

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

2 -----

3 JOINT LEGISLATIVE HEARING

4 In the Matter of the
2018-2019 EXECUTIVE BUDGET ON
5 PUBLIC PROTECTION

6 -----

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

9 January 30, 2018
10 9:38 a.m.

11 PRESIDING:

12 Senator Catharine M. Young
Chair, Senate Finance Committee
13
14 Assemblywoman Helene E. Weinstein
Chair, Assembly Ways & Means Committee

15 PRESENT:

16 Senator Liz Krueger
Senate Finance Committee (RM)
17
18 Assemblyman Robert Oaks
Assembly Ways & Means Committee (RM)
19
20 Senator Diane Savino
Vice Chair, Senate Finance Committee
Vice Chair, Senate Codes Committee
21
22 Senator John J. Bonacic
Chair, Senate Committee on Judiciary
23
24 Assemblyman Jeffrey Dinowitz
Chair, Assembly Committee on Judiciary
Assemblyman Anthony H. Palumbo

1 2018-2019 Executive Budget
Public Protection
2 1-30-18

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 Phil Steck

12 Assemblyman Michael Montesano

13 Senator James N. Tedisco

14 Assemblyman Joseph M. Giglio

15 Senator Martin Golden

16 Assemblywoman Crystal Peoples-Stokes

17 Senator Brad Hoylman

18 Assemblywoman Earlene Hooper

19 Senator Jamaal Bailey

20 Assemblyman Jeffrion L. Aubry

21 Senator Elaine Phillips

22 Assemblywoman Nicole Malliotakis

23 Assemblyman Matthew J. Titone

24 Senator Marisol Alcantara

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

3 PRESENT: (Continued)

4 Senator Gustavo Rivera

5 Assemblyman Philip A. Palmesano

6 Senator Todd Kaminsky

7 Assemblyman Billy Jones

8 Senator Patty Ritchie

9 Assemblyman Kenneth P. Zebrowski

10 Assemblywoman Aravella Simotas

11 Senator Joseph Robach

12 Senator Elizabeth O'C. Little

13 Assemblywoman Latoya Joyner

14 Senator James Sanders Jr.

15 Assemblyman Michael Blake

16 Senator Brian Benjamin

17 Assemblyman Angelo J. Morinello

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23

24

1 2018-2019 Executive Budget
 Public Protection
 2 1-30-18

3 LIST OF SPEAKERS

4		STATEMENT	QUESTIONS
5	Honorable Lawrence K. Marks Chief Administrative Judge		
6	NYS Office of Court Administration	12	24
7			
8	Robert H. Tembeckjian Administrator and Counsel New York State Commission on		
9	Judicial Conduct	163	168
10	Roger L. Parrino, Sr. Commissioner		
11	NYS Division of Homeland Security and Emergency Services	178	184
12			
13	Michael C. Green Executive Deputy Commissioner NYS Division of Criminal		
14	Justice Services	218	224
15	Anthony J. Annucci Acting Commissioner		
16	NYS Department of Corrections and Community Supervision	284	290
17			
18	George P. Beach II Superintendent		
19	NYS Division of State Police	402	404
20			
21	William J. Leahy Director New York State Office of Indigent Legal Services	453	463
22			
23	Robert H. Samson Chief Information Officer NYS Office of Information Technology Services	466	474
24			

1 2018-2019 Executive Budget
 Public Protection
 2 1-30-18

3 LIST OF SPEAKERS, Cont.

4 STATEMENT QUESTIONS

5	Bing Markee Legislative Director		
6	NYS Association of PBAs -and-		
7	Chris McNerney Port Authority Police Dept.		
8	-for- Police Conference of NY	494	501
9			
10	Michelle Esquenazi President NYS Bail Bondsman Association		
11	-and- John Kase Retired Supervising Judge Nassau County Criminal Courts		
12			
13	-and- Jeffrey Clayton, Esq. Executive Director American Bail Coalition	509	527
14			
15	Thomas H. Mungeer President New York State Troopers PBA	532	
16			
17	Michael B. Powers President NYS Correctional Officers & Police Benevolent Assn.	535	542
18			
19	Christopher M. Quick President NYS Police Investigators Assn.	563	
20			
21	David Soares Albany County District Attorney -on behalf of- District Attorneys Association of the State of New York	567	583
22			
23			
24			

1 2018-2019 Executive Budget
 Public Protection
 2 1-30-18

3 LIST OF SPEAKERS, Cont.

4		STATEMENT	QUESTIONS
5	Glenn Damato President		
6	NYS Court Clerks Association	607	
7	Patrick Cullen President		
8	NYS Supreme Court Officers Assn.	612	623
9	Billy Imandt President		
10	Court Officers Benevolent Assn. of Nassau County	627	634
11	William Dobbins President		
12	Suffolk County Court Employees Association	637	
13	Dan De Federicis Executive Director & Counsel		
14	Manuel M. Vilar Vice President		
15	Troy Caupain Board Member		
16	Police Benevolent Assn. of New York State	647	
17	Susan Bryant Deputy Director		
18	NYS Defenders Association	662	
19	Grant Cowles Senior Policy & Advocacy Associate for Youth Justice		
20	Citizens' Committee for Children	666	674
21			
22			
23			
24			

1 2018-2019 Executive Budget
 Public Protection
 2 1-30-18

3 LIST OF SPEAKERS, Cont.

4		STATEMENT	QUESTIONS
5	Melanie Blow Chief Operations Officer		
6	Stop Abuse Campaign	675	
7	Karen L. Murtagh Executive Director		
8	Thomas Curran, Esq. Board Member		
9	Prisoners' Legal Services of New York	679	686
10	Maha Syed		
11	Executive Director NY Legal Services Coalition	690	695
12	Dipal Shah		
13	Director of Strategic Partnerships		
14	Center for Court Innovation	695	
15	Dave George Associate Director		
16	Release Aging People in Prison Campaign	705	714
17	Scott Paltrowitz		
18	Associate Director of Advocacy and Community		
19	Engagement Correction Association		
20	of New York	718	
21	Sebastian Doggart President		
22	New York Families Civil Liberties Union	730	
23			
24			

1 2018-2019 Executive Budget
Public Protection
2 1-30-18

3 LIST OF SPEAKERS, Cont.

4 STATEMENT QUESTIONS

5	Nancy Lorence Board Member	
6	Connie Altamirano Survivor	
7	Call to Action Metro NY	741
8	Steve Powers Leader	
9	Bridie Farrell Leader	
10	Upstate Call to Action -and-	
11	Mary Ellen O'Loughlin Board Member	
12	Foundation for Survivors of Abuse	752
13	Gary Greenberg	
14	Founder Protect New York Kids	766
15	Elena Sassower	
16	Director Center for Judicial	
17	Accountability	775

18

19

20

21

22

23

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1 CHAIRWOMAN YOUNG: Good morning.

2 I'm Senator Catharine Young, and I'm
3 chair of the Senate Standing Committee on
4 Finance. I'd like to welcome everyone here
5 today, especially my esteemed colleague, the
6 chair of the Assembly Ways and Means
7 Committee, Assemblywoman Helene Weinstein.

8 We also are joined by several of our
9 colleagues in the Senate, and I'll announce
10 the relevant chairs to the proceedings today.
11 First we have Senator Pat Gullivan, who is
12 chair of the Senate Standing Committee on
13 Crime and Corrections. We have Senator John
14 Bonacic, who is chair of the Senate Standing
15 Committee on the Judiciary. We have Senator
16 Tom Croci, who is chair of the Senate
17 Standing Committee on Veterans, Homeland
18 Security and Military Affairs.

19 We're also very pleased to be joined
20 by Senator Diane Savino, who is vice chair of
21 the Finance Committee. Also Senator Marty
22 Golden, Senator Jim Tedisco, Senator Elaine
23 Phillips, Senator Brad Hoylman, Senator
24 Gustavo Rivera, and Senator Jamaal Bailey,

1 who is right next to me in the seat.

2 So Assemblywoman, Chairwoman?

3 CHAIRWOMAN WEINSTEIN: Yes, thank you,
4 Senator Young.

5 We are joined by the chair of our
6 Judiciary Committee, Assemblyman Dinowitz,
7 Deputy Speaker Earlene Hooper, Assemblyman
8 Matt Titone, Assemblyman Jeff Aubry, and our
9 ranker on Ways and Means, Assemblyman Oaks,
10 to introduce his colleagues.

11 ASSEMBLYMAN OAKS: Yes, we've been
12 joined by Assemblyman Joe Giglio, Assemblyman
13 Tony Palumbo, Assemblyman Mike Montesano, and
14 Assemblywoman Nicole Malliotakis.

15 CHAIRWOMAN YOUNG: Thank you.

16 Pursuant to the State Constitution and
17 Legislative Law, the fiscal committees of the
18 State Legislature are authorized to hold
19 hearings on the Executive Budget proposal.
20 Today's hearing will be limited to a
21 discussion of the Governor's recommendations
22 as they relate to public protection.
23 Following each presentation, there will be
24 some time allowed for questions from the

1 chairs of the fiscal committees and other
2 legislators.

3 First of all, I'd like to welcome the
4 Honorable Lawrence K. Marks, who is the chief
5 administrative judge of the Office of Court
6 Administration. He will be followed by
7 Mr. Robert Tembeckjian, administrator and
8 counsel, Commission on Judicial Conduct.

9 So good morning, Judge Marks.

10 CHIEF ADMINISTRATIVE JUDGE MARKS:

11 Good morning.

12 CHAIRWOMAN YOUNG: Look forward to
13 your testimony.

14 And I'd like to stress to everyone who
15 will be testifying today that we are letting
16 people know we want you to summarize your
17 testimony. As you know, we have a new rule
18 this year where testimony is to be submitted
19 24 hours in advance so the legislators have
20 ample time to review it.

21 And therefore, we have looked at your
22 testimony, Judge, but we really look forward
23 to hearing from you and you summarizing what
24 you submitted. So thank you.

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Okay, thank you. And good morning
3 Chairpersons Young and Weinstein, Bonacic and
4 Dinowitz, and good morning to the other
5 committee members.

6 I'm so pleased to be here this morning
7 to discuss the Unified Court System's
8 proposed budget. And with your permission,
9 I'd like to speak to you for a few minutes
10 about the major features of our budget
11 request. And then, of course, I'd be happy
12 to answer any questions you may have.

13 As was true last year, this year's
14 budget request is designed to support the
15 Excellence Initiative, which is the top
16 priority of Chief Judge Janet DiFiore. The
17 Excellence Initiative is our comprehensive
18 statewide effort to improve the operations of
19 the court system and ensure that everyone who
20 comes to the courts of this state receives
21 the highest level of assistance and service.

22 A primary goal of the Excellence
23 Initiative has been an all-out effort in
24 every jurisdiction of the state to provide

1 fair and expeditious justice in every one of
2 the millions of cases filed in our courts
3 every year. In carrying out this effort, we
4 have worked closely with our administrative
5 judges and local court administrators, the
6 bar, prosecutors' offices, and other justice
7 system stakeholders to attack delays and
8 inefficiencies that all too often can
9 frustrate the administration of justice.

10 In undertaking this effort, we have
11 developed individual plans in jurisdictions
12 throughout the state, taking into account the
13 distinct circumstances, problems and cultures
14 that have caused bottlenecks and delays in
15 adjudicating cases. Some of the steps we've
16 taken include restructuring how cases are
17 processed more efficiently, deploying
18 judicial and nonjudicial resources, and using
19 technology to collect and analyze caseload
20 data to identify where the problems exist.

21 In conjunction with Chief Judge
22 DiFiore's State of the Judiciary address,
23 which is next Tuesday, a week from today, we
24 will be issuing a detailed report documenting

1 the progress of the Excellence Initiative
2 during the past year. But I can tell you now
3 that this program is succeeding, that gains
4 have been made in every jurisdiction in the
5 state, and that in a large number of
6 jurisdictions the gains have been dramatic.

7 And I don't want to belabor the point,
8 but I would just note for you that, for
9 example, in the Eighth Judicial District,
10 which includes counties that encompass
11 Senator Young's district, older pending
12 foreclosure cases have declined by more than
13 a third. In Brooklyn, Assemblywoman
14 Weinstein's home county, older pending civil
15 cases in Supreme Court have declined by
16 36 percent. In Orange County, Senator
17 Bonacic's home county, older pending Family
18 Court cases are down by more than half. And
19 in the Bronx, Assemblyman Dinowitz's home
20 county, older pending felony cases are down
21 by nearly a third and older pending
22 misdemeanor cases are down by more than
23 70 percent.

24 And I could give you many more success

1 stories if time allowed. And I will see to
2 it that all of you receive a copy of our
3 report when it is released next week.

4 But I do want to emphasize that our
5 work is not finished, not by any means. A
6 lot more work needs to be done. And
7 although, as I've mentioned, the Excellence
8 Initiative has achieved success in every
9 jurisdiction, in general the successes have
10 come more easily in lower-case-volume
11 jurisdictions. Not surprisingly, eliminating
12 backlogs and delays has proved more
13 challenging in courts with higher-volume
14 caseloads.

15 That is why approval of our budget
16 request is critical. The money it would
17 provide will allow us to continue to replace
18 employees who leave the court system, which
19 thanks to the Legislature's support of our
20 recent budget requests, we have been able to
21 do over the past several years. The money
22 will also allow us to maintain and bolster
23 our technology infrastructure and, in doing
24 so, we would be able to continue and build

1 upon the progress we have made over the past
2 year.

3 Similar to last year, this proposed
4 budget is fairly straightforward. It seeks a
5 2 percent increase over the current spending
6 level in our operating budget, which would be
7 a \$44.4 million increase. We believe this is
8 not only a modest increase which is
9 consistent with Governor Cuomo's benchmark
10 for the overall State Budget, but it is a
11 necessary increase.

12 And by the way, you may have heard
13 when the Governor gave his budget
14 presentation two weeks ago, he described the
15 increase in the Judiciary Budget as
16 2.5 percent. We believe it's 2 percent. And
17 I don't want to go into the details of that
18 in my prepared remarks, but I'd be happy to
19 answer any questions that you may have about
20 that discrepancy.

21 So although the responsibility of fair
22 and prompt adjudication of cases falls
23 primarily on judges, judges cannot do that
24 alone. Without an adequate number of court

1 officers, court clerks, court reporters,
2 court interpreters and back-office staff,
3 achievement of the goals of the Excellence
4 Initiative will be problematic.

5 Although we are at lower staffing
6 levels than we were a number of years ago
7 before the budget cuts of 2011 and the
8 ensuing several years of flat-line budgets,
9 we have nevertheless made real progress in
10 attacking case backlogs and delays over the
11 past two years. That would not have been
12 possible if we had been unable to replace
13 employees when they left. This proposed
14 budget will allow us to continue to do so.

15 The proposed budget will also continue
16 the trend of restoring support for a number
17 of valuable programs that were reduced during
18 the period of budget cuts. Following through
19 on the phased-in restoration of funding in
20 the current year budget, we will again
21 increase funding across the state for the
22 Community Dispute Resolution Centers, the
23 CASA program, and the Justice Court
24 Assistance Program.

1 Importantly -- very importantly -- the
2 proposed budget also continues to include
3 \$100 million for civil legal services, the
4 budgetary goal that was set a number of years
5 ago. As you know, this money supports grants
6 we award to legal services offices throughout
7 the state, providing legal representation for
8 hundreds of thousands of New Yorkers with
9 legal matters who are unable to afford a
10 lawyer.

11 Similar to a year ago, in addition to
12 the 2 percent increase in our operating
13 budget, we are again seeking a modest capital
14 appropriation. This year's capital
15 appropriation request is \$18 million. This
16 money would be used to build and support the
17 court system's infrastructure, particularly
18 our technology and public safety
19 infrastructure. It would allow us to proceed
20 with the second year of modernizing our
21 statewide computer network by maintaining and
22 updating our computer servers, switches, and
23 high-speed cable fiber, as well as the second
24 year of modernizing our public safety

1 infrastructure by replacing outdated
2 magnetometers and x-ray machines and
3 installing additional security cameras. And
4 it would support our efforts to continue to
5 digitize paper court records, a necessary
6 complement to our e-filing program.

7 Briefly addressing a number of other
8 topics that have been drawing our attention
9 in the court system in recent months, I
10 should point out that we are hard at work
11 preparing for the October 1 effective date of
12 the new Raise the Age legislation. Planning
13 is well underway, and we will be ready to
14 accommodate the influx of additional cases in
15 Family Court that will begin on that date in
16 the first phase of the new law's
17 implementation.

18 Planning is also underway for the
19 expansion of centralized off-hours
20 arraignment parts throughout the state,
21 pursuant to state legislation enacted in
22 2016. The first four centralized parts began
23 operating last fall, and they are off to a
24 successful start. Additional off-hours

1 arrestment parts will be established
2 throughout this calendar year.

3 We are also taking some important
4 steps in the court system to address the
5 opioid crisis that has plaguing communities
6 across our state. Our ground-breaking Opioid
7 Intervention Court in Buffalo, the first of
8 its kind in the nation, may already have
9 saved several hundred lives by combining
10 intensive treatment regimens for opioid users
11 followed by intensive court monitoring.

12 A variation of the Buffalo court has
13 been established in Bronx County, with a plan
14 underway to expand the Bronx approach
15 throughout New York City.

16 We are also working with the State
17 District Attorneys Association and other
18 stakeholders to develop a statewide action
19 plan to ensure that the court system, along
20 with the entire criminal justice community,
21 is doing everything it can to address this
22 crisis on a statewide basis.

23 There's one other thing I'd like to
24 just briefly discuss with you. And

1 technically it doesn't involve next year's
2 budget, the next fiscal year budget, it
3 involves this year's budget. But because it
4 concerns a significant amount of money, I
5 just want to briefly mention it to you.

6 We have 12 labor unions in the court
7 system. And as an independent separate
8 branch of government, we negotiate contracts
9 directly with our 12 labor unions. And we --
10 a number of years ago, after the budget
11 crisis of 2011, in -- several years after
12 that we were able to reach agreement with the
13 majority of our unions, nine of our 12
14 unions. But three unions, for a variety of
15 reasons -- we did not reach agreement with
16 three of our unions until fairly late in the
17 game -- that is, last year, in 2017.

18 And we're absorbing the -- with all of
19 our union contracts, we're absorbing the
20 prospective salary increases within the
21 2 percent increases that we've received in
22 recent years. But with these three unions,
23 because agreement was reached with them not
24 until last year, there's a significant amount

1 of retroactive money that's resulted from
2 that. And frankly -- and, you know, we made
3 this clear in the collective bargaining
4 negotiations with those three unions, that we
5 simply don't have the money in our budget
6 this year to pay retroactive increases to
7 those three unions.

8 So what we agreed with those unions,
9 and this was part of the collective
10 bargaining agreements that we reached with
11 them, is that we -- the court system would
12 put legislation in this session seeking a
13 supplemental appropriation to this year's
14 budget to pay for the retroactive salary
15 increases for the members of those three
16 unions. And it's essentially the period from
17 when their agreements were ratified with
18 their members in 2017, going back to
19 October 1st of 2014.

20 And there are three unions affected by
21 this: Our two stand-alone court officer
22 unions, as well as our court clerks union,
23 which represents court clerks in the New York
24 City courts.

1 The amount of the retroactive money is
2 \$65 million. And the understanding is if the
3 Legislature approves that supplemental
4 appropriation to pay for the retroactive
5 salary increases, and the Governor signs the
6 bill, that the court system will be bound and
7 obviously would pay the retroactive money.
8 But if the bill does not pass the Legislature
9 and/or the Governor doesn't sign the bill,
10 then we would not be bound to make the
11 retroactive salary increases.

12 So I just mention that to you. The
13 bills have been submitted, and I'll be
14 talking about that with individual members of
15 the Legislature in the coming weeks.

16 So those are my prepared remarks. And
17 I'd be happy to answer any questions that you
18 may have.

19 CHAIRWOMAN YOUNG: Thank you, Judge
20 Marks.

21 First of all, I want to let everyone
22 know we've been joined by Senator Liz
23 Krueger, who's ranking member on the Finance
24 Committee.

1 But our first speaker will be Senator
2 John Bonacic, who is chair of the Judiciary
3 Committee. Senator Bonacic.

4 SENATOR BONACIC: Thank you.

5 Judge Marks, it's good to see you.
6 Good morning.

7 CHIEF ADMINISTRATIVE JUDGE MARKS:
8 Good morning.

9 SENATOR BONACIC: I'd like to thank
10 you and the Chief Judge, both of you. I
11 think you're doing both a good job, both on
12 the Court of Appeals and the Office of Court
13 Administration. Okay?

14 CHIEF ADMINISTRATIVE JUDGE MARKS:
15 Thank you.

16 SENATOR BONACIC: Let me get to the
17 controversial question first. The Executive
18 Budget provided that all state-paid judges
19 and justices assigned to a trial court must
20 certify that they have performed eight hours
21 of judicial duties a day at an assigned court
22 location. Does the Judiciary have any qualms
23 with certifying these hours and implementing
24 the Governor's request?

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Well, let me answer that question -- it's an
3 unusual proposal, certainly. We -- let me
4 just say this. Judges in the state court
5 system have a very difficult job, a far more
6 difficult job than a lot of people realize.
7 When I became a judge, I understood full well
8 how difficult a job it is to be a judge. And
9 judges in the court system also work very
10 hard.

11 But the state court system is a very
12 large operation, far-flung. We're in
13 62 counties. We have approximately
14 1300 state-paid judges across the state. And
15 as in any large organization, there are going
16 to be exceptions. But we -- the Excellence
17 Initiative is really, at its core, is all
18 about getting the lawyers to work harder,
19 court employees to work harder, and in
20 particular getting judges to work harder.

21 So to the extent that this is a
22 problem in any part of the state, in any
23 court of the state, it's a problem that we
24 have been addressing over the last two years,

1 and we are on top of this problem. So our
2 position on this bill is that it's
3 unnecessary, that we are dealing with this
4 problem. As I said, it goes to the core of
5 the goals of what the Excellence Initiative
6 is all about. And in the end, we believe
7 it's a proposal that's not necessary.

8 SENATOR BONACIC: Okay, thank you.

9 My second question, I just want
10 clarity on the cap of 2 percent of your
11 budget. The Governor says 2.5 percent. I
12 think in your preliminary remarks you said
13 the Judiciary Budget is really 2 percent.
14 Would I be correct in that?

15 CHIEF ADMINISTRATIVE JUDGE MARKS:

16 Yes.

17 SENATOR BONACIC: Okay. Now, you also
18 talk about two collective bargaining
19 agreements. And if they were to be approved
20 by the Legislature and the Governor as
21 proposed, that would take you above the
22 2 percent cap. And my calculation --

23 CHIEF ADMINISTRATIVE JUDGE MARKS: For
24 this year -- for this year's budget.

1 SENATOR BONACIC: For this year's
2 budget.

3 CHIEF ADMINISTRATIVE JUDGE MARKS:
4 Yeah.

5 SENATOR BONACIC: My calculation would
6 be that you would be somewhere between 2.2 to
7 2.3 percent. Would that be fairly accurate?

8 CHIEF ADMINISTRATIVE JUDGE MARKS: I
9 think it would. It's -- the price tag of two
10 bills that would cover the retroactive salary
11 payments for those three unions is
12 \$65 million. So it would add at least
13 another percentage point to our increase,
14 correct.

15 SENATOR BONACIC: And if for some
16 reason you were told that you have to resolve
17 those labor contracts within the 2 percent
18 cap, I think you indicated that you could do
19 it, but the retroactive portion of those
20 agreements which you've agreed to with the
21 unions would then be eliminated. Would that
22 be a fair statement?

23 CHIEF ADMINISTRATIVE JUDGE MARKS:
24 Well, we're saying -- and this is what we

1 agreed to with the unions. There was a
2 recognition on both sides, certainly our side
3 and on the side of the unions, that it's
4 really impossible for us to pay the
5 retroactive increases out of our existing
6 budget allocation.

7 The prospective raises -- going
8 forward, we have absorbed the prospective
9 raises for all our unions. And we'll be able
10 to do so with these three additional unions
11 as well. It's the retroactive money that we
12 simply don't have the money in our budget to
13 pay for that and can't afford to pay for that
14 in our budget.

15 And if I could just make one more
16 point about that, because some people -- not
17 legislators, but some have asked didn't we
18 see this problem coming, you know, on the
19 horizon. You know, were we surprised by
20 this. And the answer is with the delays in
21 reaching agreement with these three unions,
22 we did know that there would be retroactive
23 salary increases that would be growing, you
24 know, with each passing month and passing

1 year that we didn't reach agreement with
2 these unions.

3 So in response to the question, well,
4 why didn't we save for that, you know, over
5 the course of those years, put money away and
6 do a reserve fund, do a rainy day fund so
7 we'd have the money available at the point
8 when we did reach agreement with these
9 unions -- and the simple answer to that is we
10 have no legal authority to squirrel away
11 money in our budget. Whatever we don't spend
12 by the end of the fiscal year of the money
13 that's appropriated and allocated to us goes
14 back to the General Fund.

15 So there's -- and I think our unions
16 recognize that as well, that number one, we
17 simply don't have the money in our current
18 budget to pay for these retroactive
19 increases. And number two, there was no
20 vehicle or opportunity for us to save money
21 over the course of two or three years to
22 establish a reserve fund or a rainy day fund,
23 if you will, to be able to pay the
24 retroactive increases once the contracts were

1 agreed upon.

2 SENATOR BONACIC: Okay. My last
3 question, we had a roundtable, Senator Hannon
4 and I, on Section 81 of the Mental Hygiene
5 Law, the issue of guardians, and data
6 collection in order to tackle the demand in
7 this area for the ability to pay guardians.
8 That they're not having as many, yet the
9 problem of the necessity of guardians is
10 growing quite a bit. Judge Diamond is
11 leading the charge down there on the Island
12 on this issue.

13 Would you be able to do some data
14 collection when it comes to guardianships,
15 how many there are throughout the state and
16 where the concentration is?

17 CHIEF ADMINISTRATIVE JUDGE MARKS:
18 Yeah, absolutely. And we've talked about
19 this. When you raised this suggestion, I
20 talked to our people.

21 And we need to collect better data on
22 guardianship cases. As you say, this is kind
23 of a growing area, with the aging of the
24 population, and there are increasing numbers

1 of people who are not able to handle their
2 own -- not only their own finances, but their
3 day-to-day responsibilities of just getting
4 through life day to day.

5 And so we're starting to see an
6 increase in the number of petitions filed in
7 the court for appointment of a guardian. And
8 when there's no family member, you know,
9 ready, willing or able to step up and serve
10 as guardian, we appoint people off of lists,
11 private guardians off of lists.

12 And under state law, they're entitled
13 to a stipend for their services as guardian.
14 But unfortunately -- and this is the problem,
15 as you know -- in a fair number of cases
16 there's no money in the incapacitated
17 person's estate to pay the guardian, and so
18 the guardian service is essentially pro bono.

19 So as a first step, at your
20 suggestion, we are going to be collecting
21 more detailed information in guardianship
22 cases: The nature of the guardian, whether
23 it's a relative or a stranger appointed off
24 of a list, and whether the guardian will

1 receive full compensation or partial
2 compensation -- or perhaps no compensation,
3 you know, in cases where the incapacitated
4 person is truly impoverished -- and some
5 additional information, so that we can get a
6 better handle on this and work with the
7 Legislature in coming up with some solutions.

8 SENATOR BONACIC: Thank you very much,
9 Your Honor.

10 CHIEF ADMINISTRATIVE JUDGE MARKS:
11 Thank you.

12 CHAIRWOMAN YOUNG: Thank you.

13 CHAIRWOMAN WEINSTEIN: Before we go to
14 our Judiciary chair, I just want to say that
15 we've been joined by Assemblyman Weprin, our
16 Corrections chair, Assemblyman Lentol, our
17 Codes chair, and Assemblyman Phil Steck.

18 So Assemblyman Dinowitz for some
19 questions.

20 ASSEMBLYMAN DINOWITZ: Yes, thank you.
21 Good morning, Judge Marks.

22 CHIEF ADMINISTRATIVE JUDGE MARKS:
23 Good morning.

24 ASSEMBLYMAN DINOWITZ: First, I'm very

1 glad to hear that you think it's unnecessary
2 for judges to sign time sheets.

3 But I wanted to ask you specifically
4 about the number of judges that are allocated
5 in each of the judicial districts, and I know
6 we've discussed this before. As you know,
7 the State Constitution says that there shall
8 be a Supreme Court justice for every 50,000
9 population. So 12 of the 13 judicial
10 districts have fewer than that, and of course
11 you can guess which one has more than that:
12 Manhattan.

13 Now, in some of the districts perhaps
14 their caseload is very light compared to
15 others, but in some of the districts the
16 caseload is very heavy. For example, in the
17 Bronx, under the constitution, we should have
18 three more Supreme Court justices. And the
19 same thing is true -- numbers vary, of
20 course -- in several of the other counties
21 and several of the other judicial districts.

22 That has an impact on backlogs. The
23 Bronx and the other boroughs, I'm sure,
24 are -- except Manhattan -- are short not only

1 on judges but also on other court personnel.
2 You know, the delay that that causes is
3 really horrible.

4 You had mentioned that the backlog for
5 old misdemeanor cases in the Bronx has been
6 alleviated to the extent of 70 percent, but
7 that I think is after a lot of judges were
8 sent in temporarily from the outside. But
9 there are tremendous needs in a number of the
10 judicial districts, including those in the
11 City outside of Manhattan. I was wondering
12 if you have any thoughts on how we can try to
13 deal with that situation of the terrible
14 shortages, especially given the fact that the
15 constitution does say 50,000, one judge.

16 CHIEF ADMINISTRATIVE JUDGE MARKS:
17 Well, I think it's clearly a problem you've
18 identified.

19 Let me just say we are making
20 significant progress with our existing
21 judicial resources, the existing number of
22 judges, but it's not an easy thing. And the
23 formula that you identified in the State
24 Constitution, which dates back at least a

1 hundred years, one judge for every 50,000
2 residents in each of the state's 13 judicial
3 districts, is obviously an antiquated
4 formula, you know, which was developed
5 before -- I don't know if it was before the
6 advent of the automobile, but it was
7 certainly before, you know, everyone in the
8 world or in the country, you know,
9 essentially owns an automobile. And before,
10 you know, much higher levels of crime. And
11 it sort of developed at a time when our
12 society was a lot less complicated and it was
13 a much simpler society.

14 So I believe, unfortunately, we missed
15 an opportunity in New York on Election Day
16 for a constitutional convention. That's not
17 our institutional position in the Judiciary,
18 that's my own personal view. Because the
19 judiciary article in the State Constitution
20 is something like 15,000 words. It takes up
21 fully one-third of the State Constitution.
22 And, for example, the Article III of the
23 United States Constitution is about 325
24 words. Article VI of the State Constitution

1 is 15,000 words, and it's replete with
2 anachronistic procedures and provisions, and
3 that's one of them, the one you identified,
4 the formula for determining the numbers of
5 Supreme Court justices.

6 Now, having said that, we are making
7 progress with the existing number of judges
8 that we have. But I think absolutely it's
9 something we should look at to see if there's
10 a need for more Supreme Court justices.

11 Because there aren't enough Supreme
12 Court justices in a number of areas of the
13 state -- I would absolutely include Bronx in
14 that category -- we rely on lower court
15 judges. In the City of New York, for
16 example, we have to elevate many if not most
17 of the New York City Criminal Court judges,
18 the misdemeanor court judges. We have to,
19 after they get some experience, if they're
20 good judges and they prove themselves as good
21 judges, we elevate them to Acting Supreme
22 Court and usually put them in the criminal
23 term of Supreme Court.

24 And we do the same thing with New York

1 City Civil Court judges, which is the lower
2 civil court in New York City. We elevate a
3 lot of the Civil Court judges to act in
4 Supreme and put them in the civil term of
5 Supreme Court.

6 And in the end, even by doing that,
7 for the most part we're short judges in the
8 Supreme Court. And of course we've depleted,
9 to a large extent, you know, the lower
10 criminal and the lower court.

11 So I'm happy to work with you, and
12 we've already had some preliminary
13 discussions about this, about whether it
14 makes sense to develop a new judgeship
15 package. Although, you know, I should say
16 judgeships are not cheap. Because it's not
17 just the judge and the immediate staff, but
18 when new judgeships are created, we need more
19 court officers and court clerks and court
20 reporters and court interpreters and the
21 like.

22 So it's not a cheap proposition to
23 create additional judgeships. And it can be
24 very political also, you know, when judgeship

1 packages are developed, and sometimes --

2 ASSEMBLYMAN DINOWITZ: Political?

3 (Laughter.)

4 CHIEF ADMINISTRATIVE JUDGE MARKS: Can
5 be political, shocking as that may seem.

6 But there's probably a good case for
7 it, and it -- I'd, you know, be happy to work
8 with you on that.

9 ASSEMBLYMAN DINOWITZ: Okay, good.

10 So several years ago the Legislature
11 enacted provisions, as you know, for
12 homeowners threatened by foreclosure that
13 included mandatory settlement conferences,
14 preforeclosure notices, strengthening
15 anti-predatory lending laws.

16 Do you have any data on how many of
17 these homeowners are represented by counsel
18 in the foreclosure settlement conversations?

19 CHIEF ADMINISTRATIVE JUDGE MARKS:

20 Yeah, it's -- I don't have it with me, I
21 apologize. But we -- pursuant to statute, we
22 issue a report every year, it comes out in
23 November or early December, and it documents
24 the percentage of homeowners who are

1 represented in the settlement conferences.

2 And it's a much, much higher
3 percentage -- I don't have it off the top of
4 my head, but I'll get you the number and the
5 report. It's a much higher percentage than
6 it used to be, really in very large part
7 because of the money that we have in the
8 Judiciary Budget now that we give out to
9 legal services offices, and representing
10 homeowners in the settlement conferences in
11 foreclosure cases has been a top priority
12 where that money has been targeted.

13 So I believe over half of people --
14 I'll have to get you -- I don't want to speak
15 off the top of my head, but it's over half of
16 homeowners are now represented by a lawyer in
17 the settlement conferences. But I'll get you
18 the exact number. But it's significantly
19 higher than it was six, seven, eight years
20 ago.

21 ASSEMBLYMAN DINOWITZ: Okay. In
22 another area -- and this is the last
23 question -- the Executive Budget proposes
24 eliminating the \$4.3 million for the Legal

1 Services Assistance Fund. How do you imagine
2 that if that goes through as is, that that
3 would impact the court system?

4 CHIEF ADMINISTRATIVE JUDGE MARKS:

5 Well, it's obviously not a good thing. And
6 we'll see what happens. There's a strong
7 effort to prevent that from happening on a
8 national level.

9 But a number of legal service
10 providers in this state accept money from the
11 Federal Legal Services Corporation. Not all
12 of them do, because -- I can't explain this
13 entirely, but I know there are limitations if
14 you accept money from the Federal Legal
15 Services Corporation as a legal services
16 provider, there are limitations on what you
17 can do as a legal services provider. I think
18 you can't lobby the Legislature on issues,
19 you can't bring class action lawsuits. And
20 there are a number of restrictions that you
21 have to agree to if you accept that money.

22 So as a result, not all of the legal
23 services providers in New York accept the
24 money. But a number of the major providers

1 do, and they get a significant amount of
2 money from Washington. And obviously if that
3 money is cut off, it's going to have a
4 deleterious effect on the justice system in
5 New York and it's going to lead to even more
6 people appearing in court without a lawyer,
7 with all the negative consequences that flow
8 from that.

9 So it's something that we're involved
10 with institutionally, the New York State
11 court system, through our national
12 organizations, the U.S. Conference of Chief
13 Justices, which Chief Judge DiFiore is a
14 member, and the U.S. Conference of Chief
15 Court Administrators, of which I'm a member.
16 And those organizations, along with the
17 National Center for State Courts, along with
18 a lot of other organizations across the
19 country, are very involved in the effort to
20 try to prevent the defunding of the Legal
21 Services Corporation.

22 ASSEMBLYMAN DINOWITZ: Thank you.

23 CHIEF ADMINISTRATIVE JUDGE MARKS:

24 Thank you.

1 CHAIRWOMAN YOUNG: Thank you.

2 Your Honor, I just had a couple of
3 questions. You answered several of them so
4 far. But I wanted to ask you about the
5 capital programming that's included in the
6 budget.

7 The Judiciary is requesting
8 \$18 million for capital projects. Can you
9 outline those for us, please?

10 CHIEF ADMINISTRATIVE JUDGE MARKS:

11 Sure. And this is sort of following on the
12 heels of the money that the Legislature was
13 generous enough to appropriate for the court
14 system in the current fiscal year, which has
15 allowed us to do a number of things,
16 primarily upgrade our statewide computer
17 network.

18 We have a very sophisticated,
19 complicated computer network in the court
20 system because we're literally in all
21 62 counties, as you know, and we have over
22 300 courthouses. It's a big, kind of
23 widespread operation. So we need to and we
24 do have a sophisticated computer network, and

1 this money, a good chunk of it, is going to
2 upgrade and modernize our computer network
3 across the state, maintaining and upgrading
4 servers and switches and the high-speed cable
5 fiber that we use to run our network.

6 The money -- and we've started that
7 upgrading and modernizing this year, and this
8 capital operation we're seeking in next
9 fiscal year's budget would allow to us
10 continue that effort.

11 The money would also be used to
12 continue to modernize our security
13 infrastructure, meaning x-ray machines in the
14 courthouses, magnetometers, and replacing the
15 bulletproof vests that our court officers
16 wear to protect themselves.

17 We also would use some of this money
18 to continue to digitize paper records. And
19 although we have an expanding and successful
20 e-filing program in the court system, it
21 doesn't cover all of our cases that are
22 filed, so we do a lot of scanning and
23 digitizing paper records. So a portion of
24 the money would go to support that effort.

1 And let me just mention this year with
2 the capital appropriation that we received,
3 we were able to purchase the SEI case
4 management system that 95 percent or more of
5 the town and village courts use throughout
6 the state to run, to manage their courts. It
7 was a privately owned case management system.
8 The owner and developer of the system
9 retired, and we were able to purchase the
10 program from this gentleman, who had
11 previously been a town judge himself out in
12 Western New York, and we were able to --
13 we're in contract proceedings right now to
14 purchase the system. So we will be able to
15 provide that to every town and village court
16 in the state free of charge.

17 So that's in this year's capital
18 appropriation, but that's just an example of,
19 you know, a very worthy purpose to which this
20 money is being used.

21 CHAIRWOMAN YOUNG: Thank you, Judge.

22 Just curious, you mentioned security.
23 Does OCA track security issues that occur if,
24 you know, some untoward incident happens in a

1 courtroom, for example, that breaches
2 security? Do you have any statistics on
3 that?

4 CHIEF ADMINISTRATIVE JUDGE MARKS: If
5 there's something unusual that happens -- you
6 know, a fight breaks out or some act of
7 violence in the courtroom or in the hallways,
8 anything we call an unusual occurrence, our
9 security staff will fill out an Unusual
10 Occurrence Report and it will be filed and
11 distributed to court officer supervisors and
12 a group of people.

13 So we do have a depository of these
14 Unusual Occurrence Reports, and we can
15 absolutely, you know, tabulate how many
16 unusual occurrences there have been over a
17 period of time and compare to prior years.
18 So we do have that information.

19 CHAIRWOMAN YOUNG: That would be
20 helpful, thank you.

21 CHIEF ADMINISTRATIVE JUDGE MARKS:
22 Sure. And we can provide that to you.

23 CHAIRWOMAN YOUNG: Thank you.

24 Chairwoman?

1 CHAIRWOMAN WEINSTEIN: Yes, we've been
2 joined by Ken Zebrowski and Aravella Simotas.

3 And now to our Codes chair,
4 Assemblyman Lentol, for some questions.

5 ASSEMBLYMAN LENTOL: Thank you,
6 Madam Chair.

7 And good morning, Judge.

8 CHIEF ADMINISTRATIVE JUDGE MARKS:
9 Good morning.

10 ASSEMBLYMAN LENTOL: We certainly
11 appreciate your service over the last couple
12 of years. I think it's been excellent. I
13 wanted to say that right up front.

14 And one of the things that came to my
15 mind as Assemblyman Dinowitz was making his
16 remarks was the -- when he talked about the
17 judge -- the need for more judges, and I
18 thought about the need for more judges as
19 soon as Raise the Age comes online.

20 I know we've had more Family Court
21 judges as a result of the actions taken three
22 years ago, but are we going to have enough to
23 fill the youth parts as well as the Family
24 Court parts for that purpose?

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Well, that's an excellent question. And the
3 answer is we're not sure yet.

4 As you know, the Raise the Age
5 legislation is being implemented in phases,
6 and the first phase of the implementation is
7 this October 1st, as I think I mentioned in
8 my prepared remarks. And on October 1st the
9 age of criminal responsibility in New York
10 goes up to 17, and then the following
11 October 1st it goes up to 18.

12 So we will be prepared on October 1st,
13 but to some extent we have to kind of see how
14 this goes. There's no question that with
15 Raise the Age there will be fewer cases
16 overall in the state court system than there
17 are now involving 16-and-17-year-olds, and
18 that's because with cases -- all the
19 misdemeanors under the law go immediately to
20 Family Court. And the felonies -- most of
21 the nonviolent felonies have to begin in the
22 criminal court. And under the statute,
23 everyone expects that most of the nonviolent
24 felonies will then be transferred to Family

1 Court within a 30-day period. And that
2 leaves the violent felonies, of which --
3 obviously that's a minority, a much smaller
4 percentage of the overall cases. Some of
5 those will stay in criminal, some of those
6 may be transferred to Family.

7 ASSEMBLYMAN LENTOL: So I'm just
8 wondering, when you're talking, just thinking
9 about the youth parts that haven't been
10 created around the state. Is that process in
11 motion.

12 CHIEF ADMINISTRATIVE JUDGE MARKS: In
13 the criminal courts.

14 ASSEMBLYMAN LENTOL: Yeah, criminal
15 court. Is that process in motion now to get
16 ready for when --

17 CHIEF ADMINISTRATIVE JUDGE MARKS:
18 Absolutely, yeah.

19 ASSEMBLYMAN LENTOL: And have there
20 been slots filled for youth parts in parts of
21 the state where they don't have them now?

22 CHIEF ADMINISTRATIVE JUDGE MARKS:
23 There will be judges selected and trained to
24 sit in those youth parts. And that's

1 happening over the next eight months, leading
2 up to October 1st.

3 But to finish what I was saying, the
4 number of overall cases will be smaller
5 because when cases go to Family Court, the
6 first step is the case goes to -- before a
7 case is actually filed, before there's a case
8 officially filed in the Family Court, the
9 case goes to Probation, and Probation can
10 adjust the case, meaning it can divert the
11 case from ever going into the Family Court.
12 It can take the youth and put them in a
13 program, supervise them. And many of these
14 cases, particularly the misdemeanors, will be
15 adjusted, will be diverted from Family Court.

16 So we're absolutely going to end up
17 with more cases in Family Court, obviously,
18 than we have now. But overall criminal court
19 will have far, far fewer of these cases.
20 Family Court will have more. But a lot of
21 the cases will be funneled out of court
22 entirely through the adjustment process.

23 But we can't really predict today how
24 many of those cases will be diverted out

1 until we have some experience with this. So
2 it's sort of a long way of answering your
3 question. In the first stage, we will not
4 need additional judges, we'll be able to --
5 we may have to reallocate some judges from
6 the criminal side to the family side, but for
7 the initial stages of the new law, I believe
8 we'll have enough judges.

9 But down the road, you know, we'll
10 have to see. We'll have to see, you know,
11 how many -- you know, what the real
12 additional burden is on Family Court. We
13 won't know that right away.

14 ASSEMBLYMAN LENTOL: Thank you. I
15 know I'm not going to be able to ask all the
16 questions that I want, so I just want to go
17 through some of the ones that are really
18 important and timely now.

19 The first one is we have folks in
20 court, human trafficking cases, victims as
21 well as defendants, and I'm hearing that ICE
22 has taken over those parts in an effort to
23 try and get people into custody in order to
24 deport them. And that's a really sad

1 situation, I believe, and I wonder if there's
2 something that your operation can do to stop
3 that from happening or at least interfere in
4 some way to prevent that from happening.
5 Because, you know, human trafficking is such
6 a bad thing that we ought not to stop it from
7 receiving the proper criminal justice it
8 deserves.

9 CHIEF ADMINISTRATIVE JUDGE MARKS:
10 It's a -- this is a complicated situation.
11 If I could just have a few minutes, I'll
12 explain it.

13 So the court system for years has
14 allowed law enforcement to come into the
15 courthouses and take people into custody.
16 NYPD has done this for many, many, many
17 years, without controversy. State Police
18 have done this. Out of state law enforcement
19 agencies have come into our state courthouses
20 and taken people into custody. We've
21 permitted this. In fact, ICE has done this
22 in the past. In prior years, ICE has come
23 into the courthouses and taken people into
24 custody.

1 So we have allowed this. What
2 happened this year has sort of changed the
3 whole dynamic. As ICE has made more
4 appearances in court, it has not been through
5 the roof. I think -- and we're keeping very
6 close track of this, whenever ICE comes in.
7 Whether they take someone into custody or
8 not, we file one of these -- we prepare one
9 of these Unusual Incident Reports which I
10 mentioned a few minutes ago, and we track
11 this and we evaluate it.

12 But the problem is we've been asked to
13 prevent ICE from doing that, to either bar
14 them from coming into the courthouses or, if
15 they have to come into the courthouses, to
16 prevent them from making arrests. It puts
17 the court system in a very awkward and
18 difficult position, because of course we are
19 neutral. We have to be, as the Judiciary.
20 We can't take a position about policies,
21 immigration policies in Washington, whether
22 they're good or bad. Individual people have
23 their own personal views on that, but
24 institutionally we have to be neutral.

1 And it makes it very difficult for us
2 to say, okay, well, we'll allow these law
3 enforcement agencies to come into the
4 building and make arrests, but we don't like
5 you and you, and we're not going to allow you
6 to come in and make arrests. So it's a
7 complicated situation.

8 But one thing we have been -- I've
9 been directly involved with this, and the
10 Office of Court Administration. We have a
11 line of communication with ICE officials on
12 the regional level in New York and through
13 our national organizations -- the National
14 Center for State Courts, the U.S. Conference
15 of Chief Justices, the U.S. Conference of
16 Chief Court Administrators -- we have a line
17 of communication with ICE officials and
18 Homeland Security officials in Washington,
19 and we've asked them to designate courthouses
20 as sensitive locations.

21 Which is they have a policy where
22 they've designated churches, schools, houses
23 of worship, a few other institutions as
24 sensitive locations, meaning they will not go

1 and take people into custody in those places
2 unless there's some extreme exigency or, you
3 know, some emergency.

4 At this point they have declined to
5 expand their policy about sensitive locations
6 to include courthouses. However, they have
7 agreed to sort of unofficially, on the
8 regional level -- and I think we're about to
9 see a policy released very shortly on the
10 national level -- that ICE will not go into
11 non-criminal courtrooms or -- well, first of
12 all, we don't allow them to go into
13 courtrooms and arrest people. The arrests
14 have to take place outside of the courtroom.
15 But they are in agreement that they will not
16 go into non-criminal courthouses.

17 So they are not going into Family
18 Court, they're not going into Small Claims
19 Court, they're not going into Landlord-Tenant
20 Court.

21 And human trafficking court, there was
22 unfortunately an incident last June where --

23 ASSEMBLYMAN LENTOL: Excuse me, Judge.
24 I just had one last question. I don't mean

1 to stop you in mid-sentence, but I really
2 wanted to hear more about the opioid courts
3 in the Bronx and the ones in Buffalo, because
4 these are cutting-edge and I want everybody
5 to know about them because it may not come up
6 in this hearing.

7 CHIEF ADMINISTRATIVE JUDGE MARKS:

8 This is obviously, you know, a very, very
9 serious crisis across the state. And we feel
10 there's an important role for the court
11 system to play. We're trying to take a
12 leadership role with the stakeholders, the
13 DA's offices, the defense bar, the treatment
14 community and take the problem-solving court,
15 the drug court model, and apply it to opioids
16 but step it up a number of levels.

17 So in Buffalo, a court that's gotten
18 national attention, you know, a lot of
19 recognition across the country, the -- it's
20 sort of drug court, you know, very much
21 stepped up. The defendants who come in on
22 drug possession and other charges, there's an
23 evaluation done of all of them. And if it's
24 determined that they have an opioid addiction

1 or the potential to become addicted to
2 opioids, they're -- this is all voluntary,
3 it's on consent of the defendant and the
4 defense lawyer -- they will go into immediate
5 detox and intensive residential treatment,
6 which usually involves medically assisted
7 treatment, methadone or another type of
8 medically assisted maintenance drug.

9 And when they come out of treatment,
10 they will go back to court every day for
11 30 days, so they see the judge every day and
12 the judge can talk to them and observe them.

13 And it's not a simple program to put
14 in place, and it's not inexpensive. We did
15 get some federal money to support the program
16 in Buffalo. But it's really been
17 tremendously successful. There have been far
18 more people that have gone through the
19 program than was originally anticipated. It
20 was opened last May. There have been over
21 200 participants in the program.

22 Unfortunately, there was one death,
23 but only one death, which is actually a
24 remarkable statistic considering the

1 population that we're talking about here.

2 So we want to -- it may be difficult
3 to expand that exact model because it's very
4 expensive, and bringing the defendants back
5 to court every day for 30 days may not be
6 practical in some jurisdictions around the
7 state. But we want to implement some aspect
8 of the Buffalo opioid court in as many
9 jurisdictions around the state as we can.

10 ASSEMBLYMAN LENTOL: Thank you,
11 Your Honor.

12 CHAIRWOMAN YOUNG: Thank you.

13 Our next speaker is Senator Hoylman.

14 SENATOR HOYLMAN: Thank you, Judge.
15 Very good to see you.

16 CHIEF ADMINISTRATIVE JUDGE MARKS:
17 Good to see you.

18 SENATOR HOYLMAN: A couple of
19 questions, some of them brief.

20 In connection with the time clock
21 requirement that the budget has proposed, do
22 you see -- first, how unprecedented is that
23 for an Executive to propose something of that
24 nature? And do you see any constitutional

1 issues?

2 CHIEF ADMINISTRATIVE JUDGE MARKS: We
3 haven't researched it. You know, there's --
4 some have suggested that it would implicate
5 separation-of-powers concerns. But I
6 don't -- I really can't sit here -- honestly,
7 I can't sit here and sort of weigh in on that
8 because we haven't researched it at all, but
9 some have suggested that.

10 Is it unprecedented? I've never --
11 I'm not aware that it's ever been suggested
12 here in New York. Is any similar process in
13 place in any other state in the country? I'm
14 not sure, but I'm not aware. I've never
15 heard of a process like that in any other
16 state.

17 But it's something that, you know, we
18 plan on looking into and determining whether
19 we would be the first state to implement such
20 a process if the proposal is enacted into
21 law.

22 SENATOR HOYLMAN: Thank you.

23 Second -- and I appreciate the work
24 you've done in reducing backlog across the

1 state. These numbers, these percentage
2 decreases are impressive. What are your
3 goals for next year in terms of reducing
4 caseload?

5 CHIEF ADMINISTRATIVE JUDGE MARKS: The
6 goals for next year -- and I'm speaking in
7 general terms. But outside of the city, with
8 some exceptions maybe on Long Island, outside
9 the city, upstate New York, we've done
10 extraordinarily well. We've for the most
11 part achieved the goals that we set out to.

12 We're not -- you know, we have
13 something called standards and goals in the
14 court system, and they're not statutory
15 guidelines or parameters, they're sort of
16 involuntary aspirational guidelines that
17 we've set. And the timetables vary depending
18 on the type of case. Felonies are different
19 from misdemeanors and criminal cases are
20 different from civil cases and Family Court
21 is different.

22 But generally speaking, we -- we're
23 not saying that there should be no cases over
24 these standards and goals deadlines. Not

1 every case is the same, and some cases
2 obviously take longer than others. But, you
3 know, unofficially we're trying to achieve
4 the goal of at every level of court there are
5 no more than 10 percent of the cases over
6 standards and goals.

7 And we've succeeded in doing that in
8 many parts of the state. It's proving more
9 difficult, not surprisingly, in the
10 highest-volume jurisdictions in New York City
11 and in some places upstate and in some courts
12 on Long Island. So our --

13 SENATOR HOYLMAN: What's the
14 percentage over standards in New York City?

15 CHIEF ADMINISTRATIVE JUDGE MARKS:
16 Well, in felony cases it's currently around
17 50 percent. It's way too high. And we have
18 a number of ideas. That is an absolute
19 priority for us, and it may be our top
20 priority, are the continuing backlogs of
21 older felony cases, particularly in New York
22 City. Because in some of those cases people
23 are, you know, presumed innocent sitting in
24 jail -- not all, but enough -- and we have to

1 move those cases more quickly.

2 We have a number of ideas for that,
3 some new ideas. I don't want to speak too
4 much about this today because the Chief Judge
5 will be addressing that in some detail in her
6 State of the Judiciary speech a week from
7 today. But that's an absolute priority for
8 us.

9 On the civil side, Supreme Court civil
10 cases in New York City, where we've made some
11 real progress in some counties, not as much
12 progress in some other counties, I would say
13 the percentage of cases over the standards
14 and goals that apply in the civil term of
15 Supreme Court, about 30 percent are over
16 standards and goals. So it's better than the
17 felony courts, but still a long way to go.

18 And I should add that some of those
19 courts -- not Manhattan, but Bronx, Queens,
20 Brooklyn and Staten Island -- were deluged by
21 foreclosure filings --

22 SENATOR HOYLMAN: So the goal is to
23 get to 10 percent next year?

24 CHIEF ADMINISTRATIVE JUDGE MARKS: The

1 goal is to get to 10 percent, ideally within
2 the next year, correct.

3 SENATOR HOYLMAN: I wanted to ask you
4 about a proposal in the Executive Budget
5 called the Child Victims Act. I think -- are
6 you familiar with that legislation that would
7 raise the statute of limitations for crimes
8 of child sexual abuse?

9 CHIEF ADMINISTRATIVE JUDGE MARKS:
10 Yes.

11 SENATOR HOYLMAN: And how much
12 preparation has your department done in
13 anticipation of its passage? Have you
14 examined the specifics of the bill? And do
15 you see any concerns in implementation for
16 such legislation?

17 CHIEF ADMINISTRATIVE JUDGE MARKS:
18 Look, I don't -- you know, I am generally
19 familiar with the bill. I haven't read it,
20 I've read the newspaper accounts about the
21 bill. So I'm not an expert on that proposal.

22 But my reaction is -- sort of
23 unofficially, without studying the bill
24 itself -- is that, you know, any concern that

1 we might have would be is there going to be a
2 flood of new cases that, you know, will add
3 to our case inventories and further, you
4 know, frustrate what we're trying to do with
5 the court system these days, which is to
6 eliminate delays and backlogs.

7 And I have to say I don't expect that
8 that proposal would lead to a flood of new
9 cases. There would be additional criminal
10 cases, but I think we would be able to
11 accommodate them. It would be nothing like
12 the flood of foreclosure cases that we saw
13 with housing foreclosure, the mortgage crisis
14 from a number of years ago.

15 I'm pretty sure we'd be able to
16 accommodate any additional cases that
17 resulted from passage of that law.

18 SENATOR HOYLMAN: The Governor's bill
19 in the budget does not allow for a six-month
20 delay before implementation. Do you think
21 that you would need some period for
22 preparation if it passed in the budget?

23 CHIEF ADMINISTRATIVE JUDGE MARKS: You
24 mean the speedy trial proposal?

1 SENATOR HOYLMAN: No, I'm talking
2 about the Child Victims Act itself.

3 CHIEF ADMINISTRATIVE JUDGE MARKS: Oh,
4 I'm sorry.

5 Well, look, it's always good when the
6 law changes if there's some lead time to --
7 with the Raise the Age, there was,
8 fortunately -- and that was something that I
9 was urging last year, is, you know, the
10 Legislature will figure out the policy --
11 resolve the policy differences, but just give
12 us time to implement the law. And with Raise
13 the Age there was a fair amount of lead time,
14 which was very helpful.

15 So with something like this, I don't
16 think we'd need that much lead time -- you
17 know, a full year, a year and a half. But
18 some lead time is always helpful.

19 SENATOR HOYLMAN: Six months?

20 CHIEF ADMINISTRATIVE JUDGE MARKS:
21 Sure.

22 SENATOR HOYLMAN: Thank you very much.

23 CHIEF ADMINISTRATIVE JUDGE MARKS:
24 Thank you.

1 CHAIRWOMAN WEINSTEIN: We've been
2 joined by Assemblyman Morinello and
3 Assemblywoman Latoya Joyner.

4 And next, to our ranker on Judiciary,
5 Mr. Palumbo.

6 ASSEMBLYMAN PALUMBO: Good morning,
7 Your Honor, how are you?

8 CHIEF ADMINISTRATIVE JUDGE MARKS:
9 Good morning.

10 ASSEMBLYMAN PALUMBO: I've just got a
11 quick comment, a couple of quick comments,
12 and most of my questions have been answered.
13 And then I have just one question for you.

14 And by the way, great work on dealing
15 with the standards and goals, cleaning up
16 those lists. I have several friends on the
17 bench who have said you've run a real tight
18 ship for the past few years and you've made
19 great strides in the direction. So thank
20 you.

21 The request for the \$44.4 million, an
22 increase of 2 percent, regarding the
23 staffing -- and this is coupled with the
24 Executive Budget request that judges submit

1 essentially time sheets certifying their
2 duties. And in my experience -- I've been
3 practicing for 20 years, and I've only been
4 in politics a few years. I realized after
5 about 15 years that people don't like
6 lawyers, so I thought I'd get into politics
7 because they're so highly regarded.

8 (Laughter.)

9 ASSEMBLYMAN PALUMBO: But the judges
10 are there, certainly, for at least eight
11 hours. They're taking work home in all the
12 courts. And for example, in Suffolk County
13 where I'm from, many of these courts have
14 between 1200 and 1500 motions pending as we
15 speak. So they're trying to crank out five
16 or six decisions a day to just try and keep
17 up, including handling calendar, obviously,
18 and trial and so forth.

19 So my question is with regard to that
20 44 million and change, how much of that will
21 be allocated for staff? Because I think
22 that's where the issue lies, from a practical
23 standpoint -- that many people I've spoken
24 with, it's -- they're there and they're

1 working very hard to try and keep up with
2 their caseload. In light of these cuts that
3 they've never recovered from, they're really
4 struggling.

5 So how much of that would go
6 specifically to staff? If you cannot -- even
7 just a number, just generally -- is it the
8 bulk of it or -- what are your comments,
9 please, in that regard?

10 CHIEF ADMINISTRATIVE JUDGE MARKS: The
11 \$44.4 million additional money, the 2 percent
12 increase, the overwhelming amount of that
13 would be devoted to filling positions.

14 We -- it's hard to say with precision,
15 you know, as we sit here today, how many
16 positions we'd fill, because it depends on
17 how many people leave the court system. And
18 we lose, you know, a number of hundreds of
19 people every year. They retire, they go on
20 and do other things. And we've been able
21 fortunately -- for a number of years, we
22 weren't able to replace, you know, after the
23 2011 budget cuts and a few years afterwards,
24 we pretty much had a strict hiring freeze.

1 But, you know, with your help the last
2 few years, we -- with modest increases in our
3 budget, we have been able to replace people
4 when they leave -- when they left, and we've
5 been able to fill an additional number of
6 vacancies just beyond replacing the people
7 when they have left.

8 So -- but to answer your question, the
9 great majority of that money would be devoted
10 to hiring staff.

11 ASSEMBLYMAN PALUMBO: And hopefully in
12 addition to the current levels that we
13 presently enjoy.

14 CHIEF ADMINISTRATIVE JUDGE MARKS:
15 That's -- that's the goal. Because we're
16 still down from before 2011 -- 2009, 2010,
17 which was the high-water mark. We were down
18 2,000 employees in the court system -- it's a
19 lot of people -- in 2014, and we've built
20 that back, but not a whole lot. We're down
21 maybe 1650 employees still from where we were
22 before 2011.

23 So we've been trying to chip away at
24 that, you know, each year as best we can. I

1 don't see us ever going back to the
2 employment levels we had before 2011, but I
3 always say we don't have to. I think we're
4 functioning more efficiently, we're more
5 streamlined than we were a number of years
6 ago, and we can get by without filling all of
7 those vacancies, even if we were ever to get
8 enough money to do that, which is also
9 unrealistic, I think.

10 But there's no question that, you
11 know, we could benefit from more court
12 officers, court clerks, court reporters,
13 court interpreters, back-office staff. We
14 could use more staff, absolutely.

15 ASSEMBLYMAN PALUMBO: Certainly.
16 Thank you. And thank you for e-filing,
17 right? That helps us a little bit. Cleans
18 it up to a moderate extent.

19 CHIEF ADMINISTRATIVE JUDGE MARKS:
20 E-filing is great, yeah.

21 ASSEMBLYMAN PALUMBO: Yes, thank you,
22 Judge.

23 CHAIRWOMAN YOUNG: Thank you.

24 Our next speaker is Senator Bailey.

1 SENATOR BAILEY: Good morning, Judge,
2 how are you?

3 CHIEF ADMINISTRATIVE JUDGE MARKS:
4 Good morning.

5 SENATOR BAILEY: Wow, I was a little
6 loud, huh?

7 So at the risk of being duplicative of
8 my colleagues, I'd like to commend you and DA
9 Darcel Clark on the opioid court in the
10 Bronx. I look forward to learning more about
11 its implementation. Over 300 deaths in Bronx
12 County alone in 2017 due to opioid-related
13 matters. I'm glad we are treating it like
14 the public health crisis that it is and has
15 always been, which was not always treated
16 like -- it was treated like a criminal
17 justice issue when it should not have been.

18 Also I'd like to say I would like to
19 work with you and OCA on the implementation
20 of Raise the Age as that comes.

21 But my first question would be the
22 criminal justice reforms as have been
23 outlined in the Executive Budget by the
24 Governor -- bail reforms, speedy trial, and

1 to a lesser extent for OCA, discovery
2 reform -- what effect would that have on the
3 backlog, the current backlog?

4 CHIEF ADMINISTRATIVE JUDGE MARKS:

5 Well, discovery reform I think is very
6 important. We've had -- actually, the Office
7 of Court Administration has proposed criminal
8 discovery reform legislation for probably 25
9 years, if you can believe that. Maybe
10 longer.

11 Our view is that, you know, with
12 protections built in -- because prosecutors
13 do raise legitimate concerns about witnesses
14 and protection and risks to witnesses when
15 more discovery is turned over and it's turned
16 over earlier in the case. So there should be
17 protections built into any criminal discovery
18 reform legislation in that regard.

19 But as a general principle, if more
20 information is turned over in a criminal case
21 to the defense and it's turned over earlier
22 in the case, that will facilitate earlier
23 dispositions. If the evidence is clear to
24 both sides at an earlier stage, that -- it's

1 almost a truism, that will lead to earlier
2 disposition.

3 So, you know, properly crafted
4 criminal discovery reform perfectly
5 complements what we're trying to do in the
6 court system, which is speed the disposition
7 of cases and reach resolution of cases, you
8 know, at an earlier stage.

9 SENATOR BAILEY: I would most
10 certainly agree with you, as the first bill I
11 introduced in my long Senate career last year
12 was the bill concerning discovery reform. So
13 I am a hundred percent proponent of that,
14 earlier discovery will be better for both
15 sides.

16 Concerning the Access to Justice
17 Program, I have the pleasure of having as a
18 constituent Deputy Chief Administrative Judge
19 Mendelson.

20 What are we doing with the LEO
21 program? I do commend your efforts to
22 increase diversity in the legal profession.
23 Is that going to continue to be funded? And
24 if so, at what level?

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Well, Assemblywoman Joyner I think could
3 probably address that better than I could.

4 But it's funded through the Assembly,
5 am I correct? That's not -- that doesn't
6 come out of the legal services money that we
7 have in the Judiciary budget, it's separate
8 money. It's an excellent program. We
9 started it a number of years ago. We had to
10 disband it at some point for budget reasons,
11 but there's been funding provided the last
12 couple of years. We were very excited to
13 reinstitute the program.

14 And assuming we continue to get
15 funding from the Legislature, we have every
16 expectation of continuing that program.

17 SENATOR BAILEY: I also see that you,
18 in the testimony, indicated that there was
19 \$100 million for civil legal services, also
20 equally if not more important sometimes than
21 criminal legal services.

22 As you may know, the New York City
23 Council in New York City recently enacted the
24 Right to Counsel Law concern tenants' rights

1 in housing courts. Would OCA be amenable
2 to -- if the State Legislature were to come
3 up with such a proposal, would OCA be
4 amenable to something of the sort?

5 CHIEF ADMINISTRATIVE JUDGE MARKS:
6 Amenable to what?

7 SENATOR BAILEY: If this Legislature,
8 the State Legislature came up with something
9 along the lines of Right to Counsel
10 statewide.

11 CHIEF ADMINISTRATIVE JUDGE MARKS:
12 Well, that would be a great thing. I mean,
13 if every tenant in the state in an eviction
14 proceeding could have an attorney, that would
15 be a remarkable thing. So, you know, we
16 would be fully supportive of it.

17 But it would be a very expensive
18 proposition. I think in the City of New
19 York, where the local legislation is passed,
20 I think the price tag is in the neighborhood
21 of \$150 million just in New York City. And
22 there are a lot of eviction proceedings in
23 New York City, obviously, a big share of the
24 total statewide.

1 But look, you know, that people go
2 into court with the risk of losing the roof
3 over their heads and they do that without a
4 lawyer is disturbing and should be troubling
5 to all of us. And so if the State
6 Legislature ever approved legislation like
7 that and funded it, it would be a remarkable
8 thing.

9 SENATOR BAILEY: Thank you, Your
10 Honor. Nothing further.

11 CHAIRWOMAN WEINSTEIN: Thank you.
12 We've been joined by our Government
13 Operations chair, Crystal Peoples-Stokes.

14 And next for a question, Assemblyman
15 Titone.

16 ASSEMBLYMAN TITONE: Thank you,
17 Chairwoman.

18 Thank you, Judge. I really appreciate
19 the testimony that you gave. And actually we
20 had spoken very briefly about some of my
21 concerns about alternative dispute
22 resolution, and in your testimony you really
23 addressed those concerns, and I appreciate
24 that. And I hope that the Chief Judge will

1 further expand upon it in her State of the
2 Judiciary next week.

3 But I do want to go to a question that
4 is a little bit more parochial to Staten
5 Islanders. You know, we're known as the
6 epicenter of the opioid drug epidemic. We
7 had a Part N for a little bit over a year
8 that was successful, but then it was, without
9 real rationale, closed down. Can you explain
10 if there was a rationale and what that
11 rationale was for closing a drug court down?
12 You know, so we're now the only borough in
13 New York City that does not have one.

14 CHIEF ADMINISTRATIVE JUDGE MARKS: I'd
15 be happy to answer that question, because I
16 think there's a lot of confusion about that.
17 And I read -- I think it was an editorial in
18 the Staten Island Advance that was very
19 critical of the decision to close that court
20 part.

