: Well, there's a
7 list of crimes. So when you go in there,
8 they give you a list, right, and -- you go
9 into the law that they direct you to, you go
10 through a list. And basically anything
11 that's not on that list, right, is separate
12 from that.

13 So, I mean, the interpretation is that
14 you're going to switch that to Family Court.
15 All right? And in some of the sex cases,
16 what happens is if you get adjudicated in a
17 Family Court, right -- so if it's a sex crime
18 but it gets adjudicated in a Family Court, as
19 opposed to a conviction, you wouldn't be
20 subject to giving a DNA sample, and you
21 wouldn't be subject to registering on a sex
22 offender registry list. Is that correct?

23 EX. DEP. COMMISSIONER GREEN: Yes. If
24 your case is adjudicated in Family Court,

1 those provisions don't kick in. If you're
2 adjudicated a juvenile offender in adult
3 court and you're not given youthful offender,
4 they do.

5 So I think what this bill has tried to
6 do is balance, you know, trying to get better
7 outcomes for 16- and 17-year-olds with
8 protecting society from young people who
9 commit horrendous crimes. And, you know, I
10 suppose we can argue about exactly where you
11 strike that balance, but I think the bill has
12 been very thoughtful about trying to figure
13 out, you know, what cases should go into each
14 category and create a framework that even
15 within those categories, where the judge and
16 the DA are in agreement that someone should
17 be treated differently, it gives a mechanism
18 for that to happen.

19 ASSEMBLYMAN GRAF: Right. I mean, how
20 I'm reading it is if I have a person that's
21 one day short of their 18th birthday, they
22 molest a child, it's possible for them to go
23 into Family Court and it's possible for them
24 to be adjudicated in Family Court. And if

1 they're adjudicated in Family Court one day
2 short of their 18th birthday, they don't have
3 to register on a sex offender registry list
4 and they don't have to supply DNA.

5 EX. DEP. COMMISSIONER GREEN: That's
6 if it's -- if it's a felony sex crime, then
7 that's only with the consent of the DA. And
8 I think you elect a DA, in every single
9 county in the state, to stand up for your
10 rights and to make decisions like that to
11 protect the community.

12 And this bill, you know, is premised
13 on idea that DAs do their jobs and do them
14 well and that they'll review these cases and
15 they won't consent to removal to Family Court
16 unless the facts and circumstances of the
17 case are appropriate for that.

18 ASSEMBLYMAN GRAF: Yeah, but
19 there's --

20 CHAIRMAN FARRELL: Thank you.

21 ASSEMBLYMAN GRAF: Okay. Thank you.

22 CHAIRWOMAN YOUNG: Thank you.

23 Senator Croci.

24 SENATOR CROCI: Commissioner, just to

1 follow up, because I want to make sure we're
2 clear on language and interpretation.

3 I'm looking at the Title VII language
4 change that was put into the LFA bill. And
5 as we get down to the subject, we're talking
6 about lines 20 to 34 that have the track
7 changes. And it states "Provided, however,
8 that commencing on January 1, 2019, a
9 superintendent shall refer the pupil under
10 the age of 17 who has been determined to have
11 brought a weapon or firearm to school in
12 violation of this subdivision, to be a
13 presentment agency for a juvenile delinquency
14 proceeding consistent with Article 3 of the
15 Family Court Act, except a student who
16 qualifies for juvenile offender status under
17 the subdivision 42, Section 1.20 of the
18 Criminal Procedure Law, and provided,
19 however, further that commencing on
20 January 1, 2020, a superintendent shall refer
21 the pupil under the age of 18 who has been
22 determined to have brought a weapon or
23 firearm to school, in violation of this
24 subdivision, to presentment agency for a

1 juvenile delinquency proceeding consistent
2 with Article 3 of the Family Court Act,
3 except a student who qualifies for juvenile
4 offender status under subdivision 42 of
5 Section 1.20 of the Criminal Procedure Law."

6 So the superintendent now has an
7 option taken away, based on this language.

8 EX. DEP. COMMISSIONER GREEN: Well,
9 first of all, if you're talking about a
10 student who brings a loaded gun to school,
11 the language you just read me that says
12 "except as provided in the juvenile offender
13 situation," indicates that that does not
14 apply.

15 So, you know, the loaded gun scenario
16 you referred to, the language you just read
17 me indicates that that provision has no
18 applicability there.

19 If you take the rest of the
20 situations -- you know, I hear what you're
21 saying. I hear the law. But the Criminal
22 Procedure Law also has provisions. So let's
23 say it's a gun, it's an unloaded functional
24 gun. You know, that directs the

1 superintendent to do something. But the
2 Criminal Procedure Law and Penal Law have not
3 changed. And the Penal Law still says that
4 possession of an unloaded gun that's
5 functional is an A misdemeanor.

6 So, you know, I don't see anywhere in
7 there that says -- you know, there's no
8 amendment to the Penal Law to say you can't
9 be charged if, you know, you are in a
10 scenario where the superintendent made an
11 election.

12 So, you know, the point I was trying
13 to make is, you know, while I hear what
14 you're saying about a direction of the
15 superintendent to make a referral, that
16 doesn't take away the power of the police or
17 anybody else to make a determination that
18 that case, if it qualifies, should be
19 prosecuted in adult court.

20 And secondly, it specifically says in
21 serious cases -- for example, where it's a
22 loaded gun -- that section doesn't apply.
23 And the juvenile offender rules apply, and
24 that person goes to court.

1 SENATOR CROCI: Right. I didn't bring
2 up the loaded gun scenario. That was Senator
3 DeFrancisco.

4 But why do it? Why in the first place
5 make the change and take away -- why is it
6 necessary to make the change?

7 EX. DEP. COMMISSIONER GREEN: And I
8 think, honestly, that's something that
9 has to be directed to folks in the education
10 group.

11 SENATOR CROCI: Okay, very good. I
12 thank you again.

13 EX. DEP. COMMISSIONER GREEN: Thank
14 you.

15 CHAIRWOMAN YOUNG: Senator Krueger.

16 SENATOR KRUEGER: Hi. It's been a
17 while since you first testified, but I just
18 wanted to go on record to say not everyone up
19 here actually is opposed to the Governor's
20 criminal justice reform package, and I'm one
21 of them.

22 I want to go back to the reform bill
23 pretrial detention proposal. So you talk
24 about 44 other states have a different system

1 that decreases the number of people ending up
2 staying in jail while awaiting trial.

3 EX. DEP. COMMISSIONER GREEN:

4 Actually, I think it's 46.

5 SENATOR KRUEGER: I'm sorry, 46?

6 Okay. Sorry. So there are only four states
7 that have our system.

8 EX. DEP. COMMISSIONER GREEN: And the
9 federal government as well.

10 SENATOR KRUEGER: Thank you. So what
11 are the lessons we should be learning from
12 the 46 states that do it the way the Governor
13 would like to do it?

14 EX. DEP. COMMISSIONER GREEN: I think,
15 for me, the biggest lesson is that if you use
16 effective risk-assessment instruments and you
17 do it properly -- you train people on what
18 the risk-assessment instruments can and can't
19 do, you have a good instrument that's
20 validated, you know, that it's set up in a
21 way that it gets to folks in time so that
22 they can use it in making their decisions --
23 I think we can make better bail decisions.
24 You know, and "we" collectively, not pointing

1 the finger at anybody.

2 But I think if we make better bail
3 decisions, the -- one of the early studies I
4 saw from Kentucky, with the work they did
5 with the Arnold Foundation, showed that they
6 actually held fewer people and reduced the
7 number of crimes that were committed by
8 people who had been released, through the use
9 of the risk-assessment instrument.

10 So I think the challenge for us is,
11 you know, how can we make the best possible
12 decisions, how can we make sure that we're
13 not holding people that we don't need to
14 hold? You know, if we have someone that will
15 come back to court and that is in all
16 likelihood not going to commit a crime, you
17 know, should we really be holding them for
18 any length of time, much less three years or
19 five years?

20 So to me, that's the challenge, is how
21 can we continue to get better at these
22 decisions. And I think, you know, allowing
23 judges to consider the risk of dangerousness,
24 providing risk-assessment instruments, and

1 then providing a structure -- and I think
2 another thing that we should learn from other
3 states is that outright release or we hold
4 you until your trial should not be the only
5 options.

6 There are a lot of things in between
7 those two that other states are using or
8 starting to use effectively. There are other
9 types of monitoring, you know, that can help
10 keep control of someone, help make sure
11 someone returns to court, short of locking
12 you up.

13 SENATOR KRUEGER: So we would reduce
14 the rate of recidivism from -- and I'm
15 assuming we would save a bunch of money in
16 jail costs pending trials; is that correct?

17 EX. DEP. COMMISSIONER GREEN: I guess,
18 for me, the primary consideration is public
19 safety. And so I look at, for example, the
20 preliminary results out of Kentucky and I say
21 you actually decreased the number of crimes
22 that were committed. You know, so for me,
23 that's point number one.

24 But then yes, point number two, if

1 you're incarcerating fewer people pretrial,
2 you're saving those costs. There's some
3 pretty good data showing that if you get
4 incarcerated pretrial, there's a better
5 chance you're going to wind up incarcerated
6 at the end of your case. So, you know, it's
7 certainly possible that there are cost
8 savings that would result long-term from
9 this.

10 SENATOR KRUEGER: And I believe I read
11 some research showing when you're
12 incarcerated pending a trial, even if you're
13 going to be found innocent or the case is
14 going to disappear, you have a pretty high
15 rate of risking losing your job and then
16 potentially actually not being able to pay
17 your rent and your other basic needs. Could
18 you confirm that my memory is correct and the
19 research shows that?

20 EX. DEP. COMMISSIONER GREEN: I think
21 common sense also tells you that. But yes,
22 there's -- yeah, there's some good research
23 looking at risk pools. And whether you're
24 talking about an ATI program or jail, when

1 you put a low-risk person into a pool with
2 high-risk people, generally the research
3 shows that you increase that low-risk
4 person's chances of recidivating.

5 So certainly the scenario you
6 described, if that person had a job, had
7 family connections and otherwise was a
8 low-risk person, and you put them into jail
9 and they lose their job and they develop
10 associations with high-risk folks, you know,
11 in all likelihood you've taken them from the
12 low-risk pool and moved them up.

13 SENATOR KRUEGER: And is there any
14 projection -- it's not a fair question,
15 because you say you have to do your own
16 development of a tool that would be used.
17 But is there a projection of what percentage
18 of people who now sit in jail pretrial could
19 potentially not be in jail?

20 EX. DEP. COMMISSIONER GREEN: We don't
21 have that now. We are working with OCA, and
22 OCA, because of issues with the way their
23 records are kept, has not been able to get us
24 good data that's in a form that we can use

1 for all of the courts that includes bail
2 information.

3 I anticipate that they are going to be
4 able to do that soon. And when they do, you
5 know, we certainly are going to look at that
6 and try and put our criminal history
7 information and their bail information
8 together and not only look at validation, but
9 look at projections.

10 So right now, no, we don't have any
11 good information.

12 SENATOR KRUEGER: And there were some
13 earlier questions relating to wouldn't this
14 be very complicated for dealing with the DAs,
15 the police, the courts. Can I take the leap
16 that if 46 other states can figure it out,
17 our police, DAs, and courts are smart enough
18 to figure out also?

19 EX. DEP. COMMISSIONER GREEN: I don't
20 want to speak for any of them, but I have
21 very good relationships, I think, with all of
22 those groups. And, you know, I've worked
23 with them on a number of issues and they've
24 come to agreement on sealing proposals,

1 they've come to agreement on videotaping and
2 on identification procedures and all kinds of
3 other issues.

4 So yes, I'm confident that we can get
5 people behind a common-sense proposal to keep
6 moving us forward here.

7 SENATOR KRUEGER: Thank you very much.
8 Thank you.

9 CHAIRWOMAN YOUNG: Anyone else?

10 CHAIRMAN FARRELL: We've been joined
11 by Assemblywoman Walker and Assemblywoman
12 Fahy. Thank you.

13 CHAIRWOMAN YOUNG: Thank you, Deputy
14 Commissioner, for your testimony today. We
15 really appreciate it.

16 EX. DEP. COMMISSIONER GREEN: Thank
17 you. And I appreciate the support we get
18 from everyone.

19 CHAIRWOMAN YOUNG: Next up is Acting
20 Commissioner Anthony J. Annucci, New York
21 State Department of Corrections and Community
22 Supervision.

23 Okay, thank you, if we could have some
24 order, please.

1 Welcome, Commissioner Annucci. We
2 appreciate your participation today, and we
3 look forward to your testimony.

4 ACTING COMMISSIONER ANNUCCI: Thank
5 you and good morning, Chairwoman Young,
6 Chairman Farrell, and other distinguished
7 chairs and members of the Legislature. I am
8 Anthony J. Annucci, acting commissioner for
9 the Department of Corrections and Community
10 Supervision. It is my honor to discuss some
11 of the highlights of Governor Cuomo's
12 Executive Budget plan.

13 Last year, under the Governor's
14 executive Order, Hudson was converted into a
15 hybrid youth facility where 16- and
16 17-year-olds are completely separated from
17 adult inmates. While this is a progressive
18 interim measure, I urge the Legislature this
19 year to enact the Governor's Raise the Age
20 proposal.

21 The Governor has also advanced the
22 Permanent Sentencing Commission's proposal
23 that New York switch to determinate sentences
24 for those Class B through E felonies that are

1 still subject to indeterminate sentences, and
2 also authorize alternative sentences for
3 low-level predicate offenders. This will
4 save taxpayer dollars, eliminate confusion,
5 and ensure greater transparency, while also
6 reducing the burden on the Board of Parole.

7 To ensure that safety and security
8 remain a top priority, we continue our
9 partnership with the unions and have
10 implemented a number of technological
11 enhancements, training improvements, and
12 policy changes. These initiatives include
13 the completion of a full facility camera
14 project at Attica, with plans for similar
15 projects at Clinton and Great Meadow, among
16 others. Additionally, we have completed the
17 deployment of thermal imaging and heartbeat
18 detection devices, and new state-of-the-art
19 portable metal detectors.

20 Also, for the first time, we are
21 piloting the use of body cameras at Clinton,
22 with an expansion to Bedford Hills this year.
23 In addition, we significantly revised our Use
24 of Force policy and included deescalation

1 techniques in our annual training to better
2 enable staff to defuse situations without
3 resorting to physical force.

4 Lastly, we have worked with our
5 federal partners and have developed and
6 deployed a comprehensive security audit
7 instrument that will be used in all
8 facilities.

9 Our partnerships and the initiatives I
10 have briefly outlined have shown positive
11 results. While one assault on staff is too
12 many, the total number of assaults on staff
13 has been reduced by more than 15 percent,
14 reversing the alarming upward trend. With
15 the new use-of-force training, we have seen a
16 10 percent reduction in both the number of
17 use of force incidents, and the number of
18 staff involved in uses of force, an
19 11 percent reduction in staff injured during
20 a use of force incident, and a 45 percent
21 reduction in baton use in the pilot
22 pepper-spray facilities.

23 In terms of the inmate disciplinary
24 system, which is vital to the safety of all

1 staff, inmates and visitors, we continue to
2 evolve by implementing the terms of the
3 historic SHU settlement agreement that will
4 further dramatically reform our approach to
5 segregated confinement and provide greater
6 uniformity to prison discipline. These
7 reforms have already resulted in dramatic
8 changes in the population being housed in
9 SHU, including a 12 percent decrease in the
10 number of African-American inmates in SHU, a
11 7 percent decrease in the proportion of
12 African-American inmates in SHU, an almost
13 30 percent decrease in the average length of
14 sanction in a SHU cell, and a 16 percent
15 decrease in the median length of sanctions.

16 In April, we will institute the second
17 round of changes to the disciplinary
18 guidelines, with ranges being adjusted
19 downward. And we have begun a statewide
20 training initiative for all staff on the
21 terms of the settlement agreement,
22 deescalation techniques, and implicit bias in
23 decision-making.

24 Although we thus far have seen

1 encouraging results, as evidenced by these
2 statistics, we can and will do better as we
3 continue to evolve by implementing this
4 historic agreement, leading to a more fair
5 and humane system while preserving safety and
6 security.

7 With respect to programming, the
8 budget will expand the Limited Credit Time
9 Allowance statute to include two additional
10 significant program accomplishments, which
11 are participation in the DMV Program and the
12 Culinary Arts Program. The LCTA benefit is a
13 six-month reduction that is also based on
14 good behavior, thus saving taxpayer dollars
15 while making prisons safer.

16 To achieve savings, weekday visiting
17 will be reduced in our maximum facilities,
18 similar to our protocols for medium
19 facilities. By the same token, processing
20 time for visitors will be greatly facilitated
21 by our planned switch to a secure vendor
22 package program.

23 With respect to community supervision,
24 the Swift and Certain literature for

1 effective parole supervision focuses on the
2 need for positive rewards for good behavior,
3 as well as the need for certain limited
4 sanctions for negative behavior. Thus far,
5 we have seen encouraging results in our pilot
6 RESET initiative, but our ability to provide
7 meaningful rewards is somewhat limited by
8 certain anachronistic laws.

9 This budget would allow LCTA-eligible
10 inmates who are released and serving
11 post-release supervision to advance their
12 maximum expiration date by three months, for
13 every six months of unrevoked supervision
14 they serve. This is consistent with overall
15 public safety, since the research indicates
16 that if you have not been violated in the
17 first two or three years, you will most
18 likely succeed. Parole officers can thus
19 concentrate on higher-risk parolees.

20 In conclusion, many challenges and
21 expectations lie ahead for the department as
22 it continues to develop transformative
23 programs and initiatives, while relying upon
24 well-trained and dedicated staff who perform

1 their responsibilities in an exemplary
2 manner, often under dangerous and difficult
3 circumstances. The Governor's proposed
4 budget takes bold new steps to place DOCCS in
5 an advantageous position to fulfill these
6 expectations.

7 Thank you, and I will be happy to
8 answer any questions.

9 CHAIRWOMAN YOUNG: Thank you very
10 much, Commissioner, for that testimony.

11 I did have some questions. We started
12 out by talking about Hudson and the
13 Governor's executive order. And as you know,
14 in the 2017 enacted budget we included
15 \$30 million in capital funding to comply with
16 the Executive Order 150, requiring youths
17 within the state's prison system to be housed
18 in a separate facility. And that's what the
19 Hudson facility actually is.

20 And the transformation of the Hudson
21 Correctional Facility, located in Columbia
22 County, was proposed to occur in three
23 phases: The first phase, \$8 million in the
24 current fiscal year -- and I assume that work

1 has been done?

2 ACTING COMMISSIONER ANNUCCI: Yes.

3 CHAIRWOMAN YOUNG: -- the second
4 phase, \$22 million by August 31, 2016, to
5 allow the facility to open, with November
6 2016 construction of juvenile separation.
7 Has that been done?

8 ACTING COMMISSIONER ANNUCCI: That has
9 been done.

10 CHAIRWOMAN YOUNG: So the third phase
11 is unknown, with cameras, equipment,
12 et cetera.

13 How many youth have been housed since
14 the facility became operational?

15 ACTING COMMISSIONER ANNUCCI: I can
16 tell you what the population there is today.
17 I believe it's 62 inmates. We also have nine
18 at Coxsackie, which is the other facility
19 that handles maximum-security inmates.

20 I visited the facility about a
21 week and a half ago. I spent some time
22 talking to the young offenders that are
23 there, listening to the issues. I looked at
24 the separation unit, I looked at the

1 programming. It's working well, but it is
2 only an interim solution.

3 CHAIRWOMAN YOUNG: What crimes were
4 committed by the people who are housed there?

5 ACTING COMMISSIONER ANNUCCI: They
6 range. I didn't go through the list of every
7 single crime. I know one of the girls that
8 was there -- and we only had two -- she was
9 very young, 17. I know she's eligible for
10 work release, and I know we want to place her
11 there. Like so many other youth, there's a
12 dysfunctional family situation, because I was
13 encouraging her, I wanted her to do
14 education, maybe pass her high school
15 equivalency. And when I said to her, "We
16 want you to be safe, we want to return you to
17 your family, I'm sure they're waiting for
18 you," she said, "My family is not waiting for
19 me." And what I found out later, it was a
20 horrific home situation for her.

21 So placing these individuals when
22 they're released from Hudson -- we had
23 another 17-year-old individual --

24 CHAIRWOMAN YOUNG: But these are

1 people who have been convicted of violent
2 crimes, correct?

3 ACTING COMMISSIONER ANNUCCI: No,
4 they're 16- or 17-year-olds. They could have
5 been convicted of drug offenses, they could
6 have been convicted of any offense that a
7 judge said state imprisonment is the
8 jurisdiction.

9 CHAIRWOMAN YOUNG: So none of them
10 have violent criminal pasts?

11 ACTING COMMISSIONER ANNUCCI: No, I
12 didn't say that. I said I didn't look
13 through every offense. I'm sure they range.
14 But in this particular case, the girl I know
15 was convicted of a nonviolent offense.

16 CHAIRWOMAN YOUNG: Okay. So you're
17 saying that it's a mix of those.

18 ACTING COMMISSIONER ANNUCCI: It's a
19 mix, yes.

20 CHAIRWOMAN YOUNG: Thank you.
21 How many reside in the facility, on
22 average?

23 ACTING COMMISSIONER ANNUCCI: It
24 varies. It goes up and down. Because once

1 they hit their 18th birthday, we have to
2 immediately move them, we can't commingle.

3 So right now it's 62. Last week it
4 was 58. It hovers around that number. And
5 of course the ones that require
6 maximum-security placement are at Cocksackie.
7 That varies too as well.

8 CHAIRWOMAN YOUNG: Okay, thank you.

9 Could you break down for us what
10 services are provided by DOCCS, which are
11 contracted by the Office of Children and
12 Family Services, and which ones are provided
13 by the Office of Mental Health?

14 ACTING COMMISSIONER ANNUCCI: Well, to
15 make it simple, all of the mental health
16 services that are required for this
17 population are delivered by mental health
18 staff, just the same way that they deliver
19 mental health services to any of our caseload
20 inmates in any of our other 53 correctional
21 facilities.

22 OCFS has been very helpful to us in
23 structuring the programming for this youth
24 population -- their special needs, keeping

1 them busy. A heavy emphasis on education,
2 naturally; many of them don't have their high
3 school equivalency. Keeping them busy and
4 keeping them occupied and ultimately trying
5 to effectuate the best placement.

6 It was startling to me, in a few of
7 those instances, how many of them have broken
8 families. And so we have a psychologist, we
9 have a social worker. They are going to be
10 working on restoring the families, when they
11 can, if they can be.

12 One 17-year-old is about to be
13 released; he got paroled. I'm hoping today
14 we worked it out. What happened with him is
15 his mother lives in New Jersey, and to
16 transfer him to New Jersey to be supervised
17 there, they have to be 18. They won't take
18 them under interstate parole. So I had to
19 find a place, a residence that would take him
20 for the next two months. He turns 18 in
21 March. And then we had to have the mother
22 come there and sign him in and -- I won't go
23 into detail other than to say he has serious
24 health issues related, so therefore we had to

1 have a special placement for him.

2 But I am hopeful that ultimately we
3 will also put there perhaps a televisiting
4 connection so that we can better connect to
5 the families wherever they may be throughout
6 the state.

7 CHAIRWOMAN YOUNG: Thank you.

8 So what would happen to Hudson if the
9 Raise the Age proposal under the Governor's
10 budget went through? Because it's my
11 understanding that all of a sudden the
12 jurisdiction would go back to the youth
13 facilities and OCFS instead of DOCCS.

14 ACTING COMMISSIONER ANNUCCI: Well,
15 first of all, as you know, the bill envisions
16 a two-step process. The law doesn't
17 immediately go into effect to make everybody
18 the age of responsibility at 18. So you
19 would have first 16-year-olds treated as
20 minors, and then ultimately 17-year-olds. So
21 that would take a two-year process starting
22 in 2019. So there would be an overlap
23 period, number one.

24 And number two, when it's ended, we

1 would take it back as a general confinement
2 facility, and we would certainly assess all
3 of the efforts we have invested into making
4 the facility youth oriented. And certainly
5 we have enough 18-to-21-year-olds,
6 18-to-24-year-olds that could go there and we
7 wouldn't be forced, as we are now, when
8 somebody turns 18, to move them to a general
9 confinement facility.

10 CHAIRWOMAN YOUNG: So Hudson would
11 continue to operate under DOCCS
12 supervision --

13 ACTING COMMISSIONER ANNUCCI: Yes.

14 CHAIRWOMAN YOUNG: -- for the most
15 violent offenders?

16 ACTING COMMISSIONER ANNUCCI: I'm
17 sorry?

18 CHAIRWOMAN YOUNG: For violent
19 offenders?

20 ACTING COMMISSIONER ANNUCCI: For any
21 general confinement offender.

22 We have -- 64 percent of our
23 population are violent felony offenders,
24 11,000 or so are drug offenders. It's a mix

1 of a population that we have.

2 CHAIRWOMAN YOUNG: Thank you.

3 So right now we have two secure
4 facilities for youth in the state. One is
5 Brookwood, and one is Goshen. And you may be
6 familiar, back in 2010 OCFS was under the
7 supervision of Gladys Carrion, who is under
8 fire and actually is being let go from
9 New York City because of mismanagement on the
10 city level, especially as it is related to
11 the Administration for Children's Services
12 and the recent deaths and mismanagement that
13 have occurred.

14 But under her supervision, these
15 secure facilities for youth had sex parties
16 as a rewards system -- there was actually a
17 prostitute that was brought in, an underage
18 girl. And after that, the inspector general
19 had a review done and DOCCS was involved in
20 that, and DOCCS was very, very critical of
21 how these youth facilities were being run.

22 We just had another incident last week
23 of violence. There have been riots at those
24 facilities and so on. And I guess my concern

1 is if there's more of a focus on having OCFS
2 run certain programs under the Raise the Age
3 proposal, that we could have a repeat -- and
4 frankly, you know, the problem hasn't been
5 fixed. The Office of Children and Family
6 Services still has a very high level of
7 violence against staff. There's a lot of
8 violence of youth on youth, youth on staff.
9 And so I don't see where a lot of those
10 issues have been resolved at this point.

11 And my question is, what do you
12 envision would happen, and especially with
13 OCFS running these programs versus DOCCS?
14 There's an issue that needs to be resolved.

15 ACTING COMMISSIONER ANNUCCI: Well, I
16 don't think I'm in an ideal position to speak
17 to how OCFS runs its facilities. I --

18 CHAIRWOMAN YOUNG: However, DOCCS was
19 involved, did an assessment, said that they
20 were being run inappropriately. And I'm not
21 sure that everything has been fixed since
22 that time. And I think DOCCS would be very
23 capable in many cases, if there are youth
24 that are violent, that are acting out, that

1 it would be more appropriate for DOCCS to put
2 in place measures to make sure that there's
3 safety and security in the facilities.

4 ACTING COMMISSIONER ANNUCCI: Senator,
5 I believe you might be referring to the State
6 Commission of Correction that may have
7 rendered that report. DOCCS did not have any
8 involvement. We have no oversight in any
9 institutions that are run by OCFS.

10 And the issues that were going on -- I
11 remember them in the paper -- we would have
12 had nothing do with writing any kind of
13 reports or assessing what was going on there.

14 CHAIRWOMAN YOUNG: Were you here in
15 2010?

16 ACTING COMMISSIONER ANNUCCI: Yes, I
17 was here.

18 CHAIRWOMAN YOUNG: Okay. So there was
19 an assessment that was done in the youth
20 facilities?

21 ACTING COMMISSIONER ANNUCCI: I
22 believe it's the State Commission of
23 Correction, which is an oversight entity.

24 CHAIRWOMAN YOUNG: Okay, thank you.

1 As far as the parole officers go, what
2 is being done to ensure that they are
3 assigned appropriate caseloads?

4 ACTING COMMISSIONER ANNUCCI: I'm
5 sorry?

6 CHAIRWOMAN YOUNG: Parole officers.
7 You talked about parole officers in your
8 testimony, correct?

9 ACTING COMMISSIONER ANNUCCI: Yes.

10 CHAIRWOMAN YOUNG: What is being done
11 to make sure that they have appropriate-level
12 caseloads?

13 ACTING COMMISSIONER ANNUCCI: Well,
14 first of all, we rely on the COMPAS risk and
15 needs assessment to tell us what the
16 appropriate caseloads are for Levels 1
17 through 4 -- 25 to 1, 40 to 1, 80 to 1 and
18 160 to 1.

19 We also have, I believe, two parole
20 officer classes that are scheduled for this
21 year. And I believe since the merger -- and
22 I'll double-check on that -- we have had a
23 total of four parole classes. So we're
24 trying to always ensure that we have

1 sufficient resources supervising the
2 offenders.

3 I made it a priority to make sure that
4 they have all of the equipment. I have
5 placed orders for vests. We've replaced the
6 Glocks. We continue to invest in training.
7 We continue to try new initiatives.

8 A big proposal for the Governor is to
9 get rid of those low-level people that don't
10 require any further supervision. The
11 literature tells us that too much supervision
12 is actually counterproductive. And we would
13 have a reward system for those on PRS, for
14 every six months they serve without any
15 revocation of their supervision, they would
16 advance their release date by three months.

17 CHAIRWOMAN YOUNG: Thank you. I'm
18 going to come back, but I'll let the Assembly
19 ask some questions.

20 CHAIRMAN FARRELL: Assemblyman Weprin,
21 chair of the Correction Committee.

22 ASSEMBLYMAN WEPRIN: Thank you,
23 Mr. Chairman.

24 Good afternoon, Commissioner Annucci.

1 ACTING COMMISSIONER ANNUCCI: Good
2 afternoon.

3 ASSEMBLYMAN WEPRIN: I want to start
4 off by saying I appreciate you reaching out
5 to me as the new chair of Corrections my
6 first week or second week on the job. And I
7 look forward to working with you over the
8 next number of months and years, hopefully on
9 issues of concern to the State of New York.
10 So thank you for that.

11 I'm going to ask a couple of questions
12 on the Limited Credit Time Allowance. The
13 Executive Budget proposes adding two more
14 programs to the list of programs eligible for
15 LCTA, the Department of Motor Vehicles Call
16 Center Program and the Culinary Arts
17 Vocational Program.

18 Can you tell me how many inmates a
19 year participate in an LTCA-eligible program
20 and how many of them are actually granted
21 LCTA and, of those, how many are actually
22 released on LCTA?

23 ACTING COMMISSIONER ANNUCCI: I can't
24 tell you off the top of my head. I think I

1 can come back and get you more specific
2 numbers.

3 I can tell you that since the program
4 was enacted in 2009, I believe, that the
5 State of New York has saved \$14 million in
6 prison avoidance costs. And that's with
7 every successful candidate being released an
8 average of 5.3 or 5.1 months earlier by the
9 time everything was done.

10 So there were nine existing programs
11 that qualify. And this grew out of a
12 Sentencing Commission recommendation that I
13 was on with Assemblyman Lentol -- it was one
14 of the recommendations in their final
15 report -- that we looked at how many programs
16 there were for nonviolent inmates and
17 incentives to participate in programs and
18 potentially advance their release dates, but
19 there was nothing for this cohort, really.
20 And they're in for long periods of time.

21 So we felt if we structured something
22 that listed programs that were very
23 significant, exceptional, and coupled it with
24 significant hurdles for behavioral

1 achievement -- and they gave us the
2 discretion to decide what that is. And you
3 cannot have engaged in a disciplinary
4 infraction and received a recommended loss of
5 good time within the prior five years. Then
6 you would qualify.

7 And we started out with I think seven
8 or eight, and we added to it the Puppies
9 Behind Bars program, which is extremely
10 worthwhile. And these two are very
11 worthwhile. We have two call centers, one
12 that we operate jointly with the DMV at
13 Bedford Hills, one at Greene. Inmates go
14 through the training and they answer calls
15 from the general public. And they answer
16 questions that any member of the general
17 public will have about driver's license or
18 registration or -- that's basic questions.

19 In the culinary arts, we know the food
20 service industry is welcoming to released
21 offenders. So giving them the practical
22 skills -- first having them go through the
23 training to receive the serve-save
24 certificate, which is important, and learn

1 how to handle food safely and prepare it and
2 actually replicate almost a restaurant-type
3 experience -- take orders from staff, serve
4 the food and even charge for it. This is a
5 real life experience.

6 And so it's a win/win. It will save
7 taxpayer dollars and make prisons safer,
8 because there is no stronger incentive for an
9 inmate than potentially reducing his length
10 of stay in prison.

11 ASSEMBLYMAN WEPRIN: Okay. Have you
12 had female inmates in these two programs as
13 well?

14 ACTING COMMISSIONER ANNUCCI: Yes.
15 Females at Bedford Hills, yes.

16 ASSEMBLYMAN WEPRIN: And what's the
17 breakdown of female versus male?

18 ACTING COMMISSIONER ANNUCCI: I'm
19 going to have to get you that. I know when I
20 was there at Bedford, it looked like about
21 40-something women actually in the program.
22 But I'll have to get you a total over a
23 year's time, how many might that be.

24 ASSEMBLYMAN WEPRIN: Okay, thank you,

1 Commissioner.

2 DOCCS recently changed its policy to
3 limit LCTA for college unless all the credits
4 are earned within two calendar years. And
5 the problem with that I see is obviously, as
6 an incarcerated inmate it's very often hard,
7 especially for a young individual, to get all
8 the necessary credits for a degree within two
9 years, and that could be a problem. Was
10 there a reason by -- a particular reason for
11 that change? And is that flexible to be
12 changed?

13 ACTING COMMISSIONER ANNUCCI: I have
14 to double-check with my deputy commissioner
15 for program services.

16 I know that the general rule of thumb,
17 when we wrote the statute, was that we wanted
18 at least a two-year type of program
19 commitment, that it's something that's
20 demanding and requires you at least to
21 participate for two years. So I think that
22 was the thinking behind it, but I'll
23 double-check with him.

24 ASSEMBLYMAN WEPRIN: Yeah, because

1 generally you need 60 credits for an
2 associate degree and it's very hard for them,
3 you know, in the limited time as an inmate,
4 to get it within two years.

5 ACTING COMMISSIONER ANNUCCI: But the
6 LCTA specifies you have to participate for
7 two years. You don't have to actually get
8 the degree.

9 ASSEMBLYMAN WEPRIN: Okay, so you
10 don't have to get the degree within two
11 years.

12 ACTING COMMISSIONER ANNUCCI: No. I
13 don't believe so.

14 ASSEMBLYMAN WEPRIN: Okay. The
15 Executive Budget proposes to allow the DOCCS
16 commissioner, yourself, rather than the Board
17 of Parole, to set the conditions of release
18 for inmates who are released by operation of
19 law, including inmates who are presumptively
20 released, are conditionally released, or who
21 max out but must complete a term of
22 post-release supervision. The Board of
23 Parole would then continue to set conditions
24 of release for inmates with indeterminate

1 sentences who the board releases.

2 Additionally, the Executive Budget
3 proposes to allow three months of earned
4 reduction for every six months of
5 uninterrupted post-release supervision.

6 Approximately how many inmates per
7 year would have conditions of release set by
8 the department?

9 ACTING COMMISSIONER ANNUCCI: This
10 would cover everybody that's getting released
11 on a determinate sentence right now.

12 The Board of Parole sees individuals
13 that are serving an indeterminate sentence.
14 I think -- if I remember correctly, I had
15 this number. I'm going to guess somewhere
16 around 10,000 or thereabouts, but let me
17 double-check and get the exact number for
18 you, that would continue to be seen by the
19 board, and everybody else would be not seen
20 by the board.

21 These are all the individuals that are
22 going out either, you know, under a
23 determinate sentence with a merit time date
24 or a CR date. They're not seen by the board.

1 The case plan is developed by program staff.
2 We hand off with the reentry specialists, the
3 community supervision. It's really an
4 anachronistic function. The board isn't even
5 seeing these individuals. So it makes no
6 sense to place this continuing burden on them
7 for individuals that they don't even see.

8 ASSEMBLYMAN WEPRIN: And does the
9 department envision significant changes to
10 the conditions of release compared to the
11 kinds of conditions currently imposed by the
12 board?

13 ACTING COMMISSIONER ANNUCCI: No. We
14 actually think that in many ways these things
15 will be specifically geared to the inmate's
16 particular needs. There's a case plan that
17 develops. If he needs substance abuse
18 treatment, we'll make sure he gets it, we'll
19 make sure the handoff is there.

20 We have no interest whatever in adding
21 onerous conditions or additional conditions
22 to any parolee. You know, the theme
23 throughout is we want you to succeed. We
24 want you to succeed when you're taking

1 programs in our facilities, we want you to
2 succeed out there, we want public safety to
3 be advanced. So we do not want programs that
4 aren't tied to rehabilitation conditions to
5 be attached to any parolee.

6 ASSEMBLYMAN WEPRIN: I appreciate
7 that. The Daily News did a story and it got
8 a lot of publicity about the proposal in the
9 budget to reduce the number of visiting days
10 at maximum-security prisons, which currently
11 have seven days a week, to three days a week
12 in order to save what is a very small
13 percentage of the overall Correction budget
14 of about 3.5 billion. It would save
15 \$2.6 million by eliminating 39 positions.

16 My question for you is, a lot of our
17 members in the Assembly have raised that
18 issue as potentially, you know, not being
19 humane, also not allowing families the
20 opportunity to visit with those inmates who
21 are often many, many miles from their home.
22 And if the Department of Correction were
23 going to choose these three days, it
24 potentially might not be a weekend day. It

1 could present a tremendous hardship.

2 Very often, because of lines and
3 limited visitation areas, someone often
4 cannot stay more than a couple of hours. And
5 very often when you have seven-day-a-week
6 visiting, family members may come long
7 distances and stay for a number of days
8 during that period.

9 So my question for you is, what was
10 the thought process behind that, and how
11 flexible is the department? Because I know,
12 you know, members of the Assembly majority
13 have raised objections to that to me.

14 ACTING COMMISSIONER ANNUCCI: Thank
15 you, Assemblyman.

16 Let me start off by just reiterating
17 that I am absolutely committed to doing
18 everything reasonable possible to maintain
19 family ties. It's absolutely critical to do
20 that wherever we can. It's so critical for
21 reintegration. Having family supports in
22 place is vital to succeed in rehabilitation.

23 Like everybody else, there are budget
24 issues. And I'm trying to save money

1 wherever we can, responsibly, to be
2 responsible to the taxpayers. We gave a lot
3 of thought as to which day we would keep as
4 the weekday visiting day. In the mediums,
5 there's no weekday visiting. That was
6 another budget move made in the early '90s.

7 But by keeping Fridays, this is what
8 we achieved. When you go to a weekend and
9 holiday schedule, it means weekdays as well
10 as holidays. We know that four Mondays every
11 year are holidays, with Martin Luther King
12 Day, Presidents Day, Memorial Day, and
13 Labor Day. So that means four times a year,
14 coupled with Fridays, that's four consecutive
15 days. We know that Thanksgiving is a
16 Thursday. So when you have Friday visits,
17 that's a fifth time where you have visits
18 four days in a row.

19 I've been through the max facilities,
20 and every time I walk through the visiting
21 room in a max facility on a weekday, there's
22 a very limited number of visitors there.
23 They don't get that much use, and yet they're
24 fully staffed to be prepared for visitors.

1 I also want to point out that Friday,
2 when we measured it, was of all the five
3 days, the day where most of the visits for
4 weekdays happened.

5 I'll also point out that I'm a strong
6 supporter, a continued supporter of the
7 Family Reunion Program, which really allows
8 the family to live like a family briefly for
9 a weekend or whatever the duration of the
10 visit is. And that will continue, of course.

11 Also, in response to a bill that was
12 passed a number of years ago, you directed
13 that this agency no longer allow commissions
14 from phone calls to be used for any
15 supportive services. So as a result we have,
16 if not the lowest, among the lowest phone
17 rates for when inmates call home, 0.048 cents
18 per minute. And I can tell you that in 2016,
19 there were 21 million completed calls, for a
20 total of 321 million minutes. And to keep up
21 with the demand for phones, we added 68 in
22 2016, including facilities like Attica,
23 Clinton and Green Haven.

24 Also, my long-range plan is to have a

1 secure messaging system present. And we
2 currently have an RFP for the new phone
3 contract out there. We're in the blackout
4 period. But we put a placeholder in it for
5 the bidder on the phone program ultimately to
6 provide an email connection. The bidder will
7 be required to outline how the infrastructure
8 and business rules of the inmate phone system
9 can be leveraged to implement secure
10 messaging, making it much easier to stand up
11 when we are ready to pursue.

12 The other thing that we do a lot of is
13 we have many facility special events, family
14 special events, for religious holidays and
15 other events. And in 2016, there were 608
16 special events with family guests that were
17 attended by 23,398 inmates and 22,539
18 members. And I participated in a number of
19 these. A week and a half ago, I attended the
20 college graduation at Eastern Correctional
21 Facility that was in partnership with Bard.
22 The family members were in the audience, they
23 saw all the students come in in cap and gown.
24 I put on a cap and gown. There was a speech

1 made by a Yale University dean. We had
2 musicians playing the procession. And we had
3 speeches by the inmates themselves, and then
4 we had food in the area afterwards as a
5 celebratory event.

6 We had something similar at Sullivan
7 for a graduation there, Hudson Link at
8 Sullivan Community College. We had it at
9 Woodbourne.

10 I've also allowed family members to
11 come in during events such as Rehabilitation
12 through the Arts. So when the inmates put on
13 the performance at Bedford -- they saw
14 "The Wiz" -- the children can see their
15 parents in character. When we did it at
16 Sing Sing, they came in and saw the inmates
17 performing Twelfth Night.

18 And one last thing that we did that
19 I'm going to replicate, we had Celebrate Your
20 Child, an event at Sing Sing, where we just
21 had the children brought in. The caretakers
22 brought them in -- the mothers, the
23 girlfriends, whatever -- left them at the
24 facility, we put them at a church off-site,

1 just so the fathers could bond with their
2 children. We had a musician come in, we had
3 arts and crafts, we made the entire place
4 child-friendly so it looked like something
5 from Disneyland. We had a DJ, we had food.
6 But it was an initiative that went off very,
7 very well, and it's the kind of event we're
8 going to continue to do because it goes to
9 the heart of maintaining family ties. And my
10 commitment to continue that is unabated.

11 So I have an obligation to the
12 taxpayer. And unfortunately, you know, years
13 ago we made this change in medium. So if
14 you're in a max now, you have visits seven
15 days a week, it's a little of an abrupt
16 change to go to a medium. And many of our
17 mediums previously were at max, and to only
18 have visits on weekends.

19 So this was, we thought, a prudent
20 change, but still leaves weekday visits on
21 Fridays.

22 CHAIRMAN FARRELL: Thank you.

23 CHAIRWOMAN YOUNG: Thank you.

24 Senator Gallivan, who is chair of the

1 Crime and Corrections Committee.

2 SENATOR GALLIVAN: Good afternoon,
3 Commissioner.

4 ACTING COMMISSIONER ANNUCCI: Good
5 afternoon, Senator.

6 SENATOR GALLIVAN: The budget, if I
7 read it correctly, provides for 165 new
8 correction officer positions that came about
9 as a result of the security staffing reviews.
10 So that's additional positions in addition to
11 your current strength.

12 Where are you in that security
13 staffing review process?

14 ACTING COMMISSIONER ANNUCCI: We're in
15 the third year right now. I think there's
16 either four or eight left to be done. That's
17 a collaborative effort that we do with both
18 unions, NYSCOPBA as well as Council 82.

19 And when the process is complete --
20 and I think it's four facilities left to
21 finalize -- then the recommendations will be
22 submitted to the Division of the Budget.

23 SENATOR GALLIVAN: I'm pleased with
24 your testimony to learn that assaults are

1 down, which is clearly a good thing. But I
2 agree with you; as you testified, one assault
3 is too many. So while assaults are down, if
4 I understand correctly, from year to year, if
5 we go back five years, we're still
6 significantly above what it was five years
7 ago. And I know that's problematic.

8 And I also know from our separate
9 discussions and your testimony, you're
10 implementing some different things. I'd like
11 to talk just about a few of the things. And
12 this is in no particular order.

13 But you made reference to pepper
14 spray, and you've got pilot facilities. How
15 many facilities is that being used in?

16 ACTING COMMISSIONER ANNUCCI: I'm
17 going to double-check. I think we're up to
18 about six or eight.

19 But we are satisfied with the results.
20 And this was something that was recommended
21 strongly to us when we brought in auditors
22 from the National Institute of Corrections,
23 that this would make a lot of sense. And the
24 experience at places like Attica, where we've

1 put it, for the most part has been it can
2 stop a violent fight in its tracks, for the
3 most part.

4 And I'm always about trying to enhance
5 anything to keep staff safer, and this is
6 something that we are going to look to expand
7 to all of our medium and max facilities,
8 because we are very satisfied with the
9 results thus far.

10 SENATOR GALLIVAN: Now, three other
11 things that you had testified to -- thermal
12 imaging, heartbeat detection device, and
13 portable metal detectors -- are all of them
14 deployed through every facility, or are they
15 limited as well?

16 ACTING COMMISSIONER ANNUCCI: No,
17 they're not at every facility, but we are
18 spreading them at every facility, or all the
19 maxes. I'm trying to keep every one straight
20 as to exactly where we are. I think we've
21 deployed about 110 of those portable metal
22 detectors, which are very helpful in removing
23 metal weapons from the population.

24 Because it's one thing when an inmate

1 sees a fixed location where he knows there's
2 a metal detector, and it's another thing when
3 we can move them and then do them in effect
4 in an unannounced fashion. So that has been
5 very successful.