21 The court part was not working. It
22 was not a drug court, a drug treatment court
23 by any means. There was not a single -- over
24 the 16-month period that that court was in

1 operation, not a single case was diverted
2 under legislation that was passed by the
3 Legislature in 2009 to address the
4 Rockefeller Drug Laws, giving judges more
5 discretion to divert cases.

6 And by the way, the judge who sat in
7 the part is an excellent judge and nothing
8 I'm saying is in any way critical of that
9 judge. He's a very good judge.

10 But it wasn't functioning -- I don't
11 think it was ever designed to be a drug
12 treatment court. From the beginning, not a
13 single case was diverted out of that court
14 into drug treatment.

15 Secondly, there was only one trial
16 conducted in that part over the course of
17 16 months, a single trial.

18 And we came to the conclusion that the
19 part wasn't an effective use of court
20 resources. There is not a similar part in
21 any other borough in New York City except for
22 the Bronx, which has a part like that. It's
23 a post-indictment part for felonies where
24 they all go into one part. It's not set up

1 as a drug treatment court. It's nothing like
2 the opioid court.

3 It was -- we felt that it was not
4 succeeding --

5 ASSEMBLYMAN TITONE: So let me ask --

6 CHIEF ADMINISTRATIVE JUDGE MARKS: --
7 cases weren't being diverted to treatment,
8 and no trials were being conducted.

9 ASSEMBLYMAN TITONE: All right. Well,
10 you know, I mean to me that's not really
11 indicative of anything. I mean, there could
12 be settlements, there could be a disposition
13 nonetheless, whether by trial or some other
14 means.

15 My concern is that if you're telling
16 me that the narcotics part in Staten Island
17 wasn't really a drug court, then it begs the
18 question is there a drug court on
19 Staten Island. And what is OCA doing to help
20 Staten Islanders get into the treatment that
21 they deserve, just like every other borough?

22 CHIEF ADMINISTRATIVE JUDGE MARKS: No,
23 that's an excellent question. And let's
24 consider the sort of disbanding of that court

1 part Phase 1. Phase 2 is we should have a
2 real traditional, you know, effective
3 diversion part drug treatment court on
4 Staten Island. I agree with that completely,
5 and that should be the next step. And that's
6 something that we will work on achieving.

7 ASSEMBLYMAN TITONE: Sure. And I
8 think towards that goal, you know, Chairman
9 Dinowitz brought up the need for judges.
10 And, you know, OCA can look at it, well, you
11 know, the Constitution was written, you know,
12 years ago, it only has X number of words in
13 it -- but that still doesn't change the fact
14 that it exists. And that in Staten Island
15 we've created a judicial district, you know,
16 nearly a decade ago and we still do not have
17 the number of judges that we are
18 constitutionally entitled to.

19 And I think by addressing that problem
20 we can start to address the need for specific
21 court types -- our veterans courts, our
22 opioid courts, and things of that nature.

23 So, you know, I appreciate this, and
24 I'm hoping that, you know, these issues will

1 be addressed and that OCA will step up to the
2 plate on behalf of the people of
3 Staten Island and ask for the money to ensure
4 that we have what we're constitutionally
5 entitled to.

6 Thank you, Judge.

7 CHIEF ADMINISTRATIVE JUDGE MARKS:

8 Thank you.

9 SENATOR GALLIVAN: Senator Croci.

10 SENATOR CROCI: Thank you, Senator.

11 And thank you, Judge, for your appearance
12 here today.

13 I want to start by complimenting you
14 and Chief Judge DiFiore on the truly
15 remarkable work that's been done in Suffolk
16 County with the Veterans Court. Retiring
17 Judge Toomey, working with the Suffolk County
18 Sheriff's Department, working with the
19 Vietnam Veterans of America, have started
20 something that now different prosecutors and
21 different law enforcement groups and
22 charities from around the country are now
23 coming to Suffolk County for firsthand
24 knowledge of what is a truly remarkable

1 program with very, very low recidivism rates.

2 So it's something that should be
3 studied, and I want to commend you.

4 I also want to know if you believe
5 that they are adequately resourced -- I know
6 that comes out of their budget, there's no
7 specific line for it -- but if you believe
8 they're adequately resourced to continue and
9 expand that program.

10 CHIEF ADMINISTRATIVE JUDGE MARKS:

11 Well, I know that Veterans Court in Suffolk
12 County has been a success. I mean, it's been
13 a very successful program in many places
14 across the state. And I haven't heard
15 complaints that the Veterans court in Suffolk
16 is understaffed. But if it is, it's
17 something that we would look at and need to
18 address if that's the case. But I haven't
19 heard complaints about that.

20 SENATOR CROCI: Okay. I think I want
21 to associate myself with some of what
22 Assemblyman Palumbo said.

23 We talk to not only jurists but staff
24 and attorneys in and out of the Central Islip

1 Court Complex, and some of the delay --
2 because we're all concerned about speedy
3 trial and making sure that that process is as
4 efficient as possible -- some of the delay is
5 the staffing issues in actually moving
6 defendants from detention facilities up, and
7 there are inadequate court officers to do
8 that.

9 Are we comfortable that in this coming
10 budget cycle we will see additional staff in
11 places like the Central Islip Court Complex?

12 CHIEF ADMINISTRATIVE JUDGE MARKS: Our
13 goal is -- this is sort of a year by year
14 process. You know, as I said, we were down
15 2,000 employees at one point, in I think the
16 calendar year 2014, and we've been slowly but
17 somewhat steadily increasing our employment
18 levels. And it's certainly our hope and
19 expectation that that will continue this
20 coming fiscal year, including in Suffolk
21 County.

22 SENATOR CROCI: Thank you.

23 In addition, the reason I bring up
24 Central Islip Court Complex is you're no

1 doubt aware of the presence and the recent
2 killings in my community from MS-13, which is
3 a criminal syndicate -- narcoterrorists,
4 essentially -- who have a very, I would say,
5 robust and sophisticated distribution network
6 for some of the heroin and opioids that we've
7 seen on Long Island.

8 I'm concerned that we are ensuring
9 that that courthouse specifically has
10 adequate security, because it is right in the
11 center of what is now a joint federal, state
12 and local effort to not only eradicate it but
13 to make sure that there's no violence at
14 places where people come to seek justice.

15 To that end, you raise in your
16 testimony that you had been requested to bar
17 federal law enforcement from state
18 facilities. I just wanted to know where the
19 instruction or request came from.

20 CHIEF ADMINISTRATIVE JUDGE MARKS:
21 Well, we've been asked by a number of
22 individuals and groups, including public
23 officials, elected officials, criminal
24 defense advocates, immigration advocates,

1 domestic violence advocates. A whole range
2 of individuals, groups and organizations have
3 asked us to either bar ICE agents from coming
4 into the courthouses -- which by the way I
5 don't think would be constitutional. I don't
6 think we can prevent anyone from coming into
7 courthouses. They're public buildings. If
8 someone comes in and gets into a fight, we
9 can remove the person, obviously. But
10 generally speaking, whether we wanted to or
11 not, I don't think we can bar anyone from
12 coming into a courthouse.

13 But in lieu of that, we've been asked
14 to prevent ICE from arresting people in
15 courthouses.

16 SENATOR CROCI: This is just DHS, not
17 the FBI or the Department of Justice, they've
18 just requested one specific agency and
19 subcompartment of that agency?

20 CHIEF ADMINISTRATIVE JUDGE MARKS:

21 Yes.

22 SENATOR CROCI: And that's just a
23 public request? You haven't been given a
24 request -- there's no other direct in-writing

1 request to do this?

2 CHIEF ADMINISTRATIVE JUDGE MARKS:

3 There have been letters we've received on
4 this. There have been oral requests. There
5 have been meetings -- we've had meetings with
6 advocates to discuss their concerns. So it's
7 a combination of public statements, letters
8 we've received, and meetings we've had with
9 different groups and organizations.

10 SENATOR CROCI: And is there any
11 concern -- and this is my last question --
12 obviously there needs to be a federal fix to
13 legislation, particularly with regard to
14 immigration, no doubt. I think everyone
15 could agree that has to happen. But short of
16 that, under current U.S. law, under U.S.
17 Code, specifically 8 U.S.C. 1324, is it your
18 understanding that you would even have the
19 authority to do that without in some way
20 violating federal law?

21 CHIEF ADMINISTRATIVE JUDGE MARKS:

22 Well, that's a very good question, and I'm
23 not sure what the answer is.

24 Let me say this, though. We -- you

1 know, in the court system we -- for us to
2 function, people have to come to us.
3 Litigants have to come to us, witnesses have
4 to come to us, victims of crime have to come
5 to us. If they don't come into our buildings
6 and come into our courtrooms and participate
7 in court proceedings, we can't possibly do
8 what we're constitutionally established to
9 do.

10 So the concern that's been raised --
11 and again, I explained our policy. We have
12 to be neutral. We don't have institutional
13 views on what immigration policies are good
14 or what are bad. We're the court system,
15 we're neutral. But we do need to be
16 concerned about events taking place in the
17 courthouses that might result in substantial
18 numbers of people being afraid to come into
19 the buildings and participate in court
20 proceedings.

21 And so that's the concern. Which
22 is -- I think when this came up earlier, I
23 think Assemblyman Lentol raised the issue, I
24 started out by saying this is a very

1 complicated issue for us. And we're working
2 it through and, you know, trying to figure
3 out what the right and appropriate policy is
4 for the court system on a very difficult
5 issue.

6 SENATOR CROCI: Well, and we certainly
7 appreciate that. My community is reeling
8 from not only the murders that -- of brutal
9 murders of children, essentially, but also
10 this ongoing fear and intimidation within the
11 communities from these organizations that
12 essentially followed the people who came here
13 to live a life and have the American dream,
14 followed them from those countries and are
15 brutalizing those neighborhoods in our
16 communities.

17 So I appreciate your attention not
18 only to the issue but to the security at that
19 court complex. It's very important to my
20 community, very important to the families and
21 the mothers and fathers who lost children in
22 the last year and a half.

23 So thank you very much. And again, my
24 compliments to you and to Judge DiFiore for

1 the work that's being done on the Veterans
2 Court.

3 CHIEF ADMINISTRATIVE JUDGE MARKS:

4 Thank you.

5 CHAIRWOMAN WEINSTEIN: Thank you.

6 Next is Deputy Speaker Hooper.

7 ASSEMBLYWOMAN HOOPER: Thank you,

8 Madam Chair.

9 Good morning, Your Honor.

10 CHIEF ADMINISTRATIVE JUDGE MARKS:

11 Good morning.

12 ASSEMBLYWOMAN HOOPER: In the interest

13 of time, I'm going to just present the

14 questions that I'm seeking clarity on, and

15 then I will hope that you could help to

16 address them for me, please.

17 I'm going to be looking at pages 4, 5,

18 6 and 7 of your presentation. Pages 4, 5, 6

19 and 7.

20 On page 4 I would like to know what

21 type of jobs -- you indicated that you're

22 going to be hiring to fill the void of

23 employees who deal with what the Judiciary is

24 attempting to accomplish. I would like to

1 know who, how, when, where these type of jobs
2 will be announced and whether or not the
3 Nassau community constituents will be able to
4 participate with these positions, and would
5 they be widely advertised.

6 CHIEF ADMINISTRATIVE JUDGE MARKS:

7 Yeah, well --

8 ASSEMBLYWOMAN HOOPER: I'm going to
9 ask, and then I'll leave it to you. That's
10 one of the questions.

11 CHIEF ADMINISTRATIVE JUDGE MARKS:

12 Okay.

13 ASSEMBLYWOMAN HOOPER: I understand
14 also that the towns and the village courts
15 carry the largest burden of cost when it
16 comes to dealing with the judiciary in the
17 counties. That's another question. That's
18 on page 4.

19 On page 5, I would just -- I'll go to
20 page 6. The cases that are in the Family
21 Court -- and I see where you're talking about
22 the \$5.7 million in reference to increased
23 cases in the Family Court. Would you be kind
24 enough to explain how that can be addressed

1 economically and what type of resources do
2 you see going into the Family Court,
3 especially -- I'm speaking in terms of
4 Nassau County. That's on page 6, and that's
5 the fourth line.

6 On page 7, I see where you are seeking
7 to have non-attorneys to help with the
8 overload of legal work in the Judiciary. I
9 would like to know, how would this be
10 accomplished, and what impact on the
11 integrity -- or the legal implications
12 resulting from non-professionals representing
13 the clients?

14 So if you'd -- I'd appreciate it if
15 you would -- you may ask me again to go over
16 the questions.

17 CHIEF ADMINISTRATIVE JUDGE MARKS:
18 Okay. Maybe I could go backwards and start
19 with the last question.

20 ASSEMBLYWOMAN HOOPER: That's fine,
21 thank you.

22 CHIEF ADMINISTRATIVE JUDGE MARKS: You
23 know, we -- the -- what we call the justice
24 gap, the hundreds of --

1 ASSEMBLYWOMAN HOOPER: You're speaking
2 of the non-attorneys right now, right?

3 CHIEF ADMINISTRATIVE JUDGE MARKS:
4 Non-attorneys. Hundreds of thousands of --
5 despite all the good work that we've all
6 done, and there's more money for lawyers to
7 represent people in civil cases who can't
8 afford them, and there's been more pro bono
9 work that the bar has stepped up to
10 perform -- there's still what we call a big
11 justice gap in New York. There's still far
12 too many people who need a lawyer and can't
13 afford one and don't get one, even though
14 that problem is improving in recent years.

15 And we feel that there's -- like the
16 medical profession, you know, when you go
17 into a doctor's office or into a hospital,
18 there are nondoctors who perform a lot of the
19 work. You know, we still need doctors, of
20 course, to perform surgery and to make
21 diagnoses and do all the critically important
22 things that doctors do, but there are all
23 kinds of other professionals in the medical
24 profession that assist people with health

1 problems.

2 And we think that the court system,
3 the justice system, really could borrow from
4 that and make more use of nonlawyers who
5 cannot practice law, they can't provide legal
6 advice, they can't go into court and
7 represent people, they can't write briefs,
8 they can't try cases. But nonlawyers can
9 provide services to people in need of them.
10 They can help them fill out forms, they can
11 help them explain kind of the court system
12 and where to go and what to do when people
13 are representing themselves in court. They
14 can help them with agencies in terms of
15 getting benefits. There's a whole range of
16 things that nonlawyers can perform. And they
17 need to be trained before they do that, but
18 we've sort of tried to branch out in that
19 area and provide some leadership to bring in
20 nonlawyers to assist and support people who
21 have legal problems and can't afford a
22 lawyer. Again, not giving them legal advice,
23 not acting as lawyers, but doing a whole
24 range of other things that nonlawyers can do

1 and are legally permitted to do to help
2 people.

3 ASSEMBLYWOMAN HOOPER: So you would be
4 offering training to those personnel.

5 CHIEF ADMINISTRATIVE JUDGE MARKS:
6 Training is a key part of it, absolutely.

7 ASSEMBLYWOMAN HOOPER: Would they be
8 volunteers, or would they be entitled to --

9 CHIEF ADMINISTRATIVE JUDGE MARKS:
10 Generally we're relying on volunteers.
11 Students have proven to be a good resource;
12 sometimes they can get academic credit for
13 providing this service. But generally we're
14 talking about volunteers, yes.

15 ASSEMBLYWOMAN HOOPER: Thank you.

16 What is the position of the bar
17 association --

18 CHAIRWOMAN WEINSTEIN: I'd like to try
19 and move on. If we could just be concise as
20 we go forward, we still have a lot of -- we
21 have a long day ahead.

22 ASSEMBLYWOMAN HOOPER: All right.
23 What is the bar association position on this?
24 The bar association, what is their position

1 on bringing in volunteers to --

2 CHIEF ADMINISTRATIVE JUDGE MARKS: I
3 think the bar association -- I don't want to
4 speak for it. We have about a hundred
5 different bar associations in New York, and
6 they don't always --

7 ASSEMBLYWOMAN HOOPER: I'm speaking
8 Nassau County.

9 CHIEF ADMINISTRATIVE JUDGE MARKS: Oh,
10 Nassau County Bar? I'm not sure, but I think
11 the bar associations have generally been
12 supportive but have warned that we have to be
13 very careful in how nonlawyers are used and
14 that they don't cross the line into
15 practicing law. But in general, I think bar
16 associations support the notion of having
17 trained nonlawyers helping to address the
18 justice gap in the state.

19 ASSEMBLYWOMAN HOOPER: In the interest
20 of time, Madam Chair, just one last issue.

21 In reference to the jobs that you're
22 going to be seeking to fill, how will that
23 translate into persons applying for the
24 jobs -- the type of jobs, how will they be

1 advertised, and what impact would that have
2 on those persons who are seeking the jobs?
3 How would they know and when, and when do you
4 plan to do this and how do you plan to do it?

5 CHIEF ADMINISTRATIVE JUDGE MARKS:

6 Well, most of the jobs in the court system
7 are civil service jobs, meaning people have
8 to take a test, they score on the test, they
9 go on a civil service list, which is -- their
10 ranking is based on how they performed on the
11 test. And particularly the positions that we
12 need to fill in the court system, where there
13 are shortages -- the court officers, court
14 clerks, court reporters, a lot of the
15 back-office staff -- most of those employees,
16 if not all of them, are civil service
17 employees, meaning they have to take a test
18 to get on the list.

19 So, you know, we feel it's very
20 important that when we have a test, when we
21 provide a civil service test that people take
22 so that they can qualify to get on the list,
23 that there be a lot of outreach in the
24 community and that we be reaching to all

1 segments of the community so people know
2 about the test and they have time to prepare
3 for it. And we do a lot of outreach in our
4 human resources department, and without going
5 into all the details, we'd be happy to share
6 with you some of the materials and
7 information on the outreach that we provide.
8 And we'd be interested in any suggestions you
9 have to do a better job in reaching out to
10 communities when we have a civil service
11 exam.

12 ASSEMBLYWOMAN HOOPER: Thank you very
13 much.

14 CHIEF ADMINISTRATIVE JUDGE MARKS:
15 You're welcome.

16 SENATOR GALLIVAN: Senator Krueger.

17 SENATOR KRUEGER: Good morning, Judge.

18 CHIEF ADMINISTRATIVE JUDGE MARKS:
19 Good morning.

20 SENATOR KRUEGER: I think it's still
21 morning -- yes, it is.

22 So the Governor has proposed a number
23 of significant changes to our criminal
24 justice system which would impact the courts,

1 so they may impact other people who are
2 testifying today. But I'd just like a little
3 clarification from you about how you
4 understand the language of the Governor's
5 proposal for bail reform, where there's a
6 "notwithstanding" clause that actually allows
7 the DAs to, at their request, override a
8 judge's decision not to require bail.

9 Are you familiar with that paragraph
10 in his bill? I'll try to read it, but --

11 CHIEF ADMINISTRATIVE JUDGE MARKS: You
12 know, it's -- I'm familiar with the bill. I
13 want to spend more time with it. I have a
14 lot of questions myself. But if you could
15 help me with that one particular provision.

16 SENATOR KRUEGER: Okay. I'm trying to
17 read very small print -- sorry.

18 "Notwithstanding the above" -- it's a
19 reference -- it's in the bail reform
20 section -- "in cases where the prosecutor
21 indicates that it intends to" -- so sorry --
22 something for -- I apologize. Let me just
23 see if I can get it larger.

24 CHIEF ADMINISTRATIVE JUDGE MARKS:

1 You're trying to read a bill off of a phone.

2 SENATOR KRUEGER: I'm reading
3 incredibly tiny print off my phone. I
4 apologize. Oh, thank you so -- this will
5 work better. Staff is so helpful. Thank
6 you, Dorothy.

7 "Notwithstanding the above, in cases
8 where a prosecutor indicates an intent to
9 move for pretrial detention, as set out in
10 Article 545 of this title, the court shall
11 commit the defendant to the custody of the
12 sheriff."

13 So I read this and think, compared to
14 existing law, this actually gives the DAs the
15 ability to actually override what we think of
16 as a bail reform proposal whenever they want,
17 and doesn't leave the judge any discretion
18 where the judges have discretion now.

19 CHIEF ADMINISTRATIVE JUDGE MARKS: I'd
20 have to read that more closely. But that may
21 be, as I understand the bill from what I've
22 read, that when there's someone who's
23 eligible for pretrial detention -- and that's
24 a limited number of defendants under this

1 bill, certainly -- there's a limited, brief,
2 automatic remand or detention of the person,
3 and then they would come back into court
4 within a certain -- within five days for a
5 hearing on whether they can continue to be
6 detained.

7 If I'm reading it correctly. I may
8 not be reading it correctly. But that's my
9 understanding of the bill, that there's --
10 for a relatively small number of defendants
11 who can be detained pretrial. And this bill
12 certainly -- that number of defendants would
13 be much smaller under this bill than it is
14 now under current law. For that narrow group
15 of defendants, there would be an automatic
16 detention, pretrial detention, at the very,
17 very beginning of the case, but they then
18 have to come back into court within five days
19 for a hearing on the question of whether
20 detention should continue.

21 SENATOR KRUEGER: So I'm reading it
22 too broadly, so I need to revisit that.

23 CHIEF ADMINISTRATIVE JUDGE MARKS:
24 Maybe. Maybe.

1 SENATOR KRUEGER: Maybe. Okay, thank
2 you.

3 And a follow-up same theme on the
4 speedy trial -- no, excuse me, not on the
5 speedy trial, on the discovery reform. So it
6 would create a model where we would have an
7 obligation to follow discovery reform as the
8 vast majority of states in this country do,
9 but it would allow the prosecutors to redact
10 any and all information. Don't we think that
11 both defense attorneys and DAs are both
12 officers of the court and should have access
13 to the same information?

14 CHIEF ADMINISTRATIVE JUDGE MARKS:
15 Well, as I was saying before, that with
16 criminal discovery reform you want to write
17 in some protections where there are, you
18 know, legitimate, genuine risks of safety to
19 witnesses. But exactly how you do it, you
20 know, that's going to be debated on this
21 bill.

22 But one approach you could take is in
23 the first instance to give the prosecutor the
24 authority to redact, you know, in their

1 discretion -- but perhaps that could be
2 challenged by the defendant, and the judge
3 would ultimately have to make the decision.
4 The judge, in camera, you know, meaning on
5 his or her own, could review the materials
6 and there could be a judicial determination
7 about whether or not there was appropriate
8 grounds to redact the name and identity of a
9 prosecution witness.

10 Of course that would be more work for
11 the courts, and we're not necessarily out
12 looking for more work. But on the other
13 hand, that might be a satisfactory resolution
14 of this dispute about how much authority
15 should the prosecutor have to make the
16 redaction determination, should it be
17 unilateral authority or should there be a
18 review of that decision by a judge.

19 SENATOR KRUEGER: So the reverse,
20 though, also would take place, that the DA
21 goes to the judge in cases where they
22 actually think that redacting is necessary.
23 And so it would have the same impact, but
24 with less work on the courts.

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Right. Right.

3 SENATOR KRUEGER: Because I'll tell
4 you I support the Governor's proposals in
5 these areas, but I worry that all of them are
6 set up in a way that it adds to delays in the
7 court and more work for the court, and I
8 don't think that's anyone's intention. Do
9 you share that concern?

10 CHIEF ADMINISTRATIVE JUDGE MARKS:

11 Under the bail statute, there are these
12 hearings that would be required. But there's
13 no getting around that, because you can't --
14 under Supreme Court case law, which I have
15 read, you can't detain a person on the
16 grounds that they're a risk to public safety
17 without a hearing.

18 So if there's going to be sort of --
19 in this proposal if -- you know, the law in
20 New York now is that a person can't be
21 detained -- there's only one standard that
22 applies, is the person a risk of failure to
23 return to court if they're released. If
24 you're going to add to the law giving judges

1 the authority to detain people pretrial
2 because they're a risk to public safety --
3 and most people agree if you're going to get
4 rid of bail in misdemeanor cases and the
5 lesser -- and do all these other things,
6 reform the bail statute -- that should be a
7 part of it. That's going to mean more work
8 for the courts. There's no getting around
9 that.

10 But look, if the Legislature decides
11 that, you know, the bail statutes need to be
12 reformed -- and there's a very good argument
13 that they do, certainly -- if it means some
14 additional extra work for the courts, you
15 know, we'll do the additional work. I mean,
16 we're not going to stand in the way of bail
17 reform because it will mean additional work
18 for the courts. Hopefully it's not an
19 enormous amount of additional work, and the
20 bill -- the current version of the Governor's
21 bill I don't think would cause tremendous
22 additional burdens on the courts, but there
23 would be some additional work.

24 With the discovery statute, if a

1 prosecutor's redaction of witness identity
2 was reviewable by a judge, that also would
3 lead to some additional work for the courts.
4 But as I was saying earlier, overall,
5 criminal discovery reform, if information is
6 turned over sooner in the case, that will be
7 a good thing for the courts. Because I
8 believe very strongly that that will lead to
9 earlier dispositions of criminal cases.

10 SENATOR KRUEGER: Thank you very much.

11 CHIEF ADMINISTRATIVE JUDGE MARKS:

12 You're welcome.

13 CHAIRWOMAN WEINSTEIN: So we've been
14 joined by Assemblyman Blake.

15 And before we go to the next speaker,
16 I just want to apologize in advance that
17 there's a need for a number of the members to
18 go to a Ways and Means Committee meeting.
19 Maybe that actually will be positive --

20 (Laughter.)

21 CHAIRWOMAN WEINSTEIN: -- since you've
22 been in here a bit.

23 So Assemblyman Montesano.

24 SENATOR KRUEGER: If I can just -- oh,

1 I'm sorry, I apologize. We've been joined by
2 Senator Sanders and Senator Brian Benjamin
3 since the last time we were naming people.

4 Thank you.

5 ASSEMBLYMAN MONTESANO: Thank you,
6 Madam Chair.

7 Good morning, Judge.

8 CHIEF ADMINISTRATIVE JUDGE MARKS:
9 Good morning.

10 ASSEMBLYMAN MONTESANO: Judge, I know
11 there's been a lot of progress made in
12 different areas -- you spoke several times
13 today about personnel matters and being able
14 to replace personnel as they retired, and I'm
15 happy to hear of that.

16 But my big concern is what efforts are
17 being made to replenish the ranks that we
18 lost over the years? I mean, I know
19 throughout the court system we're down, but
20 especially on Long Island. And we talk about
21 Nassau and Suffolk, and I know we're down
22 significant numbers of court personnel. I
23 mean, the clerks have a big problem, and
24 especially court officers.

1 And I know Senator Croci touched on
2 that before, because Nassau County has seen a
3 big influx of MS-13 arrests and cases in
4 progress. And I know it takes, you know,
5 many more court officers to protect the
6 courts in those type of circumstances.

7 So what efforts are being made --
8 because in the past years we've sat here and
9 we've always given additional money to OCA
10 for the budget for these things. What
11 progress are we seeing with not only
12 replacing your existing personnel as they
13 retire, but increasing the ranks in the area
14 of clerks and court officers?

15 CHIEF ADMINISTRATIVE JUDGE MARKS: I'd
16 say, to be fair in answering that question,
17 we've seen slow but steady progress. And
18 we're -- and I can get you the exact number,
19 and, you know, it literally changes week to
20 week.

21 But we were down -- as I mentioned
22 before, a few years ago we were down 2,000
23 employees from the time before the budget
24 cuts and the hiring freeze that we were

1 required to impose as a result of that, and
2 now we're between -- I'd say about 1650
3 employees down. So we're replacing people
4 when they leave, and that's critical, but
5 we've also been able to fill a modest number
6 of additional vacancies so that we've gained
7 back 350 of the positions that we lost.

8 ASSEMBLYMAN MONTESANO: But so of
9 those positions that we lost -- the 350, how
10 is that personnel being distributed
11 throughout the court system?

12 You know, because, you know, of course
13 we all have our own little selfishness here.
14 So when we talk about Long Island or Nassau
15 and Suffolk counties, how is that 350 -- what
16 percentage of that is being allocated to
17 those counties?

18 CHIEF ADMINISTRATIVE JUDGE MARKS:
19 Well, off the top of my head I can't talk
20 about individual counties. But I can tell
21 you in general terms attrition between
22 New York City and outside New York City. And
23 outside New York City is a big geographical
24 region, and to some extent, a county like

1 Nassau may have more in common with Queens
2 than it does with Wyoming County upstate.

3 But the attrition inside the city has
4 been about the same as the attrition outside
5 the city in terms of numbers. And filling
6 positions has also been about the same.
7 We've filled about -- this is over the last
8 year, but I think it's true over the last
9 several years -- we've filled about the same
10 number of positions inside New York City as
11 we have outside New York City.

12 And I know in Nassau -- look, I'm not
13 going to disagree with you, Nassau could
14 benefit from some additional hiring. But I
15 do think we've been -- we have no favorites.
16 You know, we don't favor one part of the
17 state over the other or one county over the
18 other. And we distribute the funding and the
19 authorization to fill positions, you know,
20 very fairly. And I think the result of that
21 has been that the filling of positions inside
22 New York City has been essentially equal to
23 the filling of positions outside of New York
24 City.

1 ASSEMBLYMAN MONTESANO: Judge, I just
2 want to touch on just one other item.

3 So I'm aware of a situation where the
4 clerks for a long number of years are working
5 out of title within the system. And I know
6 you've been endeavoring over maybe the last
7 two years to try and come up with a
8 resolution to this or to address it.

9 What progress, if anything, is being
10 made, you know, for these people that are
11 working out of title for a number of reasons,
12 and so either they're not getting properly
13 compensated or the right amount of work, you
14 know, needs to be done in different
15 departments? Because we know backroom
16 operations are a significant component of the
17 operation of the courthouse.

18 You know, you touched earlier about --
19 you know, when they were talking about making
20 sure judges are there, well, you could have
21 the judges sit there for 12 hours if they
22 don't have the help and the personnel to move
23 the cases. And the sheriff's department
24 sometimes doesn't bring prisoners till 10:00,

1 10:30 in the morning and the judge is on the
2 bench at 9:00.

3 So, you know, it's all these types of
4 things that go on. So how do we address this
5 issue about the reclassification of these
6 clerk titles?

7 CHIEF ADMINISTRATIVE JUDGE MARKS:

8 Well, look. Let me say when you lose 2,000
9 employees, which we essentially did, you
10 know, a few years back, there are going to be
11 repercussions.

12 And look, people shouldn't be working
13 out of title. It's not good, it's not fair.
14 But when you're down 2,000 employees, you
15 sort of make do as best you can, and
16 sometimes that can happen that people are
17 working out of title. Sometimes they don't
18 complain about it, but they do have a right
19 to complain. If an employee is working out
20 of title, you know, they have a right to
21 complain about that.

22 So, I mean, I think -- look, the
23 answer ultimately is building back our
24 workforce. And not just replacing people

1 when they leave, but adding additional
2 employees and filling additional vacancies
3 beyond just addressing attrition and
4 replacing people when they leave.
5 Ultimately, that's the answer.

6 I think we're heading in the right
7 direction. It's completely driven by the
8 budget. I mean, we can only hire as many
9 people as we have the money to hire,
10 additional people. And we have been able to
11 do that on a modest basis. And I think it's
12 going to take some time, but in the end the
13 answer to the problem you raised is hiring
14 more people.

15 ASSEMBLYMAN MONTESANO: Thank you very
16 much.

17 CHIEF ADMINISTRATIVE JUDGE MARKS:
18 Thank you.

19 SENATOR GALLIVAN: Senator Savino.

20 SENATOR SAVINO: Thank you, Senator
21 Gallivan.

22 Judge Marks, thank you for your
23 testimony. And if you recall, last year I
24 think we had a brief conversation about the

1 strain that has been placed upon OCA and the
2 Judiciary as a result of having to live under
3 the 2 percent spending all these years.

4 And I was actually quite happy to see
5 that this year that the Judiciary requested
6 an increase in their budget. And for the
7 temerity of suggesting that you might need
8 some more money, I think there's an insulting
9 provision in the Article VII that suggests
10 that judges should start punching a time
11 clock, which is insulting on many levels.

12 But in your request for additional
13 money, which is about \$44 million, roughly
14 around there, you state quite clearly that
15 the first priority is for the purpose of
16 hiring court personnel -- court clerks, court
17 officers, court reporters, interpreters,
18 backroom office staff, all of the staff that
19 help support the work of the Judiciary.

20 So is it safe to say that the
21 reduction in head count, which dates back to
22 the 2011 budget cuts, has that had an effect
23 on the ability to administer the people's
24 justice? Because this is insinuation that

1 you're all going home at 1 o'clock, you know,
2 because you really have nothing else to do.

3 And I think, I would imagine -- I
4 don't work in the court system, but I would
5 imagine if you don't have a court clerk or
6 you don't have a court officer, you can't
7 operate a courtroom. Is that safe to say?

8 CHIEF ADMINISTRATIVE JUDGE MARKS: I
9 would say we, in the least two years, under
10 the Chief Judge and her Excellence
11 Initiative, we've made progress in addressing
12 delays and backlogs. And I talked about
13 that.

14 But at times it can be much more
15 difficult, because, you know, we could use
16 more court officers and court clerks and
17 reporters and the whole range of titles, and
18 it can at times delay -- I mean, you know,
19 when there's a flu outbreak, you know, we
20 could have big problems in opening up court
21 parts. But even -- that's an extreme
22 example, but sort of day to day, it's a great
23 challenge moving people around in sort of
24 like the chess game of trying to keep --

1 opening up the court parts on time, keeping
2 them running through the course of the day,
3 getting people into the building, up on the
4 upper floors, through the magnetometers.

5 It's -- I can't sit here today and
6 tell you that it's not a great challenge.
7 It's difficult. It does cause problems. It
8 makes it more difficult to achieve the goals
9 of what we're trying to achieve in the court
10 system these days.

11 So I agree with you, yes.

12 SENATOR SAVINO: Thank you. I wanted
13 to at least get that out there on the record.

14 There's two things, though, that I
15 want to point out. One, with respect to the
16 collective bargaining agreement that affects
17 I think Superior Court officers -- I should
18 put my glasses back on to be able to read it
19 better. But you have -- we moved that
20 bill out of the Senate Judiciary Committee
21 this morning. It's going to go to the
22 Finance Committee, which most of us are on,
23 I'm sure we're going to move it through.

24 But the only thing that I'm perplexed

1 about is that bill, we estimate, is worth
2 about \$43 million in -- is it current pay or
3 back pay? Or is it a combination of the two?

4 CHIEF ADMINISTRATIVE JUDGE MARKS:

5 Well, it's \$37 million. We amended the bill.

6 SENATOR SAVINO: Okay.

7 CHIEF ADMINISTRATIVE JUDGE MARKS:

8 It's \$37 million. It's -- the \$43 million
9 included some prospective pay. But after
10 discussions, we amended the bill to reduce it
11 to \$37 million so that it is strictly and
12 entirely retroactive pay.

13 SENATOR SAVINO: Okay. So then that
14 begs the next question, when you put in the
15 request of 2 -- whether it's 2 or 2.5 percent
16 above the spending cap, it's a debate -- why
17 not include that money as well so you don't
18 have to come back to us? I mean, knowing
19 that you have to pay that out, assuming we
20 approve it -- which of course we're going to,
21 it represents an agreement between OCA and
22 the bargaining units -- why didn't you
23 include that with the additional \$44 million?

24 CHIEF ADMINISTRATIVE JUDGE MARKS:

1 Because it's a supplemental appropriation for
2 this year's budget. You know, it's
3 retroactive pay that will be from a date this
4 fiscal year -- I think it's in early
5 November, when the contracts for the two
6 officer unions took effect, going back to
7 October 1, 2014.

8 So technically and legally, we
9 concluded that we really needed to seek a
10 supplemental appropriation to this year's
11 budget. Because it's money that would be
12 paid out this year.

13 SENATOR SAVINO: Is that because -- I
14 heard you say earlier that OCA is not allowed
15 to maintain labor representative reserves, as
16 opposed to the executive branch or city or
17 state --

18 CHIEF ADMINISTRATIVE JUDGE MARKS:
19 We're not allowed to --

20 SENATOR SAVINO: -- to maintain
21 reserves to pay out labor contracts?

22 CHIEF ADMINISTRATIVE JUDGE MARKS:
23 There's no way --

24 SENATOR SAVINO: That whatever you

1 haven't spent at the end of the year comes
2 back to the General Fund, is that --

3 CHIEF ADMINISTRATIVE JUDGE MARKS:
4 Exactly.

5 SENATOR SAVINO: Okay. Then that
6 answers that question.

7 And finally, I just want to reiterate
8 a concern that was raised about the need for
9 more judges. As you know, over 10 years ago
10 Eliot Spitzer signed the legislation creating
11 the 13th Judicial District of Richmond
12 County. To date, we're still waiting for the
13 judges that we're entitled to. And in fact I
14 know Brooklyn would like the judges that
15 we've taken from them, back to them.

16 So maybe next year we can talk about
17 adding more money to the Judiciary for the
18 addition of judges around the state for those
19 of us who are waiting. Not to mention the
20 strain on the Family Court system and other
21 aspects.

22 So I want to thank you again for
23 having the nerve to ask for what you need and
24 not pretending that you can survive under the

1 spending cap. Now we're going to charge off
2 to help you get it.

3 CHIEF ADMINISTRATIVE JUDGE MARKS:

4 Thank you.

5 ASSEMBLYMAN DINOWITZ: Assemblywoman
6 Malliotakis.

7 ASSEMBLYWOMAN MALLIOTAKIS: Hi, how
8 are you.

9 CHIEF ADMINISTRATIVE JUDGE MARKS:

10 Good morning.

11 ASSEMBLYWOMAN MALLIOTAKIS: Actually,
12 just to follow up on what both of my
13 colleagues from Staten Island said, does the
14 amount that you're requesting, this increase,
15 does that include the entitled judges for
16 Staten Island? Was that incorporated in the
17 ask?

18 CHIEF ADMINISTRATIVE JUDGE MARKS: No.
19 We can't create those judgeships. The
20 Legislature can create those judgeships. So
21 we wouldn't put money into our budget unless
22 there was some real understanding that new
23 judgeships are going to be created. It would
24 be too speculative to seek funding for that

1 before the Legislature either acted to create
2 the judgeships or there was some strong
3 indication --

4 ASSEMBLYWOMAN MALLIOTAKIS: Well, just
5 for those judgeships that we're already
6 entitled to, I think one of the steps is for
7 it to be included in the fiscal, right? We
8 have to be able to provide the funds for
9 that, and we're certainly all willing to do
10 that. We want to ensure that, you know,
11 something that we're entitled to and have
12 been for years is going to come to fruition.

13 So, you know, if that's some -- on
14 your end, if there's a way that you can
15 advocate for that to ensure that we're made
16 whole, that would be very helpful.

17 CHIEF ADMINISTRATIVE JUDGE MARKS:
18 Okay, just a quick response to that.

19 Richmond County is short the number of
20 Supreme Court justices that it's entitled to
21 under the constitutional formula, but it's
22 not the only county that's short. There
23 are -- Bronx County is short. There are
24 counties across the state that don't have the

1 full complement of Supreme Court justices
2 that technically they're entitled to under
3 the constitutional formula.

4 So, you know, it's --

5 ASSEMBLYWOMAN MALLIOTAKIS: I
6 understand that. But also those counties
7 have other things that we don't have. You
8 know, the community courts that are in
9 Brooklyn, Manhattan and the Bronx; of course
10 our narcotics -- the Part N that's going to
11 be removed now. That is something that's a
12 concern to us, of course.

13 And you mentioned or you alluded to
14 something about a Phase 1, the closure of the
15 Narcotics N on Staten Island -- which is very
16 important, as you can imagine, with the high
17 dependency that we have on such a court;
18 3600 cases alone since -- in just a little
19 over a year. Or court dates, I should say.

20 What -- you did allude to like a Phase
21 2 coming, it seems. This is just part of a
22 Phase 1. Could you maybe give us some more
23 insight into that?

24 CHIEF ADMINISTRATIVE JUDGE MARKS:

1 Well, I can't give you too much more
2 information. It's something that we have to
3 work on. And I agree with you, it's
4 something we need to pursue. We have a new
5 administrative judge in Richmond County,
6 Judge Desmond Green. He would take the lead
7 on this, obviously. So we have to sit down
8 with him, figure out practically what makes
9 sense. If we established a true drug
10 treatment court in Staten Island, I don't
11 think it would be a full-time court sitting a
12 full day, five days a week. I don't think
13 the caseload would support that, and I'm just
14 speaking off the top of my head.

15 But there would certainly be a need
16 for a dedicated drug court to sit maybe a
17 couple of days a week, two or three days a
18 week. And we have to figure that out.

19 ASSEMBLYWOMAN MALLIOTAKIS: Okay. I
20 mean, you did also talk about, you know, zero
21 cases going to treatment. You mentioned some
22 type of comment like that. But, you know,
23 look, if somebody's a first-time offender,
24 yes, they should be sent to treatment. But

1 if we're talking about somebody with multiple
2 felony convictions, then they shouldn't be
3 eligible for treatment. So I think that
4 that, you know, really is on a case-by-case
5 basis and we shouldn't be judging the
6 effectiveness of the court on that alone.

7 But I did want to add my voice to my
8 colleagues who have been advocating for that.

9 One other question, mental health
10 court. It's something that I believe is
11 important. We've had a number of incidents
12 on Staten Island that you read about in the
13 newspaper of individuals who are being killed
14 by people who are through -- in and out of
15 the criminal justice system over and over
16 again. We had two murders of Staten
17 Islanders -- we saw Police Officer Familia,
18 over the summer, murdered -- by individuals
19 who are either schizophrenic, bipolar. This
20 is a major issue. And when you look at the
21 history, you see 20, 30, 40, even, prior
22 arrests.

23 What is your opinion on the
24 effectiveness of mental health court in terms

1 of giving these individuals treatment before
2 they go back onto the street to hurt somebody
3 else, or even themselves? And what is your
4 opinion on how it could be expanded?

5 And also, from your perspective, are
6 there a lack of beds when you're trying to
7 send someone for, let's say, in-patient
8 treatment? You know, there were closures of
9 many mental health facilities, and so has
10 that come into consideration at all?

11 CHIEF ADMINISTRATIVE JUDGE MARKS: I
12 think the mental health courts that we've
13 established, you know, in certain
14 jurisdictions in the state have proven to be
15 very effective in reducing recidivism.

16 They use the coercive leverage that
17 the judge has -- because a criminal case is
18 before the judge and the judge can, you know,
19 ultimately send the person to jail or
20 prison -- to use that leverage to get the
21 individual with the mental health problem to
22 go into treatment and, you know, address the
23 reason why he or she may be committing
24 crimes, sometimes violent crimes.

1 So it can be very effective. I think
2 our experience is -- you know, there are
3 limited treatment slots. You know, that's
4 always an issue. But that the mental health
5 courts we've set up, including the one in
6 Brooklyn, which has been a very successful
7 court over the years, they figure out how to
8 get people into treatment slots. And, you
9 know, they've been able to do that.

10 So maybe -- I mean, we have to look at
11 this, but maybe Staten Island could benefit
12 from a combined drug treatment/mental health
13 court. You know, maybe a single judge could
14 be trained to handle both types of cases.
15 And actually, with -- people with drug
16 addictions often have mental health issues
17 that go along with the drug addiction.
18 That's very common.

19 So it's something that, you know, I
20 think we need to work on, and we'll do that.

21 ASSEMBLYWOMAN MALLIOTAKIS: Okay.
22 Well, anyway, we can work together to
23 advocate for that. I just think that there
24 are too many people who are in need of

1 services and treatment that are being allowed
2 to go back on the street without any
3 supervision, without any requirements --
4 utilizing Kendra's Law, for example, for
5 mandated outpatient treatment -- and then
6 we're seeing, you know, it starts off as an
7 arrest for something small like jumping a
8 turnstile, and the next thing you know, we
9 have a murder. And there has to be some
10 more -- we have to be a little more proactive
11 in ensuring these individuals get the
12 services that they need to help themselves,
13 and also for public safety issues.

14 Thank you.

15 CHIEF ADMINISTRATIVE JUDGE MARKS:

16 Thank you.

17 SENATOR GALLIVAN: We are now joined
18 by Senator Kaminsky, and Senator Rivera will
19 be next.

20 SENATOR RIVERA: Thank you,
21 Mr. Chairman, Your Honor.

22 I have two issues that I wanted to
23 just ask you about, one that we have already
24 heard about and one that we have not yet

1 heard about.

2 As far as the one that we have heard
3 about a little bit, earlier Assemblymember
4 Lentol was speaking to you about the presence
5 of ICE in courts across the state. And
6 because his time was running out, there was
7 one part that was -- that you started to
8 speak about related to -- you started to
9 speak about an agreement between the courts
10 and ICE related to sensitive locations. And
11 I wanted you to finish that thought just so
12 that we can know what the current parameters
13 are. And, most importantly, since you spoke
14 about apparently a new agreement or something
15 that has been reached, I wanted to get
16 clarification on what exactly you meant.

17 CHIEF ADMINISTRATIVE JUDGE MARKS:

18 Well, we -- just the first part of that, I
19 wouldn't describe it as an agreement, but I
20 think in our communications with the regional
21 officials -- you know, the New York
22 City-based, Long Island, downstate-based ICE
23 regional office -- when there were -- when we
24 were seeing an increased presence of ICE in

1 the courthouses, you know, compared to in the
2 past, we met with them and began discussions
3 with them.

4 And we have asked them to designate,
5 you know, all courthouses as sensitive
6 locations. We have not gotten them to do
7 that, either at the regional level or the
8 national level. We've had those discussions
9 at the national level as well.

10 But what we've seen, and I think it's
11 in response to our urgings, is that ICE is
12 not going into non-criminal courthouses or
13 targeting people involved in non-criminal
14 proceedings. They've limited their presence
15 and their activities to criminal defendants,
16 you know, who have cases in criminal
17 courthouses, in criminal courtrooms.

18 So we would prefer that all the
19 courthouses, including the criminal
20 courthouses, be designated as sensitive
21 locations, and we will continue to urge that.
22 But at the moment, we think we've
23 accomplished sort of the result being that
24 the activity is limited to people who are

1 involved in criminal proceedings. And not
2 victims, not witnesses, but criminal
3 defendants.

4 SENATOR RIVERA: And also I want to
5 state for the record, since there was -- and
6 Senator Croci is not here, but there was a
7 conversation that he had about whether there
8 was added security necessary in certain
9 courthouses, et cetera.

10 We can all agree that ICE agents in
11 court does not mean more security, right?
12 They are there potentially to identify people
13 who are -- who would be undocumented people
14 or to arrest folks that are -- they want to
15 target for deportation. They don't provide
16 added security to the court. Would that be
17 correct?

18 CHIEF ADMINISTRATIVE JUDGE MARKS:
19 They don't provide added security?

20 First of all, they're not -- we -- we
21 have our own policies on this. They're not
22 permitted to take people into custody inside
23 the courtroom. We don't allow that.

24 SENATOR RIVERA: I just wanted to

1 state it for the record, since Senator Croci
2 was talking about the added security that is
3 necessary in certain courtrooms in his
4 community, which I certainly appreciate, but
5 ICE does not mean security.

6 CHIEF ADMINISTRATIVE JUDGE MARKS: No,
7 those are separate issues.

8 SENATOR RIVERA: Correct.

9 So the second I have not heard much
10 about, and it is Section 510.45, of our
11 pretrial service agencies. There's an added
12 line that reads as follows in the current
13 budget proposal: "The Office of Court
14 Administration shall certify a pretrial
15 services agency or agencies in each county to
16 monitor principals released under conditions
17 of nonmonetary release."

18 Does that mean that we're privatizing
19 supervision?

20 CHIEF ADMINISTRATIVE JUDGE MARKS: No.
21 I'm familiar with that provision; I saw it.

22 These pretrial service agencies,
23 they're not government agencies, although
24 they -- pretrial services. Let me explain

1 this. Probation departments, many probation
2 departments around the state have a pretrial
3 services unit within their probation
4 department, so that would be a government
5 agency, the probation department. But in
6 some other jurisdictions, including New York
7 City, nonprofit organizations serve as the
8 pretrial services agency. In New York City,
9 the pretrial service agency is called the
10 criminal justice agency. It sounds like a
11 government agency, but actually it's not.
12 It's a nonprofit that contracts with the city
13 to perform the services that it provides.

14 And as I understand the Governor's
15 bill, there would be a greater role for
16 pretrial service agencies with bail reform.
17 If bail is going to be eliminated for
18 misdemeanors and nonviolent offenders, which
19 the bill provides for, there's going to be a
20 lot more of a need for supervision of
21 defendants when they're out, you know, while
22 their case is pending. And that will lead to
23 a larger role for pretrial service agencies.

24 And as I understand the bill, it would

1 require the Office of Court Administration to
2 certify, you know, that the agency has the
3 resources and the expertise to perform that
4 role. And if that's what the Legislature
5 wants to do, you know, we could take on that
6 role. I think that would work out fine.

7 SENATOR RIVERA: I might have a
8 followup later, Your Honor, but thank you so
9 much.

10 CHIEF ADMINISTRATIVE JUDGE MARKS:

11 Sure.

12 ASSEMBLYMAN DINOWITZ: Assemblyman
13 Steck.

14 ASSEMBLYMAN STECK: Judge, I want to
15 ask you first a question about the electronic
16 filing. And that is, is this something OCA
17 designed itself or something that OCA
18 contracted out?

19 CHIEF ADMINISTRATIVE JUDGE MARKS: You
20 know, that's a very good question. Because
21 it goes back -- our e-filing system goes back
22 many years. It started in the '90s on a
23 small scale, and it's been expanded. And we
24 do expand each year.

1 I mean -- I'll say this with a caveat.
2 I believe in the beginning we used
3 consultants to help us design it. But I'll
4 have to check that and I'll get back to you.

5 ASSEMBLYMAN STECK: Well, I think
6 that kind of answers my question. I don't
7 know if you've ever looked at the current
8 state of the federal e-filing system.

9 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm
10 not familiar with federal e-filing system.

11 ASSEMBLYMAN STECK: Well, I would
12 suggest that someone from OCA do so, because
13 it is incredibly simple and easy to use and
14 covers a wide variety -- every conceivable
15 topic in the federal system. Whereas our
16 experience with the state system is that it
17 is incredibly cumbersome and difficult to
18 use.

19 The other thing is I don't know if
20 you're aware that now that New York County
21 has e-filing, were you aware that you're
22 still required to hand-deliver papers to a
23 part? And is that really consistent with the
24 objectives of an e-filing system?

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Well, that's a good question. And actually I
3 sit in the civil term in New York County,
4 so -- and by the way, I don't find e-filing
5 difficult at all. Now, I'm not filing
6 papers, and that may be where the difficulty
7 arises, but --

8 ASSEMBLYMAN STECK: That's what we're
9 talking about.

10 CHIEF ADMINISTRATIVE JUDGE MARKS:

11 Okay. But calling up the documents, which in
12 my case is -- I find very easy.

13 ASSEMBLYMAN STECK: No, the issue is
14 how to file them, not how to review them once
15 they're filed.

16 CHIEF ADMINISTRATIVE JUDGE MARKS: So
17 we will look at that.

18 But in terms of the hard copies --
19 look, you know, a lot of judges are not
20 youngsters, maybe is a polite way to put it.
21 You know, it's an older group, for the most
22 part. And a lot of judges didn't grow up
23 with computers, and I think pretty much every
24 judge -- there may be a few exceptions --

1 don't use the computer.

2 But this is the problem you raise
3 about the requirement of -- and not all
4 judges require hard copies, but I think many
5 do. I think it's a function of people, sort
6 of an older class of people who aren't --

7 ASSEMBLYMAN STECK: That wouldn't
8 explain why you can't FedEx the papers to
9 that part when they want paper copies. You
10 have to actually hire someone in the City of
11 New York to deliver it.

12 But I think we could go on to another
13 topic, because I have a very short period of
14 time here. And that is you have been
15 repeating over and over and over that you've
16 lost 2,000 positions since a previous year,
17 and I think that school districts statewide
18 have probably lost a lot more positions than
19 that. But the filings in the court system
20 have been going down from 2006, from
21 4.5 million filings to 3.4 million filings in
22 2016.

23 Now, I recognize that there may be
24 regional differences here. In the area, in

1 the Capital District, if you go into a
2 courthouse you can hear a pin drop. We had
3 15 trials two years ago in the entire Third
4 Judicial District, civil trials, which is a
5 seven-county area.

6 So my question is, has any
7 consideration been given to instead of
8 assigning Court of Claims judges to hear a
9 lot of cases in the Capital District where
10 the Court of Claims is, to perhaps using them
11 in places like the Bronx, where my colleague
12 Mr. Dinowitz has been complaining of a
13 backlog? We don't appear to have that here,
14 and I think some of the problems that
15 Governor Cuomo has spoken about really do
16 exist in the Capital Region.

17 CHIEF ADMINISTRATIVE JUDGE MARKS:

18 Well, you raised a lot of points; I don't
19 know if I can respond to all of them.

20 It's not necessarily a bad thing that
21 there are fewer trials. It's good when cases
22 settle. There's a lot of benefits when cases
23 settle -- to the courts, to the litigants, to
24 the parties. That's not necessarily a bad

1 thing. Although some cases have to go to
2 trial, and we wouldn't want to have a system
3 with no trials.

4 ASSEMBLYMAN STECK: Well, you can of
5 course grant summary judgment, then you don't
6 have a trial, whether it's warranted or not.
7 It's not all about settlements.

8 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm
9 talking about settlements, not summary
10 judgments.

11 ASSEMBLYMAN STECK: Well, I think
12 anybody who's ever practiced law believes
13 very strongly in settlements, so no one is
14 suggesting that settlements aren't desirable.
15 I think the point, Judge, is that we have
16 such few trials, I'm raising the question as
17 to, at least in my area of the state, whether
18 the courts really are overburdened and some
19 of the resources are maldistributed and might
20 be better used, say, in Mr. Dinowitz's area.

21 CHIEF ADMINISTRATIVE JUDGE MARKS:
22 Well, that's not a novel idea. We've done
23 that periodically. We've reassigned judges
24 from upstate to downstate, including in Bronx

1 County. And it's not a panacea, but it is
2 something that can be helpful. Although it's
3 not without expense, because that generally
4 requires, under our rules, picking up the
5 accommodation costs and the transportation
6 costs of taking someone who lives in Albany
7 and assigning them to Bronx County or
8 New York County.

9 By the way, we've been criticized in
10 newspapers in New York City for the cost of
11 that, but that's fine.

12 So it's one aspect of perhaps an
13 overall solution to the problems that we
14 discussed this morning about judges in some
15 jurisdictions having very, very large case
16 inventories. So it's one possible solution
17 to a much larger problem.

18 ASSEMBLYMAN STECK: Well, I'm kind of
19 curious as to why our state court budget is
20 14 percent higher than the State of
21 California, which is larger geographically, a
22 very complicated state with more people.

23 CHIEF ADMINISTRATIVE JUDGE MARKS:
24 That's not true. That's not true.

1 ASSEMBLYMAN STECK: But in any event,
2 I apologize for interrupting. Fortunately
3 I'm not in court, so I don't get to be
4 penalized for that. But thank you very much.

5 CHIEF ADMINISTRATIVE JUDGE MARKS:
6 Thank you.

7 SENATOR GALLIVAN: Judge, I'd like to
8 focus on bail. Regarding bail in its current
9 form and the laws revolving around it, do you
10 have any opinions about how it's currently
11 working?

12 CHIEF ADMINISTRATIVE JUDGE MARKS:
13 Well, I would say it could work better.
14 There are too many people in certain parts of
15 the state who are detained on very low-level
16 bail, people who are not posing a threat to
17 public safety, charged with low-level
18 nonviolent offenses where bail is set at very
19 low levels and they -- I'm talking about
20 \$1,000, \$750, \$500 -- and they can't make
21 even that low amount. And the bail bond
22 industry doesn't offer bail bonds for very
23 low bail because there's no incentive for
24 them, no profit incentive for them in very

1 low bail.

2 So I think that there are more people
3 who are detained who shouldn't be, and that
4 we need alternatives to that. And again, I'm
5 talking about people who are not -- do not
6 pose a threat to public safety.

7 At the other end, because our bail
8 statute -- we're one of only four or five
9 states in the country that does not permit a
10 judge, in making a bail determination, to
11 take into account the defendant's risk to
12 public safety -- that that needs to be
13 addressed also.

14 So I think there are problems within
15 our bail statute that are very different. On
16 the one hand, people being detained who
17 really don't have to be detained; on the
18 other hand, judges not being able, when they
19 make a bail determination, to take risk to
20 public safety into account, as judges can in
21 45 of the 50 states in the country but not in
22 New York. Different problems, but both
23 problems that could be addressed in an
24 intelligent approach to reforming bail in the

1 state.

2 SENATOR GALLIVAN: All right, thank
3 you.

4 No, I do understand -- I'm aware that
5 judges are prohibited from considering risk
6 to public safety. But it's my
7 understanding -- and I can't recite them, I
8 apologize, and I won't put you on the spot
9 either to do that -- but that there's -- I
10 think the current Criminal Procedure Law
11 provides for eight or nine different
12 options --

13 CHIEF ADMINISTRATIVE JUDGE MARKS:
14 Yes.

15 SENATOR GALLIVAN: -- for judges.
16 One, of course, is releasing somebody on
17 their own recognizance, another of which is
18 unsecured bail, although I understand the
19 paperwork is a little bit more extensive.

20 My question is regarding -- now we'll
21 put that issue of public safety aside and
22 just focus on that second area that you had
23 talked about, the first portion of it. Would
24 it be your opinion -- or would it be fair to

1 say that the judges already have those tools
2 to make certain of those changes as far as
3 the release on recognizance, or unsecured
4 bail, or utilizing one of the other options?

5 CHIEF ADMINISTRATIVE JUDGE MARKS:

6 Yeah. And the partially secured bail bonds,
7 as well, are an option.

8 There are -- I agree with you
9 100 percent, there are options in the
10 existing statute that could help to address
11 this problem that are not being successfully
12 utilized. And we have tried to get -- look,
13 bail is an individual decision of a judge
14 exercising his or her discretion. The Office
15 of Court Administration can't tell judges how
16 to make those decisions. But we have
17 provided training on the bail statute and
18 alternatives to bail, including the options
19 in the existing law. And we've encouraged
20 and urged judges to look at the statute more
21 broadly and not limit their decisions just to
22 cash or ROR or an insurance company bail
23 bond, and to use some of the other options in
24 the statute.

1 So I agree with you that there are
2 partial solutions in the existing law that if
3 they were taken more advantage of, you know,
4 would help make a contribution to solving the
5 problem.

6 SENATOR GALLIVAN: And if we had to
7 prioritize -- I mean, that being the case,
8 should we then be focusing on the issue of
9 the threat to public safety and trying to
10 resolve that issue?

11 CHIEF ADMINISTRATIVE JUDGE MARKS: I
12 think we should be doing all of these things.
13 We should be looking at the -- figure out how
14 to get judges to use more of the options
15 available in existing law. We should be
16 looking at the problem of low bail being set
17 for people who pose no threat to public
18 safety, who can't make that bail. And we
19 should be looking at the fact that judges
20 can't take risk to public safety into account
21 when they make these decisions.

22 SENATOR GALLIVAN: My last question
23 has to do with the roles of the district
24 attorneys when it comes to the judge setting

1 bail. What role do they currently have, and
2 in your opinion, what role should they have?

3 CHIEF ADMINISTRATIVE JUDGE MARKS:

4 Well, I think the role that they have is to
5 make their recommendation based on, you know,
6 the information they have before them and be
7 helpful to the judge by making a sound
8 recommendation as to the bail decision. I
9 think that's always been their role, and that
10 should continue to be their role.

11 SENATOR GALLIVAN: Thank you.

12 ASSEMBLYMAN DINOWITZ: Assemblyman
13 Lentol.

14 ASSEMBLYMAN LENTOL: Yes, Judge, I
15 didn't want to speak again, but I just wanted
16 to offer a comment on what you said about
17 bail and public safety.

18 I believe that -- I completely
19 disagree with you. I believe that judges
20 take into account now the public safety
21 aspect of a defendant who's in front of them,
22 and it doesn't need to be in the statute.
23 And the reason I say that is a very simple
24 one: Because if you put it in the statute,

1 you'll have more problems in letting people
2 out than you know, because no judge will want
3 to make a decision regarding bail. If public
4 safety is in the statute, they'll be on the
5 hook for letting somebody out who commits
6 another crime.

7 So I believe that the framers of the
8 penal law when it was constructed in 1965 had
9 a great deal of difficulty in making a
10 determination as to whether public safety
11 should be put in this new statute that they
12 were creating -- they were all Republicans,
13 by the way -- and they decided against it
14 just because of what I said, that they could
15 leave it to the judges to decide. And most
16 judges will determine, in a case before them,
17 whether or not public safety would be
18 violated by a defendant who's before them and
19 make their decision accordingly regarding the
20 bail.

21 And you can comment on that if you'd
22 like, but I think if we -- we're going to go
23 down a very poor road that we don't want to
24 travel on because we're going to find out

1 that judges will let nobody out, and we will
2 have just the opposite effect of bail reform,
3 we'll have bail where nobody gets out.

4 CHIEF ADMINISTRATIVE JUDGE MARKS:
5 Well, I mean, I guess the premise of that
6 view is that judges can't be trusted,
7 which --

8 ASSEMBLYMAN LENTOL: No, no, it's not
9 that. It's not that they can't be trusted,
10 it's just that they can be trusted now. They
11 won't be trusted if they're required to
12 consider public safety, because they're not
13 going to be the ones to make the
14 determination as to whether public safety
15 will be violated because of this person
16 before them, and then committed a new crime
17 while he's out on bail.

18 CHIEF ADMINISTRATIVE JUDGE MARKS: So
19 you're saying judges are not following the
20 law now. That even though they're not
21 permitted, they are taking public safety into
22 account.

23 ASSEMBLYMAN LENTOL: I think I am
24 saying that, yes.

1 CHIEF ADMINISTRATIVE JUDGE MARKS: all
2 right. Well ...

3 ASSEMBLYMAN DINOWITZ: Assemblywoman
4 Joyner.

5 ASSEMBLYWOMAN JOYNER: Okay, good
6 afternoon, Judge. I have two questions.

7 CHIEF ADMINISTRATIVE JUDGE MARKS: Is
8 it the afternoon?

9 ASSEMBLYWOMAN JOYNER: Yes, it's 12:00
10 now.

11 (Laughter.)

12 ASSEMBLYWOMAN JOYNER: The first
13 question is I was informed that there is a
14 proposal to move the Housing Court in the
15 Bronx into 851 Grand Concourse. I wanted to
16 know what's the rationale behind that. I do
17 see that this is going to create a lot of
18 challenges to implement.

19 And my second question is, you know,
20 we're happy to hear about the new drug court
21 that will be coming to the Bronx, but I
22 wanted to know, does this include any drug
23 use offense, certain drug use offense, and
24 what's the rationale as to why we're not

1 covering all drug use offenses?

2 CHIEF ADMINISTRATIVE JUDGE MARKS: The
3 first question is yes, we're going to be
4 swapping Housing Court with Civil Court. And
5 the reason is very simple. We have 16
6 Housing Court judges in the Housing Court
7 building. We have, I believe, seven,
8 possibly eight -- half as many, or less than
9 half as many -- Civil Court judges in
10 851 Grand Concourse. The Civil Court
11 operation has more space for seven or eight
12 judges than the Housing Court building has
13 for 16 judges. I mean, this is really a
14 no-brainer.

15 And Housing Court is at a turning
16 point with the universal access law that was
17 enacted by the City Council, and we're going
18 to be seeing more and more lawyers in Housing
19 Court, there's going to be more litigation in
20 Housing Court as a result of that.

21 And Housing Court, in its current
22 building in the Bronx, it's just completely
23 inadequate -- probably almost from day one,
24 but it's gotten worse. It's just a

1 completely insufficient space for 16 judges
2 and all the litigation that goes on in
3 Housing Court.

4 So to us, this was a no-brainer just
5 to make the swap. And there will be some
6 disruption, obviously, as a result of that.
7 But in the end, we'll have Housing Court with
8 more space and Civil Court with less space
9 but plenty of space to conduct Civil Court
10 operations.

11 ASSEMBLYWOMAN JOYNER: And the second
12 question?

13 CHIEF ADMINISTRATIVE JUDGE MARKS: The
14 opioid initiative in the Bronx is limited to
15 individuals with an opioid addiction or at
16 risk of an opioid addiction. And we have
17 treatment -- we do have a treatment court in
18 the Bronx, it's in the Supreme Court, not in
19 the Criminal Court. I believe I'm correct
20 when I say that, I just wanted to check that
21 before.

22 ASSEMBLYWOMAN JOYNER: Yeah, I'm not
23 sure that that's correct.

24 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm

1 going to have to look into that.

2 ASSEMBLYWOMAN JOYNER: Okay. Because
3 on the record, I just think that if it's
4 going to be a true drug court, it should
5 cover all drug use offenses.

6 CHIEF ADMINISTRATIVE JUDGE MARKS:
7 Yeah, and we do have a drug treatment part
8 for felony drug cases. I don't think we have
9 one for misdemeanor cases in the Criminal
10 Court, with the exception of this new opioid
11 court that we've established. And maybe we
12 need a dedicated treatment part in the Bronx
13 for misdemeanors as well, and that's
14 something that I'll take a look at.

15 ASSEMBLYWOMAN JOYNER: Thank you.

16 ASSEMBLYMAN DINOWITZ: Assemblyman
17 Morinello.

18 ASSEMBLYMAN MORINELLO: Good morning.

19 CHIEF ADMINISTRATIVE JUDGE MARKS:
20 Good morning.

21 ASSEMBLYMAN MORINELLO: Or good
22 afternoon.

23 CHIEF ADMINISTRATIVE JUDGE MARKS:
24 Good afternoon.

1 ASSEMBLYMAN MORINELLO: Just briefly,
2 I want to swing back to the standards and
3 goals. I want to commend the Office of Court
4 Administration for the history of being open
5 to the quality-of-life courts. Drug court
6 was approved many, many years ago. We then
7 added the mental health court, domestic
8 violence court, we have the opiate addiction
9 court, which is new, and just before that,
10 the veterans court.

11 I think it's recognized that these
12 programs can take somewhere up to two, two
13 and a half years sometimes for the defendants
14 to go through the programs. How are these
15 reported, and how are they adjusted for
16 standards and goals so that they don't either
17 go against a judge's record or affect your
18 results in trying to expedite court cases?

19 CHIEF ADMINISTRATIVE JUDGE MARKS: I
20 think that's a good question.

21 In most of the courts, not all, in
22 most of the cases in most of the courts
23 there's a guilty plea entered. And once a
24 guilty plea is entered, that's a disposition.

1 So the standards and goals framework doesn't
2 apply, it's considered a disposition.

3 ASSEMBLYMAN MORINELLO: Is eliminated,
4 correct.

5 CHIEF ADMINISTRATIVE JUDGE MARKS: And
6 I think as you probably know, if the
7 defendant then goes through the course,
8 completes the course of treatment and
9 successfully goes through that, often the
10 charge will be dismissed or -- the plea will
11 be vacated, the charge will be dismissed or
12 there'll be a conviction of a lesser offense.

13 So for most of the cases, there's a
14 guilty plea and the standards and goals no
15 longer applies.

16 In the instances like the opioid part,
17 where there's no guilty plea, the prosecution
18 is deferred. The standards and goals
19 timetables, you know, stops at that point and
20 then resumes if the prosecution resumes. So
21 essentially in the problem-solving courts the
22 cases come out of the standards and goals
23 structure.

24 ASSEMBLYMAN MORINELLO: So there is a

1 recognition and there is a separate reporting
2 column for those.

3 CHIEF ADMINISTRATIVE JUDGE MARKS:

4 Exactly.

5 ASSEMBLYMAN MORINELLO: And that has
6 been recently, I understand, it hasn't been
7 the situation going back a couple of years.

8 CHIEF ADMINISTRATIVE JUDGE MARKS: It
9 may be.

10 ASSEMBLYMAN MORINELLO: Okay. I'm
11 glad you recognize that.

12 Number two, in the presentation
13 there's a section that discusses access to
14 justice, and within that, limited English
15 proficiency. I know when I was on the bench
16 we had difficulty getting interpreters, and
17 many times it was claimed as an economic
18 situation. Has OCA looked at -- is any of
19 this additional money for interpreters, or
20 are they coming up with creative ways and
21 possibly video arraignment or
22 representations?

23 CHIEF ADMINISTRATIVE JUDGE MARKS:

24 Yeah, we -- look, the language access to the

1 courts, as we call it, is a very high
2 priority for us. And across the country
3 every court system is dealing with this,
4 increasing numbers of people coming into the
5 courts with limited English proficiency.

6 And we -- it has been a real challenge
7 for us, but we -- believe me when I tell you
8 that we prioritize this issue. And we need
9 to hire more interpreters who are our
10 employees, staff employees. We also rely on
11 per-diem interpreters, interpreters who go on
12 a list, and we have an electronic system to
13 schedule them. And particularly in --
14 there's so many languages spoken in the
15 courts in this state. In Queens alone, I
16 think there are over 150 different languages
17 spoken.

18 We can't hire our own employees as
19 interpreters for 150 languages. In some of
20 the languages, the need for that interpreter
21 doesn't come up on a regular basis. And so
22 we rely on these per-diem interpreters.
23 They're not court employees, but they're
24 certified and on a list that we provide. And

1 we call them in in advance when we know that
2 there's a case on the calendar requiring an
3 interpreter in a particular language.

4 But still, that doesn't meet the full
5 need, and we're relying more and more on
6 remote interpreting, where the interpreter is
7 at a remote location. LanguageLine is one of
8 the outfits that -- it's a private company
9 that provides this service, and there are
10 other organizations that provide this
11 service.

12 And, you know, we need to sort of
13 think very broadly and expansively, you know,
14 beyond just our own court interpreter
15 employees, because that alone is never going
16 to meet the increasing demand for court
17 interpreting in the courts. Believe me, it's
18 a challenging issue, but it's critically,
19 critically important. Because, you know,
20 it's really -- if someone is a participant in
21 a court proceeding and can't understand
22 what's going on, that's as bad as coming into
23 court without a lawyer -- or maybe it's even
24 worse than that. It probably is even worse

1 than that.

2 So it's a whole other component of our
3 access to justice, and a growing challenge.
4 And I can assure you that we're committed to
5 meeting it as best we can.

6 ASSEMBLYMAN MORINELLO: Well, I liked
7 when you said remote, because the difficulty
8 many times is at the arraignment part, and
9 we're talking about bail adjustments. But if
10 you can't even arraign them, it's difficult
11 to then release them until there's an
12 arraignment. So with modern technology, I do
13 appreciate that you look in the study on
14 remote. Thank you very much.

15 CHIEF ADMINISTRATIVE JUDGE MARKS:
16 Thank you.

17 ASSEMBLYMAN DINOWITZ: Assemblyman
18 Blake.

19 ASSEMBLYMAN BLAKE: Good afternoon,
20 Judge.

21 CHIEF ADMINISTRATIVE JUDGE MARKS:
22 Good afternoon.

23 ASSEMBLYMAN BLAKE: As a
24 representative from the South Bronx, where

1 the court's actually in our district, I first
2 want to go on record in agreeance {sic} with
3 Assemblywoman Joyner and others. It is
4 surprising to me that opioid would be the
5 only drug considered in the drug court. It
6 seems to be a continual preparation of what
7 we're seeing in terms of opioid being seen as
8 a more critical drug than drugs that have
9 been impacting communities of color. So we'd
10 greatly ask for that to be considered.

11 Judge, have you seen the memo from the
12 Legal Aid Society on January 22nd of this
13 year in response to criminal discovery and
14 discovery for justice?

15 CHIEF ADMINISTRATIVE JUDGE MARKS:
16 I've seen the Governor's bill. I haven't
17 seen the Legal Aid memo. I think I'm
18 familiar with the concerns they have, though.

19 ASSEMBLYMAN BLAKE: Absolutely. So as
20 someone who -- you know, Kalief Browder was a
21 constituent of ours, his mother was a
22 constituent of ours, the challenges that
23 we've seen repeatedly.

24 I'm interested in a few things. Can

1 think you could argue that that's not the
2 best approach, but --

3 ASSEMBLYMAN BLAKE: I understand, Your
4 Honor. Thank you, sir.

5 CHIEF ADMINISTRATIVE JUDGE MARKS: --
6 you might want to give a judge, you know, the
7 capacity to review that decision.

8 ASSEMBLYMAN BLAKE: Understand. But
9 we are acknowledging that it is creating an
10 unfair dynamic there.

11 Secondly, do you equally have an
12 individual opinion in terms of the timetable
13 itself? So it says, and I'm reading in
14 Section 240 -- understanding that this is not
15 your bill, but it's for context -- that
16 within 15 days of the prosecution's
17 disclosure, information would need to be
18 released.

19 And it seems, again, that an unfair
20 dynamic is being created that the burden is
21 being placed on the defense to take actions
22 that the prosecution does not have to take in
23 that same timetable.

24 In your individual capacity, is it

1 fair that a proposal is coming forward that
2 the defense actually has to do things that
3 the prosecution does not?

4 CHIEF ADMINISTRATIVE JUDGE MARKS:

5 Well, look, I think just to answer your
6 question generally, the more information that
7 can be disclosed, as early as possible, you
8 know, should be the goal. And from the court
9 system's perspective, as I said earlier, that
10 will lead to earlier dispositions, which is
11 something that we're very interested in and
12 focused on. The more information that can be
13 disclosed, you know, at the earliest possible
14 stage, should be the goal.

15 ASSEMBLYMAN BLAKE: Understand. So in
16 your individual capacity, again, from what
17 you have heard as of now from the current
18 proposal as relates to open discovery and the
19 current implementation of how it works, your
20 assessment of what is working versus not
21 working when it comes to open discovery is
22 what?

23 CHIEF ADMINISTRATIVE JUDGE MARKS: My
24 view of what's working in the current

1 process?

2 ASSEMBLYMAN BLAKE: Correct.

3 CHIEF ADMINISTRATIVE JUDGE MARKS: My
4 view is that there is information that is
5 disclosed much too late in the process,
6 including on the very eve of trial. A lot of
7 the critical discovery does not need to be
8 disclosed until that very, very, very late
9 stage, and that's disruptive to the court
10 system, it's not the fairest approach, and
11 that should be reformed. That's my -- that's
12 not only my opinion, I think that's the
13 institutional position of the court system.

14 ASSEMBLYMAN BLAKE: Grateful for the
15 answer, Your Honor.

16 Going back to initially what we were
17 talking about in terms of the courts and the
18 decisions on the courts, I'm just still
19 trying to get a clear understanding as to why
20 a drug court is being considered in this
21 aspect, and only opioids is recognized -- and
22 let me be very clear -- is a critical issue
23 that has to be addressed. Why would that be
24 the only one being assessed, as opposed to

1 all misdemeanor drug violations that could be
2 considered?

3 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm
4 going to have to look into that. I know we
5 have a dedicated drug court in the Supreme
6 Court in the Bronx for felonies. We started
7 this opioid part in the criminal court for
8 misdemeanor cases. And I have to look into
9 why we don't just generally have a drug court
10 for misdemeanors as a whole. You know,
11 non-opioid drug situations in the Bronx.

12 ASSEMBLYMAN BLAKE: Understand.

13 CHIEF ADMINISTRATIVE JUDGE MARKS:
14 There may be a very good reason for that, but
15 I have to find out.

16 ASSEMBLYMAN BLAKE: Would ask that
17 that gets submitted back to us so we can have
18 an understanding of the rationale.

19 CHIEF ADMINISTRATIVE JUDGE MARKS:
20 Absolutely.

21 ASSEMBLYMAN BLAKE: And just in
22 conclusion, knowing the time is short, there
23 is a continual dynamic and frustration -- and
24 I'm not taking this out towards you, but on

1 the collective system -- that proposals are
2 looked at that are consistently hurting black
3 and brown communities on a repeated and
4 continual basis, without rationale as to why
5 we would not be assessing it in totality.

6 So when we look at open discovery, we
7 look at bail reform, we look at speedy trial,
8 there has to be a more general assessment of
9 assessing things in totality. And given the
10 numbers in our district in particular, would
11 ask that you all come back to us with the
12 rationale.

13 Thank you, Your Honor. Thank you,
14 Chairman.

15 CHIEF ADMINISTRATIVE JUDGE MARKS:
16 Thank you.

17 CHAIRWOMAN YOUNG: Thank you.

18 That concludes the testimony today.
19 We appreciate your patience and taking so
20 many questions. And good luck. Thank you.

21 CHIEF ADMINISTRATIVE JUDGE MARKS:
22 Thank you very much.

23 CHAIRWOMAN YOUNG: Our next speaker is
24 Robert Tembeckjian, administrator and counsel

1 for the New York State Commission on Judicial
2 Conduct. Welcome.

3 ADMINISTRATOR TEMBECKJIAN: Thank you,
4 Senator.

5 And I thank those of you who have been
6 meeting with me and making your staffs
7 available to me throughout the last couple of
8 years, so that we have a little bit of an
9 understanding of one another before I show up
10 to testify.

11 CHAIRWOMAN YOUNG: Very impressive.
12 We have your testimony, and you don't have
13 it, so you're following the directions and
14 you're going to summarize, which is great.

15 ADMINISTRATOR TEMBECKJIAN: I am, and
16 I appreciate it very much.

17 Public confidence in the court system
18 requires that the judiciary be not only
19 independent but accountable. In New York, as
20 in all other states, there is an independent
21 mechanism for reviewing the conduct of judges
22 and, where appropriate, to discipline those
23 judges for ethical violations. In New York
24 that role, under the constitution, falls to

1 the State Commission on Judicial Conduct.
2 We've been at it in our current form since
3 1978, replacing a more temporary situation
4 that was established by the Legislature until
5 the constitution created the body that we now
6 have.

7 For the last eight years, under a
8 system in which our caseload has been growing
9 rather substantially, our resources have been
10 flat, which has effectively meant that our
11 staff has been reduced and the resources that
12 we have to bear on the significant caseload
13 that we have, have been under significant
14 strain.

15 In the last year alone, we had close
16 to 2100 complaints, which is an annual record
17 for us. We've never had more than that. At
18 the same time, since 2011, when this era of
19 stagnant budgeting for us began, we've lost
20 19 percent of our staff. We've gone from 51
21 to 41 and a half. Last year I lost three
22 attorneys, two to retirement, one who
23 returned to the private sector, and was only
24 able to replace them with a half-time

1 position.

2 This has had an adverse effect on our
3 ability to conclude our matters in a timely
4 manner. Although last year we publicly
5 disciplined 16 judges and confidentially
6 cautioned 29, we conducted over 330
7 investigations and over 480 preliminary
8 inquiries, which is a substantial number on a
9 staff that has been gradually reduced.

10 Now, the Division of Budget, through
11 the Executive Budget, has recommended for us
12 an increase this year of \$112,000. That's on
13 an overall budget of slightly under
14 \$5.6 million. That will not be enough to
15 keep us even. Just to maintain our current
16 level of resources, we would need an increase
17 of \$228,000 -- and that would not allow for
18 the addition of any new staff to make up for
19 the losses, and it would not likely lead to
20 an increase in the disposition time of our
21 matters. And that is simply unfair to the
22 innocent judge who's waiting exoneration and
23 to the public which expects -- and rightfully
24 should get -- the expeditious disposition of

1 those cases in which misconduct has occurred
2 and the judge should be disciplined.

3 I asked in my request to the Division
4 of Budget for an increase of a little over
5 \$540,000 this year, which would allow us to
6 get our staff up to 45 -- not to our full
7 complement of 50 -- and to reverse some of
8 the deleterious effects that this era of
9 stagnant budgeting has created for us.

10 This is the first time in eight years
11 that the Executive Budget has proposed an
12 increase for us, and for that I am extremely
13 grateful. But as I've indicated, the amount
14 that's been recommended for us is not going
15 to be enough for us just to maintain the
16 status quo. So if we don't get a little more
17 assistance from the Legislature, which in the
18 past has demonstrated its willingness to do
19 that for us, we're going to have even more
20 attrition and an even slower disposition rate
21 as the overall caseload continues to expand.

22 Now, I realize that these numbers in
23 the overall context of a \$168 billion State
24 Budget are almost inconsequential. But for a

1 small agency like ours, and for others that
2 might be similarly situated, these relatively
3 small numbers have an outsize effect, because
4 as you might imagine, a flat budget is
5 effectively regressive. Because in order to
6 meet the increasing obligations year to year
7 in rent, in salaries, and so forth, we have
8 to make cuts in order to make do on the same
9 dollar amount.

10 The only way that I've been able to do
11 that in the last eight years has been through
12 attrition, and that has had a negative impact
13 on our ability to do the job.

14 So as much as I appreciate, under very
15 difficult financial circumstances, that the
16 Executive Budget has proposed a modest
17 increase for us, I'm hoping to find some
18 sympathy in the Legislature and that, with
19 all of the importuning of other worthy causes
20 for your time and resources, that you find
21 some way to at least partially supplement
22 what the Executive has recommended for us so
23 that we can at least stay even and, with a
24 little bit of luck, replenish some of the

1 diminished resources that we've had to live
2 with over the years and do our job a little
3 more efficiently and expeditiously.

4 So with that, and the statistical
5 analysis that is in my statement, I again
6 appreciate the time that you've given me
7 today and that you and your staffs have given
8 me in the run-up to this proceeding so that
9 we can share our views and hopefully I might
10 be able to find some help.

11 CHAIRWOMAN YOUNG: Thank you.

12 So I had a few questions. And I
13 appreciate your testimony about your concerns
14 regarding funding levels. One of the things
15 that is outlined in the Governor's budget has
16 to do with judges leaving work early.

17 ADMINISTRATOR TEMBECKJIAN: Yes.

18 CHAIRWOMAN YOUNG: And is that
19 something that the commission would track or
20 enforce? How would that work?

21 ADMINISTRATOR TEMBECKJIAN: Well,
22 first of all, I'm not aware that there's any
23 widespread issue of judges who are not
24 conscientious and doing the job. In our

1 experience, we find that the overwhelming
2 majority of judges in New York are indeed
3 conscientious and are very serious about the
4 work that they do.

5 To the extent that there have been
6 individual complaints of judges who are not
7 doing the job, when brought to our attention,
8 the commission deals with them. For example,
9 last year we had a case, publicly reported,
10 in which a judge had not been attending to
11 his duties for a period of over two years.
12 It turned out that the judge had profound
13 medical issues. And when we became aware of
14 it, we negotiated with the judge a retirement
15 in a relatively short period of time,
16 indicating that the alternative would be a
17 full-fledged disciplinary proceeding for
18 failure to perform the duties of office,
19 which is a constitutional requirement of the
20 judiciary.

21 So when we are made aware of issues
22 involving judges who are not performing the
23 duties of course in a consistently
24 appropriate and diligent manner, we have the

1 ability and the resources to deal with it.

2 I also indicated in my written remarks
3 that if the Governor's proposal is enacted, I
4 predict that it will cause a further increase
5 in our workload because his proposal is for
6 the Comptroller to audit the workday of the
7 judges. But the Comptroller doesn't have the
8 constitutional authority to take any action
9 upon finding that a particular judge has been
10 derelict in his or her responsibilities. The
11 only constitutional entity that has the
12 authority to act on such a complaint is the
13 Judicial Conduct Commission.

14 As I indicated, we have done so in the
15 past when these types of complaints have been
16 brought to our attention. We're equipped to
17 do it. We don't have the resources, nor do I
18 think it would be appropriate, to fan out
19 across the state and literally monitor the
20 workday of 1250 judges in the state-paid
21 court system, particularly without some
22 significant showing that there has been a
23 real problem.

24 We deal with the individual problems

1 when they're brought to our attention, we do
2 it quite effectively and efficiently, and I
3 think that's a system that ought not to be
4 disturbed -- but it ought to be appropriately
5 funded so that we can do our job.

6 CHAIRWOMAN YOUNG: So what you're
7 saying is you respond to individual cases
8 when they are reported to you, but you
9 haven't seen any trends of widespread abuse
10 of the system, judges not being at the job,
11 and that sort of thing.

12 ADMINISTRATOR TEMBECKJIAN: That's
13 correct. I'm not aware of any such
14 widespread problem. As Judge Marks indicated
15 in his testimony, in any group of 1250 or
16 1300 individuals, judges or otherwise, there
17 are going to be some who are not as
18 effectively performing their duties as they
19 should.

20 To the extent that that does present
21 an issue, the Judicial Conduct Commission
22 does deal with it. I think we've shown that
23 we can deal with it. And when properly
24 resourced, we can do it as efficiently as

1 possible.

2 CHAIRWOMAN YOUNG: Just curious, there
3 was a pretty notorious case in Rochester
4 about a judge that was -- that actually was
5 driving drunk and failed to show up to work.

6 ADMINISTRATOR TEMBECKJIAN: Yes.

7 CHAIRWOMAN YOUNG: Is that something
8 that the commission was involved in?

9 ADMINISTRATOR TEMBECKJIAN: It has
10 been publicly reported that we have, and we
11 are. And in terms of a specific comment on a
12 pending matter, that's pretty much as far as
13 I can go, because we do have a
14 confidentiality mandate in our statute that
15 is pretty airtight.

16 But let me just as a general
17 proposition -- and you might apply this to
18 any particular case that you've read about in
19 the newspapers -- one of the reasons why it
20 appears to take so long for the commission to
21 reach a disciplinary disposition on a matter,
22 even when there is a lot of public notoriety
23 for it, is because we literally don't have
24 the resources to do the job as efficiently as

1 we do.

2 And just one simple example that every
3 lawyer will appreciate. We don't have the
4 funding in our budget for stenographic
5 services. And of course we're required to
6 produce a transcript for every bit of
7 testimony that we take. We take 12,000 or so
8 pages of transcribed testimony every year
9 during investigations and during disciplinary
10 hearings. All of those transcript pages are
11 transcribed in-house by our secretaries
12 because we don't have the funding to go
13 outside.

14 A case such as the one that you
15 mentioned might have been disposed of six
16 months ago if we had the resources
17 commensurate with our responsibility.
18 Because just the physical task of producing
19 transcripts to the extent that we generate
20 them every year can add two to six months to
21 the disposition of a case. If there's an
22 investigation that results in a hearing,
23 transcription services would go a long way
24 towards speeding the process up. And we

1 just -- we don't have a nickel for it.

2 And the other aspect of this is the
3 very confidentiality that prohibits me from
4 discussing in detail a matter that might be
5 pending, the commission itself has been
6 advocating since 1978 that when formal
7 disciplinary charges are proposed, that its
8 proceedings at that point should be public,
9 as they are in a majority of states, so that
10 the public and the Legislature can see what
11 it is we're doing as we're doing it. So that
12 one can see all of the due process
13 obligations that we fulfill and that we
14 afford to a judge.

15 It should not be easy to remove a
16 judge from office. It shouldn't happen
17 without significant due process protections.
18 But under the veil of secrecy which we are
19 statutorily obliged to observe, you and the
20 public can't see what it is we're doing as
21 we're doing it to be satisfied -- as I think
22 you would be -- that we are on the job and
23 doing the best we can with the resources that
24 we have.

1 CHAIRWOMAN YOUNG: Thank you.

2 ASSEMBLYMAN DINOWITZ: Okay, we have
3 35 more witnesses, so I'm going to make this
4 pretty brief.

5 ADMINISTRATOR TEMBECKJIAN: I'm very
6 aware of that, and not a problem.

7 ASSEMBLYMAN DINOWITZ: And I'm sure
8 that our answers will also be brief.

9 I just want to get the numbers
10 straight. So the increase proposed is
11 \$112,000 for the budget?

12 ADMINISTRATOR TEMBECKJIAN: That's in
13 the Executive Budget. That's less than the
14 \$500,000 I asked for --

15 ASSEMBLYMAN DINOWITZ: No, I
16 understand. But that's what the Executive
17 Budget --

18 ADMINISTRATOR TEMBECKJIAN: That's
19 what the Executive is.

20 ASSEMBLYMAN DINOWITZ: How much of
21 that is going towards rent increase?

22 ADMINISTRATOR TEMBECKJIAN: \$78,000.

23 ASSEMBLYMAN DINOWITZ: So \$6500 a
24 month increase in rent.

1 ADMINISTRATOR TEMBECKJIAN: Yes.

2 ASSEMBLYMAN DINOWITZ: What's the old
3 rent?

4 ADMINISTRATOR TEMBECKJIAN: I'm sorry?

5 ASSEMBLYMAN DINOWITZ: What was the
6 rent?

7 ADMINISTRATOR TEMBECKJIAN: Our rent
8 obligations in New York City and in Rochester
9 are a little over a million dollars a year.
10 And that's negotiated by the Office of
11 General Services -- which, by the way, did a
12 very, very good job in negotiating this new
13 lease for us. Real estate, as you know, in
14 New York City is rather expensive. The
15 cost --

16 ASSEMBLYMAN DINOWITZ: There's plenty
17 of space in the Bronx where you might get a
18 better deal, just so you know.

19 ADMINISTRATOR TEMBECKJIAN: That might
20 be so. We've been in Manhattan and, by rule,
21 our headquarters are in Manhattan.

22 And OGS calculated the cost of moving
23 us, building a courtroom -- because we have
24 our own courtroom facilities, because all of

1 our proceedings are held in-house -- and they
2 assessed, and I think appropriately so, that
3 the cost of moving and building out new space
4 would have been more than the \$78,000 annual
5 increase in rent that they ultimately
6 negotiated for us.

7 ASSEMBLYMAN DINOWITZ: Still a pretty
8 hefty increase.

9 So other than that, though, your
10 budget has been flat for seven years.

11 ADMINISTRATOR TEMBECKJIAN: Yes.

12 ASSEMBLYMAN DINOWITZ: Which in
13 essence means, in real dollars, that you've
14 had a significant decrease, would that be
15 correct?

16 ADMINISTRATOR TEMBECKJIAN: That's
17 absolutely right. And that's why our staff
18 has been decreased 19 percent in that time
19 frame.

20 ASSEMBLYMAN DINOWITZ: Right. Okay,
21 thank you.

22 Assemblyman Lentol.

23 ASSEMBLYMAN LENTOL: (Inaudible.)

24 CHAIRWOMAN YOUNG: Okay.

1 ADMINISTRATOR TEMBECKJIAN: Thank you
2 very much. Appreciate it.

3 CHAIRWOMAN YOUNG: Well, thank you.
4 We appreciate you appearing today, very much.

5 Our next speaker is Commissioner Roger
6 Parrino, New York State Division of Homeland
7 Security and Emergency Services.

8 Welcome, Commissioner.

9 COMMISSIONER PARRINO: How you doing,
10 Madam Chair.

11 CHAIRWOMAN YOUNG: I would remiss if I
12 didn't thank you again for spending some time
13 in my district to look at flooding concerns.
14 I think we had a great day together, and I
15 truly appreciate it.

16 COMMISSIONER PARRINO: Thank you very
17 much. I appreciate it.

18 CHAIRWOMAN YOUNG: And the feedback
19 was great too.

20 COMMISSIONER PARRINO: Shall I begin?

21 CHAIRWOMAN YOUNG: Yes, sir. And as
22 we're asking all of the people testifying,
23 we're asking them to summarize rather than
24 read word for word the testimony, if that's

1 okay. If it doesn't work for you, we're okay
2 too.

3 COMMISSIONER PARRINO: Yeah, I prefer
4 to read it if that would be fine.

5 CHAIRWOMAN YOUNG: Okay.

6 COMMISSIONER PARRINO: Thank you.

7 CHAIRWOMAN YOUNG: We give
8 commissioners a little leeway on that.

9 COMMISSIONER PARRINO: Thank you,
10 Chairman Young. I am Roger Parrino,
11 commissioner of the Division of Homeland
12 Security and Emergency Services. Thank you
13 for the opportunity to discuss the excellent
14 work of the division over the past year as
15 well as a few highlights from the Governor's
16 public safety budget.

17 The men and women of the division are
18 charged with a tremendous responsibility --
19 namely, protecting New Yorkers from natural
20 and manmade disasters through prevention,
21 preparedness, response and recovery efforts.
22 The Governor's budget provides the resources
23 needed to accomplish our mission and protect
24 public safety. Total appropriations are

1 \$1.5 billion. Some notable budget items
2 include resources to construct a Field
3 Operations Building at the New York State
4 Fire Academy; continuation of funding to
5 support interoperable emergency
6 communications; support for the expansion of
7 disaster preparedness and emergency response
8 efforts; and resources to implement recently
9 enacted legislation.

10 I'd like to recognize the exceptional
11 work of my employees, who rise to the
12 occasion every time they are called upon.

13 I'd also like to thank the families of these
14 men and women, who spend time away from home
15 and loved ones because of their commitment to
16 public safety. Whether it was the long-term
17 Lake Ontario emergency response and recovery
18 effort, flooding, fires, tornados,
19 snowstorms, ice jams, mud slides or any other
20 incident throughout the state -- mutual aid
21 missions in Puerto Rico, the Virgin Islands,
22 Florida, and Texas -- they continue to assist
23 those in need.

24 I'm especially proud of the division's

1 work on Lake Ontario. The long-term nature
2 of severe flooding along the lake created
3 unique challenges and required creative
4 solutions. The Division worked on the ground
5 with many state agencies and local officials
6 throughout the duration of the event to fill
7 sandbags, utilize new dam technologies,
8 provide insurance information, and even pump
9 out flooded street and basements.

10 Thanks to this work and our
11 partnership with FEMA, New York State was
12 able to secure a federal disaster declaration
13 during, rather than after, the event. FEMA
14 funds will supplement the relief package that
15 was passed by you and your colleagues last
16 year.

17 We continue to support other recovery
18 efforts, which includes the reimbursement of
19 over \$7.5 billion for projects related to
20 Sandy, Irene and Lee. I've had the
21 opportunity to speak with several lawmakers
22 about projects effecting your communities,
23 and I'd like to thank you for your continued
24 support.

1 I'm happy to report that the Swift
2 Water Flood Training Facility at the State
3 Preparedness Training Center (SPTC) is
4 scheduled to open by late spring. We are
5 fully staffed and expect to begin training
6 our emergency responders as early as this
7 summer.

8 Over the last year, the division has
9 worked to ensure that local first responders
10 are better trained to handle an Orlando or
11 Las Vegas-style active shooter event.
12 Through the regionally focused Advanced
13 Active Shooter Scenario courses provided at
14 the SPTC, the division and the National
15 Center Security and Preparedness trained over
16 300 law enforcement and emergency medical
17 service personnel from four regions. This
18 rescue task force concept has law enforcement
19 secure "warm zones" for EMS to gain access to
20 victims and ultimately save more lives.

21 This past year, the division increased
22 the number of Red Team exercises across the
23 state, evaluating and enhancing the state's
24 overall counterterrorism posture. Red Team

1 exercises have been conducted in all 16
2 Counterterrorism Zones, across over 900
3 locations and businesses, in partnership with
4 nearly 100 law enforcement agencies. These
5 efforts have built upon New York's "See
6 Something, Say Something" campaign and has
7 raised awareness among various industries and
8 strengthened their partnerships with law
9 enforcement.

10 We have developed a new mandatory
11 training for civilian airport workers, which
12 provides them with the skills necessary to
13 assist passengers during emergencies and
14 identify suspicious activities. We continue
15 to grow our team to provide a full day of
16 training to civilian airport workers across
17 the state. And with the Legislature's
18 support, training has already been provided
19 to approximately 6,000 airport workers.

20 We are also committed to educating the
21 next generation of homeland security
22 professionals. The division has a strong
23 partnership with the College of Emergency
24 Preparedness, Homeland Security, and

1 Cybersecurity, which now has nearly 2,000
2 students enrolled in the program.

3 Further, the division, in conjunction
4 with the National Guard and the Red Cross,
5 has trained over 215,000 New Yorkers as part
6 of our Citizen Preparedness Corps.

7 While it is not possible to cover all
8 the great work the division has done during
9 my testimony today, I hope that I've provided
10 you with an idea of the division's priorities
11 for the next fiscal year. I appreciate the
12 opportunity to appear before you today, and I
13 am pleased to answer any of your questions.

14 CHAIRWOMAN YOUNG: Thank you,
15 Commissioner.

16 Our first speaker is Senator Tom
17 Croci, who is the chair of the Homeland
18 Security Committee in the Senate.

19 SENATOR CROCI: Thank you, Senator
20 Young.

21 Commissioner Parrino, thank you for
22 coming here and being part of this
23 conversation today and for your testimony.

24 Just a couple of questions. I know

1 you and I have had numerous discussions since
2 the beginning of your tenure, and I want to
3 compliment you and your team on the work that
4 you're doing on behalf of the residents of
5 New York State.

6 And to all of my colleagues, if you
7 don't know the commissioner's background both
8 in the military, law enforcement and as a
9 dedicated public servant -- I assure you that
10 our questions are directed through you and
11 not at you, sir. And we just want to make
12 sure that we understand some of the proposals
13 that are coming our way so that we can better
14 enable resources.

15 The first question is with regard to a
16 proposal for -- I guess it's \$1.9 million for
17 20 full-time employees to participate in
18 disaster preparedness and emergency response
19 efforts. And the second is a \$5.8 million
20 proposal for only seven full-time employees.
21 So I'm wondering why there's \$1.9 million for
22 20 and what are the scope and duties of their
23 responsibilities, and then 5.8 for only seven
24 and what the scope and duties of their

1 responsibilities would be.

2 COMMISSIONER PARRINO: So, sir, thank
3 you for the question. The 5.8 million is for
4 things that have already passed in the
5 Legislature, things that we are already
6 responsible for that we have to pick up on.

7 And the 20 is something new. We're
8 trying to increase our ability to, in the
9 emergency management area and also in the
10 counterterrorism area, to beef up and be a
11 little bit more flexible in how we respond to
12 threats to New York.

13 SENATOR CROCI: So what specifically
14 would be the duties, the kind of backgrounds
15 that these full-time employees that are
16 proposed that you envision -- what
17 backgrounds do you envision them having, and
18 what would be their duties?

19 COMMISSIONER PARRINO: So in there
20 would be five assistant commissioners for
21 emergency management. We're looking for
22 people who can respond who don't get excited.
23 Perhaps they have a career as a fireman or a
24 police officer or something along those

1 lines, and they're used to dealing with both
2 the public and with elected officials in
3 problem solving.

4 I'm also looking for people with
5 emergency management backgrounds who can pass
6 their knowledge on and work and communicate
7 with locals.

8 SENATOR CROCI: And all of these
9 individuals will be subject to same kind of
10 rigorous screening that people who work for
11 DHSES go through -- background checks, some
12 of them presumably would be -- it would be
13 necessary for them to have access to
14 classified information.

15 COMMISSIONER PARRINO: That's correct,
16 sir.

17 SENATOR CROCI: Is that kind of the
18 caliber we're looking at?

19 COMMISSIONER PARRINO: So yes, that's
20 absolutely correct. And I guess the best
21 example would be the same caliber of which I
22 work with today. I have a fantastic division
23 that I'm very proud of.

24 But some of these would -- part of

1 their ability to be hired may be hinged on
2 the fact that if they're capable of getting a
3 clearance or they've had one in the past.

4 SENATOR CROCI: Okay. Are these
5 envisioned to be civil service positions or
6 are these envisioned to be direct hires? How
7 do you envision the process?

8 COMMISSIONER PARRINO: Mix -- it's a
9 mixture of both. So -- and some of those we
10 require for the clearance would probably be
11 in the civil service area and they'd also be
12 looking for them to work in the Red Team and
13 the infrastructure area.

14 SENATOR CROCI: Okay. And the seven
15 full-time employees at 5.8 million, which you
16 said would be necessary to handle existing
17 requirements?

18 COMMISSIONER PARRINO: So this has to
19 do with -- I really wish I could get with you
20 after this to make sure I get my specifics
21 down, but I think this --

22 SENATOR CROCI: That's fine.

23 COMMISSIONER PARRINO: Yeah, the -- so
24 having to do with -- up the -- fire cancer,

1 water purification -- infrastructure for the
2 water, cyber. These are all things that
3 we've been working on.

4 SENATOR CROCI: Okay, very good.

5 COMMISSIONER PARRINO: I assure you
6 we'll be a good steward of the state's money.

7 SENATOR CROCI: Oh, I have no doubt,
8 commissioner.

9 In looking at the budget and reading a
10 press release from the Governor of
11 December 5, 2017, I notice that there's a
12 counterterrorism advisory panel that's been
13 formed. I'm extremely familiar with the
14 individuals on that panel. I used to work
15 for one of them. And obviously few better
16 minds in the country to be advising both the
17 Executive and this government on how to
18 proceed.

19 So I'm wondering, have there been
20 published recommendations, is there a report,
21 is there anything that would better inform
22 the Legislature as to the recommendations
23 that these experts have made?

24 COMMISSIONER PARRINO: Sir, as far as

1 I know, the work is still ongoing.

2 So I worked with two of the three,
3 Lisa Monaco and Commissioner Kelly. And I'm
4 looking forward to seeing their
5 recommendations and what they think. It's an
6 interesting balance between the 3,000-foot
7 view -- the 30,000-foot view or federal view
8 with someone who's worked on the local level
9 and implemented that, Commissioner Kelly. So
10 I'm very interested to see their findings
11 also. It's still in the works.

12 SENATOR CROCI: Well, our
13 understanding from the release was that these
14 recommendations were going to advise the
15 proposals in the budget. So if that's not
16 the case, we're looking forward -- would this
17 be something that we can, as a legislative
18 body, have access to, the committee? Because
19 these recommendations obviously would be very
20 interesting, to know that we're resourcing
21 what the best minds in the business say
22 New York should be doing.

23 COMMISSIONER PARRINO: Yes, so -- as
24 far as I know, they haven't finished it or

1 handed anything in. I know that when I had a
2 chance to speak to them, I spoke very highly
3 about things that I was interested in, and
4 hopefully will reflect it.

5 SENATOR CROCI: Okay. Well, we look
6 forward to those recommendations. And if
7 it's to advise what is going into this
8 budget, then should we expect to see these
9 recommendations before the budget is passed
10 at the end of March, hopefully?

11 COMMISSIONER PARRINO: Understood,
12 sir.

13 SENATOR CROCI: Okay. We'll be eager
14 to see that.

15 My final question -- I know we're
16 getting short on time, you've been very
17 patient -- the mutual aid operations that
18 we've conducted -- and as somebody who was on
19 the ground during Superstorm Sandy, like some
20 of my colleagues in this room, we know too
21 well the importance of mutual aid and what it
22 meant to our communities.

23 I'm just wondering where the money for
24 some of the mutual aid support that we've

1 given other states and territories, where is
2 that coming from? Is that coming from the
3 existing department or agency budgets? Is
4 there a special fund? How are we paying for
5 the support that we provided places like
6 California and Puerto Rico, Texas, et cetera?

7 COMMISSIONER PARRINO: So as -- the
8 way the mutual aid works, sir, is the -- so
9 it's set up on the 50 states and territories,
10 which would include Guam, Puerto Rico and
11 Washington, D.C. And when they make a
12 request, they're actually on the hook for
13 providing the finances for their request, but
14 they work with FEMA to get the funding so
15 that the state that provides the -- for that
16 request gets back-paid.

17 SENATOR CROCI: So that means that
18 federal monies are going to reimburse New
19 York State for the Guard, the National Guard
20 deployment, the amount of time that civilians
21 spent on the ground, et cetera?

22 COMMISSIONER PARRINO: So in theory,
23 it works that the federal government would
24 back the state or municipality that made that

1 request, and the state or municipality that
2 made that request funds it back to the agency
3 that provides it.

4 SENATOR CROCI: So in some way
5 New York is going to be made whole for these
6 deployments, or we're taking it out of hide
7 in one budget area? If we're going to
8 resource certain departments and agencies, we
9 want to make sure that we're doing so to
10 support mutual aid. Given what we've seen
11 with regard to natural disasters, it's
12 something we should be thinking about more
13 proactively.

14 COMMISSIONER PARRINO: I understand.

15 SENATOR CROCI: So if I could get from
16 your office perhaps a breakdown of, after
17 federal reimbursement from FEMA or the host
18 municipality, slash, territory, what are
19 taxpayers on the hook for and what should we
20 be planning for for the future.

21 COMMISSIONER PARRINO: So those
22 receipts are still coming in. So we're not
23 completed yet. There was a lot of work that
24 we did that was a result of donations that

1 that question, sir, and absolutely.

2 SENATOR CROCI: Okay. Thank you,
3 Commissioner Parrino. And again, thank you
4 for your service.

5 CHAIRWOMAN YOUNG: Thank you. So the
6 Assembly doesn't have any questions, so we'll
7 speed through the Senators that do.

8 But Commissioner, again, I thank you
9 for viewing some of the flooding areas in my
10 district. And as you know, my district goes
11 a long way. It goes from 10 miles outside of
12 Erie, Pennsylvania, all the way to near
13 Rochester.

14 And in 2017, in the spring and summer,
15 Lake Ontario experienced a significant amount
16 of flooding. And I was wondering what the
17 department's role -- what kind of support did
18 you give during that time period to the
19 people around Lake Ontario?

20 COMMISSIONER PARRINO: I spent a
21 tremendous amount of time in Lake Ontario,
22 just even understanding the problem set and
23 seeing what we could, as New Yorkers, could
24 do.

1 But the interesting thing that
2 separates Lake Ontario from other disasters
3 in the country is that it's not over. So we
4 don't know what spring is going to bring us.
5 And we were able to get FEMA to work with us
6 and cooperate with us and make it a federal
7 disaster while it's still going, which is
8 really unusual.

9 CHAIRWOMAN YOUNG: Thank you. And I
10 fully understand that and agree with what you
11 said.

12 Now, there were funds that were
13 distributed through the state that you were
14 able to secure to help the people around
15 Lake Ontario. What role -- did you take an
16 advisory role in the agencies that were
17 distributing the funds? How did that work?

18 COMMISSIONER PARRINO: So I have an
19 Office of Recovery that works with making
20 sure that under any circumstances, we get the
21 most amount of dollars. So it's never a
22 cookie-cutter approach that one program works
23 best. So I was advised by my recovery people
24 on how we should approach and when we should

1 be taking state funds and when we should be
2 applying for federal funds and when we should
3 be applying for SBA loans. Each incident was
4 different.

5 Does that answer your question?

6 CHAIRWOMAN YOUNG: Yes, it does.

7 Thank you for that.

8 Just switching a little bit now, in
9 2017 in New York State we experienced three
10 domestic terrorism incidents, all being
11 home-grown or lone wolf incidents. I know
12 that you have to be careful about what you
13 can say, but could you elaborate for the
14 Legislature on what the division's role was
15 in these incidents and what is being done to
16 prevent these types of occurrences in the
17 future?

18 COMMISSIONER PARRINO: So we use the
19 term counterterrorism, and I hope I don't get
20 punished for using it. The true term is
21 antiterrorism. My division does
22 antiterrorism.

23 So what we try to do is we're looking
24 at the patterns and trends, not only in the

1 New York State or even the United States, but
2 we're looking at the patterns and trends
3 overseas so that we can adjust and adapt to
4 what's going on.

5 So for example, the Port Authority
6 bomber. So public information, training.
7 Our citizen's preparedness now involves
8 active shooter training, which we introduced
9 this fall. Working with DOT on different
10 ways to block the bike path for the future
11 and any other paths that we have. Working
12 with other state agencies.

13 One of our biggest concerns is large
14 gatherings. Large gatherings are targets for
15 people that want to cause us harm. So my --
16 not only my counterterrorism people, my
17 emergency management people are working with
18 locals to let them know about the
19 vulnerabilities every time there's a large
20 mass gathering, and what they can do to
21 mitigate these issues.

22 CHAIRWOMAN YOUNG: So do you work hand
23 in hand, for example, with the New York City
24 Police Department? I know that some of our

1 modes of transportation -- subway systems and
2 so on, maybe buses -- could be targets. So
3 could you explain your relationship with some
4 of the cities around the state?

5 COMMISSIONER PARRINO: So my
6 relationship with the NYPD is directly
7 related to their counterterrorism people, who
8 I worked with when I was with the feds and I
9 work with today.

10 One of the assistant commissioners
11 that I have working for me comes from the
12 intelligence division of the NYPD, gives us a
13 special connection. My director for
14 counterterrorism is a lieutenant colonel in
15 the State Police, which keeps us very sharp
16 with the State Police. I'm also in
17 discussion with the Port Authority, Amtrak,
18 and everyone else, so that we're always
19 discussing the latest issues and what we can
20 do and what kind of funding we can get
21 through federal grants to harden targets as
22 opposed to leaving them vulnerable.

23 CHAIRWOMAN YOUNG: Thank you for that
24 answer, commissioner.

1 You know, we'll be having ITS
2 testifying in just a little while -- I hope
3 just a little while. But as we know, there
4 are different types of terrorism. So
5 cyberattacks are something that we experience
6 in New York State every single day,
7 unfortunately. And I was wondering, did your
8 division provide any support to the Erie
9 County Medical Center ransomware attack that
10 occurred in April of 2017?

11 COMMISSIONER PARRINO: So we did
12 through our counterterrorism piece, working
13 with the NYSIC and the State Police and ITS,
14 to just make sure that we're up on exactly
15 what happened and if there was any good
16 practices that we could provide for the
17 future.

18 CHAIRWOMAN YOUNG: Okay. Thank you
19 for that.

20 And so the fiscal year 2018 enacted
21 budget, the one we did last year, provided
22 the division funds to start a cyberincident
23 response team for certain vulnerable state
24 agencies and localities. Is this the type of

1 incident that the team would respond to?
2 We'd be very curious to know, just since, you
3 know, we made sure it was included in this
4 year's budget.

5 COMMISSIONER PARRINO: Yes, this would
6 be the type of incident.

7 CHAIRWOMAN YOUNG: Okay, thank you.

8 How many staff members would be on a
9 typical cyber response team?

10 COMMISSIONER PARRINO: We're looking
11 for seven. That's the number, seven plus one
12 administrative helper.

13 CHAIRWOMAN YOUNG: Okay. Is there
14 more than one team or --

15 COMMISSIONER PARRINO: No, this would
16 be one team. Right now we're supplemented by
17 people from the National Guard who are doing
18 a very good job for us.

19 CHAIRWOMAN YOUNG: What kind of
20 qualifications would be necessary for a team
21 member?

22 COMMISSIONER PARRINO: We're still
23 building the team. But we're looking for
24 people that have the cyber background and the

1 ability to also communicate their knowledge
2 in a style which the locals will understand.

3 CHAIRWOMAN YOUNG: So you're looking
4 to have positive relationships --

5 COMMISSIONER PARRINO: Yes.

6 CHAIRWOMAN YOUNG: -- rather than the
7 state coming in and taking over. And some of
8 the things we've heard --

9 COMMISSIONER PARRINO: That's not what
10 we're looking to do.

11 CHAIRWOMAN YOUNG: Right. Gotcha. So
12 thank you for that.

13 One of the issues would be -- and you
14 and I had actually talked about it the day we
15 were together. But speaking of local
16 governments, I think that you would want to
17 be more of a resource rather than -- you
18 know, I just referenced it, but sometimes I
19 think local governments feel that the state
20 comes in. But I also know that the
21 cyberattack problem is something that they
22 may not have the resources to deal with it.

23 So how are you communicating with
24 local governments? Are you waiting until

1 there's an incident, or are you proactively
2 letting them know that you're available if
3 they need you?

4 COMMISSIONER PARRINO: We are
5 proactively letting them know that we're
6 available to discuss the best practices,
7 cyberhygiene practices. And we're trying to
8 get that communication going at all levels of
9 the state with the whole division. I would
10 like more of a holistic view than just, oh,
11 yeah, and we're just counterterrorism. Just
12 let them know that we're available. And
13 we're not looking to take charge or take over
14 or force our ways. What we want to do is to
15 be able to always to assist and help.

16 CHAIRWOMAN YOUNG: How do you
17 interface with the state's ITS?

18 COMMISSIONER PARRINO: I interface
19 with them when we have -- we have my cyber,
20 especially my infrastructure group, who's
21 under counterterrorism, is constantly in
22 conversation with them. We attend briefs
23 together at the NYSIC to make sure that we're
24 all on the same sheet of music and we

1 understand the trends and patterns that we
2 have to be concerned about.

3 CHAIRWOMAN YOUNG: So thank you for
4 that. I mean, that's an emerging issue and
5 it just seems to be getting more and more
6 explosive as we go through the days. So we
7 appreciate all your efforts in that area.

8 Finally, I want to ask about the
9 reappropriation to allow for reimbursements
10 of Superstorm Sandy costs. And I know that
11 Senator Croci referenced Superstorm Sandy.
12 But what costs are being reimbursed with this
13 reappropriation? Because it's not clear in
14 the Governor's proposal.

15 COMMISSIONER PARRINO: Could you ask
16 that question again, please? Because I -- so
17 your question wasn't clear about how unclear
18 it was in the proposal.

19 CHAIRWOMAN YOUNG: Right. It's not
20 clear in the budget, in the proposal, as to
21 how the reimbursement of Superstorm Sandy
22 costs will occur, and it's actually included
23 in a reappropriation. So there's a reapprop
24 there, not clear -- it says it's for

1 Superstorm Sandy reimbursement costs, I
2 believe. How will that money be spent?

3 COMMISSIONER PARRINO: So I'm really
4 not quite sure, so I'd have to get with my
5 staff with you on that one. Because I'm sure
6 I know the answer, but the way you're asking
7 it, I'm just not grasping it. And I
8 apologize.

9 CHAIRWOMAN YOUNG: Okay.

10 COMMISSIONER PARRINO: I know we have
11 like over \$6 billion that we have done to
12 Sandy already, 7.5 when you include Irene and
13 others. But I'm not sure about the specific
14 part of this budget that I'm stumbling on.

15 CHAIRWOMAN YOUNG: Right. And from
16 our members on Long Island, I think that they
17 would say -- or down in the city also, the
18 areas that were affected by Superstorm Sandy,
19 they would say that there's still a lot of
20 needs out there that need to be addressed.

21 And so we're just curious, if there's
22 money in the budget for Superstorm Sandy --
23 and it looks like there is -- I'm sure our
24 members would want to know how that money is

1 being spent.

2 COMMISSIONER PARRINO: So it's being
3 spent with the locals making their
4 requirements and us getting their --
5 reimbursing them after it's been done. So
6 we're not coming up with any new ideas, it's
7 the locals that we're funding to make sure
8 they get taken care of what they want to.

9 CHAIRWOMAN YOUNG: Is there some kind
10 of list available that the members could look
11 at?

12 COMMISSIONER PARRINO: So we have the
13 list of all the requests. I don't -- I
14 suppose we could look at that and see if
15 that's available that we can make public.

16 CHAIRWOMAN YOUNG: Right. Well, I
17 think that --

18 COMMISSIONER PARRINO: Those
19 priorities are decided by the locals. So I'm
20 not sure it's a best practice that we are --

21 CHAIRWOMAN YOUNG: No, it's just a
22 communication thing. You know, we have to
23 vote on a budget.

24 COMMISSIONER PARRINO: I understand.

1 CHAIRWOMAN YOUNG: It's our
2 constitutional duty to review the budget,
3 understand what's in it. And I know that all
4 the members care deeply about their
5 constituents in their districts and their
6 communities, and so they'd like to know how
7 the money is being spent. And, you know,
8 maybe if there is a need that hasn't been
9 identified, it would be helpful to have that
10 information too, so --

11 COMMISSIONER PARRINO: Yes, ma'am.

12 CHAIRWOMAN YOUNG: Okay. Well, thank
13 you, Commissioner.

14 Our next speaker is Senator Kaminsky.

15 SENATOR KAMINSKY: Thank you, Madam
16 Chairwoman.

17 Good afternoon, Commissioner. The
18 community of Island Park was grateful to have
19 you this summer take a tour of the areas that
20 were badly flooded in Sandy and continue to
21 flood badly in moon tides and rainstorms.

22 And as we are now more than five years
23 coming up to the sixth anniversary of Sandy,
24 believe it or not, through next year, the

1 \$40 million FEMA program that your agency
2 oversees has not been seen in action. And
3 the residents there, who continue to have
4 trouble getting their kids in and out of an
5 elementary school and to just drive down the
6 basic streets, are interested where the
7 progress is.

8 We were really grateful to have you
9 there. I think your background is just
10 tremendous in lighting a fire under this
11 issue and ensuring that it's managed
12 correctly. And as we're here another year
13 later, I'd just like to ask you about it and
14 see what we can do to expedite it so that
15 there's flood relief brought to the important
16 village of Island Park that needs it so
17 badly.

18 COMMISSIONER PARRINO: So as you know,
19 I'm fully aware of the situation. I came
20 down there and you were able to introduce me
21 to a lot of people so that we could get a
22 better line of communication going. Which
23 resulted in the village's proposal of Phase
24 1, which we got sometime after July. What

1 was missing was we needed a benefit-cost
2 analysis, which we got with the village. And
3 as recently as I believe late December and
4 the middle of January, only a week or two
5 ago, we've had that information.

6 So we'll be moving forward to make
7 sure that that project gets the attention it
8 needs.

9 SENATOR KAMINSKY: Okay, I appreciate
10 it.

11 Also my district has a number of
12 religious childcare centers, community
13 centers and sites, one of which received a
14 bomb threat earlier in the year in the wave
15 of anti-Semitic threats that we unfortunately
16 witnessed.

17 And as you review the security grants
18 that our state has been so generously able to
19 provide for very important causes, you know,
20 we have -- we entrust agencies to take care
21 of our young people, as young as infants, to
22 make sure that they have the properly secured
23 doors, windows, cameras and the like. It's
24 critical, and I'd ask that you consider some

1 of these centers in Nassau County that could
2 badly use the funding, that are a very
3 visible target and certainly deserving of
4 such funding.

5 COMMISSIONER PARRINO: Absolutely,
6 sir.

7 SENATOR KAMINSKY: Thank you for your
8 time.

9 SENATOR KRUEGER: Thank you.

10 So thank you very much for your
11 testimony. But you know what, I'm skipping
12 Senator Savino, so I will hand it to her
13 first.

14 SENATOR SAVINO: Thank you. I just
15 have one question.

16 First of all, thank you for your
17 testimony, and I want to thank you --

18 COMMISSIONER PARRINO: I was this
19 close.

20 (Laughter.)

21 SENATOR SAVINO: I also want to thank
22 you for coming out to Staten Island and
23 meeting with myself and my colleagues about
24 some of the issues around not just

1 Staten Island but Brooklyn. We did
2 appreciate that, especially since that day
3 you were being, I think, pulled to Puerto
4 Rico right after you left us.

5 COMMISSIONER PARRINO: Yes, ma'am.

6 SENATOR SAVINO: I just have one
7 question. In the aftermath of the terrible
8 vehicle-ramming terrorist attack in Lower
9 Manhattan, what do you think we can do as
10 lawmakers or policymakers to prevent
11 something like that from happening, either
12 people being able to lease vehicles and use
13 them as weapons -- I mean, is there something
14 that we can do to stop that?

15 COMMISSIONER PARRINO: Well, I believe
16 one of our proposals is looking at something
17 with rental trucks over a certain weight,
18 asking for two types of I.D.

19 I think looking at the -- my Red Teams
20 look at the rental car or rental truck
21 industry. I think we can review that more.
22 That character followed a playbook that was
23 written by al-Qaida on exactly how to do
24 this, and part of that is renting a big

1 vehicle that is difficult to stop.

2 So we're looking at regulations that
3 will just give a second look to people
4 renting those types of vehicles. I think
5 that could be helpful.

6 SENATOR SAVINO: I don't know the
7 answer to this, I guess I'm going to have to
8 look it up, but I'm curious. Do the same
9 standards apply to renting a truck for the
10 day from a retailer that apply to renting
11 from, say, an actual auto or car rental
12 facility? I'm not sure if they do, and I
13 guess if they don't, they should.

14 COMMISSIONER PARRINO: I think that's
15 something we can work on to look -- I could
16 work with your staff, if you'd like, to see
17 that.

18 SENATOR SAVINO: Because he rented it
19 from the Home Depot.

20 COMMISSIONER PARRINO: Home Depot.
21 But -- I think they're under the same
22 regulations, but I'm not sure.

23 SENATOR SAVINO: Well, that's
24 interesting. I'll have to check that.

1 But thank you anyway.

2 SENATOR KRUEGER: Thank you. And we
3 have been joined by Senator Sanders.

4 SENATOR SANDERS: Semper fi, sir.

5 COMMISSIONER PARRINO: Semper fi.

6 SENATOR SANDERS: I rushed back here
7 to do several things, but I would not have
8 missed you.

9 First, I want to thank you for coming
10 out to my community. It's very hard to get
11 to for some people, but you made your way.
12 And it was very kind of you and your family
13 to come and celebrate Thanksgiving with my
14 community by helping to make sure everyone
15 had a good Thanksgiving. So we certainly
16 appreciate that.

17 I also thank you, sir, for taking us
18 on a tour. We are in the storm-ravaged part
19 of the Rockaways and other communities where
20 we got hit very bad by Sandy, and we are
21 quite concerned over the next one. It's not
22 a question of if there will be, it's when.

23 You have assured me -- and took me
24 around to see some of the sites and to see

1 some of the planning that the city is -- the
2 state, I stand corrected. Well -- well,
3 12 years as a City Councilperson, it's hard
4 to get it out of your system -- that the
5 state is actually doing. A very impressive
6 positioning of supplies, a much smarter --
7 we're going to be dealing with these storms
8 in a smarter way in the days to come.

9 I of course want to remind you that
10 the bad thing of being in this storm pattern
11 is that we really need to make sure that we
12 lift everything in our supply depots so that
13 when the storm comes, it does not take out
14 our depots.

15 You may have been asked about
16 communications, and of course that's very
17 important to us down there also. Do we have
18 a sufficient communication network for the
19 areas of New York City or -- I don't simply
20 want to say my district, but I'm thinking of
21 it. How are we going to communicate with the
22 state when the storm hits us again, sir?

23 COMMISSIONER PARRINO: So we're set
24 very well with that. So between Mesonet and

1 working with the locals and our own dispersed
2 emergency managers and regional directors and
3 assistant commissioners, we're not -- it's
4 not Albany responding to your district; we
5 have people that live just outside your
6 district that are going to be monitoring this
7 and going to be communicating and meeting
8 with the locals.

9 Is that the type of communication
10 you're talking about?

11 SENATOR SANDERS: Yes, that's exactly
12 the communication.

13 COMMISSIONER PARRINO: So we're -- and
14 we monitor the weather beyond New York State
15 to see what's coming in. So we're getting
16 much, much better on that over the years.

17 SENATOR SANDERS: We were caught short
18 before. And I stayed down there on the
19 ground and saw the dysfunction that the
20 different parts of government were not
21 speaking to one another. Again, my
22 particular community, which was hard-hit, we
23 did not see any help for four days. I
24 mean -- and in that time we had to start

1 working for ourselves.

2 Can I encourage you also, sir, that it
3 would be good to start training, doing more
4 training of the local people there? One
5 point is the city trained all kinds of first
6 responders, but then they didn't think it
7 through. They trained and had a group of
8 people, but told everybody to evacuate, so
9 they dispersed them and never used them.

10 We need to not simply train but
11 perhaps get them into a positioning where we
12 can send them to help. The city trained
13 community people, they had a core of people
14 who could help, but they dispersed them and
15 there was nothing on the ground to work with.

16 COMMISSIONER PARRINO: Sir, allow me
17 to get with your staff, I'll have my
18 assistant commissioner meet with you and
19 we'll talk this through and see if we can get
20 Joe Esposito's office and my office on the
21 same sheet of music so that we can actually
22 take care of this and we'll have something
23 going forward.

24 SENATOR SANDERS: Well, that's all

1 that I can ask for. And you certainly spoke
2 as a good Marine, sir. So as one to another,
3 I would just say I feel very confident that
4 we're going to see this thing through,
5 especially since I know it was a Marine that
6 you put in charge of the supply depot. So
7 I'm looking forward to those.

8 You're welcome back to my district.
9 New York is a safer place with you. Thank
10 you very much, sir. Thank you.

11 COMMISSIONER PARRINO: Thank you.

12 SENATOR KRUEGER: Thank you.

13 I'm just going to thank you very much
14 for your testimony. I appreciate you coming
15 to my district and talking to me about a
16 number of issues. And I know we're all very
17 appreciative of the work, which is incredibly
18 diverse, of your agency in all parts of the
19 State of New York.

20 And I'm going to hopefully excuse you
21 because we have another 35 people to chat
22 with this afternoon. Thank you so much.

23 COMMISSIONER PARRINO: Thank you very
24 much.

1 SENATOR KRUEGER: And our next
2 testifier is Michael Green, New York State
3 Division of Criminal Justice Services.

4 And we're at 10:45 on the schedule,
5 for people who are keeping track. Thank you.

6 Good afternoon.

7 EX. DEP. COMMISSIONER GREEN: Good
8 afternoon.

9 Good afternoon, Chairwoman Weinstein,
10 members of the Assembly, members of the
11 Senate. I'm Mike Green, head of the Division
12 of Criminal Justice Services. Thank you for
13 inviting me to appear before you today.

14 New York continues to experience
15 reductions in crime and the prison
16 population. Reported crime reached an
17 all-time low in 2016, and we maintain our
18 standing as the safest large state in the
19 nation. While numbers for this past year are
20 not yet final, preliminary data shows that
21 crime reached another all-time low in 2017,
22 with a homicide decrease of more than
23 10 percent.

24 DCJS initiatives such as GIVE, SNUG,

1 and our alternatives to incarceration network
2 contribute to this success, and these
3 programs continue to receive national
4 recognition. Governor Cuomo's proposed
5 budget for fiscal year 2018-2019 will allow
6 DCJS to continue to support the criminal
7 justice system in communities across the
8 state, support evidence-based programs proven
9 to be effective and cost-efficient, and
10 develop innovative programs that position
11 New York as a national leader in effective
12 public safety policy.

13 Governor Cuomo has advanced
14 significant criminal justice reforms,
15 improving every stage of the justice system
16 from arrest to community reentry. Last year,
17 several major reforms were enacted: raising
18 the age of criminal responsibility, extending
19 the landmark Hurrell-Harring settlement,
20 requiring video recording of interrogations
21 for serious offenses, and allowing properly
22 conducted witness identifications into
23 evidence at trial.

24 Building on this success, Governor

1 Cuomo has proposed additional criminal
2 justice reforms addressing bail, speedy
3 trial, discovery, civil asset forfeiture, and
4 reentry that will enhance the fairness and
5 effectiveness of our criminal justice system.

6 The majority of people in New York's
7 jails have not been convicted of any crime
8 and are held because they cannot afford to
9 post bail. The current system based on
10 monetary bail is unfair to those who lack the
11 financial resources to post it. The Governor
12 is committed to reforming New York's bail
13 statute and has proposed legislation that
14 would require that most defendants charged
15 with misdemeanors or nonviolent felonies be
16 released without requiring cash bail, in a
17 manner that is the least restrictive way of
18 assuring the defendant's appearance in court.

19 The court may order a defendant to be
20 held in jail pretrial upon motion by the
21 people in cases where a defendant is charged
22 with a crime of domestic violence or other
23 more serious violent crimes, commits a crime
24 while already on pretrial release, or fails

1 to appear in court.

2 The Sixth Amendment to the United
3 States Constitution and state law guarantee
4 all citizens accused of a crime the right to
5 a speedy trial. Too often, however,
6 defendants are held in pretrial custody for
7 excessive periods of time and courts are
8 overburdened with the number of pending
9 criminal cases. To address this problem, the
10 Governor has advanced legislation to reduce
11 unnecessary delays and adjournments in court
12 proceedings and ensure that accused
13 individuals proceed through the justice
14 system in a streamlined and efficient manner.

15 New York has one of the nation's most
16 restrictive discovery rules. It allows
17 prosecutors to withhold basic evidence until
18 after a jury has been selected and right
19 before opening statements begin. The
20 Governor has proposed legislation that would
21 require both prosecutors and defendants to
22 automatically share information in an
23 incremental fashion well in advance of the
24 start of a trial. This will ensure that

1 defense attorneys have the tools necessary to
2 represent their clients and prosecutors have
3 the tools they need to protect the identity
4 and safety of witnesses.

5 Individuals with criminal convictions
6 continue to face significant barriers to
7 their successful reintegration into society.
8 Everyone benefits from the opportunity to
9 participate fully in the workforce, where
10 they can build a stable life and support
11 themselves and their families. Our
12 communities benefit as well, as employment is
13 closely tied to reduced recidivism and
14 reduced dependence upon public services.

15 In recognition of this, the Governor
16 proposes to update New York's occupational
17 licensing statutes to remove outdated
18 mandatory bars that have kept qualified
19 applicants with criminal convictions from
20 being licensed in many fields.

21 Last year, the Legislature passed and
22 Governor Cuomo signed into law historic
23 legislation raising the age of criminal
24 responsibility to 18 years of age. To

1 successfully implement the Raise the Age
2 legislation, the Governor proposes a
3 \$100 million appropriation over the next
4 fiscal year to support a continuum of
5 effective prevention, diversion, treatment,
6 and supervision services at the state and
7 local level.

8 This 2018-2019 budget proposal will
9 allow DCJS to continue to carry out and
10 implement innovative and evidence-based
11 initiatives that are designed to promote
12 fairness, respect, and transparency in the
13 state's criminal justice system. Our highest
14 priority is public safety. We are confident
15 that with your continued support, we will
16 sustain the historic reductions in crime we
17 have achieved, while continuing to reduce the
18 number of individuals who enter the criminal
19 justice system.

20 Thank you for the opportunity to speak
21 with you today.

22 SENATOR KRUEGER: Thank you very much.

23 Our first questioner is Senator
24 Gallivan.

1 SENATOR GALLIVAN: Thank you, Madam
2 Chair.

3 Good afternoon, Commissioner.

4 EX. DEP. COMMISSIONER GREEN: Good
5 afternoon.

6 SENATOR GALLIVAN: Thank you for being
7 here, and for your testimony.

8 I want to touch on two or three
9 different areas. First, Raise the Age and
10 the additional -- I think it was \$100 million
11 in funding?

12 EX. DEP. COMMISSIONER GREEN: Yes.

13 SENATOR GALLIVAN: A couple of
14 questions along that -- or a couple of
15 questions regarding that.

16 So you outlined a number of different
17 areas where we would incur costs. Are you
18 able to be more specific at this point?

19 EX. DEP. COMMISSIONER GREEN:
20 Certainly. There are a number of agencies
21 involved, so DCJS is involved in one piece,
22 OCFS is involved in others.

23 From a DCJS perspective, I think
24 probation is one of our major focuses. Raise

1 the Age will put additional responsibilities
2 on probation departments across the state.
3 Responsibilities I think are very
4 constructive in terms of trying to intervene
5 early through the screening process, see if
6 cases can be safely diverted, supervision.

7 But part of that \$100 million is to
8 make sure that local probation departments
9 get reimbursed 100 percent for the costs that
10 they incur, to make sure that DCJS has the
11 resources we need to support them and doing
12 things like training and technical
13 assistance. The money is envisioned, for
14 example, to make sure that local sheriff's
15 departments get reimbursed for costs that
16 they've raised in terms of transport.

17 So my understanding is that that
18 \$100 million appropriation is to support both
19 state and local costs in implementing Raise
20 the Age.

21 SENATOR GALLIVAN: And it's your
22 understanding that the state bears the
23 responsibility for all the additional local
24 costs associated with the implementation.

1 EX. DEP. COMMISSIONER GREEN: Yes.

2 SENATOR GALLIVAN: The one thing that
3 was not mentioned in your testimony, and this
4 might be in another area of the budget, is
5 there any consideration for the potential
6 capital costs? The capital costs
7 specifically that -- the items that have been
8 raised at the local level regarding capital
9 costs focus on the potential for new housing
10 for those that are, first, the 17-year-olds
11 and then after that -- I'm sorry, first --

12 EX. DEP. COMMISSIONER GREEN: Sixteen.

13 SENATOR GALLIVAN: -- the 16 and then
14 the 17-year-olds, October 1, '18, followed by
15 '19.

16 And when I have talked with some of
17 the courts and the judges there was some
18 concern about -- some potential concern about
19 facilities. I don't know if it's a real
20 concern or not. But anyway, the question is
21 capital costs. Any consideration for that?

22 EX. DEP. COMMISSIONER GREEN: So I do
23 believe there is consideration for capital
24 costs. But I think in terms -- the question

1 that you're asking I think goes specifically
2 to detention facilities, which are currently
3 a local responsibility. And I think that is
4 something that probably would be more
5 appropriately addressed to OCFS, since DCJS
6 is not directly involved.

7 The one thing I would say, though, I
8 think it's important --

9 SENATOR GALLIVAN: Excuse me for
10 interrupting. I will do that. But go ahead.
11 Good point.

12 EX. DEP. COMMISSIONER GREEN: I think
13 it's important in looking at this and keeping
14 it in context to understand the numbers. In
15 2010, there were approximately 46,000 16- and
16 17-year-olds who went through the criminal
17 justice system. By 2016, that number was
18 down to 21,000, and it's been going down
19 incrementally every year. It looks like if
20 this trend continues, it will be down to
21 about 18,000 next year.

22 We anticipate for the first six
23 months -- so that would be what's covered
24 under this budget, October 1st through March

1 31st, just 16-year-olds. That number for the
2 entire state will be somewhere between 4,000
3 and 4,500. So that's spread across the whole
4 state. Obviously nowhere near that entire
5 number are going to go through detention.
6 It's envisioned that a very small percentage
7 of that number will go through detention.

8 So while it's a very real concern, I
9 do think it's important to keep the numbers
10 in perspective as well.

11 SENATOR GALLIVAN: I think that where
12 we would see the potential for costs would be
13 in the larger counties. So we have New York
14 City, then of course the Erie, Monroe,
15 Albany, et cetera. When you look at most of
16 the other upstate numbers, I understand we
17 might be talking only one or two per county.

18 But the obligation, of course, is
19 anybody who is confined has to be held
20 safely -- and the concern of keeping now, for
21 this fiscal year, the 16-year-olds separated
22 from those that are younger so we don't run
23 into some of the same problems that we were
24 concerned with when 16-year-olds were with

1 older people.

2 Changing gears, the New York State
3 Commission of Corrections. The Governor has
4 called -- the Governor has called -- I don't
5 have any specific language in front of me --
6 for stepped-up oversight, at least in his
7 presentations, between his budget
8 presentations and the State of the State,
9 regular inspections of all of the facilities,
10 local and state, in the state. The proposed
11 budget for the State Commission of
12 Corrections is unchanged.