6 The thermal imaging devices -- the
7 heartbeat detection is at I believe almost
8 all of our maxes, if not all, so that
9 vehicles exiting a facility -- and these
10 things are so sensitive, they'll detect
11 anything. And one time a vehicle couldn't
12 leave, and we found out it wasn't a person,
13 it was a mouse that was trapped in there.

14 So we're learning that technology can
15 be an enormous asset and help us and keep our
16 inmates safe and security staff safe as well,
17 and civilians as well.

18 SENATOR GALLIVAN: Along the lines --
19 continuing the theme of technology, I don't
20 think you testified to the x-ray equipment in
21 the package room. Where does that stand?

22 ACTING COMMISSIONER ANNUCCI: We are
23 still studying it, the x-ray equipment. And
24 we see an important role for that at our

1 front gate procedure.

2 I'll check with my technological
3 people to see exactly where we are, but when
4 I last checked, we're still evaluating them.
5 We'll get back to you.

6 SENATOR GALLIVAN: Please do.

7 I think a couple of years ago --
8 although I may be mistaken, but I'm thinking
9 we had perhaps a brief conversation about
10 body scanners. And whether we had the
11 conversation or not really is irrelevant. I
12 mean, what are your thoughts about the use of
13 body scanners?

14 And if I back up, where I've seen them
15 in use is post-visits. So the body
16 scanner -- the visitor is not subject to that
17 at all. But because so much contraband comes
18 in through the contact visits, the idea would
19 be that when the inmate leaves the visiting
20 area, he then passes through the body
21 scanner, similar to what you see at airports.

22 Do you have thoughts on their use?

23 ACTING COMMISSIONER ANNUCCI: I will
24 have to defer to my people. I haven't had a

1 discussion about that in a while.

2 Certainly I am concerned with
3 visitation and the introduction of
4 contraband, especially drugs. We do have
5 visitor processing systems so that we can
6 readily identify a visitor who has tried to
7 introduce contraband in one facility, and now
8 we have a way of identifying them should they
9 come with new identification or false
10 identification at a different name.

11 So that is expanding to our
12 facilities. We do strip-frisk inmates after
13 a visit. I'm not sure if, on top of that, a
14 body scanner would tell us more. But I'm
15 open to exploring anything that would further
16 increase safety and security.

17 SENATOR GALLIVAN: Several years ago,
18 Rikers deployed the body scanners. It was
19 only for a brief time. And they reported
20 success in reducing the amount of contraband,
21 particularly weapons, coming into the
22 facility, but also had reported where an
23 inmate might have, you know, swallowed a
24 balloon with drugs or something like that.

1 They ran into a a problem, though, and
2 that's state law. Public Health Law requires
3 certified x-ray technicians. So we have some
4 legislation to -- I don't want to say to
5 overcome that, to ensure compliance. But of
6 course we'd have to have a willing system to
7 be able to use it, find the funding, which I
8 would be committed to do.

9 But I would ask that that's something
10 that you look into because I think we
11 together would find that the research shows
12 it could be tremendously successful.

13 ACTING COMMISSIONER ANNUCCI: We have
14 a product evaluation committee that's always
15 looking at different things and seeing what
16 the latest technology is from various
17 vendors, so we could certainly explore that
18 as well, Senator. Thank you.

19 SENATOR GALLIVAN: Finally, I know
20 that you do have a pilot going on with body
21 cameras. What can you report to us, and your
22 thoughts on the use of body cameras in
23 facilities? And do you have enough data yet,
24 or have you evaluated it enough to know

1 whether it can be an effective tool?

2 ACTING COMMISSIONER ANNUCCI: We -- we
3 started out as a pilot. It's still a pilot.
4 But we first started it at Upstate
5 Correctional Facility, which is an SHU
6 facility, and we said if there's going to be
7 an extraction, let's see how this technology
8 works. It was already on contract, the
9 company and the vendor.

10 So we started using it there, and then
11 we started using it in high-risk escorts, so
12 when our CERT team would be transporting
13 somebody that was a high risk. And we were
14 satisfied to the point that we said, Okay,
15 let's go to the next step, let's deploy it in
16 widespread fashion -- first at Clinton, where
17 we now have 150 body cameras that are
18 deployed.

19 A lot of planning went into it. It's
20 basically event-specific, so that the
21 officers who are outfitted with it -- it's in
22 an inactive phase, but they activate it when
23 one of these events, like movement for a
24 particular area or a response to something.

1 And so we're in the very early stages
2 of continuing to evaluate it. Some issues
3 with the vendor, and they've been very
4 responsible, they've come on-scene to, you
5 know, fix any technical problems.

6 But we're hopeful that -- we think it
7 will help. Certainly my ultimate goal is to
8 have a fixed camera system in place at
9 Clinton, very similar to the \$12 million
10 project that is almost complete at Attica.
11 And I can tell you when I went to Attica,
12 which was only a couple of months ago, and
13 walked down the cell blocks, you could sense
14 the whole atmosphere was much calmer.
15 Believe me, when the commissioner walks down,
16 if they know it's the commissioner, and the
17 inmates are unhappy about something, they
18 will let you know. But most of the
19 conversation was "How you doin'?" Everything
20 okay?" "Yeah, everything's fine," and moved
21 on.

22 So cameras really have a calming
23 effect on everybody. And they let us know
24 exactly what's happening. So we're a strong

1 proponent. When we built our new
2 facilities -- now 12 years ago or so --
3 Upstate and Five Points, they were fully
4 camera-ed. That's the way to go.

5 SENATOR GALLIVAN: Thank you,
6 Commissioner.

7 Thank you, Madam Chair.

8 CHAIRWOMAN YOUNG: Thank you, Senator.

9 ASSEMBLYMAN OAKS: Assemblywoman
10 Walker.

11 ASSEMBLYWOMAN WALKER: So thank you to
12 the respective chairs for allowing me the
13 opportunity to speak and ask a couple of
14 questions.

15 The first question that I have relates
16 to college or college classes while a person
17 is incarcerated in one of your facilities.
18 Is this something that's already being
19 implemented? And, you know, is it at all
20 facilities, being made available at all
21 facilities?

22 ACTING COMMISSIONER ANNUCCI: It's not
23 at all facilities, Assemblywoman. But we are
24 strong proponents of it. We have about

1 900-and-some-odd inmates enrolled in some
2 type of college programs. I think it's at
3 24 different facilities right now.

4 The U.S. Department of Education
5 recently awarded \$30 million, and seven -- I
6 believe seven different college consortiums
7 that will service our facilities received
8 that award, so they'll be expanding on our
9 current capabilities. One of the college
10 consortiums I think was in Bennington, so
11 they will service Great Meadow.

12 And we're also looking forward to when
13 the announcement is made by the District
14 Attorneys Association of New York, this asset
15 forfeiture money that he has made available,
16 so they'll be expanding on the college
17 programs. And we are all in favor of that.

18 Based upon my experience, education is
19 the purest form of rehabilitation. And it
20 really also has a very positive effect on the
21 whole inmate population. These are role
22 models for other inmates, and it moves us
23 towards safer institutions.

24 ASSEMBLYWOMAN WALKER: So the

1 resources that are being utilized for these
2 college courses, is there any government
3 money that's attached to that, or is that a
4 part of your budget ask this year?

5 ACTING COMMISSIONER ANNUCCI: The
6 government money now that's being used is not
7 the restoration of the Pell Grant funding
8 that was just announced by the U.S.
9 Department of Education, \$30 million.

10 The money that will come from the
11 Manhattan district attorney's office is asset
12 forfeiture money --

13 ASSEMBLYWOMAN WALKER: So there's no
14 state money attached to that?

15 ACTING COMMISSIONER ANNUCCI: Well, I
16 think there might be a little bit left over,
17 or it might all be gone.

18 But basically all of the existing
19 relationships we have with college programs
20 rely on outside donors, private
21 donors like --

22 ASSEMBLYWOMAN WALKER: Well, would any
23 of these individuals be included in the
24 Governor's Excelsior tuition-free scholarship

1 program?

2 ACTING COMMISSIONER ANNUCCI: I'm not
3 aware that there are. But certainly we look
4 forward to the expansion of the Pell with the
5 seven institutions that just got awards, and
6 the District Attorneys Association, so --

7 ASSEMBLYWOMAN WALKER: Okay. Also,
8 would there be any continuation of services,
9 like once a person is released and they're on
10 parole, or maybe not on parole, but would
11 they still have an opportunity to continue in
12 their classes? Will they be transferable?

13 ACTING COMMISSIONER ANNUCCI: We are
14 engaged in various conversations with some of
15 the higher education institutions. There's a
16 vehicle by which some of our students can
17 continue, for example, at John Jay, which
18 we're looking at. And in fact we might look
19 to place some of them, take classes there
20 while they're still with us, as part of one
21 form of temporary release. It's called
22 educational release.

23 So we're looking in some ways, limited
24 ways, to continue their education in the

1 community when they need it. And some of
2 these institutions on their own do it. Like
3 I believe Bard, when some of our inmates get
4 paroled, do accept them into their programs,
5 or different college campuses.

6 So it is a continuous network, and it
7 certainly helps for employment purposes.

8 ASSEMBLYWOMAN WALKER: Thank you. I
9 think that's a wonderful program.

10 But we also had an opportunity to see
11 the usage of a restraint desk in some sort of
12 educational environments of people who are
13 incarcerated. Is that particular technique
14 something that would be employed here? Or
15 would someone who would require the usage of
16 a restraint desk be limited in their
17 opportunity to take any of these courses?

18 ACTING COMMISSIONER ANNUCCI: The
19 restraint chair that you're talking about --
20 we call them restart chairs -- they're
21 basically used for SHU populations. They're
22 not used for general-confinement inmates.

23 And we learned early on when we got
24 advice from our mental health expert, before

1 we settled a complex lawsuit, that when you
2 bring inmates out into a group setting, it is
3 absolutely critical that they all be safe.
4 And sometimes they'll assault each other.
5 And group settings are important to have for
6 mental health therapy and other types of
7 programs.

8 So we will only do it if someone's in,
9 for example, our Marcy residential mental
10 health treatment program or our step-down
11 programs in SHU. But they're not used for
12 general-population purposes. These are basic
13 classroom settings for everybody else.

14 ASSEMBLYWOMAN WALKER: But even if
15 that person who maybe, you know, required
16 some type of SHU exercises, if you will,
17 whether it be solitary confinement or through
18 the restraint desk or whatever the
19 paraphernalia is called -- if that person is
20 in one of these classes, will they still be
21 required to wear --

22 ACTING COMMISSIONER ANNUCCI: No. No.
23 No. If they were, for example, going out for
24 their outside recreation, you know, there's

1 no restart chair, there's no restraints once
2 you're in your outside recreation.

3 ASSEMBLYWOMAN WALKER: Thank you.

4 Thank you.

5 CHAIRWOMAN YOUNG: Thank you. Thank
6 you very much.

7 Senator Bailey.

8 SENATOR BAILEY: So I just have a
9 couple of questions. Thank you,
10 Commissioner, for coming here. It's along
11 the same lines that Chair Weprin and
12 Assemblywoman Walker just mentioned,
13 concerning the DMV program and Culinary Arts.
14 They sound like great programs.

15 But concerning reentry, do you have
16 specific relationships with outside groups
17 that would facilitate, post-release, that
18 somebody would be able to actually be
19 gainfully employed based upon the
20 transferable skills that they've learned
21 while incarcerated?

22 ACTING COMMISSIONER ANNUCCI: Oh,
23 absolutely. We have many relationships. We
24 have relationships and contracts with outside

1 service providers, not-for-profits, Work for
2 Success, Pay for Success.

3 There are a number of things -- we
4 have reentry specialists. We have about
5 22 people that are concerned with getting
6 jobs, getting housing, getting placements. A
7 big challenge, of course, with housing. A
8 lot of our individuals being released
9 unfortunately require homeless services.

10 But reentry is a big, big focus. The
11 Governor has created the Reentry Council. We
12 listen to their recommendations all the time.
13 We're always trying to remove the barriers
14 that there may be for hiring and employment
15 purposes. It is the public policy of this
16 state not to discriminate against anybody in
17 the hiring decision or the housing decision
18 because they may have a criminal record, and
19 we remind people of that all the time.

20 We work with the individuals as part
21 of transitional services. We do practical
22 role-playing, get them ready for a job
23 interview, how to, you know, make up a
24 resume, how do you explain to a prospective

1 employer about your criminal record. We do a
2 lot of different things.

3 And we're focused on those industries,
4 like the food service, that is friendly
5 toward the formerly incarcerated.

6 SENATOR BAILEY: Thank you,
7 Commissioner. I think I have one more
8 question for you.

9 So we're looking at potentially fewer
10 hearings and reduced sentences. Overall,
11 would you see -- what costs would that
12 offset? With the cost savings on this side,
13 would that potentially offset other costs
14 that you may have?

15 ACTING COMMISSIONER ANNUCCI: I'm not
16 sure I got the first part.

17 SENATOR BAILEY: So understanding that
18 there may be, you know, fewer hearings -- and
19 if we're reducing the amount of folks that
20 are coming in, right, do we -- are we going
21 to offset any additional costs? Are you
22 going to be able to do that?

23 ACTING COMMISSIONER ANNUCCI: You're
24 talking about the fewer hearings by the

1 Parole Board?

2 SENATOR BAILEY: Yes.

3 ACTING COMMISSIONER ANNUCCI: Okay. I
4 don't think that that's really going to
5 offset too much of the burden on the Board of
6 Parole, which is pretty extensive right now.
7 You know, they have a lot to do to basically
8 have a full file together and -- to some
9 degree, and it will take years to implement,
10 if we enacted determinate sentencing, maybe
11 that's going to change the number of hearings
12 that they will see.

13 But if we go with this change now that
14 I will set the conditions, that's more or
15 less paper changes. It's not hours of
16 changes, it's just eliminating an unnecessary
17 step. It will be helpful to them, but I
18 don't think it's going to be big in terms of
19 reduced workload for them.

20 SENATOR BAILEY: Okay. Nothing
21 further. Thank you, Commissioner.

22 Thank you, Madam Chair.

23 CHAIRWOMAN YOUNG: Thank you.

24 CHAIRMAN FARRELL: Thank you.

1 Mr. Graf.

2 ASSEMBLYMAN GRAF: Do we have any
3 policy when it comes to guard/prisoner ratios
4 in our jail?

5 ACTING COMMISSIONER ANNUCCI: I know
6 that our ratio, compared to the rest of the
7 country, is very, very good. I think our
8 inmate -- correction officer or security
9 staff ratio to inmates is 1 to 2.5. And I
10 think for the rest of the country, the
11 average is something like 1 to 6.5.

12 ASSEMBLYMAN GRAF: Now, is this
13 required, the ratio, the staffing ratio?

14 ACTING COMMISSIONER ANNUCCI: No, it's
15 not required. It's a function of what we do
16 to create plot plans for a facility, what
17 needed posts are and coverage, et cetera,
18 relief factors and all of those things. So
19 that's the total security staffing for the
20 whole system.

21 ASSEMBLYMAN GRAF: All right. And
22 right now we have enough manpower to do this
23 1 to 2.5?

24 ACTING COMMISSIONER ANNUCCI: We have

1 yet to complete the final leg of the
2 three-year security staffing audit that was
3 enacted several years ago. And so
4 ultimately, in my judgment, when we adopt all
5 of those recommendations, we'll be at the
6 full complement.

7 ASSEMBLYMAN GRAF: Correct. But where
8 are we right now?

9 ACTING COMMISSIONER ANNUCCI: We've
10 implemented the second year. We've
11 implemented the first year, now the second
12 year. So the third --

13 ASSEMBLYMAN GRAF: What's our ratio
14 right now?

15 ACTING COMMISSIONER ANNUCCI: One to
16 2.5.

17 ASSEMBLYMAN GRAF: And now here it
18 says that you as the commissioner, you can
19 set conditions of parole in certain
20 instances. Okay? Now, when you do that, do
21 you take into consideration a victim impact
22 statement like the Parole Board would do? Do
23 you talk to the victims of the crimes?

24 ACTING COMMISSIONER ANNUCCI: I don't

1 envision that we would talk to the victims of
2 the crimes.

3 Because, first of all, the offenses
4 that we're talking about, the Parole Board
5 doesn't even see them. You're talking about
6 people that are serving determinate
7 sentences. So a determinate sentence is a
8 fixed sentence. It's set in whole or half
9 years. So somebody gets, let's say, a
10 7½-year determinate sentence, right, on
11 attempted assault, that person will get
12 released either at the maximum expiration or
13 the conditional release date. When they get
14 released, there's no victim impact to assess
15 whether they feel they should get released or
16 not.

17 We are fully aware of what happened to
18 the victim and will measure that, because we
19 look at the pre-sentence report. That's a
20 very detailed document that will tell us what
21 happened. That also tells us what programs
22 the individual will need while he's with us.
23 If he needs aggression replacement therapy,
24 if it's a domestic violence matter, then

1 we'll certainly set conditions like that.

2 But to actually reach out and
3 interview the victim, that's not done now
4 under present practice.

5 ASSEMBLYMAN GRAF: Okay.

6 ACTING COMMISSIONER ANNUCCI: Unless
7 it's an indeterminate sentence. Then, of
8 course, the victim is interviewed, because
9 the decision is whether or not the person
10 gets released or not, and the Executive Law
11 requires -- that's one of the factors that
12 the Parole Board looks at.

13 ASSEMBLYMAN GRAF: Okay. Well, it
14 says in certain instances, under the
15 corrections reform bill, that you can set the
16 conditions of parole.

17 ACTING COMMISSIONER ANNUCCI: Correct.

18 ASSEMBLYMAN GRAF: Okay? Are you
19 limited in what types of cases you can set
20 the conditions?

21 ACTING COMMISSIONER ANNUCCI: If this
22 is enacted, this would be, in effect, every
23 type of decision where somebody's released,
24 in effect, by operation of law. There's no

1 discretionary Parole Board release.

2 So a drug offender, for example, he
3 gets out, I will be able to set the
4 conditions. And they will all be geared to
5 what he needs in the community. Does he need
6 drug treatment, does he need mental health
7 services, does he need substance abuse
8 counseling?

9 Whatever it is, we will set it
10 according to the case plan that's developed
11 by program staff, and then hand it off to
12 Community Supervision staff. Which will
13 continue, by the way, to have the authority
14 to change conditions as appropriate. Parole
15 officers have that authority now.

16 ASSEMBLYMAN GRAF: Okay. Are there
17 any convictions where it would have to go to
18 the Parole Board and you wouldn't be the
19 determiner?

20 ACTING COMMISSIONER ANNUCCI:
21 Absolutely. Every single case right now
22 where there's a Parole Board interview,
23 right -- and under current law, if you
24 changed nothing else, every single individual

1 with an indeterminate sentence, whether it's
2 15 to life, 3 to 9, 5 to 15, every one of
3 those cases goes before the Parole Board.
4 The Parole Board grants release or withholds,
5 holds them for two years, whatever. When
6 they finally grant release, they will
7 continue to set the conditions, because they
8 are doing the interview. They see the
9 individual before them, whether it's
10 physically in their presence or through a
11 televideo interview.

12 ASSEMBLYMAN GRAF: Okay, thank you.

13 I'm out of time.

14 CHAIRWOMAN YOUNG: Thank you.

15 Any other questions? Okay, well,
16 thank you very much.

17 CHAIRMAN FARRELL: No, no, no, no, no.
18 I'm sorry.

19 CHAIRWOMAN YOUNG: Denny's trying to
20 see if I'm still awake, I guess.

21 (Laughter.)

22 CHAIRMAN FARRELL: Assemblywoman
23 Peoples-Stokes.

24 ASSEMBLYWOMAN PEOPLES-STOKES: I'll be

1 real quick, Madam Chair.

2 Just a couple of quick questions.

3 Thank you very much for your testimony today.

4 You mentioned that there's 39 FTEs that will
5 be reduced as a result of the policy change
6 on visiting hours. How many of those 39 FTEs
7 are filled positions?

8 ACTING COMMISSIONER ANNUCCI: They're
9 all filled right now.

10 ASSEMBLYWOMAN PEOPLES-STOKES: They're
11 all filled right now.

12 ACTING COMMISSIONER ANNUCCI: Yeah.
13 What we would envision happening is if this
14 is enacted, gradually we would basically
15 absorb those staff through the normal
16 attrition process. Because, you know, we are
17 always losing staff. People retire, people
18 move to other facilities. So there are
19 always items that need to be filled. And so
20 we don't envision anybody's current job being
21 immediately affected. They'll get a
22 different post; obviously, they'll bid to a
23 different job. But we don't see that
24 happening.

1 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.

2 So does your department budget have any
3 vacancies in it?

4 ACTING COMMISSIONER ANNUCCI: I'm
5 sorry?

6 ASSEMBLYWOMAN PEOPLES-STOKES: Does
7 the budget have any vacant positions in it at
8 all?

9 ACTING COMMISSIONER ANNUCCI: Does the
10 budget have any vacancies in it?

11 ASSEMBLYWOMAN PEOPLES-STOKES: Yes.
12 Yes. You know, sometimes people will budget
13 for vacant positions.

14 ACTING COMMISSIONER ANNUCCI: Sure.

15 ASSEMBLYWOMAN PEOPLES-STOKES: Yeah?
16 How many?

17 ACTING COMMISSIONER ANNUCCI: We're
18 always having vacancies.

19 It's -- it's -- when you have a
20 workforce of 29,000 -- and we're budgeted, I
21 believe, for FTEs, 29,215 -- there is
22 constant turnover and constant challenges to
23 fill positions. Especially difficult
24 positions like nurses, which is unfortunately

1 very difficult. And then we have to schedule
2 training classes for correction officers. I
3 believe we have nine that are planned for
4 this fiscal year.

5 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
6 Because did you all just do a recent exam for
7 correction officers not long ago?

8 ACTING COMMISSIONER ANNUCCI: I'm
9 sorry, do we have what?

10 ASSEMBLYWOMAN PEOPLES-STOKES: Give an
11 exam for new correctional officers? No? A
12 civil service exam?

13 ACTING COMMISSIONER ANNUCCI: I'm
14 sorry, I still don't --

15 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
16 There's an Article VII in the budget that
17 proposes a change in preferred source
18 correctional -- an industries program, which
19 includes a procurement service for asbestos
20 abatement.

21 Can you explain how that's going to be
22 implemented and who's going to do the
23 training? And are the folks that are being
24 trained able to leave at some point, under

1 their release, with a certificate?

2 ACTING COMMISSIONER ANNUCCI: Okay, I
3 believe the change you're talking about is
4 allowing that as a preferred source status
5 under our State Finance Law.

6 We've had an asbestos abatement
7 program for a number of years right now.
8 It's a part of our Corcraft program. And the
9 individuals that participate in it, the
10 inmates, are fully trained and are credited
11 with certifications. They're given the full
12 equipment.

13 And there's a lot of demand for them,
14 because unfortunately we have a lot of old
15 buildings that require asbestos removal. And
16 it is one of the LCTA, the Limited Credit
17 Time Allowance components. So that if you
18 qualify and you participate for I believe
19 whatever it is, 18 months, plus the training
20 certificate, you can shorten your release by
21 as much as six months.

22 And I don't have the statistics, but
23 I'm --

24 ASSEMBLYWOMAN PEOPLES-STOKES: You can

1 shorten your -- I'm sorry, say that again.

2 You can shorten what?

3 ACTING COMMISSIONER ANNUCCI: You can
4 get released six months prior to your normal
5 release date. It's one of the nine
6 existing-law Limited Credit Time Allowance
7 criteria, as long as you behave as well.

8 And I've heard, at least anecdotally,
9 that there's a demand for that job in the
10 outside world. So if you have real-life
11 experience working as a crew to remove
12 asbestos from one of either our buildings or
13 one of the public buildings -- because we are
14 allowed to work on any state building or
15 government building, political subdivision of
16 the state, without taking private business
17 away -- that's very valuable in the real
18 world.

19 ASSEMBLYWOMAN PEOPLES-STOKES: Yes, I
20 have to concur, there is a demand for
21 asbestos removal, because there is, I think,
22 a huge demand to preserve some of the older
23 buildings in our state. We have a really
24 great historic preservation operation going

1 on here.

2 The problem is that asbestos is a very
3 hazardous material. And if business were to
4 listen when the environmentalists were
5 telling them that years ago, we would have
6 never put that in our buildings.

7 But my concern is that, one, the
8 inmates are providing this asbestos removal
9 as a -- through a training program for the
10 private sector.

11 ACTING COMMISSIONER ANNUCCI: I can
12 tell you that what we are doing is under the
13 auspices of the Department of Labor, to make
14 absolutely certain that all of our equipment
15 is safe equipment, that no one's health is
16 compromised, it's state of the art.

17 And we're very pleased with the
18 results so far. I have not heard any
19 complaints or any --

20 ASSEMBLYWOMAN PEOPLES-STOKES: How
21 many facilities have this program?

22 ACTING COMMISSIONER ANNUCCI: I'm
23 going to guess several. I think there's one
24 we're going to open at Fishkill as well. But

1 I think about it's two or three right now
2 where we have crews available.

3 But let me double-check on that.

4 ASSEMBLYWOMAN PEOPLES-STOKES: Is the
5 training done by the Department of Labor or
6 New York State Education?

7 ACTING COMMISSIONER ANNUCCI: I'm not
8 absolutely sure. I think it has been. But
9 I'll have to double-check and get back to you
10 on that.

11 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
12 Well, we'll follow up on that, because I'm
13 definitely interested in some clarity on,
14 one, who provides the training, to make sure
15 it's meeting all the milestones and safety
16 measures that are critically important.

17 And I think the other thing that is
18 important to know is where are the
19 private-sector buildings that the inmates are
20 providing this service, and where are the
21 public-sector buildings that the inmates are
22 providing this service?

23 And you said yes to the fact that they
24 will have a certificate when they leave that

1 allows them to have a job skill that they can
2 use in the community that they return to.

3 ACTING COMMISSIONER ANNUCCI: Yes,
4 absolutely. It's important that they be able
5 to document, whether it's in that program or
6 any of our other vocational programs or the
7 apprenticeship program that the DOL issues to
8 us -- there's a number of different things --
9 or the computer technology programs that we
10 operate -- whatever they participate in, they
11 have to meet certain qualifications, pass
12 tests. We want them to have the
13 documentation to document, when they go out,
14 what they've actually accomplished.

15 ASSEMBLYWOMAN PEOPLES-STOKES: Well,
16 thank you very much.

17 CHAIRMAN FARRELL: Thank you.

18 Joe Lentol, chairman.

19 ASSEMBLYMAN LENTOL: Thank you,
20 Mr. Chairman. Is this working? I can hear
21 myself usually when the microphone is on.

22 First of all, I just wanted to say
23 that -- how many commissioners have you
24 served under before you became acting

1 commissioner?

2 ACTING COMMISSIONER ANNUCCI: Well, I
3 started in 1984 with Tom Coughlin, who was
4 succeeded by Phil Coombe, who was succeeded
5 by Glenn Goord, who was succeeded by Brian
6 Fischer. So four. But this is my fifth
7 governor.

8 ASSEMBLYMAN LENTOL: I always thought
9 that you were the brains of the outfit under
10 those commissioners, and now you've proved it
11 by taking over. And I have to tell you that
12 I hoped that we could have gotten rid of your
13 acting commissioner title before the end of
14 the year.

15 (Inaudible; laughter.)

16 ASSEMBLYMAN LENTOL: So let me just
17 make a comment first about determinate
18 sentencing. Because and you and I served
19 on -- as you suggested, you and I served on
20 the Sentencing Commission under Commissioner
21 O'Donnell as well as Mike Green. And you
22 know the difficulties that we had in trying
23 to fashion a grid for the D and E felonies.
24 It wasn't an easy job.

1 What makes you think that the
2 Legislature can do it?

3 ACTING COMMISSIONER ANNUCCI: Well,
4 let me say this, Assemblyman. This is the
5 product of what the Permanent Sentencing
6 Commission put together, which are different
7 people altogether, who were very mindful,
8 very mindful of the resistance that came
9 about after the first O'Donnell Commission's
10 recommended grids.

11 And they operated on two principles.
12 They were absolutely adamant that the grids
13 that they came up with could not in any way
14 expose people to longer incarceration. They
15 were absolutely certain. They wanted to
16 ensure that people either would save the
17 equivalent time or less.

18 And the second thing is that this is a
19 balanced approach. There's a grid for the
20 homicide offenses, which is separate from all
21 the other indeterminates, because they this
22 way enlisted the district attorneys' support.
23 And this permanent commission is chaired both
24 by District Attorney Cy Vance and Judge Derek

1 Champagne. And many others --

2 ASSEMBLYMAN LENTOL: By the way, Tony,
3 you might remember that I was the one that
4 was screaming about racial disparities when
5 we discussed this, where we couldn't get any
6 information out of DCJS or anyone else to
7 determine whether or not this was efficacious
8 for us to do with the built-in racial
9 disparities in the system.

10 And I think we now have that problem
11 now, because everyone is accusing the
12 Parole Board of not letting anybody out. And
13 if we're going to build that into the system,
14 then we're going to have disparities as well
15 in determining what the actual grid could be.

16 ACTING COMMISSIONER ANNUCCI: Well,
17 let me say this, Assemblyman. When the
18 Legislature moved to determinate sentencing
19 for all drug offenses, this has had seismic
20 impacts on (A) who's in prison and the racial
21 makeup of who's in prison.

22 The population in prison is driven by
23 two things. One is in admissions, and you
24 get into prison by -- either as a new

1 commitment for a felony or as a return parole
2 violation. The other thing is the length of
3 stay. Now, what drives length of stay? Not
4 just a sentence, but all of the programs that
5 the Legislature has enacted over the years
6 going back 30 years -- shock, merit time,
7 earned eligibility, the alternative with
8 parole supervision sentences.

9 So right now, as we're sitting here,
10 compared to 20 years ago, there are
11 10,000 less African-Americans in prison,
12 there are 10,000 less Hispanics in prison.
13 There are 1800 more whites in prison. So
14 when you went to determinate sentencing, yes,
15 you also did a number of other things. You
16 also created alternatives for drug offenders
17 and did a number of other things. But you
18 dramatically changed the prison population,
19 and I think you made it a lot fairer.

20 So you went to determinate sentencing
21 for drug offenders. We think going to drug
22 offenders for this cohort will have similar
23 results.

24 ASSEMBLYMAN LENTOL: I also have this

1 to say. And I think this is important. And
2 it's really not part of this hearing, but I
3 have to say it anyway because I have you in
4 the room.

5 I was here long enough to remember
6 that we promised the mental health community
7 to have clinics in the neighborhood in order
8 to solve people's mental health problems.
9 Right now we have a situation where all of
10 the mentally ill people are either on the
11 street, in homeless shelters, or in our
12 jails. Can we tackle this problem?

13 I mean, can you tell us how many
14 people that you suspect are in DOCCS that are
15 mentally ill? Do you have a number for that?

16 ACTING COMMISSIONER ANNUCCI: Yeah.
17 We currently -- and it's about 20 percent now
18 of the population that are on the OMH
19 caseload. So that's about 10,000-plus
20 individuals that are requiring some degree of
21 mental health services. And of that cohort,
22 about 24 percent are diagnosed as seriously
23 mentally ill.

24 So it is a challenge for us. And yes,

1 you know, a lot of this was when we
2 deinstitutionalized and took away all of
3 those large mental health hospitals and
4 didn't really come back with sufficient
5 community supports.

6 So a lot of the services we provide it
7 should -- and we have really implemented an
8 incredible array of different possibilities
9 for delivering services with OMH. We have,
10 you know, the residential mental health
11 treatment units that you enacted years ago.
12 We have tri-ICP, we have ICP beds. We have a
13 new unit that we're going to create that's
14 going to be a step-down from the residential
15 crisis treatment beds, because you're still
16 at high risk for suicide, we learn, when you
17 get out of there. So we're going to, you
18 know, continue to deliver services.

19 Now we have, you know, specialists,
20 mental health handoffs for the community. We
21 drive the individuals when we have a
22 placement instead of putting them on a bus.
23 We hook them up with services. Getting them
24 to continue to take medication is a

1 challenge.

2 So it's a very, very complex problem.
3 But we are doing a lot behind the walls and
4 in the community. And perhaps someday we'll
5 have more diversion up-front, similar to what
6 happened with drug offenders, that you can
7 divert people from state prison altogether
8 with suitable placements up-front.

9 ASSEMBLYMAN LENTOL: We also have some
10 programs that I think have been really not on
11 anyone's radar screen, one by your former
12 boss, Commissioner Fischer, up in the Bronx
13 that is a residential facility for the
14 mentally ill. I won't mention the name of
15 it.

16 But, I mean, these are the kind of
17 approaches we have to do. Government can't
18 do it all, but government has to get involved
19 in funding some of these programs like we do
20 any of the other programs that help people
21 who are in trouble, whether it's drug addicts
22 or anyone else that is able to go to a
23 residential facility and get help. And I
24 think we have to do that now, because we

1 haven't done our job. We're letting private
2 citizens deal with the problem, and
3 government promised the people a better
4 shake, the mentally ill.

5 Thank you, Mr. Chairman.

6 CHAIRMAN FARRELL: Thank you.

7 CHAIRWOMAN YOUNG: Thank you.

8 Any other questions?

9 Okay, well, thank you very much for
10 joining us today.

11 ACTING COMMISSIONER ANNUCCI: Thank
12 you.

13 CHAIRWOMAN YOUNG: We truly appreciate
14 all of your information. Look forward to
15 working with you.

16 You brought the whole room with you,
17 apparently, because they're all leaving. I
18 guess some are coming this way.

19 Next up is Superintendent George
20 Beach, from the New York State Police.
21 Number five.

22 If we could have some order in the
23 house, please. Okay, let's have some order.
24 We'd like to begin.

1 So welcome, Superintendent. It truly
2 is always a pleasure to see you and have a
3 discussion with you. So we are very, very
4 happy that you've waited around for this many
5 hours to be able to address any questions
6 that the Legislature may have. So please
7 proceed.

8 SUPERINTENDENT BEACH: Thank you.
9 Thank you, Chairman Young, Chairman Farrell,
10 and distinguished members of the committees
11 for the opportunity to discuss with you today
12 Governor Cuomo's budget for the Division of
13 State Police. I am George Beach,
14 superintendent of the New York State Police.

15 I would like to take this opportunity
16 to thank the Legislature for its enduring
17 support of the New York State Police.
18 Because of your support, the New York State
19 Police continues to enjoy its well-deserved
20 reputation as one of the leading law
21 enforcement agencies in the nation.

22 On April 11th, the New York State
23 Police will celebrate the 100th anniversary
24 of our founding in 1917. Then-Governor

1 Charles S. Whitman signed the Wells-Mills
2 Bill into law establishing the State Police.

3 As we reflect on the 100-year legacy
4 of excellence in our agency, we recognize
5 that our role in New York continues to
6 encompass our original purpose while the
7 expectations placed upon the agency in the
8 ever-changing environment of law enforcement
9 continue to expand. Our members are faced
10 with greater threats and demands on their
11 abilities than at any time in our history.
12 This is the reality of our mission.

13 For a century, the State Police has
14 consistently provided public service through
15 its core missions while adapting priorities
16 to ever-changing societal needs. We have
17 striven for continuous improvement in every
18 aspect of our public service. Our current
19 mission priorities include reducing the
20 number of deaths, injuries and property
21 damage caused by motor vehicle accidents,
22 through traffic enforcement and motorist
23 education; providing professional police
24 services to communities and investigative

1 support to police departments around the
2 state; engaging in emergency preparedness,
3 planning and response activities; and serving
4 a crucial role in the state's
5 counterterrorism efforts through our
6 collaborative work with federal, local and
7 other state agencies.

8 My first and foremost priority
9 continues to be the safety of the public and
10 our troopers who protect them. Toward that
11 end, we will continue to provide our troopers
12 with the necessary equipment and other
13 valuable resources to achieve the best levels
14 of safety in the performance of their duties.
15 During the past year, with your support, we
16 outfitted the agency with new patrol rifles,
17 rifle-resistant body armor plates for every
18 patrol vehicle, additional plates for large
19 deployments, and new ballistic helmets as
20 well as new fitkits for existing helmets
21 statewide. Both you and the Governor have
22 paid close attention to this need after
23 observing the increasing level of
24 sophistication and tactics employed at

1 criminal events in the United States and
2 abroad.

3 The Governor continues to dedicate
4 funding to enhance efforts to detect and
5 deter terrorism in a time when such acts are
6 constantly a threat to the safety of
7 New Yorkers and are news headlines around the
8 globe. As a result, New York remains one of
9 the safest large states in the nation. Using
10 intelligence-based investigative techniques
11 and targeted enforcement, state troopers are
12 now assigned to potential target locations
13 and, with federal and local partners, provide
14 greater protection for the public through
15 asset integration strategies.

16 Our increasing presence in the
17 New York metropolitan area adds an additional
18 layer of security for our citizens as they
19 travel through the city's public
20 transportation venues. It is also intended
21 to provide a deterrent effect to both
22 terrorism and other criminality as the state
23 moves to open road tolling at all of its MTA
24 bridges and tunnels, where we have a 24-hour

1 presence.

2 The State Police is unique as the only
3 law enforcement agency in New York State with
4 the ability to deploy large numbers of
5 professionally trained police officers
6 anywhere in the state on short notice in
7 response to an emergency or natural disaster.
8 The State Police is also available for
9 large-scale deployments to meet an immediate
10 need for law enforcement services in any
11 community. In addition to our traditional
12 investigative law enforcement responses, we
13 continue our partnerships with the Office of
14 Emergency Management and the Department of
15 Homeland Security and Emergency Services,
16 with a focus on disaster preparedness and
17 response readiness.

18 Illegal drug use and its impact
19 continues to dominate headlines in our state.
20 Heroin availability and abuse continues.
21 State Police will continue to aggressively
22 investigate drug-related offenses and assist
23 local police agencies. State Police
24 Contaminated Crime Scene Emergency Response

1 Team members responded to a 38 percent
2 increase in methamphetamine and other drug
3 manufacture locations statewide in 2016.

4 Our troopers, as first responders,
5 continue to patrol with Naloxone, the opioid
6 reversal drug, which we have administered
7 218 times in medical emergencies involving
8 drug overdoses. One hundred ninety-eight of
9 those administered Naloxone survived the
10 overdose.

11 This year was the first year for the
12 Campus Sexual Assault Victims Unit that arose
13 from the "Enough is Enough" legislation and
14 the Governor's commitment to combating sexual
15 assault on college and university campuses
16 statewide.

17 Fifteen State Police personnel worked
18 across the state last year to ensure
19 uniformity in the handling of campus sexual
20 assault investigations, provide investigative
21 assistance to campus or local law enforcement
22 in receipt of these allegations, and educate
23 individuals and campus communities regarding
24 victim's rights and support resources.

1 During the year, the Campus Sexual
2 Assault Victims Unit investigated 81 campus
3 cases of sexual assault, dating and domestic
4 violence or stalking.

5 Agency staffing remains an area of
6 constant executive-level discussion within
7 the State Police. New and core mission
8 priorities, both internal and external,
9 investigative statistics, member safety,
10 transportation trends and personnel
11 attrition, among others, factor into our
12 needs requests. We continue to request and
13 conduct academy classes so that adequate
14 staffing levels are maintained to perform our
15 new and core mission priorities, without
16 sacrificing the response time or the safety
17 of our troopers. We will continue to look
18 for additional efficiencies through our
19 partnerships with other law enforcement
20 agencies throughout the state.

21 New Yorkers have come to expect public
22 service from a stable, professional and
23 adequately resourced State Police. I am
24 proud to say that New Yorkers can be

1 confident their expectations are being met.
2 It is the integrity, knowledge, dedication,
3 and quality of our men and women that
4 distinguishes the New York State Police. I
5 am honored and privileged to be a part of
6 this agency, especially as we celebrate our
7 great traditions on our 100th anniversary.

8 I thank you for your support of the
9 State Police and for the opportunity to
10 address you this afternoon.

11 CHAIRMAN FARRELL: Thank you.

12 CHAIRWOMAN YOUNG: Thank you.

13 Senator Gallivan to start.

14 SENATOR GALLIVAN: Thank you,
15 Chairwoman.

16 Good afternoon, Superintendent.
17 Thanks for your patience.

18 I would like to touch on two or three
19 different areas. The first is deployment in
20 New York City, that I believe this particular
21 budget calls for an increase in deployment to
22 New York City with police personnel.

23 SUPERINTENDENT BEACH: Yes, sir.

24 SENATOR GALLIVAN: Could you just

1 describe to us very briefly what's the role
2 of the State Police in New York City, in its
3 enhanced role, and then what impact might it
4 have on services throughout the rest of the
5 state?

6 SUPERINTENDENT BEACH: The State
7 Police is deployed at the moment, Senator, on
8 high-profile transportation facilities, which
9 include all nine MTA bridge and tunnels,
10 Grand Central Train Station, Penn Station.
11 And in addition to that, about three weeks
12 ago we also brought a contingent of troopers
13 into both JFK Airport and LaGuardia Airport.
14 Those are our primary missions at this time.

15 The reason behind this is the concern
16 that we have that these are prime targets.
17 It's no secret that all the available
18 intelligence says that New York City, and in
19 particular its infrastructure assets, remain
20 prime targets for terrorism. That has been
21 shown again and again by the attacks which
22 have either taken place or been thwarted
23 through a combination of law enforcement
24 agencies and resources down there.

1 A couple of important points. The
2 jobs that we are undertaking in New York City
3 do not supplant or replace the effort of the
4 New York City Police Department. In fact, we
5 work closely and cooperatively with the New
6 York City Police Department in all of these
7 ventures. These are state administered
8 and controlled assets. They have existing
9 police departments, the MTA Police Department
10 in addition to the Port Authority. So we are
11 enhancing the law enforcement presence on
12 those potential target locations.

13 We have not staffed any of these
14 positions in New York City at the expense of
15 any of the resources which are committed in
16 upstate troops. The Governor has budgeted
17 for these additional positions in New York
18 City.

19 As you know, we have had a presence
20 for decades in New York City, but it has been
21 largely investigators who work in a variety
22 of functions, including on federal task
23 forces, drug task forces. So this new
24 component that we are adding of uniformed

1 positions has been budgeted above and beyond
2 our existing staffing levels so that we can
3 continue to adequately discharge our
4 functions without any diminution of service
5 in upstate areas.

6 SENATOR GALLIVAN: Thank you.

7 A new proposal is a call by the
8 Governor for a Hate Crime Task Force. And I
9 know that -- while the number escapes me, I
10 know that he has provided funding for that.

11 Are those additional positions?

12 SUPERINTENDENT BEACH: The -- we --
13 let me explain. We have had, for several
14 decades, specially trained investigators
15 deployed throughout the state and in all of
16 our troops to handle reports of hate crimes.
17 So we had an existing capacity to handle
18 these reports when they came in.

19 The Governor has proposed a funding
20 source for us which will allow us to assign
21 full-time dedicated persons on a regional
22 basis, including a senior investigator and
23 five investigators. But it will allow us to
24 also expand the training. And we envision

1 being able to bring in local police resources
2 as well, get them trained as well, to expand
3 our reach.

4 And part of the reason is that, as
5 you're aware, hate crimes require a fast
6 response to them. Evidence can be lost
7 quickly. We've actually encountered some
8 instances where we've had some reports of a
9 hate-type graffiti and by the time we get
10 there, it's already been painted over because
11 it is so patently offensive to the people
12 who, you know, live or frequent these
13 institutions, that frequently we lose the
14 evidence. So our ability to respond quickly,
15 secure evidence, is critical.

16 And so that money will allow us to
17 further support our efforts on that. In
18 addition to that, we have centralized the
19 command of that unit in the BCI command staff
20 at division headquarters to ensure uniformity
21 in the training, in the response, and in the
22 investigation of those crimes.

23 SENATOR GALLIVAN: Thank you.

24 Over the past -- in testimony in prior

1 years -- and of course you would have an
2 awareness of this because of your history in
3 working on the different positions in the
4 State Police -- there was a lot of concern
5 about the conditions of the fleet, both the
6 uniformed fleet and then the plainclothes
7 cars for the BCI. And in the last several
8 years we provided funding to try to, I guess,
9 work towards fixing that.

10 Can you tell us the status of that?

11 SUPERINTENDENT BEACH: Yes. We have
12 made tremendous progress in reducing the
13 number of higher-mileage vehicles through the
14 funding resources that you did provide to us.
15 We estimate that towards the end of the
16 fiscal year, by this March, anyway, we will
17 be able to replace the last 125 to 130
18 vehicles which will be approaching the
19 threshold for mileage, which is 125,000.
20 That's been our goal.

21 The funding that is placed in this
22 budget will allow us to continue that, and so
23 we believe pretty confidently that we can
24 maintain fleet under that mileage limit

1 moving forward. But as you know, it's a
2 constant -- the vehicles are constantly in
3 motion, and so this is a problem which isn't
4 going to go away and something that we have
5 to stay on top of.

6 SENATOR GALLIVAN: But this funding --
7 if I understand correctly, this funding would
8 allow you to catch up --

9 SUPERINTENDENT BEACH: Yes.

10 SENATOR GALLIVAN: -- and then get
11 back on that cycle, and then obviously annual
12 funding would be necessary.

13 SUPERINTENDENT BEACH: Yes, sir. The
14 funding going forward will permit us to keep
15 our fleet under that mileage threshold.

16 SENATOR GALLIVAN: And where we are
17 now is much better shape than the last few
18 years --

19 SUPERINTENDENT BEACH: Oh,
20 tremendously. Yes, sir.

21 SENATOR GALLIVAN: -- and we don't
22 have concerns about safety, the safety of the
23 vehicles at this point.

24 SUPERINTENDENT BEACH: I do not. I do

1 not.