13 So two questions. First, are you able
14 to describe what the Governor's
15 intentions are in the proposal as far as the
16 additional stepped-up oversight of local
17 facilities? And second, if it's an increased
18 workload, how can they do it without any
19 increase in their budget or personnel?

20 EX. DEP. COMMISSIONER GREEN: And I
21 apologize again, but they are a separate
22 agency and I can't speak for them in terms of
23 their staffing or their ability to carry that
24 out. I think that would have to be directed

1 to them.

2 SENATOR GALLIVAN: My mistake, I
3 think. Do they not fall under DCJS?

4 EX. DEP. COMMISSIONER GREEN: No, they
5 don't. We do have a -- they're a completely
6 separate agency, with one exception.
7 They're -- it's what's called a hosted
8 arrangement. So certain services such as,
9 for example, HR services or other services,
10 we will share. But, you know, they're
11 completely separate --

12 SENATOR GALLIVAN: Okay, I'll follow
13 up separately.

14 The last area I wanted to touch on,
15 you testified briefly to it, the Governor's
16 proposals regarding bail reform. And I don't
17 know, were you here when Judge Marks was
18 testifying --

19 EX. DEP. COMMISSIONER GREEN: Yes, I
20 was.

21 SENATOR GALLIVAN: -- and the
22 discussion about bail reform?

23 EX. DEP. COMMISSIONER GREEN: Yes.

24 SENATOR GALLIVAN: Well, given your

1 background, of course, I'm sure you're
2 aware -- and I can't recite it, and I won't
3 ask you to recite all the options in bail.
4 But similar to my discussion with Judge
5 Marks, the Criminal Procedure Law provides
6 eight or nine different types of bail,
7 including -- eight or nine different options
8 that judges have, including releasing
9 somebody on their own recognizance. And when
10 we focus on judges setting low amounts of
11 bail, recognizing that public safety is not
12 an authorized element of the law that judges
13 are able to take into consideration.

14 My question is, would it be -- I have
15 the opinion that judges have enough tools to
16 make changes right now, some of the intended
17 changes that the Governor is trying to
18 achieve. What is your opinion about the
19 tools that the judges have available right
20 now in the law, and do they use it to the
21 full extent that they can, in your opinion?

22 EX. DEP. COMMISSIONER GREEN: To me I
23 think the very basic problem is that our
24 current bail statute, by definition, uses

1 someone's -- the amount of resources they
2 have as a factor in determining whether or
3 not they're going to sit in jail.

4 When you have cash bail, whether it's
5 cash, whether it's a bond where you have to
6 put some cash up, people who are otherwise
7 exactly similarly situated in terms of the
8 crime that they committed, the risk that they
9 pose, will either stay in jail or be released
10 because of how much money they have. And
11 personally, my personal opinion is that that
12 is patently unfair and it's something we
13 ought to do something about.

14 In 2016 we had 45,000 people in the
15 State of New York sit in jail for five days
16 or more who were charged with a misdemeanor
17 or a nonviolent felony because they simply
18 did not have the money to post bail. And if
19 you look at the breakdown, the demographic
20 breakdown, about 70 percent of those 45,000
21 were black or Hispanic.

22 So to me, the concept of cash bail in
23 and of itself carries a fundamental
24 unfairness that needs to be addressed. And

1 the Governor's proposal is an attempt to do
2 that.

3 SENATOR GALLIVAN: Point taken. But
4 cash bail is not the only option that the
5 judges have available to them. They can
6 release on recognizance, they can provide
7 unsecured bond, and other options.

8 But when you talk about -- and we
9 didn't -- when the judge was testifying, that
10 was one area we didn't talk about, something
11 that you just raised and I was remiss in not
12 bringing that up, is the requirement that the
13 judges consider the defendant's ability to
14 pay or resources available.

15 Is it possible that the judges need to
16 be trained in this area and that's something
17 that they're not considering at this point?
18 Because if they were, why would there be so
19 many people on small amounts of bail and they
20 can't come up with the cash?

21 EX. DEP. COMMISSIONER GREEN: Those
22 things are all things that could help. But I
23 think as long as you have cash as an option,
24 particularly for misdemeanors and nonviolent

1 felonies, you will never remove the inherent
2 unfairness that the system puts on people who
3 don't have resources.

4 So the Governor's proposal removes
5 cash for a large group of offenders,
6 particularly misdemeanors and nonviolent
7 felons, in an attempt to minimize the effects
8 of that really prejudicial effect of our
9 current system.

10 So, you know, I agree with you that
11 training, use of alternatives would all be
12 good things. But as long as you leave cash
13 as an option in there, the system by
14 definition is going to be a system that
15 discriminates against people who don't have
16 means.

17 SENATOR GALLIVAN: Thank you,
18 Commissioner.

19 CHAIRWOMAN WEINSTEIN: Assemblyman
20 Lentol.

21 ASSEMBLYMAN LENTOL: Thank you,
22 Commissioner.

23 So I don't know where to begin.
24 There's a 212-page criminal justice budget,

1 and I know I'm only going to get to a few
2 pieces of it. But I wanted to start out with
3 discovery, because discovery in my opinion is
4 the key to all criminal justice reform. In
5 any area, in any state, in any country that
6 you talk about, if you don't have the right
7 to know, it's going to be difficult.

8 However, we have been saddled in
9 New York State with a system of justice --
10 and I don't want to speechify, believe me, I
11 just want to put this into perspective.
12 Because there is a large audience out there
13 that doesn't understand discovery. I talk to
14 my constituents about discovery and they look
15 at me blankly and don't know what I'm talking
16 about.

17 And I think, though, when they watch
18 TV and they see what happens in the
19 courtroom, that in every case, whether it's
20 Court TV -- I don't know if they have that
21 anymore -- or whether it's actually live
22 trials of O.J. Simpson or in any other case,
23 they see that the law of the land, as they
24 see it, is open file discovery and that you

1 have a system of justice whereby the
2 prosecution has evidence and the defense has
3 evidence that they're going to present at the
4 trial, and that it's going to be a fair
5 fight. You turn over the evidence you have,
6 Mr. D.A., and Mr. Defense Attorney, you turn
7 over what you have, and we'll a have a fair
8 fight and fight it out in court.

9 But that's not the system of justice
10 in New York, is it, Mr. Green? Even though
11 you actually see that on cases in -- I can't
12 even remember the series that -- on
13 television, Law and Order, which films as
14 though it's happening in New York State. You
15 would think that that's not only the law of
16 the land, but it's definitely the law of New
17 York State. But it's not, Mr. Green, is that
18 correct?

19 EX. DEP. COMMISSIONER GREEN: That's
20 correct. Even though I know as a DA, I
21 always had an open file discovery policy, and
22 I know other DAs do, currently New York's
23 discovery statute is written in a way that
24 would allow prosecutors to wait until after a

1 jury is selected and before opening statement
2 to turn over some of the discovery or Rosario
3 material.

4 And I think the Governor shares your
5 concern in that regard --

6 ASSEMBLYMAN LENTOL: Yes.

7 EX. DEP. COMMISSIONER GREEN: -- and
8 the reason that he's introduced this proposal
9 is to change that framework.

10 ASSEMBLYMAN LENTOL: That's why I was
11 happy to see a proposal on discovery put in
12 the budget, because I think there is an
13 opportunity for change.

14 However, when I looked at it, I was, I
15 have to tell you, mortified. First because
16 it was very hard to understand, very
17 complicated, and it didn't seem to do what I
18 thought we do in the civil law and in every
19 other jurisdiction that has open file
20 discovery, and that is: Here's the evidence,
21 we're turning it over now to you,
22 Mr. Defendant. The defendant says, Here's
23 our evidence, we're turning it over to you.

24 That's not what this does, this

1 proposal, is that correct?

2 EX. DEP. COMMISSIONER GREEN: I don't
3 think it's fair to analogize criminal cases
4 to civil cases.

5 I think what this proposal does is
6 recognize the issue that we have in our
7 current discovery statute, but also recognize
8 some of the inherent issues in the criminal
9 justice system, such as the fact that every
10 day there are examples of witnesses who have
11 been threatened, intimidated, houses are
12 being firebombed, they're being shot.

13 And so we need to balance and we need
14 to do everything we can in cases where those
15 issues aren't present, to get the defense the
16 materials they need in an early stage of the
17 proceedings so they can use them to get the
18 representation they deserve and need. But at
19 the same time we need to make sure that we
20 take into account the very real issues that
21 prosecutors raise with regard to witness
22 intimidation and witness protection. And this
23 proposal that the Governor put forward is an
24 attempt to balance both of them.

1 ASSEMBLYMAN LENTOL: Thank you for
2 that affirmative defense, but I didn't get
3 there yet.

4 (Laughter.)

5 ASSEMBLYMAN LENTOL: I didn't want to
6 talk about that yet, I just wanted to set
7 exactly what I believe the stage of the
8 discussion is and what it ought to be.

9 Now, I understand that we have to
10 protect witnesses. And we have MS-13, we
11 have all these gangs to worry about in
12 New York. I understand all of that. Don't
13 they have gangs in California?

14 EX. DEP. COMMISSIONER GREEN: Yes,
15 they have a gang statute in California. We
16 don't too. I'm not advocating that we adopt
17 that.

18 ASSEMBLYMAN LENTOL: Well, I'm just
19 saying -- I'm not advocating anything about
20 gang statutes. I'm talking about the type of
21 discovery that they have in California allows
22 for protective orders to be issued by judges
23 in order to protect against witnesses being
24 tampered with or being hurt or being followed

1 or any of that. Isn't that true?

2 EX. DEP. COMMISSIONER GREEN: I have
3 not read California's discovery statute
4 recently, but I know the Governor's proposal
5 you have in front of you also provides for
6 protective orders to be sought by either
7 party.

8 ASSEMBLYMAN LENTOL: So all I'm saying
9 is that this particular statute is difficult
10 because it unilaterally allows prosecutors to
11 do a lot of different things that they
12 wouldn't be able to do in other states that
13 have effective discovery statutes.

14 For example, redaction. When I looked
15 at it, I said, well, you know, maybe there
16 are cases where a prosecutor needs to use
17 redaction. But it seems, as you go through
18 the statute, that it's almost in every case
19 that a prosecutor will be able to
20 unilaterally redact information, witnesses'
21 identities, et cetera, et cetera, et cetera,
22 as you go down the line. And there seem to
23 be plenty of escapes and loopholes in the law
24 that no discovery will follow as a result of

1 that unilateral power.

2 Now, maybe if there were equal time
3 given to defense to be able to redact, I
4 would have been happy. I don't think I
5 would, anyway. But I might have been happier
6 if I saw redaction allowed by the defendant.
7 But that's not allowed here. It's only one
8 way, where the prosecution gets to redact
9 everything. Is that correct?

10 EX. DEP. COMMISSIONER GREEN: I've got
11 to disagree with your characterization. I
12 don't believe that it's full of loopholes. I
13 don't believe they can redact in every case.
14 I think the right to redact is limited.

15 I think it's important to note that
16 any time there is a redaction, it provides
17 for the right to have a judge review that
18 redaction to see whether or not the judge
19 agrees with that. So I think I would again
20 disagree with your assessment. I feel that
21 it's a very balanced statute, it attempts to
22 balance legitimate concerns.

23 ASSEMBLYMAN LENTOL: So let me give
24 you an example of what I'm talking about.

1 What is the basis for the new
2 prosecution's right to redact when
3 disclosure, quote, could interfere with the
4 ongoing investigation of a case -- or a case,
5 any case? Isn't there always a hypothetical
6 chance of interference with an investigation?

7 EX. DEP. COMMISSIONER GREEN: Again,
8 as I read that, I would not read it as
9 hypothetical. I would read it as actual, and
10 I believe a judge reviewing it would also
11 read it actual, not hypothetical.

12 ASSEMBLYMAN LENTOL: And as I read the
13 protective order statutes, which I tried to
14 do -- they're complicated too. But why, in
15 your view, are they insufficient?

16 EX. DEP. COMMISSIONER GREEN: I
17 believe one reason would be the time delay
18 between -- that it would take to get the
19 protective order. This just provides for an
20 immediate remedy so the prosecutor can
21 redact, can promptly turn the remaining
22 materials over, and then if the defense has
23 an issue with the redaction, it goes to the
24 judge and the judge reviews it and makes a

1 determination as to whether or not more
2 material needs to be turned over or the
3 redactions were proper.

4 ASSEMBLYMAN LENTOL: Well, let's go
5 back to the material that's turned over.
6 Now, I don't know if this is true and I'd
7 like to ask you, because some of the lawyers
8 that I've spoken to after they've read the
9 bill -- and they're smarter than I am -- have
10 told me that the bill is unconstitutional as
11 drafted because it requires the defense to
12 disclose information before the prosecution
13 does, not after. So the prosecution --
14 instead of changing the law so the
15 prosecution will turn over stuff, we're
16 making the defense turn it over, maybe as
17 payment or a fee for them to get some
18 discovery from the prosecution.

19 So the way this statute does read, it
20 requires disclosure of certain categories of
21 information by the defense but not by the
22 prosecution also as well.

23 EX. DEP. COMMISSIONER GREEN: I
24 believe the case you're referring to is a

1 Supreme Court case involving the State of
2 Oregon, and I don't believe --

3 ASSEMBLYMAN LENTOL: Yes.

4 EX. DEP. COMMISSIONER GREEN: I think
5 that dealt with alibi witness situations. I
6 don't believe that our statute that the
7 Governor has proposed runs afoul of that.

8 I also don't believe that it generally
9 requires disclosure by the defense before it
10 requires disclosure by the people. The one
11 exception may be grand jury minutes, which
12 can be disclosed 15 days prior to trial. But
13 otherwise, the way I read it, the obligation
14 is on the prosecution first.

15 But in any event, I think the Supreme
16 Court case you referred to talks about a
17 one-sided discovery situation where there's
18 disclosure required by the defense without
19 reciprocal obligation. When you read this
20 statute as a whole, I don't think that it
21 would even come close to falling afoul of
22 that case.

23 ASSEMBLYMAN LENTOL: So I don't have
24 much time left, but I just wanted to make one

1 remark because -- about bail reform. And as
2 I said from the very outset, the key to all
3 of these criminal justice reforms, whether
4 they're speedy trial or bail reform, is
5 discovery. Because if you don't know the
6 information that you need to try your case,
7 why would you want a speedy trial? So you
8 could go to jail? I don't think so.

9 If you don't know about what happened
10 in the case and you want to argue against
11 preventive detention, which the Governor's
12 bail reform requires to be mandatory for five
13 days, how are you going to be able to fight
14 that detention at a hearing if you don't know
15 because you don't have discovery at the
16 outset?

17 So I'm just making that as a
18 statement; you don't have to reply to it.
19 But all I'm telling you and I'm telling the
20 Governor, that I love the fact that we're
21 talking about this, I love the fact that
22 discovery, bail reform and speedy trial is in
23 the budget, but we have to change it.

24 Thank you, sir.

1 EX. DEP. COMMISSIONER GREEN: Thank
2 you. I know you've advocated for these
3 issues for a long time. I appreciate your
4 comments.

5 ASSEMBLYMAN LENTOL: Thank you.

6 CHAIRWOMAN YOUNG: Thank you.

7 Senator Croci.

8 SENATOR CROCI: Thank you.

9 And thank you, sir, for being with us
10 again today this year.

11 A question, one of the proposals that
12 is in the budget in your section is the
13 Governor has proposed a half a million
14 dollars for MS-13 gang prevention efforts,
15 presumably for the Long Island area, my
16 Senate district. And I guess the efforts are
17 to be allocated pursuant to a plan submitted
18 and approved by the budget director.

19 Can you give us some details about
20 what the nature of the plan is, where the
21 monies are intended to go, what
22 organizations, and how it will be utilized?

23 EX. DEP. COMMISSIONER GREEN: It's my
24 understanding that that money is meant to be

1 targeted for Long Island related to MS-13,
2 and specifically related to the funding of
3 anti-gang education and training programs in
4 schools.

5 SENATOR CROCI: And who would be
6 conducting this training? Is this local law
7 enforcement? Is this --

8 EX. DEP. COMMISSIONER GREEN: I don't
9 believe that's spelled out in the budget
10 language. But I believe the intention would
11 be for the state to be supporting local
12 efforts.

13 SENATOR CROCI: Absolutely. And if
14 that's the case, we'd very much like to know
15 how it will be spent and to what
16 organizations and groups. Because there is a
17 federal law enforcement investigation and a
18 lot of partners down there working now, we
19 want to be complementary to those efforts.

20 So we'd just like to know exactly that
21 money is going to be allocated and what kind
22 of efforts are going on, either in the
23 Brentwood school system or Central Islip
24 school system or others. We'd very much like

1 to have the details on that.

2 EX. DEP. COMMISSIONER GREEN:

3 Understood.

4 SENATOR CROCI: Thank you.

5 CHAIRWOMAN YOUNG: Thank you.

6 CHAIRWOMAN WEINSTEIN: Assemblyman

7 Weprin.

8 ASSEMBLYMAN WEPRIN: Yes, thank you,

9 Madam Chair.

10 Thank you, Commissioner Green, for

11 coming.

12 I appreciate your initial comments. I

13 chair the Corrections Committee, and I

14 appreciate your comments on the reduction of

15 crime and prison population.

16 Having said that, I was a little

17 disturbed there were two cuts, probably

18 totaling less than a million dollars, on two

19 very good programs that were taking place

20 under your jurisdiction, and they were also

21 organizations that I have worked with closely

22 as chair of Corrections and help to prevent

23 recidivism and also reducing the prison

24 population. One is a program by the Osborne

1 Association, a defender-based advocacy
2 program, and the other one was the Legal
3 Action Center Program. I think the total of
4 both of the items were less than a million
5 dollars.

6 Is there any reason why they were
7 defunded? And obviously we can restore them,
8 but what was the thinking behind that?

9 EX. DEP. COMMISSIONER GREEN: So in
10 the Governor's proposed budget, I don't
11 believe that there are any cuts in line with
12 anything you've mentioned. I'm assuming or
13 guessing that you're speaking about money
14 that was allocated pursuant to a competitive
15 request for proposal, a request for
16 application, last year. So in the ATI
17 funding realm, we did put out funding in a
18 number of different areas. There was
19 workforce-related ATI funding, and then there
20 was ATI funding related to other programming.

21 And it's possible, as part of that
22 competitive solicitation, that the
23 organizations that you mentioned may have
24 previously got money but did not put in

1 proposals that met the standard to get
2 funded.

3 So there's no cut in funding in any of
4 those funding streams. But we put out
5 competitive proposals and then made awards,
6 looking at both geographically where is the
7 need, and then in terms of programming,
8 making sure we had the right programming
9 being funded, and then, within those
10 confines, funding the best proposals that we
11 had. So I can only guess that you're
12 referring to organizations that may have not
13 gotten funding through that.

14 And all I can say is that we've done
15 the best that we can at DCJS to make sure
16 that we take the money that's being allocated
17 and make sure it's being distributed where
18 the need is and that the right types of
19 services are being funded and that they're
20 being provided in the best way possible.

21 I know that we have significant
22 contracts with Osborne still. So, you know,
23 it's not that we don't work with them or they
24 don't provide very valuable services under

1 our funding streams.

2 ASSEMBLYMAN WEPRIN: I've been told by
3 counsel that they did lose the funding
4 through the ITA process. But if it's
5 possible to look at those programs again,
6 maybe we can look to fund them in addition or
7 try to see if the services they provided are
8 being provided by some of these new programs
9 that came out through the ITA RFP.

10 EX. DEP. COMMISSIONER GREEN: We'll
11 certainly do that.

12 ASSEMBLYMAN WEPRIN: Thank you.

13 Thank you, Madam Chair.

14 CHAIRWOMAN YOUNG: Thank you very
15 much.

16 Any more questions? Senator Phillips.

17 SENATOR PHILLIPS: Good afternoon,
18 Commissioner.

19 Just in reference, I also represent a
20 portion of Long Island, but Nassau County.
21 And I'd like to go back to the MS-13 gang
22 activity. Although we're fortunate in Nassau
23 that we haven't had the extreme that's in
24 Suffolk, but it's in Nassau County. And, you

1 know, thanks to the hard work of the Nassau
2 County Police Department, we are prepared.

3 But what kind of support has DCJS
4 offered in an effort to eradicate MS-13?

5 EX. DEP. COMMISSIONER GREEN: About, I
6 would say, maybe two months ago myself and
7 Mike Wood, who's the head of our Office of
8 Public Safety and a former deputy chief at
9 the Rochester Police Department, went to
10 Long Island. We spent the morning with the
11 Nassau County police commissioner and his top
12 people working on the issue. We spent the
13 afternoon with Commissioner Ryder and his top
14 people, you know, looking for ways we could
15 help. We've been working with Suffolk County
16 with regard to improvements they're making to
17 their intelligence center. I think the
18 proposal that Senator Croci asked me about
19 came out of those conversations.

20 So, you know, we've personally been
21 down there -- and I agree with your
22 assessment that I think both police agencies
23 are very dedicated and working very hard on
24 this issue. And we're working with them

1 behind the scenes to support them in any way
2 we can.

3 SENATOR PHILLIPS: And do your crime
4 analysis centers provide any support? Is
5 there any --

6 EX. DEP. COMMISSIONER GREEN: We're
7 networked -- our DCJS directly supported
8 centers, there's eight of them. And then
9 we're networked with centers in both Nassau
10 and Suffolk. So to the extent -- first of
11 all, we share information through that
12 network so they can -- you know, if MS-13
13 members are operating somewhere else within
14 that network, they can share information with
15 law enforcement agencies.

16 And then if we have tools that exist
17 within our network that would be useful to
18 them -- such as, for example, facial
19 recognition or social media mining tools --
20 we can make those available to them.

21 SENATOR PHILLIPS: And last, I just
22 would like to support what Senator Croci said
23 on this half a million dollars.

24 There are several programs in this

1 MS-13 gang prevention proposal, and I think
2 the worst thing that could happen is the
3 school districts don't know how or aren't
4 thought of. And, you know, I worry about
5 that a little bit in my district because
6 sometimes people don't think, but, you know,
7 Westbury, Elmont, Port Washington, you know,
8 these are districts that need support to
9 combat this and prevent it before it comes
10 in.

11 So the sooner you can be clear on
12 where that money is going and how to apply,
13 the better. Thank you.

14 EX. DEP. COMMISSIONER GREEN: Thank
15 you. I appreciate the concern.

16 CHAIRWOMAN WEINSTEIN: Thank you,
17 Commissioner. I have a question.

18 I see that the Executive Budget
19 eliminates the \$2.83 million in funding for
20 civil legal services and instead funds part
21 of the \$6.1 million in existing aid to
22 defense services through the LSAF fund, the
23 Legal Services Assistance Fund.

24 What's the rationale for eliminating

1 the civil legal services funding and
2 replacing it with indigent defense funding?

3 EX. DEP. COMMISSIONER GREEN: The
4 funding that comes through DCJS's budget in
5 terms of the money that's going out to the
6 defense agencies I know is unchanged.

7 I believe with regard to two areas of
8 funding, the source of those funds may have
9 changed from General Funds to another
10 specific fund.

11 In both of those cases, I think the
12 fund that's now being used as opposed to the
13 General Funds, the purpose of that fund does
14 specifically cover the funding it's being
15 used for. And I think that might be more
16 appropriately addressed to Budget, but my
17 understanding is that the purpose was to try
18 and make sure that no on-the-ground agency
19 suffered any cuts in a very difficult budget
20 year.

21 CHAIRWOMAN WEINSTEIN: Well, the --
22 since I was around at the time with your
23 predecessor, Katie Lapp, when that was
24 established, we -- the LSAF fund specifically

1 was designed for civil legal services.

2 I understand the desire to show that
3 the agency is under its 2 percent cap, but I
4 don't know that it's appropriate to do that
5 by offloading expenses that rightfully belong
6 under the General Fund and eliminating legal
7 services funding.

8 Is there any proposal to replace that
9 \$2.83 million in legal services funding?

10 EX. DEP. COMMISSIONER GREEN: And
11 again, I think the figure I had was \$2.6
12 million here. But I think that might be a
13 question that's more appropriately addressed
14 to the Budget Division.

15 All I can say is what I know from the
16 DCJS budget is that the same amount of money
17 that we had to fund Aid to Defense and to
18 fund the New York Defenders in last year's
19 budget is also present in this year's budget.
20 The only difference is the source of those
21 funds.

22 CHAIRWOMAN WEINSTEIN: Right. Okay,
23 thank you very much.

24 Senate?

1 SENATOR KRUEGER: Thank you.

2 Senator Jamaal Bailey.

3 SENATOR BAILEY: Thank you, Senator.

4 Thank you, Commissioner, for coming
5 before us.

6 Not to belabor the point that
7 Assemblyman Lentol made so well about
8 discovery, but I do -- I am a huge proponent
9 of discovery reform, and I'm happy about the
10 steps that we're taking but we need to go a
11 little bit further.

12 You mention that certain
13 jurisdictions are in fact open file
14 jurisdictions where they do allow the defense
15 to get the information -- the evidence
16 beforehand. We mentioned how important
17 witness protection is, and I agree. But in
18 these jurisdictions do we have any statistics
19 about any spike in intimidation or issues
20 that would require these witnesses to be
21 protected as such?

22 EX. DEP. COMMISSIONER GREEN: I don't
23 believe there's any statewide data that's
24 kept, but I've had prosecutors for the last

1 year sending me examples. And I have
2 documented examples. They include videotapes
3 taken off of social media of gang members
4 reading witnesses' grand jury testimony aloud
5 and proclaiming that they're putting out
6 warrants for the witnesses and that they
7 should be killed. You know, and I could go
8 on and on with examples.

9 So I think a comparison to other
10 states is tough because you can pull out one
11 piece of a statute from another state and
12 say, See, this is great. But my general
13 experience is when you read the whole
14 statute, you and everyone else will find
15 things you like in other states' statutes and
16 things you don't like. And I think it's
17 probably the same in the Governor's proposal.
18 And the bottom line is I think everybody is
19 trying to balance these things.

20 You know, personally I think the
21 Governor's proposal did a very good job. It
22 goes much further than our current discovery
23 statute in terms of making information
24 available to the defense. It will no longer

1 allow prosecutors to walk in after jury
2 selection, before opening statement, dump
3 materials on the desk and say, Let's go now.
4 It provides for grand jury testimony to be
5 turned over 15 days before trial, which is a
6 tremendous improvement over our current
7 statute.

8 But it does put those witness
9 protection things in there too, because
10 they're very important.

11 So, you know, I'm sure we could
12 discuss and there will be discussions about
13 how you strike that balance. But I think the
14 important thing is, you know, that we
15 recognize the importance of both of those
16 things and try and come up with a statute
17 that takes them both into account.

18 SENATOR BAILEY: I would agree with
19 you. And to your point about the countless
20 social media clips about witness
21 intimidations, I could also have countless
22 clips of people who have taken guilty pleas
23 without knowing information before them,
24 individuals who have been incarcerated with

1 little to no information about why they are
2 in there.

3 So it's -- what we're saying is
4 essentially the same thing. I believe that
5 we have come further than we've been before.
6 But as Assemblyman Lentol mentioned, the
7 discovery -- the redaction policy I believe
8 is overbroad. There is far too much
9 prosecutorial power in that statute. And I
10 hope that's something that we can remedy.

11 In my limited time, I wanted to speak
12 about the SNUG program and its funding,
13 \$4.8 million in appropriation. The SNUG
14 program does a lot of good work in my
15 senatorial district, particularly in the City
16 of Mount Vernon. Are there any new SNUG
17 programs that are going to be planned
18 statewide?

19 EX. DEP. COMMISSIONER GREEN: I don't
20 believe there are any plans for any new
21 programs in our network. I think the
22 Poughkeepsie program that was just stood up
23 as a result of money in last year's budget is
24 the newest one. I think that gives us 11

1 sites that we're operating with the
2 \$4.8 million in funding that you provide.

3 You know, I would agree with you, I
4 think those programs are just absolutely
5 tremendous programs. And we're on pace -- we
6 don't have the final 2017 numbers in yet, but
7 by all accounts it looks like we're going to
8 come in under 600 homicides for the state for
9 2017. We haven't hit that number since 1965
10 when we started keeping track as a state. It
11 looks like the shootings, both in New York
12 City and the rest of the state, are going to
13 come in significantly down in 2017 compared
14 to '16.

15 And I think that, you know, while law
16 enforcement deserves some credit, I think the
17 SNUG programs deserve a lot of credit as
18 well. You know, we've worked very hard with
19 those programs, we have a great partnership
20 between DCJS and the local programs on the
21 ground and the not-for-profits they operate
22 out of, and really appreciate the support
23 that the Legislature has provided us with
24 those.

1 SENATOR BAILEY: It is an excellent
2 program, Commissioner.

3 One final question about civil asset
4 forfeiture. There is mention in the
5 Executive Budget Article VII about the
6 ability of law enforcement to bring civil --
7 eliminating the ability, excuse me, of law
8 enforcement to bring civil asset forfeiture
9 proceedings against individuals not charged
10 with a felony and requires a conviction
11 before a court may grant forfeiture of the
12 defendant's assets.

13 Where does DCJS come down on this?

14 EX. DEP. COMMISSIONER GREEN: The
15 genesis of the proposal I believe are
16 instances where there have been forfeiture
17 actions where money has been taken from
18 people who ultimately they weren't charged
19 with crimes or weren't convicted of crimes.
20 And so I think the purpose is to try and
21 limit forfeiture to situations where there is
22 a conviction.

23 SENATOR BAILEY: Okay. Thank you,
24 Commissioner. Nothing further.

1 EX. DEP. COMMISSIONER GREEN: Thank
2 you.

3 CHAIRWOMAN WEINSTEIN: Assemblyman
4 Oaks.

5 ASSEMBLYMAN OAKS: Hi. I just wanted
6 to address the issue related to the bail
7 proposal and the concern that I've heard
8 raised around the issue of outstanding
9 warrants.

10 Already with the bail system we have a
11 significant number of people who, you know,
12 don't appear or whatever and there are
13 outstanding warrants. I'm concerned that
14 without bail then the percentage of people
15 who would then appear in court might be
16 reduced dramatically.

17 So is there anything within the
18 proposal that would address the issue of the
19 possibility of having an increased number of
20 folks who don't appear?

21 EX. DEP. COMMISSIONER GREEN: Yes, I
22 believe there is. And a couple of comments
23 I'd make.

24 First, the fact that people raise that

1 as an issue and say that there's a large
2 number of warrants, if that's true, would
3 indicate that the current system is not
4 working to get people to return to court.

5 I have seen studies in a very limited
6 basis that indicate that removing monetary
7 bail does not in any way reduce reappearance
8 rates.

9 But the Governor's proposal also does
10 address situations where someone refuses to
11 voluntarily return to court. And one of the
12 bases for pretrial detention or a motion
13 asking a judge to consider pretrial detention
14 would be in a situation where someone has
15 been released, has been given a court date,
16 and has refused to voluntarily return to
17 court. And ultimately a judge would have the
18 power, after going through the proper
19 processes, to order that person held if
20 there's no other way to get them to return to
21 court.

22 ASSEMBLYMAN OAKS: So when you're
23 saying you looked at some data and whatever,
24 your sense is we may not see that increase

1 or -- in people appearing?

2 EX. DEP. COMMISSIONER GREEN: You
3 know, some of the data I've looked at -- for
4 example, people who have \$500 or less bail
5 set, over half of those people across the
6 state cannot afford the bail, and that amount
7 of bail keeps them sitting in jail.

8 You know, I'm hard-pressed to think
9 that someone who posted \$250, the sole reason
10 they come back to court is for that \$250. So
11 no, I don't think the elimination of cash
12 bail for misdemeanors and nonviolent felonies
13 is going to dramatically increase the number
14 of people who don't come back.

15 Further, in the Governor's proposal,
16 for the first time the Governor would put in
17 a statutory framework to provide monitoring
18 services. And there are studies that show
19 that things like text messaging or
20 notifications being sent to people to inform
21 them of their court dates can dramatically
22 improve the percentage of people that come
23 back to court when they're supposed to.

24 So I think there are much more

1 efficient ways, in this day and age, other
2 than cash bail to really focus on and improve
3 appearance rates in court.

4 ASSEMBLYMAN OAKS: Well, one of the
5 things I think certainly people who commit an
6 offense appear, many are referred under the
7 current structure to services, pretrial
8 services of different kinds. And certainly
9 getting individuals in these services can
10 often highlight some of the issues, whether
11 it's homelessness or education issues,
12 trouble with finding jobs, et cetera. Some
13 of those educational issues are addressed,
14 identified, and perhaps more stability
15 brought to the person's life and the
16 likelihood of reoffending goes down.
17 Certainly I've seen, you know, benefits. Had
18 a chance to serve on a board, you know, that
19 did that.

20 Again, I guess as I was concerned, if
21 you're not appearing to answer, then the
22 opportunity to get them to, you know, those
23 services may be reduced.

24 But obviously should this go forward,

1 you know, the opportunity for us to be able
2 to respond and have an impact on lowering
3 crime and certainly individuals' involvement
4 in that crime, you know, we need to be
5 successful with.

6 EX. DEP. COMMISSIONER GREEN: No, I
7 would agree that that's a very important part
8 of the proposal.

9 ASSEMBLYMAN OAKS: Thank you.

10 CHAIRWOMAN YOUNG: Thank you.

11 Senator Savino.

12 SENATOR SAVINO: Thank you,
13 Senator Young.

14 Thank you, Commissioner, for your
15 testimony.

16 I'm not going to belabor the point on
17 the proposals in the Governor's budget around
18 bail and discovery and others, because there
19 are other people who are going to come up and
20 speak later on. I know the DAs Association
21 is here and Defenders are here and Legal Aid,
22 so I'll leave those questions for them.

23 I do want to make one point, though.
24 I think both Assemblymember Lentol and

1 Senator Bailey, who -- he and I cochair the
2 Codes Committee, and we're working on some of
3 these legislative efforts -- I want to
4 emphasize their point about discovery being
5 the most important part of it. Because if
6 you're a defense attorney or a defendant, the
7 last thing you want is a speedy trial when
8 you don't know what evidence the DA is
9 sitting on. So that has to be front and
10 center of anything.

11 But I want to ask you a question about
12 a proposal in the Governor's Article VII
13 which sounds like a good thing, but it's a
14 little confusing. So it talks about removing
15 the employment restrictions for persons with
16 felony convictions and makes hiring
17 discretionary.

18 And they outline several particular
19 positions: Check cashers; the ability to
20 serve on the Community District Education
21 Council; serving on the Bingo Control
22 Commission, which I didn't even know we had
23 one of those, but I guess we do; a notary;
24 selling or distributing games of chance;

1 insurance adjusters; real estate brokers and
2 real estate salespersons; subsidized
3 private-sector and not-for-profit employment
4 programs; and driver school employees. I'm
5 assuming that means persons who work for a
6 driving school, not school employees who
7 drive, right?

8 EX. DEP. COMMISSIONER GREEN: I
9 believe the first is the case.

10 SENATOR SAVINO: All right. So the
11 question I have, does it mean all felony
12 convictions, there would be a bar? Because
13 say, for instance, you were convicted of
14 embezzling money from a non-for-profit. We
15 wouldn't want you working there again. Or if
16 you had robbed a bank, we wouldn't want you
17 working as a check casher.

18 Or we've also passed several
19 restrictions on what Level 3 sex offenders
20 and what kind of occupations they're allowed
21 to work. I think in the Senate we've pretty
22 much outlawed all of them. I'm not sure the
23 Assembly has followed suit. But would that
24 conflict with those statutes, where we don't

1 believe that Level 3 sex offenders shall be
2 working in a school or teaching people how to
3 drive?

4 So I'm -- could you explain some of
5 these? And if you don't know the answer,
6 that's fine. But I'm just curious about
7 these.

8 EX. DEP. COMMISSIONER GREEN: I
9 believe under current law a conviction serves
10 as an absolute bar.

11 I think the intention here is that in
12 the overwhelming majority of cases, when a
13 person has served their time, has
14 successfully completed and is going on trying
15 to rebuild their life, that we can't be
16 throwing up roadblocks.

17 And I think you, you know, rightfully
18 point out that there are certain limited
19 circumstances where it would make sense to
20 look at those. I don't know if the bill
21 makes provisions for that or not, but I can
22 get back to you on that.

23 SENATOR SAVINO: Thank you. I would
24 just say, again, I believe in redemption and

1 I think the most important thing we could do
2 to prevent recidivism is to find a way for
3 people to become productive members of
4 society. But I think that, again, if you've
5 been convicted of embezzling money from a
6 nonprofit, we might not want you working in
7 the nonprofit sector again.

8 And I only point these out because
9 these were pointed out to me that these are
10 occupations that for some reason have been
11 identified. So I think we should just be
12 very careful about how we apply this. And in
13 an effort to get people back to work and
14 become functioning members of society -- all
15 important goals of the state, but at the same
16 time we have to be careful how we apply it.

17 Thank you.

18 EX. DEP. COMMISSIONER GREEN: Thank
19 you.

20 CHAIRWOMAN YOUNG: Thank you, Senator
21 Savino.

22 We've been joined by Senator Joe
23 Robach, Senator Patty Ritchie, Senator Marty
24 Golden, and Senator Brian Benjamin.

1 CHAIRWOMAN WEINSTEIN: Assemblyman
2 Lentol for a question.

3 ASSEMBLYMAN LENTOL: Thank you. I'm
4 not going to come back for my 15 or 10
5 minutes -- five minutes that I have, I just
6 wanted to make a comment. And this is a
7 complimentary one to be sure, Commissioner
8 Green.

9 And it's not on policy, but I wanted
10 to let you know that buried in the DCJS
11 website -- and this was something that was
12 produced by DCJS a few years back when -- it
13 was apropos then, but it seems to be more
14 apropos now. And buried in the website is a
15 video I had commissioned legislatively, and
16 it's called "The Familiar Stranger." And it
17 teaches parents, teachers and coaches that
18 they're not the only ones, that they are
19 usually the first victims, not the pedophiles
20 of a pedophile {sic}. Parents, teachers and
21 coaches.

22 We heard the gymnasts who were abused
23 say that they were groomed, but the pedophile
24 grooms the parents first. And nobody talks

1 about that. And so everyone misses the
2 point, and it puts the kids at risk. And
3 they put it on the kids to have the
4 responsibility for it.

5 So I just put it on the front burner
6 for you so you can put it on the front page
7 of the website, because it really is very
8 good. And it was done by CJS.

9 EX. DEP. COMMISSIONER GREEN: Thank
10 you. I've actually seen the video. Thank
11 you. I appreciate the comment.

12 CHAIRWOMAN YOUNG: Thank you.

13 Our next speaker is Senator Krueger.

14 SENATOR KRUEGER: Good afternoon.

15 Thank you for your testimony.

16 You may have heard me ask the Chief
17 Administrative Judge this earlier today. My
18 concern -- as much as I support bail reform,
19 discovery reform and speedy trial reform, my
20 concern is the way the wording is written in
21 the bail reform bill, it actually would take
22 existing discretion away from judges. And if
23 a DA decided that they were going to demand
24 remand into custody, it would result in -- as

1 I understand it -- at least a five-day
2 placement, and perhaps longer, before a judge
3 even evaluated whether they should be
4 remaining in jail if they don't have cash or
5 bond.

6 So my question is, you highlighted
7 there are 45,000 people in the state who
8 currently end up staying in jail because they
9 have inadequate money to pay their bond.
10 Don't we need to fix this language so we
11 don't actually, at the end of the day, say we
12 thought we did something but actually we're
13 not seeing fewer people ending up in our
14 jails for at least some period of time?

15 Because my understanding is for a
16 low-income person, five days in jail means
17 losing their job, potentially losing their
18 children to child welfare. And that the goal
19 of the Governor is not to create a new set of
20 problems, but rather to address the problems
21 you so well described as happening for
22 45,000 people.

23 EX. DEP. COMMISSIONER GREEN: I think
24 we share the same goal. I think that we have

1 a different view of that language. That
2 language doesn't apply in every case. As I
3 read it, there's a limited universe of cases
4 that that would apply in. It includes
5 domestic violence cases, it includes Class A
6 felony cases, cases of serious violence,
7 cases involving witness intimidation. That's
8 not an exhaustive list, but I think it's
9 close to exhaustive.

10 So as I read it, in that limited
11 universe of cases, yes, if a DA moves, it
12 would be up to five days until the judge
13 could hold a hearing. The judge -- you know,
14 to the extent the court had the ability to
15 hold the hearing before five days, that could
16 be done. They don't have to hold the person
17 for five days. But in the event it takes the
18 court five days to get to the hearing, they
19 would have up to that much time.

20 So, you know, I'm sure that there will
21 be discussions or negotiations over the
22 language, and I look forward to those
23 discussions.

24 SENATOR KRUEGER: So I would urge that

1 you clarify that the language is designed for
2 a subset universe of people, because as it's
3 been confirmed to me by several others, that
4 that might be the intent but that's not the
5 language. And so --

6 EX. DEP. COMMISSIONER GREEN: I just
7 read it again this morning, and I -- you
8 know, again, I respect -- you know, people
9 read the same laws and disagree. I read it
10 that way. I think the language says it. But
11 certainly I'll take that back and it's
12 something we'll look at.

13 SENATOR KRUEGER: And again, I suppose
14 just to reiterate, but I think you did say
15 and highlight -- because sometimes we sit in
16 these rooms and, you know, it's the Public
17 Protection Day so we're talking about all the
18 things people are worried about, and there
19 are real worries. Certainly gang violence is
20 a real worry, and violent criminals are a
21 real worry. But again, just to emphasize,
22 we're a safer state than we've been certainly
23 in my lifetime. And that I think that we
24 all, to some degree, who are in government

1 and in public protection and the advocates
2 who are here should recognize that actually
3 we must be doing something right, because
4 we're clearly going in the right direction
5 here.

6 EX. DEP. COMMISSIONER GREEN: Not only
7 are we safer, but our prison population is
8 lower than it's been since -- it peaked in
9 '99, but it's incredibly low.

10 If you look at the number of people we
11 have under total community correction
12 supervision, we're the fourth lowest state in
13 the country. I think it's only New
14 Hampshire, Maine, and one other small state
15 that are below us.

16 So, you know, probation numbers have
17 diminished considerably, prison numbers have
18 diminished considerably. At the same time,
19 our index crime rate is at an all-time low,
20 our homicides are at an all-time low.

21 So I really do appreciate your
22 comments. Thank you.

23 SENATOR KRUEGER: Thank you very much.

24 Senator Marty Golden.

1 SENATOR GOLDEN: Thank you very much.
2 I just have -- I got here late. I'm not
3 going to go over some of the -- I was at an
4 another committee meeting. So I too am not
5 going to go over the bail, I'm going to
6 listen to those in the audience that are
7 going to be testifying shortly. I'm not sure
8 it's the right route to go, but we'll listen
9 to both sides and see what we can, to make
10 sure that the constituency here in the City
11 and the State of New York are safe.

12 The area I want to deal with -- I
13 think it may have been touched on -- is gang
14 violence. I know that we -- there's a budget
15 cost of 500,000 to fund a plan to cut MS-13's
16 recruitment pipeline. Is DCJS engaging in
17 other activities that would help stop that
18 gang recruitment? Because we don't see it
19 just in Long Island, we see it across the
20 state now, big time in Brooklyn. So we need
21 to hopefully have a good approach on dealing
22 with that issue. Is there other avenues that
23 the -- that your agency is taking to curtail
24 that?

1 EX. DEP. COMMISSIONER GREEN: I
2 believe two other programs that we have that
3 have received national recognition are
4 directly related to gang violence, and that's
5 our GIVE, or Gun-Involved Violence
6 Elimination Program, and the SNUG programs.

7 And both of those look at the gang and
8 the violence issue from a different
9 perspective -- you know, GIVE more centered
10 at the law enforcement perspective, so it
11 provides about \$14 million in funding to
12 prosecutors, police departments, probation
13 departments and sheriff's departments in the
14 17 largest counties outside New York City, to
15 focus on shootings and homicides. And in
16 many of our cities, those shooting and
17 homicide issues are in many ways
18 gang-related.

19 The shootings and homicides are down
20 significantly in GIVE jurisdictions in 2017.
21 That money, in addition to providing funding,
22 we provide extensive training and technical
23 assistance on evidence-based efforts to
24 attack those problems.

1 And then the SNUG or street outreach
2 problems are looking at that same issue from
3 a public health perspective and attacking it
4 from a different angle. And, you know, what
5 we've been working on doing is behind the
6 scenes getting those efforts to work hand in
7 hand. In many of our jurisdictions, that's
8 starting to happen and happen successfully.

9 So yes, we are very focused on the
10 issue, both on Long Island and across the
11 rest of the state.

12 SENATOR GOLDEN: Is DCJS obviously
13 working with the feds here on this, and the
14 local counties?

15 EX. DEP. COMMISSIONER GREEN: I would
16 say it's the local law enforcement that works
17 more with the feds in many of the efforts.

18 So for example, focused deterrence is
19 one of the efforts that we support under
20 GIVE. Focused deterrence involves many
21 different components, but one is an outreach
22 directly to the people involved in this
23 behavior, letting them know what the
24 community feels about it. But another piece

1 are enforcement actions when people violate
2 those community norms. And many times those
3 enforcement actions do involve a combination
4 of the locals and the feds working together
5 to do, for example, a RICO takedown against a
6 gang or something to that effect.

7 So it's -- you know, DCJS is
8 supporting efforts behind the scene, but part
9 of those efforts we support do involve, where
10 it's appropriate, supporting and encouraging
11 ways that locals and feds can work together.

12 SENATOR GOLDEN: And the approach that
13 you're now taking with MS-13, are we
14 expanding these approaches into the organized
15 crimes within the Russian and different
16 organizations that are out there organized
17 throughout the State of New York? Are you
18 taking some of those new approaches, are you
19 applying them to organized crime?

20 EX. DEP. COMMISSIONER GREEN: I think
21 that in some ways each of these situations
22 poses unique challenges and some of the
23 challenges MS-13 poses are unique and are
24 unique solutions. You know, some of the

1 problems, for example, in places like
2 Rochester and Buffalo, which are more the
3 neighborhood-crew-type situation driving the
4 violence, call for different types of
5 solutions.

6 So what we're really encouraging is
7 the local law enforcement in each of their
8 jurisdictions to, you know, from an
9 analytical perspective drill down and
10 understand exactly what the issues are. We
11 assist in looking at national research to
12 understand what is out there that's worked in
13 the past for those specific problems, try and
14 make the connections, and try and make sure
15 that each locality is pursuing strategies
16 that are appropriate for the particular
17 issues or problems that they're facing.

18 SENATOR GOLDEN: We do see a spike in
19 financial crimes, obviously, within the
20 Russian, Asian and Hispanic gang culture.
21 And I'm just wondering if we're expanding
22 into that area to curtail some of those
23 financial crimes that are going on,
24 especially with our seniors and with our

1 institutions.

2 EX. DEP. COMMISSIONER GREEN: I know
3 in our conversations -- and I think you may
4 have missed it, but I indicated that we were
5 in Suffolk and Nassau earlier this year
6 talking with the police commissioners there,
7 and they did mention some of the financial
8 crimes that they're seeing associated with
9 the gang activity. And where we can support
10 them in their efforts to fight that, we're
11 certainly doing that.

12 SENATOR GOLDEN: Thank you for your
13 service, sir. Thank you.

14 EX. DEP. COMMISSIONER GREEN: Thank
15 you.

16 SENATOR KRUEGER: Thank you very much,
17 Commissioner.

18 EX. DEP. COMMISSIONER GREEN: Thank
19 you.

20 SENATOR KRUEGER: I believe all people
21 have asked their questions. Appreciate your
22 time.

23 EX. DEP. COMMISSIONER GREEN: Thank
24 you.

1 CHAIRWOMAN YOUNG: Thank you.

2 SENATOR KRUEGER: Our next speaker is
3 Anthony Annucci, New York State Department of
4 Corrections and Community Supervision.

5 Good afternoon.

6 CHAIRWOMAN YOUNG: Good afternoon.
7 Welcome. We're glad to have your testimony,
8 Commissioner.

9 ACTING COMMISSIONER ANNUCCI: Thank
10 you.

11 Good afternoon, Chairwoman Young,
12 Chairwoman Weinstein, and other distinguished
13 chairs and members of the Legislature. I am
14 Anthony J. Annucci, acting commissioner for
15 the Department of Corrections and Community
16 Supervision. It is my honor to discuss some
17 of the highlights of Governor Cuomo's
18 Executive Budget plan.

19 Last year, New York appropriately
20 raised the age of criminal responsibility in
21 stages to 18. Since then, we have worked in
22 coordination with our state and local
23 partners, and this year we will transition
24 Hudson and Adirondack into Adolescent

1 Offender Facilities, to become operational by
2 October 1st. In 2019, we will convert the
3 previously closed Groveland Annex to a
4 standalone Adolescent Offender Facility.

5 Also, we will continue to reform the
6 use and conditions of solitary confinement
7 through the multiyear, comprehensive
8 settlement with the New York Civil Liberties
9 Union.

10 Since implementation in 2016, there
11 has been an impressive 29 percent reduction
12 in the number of inmates serving sanctions in
13 a special housing unit (SHU) cell, and a
14 25 percent decrease in the average length of
15 stay of an inmate in a SHU cell. During this
16 same period, assaults on staff were reduced
17 approximately 11 percent.

18 To continue building on this success,
19 Governor Cuomo has directed DOCCS to
20 consolidate SHU beds by closing one housing
21 unit at Cayuga, Upstate and Southport
22 Correctional Facilities. Upon completion of
23 these consolidations, and throughout the
24 implementation of this historic agreement,

1 New York will have removed more than 1,200
2 SHU beds.

3 Safety and security will again remain
4 a top priority. Working with the unions, we
5 have implemented and will expand upon a
6 variety of technological enhancements,
7 training improvements, and policy changes.
8 The department will continue installing a
9 number of fixed camera systems. After
10 initially piloting the use of body cameras at
11 Clinton and Bedford Hills, we will also
12 expand their use to other facilities and our
13 office of Special Investigations.

14 Lastly, since the department has
15 successfully piloted the use of pepper spray,
16 this year we will operationalize it
17 statewide. Thus far, among the results of
18 the pilot at the four test facilities, there
19 is an 11 percent reduction in the number of
20 reported staff injuries associated with staff
21 assaults.

22 As we continue to use technology to
23 make our prisons safer, we will also leverage
24 it to improve operations and interactions

1 with family and friends by expanding services
2 to our population. The department plans to
3 move to an electronic Inmate Trust Account
4 Services system, which will allow family and
5 friends to more easily deposit money, as well
6 as provide quicker access to the funds for
7 the population. Through this platform,
8 releasees will be issued debit cards that can
9 be transitioned to a bank account in the
10 community.

11 In a groundbreaking move, the
12 department will provide each incarcerated
13 individual a tablet at no cost, with the
14 ability to access free educational material
15 and e-books, and to file grievances.
16 Individuals will also have the option to
17 purchase music and additional e-books, and to
18 use a secure email system to communicate with
19 family and friends.

20 We have also awarded a new inmate
21 telephone system contract, resulting in a
22 reduction in the per-minute call rate to be
23 one of the lowest in the nation, while also
24 securing the ability to make permanent our

1 SHU pilot tablet program, to provide easier
2 access to the telephone and preloaded
3 educational materials.

4 The budget will also build upon proven
5 reentry initiatives with an expansion of the
6 merit time and limited credit time allowance
7 statutes, as well as a pilot to place up to
8 100 LCTA-eligible inmates into educational
9 release and work release. Also, geriatric
10 parole will be authorized for inmates over 55
11 with debilitating age-related conditions; the
12 parole supervision fee, which inhibits
13 reentry, will be repealed; and the Board of
14 Parole, in conjunction with Community
15 Supervision staff, are engaging with the
16 Governor's Reentry Council for a
17 comprehensive review of parole revocation
18 guidelines and practices.

19 Appropriate alternatives to
20 incarceration for those technical violators
21 who pose little risk to reoffend will be
22 prioritized.

23 This year we will also expand our
24 Veterans Residential Therapeutic Program to a

1 maximum-security prison. This program
2 provides treatment services in a therapeutic
3 community setting to the veteran population,
4 to heal and restore them to a pro-social
5 state.

6 For Community Supervision, we have
7 implemented a strategic plan to improve
8 outcomes for parolees to include monitoring
9 enrollment in substance abuse treatment,
10 anger management, sex offender counseling,
11 domestic violence programs, mental health
12 services, and employment and vocational
13 training programs.

14 Additionally, we continue to study our
15 RESET initiative, which focuses on
16 case-plan-driven techniques that concentrate
17 on criminogenic risks and needs to enhance
18 public safety. This evidence-based approach
19 continues to show indications of better
20 outcomes by taking swift, certain and fair
21 actions toward new delinquent behavior, while
22 also acknowledging and rewarding positive
23 achievements.

24 In conclusion, this year we will

1 embark on many exciting initiatives that will
2 have a positive impact throughout the entire
3 agency. We will rely on new technologies to
4 deliver transformative programs and
5 initiatives, while our professional,
6 well-trained, and dedicated work force will
7 continue performing their daily and
8 oftentimes dangerous responsibilities in an
9 exemplary manner. The Governor's proposed
10 budget will build on criminal justice reform
11 and place DOCCS in an ideal position to
12 fulfill its expectations.

13 Thank you, and I will be happy to
14 answer any questions.

15 CHAIRWOMAN YOUNG: Thank you,
16 Commissioner. We appreciate that testimony
17 very much.

18 I'd like to start with a few
19 questions. And first of all, I have spent
20 time visiting all the facilities that are
21 either in my Senate district or surround it.
22 And recently I had the opportunity to go back
23 to Attica, which I hadn't visited since I was
24 a reporter in my early twenties many, many,

1 many years ago.

2 So the first question has to do with a
3 proposal by the Governor. But could you
4 please explain what the purpose is of special
5 housing units?

6 ACTING COMMISSIONER ANNUCCI: Special
7 housing units is the means by which we
8 basically separate from the general
9 population those individuals whose
10 misbehavior places other inmates at risk,
11 such as a serious assault or possession of a
12 large amount of contraband or drugs. So they
13 are separated from the general population
14 pursuant to a disciplinary hearing and
15 sanction that may impose placement in a
16 special housing unit.

17 Our system is different from others,
18 in that we have a fixed system with penalties
19 for periods of time in a special housing
20 unit. Once that is served, the person is
21 released. And we, as you know, are in the
22 process of implementing a multiyear agreement
23 with the New York Civil Liberties Union to
24 transform our SHUs to basically provide more

1 services so that, consistent with where the
2 entire country is going, we can safely say
3 that you will not be at risk of harm when you
4 are placed in these SHUs with all of the
5 changes that we are making.

6 CHAIRWOMAN YOUNG: So with the SHUs,
7 they're designed to protect other inmates
8 from potential violence, protect a person
9 maybe from himself, protect the staff;
10 correct?

11 ACTING COMMISSIONER ANNUCCI: Correct.

12 CHAIRWOMAN YOUNG: So you mentioned
13 something about a national trend. But in the
14 Governor's proposal, there's a section that
15 proposes closing 900 special housing unit
16 beds. So where will those inmates that are
17 currently residing in those beds be
18 relocated?

19 ACTING COMMISSIONER ANNUCCI: They're
20 not currently residing in those beds,
21 Senator. Those are vacant beds. We have
22 that many vacancies in our --

23 CHAIRWOMAN YOUNG: So in the system
24 today there are 900 vacant beds.

1 ACTING COMMISSIONER ANNUCCI: Well,
2 there are vacant beds and there are beds that
3 we have put offline and filled with
4 alternatives.

5 For example, the step-down unit at
6 Green Haven, the step-down unit at Wende are
7 providing out-of-cell time for individuals,
8 preparing them for release. And so when
9 they're released into the community, we don't
10 consider them to be traditional SHU beds.

11 CHAIRWOMAN YOUNG: So today you're
12 saying that those step-down and those other
13 beds, those SHU beds are vacant. Or is this
14 going to be created?

15 ACTING COMMISSIONER ANNUCCI: I'm
16 sorry, I didn't get the question.

17 CHAIRWOMAN YOUNG: So you're creating
18 this, it sounds like. You're saying that
19 there aren't --

20 ACTING COMMISSIONER ANNUCCI: It's a
21 combination of two things. It's a
22 combination of the SHU population has
23 dramatically been reduced, and at the same
24 time we're putting online new programs that

1 are providing out-of-cell time and treatment
2 and therapy, and therefore we do not need
3 this many SHU beds.

4 CHAIRWOMAN YOUNG: How long has DOCCS
5 been reducing the SHU beds?

6 ACTING COMMISSIONER ANNUCCI: Since we
7 started the agreement and converted a number
8 of these.

9 You may also recall that when we
10 enacted all the laws to deal with the
11 seriously mentally ill, we took that RMH, the
12 RMHU that's now at Marcy, that originally was
13 a 200-bed S block. We converted that to an
14 RMHU for the seriously mentally ill. And we
15 have converted other units. I can probably
16 compile a master list, I just can't think of
17 everything off the top of my head right now.

18 CHAIRWOMAN YOUNG: Okay, thank you,
19 Commissioner. Do you envision closing more
20 SHU beds in the future?

21 ACTING COMMISSIONER ANNUCCI: I don't
22 envision it right now. But I'm really
23 anticipating what the system will look like
24 when everything is brought online. And we

1 have yet to enact the centerpiece of the
2 agreement, which is the 252-bed step-down
3 program at Southport that's planned. That's
4 going to take a bit of time to build up and
5 provide the necessary program space and group
6 recreation areas.

7 Later this year we will implement the
8 step-down unit at Lakeview.

9 So I am confident when all is brought
10 online that we will retain the ability to
11 safely segregate individuals but provide them
12 the needed out-of-cell treatment and
13 programming so that there is no potential
14 risk of harm, keeping everybody safe.

15 CHAIRWOMAN YOUNG: Thank you for that
16 answer, Commissioner.

17 So you just referenced Lakeview, which
18 is in my Senate district. Could you give
19 more information on what's happening there?

20 ACTING COMMISSIONER ANNUCCI: I didn't
21 quite get that, Senator.

22 CHAIRWOMAN YOUNG: So, Commissioner,
23 you just mentioned Lakeview, which is in my
24 Senate district. Could you please give more

1 information as to what's happening there.

2 ACTING COMMISSIONER ANNUCCI: In terms
3 of what our plans are for that unit?

4 CHAIRWOMAN YOUNG: Yes.

5 ACTING COMMISSIONER ANNUCCI: Yes,
6 that is going to be a program designed
7 primarily for the offenders that keep cycling
8 in and out of SHU because they keep taking
9 drugs and they have drug dependencies.

10 And so this is a special program
11 that's going to be for them, it's going to
12 focus on their substance abuse and hopefully
13 get them to finally understand that they need
14 to refrain from this. And it will be very
15 heavily focused on treatment.

16 CHAIRWOMAN YOUNG: Okay. Well, thank
17 you for that.

18 Just switching gears, you referenced
19 Raise the Age. And it would be beneficial, I
20 believe, to the Legislature to hear directly
21 from you more information about what
22 transformations DOCCS has undertaken since
23 Raise the Age was enacted.

24 ACTING COMMISSIONER ANNUCCI: Yes.

1 And obviously we got a head start because the
2 Governor issued his executive order a couple
3 of years ago which required us to remove all
4 16- and 17-year-olds from the adult system
5 and house them in Hudson. And now with the
6 law, we are nicely positioned to transform
7 Hudson and make it into an adolescent
8 offender facility when that law takes effect.

9 It has been eye-opening for us. We
10 worked very closely with the Office of
11 Children and Family Services to really
12 develop age-appropriate programming for this
13 cohort and also to properly train staff. So
14 we are now in the midst of doing physical
15 rehabilitation at Adirondack and making
16 individual rules for this population, and
17 developing programs that are specifically
18 aimed at the young.

19 And it's a work in progress, to some
20 degree. For example, we just met with Hudson
21 Link. We want to bring a college program
22 there. We want to put the barbering program
23 there. We want to bring credible messengers,
24 that people who have been through the system

1 and who have made it on the outside to come
2 and speak to this cohort.

3 So they're very, very challenging.
4 The number of females we have are only one or
5 two at a time. I was just there a week ago
6 for the graduation of one who received her
7 high school diploma. She was the first one
8 from that facility to get a high school
9 diploma, but I wanted to be there,
10 congratulate her. She stood up, thanked the
11 facility and said "If it's not for this
12 facility, I would not have turned my life
13 around." So that was very gratifying. We
14 took some pictures with her mother and
15 family. And we're definitely moving in the
16 right direction there.

17 CHAIRWOMAN YOUNG: Thank you for
18 sharing that.

19 How many youth are at Hudson right
20 now?

21 ACTING COMMISSIONER ANNUCCI: We have,
22 I think, 50 at Hudson and six at Cocksackie.
23 Cocksackie is now where we house the 16- and
24 17-year-olds that require maximum security

1 placement. But we are going to have
2 everybody stay at Hudson when the law changes
3 since there's no more maximum security.

4 CHAIRWOMAN YOUNG: So there was
5 \$30 million spent, I believe, so far to
6 retrofit Hudson. Can you give us a little
7 bit more information as to how that money was
8 spent?

9 ACTING COMMISSIONER ANNUCCI: A lot of
10 it had to do with, you know, upgrading and
11 being able to construct the rec areas, the
12 juvenile separation unit that is there.
13 Obviously there will be times when inmates
14 will fight with each other, youth will fight
15 with each other, and we have to be able to
16 separate them. But we also want to give them
17 group recreation, if needed. We also, if we
18 have to use what we call the restart chair so
19 that -- to prevent them from fighting.

20 So there's a lot of different
21 upgrades. As well as the fact that we had to
22 add a whole separate area for the females.
23 That was always a male facility except many,
24 many, many years ago. But to be able to do

1 all those things and secure the perimeter,
2 et cetera, is a lot of work.

3 But we can -- I can get you the full
4 rundown on those costs, Senator, if you wish.

5 CHAIRWOMAN YOUNG: Thank you. That
6 would be helpful.

7 What about OCFS? You referenced them
8 just a few minutes ago. And what do you see
9 OCFS's role being moving forward as far as
10 working with DOCCS?

11 ACTING COMMISSIONER ANNUCCI: They've
12 been our partners from day one. And we
13 really value their experience, their
14 knowledge, advising us on what the
15 appropriate curriculums should be, and
16 programs.

17 They in turn have admired some of the
18 things we have. They were very complimentary
19 of the vocational programs that we have there
20 as well.

21 We studied their educational programs.
22 They actually have coed classrooms for some
23 of their college programs, I believe at
24 Columbia.

1 So we'll certainly keep an open mind
2 and be able to communicate regularly and take
3 their input.

4 CHAIRWOMAN YOUNG: Thank you for that.

5 You mentioned Groveland. Could you
6 tell us about that?

7 ACTING COMMISSIONER ANNUCCI:

8 Groveland had an annex that we closed a
9 number of years ago when we were downsizing
10 in general. And that is an ideal location --
11 with a lot of rehab work, obviously, to make
12 it as the third adolescent offender facility.

13 Even though the numbers are low, what
14 we anticipate is that once the laws have
15 changed and once you have someone who is,
16 let's say, a week from their 18th birthday
17 and gets sentenced to, you know, a state
18 imprisonment sentence, at a minimum we have
19 to hold on to that person for two years.

20 Right now when a 16- or 17-year-old
21 turns 18, we're transferring them to the
22 adult system. But going forward, we will
23 hold on to those people for at least two
24 years, even if they're only a week shy of

1 their 18th birthday.

2 So we feel with these three
3 facilities -- and again, it's hard to predict
4 exactly what the numbers will be -- this will
5 give us the latitude. Because in effect,
6 this is going to be a system within a system,
7 separate and distinct, entirely, from the
8 adult system.

9 CHAIRWOMAN YOUNG: One of the things I
10 wanted to ask about -- so we have three
11 facilities. It's Coxsackie -- right, you
12 said -- Hudson and Groveland. Those are the
13 three?

14 ACTING COMMISSIONER ANNUCCI: No.
15 Coxsackie is right now used in accordance
16 with the Governor's executive order for those
17 16- and 17-year-olds that require maximum
18 security placement. But that is going to
19 stop, obviously. Probably in the very near
20 future we'll just have anybody coming in on
21 the current law, we feel confident we can
22 handle them safely at Hudson.

23 CHAIRWOMAN YOUNG: At Hudson.

24 ACTING COMMISSIONER ANNUCCI: So

1 that's just going to just phase out, and
2 we're going to use Coxsackie for a different
3 purpose.

4 CHAIRWOMAN YOUNG: Okay, so --

5 ACTING COMMISSIONER ANNUCCI: But the
6 three facilities will be Hudson, Adirondack,
7 and then Groveland.

8 CHAIRWOMAN YOUNG: Okay. Thank you
9 for clarifying that.

10 So I wanted to ask about transporting
11 the youth population. Who is responsible for
12 that? So, say, for example in Chautauqua
13 County, which I represent, there has to be a
14 youth who's transported from Chautauqua
15 County to Hudson.

16 ACTING COMMISSIONER ANNUCCI: That's
17 what happens now, Senator. That is right now
18 the sole reception place, in accordance with
19 the Governor's executive order, for any 16-
20 or 17-year-old that's sentenced.

21 And the counties from around the
22 state, they've arranged -- sometimes they
23 coordinate with one another, and someone will
24 pick up one of their youth and drive them.

1 But they take them to Hudson, because that's
2 the only place that we currently use as a
3 reception location for the 16- and
4 17-year-olds.

5 Which is another thing that we had to
6 rehab. We had to make it a reception center
7 as well.

8 CHAIRWOMAN YOUNG: So who is
9 responsible for the cost of transporting
10 these young people?

11 ACTING COMMISSIONER ANNUCCI: Local
12 officials have always been responsible for
13 transporting them.

14 They have applied to us for
15 reimbursement under a statute that the
16 Governor is now proposing to amend. Instead
17 of continuing to reimburse them for a portion
18 of their salaries, they will be reimbursed, I
19 believe, for regular mileage.

20 CHAIRWOMAN YOUNG: So there is some
21 reimbursement to the local governments?

22 ACTING COMMISSIONER ANNUCCI: It's the
23 sheriff, I believe, that submits the requests
24 for reimbursement.

1 CHAIRWOMAN YOUNG: Okay. So if it's
2 not based on the salaries, is that actually a
3 drop in reimbursement to the local
4 governments? And the reason I ask that is
5 because Senator Gallivan, Senator Lanza and I
6 negotiated with the Governor on the Raise the
7 Age proposal, and part of the deal, for lack
8 of a better word, was that there wouldn't be
9 costs imposed on local governments.

10 ACTING COMMISSIONER ANNUCCI: I think
11 we're mixing a little bit of apples and
12 oranges. The change I talked about in the
13 law that the Governor is proposing is a
14 change for all the counties in the state,
15 however they're delivering to us individuals
16 that are state-ready, whether they're
17 adolescent offenders or whether they're
18 adults.

19 Right now under the law they apply for
20 reimbursement, and in that bill to us is a
21 portion of their salaries. And that's pretty
22 much an antiquated statute. So across the
23 board, we are making that change and treating
24 everybody uniformly. They'll get reimbursed

1 for their travel.

2 And part of the thinking, Senator, I
3 should point out is that we have been very
4 accommodating, my agency, to the needs of the
5 local counties when they have someone in
6 their custody that requires extraordinary
7 mental health care or medical care. And
8 under a provision of the law that's called
9 Section 504 of the Correction Law, they've
10 come to me and they've said, Would you,
11 instead of us having to have this individual
12 with us and pay enormous outside hospital
13 costs, can you take them into one of your
14 regional medical units? And I have done that
15 repeatedly and saved a lot of counties a
16 fortune. And we always get thanked by the
17 sheriffs, by the Sheriffs Association, we
18 always get that feedback that they are
19 extraordinarily appreciative of us doing
20 that.

21 CHAIRWOMAN YOUNG: No, and I think
22 that we're appreciative of that also. But I
23 just want you to give me an answer to my
24 question. Does the Governor's proposal

1 included in the budget actually reduce
2 funding to local governments for the
3 transportation costs? Is it going to net out
4 to be less to the local governments or more
5 to the local governments? How is it going to
6 net out?

7 ACTING COMMISSIONER ANNUCCI: Well,
8 the statute that I'm talking about that's
9 been changed, obviously there will be less
10 reimbursement going back to the sheriffs for
11 the transportation costs.

12 CHAIRWOMAN YOUNG: Thank you.

13 CHAIRWOMAN WEINSTEIN: Assemblyman
14 Weprin, Assembly chair of Corrections.

15 ASSEMBLYMAN WEPRIN: Thank you, Madam
16 Chair.

17 Good to see you, Commissioner. I just
18 want to say, on a personal note, this is my
19 second year as chair of Corrections and
20 you've been very open and responsive to my
21 office last year and this year. And I think
22 we have a very good working relationship, and
23 I appreciate that. And hopefully that will
24 continue.

1 And I've also enjoyed many, many
2 programs that we've witnessed together,
3 including the most recent performance that we
4 were at at Green Haven, and want to keep that
5 going, obviously, and look forward to that.

6 I also am happy to see the Governor's
7 proposal on geriatric parole. It's something
8 that I've been pushing for for a while. And
9 I'm actually -- I'm going to be amending my
10 bill, if I haven't already done it, to go
11 from 60 to 55 based on your proposal, and I
12 thank you for making my bill stronger.

13 Can you give me an indication about
14 how many inmates currently are over 55 in
15 facilities in the state?

16 ACTING COMMISSIONER ANNUCCI: I had
17 that number, Assemblyman. I don't remember
18 it off the top of my head.

19 But what I can tell you is in looking
20 at, according to our bill, the number of
21 individuals who meet the criteria crimewise
22 and who either today are housed in a unit for
23 the cognitively impaired or a regional
24 medical unit, which means they would have

1 difficulty functioning, taking care of
2 themselves in a general confinement setting,
3 that number is somewhere around -- a little
4 below 200, I believe, about 195.

5 But I can separately get to you the
6 number that are 55 and older. And it is a
7 population that has slowly and steadily
8 increased, which has also driven, you know,
9 our hospital costs. Even though we had 800
10 less hospital days than the year before, the
11 costs of hospital treatment go up, obviously.
12 And obviously we're looking -- this is a
13 humanitarian gesture, but obviously we'll
14 also save the state money.

15 ASSEMBLYMAN WEPRIN: I appreciate
16 that. I know the geriatric parole proposal
17 creates a health standard of a chronic or
18 serious condition, disease, syndrome or
19 infirmity exacerbated by age that has
20 rendered the person so physically or
21 cognitively debilitated or incapacitated that
22 the ability to provide -- and I'm quoting
23 from the bill -- self-care within prison is
24 substantially diminished.

1 Could you define what that means? And
2 generally, what kinds of illnesses are we
3 talking about?

4 ACTING COMMISSIONER ANNUCCI: We
5 carefully sat down with all of the people
6 involved in making -- in writing the statute.
7 In particular, we got a lot of feedback from
8 my chief medical officer, Dr. Carl
9 Koenigsmann. And he was very clear that
10 there's no per se definition of conditions
11 that are only applicable to people at a
12 certain age. That you can have some of these
13 conditions at any age, as we know, whether
14 it's cancer, high blood pressure, diabetes,
15 et cetera. But we do know that many people
16 who, when they get these conditions at
17 advanced ages, it is more debilitating for
18 them.

19 So we are looking at the individual as
20 a whole. Not just his age per se, but what
21 the conditions are and, most importantly, his
22 ability to self-ambulate and take care of
23 himself in a correctional facility setting.

24 And the other important thing is that

1 this statute nicely bifurcates the
2 responsibility for determining dangerousness.
3 It's no longer incumbent upon my chief
4 medical officer, and he needs the
5 commissioner to approve it, to determine
6 whether or not the individual is capable of
7 presenting a risk of harm to the public.
8 That responsibility will now solely fall to
9 the Board of Parole. Which I think is a
10 better way of handling things, because they
11 do it as a face-to-face interview.

12 Dr. Koenigsmann was more or less doing
13 this on a paper review of the medical records
14 he gets. He then passes it up to me, and
15 99 percent of the time I sign off. My office
16 will then, as is the current practice, send
17 out the letters to the judge, DA, district
18 attorney, on behalf of the Board of Parole,
19 to get input, as the case is being then
20 referred to the Board of Parole for a final
21 determination.

22 ASSEMBLYMAN WEPRIN: Okay, staff has
23 given me a calculation of 5,610 inmates
24 currently incarcerated over 55. Would that

1 sound like a good number?

2 ACTING COMMISSIONER ANNUCCI: Yeah,
3 that sounds fair.

4 ASSEMBLYMAN WEPRIN: Okay, moving on
5 to a couple of other topics, merit time and
6 limited credit time allowance expansion.
7 I've strongly supported that, but I have a
8 question. Why continue to have different
9 criteria and time reductions for the two
10 programs? Shouldn't achievement in good
11 behavior be rewarded the same way regardless
12 of the class of the offense?

13 ACTING COMMISSIONER ANNUCCI: Yeah,
14 there's a real history to this. The merit
15 time statute goes back to I think 1997 or
16 '98, and that's the time when the state
17 wanted to differentiate significantly between
18 what would happen with violent felony
19 offenders and what would happen with the
20 nonviolent felony offenders. And so there
21 was a recognition that nonviolent offenders,
22 and particularly since we had so many drug
23 offenders, that we would allow them the
24 ability to potentially earn an earlier

1 release.

2 And so it was based upon a formula,
3 the benefit being one-sixth off the minimum
4 sentence. If you serve six to 18 years, you
5 qualify for merit time by doing one of those
6 programs -- whether it's substance abuse
7 treatments, whether it's get your GED, a
8 vocational program, or performing 400 hours
9 or more of community services as part of a
10 work group -- plus a positive disciplinary
11 record, you would get the benefit.

12 Now, after the passage of time and the
13 sentencing commission that was chaired by
14 then Director of Criminal Justice Denise
15 O'Donnell, there's a recognition that we also
16 need to look at a lot of people that may be
17 in prison for serious offenses, but they're
18 in for a long time and they've changed their
19 lives around. And having nothing that
20 enables them to get any kind of time
21 reduction was counterproductive.

22 So after discussing this issue for a
23 while, we came up with an agreement that
24 there should be some ability to earn a

1 reduction of time. And rather than make it
2 formula-driven by taking a percentage,
3 et cetera, we recognized why not make it just
4 a neat, clean six-month reduction.

5 In the case of anybody serving an
6 indeterminate sentence without a life term
7 maximum, that would be six months off the CR
8 term. In the case anybody with a life term
9 maximum, it would be six months off the
10 minimum sentence. So if it's 15 to life,
11 it's -- you'd get out after -- potentially,
12 with Board of Parole approval -- after
13 14½ years.

14 But there was a recognition that
15 because these are serious offenses, the bar
16 had to be raised higher. So generally
17 speaking, this is a list of pretty
18 significant programs.

19 It's a lot easier to get a GED than to
20 get your master's degree from, you know, the
21 theology school that is present at Sing Sing.
22 If you look through all the different program
23 listings, I believe there's 12 of them now,
24 they're pretty demanding. So there's a

1 recognition, and it's consistent with their
2 recommendations, yes, give them a benefit,
3 but make it much more demanding. And I think
4 the new ones that we're proposing are very
5 good. The cosmetology, we just got an
6 agreement with the Department of State, the
7 Department of Education, that we can
8 license -- an inmate that passes the test can
9 actually receive her license while
10 incarcerated, and then go out and potentially
11 get a job in that business. So we wanted to
12 do that, we wanted to do barbering. And of
13 course the third thing is the T4C plus one
14 year of work release.

15 ASSEMBLYMAN WEPRIN: I have actually
16 personally visited a number of those programs
17 and was very impressed. So I hope you
18 continue in those veins of adding more
19 programs. And I appreciate the work that you
20 and the Governor have done in that area.

21 When I first became chair of
22 Corrections last January, one of the issues
23 that was obviously a problem were the
24 vacancies in parole commissioners. I'm very

1 happy to see that the Governor filled those,
2 including one of our staff members that you
3 know. So that's positive. And I'm very
4 happy to see your proposal to add three new
5 commissioners.

6 How many parole commissioners do we
7 have now? I've heard different numbers.
8 I've heard 16, 17, and then --

9 ACTING COMMISSIONER ANNUCCI: I
10 think -- we're funded for 17, but I think
11 there was one vacancy recently created.
12 Including the chairwoman.

13 ASSEMBLYMAN WEPRIN: So there will be
14 17. And then the additional three is
15 included in that, or it would be on top of
16 that 17?

17 ACTING COMMISSIONER ANNUCCI: It
18 includes the three that were recently
19 appointed. So we're funded for 17.

20 ASSEMBLYMAN WEPRIN: No, but I'm
21 saying the three that are proposed. In
22 the current budget, there's a proposal to add
23 three new.

24 ACTING COMMISSIONER ANNUCCI: No,

1 that's the current.

2 ASSEMBLYMAN WEPRIN: That's the
3 current. So a full complement will be 17.

4 ACTING COMMISSIONER ANNUCCI: I
5 believe. Let me double-check on that,
6 though. I'm not a hundred percent sure.

7 ASSEMBLYMAN WEPRIN: Okay, if you
8 could let me know.

9 The other thing that I've been a
10 strong supporter of, and I know you have as
11 well, is the video visitation. Not to
12 supplant regular visitation -- as you know,
13 I've been a strong advocate for regular
14 visitation -- but as a supplement to regular
15 visitation.

16 Can you give us an update on how many
17 facilities have the video conferencing
18 visitation and how that's working?

19 ACTING COMMISSIONER ANNUCCI: I know
20 we have arrangements, contracts, with the
21 Osborne Association, the Children's Center, I
22 think another entity called Jericho. I think
23 it's the Child's Center that has Bedford
24 Hills and Albion. And I forget the sites;

1 there might be one in the Bronx, one in
2 Brooklyn. Osborne I think had Clinton and
3 one other. And I can't remember everyone. I
4 will get you all of that. I had it all
5 written out in my notes.

6 But I know they're looking to expand,
7 including we want to put it at the youth
8 facility in Hudson as well.

9 ASSEMBLYMAN WEPRIN: Okay, great.

10 And just one last question. I know we
11 went through that whole issue with the
12 package program which was rescinded. But
13 during that process when I was contacted by
14 many advocacy groups, it was either a rumor
15 or something that people had mentioned that
16 there were certain commissary facilities that
17 were going to be closed or not taking place
18 in different facilities because of, you know,
19 this new package program which is no longer
20 in existence.

21 Are there any facilities contemplating
22 removing commissary privileges and --

23 ACTING COMMISSIONER ANNUCCI: No.

24 ASSEMBLYMAN WEPRIN: So there's no

1 truth to that.

2 ACTING COMMISSIONER ANNUCCI: That was
3 never part of the secure package vendor
4 program, to close commissaries. We always
5 want to have commissaries, we always want to
6 have the ability for inmates to purchase what
7 they want.

8 ASSEMBLYMAN WEPRIN: Well, I'm happy
9 to hear that, because I have gotten favorable
10 comments, you know, on commissaries. And
11 there was that rumor going around during that
12 program, so I'm happy to hear that that is
13 not in fact the case.

14 ACTING COMMISSIONER ANNUCCI: No.

15 ASSEMBLYMAN WEPRIN: Thank you, Madam
16 Chair. I'm okay for now.

17 CHAIRWOMAN YOUNG: Thank you. Our
18 next speaker is Senator Gallivan.

19 SENATOR GALLIVAN: Thank you, Madam
20 Chair.

21 Good afternoon, Commissioner.

22 ACTING COMMISSIONER ANNUCCI: Good
23 afternoon, Senator.

24 SENATOR GALLIVAN: Thanks for your

1 patience.

2 I too would like to thank you for your
3 cooperation as our offices have worked
4 together over the past number of years. And
5 I look forward to that continuing, of course.

6 I want to pick up on a couple of
7 things discussed already. First we'll start
8 with SHU, special housing. And I know that
9 you described it. Is it fair to say, though,
10 that the use of special housing is among the
11 tools that helps provide for the safety,
12 security and order in a facility?

13 ACTING COMMISSIONER ANNUCCI: Yes.

14 SENATOR GALLIVAN: Can you describe
15 the specific cell? And how does the cell
16 itself where the inmate resides, how does it
17 differ than the normal cell in regular
18 housing?

19 ACTING COMMISSIONER ANNUCCI: Well,
20 for starters, compared to a normal cell
21 there's basically no property. And it's also
22 removed to a remote part of the facility, so
23 there's not access or travel by other
24 inmates, not a lot of contact with other

1 people.

2 But there is a fair amount of contact
3 when people make rounds, when the supervisors
4 make rounds, the sergeants, the ORC, or the
5 offender rehabilitation coordinator. The
6 chaplain may make site visits and check on
7 people. Depending upon if it's an OMH-level
8 facility, the clinician will make rounds. So
9 there's that kind of activity.

10 But in terms of its physical location,
11 it's physically removed from the
12 general-confinement aspects of the facility.

13 SENATOR GALLIVAN: How about its
14 physical size as compared --

15 ACTING COMMISSIONER ANNUCCI: The
16 cells vary, but generally speaking they're
17 pretty much comparable to what you'd find in
18 a normal general-confinement cell.

19 SENATOR GALLIVAN: Are you able to
20 distinguish it from what -- sometimes the
21 general public gets a view of it from
22 television or the movies, like Orange is the
23 New Black, Shawshank Redemption, that --
24 where it's dark and it's very small. I mean,

1 can you distinguish it from that?

2 ACTING COMMISSIONER ANNUCCI: No, I
3 don't think they're quite that small. But
4 it's -- you know, the problem is, and the
5 experts tell us, that 23 hours a day
6 confinement over a long period of time does
7 potentially cause a risk of harm.

8 So all of these programs that we
9 developed -- and I see us moving in a very
10 similar path to what we did when we enacted
11 all these programs for the mentally ill. We
12 provided all these programs or all these
13 special beds that provide out-of-cell
14 treatment and programming. And that's a lot
15 of what we're going to be doing going
16 forward.

17 As well as the amenities that are
18 being provided while they're in their SHU
19 cells, such as we have presently rolling
20 telephone carts where they now, as part of
21 the PIMS system, can make I believe a
22 once-per-month phone call to family.

23 SENATOR GALLIVAN: So that's a move
24 you're referring to inmates in SHU would

1 ultimately --

2 ACTING COMMISSIONER ANNUCCI: Yes.

3 SENATOR GALLIVAN: -- for what they
4 don't have now, would ultimately have that
5 whole menu of programs available to them,
6 with the movement that -- or where you're
7 moving to.

8 ACTING COMMISSIONER ANNUCCI: I'm
9 sorry --

10 SENATOR GALLIVAN: I'm not sure if I
11 understood you correctly. So what you just
12 described, you talked about making a movement
13 towards or what you're working towards. And
14 that is offering that full range of programs
15 to the inmates that are housed in the special
16 housing.

17 ACTING COMMISSIONER ANNUCCI: Yes.
18 Yes.

19 SENATOR GALLIVAN: All right, thank
20 you.

21 So we talked about the safety and
22 security of the facility. And I know that
23 that always is a concern of yours, based on
24 our discussions. And in your testimony you

1 talked about some of the pilots that were
2 started that work towards that. Some of them
3 came about as a result of the Inspector
4 General report, obviously --

5 ACTING COMMISSIONER ANNUCCI: Correct.

6 SENATOR GALLIVAN: -- and some of them
7 were things that you had been working on and
8 trying to implement for years.

9 Is it ultimately your intention, these
10 various programs -- you talked specifically
11 about pepper spray and in those four
12 facilities you had a reduction of assaults on
13 staff. Is it ultimately your intention to be
14 expanding these various programs statewide?

15 ACTING COMMISSIONER ANNUCCI: Pepper
16 spray, it's our intention to make that
17 statewide.

18 SENATOR GALLIVAN: Contraband is
19 always a concern, and we still have sky-high
20 levels of assaults, inmate on inmate, inmate
21 on staff. Are there other tools that you
22 haven't implemented yet that could be used?
23 Such as -- one of the things that we are
24 trying to provide the ability to use in

1 legislation, and then obviously funding has
2 to follow -- would be the use of body
3 scanners.

4 Rikers Island used them for several
5 months. They used them for the most part
6 following visitation -- inmates would go
7 through them -- and they saw a significant
8 reduction of violence inside the facility.

9 So have you considered other things
10 that you're not doing to date --

11 ACTING COMMISSIONER ANNUCCI: Well, I
12 can tell you that we've done a lot to try and
13 combat contraband. I've added significantly
14 to the canine units. We have nine in special
15 ops and we have two more in our OSI unit.
16 And together, we have made hundreds of
17 arrests. They have really been
18 extraordinarily effective. Our partnership
19 with the State Police, who also come in and
20 allow their teams to work as well. They're
21 very good at detecting illegal substances.
22 And so we will continue to do that,
23 potentially expand in the future as we go.

24 With respect to body scanners, my

1 understanding -- and you and I briefly had a
2 conversation about that -- is that it may
3 either violate the Public Health Law or may
4 violate one of the regulations that --

5 SENATOR GALLIVAN: That's exactly what
6 the legislation would provide for. Currently
7 there's a limitation on who can use the body
8 scanners. There's been some question of
9 safety, but we'll treat that as a separate
10 issue for now. But it is the authority to
11 use it under the Public Health Law.

12 However, if we assume that that
13 obstacle is overcome, is that something that
14 you've considered using? Or would it be
15 valuable to use?

16 ACTING COMMISSIONER ANNUCCI: Well,
17 Senator, there's a lot to consider there.
18 These are -- the overwhelming majority of
19 families that come, young children that come,
20 we're trying to make an atmosphere where they
21 can maintain family connections, because that
22 is critical for reentry. And I don't want to
23 make a final determination because obviously
24 I keep an open mind about everything. But I

1 certainly don't want to create another
2 problem and make people feel that, you know,
3 this is -- I have to see it in operation. Is
4 it a humiliating experience, et cetera.

5 What I can also tell you that we've
6 done --

7 SENATOR GALLIVAN: Excuse me,
8 Commissioner. Commissioner, if I may, this
9 would only be -- the use at Rikers and the
10 use that I would propose would solely be for
11 the inmates to pass through after they leave
12 the facility or after they follow a visit.
13 It would not be the visitors themselves.

14 ACTING COMMISSIONER ANNUCCI: Okay,
15 well that's different.

16 SENATOR GALLIVAN: I understand your
17 concern over visitors.

18 ACTING COMMISSIONER ANNUCCI: Okay.
19 But the problem is once drugs get into the
20 facility, right, they can be left in a
21 restroom and people have elaborate ways to
22 get it out. So the best defense is to
23 prevent it from coming in in the first place.

24 I will also say that we have

1 completely implemented our visitor processing
2 identification system so that when a visitor
3 has been identified as trying to bring in
4 drugs at one facility, should that person try
5 and enter another facility under a different
6 name with different identification, we now
7 know who they are and can prevent their
8 entrance.

9 SENATOR GALLIVAN: Thank you. The
10 last area right now for the sake of the time
11 that I have, the secure vendor package
12 program. I know that was a goal for years
13 and years, and it's recognized as a best
14 practice nationwide. There were some
15 problems with it, and the Governor responded
16 by pulling that back.

17 Now, I think I have the correct
18 understanding of that, that the Governor's
19 action was to pull it back until you work out
20 the problems. Do I have that correctly --

21 ACTING COMMISSIONER ANNUCCI: Yes,
22 Senator, it clearly was the right decision to
23 make.

24 SENATOR GALLIVAN: But is that the

1 correct understanding, that this is not pull
2 it back and get rid of it --

3 ACTING COMMISSIONER ANNUCCI: Right,
4 this is --

5 SENATOR GALLIVAN: -- this is pull it
6 back and fix it.

7 ACTING COMMISSIONER ANNUCCI: The term
8 "suspended" was used, so that we can have an
9 opportunity to take into consideration all
10 the feedback that we've received thus far,
11 sitting down with the unions, getting their
12 input, sitting down with our superintendents,
13 particularly at the three facilities where it
14 was a pilot, listening to the advocates,
15 listening to the inmates. Perhaps talking
16 further with the vendors that we had
17 enlisted.

18 And I'm confident that at some point
19 in the future we can craft a proposal that
20 will still accomplish the security things
21 that we need accomplished but balance those
22 other considerations. There are pilots that,
23 you know, work well, and unfortunately this
24 was one that right out of the block generated

1 a lot of problems. And I will take
2 responsibility for some of that, in that I
3 should have better prepared and explained,
4 because there was some misinformation about
5 what was going on as well.

6 Lesson learned. I think we can go
7 forward in the future. I can't give you a
8 timetable, because we have that and we have
9 so many other things that we're doing at the
10 same time. But it remains an important issue
11 for us.

12 SENATOR GALLIVAN: All right,
13 Commissioner, thank you. And thank you again
14 for your efforts across your agency with like
15 25, 30,000 -- a very difficult, challenging
16 job from top to bottom. I understand that.

17 ACTING COMMISSIONER ANNUCCI: Thank
18 you, Senator. I'm very proud of the
19 29,000-plus people. They never cease to
20 amaze me, every one of them, what they do.

21 SENATOR GALLIVAN: With good reason.
22 Thank you, Commissioner. Thank you,
23 Madam Chair.

24 CHAIRWOMAN YOUNG: Thank you.

1 CHAIRWOMAN WEINSTEIN: Assemblyman
2 Palmesano.

3 ASSEMBLYMAN PALMESANO: Thank you,
4 Madam Chairwoman.

5 Commissioner, I just wanted to kind of
6 touch on a few areas. First, I know when we
7 were talking about the special housing units
8 that's going on in the budget -- and I know
9 part of this is to comply with the NYCLU
10 settlement. You know, in full disclosure, I
11 was not supportive of that when I saw that.

12 I think, as one of my colleagues up
13 here mentioned, the use of the SHU is a tool
14 that is used to keep our correction officers
15 that are in our facilities safe, but not just
16 our correction officers but the inmates that
17 are trying to do their time and not trying to
18 be a part of the problem.

19 So in the budget I know there's about
20 \$6.8 million in savings, 110 FTEs that are
21 going to be -- they said they can be
22 transferred. And I know part of that NYCLU
23 settlement, there's a lot of money that's
24 being invested to comply with that. But like

1 for some of these workers who might be
2 dislocated and might have to travel hundreds
3 of miles away to another facility, away from
4 their families, is there going to be any
5 accommodations for them for housing or for
6 travel to make their lives a little easier
7 when they might be losing their job?

8 ACTING COMMISSIONER ANNUCCI: We're
9 very confident that we can accommodate as
10 best as possible the staff that are at these
11 units.

12 I attrit every pay period, I believe,
13 something like 54 or 55 staff. So there's
14 always vacancies being created. As these
15 units get emptied, the staff will work with
16 them to get them other jobs in that facility.
17 And I believe we're going to leave them there
18 till May, when there's a reranking list and
19 so they'll have better options to pursue.

20 So my system changes very quickly.
21 There's a lot of attrition, there's a lot of
22 new demands for correction officers. And in
23 fact, we are predicting that we will need, in
24 the upcoming fiscal year, as many as eight

1 academy classes to fill the vacancies in our
2 system that are created.

3 ASSEMBLYMAN PALMESANO: Because one of
4 the areas -- and not physically in my
5 district, but nearby, is Southport. So I
6 definitely have some concerns relative to the
7 employees that are there. I know there's
8 going to be changes being made to the
9 facility, and I think anything that would be
10 able to allow those individuals who have been
11 there for a number of years to stay there,
12 where they have their families, I think would
13 be a positive thing and also would send a
14 positive message to them through this
15 transition.

16 I want to get into the issue of -- you
17 know, one of the big issues we know is drugs
18 that are a big problem in our prisons. And
19 from some of the information I'm getting --
20 and I would hope that maybe you can clarify
21 for us statewide the number of drug tests
22 that are going on in the prisons, how many
23 people are testing positive, what are the
24 results of those tests. Because I think you

1 mentioned in your statement that you would
2 rather see us get to them before they get in
3 the prison than afterwards.

4 And I think on that front, you
5 mentioned the use of the canine drug dogs.
6 And we have 54 correctional facilities across
7 the state, and I think I heard you say we
8 have 11 that we're using. I think the
9 success of the canine drug dogs is well
10 known. Why not make that investment and put
11 them in every facility across the state,
12 another tool that's given to our law
13 enforcement so if people are coming with
14 drugs, we can catch them before it gets
15 there. And that will help relieve the
16 powder-keg environment that quite frankly I
17 think is going on in our facilities, whether
18 they're maximum or medium security prisons.

19 Any plans on your part, in addition to
20 the millions of dollars that are being
21 invested for the NYCLU settlement, to give
22 our officers, our COs, and our prisons more
23 drug dogs in the facilities to keep them out
24 when they get in. You know, because the

1 package program was put aside. Some people
2 thought it was a bad idea, some people
3 thought it was a good idea. But the drug
4 dogs I think everyone can recognize is a good
5 idea. Let's get to them before they get into
6 the prisons and put them in every facility --
7 it can't cost that much money -- and we'd
8 make a significant impact on addressing the
9 drug problems.

10 Because I've heard some statistics,
11 2500 annually just in one region of drug
12 tests. And that's something we have to
13 address. Because with the gangs that we know
14 are in our facilities, with the assaults that
15 are rising dramatically, and from your own
16 numbers from 2012, probably 40 percent
17 inmate-on-staff assaults and inmate-on-inmate
18 assaults up 70 percent, if you looked at the
19 numbers, that's a powder-keg environment.

20 And I don't know about anyone else --
21 and I'm sure they do -- every so often
22 there's an article in the paper about an
23 inmate getting attacked -- or a correction
24 officer getting attacked by an inmate. And I

1 think we need to do more to give them the
2 tools they need to protect themselves,
3 because they have a very dangerous job.

4 And the NYCLU settlement I think takes
5 tools away from them. I think the canine
6 drugs could be an issue to help them. So is
7 there anything you can do to give us the drug
8 result tests? And what's your plans on
9 expanding the canine units statewide to all
10 our facilities to address this problem?

11 ACTING COMMISSIONER ANNUCCI: Well,
12 there's a lot you said there, Assemblyman. I
13 certainly respect everything that you said.
14 I couldn't agree more that our staff have a
15 tough job. And I'm very proud of the job
16 that they do.

17 I don't think at this point we're
18 ready to expand the canine units, but I can
19 tell you that I really stepped up our OSI
20 narcotics unit. We have phenomenal means of
21 intelligence that we learn of who's
22 potentially smuggling drugs in. We work with
23 outside law enforcement, we seek criminal
24 prosecutions. Because anybody trying to

1 smuggle drugs into a correctional facility is
2 a felony, dangerous drugs should raise it to
3 a felony.

4 So I can tell you that we are open to
5 expanding this. I don't know if putting a
6 team, a canine in every facility would still
7 be a hundred percent effective. But back to
8 your earlier question as to the percentage of
9 individuals that test positive by random
10 urinalysis, it's -- I checked it a while ago,
11 but it's not nearly as high as you might
12 think. It's --

13 ASSEMBLYMAN PALMESANO: Could you
14 provide those figures?

15 ACTING COMMISSIONER ANNUCCI: Yeah, I
16 can definitely get those. Now I can't
17 remember off the top of my head, but I'll get
18 that for you.

19 ASSEMBLYMAN PALMESANO: That's fine.

20 I have another question on one of the
21 issues that, you know, we've talked about in
22 the past, and that is the issue of double
23 bunking and double celling. And again, with
24 the NYCLU settlement there's millions of drls

1 being invested into the correctional
2 facilities to address that. But by I think
3 our own statistics, we still have in the
4 neighborhood of 6,494, a combination of
5 double bunks and double cells in our
6 facilities both at maximum and medium
7 facilities.

8 Certainly that's an environment that I
9 believe, a lot of my colleagues believe, is a
10 dangerous environment -- not just for the
11 corrections officers who are in these
12 facilities, but for the inmates. I've been
13 to a facility where it was in a dormlike
14 setting -- because I too have toured all the
15 facilities in and around my district, and you
16 would have 60 inmates in a room, not a big
17 room, and they were a cubicle, double-bunked,
18 and not much bigger space than me to
19 Mr. Weprin.

20 And I don't think that's a positive
21 environment. I know the administration and
22 the Governor has gone around touting the
23 closure of prisons and is proud of it, but we
24 should get rid of these double bunks and

1 double cells as quick as possible to make for
2 safer environment, not just for our
3 corrections officers but for the inmates that
4 are in these facilities. And I think we
5 should have a plan in place, because there's
6 a lot of plans to deal with the NYCLU
7 settlement, but not a lot of plans to deal
8 with the double bunking and double celling.

9 And I think between the drugs and the
10 double bunking and double celling -- and we
11 know the assaults are up dramatically. I
12 know you said there's an decrease, but if you
13 look from 2012 to now, dramatic increase in
14 the assaults on corrections officers and a
15 dramatic increase in assaults on inmates.

16 And we're in a powder-keg environment.
17 And I'm very concerned about what's going to
18 happen in these facilities. It's not enough
19 just to go around saying we're closing
20 prisons, we've got to give our corrections
21 officers the tools they need to do their job,
22 but to do it so they can be safe, so they can
23 get home to their families.

24 And for the other inmates in the

1 facility who are just trying to do their
2 time, we have to be able to get the bad guys
3 out of there and separate them from those
4 instances. And that's where I'm concerned
5 where some of these settlements are taking
6 away important tools to keep everyone else
7 safe in that facility.

8 I'd like to know your comments on that
9 relative to double bunking and double
10 celling, and your plans on that.

11 ACTING COMMISSIONER ANNUCCI: Just to
12 clarify, when we were overcrowded, we had to
13 take 5 percent of our maximum security space
14 and convert that to double cells. And these
15 were very small cells that were built to just
16 hold one person. You know, we did that at 13
17 of our then existing 14 maximum-security
18 facilities. Southport was the only
19 exception. So 5 percent.

20 And I have basically a few years
21 ago -- it started under my predecessor, but I
22 continued it -- we've taken down basically
23 every cell in a max that had originally been
24 converted, was originally a single and

1 converted to double, with very few
2 exceptions -- I think just the depot at
3 Auburn and I think a few double cells at
4 Downstate. So there's just a small number of
5 double cells still being operated that were
6 originally single-cell construction.

7 The new construction was double cells,
8 and those are all 105 square feet. So those
9 cells at Upstate and at Five Points, those
10 are new maximum-security facilities, all
11 double-celled, with 105 square feet. And I
12 believe the Cadre Unit at Southport also was
13 double-celled. Again, those cells were built
14 large enough for two. And of course all the
15 S blocks were built for two inmates. So
16 there's ample space there -- at least, it's
17 not crowded.

18 With respect to the dorms, there's a
19 maximum under the standards allowed by the
20 SCOC of 60 in a multiple-occupancy unit. And
21 in order to fit 60 in, you have to double the
22 back 10 against the wall. And that's where
23 the double bunks are. And I get it that, you
24 know, people would say, Well, if we put only

1 54 in instead of 60 -- because when we opened
2 them, that's exactly what we put in there.
3 We put 54 because we put two beds on each
4 end.

5 So each cookie-cutter facility, when
6 it opened, had 54. We added six more,
7 consistent with an SCOC standard that allowed
8 as many as 60. And to do it in such a way
9 that the officer would have a full panoramic
10 view of the dorm, we double-bunked the back
11 10. So spacewise, it's just six more than
12 what we originally had when they opened many,
13 many years ago.

14 But I understand your concerns. And
15 again, I couldn't agree with you more that
16 the officers have a tough job and we should
17 do everything possible to make them as safe
18 as possible.

19 CHAIRWOMAN WEINSTEIN: Thank you.

20 Senate?

21 CHAIRWOMAN YOUNG: Thank you.

22 Senator Ritchie.

23 SENATOR RITCHIE: Good afternoon,
24 Commissioner. I would like to start by just

1 following up on a couple of questions that
2 Senator Gallivan had on the packaging policy.

3 Just recently I had the opportunity to
4 tour once again the five facilities that I
5 represent, and one of the main issues was the
6 contraband or drugs coming into the facility.
7 And they were looking forward to the
8 packaging policy just because it's so hard to
9 screen and make sure that they're keeping the
10 drugs out.

11 So just for clarification, the
12 packaging policy is suspended, it is not
13 suspended indefinitely?

14 ACTING COMMISSIONER ANNUCCI: Well,
15 it's suspended until we can come back and
16 create what we think is an acceptable policy.
17 And of course I will sit down with my
18 principals when we get to that point and
19 carefully lay out what we think is the
20 reasonable alternative, and then a decision
21 will be made where we go from there. Right
22 now, it's just suspended.

23 SENATOR RITCHIE: So do you have any
24 time frame for that? Because this is

1 something that's been in the works for years.

2 ACTING COMMISSIONER ANNUCCI: Yeah, I
3 can't give you any time frame, Senator.

4 If you were to ask me today or any
5 time in the last two years what is the single
6 overriding challenge I have, I would answer
7 today and any time in the past two years
8 there's no single challenge. The challenge
9 is that we are doing so many things, so
10 quickly, in the system. All of the changes
11 that came about as a result of the Clinton
12 escape, all the security enhancements, the
13 deescalation training, the new
14 responsibilities we have to house adolescent
15 offenders, the geriatric parole, studying the
16 parole revocation guidelines -- so many
17 initiatives that we're doing so quickly.

18 When you have a pilot like this that
19 immediately stumbled, it takes away from our
20 ability to make sure all the other things
21 that we're doing are happening appropriately.

22 So my intention is yes, we're going to
23 take our time, we're going to sit down
24 carefully, we're going to look at what we

1 had. But I can't take away from all these
2 other things that are also very important as
3 well. And lot of them go to safety and
4 security, such as expanding statewide the
5 pepper spray program.

6 SENATOR RITCHIE: So I certainly
7 understand what you're saying, that you have
8 a number of moving parts. But the contraband
9 and the drug issue is something that I heard
10 at all five facilities -- and not just at the
11 five that I represent, but pretty much every
12 facility across the state -- that the
13 situation is getting to a really dangerous
14 level because of the drugs getting into the
15 facility.

16 So I would ask that -- I understand
17 it's complicated -- that this doesn't just
18 get put by the wayside for another couple of
19 years, that this is something that's
20 extremely important as a safety tool.

21 And along with that, the pepper spray
22 that you mentioned earlier. I know that I've
23 had facilities who have reached out and asked
24 for pepper spray and have not been able to

1 get that. So that is something that is a
2 priority at this point?

3 ACTING COMMISSIONER ANNUCCI: Yes,
4 it's a priority.

5 SENATOR RITCHIE: And recently I
6 reached out to you with a letter on the
7 personal alarms, where there was an issue
8 that they weren't working in a couple of the
9 facilities. And I did receive a response
10 back that that was going to be a priority.
11 So I'm just wondering what the status of
12 making sure that the personal alarms for the
13 civilians working at the facility -- where
14 are we at with that?

15 ACTING COMMISSIONER ANNUCCI: Yeah,
16 I'm trying to remember from my notes because
17 there's a lot of things I had to go over.

18 But I know we just -- we are replacing
19 them. I don't know the exact schedule. They
20 have -- some of these systems are quite
21 dated. I forget the two facilities that we
22 just finished. But what I'll do, Senator, is
23 I'll go back and I'll look at the schedule
24 and I'll give you a written reply as to what

1 our plan is going forward with that. Because
2 it is very important, civilian alarms.

3 SENATOR RITCHIE: And my next couple
4 of questions are on staffing levels. Just
5 recently I learned that several months ago
6 there was an incident with a generator and
7 the facility was in the dark for most of the
8 night. Luckily, it happened at shift change,
9 so there were extra officers who were
10 available to stay over.

11 But one of the staffing issues seems
12 to be at critical level from -- for the later
13 shift, from 11:00 to 7:00, that there are not
14 enough officers who are able to rove or make
15 the rounds on the grounds if in fact
16 something does come up.

17 Is that an issue that you think we
18 need to look at staffing-wise?

19 ACTING COMMISSIONER ANNUCCI: Well, as
20 you know, Senator, we added 268 additional
21 staff in the last two years after a review of
22 two-thirds of the facilities. So our ratio,
23 when compared to every other prison system in
24 the country, is very favorable. It's

1 basically one to three.

2 I'm not sure what facility you're
3 talking about. And certainly when an
4 emergency happens where a generator fails and
5 there's housing units in the dark, yeah,
6 we're pressed. And we -- you know, the
7 initial solution would be mandating overtime
8 for the existing staff that are there to make
9 sure we're under control.

10 But I'm not aware of any complaints
11 that have been brought to our attention in
12 central office about insufficient staff on
13 the late shift at any facility. But if you
14 have something in particular, let me know and
15 we'll certainly take a good look at it.

16 SENATOR RITCHIE: Okay. And along the
17 staffing lines, the issue of the number of
18 officers who are retiring. Recently I
19 sponsored the bill that would allow an
20 officer's family to collect the pension if
21 something were to happen, and it was vetoed
22 by the Governor.

23 So it's a concern from a number of
24 officers that I've met with and their

1 families. And as we get more and more
2 inexperienced guards at the facilities, those
3 that are retiring in pretty big lots is a
4 real concern.

5 Can you tell me how you're going to
6 address the attrition issue?

7 ACTING COMMISSIONER ANNUCCI: Well,
8 everybody has free choice. I can't not allow
9 staff to retire.

10 I think the best thing I can do is
11 everything humanly possible to make it a safe
12 environment, and at the same time recognize
13 the difficult job they have.

14 One of the things I worry about a lot
15 is the rates of suicide among security staff.
16 And I don't think it's just a problem in
17 New York; I know California is concerned and
18 they've commissioned a study on it. And I've
19 asked my mental health staff to really take a
20 good look at the resources that are available
21 and how we can connect people to help that
22 they need before it's too late.

23 It's a tough job, there's a lot of
24 stress on the job. And I think part of the

1 problem is a reluctance to come forward and
2 admit you're feeling the stress or it's
3 affecting you. And it's not easy to go home
4 at night and then become a normal family man
5 and a normal parent when you've had the
6 stress of perhaps an assault, perhaps
7 witnessing the suicide of an inmate. It's a
8 very tough, tough job.

9 So my goal, among others, is to try
10 and make the working environment -- not just
11 for our security staff, but for all our
12 civilians -- as safe as possible.

13 And I'm more than happy -- we meet
14 regularly with the unions. If they have
15 suggestions, things that we can do that might
16 be positive -- wellness programs, nutrition
17 programs -- we've partnered in the past with
18 them, and it's a valuable relationship.
19 Anything to be done to make it a better, more
20 healthy working environment for them I think
21 in turn would help with our attrition rate.

22 SENATOR RITCHIE: Well, I think one of
23 the issues that would have kept more officers
24 on the job is the fact that if this bill

1 would have been signed. It's a real risk for
2 their family if they stay on past the time
3 that they're able to retire. If something
4 does happen to the officer, the family is not
5 entitled to the retirement benefits. And I
6 think that's something that should be
7 addressed.

8 I understand I'm over my time, so I
9 have one last question for you. You know, as
10 we're looking for ways to make sure there are
11 resources in place for a safe staffing level,
12 I really don't understand the mental health
13 transport issue, especially when it has to do
14 with the hub that I represent.

15 We actually have a correctional
16 facility, two of them, within sight of a
17 psychiatric center. But when an inmate needs
18 a mental health evaluation, they are
19 transported over two hours to a facility.
20 Many times the officers have to come back
21 just to find out the next day they go back to
22 pick the inmate up and bring them back.

23 If we're looking for a way to save
24 money for the state as a whole and be more

1 efficient, I really don't understand, with a
2 psychiatric facility, you know, a stone's
3 throw away, why we can't put some kind of
4 resources in place so that an inmate who
5 needs an evaluation can be just transported
6 across the street, saving two officers back
7 and forth on multiple days, times five
8 prisons.

9 So I would ask -- we brought this up
10 in the past. You know, I understand there's
11 a couple of agencies that would have to work
12 on this. But if we're looking for a way to
13 save money and be more efficient, this looks
14 like it would be something that would be very
15 easy to do.

16 ACTING COMMISSIONER ANNUCCI: I'll
17 certainly look into that, Senator.

18 SENATOR RITCHIE: And just to close, I
19 would like to just take a moment to thank you
20 but also thank the men and women who work in
21 our correctional facilities. I think when
22 you go and tour the facilities and you see
23 what they're up against, it gives you a
24 greater appreciation for how dangerous their

1 jobs are. Thank you.

2 CHAIRWOMAN YOUNG: Thank you.

3 CHAIRWOMAN WEINSTEIN: Assemblyman
4 Jones.

5 ASSEMBLYMAN JONES: Thank you, Madam
6 Chair.

7 And Commissioner, thank you. And I'd
8 like to extend my thanks to your office.
9 You've always been very accommodating to me
10 in anything I've reached out with, so thank
11 you.

12 I have a little bit of experience;
13 I've been -- in my previous life I was a
14 correction officer for over 20 years and
15 dealt with these things on a day-to-day
16 issue. I think -- or I know the number-one
17 thing we need to do is keep contraband out of
18 these facilities, because we know anytime we
19 introduce contraband into these facilities,
20 it puts our hardworking men and women that
21 work in those facilities, and the inmates
22 that want to go to programs and do the right
23 thing, it puts everybody in jeopardy.

24 So I just want to, on top of the

1 Senator's point, and the Assemblyman, my
2 colleagues, we need to seriously take a look
3 at the secure package program again. I think
4 we were on the right path. If we have to
5 make a few adjustments to it, I think it's
6 one way, one tool we can use to keep
7 contraband out of the facilities. We need to
8 do that.

9 I also want to associate with
10 Assemblyman Palmesano, because double bunking
11 needs to go, it's just got to go. No ifs,
12 ands, or buts about it. It still exists. We
13 can call it by any other name, but just -- I
14 would like to see it go.

15 I do have a question here, I'm not
16 going to grandstand the whole time. The
17 implementation of pepper spray, we're doing
18 it on a pilot basis. I know the Senator
19 touched on it. Could you give me a time
20 frame on when statewide implementation of
21 that would be?

22 ACTING COMMISSIONER ANNUCCI: We hope
23 to have it complete in 2018.

24 ASSEMBLYMAN JONES: 2018 for statewide

1 implementation? Okay, great.

2 I'm going to keep it brief. I want to
3 thank you again, your office, for everything
4 you've done. But I really do need to stress
5 that we need to do everything we can to keep
6 our hardworking men and women, COs and
7 civilians in those facilities, safe. And I
8 would -- please explore and go and take a
9 look at the implementation of the secure
10 vending program again.

11 I'm happy to hear from you that we're
12 not just canceling it, we're taking another
13 look at it. But I think we need to do that.
14 You get the reports in your office every day
15 about contraband. I get reports. I have
16 five correctional facilities in my Assembly
17 district also. We need to help protect our
18 hardworking men and women that work in those
19 facilities. Please take a look at that
20 policy. If we can make some tweaks to it, we
21 can make everybody in the correctional
22 facilities safe. Thank you.

23 CHAIRWOMAN YOUNG: Thank you.

24 Senator Savino.

1 SENATOR SAVINO: Thank you.

2 Commissioner, good to see you.

3 ACTING COMMISSIONER ANNUCCI: Good to
4 see you, Senator.

5 SENATOR SAVINO: I just have one or
6 two questions for you.

7 As you know, for the past several
8 years whenever you've come before us, we had
9 to address the issue of overtime and its
10 effect on the budget. I didn't see anything
11 about it in your testimony or even in the
12 Governor's budget. If you can tell us a bit
13 about the staffing levels now and whether or
14 not you're still relying on overtime to the
15 extent that you used to be.

16 ACTING COMMISSIONER ANNUCCI: Well,
17 overtime is driven by a number of things.
18 And some of the things that have changed in
19 the last two years are we seem to see more
20 one-on-one watches for people that are at
21 risk, the mentally ill, and those are ordered
22 by OMH. Outside hospital trips are costly,
23 unplanned for.

24 And at any one time, I have a

1 significant number of officers that are out
2 on workers' comp, which we're not really
3 funded to cover that. Those are
4 unanticipated expenses. So we have, as of
5 last week, 986 or so officers out on comp. I
6 think that needs to be looked at. The
7 overall majority have nothing to do with
8 inmate contact. And obviously I would be
9 able to really make a dent in the overtime if
10 more staff were present at work. So that's
11 subject to negotiations, and I can't really
12 comment much further on that.

13 SENATOR SAVINO: I think that nurse at
14 Bedford Hills, Mercy -- I think she finally
15 retired. She probably has a pension worth
16 \$500,000. But God bless her, she worked hard
17 for it.

18 But I want to return back to the issue
19 of double bunking, make sure I understand
20 this. Because, you know, for years the
21 corrections officers would come up and do a
22 visual, they would bring a model of what
23 double bunking looked like. And quite
24 frankly, it looked inhuman.

1 So let me just see. So before the
2 massive increase in the prison population in
3 the 1980s, it used to be 50 beds to a dorm,
4 right? And then after that, because of the
5 explosion in the inmate population, we went
6 up to 60.

7 ACTING COMMISSIONER ANNUCCI: We
8 really never had 50. It was 54, really. Now
9 it's 60.

10 SENATOR SAVINO: Then we allowed it to
11 go up to 60. But the inmate population is
12 now at the lowest it's been in several years.

13 ACTING COMMISSIONER ANNUCCI: Correct.

14 SENATOR SAVINO: In fact, we've closed
15 prisons. So if we were to eliminate double
16 bunking, we wouldn't have any empty beds,
17 then, in the prison system at all, would we?
18 And why not do that, since we know that --

19 ACTING COMMISSIONER ANNUCCI: Because,
20 Senator, this is a difficult fiscal year.
21 We're facing enormous challenges. We have so
22 much uncertainty out of Washington.

23 To the extent that we continue to
24 downsize in our population, the responsible

1 thing to do, in the absence of closures, is
2 for me to do consolidations. And that is you
3 have a facility, let's say, with 14 dorms but
4 you only need really 11, then you consolidate
5 three of them. And the other 11 may be
6 filled close to 60, but at least you're
7 saving the staffing for those dorms. And I
8 think we do owe a responsibility to the
9 taxpayers.

10 If it was a question of this
11 presenting an unsafe situation, then that
12 would be different. But we have operated
13 under that standard for years. And I think
14 everybody overfocuses on the fact that it's a
15 bunk bed. It's two beds, one on top of
16 another. That's what you see in many college
17 dorms, and maybe a lot less. So --

18 SENATOR SAVINO: Different population.

19 So if what you're saying is that the
20 double bunking is not a problem, why is it
21 routinely pointed out to us by those who work
22 in the prison system, the corrections
23 officers, former corrections officers, that
24 it creates problems? It creates, you know,

1 issues between the inmates and between the
2 corrections officers. I mean, are they just
3 misrepresenting it, or is it really a
4 problem?

5 ACTING COMMISSIONER ANNUCCI: I don't
6 think it's really a problem. But it's a
7 question of if it was less inmates, there
8 would be less issues to worry about. So I
9 get where they're coming from. And, you
10 know, the argument that take down all the
11 double bunks in the back and you would have
12 less inmates in the dorm to worry about.

13 But the real concerns, the real
14 incidents that I'm concerned about most of
15 all aren't in my medium security facilities.
16 Right? They're in my maxes. That's where
17 the long-termers are, that's where most of
18 the gang violence is. And that's really
19 where the rubber meets the road.

20 So for the most part, the mediums are
21 running very well even with, you know, 60-man
22 dorms and other dorms that have double bunks.

23 SENATOR SAVINO: Well, I'm glad to
24 hear they're run very well, and I guess we've

1 got to give some credit to the staff that
2 works there, the corrections officers and the
3 nonuniformed staff and, of course, yourself.

4 I just want to thank you for your
5 testimony and the comments you've just made.
6 Thank you, Commissioner.

7 ACTING COMMISSIONER ANNUCCI: Thank
8 you, Senator.

9 CHAIRWOMAN YOUNG: Senator Krueger.

10 SENATOR KRUEGER: Good afternoon.

11 ACTING COMMISSIONER ANNUCCI: Good
12 afternoon.

13 SENATOR KRUEGER: Thank you. I'm
14 sorry I had to leave for a little while.

15 So sexual harassment is a hot topic in
16 the world we live in right now. And I'm
17 wondering what you are doing to decrease the
18 chances of an inmate being raped in one of
19 your prisons. I have found any number of
20 rape accusations in the last year by women
21 who are inmates in state prisons, and I'm
22 wondering whether there's some kind of change
23 in policy that you're implementing or can
24 implement to try to decrease the number of

1 incidents.

2 And I don't know that they're all
3 against women, by the way, so I don't want to
4 be sexist, they're just the cases that I
5 found.

6 ACTING COMMISSIONER ANNUCCI: Well,
7 first of all, Senator, we are moving fast and
8 furious to be fully compliant with the Prison
9 Rape Elimination Act. Those are standards
10 that were promulgated by the feds that we
11 have to comply with. We've had 45, I
12 believe, or 46 of our 54 facilities
13 accredited under PREA. Those are strict
14 standards. Outside auditors come in and walk
15 through the entire facility. It's required
16 us to make changes here and there -- privacy
17 curtains for the showers, mirrors so that
18 blinds spots are eliminated. A lot to do
19 with the LGBT community, how you respectfully
20 communicate with them, et cetera. So many,
21 many changes there.

22 With respect to our female facilities,
23 I've taken a number of additional steps.
24 First we are adding, I believe -- and there

1 are already fixed cameras at Bedford, but I'm
2 adding something like I'm going to say 800 --
3 I hope I'm wrong on that number, I'll
4 double-check that. So we're really expanding
5 our fixed camera system there.

6 I've instituted body cameras and
7 requiring staff to wear them. To the best of
8 my knowledge, no other correctional system in
9 the country is even close to what we're
10 doing. When it's fully implemented, we will
11 have ordered, I believe, 650 body cameras for
12 staff to use, particularly when they're in
13 areas of the facility where there are not the
14 fixed cameras.

15 I've also instituted a number that the
16 inmates can call to make a direct complaint
17 to our Office of Special Investigations. I
18 think it's just star 44 or star 45, they hit
19 that, and they're connected directly to our
20 OSI.

21 I've also had our OSI make unannounced
22 visits there, walk through the units, and
23 allow -- get the feedback directly from the
24 offender population.

1 So while obviously the Prison Rape
2 Elimination Act applies to all of our
3 facilities and all individuals have to be
4 protected, I'm especially mindful of the
5 potential vulnerability of female staff. And
6 when we have successfully identified and
7 obtained the evidence, we go for criminal
8 prosecution. We have a strong partnership at
9 Bedford Hills with the Westchester DA and
10 with the U.S. Attorney's office. And then we
11 hold up as examples of deterrence what
12 happened. And one individual recently was
13 convicted and is serving time in a federal
14 prison.

15 And in my training video, which all
16 staff listen too, I warn them in very stark
17 terms, think about for a moment what it would
18 be like to one day being a person employed by
19 the department, and the next day being a
20 person confined by the department.

21 And we absolutely have to have a zero
22 tolerance policy for that. Inmates deserve
23 to be protected. I pushed years ago to
24 change the law so that as a matter of law, an

1 inmate cannot consent to a sexual
2 relationship, given the power differential in
3 the relationship. And I was glad years ago
4 that the Legislature acted on that. So just
5 like a 15-year-old can't consent, an inmate
6 confined in a correctional facility cannot
7 consent.

8 SENATOR KRUEGER: Thank you. I
9 appreciate you're doing this.

10 I'm just curious because we're rolling
11 out body cameras in police forces as well,
12 and there seems to be a little bit of
13 discussion about then who has access to
14 review the tapes and can they be used as
15 evidence by people who may file the
16 complaints.

17 What will be your policy with the body
18 cameras?

19 ACTING COMMISSIONER ANNUCCI: We
20 absolutely would use them as evidence if we
21 need to.

22 And we haven't had any problem that
23 I'm aware of reviewing them and turning them
24 over. Some minor problems, initially; some

1 of them didn't work properly. But that's to
2 be expected with any pilot.

3 And we are going forward with that,
4 and the next facility I believe is Taconic.
5 And a number of our other max facilities,
6 males.

7 SENATOR KRUEGER: So when an inmate
8 comes forward through the phone number to the
9 inspector general, are they then provided
10 representation in some way? What happens?

11 ACTING COMMISSIONER ANNUCCI: No, we
12 open an investigation. They've officially
13 lodged the complaint.

14 And the reason that we did this is we
15 wanted to give another means by which, if a
16 female feels that it's unsafe to either write
17 a letter or, you know, ask to meet with OSI,
18 this is a direct connection, they can make
19 that complaint and hopefully feel safe doing
20 it, and we will then open an investigation
21 and go see what's involved.

22 SENATOR KRUEGER: So my time is up.
23 But are they moved or the person they accuse
24 moved during the investigation?

1 ACTING COMMISSIONER ANNUCCI: It
2 depends. It depends on the facts and
3 circumstance.

4 I mean, number one, if there's any
5 potential credibility there, our number-one
6 priority is keep her safe. And whatever we
7 have to do to do that, we'll make sure that
8 happens.

9 SENATOR KRUEGER: Thank you very much.

10 CHAIRWOMAN YOUNG: Thank you.

11 Our next speaker is Senator Robach.

12 SENATOR ROBACH: Yes, thank you.

13 Very quickly, I'll get to it, we
14 talked a lot about inmates, a lot about
15 people that work in that. I'd like to just
16 touch a little -- a couple of things here
17 about the other population group, the public
18 we're trying to protect. I'll get right to
19 it, because we have limited time.

20 I'm a little concerned with, you know,
21 more merit time and credit time allowance.
22 We have had a lot of recidivism in Rochester,
23 which I know you're aware of. There have
24 been horrendous cases. And the statement

1 keeps being made by DOCCS that a hundred
2 percent of the time, violent felons do
3 80 percent of their time. I don't think
4 that's true. But I'd like us to work toward
5 it.

6 So I guess my question would be is, do
7 you really think we need to be letting more
8 people -- or would some of these violent
9 people be eliminated from the pool of merit
10 time and/or credit time allowances? You
11 know, I do think it's a very small percentage
12 of the people. But I do think we've had too
13 many, I'll say, for a lot of nefarious
14 reasons, slip through the cracks. And I
15 think we could do both things and address
16 that, with some work.

17 I'm just wondering what your
18 thoughts are on that.

19 ACTING COMMISSIONER ANNUCCI: Senator,
20 I appreciate your remarks. And I think part
21 of our problem is we use the term "violent
22 felony offender" and we paint a very broad
23 brush. And I'm very mindful of the very bad
24 cases that happened in your area and deeply

1 regret that they did happen.

2 But I think, starting with day-to-day
3 operations in a correctional facility, having
4 meaningful incentives for inmates to
5 behave -- and this is two-pronged. It's not
6 just that you do this program and you'll get
7 the benefit, you also have to have a very
8 positive institutional record. And if you
9 don't meet that criteria, you're not getting
10 the benefit.

11 And for the limited credit time, it
12 means you can't, for example have had a
13 recommended loss of good time in the prior
14 five years or you can't have maintained an
15 overall poor institutional record. And it
16 also means you can't have filed a frivolous
17 lawsuit.

18 And it's the same thing with merit
19 time. Different category of offender that's
20 eligible, but he has to maintain the record.
21 If he has a total amount of either SHU or
22 keeplock sanctions in excess of 60 days, he's
23 not eligible to get it.

24 So these are very important

1 incentives, I think, and help make our
2 prisons safer because there's a strong
3 incentive to behave.

4 And I think the people that commit the
5 offenses that were committed in Rochester,
6 they wouldn't get the benefit of that kind of
7 program while they were incarcerated with us.
8 I really doubt that they would be able to
9 meet these standards.

10 SENATOR ROBACH: What I would hope as
11 you move forward, I think there should be a
12 standard -- that was the sentence or the line
13 I got from DOCCS, I like that. I would like
14 80 percent time served for violent felons.
15 And I think they should be defined by, you
16 know, people that do inflict bodily injury --
17 shooters, rapists, murderers. I mean, some
18 of people that have been let out early are
19 very concerning to me.

20 And just real quickly --

21 ACTING COMMISSIONER ANNUCCI: Sex
22 offenders are not eligible. By law, they
23 would not be eligible for limited credit
24 time.

1 SENATOR ROBACH: Okay. Well, I think
2 we ought to put more people in that category,
3 too, just for my two cents.

4 And then I'd be remiss if I didn't say
5 it too -- and I don't want to make it
6 personal -- while I get that, I'd like to
7 know what the definition is of debilitating
8 age release. What would constitute
9 debilitating? Would that mean they couldn't
10 be physically able to get up and attack
11 somebody else? What would define that?

12 ACTING COMMISSIONER ANNUCCI: Well,
13 our job is to look at somebody with these
14 conditions, whatever it may be -- it may be
15 advanced arthritis, it may be a severely
16 weakened heart that the person has difficulty
17 moving from point A to point B -- and us
18 making an assessment and understanding this
19 person now has severe limitations in caring
20 for themselves.

21 The whole reason why we have regional
22 medical units, among others, and a unit for
23 the cognitively impaired, is these
24 individuals cannot function on their own. In

1 fact, were we to release them, many of them
2 would have to be placed in some kind of
3 hospital-like setting, a hospice setting or a
4 nursing home placement.

5 Now, can they possibly pose a danger
6 to others? That's a judgment that you have
7 to make. And I think you make that in three
8 ways. Number one, you know what the whole
9 history is, right? You look at his original
10 crime, you look at how long he's been
11 incarcerated, you look at the amount of time
12 remaining on his sentence, and then you make
13 an assessment during the interview. And
14 that's what the Parole Board is going to do
15 going forward.

16 SENATOR ROBACH: Well, good. Because
17 I -- you know, again, we had another one in
18 Rochester, a 59-year-old. I saw the tape, he
19 was very, very capable of being very, very
20 violent. And you know, again, I don't know
21 if the right answer is quantify the
22 conditions or raise the age, or maybe some
23 combination.

24 But I would say this. I mean this

1 sincerely. You have a very, very hard job.
2 But I think some of the things that are being
3 suggested, if they are not implemented
4 correctly, I really believe they're going to
5 put more of the public in danger, who has
6 done nothing. And so I hope, I really do --
7 I know there's a push for a lot of reforms,
8 and some of them are good. But I hope --
9 you're in an influence of power -- that
10 you'll even talk to the Governor directly and
11 hopefully, when we get to the end of this,
12 some of those loopholes or some of those
13 things will be diminished greatly. I really
14 think if we don't take that opportunity,
15 we'll be doing the wrong thing.

16 So I appreciate you considering those.

17 ACTING COMMISSIONER ANNUCCI: Sure,
18 Senator.

19 SENATOR ROBACH: Thank you.

20 CHAIRWOMAN YOUNG: Okay. Thank you,
21 Senator Robach.

22 Our next speaker is Senator Rivera and
23 then Senator Little.

24 SENATOR RIVERA: Thank you, Madam

1 Chair.

2 Commissioner.

3 ACTING COMMISSIONER ANNUCCI: Senator.

4 SENATOR RIVERA: So I have a few
5 things. And I apologize that I had to be in
6 and out, so some of the stuff you might have
7 already covered. I did want to start where
8 Senator Robach just ended, geriatric parole.

9 The current proposal -- and I'm sure
10 that in the line of questioning that you had
11 with Senator Robach, you did discuss it. But
12 if you could give me just in a minute the
13 overall -- I certainly get the reasoning, but
14 tell me how it's structured currently as far
15 as the proposal is concerned.

16 ACTING COMMISSIONER ANNUCCI: Okay.
17 So this is in addition to the current medical
18 parole types, one for the terminally ill, one
19 for the severely debilitated though they're
20 not terminal. And this is looking at a
21 cohort of individuals who are 55 and older
22 and who are suffering from some conditions
23 that when coupled with their advanced age,
24 severely limits their ability to care for

1 themselves in the correctional facility
2 setting.

3 And as a starter, we're looking at the
4 individuals who meet that criteria and are
5 either in our unit for the cognitively
6 impaired or one of our regional medical units
7 which provide skilled nursing care.
8 Obviously these individuals aren't able to
9 function on their own. So those would be,
10 without knowing any individual cases, the
11 potential pool that you'd start with, that
12 you'd look at carefully and perhaps refer to
13 the Board of Parole.

14 My determination and my doctor's
15 determination is solely to whether or not
16 they have those conditions debilitating them.
17 It's then up to the Board of Parole to decide
18 whether or not their release is incompatible
19 with the welfare of society.

20 SENATOR RIVERA: There you go. So
21 since time is limited, so first on the issue
22 of debilitating. Right, that's the -- is
23 that the word or the terminology that's used
24 in the proposal, debilitating? And is there

1 a clear definition of what debilitating
2 means?

3 ACTING COMMISSIONER ANNUCCI: Other
4 than the dictionary definition? If it's not
5 written in that statute, I don't think so.

6 But I think it's more the result
7 that's happening, you know, to the
8 individual. What is their condition, what
9 are they able to do? Can they help
10 themselves? Do they require help for
11 activities of daily living?

12 SENATOR RIVERA: And then once you
13 make that determination, you have the -- the
14 person has to be above 55 and fit the
15 criteria of debilitating, of having a
16 debilitating condition. Then they are
17 eligible.

18 But this does nothing to change the
19 statute that currently exists, which
20 particularly as it relates to instant
21 offense, in many instances people who have
22 paid their debt to society 15, 20, 30 years,
23 they have been rehabilitated in all sorts of
24 different ways, but yet are not paroled. So

1 basically this changes nothing of that,
2 correct?

3 ACTING COMMISSIONER ANNUCCI: Correct.

4 SENATOR RIVERA: Okay. I wanted to
5 talk a little bit about overdoses.
6 Particularly, what is the protocol currently
7 when an incarcerated person overdoses inside
8 a facility?

9 ACTING COMMISSIONER ANNUCCI: So we
10 have a standing order where our nurses,
11 without a doctor's order -- this is an
12 arrangement by the Department of Health --
13 can, if they suspect an overdose, can inject
14 Narcan to bring somebody back. We have
15 Narcan kits available, we don't have to wait
16 for the medical --

17 SENATOR RIVERA: So but after, let's
18 say, that that happens, the person is
19 stabilized, there are -- I've heard some
20 reports, and they've been very troubling,
21 that as part of the protocol in some
22 facilities, that somebody, after they have
23 survived an overdose, that they're put in
24 SHU.

1 ACTING COMMISSIONER ANNUCCI: No, no.
2 No, no. First things first. We have to save
3 lives. And somebody who's in an overdose
4 situation, we have to bring them back right
5 away. So it's routine, without us knowing if
6 the person took drugs or not, if they are
7 unresponsive -- and this happens a lot -- we
8 will administer Narcan immediately, right,
9 and hopefully bring them back.

10 But there have been, you know, periods
11 where we've had to rush 25 people, different
12 times during the week to outside hospitals
13 for opioids. Now, after that, when they come
14 back, obviously they violated our
15 institutional rules, they may be charged with
16 an act of misconduct and they may be placed
17 in segregated confinement. I don't know that
18 that's been done in any specific case, but
19 it's a logical follow-up for that.

20 SENATOR RIVERA: I would want to have
21 further conversations with you at some other
22 point, because it is -- as we've had this
23 ongoing conversation talking about addiction
24 as a public health issue, obviously this is a

1 slightly different situation because we're
2 talking about somebody that's already
3 incarcerated. But it seems that this is
4 obviously a punitive action that is taken
5 about something to someone. I'd want to talk
6 with you about that further.

7 ACTING COMMISSIONER ANNUCCI: Sure.

8 SENATOR RIVERA: Just one more thing,
9 since I've run out of time but I have one
10 more question that I quickly want to ask, and
11 that is about the -- how many people
12 currently incarcerated are there for
13 technical parole violations? If you have any
14 sense of that. And I might come back for a
15 second round.

16 ACTING COMMISSIONER ANNUCCI: Sure.

17 Sure. I mean, first of all, the Governor has
18 directed my Community Supervision staff and
19 the Board of Parole to work with the Reentry
20 Council to look at the parole revocation
21 guidelines. Those guidelines were created
22 back in the '90s, and they're very much
23 dependent upon the original crime of
24 commitment. If the original crime of

1 commitment was violent, then the penalty for
2 a technical violation is longer.

3 That doesn't make sense anymore. That
4 needs to be changed. And I've internally
5 been looking at that with my staff and coming
6 up with some potential ideas.

7 We take very seriously what the
8 Legislature wanted when you directed us to
9 merge and you wanted us to use graduated
10 sanctions. And so, for example, we have a
11 lot of alternatives that didn't exist five
12 years ago. Our parole diversion programs --
13 we have it at Edgecombe and Hale Creek and
14 Orleans, it's a 45-day program. Instead of
15 sending someone up to a regular facility for
16 two years, they successfully complete that
17 program, they return to the community, they
18 still are eligible for a merit discharge of
19 sentence.

20 We have the Reset Initiative, where we
21 have a grid of responses to both negative
22 behavior and good behavior. The negative
23 behavior might be just one day or two days,
24 you're placed back in a facility. But it's

1 done up front. We know that the parolee
2 signs a contract: If I do this, this will
3 happen. If I do that, that will happen. But
4 I think there's a lot more room to be had.

5 And I know there was a report, I
6 didn't read the report, but I know that last
7 week there were 130 people in Rikers Island
8 that were our parolees on a technical warrant
9 only. So I think there was a lot of
10 misleading things about what that report
11 claimed.

12 CHAIRWOMAN YOUNG: Thank you.

13 Senator Little.

14 SENATOR LITTLE: Okay, thank you. And
15 thank you, Commissioner, for being here.

16 A lot of topics have been touched on
17 today, but I'd like to begin by thanking you
18 for your leadership and many of these
19 programs that you mentioned today -- the
20 veterans programs, all of those, the tablets
21 that you're now providing, and also to your
22 staff. I have nine facilities in my
23 district, state facilities and one federal,
24 and wonderful people working day and night,

1 24 hours a day, seven days a week, in these
2 facilities.

3 I just also can touch upon the double
4 bunking. Have seen the difference that
5 eliminating the two to a cell has made at
6 Great Meadow. Recently toured there again,
7 and there was a big difference in what went
8 on. And I'm sure it's a lot safer for the
9 correction officers working there.

10 But I do want to mention one facility
11 that I was at just recently, Moriah Shock.
12 And I know that you had a great deal to do
13 with forming the program way back. But
14 nevertheless, it -- I just couldn't say
15 enough about it, how commendable the
16 superintendent was, the counselors that were
17 there, the people that were there.