2 SENATOR GALLIVAN: All right, thanks.

3 My final question has to do with the
4 SAFE Act. It continues to be an area of
5 concern for many of us.

6 There is concern that I've received
7 from many of my constituents -- where they're
8 getting this, I don't know, and I wanted to
9 try to clarify this. Are there any plans --
10 well, as we know now, pistol permits are
11 administered at the local level, through the
12 county courts, by the local judge. And the
13 concern is the future of that.

14 Are there plans for the State Police
15 to take over the issuance of pistol permits?

16 SUPERINTENDENT BEACH: No, there are
17 not. That will remain the function of the
18 county licensing authorities.

19 SENATOR GALLIVAN: All right. Thank
20 you.

21 SUPERINTENDENT BEACH: Yes, sir.

22 SENATOR GALLIVAN: All set.

23 CHAIRWOMAN YOUNG: Thank you, Senator.

24 CHAIRMAN FARRELL: Assemblywoman

1 Crystal Peoples-Stokes.

2 ASSEMBLYWOMAN PEOPLES-STOKES: Thank
3 you.

4 Thank you, sir. And thank you for
5 your service. We certainly do appreciate the
6 service of the State Police.

7 SUPERINTENDENT BEACH: Yes, ma'am.

8 ASSEMBLYWOMAN PEOPLES-STOKES: Having
9 had the opportunity to be in a briefing not
10 long ago with the homeland security
11 commissioner, I do understand why there's
12 perceived need for the new officers, state
13 troopers, in New York City. But I still do
14 have some concern because I think, you know,
15 it's not the only area that quite frankly
16 needs extra surveillance, and I think it
17 should be spread out more throughout the
18 state as opposed to the entire amount
19 directed toward New York City. That's just
20 my opinion on that one.

21 But my question for you is, have you
22 received like any specific directive from the
23 federal administration regarding the recent
24 executive orders?

1 SUPERINTENDENT BEACH: No. As was
2 indicated by several of the other
3 commissioners this morning, the executive
4 orders that have been issued are being
5 examined by our counsel's office to see if
6 there's any applicable matters or issues that
7 would arise.

8 I have been told preliminarily that at
9 this point we don't anticipate any problems
10 whatsoever, either now or moving down the
11 road.

12 ASSEMBLYWOMAN PEOPLES-STOKES: Good.
13 Good.

14 The other thing I -- the last thing I
15 want to ask you is regarding the sexual
16 offense evidence kits. There has been some
17 backlog in those for a while, and I
18 understand that the Governor has proposed
19 some additional resources to try to catch up
20 on that. What's the strategy for getting
21 that done?

22 SUPERINTENDENT BEACH: Yes, ma'am. We
23 have budget authority now to hire 26
24 additional forensic scientists to handle what

1 we anticipate to be the expected caseload.
2 In addition to that, we have performed
3 outreach to other police departments and
4 prosecutorial authorities in the state to try
5 and determine what that potential universe of
6 cases might be. And we believe, based on
7 those surveys, that these additional
8 26 people will allow us to meet the demands
9 being placed upon us.

10 We do have some space requirements and
11 needs at our Forensic Investigation Center,
12 and we are working closely with Division of
13 Budget and with OGS to assess those needs and
14 to move forward on making that --
15 implementing that additional square footage.

16 ASSEMBLYWOMAN PEOPLES-STOKES: Where
17 is that forensic center located?

18 SUPERINTENDENT BEACH: It's located on
19 the state campus in Albany, right adjacent to
20 our --

21 ASSEMBLYWOMAN PEOPLES-STOKES: And so
22 are you saying that it's understaffed? Is it
23 understaffed?

24 SUPERINTENDENT BEACH: We believe that

1 the staff that we have on board right now is
2 adequate.

3 However, it will take the addition of
4 these 26 people to meet this demand. But we
5 are meeting our goals otherwise in addressing
6 the needs of the law enforcement and
7 prosecution and law community.

8 ASSEMBLYWOMAN PEOPLES-STOKES: So how
9 do you receive, say, these evidence kits from
10 different law enforcement departments
11 throughout the state? What are they, mailed
12 to you or do they come in a car or --

13 SUPERINTENDENT BEACH: They can. But
14 typically what happens is their evidence
15 technicians will bring the kits and other
16 evidence which is submitted for
17 examination -- the evidence technicians will
18 frequently bring those either to the Forensic
19 Investigation Center or to one of our
20 regional laboratories which are placed --

21 ASSEMBLYWOMAN PEOPLES-STOKES: Oh, so
22 how many regional laboratories?

23 SUPERINTENDENT BEACH: I'm sorry,
24 ma'am?

1 ASSEMBLYWOMAN PEOPLES-STOKES:

2 Regional laboratories, did you say?

3 SUPERINTENDENT BEACH: Yes, ma'am. We
4 have one in Hudson Valley at Stewart Airport,
5 we have one in Binghamton, and we have one in
6 Olean that provide regional --

7 ASSEMBLYWOMAN PEOPLES-STOKES: The
8 last one you said?

9 SUPERINTENDENT BEACH: In Olean.

10 ASSEMBLYWOMAN PEOPLES-STOKES: Olean.

11 SUPERINTENDENT BEACH: Yes, ma'am.

12 CHAIRWOMAN YOUNG: Olean.

13 (Laughter.)

14 ASSEMBLYWOMAN PEOPLES-STOKES: Okay,
15 thank you. In the Senator's area.

16 Thank you very much. I appreciate
17 you.

18 SUPERINTENDENT BEACH: Thank you.

19 CHAIRWOMAN YOUNG: Thank you very
20 much.

21 Senator Croci.

22 SENATOR CROCI: Thank you, Madam
23 Chairwoman.

24 Superintendent, thank you very much

1 for your appearance here today. And I want
2 to again thank you for your service to our
3 state over the years. You are in the
4 enviable position of leading one of the
5 finest law enforcement organizations in the
6 country. All of us, I think, have troopers
7 as friends or in the family somehow, and it's
8 a long and storied tradition.

9 And we're very proud to have you here
10 today and again compliment you for the
11 organization you lead.

12 In the Governor's budget he proposes,
13 as my colleague Senator Gallivan mentioned, a
14 Hate Crimes Task Force. Has this proposal
15 been coordinated with the Department of
16 Justice Civil Rights Division or the U.S.
17 Attorney's offices in New York State?

18 SUPERINTENDENT BEACH: We envision at
19 this point -- we don't envision, we are
20 actually already working with the Division of
21 Human Rights at the state level. And in
22 addition to that, partnering with local law
23 enforcement agencies and sheriff's offices.

24 To date we have not established a

1 partnership with federal prosecutors yet. Of
2 course, as you know, we are well networked
3 with all of the district attorneys. And they
4 have been made aware and are -- you know, we
5 have made an outreach to all of them.

6 But I'm unaware that we've established
7 any partnerships federally.

8 SENATOR CROCI: So it would be a fair
9 statement to say that this policy proposal
10 was -- not at your level and your agency, but
11 not at the policy level in the Governor's
12 office coordinated yet with our federal
13 partners?

14 SUPERINTENDENT BEACH: Correct.

15 SENATOR CROCI: Thank you.

16 The Governor also, as mentioned,
17 includes money for bridge and tunnel
18 initiatives. I'm familiar, having worked
19 with some of the New York City and other
20 state agencies in reviewing that situation,
21 that it's something that the Senate's
22 Counterterrorism and Public Protection Task
23 Force will be looking at.

24 I just wanted to talk about one

1 specific part of that allocation, the
2 nonpersonal service. I notice \$22 million
3 for personal service -- that's personnel --
4 over time, et cetera, but then there's a
5 \$5 million nonpersonal service. I'm just
6 wondering if you could explain a little more
7 what that is.

8 SUPERINTENDENT BEACH: Well, the -- I
9 haven't studied that portion of the budget as
10 closely, Senator. But in addition, we have
11 had, in order to operationalize this
12 initiative, to purchase vehicles. With those
13 vehicles, of course, comes protective
14 equipment. In addition to that, we purchased
15 LPR units for the vehicles down there to
16 function in the capacity that they have to on
17 the bridges and tunnels.

18 SENATOR CROCI: Okay, so it's money in
19 support of the personnel movement.

20 SUPERINTENDENT BEACH: Yeah, for
21 equipment, yes, sir.

22 SENATOR CROCI: Understood, thank you.

23 He also requests an additional
24 \$1 million a year to complete the transfer of

1 personnel from the Department of Homeland
2 Security. This is the Intelligence Analysis
3 Unit. We had discussed that last year, I
4 think, around this time.

5 SUPERINTENDENT BEACH: Yes, sir.

6 SENATOR CROCI: Can you tell me how
7 that process has gone and what the additional
8 million dollars will be used for?

9 SUPERINTENDENT BEACH: We're actually
10 almost complete with the process of
11 transferring everybody right at this point.
12 And the additional million dollars will be to
13 offset some of the costs associated,
14 personnel and nonpersonnel, to equip and
15 staff over at the NYSIC where these folks
16 will come in and work with us.

17 SENATOR CROCI: Okay. So in last
18 year's budget that money, I believe, was
19 included as well. This year there's
20 another -- is there a way that we can
21 receive -- I don't expect you to have it now,
22 but receive a breakdown of how exactly
23 that --

24 SUPERINTENDENT BEACH: Sure. I'd have

1 to get back to you on that, but I'd be glad
2 to.

3 SENATOR CROCI: Okay. How is that
4 working, by the way, with those?

5 SUPERINTENDENT BEACH: We are very
6 pleased.

7 SENATOR CROCI: Is that information
8 flowing up to you and --

9 SUPERINTENDENT BEACH: This expanding
10 capacity for us is tremendous.

11 SENATOR CROCI: And how is the
12 intelligence reporting being done by your
13 agency? Is it being pushed up to DHS --

14 SUPERINTENDENT BEACH: Yes.

15 SENATOR CROCI: -- and can you just
16 give us an idea of how that process works?

17 SUPERINTENDENT BEACH: Well, as you're
18 aware, the NYSIC is the state's fusion
19 center. And it's driven by the need to
20 acquire, collect, analyze and push out
21 actionable intelligence to local law
22 enforcement, state partners, and through a
23 consortium of federal agencies which
24 contribute to all of that process.

1 And in addition to that, we of course
2 push intelligence out for the New York State
3 Police as well as the chamber, senior
4 executives in state government, so that they
5 can make decisions about initiatives and
6 emerging situations as they're occurring.

7 SENATOR CROCI: Very good. My last
8 question -- I have about 20 seconds left -- I
9 have repeatedly, as have other elected
10 officials in the state, asked that the mayor
11 of New York, Mayor de Blasio, and the
12 Governor, through the State Police,
13 reestablish the demographics units that were
14 so successful under Commissioner Kelly in
15 New York City in preventing terrorist acts --
16 before we have to get to preparedness levels,
17 preventing by having that good human terrain
18 information.

19 Has the Governor yet directed that the
20 State Police establish such a unit?

21 SUPERINTENDENT BEACH: No.

22 SENATOR CROCI: Okay. Thank you very
23 much. And thank you again, to you and to all
24 the troopers.

1 SUPERINTENDENT BEACH: Yes, sir.

2 CHAIRWOMAN YOUNG: Thank you.

3 CHAIRMAN FARRELL: Helene Weinstein.

4 ASSEMBLYWOMAN WEINSTEIN: Just a
5 follow-up on the question about New York
6 City, the deployment of State Police in
7 New York City. Was that coordinated? Was
8 that at the request of New York City or --

9 SUPERINTENDENT BEACH: No, it was not
10 at the request of New York City.

11 But one of the points that I should
12 have made previously is that we have always
13 worked very closely with the New York City
14 Police Department. As I mentioned
15 previously, for decades we have had personnel
16 working down there who work on a daily basis
17 not only with the New York City Police
18 Department but all the other police agencies
19 and federal partners who we work with down
20 there.

21 I have met with and my executive staff
22 has met with all of the senior executives of
23 the New York City Police Department, to
24 ensure that the existing relationships that

1 we have and the coordination of our work is
2 seamless. And so as we add this uniformed
3 component, I have personally met with
4 Commissioner Jim O'Neill. I consider him a
5 friend. And I can assure you that not only
6 the New York City Police Department but all
7 of our other partners down there have been
8 nothing but supportive in helping us stand
9 this mission up down there.

10 ASSEMBLYWOMAN WEINSTEIN: Just from
11 personal experience at the Battery Tunnel,
12 there used to be NYPD, and now that car is
13 gone and now there's a state car, I guess the
14 state Port Authority. Or were those
15 Triborough --

16 SUPERINTENDENT BEACH: Yes, ma'am they
17 were TB, Triborough Bridge and Tunnel
18 Authority officers. They still are there,
19 but we call them now MTA Bridges and Tunnels
20 officers. So we are augmenting their
21 existing patrols down there.

22 ASSEMBLYWOMAN WEINSTEIN: I guess they
23 were hiding the other day. Thank you.

24 SUPERINTENDENT BEACH: I'm glad that

1 you saw the troopers, though.

2 CHAIRWOMAN YOUNG: Thank you,
3 Superintendent. And I'd like to echo the
4 sentiments of my colleagues. We are strong
5 supporters of the State Police, and thank you
6 for all of the great service that you give to
7 the citizens of New York.

8 Assemblywoman Crystal Peoples brought
9 up the crime labs. And as you pointed out,
10 we have one in Olean. And I just wanted to
11 ask you about not only the lab but also the
12 barracks in Olean, and I want to get your
13 assurance that both of those will remain
14 operating.

15 SUPERINTENDENT BEACH: Yes, they will.
16 And the replacement of those facilities is
17 also a priority for us in our capital budget
18 planning. But we'll continue to work --

19 CHAIRWOMAN YOUNG: And we'd like to
20 see those remain in Olean.

21 SUPERINTENDENT BEACH: Oh, yes.
22 Absolutely, yeah.

23 CHAIRWOMAN YOUNG: Okay. Thank you.
24 I'm glad to hear that.

1 SUPERINTENDENT BEACH: Yes, ma'am.

2 CHAIRWOMAN YOUNG: Very glad,
3 actually.

4 I want to go through a little bit of
5 history, because we have been strong
6 supporters of the New York State Police
7 School Resource Officers Program. And I know
8 you probably know the history, but it
9 actually started in the early 2000s under
10 some COPS, the Community Oriented Police
11 Services grants through the federal
12 government.

13 And it took a little bit to catch on,
14 but at the time it was to provide training to
15 students, faculty, and staff in the following
16 areas, which included identifying and
17 mitigating problems contributing to bullying,
18 school safety curriculum, gang recognition,
19 drug resistance and personal safety, and
20 identifying environmental factors that
21 contribute to substance abuse, disorderly
22 behavior, and truancy. And I don't think any
23 of those problems have gone away. And in
24 fact, we've seen active shooter situations,

1 unfortunately, across the country over the
2 past many years.

3 So once the schools had the SROs
4 within their facilities, they were just
5 thrilled with the results. And the fact that
6 they had a mentor who could provide, you
7 know, guidance to students, help them, be a
8 sounding board, and provide safety and
9 security to the school buildings.

10 So in 2009 the Executive Budget, under
11 Governor Paterson, included the redeployment
12 of 200 troopers, of which 92 were assigned to
13 school districts as SROs. Unfortunately, the
14 majority at that time rejected that proposal,
15 and through administrative action, the
16 Executive did provide the 92 officers. And
17 then in 2010, unfortunately, the program was
18 ended.

19 There still is a lot of interest in
20 our school districts, I think, and some of
21 our colleagues in the Legislature on the SRO
22 program. And the division currently has a
23 School and Community Outreach Unit. Could
24 you tell us what this unit actually does?

1 SUPERINTENDENT BEACH: Well, it's
2 actually headquartered and administered in
3 our field command operation, so it's part of
4 our day-to-day policing operations. It falls
5 under the purview of one of the captains who
6 works in field command.

7 There are two uniformed sergeants who
8 work in that unit with that captain. In
9 addition to that, we have civilian staff who
10 maintain the webpage and, in concert with the
11 State Education Department, the portal
12 through which we can put out information on a
13 frequent basis to school systems. And it's
14 a -- I am told, a tremendous resource.

15 In addition to that, we have taken
16 other steps towards safety and security at
17 the schools. We have acquired, over time,
18 emergency plans for each of the facilities in
19 each of the districts. That project is
20 underway, but we're largely complete now.
21 Those plans are put together by the
22 superintendent; typically, it would be the
23 business superintendent who we deal with in
24 the districts. We created a form, basically,

1 they can fill it out for us. They can do
2 that online to make it seamless, submit that
3 to us.

4 We share that, and have uploaded that
5 not only into our own computer car systems,
6 so that our people responding to potential
7 incidents have the layout and have the
8 emergency plan available right at their
9 fingertips, but we have also made that
10 available to our partners in local police and
11 to sheriff's offices.

12 In addition to that, each of the
13 troops -- and in some cases there are several
14 of our people assigned in each of troops as
15 resource officers. This does not replace the
16 SROs, who were able to devote time in each
17 one of the schools to which they were
18 assigned, but they are an active outreach
19 component of the New York State Police to all
20 of the schools in their district. And they
21 coordinate the flow of information back and
22 forth between us and the schools.

23 Where possible, they do spend time,
24 particularly in areas in which there are no

1 other local or sheriff's patrols to provide a
2 visible presence at the schools. And so we
3 kind of lean on them to do some of these
4 functions for us. But it cannot completely
5 replace the SRO program as we had once run
6 it.

7 The last thing, and I want you to
8 know, is that every chance I get -- and I
9 frequently get a chance to speak both to our
10 supervisor groups or to our troopers, and one
11 of the first things that I make them aware of
12 that's a priority for us is they have to know
13 where the schools are, they have to go there
14 frequently, they have to -- I prefer them to
15 be on a first-name basis with the principals
16 or administrators at those facilities, so
17 that if something does happen, we have a
18 ready resource and people who are
19 knowledgeable about what's happening.

20 So we've tried to draw kind of a net
21 together to perform some of these functions.

22 CHAIRWOMAN YOUNG: The Legislature and
23 the Governor worked together to put in place
24 several new initiatives to deal with the

1 opioid and heroin crisis that we see. And
2 obviously we're all very alarmed by the fact
3 that it still is a crisis in the state. I
4 think we've put measures in place that will
5 help over time to alleviate some of the
6 issues that are out there. But I was at one
7 of my school districts recently and the kids
8 were talking about "Another one died last
9 week." Very matter-of-factly, by the way,
10 which is horrifying when you think about it.
11 But they were referring to one of their
12 fellow students who had died from an
13 overdose.

14 And in light of that -- and I
15 appreciate the fact that you talked about the
16 Narcan administration that the troopers have
17 given out. You've saved a lot of lives. But
18 in light of the drug situation that is
19 rampant in some of our schools, in light of
20 the active shooters that have occurred in
21 other states, have you given any thought to
22 possibly reconstituting the SRO program?

23 Because, you know, I appreciate
24 that -- and I know you're very on top of the

1 schools and you know where they're at and you
2 know -- you help them with their plans. But
3 is there any thought to that? And what would
4 it cost to restart the SRO program?

5 SUPERINTENDENT BEACH: We -- based on
6 our existing programs in the past, we know
7 what it would cost. We know what the
8 commitment of the personnel would be. And it
9 has been the subject of discussion, and it
10 has been the subject of some planning in the
11 State Police. Unfortunately, at this time --
12 and as you know, there's a constant
13 assessment of needs around the state, and
14 staffing levels. At the current time, with
15 the commitments that we have now undertaken,
16 I can't at this point commit people. When we
17 ended the program, we had about 105. And I
18 know what great work they did.

19 But yes, we do, from time to time,
20 look at that.

21 CHAIRWOMAN YOUNG: Thank you.

22 I think that's all I have. Thank you.

23 CHAIRMAN FARRELL: Assemblyman Oaks.

24 ASSEMBLYMAN OAKS: Yes,

1 Superintendent, I just wanted to focus a
2 little bit with -- the recertification of
3 pistol permits is coming up, and I know
4 actually within this budget year that we're
5 looking at and talking about, we're going to
6 start to see the first ones of those coming
7 up for being renewed.

8 So just wanted to check with you, do
9 you have numbers on about what we're talking
10 on, total numbers for recertification?

11 SUPERINTENDENT BEACH: Yes, sir. I'm
12 happy to be able to report to you that we
13 started that recertification program on
14 January 1, as we were required to do.

15 We have, to date, received just under
16 60,000 recertifications, either by computer
17 or by mailed recertification forms.

18 ASSEMBLYMAN OAKS: And those -- they
19 have how long to do that? Or you said you've
20 received 60,000. But if that's only a
21 portion of it --

22 SUPERINTENDENT BEACH: Oh, yes.

23 ASSEMBLYMAN OAKS: -- do you know
24 what -- the total number you're going to be

1 looking at?

2 SUPERINTENDENT BEACH: We are -- we're
3 estimating it could be potentially 500,000.

4 ASSEMBLYMAN OAKS: And when do you see
5 that, then, that the cycle will have been
6 completed, that you will have all of those?

7 SUPERINTENDENT BEACH: We anticipate
8 -- to answer your question, the closing date
9 on this for recertification is January 31,
10 2018. We're hopeful that in that universe
11 that's potentially out there -- and that is
12 just an estimate on our part -- that we will
13 have, if not all, certainly most of them in
14 by that point.

15 ASSEMBLYMAN OAKS: And are there fees
16 related to that?

17 SUPERINTENDENT BEACH: No, there are
18 not.

19 ASSEMBLYMAN OAKS: And as a part of
20 the recertification, is there changing
21 responsibilities of any of the entities --
22 you know, local sheriffs have had
23 responsibilities, the local courts, county
24 clerks. Or that process, if someone was

1 going to get a new one, the filing of the
2 papers, et cetera, that's kind of continuing
3 as is, except for the notification and the
4 recertification?

5 SUPERINTENDENT BEACH: Correct. There
6 will be no change in the actual licensing
7 procedures and protocols as they exist now.
8 That will remain a function of the counties.

9 ASSEMBLYMAN OAKS: Thank you.

10 SUPERINTENDENT BEACH: Yes, sir.

11 CHAIRWOMAN YOUNG: Anyone else?

12 Senator Krueger would like to ask some
13 questions.

14 SENATOR KRUEGER: Thank you very much.

15 So one of my colleagues just asked you
16 about the demographics units of the NYPD. My
17 understanding is that those are the units we
18 were referring to as racial and religious
19 profiling units that the U.S. Justice
20 Department investigated New York City about
21 and urged the closing of the units rather
22 than sue us. Is that your understanding of
23 what those units were?

24 SUPERINTENDENT BEACH: Yes, ma'am.

1 SENATOR KRUEGER: Would you support
2 the New York State Police profiling by
3 religion or race?

4 SUPERINTENDENT BEACH: We would not do
5 so.

6 SENATOR KRUEGER: You do not do so.

7 SUPERINTENDENT BEACH: No.

8 SENATOR KRUEGER: Thank you.

9 In your testimony you reference the
10 work on college campuses --

11 SUPERINTENDENT BEACH: Yes, ma'am.

12 SENATOR KRUEGER: -- over the last
13 year based on the law that was successfully
14 passed, the Campus Sexual Assault Victims
15 Unit. You talk about 75 cases. I'm curious,
16 do you have any data on what was the outcome
17 of any of these cases? Were they followed
18 through with police, DAs, court cases?

19 SUPERINTENDENT BEACH: Yes, I do.

20 SENATOR KRUEGER: Thank you.

21 SUPERINTENDENT BEACH: Let me just
22 make sure I do have it.

23 And we're up to 81 as of today.
24 Between the time we wrote this and now,

1 it's --

2 SENATOR KRUEGER: So your testimony is
3 there were 75 cases.

4 SUPERINTENDENT BEACH: Yes, ma'am.

5 SENATOR KRUEGER: Do you know how many
6 of those were actually taken off campus and
7 brought to DAs and the criminal justice
8 system?

9 SUPERINTENDENT BEACH: Let me just
10 check. And if I don't have that, I will
11 certainly be glad to get that. Let's see.
12 Forty-eight of the cases specifically
13 assigned to and investigated by the State
14 Police, in conjunction with our CSAVU
15 members, the specially assigned unit members.
16 We assisted, in 27 cases, either local police
17 departments or university police departments.
18 And the 75 cases involve 47 different
19 institutions. We made a total of 18 arrests,
20 which is 24 percent of those cases which were
21 investigated. We have 33 cases that are
22 currently pending, and 42 that are closed.

23 SENATOR KRUEGER: Thank you.

24 Do you happen to know if that's a

1 significant increase over the numbers of
2 cases being dealt with by the police prior to
3 this law being implemented?

4 SUPERINTENDENT BEACH: I don't know
5 that. I have only our stats from this unit
6 here.

7 SENATOR KRUEGER: Okay. Thank you.

8 So for several years since we passed
9 the SAFE Act, there's been the question about
10 whether there could be successfully
11 implemented an ammunition database -- and
12 I'll let Cathy Young jump in afterwards. Has
13 anybody figured out whether this can in fact
14 be done, from a technical perspective?

15 SUPERINTENDENT BEACH: A couple of
16 things on that, Senator. As you know, the
17 SAFE Act requires ammunition sellers to
18 access a database to ensure that a buyer is
19 not prohibited from owning a weapon. And as
20 the superintendent, I'm required to certify
21 that such a system meets the needs and the
22 demands that are made by the law. My
23 predecessor, Joe D'Amico, had three
24 technological solutions presented to him,

1 none of which met that demand. And I have
2 not, to date, seen anything that has been
3 developed which would make that operational
4 in the law.

5 SENATOR KRUEGER: And have new
6 proposals been submitted to you to review?

7 SUPERINTENDENT BEACH: No. Just the
8 three that are preexisting.

9 SENATOR KRUEGER: And whose
10 responsibilities would it be to submit those
11 proposals to you to review?

12 SUPERINTENDENT BEACH: Office of
13 Information Technology Services.

14 SENATOR KRUEGER: So they'll be
15 testifying later. Thank you.

16 The Governor puts money into the
17 budget to put additional State Police into
18 New York City. How many State Police
19 additionally will be assigned to New York
20 City?

21 SUPERINTENDENT BEACH: We have -- at
22 the current time, we have 105 uniformed
23 members of all ranks. That includes 89
24 troopers, sergeants, two lieutenants, and a

1 captain.

2 SENATOR KRUEGER: And this will be
3 additional troopers, with this new budget
4 money?

5 SUPERINTENDENT BEACH: Yes, ma'am.

6 SENATOR KRUEGER: What would it bring
7 your count up to in New York City?

8 SUPERINTENDENT BEACH: That would be
9 -- that's the existing count now. Now, there
10 is envisioned, to meet the initiatives that
11 we've undertaken for counterterrorism and
12 open road tolling, that will result in us
13 having, by fall of next year, a total of 202
14 uniformed personnel in the city.

15 SENATOR KRUEGER: So going from 105 to
16 202 --

17 SUPERINTENDENT BEACH: Yes, ma'am.

18 SENATOR KRUEGER: -- full-time
19 equivalent staff of the State Police located
20 in New York City.

21 SUPERINTENDENT BEACH: Yes, ma'am.

22 SENATOR KRUEGER: So Senator Young
23 brought up the SRO program, and when you were
24 answering her questions where she was urging

1 a reevaluation of that program, you said at
2 least one time there were 105 State Police
3 assigned to that program, I guess it's in
4 upstate school -- or outside of New York
5 City. I'm not asking this question, I'm
6 saying it just for the record.

7 SUPERINTENDENT BEACH: I understand.

8 SENATOR KRUEGER: I think NYPD is
9 extraordinarily qualified to handle the
10 situations on a daily basis in New York City.
11 The numbers are enormous in comparison to 105
12 or 200 State Police in New York City. I
13 would urge the Governor to reevaluate and
14 reassign those State Police to other parts of
15 the state where I think they are needed and
16 they are wanted. Not that they're not always
17 welcome in New York City. Love to always run
18 into New York State Police.

19 But I really think for all the
20 problems, the NYPD has got the manpower to do
21 what needs to be done. And I worry, in the
22 context of not enough funding and not enough
23 State Police for communities throughout the
24 state, that this is not the best use of

1 resources.

2 SUPERINTENDENT BEACH: Yes, ma'am.

3 SENATOR KRUEGER: Thank you very much.

4 CHAIRWOMAN YOUNG: Thank you.

5 Senator Croci.

6 SENATOR CROCI: Yes, thank you, Madam

7 Chairwoman. I just wanted to clarify

8 something that my colleague had mentioned.

9 Superintendent, does the State Police
10 on a routine basis use undercover operatives?

11 SUPERINTENDENT BEACH: Yes.

12 SENATOR CROCI: Okay. Do they
13 investigate in areas of drug gangs and gangs
14 that are involved in criminal activity?

15 SUPERINTENDENT BEACH: Sometimes.

16 SENATOR CROCI: And are those gangs
17 sometimes of a specific demographic, either
18 national descent or otherwise?

19 SUPERINTENDENT BEACH: I'm just
20 reviewing, Senator, in my mind if I can say
21 that as a declarative statement, and I -- I
22 don't -- I would not have that information
23 now, to be honest with you.

24 SENATOR CROCI: Well, I'll help. So

1 having some experience working with law
2 enforcement in New York City and around the
3 state and indeed in the country, we do
4 investigate drug gangs, criminal gang
5 activity. We understand what countries that
6 these gangs are coming from, and they are
7 investigated as such. There is no profiling,
8 to my mind, or has been documented either in
9 the NYPD or in the State Police, even though
10 we've been doing this for many years.

11 I know that my colleague cited a
12 couple of specific examples. But do you know
13 of any other way -- is there any doubt in
14 your mind that good human intelligence is a
15 key to preventing future attacks?

16 SUPERINTENDENT BEACH: It's an
17 accepted best practice, Senator, that good
18 human intelligence does make a difference
19 in -- particularly in countering terrorism
20 and terroristic acts.

21 SENATOR CROCI: Thank you very much.

22 CHAIRWOMAN YOUNG: Anyone else?

23 Again, thank you, Superintendent, for
24 your service and for joining us today. We

1 truly, truly appreciate it.

2 SUPERINTENDENT BEACH: Thank you,
3 Chairman.

4 CHAIRMAN FARRELL: Thank you very
5 much.

6 SUPERINTENDENT BEACH: Thank you, sir.

7 CHAIRWOMAN YOUNG: Our next speaker is
8 Director Bill Leahy, New York State Office of
9 Indigent Legal Services.

10 Welcome.

11 DIRECTOR LEAHY: Thank you, Madam
12 Chairwoman, and Chairman Farrell and the
13 other esteemed members of the committees.

14 CHAIRWOMAN YOUNG: I apologize, first
15 of all, for the long day, but obviously
16 there's a lot of interest in the information
17 to be presented.

18 DIRECTOR LEAHY: Thank you.

19 I wanted to introduce my comments upon
20 the Executive Budget by just giving a little
21 bit of history, and I want to started with
22 some numbers. And these come from a report
23 we published, it's an annual report we
24 publish, on what it would take -- or let's

1 put it another way, the progress being made
2 in upstate New York toward reducing the
3 habitually vastly excessive caseloads.

4 And in that report we published this
5 fall, there's a chart that shows that in the
6 year 2012, the average caseload in the 57
7 counties outside New York City was 719. It
8 went down to 680 in the following year, and
9 then to 616 in 2014, and 561 in 2015.

10 Now, I do not cite those numbers --
11 it's a 22 percent reduction -- I don't cite
12 them with pride, I don't cite them with
13 satisfaction. But I do cite them to show
14 what can be done by a very small office with
15 very small additional amounts of funding --
16 if legislative support is present, if clear
17 and effective communication with localities
18 is in place and if, importantly, the
19 professional expertise of the office is
20 allowed to function independently and without
21 any interference other than the need to
22 secure funding on an annual basis, which is
23 indeed my purpose here today.

24 I also want to say that as many of you

1 know, but perhaps some of you may not,
2 reducing caseloads in the upstate counties is
3 not all we have done. And this is all
4 pre-Hurrell-Harring, so I'll get to the
5 Hurrell-Harring piece in just a moment. We
6 have grants out to 25 counties to provide
7 Counsel at First Appearance, in compliance
8 with the law, or at least to begin compliance
9 with the law. We have grants out to
10 47 upstate counties for caseload reduction
11 and quality improvements in assigned counsel
12 programs.

13 We have the country's first network,
14 statewide network of regional immigration
15 assistance centers, so that lawyers who
16 represent clients in criminal cases can have
17 the benefit of expert advice as they fulfill
18 their responsibility to inform their clients,
19 under the Padilla vs. Kentucky case,
20 accurately about the immigration consequences
21 of convictions and whether or not to accept a
22 plea offer.

23 We have also established New York's
24 first statewide standards for criminal trial

1 representation, for appellate representation,
2 for parental representation. We are working
3 now on assigned counsel representation
4 standards, which will also be a first.

5 We are -- we have just released our
6 second Counsel at First Appearance request
7 for proposals, with more ample funding this
8 time, which we hope all or almost all
9 57 counties will apply for and will make use
10 of.

11 We are awaiting approval from OSC for
12 the release of our first ever upstate quality
13 parental representation office, which was
14 explicitly modeled after the very successful
15 programs which have been established in
16 New York City over the past 10 to 15 years.

17 So the point is everything we have
18 been able to accomplish basically with a
19 staff of 11 -- up until the Hurrell-Harring
20 moment -- is really attributable to these
21 three factors I have mentioned.

22 Now, on October 21, 2014, a thunderous
23 event happened in the State of New York: The
24 state agreed to settle the Hurrell-Harring

1 class action lawsuit alleging massive
2 deprivations in the provision of counsel in
3 five New York counties. And the day
4 following that settlement, I sent out a
5 memorandum trying to set it in context, what
6 did it mean for the state.

7 And I said three things. First, I
8 said it was historic because for the very
9 first time the State of New York recognized
10 that it's a state responsibility to comply
11 with the 6th Amendment and the pertinent
12 provision of the State Constitution.

13 Secondly, what was historic is that
14 the state had chosen to vest the
15 responsibility for the implementation of that
16 settlement with a professionally staffed --
17 I'm quoting myself, I'm sorry, that's
18 probably tacky -- professionally staffed and
19 independent office and board, thus complying
20 with the first and most important of the
21 American Bar Association's 10 principles of
22 an effective public defense delivery system.

23 Then I went on to say, what is it
24 going to take to make this work in the five

1 counties? That was the next step. And the
2 three things I identified there -- and I'm
3 happy to say they're all in place -- a
4 continuation and a strengthening of the good
5 working relationships that we already had
6 with officials in those five counties; number
7 two, full funding of the budget requests that
8 come along and are necessary to effective
9 implementation of the supplement -- and I'm
10 happy to say that has been true -- and
11 third -- well, actually that part -- I should
12 have said two points, because that part I
13 broke it out into two, I broke it out at the
14 start and then ongoing. Right up until
15 today, with the Governor's budget release two
16 weeks ago, those commitments are fully
17 fulfilled by the state in those five
18 counties.

19 And then, of course, my third point
20 was, what about the rest of the state? What
21 about the counties who weren't lucky enough
22 to be sued? And there I said that, first of
23 all, there's no argument that they should be
24 in any worse -- there's no principled

1 argument that anyone had then, or even
2 subsequent, expressed to me as to why any of
3 those other counties should be left behind
4 and left unremedied.

5 And then I said that our goal is to
6 work towards the day when there's one
7 standard of justice in New York City. And
8 I'm saying this in kind of halting terms
9 right now. We have here in the room
10 Assemblywoman Fahy and Senator DeFrancisco,
11 who have spoken far more eloquently and have
12 made this point with crystal-clear logic, and
13 it's of course inarguable. Of course there
14 should be one standard of justice in the
15 State of New York, and not two or three or 57
16 or 62.

17 So all of that brings me to the
18 Executive Budget. And there is very, very
19 good news in this Executive Budget. And
20 there are a couple of problems. The very,
21 very good news is that, as I mentioned, there
22 is full funding of the three provisions of
23 the Hurrell-Harring lawsuit for which the
24 state agreed in the original settlement to

1 pay.

2 There is an additional -- there's a
3 total of \$19 million in funding for caseload
4 relief. Now, you may recall that in last
5 year's budget the state put in \$10.4 million,
6 and I believe I testified to you that that
7 was sufficient to get those five counties to
8 the then-weighted caseload standard of 367
9 cases. And that's a national standard that
10 adds in a supervision component, because the
11 First Department in New York City has
12 identified a supervision component. So that
13 has been our standard, ILS, subject to state
14 funding, since 2014.

15 So the caseload standards we delivered
16 for the five counties, pursuant to
17 paragraph IV of the settlement, Roman numeral
18 4 -- and I gave you each a copy of the
19 settlement as well, for reference -- that
20 adds another 8.6 million to that 10.4. So
21 it's just over \$19 million annually in the
22 five lawsuit counties, and that is fully
23 funded in the Executive Budget, and that is
24 very good news.

1 It is also very good news that in the
2 Executive Budget funding is continued for
3 quality improvements and funding is continued
4 for counsel at arraignment. And that is, if
5 not full funding, certainly deserves the
6 title ample funding for those purposes in
7 those counties for this year. And we're very
8 pleased to see it.

9 We are also very, very happy to see
10 that in the first Executive Budget I think in
11 New York's history, there is proposed an
12 extension of those Hurrell-Harring settlement
13 reforms to the entire State of New York. Not
14 just the 52 upstate or outside of New York
15 City counties, but also the City of New York.

16 Why is this important? This is
17 important because the new caseload standards
18 we delivered to the parties on December 8th
19 exceed, are lower than, the existing caseload
20 standards in New York City. So they help
21 New York City and they help the rest of the
22 state. There are many portions of the state,
23 I hasten to add, whom they help a lot more
24 than they help New York City, because of the

1 simple fact that caseloads upstate are
2 averaging 561, but there are a couple of
3 jurisdictions out in the Southern Tier where
4 the caseloads are double that. So there's a
5 lot of work to be done, comparatively, to get
6 the upstate counties down.

7 So that's all the very good news in
8 the Executive Budget.

9 There's a little more good news. And
10 that is that if you look at the authorized
11 positions that the executive branch
12 publishes, there's an increase of three
13 positions in my office, from 19 to 22. And
14 if you run an office the size of the office I
15 run, and you have the needs that we have
16 identified, we are very pleased to see that
17 responsiveness.

18 So that is the good news, and it's an
19 important good news.

20 Now, there are a couple of issues.
21 You will have noticed, no doubt, that in the
22 line for State Operations of my office, where
23 current funding is \$3.2 million, where our
24 budget request in October was for

1 \$6.4 million, and where we were encouraged to
2 and did file a late post -- just before the
3 Executive Budget, a proposal for a unit to
4 implement the extension of statewide
5 reform -- we did that, a 10-person unit, with
6 a total request of a million and a half
7 dollars -- there is, instead of the sum of
8 all these numbers or any combination thereof,
9 there is a zero in that account.

10 And on the other hand, in the Aid to
11 Localities account, which includes the
12 increases I've already described to you --
13 which is a total of \$8.6 million, as I
14 mentioned, over the original -- not the
15 original request, but the original last
16 year's budget -- there's a total of
17 \$4.8 million in excess of the \$81 million
18 level funding. I think those of you who
19 follow our budget have been familiar with the
20 \$81 million Executive Budget ask for a number
21 of years now. And instead, it's 85.8. And
22 then there's also language in that Aid to
23 Localities -- at the very end of the Aid to
24 Localities appropriation that a portion of

1 these funds may be transferred to State Ops.
2 So that is one problematic area that I would
3 like to address with you.

4 And the second one is that the
5 extension of the Hurrell-Harring settlement
6 statewide one would think would follow the
7 model of the Hurrell-Harring settlement. And
8 in most respects, it does. It leaves to the
9 office and our governing board the planning
10 and the proposing, and this is what we have
11 done. And in the Hurrell-Harring settlement
12 you'll notice the language "in consultation
13 with" the Executive and other parties,
14 including the Legislature. And this, of
15 course, we're happy to do, and we have done.
16 And it has worked splendidly, because when we
17 produced our caseload standards, which is the
18 big -- the biggest of the reforms, and
19 certainly the biggest cost-driver, to the
20 Executive on December 8th, our judgment was
21 respected and accepted and, now we know,
22 fully funded.

23 So for some reason, there is in the
24 Executive proposal an addition. And that

1 addition, I'm sure you've seen it in both the
2 Article VII and in the appropriation
3 language, says that our plan must be approved
4 by the director of the Department of the
5 Budget.

6 So those are the two problematic
7 aspects of this budget. And we are having
8 conversations, of course, regular
9 conversations with the Executive about this.

10 The point I would like to make about
11 the Department of Budget and the independence
12 issue is the following. It is that the
13 independence of a public defender function
14 does not mean independence from fiscal
15 responsibility, and it certainly does not
16 mean that you're given a printing press to
17 print money. Appropriations are the
18 exclusive domain of the Executive and the
19 Legislature, and no one suggests otherwise.
20 But it is the planning function that has to
21 be independent and is governed by an
22 independent board composed of representatives
23 from the executive, the legislative, the
24 judiciary, the counties and so on.

1 So in our conversations, that
2 distinction is clear. I think everyone
3 accepts that distinction. And the problem is
4 we don't yet see that distinction honored in
5 the language in the Executive Budget.

6 I'm happy to take any questions,
7 particularly on those issues.

8 SENATOR KRUEGER: Thank you very much.

9 Our first questioner is Senator John
10 DeFrancisco.

11 SENATOR DeFRANCISCO: Thank you for
12 the kind words. I did carry the bill. And
13 there's a -- I've got a bunch of questions.

14 The first question is you said the bad
15 news is the fact that the budget director has
16 to approve your actions and the funding
17 request and so forth. Isn't there another
18 big problem? Isn't there no funding for the
19 rest of the state?

20 DIRECTOR LEAHY: I'm sorry, I missed
21 the question, Senator.

22 SENATOR DeFRANCISCO: Isn't another
23 little problem the fact that it talks about
24 applying the supplement of the five counties

1 statewide but it doesn't have any funding to
2 do that, does it?

3 DIRECTOR LEAHY: Exactly. It calls
4 for -- I should have been more specific about
5 that.

6 SENATOR DeFRANCISCO: More specific?
7 That's the big issue.

8 DIRECTOR LEAHY: No, I'm saying it --
9 no, it calls for my office to submit plans by
10 December 1st for, I would assume -- and full
11 implementation by April 1, 2023. So the
12 assumption is that this would be a plan that
13 would go into effect on April 1, 2018, with
14 funding. Funding is certainly a piece of it.

15 SENATOR DeFRANCISCO: Are you
16 comfortable with that assumption?

17 DIRECTOR LEAHY: Well, I do note in
18 the state's financial plan that we appear for
19 the first time and there are -- you know,
20 there are of course, you know, also budget --
21 yeah.

22 SENATOR DeFRANCISCO: Okay. So you're
23 okay with it.

24 DIRECTOR LEAHY: I think it's

1 appropriate way to plan.

2 SENATOR DeFRANCISCO: Okay --

3 DIRECTOR LEAHY: I'm not withdrawing
4 our budget request for this year for caseload
5 relief and Counsel at First Appearance. We
6 have 19 million requests for caseload relief
7 and 8 million requests for Counsel at First
8 Appearance, and I'd love to see those funded
9 this year.

10 SENATOR DeFRANCISCO: Okay. Well, the
11 Governor, in vetoing the bill that
12 Assemblywoman Fahy and myself put forward,
13 talked about the cost of that bill was too
14 much. Is that fair to say?

15 DIRECTOR LEAHY: Yeah, I -- well, the
16 way I interpreted it, he did not want the
17 state exposed to uncontrollable fiscal costs.
18 There's nothing we have done in our
19 implementation of the Hurrell-Harring
20 settlement that can fairly be characterized
21 as imposing uncontrollable costs. Quite the
22 contrary. We have worked very closely to
23 ensure that our plans are approvable.

24 SENATOR DeFRANCISCO: All right.

1 Except that if -- I'm not so sure how you
2 have that comfort when he's got your plans
3 being subject to the approval of the budget
4 director. That doesn't sound like a lot of
5 confidence towards your office.

6 DIRECTOR LEAHY: It doesn't. And
7 there's a disconnect there, there really is.
8 There's a disconnect between what I am told
9 in meetings and the actions --

10 SENATOR DeFRANCISCO: All I'm trying
11 to say is that I think it's more of a dire
12 situation than you're talking about. The
13 logic of allowing every state {sic} to be
14 able to have the same benefits as the five
15 states that settled -- the five counties that
16 settled, it seems to me that it doesn't show
17 that here in any way that that's going to
18 happen. And clearly not to what extent,
19 whether it will be the same funding or not.
20 So I think you're painting this picture as, I
21 think, much nicer than it really is.

22 So with that in mind, the Governor
23 claims his intent is that he wants to
24 treat -- and I've talked to him directly on

1 this -- he wants to treat the other counties
2 exactly the way the five counties were
3 treated in the settlement. And I'm sure
4 you've heard that as well; correct?

5 DIRECTOR LEAHY: Yes.

6 SENATOR DeFRANCISCO: All right. Now,
7 the bill that Pat Fahy and I put forth, did
8 that bill treat the other counties that
9 haven't been part of the settlement exactly
10 the way the counties that did settle the case
11 were treated?

12 DIRECTOR LEAHY: In my opinion, it
13 didn't.

14 SENATOR DeFRANCISCO: Okay. So
15 there's a disconnect there, then. If there's
16 a veto and he said he wants to treat the
17 counties -- do you have any -- and I'm being
18 very serious, because I'm trying to figure
19 out what we've got to do to get this done.
20 Is there any way you could bridge that
21 disconnect? Have you talked to anybody that
22 would give you an indication of what things
23 the Governor thought were too expensive in
24 the bill and treated the other counties other

1 than the five better than the five counties?

2 DIRECTOR LEAHY: I've had three
3 conversations in the two weeks since the
4 Governor's budget came out, on this very
5 issue.