18 And I guess my biggest question, there
19 were only 170 inmates there when there's a
20 capacity of 300. Two questions, actually. I
21 wonder if there's a way that rather than
22 bringing inmates from other parts of the
23 state out to Lakeview for intake and then
24 bringing them back to Moriah, if there's a

1 way to do the intake at Moriah, it might save
2 on some transportation.

3 And secondly, how do we get more
4 inmates to benefit from this program?
5 Because you could see just -- you know, we
6 spent quite a few hours there -- that this is
7 a program that's very beneficial to them.
8 And then as well, I'm sure your agency
9 wouldn't be in charge of it, but when they
10 get out, something that's going to help them
11 get through, whether it's military or some --
12 some way.

13 And we talked about some more training
14 and workforce training, like maybe volunteer
15 fire squadrons or basic EMS training that
16 could take place among them and help them
17 out.

18 But they do a great job in their work
19 programs, and I can't say enough about it. I
20 wish everybody got a chance to see this
21 place. It is -- it's just really
22 commendable, and I thank you very much for
23 that. But some questions of how to make it
24 bigger. So thank you.

1 ACTING COMMISSIONER ANNUCCI: Thank
2 you, Senator. And I appreciate your
3 questions very much. I'm very proud of the
4 Shock program in general. It's saved
5 taxpayers, since it was created, over
6 \$1.5 billion in prison cost avoidance. I
7 think it really builds character in the
8 individuals that graduate. It's amazing the
9 difference when you see when they first start
10 the program and when they end up. And it's
11 basically a lot of dedication by staff. And
12 Moriah in particular has a wonderful
13 superintendent. And I'm always getting
14 letters, acknowledgments from the community,
15 appreciation when the work crews help out,
16 helping put out fires sometimes, you know,
17 and various other things.

18 What we did was originally we made
19 Lakeview the reception center because we
20 wanted more inmates to volunteer, and we
21 wanted them to get them out at reception and
22 see what a real program was like and be
23 interested in signing up for it.

24 Many years ago we had so many more

1 drug offenders than we have now. We had at
2 one time like 24,000, and now we have about
3 6700. So there's a lot less from the pool to
4 apply for that program. But we can recruit
5 from general population when they become
6 within three years or less of their release
7 date.

8 And I know the superintendent has some
9 ideas to maybe market the idea that you can
10 spend your last three years in a shock
11 facility and get out by serving six months.
12 We can certainly, I think, up enrollment
13 there. Someone suggested that this process
14 for Lean might be appropriate to do that.
15 And I might, you know, revisit having central
16 office play more of a role as to, you know,
17 who goes to Lakeview, who goes to Moriah.

18 The program is wonderful, they do a
19 great job at Moriah. And if there are
20 creative ways to get more inmates to
21 volunteer, I think it's a win/win all around
22 for public safety. They're better for it.
23 It's just a very good program.

24 SENATOR LITTLE: There is a YouTube

1 "Prison With No Walls" that you can just go
2 on YouTube and watch, it gives you a good
3 example.

4 But the counselors, the amount of
5 investment they have in the inmates and
6 working with them and -- I can't say enough
7 about it. But thank you, and I just hope
8 more people can benefit from that program.

9 ACTING COMMISSIONER ANNUCCI: Thank
10 you.

11 SENATOR LITTLE: Thank you. Thanks
12 for all you do.

13 CHAIRWOMAN YOUNG: Thank you, Senator.
14 Senator Bailey.

15 SENATOR BAILEY: Thank you, Madam
16 Chair.

17 Good afternoon, Commissioner. Thank
18 you for your patience and your testimony thus
19 far.

20 I was looking over the comments
21 concerning the merit time -- excuse me, your
22 testimony concerning the merit time statutes,
23 and I look at it as generally positive. How
24 many people would you estimate would benefit

1 from the merit time expansion?

2 ACTING COMMISSIONER ANNUCCI: How do I
3 think people would benefit from it?

4 SENATOR BAILEY: No, how many people.
5 Approximately how many people would benefit
6 from that?

7 ACTING COMMISSIONER ANNUCCI: Under
8 the new change?

9 SENATOR BAILEY: Yes, under the new
10 change, sir.

11 ACTING COMMISSIONER ANNUCCI: It's not
12 going to be big numbers. And I know that we
13 have a number that was given for the budget,
14 I just can't remember. It's not huge.

15 Basically, you know, it's individuals
16 who would, for example, not need any of the
17 other criteria -- not be in need of substance
18 abuse treatment, you know, not need a GED,
19 someone who's already got a high school
20 diploma. But there's some number of them,
21 you know, that would qualify and meet it. So
22 I think -- I'm pretty sure it was a low
23 number, but I think we still need to assess
24 what's out there to come up with a firm

1 number. I'll try and do that and get back to
2 you on that.

3 SENATOR BAILEY: All right, I thank
4 you for that.

5 Within that potential expansion, is
6 there a possibility of -- and I know you just
7 said you're not sure about the numbers, but
8 is there a possibility of expanding
9 vocational or college programs within that?

10 ACTING COMMISSIONER ANNUCCI: Well, we
11 have a huge college program expansion. I'm
12 very grateful what the Governor did, arrange
13 with the Manhattan DA's office DANY funding
14 that is going to allow, when it's fully up,
15 an additional 2400 college slots. We already
16 have Pell grants. We'll have college at 26
17 of our facilities.

18 So we're very proud of that, and I
19 think it's really transformative in what it
20 does safety-wise and for the rest of the
21 population.

22 The voc programs we have -- and we
23 have 28 of them, and they are really good
24 programs. And what I've had program staff do

1 is they're making a DVD and they've had our
2 voc instructors and inmates from each of our
3 programs speak on camera, the voc instructor
4 talking about, well, this is what you first
5 train a new arrival at. At first they're a
6 little skeptical and what am I going to do
7 with this, and then you have the inmates
8 speak and say, yes, I was a little shy, but
9 now I understand this is a great trade to
10 learn.

11 And once this is all done, we're
12 hopefully to perhaps give that to some
13 employers outside. Because it's one thing to
14 have someone present with a piece of paper,
15 This is a skill I learned when I participated
16 in the culinary arts; it's another thing to
17 hear the person who trains them, where they
18 also learn the soft skills, the importance of
19 showing up to work on time, putting your
20 tools away, being respectful, et cetera, and
21 the actual trade they're learning.

22 So when this DVD is finished, I think
23 it really will showcase about 28 different
24 voc programs that we have. And I think a

1 prospective employer who looks at this will
2 really be enticed to potentially hire
3 someone.

4 SENATOR BAILEY: That's excellent.
5 Because one of the goals that we obviously
6 have in restorative justice is to restore
7 people to a place where they can productive
8 once they reenter society. So I do thank you
9 for that.

10 One final question concerning the
11 temporary release programs, the pilot
12 programs. I know that certain offenses are
13 excluded, but it says that for inmates who
14 would otherwise be ineligible for other
15 release programs. Can you walk me through
16 that a little bit?

17 ACTING COMMISSIONER ANNUCCI: Yeah,
18 it's a long story and it's very complicated.
19 The statute is 851 of the Correction Law.

20 Basically what we're doing is the same
21 cohort of inmates that are eligible for LCTA,
22 right, which basically is you're not eligible
23 for merit time -- you know, people that are
24 serving longer sentences except for sex

1 offenders -- would be eligible. It's a very
2 small number. It's 50, which in a population
3 of 50,000 is one-tenth of 1 percent. So 50
4 for work release, 50 for educational release.

5 And it's a pilot, you know. We have
6 basically walled off whole cohorts of
7 offenders from these programs. These are the
8 best transitional services programs you have,
9 because you gradually acclimate to living in
10 the community. So when you're in a work
11 release facility, yes, you're still serving
12 your sentence but you're able to leave the
13 facility, get a job, you're able to furlough
14 to an approved residence. So instead of
15 going from confined in a correctional
16 facility 24 hours a day, you gradually get
17 used to being released in the community.

18 And I can tell you, if you've been in
19 the system for a long time -- you know, 20
20 years -- it's overwhelming when you get out.
21 It's just -- the technology has changed.
22 People get intimidated just crossing the
23 street. They end up in tears because they
24 lose sight of their wife in Walmart. That's

1 a real story.

2 So having people gradually get
3 released into the community who have proven
4 themselves over time. And our
5 superintendents, our facility staff have a
6 good sense of who's good, who's a safe risk.
7 We do that for work release.

8 For educational release, the
9 possibilities are endless. We have all these
10 individuals that are participating in college
11 programs. And I can tell you when we brought
12 outside students into our correctional
13 facilities to share a classroom, it's been an
14 extremely positive experience. I got this
15 absolutely glowing letter from a colonel with
16 West Point because we allow their cadets to
17 come in and share a classroom with inmates in
18 Eastern, a maximum security facility, or
19 Woodbourne, and the letter thanked me for
20 having, you know, the foresight to allow this
21 to happen.

22 And this is going to build better
23 cadets. The future military leaders are
24 going to defend this country because they are

1 now exposed to individuals that they never
2 would see before. When you put people with
3 differences in the same setting -- common
4 purpose, educational learning -- everybody
5 all of a sudden has their eyes opened.

6 So this would take it to the next
7 step. Instead of bringing the outside
8 students into our facilities, a limited
9 number, 50, would be able from a work release
10 facility like Lincoln and maybe Rochester, a
11 couple of others, to go into the college
12 program, and the colleges would accept them.
13 John Jay, for example, has a presence, they
14 teach in Otisville, they're going to teach at
15 Queensborough. They are champing at the bit
16 to have this happen because they see this --
17 everybody's concerned about how do we break
18 the cycle, and education is so key to
19 breaking the cycle.

20 CHAIRWOMAN YOUNG: Thank you.

21 CHAIRWOMAN WEINSTEIN: Assemblyman
22 Palmesano.

23 ASSEMBLYMAN PALMESANO: Yes, thank
24 you. And I appreciate the indulgence of my

1 colleagues for a follow-up.

2 Commissioner, I appreciate your time.
3 I know it's been a long day. Something in
4 your comments kind of caught my attention and
5 I just kind of wanted to follow up on it. I
6 know when we were talking about the issue of
7 double bunking, I thought, if I heard
8 correctly, you said some more of the issues
9 are around our maximum security prisons.

10 I kind of want to disagree with you on
11 that from the perspective of when we look at
12 the violence, when we talk about the violence
13 statistics that are going on in our
14 facilities, inmate on assault. And we talk
15 about, generally, the broad numbers, just
16 total -- 2012, it was 524. In 2017, it was
17 798.

18 But if you look at the medium security
19 facilities, in 2012 there was 114 assaults by
20 inmates on correction officers, on staff. In
21 2017, it was 198. That's nearly a 75 percent
22 increase in assaults going on in our medium
23 security facilities.

24 And I've been to -- you know, the most

1 recent assault happened in Groveland, nearby
2 my district. I've been to Groveland and
3 Livingston. When I went into that facility,
4 the double bunks, they weren't just the ones
5 in the back, they were the whole corridor.

6 And I think with the closures, I think
7 this has kind of expanded this problem. The
8 violence in our mediums are going up. The
9 reclassification of prisoners, the increase
10 of gangs into drugs -- I think this is a
11 growing problem. And I know you mentioned in
12 your testimony about, you know, we have a
13 responsibility -- you know, when someone asks
14 why can't we just get rid of them all, we
15 have a responsibility to taxpayers.

16 The only thing I would say in that --
17 I can't speak for everyone -- but the
18 taxpayers I represent would want us to make
19 sure we're spending the proper resources to
20 make sure that the men and women who go to a
21 dangerous job every day have the resources
22 they need to do their job, and would rather
23 see it spent on them, to protect them, than
24 maybe some of these -- you know, the

1 settlement we talked about taking away
2 tools -- some of these other things that are
3 going for those in the facilities.

4 We have to have a balance. I'm not
5 saying we can't do everything, but we have to
6 have a balance. And I think it's important
7 that we're making sure that we let our
8 corrections officers and our people working
9 in these dangerous environments, that we have
10 their backs. And I'm not sure they feel we
11 have that way.

12 So if it means revisiting the
13 packaging program that the Governor rescinded
14 right away, we should do that. If it means
15 drug dogs in every correctional facility,
16 then we should do that. If it means pepper
17 spray statewide, then we should do that. If
18 it means more staffing in our facilities,
19 then we should do that. If it means getting
20 rid of the double bunks and the double cells
21 once and for all, we should do that. If we
22 need to lower the threshold on the number of
23 beds in a dorm setting, then we should do
24 that.

1 And I've heard that there's been
2 situations in a double bunk, double cell,
3 where there's been -- an inmate murdered his
4 inmate. So there's definitely a problem.

5 But when I look at those statistics
6 from 114 assaults in a medium security prison
7 to 198 in just five years, we have a problem
8 in our facilities that needs to be addressed,
9 and we need to make sure that these officers,
10 these people who go to work every day know we
11 have their back. A 75 percent increase is
12 unacceptable, and we need to find out and get
13 at the root of that problem. The drugs, the
14 gangs, all of that. And we need to send a
15 clear message.

16 The Governor could send a real clear
17 message to the corrections officers, the men
18 and women who work in these facilities, that
19 we have their back. And I just haven't heard
20 it from him, Commissioner. And I know you
21 speak very highly of the men and women who
22 work in our facilities, but we need the
23 Governor to walk the walk as well as talk the
24 talk.

1 And I have a concern on this issue,
2 and I'm going to continue to speak out. A
3 lot of colleagues will. But when I see those
4 statistics, you can't dismiss them because
5 they're from your website. It's a 75 percent
6 increase of inmate on correction officers, on
7 staff assaults -- increase, in five years.
8 And I think the double bunking, the double
9 celling, the prison closures are a part of
10 that. And I just wanted to make sure you
11 understood that from my perspective, and
12 hopefully that's something we can address
13 when we're making investments and changing
14 our correctional facility operations.

15 So anything you want to comment on
16 that? Otherwise, I appreciate you just
17 taking my comments into consideration.

18 CHAIRWOMAN YOUNG: Briefly.

19 ACTING COMMISSIONER ANNUCCI: I'll be
20 very, very brief.

21 The only thing I will say is with the
22 assault numbers, remember, this is not the
23 Penal Law definition of assaults. We have a
24 very low threshold. If you just reach out

1 and grab an officer's hand, you've laid your
2 hands on an officer, that's an assault. So
3 to understand the level of violence, you also
4 have to look at what kind of injuries are
5 involved. And you promulgated new standards
6 for us years ago, and we agreed to them. We
7 have four different definitions. The
8 overwhelming majority, like 74-something
9 percent, no injury at all. And couple that
10 with the minor injuries, it's something like
11 90-something percent. Only a very small
12 percentage are actually moderate, and I don't
13 think we've had any severe. I'd have to
14 double-check.

15 Again, I don't condone ever putting
16 your hands on an officer. But in terms of
17 the violence, you have to look at those
18 numbers as well, and the increase.

19 The increases bother me, but the
20 increase this year is still less than what we
21 had, the total number, in 2015. So I'm not
22 sure there's a dangerous trend there, as
23 you're concerned.

24 And also I will say -- just one

1 anecdotal story that I think really
2 epitomizes the Governor's care for our
3 correctional staff. It was Memorial Day
4 weekend, I think two years ago, when we got
5 the word that a correction officer at home
6 was severely burned when a bomb blew up in
7 his face. And we had no idea where that came
8 from. The original thought, it could be an
9 inmate. That was on, you know, Sunday
10 morning. That Monday, he was in the hospital
11 to visit with that family. He couldn't see
12 the officer, he was so severely burned.
13 Thank God he's recovered, and thank God it
14 had nothing to do with the inmate population.

15 But I'm sure on a Memorial Day weekend
16 he had better things to do than to drop
17 everything and get out to that hospital and
18 check on that officer's condition.

19 CHAIRWOMAN YOUNG: Thank you,
20 Commissioner.

21 And Senator Rivera has a 60-second
22 question, and we would ask you that you
23 answer within 60 seconds. Thank you.

24 SENATOR RIVERA: I got 60, you have

1 60, so I'm going to do -- sir, I look forward
2 to following up on all the things that we
3 talked about in the first round. But just
4 really quickly, do you know a gentleman by
5 the name of Rick Raemisch? Rick Raemisch is
6 the corrections commissioner for the State of
7 Colorado.

8 ACTING COMMISSIONER ANNUCCI: Oh,
9 yeah, yeah, I know him. Yeah, Colorado.

10 SENATOR RIVERA: So I would suggest --
11 and I still have 50 seconds -- one thing that
12 I would suggest, as he did, he actually spent
13 24 hours at a SHU --

14 ACTING COMMISSIONER ANNUCCI: Yes, I
15 know that.

16 SENATOR RIVERA: And I would suggest
17 that's one of the things that maybe you
18 should do as well. If we're going to be
19 ahead of the curve in this state as far as
20 progressive policy, we should move in that
21 direction.

22 And I didn't even use the whole
23 60 seconds. Thank you, Madam Chair.

24 ACTING COMMISSIONER ANNUCCI: That

1 would probably be the best night's sleep I'd
2 had in a long time.

3 (Laughter.)

4 CHAIRWOMAN YOUNG: Thank you,
5 Commissioner.

6 SENATOR KRUEGER: Thank you.

7 ACTING COMMISSIONER ANNUCCI: Thank
8 you.

9 CHAIRWOMAN YOUNG: Our next speaker is
10 Superintendent George Beach II, New York
11 State Division of State Police.

12 Welcome, Superintendent.

13 SUPERINTENDENT BEACH: Thank you,
14 Chairman.

15 CHAIRWOMAN YOUNG: I look forward to
16 your testimony.

17 SUPERINTENDENT BEACH: Thank you.

18 Chairman, do you want me to summarize
19 my testimony?

20 CHAIRWOMAN YOUNG: Yes. That would be
21 very helpful.

22 SUPERINTENDENT BEACH: I'll be more
23 than glad to.

24 Chairman Young and Chairman Weinstein,

1 I would like to take this opportunity to
2 thank the Legislature for its significant
3 efforts in understanding our agency's
4 missions and, in doing so, for your enduring
5 support of the New York State Police. That
6 support enables the New York State Police to
7 advance the public safety needs of the state
8 and to continue as one of the leading law
9 enforcement agencies in the nation.

10 New Yorkers expect effective public
11 service from a stable, professional and
12 adequately resourced State Police. I am
13 proud to say that New Yorkers can be
14 confident their expectations are being met.
15 It is the integrity, knowledge, dedication
16 and quality of our men and women that
17 distinguishes the New York State Police. I
18 am honored and privileged to be a part of
19 this agency as we move forward in our second
20 century of service to the public in this
21 great state.

22 Once again, I thank you for your
23 support of the State Police and for the
24 opportunity to address you this afternoon.

1 CHAIRWOMAN YOUNG: That was brief.

2 Very good.

3 We do have some questions, though,
4 Superintendent. First of all, I want to say
5 thank you to you and your members for your
6 outstanding service to the people of
7 New York.

8 SUPERINTENDENT BEACH: Yes, ma'am.

9 CHAIRWOMAN YOUNG: There are several
10 items in the budget that I had some questions
11 about. The first one has to do with the
12 Executive Budget proposing to send 26 FTEs to
13 Long Island to combat MS-13. In what
14 capacity will these FTEs be serving?

15 SUPERINTENDENT BEACH: Senator, those
16 FTEs include five investigators -- four
17 investigators, one senior investigator -- to
18 work as part of the FBI-led Safe Streets
19 Eastern Long Island Task Force directed at
20 MS-13 activity. That also includes 10
21 members of what we are calling a Gang
22 Violence Prevention Unit who will work
23 closely with the county police departments in
24 outreach to educators and students -- not as

1 SROs, but as an adjunct to the Suffolk County
2 Police Department.

3 In addition to that, we have deployed
4 some additional uniformed patrols in areas
5 which have been identified to us as areas
6 problematic for MS-13. And so those are the
7 positions that we have asked to be replaced
8 in the budget.

9 The additional uniformed patrols would
10 constitute what we are calling a community
11 stabilization team --

12 CHAIRWOMAN YOUNG: Okay.

13 SUPERINTENDENT BEACH: -- the
14 assistance team. This is not a new proposal,
15 it is one that we have made in the past and
16 have actually requested that consideration be
17 given to staffing each of the troops in the
18 state with this specialized unit to address
19 directed problems.

20 Our first effort at this would be on
21 Long Island, and it would be targeted towards
22 heightened levels of criminal and gang
23 activity associated with MS-13.

24 CHAIRWOMAN YOUNG: Thank you, and

1 we're very glad that you're addressing that
2 very serious and very significant issue. I
3 know Senator Croci probably has some more
4 questions, but I was just wondering --
5 obviously, you have been working on this
6 somewhat before this year's budget. Is this
7 situation stabilizing, getting worse, getting
8 better? What's your assessment?

9 SUPERINTENDENT BEACH: I believe the
10 situation is stabilizing because there have
11 been significant resources committed. Prior
12 to this, the State Police, through a
13 combination of resources, has devoted 25 FTEs
14 to directed patrols in areas identified to us
15 as MS-13-problematic.

16 As I said, we did resource the FBI-led
17 task force with the five investigatory
18 personnel, so this would be an effort for us
19 to actually formalize in our budget those
20 positions. But we have gone ahead and
21 committed those resources because of the
22 problem as it exists now.

23 CHAIRWOMAN YOUNG: Well, thank you.
24 And I know -- as I said, Senator Croci's been

1 a leader on this issue, so I look forward to
2 his questioning.

3 SUPERINTENDENT BEACH: Yes, ma'am.

4 CHAIRWOMAN YOUNG: The enacted budget
5 from this year provided for an additional
6 150 troopers for Troop NYC. In what capacity
7 do these additional troopers serve? So those
8 are the ones stationed in New York City.

9 SUPERINTENDENT BEACH: Yes, ma'am.
10 Our total number actually, by the time I'm
11 speaking to you now, is 207 uniformed
12 personnel.

13 We have very highly defined missions
14 in New York City. The majority of the
15 troopers and supervisors are assigned to
16 assist the MTA Bridge and Tunnels
17 police officers on the nine state-owned and
18 controlled facilities, crossings, and tunnels
19 in the city.

20 In addition to that, we commit some
21 resources on a much smaller scale to
22 patrolling Penn Station, Grand Central
23 Station, and the 9/11 Museum properties. And
24 in addition to that, we have a presence now

1 in the John F. Kennedy Airport and LaGuardia
2 Airport, which is staffed by members of
3 Troop NYC but is augmented by out-of-troop
4 resources as well.

5 CHAIRWOMAN YOUNG: How do you
6 interface with the other law enforcement
7 agencies that are tasked with patrolling
8 these areas also?

9 SUPERINTENDENT BEACH: I'm sorry, how
10 do --

11 CHAIRWOMAN YOUNG: How do you
12 interface with the -- note, my mic is not
13 good -- how do you interface with the other
14 law enforcement entities that are also tasked
15 with protecting New York City?

16 SUPERINTENDENT BEACH: Right. We
17 enjoy an outstanding relationship,
18 particularly with the New York City Police
19 Department. They have been absolutely
20 supportive of our efforts. Our command
21 staffs are in constant contact with the
22 command staffs not only of the New York City
23 Police Department, but the Metropolitan
24 Transportation Authority, with the Port

1 Authority. We also augment our numbers with
2 National Guard folks.

3 And one of the main things that we do,
4 particularly where there are many police
5 departments operating, is we deconflict the
6 space so that the police departments that we
7 operate cooperatively with know what our
8 commitment is on a daily basis, know pretty
9 much down to the person who is working what
10 post.

11 We also avail ourselves of utilizing
12 their communication system and -- so that we
13 can all speak on the same radio network. And
14 that's to ensure not only the safety of the
15 public but to ensure the safety of our
16 members who are operating in these
17 environments where there are multiple police
18 departments working.

19 CHAIRWOMAN YOUNG: Thank you for that,
20 Superintendent.

21 Now just switching gears a little bit,
22 in January of 2017 the Governor signed a law
23 that was passed both by the Senate and the
24 Assembly -- Senator Hannon's bill -- that

1 deals with untested sexual assault kits,
2 evidence kits.

3 And after that happened, I was curious
4 about whether there was an influx of untested
5 kits sent to the state's forensic lab that
6 required more for FTEs in addition to the
7 26 added in the fiscal year enacted budget
8 this year. So we put jobs in last year, in
9 this current budget, and now you're asking
10 for more. So could you give us an update on
11 that situation?

12 SUPERINTENDENT BEACH: Yes, ma'am. We
13 anticipated as a result of the enacting of
14 the law that we would have a 100 percent
15 increase. What we have actually seen is a
16 161 percent increase in submissions to our
17 Forensic Investigation Center.

18 CHAIRWOMAN YOUNG: What do you
19 attribute that to?

20 SUPERINTENDENT BEACH:
21 Operationalization of the law, and I believe
22 that when outside laboratories finally became
23 aware that they should be sending these in,
24 many of them did so all at once. To be

1 honest, in the past month we received 215
2 from Onondaga agencies alone. So we've had
3 this very rapid expansion of submissions to
4 the Forensic Investigation Center.

5 CHAIRWOMAN YOUNG: How is that
6 impacting solving crimes?

7 SUPERINTENDENT BEACH: We are doing
8 everything we can to move as quickly as
9 possible. We have been given the authority
10 to hire and deploy 30 additional scientists
11 in the analysis of these kits. That is a
12 lengthy process. Nonetheless, we have --
13 from internal promotions and reassignments we
14 have filled 19 of those positions, and we are
15 in the process of filling the other 11 as we
16 speak.

17 Bearing that in mind, it takes us, on
18 average, 12 to 18 months to have a scientist
19 up to speed, able to do the analysis, and
20 qualified to testify in court. So this is a
21 challenge for us.

22 In addition to that, obviously we are
23 creating additional space needs within the
24 laboratory, where we are already a very

1 cramped -- and what we have done is we have
2 moved some units out of the laboratory. Our
3 computer crime units have come out of there
4 to create additional space.

5 So I would say to you we are doing
6 everything we possibly can as quickly as we
7 can to get up to speed on this.

8 CHAIRWOMAN YOUNG: So the lab is
9 required to test the kits within 90 days.
10 Has there been any issue in complying with
11 this now?

12 SUPERINTENDENT BEACH: We have
13 encountered some issues, yes.

14 CHAIRWOMAN YOUNG: Okay. Have you
15 seen the report that was required to be sent
16 to the Legislature by March 1, 2017? Because
17 I'm not sure we've received that yet.

18 SUPERINTENDENT BEACH: I did not.

19 CHAIRWOMAN YOUNG: When can we expect
20 it?

21 SUPERINTENDENT BEACH: I will
22 certainly check into that, though.

23 CHAIRWOMAN YOUNG: That would be very
24 helpful to us.

1 SUPERINTENDENT BEACH: Yes,
2 absolutely.

3 CHAIRWOMAN YOUNG: Thank you.

4 I wanted to switch gears now. Many of
5 us represent districts where people are
6 concerned about the pistol permitting --

7 SUPERINTENDENT BEACH: Yes.

8 CHAIRWOMAN YOUNG: -- requirement that
9 the State Troopers have been in charge of it.
10 And we've heard from a lot of our
11 constituents that they never were notified.
12 For example, we've heard that there are
13 issues with the pistol permit being linked to
14 a person's driver's license. I want to get
15 into that, but I had several questions.

16 So what measures did the State Police
17 take to notify pistol permit holders of their
18 need to recertify?

19 SUPERINTENDENT BEACH: Senator, we
20 sent out, in January of 2017, 395,000
21 letters.

22 In addition to that, we've engaged in
23 a year-long media campaign which includes
24 notices through the media, on our web page.

1 Through our partners at the county and local
2 level, we have placed forms, brochures. We
3 use our social media accounts from the State
4 Police to periodically advertise the fact
5 that the deadline is approaching. In fact,
6 as you know, it's tomorrow.

7 So we have engaged in a year-long
8 campaign to get the word out.

9 CHAIRWOMAN YOUNG: Well, many of us
10 were opposed to the SAFE Act for many reasons
11 and still are. But can you provide an update
12 as to how many permits have been recertified
13 to date?

14 SUPERINTENDENT BEACH: Yes.

15 CHAIRWOMAN YOUNG: Tomorrow's the
16 deadline, and where are we at?

17 SUPERINTENDENT BEACH: Yes. I'm
18 please to be able to report to you that we
19 have been able to recertify about 70 percent
20 of the submissions at this point, which is
21 about 277,000 permits. We have 30 percent
22 remaining outstanding at this point.

23 I have to tell you that we have
24 received over 40,000 in the last two weeks,

1 and we anticipate each day getting more and
2 more and more as the deadline comes close.
3 Many people did wait apparently to the last
4 minute to either send the mail form in or to
5 access our website. But we have been able to
6 recertify 277,000 to date.

7 CHAIRWOMAN YOUNG: Several of our
8 constituents have reported problems with the
9 State Police website where there's no
10 verification that they actually have been
11 recertified, and so they're very nervous
12 about have I really been recertified or not,
13 are the state troopers going to come after me
14 because I tried to do it on the website and
15 I'm not sure it works.

16 So how are you going to let people
17 know that they actually are recertified?

18 SUPERINTENDENT BEACH: I would have to
19 check with my technical people. I have not
20 been apprised of any issues related to the
21 web site and the certifications, but I'll
22 certainly look into that and make sure that
23 if there's a problem that it's corrected
24 immediately.

1 CHAIRWOMAN YOUNG: So 70 percent of
2 the people who were pistol permit holders
3 have been recertified. But what happens to
4 the 30 percent who don't? Is there a
5 revocation process, and how would that work?

6 SUPERINTENDENT BEACH: We intend to
7 continue outreach to the 30 percent and make
8 every effort to get them to recertify.

9 CHAIRWOMAN YOUNG: Okay. And is there
10 any timeline that the State Police have put
11 on that effort?

12 SUPERINTENDENT BEACH: No.

13 CHAIRWOMAN YOUNG: Okay. And I've
14 heard from some people that they're concerned
15 that the pistol permits are somehow being
16 linked to a person's driver's license. Could
17 you address that?

18 SUPERINTENDENT BEACH: It's the other
19 way around. The easiest way to verify the
20 very basic descriptor information that we
21 need to verify the permit is through means of
22 a driver's license. That's our quickest way
23 to do it. Or a non-driver ID. So we have
24 required that for people who are

1 recertifying. That takes many of the
2 investigative steps out for us in terms of
3 having to verify an actual address, a legal
4 name, to associate that with an existing
5 permit. Otherwise it literally becomes a
6 hand search for us.

7 So in order to make this as efficient
8 and as easy for the public to recertify, we
9 did require that people use either a driver's
10 license or a non-driver's ID to access into
11 the system.

12 CHAIRWOMAN YOUNG: Is that linked in
13 the system somehow together now? Is that --
14 so for example, if a trooper pulls somebody
15 over and they check their driver's license,
16 does the status of a pistol permit
17 recertification show up?

18 SUPERINTENDENT BEACH: No. No, it
19 does not.

20 CHAIRWOMAN YOUNG: Okay. Thank you.
21 I'll come back.

22 CHAIRWOMAN WEINSTEIN: You know, in
23 the budget the Governor proposed to remove
24 firearms from people charged with domestic

1 violence offenses and revoke or suspend those
2 firearm licenses. This information is then
3 reported to the State Police and also DCJS,
4 presumably for inclusion in the statewide
5 licensing record database established in the
6 SAFE Act.

7 However, it's my understanding that
8 this database and the ammunition database are
9 still not operational now, four years out.
10 Is that in fact true? And how does the
11 failure to have those databases available
12 impact the effectiveness of the Governor's
13 proposal regarding suspension and revocation,
14 and just when do you think those databases
15 will be operational?

16 SUPERINTENDENT BEACH: Well, it's my
17 understanding that the first is a proposal,
18 Chairman, and we would have to wait until
19 that's operationalized. But with reference
20 to the databases, the ammunition database --
21 it continues to be problematic for us from a
22 technology standpoint.

23 We have in furtherance of the law
24 registered all sellers of ammunition at this

1 point, and we continue to work with IT
2 people. I don't have any more IT people at
3 the State Police, so we are dependent upon
4 Information Technology Services to assist us
5 in this process.

6 The truth of the matter is that -- and
7 I can only report, I'm not an IT expert --
8 but I can only report to you what is being
9 told to me is the impediments, and I will do
10 so, but the summary point is that we haven't
11 found one technology that addresses the
12 issues. And what I am told is that there are
13 a combination of circumstances that make it
14 difficult to establish this database. That
15 includes the sheer volume of people who sell
16 ammunition, the remoteness of many of those
17 locations, and the associated connectivity
18 issues with those.

19 Nonetheless, I want to assure you that
20 this remains a priority to the State Police.
21 It is a part of our Technology Working Group
22 discussion with ITS, and it occurs at
23 least -- they're at least talking twice a
24 month, trying to work their way through some

1 of these issues. But those are problematic
2 issues that they have to address to assist
3 us.

4 CHAIRWOMAN WEINSTEIN: And obviously
5 there are current laws regarding in a
6 domestic violence situation where a court --
7 where a judge can order firearms suspended.
8 Is there a mechanism that the State Police
9 are notified of that event taking place, that
10 order?

11 SUPERINTENDENT BEACH: Yes. And that
12 would trigger an investigation on our part to
13 secure all the weapons that a person may hold
14 if there's a court order to that effect.

15 CHAIRWOMAN WEINSTEIN: And how do
16 you -- how are you notified about the court
17 order?

18 SUPERINTENDENT BEACH: Our local
19 barracks would be notified from the court as
20 part of the process that this has occurred.
21 And I will tell you that there are oftentimes
22 plaintiffs who will go into a Family Court
23 situation and secure a order of protection
24 which includes taking weapons or securing

1 weapons, and they will sometimes notify us as
2 well before we get a court notification.

3 CHAIRWOMAN WEINSTEIN: Thank you.

4 CHAIRWOMAN YOUNG: Senator Gallivan.

5 SENATOR GALLIVAN: Thank you, Madam
6 Chair.

7 Good afternoon, Superintendent.

8 SUPERINTENDENT BEACH: Senator.

9 SENATOR GALLIVAN: Thank you for your
10 patience as well.

11 CHAIRWOMAN YOUNG: Mic.

12 SENATOR GALLIVAN: How's that working?

13 Good afternoon again.

14 SUPERINTENDENT BEACH: Thank you.

15 SENATOR GALLIVAN: Senator Young had
16 touched upon the recertification, so for the
17 sake of time I will move past that.

18 You testified also pursuant to her
19 questions about your deployment in New York
20 City. Could you address again -- not the
21 deployment in New York City, I thought you
22 thoroughly covered that. The question
23 becomes what about the rest of the state
24 where we've had -- where we know that some of

1 the deployments to New York City have been on
2 overtime, and the backfilling has been on
3 overtime, which is something we wouldn't
4 financially be able to sustain. But how do
5 we ensure coverage for all of those upstate
6 areas where the State Police is the primary
7 patrol or provides that specialized
8 assistance for all the local police
9 departments?

10 SUPERINTENDENT BEACH: Both of which
11 are obviously priority missions for the
12 New York State Police.

13 SENATOR GALLIVAN: Yes.

14 SUPERINTENDENT BEACH: And I can tell
15 you that our sworn strength now is the
16 highest that it has ever been. And when the
17 Governor and I discussed the deployment to
18 New York City, one of the things that I asked
19 is that under no circumstances should that be
20 made at the expense of staffing upstate
21 troops, and the Governor has been true to his
22 word.

23 And so we have had back-to-back
24 academy classes -- also through the good

1 graces of this Legislature to fund those
2 resources to us -- and that has permitted us
3 to -- it has allowed us to maintain our
4 staffing levels upstate and to do the
5 footprint expansion in New York City. We
6 have been fortunate.

7 As you did say, from time to time the
8 New York State Police has to respond with
9 large numbers of troopers to emergency
10 situations, as you are well aware. Our
11 budget gives us the flexibility to do that.
12 In those instances we, as you also know,
13 routinely will -- if we have to -- hire to
14 maintain staffing in patrol levels in the
15 upstate regions of the state. That is a core
16 mission that is not negotiable to us, and we
17 have to maintain that because so many of the
18 upstate communities depend upon us and so
19 many police agencies depend upon us for
20 support services. And the Governor is well
21 aware of that and has made that commitment to
22 us.

23 SENATOR GALLIVAN: All right, thank
24 you.

1 I know that we've talked about this in
2 the past, but it's been a little while since
3 we talked about the State Police fleet.
4 Could you comment on the fleet, separating
5 out the uniform vehicles and separately the
6 BCI vehicles.

7 SUPERINTENDENT BEACH: Yeah, I have
8 the actual statistics, Senator.

9 We have been the beneficiary of having
10 dedicated budget lines for the past several
11 years, \$15 million which has been
12 appropriated to us. The goal has been to
13 reduce the number of vehicles in the fleet
14 that have more than 125,000 miles on them.
15 We've been largely successful in that. To
16 this very minute, we have been able to reduce
17 that down this fiscal year to 24 vehicles
18 that have more than 125,000 --

19 SENATOR GALLIVAN: Is that uniform or
20 BCI?

21 SUPERINTENDENT BEACH: Let me just --
22 let me get the breakout for you here. Hang
23 on, just one second, because I have the
24 actual statistics. I have the actual

1 statistics on both. Just one second, let me
2 get that for you.

3 Overall, we've been able to reduce the
4 incidence -- again, because of that -- those
5 expenditures of those monies, BCI vehicles
6 decreased by 9 percent and 33 percent
7 respectively, so the average mileage has
8 decreased in BCI vehicles 9 and 33 percent.
9 That left us 24 vehicles out of compliance at
10 this point. That would be 17 patrol
11 uniformed concealed identity and seven BCI,
12 so 24 total.

13 And I would just add that there are
14 some variables in there that money sometimes
15 can't address, and that would be
16 manufacturer's schedule and acquisition
17 dates that we picked the vehicles up. We do
18 everything we can to do a capital plan to try
19 and avoid this, but unavoidably sometimes
20 delivery schedules are held up, and that
21 causes us to have some vehicles that are out
22 of compliance with the policy.

23 SENATOR GALLIVAN: And obviously the
24 goal is to have everything in compliance.

1 SUPERINTENDENT BEACH: Yes.

2 SENATOR GALLIVAN: Is that something
3 that would be possible this fiscal year with
4 what the Governor --

5 SUPERINTENDENT BEACH: Yes.

6 SENATOR GALLIVAN: -- is proposing?

7 SUPERINTENDENT BEACH: I believe it
8 will be. Yeah. Speaking to the
9 administration with the dedicated line,
10 budget line item, we believe that we're going
11 to be able to do that.

12 SENATOR GALLIVAN: Yeah.

13 The last area that I wanted to
14 cover -- and it's actually timely. It was in
15 the Governor's budget proposal, but he
16 actually sent out a release on it today, and
17 it has to do with the State Police's ability
18 to investigate internet crimes against
19 children and specifically deals with
20 administrative subpoenas.

21 Could you tell us about that?

22 SUPERINTENDENT BEACH: Yes. The
23 purpose of the legislation would be to give
24 the State Police administrative subpoena

1 power in very limited circumstances to obtain
2 internet provider subscriber information for
3 people who are suspected of internet crimes
4 against children.

5 The reason for this is that to date we
6 have had to depend upon the subpoena power of
7 prosecutorial agencies, either federal or
8 county. That slows us down considerably and
9 ties up their resources in securing those
10 subpoenas for us.

11 And I want to make a very important
12 distinction. The acquisition of the
13 subscriber information for IP addresses has
14 not been held to require a warrant. And the
15 distinction I want to draw for you is that
16 once we get that subscriber information,
17 should we deem it necessary to look at
18 content from that point on, then we would
19 obtain a search warrant to do so.

20 So this would be an administrative
21 process which many other law enforcement
22 agencies, including the New York City Police
23 Department, already has the authority to do.
24 This would allow us to move as quickly as

1 possible, which is necessary in investigation
2 of these crimes.

3 So I would tell you that the process
4 by which we have to go, as I said before, to
5 outside prosecutorial agencies is
6 inefficient, and it hinders our ability to
7 move quickly. To be frank, we are facing
8 ever-increasing incidents of internet crimes
9 against children. One of the greatest
10 growths that we've seen is in our computer
11 crime units handling these types of crimes.
12 Given that being the case, we would ask the
13 Legislature to authorize us to have this
14 subpoena power. But again, it is only to
15 obtain subscriber information.

16 SENATOR GALLIVAN: And only for these
17 types of cases.

18 SUPERINTENDENT BEACH: Yes.

19 SENATOR GALLIVAN: Thank you.

20 SUPERINTENDENT BEACH: Yes.

21 SENATOR GALLIVAN: Thank you, Madam
22 Chair.

23 CHAIRWOMAN YOUNG: Thank you.

24 CHAIRWOMAN WEINSTEIN: Mr. Oaks.

1 ASSEMBLYMAN OAKS: Yes, thank you.

2 Senator Young, I believe, spoke some
3 on the recertification of pistol permits. I
4 just wanted to follow up with that. I know
5 that you gave her some numbers -- what I was
6 trying to clarify is do you have a sense of
7 the -- what the number is who have filed?
8 What percent of the total number of permit
9 holders have sent in their recertification,
10 and do you have those?

11 SUPERINTENDENT BEACH: About -- yes,
12 sir, about 70 percent.

13 ASSEMBLYMAN OAKS: So 70 percent of
14 everyone has sent theirs in. And that number
15 is what? Sorry -- again, I apologize, I had
16 to step out.

17 SUPERINTENDENT BEACH: It's -- our
18 records reflect that that's about 277
19 people -- uh, 277,000.

20 ASSEMBLYMAN OAKS: 277,000. And that
21 is 70 percent of the total. And then of
22 those, the numbers that have been
23 processed -- and people have received their
24 information back yet? Or those all --

1 already have been processed, everyone's who's
2 somewhere in the process?

3 SUPERINTENDENT BEACH: Some are in the
4 process of still being verified for accuracy.
5 One of the things that we are confronting is
6 that at the county level there are
7 actually -- because this goes back many
8 decades, there are many records which are
9 kept on paper. And the recertification
10 process will come in, we literally will have
11 to check that against existing county records
12 and to reconcile differences which may exist.

13 And these are not criminal
14 differences. It could be that someone has
15 moved to a new address --

16 ASSEMBLYMAN OAKS: Sure.

17 SUPERINTENDENT BEACH: -- and failed
18 to report it, you know. In other words, it's
19 administrative recordkeeping.

20 For us, the focus of this is as a
21 recordkeeping exercise. That's the tasking
22 we've been given in the law, and so that's
23 what we're working towards now. But the
24 process is cumbersome and it does slow us

1 down. Each one of those has to be researched
2 by our people in the pistol permit bureau.

3 ASSEMBLYMAN OAKS: And just a few
4 weeks ago we heard some numbers as low as 30
5 or whatever, so your office, it would appear,
6 has received quite a few within the last few
7 weeks as we approached the deadline.

8 SUPERINTENDENT BEACH: As of this --
9 the stats I'm giving you are probably about a
10 month old. I know as of two weeks ago, in a
11 two-week time period, we have received about
12 41,000 in a two-week time period. So it's
13 evident to us that there are a number of
14 people, thousands, who have waited until the
15 end of the recert process to send that in.
16 And we don't anticipate those numbers slowing
17 down at all. So we're --

18 ASSEMBLYMAN OAKS: So -- I'm sorry --
19 but those numbers that -- is this 277 and the
20 70 percent, is that pretty much up-to-date,
21 or does that not include that late rush?

22 SUPERINTENDENT BEACH: It's hard to
23 say.

24 ASSEMBLYMAN OAKS: Yeah, yeah, okay.

1 SUPERINTENDENT BEACH: It would be
2 difficult for me to say.

3 ASSEMBLYMAN OAKS: The latest
4 numbers -- yeah -- understood.

5 SUPERINTENDENT BEACH: We're very
6 pleased that that many people actually
7 accessed the system and sent their
8 information in. And now it's a matter of us
9 assembling the recordkeeping appropriately.

10 ASSEMBLYMAN OAKS: Thank you very
11 much.

12 SUPERINTENDENT BEACH: Yes.

13 CHAIRWOMAN YOUNG: Senator Croci.

14 SENATOR CROCI: Thank you, Madam
15 Chairwoman.

16 Superintendent Beach, thank you again
17 for being here. And again, my compliments to
18 you and to the organization that you lead,
19 which I believe is one of the premier law
20 enforcement organizations in the country by
21 necessity, but also because of some pretty
22 stellar leadership at the ranks throughout
23 the years. So I want to compliment you on
24 that.

1 SUPERINTENDENT BEACH: Thank you.

2 SENATOR CROCI: I do want to dovetail
3 off of what Senator Young had raised with
4 regard to the proposed FTEs and the MS-13
5 gang prevention proposal.

6 I sort of was following the math, I
7 heard 10 uniformed patrols. Could you just
8 one more time detail for me the other -- the
9 billets involved? I hate to make you go
10 through it again, but it would be very
11 helpful.

12 SUPERINTENDENT BEACH: Sure.

13 We -- and again, Senator, some of
14 these actually reflect actual deployment of
15 personnel already.

16 SENATOR CROCI: Already on the scene.

17 SUPERINTENDENT BEACH: Yes.

18 SENATOR CROCI: Do we have an idea --
19 if you can't tell me the exact number, that's
20 fine, understood.

21 SUPERINTENDENT BEACH: No, I can tell
22 you -- we put a senior investigator and four
23 investigators in the FBI-led task force.

24 SENATOR CROCI: So they respond --

1 their day-to-day operational control is the
2 FBI.

3 SUPERINTENDENT BEACH: Yes.

4 SENATOR CROCI: Okay. So they're
5 detailed to be --

6 SUPERINTENDENT BEACH: As a -- as a
7 part of that -- towards MS-13 gang violence.

8 SENATOR CROCI: Okay, so I'm at like
9 15 or 16 right now. Ten are uniformed
10 patrols --

11 SUPERINTENDENT BEACH: Yes.

12 SENATOR CROCI: And six --

13 SUPERINTENDENT BEACH: And another 10
14 are part of what we are calling the Gang
15 Violence Prevention Unit, which will act in
16 concert with existing school resource
17 officers in Suffolk County.

18 SENATOR CROCI: Are these uniformed
19 troopers --

20 SUPERINTENDENT BEACH: They are.

21 SENATOR CROCI: -- or are these
22 civilians?

23 SUPERINTENDENT BEACH: No, they are
24 uniformed troopers.

1 SENATOR CROCI: So they are all
2 uniformed --

3 SUPERINTENDENT BEACH: Yes, sir.

4 SENATOR CROCI: -- troopers. Okay.
5 Understood.

6 I just to want talk a little about
7 uniformed patrols recognizing that troopers
8 don't grow on trees, they're assets that cost
9 money to produce, to train, and to maintain.
10 Are they doing patrols in concert with the
11 task force?

12 SUPERINTENDENT BEACH: In some cases,
13 yes. For the most part, we are augmenting
14 patrols which are being done by the county
15 police departments --

16 SENATOR CROCI: Okay.

17 SUPERINTENDENT BEACH: -- in Nassau
18 and in Suffolk County, in areas which have
19 been identified to us by the police
20 departments as having a high incidence of
21 MS-13 gang activity.

22 SENATOR CROCI: Does that include the
23 state parks in Brentwood and Central --

24 SUPERINTENDENT BEACH: Yes, sir, it

1 does.

2 SENATOR CROCI: Okay. Very good.

3 SUPERINTENDENT BEACH: So we are
4 working cooperatively with the Parks Police,
5 but that does include the parks.

6 SENATOR CROCI: Okay. Very good.

7 These patrols -- I'm looking at an
8 executive order that the Governor signed in
9 September about what law enforcement may or
10 may not do with individuals who are in this
11 country illegally, and there's a little bit
12 of legal gymnastics in here. But if two
13 troopers pull over somebody for a traffic
14 stop -- the way a very wise and sharp state
15 trooper did in Oklahoma City in 1995, and
16 caught Timothy McVeigh for a traffic
17 violation -- would then that information be
18 relayed to federal law enforcement for
19 further followup?

20 SUPERINTENDENT BEACH: Senator, the
21 New York State Police does work cooperatively
22 with all of our federal law enforcement
23 partners. We have a well-defined policy
24 which guides the actions of New York State

1 Troopers, and there are contacts and inquiry
2 regarding persons who are potentially
3 undocumented. The guiding principle on that
4 is that New York State Troopers do not
5 enforce federal civil law when it comes to
6 immigration.

7 Having said that, our policy -- the
8 trigger for further inquiry is evidence of
9 criminality. In cases where State Police
10 troopers encounter a situation with a person
11 who -- where there is evidence of criminality
12 and in the investigation which occurs --
13 ensues into criminality, if it is determined
14 that they are here as an undocumented person,
15 that would trigger on our part a notification
16 to the federal authorities.

17 SENATOR CROCI: So a traffic stop
18 subject to further probable cause or other
19 evidence at the scene would then -- the
20 unlawful activities which would then enable
21 you, under this executive order, to talk to
22 federal law enforcement.

23 SUPERINTENDENT BEACH: That's correct.

24 SENATOR CROCI: Okay.

1 SUPERINTENDENT BEACH: We did add one
2 more thing that I would like to bring to your
3 attention to ensure that we're fully
4 compliant out on the road.

5 We did add -- I added this year that
6 in situations where the troopers encounter
7 one of these circumstances, that they are to
8 contact a supervisor, and a supervisor will
9 walk through the fact pattern with them and
10 help them in making a determination about
11 whether a notification is appropriate under
12 those circumstances.

13 SENATOR CROCI: Is this supervisor
14 sitting in like a mini-JTTF where they're
15 with federal law enforcement?

16 SUPERINTENDENT BEACH: No. This would
17 be our road supervision people, our sergeants
18 and our zone supervision staff. We have
19 trained carefully on the policy, we have
20 refreshed on the policy, to the extent that
21 when things are brought to our attention,
22 they're carefully studied after the fact to
23 see if they're in compliance with the policy
24 and to see if there are course corrections

1 that we might need to make.

2 SENATOR CROCI: Okay. That works for
3 me. Thank you.

4 SUPERINTENDENT BEACH: Yes, sir.

5 CHAIRWOMAN YOUNG: Senator Krueger.

6 SENATOR KRUEGER: Hi.

7 SUPERINTENDENT BEACH: Hi, Senator.

8 SENATOR KRUEGER: So in the Enough is
9 Enough legislation that was part of last
10 year's budget, the State Police was given I
11 think \$4 million or \$4.5 million --

12 SUPERINTENDENT BEACH: Yes, ma'am.

13 SENATOR KRUEGER: So there's been a
14 recent audit saying there hasn't been pickup
15 by all the college campuses in the state for
16 the program -- I think it was a State
17 Comptroller's audit a few days ago, I don't
18 know if you've had a chance to take a look at
19 it. But it's consistent with some complaints
20 I've gotten that college campuses are not
21 implementing and may not even know what their
22 responsibilities are.

23 So can you help me understand what
24 you've done and what you're going to be

1 continuing to do to make sure --

2 SUPERINTENDENT BEACH: Senator, I got
3 as far as reading the executive summary --

4 SENATOR KRUEGER: Okay.

5 SUPERINTENDENT BEACH: -- and the --

6 SENATOR KRUEGER: Good. You get
7 points for that.

8 SUPERINTENDENT BEACH: -- and the
9 State Police were found to be in compliance.

10 SENATOR KRUEGER: I'm sorry. The
11 second sentence?

12 SUPERINTENDENT BEACH: The State
13 Police were found to be in compliance with
14 our requirements under the law.

15 SENATOR KRUEGER: But if the campuses
16 are not in compliance, because I think that's
17 actually the bigger problem, what might --
18 and you're sort of -- you're the agency who's
19 tasked with making sure that we are in
20 compliance.

21 So what are you going to be doing in
22 Year 2 to make sure that there's broader
23 knowledge about this and more compliance on
24 the college campuses?

1 SUPERINTENDENT BEACH: Well, obviously
2 our CSAVU unit works collaboratively with
3 persons from the State Education Department.
4 To the extent that we can assist in
5 addressing the issues which have been
6 identified in that, we will certainly do so,
7 because it is a collaborative effort.

8 So first I would say we would have to
9 analyze what needs to be done. And then, as
10 I said, we'll assist, if we possibly can, the
11 State Education Department in finishing out
12 what they need to.

13 SENATOR KRUEGER: And the \$4.5 million
14 is continued again in this year's budget?

15 SUPERINTENDENT BEACH: Yes.

16 SENATOR KRUEGER: So how do you use
17 that? How many staff do you have?

18 SUPERINTENDENT BEACH: We have -- let
19 me get to it, I have the exact numbers for
20 you.

21 SENATOR KRUEGER: Sure.

22 SUPERINTENDENT BEACH: The CSAVU unit
23 is staffed with 15 people statewide. We have
24 a technical lieutenant in Albany who

1 supervises the effort statewide. We have 11
2 senior investigators who work regionally to
3 handle the campuses in their area. We have
4 an administrative senior investigator. We
5 have two civilian support staff, and we have
6 a public information officer who handles our
7 outreach campaign and keeps CSAVU in the
8 media so that we can get the attention to
9 keep the word out there.

10 You know, obviously we're going to
11 keep the unit going at the same staffing
12 levels at this point which we feel is
13 appropriate to the demand being made on them.
14 We did last year 5,500 hours of outreach
15 training, both on and off campus, 1,689 hours
16 of specialized training for our people and
17 for campus police and for local police
18 departments. And in addition to that, we
19 obviously handled casework which was reported
20 to us or in which we provided assistance to
21 campus or local police departments that had a
22 crime reported to them.

23 SENATOR KRUEGER: And in this year's
24 budget the Governor talks about changing the

1 protocol of how to handle sexual offense or
2 rape kits, and I believe gives you money to
3 do something different there as well. I'm
4 curious what is going to change and how the
5 State Police are going to deal with my
6 understanding of hospitals actually throwing
7 out rape kits after 30 days and no one ever
8 testing them and not having a consistent
9 protocol to make sure chain of evidence is
10 not violated with --

11 SUPERINTENDENT BEACH: Boy, I hope
12 that's not the case. They're supposed to be
13 coming to us, under the law, the rape kits,
14 for analysis.

15 The money will be used to augment our
16 personnel resources for scientists. As I
17 indicated previously, the goal is to hire 30.
18 We've filled 19 of those positions already,
19 but we critically need the money to expand
20 both storage and infrastructure to allow us
21 to set up workstations for our scientists so
22 that they can process these cases.

23 SENATOR KRUEGER: When you say they're
24 supposed to come to you, your understanding

1 of the law is that "they" being the
2 hospitals?

3 SUPERINTENDENT BEACH: No. Law
4 enforcement agencies that get them. In other
5 words -- or outside laboratories.

6 In other words, if the Onondaga County
7 laboratory receives one of the kits, it's
8 supposed to be chain of custody, it's
9 supposed to be sent to State Police --

10 SENATOR KRUEGER: So I'm going to ask
11 you to look earlier in the process. But my
12 understanding is that the kits don't get out
13 of the hospitals to go to law enforcement if
14 perhaps the victim didn't check a box and
15 say, Yes, the night of. And it's not
16 something they're necessarily going to go
17 back and revisit.

18 SUPERINTENDENT BEACH: Right.

19 SENATOR KRUEGER: So we supposedly
20 have a large number of rape kits that never
21 get to law enforcement, never get tested --

22 SUPERINTENDENT BEACH: Okay.

23 SENATOR KRUEGER: Which I would argue
24 is probably important -- even if this victim

1 chooses not to go forward at this time, it's
2 still valuable to have that evidence kit
3 available.

4 And you're telling me I'm at zero,
5 so --

6 SUPERINTENDENT BEACH: And I can
7 assure you that if it's a State Police
8 investigation, that our investigators will
9 make sure that the evidence is secured.

10 SENATOR KRUEGER: I don't have time,
11 but I would ask you to follow up to help me
12 understand --

13 SUPERINTENDENT BEACH: I will.

14 SENATOR KRUEGER: -- why things aren't
15 getting processed to you ever.

16 SUPERINTENDENT BEACH: Yes, ma'am. I
17 will do that.

18 SENATOR KRUEGER: Thank you.

19 CHAIRWOMAN YOUNG: Senator Savino.

20 SENATOR SAVINO: Thank you, Senator
21 Young. Good afternoon -- early evening,
22 Superintendent. How are you?

23 I'm not going to go over some of the
24 things that other people have asked, but I

1 just want to make a couple of -- get at
2 points of clarity.

3 So on this -- on the -- the budget
4 projects that the number of full-time
5 equivalents by the end of FY2019 will be
6 5,741, with an increase of 30 FTEs. You are
7 also -- and some of them -- along with the
8 additional 26 FTEs for the MS-13 initiatives.
9 So we're looking at roughly 5,741.

10 You're also requesting, or you've
11 requested and the budget allocates for two
12 new academy classes this year, with about 100
13 candidates for each class. Is that correct?

14 SUPERINTENDENT BEACH: Yes.

15 SENATOR SAVINO: How many people do
16 you anticipate, though, are going to be
17 retiring this year? Do you not think it's
18 going to exceed 200?

19 SUPERINTENDENT BEACH: Yes.

20 SENATOR SAVINO: You do? It will?

21 SUPERINTENDENT BEACH: What we've been
22 running on, a five-year average, is about 220
23 per year. So when Budget looks at our
24 request to run academy classes, it is first

1 baselined --

2 SENATOR SAVINO: Mm-hmm.

3 SUPERINTENDENT BEACH: It is what --
4 the actual number who will attrit, and that's
5 considered a baseline calculation.

6 SENATOR SAVINO: Is it possible more
7 might retire? I mean, do we have a sense of
8 how many members are approaching that 20-year
9 mark? And on that, do they generally retire
10 at 20 years from the State Police?

11 SUPERINTENDENT BEACH: They generally
12 do not. But as a cautionary note -- and I
13 have let our budget staff people, our public
14 safety cluster -- the State Police was
15 expanded exponentially in the years 1986 and
16 1987.

17 SENATOR SAVINO: So they would all be
18 approaching retirement age now?

19 SUPERINTENDENT BEACH: Well, they're
20 going to have 32 years on this year.

21 SENATOR SAVINO: Yeah.

22 SUPERINTENDENT BEACH: And that's --
23 you max out on your pension. So we're
24 anticipating that there will be a significant

1 departure by a significant number of those
2 people.

3 We're still trying to calculate that
4 at this point in terms of how many people
5 left, where they are, and to take some
6 educated guesses at how many will leave. We
7 know it will be a high number.

8 SENATOR SAVINO: So we could
9 conceivably have a bunch of new state
10 troopers soon driving old cars with a lot of
11 miles on them. I know you touched on the
12 issue of the vehicles. I would hope, though,
13 that we could do better, because the last
14 thing we want is people driving cars with
15 200,000 miles on it.

16 SUPERINTENDENT BEACH: Yes.

17 SENATOR SAVINO: I want to touch on
18 something about the number of state troopers
19 who are placed downstate in the City of
20 New York. Now, I am one of those people who
21 actually likes them around because they
22 helped us maintain the traffic on the Staten
23 Island Expressway, making sure people don't
24 abuse the HOV lane.

1 But I know they were there, they were
2 on the Belt Parkway, they were also, I
3 believe, at the bridges and tunnels still?

4 SUPERINTENDENT BEACH: Yes.

5 SENATOR SAVINO: Can you give me an
6 idea of how many are there and are -- do we
7 anticipate they're going to stay?

8 SUPERINTENDENT BEACH: Yes.

9 They're -- we are -- those are permanent
10 staff positions on the nine MTA bridges and
11 tunnels.

12 SENATOR SAVINO: And the troopers that
13 have been assigned downstate, do they
14 generally live downstate? Or has it created
15 a hardship for some of them having to
16 relocate or travel long distances?

17 SUPERINTENDENT BEACH: It's a mix. I
18 was pleasantly surprised when we canvassed --
19 which we do as a matter of protocol and in
20 compliance with our union contracts to see
21 who might be interested in the assignment --
22 the first 55, all but one requested
23 assignment down there.

24 Then too, we attract a significant

1 number of candidates from Troop L on the
2 Island. Troop L is a difficult troop to get
3 into. Once people go back home to
4 Long Island, they stay for extended periods
5 of time, and often our younger troopers are
6 sent distant in-state, maybe Troop B or
7 Troop D in the Syracuse area. And so a
8 number of them, when I spoke to them, said
9 that's as close as they could get to
10 Long Island, they were going to take the
11 assignment for now.

12 SENATOR SAVINO: Do you have any
13 troopers that come from the city, that are
14 New York City residents?

15 SUPERINTENDENT BEACH: Oh, yes. Yeah.
16 Yes, we do, many. Many.

17 SENATOR SAVINO: Well, again, I'm one
18 of the few people that likes them. Other
19 people complain, they think you're bigfooting
20 the NYPD. From what I've seen, the State
21 Police and the NYPD tend to work fairly well
22 together.

23 SUPERINTENDENT BEACH: Yeah, I can
24 assure you that we're not. I personally talk

1 with Jim O'Neill on a very frequent basis.
2 We have an excellent working relationship
3 with them. They have been very supportive of
4 us.

5 SENATOR SAVINO: And again, they've
6 been a great help to those of us on
7 Staten Island. We spent many years trying to
8 get a HOV lane that would take us across the
9 bridge onto the Gowanus Expressway. The
10 minute it opened, people just abused it
11 terribly. And it wasn't until the Governor,
12 at our request, sent state troopers down that
13 we were able to get a handle on that. So I
14 want to thank you and thank your members for
15 their work.

16 CHAIRWOMAN YOUNG: Thank you, Senator.
17 Anybody else?

18 Superintendent, I just wanted to ask
19 you -- we had a brief conversation during the
20 hearing last year about the Olean Barracks
21 and the lab. Can you give an update on that?

22 SUPERINTENDENT BEACH: We don't have
23 any intention of moving them, I want to
24 assure you of that. We are experiencing

1 significant -- as you're aware, significant
2 structural difficulties with the barracks
3 which we have to address. And in this year's
4 budget we have requested and been granted a
5 line item for capital expenditures, including
6 construction. Olean would be one of our
7 priority projects because of the difficulties
8 we're having.

9 CHAIRWOMAN YOUNG: Great. But it
10 would still be in the Olean vicinity?

11 SUPERINTENDENT BEACH: That is our
12 intention, yes.

13 CHAIRWOMAN YOUNG: Very good. Okay,
14 thank you.

15 I think that's it. So we really
16 appreciate all that you do and all that your
17 troopers do and everyone at the department,
18 so thank you so much.

19 SUPERINTENDENT BEACH: Thank you for
20 the opportunity.

21 CHAIRWOMAN YOUNG: Our next speaker is
22 Director Bill Leahy, New York State Office of
23 Indigent Legal Services.

24 Can I ask that you summarize your

1 testimony, please? I'm sure you'll be glad
2 to after all this time.

3 DIRECTOR LEAHY: Thank you, Senator
4 Young and Assemblywoman Weinstein. I want to
5 try to keep this relatively simple and give
6 you three major points that I'll try to make
7 in relatively brief remarks, and then I hope
8 we'll have an opportunity for a little
9 conversation.

10 The first point in kind of bullet
11 fashion is that we urge your support of the
12 funding that the Governor has recommended in
13 his Executive Budget for the statewide
14 extension of the Hurrell-Harring reforms
15 pursuant to legislation enacted in the
16 current-year budget.

17 The second point is that I need to
18 speak to you about the neglect of the
19 parental representation responsibility in
20 Family Court that we have. That has gone
21 unaddressed through all the various reforms,
22 the important reforms that have taken place
23 and are taking place with respect to criminal
24 defense.

1 And then a final point I want to make
2 is about other funding streams that also
3 support public defense, and in particular the
4 New York State Defenders Association, which
5 plays such a vital role in maintaining the
6 quality of public defense in New York and is
7 only partially addressed in the Executive
8 Budget.

9 So let me take the first first. For
10 almost 50 years, New York was mired in an
11 unconstitutional and fractured system of
12 providing public defense, under County Law
13 18B and the county-based public defender
14 systems, with virtually no state oversight
15 and very little state financial support.
16 That led to a long series of caustic reports
17 and assessments, culminating in 2006 with
18 Chief Judge Kaye's commission, which
19 excoriated the system and said it failed
20 New York's duty to comply with the right to
21 counsel under the Sixth Amendment and under
22 the Gideon case and under the New York
23 Constitution.

24 Let me not get ahead of myself into

1 parental representation, let me just say that
2 ultimately that led, in 2010, to the
3 legislation that created the Office of
4 Indigent Legal Services, and in 2011 we began
5 operations, just about this time of year -- a
6 little later, because I missed the budget
7 hearing. I came into town on the 22nd of
8 February, I missed a lot of the fun. I
9 didn't know what I had missed.

10 But I was here in time for that
11 raucous last month of the budget when our
12 funding that was proposed by the Governor
13 that first year was cut in half and when our
14 intended staffing was cut in half, so I got
15 here in time for that.

16 So much has happened in the seven
17 years that we've been in operation. We are
18 still very small. We just this month added
19 three staff members, for a grand total of 23
20 staff. But what has happened over the seven
21 years is really quite an amazing story. Some
22 of you know all of it, some of you know some
23 of it. First, with the support of this
24 Legislature, we were able to get funds out to

1 the counties, particularly the upstate
2 counties, to begin to reduce excessive
3 caseloads and to begin to comply with the law
4 that requires counsel at arraignment in
5 criminal cases. We will always be grateful
6 for your support in those early years.

7 Then in 2014 came the settlement of
8 the Hurrell-Harring lawsuit, and that
9 settlement required the state to fund counsel
10 at arraignment, to fund caseloads that were
11 not set in the settlement but were delegated
12 to my agency to set. And then they were set
13 in December 2016, at new lower levels, even
14 lower than the levels that had been set in
15 New York City earlier in 2010.

16 And thirdly, quality improvement
17 initiatives, meaning that lawyers did not
18 have to do everything on their own, they
19 could have access to investigators, they
20 could have access to support services, they
21 could have access to expert witnesses -- all
22 at state expense, but only in the five
23 counties of Onondaga, Ontario, Schuyler,
24 Suffolk, and Washington.

1 So you know the story from there.
2 Assemblywoman Fahy stepped up, Senator
3 DeFrancisco stepped up. This Legislature
4 unanimously stepped up and passed a bill that
5 went to the Governor, and then we've been
6 through a long process -- it's only been
7 13 months since the Governor's New Year's Eve
8 veto, a couple of hours before the New Year's
9 Day of 2017, his promise in that veto message
10 to file a bill to have the state extend the
11 Hurrell-Harring reforms statewide. Three
12 weeks later, in January 2017, he fulfilled
13 that promise. Several months after that,
14 this Legislature signed on, and that law was
15 changed to put the state in the responsible
16 position.

17 And again -- and we feel very blessed
18 and very fortunate -- our agency was chosen
19 to implement the now statewide reform. And
20 that was April whatever it was, 7th or 8th or
21 so. And we were given a huge responsibility
22 by December 1st to produce plans for
23 statewide implementation. We were able to do
24 that.

1 And we did it I think so well that in
2 the Governor's Executive Budget there is the
3 full \$50 million appropriation, recommended
4 appropriation that we requested and that is
5 Phase 1 of a five-year plan to make the
6 entire State of New York compliant with its
7 constitutional responsibilities with respect
8 to criminal defense. So no county will have
9 to worry about being sued, as the five
10 counties were. The state will not have to
11 worry about being sued. We won't have to
12 worry about a heightened risk of wrongful
13 convictions.

14 New York has gone from very close to
15 the bottom of states in their compliance with
16 the right to counsel in criminal cases to, in
17 just a few short years, we'll be very near
18 the top. And all of you in this room deserve
19 a tremendous amount of credit for that.

20 So that's the very good news. And I
21 urge your full-hearted support of the
22 Executive Budget request with respect to
23 criminal defense.

24 Now, I mentioned I would talk about

1 parental representation. That's the missing
2 25 percent, about 25 percent of the cases for
3 which representation is legally required if a
4 person is eligible, financially eligible.
5 It's equally mandated by law, but it was --
6 there's a little footnote in that Kaye
7 Commission report in 2006, and it says all
8 the problems we're addressing in this report
9 are equally applicable to parental
10 representation, but that is not part of our
11 mandate.

12 So when that report came out in 2006,
13 that's pretty much all that was said. And
14 when the plaintiff's Civil Liberties Union
15 lawsuit came in 2007, it also was not
16 included. And so in 2014 the settlement did
17 not include it. And the legislation that is
18 so wonderful with respect to criminal defense
19 also does not include it.

20 Now, I will tell you two very hopeful
21 things, and I will make an ask of you with
22 respect to this budget. The hopeful things
23 are that, number one, the board which employs
24 me and which guides me and my staff --

1 chaired, of course, by Chief Judge Janet
2 DiFiore -- has spent a lot of time examining
3 the deficiencies in the area of parental
4 representation. And Chief Judge DiFiore
5 personally, and the board, are very involved
6 and intend, I think, to be very active in
7 this area. Our director of parental
8 representation, Angela Burton, and I have met
9 with Judge Marks, with the Family Court
10 judges. We know there is a tremendous
11 recognition within the Judiciary, and we hope
12 that that recognition of the problems with
13 parental representation will soon spread to
14 the Legislature and to the Governor.

15 My specific ask is that there's a
16 \$3 million Aid to Localities request in our
17 budget request which did not find its way
18 into the Executive Budget. I would ask that
19 the Legislature add that \$3 million. It
20 would give us a jump-start on the reforms
21 that are to come and that frankly are legally
22 required.

23 The second piece besides the judicial
24 involvement I want to mention is the State

1 Bar Association Committee on Families and the
2 Law. Very active on this area. They are
3 preparing a resolution that we expect will
4 receive State Bar Association approval urging
5 the state to step in and take this burden
6 from the counties. So that's another area
7 that we look forward to working with our --
8 both our friends at the State Bar Association
9 and our allies at the New York State
10 association of counties to make parental
11 representation reform a reality in 2018.

12 The third thing I do want to mention,
13 as I said, is the other accounts. What we're
14 doing with respect to public defense in
15 New York is building upon a structure. Now,
16 some of that structure is not adequately
17 funded in the Executive Budget. The
18 Institutional Parole Program is not funded,
19 and that's a \$600,000 -- I'm going to have to
20 go from memory here because I've misplaced my
21 notes. The Aid to Defense, cut by \$441,000.
22 The Prisoners Legal Services is short about a
23 half a million, and Karen Murtagh will be
24 addressing that. And most importantly, the

1 New York State Defenders Association,
2 including their Veterans Defense Program.

3 I hope you understand -- and I know
4 Susan Bryant will be speaking to you, I hope
5 soon, about their -- they've got about a
6 million in the Executive Budget. They are
7 funded now at 2.5 million -- just under 2.6,
8 I believe. They provide essential backup
9 center services for 150 public defense
10 providers all across the State of New York.
11 Mark Williams, the soon to be outgoing public
12 defender of Cattaraugus County, speaks all
13 the time about how often his office and other
14 offices in rural counties, particularly, rely
15 upon NYSDA staff for quick and accurate and
16 helpful legal advice in the representation of
17 their clients.

18 So that's not my budget line, but it's
19 a budget line that is essential to the job
20 that we're doing of reforming public defense
21 in the State of New York.

22 So I'll just close my opening remarks
23 with thanks to the Legislature, to the
24 Governor, to the State Bar, to the State

1 Association of Counties, to all our county
2 and county defense provider allies who have
3 all contributed to making this reform happen.
4 And I'll be happy to take any questions you
5 may have.

6 CHAIRWOMAN YOUNG: Assemblywoman
7 Weinstein.

8 CHAIRWOMAN WEINSTEIN: Thank you for
9 being here, and your patience.

10 You know, so last year when we enacted
11 legislation to expand the provisions of
12 Hurrell-Harring, the settlement, statewide,
13 one of the most heavily negotiated items was
14 the level of oversight by the Division of
15 Budget in the development of the plan. It
16 ultimately was agreed that Budget would
17 review and approve the plans, but limited --
18 approval solely limited to the projected
19 fiscal impact.

20 So there's different language in the
21 Executive Budget this year, and I was
22 wondering if you believe that the
23 appropriation language as presented reflects
24 the negotiated DOB approval language, or does

1 it go beyond and do we need to revisit that?

2 DIRECTOR LEAHY: Well, I think that's
3 an issue that I hope is well-resolved before
4 you come down to crunch time in your budget
5 deliberations. One of those plans is an
6 operational plan. I think the Governor's
7 budget came out on the 16th of January. On
8 the 22nd of January we delivered a
9 preliminary draft of an operational plan.

10 We're working very closely and very
11 cooperatively with the public protection team
12 at the department of the Budget, which is an
13 excellent team. We're also working very
14 closely with counsel's office, which has
15 provided excellent guidance and support for
16 us.

17 I do not right at this moment have a
18 concern with that language, as our
19 understanding is that the language is to
20 assist us in making sure that the services --
21 the reforms we will be implementing are
22 provided efficiently as well as
23 professionally and effectively. I take that
24 at face value, and I do so based on our

1 working experience with the personnel at the
2 DOB and in the counsel's office.

3 Now, if my hopes are unrealized, I --
4 you know, Mr. and Mrs. Leahy did not raise a
5 wallflower, I will not be quiet about that.
6 But no, I -- we've had great meetings.
7 There's a legitimate interest on the part of
8 the Executive to make sure that this very
9 substantial reform program operates as
10 intended.

11 And no one is interfering with our
12 professional judgment about the decisions as
13 to how the rollout and the actual reform is
14 to be constructed. We're working very
15 intensively with every single county and the
16 City of New York to do that. No one is
17 telling us how to do that. No one is
18 questioning that. I think the DOB concern is
19 a legitimate one, and one that we can and
20 will respond to and are responding to. And I
21 expect that -- I'll be very disappointed, I
22 will tell you this, I will be very
23 disappointed if come April 1st we don't have
24 approval for plans pursuant to that language

1 which you could then -- you know, the
2 language would -- the issue would kind of
3 moot out, I suppose.

4 CHAIRWOMAN WEINSTEIN: Thank you. And
5 I just want to thank you for your comments
6 about the need to also address parental
7 representation throughout the state. Thank
8 you.

9 DIRECTOR LEAHY: Thank you very much.

10 CHAIRWOMAN YOUNG: Thank you. Our
11 next speaker is Robert H. Samson, Chief
12 Information Officer for the New York State
13 Office of Information Technology Services.

14 Welcome.

15 OITS CIO SAMSON: Thank you.

16 Well, good evening, I guess, at this
17 point, Chairwoman Young and Chairwoman
18 Weinstein and distinguished members of the
19 Legislature. As mentioned, my name is Bob
20 Samson. I'm the Chief Information Officer
21 for the State of New York.

22 I am particularly pleased to be here
23 because I am nothing less than a New Yorker.
24 I was born in Park Slope in Brooklyn, we

1 lived in Greenpoint, I met my wife Linda at
2 college in Plattsburgh, New York, got married
3 in Schenectady, lived and worked in Utica and
4 Syracuse. I now live in Albany, I vacation
5 in Hamilton County in the Adirondack Park.
6 So I have a rather geographically dispersed
7 relationship with the State of New York.

8 I'd also like to start by thanking you
9 for your dedicated service to our state, as
10 evidenced by this long day that you've had so
11 far. I suspect it will probably be longer.

12 I was appointed to the role of New
13 York State chief information officer in May
14 of 2017. I joined state service as the CIO
15 coming out of retirement from the private
16 sector, where I was a senior executive for a
17 large technology company for over 37 years.
18 While I'm relatively new to the New York
19 State CIO job, I am no stranger to ITS. For
20 two years, in 2011 and 2012, I served as a
21 volunteer on Governor Andrew Cuomo's Spending
22 And Government Efficiency -- or SAGE --
23 commission, on which I chaired the
24 information technology subcommittee.

1 Governor Cuomo adopted the recommendations of
2 the SAGE Commission and, executing his bold
3 vision, in late 2012 he created ITS.

4 The initial focus at ITS was the
5 consolidation of infrastructure and services,
6 including data centers, telephones, email
7 systems, and networks. ITS has just turned
8 five years old, and the work contemplated by
9 the SAGE Commission is now largely complete.
10 No other state in the nation has taken on
11 such a project on such a scale. New York
12 leads the nation in building an IT service
13 delivery organization commonly referred to as
14 "the all-in model" -- all of the people, all
15 of the funding, all of the standards. Many
16 states look at New York with a certain sense
17 of envy, and we are routinely called upon to
18 advise them on their own strategies for IT
19 transformation.

20 Now I'd like to update you on our
21 progress since I joined the state in May of
22 2017 and let you know what we plan to do in
23 the coming year. But before I do, I'd like
24 to leave you with a metaphor. In 1947 there

1 was one -- one -- transistor in the world,
2 one. Today there's 2.5 billion transistors
3 for every human being on the planet, and my
4 phone has 4.3 billion transistors in it.
5 Some of you that might have an iWatch, if you
6 happen to be wearing one, that watch is two
7 times more powerful than a supercomputer made
8 by Cray Corporation in 1985.

9 Now, why do I bring that up? The
10 transistors are now instrumenting parts of
11 our society and processes and elements of our
12 society that had never been instrumented
13 before. So as the world becomes instrumented
14 with transistors, interconnected with the
15 Internet, it is becoming increasingly
16 intelligent. And that is the world that we
17 operate in in ITS. Much of the invention for
18 the transistor, my little friend that's in my
19 phone here, is done right down the road here
20 at the college of Nanoscale Science and
21 Engineering at SUNY Poly. It is the foundry
22 of invention, and most of the chips in this
23 phone were manufactured up the road in Malta,
24 New York.

1 So as a state we have to meet this
2 rapidly changing world head on and embrace it
3 and leverage it, and that's what we do every
4 day.

5 I would also point out that the Mario
6 M. Cuomo Bridge is filled with billions of
7 transistors that manage its health every
8 single day, 24 hours a day, seven days a
9 week, further evidence of this
10 instrumentation, interconnectedness, and
11 intelligence. An intelligent bridge.
12 Probably the most intelligent bridge in the
13 world.

14 So where are we going? We're going to
15 continue to strengthen the state's cyber
16 posture. Cybersecurity is ITS's first
17 priority. ITS has significantly improved the
18 state's information security position through
19 a mixture of investments in our cyber
20 professionals and new security-related
21 technologies, including the buildout of our
22 Cyber Command Center. Next we're going to
23 complete the consolidation of 53 data centers
24 into one secure state-of-the-art data

1 center -- indeed, a Tier 3-plus data center.

2 And probably perhaps most importantly,
3 although these are not necessarily in
4 importance order, we're going to strengthen
5 the focus on our people. At the end of the
6 day, the technology industry is not about the
7 technology. It never has been. I've been
8 around it for 40 years. The secret of the
9 technology industry are the people that use
10 the technology, bend the technology, shape
11 the technology, apply the technology in
12 innovative ways that change the trajectory of
13 how work is done.

14 We have no better workforce than the
15 ITS workforce here in the State of New York.
16 I can point to example after example after
17 example and we'd be here a very long time
18 this evening if I went through all the
19 examples that I have of their expertise,
20 their knowledge, their brilliance at what
21 they do every single day. It is truly a
22 treasure that we have in New York State, the
23 ITS workforce that we have.

24 We've invested heavily in the skills

1 of our workforce and support the proposal in
2 Governor Cuomo's Executive Budget that would
3 allow ITS to bring in even more talent into
4 the ITS workforce to assist us in innovating
5 for our clients.

6 Next we're going to focus on our
7 clients more rigorously than we have in the
8 past. We refer to our agency partners as
9 clients. As a first-of-its-kind state IT
10 organization, our business is applying
11 technology to the business of government, and
12 we're making significant changes to how we
13 deliver on this promise for our agency
14 partners. We are more client-centric,
15 skills-based, and process-driven. That is
16 truly the heart of an IT service delivery
17 organization. Client-centered, focused on
18 your agencies and your clients; have a
19 skills-based organization that is engaged
20 with a set of processes that are consistent,
21 well known, published, that allows you to
22 execute on what is our vision, which is
23 innovation that matters for all New Yorkers.

24 The Governor's bold vision for IT

1 years ago was that -- and this is his
2 words -- it is horizontal, touching every
3 aspect of government; it is transformational
4 in the power of what technology can do for
5 government; and above all else, it needs to
6 be secure. Because of this vision, ITS was
7 created. Now that ITS exists, we have an
8 unparalleled depth, scope and insight into
9 how technology can help solve problems that
10 seemed impossible to solve just a few years
11 ago.

12 This is what truly sets New York State
13 apart from the rest -- applying technology to
14 solve the state's grand challenges and
15 delivering on what our tag line is,
16 innovation that matters for all New Yorkers.

17 There's plenty of examples of this
18 focus on innovation, just one of which was
19 the Governor's Excelsior scholarship, which
20 you passed last year, and the IT systems that
21 support it. I could answer questions
22 regarding additional innovation activities
23 that we have executed on.

24 New York State is a leader in

1 technology thanks to Governor Cuomo's
2 incredible vision for the creation of ITS.
3 We're demonstrating that new leadership by
4 using technology to solve the government's
5 biggest challenges. As a New Yorker, I'm
6 honored to be working for an agency like ITS,
7 with our incredible employees, that touches
8 every single aspect of New York State
9 government. That's what technology does. It
10 touches every single aspect of New York State
11 government.

12 Thank you for the opportunity to be
13 here with you, and thank you for your service
14 to New York.

15 CHAIRWOMAN YOUNG: Thank you,
16 Mr. Samson. I just have a few questions.
17 And I want to thank you; you came to my
18 office, we spent some good time together --

19 OITS CIO SAMSON: Yes, we did,
20 Senator.

21 CHAIRWOMAN YOUNG: -- and I appreciate
22 the information that you gave me.

23 Just some follow-up questions related
24 to the budget. In 2009, the Legislature

1 authorized 500 term appointments. To date,
2 how many of those term appointments have been
3 utilized?

4 OITS CIO SAMSON: Of the 500 in 2009?
5 I believe that was 170, but I can get back
6 with you with that answer, Senator.

7 CHAIRWOMAN YOUNG: Okay, that would be
8 helpful. And were any of the slots extended
9 after the five-year time period?

10 OITS CIO SAMSON: I don't know the
11 answer to that question. I'd have to get
12 back to you. I've been here since May; I
13 don't know the answer to that question. I
14 can get that for you, though, Senator.

15 CHAIRWOMAN YOUNG: If you could give
16 us a report of how many were utilized, how
17 many were extended after the five-year term
18 expired, and are any of these 500 slots open
19 and available? So just to summarize, too,
20 how many are currently serving in term
21 appointment slots? That would be very
22 helpful if we could get that information.

23 OITS CIO SAMSON: Okay.

24 CHAIRWOMAN YOUNG: And also, are you

1 aware if any of the term appointments
2 actually transitioned to become regular
3 employees?

4 OITS CIO SAMSON: That is another from
5 the 2009?

6 CHAIRWOMAN YOUNG: Yes.

7 OITS CIO SAMSON: I'd have to get a
8 complete answer for you on that. I don't
9 know the answer to that.

10 CHAIRWOMAN YOUNG: Okay. All of that
11 would be most helpful.

12 You and I talked about some of the
13 cyberincidents. And could you explain a
14 little bit further the responsibility of
15 protecting the executive agency's IT
16 infrastructure as it's split between the
17 state agencies? Could you tell us how
18 that's -- obviously, you can't give away
19 trade secrets, but what is your role in all
20 of that protection of our systems?

21 OITS CIO SAMSON: Okay, so our role,
22 we have a cyber team, we have a chief
23 information security officer. Her name is
24 Deb Snyder, and she manages our cyber

1 strategy and the initiatives that we have.

2 If you go back to 2012 when we
3 originally created ITS, we transferred over
4 about \$1.5 million of expense and six
5 dedicated resources to cyber. Today that
6 number is close to \$50 million of expense and
7 60 dedicated employees. And that's a
8 reflection of the world that we find
9 ourselves in, quite frankly. It's also a
10 function of the world we find ourselves in
11 here in New York, because we've been blessed
12 with consolidating all of the disparate 53
13 data centers and 27 different email systems
14 into one organization, but also into one data
15 center with a backup in Utica, New York,
16 which allows you to protect those assets.

17 It's not just protecting the data
18 center, it's protecting our network assets.
19 We have 143,000 state workers that access our
20 systems, 1500 miles of fiber, 25 petabytes of
21 data that we have stored. All of these are
22 precious assets to the State of New York.

23 In the prior model, that was all
24 distributed. Our cyber strategy is now

1 focused on, as we consolidated all of that,
2 to protect those assets as rigorously as we
3 can. We're employing new technologies to
4 begin encrypting the data that we have so
5 it's better protected. It's part of our
6 broader strategy for cyber. We monitor cyber
7 rather rigorously. We get an enormous number
8 of attempts to break into our systems every
9 single day, from locations all over the world
10 and also both inside the United States and
11 from other states. So it's a first priority
12 for us, is cyber. We've invested both in
13 talent and in new technologies to protect the
14 state's assets. And we continue to do so as
15 we build out our Cyber Command Center, which
16 is again a first in the nation for New York.

17 CHAIRWOMAN YOUNG: Thank you.

18 How does ITS interact with the
19 Department of Homeland Security's
20 Cyberincident Response Team? Is there any
21 overlap?

22 OITS CIO SAMSON: We work very closely
23 with one another. So they're the first line
24 as we work with local governments. Local

1 governments, for me personally, is a passion,
2 helping local governments.

3 I think in one of the earlier sessions
4 it was mentioned that Erie County Medical
5 Center -- I think perhaps you had mentioned
6 that --

7 CHAIRWOMAN YOUNG: Correct.

8 OITS CIO SAMSON: -- we worked very
9 closely with Erie County Medical Center to
10 get them back online. We've worked with
11 Schuyler County. So where there is an
12 engagement and an issue in a county, we work
13 very, very closely with DHSES in aligning our
14 resources together both with NYSIC, DHSES,
15 State Police, as well as the federal agencies
16 that we work with.

17 In instances like that, cyber is
18 highly collaborative. It doesn't sit in one
19 place, it requires multiple skills and
20 talents that you bring to bear in a
21 situation. We happen to have a really deep
22 bench of talent in ITS. Our first mission is
23 to protect the state agencies, and as a
24 secondary to that, we help protect local

1 governments because many of those local
2 government systems are connected to our
3 systems. So it's a first imperative for us
4 as well.

5 CHAIRWOMAN YOUNG: We had a nice
6 conversation about that fact. So you
7 actually provide technical assistance to
8 local governments, right?

9 OITS CIO SAMSON: We do. We help
10 them. We've built a number of tools for
11 them. We have a tool that's available for
12 local governments to do a quick cyber
13 assessment of their own vulnerabilities. We
14 build that tool; that's available to them.

15 I have met with a number of CIOs from
16 some of the local municipalities. We've met
17 just recently, as an example, with Washington
18 County. So we've spent time with them,
19 advising them, consulting with them, and
20 giving them some tools to help them deal with
21 what is a very complex topic.

22 As you well know, the skills inside
23 local government scale, right, from New York
24 County at one end to Hamilton County on the

1 other, and everything in between. And a
2 number of studies have been done by the
3 Center for Technology in Government on the
4 preparedness of local governments for cyber.
5 And as you can well imagine, there's a very
6 wide gap between some that are really
7 sophisticated and some that aren't.

8 Our objective is to leverage the
9 skills and talents we have, build tools that
10 help them do the assessments that they need
11 to get done, and then sit alongside them when
12 they happen to have a situation that needs
13 remediation and help. And work very, very
14 closely with our partner agencies, as you
15 just mentioned.

16 CHAIRWOMAN YOUNG: Thank you.

17 You mentioned the fact that there are
18 countless cyberincidents every single day.
19 Do you feel that the ITS department and the
20 state's network actually is sufficiently
21 prepared to face the challenging
22 environment --

23 OITS CIO SAMSON: Yes, I do.

24 CHAIRWOMAN YOUNG: -- that we have?

1 Because threats evolve every single day.

2 OITS CIO SAMSON: It evolves every
3 day. Cyber, as a topic, is a moving topic,
4 as you can well imagine and as you just
5 pointed out. But we have invested, as I
6 mentioned earlier, significantly in both
7 resources and technologies to protect the
8 state's assets. We continue to invest in
9 that. It's not a static investment that we
10 make once and then sit. You have to watch
11 the threats. We work closely with our
12 partners to see what the emerging threats are
13 and then take action to remediate what
14 potentially could be a threat and deal with
15 that.

16 So we work very, very closely. It is
17 a 24/7 job, quite frankly, for our cyber team
18 and our chief information security officer.
19 I don't know how she sleeps at night, because
20 it is an intense world that you live in in
21 the cyber world that we find ourselves.

22 CHAIRWOMAN YOUNG: Thank you.

23 Senator Savino.

24 SENATOR SAVINO: Thank you, Senator

1 Young.

2 OITS CIO SAMSON: Hi, Senator.

3 SENATOR SAVINO: Nice to meet you,
4 Mr. Samson.

5 OITS CIO SAMSON: Nice to meet you
6 too.

7 SENATOR SAVINO: I must say you are
8 very enthusiastic for someone -- I guess it
9 has to do with the fact that you've only
10 worked for state government for a relatively
11 short period of time.

12 (Laughter.)

13 SENATOR SAVINO: Come back in 30 years
14 and -- I don't know.

15 OITS CIO SAMSON: But I worked for a
16 gigantic company, and the parallels are
17 fairly similar.

18 SENATOR SAVINO: So being that you
19 came out of the private sector, I'm sure
20 managing a state agency and the limitations
21 of the ability to move people around the way
22 you would like, or even the way the Governor
23 would like, is a little eye opening.

24 So as you're probably aware, the state

1 civil service system was adopted about 135
2 years ago to establish that employees be
3 selected based on merit and fitness, to kind
4 of take the politics out of the public
5 service and to allow people to compete
6 against their peers.

7 So in 2009, Senator Young referenced
8 the changeover for IT, because at the time we
9 found that the State of New York was
10 outsourcing information technology work to
11 private vendors. And we were spending about
12 \$7 billion on those services, agency by
13 agency. And in fact I think what was the
14 predecessor agency of ITS was spending the
15 most out of anybody. And so we set about
16 trying to develop a career path and how to
17 insource this work, because we realized it
18 was very vital. And in fact in your
19 testimony you say that we are moving from a
20 vendor-led centralized model to a state
21 workforce-led, geographic-based model that is
22 more responsive to the unique needs of
23 New York State government.

24 OITS CIO SAMSON: Correct. Correct.

1 SENATOR SAVINO: And that's exactly
2 what we set out to do in 2009. You've
3 already answered the question about how many
4 of those positions have been insourced. But
5 then again last year, the Governor put
6 forward a proposal -- which he puts forward
7 again this year -- about 300 term
8 appointments.

9 OITS CIO SAMSON: Correct.

10 SENATOR SAVINO: Right? So the
11 questions we asked last year, and I'm going
12 to continue to ask this year, is of those 300
13 term appointments, they would have to
14 eventually take a civil service test.

15 OITS CIO SAMSON: Correct.

16 SENATOR SAVINO: But a test that has
17 not yet been developed. That was last year's
18 answer. Is that still the case this year?

19 OITS CIO SAMSON: Whether the test has
20 been developed? I think the tests have been
21 developed, actually.

22 SENATOR SAVINO: Okay. So then last
23 year we found, while we were examining this
24 proposal from the Governor, that there were

1 about a thousand people who had already taken
2 a civil service test for the IT position.
3 And the question was put to your predecessor,
4 why are we not going to that list, hiring
5 people off that list into the
6 competitive-class position, and allowing them
7 to take on this? Why are we looking to take
8 300 people from outside and give them a term
9 appointment, suggesting that they take a
10 civil service exam yet to be given at some
11 point in the future?

12 So I still have the same position. If
13 we have candidates that have been tested, why
14 aren't we utilizing that list before we bring
15 in 300 people from the outside?

16 OITS CIO SAMSON: Well, let me just
17 back up for just a moment on this topic,
18 because this is an important dimension to
19 this topic that we can't ignore.

20 We are in a war for talent in the IT
21 industry. We compete with the Googles of the
22 world, we compete with the Microsofts on the
23 larger end, and then smaller IT companies.
24 So we're competing for talent. And it's

1 quite frankly difficult for the state to
2 compete for talent.

3 So this is another tool that we can
4 use. It is skills-based. It focuses on the
5 skills that we need. We have 700, you know,
6 consultants because they're there because we
7 don't have the skills in our own workforce to
8 go do that work. This is a way for us to get
9 those skills quickly. State workers can
10 compete for those jobs. We're working
11 closely with our PEF partners on this. So it
12 is a way for state employees to compete for
13 those jobs based on skills, or a contractor
14 to be brought into the state workforce --
15 happens to save us money. We're spending an
16 enormous amount of money with these
17 contractors and consultants. It also gives
18 us a more durable model with these workers
19 becoming state workers, so we don't -- in the
20 case of consultants, they might come and work
21 for a few years and leave, and we lose all
22 the knowledge that they have.

23 So this is an opportunity to capture
24 their knowledge and keep it inside the state

1 workforce. The state workforce can still
2 compete for these jobs. It is, at its core,
3 skills-based, and that's how we designed
4 this.

5 If you go back to my original comment
6 about being a client-centered, skills-based
7 -- this is how we build the deeper skills on
8 our bench. We're going to be having a number
9 of retirees in the years ahead. Some of
10 these skilled resources that come in can
11 mentor some of the interns that we have. We
12 have about 150 interns that work for us now.
13 We're very active on the college campuses
14 trying to recruit the next-generation ITS
15 workforce.

16 As I mentioned, we're in a war for
17 talent. We compete on the college campuses,
18 we compete for skills, and we also work to
19 invest in our own employees with the skills
20 development programs that we have that we've
21 invested rather significantly in and we plan
22 to invest more.

23 So this model is not one or other,
24 it's fully integrated around the idea that,

1 first, we're in a war for talent; secondly,
2 we're a skills-based organization, we have to
3 get those skills as quickly as we can; and
4 then continue to invest in our workforce over
5 the long haul.

6 SENATOR SAVINO: I completely
7 understand. And, you know, I have a very
8 good friend who is a senior systems engineer.
9 She makes a fortune. So for her, the idea of
10 working in government is not --

11 OITS CIO SAMSON: Doesn't work for
12 New York.

13 SENATOR SAVINO: No, she does not.

14 But that's not the -- the point is I
15 understand that you're competing for talent.
16 But I'll go back to we have -- we already
17 have established lists of people who may be
18 the talent that you're looking for, so the
19 only question I have --

20 OITS CIO SAMSON: And they could be,
21 absolutely.

22 SENATOR SAVINO: -- is why aren't we
23 turning to that list first before we hire
24 people from the outside?

1 OITS CIO SAMSON: But they could
2 compete for these jobs as well.

3 SENATOR SAVINO: Okay. But again, if
4 we're hiring those titles -- and maybe we're
5 not, maybe that's not what we're hiring,
6 because from this proposal it's hard for me
7 to figure it out.

8 If the titles that the Governor is
9 proposing that we hire from are the titles
10 that those individuals have already been
11 tested for, the law says you have to go to
12 the list first, exhaust the list. You could
13 go through all 300 people on the list and
14 find the talent that you want; you even have
15 the ability to do what's called selective
16 certification under the civil service system,
17 if you want to establish people with
18 particular skills off the master list.

19 So I'm just suggesting, again -- and I
20 know, you know, civil service can sometimes
21 seem, you know, clunky and anachronistic in
22 some ways. But it has served the people of
23 the State of New York for 135 years, and I
24 think it's important that we protect it. So

1 if there's a way to do this within the
2 system, we should do so. Because you're
3 being asked to hire 300 talented people, give
4 them a five-year term appointment, and make
5 them take an exam to hold that job in
6 perpetuity anyway. So it would seem to make
7 sense you may already have applicants who you
8 can turn over rather quickly.

9 OITS CIO SAMSON: Right. Right.

10 SENATOR SAVINO: So it's my only
11 suggestion. Perhaps we could meet at another
12 time and talk about it even more. As I said,
13 you are very enthusiastic and I really don't
14 want to beat it out of you yet. You have a
15 long time to go.

16 OITS CIO SAMSON: No, I mean, this all
17 fits into the whole rubric of the social
18 service, you know --

19 SENATOR SAVINO: Civil service.

20 OITS CIO SAMSON: -- rules and
21 regulations. It doesn't go outside of that,
22 it doesn't change that. It's just another
23 tool to attract the right skills. Those
24 employees will become PEF employees, they'll

1 become state employees. We'll get the
2 benefit of their skills. At the same time,
3 while we continue to invest in the state
4 workforce, they can also compete for these
5 jobs. It gets back to --

6 SENATOR SAVINO: But they don't have a
7 reasonable expectation of continued
8 employment if they're not called off the
9 list. They could be -- perhaps you're going
10 to hire them, and I'm not -- I don't know
11 this to be true, but there's a possibility
12 that they would ask you to hire them as
13 noncompetitive employees, which would deprive
14 them of due process rights. So there's a
15 concern about that too.

16 So again, I'm more than happy to meet
17 with you at a later time and --

18 OITS CIO SAMSON: Okay, let's -- we
19 can meet.

20 SENATOR SAVINO: -- talk about this.

21 OITS CIO SAMSON: I'd love to do that.

22 SENATOR SAVINO: I won't belabor the
23 point, but --

24 OITS CIO SAMSON: Let's get together.

1 I'd like to do that, yeah.

2 SENATOR SAVINO: Thank you. We will.

3 CHAIRWOMAN YOUNG: Thank you.

4 Anybody else?

5 OITS CIO SAMSON: Any other questions?

6 CHAIRWOMAN YOUNG: Okay. Well, thank
7 you --

8 OITS CIO SAMSON: Senator Krueger,
9 good to see you.

10 SENATOR KRUEGER: Nice to see you.

11 CHAIRWOMAN YOUNG: Thank you very
12 much, Mr. Samson.

13 OITS CIO SAMSON: Okay, thank you.

14 CHAIRWOMAN YOUNG: Look forward to the
15 information that you're sending, and we
16 really wish you well in your very, very
17 important job. We need you.

18 OITS CIO SAMSON: Thank you, Senator.

19 CHAIRWOMAN YOUNG: We're on to page 2.

20 We have the New York State
21 Associations of PBA and Police Conference of
22 New York. Representing them is Bing Markee,
23 legislative director, and Chris McNerney,
24 police sergeant, Port Authority Police

1 Department.

2 Welcome, gentlemen. We appreciate
3 your patience and we appreciate your service,
4 and we look forward to your testimony. If
5 you could do everyone a favor and maybe
6 summarize it as best you can, and then we'll
7 ask questions if we need more information.

8 MR. MARKEE: Good morning, Madam
9 Chairwomen --

10 PANEL MEMBERS: Morning?

11 MR. MARKEE: -- Senators,
12 Assemblymembers. My name is Bing Markee.
13 I'm the legislative director for the New York
14 State Association of PBAs, and I'm speaking
15 on behalf of my association and the Police
16 Conference of New York today. We have
17 submitted joint testimony, which you should
18 have copies of, and I'm not going to read
19 this testimony, which I'm sure you're
20 thankful for. I will just touch on a few
21 points.

22 We -- together, we represent the vast
23 majority of police officers across the state,
24 and we have very serious concerns about the

1 Governor's bail reform proposal. The way the
2 proposed legislation is written, it
3 essentially eliminates monetary bail in the
4 state and sets a very high threshold for
5 violent felony bail.

6 We think that this is not something
7 that should be done in the budget, it's much
8 too complicated. And in fact we believe it
9 will be a significant -- it will add
10 significantly to the budget deficit because
11 of the costs involved.

12 To elaborate on that, I have with me
13 today a unique individual who has experience
14 in both states, Port Authority Police
15 Sergeant Chris McNerney. He's a former
16 New York City police officer, and he is now a
17 police sergeant with the Port Authority
18 Police. And because of the jurisdiction of
19 the Port Authority Police, they basically are
20 police officers in both states and they have
21 jurisdiction from the Canadian border to the
22 tip of Cape May. They operate in multiple
23 jurisdictions, and Chris's actual function is
24 as the court sergeant. So he deals with this

1 bail issue all the time. And he's here to
2 talk about the nightmare that we feel is
3 going on in our state across the Hudson
4 River, and what we may be looking at here in
5 New York if we allow this proposed
6 legislation to go through as is.

7 So Chris?

8 CHAIRWOMAN YOUNG: Thank you.

9 POLICE SERGEANT McNERNEY: Hello.
10 Thank you for the opportunity to speak to
11 you. My name is Chris McNerney, and I'm a
12 police sergeant with the Port Authority of
13 New York and New Jersey.

14 My role with the Port Authority is
15 that of their court liaison sergeant. I deal
16 with multiple superior and municipal courts
17 throughout New Jersey, in Bergen, Hudson,
18 Middlesex and Union counties and all the
19 jurisdictions that they cover within that --
20 the City of Newark, the City of Elizabeth.
21 So I have a dynamic overview of the impact
22 that bail reform has had in the State of
23 New Jersey.

24 On January 1st of 2017, New Jersey

1 implemented bail reform, and it has been
2 quite a failure in New Jersey, regardless of
3 what you read. I'm one of the boots on the
4 ground that argues on a daily basis in this
5 failed system. They went from a
6 monetary-based bail system to one that is
7 based on risk assessment. They use an
8 algorithm that gives them a numeric value
9 from 1 to 6 in three areas: Their likelihood
10 to flee, their likelihood to commit another
11 crime, and the likelihood that their new
12 crime will be that of a violent nature.

13 The legislation was unfunded. It was
14 put on the counties, the courts, the
15 municipalities, and the police departments,
16 and it has been a financial burden.

17 With that, part of bail reform
18 included hiring additional personnel, the
19 creation of pretrial services. The creation
20 of pretrial services, they took many of the
21 experienced and senior talented prosecutors
22 at municipal levels and they left for better
23 jobs in this new system, leaving us with
24 inexperienced prosecutors to prosecute these

1 crimes.

2 When bail reform was implemented, they
3 didn't really know how the pretrial services
4 was going to be managed. It's on a county by
5 county basis. In the County of Essex,
6 shortly into bail reform they were releasing
7 people who had committed serious crimes with
8 an ankle bracelet. About a month and a half
9 into it, they had to call them back to
10 retrieve the ankle monitors to give them to
11 people who had committed more serious crimes
12 than them.

13 With that, they have eliminated the
14 bail bondsman, who was another asset to us,
15 who monitored people out on bail, tracked
16 them and ensured their appearance in court.

17 There were numerous cases where people
18 had committed serious crimes, such as the one
19 in Ocean County, the 20-year-old sex offender
20 who was charged with attempting sexual
21 assault on a 12-year-old girl. He offered to
22 give her a gaming console in exchange for
23 sex. And he was released with an ankle
24 monitor. The chief of police in that

1 municipality challenged his release up to the
2 highest court, but under the directive of the
3 Attorney General, he met release. He took it
4 upon himself, as he said, in the interests of
5 public safety to go to Facebook and warn
6 people that the state had allowed this
7 charged sex offender to be released back into
8 the community in which this 12-year-old girl
9 lived.

10 Additionally, the case of Jules Black,
11 who was arrested for possession of a handgun.
12 He was released, his public safety assessment
13 said he was not a threat to public safety.
14 Three days after his release, he murdered
15 Christian Rogers. His mother has filed a
16 federal lawsuit saying that New Jersey has
17 the liability for releasing this person back
18 into the public.

19 This system of bail reform has created
20 a revolving door where criminals are
21 repeatedly arrested and let go. In Union
22 County, they finally arrested somebody for
23 the 11th time for burglaries, robberies,
24 where he was repeatedly let back into the

1 community and allowed to victimize 10 other
2 people.

3 In the State of New Jersey, aggravated
4 assault on a police officer is a summonsable
5 offense. You can be fighting with a prisoner
6 and a couple of hours later you'll be handing
7 him a summons as he walks out the door. I
8 can tell you that that's disheartening, as a
9 member of the law enforcement community, that
10 you're not valued that that crime was
11 committed against you.

12 More alarming, though, is these people
13 being released back into the streets. The
14 system of bail that had been in place is
15 replaced with this new bail reform where
16 municipalities and jurisdictions argue over
17 releasing the prisoners. I had one
18 individual who had seven warrants for his
19 arrest; he was arrested on new charges. When
20 I contacted two of the municipalities, they
21 were arguing over who was going to come get
22 him, the person with the highest bail, with
23 10 percent, or the other municipality. At
24 the end of the argument, they both issued him

1 an ROR, released on his own recognizance.
2 All seven warrants were vacated and he was
3 released back into the community because of
4 this bail reform.

5 In my experiences, bail reform in
6 New Jersey has been a failed venture at the
7 risk of public safety. Bail reform is
8 something that should be researched and
9 studied and not haphazardly implemented as it
10 was in New Jersey, a system of trial and
11 error. In addition to the financial burden
12 that it's placed on the courts, the
13 municipalities and the police departments, I
14 think the cost to the public is far greater.

15 Thank you for your time.

16 CHAIRWOMAN YOUNG: Thank you. And we
17 appreciate you sharing your experiences.

18 I know Senator Gallivan has some
19 questions.

20 SENATOR GALLIVAN: Thank you, Madam
21 Chair. I actually had some questions. I did
22 want to ask you about New Jersey's
23 experience, so I appreciate you sharing that.
24 And it certainly gives us a place to go to

1 look into it to make a comparison. Thank
2 you, Madam Chair.

3 CHAIRWOMAN YOUNG: Thank you.

4 CHAIRWOMAN WEINSTEIN: Assemblyman
5 Oaks.

6 ASSEMBLYMAN OAKS: Just a quick
7 question.

8 Earlier when we talked about the
9 proposal, I raised the issue of open
10 warrants, you know, that are always a
11 problem. Do you have any numbers on or any
12 sense on since going to that in New Jersey,
13 whether you've had a lot more open warrants
14 of people not appearing?

15 POLICE SERGEANT McNERNEY: I think the
16 majority of people who have a warrant, they
17 fail to appear. Part of my duties is the
18 acceptance of subpoenas and scheduling police
19 officers for courts within New Jersey, and
20 the majority of the cases result in a failure
21 to appear with a bench warrant for the
22 defendant.

23 So statistical numbers I don't have,
24 but the majority of the cases in which my

1 officers go to, there's a failure to appear.
2 So if somebody is released and they failed to
3 appear, they may have two or three matters
4 outstanding. When they are rearrested and
5 scheduled to go to court, there can be four
6 or five officers who appear, and yet again
7 the defendant will fail to appear. That's
8 five officers who are not working their
9 normal patrol duties, they're assigned to
10 court for the day.

11 ASSEMBLYMAN OAKS: But your sense
12 would be since doing the bail reform, that
13 that has increased compared to what it
14 would --

15 POLICE SERGEANT McNERNEY: I believe
16 that it has increased. I don't have the
17 numbers, but I think under the old system the
18 defendants were more likely to appear because
19 they had a bail or they had a bail bondsman
20 ensuring their appearance in court.

21 ASSEMBLYMAN OAKS: Thank you.

22 CHAIRWOMAN WEINSTEIN: Senator Savino.

23 SENATOR SAVINO: Thank you, Officer,
24 for your testimony.

1 So while you were talking, I pulled up
2 some numbers on New Jersey because they're
3 just about at the end of their first year.
4 So one of the things that they apparently
5 didn't anticipate is while they would be
6 saving money by not having people locked up,
7 they're spending money on the other end, and
8 they didn't fund that. So it's about
9 \$45 million, according to this report, the
10 State of New Jersey now has to fund for
11 pretrial -- their pretrial system.
12 Apparently it's a lot more expensive than
13 they thought.

14 Do you see the same type of
15 proposal -- is what you're proposing in
16 New York a mirror image of what New Jersey
17 did? Could we wind up with the same costs?
18 And our state is much larger.

19 POLICE SERGEANT McNERNEY: My
20 understanding of the New York proposal is it
21 doesn't include a public safety assessment,
22 that just by statute the defendant would be
23 released. In New Jersey, they have the
24 public safety assessment.

1 I know that the New York proposal does
2 contain pretrial services. I'm assuming here
3 that there would be some type of an
4 assessment regarding his suitability to be
5 released at some point.

6 In regards to the cost of bail reform,
7 that number -- some of the numbers are
8 unaccounted for because they -- it was
9 unfunded legislation, so the costs fell on
10 the counties, the courts, the police
11 departments. And I don't know if they can
12 properly track, you know, how much that cost
13 them.

14 SENATOR SAVINO: It's interesting,
15 according to this report also, the crime
16 statistics from the New Jersey State Police
17 show no major bump in violent offenses across
18 New Jersey. However, some of the mayors in
19 New Jersey -- particularly the mayor of
20 Newark has been very critical. He said that
21 many of the defendants who were facing
22 firearms charges are back on the street and
23 shootings are up in the City of Newark.

24 Do you have any information about

1 that?

2 POLICE SERGEANT McNERNEY: No. I
3 probably read the same article you're
4 reading. The mayor of Newark, Ras Baraka,
5 and the police director of Newark, Anthony
6 Ambrose, are adamantly against bail reform
7 due to the increase in shootings and crimes
8 in the City of Newark.

9 SENATOR SAVINO: I think we all agree
10 that people who shouldn't be sitting in jail
11 pretrial shouldn't be forced to sit there
12 simply because they can't afford to make
13 bail. I just think we need to approach this
14 carefully so that we solve that problem and
15 not create another problem.

16 So I want to thank you for your
17 testimony and look forward to continuing this
18 discussion.

19 CHAIRWOMAN YOUNG: Thank you very
20 much. And thank you, Senator Savino.

21 I guess, from your viewpoint, what's
22 wrong with the current system?

23 MR. MARKEE: I'm sorry, I couldn't
24 hear you.

1 CHAIRWOMAN YOUNG: From your
2 viewpoint, what's wrong with the current
3 system?

4 MR. MARKEE: The current system?

5 CHAIRWOMAN YOUNG: Yes.

6 MR. MARKEE: Look, in any system
7 there's room for improvement. We testified
8 last year about trying to mitigate some of
9 the Raise the Age issues where we admitted
10 that there's always room for improvement.

11 But this is not something that should
12 be done so quickly. What we're doing here is
13 throwing out the baby with the bathwater. If
14 you want to reform bail, you have to look at
15 the way people are bailed out. And if you
16 eliminate bail, which essentially this
17 legislation does, for all misdemeanors and
18 nonviolent felonies, all you -- and it also
19 raises the threshold, by the way, for violent
20 felonies -- you'll see the experience that
21 New Jersey has had with respect to failure to
22 appear.

23 And I don't see a big problem with the
24 current system other than perhaps other

1 issues that the Governor is trying to address
2 in the proposed budget -- speedy trial and
3 that type of thing. That's what's causing a
4 big part of this problem. It's not the issue
5 of people not being able to make bail. A lot
6 of these -- if you look at the actual
7 statistics, which I understand the bail
8 industry will be presenting to you following
9 our testimony, the actual statistics of
10 people that are in jail because of bail
11 issues is extremely low. The people that are
12 in jail are in jail on holds for other
13 reasons -- probation violations, parole
14 violations, whatever. They're not there
15 because they can't make bail.

16 The numbers are being skewed, and the
17 system, the existing system, is being blamed
18 for something that it's not responsible for.
19 And I think the Governor has been sold a bill
20 of goods with respect to what the real
21 problem is here. As Senator Savino alluded
22 to, it's not -- we're attacking -- we're
23 killing a fly with a sledgehammer, basically.

24 I don't know if I answered your

1 question, but I --

2 CHAIRWOMAN YOUNG: Thank you, though.

3 Yes, you did. Thank you very much.

4 We appreciate all that your members
5 do, and we appreciate your willingness to be
6 with us today. And certainly a lot of good
7 information. Thank you.

8 MR. MARKEE: Thank you.

9 CHAIRWOMAN YOUNG: Our next speakers
10 are from the New York State Bail Bondsman
11 Association: Michelle Esquenazi, president;
12 John Kase, retired supervising judge of the
13 Nassau County Criminal Courts; Jeffrey
14 Clayton, Esquire, executive director of the
15 American Bail Coalition.

16 Welcome. President, I think I
17 butchered your name, and I apologize. Is it
18 Esquenazi?

19 CHAIRWOMAN ESQUENAZI: That's quite
20 all right, Madam Speaker -- Madam Chair, I'm
21 sorry. My father gave me that last name.
22 It's Esquenazi.

23 CHAIRWOMAN YOUNG: I was close.

24 CHAIRWOMAN ESQUENAZI: It's been

1 chopped my whole life.

2 Shall I?

3 CHAIRWOMAN YOUNG: Yes, please.

4 CHAIRWOMAN ESQUENAZI: Thank you.

5 Good evening, Madam Chair and esteemed
6 Assembly and Senate members. My name is --

7 CHAIRWOMAN YOUNG: I'm sorry, before
8 you begin, if you could summarize your
9 testimony. And remember, there's 10 minutes
10 per panel, so there's not 10 minutes per
11 person. So I just wanted to point that out.

12 CHAIRWOMAN ESQUENAZI: Okay. My name
13 is Michelle Esquenazi. I am the president of
14 the New York State Bail Bondsman Association.
15 I grew up in Brooklyn, New York -- Canarsie,
16 to be exact. My family are a bunch of Cuban
17 immigrants to this country, and I am proud to
18 be Latina American.

19 Growing up in Brooklyn definitely made
20 me who I am. I grew up in a time where mom
21 stood out on the stoop and we played
22 Ringolevio and waited for the Good Humor man.
23 And one of the things that kind of guided us
24 through our childhood was something called

1 consequence. And we didn't dare sass our
2 mothers, and that was just the way things
3 were.

4 While my father was always a shoe
5 salesman and away much of the time, my mother
6 was also a woman ahead of her time, and she
7 worked and she ran the shoe shop. And the
8 lady that took care of us was Haitian and we
9 learned patois and we taught her English, and
10 she was a wonderful lady. And from a very
11 early age, we really knew nothing about color
12 and all of that, we just kind of went to
13 Haitian church, and we just did a little bit
14 of everything.

15 One of the biggest issues that I have,
16 and I just really want to go on the record
17 about this part of it as it relates to the
18 bail reformers is that they are describing
19 people in this day and age, in 2018, by
20 color. I am a mother of a biracial child,
21 and I find that to be incredibly archaic and
22 insulting.

23 So the brown and the black and all of
24 that is extremely Archie Bunker, in my

1 judgment, and I think it's absolutely wrong.
2 And I think we as New Yorkers deserve a lot
3 more than to describe people of color. I
4 have people of color in my family that are
5 officers, that are veterans, that are judges,
6 that are politicians, that are black, brown,
7 green, orange, polka-dotted, and rainbow,
8 just like my beautiful gay married daughter.

9 To implement a system of bail reform
10 this sweeping would be of great detriment to
11 the good people of the State of New York. I
12 realize that my industry has been incredibly
13 vilified, and I'm sorry for that, because the
14 fact of the matter is we are mom-and-pop-shop
15 nation. We are multigenerational businesses,
16 and we serve an incredible function, a small
17 incredible function in any successful
18 criminal justice system, especially here in
19 the State of New York. We are 212 bail
20 agents that service the State of New York,
21 and we do it with pride and conviction and we
22 do a very good job at returning the warranted
23 to the proper jurisdiction of the State of
24 New York with absolutely zero taxpayer

1 expense.

2 I wanted you all to know that criminal
3 offenders do not choose their victims by
4 political ideology. They don't look on a
5 subway platform and go, She is a
6 conservative, she is a liberal, she is a
7 Democrat and I'm going to sexually assault
8 her. Rewarding recidivism should not be the
9 way that the State of New York moves this
10 agenda forward.

11 Clearly we believe that the indigent
12 should not be incarcerated. A few years back
13 our State Department of Financial Services
14 decided that they were going to give that
15 problem a title, and that title came in
16 charitable bail funds. If people are
17 lingering because they are indigent, that
18 means that the charitable bail funds are not
19 doing their job. They have a two-year living
20 requirement. Most people that are homeless
21 don't live in the same place for two years.
22 So that's some sort of fallacy that's going
23 on.

24 I also want you to know that just

1 because a crime is nonviolent, it doesn't
2 mean that it's non-victim. You have
3 stalking, sexual abuse, escape, bail jumping,
4 illegal abortion, vehicular manslaughter,
5 rob 3, identity theft, promoting obscene
6 sexual performance by a child. All of these
7 arraignments would be automatically released.

8 And I am a mother of four children,
9 and I have to tell you I find that incredibly
10 offensive. I know what I do, I've been doing
11 it for well over two decades, and I'm always
12 happy to have an intelligent conversation
13 with any legislator from any side of the
14 aisle. I just believe that public safety
15 should really not be a political issue. I
16 realize that it has come under the auspices
17 of being a political issue, but it shouldn't
18 be.

19 New York is a political gateway, and
20 we define the issue for the nation. We will
21 define this issue for the nation. New Jersey
22 is an abortion of justice. All you have to
23 do is look across the river to see what Chris
24 Christie left his citizens. They took off

1 the moratorium on raising the taxes, and they
2 raised the people's taxes by 2 percent to
3 fund criminal release.

4 If this is to be done, it should be
5 done by virtue of a fact-based-evidence
6 study. The fact of the matter is there
7 should also be a citizen's right to know.
8 The good citizens of the State of New York
9 have absolutely no idea what bail is. They
10 don't even realize how it protects them.
11 They don't even realize that while you are
12 all sleeping, we are out picking up the
13 warranted and we are bringing them back to
14 the proper jurisdiction so that they can be
15 admonished by the court, and the district
16 attorney does not have to sentence them in
17 absentia, which costs the State of New York
18 countless millions of dollars to do so.

19 We are -- like I said, we are a small
20 industry, but we serve a great purpose to the
21 State of New York. And to not see us as such
22 only means that you have not met with us. I
23 think it is unfair that in all of this bail
24 reform, the legislators have met with the

1 other side innumerable times, but they have
2 never met with the private bail bond
3 industry.

4 And yes, we are small, a hundred
5 percent, but we're valuable. And to just get
6 rid of us with one stroke of a pen would just
7 be egg on the face of every legislator that
8 moves that agenda forward.

9 And I have a letter here from a Purple
10 Heart recipient, his name is Assemblyman Bob
11 Andrzejczak, and he's from New Jersey. And
12 he was one of the Democrats that sponsored
13 the bail reform bill across our river. And
14 he would like you to know that the law went
15 into effect this past January and it has been
16 an absolute disaster. The public safety
17 needs of the citizens in New Jersey have
18 suffered far greater than could have been
19 imagined. The costs to the state have
20 increased exponentially and, even worse, the
21 constitutional rights of many of the accused
22 are being infringed.

23 So not only would this reform movement
24 move all of the offenders out into an ROR

1 status and move them back into the
2 communities in which we live -- and the
3 communities of color, actually -- it would
4 also remand a variable of defendants. It's
5 called preventative detention, and it's
6 unfair and it violates the 8th Amendment of
7 the Constitution. The framers of the
8 Constitution were here long before we were,
9 and they thought the 8th Amendment was a
10 very, very good idea.

11 I also want you to know that the three
12 top states that people are fleeing from right
13 now are Illinois, New Jersey, and New York.
14 We are going to suffer at the hands of this
15 tax reform issue; we're moving into this
16 season with quite the deficit, if you will.
17 This is going to be quite the financial
18 burden on the people of the State of
19 New York, and we are injured in that regard
20 quite enough.

21 You will find -- in the testimony that
22 we've given you, you will find that there is
23 a report from an independent economist. He
24 did the report for New Jersey, and he was

1 kind enough to follow it up with a report for
2 a year later, and he indicates an abysmal
3 failure and a tremendous amount of money.

4 The bail bond industry operates at
5 absolutely zero taxpayer cost. We pay
6 forfeitures, claims, we pay premium tax. We
7 employ people. We probably employ about
8 2,000 people.

9 The other thing that I want you to
10 know is, as a Latina American person, I am
11 part of the M -- minority/women business
12 enterprise. That's who I am. Half of our
13 members are minorities. They are Latinos,
14 they are African-Americans. And by doing
15 something like this, you would be putting
16 small businesses out of business. And that's
17 something that I want each and every one of
18 you to please think about as you move forward
19 with this.

20 Part of this really is accountability
21 in making good decisions. So I really think
22 that what we need to do is just simply come
23 together and have a dialogue and maybe really
24 talk about this further. Because to be quite

1 honest with you, to implement something like
2 this and remove judicial discretion is going
3 to be a failure for the State of New York.
4 And I as a New Yorker implore you, as a
5 mother I implore you, as a bail bond agent I
6 implore you to think about this prior to just
7 doing it.

8 CHAIRWOMAN YOUNG: Thank you. We
9 really appreciate your testimony.

10 I did want to remind everybody that we
11 still have a lot of people that need to
12 testify, so -- there was 10 minutes for the
13 entire panel. I don't want to cut the others
14 off, so if you just would take a couple of
15 minutes each, please.

16 And I would remind everybody to please
17 stick to the time limit now, because at this
18 rate we won't get out of here till after
19 midnight.

20 EXECUTIVE DIRECTOR CLAYTON: Well,
21 good evening. My name is Jeff Clayton. I'm
22 the executive director of the American Bail
23 Coalition.

24 JUDGE KASE: Excuse me --

1 EXECUTIVE DIRECTOR CLAYTON: I'm a
2 graduate of the University of -- you want to
3 go ahead?

4 JUDGE KASE: Yeah, if you don't mind.

5 EXECUTIVE DIRECTOR CLAYTON: Okay.
6 I've got to defer to the judge.

7 (Laughter.)

8 JUDGE KASE: Well, thank you. Thank
9 you for allowing me to share my opinion
10 before this distinguished body.

11 By way of background, I've been
12 involved in the criminal justice system for
13 the past 50-plus years, as a prosecutor for
14 the Bronx District Attorney's Office, a
15 special attorney for the United States
16 Department of Justice Organized Crime and
17 Racketeering Section in New Jersey, a member
18 of the -- I was an assistant attorney general
19 for the New York State Organized Crime Task
20 Force, I was chief of Rackets, chief of
21 Narcotics, and chief of the Trial Bureau in
22 the Nassau County District Attorney's Office.

23 In 1978, I formed the firm of Kase and
24 Druker. In 2004, I left the firm on a leave

1 to become a county court judge. In 2012, I
2 was placed in the order of supervising judge
3 for the County of Nassau. I returned to
4 practice in 2013. I am the treasurer of the
5 Independent Democrats, just so that's on the
6 record and before you.

7 Based on my experience, I believe in
8 the following of bail and bail bonds: It's
9 one thing to presume that a person is
10 innocent from the point of view of evidence
11 at a criminal trial. It is a separate and
12 distinct matter when judging whether the
13 accused will return to defend him- or herself
14 against the accusations. Why? Our
15 constitutions, both federal and state,
16 presume innocence at trial, but that
17 presumption does not attach to an accused of
18 crime.

19 We look at many factors: A person's
20 risk of flight; property ownership; length of
21 time residing in a jurisdiction of the court;
22 background, checking ties to the community;
23 prior run-ins with the law; licenses, if any,
24 held by the accused; family ties and health.

1 All of the above and others must be examined
2 in the probability of determining whether or
3 not an accused will return to court.

4 These are some of the factors. What
5 is the difference between an individual's
6 promise to return by signing a piece of paper
7 to the court and the setting of a bail bond
8 with a surety company? If a person jumps,
9 skips or fails to appear in court when the
10 bail is personally set, then and only then at
11 taxpayers' expense is the defendant sought
12 after by local or state police or the United
13 States Marshals Office, depending on the
14 appropriate jurisdiction.

15 With a bail bond, there is little or
16 no expense to the taxpayer. The issuing
17 surety will look for the fugitive, seeking
18 not to lose their money.

19 The majority of misdemeanor and
20 nonfelonies are not bonded. There is no
21 criminal history, or minor criminal history,
22 without warrants appearing on a defendant's
23 record. In that case, depending on the
24 seriousness of the crime -- and as my

1 colleague just illustrated, some of the
2 crimes that are not listed as serious are
3 truly serious to the victims of the crime,
4 sex abuse and other things going forward --
5 the placing of a bail bond is inappropriate.

6 While with serious felonies -- and by
7 definition, felonies are serious -- then a
8 judge uses his or her discretion in fixing a
9 bond.

10 As I understand Governor Cuomo's
11 proposal, he wants bail eliminated for
12 misdemeanor cases and nonviolent cases. A
13 universal rule does not allow for a judge who
14 should be retaining authority to determine
15 the likelihood of a reappearane and will
16 force judges to remand a defendant and cause
17 defendants to appeal, thus using valuable
18 court time. The number of cases taken as a
19 whole which can be criticized is very small,
20 and the defendant can and will appear if
21 counsel thinks he has a chance of reversing
22 the lower court's decision. The higher court
23 will then do so when they believe it to be
24 appropriate.

1 I also want to add -- and this is very
2 important in my testimony -- that if a person
3 jumps or skips or fails to appear, you have
4 police officers, at taxpayers' expense,
5 looking for that individual. When a person
6 enters out on bail, while it's true that a
7 police officer may encounter that person, you
8 have bail bond people, at their expense,
9 looking for -- and saving the taxpayers
10 money -- and finding this fugitive.

11 Thank you. I'm available for
12 questions if you have any.

13 CHAIRWOMAN YOUNG: Thank you.

14 EXECUTIVE DIRECTOR CLAYTON: Thank
15 you. My name is Jeff Clayton. I'm the
16 executive director of the American Bail
17 Coalition. I will testify fast; brevity is
18 the soul of wit. I'm a proud graduate of the
19 University of Rochester.

20 New York already has a pretty good
21 bail system when I look at it nationally.
22 New York is one of four states that don't
23 allow considerations of dangerousness in the
24 setting of bail, which means it's purely an

1 appearance bond. And that's why the bails in
2 New York are so low.

3 New York incarcerates generally less
4 than 10 percent of all arrestees, which is
5 also low when compared to the rest of the
6 states.

7 Looking at the issue of preventative
8 detention -- to me, that's the biggest part
9 of this bill -- which is getting the state to
10 detain persons without bail, that's been
11 abused in every system that I've seen that's
12 gotten it. Nobody thought it was
13 constitutional prior to the federal
14 government doing it. And since 1984,
15 pretrial incarceration has increased by
16 267 percent in the federal system.

17 Your neighbor in New Jersey is using
18 it now. Well, guess what? They're filing
19 preventative detention motions in
20 43.6 percent of all cases, detaining
21 19 percent of all defendants. That's
22 dangerous to crack that door, and it would be
23 a fundamental pool shift in New York that
24 could literally probably increase the amount

1 of incarceration you have in New Jersey.

2 Speaking of the costs, Attorney
3 General Porrino in New Jersey issued a report
4 and the report said "We just don't know how
5 much this thing is going to cost." And they
6 still don't. Of course the testimony was
7 mentioned of an economist who looked at this
8 who's estimating that it's costing roughly
9 around \$500,000 a year. Every county in
10 New York would have to create a pretrial
11 program in order to implement the conditions
12 that are alternatives to bail that judges
13 would impose, which would be heavily
14 expensive in New York and could cost I think,
15 you know, millions of dollars.

16 Finally, I would point out that this
17 is really a restriction on judicial
18 discretion. The question of bail is what is
19 the least restrictive form of bail. And to
20 somebody who can post a bail bond, that can
21 be the least restrictive form of bail,
22 instead of things like house arrest and ankle
23 monitors. Judges will blanket New Yorkers
24 with conditions if this legislation passes,

1 because judges won't have the option for
2 bail.

3 So I would suggest to you to take some
4 time and think this through. This is much
5 more than just eliminating bail for certain
6 crimes, it's a major policy shift.

7 Thank you.

8 CHAIRWOMAN YOUNG: Senator Savino.

9 SENATOR SAVINO: Thank you. Thank all
10 three of you for your testimony, and this
11 book, which has quite of lot of information
12 in it.

13 And I went back through our budget
14 book, and I remember hearing Mike Green from
15 DCJS talk about pretrial services, but
16 there's no money in the Governor's budget for
17 it. And now I'm rather alarmed by seeing how
18 much money this apparently is proposed to
19 cost New Jersey -- about \$55 million for the
20 pretrial services, because they thought they
21 would pay for it through court fees and the
22 court fees aren't covering the cost, and so
23 now the counties are being saddled with it.
24 I think that's an issue that we absolutely

1 have to be concerned about, along with some
2 of the other issues that this has raised,
3 because it doesn't look like we're paying for
4 these services.

5 And now you've recently seen this
6 happen in New Jersey. In other states, what
7 are we seeing where they've implemented bail
8 reform?

9 EXECUTIVE DIRECTOR CLAYTON: Well, in
10 other -- certainly New Mexico has sort of
11 followed the lead of New Jersey, and it's a
12 similar problem.

13 And to point out in New Jersey, I
14 mean, you've got to realize the counties sued
15 the state and said it was an unfunded
16 mandate. And they lost because the governor
17 acutely made the argument that it was
18 required by the constitution, which it
19 wasn't. But it was a panel that basically
20 said sorry. And it's millions and millions
21 of dollars.

22 And certainly you're going to have to
23 fund it up in New York, because this bill
24 says if somebody can't afford an ankle

1 monitor, if somebody can't afford house
2 arrest, the State of New York is going to
3 have to pay for that. And that's going to be
4 hugely expensive. And judges will be in a
5 box of detention or blanketing with
6 conditions, all of which have to be
7 monitored, and I don't know how many
8 employees would have to be hired to cover
9 this.

10 SENATOR SAVINO: And Judge Kase, I
11 know you're not a practicing judge anymore,
12 but how does a judge determine?

13 JUDGE KASE: Well, it really happens
14 on a lot of factors. One of the primary
15 factors is having the defendant appear in
16 front of you. You get a sense of demeanor
17 and appropriateness, whether the family is in
18 court with the person, whether they have a
19 sense of hostility. And you look at their
20 prior arrest record.

21 Now, if they have a likely prior
22 arrest record, that's very important in
23 fixing bail. If they have no prior record
24 but you still think bail is appropriate, you

1 might fix it as personal recognizance without
2 a surety behind it, or you might find a
3 surety.

4 If the person has a serious crime
5 charged, has somewhat of a prior record, they
6 still are entitled to bail, they don't have
7 to be remanded, so you fix the bail and you
8 give possibly a cash alternative to the
9 surety amount that's there.

10 And I just want to reemphasize, having
11 a private police nontaxpayer expense group of
12 people pursuing fugitives is a heck of a lot
13 better than having a police department which
14 is undermanned -- and we always need more
15 police -- looking for something that's being
16 done for free to the government.

17 SENATOR SAVINO: Thank you.

18 JUDGE KASE: Oh, I just wanted to make
19 one other point, if I have the time.

20 You may remember that there were
21 serious riots going on in the late '60s and
22 early '70s, very serious riots. Nassau
23 County had a program which on the face of it
24 was very interesting at the time but probably

1 unconstitutional. That was mass arrests.
2 Everybody who was involved in rioting was to
3 be placed in the Nassau Coliseum. Nobody was
4 to be released until the riots subsided. At
5 that point a number of judges were asked to
6 be placed there and progressively release
7 them.

8 This to me was unconstitutional at the
9 time, even though I was with the district
10 attorney's office. This was not a very good
11 solution to a problem. Thank you.

12 SENATOR SAVINO: Thank you.

13 CHAIRWOMAN YOUNG: Thank you. And I
14 think all of the information has been very
15 valuable, and we appreciate it because it
16 certainly helps us balance the scales as far
17 as deliberating whether or not to pass the
18 Governor's portion of the budget regarding
19 bail reform. So thank you.

20 EXECUTIVE DIRECTOR CLAYTON: Thank
21 you.

22 JUDGE KASE: Thank you for the
23 opportunity.

24 CHAIRWOMAN ESQUENAZI: Thank you.

1 CHAIRWOMAN YOUNG: Our next speaker is
2 President Thomas Mungeer, New York State
3 Troopers PBA.

4 Welcome.

5 PRESIDENT MUNGEER: Madam Chair Young,
6 Madam Chair Weinstein, esteemed members of
7 the Legislature, I appreciate this time and I
8 will motor right through this.

9 CHAIRWOMAN YOUNG: Thank you.

10 PRESIDENT MUNGEER: My superintendent,
11 George Beach, had testified before and he hit
12 on a couple of things. As in years past,
13 we've asked for manpower and equipment,
14 vehicles. I'm going to kind of bring that
15 down a little bit. I appreciate the
16 continued funding for patrol vehicles, things
17 have gotten better, though we still have
18 26 percent of my patrol vehicles, marked
19 vehicles, above the recommended 125,000 miles
20 that the superintendent spoke about that they
21 wanted to retire the cars. So that would be
22 appreciated if that funding remains.

23 The big thing here is manpower. The
24 Governor's Executive Budget has put in two

1 classes of 100. This will not do. The
2 superintendent himself stated our attrition
3 is above that number. You know, based on
4 possible retirements of large classes in
5 1986, 1987, our attrition rates will probably
6 hit at least 250 this year, in our estimates.

7 The Troopers PBA is asking for two
8 classes of 250. We are at historic highs,
9 but unfortunately -- or fortunately for many
10 parts of the state and other places outside
11 the state -- the troopers have been tasked
12 with numerous, numerous duties. Our duties
13 have expanded tenfold in the last couple of
14 years.

15 That being said, we are at a point now
16 upstate that although patrols are being
17 supplemented by overtime, there's only a
18 certain point that you can get by continuing
19 to do that with overtime. We need extra
20 patrols.

21 The Troopers PBA is also looking, in
22 addition, to this extra manpower to institute
23 a couple of programs upstate. Our mission
24 statement, now almost 101 years ago, was a

1 rural police force upstate. We would like to
2 see the SRO program, the school resource
3 program, reinstated upstate. We would like
4 to see a community policing team in each
5 troop, as the superintendent did testify
6 before, for upstate for crime, to be able to
7 go to the various cities upstate.

8 And the Troopers PBA, we will be
9 submitting legislation to have a trooper in
10 every construction zone on state highways, to
11 keep both the motorists safe and also our
12 construction workers out there safe.

13 I appreciate the time. Thank you.

14 CHAIRWOMAN YOUNG: Thank you very
15 much. And any questions?

16 SENATOR GALLIVAN: You said what I was
17 going to ask.

18 PRESIDENT MUNGEER: Thank you.

19 CHAIRWOMAN YOUNG: Okay, good. And we
20 appreciate everything that you do and all
21 your membership does in keeping us safe in
22 New York. And I'm with you, the SRO program
23 was fantastic, and we should do all we can to
24 bring it back. So thank you so much.