6 SENATOR DeFRANCISCO: Okay.

7 DIRECTOR LEAHY: And there is
8 agreement that -- here's -- the Governor's
9 position, as explained to me, is there is no
10 intent to interfere with the independent
11 operation and planning of the office and the
12 board. Okay? That's number one.

13 Number two, from my part I have made
14 it very clear that we have no right, desire,
15 or dream of dictating how the state spends
16 its money going forward into the future.

17 In other words, so -- and furthermore,
18 the third point about that is what you arrive
19 at is this should be easily resolvable if
20 both of those positions are accurate. I
21 mean, there can be consultation, there can be
22 submission of the cost of the plan as part of
23 the budget --

24 SENATOR DeFRANCISCO: Okay, I've --

1 I'm going to just finish this line and then
2 I'm going to stop, because I'll -- they'll
3 back to me because I've got many, many other
4 questions.

5 I guess the point is that the -- did
6 the five-county settlement, did that provide
7 for those five counties to be given resources
8 to pay for the initial cost of the assigned
9 counsel program in addition to the additional
10 cost that your standards are providing? In
11 other words, was there a complete takeover of
12 the costs of the five counties in your
13 settlement?

14 DIRECTOR LEAHY: Well, no, there's
15 not. That's the difference between the
16 Governor's budget proposal and your bill.
17 Your bill would have had the state pick up
18 those existing costs.

19 SENATOR DeFRANCISCO: Okay, but this
20 is crucial. This is really crucial. What's
21 crucial is that did, did the settlement,
22 okay, the five counties, did that settlement
23 assume all the costs of indigent legal
24 services?

1 DIRECTOR LEAHY: No, they did not.

2 SENATOR DeFRANCISCO: All right. So
3 isn't the Governor right and -- I'm just
4 trying to be fair to both sides -- isn't the
5 Governor right that to mirror what the five
6 counties got, that bill overstepped?

7 DIRECTOR LEAHY: Well, that's for the
8 Governor and the bill sponsors, I think, to
9 determine. But --

10 SENATOR DeFRANCISCO: Okay, you could
11 figure it out, I think. If the bill covered
12 all costs of assigned counsel, which is
13 greater than simply the increased costs for
14 the five-county settlement, isn't that
15 logical that the bill was -- provided more
16 than the settlement?

17 (No response.)

18 SENATOR DeFRANCISCO: Okay, you don't
19 want --

20 DIRECTOR LEAHY: It's certainly
21 logical, yes. It's extending -- it's doing
22 what it says it's doing, and it's not doing,
23 you know, what it doesn't say.

24 SENATOR DeFRANCISCO: And this is the

1 crucial question to try to get this resolved,
2 and I think the Governor and his people would
3 ask the same thing. If the budget mirrored
4 exactly what the five-county settlement was,
5 would that satisfy you as far as your quest
6 to have counsel?

7 DIRECTOR LEAHY: That is exactly the
8 component of the Executive Budget of which we
9 strongly approve. Not only approve, we say
10 it's historic in the State of New York.

11 SENATOR DeFRANCISCO: So that would be
12 satisfactory to you, if the five-county deal
13 got translated to the other counties -- not
14 assuming more of the cost, but just the cost
15 that was assumed with the five counties.

16 DIRECTOR LEAHY: Yes. But not to take
17 this too far afield, but this is an important
18 point. The bill that you and Assemblywoman
19 Fahy filed would have also assumed the costs
20 of -- all the costs of parental
21 representation in Family Court. That's
22 25 percent of the caseload. That is not in
23 the Hurrell-Harring settlement and so it's
24 not part of the five-county deal. And, of

1 course, nor is it part of the extension of
2 the five-county deal to the rest of the
3 state. That's another qualification along
4 with --

5 SENATOR DeFRANCISCO: Okay, I'll wait
6 till my next turn.

7 CHAIRWOMAN YOUNG: Thank you.

8 CHAIRMAN FARRELL: Thank you.

9 Ms. Fahy, please.

10 ASSEMBLYWOMAN FAHY: Thank you,
11 Mr. Chairman.

12 I want to piggyback on some of the
13 questions that Senator DeFrancisco just
14 raised, as well as some of the concerns. And
15 I also want to reiterate I'm afraid I'm not
16 that satisfied as well.

17 I think that it was intentional in the
18 bill that we proposed these last couple of
19 years -- and passed, with unanimous support
20 in both bodies -- it was intentional to pick
21 up those base costs or existing costs within
22 the counties.

23 Now, I recognize that that was part of
24 and one of the core reasons why the Governor

1 vetoed the bill, in addition to this
2 independence issue that you mentioned. But
3 if I could just push you a little further --
4 again, piggybacking on what Senator
5 DeFrancisco raised -- I thought the intent
6 here, the intent of our legislation was that
7 we would try to remedy what in our view had
8 been essentially a 50-year unfunded mandate,
9 a constitutional mandate that had been passed
10 on to the counties and unfunded.

11 So a constitutional requirement that
12 those accused of a crime be provided this
13 representation. Most states did pick up the
14 cost of that. In New York, we chose to pass
15 that on to the counties.

16 So one of the reasons that we had
17 proposed to go beyond the settlement of the
18 Hurrell-Harring, the five counties that had
19 been settled in 2014, was that because the
20 state's -- because the counties do feel that
21 they have been unfairly picking up this
22 burden. And in order to improve the entire
23 foundation, or to improve the entire
24 structure of this system, that we would pick

1 up, over a phased-in period, at least seven
2 years, that we would begin to pick up those
3 costs.

4 Now, whether -- you know, I understand
5 that Family Court and even Surrogate's Court
6 could be included in that. But I really want
7 to get at the criminal court piece of this.
8 So if you don't mind, I'd like to pin you
9 down a little bit further on that in terms of
10 your position, following on what Senator
11 DeFrancisco said.

12 It was intentional on our part. Are
13 you saying that you are satisfied with just
14 going where we are in the budget right now?
15 And by the way, I commend the Governor for
16 agreeing to extend the Hurrell-Harring case
17 to the rest of the counties, to the other 52.
18 So that is progress. The glass is half full.
19 I would just prefer to fill the entire glass
20 as opposed to halfway.

21 DIRECTOR LEAHY: Let me answer you
22 directly. Bearing in mind we are an
23 implementing agency and not an outside
24 advocacy group, there were three big

1 components of the Fahy-DeFrancisco bill: The
2 state takes over the unfunded mandate, the
3 state picks up the cost of the
4 Hurrell-Harring settlement, and -- somewhat
5 buried, but in the fiscal piece, it was there
6 -- would also pick up the parental
7 representation costs, past and future.

8 Loved all three. Loved the bill.
9 Love it today. But it was vetoed. And I
10 can't do anything about the veto.

11 Now, is the Governor's proposal to
12 extend the settlement reform statewide
13 positive and important? Very much so. And I
14 support it.

15 ASSEMBLYWOMAN FAHY: Okay, so I --
16 okay. Then I won't push any further. But I
17 just want to concur with what we just heard
18 from Senator DeFrancisco --

19 DIRECTOR LEAHY: Would I be happier if
20 it were the Fahy-DeFrancisco bill in toto?
21 I'd be even happier.

22 ASSEMBLYWOMAN FAHY: Okay. Because --
23 well, I did think the budget included the
24 monies -- or did reference the \$250 million

1 for the increase going forward in order to
2 extend the Hurrell-Harring to the rest of the
3 counties, those provisions.

4 Again, our preference -- and I have
5 reintroduced the bill and am working, intend
6 to work with Senator DeFrancisco to still
7 move that. But the intent is that we work on
8 that foundation to relieve this burden and
9 improve the quality of the existing services.

10 With regard to the independence, I
11 think you've made some good points there. I
12 think that -- I would like to think that we
13 could address some of that language and find
14 some agreement, because as you have said, we
15 need to maintain that independence in the
16 planning while we respect the Governor's
17 right to oversee the expenditures and the
18 fiscal piece of this.

19 DIRECTOR LEAHY: I think that's the
20 right way to put it.

21 And the point I keep making is this is
22 too important a gain, the statewide
23 expansion, to have it fall apart over what,
24 once you parse it out, is largely a matter of

1 semantics. And again, if you accept at face
2 value what everyone is saying, it's just a
3 matter of semantics and it can be dealt with
4 in the normal negotiating course.

5 ASSEMBLYWOMAN FAHY: Last quick
6 question, I just want to reiterate a point
7 that I think you just mentioned. The
8 \$250 million that is referenced in the budget
9 or in the Title VII language, I'm not sure,
10 that would again -- that would be for funds
11 going forward, any increased funds in order
12 to extend the settlement. That does include
13 the cost of Family Court going forward,
14 right, increased costs?

15 DIRECTOR LEAHY: No, it does not.

16 ASSEMBLYWOMAN FAHY: So it's still
17 criminal --

18 DIRECTOR LEAHY: It's expansion of the
19 Hurrell-Harring settlement, which is
20 criminal --

21 ASSEMBLYWOMAN FAHY: Just criminal,
22 not the -- okay. And you do estimate that
23 that -- I think your estimates have been that
24 that would be -- to address the base funding

1 or the existing funds, as well as to include
2 Family Court, that would be roughly
3 \$400 million, is that some of the estimates
4 that have been --

5 DIRECTOR LEAHY: Well, there's a lot
6 of calculations that need to be done,
7 especially now that you have New York City in
8 the budget and the bill. And New York City,
9 we don't have as solid data for New York City
10 as we do for the upstate.

11 But I think the \$250 million number
12 that I saw, I think it was in the budget
13 book, you know, it seems like a reasonable
14 kind of long-term estimate. I mean, we're a
15 long way from being at full funding
16 statewide, which under the Governor's
17 proposal is five years out and I think under
18 Fahy-DeFrancisco was going to be seven years.

19 ASSEMBLYWOMAN FAHY: Seven, yes.

20 Okay, thank you.

21 Thank you, Mr. Chairman.

22 CHAIRWOMAN YOUNG: Senator
23 DeFrancisco.

24 SENATOR DeFRANCISCO: Just to be

1 clear, it definitely was the intent to try to
2 get full funding for all the counties. But
3 then when it got to the point of the cost
4 that the Governor was not willing to do, the
5 question was where do we go from there.

6 Okay?

7 So I want to make clear today, so we
8 go from there more quickly, is there money --
9 not something's going to start in 2018, but
10 is there any money in the budget right now to
11 start implementing the five-county settlement
12 for the rest of the counties in the state?

13 DIRECTOR LEAHY: No, there is not.

14 SENATOR DeFRANCISCO: And this may be
15 what Assemblywoman Fahy just asked you. Do
16 you have an estimate of what that would be?

17 DIRECTOR LEAHY: Well, we would
18 have -- should this budget provision be
19 enacted, we would have the responsibility to
20 give an answer to those questions by
21 December 1st of this year.

22 We can ballpark things. We can say
23 that \$19 million -- that is a hard number.
24 That's a very detailed number including all

1 the costs of adding the staff and the offices
2 and so on in the five counties. That should
3 be about 14 percent of the 57-county cost.
4 So you can basically times it by seven,
5 you're at about 140 -- well, 140 plus the 19,
6 so say \$160 million in round dollars.

7 SENATOR DeFRANCISCO: So wouldn't it
8 be better --

9 DIRECTOR LEAHY: Outside New York
10 City.

11 SENATOR DeFRANCISCO: Okay. Wouldn't
12 it be better to start -- we know it's going
13 to cost. If it cost \$19 million for five
14 counties, we know it's going to cost
15 something. So wouldn't it make sense to have
16 a number to begin the process of applying
17 this principle in the settlement to the rest
18 of the counties?

19 DIRECTOR LEAHY: Oh, absolutely. I
20 think the number -- right.

21 SENATOR DeFRANCISCO: And the number,
22 you think, once it starts being implemented,
23 is \$160 million, approximately?

24 DIRECTOR LEAHY: Plus the increased

1 city costs, yeah.

2 SENATOR DeFRANCISCO: Okay. All

3 right. Okay, that's number one.

4 Number two, one of the things that was

5 done here in this process was -- one of the

6 things you were charged to do in the

7 settlement is to come up with eligibility

8 standards; correct?

9 DIRECTOR LEAHY: Yes.

10 SENATOR DeFRANCISCO: Now, you've got

11 a whole book on eligibility standards here.

12 Okay? Do you have it with you?

13 DIRECTOR LEAHY: I do.

14 SENATOR DeFRANCISCO: Okay. Could I

15 just ask you -- for example, Onondaga County.

16 This is one of the five counties that was

17 part of the settlement, and I represent part

18 of Onondaga.

19 Page 11. Does this chart that's on

20 page 11, does this -- the arrow going up on

21 the top chart, which deals with applications

22 for assigned counsel, it sort of goes up

23 maybe, I don't know, 70 -- I don't know how

24 many degrees. But that shows a substantial

1 increase in applications; correct?

2 DIRECTOR LEAHY: It does. During a
3 six-week period.

4 SENATOR DeFRANCISCO: Okay. And the
5 lower chart, where the lines are going down,
6 does that mean that the denials by the judge
7 for free counsel are going down?

8 DIRECTOR LEAHY: Yes.

9 SENATOR DeFRANCISCO: Okay. So based
10 on the standards, at least for Onondaga
11 County, the new standards, the number of
12 applications for free counsel are going up
13 and the judges are denying them less.

14 DIRECTOR LEAHY: Yes.

15 Keep in mind, though, Senator, that
16 Onondaga County is a true outlier with
17 respect to eligibility. Our findings, dating
18 back to the beginning of 2015, show that
19 judges had historically been overriding
20 denials of eligibility by the assigned
21 counsel program in 86 percent -- with an
22 86 percent frequency.

23 During the six-week, very short period
24 in which we had data post the new standards

1 coming in, that rate rose to 89 percent
2 reversal of denials. So the judges in
3 Onondaga have really been replacing the
4 assigned counsel program, which I'm very
5 happy to say is now under new leadership.

6 And we're hoping for -- in other
7 words, what we don't know about those numbers
8 you note on page 11, we don't know whether it
9 is a true spike because of changes in
10 eligibility or whether, as many attorneys
11 have told us, the process of having a client
12 become eligible took weeks or months in
13 Onondaga under the old leadership of the ACP
14 program. Because voluminous documentation
15 was required. As I've already indicated,
16 many, many erroneous denials of eligibility
17 were rendered. Attorneys didn't get paid
18 until eligibility was determined, so the
19 critical first weeks of representation were
20 not funded.

21 So what we don't know is whether all
22 of those pent-up applications which had not
23 been submitted to the program because
24 documentation was not complete -- and now,

1 all of a sudden, September 19th,
2 documentation was not required in order for
3 eligibility to be considered -- whether that
4 led to a one-time surge. That's noted in the
5 accompanying pages.

6 SENATOR DeFRANCISCO: Okay. Can you
7 go to page 26? There's a chart there for
8 Schuyler County. Percentage of applications
9 found ineligible; correct?

10 DIRECTOR LEAHY: Right.

11 SENATOR DeFRANCISCO: And do you see a
12 precipitous drop down to zero people were
13 found ineligible for assigned counsel?

14 DIRECTOR LEAHY: 0.9?

15 SENATOR DeFRANCISCO: Excuse me, 0.9.

16 DIRECTOR LEAHY: Yup.

17 SENATOR DeFRANCISCO: So of all the
18 people applying for assigned counsel, only
19 0.9 percent in Schuyler County were found
20 ineligible, based on the new standards.

21 DIRECTOR LEAHY: Actually, you can
22 look at the table on page 4, which has all
23 five counties in one place, and that will
24 show the Schuyler rate did go down from a 3.1

1 percent denial rate before implementation to
2 0.9 percent after implementation, and that
3 the five-county average went from 4.4 percent
4 denial rate to 1 percent denial rate, on
5 average, during this very short period of
6 time.

7 SENATOR DeFRANCISCO: During a very
8 short period of time, which all happens to be
9 after you changed the eligibility standards.

10 DIRECTOR LEAHY: Yeah. The point
11 being that in the five counties, the overall
12 impact on -- of the eligibility standards on
13 increased cases and cost is quite minimal.

14 SENATOR DeFRANCISCO: I don't make the
15 same conclusion. When you've got counties
16 that everybody's eligible that applied, that
17 concerns me a little. Which brings me to my
18 very, very final point. The out --

19 DIRECTOR LEAHY: Senator, let me say
20 one more thing about that, if I may. And I'm
21 sorry if I'm interrupting.

22 SENATOR DeFRANCISCO: Go ahead.

23 DIRECTOR LEAHY: That is that --
24 please understand that we were not

1 negotiators of this settlement, we're the
2 implementers of it. Had I been at the
3 negotiating table, I can tell you, without
4 any fear of doubt, that either that provision
5 would have been funded or it wouldn't have
6 been in there.

7 And that's the one provision in the
8 settlement that is not funded, except for the
9 five counties. And that is not right. And
10 that is why we have a \$6 million request not
11 found in the Executive Budget -- I hope it
12 will be found in the legislative add -- to
13 reimburse counties for any additional costs
14 of the implementation standards -- which
15 don't go into effect in the other counties
16 until April 1st.

17 SENATOR DeFRANCISCO: Okay. This is
18 my concern. If you have poor counties, rural
19 counties, where everybody applies for free
20 counsel, gets it -- or 0.9 percent don't get
21 it, okay -- that the costs overall to each of
22 these counties are going to go up
23 substantially with the new eligibility
24 standards. And we're going to be creating a

1 problem, a substantial problem down the road.

2 Okay?

3 It's different if the Governor signed
4 the bill that the state's picking up all of
5 the charges. But the state, under this
6 budget, is not. Okay, so that's point one.

7 And these are the standards. Now,
8 tell me if I'm incorrect. The old standards,
9 when we were talking about this bill, trying
10 to get things done, was that if your gross
11 income was -- I think it was 125 percent of
12 the poverty level, you would be -- under the
13 guidelines, the people would be eligible. Is
14 that fair to say?

15 DIRECTOR LEAHY: No. Senator, we did
16 eight public hearings, we did a survey of
17 judges and providers, we -- in this very
18 report you can read that we found at least
19 70 different standards for determining
20 eligibility in the state.

21 And you can also read, again on page
22 4, that three of these five counties under
23 this preliminary study -- very preliminary,
24 we don't take it as gospel -- show no

1 increase in assignments.

2 A fourth one, Washington County, shows
3 an increase that they attribute not to
4 eligibility but to Counsel at First
5 Appearance. And the reason there is pretty
6 clear, that if people have a lawyer at first
7 appearance, that lawyer hands them an
8 application form, they're much more likely to
9 go through the laborious process of applying
10 for counsel than they would have been if they
11 were alone there.

12 And then there's Onondaga, and that
13 one is very much in flux. And we expect that
14 to even out, but it's early days.

15 SENATOR DeFRANCISCO: Okay. Now,
16 getting back to the question, the question
17 was, if you want to tell me the five
18 counties, what was the percentage over the
19 poverty level that each of the counties
20 applied before you changed the standards?

21 DIRECTOR LEAHY: I think that that is
22 probably in the report. I don't have it off
23 the top of my head.

24 I can tell you that over and over and

1 over again, at our eight public hearings --
2 and I attended six of them -- we heard that
3 we have a low rate but we have a beneficent
4 review and most people who apply for counsel
5 are given counsel. That was the
6 overwhelming --

7 SENATOR DeFRANCISCO: Well, that's
8 great. I don't care what's said at the
9 hearings. What I'm trying to find out is
10 what was fact, not what people's opinions
11 were trying to expand the system.

12 My understanding was that 125
13 percent -- if you are 125 percent, your gross
14 income is 125 percent of the poverty level,
15 under the guidelines, you're eligible. Make
16 it a 150 percent. Make it 175 percent. The
17 new guidelines went from that number to
18 250 percent -- not of the gross income, but
19 of the net income. Is that fair to say?

20 DIRECTOR LEAHY: I don't believe gross
21 income was really the actual standard in any
22 county, Senator.

23 SENATOR DeFRANCISCO: Bill, you're
24 losing me. You're really losing me. We'll

1 have more discussions about it.

2 DIRECTOR LEAHY: We really need to,
3 because there has been so much hysteria about
4 what these new standards -- which we're
5 implementing under a court order, please keep
6 in mind, are going to cost. And there is as
7 yet scant evidence that that actually is the
8 case.

9 We're doing our best with this 38-page
10 report concerning three months of experience.
11 We're getting it in here on time for this
12 budget hearing. It should be the start of a
13 more rational debate about this important
14 issue.

15 SENATOR DeFRANCISCO: Well, you can't
16 have a rational debate if you're changing the
17 facts as you go forward.

18 DIRECTOR LEAHY: I'm not changing any
19 facts, I am telling you what we learned
20 during our study.

21 SENATOR DeFRANCISCO: Well, answer
22 this. Maybe you can do this without any
23 public hearings and so forth. Do you know
24 the new standards, the eligibility standards?

1 DIRECTOR LEAHY: Yes.

2 SENATOR DeFRANCISCO: Okay. Is it 250
3 percent --

4 DIRECTOR LEAHY: Yes.

5 SENATOR DeFRANCISCO: If your net
6 income, not gross --

7 DIRECTOR LEAHY: Yes, net.

8 SENATOR DeFRANCISCO: -- your net
9 income is 250 percent of the poverty level.
10 And net means you take out automobile
11 payments, rent payments --

12 DIRECTOR LEAHY: You take our
13 reasonable and necessary living expenses for
14 you and your dependents.

15 SENATOR DeFRANCISCO: Now, is that a
16 substantially bigger eligibility pool?

17 DIRECTOR LEAHY: Yes, it is an
18 expanded eligibility pool. The question is,
19 is it a more appropriate one. We think it
20 is.

21 SENATOR DeFRANCISCO: Okay. And the
22 last point is simply this. We've got to get
23 something that works. All right? If you
24 want to insist that the eligibility

1 standards are going to be expanded to that
2 amount, then you're going to be in a
3 situation where the costs are going to be
4 expanded. And the issue of cost is not going
5 to be over after this budget, it's going to
6 be continually going forward.

7 What I'm only suggesting is that in
8 order to get this thing moving, we should
9 have an amount in the budget that's realistic
10 to start treating the other counties exactly
11 like the five counties that sued -- or were
12 sued. And secondly, to make sure that the
13 eligibility standards aren't going to break
14 the bank of the counties, because at least
15 right now, all of the costs of the counties
16 are not being covered by the state. Fair
17 enough?

18 DIRECTOR LEAHY: Fair enough.

19 Senator, I agree with you on both
20 points. I'm happy to continue the discussion
21 with you. And as I've told you before, when
22 we have a body of work, when we have a year's
23 time to take a look at what the impact
24 actually is -- you know, we don't consider

1 ourselves all knowing and supremely
2 intelligent. We're happy to reassess should
3 data demonstrate that we should.

4 CHAIRMAN FARRELL: Finished?

5 SENATOR DeFRANCISCO: Yes.

6 CHAIRWOMAN YOUNG: Okay, thank you.

7 CHAIRMAN FARRELL: Assemblywoman
8 Weinstein, please.

9 ASSEMBLYWOMAN WEINSTEIN: Thank you,
10 Mr. Chairman.

11 Bill, I thought I heard you mention
12 that about -- close to 25 percent of the
13 cases were family representation.

14 DIRECTOR LEAHY: Yes.

15 ASSEMBLYWOMAN WEINSTEIN: So I'd just
16 like some clarification. I know that you
17 said that they're not included in the
18 settlement agreement, but are they included
19 in the caseload standards that you've
20 developed so far?

21 DIRECTOR LEAHY: No, they're not.
22 Because those are done pursuant to the
23 settlement and as part of the implementation
24 of it.

1 ASSEMBLYWOMAN WEINSTEIN: So then how
2 do the family representations fit with
3 caseload standards? Could that then increase
4 the number of cases, individual 18b --

5 DIRECTOR LEAHY: Right now they're
6 essentially orphaned. I have a -- on page 8,
7 the last page of my written presentation, I
8 have a paragraph called "Unfinished Business"
9 to try to highlight this. Some of you may
10 have seen the New York Law Journal piece in
11 which I raised it as a real concern.

12 Angela Burton, who is the director of
13 parent representation in my office, is
14 studying this and organizing, you know, what
15 we hope will be a task force to look at the
16 problem. The problem is it goes all the way
17 to the Kaye Commission. It was not included
18 in the Kaye Commission study. Therefore, or
19 perhaps therefore, it was not included in the
20 Hurrell-Harring litigation, which began in
21 2007. And it is left out of the settlement
22 and it's left out of the Governor's
23 otherwise, you know, very positive proposal,
24 and it's very unfortunate. It should be in.

1 It's every bit as much mandated
2 representation as is criminal defense.

3 ASSEMBLYWOMAN WEINSTEIN: So I don't
4 want to take up more time here, but if you
5 could forward us some data on the cost of
6 that representation.

7 DIRECTOR LEAHY: We've done a little
8 preliminary work. The five counties is where
9 we have our best data, just because we've dug
10 in so deep there. And based on just the five
11 counties, you know, it looks as though the
12 cost component may exceed case assignment
13 component. So 25 percent case assignments,
14 it's looking like about 30 percent of costs,
15 as near as we can tell. Again, early basis
16 and always subject to further review. But
17 that's the way we see it right now.

18 ASSEMBLYWOMAN WEINSTEIN: And I know
19 you were having a discussion with Senator
20 DeFrancisco about the 250 percent of poverty.
21 You said that was net? Do you have a dollar
22 figure --

23 DIRECTOR LEAHY: Net income.

24 ASSEMBLYWOMAN WEINSTEIN: --

1 associated with --

2 DIRECTOR LEAHY: Well, we were guided
3 by two things. We were guided by the Third
4 Department guidelines going back to 1977.
5 They didn't say 250, but they talked about
6 net income and how you have to be able to
7 care for yourself and your family, and then
8 can you hire a lawyer. That's the proper way
9 to analyze it.

10 And the second thing we followed is
11 the self-sufficiency index for each county.
12 And the lowest self-sufficiency index of any
13 county in the state, in 2010, was about
14 220 percent. So very likely even there
15 it's --

16 ASSEMBLYWOMAN WEINSTEIN: It may even
17 be low for --

18 DIRECTOR LEAHY: And of course on Long
19 Island, Westchester, Hudson Valley, it's like
20 350, 400. So we don't think 250 is an
21 unreasonable approach.

22 ASSEMBLYWOMAN WEINSTEIN: Okay. Thank
23 you very much.

24 CHAIRWOMAN YOUNG: Senator Krueger.

1 SENATOR KRUEGER: Evening. Is it
2 evening? I'm not sure. Oh, it's afternoon.

3 So we just got into lots and lots of
4 substance about the money for the different
5 counties. I'm a little confused about the
6 money just to have you continue. Because
7 you've been taken out of the State Operations
8 budget and you can be moved into Aid to
9 Localities, but you're not there now. So who
10 moves you and when? And what happens if you
11 don't?

12 DIRECTOR LEAHY: Well, I am seeking --
13 not necessarily daily, but very, very
14 frequently -- the assurances that I think are
15 implicit in your question.

16 Here we are in the budget not only --
17 well, we're two years, first of all, into a
18 7½-year implementing role, chosen by the
19 State of New York for that role. We're very
20 proud to have it, we're fulfilling it very
21 responsibly, but we've got 5½ years to go,
22 and that obligation doesn't cease if we have
23 zero in our State Operations line, the
24 state's obligation. That's number one.

1 Number two, we are vested with the
2 responsibility of taking Hurrell-Harring
3 reforms statewide in the Governor's own
4 budget. So the word "disconnect" is about
5 the most mild word I can think of to describe
6 all of those responsibilities on the one
7 hand, and the zero in the State Ops line on
8 the other.

9 And I wish I had an answer to that
10 question which I have been putting. I don't
11 have one yet. I intend to get one. I have
12 expressed that I have a very hardworking and
13 very expert staff which produces these
14 reports and these plans, and they
15 understandably would like to know that their
16 state employment will continue.

17 SENATOR KRUEGER: So if you're not put
18 back into State Ops, then you have to
19 actually be written in somewhere in a budget
20 bill into Aid to Localities, correct?
21 Because you're not there really either.

22 DIRECTOR LEAHY: Right. We're not
23 specifically written in, it's just a portion
24 may be transferred to State Operations.

1 That's what it says.

2 SENATOR KRUEGER: No, I think it said
3 a portion may be transferred to Aid to
4 Localities.

5 DIRECTOR LEAHY: From Aid to
6 Localities into State Ops.

7 SENATOR KRUEGER: Right, that could be
8 transferred. But that would need to be
9 explicit in the budget, except "can be" is
10 not really very explicit if you want to make
11 payroll. Right?

12 DIRECTOR LEAHY: I'm sorry, I missed
13 your question.

14 SENATOR KRUEGER: "Can be" is not very
15 useful when you want to make payroll.

16 DIRECTOR LEAHY: "Can be" is not very
17 useful. And of course we have no control
18 over that. I mean, I have already expressed
19 the view that there's \$4.8 million that
20 belongs in State Ops, and what's it doing in
21 Aid to Localities, and I want it back.

22 SENATOR KRUEGER: Okay. So I just
23 wanted to agree with you that you're not in
24 the right place right now.

1 In the very beginning of your
2 testimony, you talked about all these reports
3 showing real success coming out of the work
4 in indigent legal services, and a reduction
5 in the number of cases. Where are the
6 reports?

7 DIRECTOR LEAHY: The reports are all
8 on our website. They come out every fall.
9 They're called -- they have a kind of
10 unwieldy title, I have one here, "Estimate of
11 the Cost of Compliance with Maximum National
12 Caseload Limits in Upstate New York."

13 SENATOR KRUEGER: So I can go online
14 now and see the most recent reports.

15 DIRECTOR LEAHY: Yes, you can. Or you
16 can simply ask me to send your office an
17 email with all four, and I will do it before
18 the day is out.

19 SENATOR KRUEGER: Thank you very much.
20 Thank you.

21 CHAIRWOMAN YOUNG: Thank you.

22 CHAIRMAN FARRELL: Thank you.

23 That's it?

24 CHAIRWOMAN YOUNG: Okay. Thank you so

1 much for your testimony today. We truly
2 appreciate it.

3 DIRECTOR LEAHY: Thank you very much
4 for your time. I really appreciate it.

5 CHAIRWOMAN YOUNG: Okay, thank you.

6 Our next speaker is Director and Chief
7 Information Officer Margaret Miller, New York
8 State Office of Information Technology
9 Services.

10 Welcome. So go ahead, proceed.

11 DIRECTOR MILLER: Thank you.

12 CHAIRWOMAN YOUNG: Thank you.

13 DIRECTOR MILLER: Good afternoon,
14 Chairwoman Young, Chairman Farrell, and
15 distinguished members of the Legislature. I
16 am Maggie Miller, the state's chief
17 information officer and director of
18 Information Technology Services, and I'm
19 joined today by Matt Millea, executive deputy
20 director of the Office of Information
21 technology Services.

22 The 2017-2018 Governor's Executive
23 Budget includes \$582 million in General Fund
24 support to enable ITS to continue to provide

1 consolidated statewide information technology
2 services. The Executive Budget also includes
3 \$85 million in capital funds for IT
4 innovation in enterprise-level applications
5 and programs.

6 The funding will allow ITS to build on
7 the very considerable progress accomplished
8 to date towards ensuring the citizens of
9 New York are provided with the best possible
10 technology in their interactions with state
11 government, making government work smarter
12 for citizens, spurring economic growth, and
13 making the state more accessible to business.

14 Every member of the ITS team can be
15 proud of the progress made in our
16 transformational journey. We are very
17 conscious of the distance still left to
18 travel before the ITS organization and the
19 services it provides fully meet the standard
20 that the citizens of New York deserve. Such
21 was the fragility of the environment before
22 consolidation that we've had to focus more
23 and for longer than we'd anticipated on
24 reducing operational and cyber risk rather

1 from the environment of the agencies ITS
2 serves, to reduce risk, improve the quality
3 of our services, provide the best career
4 opportunities to ITS team members, and free
5 up resources to invest in innovative new
6 services to citizens. We make multiyear
7 plans based on the best information available
8 at the time, while continuously modifying
9 these plans as the needs of citizens and
10 agencies evolve, and as circumstances demand.

11 The Office of Information Technology
12 Services' Executive Budget request for state
13 fiscal year 2017-2018 reflects these goals
14 and constraints.

15 In the last year, ITS determined key
16 areas of strategic focus, and these remain
17 our strategic priorities in the 2017-2018
18 financial year.

19 There is no higher priority for ITS
20 than protecting citizen data against
21 cyberattack. We have adopted the industry
22 standards NIST 800.53 and ITIL frameworks and
23 are aggressively driving towards compliance,
24 working closely with our partners in DHSES

1 and State Police as well as the FBI and the
2 federal Department of Homeland security.

3 Among our initiatives to improve
4 cybersecurity are a remediation of critical
5 applications to achieve the required level of
6 cyber protection, implementation of a
7 vulnerability scanning architecture and
8 support organization to ensure devices
9 located at our CNSE data center are
10 maintained to industry security controls,
11 real-time network monitoring against threats
12 in both the CNSE and Utica data centers,
13 passive email phishing and malicious URL
14 payload protection, real-time network packet
15 capture and incident response support for
16 network threats discovered, and threat
17 correlation across multiple vectors and
18 consolidated management of threat
19 intelligence.

20 Running existing services and building
21 new ones as cost-effectively as possible,
22 while managing our financial resources in
23 accordance with best practice, is the very
24 core of what we do. These outcomes are those

1 most visible to our agency partners and
2 citizens. The remaining strategic priorities
3 are those areas we must focus on in order to
4 transform the way ITS delivers services to
5 agencies and citizens.

6 New York citizens expect IT-enabled
7 services to be reliable, secure, and
8 available 24/7, and we have a major focus on
9 overcoming decades of underinvestment in
10 infrastructure, processes and skills to
11 achieve operational excellence by remediating
12 the technology debt, driving out complexity,
13 accelerating the consolidation of legacy data
14 centers, and significantly upgrading our
15 level of operational maturity while further
16 driving down costs.

17 ITS continues to transform
18 applications by delivering integrated IT
19 services from the citizen viewpoint, and
20 these services will mirror the best of the
21 commercial world in functionality,
22 availability, reliability, usability and
23 security. Wherever possible, we build
24 capabilities once and reuse in multiple

1 places to deliver a seamless citizen
2 experience and best value, securely and
3 reliably.

4 We are achieving this by identifying
5 opportunities for sharing technology
6 solutions across agencies with similar needs.
7 Technologies procured and stood up with a
8 ready-trained workforce are being leveraged
9 by multiple initiatives.

10 ITS has the capacity to help transform
11 how cost-effective services are delivered to
12 the citizens of New York State. To achieve
13 this, we must have the right resources, the
14 right skills and the right organization. We
15 plan to become a national leader in building
16 the IT workforce of the future by partnering
17 with academic institutions and technology
18 industry leaders to develop the workforce we
19 need to grow the technology sector in
20 New York State.

21 We're reengineering the ITS
22 organization and offering really exciting
23 career opportunities to our staff. We do
24 have much to do to ensure that each member of

1 the team has the opportunity to reach his or
2 her potential and make the greatest possible
3 contribution to our transformation program.
4 We're ensuring our training and development
5 plans are closely aligned with our
6 transformation strategy and that each team
7 member has the skills needed to be effective
8 and to progress in his or her career. In
9 2016 alone, ITS provided more than 6,800
10 training courses to our staff.

11 However, expertise requires both
12 training and experience. We face a
13 significant loss of experience, with
14 35 percent of our staff eligible to retire in
15 the next five years, and 15 percent of our
16 team eligible to retire today. As the vast
17 majority of IT staff in the state are already
18 part of ITS, the only way to replace the head
19 count lost from retirements is with
20 entry-level staff with very limited
21 experience. That results in a very high
22 reliance on expensive consultants to meet the
23 experience deficit.

24 For these reasons, we are requesting

1 your support for the Governor's Executive
2 Budget proposal that allows us to hire a
3 number of these consultants into the
4 PEF-represented state workforce in term
5 roles. On passing the civil service exams,
6 those individuals would then be able to apply
7 for permanent positions, in competition with
8 existing ITS staff.

9 Again, I ask for your support for this
10 important legislation.

11 Thank you for the opportunity to speak
12 with you today, and I welcome your questions
13 and comments.

14 CHAIRWOMAN YOUNG: Thank you very
15 much. Thank you for joining us here today.

16 And I listened to your testimony.
17 Now, we had a discussion last year about
18 career ladders within the department, and
19 you're bringing forward a proposal that
20 actually would add I believe an additional
21 250 slots.

22 So in 2009, we authorized 500 term
23 appointments. To date, how many of these
24 slots have been utilized?

1 DIRECTOR MILLER: I think that
2 provision has expired.

3 CHAIRWOMAN YOUNG: It expired, but how
4 many were utilized, and were any held over?

5 DIRECTOR MILLER: None. The program
6 was very successful, and we were very
7 successful in retaining those staff.

8 So the examination was held within the
9 five-year period, and all the staff who were
10 then in those positions I believe took the
11 exam, and many of them passed and were
12 successful in achieving permanent positions,
13 and we've retained them. There's been a
14 great record of retention of some very key
15 skills as a result of that program. And
16 that's one of the reasons we're asking for a
17 repeat of the program.

18 I don't have the number on exactly how
19 many were hired during that process, I'm
20 afraid. I can get it back to you.

21 CHAIRWOMAN YOUNG: Okay, thank you.

22 Are term appointment employees
23 classified as contractors, or something else?

24 DIRECTOR MILLER: They're classified

1 as staff. They're PEF positions, so they are
2 PEF-represented roles, so they're classed as
3 staff positions -- technically not permanent,
4 they're this unique-term role.

5 Temporary positions are what we use
6 for project roles of a limited duration.

7 CHAIRWOMAN YOUNG: So you're saying
8 the vast majority of the 500 slots made the
9 transition to permanent employee?

10 DIRECTOR MILLER: I could be wrong; I
11 don't remember it being 500. I do apologize.
12 I'll check the numbers and get back to you.

13 CHAIRWOMAN YOUNG: Oh, okay.

14 DIRECTOR MILLER: I thought the
15 original number was lower. But I will find
16 out.

17 CHAIRWOMAN YOUNG: Because I thought
18 you just said that, that the 500 slots were
19 utilized and most of them transitioned into
20 permanent employment.

21 DIRECTOR MILLER: From memory, the
22 first time around it was a lower number than
23 500. And we're requesting 250, as you know,
24 this time.

1 CHAIRWOMAN YOUNG: It would be helpful
2 to know those figures.

3 DIRECTOR MILLER: Yes, of course.

4 CHAIRWOMAN YOUNG: Thank you.

5 What kind of job functions do these
6 individuals perform?

7 DIRECTOR MILLER: It will be a range
8 of roles, depending on our need. But roles
9 where experience, as I say, is crucial. And
10 in IT, experience always matters.

11 And as I just described, we're losing
12 a great deal of valuable experience through
13 retirement, and currently our only mechanism
14 is to hire people at entry level. And
15 unfortunately, that's adding to the already
16 increasingly unsustainable load on some of
17 our senior staff, who are really critical to
18 the operation of the agency.

19 CHAIRWOMAN YOUNG: So your testimony
20 says that you face a significant loss of
21 experience --

22 DIRECTOR MILLER: Yes.

23 CHAIRWOMAN YOUNG: -- with 35 percent
24 of your staff eligible to retire in the next

1 five years. I seem to remember a discussion
2 last year during the budget hearings about
3 career ladders and employees being very
4 concerned about lack of career ladders. And
5 what have you done to address that situation?

6 DIRECTOR MILLER: Well, as I just
7 mentioned, we've had a very intensive
8 training program. We've chosen some very
9 specific skills that are strategic skills for
10 the future so we can really focus our career
11 development on those skills, and we have
12 conducted 6,800 trainings.

13 And in fact, in the last year, we
14 promoted a record 11 percent of our staff
15 internally into new opportunities. But
16 unfortunately, that isn't sufficient to meet
17 the experience deficit.

18 CHAIRWOMAN YOUNG: Thank you.

19 The IT cybersecurity responsibilities
20 were absorbed from the Department of Homeland
21 Security and Emergency Services. And as it
22 stood, DHSES performed this task for three
23 programs -- information security management,
24 managed security services, and the

1 cyber-incident response team.

2 The Executive's 2018 budget proposal
3 includes the creation of a cyber-incident
4 response team funded through DHSES. So when
5 IT absorbed the responsibilities that were
6 formerly with the Department of Homeland
7 Security, IT took over information security
8 management, managed security services, and
9 the cyber-incident response team. Now that
10 the cyber-incident response team is being
11 funded through DHSES, does your department
12 still have a response mechanism?

13 DIRECTOR MILLER: Well, one of the
14 things that I've worked very closely on with
15 the commissioner of DHSES and also the
16 superintendent of State Police is making sure
17 we have absolute clarity on who's responsible
18 for what. And that's working very well.

19 And in fact what we've clarified now
20 is that the responsibility of ITS is for
21 ensuring the security of the data held by the
22 48 agencies we support. Whereas the
23 Department of Homeland Security, of course,
24 is responsible for helping New York State

1 citizens and businesses and critical
2 infrastructure protect themselves, so that
3 their scope is somewhat wider.

4 So we have a capability to respond to
5 incidents within the organizations we
6 support, but DHSES's responsibility is very
7 much broader than that.

8 CHAIRWOMAN YOUNG: So it's still split
9 between multiple agencies, is what you're
10 saying.

11 DIRECTOR MILLER: Well, and
12 appropriately so, I think, because we have
13 different areas of responsibility. And of
14 course there's also State Police, who enforce
15 cybersecurity laws and provide targeted cyber
16 intelligence.

17 And in fact we actually had the
18 opportunity to test out how well we work
19 together only a couple of months ago, because
20 we had the opportunity to take part in a
21 tabletop exercise run by the federal
22 Department of Homeland Security, where we
23 mocked up a cyberattack on the health agency
24 and we had -- goodness me, I think we must

1 have had 50 people in attendance, from all
2 the potentially affected departments who
3 would have to respond to a real cyber event.
4 We had members of staff from the chamber and
5 everybody from the Governor's staff to
6 communications and so forth.

7 Nobody had prior notice of this
8 exercise, what it was going to be like, so
9 nobody could prepare -- other than how they
10 would normally. And in fact we did very
11 well. And we looked at the after-action
12 report that was produced for us, and the
13 Department of Homeland Security was very
14 complimentary about the way the different
15 agencies worked together, didn't fall over
16 each other, but really understood their
17 roles.

18 CHAIRWOMAN YOUNG: Which state
19 agencies and public authorities specifically
20 are covered under ITS?

21 DIRECTOR MILLER: There are 48. I can
22 list them for you if you'd like.

23 CHAIRWOMAN YOUNG: Forty-eight out of
24 how many?

1 DIRECTOR MILLER: Well, there are,
2 gosh, quite a large number of non-executive
3 agencies and authorities and other executive
4 agencies that we don't support. That was the
5 original mandate of ITS when it was formed.

6 CHAIRWOMAN YOUNG: If an executive
7 state agency is the victim of a cyberattack,
8 how are the victims notified? Are they
9 notified by you? How does that process work?

10 DIRECTOR MILLER: It depends on the
11 nature of the attack. If the -- if it's an
12 attack on an agency that we support, then --
13 and the majority of attacks, of course, are
14 not successful.

15 But in the rare event that an attack
16 might be successful, then we would work very
17 carefully with that agency to determine the
18 extent of any breach and whether indeed that
19 breach required notification, and then the
20 agency itself would handle the notification
21 if it was citizens' data that was breached.

22 CHAIRWOMAN YOUNG: How do you
23 interface with federal agencies, that sort of
24 thing? Because it seems to me that there are

1 constant new threats out there, there are new
2 schemes that are put together and -- how does
3 that work so that you're up to speed?

4 Because I have to imagine that this changes
5 day by day and even minute by minute in some
6 cases.

7 DIRECTOR MILLER: Indeed it does,
8 yeah.

9 We work very closely with the NYSIC
10 and also with the Multistate ISAC, which is
11 an organization that collects information
12 from around the country and around the world,
13 from federal agencies and state agencies. We
14 have a very close relationship with them.
15 And of course, conveniently, they're located
16 very nearby. And we review all the
17 information provided to us to determine
18 what's actionable and what's for information
19 only, and move very aggressively to implement
20 their recommendations, such as we did with
21 the Grizzly Steppe recommendations that
22 recently surrounded the election.

23 CHAIRWOMAN YOUNG: One of the issues
24 has to do with -- and I know you're focused

1 on the state agencies, but with the new
2 cyber-incident response team. It will be
3 helping localities who may be under threat
4 and that sort of thing.

5 But do you see a need for some kind of
6 focus on private industry or business? And
7 the reason I ask that is that many people in
8 the state were victims of a computer hack by
9 a health insurance organization. And of
10 course we're very concerned about that.
11 Those are some of the most sensitive records
12 about anyone, and it includes items that
13 could be used for identity theft and other
14 nefarious deeds.

15 So what need do you see out there?

16 DIRECTOR MILLER: Indeed, I was the
17 victim of such an attack myself only a couple
18 of weeks ago, so I totally understand that.

19 I'm confident that Commissioner
20 Melville has a good plan in place in order to
21 advise industry. And of course, you know, we
22 welcome the new regulations that DFS is
23 proposing to make sure that financial
24 organizations secure their data.

1 The threats are constantly evolving.
2 We maintain a posture of I would call it
3 confident paranoia, because however on a
4 daily basis we increase our level of
5 protection, the threat continues to evolve.
6 And that's one of the reasons why in ITS
7 we're spending more on cybersecurity -- in
8 fact, more than twice as much as the majority
9 of government agencies across the country.
10 We're spending fully 17 percent of our budget
11 on securing citizen data.

12 But I do think that there's a need for
13 more awareness. Certainly there are federal
14 regulations and financial regulations, such
15 as SOX, that focus on this. But I'm
16 confident that Commissioner Melville has a
17 plan on that subject.

18 CHAIRWOMAN YOUNG: Thank you.

19 We'll allow the Assembly to ask some
20 questions, and then some of my colleagues.

21 ASSEMBLYMAN OAKS: Yes, I just had a
22 question. The ammunition database through
23 the SAFE Act, originally there was an
24 appropriation of \$80.74 million that would

1 have paid for that. My understanding is
2 there's currently \$4.6 million left in that.
3 So I guess the question would be, are we done
4 with that? And if so, do we have a plan to
5 use that other 4.6?

6 DIRECTOR MILLER: Unfortunately, I
7 don't recognize those specific numbers.

8 But I mean, as you know,
9 Superintendent Beach has been in his role for
10 some seven months at the moment, and we
11 continue to work very closely with him and
12 his team in order to find a suitable solution
13 for the ammunition database. But so far, as
14 you know, we've been focusing on the many
15 provisions required -- the many elements
16 required to fully meet the provisions of the
17 SAFE Act.

18 And in fact we've just this month
19 implemented the functionality for pistol
20 recertification, and I'm pleased to say that
21 we've already seen some 30,000 registrations,
22 pistol recertifications.

23 But as I say, unfortunately I don't
24 recognize those specific numbers. Happy to

1 follow up with you later.

2 ASSEMBLYMAN OAKS: I would be
3 appreciative of that. Thank you.

4 DIRECTOR MILLER: Of course.

5 CHAIRWOMAN YOUNG: And I will remind
6 you, Director, that there is a memorandum of
7 understanding that the database cannot go
8 forward without --

9 DIRECTOR MILLER: Indeed.

10 CHAIRWOMAN YOUNG: -- the agreement by
11 the majority leader in the Senate, and that's
12 still in place.

13 DIRECTOR MILLER: Indeed.

14 CHAIRWOMAN YOUNG: Senator Croci.

15 SENATOR CROCI: Thank you, Madam
16 Chair.

17 Director, good to see you again.

18 DIRECTOR MILLER: Good to see you,
19 Senator.

20 SENATOR CROCI: A quick question. You
21 mentioned that there's coordination with
22 regard to the cyber-incident response teams,
23 the fact that they're going -- they're not
24 going to your office, and instead they're

1 going to DHSES, whereas I think last year
2 when we were having these conversations, it
3 was the other way around.

4 But you said that there's an
5 understanding between the superintendent of
6 State Police and Commissioner Melville at
7 DHSES and yourself.

8 DIRECTOR MILLER: Mm-hmm.

9 SENATOR CROCI: So there is a coherent
10 policy, everyone knows their lane in the
11 road. My question is, where can I as a
12 legislator read that policy or that roadmap
13 for how these lanes in the road function?

14 DIRECTOR MILLER: For how we interact
15 between us and --

16 SENATOR CROCI: Yes. You said
17 there -- and it was recognized even by the
18 Department of Homeland Security. I'm just
19 wondering, is this an informal policy or is
20 this something where it's a, you know,
21 interagency process and you've come up with
22 something that a legislator or someone else
23 can look at and say this is -- who is
24 responsible for this kind of an incident

1 either compliant or approaching compliance.
2 I'm looking at the report that I got from
3 OGS, my office received, with the members of
4 the committee. And you're not in this one,
5 your department isn't, but I see zero
6 percent, zero percent in this year's report,
7 which was late -- not from you, but was late.
8 I don't see you listed. So I'm wondering
9 what is your current compliance with the
10 state law with regard to state contracts
11 issued by your department for
12 service-disabled veteran-owned businesses?

13 DIRECTOR MILLER: Yeah. Well, the
14 good news is I'm pleased to say for the
15 second year running, on the minority- and
16 women-owned businesses, we are exceeding our
17 target. In fact, we've reached double our
18 target.

19 I'm personally disappointed to have to
20 tell you that for disabled and veteran-owned
21 business, for the current year we'll probably
22 only reach 50 percent of our goal. I'm very
23 disappointed about that. I --

24 SENATOR CROCI: Fifty percent of the

1 requirement, or do you have a goal that's
2 short of the requirement?

3 DIRECTOR MILLER: We have a --

4 SENATOR CROCI: It's 6 percent.

5 DIRECTOR MILLER: We have to establish
6 a goal, and that's a published goal.

7 The limitation on us in that area,
8 which hopefully won't exist in the next year,
9 is that we're limited by the order of
10 precedence of procurement. So first of all
11 we have to go to preferred-source vendors, if
12 the form and fit meets our needs. Then we go
13 to OGS centralized contracts, and that's
14 where we do the vast majority of our
15 purchasing. And there just weren't many
16 veteran-owned businesses in that category.

17 I'm pleased to say that OGS has just
18 added 10 disabled and veteran-owned
19 businesses to that category. So I'm really
20 optimistic that I'll be able to tell you next
21 year that we've beaten our goal. That's our
22 intent.

23 SENATOR CROCI: I sure hope so.

24 DIRECTOR MILLER: Yeah, I'm --

8 And more alarming is "ITS often did
9 not provide timely or independent access to
10 certain data and staff, thus limiting the
11 reliability of some of the data that auditors
12 received and the interviews the auditors
13 conducted. There is considerable risk that
14 the material information pertaining to IT
15 transformation was withheld. Further,
16 throughout the audit, we were presented with
17 contradictory information when trying to
18 obtain documentation and answers to our
19 inquiry."

20 And this is from Comptroller
21 DiNapoli's report of August 2016, which
22 you're no doubt aware of. This recently came
23 across our desks, and I just wanted to give
24 you the opportunity to explain it. Thank

1 you.

2 DIRECTOR MILLER: I'm delighted to,
3 thank you.

4 I categorically reject OSC's
5 statement. ITS always works in good faith to
6 comply with all auditors' requests. I
7 believe the truth matters, and the truth is
8 that no requested data was withheld. In
9 fact, I personally committed to provide any
10 information requested, and did so, and spent
11 many hours explaining the terminology and
12 concepts.

13 I welcome all input that's objective
14 and constructive and well informed.
15 Unfortunately, I don't think anybody learned
16 anything useful from this exercise. I
17 requested the standard against which the
18 transformation was to be evaluated; the only
19 reply I ever received was that OSC would
20 measure the program against the measures we
21 use ourselves. But the report makes no
22 reference to the NYST and ITIL frameworks
23 that we do use.

24 And despite the tone of the report,

1 they only came up with four recommendations
2 that were specific, all of which were either
3 already complete or in progress.

4 So I'm as puzzled as you are, Senator,
5 by the nature of their comments.

6 SENATOR CROCI: Well, just to close,
7 Madam Chair, I haven't found the
8 comptroller's office to engage in hyperbole
9 or speculation. They're normally very
10 factually based. And of course Comptroller
11 DiNapoli is somebody that is held in high
12 regard in both houses.

13 I'm just curious as to how there can
14 be such a disagreement with the process of an
15 audit or the information that was provided.

16 DIRECTOR MILLER: I'm, as I say, as
17 puzzled as you are.

18 There were some initial delays that
19 were due entirely to the fact that OSC
20 objected to the presence of a member of my
21 audit team in the interviews. That was
22 necessary to make sure that statements by ITS
23 staff weren't misrepresented or
24 misunderstood, as unfortunately had happened

1 in the past.

2 And also, some of the information
3 requested by OSC didn't exist in the form
4 they specified, and they were working
5 documents. So it took a while for us to pull
6 the information together and create the right
7 versioning and check for accuracy and so
8 forth.

9 This is a really complex
10 transformation that is tough to understand
11 for those with many decades of experience in
12 IT. But as I've said to you, while we're far
13 from perfect and have a long way to go, we
14 have already or are in the process of
15 actioning all the recommendations they made
16 and did categorically provide all the
17 information requested. And I completely
18 reject the statement that we in any way
19 frustrated the audit. We did not.

20 SENATOR CROCI: Okay, thank you.

21 Thank you, Madam Chair.

22 DIRECTOR MILLER: Thank you.

23 CHAIRWOMAN YOUNG: Thank you.

24 Senator Krueger, please.

1 SENATOR KRUEGER: Thank you.

2 So just following up on Assemblymember
3 Kolb's question, even if from a different
4 direction --

5 CHAIRWOMAN YOUNG: Oaks.

6 SENATOR KRUEGER: I'm sorry, excuse
7 me. I apologize.

8 So there was \$84 million for the
9 ammunition database at some point in time,
10 and you said you were going to get back to
11 him on that. I would also like to understand
12 what was spent exactly, because we don't
13 actually have one.

14 And I asked the question of
15 Commissioner Beach of the State Police, who
16 said there's been no new proposals made to
17 him since he's been in charge of the State
18 Police. So I know that there were three
19 earlier proposals, but I can't believe we
20 spent millions and millions of dollars on
21 yet-to-happen.

22 DIRECTOR MILLER: Right.

23 SENATOR KRUEGER: So I would like a
24 clarification of that.

1 DIRECTOR MILLER: Certainly. By all
2 means.

3 So as I said, the SAFE Act requires a
4 number of provisions, and there are number of
5 elements to the IT work required to meet
6 those provisions.

7 The components we've completed already
8 are the assault weapon registration, mental
9 health reporting, ammunition dealer
10 registration, and the recertification of
11 pistols. And on all of those, we spent
12 \$12.8 million. But we have spent no money at
13 all on the ammunition database.

14 SENATOR KRUEGER: So you've said that
15 you oversee -- what did you say, 48 or 49
16 agencies?

17 DIRECTOR MILLER: Forty-eight.

18 SENATOR KRUEGER: And you talk about,
19 in your testimony, all these things you're
20 doing. Do you have a list of the
21 accomplishments that you have completed on
22 any of these agencies in their software or
23 hardware?

24 DIRECTOR MILLER: We do report to the

1 commissioners on a regular basis on our
2 progress. And in fact we're currently
3 working on a report that calls out all the
4 achievements over the four-year life of ITS.

5 Unfortunately, I don't have a report I
6 can give to you right now.

7 SENATOR KRUEGER: So it's one of my
8 pet peeves: So have we finished the
9 computerization of the Department of Housing?
10 Which is no longer called DHCR, it's HCR.

11 DIRECTOR MILLER: I'm pleased to say
12 that finally the contract has been awarded
13 for that piece of work.

14 SENATOR KRUEGER: Just the contract?

15 DIRECTOR MILLER: Yes, and the -- the
16 work has been begun.

17 SENATOR KRUEGER: So that was
18 supposedly a top priority of the Cuomo
19 administration when the Governor was first
20 elected, and we have a contract awarded
21 after -- six and a half years?

22 DIRECTOR MILLER: It's been a very
23 lengthy process, yes, I know.

24 SENATOR KRUEGER: Get any farther on

1 any other agencies?

2 DIRECTOR MILLER: Oh, yes. Yes. I
3 mean, we have -- at the moment we have a
4 portfolio in the current year of some 140
5 projects that are over a million dollars, as
6 well as a large number of enhancements to
7 existing systems.

8 So there are a huge number of projects
9 going on at any time in the agency.

10 SENATOR KRUEGER: I share some of my
11 colleagues' frustration that we're not
12 getting anywhere fast enough on an incredible
13 number of issues.

14 You are right when you say the people
15 of New York State, the consumers of state
16 government, in fact are expecting a
17 21st-century government that has functioning
18 IT and allows them to participate in all
19 kinds of ways, and that our workers deserve
20 the kinds of systems that allow them to
21 provide the services.

22 And I look at the state compared to
23 other states -- or even the City of New York,
24 where I live -- and I'm constantly shocked

1 with how little progress we make.

2 So I have not read the comptroller's
3 report. I will, on the recommendation of
4 Senator Croci, read it.

5 DIRECTOR MILLER: For sure. I mean, I
6 would say that we probably don't do a good
7 enough job of explaining some of the progress
8 we do make, and we are making significant
9 progress. You'll have noticed, for example,
10 on the recent election, that the voter
11 registration process went very smoothly. And
12 that, for example, required us to completely
13 rewrite the systems that underpin
14 applications for voter registration. We
15 rebuilt those between the primary and the
16 general election registration process. And
17 we handled 800,000 applications, 200,000 of
18 those in the last week, without any
19 interruptions in service.

20 So a lot of what we do is not terribly
21 obvious because it's not headline-grabbing,
22 but actually works very well.

23 And we've also, unfortunately, because
24 of the fragile nature of the environment when

1 ITS was formed, we've had to focus far too
2 much and for far too long on stabilizing the
3 environment and on cybersecurity.
4 Unfortunately, those things have to come
5 first. It doesn't make me very popular with
6 my commissioner colleagues, but I have to
7 insist that stabilizing the environment,
8 making sure that we have operational security
9 and cybersecurity, has to come before
10 anything else, including, unfortunately, some
11 of the newer projects.

12 SENATOR KRUEGER: Thank you.

13 CHAIRWOMAN YOUNG: Point of
14 clarification. There was never any money
15 lined out in any state budget regarding the
16 SAFE Act.

17 DIRECTOR MILLER: That's correct.

18 CHAIRWOMAN YOUNG: So you apparently
19 have been spending these millions of dollars
20 out of the ITS budget.

21 DIRECTOR MILLER: Out of the General
22 Fund, that's correct.

23 CHAIRWOMAN YOUNG: Thank you.

24 Senator Savino.

1 SENATOR SAVINO: Thank you, Senator
2 Young.

3 Thank you, Ms. Miller. I just have a
4 question about -- at the end of your
5 testimony, you talk about the IT staff and
6 the significant threat to -- the loss of
7 staff. I think in your testimony you said
8 you're facing -- about 35 percent of your
9 staff right now are eligible to retire in the
10 next five years, and 15 percent are eligible
11 today. That's fully 50 percent of the IT
12 staff.

13 And at the same time, in the
14 Governor's budget there's a proposal to allow
15 for the hiring of 250 people. And this was
16 the subject of some discussion the other day
17 with Civil Service and with GOER, and I'm
18 still somewhat confused as to who these
19 people are, what they would do.

20 Because I understand we have an
21 existing -- we have an existing civil service
22 list for IT positions with almost a thousand
23 people on it. So I asked the question then,
24 why can't we just turn to that list and hire

1 people off the list? They couldn't answer
2 it.

3 So perhaps you can tell me --

4 DIRECTOR MILLER: Certainly.

5 SENATOR SAVINO: -- one, if that list
6 for those positions are positions that you
7 need to fill with these 250 that we want to
8 hire. And if not, why not? Like, what
9 exactly are these 250 people going to do?

10 And then at some point these 250 staff
11 people that will now be represented and state
12 workers, there's going to have to be a civil
13 service exam developed for this position.
14 That's my understanding.

15 DIRECTOR MILLER: Happy to clarify.

16 SENATOR SAVINO: Maybe you can explain
17 it to me, because they couldn't.

18 DIRECTOR MILLER: I'll try.

19 So these individuals are current --
20 currently contractors, very expensive
21 contractors. So they're a known entity. So
22 we know their value to the state. They've
23 already learned about state systems.

24 And this legislation allows us to turn

1 those expensive contractors into state
2 employees in PEF positions, but those
3 positions only last for up to five years.
4 During that five-year period they have to
5 take a civil service exam appropriate to the
6 role that they would be going into.

7 But what this does do is allow us to
8 hire people at more senior levels, more
9 experienced people. Because currently the
10 only way we can bring people into the ITS
11 organization is at the lowest levels. Now,
12 that's great, and we have fantastic
13 internship programs, and we love having
14 bright kids straight out of college join the
15 organization. But as I said, expertise is a
16 mixture of skill and experience. And we
17 desperately need an injection of experience
18 into the middle layers and into the more
19 senior layers of the organization.

20 SENATOR SAVINO: So the existing list
21 that has a thousand -- that would be a lower
22 title or a lower level of skill?

23 DIRECTOR MILLER: There are probably a
24 range of lists, so we have lists applicable

1 to multiple titles. And those -- I think
2 there's a misunderstanding that -- about who
3 competes for the permanent roles.

4 So the permanent roles that these term
5 appointments would be eligible to compete for
6 are available to -- and indeed the term
7 roles -- are available to permanent staff as
8 well as the contractors. And in fact we're
9 obliged to hire from the permanent staff in
10 preference to the contractors.

11 So there's an opportunity for the
12 permanent staff to apply for the term roles,
13 and then when term staff, if they pass the
14 exam, they're in competition with permanent
15 staff who might have reached that level in
16 the ladder, and we would take a view on which
17 are more suitable and would most likely hire
18 the -- those who had the greatest skills as
19 well as the experience.

20 SENATOR SAVINO: It makes a little bit
21 more sense than the explanation I got the
22 other day. But I just wonder, you know, if
23 we are developing exams that actually reflect
24 the work that the agency needs. And perhaps

1 that's something that Civil Service should be
2 looking at.

3 DIRECTOR MILLER: Yeah, that's a
4 different matter and something that we're
5 working very closely with Civil Service on.

6 The tricky thing is that the civil
7 service exams are by nature very general, and
8 IT skills are very specific. So that does
9 give us some challenges, and that's something
10 that Civil Service and our HR department are
11 working on very closely. Because obviously
12 we don't want to have to develop an exam for
13 each very narrow technology skill. That
14 wouldn't be a good use of anybody's time.

15 But at the same time, if someone comes
16 in the top three on a particular exam, but
17 their skills are in COBOL programming and I
18 need someone who's skilled in an Oracle skill
19 set, then that's a mismatch too.

20 So it's -- we're trying to work within
21 the system, at the same time hoping Civil
22 Service and PEF will work with us to make the
23 system more appropriate for the 21st century.

24 SENATOR SAVINO: Thank you.

1 CHAIRWOMAN YOUNG: I just have just
2 one more question, and that's whether -- I
3 wanted to ask whether ITS has developed a
4 cloud strategy.

5 DIRECTOR MILLER: I'm sorry?

6 CHAIRWOMAN YOUNG: A cloud strategy.

7 DIRECTOR MILLER: Oh, a cloud
8 strategy. Yes, indeed.

9 We're very thoughtful and very careful
10 about it. Such is the scale of ITS that in
11 fact we have our own private cloud that
12 operates out of our CNSE data center, and
13 that's how we provide services to many of our
14 agencies, is using a private cloud concept.

15 But we are very carefully and
16 selectively adopting government clouds. So
17 for example, our email system is housed in
18 the Microsoft government cloud. And we are
19 also, on a very selective and careful basis,
20 making use of other cloud services that meet
21 our security requirements, and where we
22 believe we won't be locked into a particular
23 vendor in an inappropriate fashion.

24 So we have a strategy, but we're being

1 very careful and thoughtful about it.

2 CHAIRWOMAN YOUNG: Thank you for that
3 answer.

4 Are the other state agencies and local
5 governments able to access the cloud system
6 that you're putting together? Because that's
7 a low-cost alternative.

8 DIRECTOR MILLER: It can appear a
9 low-cost alternative, although I often
10 counsel my colleagues to be careful of the
11 total cost of ownership over time.

12 But certainly where cloud providers
13 are available on the OGS contracts, those are
14 available to other state agencies, yes.

15 CHAIRWOMAN YOUNG: And to local
16 governments also?

17 DIRECTOR MILLER: I believe so, yes.

18 EX. DEP. DIRECTOR MILLEA: If I could
19 just add, Senator, we are working closely
20 with OGS on a periodic recruitment for the
21 cloud umbrella contract that OGS has, with a
22 particular focus on making sure that local
23 governments will have the vendors they're
24 looking for and that they'll be able to

1 participate through the OGS procurement.

2 DIRECTOR MILLER: Thanks, Matt.

3 CHAIRWOMAN YOUNG: Okay, thank you.

4 Anyone else? Okay, I think we're all
5 set, so thank you for testifying today. We
6 truly appreciate it.

7 DIRECTOR MILLER: Thank you.

8 CHAIRWOMAN YOUNG: Next up is
9 Robert -- Tembeckjian?

10 ADMINISTRATOR TEMBECKJIAN: You got it
11 right last year and this year too. Thank
12 you, Senator.

13 CHAIRWOMAN YOUNG: It took me a
14 second.

15 -- administrator and counsel for the
16 New York State Commission on Judicial
17 Conduct.

18 ADMINISTRATOR TEMBECKJIAN: Thank you.

19 No, I'm not going to read it at all.

20 And I will be as brief as possible.

21 Public confidence in the courts and in
22 the integrity of the judiciary requires an
23 effective and capable judicial ethics
24 enforcement component, and that's what the

1 Commission on Judicial Conduct does. We are
2 created in the State Constitution. We have
3 disciplinary jurisdiction over the 3300
4 judges of the New York State Unified Court
5 System. We receive close to 2,000 complaints
6 a year and process them all.

7 We have, over the last nearly 40 years
8 of our existence, conducted over 10,000
9 preliminary inquiries, 8,000 investigations,
10 and have publicly disciplined 814 judges,
11 including 169 who were removed from office
12 for egregious misconduct as well as 63 who
13 resigned with the stipulation that they never
14 return, also in situations where the alleged
15 misconduct was significant.

16 The Legislature in 2007 made a
17 significant investment in the commission's
18 resources by, for the first time in a
19 generation, bringing our budget up to a level
20 far beyond what the Executive Budget had
21 recommended so that we would have the
22 resources to investigate and, where
23 appropriate, publicly discipline judges in a
24 timely manner.

1 Certainly it is in the interest of
2 both the judge under investigation and the
3 public that our inquiries be conducted and
4 concluded in as expeditious a fashion as
5 possible so that those who are guilty of
6 misconduct are punished and those who are
7 innocent are exonerated, without undue delay.

8 Now, in the last seven years we've
9 been in a period of I would call Executive
10 Budget stasis. For the seventh year in a
11 row, the Executive Budget is recommending not
12 one penny more in resources to the Judicial
13 Conduct Commission. And that is a problem.

14 Over the last seven years of this
15 static period, our staff has been reduced by
16 18 percent -- we went from 55 authorized
17 full-time employees to 50, but I'm only able
18 to employ 45 because of the limitation on our
19 resources. The progress that we made after
20 the 2007-2008 infusion of funds to more
21 speedily conclude our proceedings has begun
22 now to backslide, because the resources are
23 limited.

24 A flat budget is a cut, because our

1 expenses go up, our rent goes up, the cost of
2 our services go up, salaries go up. But if
3 we're not given any additional funding to
4 cope with it, then we've got to find places
5 to cut. And that has an impact on our
6 ability to do our job efficaciously, swiftly,
7 and within the constitutional and statutory
8 guidelines of due process under which we
9 operate.

10 And that is a concern. So that, for
11 example, in the last five years, the average
12 number of matters pending at the close of the
13 calendar year has remained static at about
14 195, where we had been down to under 170 as
15 the result of the infusion of funding that
16 you provided for us in 2007.

17 In the last several years, I have
18 asked the Legislature to give us a little
19 more than the Executive Budget has
20 recommended, just so that we could stay
21 constant and not hemorrhage staff any
22 further. Throughout the year, in
23 consultation individually with a number of
24 Senators and members of the Assembly, I took

1 some of the advice that I was hearing and I
2 asked in this year's budget submission for
3 what would be required to get us up
4 essentially to our approved station of 50
5 employees. I've asked for \$550,000 more on
6 our budget of \$5.6 million.

7 In the large scheme of things, we're
8 really not talking, obviously, about very
9 much. I'm asking for a budget of slightly
10 over \$6.1 million. Given the large amounts
11 of money that you've been hearing about and
12 discussing with all the previous speakers to
13 me today, this must seem almost like a walk
14 in the park.

15 But unlike most of my colleagues who
16 have testified before you today, I don't
17 really have -- and the commission doesn't
18 really have -- a constituency to which we can
19 turn for support. We don't get funded by the
20 judiciary, for the very logical and obvious
21 reason that the judicial branch should not be
22 controlling the budgetary purse strings of
23 the entity that disciplines members of the
24 judicial branch.

1 And for whatever reason, in the last
2 seven years I've been unable to make the case
3 to the Division of Budget and the second
4 floor that the commission's budget ought to
5 at least keep pace with inflation. And in
6 fact, the \$6.1 million that I'm asking for
7 this year is less than what would have been
8 our due if we had simply kept pace, 2 percent
9 a year, with the rate of inflation over the
10 last seven years.

11 I hope that in dealing with the very
12 large budgetary numbers that you deal with in
13 the overall state budget and with individual
14 agencies, that somehow you might find the
15 relatively limited resource improvement that
16 I'm asking for so that we can get our staff
17 back up to speed, so that we can more
18 efficiently and quickly dispose of the
19 matters before us. And hopefully it would be
20 the last time in half a generation I'd have
21 to come back and ask, hat in hand, for this
22 kind of assistance.

23 And that said, most of you know our
24 record of achievement. Despite this

1 limitation of funding, we essentially lead
2 the nation -- every state has a judicial
3 disciplinary entity like ours. None gets
4 more complaints in a year than we have. None
5 has more judges under its jurisdiction than
6 we do. None discipline as many judges as we
7 do.

8 But in the smaller states, where the
9 resources are more commensurate with the size
10 of their judiciary and the size of their
11 physical jurisdiction, they tend
12 comparatively to do better than we do. And
13 so I'm hoping that this year the Legislature
14 can find its way to give us the resources we
15 need to get back up to speed.

16 CHAIRWOMAN YOUNG: Thank you very
17 much.

18 Senator DeFrancisco.

19 SENATOR DeFRANCISCO: Yes, you have
20 some in this room that are very sympathetic.
21 Some in this room haven't seen an increase in
22 18 years.

23 (Laughter.)

24 ADMINISTRATOR TEMBECKJIAN: I'm aware

1 of that.

2 SENATOR DeFRANCISCO: I was a young
3 man back then, the last time --

4 ADMINISTRATOR TEMBECKJIAN: There's no
5 one here more sympathetic than you, Senator,
6 and Assemblywoman Weinstein, for which I am
7 deeply grateful.

8 SENATOR DeFRANCISCO: I'm going to do
9 what I can to try to get some increase.

10 And there's two reasons. One, because
11 it's the right thing to do. You know, I
12 remember when your organization came into
13 being -- I think it was in the '70s, wasn't
14 it?

15 ADMINISTRATOR TEMBECKJIAN: Yes, it
16 was. Right, 41 years ago.

17 SENATOR DeFRANCISCO: And at that time
18 the judges went ballistic, thinking that
19 there could be a body that could possibly
20 supervise -- not supervise them, but look
21 over their shoulders to make sure that they
22 comply with proper comportment, proper
23 procedures, and dealing with the public
24 fairly. And that was the case for many

1 years.

2 Now it's second nature. The judges in
3 many cases are appreciative of your office
4 because they review wrongful allegations
5 against them and clear them from nonsensical
6 charges.

7 So it's exactly what's needed in the
8 judicial realm, and it's accepted by judges
9 and practitioners alike. And I think it's
10 the right thing to do to make sure you
11 operate the way you've been operating.

12 The second reason is a selfish reason.
13 As you well know, I'm trying to do the same
14 thing with a prosecutorial commission that
15 reviews prosecutorial conduct. Because
16 it's -- and there's been a lot of screaming
17 and yelling, just like there was in the '70s
18 with respect to your commission. And I think
19 over time it would do a great service to
20 everyone in our community, and I want to make
21 sure you continue to succeed so you're the
22 light for the rest of us to recognize what we
23 should be doing with a prosecutorial
24 commission.

1 And you've done a great job. I
2 appreciate it.

3 ADMINISTRATOR TEMBECKJIAN: I
4 appreciate that very much. And as your
5 colleagues know, the legislation on a
6 prosecutorial misconduct commission is
7 modeled on the statute that governs the
8 Judicial Conduct Commission, and I think that
9 it's significant. And I deeply appreciate
10 that you think well enough of us that you
11 would want to model your new version on the
12 success that we've been able to demonstrate,
13 both statutorily and I think in operation.

14 And I certainly hope that when the
15 three parties sit down to negotiate this
16 year, that we can prevail.

17 SENATOR DeFRANCISCO: And we didn't
18 plan that, did we?

19 ADMINISTRATOR TEMBECKJIAN: No, we
20 didn't. We certainly didn't.

21 SENATOR DeFRANCISCO: Okay, thank you.

22 CHAIRWOMAN YOUNG: Thank you.

23 CHAIRMAN FARRELL: Helene Weinstein.

24 ASSEMBLYWOMAN WEINSTEIN: Thank you,

1 Bob, for being here and joining us in this
2 marathon.

3 I want to join my colleague, the
4 former chair of the Judiciary Committee when
5 we clearly saw the need to improve services.
6 He's gone on to bigger and better things, but
7 I share his commitment that the office is
8 deserving of an increase. It is important
9 for judges to be able to have that, and for
10 people who are alleging wrongdoing to be able
11 to have a quick resolution of the issues.

12 And I just wanted to ask a question.
13 Over these past six years when the budget has
14 remained flat, has the number of matters
15 referred to the commission increased,
16 remained steady?

17 ADMINISTRATOR TEMBECKJIAN: It's
18 actually gone up. The average, the five-year
19 average has been about 1850 complaints a
20 year, and last year we had 1940. The year
21 before, we had 1959. So that we actually are
22 seeing more complaints and are processing
23 more.

24 And as you know, because of the depth

1 of the investigations that we conduct, it can
2 take as long and it is just as important to
3 spend the resources to clear a judge as it is
4 to censure or remove a judge from office.

5 And in that respect, to follow up on
6 what Senator DeFrancisco said, the commission
7 does absorb a lot of the heat and hostility
8 that might otherwise be directed to the
9 judiciary for incorrect rulings, bad
10 decisions. The number of complaints that we
11 get that we dismiss because they don't really
12 allege ethical wrongdoing, but have to do
13 with someone's dissatisfaction with a court
14 ruling, actually does a service to the
15 judiciary. And I think it helps to enhance
16 the independence of the judiciary to call
17 them like they see them and to know that
18 they're not going to be punished for having
19 made what might be an unpopular decision but
20 one that was certainly within their
21 discretion.

22 That's a very important role that we
23 play. It doesn't show up in the statistics,
24 but it's extremely significant. And we take

1 it very seriously, as we do our role in
2 helping to educate and train the judiciary
3 and court staff in the appropriate ethical --
4 promulgated ethical rules to follow.

5 And I think that the behavior overall
6 among the judiciary has dramatically improved
7 from the time in 1976 when the commission was
8 created in its current incarnation to today.
9 And having been there then and still having
10 been there today, I have seen a dramatic
11 change for the better. And I think that also
12 speaks to the significant role that we play
13 and why it's important to fund us at a level
14 that we can do our job.

15 ASSEMBLYWOMAN WEINSTEIN: Thank you.

16 ADMINISTRATOR TEMBECKJIAN: Thank you.

17 CHAIRWOMAN YOUNG: Thank you.

18 CHAIRMAN FARRELL: Assemblyman Weprin.

19 ASSEMBLYMAN WEPRIN: Thank you,

20 Mr. Chairman.

21 Mr. Tembeckjian, I'm sure you wouldn't
22 remember, but --

23 ADMINISTRATOR TEMBECKJIAN: But I do.

24 ASSEMBLYMAN WEPRIN: -- as a young

1 lawyer --

2 ADMINISTRATOR TEMBECKJIAN: I

3 remember. I do.

4 ASSEMBLYMAN WEPRIN: -- it was from

5 like 1981 through 1983, I worked for Alfred

6 Julien, who had a number of cases before

7 you -- Gerald Sternway {ph}. I was the

8 administrator at the time. I think you were

9 deputy, if I'm not correct --

10 ADMINISTRATOR TEMBECKJIAN: That's

11 right. That's right. And I do remember. We

12 were both pretty young then. We didn't have

13 any gray hair, neither one of us did.

14 ASSEMBLYMAN WEPRIN: You look pretty

15 good.

16 But I'm well aware of -- even though

17 on the other side of a couple of cases, I am

18 very much aware and respectful of the great

19 work that your commission has done over the

20 years.

21 ADMINISTRATOR TEMBECKJIAN: I thank

22 you.

23 ASSEMBLYMAN WEPRIN: And it is a very

24 important tool to keep, you know, the

1 judiciary honest and also to allow aggrieved
2 litigants to have an opportunity to have some
3 other form of appeal.

4 So I certainly will support an
5 increase in your budget.

6 ADMINISTRATOR TEMBECKJIAN: I thank
7 you very, very much, Assemblyman. Thank you.

8 CHAIRWOMAN YOUNG: Thank you.

9 All set? I think we're all set, so
10 thank you so much for joining us. We really
11 truly appreciate you.

12 ADMINISTRATOR TEMBECKJIAN: Thank you,
13 Senator Young, very much. Thank you.
14 appreciate it, thank you.

15 CHAIRWOMAN YOUNG: Next we have
16 President Thomas Mungeer, the Police
17 Benevolent Association of the New York State
18 Troopers.

19 Good evening.

20 PRESIDENT MUNGEER: Chairwoman Young,
21 Chairman Farrell, esteemed members of the
22 Legislature, I appreciate it. I'm going to
23 keep this very simple because I know it's
24 been a long day.

1 I kind of want to go off the testimony
2 of my superintendent, George Beach, before,
3 that focused -- the questioning was focused
4 more on New York City initiatives for
5 antiterrorism. I believe in the mission,
6 very important. But I think it's very
7 important also that we don't lose track of
8 there's another 57 counties other than
9 New York City.

10 You know, as he said, that we
11 celebrate our 100th anniversary this year,
12 and we've always been able to go in and help
13 other police agencies, which is what we're
14 doing down in New York City. But Senator
15 Young, you brought up a very good point, that
16 the SRO program -- very important, would love
17 to see it reinstituted. As the father of
18 four children, I see the value. Also, I
19 think the lesson that we learned from earlier
20 this month with the Fort Lauderdale airport
21 was that the terrorists are going to look
22 for, you know, the path of least resistance.

23 It doesn't have to be the Miami
24 Airport, it might not be the JFK or the

1 LaGuardia, but it might be upstate, at the
2 points -- what I'm trying to get at, the
3 border crossings, transportation hubs, points
4 of mass gathering, we definitely need more
5 protection. And if we're able to come in and
6 help out the local police departments, county
7 sheriff's departments, the more the better.

8 We are stretched. There is funding
9 for more troopers down in New York City, but
10 the bottom line is that we're stretched. We
11 have troopers headed down right now, manning
12 posts down there at the airports, bridge and
13 tunnels on overtime. And that, you know, it
14 does -- I won't say that it leaves upstate
15 short, but again, it's on overtime. These
16 guys, men and women, are away from their
17 families.

18 Normal year, in the Division of State
19 Police, they lose slightly under 250 troopers
20 through attrition. I'm looking to increase,
21 besides the attrition, two classes of 250
22 troopers. It's an extra 250 troopers to be
23 used for such things as the SRO program,
24 antiterrorism initiatives upstate, plus also

1 be able to carry out the mission that the
2 Governor has entrusted us with down in the
3 city.

4 With that, again, the Legislature has
5 been very good the last couple of years, as
6 Senator Gallivan has helped and stated with,
7 you know, increased -- better patrol cars.
8 We are starting to come out of that hole.
9 We're still not there. We still need an
10 additional \$15 million, just as a matter of
11 course, to keep up so we're not -- so we're
12 replacing the cars at 125,000 miles instead
13 of 200,000 miles.

14 Our troopers -- you know, we don't
15 drive 55 miles an hour. It's not by choice.
16 When you have to chase people down, sometimes
17 you have to get up to high speeds, so you're
18 going from zero to almost 100 miles an hour
19 back to zero all day long, so you need a
20 reliable vehicle.

21 The other thing we made is that -- for
22 the antiterrorism mission, we're going to
23 need rifles, we're going to need the tactical
24 ballistic vests. So we need all this

1 equipment to carry out this mission. It's
2 good that the Governor has appropriated
3 funds, but we need more. And I believe that
4 we can't leave upstate -- we can't ignore
5 upstate. We have -- that's been our mission
6 since 1917.

7 Again, I appreciate what the Governor
8 is doing down in the city, but there's a
9 whole other area north of the George
10 Washington Bridge, and west, that we can't
11 lose sight of. And also, not for nothing,
12 Fort Lauderdale should be a lesson to us all
13 that we can't turn a blind eye.

14 So I appreciate the time.

15 CHAIRWOMAN YOUNG: Thank you.

16 How does it work as far as people
17 being assigned to New York City? Do they
18 rotate in and out? Do they --

19 PRESIDENT MUNGEER: We do have a
20 permanent detail down there, as the
21 superintendent said. But, you know, the
22 expanded mission with the airports, the
23 troopers are being sent down a week at a
24 time. And it's similar. It's just part of

1 the job. The Dannemora prison break, we had
2 the same thing. During 9/11 we sent 500
3 troopers, in the blink of an eye. We were
4 down there that afternoon.

5 So it's a matter of course of what we
6 do. But again, it's a week away from home.
7 And that's what we sign up for. But they are
8 troopers coming from up in your area, Troop
9 A. They are coming down from Troop B and
10 what have you. It is taking manpower off the
11 road. They are filling in the gap in tour
12 coverage with, you know, troopers filling in
13 the patrol posts and what have you. But
14 again, the manpower is being stretched thin.

15 CHAIRWOMAN YOUNG: Okay, thank you.

16 Any -- Assemblyman?

17 CHAIRMAN FARRELL: The Chrysler
18 product, does it make the 100,000? The
19 Dodge.

20 PRESIDENT MUNGEER: The Dodge? You
21 know, they did have some glitches on that,
22 from what I understand, the brakes and what
23 have you. But unfortunately we've been
24 pushing these products to almost 200,000

1 miles at times, and when -- I'm all right
2 with 125,000 miles, but, you know, a normal
3 car usually doesn't go by that, especially
4 when you're driving it the way we do at high
5 speeds all day long.

6 CHAIRMAN FARRELL: One of your guys
7 picked me up when I blew out at 225 with a
8 Pontiac. He was very nice. I didn't know
9 you can't get picked up on the Taconic.

10 Thank you.

11 CHAIRWOMAN YOUNG: Senator Gallivan.

12 SENATOR GALLIVAN: Welcome,
13 Mr. President.

14 PRESIDENT MUNGEER: Senator.

15 SENATOR GALLIVAN: As always, thanks
16 to your and your members for what you do
17 across the state on behalf of all our
18 citizens.

19 A number of members up here today
20 expressed concern -- and I share the
21 concern -- to ensure that we have proper
22 staffing across the state. I think the
23 reason for the little focus on New York City
24 is because of the Governor's proposal to add

1 funding for that. But please don't mistake
2 that, and I think I can speak for my
3 colleagues. We are concerned with deployment
4 statewide and ensuring safety for our
5 communities statewide.

6 Can you help me on a couple of things?

7 PRESIDENT MUNGEER: Sure.

8 SENATOR GALLIVAN: First, your
9 testimony -- and then looking at your written
10 testimony -- you mentioned two classes of 250
11 people to help staff up beyond attrition.

12 PRESIDENT MUNGEER: Yes.

13 SENATOR GALLIVAN: And I see funding
14 for a thousand troopers in your written
15 testimony.

16 PRESIDENT MUNGEER: Yeah, by the end
17 of next year. This is not the -- I guess the
18 end all. We're going to lose 250 troopers
19 this year, 250 next year. So I'm looking --
20 next year I'm going to be back here again,
21 Senator --

22 SENATOR GALLIVAN: So the fourth
23 class --

24 PRESIDENT MUNGEER: -- and I think

1 you're going to be in the same spot --

2 SENATOR GALLIVAN: I hope so.

3 PRESIDENT MUNGEER: -- and I'm going
4 to sit here and I'm going to ask for another
5 500 troopers again. So I figured I'd cut to
6 the chase and put the thousand in there right
7 off the bat.

8 SENATOR GALLIVAN: Understood. And
9 while we can check on these numbers, I just
10 don't have them with me. And if you're able
11 to help with the numbers, fine. If not,
12 we'll look it up.

13 We believe that over the past two
14 fiscal years, about \$30 million were spent,
15 from what we allocated, for State Police
16 vehicles, and I'm looking at a little under
17 \$15 million for the uniform patrol cars.

18 PRESIDENT MUNGEER: Yeah.

19 SENATOR GALLIVAN: So that was a total
20 of \$30 million. I'm seeming to remember that
21 we allocated more. Do you know that or not?

22 PRESIDENT MUNGEER: I believe that it
23 was an extra -- you allocated on top of the
24 existing, I believe, \$12 million to

1 \$15 million. We were again stuck -- I don't
2 want to use the term stuck in the rut, but we
3 hadn't bought any cars and our cars were very
4 dilapidated, if you will. That was on top.

5 We're actually -- we're not out of the
6 woods yet, but we're a heck of a lot better
7 than where we were because of that funding.

8 SENATOR GALLIVAN: I think that's
9 consistent with the superintendent's
10 testimony.

11 Well, we can check on it, because it
12 may be that -- I mean, you mentioned the
13 number \$15 million. It might already be
14 provided for, so -- if I understood the
15 superintendent's testimony correctly, that
16 kind of gets you up to where you have to be
17 to then continue the regular rotation so long
18 as you're sufficiently funded in years
19 forward.

20 PRESIDENT MUNGEER: Yeah, \$15 million
21 is pretty much what they need every year just
22 to keep up the vehicles just on a yearly
23 turnover.

24 We can't ignore also, with extra

1 troopers, whether they're down in New York
2 City or upstate, we need cars. You know, a
3 trooper needs his horse to get around on, if
4 you will. So extra cars come, you know --

5 SENATOR GALLIVAN: Except these
6 horses cost a little more.

7 PRESIDENT MUNGEER: Yeah, a little
8 bit.

9 SENATOR GALLIVAN: Last question --
10 and again, it goes back to refreshing my
11 memory. I know in the past several years
12 that we've had discussions, you've testified,
13 NYSPIA has also testified -- I might be
14 confusing your testimony, or what we
15 ultimately did about the need for additional
16 firepower -- rifles, things like that.

17 PRESIDENT MUNGEER: Yes.

18 SENATOR GALLIVAN: Was money allocated
19 in the past year or two for some of these
20 things, for rifles for troopers?

21 PRESIDENT MUNGEER: Yeah, for -- my
22 goal is -- and again, I think in this day and
23 age you never know when you're going to be
24 deployed -- I would like a rifle for every

1 uniformed member. And I would like a rifle
2 plate and carrier for every uniformed member.

3 Right now the allocation is -- I
4 believe there's 1700 rifle plates. That's
5 one for every car plus another 500 for the
6 various troop locations. And I believe
7 there's a little over a thousand patrol
8 rifles. So that means that a third of my
9 uniformed force -- actually, a quarter, when
10 you count the supervisors -- do not have a
11 patrol rifle yet.

12 So we are picking away at the problem.
13 You have allocated funds over the last couple
14 of years, and we're getting there. But I
15 don't think we're over the finish line yet.
16 Because as you know, Senator, you get
17 deployed somewhere, you want that equipment
18 with you. Sometimes you don't have time to
19 run back to the barracks and pick that stuff
20 up and run out.

21 SENATOR GALLIVAN: Okay, thanks.
22 That's all I had.

23 PRESIDENT MUNGEER: Thanks, Senator.

24 CHAIRWOMAN YOUNG: Thank you.

1 Senator Savino.

2 SENATOR SAVINO: Thank you, Senator
3 Young.

4 Tom, I just have a question about -- I
5 know there's some dispute about whether you
6 guys should be in New York City or not in
7 New York City. Personally, I love you
8 wherever you are.

9 But we have you guys on Staten Island
10 now, because we have an HOV lane on the
11 Staten Island Expressway. And after a
12 tremendous amount of money that went into
13 building it out, for some reason or other we
14 were -- it seemed like the local department
15 was just not doing a particularly good job of
16 enforcing the HOV-3 lane, and it became a bit
17 of a problem. And so the solution, it
18 appeared, was the Governor's office sent the
19 State Police down to patrol the Staten Island
20 Expressway.

21 So your guys have been down there now
22 for a couple of months, and so abuses of the
23 HOV lane seem to have stopped. You know,
24 nothing like having state troopers assigned

1 to it. But how many of your members are
2 actively doing that? And has there been any
3 discussion with the NYPD about them actually
4 taking it over? Because it really is
5 something highway patrol should be doing, you
6 know, in New York City.

7 PRESIDENT MUNGEER: I cannot comment
8 because I do not know if there's been
9 conversations with the NYPD over taking over,
10 you know, various roadways down there.

11 I do believe that the patrol has been
12 pulled back, only because there's other
13 duties, whether it's the bridges and tunnels
14 or the airports. And again, we don't really
15 have the manpower. But I believe they have
16 taken that patrol out of that area.

17 I have heard, you know, comments that,
18 you know, the NYPD can handle what they have
19 down there, and I agree. They have, you
20 know, adequate resources. Where we've been
21 put is actually not where the NYPD was. It
22 was actually bridge and tunnel and the Port
23 Authority were the areas. MTA is where we've
24 been deployed.

1 So again, I don't know -- to answer
2 your question, I don't know if that
3 conversation has gone on. I do not believe
4 that that is one of our missions that we'll
5 be looking to do.

6 Personally, I think that what we're
7 doing now with the bridges and tunnels,
8 airports, it's enough. I don't think, you
9 know, patrolling the roadways as such -- we
10 don't have the resources, actually, right
11 now. You know, we're spread thin. And any
12 other duties such as that without, you know,
13 getting the funding for what we're looking
14 for for upstate and what have you, I don't
15 think it's part of the mission.

16 But again, I think that's better left
17 to the superintendent of State Police to
18 answer that.

19 SENATOR SAVINO: Well, it's certainly
20 had an effect on HOV lane abuses. But you're
21 right, you now are at the bridges and tunnels
22 alongside the Port Authority PD --

23 PRESIDENT MUNGEER: Yeah, the Bridge
24 and Tunnel Authority is --

1 SENATOR SAVINO: Or the Bridge and
2 Tunnel Authority. And so at the same time
3 we're moving to cashless tolling, dismantling
4 toll booths at all of the MTA crossings. So
5 they've taken them down at the Battery Tunnel
6 now, they've taken them down at the Queens
7 Midtown Tunnel. By the way, it's a mess, but
8 that's beside the point.

9 So what role is the State Police --
10 are they there for security or is it to help
11 with this new transition to cashless tolling?
12 I'm confused as to what -- because we have
13 two sets of police on the scene on these
14 sites.

15 PRESIDENT MUNGEER: We do. And from
16 my understanding, again, some of these
17 questions are probably better posed to the
18 superintendent of State Police. But it is my
19 understanding that they're engaged in traffic
20 enforcement.

21 But I think a lot of it also is that
22 the Governor's wish -- and I -- you know, I
23 believe, is that the mere presence of the
24 State Police is an antiterrorism type -- is a

1 terrorism deterrent, if you will. The same
2 with the airports with the troopers. The
3 Port Authority are there and they've policed
4 that location for decades. But again, not to
5 supplant them, but to basically buttress up
6 the enforcement there.

7 SENATOR SAVINO: Thank you.

8 CHAIRWOMAN YOUNG: Thank you, Senator.

9 Thank you, President Mungeer for
10 waiting so long today and appearing before
11 us. And truly we appreciate everything that
12 your members do, and they certainly are the
13 finest. So thank you for being here.

14 PRESIDENT MUNGEER: And we appreciate
15 your support. Thank you.

16 CHAIRWOMAN YOUNG: Thank you.

17 Our next speaker is President
18 Christopher Quick, New York State Police
19 Investigators Association.

20 Hi, President Quick. Great to see
21 you.

22 PRESIDENT QUICK: Good evening,
23 Senator Young, Assemblyman Farrell. Thank
24 you for having me here for my testimony.

1 I am Christopher Quick, an
2 investigator with the New York State Police.
3 I also serve as president of the New York
4 State Police Investigators Association.

5 NYSPIA is the employee union that
6 represents approximately 1100 State Police
7 senior investigators and investigators
8 throughout the state. State Police
9 investigators are assigned to stations or
10 special details and are referred to the
11 Bureau of Criminal Investigation, or BCI.

12 Our investigators work on everything
13 from larcenies, robberies, burglaries,
14 identity theft, sex crimes, and homicides.
15 We also have investigators assigned to
16 special details, including computer crimes,
17 forensics, narcotics, auto theft, special
18 investigations, dignitary protection, gaming
19 and counterterrorism.

20 Demand on the resources of State
21 Police, particular investigators, has
22 increased, whether it's to keep up with the
23 background checks for the casinos being built
24 in New York State or keeping the public safe

1 in the face of the changing world we live in
2 involving terrorism and mass attacks on the
3 public.

4 To ensure the safety of New Yorkers
5 and visitors to the state, we must have the
6 proper equipment and manpower. The BCI is
7 commonly known as the undercover operation of
8 the Division of State Police and are not
9 issued uniforms that a trooper wears in his
10 or her normal course of duty. There are
11 certain situations where a uniform would be
12 necessary for an investigator. For example,
13 the Matt Sweat manhunt, state of emergencies
14 such as Hurricane Sandy and Irene operations.
15 Investigators will often wear civilian
16 clothing and are not readily recognizable as
17 law enforcement officers.

18 The superintendent recently approved a
19 Class B uniform to be worn in these types of
20 emergency situations. The uniform consists
21 of a blue-color cargo-pocket work pant and
22 shirt with clear markings of "New York State
23 Police," and name tags.

24 The cost to outfit one investigator

1 with two sets of these uniforms would be
2 \$250.96. The uniforms are produced by the
3 Blower uniform company and are made in the
4 USA. I ask this board to consider
5 appropriating \$300,000 for the purchase of
6 Class B uniforms for the BCI members this
7 budget year.

8 Another area of particular importance
9 is our aging fleet of undercover vehicles.
10 The BCI fleet is currently numbered at 1,237
11 vehicles. There are 490 vehicles with more
12 than 90,000 miles, roughly one-third of the
13 BCI fleet. There are 245 with 135,000 miles
14 or more still in service. It is the belief
15 of the division and the automotive
16 maintenance inspector that vehicles should be
17 surplusd at 125,000 miles.

18 Last year when I testified before the
19 public protection board, the majority of the
20 vehicles exceeded 150,000 miles. Monies were
21 appropriated with the intent of replenishing
22 the fleet on a two-year timetable. This
23 strategy has improved the fleet noticeably,
24 and I sincerely appreciate the interest,

1 concern and problem-solving that each of you
2 took. This is, however, a continuing problem
3 that needs continued attention. On behalf of
4 the NYSPIA members, we want to thank you for
5 making that a concern.

6 Many of our investigations involve
7 undercover operations. In these cases, our
8 investigators need to blend in with the
9 community, both in clothing and with their
10 vehicles. These undercover operations can
11 range from drug surveillance to
12 counterterrorism investigations. The
13 criminal element does its homework, and many
14 are aware of the types of undercover vehicles
15 we typically use.

16 For that reason, we propose a pilot
17 program to allow for the leasing of vehicles.
18 Leased vehicles will allow for
19 diversification in makes and models and, most
20 importantly, non-police-type vehicles for
21 undercover work.

22 Leasing vehicles will also help reduce
23 the high maintenance costs the division
24 currently experiences.

1 In addition to the desperate need for
2 more unmarked vehicles, the Division of State
3 Police must be made whole again in terms of
4 manpower in order to meet today's security
5 threats. Oftentimes, even when there's an
6 immediate operational need to promote a
7 trooper to the rank of investigator, that
8 promotion is delayed because of the shortage
9 of BCI vehicles. This can result in a
10 shortage of investigators for months at a
11 time for the sole reason that there are no
12 BCI vehicles available.

13 Terrorism in the United States is on
14 the rise. The Governor recognizes this and
15 has dedicated a significant uniform trooper
16 presence in New York City. The troopers are
17 assigned to high-profile landmarks that are
18 potential targets for terrorism -- Times
19 Square, the Freedom Tower, commuter trains to
20 bridges and tunnels and, just recently, John
21 F. Kennedy Airport and LaGuardia Airport.

22 As more troopers are added to
23 Troop NYC, it increases the need for more
24 investigators. Airport security will require

1 a large detail consisting of troopers and
2 investigators. An investigator's duties
3 would include gathering intelligence,
4 conducting investigations, and acting as a
5 liaison to the Port Authority Police, NYPD,
6 and Joint Terrorism Task Force.

7 While our superintendent has
8 repeatedly stressed and fought for the need
9 to have recruit basic school classes at our
10 academy to bolster the needs of the division,
11 we have not been able to keep up with the
12 attrition. This has resulted in the BCI not
13 being full-strength to perform the expanding
14 duties and initiatives required by our
15 changing world.

16 We strongly urge this Legislature to
17 ensure our investigators are safe, as well as
18 the public, by adequately funding the
19 Division of State Police to allow for the
20 purchase of unmarked vehicles, Class B
21 uniforms, as well as funding new and regular
22 academy classes, so we can accomplish our
23 core mission of protecting and serving the
24 people of this great state.

1 I appreciate your time, and I'm happy
2 to answer any questions you may have.

3 CHAIRMAN FARRELL: Thank you.

4 CHAIRWOMAN YOUNG: Thank you.

5 Just one quick question. You talked
6 about the attrition rate, Mr. President. And
7 I was wondering, do you have any kind of
8 figures or facts on how many people will be
9 aging out over the next several years, so the
10 Legislature has that information?

11 PRESIDENT QUICK: I don't have it in
12 my testimony. But, you know, as we talk to
13 the division, they estimate 250 people
14 annually. President Mungeer of the Troopers
15 Association testified to that as well.

16 CHAIRWOMAN YOUNG: Okay. Good. I do
17 think that's a very significant issue that we
18 need to address. We went through years
19 without academies, and now we want to make
20 sure that they stay on track. So thank you.

21 Thank you. Oh, I'm sorry, Senator
22 Gallivan would like to say something.

23 SENATOR GALLIVAN: I'd be remiss if I
24 didn't thank you and your members for the

1 work that you do as well.

2 I think I'm clear now about the
3 vehicles. I mean, combined with yours and
4 President Mungeer's testimony. So your
5 belief is that you're now on the plan with
6 what was allocated last year to at least
7 catch up with the vehicles.

8 PRESIDENT QUICK: I believe it's
9 working.

10 SENATOR GALLIVAN: And once caught up,
11 we need the future funding, of course,
12 annually.

13 PRESIDENT QUICK: Right. We can't
14 take our eye off the prize. The need is
15 there continuously.

16 SENATOR GALLIVAN: Understood.
17 Manpower as well. So it's noted. Thanks
18 again.

19 PRESIDENT QUICK: Thank you.

20 CHAIRWOMAN YOUNG: Thank you. And our
21 sincere appreciation to all of your members
22 for putting their lives on the line for us
23 every day. Thank you so much.

24 CHAIRMAN FARRELL: Thank you.

1 women that I represent. They are New Yorkers
2 who put service first and bravely protect
3 their fellow citizens.

4 We are citizens of this great state
5 who endeavor on a daily basis to provide
6 safety and security for the millions of users
7 who enter our facilities each year. It is a
8 task we continue to do better than our many
9 counterparts nationwide, despite being
10 without a collective bargaining agreement for
11 six years. Lean personnel levels and
12 training inefficiencies add to the
13 troublesome work conditions we encounter.
14 And I thank you for allowing me this forum to
15 once again share the manner in which this
16 budget affects our professional and personal
17 lives.

18 This year's Judiciary Budget can be
19 described as yet another in a series of
20 illusions, specifically its impact on
21 New York State court officers. As it is
22 outlined, another 2 percent increase and a
23 new line item for a \$15 million capital
24 appropriation are steps in the right

1 direction. The larger picture, however,
2 remains unclear, as we have serious financial
3 and personnel shortfalls dating back seven
4 years that have still not been fully
5 recovered. The budget directly notes that
6 the system "faced significant cost increases,
7 mostly non-discretionary, without
8 corresponding increases in funding."

9 Over a seven-year period, an increase
10 of only \$120 million was granted, while costs
11 were absorbed at a much higher rate. The
12 summary continues by admitting that service
13 to the public suffered. Workforces shrunk,
14 and positions were not refilled upon
15 attrition and cessation of service for more
16 lucrative jobs in the law enforcement and
17 civil service arena, to the tune of more than
18 2,000 employees. These disadvantages and
19 burdens would be catastrophic for private
20 business and enterprise, but for us it is a
21 mere hardship to digest and move forward.

22 Efforts have unquestionably been made
23 to address the many inadequacies our system
24 faces, and I am grateful for the new and

1 inclusive philosophy Chief Judge DiFiore has
2 infused into the court system. Her
3 Excellence Initiative is exactly the type of
4 action which will rebuild this ailing system.

5 We know how we got to this point, and
6 I believe our new leadership will prove how
7 to deliver us to the future. The question at
8 hand is, Where are we presently? The hard
9 truth remains that in the jurisdiction I
10 represent, we are still shorter, albeit by a
11 small number, than 2015, when we were at an
12 8.3 percent deficit from 2009. This
13 minuscule shift in totals of security
14 staffing translates into problematic
15 disorganization through safety breaches in
16 our courts, a force well behind on training,
17 issues of delays in every court, and
18 ultimately a disservice to the public.

19 This continual lack of staff and the
20 system's inability to properly reconstitute
21 its security protocols leads to delays
22 throughout the day. They contribute to much
23 slower entry times, part opening times, and
24 the inability to promptly deliver inmates to

1 court.

2 A systemwide moratorium of sorts on
3 overtime is responsible for a decrease in the
4 length of the actual court Day. This leads
5 to frustrated court users, jurors and
6 employees, who all attribute this stagnant
7 pace to the inherent indolence of an entire
8 branch of government. All of this while
9 judges and judicial staff are continuously
10 added -- as no court officers are to maintain
11 acceptable security for them.

12 In fact, bringing court officer
13 staffing to levels attainable in 2008 would
14 cure these ills. The court day would begin
15 faster, trials would begin on time, and all
16 safety protocols met, allowing the system to
17 perform efficiently and recover from years of
18 listless operation.

19 Furthermore, the staffing deficits we
20 have faced have further-reaching
21 consequences. Many of our members have not
22 been sent for yearly CPR, AED, first aid and
23 equipment training because they cannot be
24 spared at their work location. This is

1 beyond unacceptable, it is nonsensical. It
2 is equivalent to sending a carpenter to work
3 without a hammer. In fact, school resource
4 employees in the metropolitan area receive
5 more training than we do -- because it is
6 mandated -- where we overlook the importance
7 of keeping up to date with our most important
8 capabilities and certifications because the
9 Office of Court Administration refuses to
10 maintain a proper census of officers.

11 Another development to consider with
12 respect to these personnel deficiencies is
13 the employees' inability to be granted their
14 duly accrued vacation time with their
15 families because managers cannot afford their
16 absence. It has been proven that law
17 enforcement officers face serious stressors
18 in their workplace and should be required to
19 take leave when requested.

20 Lastly, health initiatives conducted
21 by our organization demonstrate that our
22 levels of serious health concerns, such as
23 hypertension and heart disease, continue to
24 rise higher than national averages. We must

1 recognize that the mandate of doing more work
2 with less resources, especially in the law
3 enforcement community, is making our people
4 ill. These issues affect our family life as
5 spouses and parents.

6 By once again expanding our rosters to
7 sufficient levels, the court system can once
8 again flourish and our employees can begin to
9 feel less burdened both at work and at home.

10 As of March 31, 2017, our bargaining
11 unit will be out of a contract for six full
12 years. Our members want a fair contract.
13 They want to be compensated for the efforts
14 they have given in the leanest of times.
15 They also want to be compensated for the
16 ever-increasing hazards they face on a daily
17 basis. Overcrowded courts, simultaneous
18 multiple defendant cases, large gang
19 populations, suspicious packages, the
20 always-present specter of terror, and the
21 New York City Department of Corrections
22 continually shifting their responsibilities
23 to our ranks are among the latest conditions
24 which cause our employment to be more

1 perilous. These issues must be addressed
2 through training, as I have said earlier, but
3 they also must be addressed in the fair and
4 equitable compensation that comes with
5 bargaining in good faith.

6 Furthermore, matters requiring massive
7 amounts of funding have superceded the
8 reasonable and decent provisions that would
9 bring us labor peace through a long-term
10 contract. The massive raises given to judges
11 and civilians within the court system, as
12 well as initiatives in excess of \$100 million
13 to ensure attorney engagement in the very
14 system this budget funds, are among the more
15 frustrating features of this budget process.

16 We are earnest and hardworking men and
17 women, and we want to be treated as such by
18 receiving what we deserve for the job we do,
19 no more and no less.

20 I wholeheartedly welcome and applaud
21 our new chief judge, Janet DiFiore, and her
22 Excellence initiative, which is rooted in a
23 back-to-basics philosophy. I believe the
24 best method of change is to break things down

1 to bare elements, and that is the ideology
2 being used in rebuilding the New York State
3 court system.

4 In recent years at this hearing I have
5 testified and advocated for new equipment,
6 programs and training to become comparable to
7 other agencies throughout the nation who have
8 innovated security protocols and practices.
9 I am pleased to see some of these issues
10 addressed within this budget. There is a
11 request for an appropriation in the amount of
12 \$15 million, some of which will be used to
13 re-outfit our entire force with body armor.
14 It will also be used to replace our security
15 screening equipment, which is the first line
16 of defense for anybody entering a court
17 facility. These inclusions in the Judiciary
18 Budget are clear indications that the
19 critical issue of security has not been
20 overlooked as it has been in the past.

21 I urge the Office of Court
22 Administration to sustain that sensibility
23 and look to support our forces with
24 forward-thinking measures, both practically

1 and financially, to progress into the future.
2 We are only as safe as the policies and
3 operations we maintain. We must
4 technologically advance with the use of
5 cameras, explosives detection, and K-9
6 programs. It is my sincere hope that next
7 year I can sit here and update you on the
8 development of such critical and innovative
9 programs.

10 This summary of serious and crucial
11 issues to New York's court officers is only a
12 cursory view of some of the problems we face
13 and how the budget affects us. Our morale
14 has been subterranean for many years now
15 because of the agency's inability to fund the
16 most necessary tools we require. Our pride
17 has been terribly damaged, and the way to
18 reconstruct it is through budgetary items,
19 only some of which I have described here
20 today.

21 I urge you to visit your court
22 facilities as well, as many of the problems
23 are obvious upon arrival. Together we can
24 all steer the course forward for the system,

1 the public it serves, and those who have
2 sworn to serve it.

3 I thank you once again for your time
4 and for your service to the people of the
5 State of New York.

6 CHAIRWOMAN YOUNG: Thank you very
7 much.

8 PRESIDENT CULLEN: Thank you.

9 CHAIRMAN FARRELL: Thank you.

10 CHAIRWOMAN YOUNG: Senator Savino.

11 SENATOR SAVINO: Thank you.

12 Thank you, President Cullen. I just
13 have one question, because earlier today when
14 Judge Marks testified, he talked about the
15 judiciary's budget and their request for
16 funding, they didn't mention anywhere whether
17 or not they had money in reserve for the
18 settlement of a contract that is six years
19 overdue. It doesn't sound like they do.

20 PRESIDENT CULLEN: There are no
21 indications.

22 SENATOR SAVINO: So is there a pattern
23 that -- let's assume you were to settle
24 tomorrow. Is there a pattern that other

1 unions have settled that we could anticipate
2 to try and figure out what it might
3 potentially cost OCA?

4 PRESIDENT CULLEN: As you know very
5 well, contract negotiations are a very
6 difficult path to walk upon. The problem in
7 the court system is that 11 unions represent
8 employees throughout the entire system. And
9 as the representative of an entire uniformed
10 force, we feel deserving of a different
11 treatment when it comes to compensation.

12 There are no indications that -- and
13 there never have been indications in the
14 Judiciary Budget of funds set aside should
15 there be the completion of the round of
16 negotiations for collective bargaining.

17 SENATOR SAVINO: Are there any other
18 outstanding contracts?

19 PRESIDENT CULLEN: Yes. My
20 organization is one of four out of those 11
21 that have not a contract since 2011.

22 SENATOR SAVINO: Are any of them as
23 long overdue as yours?

24 PRESIDENT CULLEN: All the same, all

1 the same period of time. 2011 was the
2 last -- the end of the prior collective
3 bargaining treatment agreement.

4 SENATOR SAVINO: This could run into a
5 significant amount of money if in fact they
6 were to settle with retroactivity on four
7 bargaining units.

8 PRESIDENT CULLEN: Indeed. And I
9 think the time has come to look forward
10 towards a long-term contract to settle the
11 previous contract and current contract,
12 Senator.

13 SENATOR SAVINO: And finally, when was
14 the last bargaining session that was held?

15 PRESIDENT CULLEN: Mid-December.

16 SENATOR SAVINO: Is there one
17 scheduled soon?

18 PRESIDENT CULLEN: No.

19 SENATOR SAVINO: Thank you.

20 PRESIDENT CULLEN: And thank you for
21 your comments earlier also on our disability
22 bill, which was unanimously passed by the
23 Senate last year. Much appreciated.

24 CHAIRWOMAN YOUNG: Thank you so much.

1 We appreciate you coming in today to share --
2 oh, I'm sorry, Senator Gallivan would like to
3 speak.

4 SENATOR GALLIVAN: Thank you, Madam
5 Chair.

6 Senator Savino did touch on an area
7 that I wanted to touch on, so I'll pass right
8 over that.

9 Help me with your membership. You're
10 about 2,000?

11 PRESIDENT CULLEN: We're 1500 as of
12 2009. Currently, today, 1379.

13 SENATOR GALLIVAN: And you're Supreme
14 Court --

15 PRESIDENT CULLEN: Supreme Courts in
16 the five boroughs and the 9th Judicial
17 District, which consists of the five boroughs
18 north of New York City. Ten counties in all,
19 30 facilities.

20 SENATOR GALLIVAN: Do you include
21 supervisors as well?

22 PRESIDENT CULLEN: Yes.

23 SENATOR GALLIVAN: The entire uniform.
24 What's that go up to, captain?

1 PRESIDENT CULLEN: Major.

2 SENATOR GALLIVAN: Up to major.

3 PRESIDENT CULLEN: Yes, sir.

4 SENATOR GALLIVAN: The other three
5 that are without contracts, are they law
6 enforcement units as well?

7 PRESIDENT CULLEN: They have -- I
8 believe their memberships are made up
9 partially of law enforcement and also
10 partially clerical and civilian employees as
11 well. My membership is strictly uniform
12 personnel.

13 SENATOR GALLIVAN: All right, thank
14 you. And of course thanks to you and your
15 members for your efforts.

16 PRESIDENT CULLEN: Thank you for your
17 support, always.

18 CHAIRWOMAN YOUNG: Thank you. We'd
19 love to see your situation resolved. And we
20 truly appreciate everything that you and your
21 members do, so please extend our gratitude.

22 PRESIDENT CULLEN: Thank you, Senator.

23 CHAIRWOMAN YOUNG: Thank you.

24 Now you're up. Our next speaker is

1 President Bill Imandt, Court Officers
2 Benevolent Association of Nassau County. So
3 you get to be introduced twice.

4 PRESIDENT IMANDT: Thank you, Senator.

5 (Discussion off the record.)

6 PRESIDENT IMANDT: I want to thank
7 you, distinguished members of the Senate and
8 the Assembly. I am one of the four unions
9 that was just alluded to that do not have a
10 contract six years strong -- April 1st will
11 begin our seventh year, actually going from
12 six to seven years.

13 I sat before your committee at the
14 hearing on public protection approximately
15 one year ago today and gave you a report on
16 my take as the union president of COBANC, the
17 Court Officers Benevolent Association of
18 Nassau County, about the state of New York
19 State courts, downstate and Nassau County in
20 particular. I told you that 2011 was
21 probably the worst year in my 33-year career
22 as president, court clerk, court employee and
23 as a citizen of New York State.

24 Why? Well, because in 2011 something

1 happened in the judiciary that we in the
2 court system and the citizens of New York may
3 never recover from. That year we suffered
4 layoffs, in Nassau County and statewide, of
5 approximately 20 percent of our workforce.
6 It is the same year we were offered
7 zero percent compensation during contract
8 negotiations, the first of three consecutive
9 zeroes. The seed was also planted to raise
10 the judges' salaries, which came to fruition
11 only last year. New discretionary programs
12 were started up, carving out a tremendous
13 portion of the budget, and those monies were
14 never replaced. And neither was the
15 personnel.

16 We are one of the three equal branches
17 of government, and we are being treated like
18 an experimental startup program. Last year
19 you graciously increased the court budget by
20 2.4 percent -- and that was supposed to go
21 towards bringing back some of the 2,000
22 workers that were laid off back then and
23 towards decent, at least near-cost-of-living
24 increases to the middle-class court

1 employees. And I'd like you to know how it
2 turned out a year later.

3 Of the approximate 155 court employees
4 in Nassau County that were laid off -- again,
5 20 percent of the Nassau court workforce --
6 we actually are down from last year. Oh,
7 there's been some hiring, with retirements,
8 transfers and promotions to other counties,
9 but subtract two more employees that we are
10 down from that 20 percent that we were down
11 from last year. Six years of getting the job
12 done with 20 percent less people.

13 My members are understaffed, tired,
14 overworked, unappreciated, and woefully
15 underpaid. Again, morale is way down.
16 Sickness and absenteeism are up, and
17 disciplines are way up, over 200 percent
18 since just two years ago.

19 This heartless game that goes on
20 between the Office of Court Administration,
21 the Legislature, and the Governor has got to
22 stop. The Governor mandates a 2 percent
23 increase cap on state agencies and doesn't
24 even give that to the Judiciary -- again, the

1 third branch of our government. We averaged
2 1.3 percent during those five years since
3 that edict. If we got that .7 percent each
4 year, we'd have enough to fund the courts
5 now -- but we've averaged out to be
6 1.3 percent.

7 As the court administration is fully
8 aware, we need at least a 5 percent increase
9 this year to properly serve the citizens of
10 New York. But the Office of Court
11 Administration is afraid to ask the
12 Legislature, who appears to be afraid to push
13 back on the Governor. And the court workers
14 and the citizens of New York are the ones
15 that suffer.

16 I know most of you are practicing
17 attorneys and many of you have come to tell
18 me the horror stories about the once proud
19 New York court system -- five years for a
20 misdemeanor jury trial, where the maximum
21 penalty for a guilty verdict is one year,
22 eight-year-old foreclosure cases that have
23 cost Long Island over \$300 million in lost
24 property values, matrimonial cases taking

1 over 300 percent longer to conclude, with
2 backlogs due to understaffing, and the
3 accused taking longer to be arraigned and all
4 civil cases taking that much longer.

5 We're better than that. We have to
6 be. With the billions that the Governor is
7 throwing around on all these new projects,
8 there's no excuse not to be. Take care of
9 your foundation before you put on an
10 extension. The Judiciary's foundation is
11 crumbling.

12 And my last paragraph -- I promise you
13 I won't take much longer -- is the citizens
14 of New York deserve better than what they are
15 receiving for their tax dollars. You tell us
16 that you can only give the Office of Court
17 Administration what they ask for. Well,
18 then, we need to have you have meaningful
19 conversations with the Office of Court
20 Administration to find out what they really
21 need to operate properly, effectively, and
22 efficiently. Again, my numbers say it's a
23 5 percent increase.

24 Then, together, we all need to tell

1 the Governor, in no uncertain terms, this is
2 not a request, this is our mandate, a mandate
3 from the citizens of New York State, the
4 New York Legislature, and the Office of Court
5 Administration and all the court workers that
6 I represent.

7 I'm sorry for being upset about this,
8 but it's six years. But I will take
9 questions. I appreciate if you have any,
10 because I've got answers.

11 CHAIRWOMAN YOUNG: Questions?

12 Well, I think -- you know, obviously
13 we're sympathetic and we appreciate your
14 passion for your members. And it sounds like
15 they're dealing with very difficult
16 situations. And we'd really like to see it
17 resolved, because they deserve to be treated
18 in a fair way, there's no question.

19 PRESIDENT IMANDT: Well, yes, Senator.
20 Thank you, I appreciate that. But we need to
21 have meaningful contract negotiations too,
22 and that's not happening. The bargaining is
23 stonewalled for the last two years. So you
24 give them more money, and it never filters

1 back to the court workers.

2 So I appreciate it, Senator Savino and
3 all of you up there. Please, hold their feet
4 to the fire: What are you doing with the
5 money? Where is it going?

6 Senator Savino asked about is there a
7 reserve for retroactive pay. I've calculated
8 Nassau County is close to \$6 million in
9 retroactive pay. The court clerks are about
10 \$11 million, and so is Pat Cullen. This is
11 all back money that's going to be due
12 someday, and they're not prepared for it.

13 Apparently, I'm told, they can't carry
14 from one budget to the next. If that's true,
15 then when you get to no contracts at the end
16 of the fiscal year, they put it on furniture,
17 computers -- they do some hiring, yes. But
18 with attrition and retirements and things
19 like that, the numbers aren't going up.
20 Nassau's numbers have gone down. Please help
21 us.

22 CHAIRWOMAN YOUNG: Thank you.

23 PRESIDENT IMANDT: Thank you.

24 CHAIRWOMAN YOUNG: Thank you very

1 much.

2 The next speaker is President Michael
3 Powers, New York State Correctional Officers
4 and Police Benevolent Association, Inc.,
5 NYSCOPBA.

6 (Inaudible interjection.)

7 SENATOR GALLIVAN: First, Suffolk
8 County Court Employees.

9 CHAIRWOMAN YOUNG: Oh, okay. I'm
10 trying to push it, I guess, subconsciously,
11 because it certainly isn't a slight. And I'm
12 sorry.

13 President William Dobbins, Suffolk
14 County Court Employees Association.

15 Okay, my apologies. So welcome. Very
16 happy to have you here.

17 PRESIDENT DOBBINS: Thank you. Thank
18 you, Senator. Thank you, everybody, for
19 allowing me to be here today.

20 You gave me the privilege of appearing
21 last year, and I spoke to you about the
22 staffing issues and the concerns that we have
23 in Suffolk County. And unfortunately, you
24 know, I'm sad to report nothing has changed.

1 Our staffing levels are lower than they were
2 a year ago. And the court got an increase to
3 their core budget -- they got a 2.4 percent
4 increase to their budget last year, and none
5 of it translated into jobs for our courts.

6 President Cullen spoke before about
7 his court officers, they are almost 9 percent
8 down in staffing. Well, my court officers in
9 Suffolk County are 22 percent down in
10 staffing. We can't keep our courts safe, we
11 can't keep them secure.

12 And we are here to ask that somebody
13 hold OCA's feet to the fire. Judge Marks was
14 here this morning, and he paints a fairly
15 decent picture of what's going on in the
16 courts, but it's not quite the case. Let's
17 talk about 200 more people being hired in the
18 next year. That doesn't even touch what we
19 need. We have a class of 120 court officers
20 going in in the end of February -- 120 court
21 officers. He's talking about 200 people.
22 Well, what about the other staff?

23 I represent 102 separate titles,
24 ranging from court messenger, court officer,

1 court clerk, court reporter, court attorney,
2 court attorney referee, and it goes on and
3 on -- 102 separate titles, and we're
4 suffering. We have the highest mortgage
5 caseload in the state. We have backlogs.
6 Those backlogs -- because the court attorneys
7 can't get to do the motions, there's not
8 enough of them, those backlogs translate into
9 zombie homes in our communities. So it
10 affects the community as well.

11 You know, there's a sense that
12 people -- this is a human issue. There's a
13 sense that people care about the community,
14 that it should be about public service, but
15 that seems to fall on deaf ears when it comes
16 to OCA. Last year they received some extra
17 money in the budget. That money went to pay
18 for their raises, judges' raises, an increase
19 of \$27 million for judges' raises. None of
20 it translated into more hiring, none of it.

21 And the only reason why there was more
22 hiring this year was because they couldn't
23 settle the contracts with one of those unions
24 that just spoke before, COBANC. When they

1 couldn't settle the contract, there was
2 \$40 million available; they said, Okay, now
3 we'll hire. That's the only reason those
4 people were hired.

5 Last year Judge Marks -- I think it
6 was Senator Bonacic asked him, he said, "What
7 are you going to do if you don't get the
8 money for your raises?" And Judge Marks
9 said, "Well, we'll probably have to reduce
10 staffing through attrition." Well, that's
11 what he's been doing. That's exactly what
12 he's been doing. And the only reason he
13 started to hire was because one of the unions
14 didn't settle their contract this year. He
15 had money that he had to spend.

16 My concern is what's going to happen
17 when these other four unions do finally
18 settle. You're talking maybe \$50 million in
19 back pay. Fortunately, my union has a
20 contract -- well, we had a contract. Our
21 last contract expired last year. We're
22 working on a new contract.

23 But what happens when those four
24 unions that have been without a contract

1 since 2011 finally settle their contract?
2 You're talking about \$50 million to
3 \$60 million in back pay owed to those unions.
4 What is that going to translate to in the
5 court system? They're not going to be able
6 to hire. We have all these wonderful ideas
7 about programs, putting money in to help
8 people that can't afford attorneys. What
9 good is it if there's no staff to support the
10 court?

11 The infrastructure of the court is
12 collapsing. It's collapsing. And nobody
13 seems to care, nobody seems to be doing a
14 thing about it. It seems like it's become a
15 political game of ping pong -- it goes back
16 and forth, back and forth, and nothing gets
17 done.

18 I'm here to implore you to please hold
19 their feet to the fire. They have the funds.
20 They have the resources. They decide to
21 spend it in other ways. Without the
22 personnel to support our court system, to
23 answer motions, to accept dockets -- could
24 you ask a judge to initiate a case? Could

1 they prepare a court file? Do they know how
2 to enter it into the system? Do they know
3 how to talk to a litigant in order to prepare
4 an order of protection?

5 It's the little people that work in
6 our system that do all of that. We are the
7 people that make it all work. When I took
8 over in this union, my motto was that we are
9 the heartbeat of the court because without
10 us, without that life of the heartbeat, the
11 system dies and all these exemplary programs,
12 really good programs, mean nothing. If
13 there's no money to spend to pay for
14 staffing, to settle contracts that are long
15 overdue, to settle future contracts, we're
16 lost.

17 You ask about do they have reserves?
18 They don't even talk about reserves. They
19 say they can't budget for something that's
20 not due yet. Well, if they have \$50 million
21 that they owe to other unions and they don't
22 have it, haven't even talked about how
23 they're going to pay for it, what's going to
24 happen? I asked Judge Marks, I said, "How

1 are you going to pay for it?" He says,
2 "We'll find a way." They find a way by
3 borrowing from Peter to pay Paul. That seems
4 to be the OCA way.

5 And Judge DiFiore -- Judge DiFiore,
6 wonderful. I think she's going to be really,
7 really good for our court system. And she
8 has this Excellence Initiative -- but again,
9 because there's no staff, there's no hiring,
10 there's no contracts that are settled, so we
11 have all this money that is owed -- I don't
12 see that it's ever going to be achieved.

13 I think that we all -- me, you,
14 Judge Marks, OCA -- I think we have to look
15 at it on a human level. I think we have to
16 look at the humanity. The people who take
17 off from jobs -- they have no sick time, but
18 they have to take off from work to go to
19 court to have a case heard or to file a
20 petition. And then they're told, You know
21 what, we don't have enough staff to handle
22 it. Or, We don't have enough staff to open a
23 courtroom. So you'll have to go away, you
24 took the day off for nothing, and that's a

1 lost day.

2 We have prisoners that can't be
3 transported to courtrooms because there are
4 not enough court officers. What do we do
5 with that? There are people who take off
6 from work to come to court to see their loved
7 ones come into the courtroom, to hope that
8 maybe there's going to be some kind of
9 settlement coming to the case, and it just
10 doesn't happen. The defendant gets brought
11 back to the jail, wait two more weeks and
12 hopefully something can happen.

13 It's a waste of resources, it's a
14 waste of time, and it's really a dishonest
15 way to do things. I think we're pulling the
16 wool over the public's eyes and I think that
17 OCA is responsible. I think they have a
18 fiduciary responsibility to care for the
19 court system, and since 2011 they have
20 neglected that responsibility.

21 We all are victims -- the public, the
22 staff, and I believe you as well, because
23 you're told that they're going to do one
24 thing and they do another. They have a way

1 of using words. They're attorneys, they know
2 how to use words to express thoughts the way
3 they want it to be heard. But if you look at
4 it at a human level, things are very
5 different.

6 Thank you so much for allowing me to
7 appear here today, and being very patient.
8 Thank you.

9 CHAIRWOMAN YOUNG: Thank you.

10 CHAIRMAN FARRELL: Thank you.

11 CHAIRWOMAN YOUNG: Please thank all of
12 your members. Thank you.

13 PRESIDENT DOBBINS: Thank you.

14 CHAIRWOMAN YOUNG: The next speaker,
15 President Michael Powers, New York State
16 Correctional Officers & Police Benevolent
17 Association.

18 Welcome.

19 PRESIDENT POWERS: Good evening.

20 EX. VP SAWCHUCK: Good evening.

21 CHAIRWOMAN YOUNG: Very happy to have
22 you here, and look forward to your testimony.

23 PRESIDENT POWERS: Thank you.

24 Good evening, Assemblyman Farrell,

1 Senator Young, Senator Gallivan, chair of
2 Crime and Corrections, Assemblyman Weprin,
3 chair of the Assembly Corrections Committee,
4 and esteemed members of the Legislature.
5 Thank you for allowing me to speak today on
6 behalf of the over 21,000 dedicated members
7 of the New York State Correctional Officers &
8 Police Benevolent Association, otherwise
9 known as NYSCOPBA.

10 My name is Michael Powers, and as
11 president of NYSCOPBA, I have the privilege
12 of representing the interests of our
13 membership, including the brave and
14 hardworking correctional officers and
15 sergeants who are charged with maintaining
16 the care, custody and control of our
17 correctional facilities in the State of
18 New York. With me today are three of
19 NYSCOPBA's statewide elected officials:
20 Executive Vice President Tammy Sawchuk,
21 Recording Secretary Mike Dildine, and
22 Treasurer Dave Widdivo.

23 We've submitted our written testimony
24 today, and in the interests of time and

1 recognizing the long day in front of you,
2 we -- many of the graphs and charts that you
3 have before you show much of the violence
4 that is in our system. That's been evident
5 in this year's testimony and in last. So
6 I'll spare you that reading of the whole
7 entire testimony, and I'll touch on --
8 clearly and concisely state what the
9 dedicated professionals of NYSCOPBA believe.

10 Our number-one concern is the lack of
11 resources. We believe it takes adequate
12 resources to effectively supervise inmates.
13 Currently we are lacking the resources
14 necessary to curb the growing violence. This
15 is especially true as four out of five
16 inmates in maximum-security facilities and
17 more than half the inmates in the
18 medium-security facilities have been
19 convicted of violent felonies.

20 The necessary resources required
21 include a sufficient number of regularly and
22 uniformly trained correction officers
23 outfitted with equipment that enables them to
24 both do their job and return home safely to

1 their families each night.

2 While we are encouraged by the
3 increase in correctional officer positions
4 that have been filled as a result of
5 departmental staffing reviews, we have a long
6 way to go to reach a staffing ratio that
7 allows critical posts to remain open.

8 Achieving a better staffing ratio
9 would be more attainable if there was an
10 incentive in place to retain some of
11 NYSCOPBA's most seasoned, retirement-eligible
12 officers. Our senior officers are
13 consistently opting for retirement to protect
14 the financial well-being of their families,
15 because sufficient death benefits are not
16 currently available to them. We need to pass
17 equitable death benefit legislation that
18 gives our senior officers a reason to remain
19 on duty. Doing so will ensure that our newly
20 hired officers learn on the job from our most
21 senior NYSCOPBA members with the most
22 experience and practical knowledge.

23 This on-the-job training is even more
24 indispensable because meaningful classroom

1 training remains unavailable after a
2 corrections officer leaves the academy. Too
3 often the training that is provided does not
4 focus on the tools and techniques correction
5 officers need to provide security to a
6 facility.

7 While we are encouraged by some of the
8 actions the department has taken to act on
9 recommendations made by the Inspector General
10 and made previously by NYSCOPBA, much of the
11 equipment correction officers rely on is
12 still embarrassingly outdated or inadequate,
13 to the detriment of officers and inmates
14 alike.

15 NYSCOPBA has articulated its stance on
16 these critical issues frequently and
17 consistently at hearings like this and
18 through official channels like
19 labor-management meetings at both the state
20 and facility levels. And we will continue to
21 make our voices heard on these and any other
22 issues that affect the safety and security of
23 our members, inmates, and the prisons they
24 collectively work and reside in.

1 The men and women of NYSCOPBA, each of
2 whom walks the toughest beat in law
3 enforcement, as former Senator Nozzolio used
4 to tell us, remain committed to such reform.
5 We look forward to working with all of you as
6 partners in that effort.

7 Thank you again for the opportunity to
8 share our views, and we'll do our best to
9 answer any questions you have.

10 CHAIRWOMAN YOUNG: Thank you,
11 President Powers. And we truly appreciate
12 everything that your members do, because we
13 know what a tough job they have. And I know
14 Senator Nozzolio spoke of that all the time,
15 because he understood how dangerous a
16 situation your members are in every single
17 day, protecting us.

18 It's alarming to see your statistics
19 regarding inmate-on-inmate assaults,
20 inmate-on-staff assaults, the use of K2. And
21 you talk about the fact that more contraband
22 is getting into the prison system. Is this
23 due to lack of resources? You started out
24 your comments saying that that's the most

1 urgent situation that is facing us.

2 It seems to me that when you look at
3 these statistics, obviously you're doing a
4 great job as far as fulfilling your duties
5 every day, but there's something going on.
6 And could you talk about what's going on, in
7 your estimation?

8 PRESIDENT POWERS: It's a very large
9 agency, as you're well aware. And many of
10 the things that need to be addressed of
11 course always cost money. And resources cost
12 money, new technology costs money. And this
13 department, in our opinion, is behind the
14 times if you look across the nation,
15 nationally. And much of what we need is
16 going to cost money. And in order to do
17 that, we need more staff.

18 We have issues with staffing in our
19 facilities with closed posts. We have issues
20 with staffing with attrition rates -- as we
21 mentioned, the death benefit legislation that
22 we're pursuing. You know, many of the
23 things -- our hiring rate is not nearly close
24 to the rate of attrition.

1 Just in January of 2017 alone, as of
2 today I received a report that 117 correction
3 officers retired in the month of January.
4 And that, since 2007, is a 30 percent
5 increase since in years past. So we can't
6 keep our staff to stay. And with that, and
7 not being able to keep up with the rate of
8 hire, it just puts us behind.

9 The contraband levels. We have high
10 violence, a significant rise in violence. As
11 you can see, the inmate-on-inmate assaults
12 are nearly up 25 percent since last year
13 alone.

14 And, you know, with that, it just --
15 we need more resources. And we need better
16 technology and we need more training when we
17 come out of the academy and enter in the
18 field. That training needs to persist and it
19 needs to continue while in service.

20 CHAIRWOMAN YOUNG: Do we still have an
21 issue with double-bunking in maximum-secure
22 facilities?

23 PRESIDENT POWERS: A majority -- every
24 medium correctional facility in the State of

1 New York is double-bunked. The back wall of
2 each facility -- the facilities, I believe
3 the housing units were built for 50; they all
4 house 60. So double-bunk still exists.

5 NYSOPBA SECRETARY DILDINE: It's
6 mainly the mediums. We presently have nearly
7 7,000 top bunks, so 14,000 inmates in
8 double-bunk situations.

9 CHAIRWOMAN YOUNG: That obviously
10 contributes to the tension that normally
11 exists within the prison walls and increases
12 the incidence of violence that could occur,
13 other untoward things, so --

14 PRESIDENT POWERS: I believe the
15 acting commissioner testified today, and we
16 dispute that number -- he said 64 percent of
17 the inmate population is violent. We feel it
18 could be a bit higher than that.

19 But I mean that's what you're dealing
20 with. You know, you have these
21 maximum-security facilities and a majority of
22 the facilities, the inmates that are housed
23 within the facilities are violent offenders.

24 CHAIRWOMAN YOUNG: Thank you.

1 CHAIRMAN FARRELL: Mr. Weprin.

2 ASSEMBLYMAN WEPRIN: Thank you,
3 Mr. Chairman.

4 Thank you, President Powers. I see in
5 your testimony it's listed as 9:30 a.m. I
6 hope you haven't been here since 9:30 a.m. --

7 (Laughter.)

8 ASSEMBLYMAN WEPRIN: -- as the chairs
9 of our committees and a number of members
10 have been.

11 You know, the commissioner was here
12 and there was a proposal this morning --
13 Commissioner Annucci -- and there's a
14 proposal the Governor has made to reduce
15 visitation days at maximum-security prisons
16 from seven days to three days. When I
17 questioned him about it, he defended that as
18 a cost saving, the fact that he has to cut in
19 his budget. But it looked to me that the
20 cost saving was minimal, \$2.6 million in
21 probably a \$3.5 million correction budget.
22 But it potentially involved eliminating
23 39 positions.

24 Does your union have a position on

1 reducing the visitation in maximum security
2 from seven days to three days?

3 PRESIDENT POWERS: Other than the
4 proposal in the Executive Budget, we haven't
5 seen anything regarding it, how they're going
6 to implement it, where they're going to get
7 the staff. You know, I mean we have some
8 ideas, but we haven't seen the actual
9 proposal as of yet.

10 And you know, I mean -- do we have a
11 stance? No, not necessarily at this point.
12 We just don't know how they're going to do
13 it.

14 ASSEMBLYMAN WEPRIN: Well, the
15 commissioner indicated, when I questioned him
16 earlier today, that the seven days was
17 underutilized, that there were many days when
18 it wasn't being used.

19 Has that been your experience?

20 PRESIDENT POWERS: I come --
21 personally, from a personal experience? I
22 haven't worked in a max facility in quite
23 some time, but I recall them being busy,
24 quite frankly, all the time.

1 But, you know -- I mean, a visit room
2 is a high-volume place at times. Sometimes
3 they're slow. Weekends and holidays -- I
4 traditionally worked in a medium-security
5 facility. Our medium facilities are swamped.
6 In fact, at some points some people have to
7 cut their visits short in order to bring in
8 other individuals because of capacity
9 reasons.

10 ASSEMBLYMAN WEPRIN: In those
11 facilities, the visitation days were reduced
12 over the years; is that correct?

13 PRESIDENT POWERS: I'm sorry?

14 ASSEMBLYMAN WEPRIN: The days at the
15 minimum-security or medium-security prisons
16 were reduced over the years, right, from
17 seven days?

18 PRESIDENT POWERS: To weekends only in
19 the mediums, correct.

20 ASSEMBLYMAN WEPRIN: Medium, yeah.

21 PRESIDENT POWERS: I believe in -- I
22 can't remember what year.

23 EXEC. VP SAWCHUCK: Yes, weekends and
24 holidays in the mediums.

1 And just to follow up, Assemblyman
2 Weprin, what you asked about visiting in
3 different facilities, I think you might see
4 less visitors the further north or west you
5 go, in a maximum-security, but you might see
6 more visitation in a southern jail like
7 Sing Sing, which is maximum-security.

8 PRESIDENT POWERS: Bedford Hills and
9 whatnot.

10 EXEC. VP SAWCHUCK: Bedford Hills,
11 yes.

12 ASSEMBLYMAN WEPRIN: Yeah, that's a
13 good point.

14 I know there's been a two-year review
15 of staffing. Has NYSCOPBA drawn any
16 conclusions from that two-year staffing
17 review? And what's the current situation?

18 PRESIDENT POWERS: Well, the
19 memorandum of understanding includes both our
20 input and of course the state's, the
21 department's. And, you know, we've had -- I
22 believe we're nearly completed, I believe
23 they're close to completing the third year of
24 it now. We've seen an increase in staff, but

1 we haven't seen an increase in any posts.
2 You know, we're thankful for the staff, but
3 there's -- we still strongly believe that
4 there's a long way to go.

5 NYSCOPBA SECRETARY DILDINE: Part of
6 the -- if I could --

7 ASSEMBLYMAN WEPRIN: Yes, sure, jump
8 in.

9 NYSCOPBA SECRETARY DILDINE: Part of
10 the issue, when we did these staffing
11 reviews -- which we've done, and we've had
12 our input, and we appreciate having the
13 chance to give that input. But a lot of
14 those posts that were created were already
15 there. They're what we call "ghost posts,"
16 posts that had to be filled every day to run
17 the facility.

18 So what we gain is we may gain the
19 relief for that post, but it's really not
20 addressing the security issues. So a lot of
21 the security issues still haven't been
22 addressed because of that.

23 ASSEMBLYMAN WEPRIN: Okay, I
24 appreciate it.

1 And my final question is, I know your
2 contract is out for ratification now. Do you
3 anticipate any problems, and how is that
4 ratification process going?

5 PRESIDENT POWERS: Our constitution
6 puts it in our membership's hands. Our
7 membership is our governing body, and
8 depending on how the ballot count turns out
9 in February, we'll find out.

10 ASSEMBLYMAN WEPRIN: What's the date
11 on the election, the final date?

12 NYSCOPBA SECRETARY DILDINE: The 27th
13 is when the votes are counted. February the
14 27th.

15 ASSEMBLYMAN WEPRIN: Okay. Well, good
16 luck. Thank you for all the work that you do
17 protecting us each and every day. Thank you.

18 PRESIDENT POWERS: Thank you.

19 CHAIRWOMAN YOUNG: Thank you.

20 Senator Gallivan.

21 SENATOR GALLIVAN: Thank you,

22 Chairwoman.

23 Welcome. Thanks for hanging in there.

24 I'll try not to be repetitive. I'm

1 going to start by thanking you, of course,
2 for the work that you and your members do. I
3 don't want to take credit for Senator
4 Nozzolio's term; it's very apt, though. It's
5 a very difficult job. And he said it year
6 after year, so he deserves credit for saying
7 that. But you deserve credit for the work
8 that you do.

9 I believe you were present for the
10 commissioner's testimony.

11 NYSOPBA TREASURER VIDDIVO: We
12 listened.

13 PRESIDENT POWERS: We listened to it,
14 yes.

15 SENATOR GALLIVAN: I want to touch on
16 some of the same things, and then I'll move a
17 little bit beyond it. Most of -- much of the
18 questions, the things that I focused on with
19 the commissioner, was the violence in the
20 facilities, the assaults and contraband. The
21 recognition that on a year-to-year basis,
22 assaults were slightly down, but over that
23 five-year period, of course, significantly
24 up. And that's just simply the assaults on

1 staff. And we see increased inmate-on-inmate
2 assault, increased contraband.

3 So the commissioner testified to some
4 of the steps that they were taking, and then
5 I want to follow up afterwards about your
6 thoughts about what needs to be done. But if
7 we could go through some of the things that
8 he had talked about. And he talked about
9 some of the different -- the policies and the
10 equipment. So pepper spray, body cameras,
11 the thermal imaging, heartbeat detection
12 devices, portable metal detectors. I did ask
13 him about x-rays, the x-rays in the package
14 room, the new or supposed new equipment
15 that's in there.

16 So can you talk about some of the
17 things that they've done, focusing on that
18 equipment, if you think it's effective or
19 not? Obviously some of it is in a pilot
20 phase, I know, and he testified to if it's
21 successful, they would like to go systemwide.
22 But then in addition, I raised a question
23 about body scanners, using body scanners
24 after visits, and everybody goes through it

1 to help reduce the contraband.

2 Could you then talk about what your
3 recommendations would be -- if you had a --
4 the wish list, you talk about resources.
5 What could help be more effective and to keep
6 the prisons safer? But starting with what is
7 in -- some of the changes they're making now,
8 and then moving into the so-called wish list.

9 PRESIDENT POWERS: Let me start off
10 by -- in the line of questioning, and your
11 point exactly, coming from a visit and having
12 the offender go through a body scan is --
13 we'd welcome that with open arms. You know,
14 that would -- we'd -- you know, it was an
15 excellent idea. And we feel that initially,
16 just in the short strokes, how much that
17 would take away from the potential contraband
18 from getting from that visit room into our
19 facility, down back and dispersed amongst the
20 inmate population. Which readily happens,
21 you know. But that's a huge deterrent from
22 that point, from that standpoint right there,
23 from the visit room before it gets back to
24 the housing block. You know, that was a

1 great idea.

2 And much of the technology that we've
3 seen, they're pilot programs. You know,
4 there's good and bad with everything, and we
5 haven't seen the outcome of much of what's
6 come out as far as the body cameras.

7 You know, many of the facilities are
8 getting camera-ed up, microphoned up, and I
9 believe Attica, Clinton -- Clinton's in the
10 loop here pretty quick. And, you know, much
11 of the technology that we've seen has been
12 advantageous.

13 The Cellsense is good. That's a
14 mobile device that allows us to move it about
15 the facility to detect contraband moving from
16 one point in the facility to another. It's
17 not a fixed metal scanner, it's mobile, and
18 we're able to utilize that. We've had some
19 good success with that.

20 Some of the other technology I haven't
21 seen --

22 EXEC. VP SAWCHUCK: Pepper spray.

23 PRESIDENT POWERS: The OC spray, the
24 pepper spray is --

1 EXEC. VP SAWCHUCK: Very effective.

2 PRESIDENT POWERS: -- from what we
3 understand, and reports from the field that
4 we get, are good. And reports from the
5 department are good as well. And it quells
6 the possibility for having us to have to
7 physically get in and break up a fight, a
8 stabbing, a violent incident of any sort.
9 And/or possibly potential discipline from the
10 department for, you know, alleged acts that
11 take place in a violent incident such as
12 that, and it seems to us as if we're the ones
13 getting it, getting it more so than the --
14 some of the perpetrators of the violent act.

15 But at any rate, you know, we've seen
16 some success, but there's still a bit of --
17 still quite a ways to go.

18 NYSCOPBA TREASURER VIDDIVO: Can I
19 just follow up on the pepper spray, the OC
20 spray that's been in the pilot program that
21 was in motion last summer? In our opinion --
22 I believe I speak for all of us -- I think
23 that we need to expedite that. I think it's
24 no -- anecdotal, but no coincidence that the

1 assaults on staff have declined slightly.

2 And I think that we can attribute the use of
3 the pepper spray to that, somewhat. And I
4 think it needs to be expedited and put forth
5 in all the facilities and done yesterday, as
6 opposed to, you know, moving forward, getting
7 it out quickly.

8 SENATOR GALLIVAN: What's happened in
9 the package rooms? Is there new equipment in
10 there?

11 PRESIDENT POWERS: I haven't seen it
12 yet.

13 VP SAWCHUCK: No.

14 NYSCOPBA SECRETARY DILDINE: No, we're
15 still waiting. The department's been working
16 on a plan for literally years to change the
17 way the package rooms operate. And obviously
18 the two biggest issues with contraband are
19 the package room and the visiting room.

20 Your idea would be excellent. Now, if
21 we can get the -- they're looking at working
22 on a central location where this stuff comes
23 from. We're waiting --

24 SENATOR GALLIVAN: But still no

1 movement on getting over the hump on that.

2 NYSOPBA SECRETARY DILDINE: Still no
3 movement. We've been waiting for a couple of
4 years for it to come through. It would
5 surely help.

6 PRESIDENT POWERS: To give you an idea
7 as to how that would happen, typically
8 through the package room, a package is sent
9 in through a family member of the offender or
10 the inmate, and then it's dispersed on back.
11 Sometimes -- not sometimes, a good large
12 aspect of the contraband that comes into our
13 facilities comes through in package rooms.
14 And I think you'd be quite surprised and
15 amazed at the innovative ways in which some
16 people look to introduce contraband into
17 these facilities through the package room.

18 And what Mike was alluding to was
19 through the centralized packaging commissary,
20 the commissary aspects of the operations in
21 the correctional facility, it would decrease
22 significantly because it comes from a vendor,
23 where the inmate places his order for a
24 package through a vendor instead of having

1 his family come in and having the potential
2 of having the outside contraband come in
3 through an outside criminal entity.

4 SENATOR GALLIVAN: The inspector
5 general's report recommendations included
6 training, didn't they? I don't recall all
7 the recommendations. So you mentioned the
8 need for training, or lack of post-academy.
9 What should there be? What would you like to
10 see training in? What do you feel that
11 training should be in?

12 PRESIDENT POWERS: Well, here's a
13 perfect example. A lot of our members that
14 have to physically get involved in a
15 potential serious physical injury incident
16 get -- you know, we find that they're being
17 disciplined by the department. And, you
18 know, they're fighting for their livelihoods
19 over certain instances that happen.

20 And basically just to move past that,
21 we're starting to see -- I apologize, I lost
22 track of your --

23 (Unintelligible cross-talk.)

24 SENATOR GALLIVAN: The training. You

1 mentioned a lack of training, a lack of
2 in-service training.

3 PRESIDENT POWERS: The use of force,
4 the use of force training. The department
5 actually backed off the hands-on training
6 since graduation from the academy.

7 More importantly, from what we've
8 discovered recently, is they've backed --
9 instead of four hours of annual training that
10 I would receive, or any one of us here at the
11 table, if we were still in the facility -- or
12 former correction officer Assemblyman
13 Jones would receive in the facility -- would
14 be four hours of annual training. They've
15 reduced that to two. And --

16 EXEC. VP SAWCHUCK: Defensive tactics.

17 PRESIDENT POWERS: Yeah, I'm 51 years
18 old. I haven't used defensive tactics, you
19 know, or had a lengthy period of training in
20 baton use or defense tactics or the
21 dispensing of chemical agents, if needed, or
22 anything of that nature. It's minimal, at
23 best. And, you know, it's to stay within the
24 guidelines of their training curriculum.

1 Which is not effective for our 25-year
2 correction officer who's still in the field.

3 NYSOPBA SECRETARY DILDINE: Our
4 requirements, we get 40 hours, basically, a
5 year for training. Much of that when I
6 began, 29 years ago when all of us had a lot
7 of time on the job, a lot of that training
8 was security training -- teach you how to
9 deal with the inmates when they're violent,
10 teach you how to try to quell a
11 disturbance -- most of that has gone away.
12 Because now we're under court-mandated
13 trainings, we're under commissioner's
14 initiatives, all those things. We get no
15 hands-on training in those issues that are
16 near and dear to everyone. Everyone would
17 agree. You know, the violence in the prisons
18 are up.

19 So we actually, I think, put a
20 proposal in that would double our training
21 hours to 80 hours, because in reality that's
22 what needs to happen. We need hands-on
23 training. The department is reluctant to do
24 it. You know, they cite workers' comp, they

1 cite all these different reasons, but it all
2 comes down to money.

3 SENATOR GALLIVAN: Well, I look
4 forward to working with the new chairman of
5 Corrections, my colleague in the Assembly,
6 Assemblyman Weprin, and I'm hopeful we can
7 make some progress and continue to make the
8 prisons safer for you and everybody in there.

9 Thank you for your testimony.

10 PRESIDENT POWERS: Well, we look
11 forward to working with all of you. And more
12 importantly, anything you need from us, by
13 all means, don't hesitate to reach out.

14 SENATOR GALLIVAN: I know that. Thank
15 you.

16 CHAIRWOMAN YOUNG: Thank you so much.

17 SENATOR KRUEGER: Thank you very much.

18 CHAIRMAN FARRELL: Mr. Oaks.

19 ASSEMBLYMAN OAKS: No, no, that's
20 okay. Actually Senator Gallivan asked the
21 questions I wanted to.

22 So just thank you for being here and
23 for your service.

24 EXEC. VP SAWCHUCK: Thank you.

1 PRESIDENT POWERS: Thank you.

2 Appreciate it.

3 CHAIRWOMAN YOUNG: Next, Executive
4 Director Jonathan Gradess, New York State
5 Defenders Association.

6 MR. GRADESS: Hi.

7 CHAIRWOMAN YOUNG: Great to see you.

8 EXECUTIVE DIRECTOR GRADESS: Well, I
9 made it before my bedtime, and I'm grateful
10 for you staying.

11 Thank you, Chairperson Young and
12 Chairman Farrell and members of the joint
13 committees. I'm here with Art Cody. I am
14 Jonathan Gradess, the executive director of
15 the Defenders. And Art Cody is with me; he
16 is the deputy director of our Veterans
17 Defense Program.

18 I hope we can bring you a little bit
19 of more cheery news than some of what you've
20 been hearing. It is a request for money, but
21 I also want to talk to you about some of the
22 issues you were talking about this afternoon.
23 So I'm going to yield first and let Art
24 describe the needs that NYSDA has for its

1 Veterans Defense Program, and then I will
2 talk some about the status of public defense
3 generally in New York.

4 DEPUTY DIRECTOR CODY: Thank you.

5 Good evening, and thank you for the
6 opportunity this evening to talk about the
7 most vulnerable of New York State's veterans.
8 Virtually all of the veteran clients that the
9 VDP, the Veteran Defense Program, works with
10 are afflicted with significant mental health
11 issues. Predominantly those issues take the
12 form of posttraumatic stress.

13 Having served in Afghanistan, I can
14 tell you that what our servicemen and
15 servicewomen are exposed to stays with them
16 when they leave Afghanistan and stays with
17 them for the rest of their lives, and often
18 results in criminal justice involvement.

19 With respect to veterans, the VDP
20 fulfills NYSDA's mission of promoting
21 indigent defense in two primary ways, the
22 first of which is training. Since we opened
23 our doors a little less than three years ago,
24 we've trained over 900 attorneys. But for

1 us, the training is only the beginning of our
2 commitment to veterans and to the defense
3 community.

4 The second way that we serve veterans
5 is through direct assistance. Very commonly,
6 in the wake of one of our training sessions,
7 we will receive numerous calls for direct
8 assistance, and this is really due to our
9 expertise. We're able to interpret the
10 military documents, talk to the veteran
11 client, talk to his or her chain of command,
12 and understand that veteran's story.

13 I think it's important to understand
14 that currently, only 7 percent of the United
15 States population are veterans. So we have
16 this somewhat strange world that our
17 New Yorkers have been immersed in, and it can
18 be very difficult for a civilian judge, a
19 civilian jury, even a civilian defense
20 attorney, to understand and be able to
21 explain.

22 At core, every veteran deserves to
23 have his or her story told. But to do that
24 right is very intensive and it takes time.

1 As I mentioned during my testimony here last
2 year, the Veterans Defense Program will never
3 turn a veteran away. We don't say no. But
4 with a staff of two attorneys for the State
5 of New York, we're stretched a little thin.
6 We can no longer provide the kind of
7 investigation and the kind of presentation
8 that each and every veteran needs and
9 deserves.

10 We're seeking funding for additional
11 attorneys, caseworkers, and support staff,
12 both for the already overburdened Western
13 New York office, and also to establish a
14 downstate office to better serve our veterans
15 in those counties where there's a more heavy
16 concentration of veterans downstate.

17 Thank you.

18 EXECUTIVE DIRECTOR GRADESS: Thank
19 you, Art.

20 So we are here asking for money, a
21 total of \$1.4 million additional funds. I'll
22 take a page from Mr. Tembeckjian's book that
23 we've had seven years of flat funding. The
24 Governor cut us 60 percent from the

1 appropriation that you ended up with last
2 year, and an additional 5 percent of what he
3 even put in last year. When Bob said that
4 flat funding is a cut, he's not kidding.

5 And we are now as deeply ingrained in
6 the improvement of quality as we have ever
7 been. Hurrell-Harring gave us obligations in
8 the Hurrell-Harring counties with our public
9 defense case management system. We're now
10 performing 40 training programs a year. We
11 have the case management system up and
12 running in 69 programs in 45 counties. And
13 you can't cut that.

14 So we need to be restored, and we need
15 to be increased, and we need your help to do
16 it.

17 I want to go back, however, to the
18 context in which our backup center creates
19 services. We've had a -- I was hoping to
20 come in here at this point and give you a
21 great big thank you for each of your votes
22 last June 17th on the Fahy-DeFrancisco bill.
23 I thought maybe I could come in for once, say
24 thanks for what you did, thank the Governor

1 for signing it, and here's what we need in
2 the way of money.

3 Unfortunately, that is not the case,
4 so I want to ring through a couple of things
5 that I think are important. One is I would
6 like you to reintroduce the DeFrancisco bill
7 in the Senate. The Fahy bill has already
8 been reintroduced. I'd like you to pass it.
9 I'd like you to be prepared to override
10 another veto.

11 Why is that? Because what that bill
12 was doing was essentially not mandate relief,
13 not public defense reform, it was mandate
14 fulfillment. The U.S. Supreme Court in 1963
15 put the obligation for public defense
16 services on the State of New York. Our Court
17 of Appeals in 1972 put the obligation for
18 parental defense on lawyers in New York.
19 Those obligations have been incorporated in
20 statute, and the counties are dying under the
21 combined burden of that mandate, which is the
22 state's, and the property tax cap.

23 So while a lot of people read the bill
24 as mandate relief and others read it as

1 improvement to justice, it came to be called
2 the Justice Equality Act because it would
3 have done all of those things and more.

4 Now, the Governor's bill at this
5 point -- and I'm very happy to see the bill.
6 But you know, it does bring up the idea that
7 the devil is in the details. And those
8 details include the following. You cannot
9 allow the Governor's proposal to undermine
10 the independence of the Indigent Legal
11 Services Office. The Division of the Budget
12 should not have, does not need, does not
13 require and would undermine best practices if
14 you take away the independence of that
15 office. That office, as an independent
16 entity, is at the core of the Hurrell-Harring
17 settlement. It was trusted enough by the
18 State of New York to do the job in the
19 Hurrell-Harring counties.

20 And those counties, please recall,
21 were not the original defendants in that
22 lawsuit. That lawsuit was failed against the
23 State of New York. New York was the sole and
24 exclusive defendant. It was filed by the

1 Civil Liberties Union, and it used examples
2 from the five counties as exemplars of what
3 is wrong in each of the counties. The
4 Civil Liberties Union could have taken out a
5 dart, blindfolded themselves and thrown it at
6 a map of New York and picked five other
7 counties from which to draw examples. Right?

8 It was the state that moved at -- and
9 perhaps they were choosing strategically,
10 long before we realized it -- it was the
11 state that added those five counties, moved
12 to add them, said they have to be defendants.
13 And then when the state came to settle, they
14 were able to settle only for those five
15 counties.

16 The act of passing the
17 DeFrancisco-Fahy bill last year was a great
18 step forward for this Legislature and for
19 this state, and each of you, all
20 187-to-nothing voters for that bill, are to
21 be commended.

22 I would urge you to repeat what you
23 did. I would urge you very strongly, in the
24 strongest terms you can. If that is not

1 doable, or if you do it and that fails, you
2 cannot allow for the Division of the Budget
3 to be engaged in overseeing this office.

4 The state is in the business of
5 running parole. As you've just heard, it's
6 in the business of running corrections. It's
7 in the business of running the State Police.
8 The State Police spend their time arresting
9 our clients and seeing to it that they're
10 sentenced to probation, which the state runs,
11 or to parole or to prison.

12 The Executive runs those agencies.
13 There is a direct conflict of interest.
14 Public defense services are really hard to
15 appreciate. The government has a
16 6th Amendment obligation to fund and support
17 them, but it can't be meddling in them. And
18 the Division of the Budget would be meddling.
19 That's one.

20 Two, the bill is sneaky, the
21 Article VII, because it doesn't really match
22 what Hurrell-Harring did. Hurrell-Harring
23 said you won't have to spend a dime until we
24 give you the money. The Article VII is a

1 reimbursement bill. So let me tell you
2 how that's going to work in the defective
3 public defense system that we have.

4 Let us just say your public defender
5 system is a million-dollar budget, for the
6 sake of math, and the quality
7 improvements are going to cost \$250,000. You
8 are then going to say, as a county official
9 with a tax cap, where do I get this money?
10 Let me look at my indigent defense line. Let
11 me make the cuts in indigent defense that are
12 necessary so that I can come up with the
13 \$250,000 to do the new mandated services, and
14 let me end up with that same \$1 million
15 budget again.

16 So really, the idea that this is an
17 extension of quality as a reimbursement
18 program doesn't work.

19 So if you engage in the second-tier
20 fix, the Governor's Article VII, and not in
21 the re-passage of Fahy-DeFrancisco to build
22 the base, if you focus only on the second
23 floor and not the foundation, because you
24 have to, you've got to make those two

1 conditions, that the accepted best practice
2 of independence is within the bill and the
3 Division of the Budget is cut out, and
4 secondly that the money is up-front.

5 And I think Senator DeFrancisco
6 alluded to this in the question, Where's the
7 money? And there really isn't any, and there
8 needs to be.

9 So with that, and with my request that
10 though I'm committed on this overall issue, I
11 hope you'll recall our budget request, I'd be
12 happy to answer any questions if you have
13 them.

14 CHAIRMAN FARRELL: Thank you.

15 Questions?

16 SENATOR KRUEGER: You were very
17 thorough.

18 EXECUTIVE DIRECTOR GRADESS: Thank you
19 very much.

20 SENATOR KRUEGER: Senator Bailey.

21 SENATOR BAILEY: Let me find my
22 questions.

23 Thank you for your testimony. I just
24 have one question. Concerning the Raise the

1 Age, how do you anticipate that the Raise the
2 Age proposal as currently -- as we currently
3 today -- I don't want to project any changes
4 to it -- but as currently enacted today, how
5 will that affect what you do?

6 EXECUTIVE DIRECTOR GRADESS: Well, I
7 think there's a lot of questions that are
8 unanswered in Raise the Age. I don't know
9 anyone who does not support the idea of Raise
10 the Age, but I think Raise the Age in its
11 current form has a very Manhattan-centric,
12 New York City-centric view of how the world
13 works.

14 When you get up to Essex County and
15 you're a 16-year-old and you're arrested, and
16 instead going into a part in New York City,
17 you go to a village court, and that village
18 court is run by a former state trooper or by
19 someone who's not a lawyer, and there is no
20 available probation department, no available
21 part, a lot of the questions that we have and
22 that remain unanswered -- I'm not sure how it
23 would affect things.

24 I do know there's a question as to who

1 would do the work. I do know that if it
2 becomes a -- some of these things are an
3 additional burden, the work will not be done
4 well, because right now we're underfunding
5 the public defense system.

6 A lot of questions we have to look at.
7 I've prepared a lot of those questions.
8 Don't have answers for them, but I'd be happy
9 to share them with you.

10 SENATOR BAILEY: Certainly. Thank you
11 for your time.

12 EXECUTIVE DIRECTOR GRADESS: Thank you
13 all very much.

14 CHAIRMAN FARRELL: Thank you.

15 New York State Coalition Against
16 Domestic Violence, Connie Neal, executive
17 director.

18 And the next one is going to be Victor
19 Antonio-Perez and company. Would you move
20 down so that when you come, it won't take
21 time? You know, if you could get up close.
22 Thank you.

23 Good evening.

24 EXECUTIVE DIRECTOR NEAL: Good

1 evening. My name is Connie Neal, and I'm the
2 executive director of the New York State
3 Coalition Against Domestic Violence. On
4 behalf of the coalition, I want to thank you
5 for the opportunity to speak to you tonight
6 on the proposed New York State budget and its
7 implications for victims of domestic violence
8 in New York.

9 The coalition is a statewide nonprofit
10 membership organization of local domestic
11 violence service providers and allied
12 organizations. In New York there are nearly
13 250 residential and non-residential domestic
14 violence programs across the state, and
15 together we share a commitment to support the
16 social change necessary to prevent and end
17 domestic violence.

18 New York State has a long and storied
19 history as a national leader. However, being
20 number one isn't always something to be proud
21 of. According to the National Census of
22 Domestic Violence Services, coordinated by
23 the National Network to End Domestic
24 Violence, New York has the highest demand for

1 domestic violence services in the country.

2 The national Census provides a one-day,
3 unduplicated count of adults and children
4 seeking services from domestic violence
5 programs in all states and the U.S.
6 territories.

7 So data from the most recently
8 compiled census indicate that on one day,
9 6,950 victims of domestic violence received
10 services in New York. Of those services,
11 over 3200 victims, including adults and
12 children, received critical non-residential
13 services, including counseling, legal
14 advocacy, and children's support groups. On
15 that same day, nearly a thousand requests for
16 domestic violence services went unmet because
17 of critical funding and staffing shortages.

18 We also know that domestic violence
19 programs in New York reported that 148
20 individual domestic violence services for
21 survivors were reduced or eliminated during
22 2015. And finally, domestic violence
23 programs reported that 115 staff positions,
24 most of which were direct service advocates,

1 were eliminated in that same time period. As
2 a result, there are fewer advocates to answer
3 calls for help.

4 The staggering demand for domestic
5 violence services in New York shows us that
6 we must do more. This is a call to action
7 for New York State, and at the same time,
8 this is an opportunity to create the
9 strongest domestic violence coalition and
10 network of domestic violence programs in the
11 country. Simply put, a meaningful investment
12 in domestic violence services and primary
13 prevention must be a top public protection
14 priority in our state.

15 The New York State Executive Budget
16 proposal contains little state-originating
17 funding to support domestic violence
18 services, and relies heavily on federal
19 funding sources. Federal funding is simply
20 not enough.

21 So today we are asking that you ensure
22 the following items are prioritized in the
23 final budget. First, to address
24 long-standing gaps in funding for local

1 domestic violence programs across the state
2 as a result of years of flat or reduced
3 investments by providing \$6 million in
4 funding from the TANF sources for
5 non-residential domestic violence services,
6 and providing at least a 3 percent increase
7 in the domestic violence shelter per diem
8 rate.

9 Non-residential domestic violence
10 services are mandated by New York State
11 social service regulations, and they are also
12 essential to New York State's response to
13 domestic violence. The State Budget provides
14 only one dedicated stream to support these
15 services, and it's incumbent upon the
16 Legislature to increase funding to
17 \$6 million.

18 Similarly, because the per-diem rate
19 for shelters has been flat for years,
20 domestic violence residential programs are in
21 critical need of additional support as well.

22 Secondly, we support the need to
23 stabilize and increase civil legal services
24 funding for domestic violence victims

1 statewide. Legal services for victims is
2 always a top priority issue, and we are in
3 need of consistent and effective access to
4 funding to support their legal services
5 needs.

6 Third, to provide \$4.5 million in
7 funding for local domestic violence programs
8 to collaborate with colleges and universities
9 to implement the recent "Enough is Enough"
10 campus policy mandates for dating violence,
11 domestic violence, and stalking services.
12 This support for domestic violence programs
13 is intended to complement the \$4.5 million
14 already provided for rape crisis programs in
15 each of the past two years for their work to
16 prevent sexual assault.

17 I encourage you to support domestic
18 violence programs so that they can adequately
19 implement this initiative by addressing,
20 again, those components of the legislation
21 which have to do with dating violence,
22 domestic violence, and stalking, and their
23 work in conjunction with and in coordination
24 with colleges and universities across the

1 state.

2 And finally, to create a primary
3 prevention funding stream for domestic
4 violence programs in New York by establishing
5 a \$17.25 million fund to be dispersed through
6 coordinated support to the coalition and
7 local domestic violence programs statewide.

8 The consequences and costs of domestic
9 violence homicides can be devastating not
10 only for the victims and their families, but
11 also for neighborhoods and communities in
12 which the murders occur. The average cost
13 per homicide can exceed \$17.25 million when
14 considering all medical care costs involved,
15 lost future wages, public program costs,
16 police responses, property damage and losses,
17 and really the negative impact on the quality
18 of life in communities.

19 Primary prevention goes beyond raising
20 awareness of domestic violence and works to
21 promote the behaviors we want to see adopted
22 in communities across our state. This is a
23 relatively new concept for many working to
24 end domestic violence, whose main focus has

1 previously been responding to the needs of
2 victims. However, it's clear that we must
3 increasingly focus our efforts on stopping
4 potential perpetrators before they commit
5 their first act. This includes promoting
6 social change through activities, programs,
7 and policies that change the attitudes,
8 behaviors and social norms that allow
9 domestic violence to thrive.

10 Since the cost of a single homicide
11 can be well over \$17.25 million, as I just
12 mentioned, we're requesting funding at this
13 level to demonstrate New York State's
14 commitment to preventing the far-reaching
15 tragedies of domestic violence homicides.

16 The challenge in front of us today is
17 to send a clear message that the Legislature
18 will do more to help protect survivors of
19 domestic violence and, equally important,
20 take significant steps toward understanding
21 that we also have to work toward preventing
22 domestic violence before it occurs in the
23 first place.

24 In conclusion, New York should not be

1 the number-one state in the country with the
2 highest demand for domestic violence
3 services. We must affirm our collective
4 commitment to ending domestic violence by
5 increasing investments in these vital,
6 life-saving programs. In doing so, we will
7 become the national model for primary
8 prevention services in the country. We ask
9 that you work with your fellow legislators
10 and the Governor to ensure no survivor of
11 domestic violence is ever turned away from
12 the services they seek, and that New York
13 State meaningfully invests in primary
14 prevention so we can stem the tide of
15 domestic violence once and for all.

16 I look forward to working with you to
17 create and sustain the strongest statewide
18 domestic violence coalition, network of
19 services, and primary prevention initiatives
20 in the country, and want to thank you again
21 for the opportunity to present this
22 testimony.

23 CHAIRMAN FARRELL: Thank you.

24 CHAIRWOMAN YOUNG: Any questions?

1 CHAIRMAN FARRELL: Any questions?

2 CHAIRWOMAN YOUNG: Thank you for
3 coming.

4 EXECUTIVE DIRECTOR NEAL: Okay, thank
5 you very much.

6 CHAIRWOMAN YOUNG: Next up we have
7 senior parole officer -- actually, we have a
8 group, which is great. So we have the
9 New York State Public Employees Federation.
10 And if I miss someone's name, please announce
11 yourself. But what I have so far is Victor
12 Antonio Perez, senior parole officer; Penny
13 Howansky, council leader; Steven Drake,
14 statewide labor management chair; VP Nikki
15 Brate; and Assistant Council Leader Jeff
16 Smith. Did I get everybody? Is that right?
17 Where did I go wrong?

18 MS. HOWANSKY: We have Nikki Brate in
19 the back.

20 CHAIRWOMAN YOUNG: There's Nikki. Hi.

21 So thank you so much for joining us.

22 Sorry about the lateness of the hour.

23 Obviously this is a very important topic

24 area. But we appreciate everything that PEF

1 does, so we look forward to your testimony.

2 MR. ANTONIO PEREZ: Thank you. I
3 started mine as "Good morning," but changed
4 to "Good afternoon" and now it's "Good
5 evening."

6 CHAIRWOMAN YOUNG: At least it's not
7 "Good morning" again.

8 MR. ANTONIO PEREZ: It's not "Good
9 morning" again, that's right. We always have
10 to look at the positive side.

11 Chairwoman Young and Chairman Farrell
12 and the distinguished members of the
13 Legislature, my name is Victor Antonio Perez.
14 I'm presenting today on behalf of Division
15 Council Leader 236 Paul Rigby, who testified
16 here last year, I was right behind him. He
17 couldn't be in today, he's had to be called
18 out of town on a family emergency. But I am
19 the former council leader of PEF Division
20 236, and I presently hold the position of
21 statewide chair of health and safety for
22 community supervision in my PEF division,
23 which represents 938 members made up of
24 parole officers, senior parole officers,

1 parole revocation specialists, and
2 administrative law judges. I'm also the
3 president of the Fraternal Order of Police
4 Lodge 27, representing New York State parole
5 officers. Currently I am a senior parole
6 officer at the New Rochelle area office that
7 covers southern Westchester County. And I've
8 been with the state for 28 years; 25 of those
9 years, I have been on the parole side.

10 It's important to note I've worked on
11 both sides of the double razor wire fence, as
12 we call it, so I was very involved in
13 preparing parole board hearings for about
14 eight years, and actually about 13 years in
15 the field operations. I worked in Taconic,
16 Bedford Hills, Lakeview Shock, on that side,
17 and I've worked in Rochester, I worked in
18 Western New York, yes, where I lived in
19 Chautauqua County for a number of years.
20 That's where Lakeview Correctional Facility
21 is, yes. I came back to the Bronx -- that's
22 a whole different story. And like I said,
23 I'm now in New Rochelle. I worked in the
24 Bronx for about 10 years.

1 A couple of things about the budget as
2 it pertains to community supervision, quite
3 disturbing. The obvious one, there's no
4 increase in FTEs for community supervision.
5 Just to give you some perspective of the
6 \$2.85 billion budget that's allocated to the
7 Department of Corrections and Community
8 Supervision -- which represents almost
9 69 percent of the entire public safety budget
10 for public protection -- can anybody guess
11 how much of that goes to community
12 supervision? Take a guess. Four-point-eight
13 percent.

14 And when people talk about releasing
15 prisoners from state correctional facilities,
16 they don't disappear, folks, they land up on
17 our front step and we have to deal with it.
18 And we have to deal with quite a lot on our
19 plate. We have sex offenders and -- I'm so
20 glad to hear that everybody has applauded the
21 recent allocations to supervising the
22 severely mentally ill. And so what we have
23 now is 36,000 parolees being supervised by
24 650 parole officers throughout the State of

1 New York. And that comes down to about a
2 55-to-1 ratio, as opposed to the 2.5 per
3 correction officer on the inside.

4 The 650 is about 55 to 1, but if you
5 take away -- and rightfully so, we have to --
6 we supervise the severely and persistently
7 mentally ill, which is a caseload of 15 to 1.
8 We supervise sex offenders at the ratio of 25
9 to 1. We supervise the other mentally ill at
10 the ratio of 25 to 1.

11 And those are dedicated officers and
12 very skilled officers and do an excellent job
13 in what they do. Had we had that back in the
14 St. Hubert incident, maybe we would have
15 saved a life. But we didn't.

16 I share that with you because the
17 ratio of 55 to 1 is not a real ratio. When
18 you take out the other specialized caseloads,
19 that ratio goes up to 65 to even 75 to 1. So
20 we are talking about -- there was a lot of
21 mention of violent felony offenders, how many
22 violent felony offenders are in state prison.
23 Acting Commissioner Annucci testified earlier
24 this morning, they're at about 64 percent.

1 So it looks about right. He might be off by
2 a percentage or two, according to our
3 figures.

4 But by the time they get out on
5 parole, there are incentives for those who do
6 well for nonviolent felony offenders, so the
7 average parole officer actually supervises a
8 caseload of -- approximately 75 percent of
9 their caseload is violent felony offenders.

10 Not to say all violent felony
11 offenders are bad. If you give me a caseload
12 of murderers, I would take that over anything
13 else that you would give me. Why? Because
14 they've served 25, 30, 35 years in prison.
15 They're not going back. They're not going
16 back. Does that mean they don't need any
17 supervision? And they come out as a COMPAS
18 Level 4, the least likely to recidivate.
19 No, they need to know what a cellphone is. I
20 just remember this guy staring at me after 36
21 years in prison and I'm on my phone doing an
22 email, and during it he was just staring at
23 me. I didn't know what he was staring at.
24 And obviously he had never seen a smartphone

1 before.

2 He needs to know, you know, how he
3 gets his medicine. He needs to know, you
4 know, where to go. Thirty-six years in
5 prison, you can imagine what a welcome back
6 to society looks like. Do they need
7 supervision? Are they going to recidivate?
8 No. But do they need supervision?
9 Absolutely. Absolutely. Because again, we
10 wear the two hats. We wear the social worker
11 hat and we wear the law enforcement hat.

12 Quickly talking about staffing ratios
13 and the decrease in parole officers, in 2000
14 we had 1400 PEF members, 1113 of whom were
15 parole officers and senior parole officers.
16 We go 17 years later, we have 938 PEF people,
17 and 760 are parole officers and senior parole
18 officers.

19 So to just give some relativity to
20 that, the inmate population has decreased by
21 about 25 percent, and so has the parolee
22 population, but the parole officer population
23 has decreased 33 percent.

24 So again, we're burdened with all of

1 these other people that are coming out of
2 prison, now violent felony offenders. And
3 when I started this job, you know, some 20
4 years ago, that was not the case. That was
5 the case where you had your people selling
6 two vials of crack cocaine to an undercover
7 cop, and he had a supervisor when he came
8 out. That's not the case today.

9 I want to talk a little bit about the
10 COMPAS risk tool. We all know what that is.
11 Even though the risk assessment tool itself
12 seems to be maybe an accurate predictor of
13 who is going to perhaps violate parole or
14 recidivate, what it doesn't do is the 25 to 1
15 ratio and the 40 to 1 ratio and the 80 to 1
16 ratio -- and you heard the commissioner say
17 160 to 1 ratio -- the way we are supervising,
18 in the last four years it has not produced
19 any differences in the recidivism rate. If
20 you look at the recidivism rate, depending on
21 who you listen to, it's anywhere from
22 42 percent to 52 percent. So obviously the
23 program is not working.

24 I do want to talk quickly -- and I

1 don't want to take everybody's time up, but
2 the two things in the budget today that -- of
3 the 2017-2018 budget that are very disturbing
4 is the move to take the responsibility that
5 was once assigned to the Board of Parole and
6 give it to the commissioner of the Department
7 of Corrections.

8 I want to remind everybody that when
9 this agency was consolidated back in 2011, it
10 was distinctly said in that consolidation
11 summary, and I quote, "The Parole board will
12 continue as an independent body, with the
13 Administrative Law Judges and the Board's
14 Counsel's Office answering directly to the
15 Parole Board." The Parole Board will
16 maintain its existing functions, which
17 includes release decisions. There will be no
18 change in the Parole Board's role in setting
19 an offender's release conditions.

20 That was the basis on which this
21 consolidation was made, and today you heard
22 the commissioner state that -- he said, Never
23 mind, I want that power back.

24 We're treading in a very, very

1 dangerous area. I want to remind everybody
2 in 1930 the Division of Parole was
3 established in the Executive Department. In
4 1971, the Division of Parole was consolidated
5 with the Department of Corrections to form
6 the Department of Correctional Services. In
7 the wake of the Attica prison riots and
8 demands from the courts and other quarters
9 that the procedural rights of parolees be
10 protected, and as part of the recommendation
11 of the McKay Commission, Parole in 1977 was
12 again established as an autonomous agency
13 within the Executive Department. That was
14 made for a reason, folks. That was made for
15 a reason because if you give too much power
16 to one person or one set of people that
17 control the freedom of another individual,
18 you have the danger of creating a situation
19 where absolute power corrupts absolutely.
20 Let's not go there. We have been there,
21 we're trying it again, and the proposal in
22 the budget is to amend the Executive Law 259
23 to go exactly where we've been before and
24 it's prevailed.

1 I'm just going to hold on to any other
2 comments. And I know some of my colleagues
3 would like to speak, so thank you for your
4 attention.

5 CHAIRMAN FARRELL: Thank you.
6 Senator?

7 SENATOR KRUEGER: Was anyone else
8 going to talk?

9 MS. HOWANSKY: Yes, we were.

10 SENATOR KRUEGER: Can we let them all
11 present first? Okay, thank you.

12 MS. HOWANSKY: Okay, thank you.

13 CHAIRMAN FARRELL: We'll be here until
14 11 o'clock.

15 SENATOR SAVINO: Not me.

16 MS. HOWANSKY: Actually, I have
17 provided some very comprehensive testimony,
18 so I'll hope that you'll read it at that
19 time. I won't sit here and read it to you,
20 okay? So what I will do at this point is
21 take up a couple of points after the
22 testimony that we heard earlier today from
23 ITS. Okay?

24 So one of the things that really

1 puzzled me, and I'm sure it puzzled you as
2 well, is the fact that you had asked her on a
3 couple of different occasions what experience
4 is lacking or what roles are these 250 SE
5 positions going to play. And we clearly did
6 not get an answer on that. So being that she
7 doesn't know what it is that she wants these
8 people to do, how does she know that her
9 current workforce doesn't have these skills?
10 Because she doesn't know what she wants,
11 correct?

12 The other comment she made was quite
13 misleading as far as we were concerned. The
14 comment was that the only way that people can
15 enter the state at a higher level position is
16 through entry-level positions. However, it's
17 quite clear that we have many examinations
18 out there on upper-level IT positions on the
19 eligible lists, and there's thousands of
20 people on these lists. Thousands of people.
21 And guess what? They have experience, they
22 have skills. They passed the exam.

23 In fact, back in 2009 when we had the
24 legislation, I think that in the end they

1 only hired maybe a little over a hundred, so
2 there was a very few amount of people that
3 even wanted these state positions. That was
4 an issue that we had. Many of them scored
5 very low, and some of them even didn't pass
6 the exam, so today they're not even on the
7 list, so they couldn't even have a job.

8 Furthermore, ITS is already using a
9 mechanism to get specialized-expertise people
10 on board, and that's through the use of
11 project items. If you read the language to
12 obtain a project item, it's very similar to
13 the language that is written in the
14 legislation for the special expertise. The
15 caveat that's there is that the project items
16 last for 18 months, and SEs would last for
17 five years. Hence, it would be a task on ITS
18 to have to renew these positions every
19 18 months. But for many years they've been
20 doing it, so why stop now?

21 So we go back to eight years ago, and
22 we have to ask ourselves, did it really work?
23 Where are these people today? How have we
24 improved in ITS? What knowledge did we gain?

1 Where was the succession planning? Where is
2 the knowledge we gained? Where was the
3 training we had? So I think that those are
4 some very serious questions that need to be
5 asked, and you'll find some of those
6 responses in our testimony as well.

7 ITS also explained today -- which was
8 very concerning, and should be very
9 concerning for all of us -- that the 250
10 people that they're proposing to hire are
11 current contractors. Well, how is that fair?
12 How does that say that we would get
13 preference if they've already determined that
14 they're going to hire contractors that are
15 already there? That kind of defeats the
16 whole civil service merit and fitness system.

17 Furthermore, I would have to state
18 that the legislation itself at this point is
19 fundamentally flawed. Why? Because bias is
20 already there. Let's refer back to the
21 testimony that you received from the acting
22 commissioner of Civil Service, where she
23 already stated we don't have the skills, we
24 don't have the talent. So how can they state

1 they would propose to have 250 SE positions
2 and actually hire them fairly?

3 One other outstanding thing -- just
4 one last thing, if you would entertain me --
5 is the training. And I'm sorry, because I
6 did have this big thing here. But in the
7 end, they have a training budget this year
8 where they're proposing \$2 million. Out of
9 that \$2 million, \$1.6 million goes to
10 salaries and benefits. Out of that
11 \$2 million budget, \$313,000 will actually go
12 to training, \$313,000. That's 15 percent of
13 the \$2 million that they propose.

14 How are we going to get trained?
15 Well, thank goodness for us, because we did
16 have an ITS PEF member who developed a very
17 comprehensive plan, worked with us. And he
18 applied for some grants, and through the
19 collective bargaining agreement, we were
20 awarded \$200,000 that will train 300 PEF
21 members in the ITIL skills and to get them
22 certified. And that training will be
23 targeted to the 160 people who have already
24 been displaced by the outsourcing of the help

1 desk. That is two-thirds of what ITS is
2 planning to do even today.

3 And lastly, they had put in
4 legislation back in the fall where it
5 included monies for training. I find it
6 ironic that now the only thing they want from
7 us is 250 SE positions, no provisions for
8 training, but just 250 positions that they
9 can appoint at their discretion. That should
10 be concerning to all of us. It should be
11 concerning to the New York State taxpayers,
12 the people that you represent. We are
13 qualified IT people. We do our jobs. We are
14 ITS, and we, the PEF members at ITS, are the
15 New York State geeks.

16 That was for you, Diane.

17 CHAIRWOMAN YOUNG: Thank you. Thank
18 you for that. Thank you, I appreciate it
19 very much. Both of you gave great testimony.

20 And as far as the IT situation goes,
21 you heard me ask Ms. Miller today about
22 career ladders, and she seemed perplexed by
23 that. Because I remember we had an extended
24 conversation about that last year, and she

1 did say that there was a lot of training
2 going on. But you're saying that that's
3 really not the case and that they're not
4 bringing people along to fill those
5 positions.

6 MS. HOWANSKY: They have provided
7 training. Much of that training has been in
8 soft skills, like working in team
9 environments, learning how to be a better
10 leader, situations like that. We have
11 mandatory training where she said that we had
12 many trainings -- well, much of that training
13 is based on discrimination in the workplace,
14 sexual harassment.

15 They also do provide us -- and it's a
16 nice tool that they provide us -- it's called
17 Lynda.com, where we can go on there and take
18 self-training.

19 But as far as set -- there is no
20 workplace development plan. There is no
21 strategy. So haphazardly we can take all the
22 trainings we want, but we will never know, we
23 will never ever know if we are meeting the
24 vision of the department, because we don't

1 know what it is. There's no strategy.

2 CHAIRWOMAN YOUNG: Thank you for that.

3 So thank you for all that you do, and thank
4 you for the parole officers too. They
5 certainly have a very difficult job, and they
6 are so crucial to keeping us safe, so
7 appreciate that.

8 Anybody on the Assembly side first?

9 CHAIRMAN FARRELL: Nope.

10 CHAIRWOMAN YOUNG: Okay. Senator
11 Gallivan.

12 SENATOR GALLIVAN: Thank you all for
13 your testimony and, it goes without saying,
14 the work that the people you represent do on
15 a daily basis.

16 I have two questions for Officer
17 Perez. You testified about the reduction in
18 parole officers and senior parole officers
19 over time, starting -- you give some data in
20 the written testimony, and some verbal --
21 from 2000 now to 2010 to 2016. And obviously
22 the reduction is dramatic, and it's clearly
23 greater than the parolee population, the
24 decrease in the parolee population.

1 My question with that, the number
2 right now that is around 750, are there
3 vacant positions or have all those positions
4 been eliminated?

5 MR. ANTONIO PEREZ: The 750 includes
6 senior parole officers, which make up about a
7 hundred people, who do not directly supervise
8 parolees. So that number has decreased to
9 about 650. And they're running -- the
10 Department of Corrections and Community
11 Supervision is going to be running a class, I
12 believe in April. They start out with 50.
13 Not everybody makes it out of the class.
14 Nine people didn't make it, and probably for
15 very good reasons. So we don't always get
16 all those people. But those are positions
17 that are presently vacant now and will be
18 filled.

19 The problem, like everybody testified
20 today, is whether or not our hiring rate can
21 keep up with our attrition rate. We, like
22 the correction officers, have a problem that
23 people are getting out, not because of the
24 death benefit, but because we can't get

1 line-of-work injury compensation.

2 SENATOR GALLIVAN: So the combination
3 of senior parole officers and parole
4 officers, do you know what the authorized
5 strength is? So what you have plus your
6 vacancies.

7 MR. ANTONIO PEREZ: I don't have the
8 exact FTEs. The FTEs for the entire division
9 is 1335, but I don't have the FTEs --

10 SENATOR GALLIVAN: That's okay, we can
11 find that.

12 MR. ANTONIO PEREZ: Right.

13 SENATOR GALLIVAN: But along those
14 lines -- and you talked about the ratios, the
15 caseload ratios -- are there any national
16 standards? I mean, is there a national
17 organization or, you know, best practices
18 somewhere, an accreditation agency that makes
19 recommendations as to what should be the
20 optimum standard --

21 MR. ANTONIO PEREZ: I've been told
22 that each state has -- based on their
23 population, has different standards. And
24 some people who do use the COMPAS standard

1 have similar to ours.

2 I also have been told that other
3 municipalities and states have rejected the
4 COMPAS standards because they don't meet
5 their needs.

6 Our major problem, as Acting
7 Commissioner Annucci testified -- or didn't
8 testify to, I should say -- is the problem in
9 our ratios are the 160 to 1. If we can
10 eliminate that Level 4, that makes sense. We
11 could work it with that as a ratio. Of
12 course that means that they'd have to hire
13 another 200 parole officers, which are not --
14 it's not inconceivable. And I think we could
15 at least begin to deliver some of the
16 services that the parolees need, you know,
17 upon arriving from doing anywhere from 5 to
18 36 years in state prison.

19 SENATOR GALLIVAN: And the Level 4 is
20 the worst, the ones that --

21 MR. ANTONIO PEREZ: No, the Level 4 is
22 the least --

23 SENATOR GALLIVAN: I'm sorry, the ones
24 that need presumably the least amount of

1 supervision. Typically, at least according
2 to your testimony, they're those that have
3 been in prison for a much longer period of
4 time.

5 MR. ANTONIO PEREZ: Typically those
6 who have done a lot of time in prison.
7 They're generally older, they come out at 50,
8 60 years old, some need medical attention.
9 People do age out of crime.

10 The problems we have are generally
11 with the younger youth who we have to spend a
12 lot of time with and chase, you know, a lot
13 of times when they're not doing the right
14 thing.

15 We also engage in a lot of activities
16 with -- it's too bad Senator Bailey left. I
17 wanted to let him know that we were working
18 with the Mount Vernon Police Department to
19 address their gang problem, because many of
20 them are on parole. And just because they
21 come out and they complete all these
22 correctional services doesn't mean that they
23 don't go back to a life of crime, as seen by
24 our recidivism rate.

1 So we do engage in those activities as
2 well. There's a -- I mean between family
3 intervention, between making sure they get
4 into programs, making sure all the diversion
5 programs are utilized -- and if I may,
6 there's one thing I didn't bring up. The
7 commissioner has wanted to -- he has a
8 proposal to eliminate three months of parole
9 for every six months that a parolee does
10 without being violated.

11 Let me tell you something. Just
12 because somebody has been on parole for six
13 months without being violated does not mean
14 they're doing well. Trust me. Chances are
15 they've relapsed, we've put them in a
16 diversion program, they might have been
17 arrested for some minor offenses. We haven't
18 violated them, we continue to work with them.
19 That's what we do.

20 And so they have domestic violence
21 problems, we continue to work with them.
22 That's what a parole officer does. It
23 doesn't mean that he doesn't do well {sic}
24 and he should be rewarded for, again, having

1 three months left of supervision.

2 SENATOR GALLIVAN: And if I recall
3 correctly, there already is a mechanism to
4 reward a parolee.

5 MR. ANTONIO PEREZ: Yes, we have --
6 those mechanisms are in place. Thank you for
7 bringing that up. We have a year discharge
8 for those nine violent felony offenders, we
9 have a merit discharge for them, and many of
10 them achieve them. We have a three-year
11 discharge for those people who do three years
12 on parole. And even if you're not eligible
13 for that, if you do well, even the COMPAS
14 reassessment program is saying that if you do
15 well after a year or two, you don't have to
16 report as often. Instead of every two weeks,
17 every other month, and then eventually every
18 four months.

19 Those mechanisms were already in
20 place. We don't need any more. We need more
21 supervision for some of these guys, not less
22 supervision.

23 SENATOR GALLIVAN: All right. Thank
24 you all.

1 MR. ANTONIO PEREZ: Thank you.

2 CHAIRWOMAN YOUNG: Thank you. Anyone
3 else?

4 CHAIRMAN FARRELL: Thank you.

5 CHAIRWOMAN YOUNG: Thank you very
6 much. Thanks for coming.

7 Next on the schedule is District
8 Council 37. They have decided not to
9 participate today, but they have sent in
10 written testimony, which we will read.

11 ASSEMBLYMAN WEPRIN: They get extra
12 credit for that.

13 CHAIRWOMAN YOUNG: Extra credit,
14 that's right.

15 We also have Grant Cowles, senior
16 policy and advocacy associate for youth
17 justice, from the Citizens' Community for
18 Children.

19 Welcome.

20 SENATOR KRUEGER: And is it Citizens'
21 Committee for Children?

22 MR. COWLES: Yes, it's Citizens'
23 Committee for Children.

24 SENATOR KRUEGER: Okay, because I know

1 that group.

2 CHAIRWOMAN YOUNG: I'm sorry.

3 MR. COWLES: No, it got misplated.

4 It will be really, really short, I
5 promise.

6 So I'm Grant Cowles, and I just want
7 to say thank you again for our being here.
8 I'm the senior policy associate for youth
9 justice of the Citizens' Committee for
10 Children. We don't accept any government
11 funds, we just advocate for children and
12 families.

13 And I'm going to keep it really,
14 really short. I think I'm going to do three
15 minutes or less, because it's really simple
16 and it's really straightforward and common
17 sense. We're asking you to Raise the Age.

18 So CCC is extremely pleased that
19 Governor Cuomo has once again included a
20 comprehensive plan to raise the age of
21 criminal responsibility in the Executive
22 Budget. As one of only two states in the
23 country that prosecutes all 16- and
24 17-year-olds as adults, regardless of the

1 crime, these changes are long past due.

2 Raising the age is smart on crime and
3 is good for the kids. Criminology research
4 has demonstrated that raising the age would
5 reduce recidivism by 34 percent. One study
6 that compared New York kids with New Jersey
7 kids -- everything else being equal except
8 for the New Jersey kids were in juvenile
9 court and the New York kids were in adult
10 court -- found that the New York kids were
11 100 percent more likely to be rearrested for
12 a violent offense and 47 percent more likely
13 to be rearrested for a property offense.

14 There's a lot of other similar
15 findings in research about how 16- and
16 17-year-olds in the adult system actually
17 decrease public safety.

18 Also, the medical research shows that
19 16- and 17-year-olds' brains are not fully
20 developed until they are in their mid-20s.
21 The frontal lobe is the part that develops
22 last, and that's the part responsible for
23 reasoning, impulse control, and understanding
24 long-term consequences. And while this

1 immaturity of the adolescent brain may lead
2 to risky behavior, it also makes an
3 adolescent highly receptive to positive
4 change.

5 But we know that research shows that
6 the criminal justice system is actually going
7 to change them for the worse, while the
8 juvenile justice system can provide the
9 services needed for pro-social development.

10 The United States Supreme Court has
11 recognized this with a series of decisions
12 recognizing that youth are less capable than
13 adults because of their brain development,
14 and nearly every law already in New York
15 recognizes that young people are different
16 than adults. You've got to be 21 to drink
17 alcohol, 18 to get married without parental
18 permission, 18 to join the military, 18 to
19 vote, 18 to sit on a jury, 17 to see an
20 R-rated movie without an adult, and 18 or
21 even 21 to purchase cigarettes. It's well
22 past time that the criminal justice laws
23 reflect this difference in adolescents.

24 CCC is a lead member of the Raise the

1 Age NY campaign, which represents over 100
2 organizations. And as such, we believe that
3 there are seven core requirements that must
4 be included in comprehensive legislation.
5 These include -- I won't read them all, but
6 these include raising the overall age of
7 juvenile jurisdiction to 18.

8 Regarding the courts and laws, that we
9 should originate as many cases of 16- and
10 17-year-olds in Family Court as possible and
11 create youth parts for the 16- and
12 17-year-olds tried in adult court, and apply
13 the Family Court Act to as many of these
14 youth as possible, regardless of what
15 courthouse they're in.

16 Ensure no youth who is 16 or 17 years
17 old is placed in adult jails or prisons,
18 ensure parental notification and juvenile
19 interview practices for all 16- and
20 17-year-olds, better address collateral
21 consequences of court involvement and expand
22 YO, and increase investments in the front-end
23 diversion services that keep youth out of the
24 system altogether.

1 So in conclusion, passing Raise the
2 Age legislation in this budget is critical
3 for the youth, families and communities
4 throughout New York State. We understand
5 that there are no costs to localities in the
6 upcoming fiscal year because of the phase-in
7 of the legislation, and that the budget
8 includes \$110 million for the capital needs.
9 We urge the Governor and the Legislature to
10 adopt a budget that includes comprehensive
11 Raise the Age legislation and ensures that
12 both the state and the localities will have
13 the resources necessary to effectively raise
14 the age of criminal responsibility.

15 The time is now to finally raise the
16 age of criminal responsibility in New York.
17 Every year we wait, more youth become
18 ensnared in the adult criminal justice
19 system, including 27,000 New York 16- and
20 17-year-olds who were arrested in 2015.
21 Children only get to be children once, and
22 today's 16- and 17-year-olds need us to
23 implement smart policies as soon as possible.

24 CHAIRWOMAN YOUNG: Thank you. Thank

1 you for your participation. We really
2 appreciate you waiting so long.

3 Any questions?

4 SENATOR KRUEGER: I appreciate your
5 testimony.

6 CHAIRWOMAN YOUNG: Thank you.

7 MR. COWLES: Thank you.

8 CHAIRWOMAN YOUNG: The next speaker is
9 Anne Erickson, president and CEO of the
10 Empire Justice Center, who Senator Krueger
11 just told me had to leave.

12 After that it's Executive Director
13 Blair Horner, New York Public Interest
14 Research Group. He's coming from the top.

15 Hi, Blair.

16 SENATOR KRUEGER: Good evening.

17 MR. HORNER: Hi, everybody. Senators,
18 Assemblymembers, good to see you all. I have
19 submitted a testimony that focuses on the
20 Governor's reform package, his proposals on
21 campaign finance, ethics, voting, and
22 openness. It's pretty detailed testimony.
23 It's 18 pages long. I think I'll read every
24 word -- just kidding, just kidding. I will

1 summarize the comments and try to go through
2 them quickly.

3 I know that it's not really a lot of
4 what's been discussed tonight, but this
5 particular package that the Governor advanced
6 didn't seem to have any particular place for
7 it to go, and so we choose to discuss it
8 today.

9 So my name is Blair Horner, I'm the
10 executive director of NYPIRG, New York Public
11 Interest Research Group. The Governor offers
12 a package of reforms in four major areas; as
13 I mentioned earlier, ethics, openness,
14 campaign finance, and voting rights. I'm
15 going to just touch on some comments in each
16 of those areas and then wrap it up in case
17 you have any questions.

18 The first area that I'll mention is in
19 the area of voting. New York has had a long
20 and lousy record of voter participation. In
21 the most recent elections in 2016, according
22 to the U.S. Elections Project, New York State
23 ranked 44th in voter participation in terms
24 of turnout.

1 The Governor in his package offers
2 some best practices, one of which is Election
3 Day registration. When we looked at the
4 states that had allowed voters -- well,
5 would-be voters to register and vote on the
6 same day, the states that had the highest
7 voter turnouts were states that had that.
8 The states with the four highest voter
9 turnout rates in the 2016 election all
10 allowed Election Day registration. None of
11 the 13 states that had it had lower than the
12 national average in terms of voter turnout.

13 So we like that idea.

14 In terms of campaign finance, New York
15 is a system that is marked by a reliance on a
16 small number of very large donors. The
17 Governor's proposals, particularly in the
18 area of creating an involuntary system of
19 public financing, reversed that, to create a
20 system that we believe is preferable, which
21 is to rely on a large number of small donors.
22 We think that that makes sense.

23 The Governor adds in his package a
24 pay-to-play recommendation which would ban

1 campaign contributions from those seeking or
2 receiving government contracts. We think
3 that's likely in reaction to what's been
4 happening in the executive branch.

5 And one of the reasons why this issue
6 has even been coming up is because of the
7 really -- I've been here a long time,
8 30-some-odd years -- the unprecedented
9 scandals that we've all seen, both in the
10 legislative but also in the executive branch
11 at the top level. So I think in some
12 reaction to that, the Governor offers this
13 package.

14 New Jersey has a very robust law in
15 this area. We recommend that you take a look
16 at that.

17 The third issue is dealing with
18 openness. The Governor offers some Freedom
19 of Information Law requests. We think the
20 proposal is too narrowly drafted -- in fact,
21 in some ways makes the law worse. The
22 specific exemption for critical
23 infrastructure we think is unneeded. In
24 fact, the head of the Committee on Open

1 Government says it's absolutely unnecessary,
2 the current law would cover any issues that
3 relate to that.

4 Anytime you weaken the Freedom of
5 Information Law, it gets our attention, and
6 this administration has been noticed more for
7 its opacity than openness. And so we would
8 urge and we make specific recommendations in
9 the testimony on how to strengthen FOIL.

10 Lastly, in the area of ethics, we like
11 the Governor's proposal on limiting outside
12 income, but we think that the single biggest
13 problem in his package is what he misses. He
14 makes -- the Governor, in reacting to I guess
15 the executive branch investigations, makes
16 recommendations for the creation of various
17 inspector generals, all of whom report to
18 him.

19 We think that what's needed is
20 independent oversight of both contracting and
21 ethics. And the state creates, through its
22 constitution, someone to do that: The State
23 Comptroller, who's seen his powers actually
24 cut back over the past number of years.

1 We think the Comptroller's role should
2 be strengthened. And since he's an
3 independently elected official, he should be
4 independently elected to the people of the
5 State of New York, not the Governor.

6 We also make specific recommendations
7 on the issue of ethics oversight. We don't
8 think that the state should have an ethics
9 oversight board filled with appointees from
10 the executive and legislative branches
11 directly. We don't think that the staff of
12 the ethics watchdog should come from the
13 staff of the Governor. We don't think that
14 that's the kind of independent ethics
15 oversight that New Yorkers deserve.

16 So I'll stop there.

17 CHAIRWOMAN YOUNG: Any questions?

18 Thank you.

19 MR. HORNER: Thank you.

20 ASSEMBLYMAN OAKS: Thank you.

21 SENATOR KRUEGER: I memorized it,
22 thank you.

23 CHAIRWOMAN YOUNG: Next we have
24 Prisoners' Legal Services, Karen Murtagh and

1 Tom Curran.

2 Okay, thank you. Welcome.

3 MS. MURTAGH: Thank you.

4 Unfortunately, former Senator John Dunne was
5 not able to join us this evening, but he
6 sends his regards.

7 I think Tom will begin.

8 MR. CURRAN: Hi, my name is Tom
9 Curran. I'm a board member of Prisoners'
10 Legal Services, which was established in 1976
11 arising out of the 1971 Attica rioting.

12 Prisoners' Legal Services was designed
13 as, for want of a better way of putting it, a
14 pressure valve, its purpose to provide a
15 professional voice to the legitimate concerns
16 of New York State's 51,000 inmates. And with
17 a staff of 15 lawyers, it provides real,
18 demonstrable affirmation to these inmates
19 that the system that incarcerated them is
20 just and provides nonviolent, meaningful
21 recourse for legitimate concerns.

22 PLS does this on a lean budget that
23 makes the most of every dollar it gratefully
24 receives and is indeed creative in stretching

1 every dollar through community partnering,
2 law schools, pro bono programs and the like
3 that Karen can speak to far better than I.

4 This is an organization that has never
5 been sanctioned for frivolity by any
6 tribunal. These are serious people dedicated
7 to doing serious work, and they do so.
8 There's no cupcake litigation here. They
9 can't cover the cases that are referred to
10 them.

11 Just having sat here and listened to
12 the various law enforcement communities, I
13 want to assure you all that I feel that I
14 have significant law enforcement bona fides.
15 I am a third-generation former prosecutor in
16 New York. My grandfather and namesake was
17 the Secretary of State of New York. My
18 father was a member of the Legislature from
19 Manhattan for three terms. I can assure you
20 that these forebears were not light on crime.
21 I know, as one of -- uniquely, on behalf of
22 my four sisters and two brothers, I can tell
23 you that my father was not light on offenses.

24 That's not what PLS is about. PLS is

1 about providing fairness for people that
2 we've put in jail because of their violations
3 of the social compact. And it would be
4 perverse for us to violate the social compact
5 in our treatment of them.

6 I really appreciate the opportunity of
7 coming up here every year. It means a lot to
8 me, and I know that my mother will be happy
9 about it too. Thanks so much.

10 CHAIRMAN FARRELL: Tell your father I
11 said hello.

12 MR. CURRAN: Oh, he's gone now,
13 Senator {sic}. My father, Paul, died in
14 2008.

15 CHAIRMAN FARRELL: Oh, I'm sorry, I
16 thought you were Karen Murtagh.

17 (Laughter.)

18 MR. CURRAN: Well, I've been called
19 worse. But this is Karen Murtagh, yes.

20 CHAIRMAN FARRELL: Oh, yes.

21 MR. CURRAN: I'm Tom Curran, Senator.

22 CHAIRMAN FARRELL: I'm sorry. Didn't
23 look at the name.

24 MS. MURTAGH: Chairman Farrell,

1 Chairman Weprin -- welcome to the chair of
2 Corrections. I look forward to working with
3 you -- and esteemed members of the Assembly
4 and Senate who have stayed, thank you very
5 much.

6 I'd like to speak just for a few
7 minutes about the actual work that PLS does
8 and focus on four areas -- solitary
9 confinement, the work we do for juveniles,
10 jail team and sentencing work, and the
11 medical and mental health work that we do.

12 When it comes to solitary confinement,
13 we receive literally thousands of requests
14 every year to review disciplinary hearings
15 that are held against people in prison. We
16 can't take anywhere near the number of cases
17 that we get. We are able to accept about
18 20 percent of the requests we receive.

19 Out of the 20 percent of cases that we
20 accept, after we review them and choose those
21 that we believe have merit to litigate or to
22 advocate on, we are successful in over
23 70 percent of those cases. Last year alone,
24 we saved or had expunged from prisoners'

1 records 61 years of solitary confinement
2 time. That is an incredible figure.

3 If you put it together with the past
4 two years, it was 144 years of solitary
5 confinement time. Which should concern this
6 body, because if PLS only has the capacity
7 and the resources to take 20 percent of these
8 cases, how many people are languishing in
9 solitary confinement that should not be, but
10 they do not have an attorney to represent
11 them on an appeal of their case?

12 Another area where we've done
13 significant work over this past year is with
14 respect to juveniles. We filed the case of
15 Cookhorne v. Fischer a few years ago, and as
16 a result of that, we settled the case and now
17 juveniles in New York State cannot be subject
18 to solitary confinement.

19 We still think there's a long way to
20 go, because the definition of solitary
21 confinement is 23 hours a day in your cell,
22 and juveniles are still confined for 19 hours
23 a day in their cell. So we are still working
24 on that. But as part of the Cookhorne

1 settlement, we also were able to effect a
2 change in the regulations so that age is now
3 a mitigating factor, per se, when a 16- or a
4 17-year-old appears before a hearing officer
5 to be disciplined in prison.

6 We also were able to settle with the
7 Department of Corrections on a transition
8 program for juveniles, so there's an effort
9 to transition them out of their separation
10 unit -- it's not called solitary confinement,
11 because it's less than 23 hours, but it still
12 is a significant long-term confinement for
13 them being away from people. And there's an
14 effort to transition them out.

15 And finally, we are monitoring the
16 juvenile facilities, which now in New York
17 State are really only at Coxsackie and at
18 Hudson Correctional Facility. So as part of
19 our settlement, we go in once a year, we tour
20 the facilities, we interview all of the
21 juveniles that are in the facility, and then
22 we meet with the Department of Corrections
23 and give them what I would say is very
24 valuable feedback about needed improvements

1 at both facilities.

2 We also do significant jail time and
3 sentencing work. Somehow, jail time and
4 sentencing credits gets messed up all the
5 time. And we accept those cases, we
6 advocate -- typically, we don't even have to
7 litigate. But last year we saved over
8 17 years of jail time, which means people go
9 home sooner.

10 And we do significant medical and
11 mental health work. Commissioner Annucci
12 said earlier today that their estimate is
13 that 20 percent of the population is mentally
14 ill. We believe that estimate to be quite
15 low. Most of the clients who write us suffer
16 from some form of mental illness. We focus
17 on veterans and juveniles, which have the
18 highest rate of mental illness.

19 And this past year we also were
20 able -- we filed a case in federal court that
21 DOCCS settled to change the way hepatitis C
22 treatment is provided to prisoners in New
23 York State.

24 I would also like to note that -- you

1 know, I don't always like making this
2 argument, but PLS is an economically sound
3 investment. For every dollar that you spend
4 on PLS, the state saves \$2 to \$3. If you add
5 up the solitary confinement time, the jail
6 time, the sentencing team and the good time
7 and then you look at the cost of housing a
8 prisoner, which is \$60,000 a year, last year
9 PLS saved the state \$4 million, and we were
10 funded at \$2.45 million.

11 Which brings me to why we're here
12 today. We are in the Governor's budget for
13 \$2.2 million, which would be a cut from last
14 year. We are asking for an add from this
15 body of \$1.3 million. The Legislature has --
16 and I meant to say this in the beginning:
17 thank you, thank you, thank you -- has always
18 been there for PLS. If it wasn't for the
19 Legislature, we would have ceased to exist 20
20 years ago.

21 For 15 years, from 2001 to 2015 --
22 sorry, 14 years -- the Legislature funded us
23 at \$1.2 million in the later years, and in
24 the earlier years \$2.285 million. So the ask

1 of \$1.3 million is not, you know, some
2 far-fetched number that we came up with.
3 That number will begin to put PLS back to the
4 funding that we were at in the mid-'90s, and
5 it will allow us to accept another 1300
6 cases, reducing the unmet need by 34 percent.

7 So I urge this body to add, to
8 Governor Cuomo's appropriation for us of 2.2,
9 an additional 1.3, resulting in total funding
10 for PLS of \$3.5 million.

11 And I'm happy to answer any questions
12 you may have.

13 CHAIRMAN FARRELL: Thank you.
14 Senator.

15 SENATOR KRUEGER: Thank you very much.
16 I always appreciate your coming and
17 testifying. You know, most of the world
18 doesn't really understand you exist or the
19 importance of the fact that you do exist and
20 continue to show that in a civilized society,
21 you recognize legal rights even for people
22 who have violated our laws and end up in
23 prison.

24 It's a trick question for you, because

1 I want you to be there and I want you to be
2 correctly funded. But you highlight that --
3 at least it sounds like on page 6, when you
4 talk about your work, that one of the biggest
5 issues you work on is incorrect calculation
6 of jail time, sentencing credit, merit time,
7 good time, solitary confinement.

8 Is this just like an IT problem?
9 Should the state be doing something to
10 improve the IT tracking systems in our
11 prisons, which would help a lot of prisoners
12 if not decrease your caseload?

13 MS. MURTAGH: I don't know if it's an
14 IT problem.

15 And the -- I would want to separate
16 the good time and the SHU time, which is
17 something that, you know, only I would say an
18 organization like PLS can work on, because
19 it's a disciplinary hearing where
20 constitutional rights are sometimes violated,
21 we have to file an appeal and sometimes have
22 to file an Article 78. That's separate.

23 The jail time and sentencing time,
24 it's an issue in administration for sure.

1 You know, oftentimes you have somebody who
2 was arrested on one crime in one county and
3 then he's picked up in another county on a
4 second crime and then he's held for a year on
5 both crimes. And then he's sentenced on
6 those crimes, and he doesn't get any credit
7 for any time that he spent in jail.

8 And it's logistically a nightmare,
9 because just a letter from us to DOCCS isn't
10 enough. You have to have the sheriff of the
11 county certify that this person was indeed
12 here on these dates, being held on this
13 crime, and then you have to have the
14 sentencing minutes of the judge that it was
15 for the same crime.

16 And it -- yes, administratively I
17 think they could do much better. But it's
18 62 counties, many different jails, and then
19 trying to figure out the jail time statute as
20 it applies to all those times.

21 SENATOR KRUEGER: And there was some
22 testimony earlier today about the quote,
23 unquote, money spent and hopeful improvements
24 in both sort of the protocols and the

1 caseloads for mentally ill prisoners. Do you
2 have any positions on where the state's been
3 going with those changes?

4 MS. MURTAGH: Could you elaborate on
5 that?

6 SENATOR KRUEGER: Sure. So Probation
7 talked about -- or Parole, sorry, talked
8 about new protocols for working with mentally
9 ill prisoners. At least in the City of
10 New York there's a real effort, and we'll see
11 whether it's successful or not, to stop
12 treating our city jail basically as the place
13 of sometimes first resort for people
14 suffering mental illnesses. There's been
15 some changes in some of the facilities to set
16 up specialized units for people with mental
17 illness.

18 And I was just wondering whether from
19 your perspective you're seeing any concrete
20 improvements from these various reform
21 proposals.

22 MS. MURTAGH: Well, what we see is
23 what's happening inside the New York State
24 prisons with respect to the programs that

1 either DOCCS or OMH institutes for mental
2 health.

3 And there have been absolute major
4 improvements in the treatment of the mentally
5 ill in our New York State prisons. We have a
6 long way to go, but six or seven years ago we
7 were like in the medieval times. But the SHU
8 exclusion law that was passed that prevents
9 the Department of Corrections from placing a
10 seriously mentally ill person in solitary has
11 helped a great deal.

12 Then there have been behavioral mental
13 health units, a whole bunch of different
14 units that have been opened over the past
15 eight, nine years, where people are diverted
16 and are treated differently as opposed to --
17 you know, treatment as opposed to punishment.

18 But it's definitely not perfect. I
19 mean, we just recently had to file a lawsuit
20 for a client who came to prison at 19,
21 seriously mentally ill, was put in solitary
22 right away, was held for four and a half
23 years in solitary, has 11 more years of
24 solitary hanging over his head and attempted

1 suicide a number of times. And we, you know,
2 dealt with the Department of Corrections and
3 OMH over and over and over again to get him
4 out of solitary and get him in the proper
5 unit, and it failed, and then we finally had
6 to file a lawsuit.

7 So people fall through the cracks.
8 There's 51,000 prisoners, so people fall
9 through the cracks. So it's very important
10 to have an organization like PLS to find
11 those people and make sure that they're taken
12 care of.

13 SENATOR KRUEGER: And one last
14 question. I know I shouldn't be doing this
15 this time of night.

16 So we have an aging population in our
17 prisons. And how is that reflected in the
18 kind of cases you see or have to deal with?

19 MS. MURTAGH: We are actually in the
20 process of developing an elderly unit where
21 we specifically focus on elderly issues.

22 We don't see the disciplinary problems
23 with elderly prisoners. They kind of age out
24 of all of that. But we have issues like

1 people suffering from dementia, people that
2 need medical parole. We have done a number
3 of cases on medical parole.

4 So they present different issues,
5 maybe programming issues, but typically it's
6 medical issues that the elderly population
7 present.

8 SENATOR KRUEGER: Thank you very much.
9 Assembly?

10 CHAIRMAN FARRELL: Assemblyman Weprin.

11 ASSEMBLYMAN WEPRIN: Yes, Ms. Murtagh,
12 the Corrections staff speaks very highly of
13 PLS and the work that you do. And I look
14 forward to meeting -- I think we're meeting
15 in a couple of days --

16 MS. MURTAGH: Yes.

17 ASSEMBLYMAN WEPRIN: -- so I look
18 forward to that and going into -- more
19 in-depth at that meeting. Thank you.

20 MS. MURTAGH: Thank you very much.

21 CHAIRMAN FARRELL: Thank you.

22 SENATOR KRUEGER: Thanks very much.

23 MR. CURRAN: Thank you very much.

24 SENATOR KRUEGER: New York State

1 Dispute Resolution Association, Charlotte
2 Carter and Sarah Rudgers-Tysz.

3 MS. RUDGERS-TYSZ: Tish, very good.
4 Good try.

5 (Discussion off the record.)

6 MS. CARTER: Good evening, Senator
7 Young and honorable committee members. Thank
8 you for this opportunity to speak. We're
9 here on behalf of a --

10 CHAIRWOMAN YOUNG: Is it "Ties," by
11 the way?

12 MS. RUDGERS-TYSZ: Tish.

13 MS. CARTER: Tish.

14 CHAIRMAN FARRELL: (Inaudible.)

15 MS. RUDGERS-TYSZ: That's okay.
16 Nobody gets it. It's a great telemarketers
17 check.

18 MS. CARTER: So we're here on behalf
19 of a statewide network of community dispute
20 resolution centers, or CDRCs. I'm Charlotte
21 Carter, and I'm the executive director of the
22 New York State Dispute Resolution
23 Association.

24 MS. RUDGERS-TYSZ: And I'm Sarah

1 Rudgers-Tysz, the executive director of
2 Mediation Matters, which is the community
3 dispute resolution center that covers Albany,
4 Rensselaer, Saratoga, Schenectady, Warren and
5 Washington counties.

6 MS. CARTER: NYSDRA is a professional
7 association. We have public and private
8 members. We also administer statewide
9 mediation and arbitration programs under
10 contract with various state agencies. We're
11 part of a network of CDRCs who provide
12 services at little or no cost to residents in
13 every county in the state. Currently there
14 are 20 CDRCs, and they help people resolve
15 problems through a wide range of services.

16 We're here to ask the Legislature for
17 \$1.7 million to fund a family services
18 initiative that would allow the CDRCs to meet
19 serious emerging needs of families across the
20 state. There are very complicated challenges
21 facing youth, their families, and the systems
22 that support them. And a lot of those
23 problems can't be adequately addressed in
24 traditional forums. The CDRCs, with

1 additional resources, could meet many of
2 those needs.

3 In 1981 the Legislature passed
4 legislation to establish the CDRC network,
5 with funding and oversight provided by the
6 Office of Court Administration. That funding
7 was initially a little over \$500,000 for
8 17 counties, and it grew to a little over
9 \$9 million in 2010. In 2011, the funding was
10 slashed by 44 percent, and it hasn't
11 increased significantly since then. State
12 funding for the CDRCs is only \$5.4 million,
13 which has forced the CDRCs to focus on their
14 core court-based services and thus limit
15 their services to the broader community.

16 In the meantime, the CDRCs are facing
17 a staggering need for family services that go
18 well beyond the court-based work that OCA
19 funds. The support of the Legislature would
20 allow the network to deliver innovative
21 family services, including services to
22 veterans and their families, to young people
23 in schools, to elder adults and their
24 caregivers, and to people leaving the

1 correctional system.

2 Mediation provides a low-cost,
3 high-yield conflict management. A mediated
4 case costs the state just \$336. Seventy-five
5 percent of mediations result in agreement.
6 Disputes are typically resolved within just a
7 couple of weeks, and 92 percent of
8 participants express satisfaction with their
9 experience.

10 We all benefit from the restoration of
11 important personal and business relationships
12 in our communities. Last year the network
13 served nearly 70,000 individuals and handled
14 over 28,000 cases. CDRCs match state funding
15 nearly dollar for dollar. They use
16 professionally trained community mediators
17 whose donated time has been valued at
18 \$2.3 million annually.

19 MS. RUDGERS-TYSZ: The demand for our
20 work continues to grow, as do the costs for
21 providing the services. We are receiving
22 increasing requests from county offices,
23 partner nonprofits and schools, all seeking
24 our assistance with families in very unique

1 circumstances, such as a parent returning
2 home after military service. Or
3 grandparents, who have been the only stable
4 adults in grandchildren's lives, that are now
5 fighting to preserve that relationship and
6 that connection when the parent is released
7 from prison. Or maybe that same parent,
8 trying to reconnect with their children while
9 also reestablishing their position within the
10 community. Some families are seeing their
11 teenagers struggling with online bullying,
12 and the school has little ability to
13 intervene at that point. Or siblings
14 disagreeing over the care for an aging
15 parent, and then that puts their relationship
16 into jeopardy.

17 These are just a few examples where
18 our services can transform the lives of the
19 families within our communities. Those needs
20 are growing, and with only a small staff
21 spread throughout the six counties we serve,
22 we know that we cannot meet the vast number
23 of requests.

24 This situation is not limited to our

1 area. All across the state, the CDRCs have
2 vast skills and talents to help those
3 struggling within our community but can only
4 spread those resources so far. Through our
5 dedicated partnerships we can provide
6 seamless transitions for families in crisis
7 so that they do not have to add another step
8 when seeking assistance.

9 Conflict resolution services make our
10 communities safer, and they help individuals
11 feel empowered to resolve the issues in their
12 lives and repair their relationships. We
13 have been meeting with legislators in
14 district and here in Albany and have had a
15 great response on the ground. By supporting
16 the Family Services Initiative, the
17 Legislature will make a positive difference
18 for vulnerable families and a strong
19 investment in this vital community resource.

20 Thank you.

21 CHAIRWOMAN YOUNG: Thank you.

22 Any questions?

23 Thank you so much for joining us.

24 MS. CARTER: Thank you.

1 MS. RUDGERS-TYSZ: Thank you.

2 CHAIRMAN FARRELL: Have a good
3 evening.

4 CHAIRWOMAN YOUNG: The next speaker is
5 Director of New York State Policy Sebastian
6 Solomon, Legal Action Center.

7 CHAIRMAN FARRELL: No answer? Nobody?

8 CHAIRWOMAN YOUNG: Is Mr. Solomon
9 here?

10 CHAIRMAN FARRELL: Going once --

11 CHAIRWOMAN YOUNG: Apparently not. We
12 have his testimony.

13 After that, we have Director Terry
14 O'Neill, Esquire, the Constantine Institute,
15 Inc.

16 MR. O'NEILL: Good evening, ladies and
17 gentlemen. I thank you very kindly once
18 again for your patience and forbearance.
19 I've sat through hearings like this going
20 back 30 years now, so I know what it's like.

21 I have submitted written testimony,
22 which you can see goes on at length, with the
23 number of programs that we've been working on
24 over the years. But tonight the only thing

1 that I'm going to raise is something that
2 responds to a proposal that Governor Cuomo
3 has made in his budget, and it responds to
4 the national crisis in police-community
5 relations.

6 Now, I've been coming to these
7 hearings now for about 10 years promoting the
8 concept of community policing, which I have
9 all along thought is something that we really
10 should be promoting at the state level but
11 never have. This recent crisis that's
12 erupted, especially in the last couple of
13 years since the Ferguson, Missouri, incident
14 has gotten a lot of people talking about it.

15 And one of the results of my annual
16 appearances here has been that there is a
17 network of people all across upstate New York
18 who have heard of me as the person who has
19 been coming to keep the idea of community
20 policing before the Legislature, and looking
21 for the opportunity at some point for us to
22 pick it up and make it happen.

23 So in my written testimony you will
24 see described a proposal that would bring all

1 of these activists that we've been meeting
2 around the state together to work together
3 under the auspices of the Government Law
4 Center at Albany Law School, to develop a
5 comprehensive and coherent program to promote
6 community policing throughout the state. And
7 they would bring together not only the
8 activists that we're talking to, but also
9 academics who have studied the problem and
10 leaders in law enforcement who could use some
11 guidance in how to improve their relations
12 with people in their communities.

13 And one of the reasons why we look to
14 establish this in Albany is that I can tell
15 you, as a 35-year resident of this city and a
16 long-time student of what's going on in
17 policing in America, the Albany Police
18 Department about six years made a clean break
19 with its past and became the first municipal
20 police agency that I'm aware of in the State
21 of New York that has truly embraced the
22 community policing philosophy.

23 You may hear other departments such as
24 my distant cousin Jimmy, down in New York

1 City, talking about how he's going to
2 implement community policing in the NYPD.
3 There's a program out in Buffalo. And others
4 have used that term, but I don't think -- you
5 know, based on all of experiences that I've
6 had where I've seen this begin to take off
7 and be successful, is it's not something that
8 the police department can up and do on its
9 own.

10 So what Governor Cuomo has proposed to
11 do is to have a one-day conference bringing
12 together people such as I described. And I
13 really don't think that one day is enough to
14 get anything ignited here.

15 The other thing he's proposing is that
16 the problem of police-community relations
17 he's decided to hand to the Municipal Police
18 Training Council, and it would be addressed
19 by the council reviewing the statutory basic
20 and supervisory training that it's been
21 promulgating since 1959. That hasn't been
22 done in a long time.

23 And again, I think because the council
24 is predominantly law enforcement leaders,

1 you're not going to get any recommendations
2 that will effect a better -- more of a
3 partnership relationship between the police
4 and the community. We have to do that in
5 another way.

6 So you can take a look at what I have
7 proposed in there. It's very small, I don't
8 think it would cost very much at all, and in
9 the end we would put New York out front in
10 promoting this concept throughout the state.

11 So thank you very much. If there are
12 no further questions, I guess --

13 CHAIRMAN FARRELL: Thank you.

14 MR. O'NEILL: All right.

15 CHAIRWOMAN YOUNG: Thank you.

16 SENATOR KRUEGER: Thank you for
17 staying.

18 CHAIRWOMAN YOUNG: Our final speaker
19 is Elena Sassower, director of the Center for
20 Judicial Accountability.

21 You are not allowed to read all the
22 that.

23 (Laughter.)

24 MS. SASSOWER: Of course. I quite

1 agree.

2 Okay. May I? (Drinking water.) My
3 name is Elena Sassower. I am director and
4 cofounder of a nonpartisan, nonprofit
5 citizens organization called Center for
6 Judicial Accountability. But most
7 importantly, for purposes of this
8 presentation today, I am the author of and
9 individual plaintiff in a citizen taxpayer
10 action brought in the public interest and on
11 behalf of the people of the State of New York
12 against the Governor, against the Senate and
13 Assembly, Temporary Senate President
14 Flanagan, Assembly Speaker Heastie, the
15 Attorney General, the Comptroller, the Chief
16 Judge.

17 The lawsuit lays out the succession of
18 constitutional violations, statutory
19 violations, and violations of the Assembly
20 and Senate rules with respect to the
21 Judiciary Budget, Legislative Budget, the
22 Executive Budget. It presents 10 causes of
23 action.

24 And I think it is fitting to begin

1 this presentation by making reference to what
2 it is that I handed up, I have distributed in
3 support of this testimony, and that is
4 Article VII, Sections 1 through 7, of the
5 New York State Constitution, which define the
6 process by which the budget is fashioned and
7 enacted.

8 It is fitting to begin with this
9 because this is a hearing on public
10 protection. And our public protection, our
11 foremost public protection is in the New York
12 State Constitution and what it lays out. In
13 addition to Article VII, Sections 1 through
14 7, which pertain to the budget, is another
15 very important provision of the State
16 Constitution, which is Article III, Section
17 10: "Each house of the Legislature shall
18 keep a journal of its proceedings, and
19 publish the same ... The doors of each house
20 shall be kept open."

21 In sum and substance, what is
22 presented in the lawsuit is the
23 unconstitutionality of what's been going on
24 with your closed-door political conferences,

1 which substitute for open committee
2 deliberations and votes on bills. You're not
3 voting on bills, you're not reconciling
4 bills.

5 And under the Constitution, except for
6 the legislative and judiciary budgets, the
7 other budget bills presented by the Governor
8 never go back to the Governor, they become
9 law immediately once the Senate and Assembly
10 pass the bills and reconcile their
11 differences.

12 So all of this talk about how we've
13 got to get an on-time budget, we have to put
14 together a deal, this is out of whole cloth.
15 This is violative of the constitution.

16 Now, so many of the speakers today
17 were pleading to you for money, and they
18 wanted appropriations from you. And you
19 needed to tell them the truth, and the truth
20 is that the Constitution restricts you --
21 unless what they were seeking is part of the
22 Judiciary Budget or Legislative Budget, you
23 are restricted by Article VII, Section 4,
24 which reads: "The Legislature may not alter

1 an appropriation bill submitted by the
2 Governor except to strike out or reduce items
3 therein, but it may add thereto items of
4 appropriation, provided that such additions
5 are stated separately and distinctly from the
6 original items of the bill and refer each to
7 a single object or purpose. None of the
8 restrictions of this section, however, shall
9 apply to appropriations for the Legislature
10 or the Judiciary."

11 In other words, with respect to the
12 judiciary and legislative budget bill, you
13 are free to change it however way you choose,
14 however is appropriate.

15 But Section 4 continues: "Such an
16 appropriation bill shall, when passed by both
17 houses, be a law immediately without further
18 action by the Governor, except that
19 appropriations for the Legislature and
20 Judiciary and separate items added to the
21 Governor's bills by the Legislature shall be
22 subject to approval of the Governor as
23 provided in Section 7 of Article IV."

24 So you needed to say, to all those who

1 were pleading for money, that you cannot
2 constitutionally add -- add to the
3 appropriations that are in the State
4 Operations budget or the Aid to Localities
5 budget or any budget bill other than
6 Judiciary and Legislature.

7 Now, the citizen taxpayer action I
8 alerted you to in advance of today. And I
9 begged and pleaded, to you and leadership and
10 the appropriate committees, to address the
11 violations that have been chronicled in the
12 lawsuit with respect to prior fiscal years so
13 that there wouldn't be a repeat this fiscal
14 year. Because as was clear already,
15 everything was repeating.

16 The only thing that is really
17 different -- and I want to commend Senator
18 Young, Assemblyman Farrell, Senator Krueger,
19 Assemblyman Oaks, that this year you have
20 permitted me to testify, as I have requested
21 to testify in each of the past three years,
22 but you have not permitted me ever since my
23 testimony on February 6, 2013.

24 And the reason that you did not permit

1 me to testify is because of the explosive
2 nature of my testimony then. And it is to
3 your credit, and I thank you, because the
4 only way to go now is forward.

5 And we have a real problem. Not only
6 is the budget off the constitutional rails in
7 toto, but we have a huge problem with respect
8 to the judicial pay raises that have been
9 paid out since April 1, 2012. And this as a
10 result initially of the report of the
11 Commission on Judicial Compensation, and that
12 have now been replicated and amplified by the
13 2015 Report of the Commission on Legislative,
14 Judicial and Executive Compensation.

15 There is probably paid out, now, in
16 excess of \$200 million. I don't know the
17 exact amount, and it's nowhere in any budget.

18 And with respect to the Judiciary
19 Budget, the Judiciary Budget conceals that
20 there is a further pay increase that will
21 take effect April 1, 2017, unless you
22 override it. And embedded somewhere in the
23 Judiciary Budget are appropriations for that
24 pay raise, which they have not advised you is

1 even there.

2 Apparently you -- "you," I mean the
3 Senate majority in its White Book, and the
4 Assembly majority in its Yellow Book -- had
5 some information and included in those books
6 that there is a \$2.4 million salary increase
7 coming to the judges, but it is nowhere in
8 any kind of line item.

9 Let me very, very briefly, if I may --
10 I have just -- okay, I will just give -- let
11 me just read --

12 CHAIRMAN FARRELL: A sentence to
13 close.

14 MS. SASSOWER: I beg you, let me at
15 least read recommendations with respect to --

16 CHAIRWOMAN YOUNG: Ma'am, you're out
17 of time. This has been a long day.

18 MS. SASSOWER: I've waited -- I've
19 waited -- I've waited since the beginning of
20 the hearing at 9:30.

21 CHAIRWOMAN YOUNG: But --

22 MS. SASSOWER: This is of sufficient
23 importance that you can give me five or 10
24 minutes.

1 CHAIRWOMAN YOUNG: But each speaker is
2 given a certain allotted amount of time. So
3 I'm sorry, please. Thank you.

4 MS. SASSOWER: Let me close --

5 CHAIRMAN FARRELL: Thank you.

6 MS. SASSOWER: -- let me then close
7 with a reference.

8 CHAIRMAN FARRELL: With a sentence.

9 MS. SASSOWER: I have -- I have -- I
10 have just -- I have just six -- six
11 recommendations that I would just like to
12 read very quickly. Please, let me just read
13 the recommendations.

14 CHAIRWOMAN YOUNG: Ma'am, you've been
15 on for two nights in a row. You've had your
16 allotted amount of time. It's over, we're
17 shutting down. Thank you very much.

18 (Whereupon, at 9:00 p.m., the budget
19 hearing concluded.)
20
21
22
23
24