1 PRESIDENT MUNGEER: No, absolutely.

2 Appreciate your support. Thank you.

3 CHAIRWOMAN YOUNG: Thank you.

4 SENATOR KRUEGER: Thank you for being
5 here.

6 CHAIRWOMAN YOUNG: Our next speaker is
7 Michael Powers, president of NYSCOPBA. And
8 also Tommy Sawchuck, executive vice
9 president.

10 Hi, President Powers.

11 PRESIDENT POWERS: Hi, how are you?

12 CHAIRWOMAN YOUNG: I'm great, how are
13 you?

14 PRESIDENT POWERS: Well, thank you.

15 CHAIRWOMAN YOUNG: Welcome, everyone.

16 PRESIDENT POWERS: There's a typo on
17 the program there: Ms. Tammy Sawchuck.

18 CHAIRWOMAN YOUNG: That's what I
19 thought, but it says Tommy. So I apologize.

20 NYSCOPBA EXEC. VP SAWCHUCK: That's
21 all right. Thank you.

22 CHAIRWOMAN YOUNG: Okay. So we look
23 forward to your testimony. And if you could
24 summarize, that would be most helpful.

1 PRESIDENT POWERS: Be happy to, thank
2 you.

3 CHAIRWOMAN YOUNG: Thank you.

4 PRESIDENT POWERS: Good evening,
5 Cochairs Young and Weinstein and esteemed
6 members of the joint budget committee. As
7 many of you are aware, I'm Michael Powers,
8 the president of NYSCOPBA. With me is the
9 executive vice president, Tammy Sawchuck, the
10 new recording secretary, Chris Summers, and
11 my treasurer, Toby Hogan.

12 In the interests of time, I'll limit
13 the testimony to a few critical issues for
14 NYSCOPBA. Please refer to NYSCOPBA's
15 submitted testimony for further explanation
16 on all of our issues of interest.

17 Couple of things we want to talk about
18 are the "death gamble" legislation. First
19 and foremost, we want to personally thank the
20 Legislature for passing our death gamble
21 legislation last year. As many of you are
22 aware, the Governor vetoed this bill and
23 failed to include it in his Executive Budget.
24 We are calling upon the Legislature to

1 introduce it and have it included in this
2 year's Executive Budget.

3 SHU, our issues. We recognize a lot
4 of testimony back earlier today with the
5 acting commissioner. The Governor has
6 announced an initiative to close
7 approximately 1200 SHU beds throughout the
8 system. While we fully disagree with this
9 decision, since this initiative will not
10 reduce the risk of violence to both inmates
11 and staff, we feel it is imperative to at
12 least bring some clarity to the SHU issue in
13 New York.

14 Inmates that are housed in secure
15 housing units have more access to and more
16 one-on-one contact with mental health
17 providers, counselors, physicians, members of
18 the facility than inmates in general
19 confinement. Moreover, the department has
20 instituted a pilot program in three
21 facilities which allows inmates in secure
22 housing units to access electronic computer
23 tablets. This program will soon be
24 systemwide in our SHUs.

1 The lighting inside the cells in an
2 SHU and the dimensions of the SHU cells meet
3 the accreditation of the American
4 Correctional Association. In fact, the size
5 of a secure housing unit is essentially no
6 different than the size of a cell in general
7 confinement, and in some instances
8 considerably larger.

9 Inmates in these units are given the
10 opportunity to participate in the PIMS
11 program. That allows inmates who display
12 proper behavior to gain privileges while
13 inside secure housing units. Basically, in
14 short, our concern as NYSCOPBA is that those
15 that would have you believe that these cells
16 resemble something out of a Hollywood film
17 such as "The Shawshank Redemption," and
18 making those inferences are providing
19 disingenuous and nonfactual information. And
20 we encourage all legislators to visit a
21 facility and go through an SHU themselves.

22 The other issue we'd like to talk
23 about is double bunking. For many years
24 NYSCOPBA has articulated our stance on the

1 existence of double bunks within the prison
2 system. The concentration of inmates,
3 particularly within the medium-security dorm
4 setting, that has resulted from double
5 bunking has created a serious safety
6 consideration for members of our organization
7 as well as for the inmate population.

8 Current regulations utilized by the
9 department allow for up to 60 inmates to be
10 housed in a medium-security dorm setting.
11 When the prison population experienced a
12 sharp increase in the late '80s and early
13 '90s, the overcrowding necessitated drastic
14 action. The state revised the regulations to
15 authorize a 20 percent increase in the number
16 of inmates housed in the medium dorm setting,
17 now allowing for 60 inmates per dorm as
18 opposed to 50.

19 Rather than continuing to close beds,
20 the department should immediately take steps
21 to address the overcrowding in medium dorms
22 by removing double bunks and limiting the
23 number of inmates in those dorms to 50, not
24 60.

1 This all brings us back to violence,
2 as many times in the last couple of years.
3 Those of you who have been present at past
4 hearings know that NYSCOPBA has clearly and
5 consistently rang the alarm about the
6 escalating levels of violence in New York's
7 correctional system. Regrettably, I'm here
8 to ring that bell again.

9 A measure that NYSCOPBA supported as a
10 method of curbing violence and contraband was
11 the pilot program to implement a secure
12 vendor package program for inmate packages.
13 Unfortunately, the DOCCS unveiling of this
14 pilot program was shortsighted, and the
15 Governor stopped the program only a few weeks
16 into its implementation. NYSCOPBA is hopeful
17 that the elimination of the program is merely
18 temporary, as secure vendor programs in many
19 states throughout our union have proven to
20 curtail violence and limit the introduction
21 of contraband into our facilities.

22 As many of you may recall, NYSERDA
23 entered into a memorandum of understanding in
24 2014 to thoroughly review the staffing needs

1 of all 54 correctional facilities. The union
2 and the leaders of each facility agreed on
3 the need for security staff increases.
4 Regrettably, only two years' worth of
5 staffing increases have materialized in that
6 three-year MOU.

7 Had the roughly 200 additional
8 correction officers, properly trained and
9 equipped, been hired and deployed, we believe
10 the increases in violence illustrated in the
11 charts which are in the testimony we provided
12 to you would not have occurred.

13 NYSCOPBA calls on the state to
14 allocate the necessary funding to train and
15 provide for the agreed-to staffing levels
16 that will make for a safer prison system.

17 The men and women of NYSCOPBA, each of
18 whom walks the toughest beat in law
19 enforcement, remain committed to reforming
20 the prison system so that staff and inmates
21 alike can operate in a safe and productive
22 environment. We look forward to working with
23 all of you as partners in that effort.

24 Thank you again for the opportunity to

1 share our views, and we'll do our best to
2 answer any questions you may have.

3 CHAIRWOMAN YOUNG: Thank you,
4 President Powers.

5 Senator Gallivan.

6 SENATOR GALLIVAN: Thank you, Madam
7 Chair.

8 And thank all of you for your patience
9 and the work that you do and of course all of
10 your members do. There is no question it is
11 an extremely difficult and challenging job.

12 For the sake of time, I won't go into
13 some of the areas you testified about. We've
14 talked about some of them extensively today.
15 But I just do want to note that I did have
16 concerns about the Governor's directive with
17 the secure vendor package program that you
18 had expressed. We will continue to work with
19 the commissioner to ensure its -- the
20 timeliness of them dealing with it and fixing
21 the things that need to be fixed so that it
22 can be implemented.

23 SHU, again, we have concerns, I
24 personally have concerns about curtailing its

1 use. But that has been testified to, and we
2 can talk further about that privately.

3 Double bunking I know that you spoke
4 about as well. I only want to ask one
5 question. It deals with -- in a sense with
6 double bunking, but it could apply anywhere
7 in the facility. And that has to do with
8 when an emergency takes place, when there may
9 be a fight in a dorm room where you have one
10 correction officer supervising 50 or
11 60 inmates -- and I'm assuming in the evening
12 they're alone, the doors are locked -- what
13 assistance is available to respond to an
14 emergency, whether it's an inmate-on-inmate
15 attack or an inmate-on-staff attack?

16 And you can -- I mean, you can talk
17 about the dormitory style, but you don't need
18 to confine it to that, you can talk to other
19 areas of the facilities.

20 PRESIDENT POWERS: I think you'd be
21 pretty surprised with this answer, and I'll
22 be brief with it. On our Tour 1 shift in our
23 facilities, which are 11 p.m. to 7 a.m., we
24 have one officer supervising 60 inmates in a

1 secured housing unit while that officer is
2 secured inside it. Our midnight shifts are
3 skeleton crews in a typical single
4 cookie-cutter-style setting. We have
5 approximately 23 correction officers in the
6 facility working the whole shift. And
7 that -- when you have a significant incident
8 such as a fight or an incident or an assault
9 on staff, we have limited staff to report to
10 that area. And many times there's a
11 compromise somewhere in the facility in that
12 response, due to the shortage of staff on
13 that tour.

14 SENATOR GALLIVAN: So now you talked
15 about the staffing levels in the -- I don't
16 know if I'm quoting you correctly -- a
17 three-year plan where two of the years have
18 been implemented and you made reference to a
19 third that hasn't been completed yet? Is
20 that the actual study, or is that the
21 additional staff?

22 PRESIDENT POWERS: We entered into a
23 memorandum of understanding in 2014 with the
24 department and the Executive to have staffing

1 reviews done at all 54 of our correctional
2 facilities. And in that process I think
3 we've obtained 265 to date, but we're short
4 another 206, I believe that number is. Don't
5 quote me on it completely, but I can get it
6 for you.

7 SENATOR GALLIVAN: And that's from the
8 agreed-upon additional staffing level --
9 additional --

10 PRESIDENT POWERS: We're waiting for
11 those 206 items to come online right now.

12 SENATOR GALLIVAN: All right. Could
13 you get that to us, please?

14 PRESIDENT POWERS: Absolutely. I'd be
15 happy to.

16 SENATOR GALLIVAN: Thank you. Thank
17 you, Madam Chair.

18 CHAIRWOMAN WEINSTEIN: Assemblyman
19 Oaks.

20 ASSEMBLYMAN OAKS: Yes. You covered a
21 number of issues, appreciate you highlighting
22 those.

23 I note when Assemblyman Palmesano was
24 here he listed off a number of those things

1 and asked those questions to the
2 commissioner. The one thing that he
3 recommended that I didn't hear in yours, so I
4 guess I'm just looking, is he talked about
5 the use of dogs for trying to root out drugs
6 entering facilities. Just position on that,
7 or thoughts? I'd appreciate --

8 PRESIDENT POWERS: We're on the record
9 with the department for a canine at every
10 facility. You know, we've talked many times
11 about the effectiveness of it. And it's not
12 foolproof, but it's -- you know, not to quote
13 the acting commissioner or anything, but it
14 would significantly reduce a lot of the
15 contraband and more importantly the drugs
16 that the dogs are trained to sniff out, and
17 for us to be able to retrieve and take out --

18 ASSEMBLYMAN OAKS: So it's been
19 recommended; at this point, no action?

20 PRESIDENT POWERS: Well, we -- you
21 know, back when we started this push with the
22 canines, they had maybe three or four. you
23 know, we're pushing nine now. And we won't
24 be satisfied until we have 50, 60. We'll go

1 with 60, just round it off.

2 ASSEMBLYMAN OAKS: Thank you.

3 CHAIRWOMAN YOUNG: Thank you. And
4 thank you, President Powers and everyone, for
5 all that you do.

6 I recently visited Attica, and it's
7 interesting to hear you talk about the
8 systemwide violence. And they confirmed that
9 when I was there. And so we have -- you
10 know, based on your testimony, we have
11 problems with not enough staffing, we have
12 problems with double bunking, problems now
13 with the SHUs and the closure of them.

14 But what else is contributing toward
15 that systemwide violence? Is there some
16 other trend out there that is affecting the
17 inmate population and our correction
18 officers?

19 PRESIDENT POWERS: Absolutely. You
20 know, the -- it's been talked about all day
21 today, the secure vendor package program.
22 Just yesterday, right, just within the last
23 week, last night, 46 scalpel blades and 11
24 grams of marijuana were taken out of a green

1 bell pepper at one of our facilities.

2 Our package room system is in dire
3 need of work. The four days before that, in
4 between two Pop Tarts, secured in the actual
5 Pop Tart package, were a dozen Suboxone
6 strips that were to be distributed.

7 When that exits, if we don't catch
8 it and it gets into the facility, the gangs
9 take over, the territories take over, they
10 start running the facility, they start moving
11 the product, guys start using the product, we
12 start dealing with the individuals that are
13 high on the product. That's where the
14 violence comes from.

15 CHAIRWOMAN YOUNG: So that program was
16 pulled and --

17 PRESIDENT POWERS: It was a pilot
18 program. Isn't that what pilot programs are
19 for? You know, you kind of tweak it out as
20 you go and you work through it and, you know
21 -- I mean, that's our concept.

22 And, you know, we played a significant
23 role in trying to implement this.

24 Ultimately, the department's the management,

1 they call the shots. But, you know, we had
2 our say and, you know, we won't stop until it
3 comes back.

4 CHAIRWOMAN YOUNG: Thank you for that.

5 CHAIRWOMAN WEINSTEIN: Assemblyman
6 Weprin.

7 ASSEMBLYMAN WEPRIN: Good evening,
8 President Powers.

9 PRESIDENT POWERS: Yes, yes, good
10 evening.

11 ASSEMBLYMAN WEPRIN: One thing you've
12 probably found in the last year and a few
13 months that I've been chair of this
14 committee, we won't agree on every issue, but
15 you always have access and my door is always
16 open to meet you with and your members, who I
17 think are doing a phenomenal job under very
18 difficult circumstances.

19 PRESIDENT POWERS: We appreciate it.

20 ASSEMBLYMAN WEPRIN: I agree with you
21 on the death gamble bill. As a matter of
22 fact, Assemblywoman Jenne and I wrote a
23 letter to the Governor asking him to include
24 the funds in the budget, and I will still

1 press to try to get that done.

2 I know there's some numbers that were
3 thrown around on how much that would cost. I
4 know -- I think on the high side, which is
5 really unrealistic, \$14 million was cited by
6 the State Comptroller, but I think that would
7 only happen if everyone who's past their
8 retirement age passed away within a year.
9 What do you think the actual real number or
10 realistic number would be for the cost of
11 that? It's certainly less than 14 million,
12 in my opinion.

13 PRESIDENT POWERS: I would have to
14 refer that to our legislative counsel and
15 some of our -- but it could potentially be a
16 bit less than that.

17 ASSEMBLYMAN WEPRIN: Could be what,
18 I'm sorry?

19 PRESIDENT POWERS: You're talking
20 about the cost of the fiscal note?

21 ASSEMBLYMAN WEPRIN: The cost of how
22 much it would be to implement the --

23 PRESIDENT POWERS: It had a five-year
24 sunset language in it, and I think it came in

1 at \$13.7 million. And, you know, we
2 actually --

3 ASSEMBLYMAN WEPRIN: That would be on
4 the high side, though.

5 PRESIDENT POWERS: That would be on
6 the high side, yes.

7 I mean, there are obviously mechanisms
8 in place -- you know, we could scale back to
9 maybe three years. You know, I mean we've
10 talked about it. But right now it's -- the
11 proposal stands as it is, we'll reintroduce
12 it, and we'll be working -- we'll work you
13 hard to support it again.

14 ASSEMBLYMAN WEPRIN: Okay. Well,
15 we'll work with you on it again if we can't
16 get it in the budget. But certainly it would
17 be a lot easier if we could get it in the
18 budget.

19 PRESIDENT POWERS: Yes. Yes, sir.
20 That would be great if we could get that
21 done.

22 ASSEMBLYMAN WEPRIN: Thank you once
23 again for your service and all the service of
24 all your members.

1 PRESIDENT POWERS: Thank you.

2 CHAIRWOMAN YOUNG: Senator Savino.

3 SENATOR SAVINO: Thank you.

4 Hi, Mike, how are you? Good to see
5 you guys.

6 So you were here before and you heard
7 Commissioner Annucci talk about the budget,
8 and I asked him the question I always ask
9 about overtime. And he said a couple of
10 interesting things, but one of them that
11 stuck in my mind and I didn't get a chance to
12 follow up with him was he said right now
13 there's about 900 of your members who are out
14 on workers' comp and that's a problem that we
15 need to do something about.

16 I get the sense he thought that
17 somehow or other we needed to reduce the
18 number of workers' comp incidents, and I
19 agree. But the question is, is there --
20 there must be a reason for all of these
21 workers' comp claims. So is it all workplace
22 injuries?

23 PRESIDENT POWERS: Well, you'll see in
24 our written testimony a majority of them are.

1 Yeah, without question. You'll see in the
2 testimony where from 2014, since really the
3 inclusion of the NYCLU settlement to today,
4 you'll see the significant rise in
5 violence -- not just towards staff, but
6 towards, you know, the other inmates in the
7 population, even some of the civilian staff.
8 Some of that doesn't necessarily get reported
9 as well. You know, our civilian staff are
10 suspect at times because they're down back
11 and they're dealing with certain situations
12 and they have just as much ability to impose
13 discipline as we do.

14 But yeah, sure, without question.
15 And, you know, with the rise in violence
16 we've got a lot more significant injuries,
17 we've got a great deal of members that are
18 eligible to retrain -- 2,250 as I sit here
19 today. And, you know, it's becoming a much
20 more dangerous place to work. And that
21 workers' comp number would surely contribute
22 to the fact that we're working in a much more
23 violent situation than we have in the past.

24 SENATOR SAVINO: So knowing that, has

1 the department approached you at all about
2 trying to develop policies to reduce the
3 level of inmate violence or violence in the
4 prison system at all to kind of prevent this
5 increase in workers' comp claims because of
6 injuries?

7 PRESIDENT POWERS: We continually
8 badger them for staffing, technology, other
9 resources, you know, to be able to combat and
10 to be able to go back. I think I testified
11 in here a couple of years ago that our
12 department is significantly behind the times.
13 And, you know, it's -- we're working,
14 recognizing the struggle with budget that
15 everybody has. You know, we continue to
16 work, and we're asking for the sky. And you
17 know, we deserve it.

18 And quite frankly, to be able to have
19 to work into these situations and work
20 through them -- you know, we're constantly
21 asking. And unfortunately, what we're
22 seeing -- and it's not a slight to the inmate
23 population in any way, shape or form, but we
24 seem to see more catering to them and not a

1 whole real solid conversation regarding
2 combating and rolling back a lot of the
3 issues that we deal with on a daily basis,
4 our members, our front line.

5 SENATOR SAVINO: And finally, I want
6 to thank you and your members who -- we set
7 up that tour, I got to go along with the
8 department to visit Sing Sing and see it up
9 close and personal, and then also to Hudson
10 to see where we're now housing, you know, the
11 16- and 17-year-olds. It was definitely an
12 informative experience, and I highly
13 recommend it to the rest of my colleagues to
14 spend the time to actually go out and see
15 some of the jails.

16 PRESIDENT POWERS: Good. Thank you.
17 Thank you.

18 SENATOR SAVINO: Thanks.

19 CHAIRWOMAN WEINSTEIN: Assemblyman
20 Palem -- Pale -- Palmesano. Sorry.

21 ASSEMBLYMAN PALMESANO: No, that's
22 okay. Thank you.

23 Mr. Powers, thank you for being here.
24 I know it's been a long day. Just a couple

1 of quick questions for you.

2 Earlier today when we were talking
3 about -- with the commissioner relative to
4 the increase in violence for the past several
5 years, from 2012 to 2017 the big spike and
6 increase both in inmate-on-correction-
7 officers or staff and inmate-on-inmate, one
8 of the big statistics that kind of jumped out
9 was the dramatic increase in our
10 medium-security facilities -- 114 in 2012 up
11 to 198 in 2017, almost a 75 percent increase.

12 What, from your perspective from
13 talking to the COs and the people in the
14 medium-security facilities, has really driven
15 that increase in assaults on our correction
16 officers and our staff in these
17 medium-security facilities?

18 PRESIDENT POWERS: You've seen a
19 significant drop in the inmate population
20 since the amendment of the Rockefeller drug
21 laws, and now what you have is a smaller
22 inmate population but a much more violent
23 inmate population.

24 We dealt with -- we spoke in 2014

1 about the reclassification of maximum
2 security inmates to medium security. Well,
3 now our medium-securities are running at
4 capacity, our maxes are running at capacity,
5 and now you've still got the same kind of
6 inmate, whether he's locked up behind a set
7 of bars or if he's in a dormitory-type
8 setting or whether he's gang-affiliated or
9 whatever the case may be.

10 But listening to you earlier today, I
11 would have to concur with you with the fact
12 that it -- I don't believe that it's just
13 isolated in the maximum-security prisons.
14 There's a significant amount of violence in
15 our max jails, but there's also a significant
16 amount of violence in our medium facilities
17 as well.

18 ASSEMBLYMAN PALMESANO: The issue of
19 double bunking has come up pretty regularly
20 in the past. I know, having toured some of
21 the facilities in and around my district, I
22 think we got the impression that the double
23 bunking and double celling wasn't really a
24 safety issue or a security issue, that some

1 of these are constructed that way. But we
2 still know that I think over 6,000 beds in
3 our facilities are either double bunked or
4 double celled.

5 From your perspective, or from the
6 perspective of the officers who work in our
7 facilities, does this -- is this conducive of
8 a safer environment or is it more, obviously,
9 of a disruptive environment or an issue where
10 more violence can be fostered?

11 PRESIDENT POWERS: In our medium
12 settings in a housing unit full of 60 inmates
13 and with one officer, obviously it would not
14 necessarily make it all that much easier but
15 it would be a bit easier for that officer to
16 supervise 50 inmates than it would 60.

17 There are currently 6,835 top bunks in
18 classification situations. That potentially
19 has the number to be -- you know, if you fill
20 every one of them, you've got 13,670 inmates
21 that can be placed in a double-bunk
22 situation. There are 2,237 top bunks in
23 double cells statewide in a max. DOCCS
24 claims that 2,140 of these beds exist in

1 cells that were built to accommodate double
2 occupancy. 3,342 top bunks exist in medium
3 and dorm room settings. The remaining 1,250
4 top bunks exist in maximum male jails and
5 female.

6 Our concern with a majority of this is
7 if you were to take down the top bunks and
8 move the inmate population into the vacant
9 consolidated dorms that we have now, the
10 8,000 number of alleged empty beds would
11 pretty much be eradicated and you would have
12 maybe, you know, 1,000, you know, 1200,
13 maybe, empty beds statewide. And that would
14 make it not necessarily easier but it's going
15 to create a bit of a relief for that officer
16 who not only has to deal with potentially 22
17 inmates just on this back wall alone -- which
18 is approximately from us to you away -- in
19 that dorm situation, so he can't see
20 everything across the back end of that wall,
21 he or she.

22 So it has its issues, without
23 question. And we believe strongly that the
24 double bunks need to come down.

1 ASSEMBLYMAN PALMESANO: Relative to
2 some training, I have a couple of quick
3 questions that I hope you can address as you
4 speak. But one of the things that I've been
5 made aware of about and a lot of us have been
6 aware about is the department's policy on
7 training security staff to administer Narcan
8 for drug overdoses.

9 And what's your experiences with the
10 number of drug overdoses going on in our
11 facilities, the drug problem -- we know
12 there's a rampant drug problem with the drug
13 overdoses. And having to train staff on
14 administering Narcan for drugs that shouldn't
15 even be in the prisons in the first place,
16 and how does spending training dollars on
17 that and what about the department's, from
18 your corrections officers, addressing the
19 training that you do need in your facilities
20 that would be helpful to keep you safe while
21 doing your job?

22 PRESIDENT POWERS: I believe the
23 acting commissioner says that -- in one part
24 of his statement was that we've seen a lot of

1 change, and it's coming fast and furious.
2 And some of that aspect of what you talk
3 about regarding the training is actually part
4 of it. We're cutting corners in certain
5 aspects of our training curriculum to bring
6 about the Narcan.

7 Now, the overdoses, to answer your
8 question regarding the overdoses in many of
9 the facilities, they're significant. And
10 it's this K2, this synthetic marijuana that's
11 out there that is creating a lot of these
12 overdoses. And this Narcan, some -- many
13 times we've had as many as 17 applications
14 applied to an overdosed inmate before he
15 actually took to it. Flatlined, the whole
16 9 yards, before he was brought back to life.

17 And, you know, that training
18 component, we constantly drive home training.
19 And as I mentioned earlier, we're a bit
20 behind the times, quite a bit behind the
21 times with other areas of the country in our
22 trade, and what we need is consistently more
23 training technology and resources.

24 ASSEMBLYMAN PALMESANO: And one last

1 question. I know that the union and the
2 department completed a mutually agreed to
3 staffing audit statewide. And how did those
4 results come out, and what's your thinking of
5 the impact of it?

6 PRESIDENT POWERS: We never have
7 enough staff, quite frankly, you know. And,
8 you know, we have a lot of workplace violence
9 incidents that occur that deplete our staff.
10 And, you know, we're not satisfied with the
11 staffing levels that we have in our 54
12 facilities at this point, and we'll continue
13 to advocate and push for additional staff.

14 ASSEMBLYMAN PALMESANO: Thank you for
15 what you do and your members do for our
16 communities. Appreciate it.

17 PRESIDENT POWERS: Thank you.

18 CHAIRWOMAN YOUNG: Thank you for
19 keeping us safe. We appreciate you appearing
20 today. And please keep in touch.

21 CHAIRWOMAN WEINSTEIN: Thank you.

22 CHAIRWOMAN YOUNG: Thank you very
23 much.

24 PRESIDENT POWERS: Thank you.

1 CHAIRWOMAN YOUNG: Our next speaker is
2 President Christopher Quick, New York State
3 Police Investigators Association.

4 PRESIDENT QUICK: Good evening, Madam
5 Chair Young --

6 CHAIRWOMAN YOUNG: Welcome.

7 PRESIDENT QUICK: -- and Madam Chair
8 Weinstein. Thank you.

9 CHAIRWOMAN YOUNG: Great to see you.
10 Thank you.

11 CHAIRWOMAN WEINSTEIN: Thank you.

12 CHAIRWOMAN YOUNG: If you could
13 summarize your testimony, it would be most
14 helpful.

15 PRESIDENT QUICK: I've reduced my
16 testimony that I had prepared and given to
17 you to some talking notes, and I'll reduce
18 those as well to save some time.

19 CHAIRWOMAN YOUNG: Right. Because as
20 you know, all the testimony was submitted
21 24 hours in advance, and it's given to all of
22 the legislators, so that's helpful.

23 Thank you.

24 PRESIDENT QUICK: Okay.

1 So NYSPIA represents 1,168
2 investigators and senior investigators of the
3 State Police, and we investigate felonious
4 crimes such as larcenies, robberies,
5 burglaries, identity thefts, sex crimes, and
6 homicides. Many of our members are assigned
7 to special details and special narcotics
8 details.

9 Times change, and the demand on the
10 resources of the State Police, particularly
11 the investigators, has increased. This is
12 due to terrorism action threats, the sexual
13 assaults on campuses, the bias crimes, the
14 gang violence, and the heroin epidemic. To
15 ensure the safety of New Yorkers and the
16 visitors, we must have the proper equipment
17 and manpower.

18 The BCI is commonly referred to as the
19 undercover arm of the State Police. You
20 usually see a State Police investigator in a
21 suit and tie or regular street attire to
22 blend in for his undercover operations. But
23 there are certain times that we need to be
24 identified as police officers and, you know,

1 certain examples such as the Matt Sweat
2 manhunt up in the Adirondacks, states of
3 emergency such as Hurricanes Sandy and Irene,
4 and terrorist-related details.

5 So we're looking to -- the
6 superintendent has recently approved a
7 Class C uniform, and we're looking for
8 appropriations of just over a half-million
9 dollars to outfit 1,200 investigators with
10 two uniforms and proper footwear. This
11 uniform consists of a black cargo pant along
12 with a gray shirt that's clearly marked with
13 the New York State Police on it.

14 Another area that we talked about in
15 prior testimony is the importance of our
16 aging fleet. In 2016 when I testified, the
17 majority of the vehicles exceeded 150,000
18 miles at the BCI. Monies were appropriated
19 with the intent of replenishing the fleet on
20 a two-year strategy. The plan is a work in
21 progress, and the fleet continues to improve.

22 The board's attention to this matter
23 is sincerely appreciated, but there needs to
24 be more done. Many of our investigators

1 involved in undercover operations need to
2 blend into the community that their
3 operations are in. And we spoke about the
4 typical police vehicle, a Chevy Impala or
5 Ford Taurus, in the past. Last year the
6 division appropriated funding for 35
7 non-typical police vehicles, which they call
8 "funny cars" in the police business. So that
9 new idea of purchasing vehicles is working
10 well for our undercovers.

11 And you heard the superintendent as
12 well as Tommy Mungeer speak about the
13 membership is at a historical high in the
14 State Police. The BCI still lacks its high.
15 We were 1,316 members in 2008. The division
16 is looking to expand our manpower to 1,205
17 this year. So we're still pushing for that
18 number of 1,316.

19 And also you've heard mention about
20 the trooper classes of 1986 and 1987 where
21 they pushed dual classes in Albany and
22 Brockport. Each class had 150 each, so in
23 one year's time the ranks of the State Police
24 was boosted by 600 members. And as they come

1 up on retirement soon, this will definitely
2 abnormally affect the attrition rate of the
3 State Police.

4 And that's my testimony.

5 CHAIRWOMAN YOUNG: Thank you, we
6 appreciate it.

7 Any questions? Thank you. We
8 appreciate all that you do, all of your
9 members.

10 PRESIDENT QUICK: Okay. Have a good
11 night.

12 SENATOR KRUEGER: Thank you.

13 CHAIRWOMAN YOUNG: Thank you, you too.

14 Next speaking is Albany County
15 District Attorney David Soares, District
16 Attorneys Association of the State of
17 New York.

18 Thank you for your patience, District
19 Attorney.

20 DISTRICT ATTORNEY SOARES: Thank you.
21 I'm from the West African country of Cape
22 Verde, my Portuguese-sounding name is Soares.
23 I wish it was "Zorros."

24 (Laughter.)

1 DISTRICT ATTORNEY SOARES: For many
2 obvious reasons.

3 CHAIRWOMAN YOUNG: So what is it --
4 it's "Soares"?

5 (Laughter.)

6 DISTRICT ATTORNEY SOARES: For
7 purposes of the record, I have submitted --
8 we have submitted our testimony, and I will
9 try to be as brief as possible. But you
10 know, that is something that we attorneys
11 have a very terrible time with.

12 I will first say that I am going to
13 strike from the record the introduction of
14 that testimony that said "Good morning."

15 (Laughter.)

16 DISTRICT ATTORNEY SOARES: I think
17 we've surpassed that.

18 CHAIRWOMAN YOUNG: Well, I'm hoping
19 that some people in the crowd won't have to
20 say that, so --

21 DISTRICT ATTORNEY SOARES: True, true.
22 I'll be brief, point taken.

23 CHAIRWOMAN YOUNG: We need to keep
24 pushing on.

1 DISTRICT ATTORNEY SOARES: I want to
2 thank you, first and foremost, for the
3 opportunity to speak with you. I'm proud to
4 be here with Ed Saslaw representing the
5 Queens District Attorney's Office as well. I
6 want to thank you very much for giving us
7 this opportunity to present to you.

8 You know, every single day the work of
9 prosecutors is an integral part of
10 maintaining and improving the quality of life
11 for New York and all of our visitors.
12 New York State is a state that we should all
13 be very proud of. Year after year, New York
14 continues to be a leader in public safety.

15 New York is the fifth safest state in
16 the country, and New York also has one of the
17 lowest crime rates of any large state. And
18 New York is proof positive that you can
19 manage to accomplish the two pillars and two
20 goals of public safety, which is to maintain
21 safety while also reducing our prison
22 population.

23 We're obviously doing something right,
24 and this includes many of you -- all of you,

1 as a matter of fact. You are scrutinizing
2 our budgets, you are drafting legislation,
3 and you are doing all you can to assist all
4 of us who are involved and stakeholders in
5 public safety.

6 As we speak, we now have police
7 officers and other members of law enforcement
8 at all levels putting their lives on the line
9 every single day engaging individual
10 communities and neighborhoods, just doing
11 what they do best, and that is investigating
12 and solving crime.

13 We also have first responders, core
14 personnel, defense attorneys, victim
15 advocates, and yes, even prosecutors, who all
16 take part in making this state the safest
17 large state in the United States.

18 District attorneys have created
19 numerous diversion programs that I think are
20 contributing as well to the decrease in
21 prison population. We continue to develop
22 initiatives and search for better ways to
23 address the needs of those suffering from
24 drug addiction. We tailor our investigations

1 in accommodations for the elderly. We
2 provide alternatives for people who are
3 mentally ill as well as providing the best
4 level of service for victims of domestic
5 violence and sexual assault.

6 We all have a lot to be proud of in
7 New York, and I have to say that we owe it to
8 our residents, our business community, to
9 continue this trend. But we cannot do that,
10 and I will stress this -- that is, we just
11 completed our district attorneys' winter
12 conference this past week, and while it's
13 difficult sometimes to get prosecutors to
14 agree on many things, I can say that all 62
15 counties are prioritizing this battle with
16 the opioid crisis and we've determined that
17 that is our number-one challenge moving
18 forward in 2018 and into the future. And we
19 are looking for as many resources as possible
20 to tackle this crisis.

21 In 2017, more people in New York died
22 of unintentional opioid overdoses than from
23 firearm- and vehicle-related deaths combined.
24 For the first time in the history of our

1 nation, our life expectancy has decreased.
2 And this is solely because of opioid deaths.

3 We need to make sure that those that
4 are addicted are getting the swift help and
5 access to treatment that they need before
6 they overdose. And they also need ongoing
7 treatment, monitoring, and support. We are
8 advocating for additional resources to help
9 us combat the demand side of this equation.

10 We need to make sure that all of us
11 are working together to rid our communities
12 from the merchants who are peddling this
13 death. They are in our neighborhoods and
14 they are selling heroin and fentanyl to our
15 neighbors, to our children, and these are the
16 very people responsible for killing members
17 of our community.

18 And there's something to be said about
19 the effort that is being undertaken to make
20 sure that these individuals go right back
21 into the streets from which they were
22 previously arrested. Right here in the
23 beginning of 2018, any discussion of public
24 safety and public protection must be

1 dominated by realistically addressing the
2 opioid crisis and all that goes along with
3 the manufacturing, trafficking, and sales of
4 these drugs that are killing our residents at
5 staggering rates.

6 We as the District Attorneys
7 Association are concerned about a number of
8 public protection items in the proposed
9 Executive Budget. Bail, discovery, speedy
10 trial issues, and asset forfeiture deal with
11 serious and complex issues that should not be
12 decided in the context of a budget
13 legislation and an accelerated schedule which
14 attaches Article VII proposals. We should
15 not short-shrift the discussion that these
16 items deserve.

17 Fundamental changes in the bail system
18 or discovery timelines in a criminal case
19 will have a significant impact on public
20 safety in New York State as well as the
21 impact on the ability to investigate future
22 crime. We hope that these topics are given
23 the time and consideration that they deserve.

24 These subjects should be considered

1 with the care in which important criminal
2 justice legislation is best considered: By
3 full committee consideration in all the
4 appropriate committees and by full debate in
5 both houses. These are not issues with
6 simple solutions.

7 The bail proposal was a good example
8 of how wrong it is to tackle a perceived
9 issue in an expedited fashion. One specific
10 Bronx case with a far more complicated
11 history than is often described is used both
12 to define the problem and as the basis for
13 the supposed solution.

14 There is virtually no objective
15 support for the claim that our jails are
16 filled with people that should not be
17 incarcerated. District attorneys' offices
18 which have examined this often-repeated but
19 unsupported claim have found that to be quite
20 untrue. I'd like to thank Judge Brown from
21 the Queens County District Attorney for
22 providing us with this sample.

23 In a randomly selected representative
24 week, the Queens prosecutors carefully

1 examined in March of 2015 that bail was set
2 only on 43 of the approximate 700 misdemeanor
3 defendants arraigned during that week. Those
4 43 defendants had an extraordinary number of
5 prior arrests, prior convictions, pending
6 cases, and prior bench warrants. Among those
7 43 defendants there were 478 prior arrests,
8 340 prior convictions, and 114 bench warrants
9 that had been issued in prior cases when
10 these defendants failed to appear in court,
11 the specific issue which should motivate a
12 judge to impose some bail when the defendant
13 appears again at an arraignment.

14 Those prior arrests and convictions
15 also demonstrate that as individuals with
16 long prior criminal histories, they faced
17 more substantial penalties on convictions for
18 their new offense and therefore had increased
19 incentives to flee. The same review also
20 established that 94 percent of the defendants
21 who have misdemeanor cases pending were
22 either out on bail or had been released on
23 their own recognizance. And 79 percent of
24 the defendants who were charged with felonies

1 but not indicted were out on bail or on their
2 own recognizance.

3 Other DAs' offices both in New York
4 City and around the state have similarly
5 found that only a small fraction of those
6 charged with minor crimes or some major ones
7 are being held in jails because of a failure
8 to make bail, and that those who are being
9 held are for good and sound reasons and not
10 simply because of poverty or other obviously
11 inappropriate factors.

12 Our point today, though, is not to ask
13 you to take our word for it but to look
14 closely at the claims being made before
15 accepting supposed facts as a basis for
16 radical change in the law. Are there
17 problems regarding bail in the state? Yes.
18 Surely there are, and they are worth
19 examining and considering. But many of those
20 issues can be dealt with administratively
21 both within the court system and outside of
22 it -- making it simpler, for instance, for a
23 defendant to post bail once it has been set,
24 and to increase use of the many options

1 already available to judges within the state
2 as it now exists.

3 If there are mistakes that are being
4 made, the system -- we should create a system
5 to deal with them, and that should be
6 established. But claims based on anecdotal
7 evidence should not be determining how the
8 law -- and what the law should provide.

9 The letter sent to the Governor in
10 November by over 100 community and advocacy
11 groups throughout the state said that
12 New York has one of the most progressive bail
13 statutes in the country and urged instead
14 what they considered reforms.

15 We as the District Attorneys
16 Association agreed with some of the things
17 that were said; in fact, we agreed with much
18 of what was said. Not entirely all of it.
19 But that is the reason why we believe that
20 these issues should be discussed more
21 thoroughly.

22 We have concerns about the proposed
23 discovery statute. We feel that careful
24 consideration must be made before any changes

1 are undertaken. For example, the requirement
2 that we provide sworn testimony supporting
3 the application for search warrants and the
4 requirements that we turn over civil witness
5 names, addresses, and statements 30 days
6 after arraignment is unacceptable.

7 We hope that you give care and
8 consideration to any changes in the discovery
9 statute, and we will be available and look
10 forward to discussing these issues with you
11 in the coming weeks.

12 To those accused of a crime, a speedy
13 trial is a constitutional right and a
14 guarantee. However, to those of us in law
15 enforcement, a speedy trial is equally
16 critical. Preserving evidence, protecting
17 witnesses, ensuring that memories are
18 accurate and the advantage to closing
19 yesterday's cases today, so that staff and
20 resources are available for future cases,
21 helps to provide for a more efficient
22 tomorrow. When cases linger, it is usually
23 the prosecution that is compromised, and that
24 therefore explains why law enforcement is

1 anxious to get a swift resolution.

2 However, experience teaches us that
3 nothing will delay a matter's progress to a
4 resolution more than a speedy trial motion.
5 The need to order court transcripts from
6 previously routine calendar calls creates
7 significant delay but is necessary to
8 accurately and ethically answer such motions.

9 Experience also teaches us that relief
10 is rarely granted by the courts. That is
11 because the prosecution is rarely responsible
12 for delays that are not statutorily
13 recognized, and the artificial conclusion of
14 serious matters is hardly an appropriate
15 remedy to be dispensed lightly by our courts.

16 DAASNY again recommends that the issue
17 of speedy trial be carefully looked at and
18 that the root causes of any court delays be
19 examined. DAASNY remains interested in a
20 partnership with the courts and other
21 stakeholders to reduce any delays in the
22 system. It is very likely that thoughtful
23 and dedicated and committed administrative
24 solutions are in the offing in order to

1 establish a more efficient system.

2 DAASNY is also willing to continue to
3 meet with the Governor's office to discuss
4 reasonable modifications regarding bail and
5 discovery and speedy trial. We, like all the
6 parties, do not want to punish or
7 discriminate against people of limited
8 financial means. That is not what we stand
9 for, and that has never been our intent or
10 purpose.

11 As we have already stated today, our
12 concern has always been and continues to be
13 the safety of our communities. Every day,
14 prosecutors use their experience and
15 discretion to balance the needs of victims
16 and witnesses against the right of the
17 accused.

18 We need once again to look at the fact
19 that local criminal court judges, without any
20 formal legal training, are setting bail on
21 defendants without counsel present or without
22 properly utilizing our current bail statutes.
23 It also must be noted that prosecutors are
24 not required to be heard by the court on

1 misdemeanor bail and often are not in many
2 jurisdictions.

3 Currently, throughout many town and
4 village courts, defendants are arraigned
5 without prosecution or defense counsels
6 present. Prosecutors throughout the state
7 have implemented programs to review bail set
8 on misdemeanor cases in order to monitor the
9 length of time people are being held prior to
10 trial.

11 There is also a proposal in the
12 Executive Budget concerning asset
13 forfeiture --

14 CHAIRWOMAN YOUNG: D.A. Soares?

15 DISTRICT ATTORNEY SOARES: Yes?

16 CHAIRWOMAN YOUNG: I know you're just
17 partway through your testimony, but you've
18 exceeded the 10 minutes and we're only about
19 a third of the way through.

20 So we do have several members who
21 would like to ask questions, if you don't
22 mind, since we have that submitted into the
23 record, your testimony submitted into the
24 record. We do have several questions because

1 I think, as you raised so appropriately, the
2 issues of speedy trial, discovery, the bail
3 reform are ones that we will have to make
4 some decisions on. So would you mind taking
5 some questions at this point?

6 DISTRICT ATTORNEY SOARES: I don't.

7 If I can just, by way of closing,
8 state that -- and I'm speaking on behalf of
9 Albany County, I'm not speaking on behalf of
10 the DAs Association when I say this.

11 But with the current crisis that we
12 are experiencing right now with overdose
13 deaths -- in fact, DA Hoovler of Orange
14 County has sent with us and we included in
15 part of the package that there were four
16 overdose deaths in his county alone this
17 week. With this issue that is here and on
18 the rise, it seems as though we have a bill
19 that -- or proposals here that would
20 benefit -- I call it the "Escobar Bill,"
21 because it is a bill that is calling for,
22 when you investigate a narcotics trafficker
23 and that person is arrested or the
24 organization is arrested, the proposals today

1 are that we provide the names of confidential
2 informants, witnesses, to that presumed
3 offender and that we release that person and
4 that we also not look to obtain his assets
5 because of the limitations on the asset
6 forfeiture proposals. These assets are moved
7 around, oftentimes separately than the
8 narcotics, into the names of individuals that
9 we would not name as defendants in cases.

10 And so while we are here in the
11 present time, when we're dealing with this
12 crisis, it seems as though we have proposals
13 that are designed to undermine the work of
14 law enforcement in maintaining the safety
15 that we currently enjoy in our state.

16 Thank you.

17 CHAIRWOMAN YOUNG: Thank you. I
18 appreciate that very much.

19 I did have some questions, and just
20 starting with speedy trial. What's the
21 difference between speedy trial and obtaining
22 an actual trial date?

23 DISTRICT ATTORNEY SOARES: In
24 obtaining an actual trial date?

1 CHAIRWOMAN YOUNG: Yes.

2 DISTRICT ATTORNEY SOARES: Well, it
3 appears as though with this proposal the
4 courts would no longer factor in the time
5 that the courts are taking, the adjournments
6 that are imposed because of court congestion.

7 And so we would be up against serious
8 issues if courts were, in six months, let's
9 say -- if a person who is arrested today and
10 in six months did not have their trial, and a
11 lot of those adjournments were a result of
12 court congestion, the people would be at a
13 disadvantage. Because according to the
14 legislation that's being proposed here, that
15 defendant would be entitled to have a case
16 dismissed, and that's not appropriate.

17 CHAIRWOMAN YOUNG: Right, okay. And
18 who usually determines the trial date? It's
19 the courts, right?

20 DISTRICT ATTORNEY SOARES: It's the
21 courts. As a matter of fact, there -- as I
22 said, our association is open to a lot of
23 discussion around these issues because we do
24 believe that there are solutions that could

1 be beneficial to all concerned parties. But
2 at the root of it is having trial dates set
3 and having trial dates set firmly.

4 In many instances, for example in
5 Albany County, it could be a Friday and we're
6 being called on a Friday to let us know that
7 there's a trial that's taking place on a
8 Tuesday or a Wednesday. And so that's not a
9 very structured, organized way to proceed.

10 But if we had a date certain for all
11 of our cases, it would make the entire
12 discovery issue, speedy trial issues, it
13 would make those issues disappear.

14 CHAIRWOMAN YOUNG: Thank you.

15 So basically if we just went ahead
16 with this proposal that's out there through
17 the Governor's budget, it actually could
18 interfere in the appropriate resolution of
19 cases? Is that what you're saying?

20 DISTRICT ATTORNEY SOARES: That is
21 correct.

22 CHAIRWOMAN YOUNG: Okay.

23 DISTRICT ATTORNEY SOARES: If we were
24 to implement these proposals as is, I would

1 like to see the office that could possibly
2 keep a drug prosecution moving forward,
3 because it would be impossible.

4 Now, having said that, if there is a
5 case where there is a date certain for trial
6 and we are given a date certain by the court
7 to turn over everything -- in cases like
8 that, which we have in Albany, I now know
9 exactly how much time I have to arrange for
10 hotels, to arrange for removal of victims and
11 witnesses from the local community where they
12 won't be threatened and know when they're
13 going to be on trial.

14 And it would -- it's also great for
15 victims as well as witnesses to have those
16 dates certain so that they can prepare
17 themselves, because it's rather absurd to
18 remove a family, a child from a school
19 district, and have them living two counties
20 over for several months before we know a
21 trial date.

22 CHAIRWOMAN YOUNG: Thank you for that.

23 How does this alter the judge's role
24 in pre-indictment -- in negotiations?

1 DISTRICT ATTORNEY SOARES: With this
2 particular legislation, I don't know that we
3 ever get to negotiations. I can tell you
4 that judges, local court judges are the area
5 where I think you're going to find the
6 problems with bail. Because for example, you
7 take Albany County, we have courts that meet
8 only once a month. And the disproportionate
9 amount of systems that exist in New York
10 State are court systems just like mine.

11 I know that sometimes -- and those of
12 us that are upstate seem to have this thing
13 where we say that there's a downstate bias
14 whenever they're authoring proposed
15 legislation, because it doesn't work in
16 upstate communities. So we have town judges
17 that are not lawyers, they're not legally
18 trained, with courts that meet sometimes once
19 every two weeks, with courts that meet
20 sometimes once a week. They're conducting
21 arraignments without a public defender,
22 defense attorney present, or prosecutor. So
23 in those instances, we see the abuse of bail.

24 And so I think that there are

1 opportunities to take the issue of bail and
2 provide greater training and address it
3 administratively as opposed to passing new
4 legislation.

5 CHAIRWOMAN YOUNG: Thank you.

6 The discovery piece of it -- and I'll
7 get to the bail reform in just a second, but
8 the discovery piece of the Governor's
9 proposal seems to be extremely worrisome,
10 because I've talked to other district
11 attorneys and they've told me that with this
12 new system, witness intimidation would be
13 real. And that oftentimes even now, under
14 the current system -- especially through the
15 use of social media, but other means --
16 actual witnesses, if they're identified, can
17 be intimidated and scared out of testifying,
18 especially in violent cases.

19 And so I wanted to get your
20 perspective on that. I think you touched on
21 it a bit in your testimony, and I'd like for
22 you to kind of flesh that out for us a little
23 bit more. Because it seems to me that, you
24 know, as you said, we're working in New York

1 State all the time to make it as safe as it
2 possibly can be. New York City has had the
3 murder rate drop significantly. And would
4 this reverse some of those positive trends
5 that we have in this state?

6 DISTRICT ATTORNEY SOARES: I believe
7 wholeheartedly, and I think that the 61 other
8 district attorneys would agree emphatically,
9 that if the discovery proposal that is being
10 proposed in the Executive Budget were to
11 pass, I don't believe that we would be able
12 to ever make an organized crime prosecution
13 involving narcotic traffickers. I don't
14 believe it would be possible for us to keep
15 people safe.

16 Just this past Saturday we had one of
17 our victims shot at in the wonderful little
18 City of Cohoes. There are a number of
19 instances where I personally, as the district
20 attorney here in Albany County, through the
21 work of NYPTI -- and NYPTI's relocation
22 grant -- we are moving people more than we
23 ever have before, and that's because of the
24 level of violence that we're experiencing in

1 our communities.

2 But with this particular discovery
3 statute where after arraignment we're talking
4 about turning over information that we simply
5 do not turn over until we know for certain
6 the date of trial and we have time to protect
7 our witnesses, unless this body is prepared
8 to, in addition to passing this particular
9 discovery bill, provide hundreds of millions
10 of dollars in grants to counties to move
11 people -- this would be unsound, and we would
12 be taking the state in a very different
13 direction than its current trajectory.

14 CHAIRWOMAN YOUNG: Thank you for that.

15 So the ability of the judge to set
16 bail in certain cases would be limited, and
17 we heard some testimony earlier about that.
18 Will the new procedures impact resources of
19 the district attorneys' offices?

20 DISTRICT ATTORNEY SOARES: I can tell
21 you that in my office, my budget has grown
22 exponentially in our efforts to locate
23 defendants who have left the jurisdiction and
24 return them. Our extradition practice has

1 increased, and that's with the current bail
2 statute.

3 But what I can say is that my hope is
4 that if for whatever reason this group
5 decided to pass this legislation, that there
6 would be a hefty check that accompanies the
7 passage of such legislation to the counties,
8 who right now are bearing the expense of
9 having to engage in extradition.

10 And it's not just here. It's
11 extradition -- I've sent people to the
12 marshals from the Dominican Republic. We
13 have defendants who disappear to many
14 different places.

15 Let me also just say this. Because of
16 the burden on the local taxpayer, I as the
17 district attorney, I've had to make decisions
18 about what defendants we do go back to get.
19 Because I've had to leave people in some
20 jails, and releasing them because we're just
21 not going to pay the several thousand dollars
22 to have two members of law enforcement
23 travel, stay overnight, and pick up an
24 offender who's out of our jurisdiction on a

1 low-level misdemeanor.

2 CHAIRWOMAN YOUNG: Thank you.

3 You know, it seems like the
4 justification for this proposal is that
5 people who are charged with misdemeanors
6 allegedly are held on bail. Could you
7 explain that to us? Are people who are
8 charged with misdemeanors generally held on
9 bail in the current system?

10 DISTRICT ATTORNEY SOARES: There are
11 people -- you know, I could not sit here and
12 ethically state to this great body that the
13 criminal justice system, which is a system I
14 am proud to be part of -- but we are in need
15 of improvement. And we can improve. But
16 judges right now, as it is, they have the
17 ability to release people on their own
18 recognizance. And many of them do.

19 But this idea that we have of millions
20 of people in local corrections that have bail
21 being set, it's just not true. But I can't
22 speak for every jurisdiction. That could be
23 happening in some jurisdictions, but I
24 believe that what is essential is the nature

1 of greater training for -- especially for the
2 judges who are not required to be lawyers.

3 Because it seems as though, you know,
4 we continue to run politically on this whole
5 tough on crime idea. And especially in
6 smaller, more rural communities, that really
7 plays. And so we have individuals who engage
8 in setting bail on low-level offenses so that
9 they can appear to be tough on crime. But
10 that's really up to local prosecutors and
11 local practitioners to make sure that we're
12 catching it, rooting it out, and addressing
13 it appropriately.

14 CHAIRWOMAN YOUNG: Thank you.

15 CHAIRWOMAN WEINSTEIN: Assemblyman
16 Dinowitz for a question.

17 ASSEMBLYMAN DINOWITZ: Thank you.

18 And I will be sure to read the rest of
19 your 11 pages.

20 (Laughter.)

21 DISTRICT ATTORNEY SOARES: Well, I
22 just want to say for the record that some of
23 the testimony contained here happens to be
24 our items in our budget which we've submitted

1 to you.

2 ASSEMBLYMAN DINOWITZ: I'm sure it's
3 very good. I will read it, I promise.

4 You know, when you make predictions,
5 dire predictions about what could happen, I'm
6 always a little skeptical. I'll give you an
7 example. It was only a few years ago that
8 there were many people in law enforcement
9 that were making terrible predictions about
10 what would happen in New York City if stop
11 and frisk was ended. And stop and frisk was
12 ended -- or sharply reduced, certainly -- and
13 since that time, the crime rate hasn't gone
14 up.

15 We haven't gone down -- we haven't
16 gone back to, as some people said, the bad
17 old days of David Dinkins. Rather, the crime
18 rate continues to go down. And in fact, last
19 year the crime rate of New York City, the
20 murder rate and other categories of crime,
21 was the lowest since I've been alive, and
22 I've been around for a while.

23 So one doesn't always know how some of
24 these changes really will impact in the real

1 world. But I did have one question, which
2 may lead to other questions. On the bottom
3 of page two you refer -- you mention one
4 specific Bronx case. I'm guessing you're
5 talking about the Kalief Browder case. No?

6 DISTRICT ATTORNEY SOARES: Yes.

7 ASSEMBLYMAN DINOWITZ: Well, what is
8 your view that is different than the
9 prevalent view that most people have that he
10 was incarcerated for an extended period of
11 time for some relatively minor -- not
12 inconsequential, but certainly relatively
13 minor charges and for -- I think he was in
14 jail for a few years, in fact, and he was not
15 tried.

16 And he was abused in jail -- there are
17 all kinds of charges made, obviously, about
18 what happened to him in jail, and he
19 ultimately took his life. So I'm just
20 curious as to what your take is on it that
21 seems to be different than what many people
22 think.

23 DISTRICT ATTORNEY SOARES: That's a
24 really good question, and I didn't mean to

1 sound flippant in reading the testimony.

2 That certainly is an issue that every
3 practitioner should be very concerned about.

4 As a district attorney here in Albany
5 County, I can say to you that I have had the
6 experience where we have a columnist who may
7 write a story about a particular case of mine
8 without ever having spoken to me, without
9 ever having spoken to victims, or without
10 ever understanding the procedure. And before
11 you have an opportunity to address the issue,
12 whether it's social media or -- that is out
13 there, and it catches fire. And before you
14 know it, you have people outside of your door
15 making certain demands.

16 What I can say and what I do know --
17 and I'm not the prosecutor who handled that
18 particular case in the Bronx -- is that this
19 young man was not in jail solely on a
20 misdemeanor and had bail set, and that was
21 the only thing keeping that young man in. I
22 believe there was a probation violation there
23 as well.

24 That being said, it doesn't matter

1 what the issue was that had that particular
2 young man there. There was a collapse, a
3 monumental collapse in the system. And
4 oftentimes, and especially in more recent
5 times, it's oftentimes a headline or a story
6 like that that compels such -- evokes such an
7 emotion, a strong emotion, that it drives the
8 entire dialog around the issue. And what
9 we're suggesting is that maybe if the defense
10 attorney who was assigned that case didn't
11 have the caseload that that particular
12 attorney had, he might have remembered that
13 his client was in jail.

14 Maybe if there were more technology
15 that was being adopted by OCA -- I mean, it's
16 absurd to think that, you know, we have these
17 little phones on us that remind us of things,
18 but we don't have the ability to provide
19 ticker information that lets us know what our
20 jail population looks like? I think that
21 more expansive conversation and dialogue,
22 more extensive conversation and dialogue
23 around these issues take into consideration
24 our concern about public safety and it will

1 also help produce better outcomes for people
2 who stand accused of crimes.

3 But, you know, articles that emanate
4 in a particular paper that then become, you
5 know, the driving force behind, you know,
6 expedited legislation is something that I
7 think we have to be fearful of.

8 ASSEMBLYMAN DINOWITZ: I will say for
9 the record that the case was delayed numerous
10 times. I'm not looking to point fingers at
11 anybody, I have the greatest respect for the
12 former DA in the Bronx, but it was put off
13 numerous times.

14 I would attribute much of what
15 happened to a lack of resources in the DA's
16 office, in the courts, understaffing not only
17 of judges but of all kinds of court
18 personnel, and all those things add up to
19 some of the serious problems that the Bronx
20 experienced, which is why so many -- there
21 was a huge influx of judges sent in from the
22 outside to alleviate the case backlog, as I'm
23 sure you know, a few years ago.

24 But that case kind of became the

1 poster child, if I can use that word, for
2 demand that many people have for a whole host
3 of changes that people believe is necessary.

4 DISTRICT ATTORNEY SOARES: And I
5 agree. And what I think is that we can do
6 better by people if we're sitting at a table
7 having these discussions and we develop
8 solutions that are rooted in best practices
9 as opposed to -- you know, I'll give you an
10 example of Raise the Age, which one of my
11 local cases was the poster child for local
12 Raise the Age.

13 Here's a young man who lured someone
14 out of their home on the guise of buying a
15 pair of sneakers, and when the young man
16 arrived to sell him the sneakers, he showed
17 what appeared to be a gun. We offered that
18 young man, who had a criminal history, time;
19 he decided to go to trial, he was sentenced
20 for robbery, nine years, and he became the
21 cause celebre. Well, you know, he received
22 youthful offender on appeal, he was out and
23 then proceeded to commit four more crimes,
24 and he's back in.

1 So I just wish that we could have sat
2 at a table, discussed the issues surrounding
3 16- and 17-year-olds, because I'll tell you
4 right now, all of you are going to sit here
5 in this session and you're going to pass
6 legislation that comes under the guise of
7 criminal justice reform without ever
8 considering that we need to put a lot more
9 money into these communities and create more
10 prevention strategies so that they're never
11 coming here.

12 But it seems like the only -- the
13 ground zero for this discussion is in the
14 context of criminal justice. And I say that
15 we need to have conversations beyond criminal
16 justice so that we're making sure that people
17 aren't ever getting here.

18 ASSEMBLYMAN DINOWITZ: Well, I'll just
19 finish by saying that I believe that most of
20 my colleagues on our side of the aisle in the
21 Assembly would agree with that.

22 Anyway, thank you very much.

23 DISTRICT ATTORNEY SOARES: Thank you.

24 CHAIRWOMAN YOUNG: Senator Gallivan,

1 did you have a question?

2 Senator Bailey.

3 SENATOR BAILEY: Thank you, Madam
4 Chair.

5 Thank you, D.A. Soares, for indulging
6 us. Good evening.

7 To your last point, before I go on to
8 my other questions, I wholeheartedly agree
9 that funding has been deprived from many of
10 these aggrieved communities where these
11 individuals come from. So that is not
12 something that is lost before anybody, as
13 Assemblyman Dinowitz mentioned, or my
14 Democratic colleagues in the Senate -- or
15 even possibly my Republican colleagues, I
16 don't want to speak for anybody else.

17 But my question for you is, as
18 currently constructed, do you believe that
19 the discovery statute as we have in CPL 240
20 is adequate?

21 DISTRICT ATTORNEY SOARES: I do.

22 SENATOR BAILEY: Okay.

23 DISTRICT ATTORNEY SOARES: And let me
24 just follow that up by saying we could do

1 better, and we actually have a solution to be
2 better at this.

3 Now, prosecutors all across this
4 state, we benefit from an organization called
5 the New York State Prosecutor's Training
6 Institute, and NYPTI has a Prosecutor's Case
7 Management System that for the last four
8 years we continue to invest money in in order
9 to improve. But the one thing that it offers
10 us is the ability to engage in e-discovery.

11 Now, I know that that may not sound --
12 but we're talking -- it's a revolution in
13 criminal justice, because many systems are
14 antiquated. But the ability for us to be
15 able to load an entire case file into a cloud
16 and provide you as a defense attorney with a
17 number that you can go and download that
18 file, and for us to keep track because,
19 anecdotally, we also believe that we can
20 provide all the early discovery in the world,
21 but you can't make them read it and prepare
22 for trial.

23 And so investment in NYPTI, in helping
24 us offset some of these expenses that we only

1 seem to be reaching and achieving because of
2 our lack of funding, is a way to get at this
3 discovery issue and provide the sort of a
4 fair and equitable solution that you're
5 talking about.

6 SENATOR BAILEY: As you mentioned
7 earlier so well about case caps and, as you
8 mentioned, whether they read it or not is a
9 virtue of whether they have the time to go
10 through a voluminous caseload that -- you
11 know, again, that's a funding issue. Our
12 public defenders need more assistance, they
13 need more money, they need more funding.

14 But you mentioned witness protection
15 and intimidation being important. And I know
16 that there are a few district attorneys who
17 do practice open file discovery. Are there
18 any statistics that show that in these
19 jurisdictions with open file discovery that
20 there is an increase in witnesses being
21 intimidated or accosted in any shape, form,
22 or fashion?

23 DISTRICT ATTORNEY SOARES: Let me be
24 clear on that. Open file discovery that we

1 practice in Albany County and that other
2 district attorneys practice, that still
3 doesn't provide for defendants the names and
4 other identifying features of our --
5 especially if it's a domestic violence case
6 or a gang case or a narcotic case. We're not
7 providing that information, you know, in the
8 process of open discovery.

9 We will provide that information when
10 we receive a trial date, and you can
11 usually -- in Albany County, when we get a
12 trial date, that's when you're going to get
13 that information, because then we can go
14 ahead and provide more safety and move
15 people. We'll know the exact time period in
16 which those people need to be removed from
17 the community.

18 SENATOR BAILEY: I just want to say
19 for the record that folks like myself who are
20 pro-discovery reform and not anti-public
21 safety -- I have a wife and two children who
22 I want to be safe at all times -- I just want
23 to make that very clear --

24 DISTRICT ATTORNEY SOARES: And I

1 didn't mean to -- I'm sorry if I --

2 SENATOR BAILEY: No, it's not
3 personal. No, no, not at all, D.A. Not at
4 all.

5 I just wanted to make that clear
6 because a lot of the rhetoric that comes
7 around is that because you're pro-discovery,
8 pro-bail reform, pro-speedy trial, that you
9 are -- you just want to let everybody out of
10 jail, and that certainly is not the case.

11 What I do want, and the reason why I
12 went to law school and practiced law, was in
13 the interests of justice and fairness. And I
14 believe that both sides having that
15 information that they need is in the
16 interests of justice and fairness.

17 You do have a point, maybe sitting at
18 the table is something that maybe -- that
19 should be done. But you also have another
20 point in saying that our discovery statutes
21 and our criminal justice system as a whole
22 could do better.

23 I just wanted to ask again, since that
24 intimidation part seems to be so essential,

1 are there any statistics -- like you had some
2 good stats about Judge Brown -- excuse me,
3 D.A. Brown in Queens with that, and that was
4 excellent.

5 But I just want to see some numbers
6 about what is intimidation in -- and how it
7 could increase in the event that open file
8 discovery would be enacted.

9 DISTRICT ATTORNEY SOARES: What I will
10 do is I will reach out to NYPTI and --
11 because we use NYPTI as our source of funding
12 to both move people and to relocate them. I
13 can go to NYPTI, and they can provide me with
14 all the information for my county.

15 I don't know if every county is using
16 NYPTI, but I can provide you with our Albany
17 County information. I can also look to our
18 association to reach out to the rest of the
19 body and provide you with that information.

20 SENATOR BAILEY: D.A. Soares, I really
21 thank you for your time and for your patience
22 during this testimony. I appreciate it.

23 DISTRICT ATTORNEY SOARES: Thank you,
24 sir.

1 CHAIRWOMAN YOUNG: Anyone else?

2 Thank you so much.

3 DISTRICT ATTORNEY SOARES: Thank you.

4 Have a great night.

5 CHAIRWOMAN YOUNG: We really truly
6 appreciate your testimony.

7 DISTRICT ATTORNEY SOARES: If you ever
8 need anybody to serve as a witness for you,
9 that you all work very hard, please call me.

10 CHAIRWOMAN YOUNG: Thank you.

11 Our next speaker is President Glenn
12 Damato, New York State Court Clerks
13 Association.

14 Again, we're asking people to
15 summarize their testimony, so -- a lot of
16 people have been waiting all day, and we do
17 have your testimony in writing already, and
18 it's been distributed to all the legislators.

19 So welcome.

20 PRESIDENT DAMATO: Good evening,
21 Madam Chairs and Senators and members of the
22 Assembly. My name is Glenn L. Damato,
23 President of the New York State Court Clerks
24 Association. I'll make this as brief as

1 possible, considering the late hour. Thank
2 you for letting me speak at this Public
3 Protection hearing.

4 Having been employed in the New York
5 courts for 27 years, I am very familiar with
6 the needs of the court. It has been very
7 difficult to run the New York City courts
8 with the staffing that's currently in place
9 at this time. Before the "Workforce
10 Reduction Plan" that was implemented several
11 years ago, my union had a membership
12 numbering almost 1800 members. In 2018,
13 despite the recent hiring of 120 court
14 clerks, we struggle to maintain a membership
15 barely over 1500.

16 In this ever-changing world of modern
17 technology, it is very important to maintain
18 staffing to ensure efficient implementation
19 of new programs, as well as to provide prompt
20 and courteous service to the public. With
21 the advent of computer-generated court
22 calendars, electronic filing, and other new
23 programs and systems new to the courts, it is
24 imperative to keep court staffing at levels

1 commensurate with the workload.

2 I have witnessed numerous delays in
3 the courts in the last few years. These
4 delays were largely the result of short
5 staffing. The lack of court clerks citywide
6 has slowed down every facet of the court's
7 procedures. The litigants, the defendants,
8 the attorneys and anyone else who comes in
9 contact with the justice system in the City
10 of New York demand -- and deserve --
11 courthouses that are run efficiently and with
12 alacrity.

13 I ask that every consideration be made
14 in making sure the New York State courts are
15 sufficiently funded and remain a viable, fair
16 and swift source of justice in the City of
17 New York. I welcome any of your questions
18 and concerns.

19 And I'd like to address the bail
20 reform issue. I have to echo the sentiments
21 of the previous speaker, the district
22 attorney. On our inspection of the bill, it
23 seems like it's a bill to undermine law
24 enforcement.

1 Having worked in criminal court for a
2 good portion of my career, I was familiar
3 that the sole purpose of bail in New York
4 State is to guarantee a defendant's
5 appearance on the next court date.

6 Unfortunately, that's not the case now, and
7 if this bill goes, it will certainly not be
8 the case in the future.

9 I witnessed the wily old Legal Aid
10 attorney versus the untrained criminal court
11 judge who had no experience in criminal
12 court, and we had a defendant who had been
13 arrested for a misdemeanor and he had one or
14 two previous warrants for misdemeanors. And
15 the Legal Aid attorney would say,
16 "Your Honor, could you please set a dollar
17 bail on the outstanding cases?" And we'd
18 tell the judge, "Judge, he absconded on two
19 cases. Why wouldn't you set the same bail as
20 last time, \$500 per case? And they just
21 couldn't grasp why we would tell them that.

22 And I've spent a lot of time in other
23 courthouses around the country -- Orleans
24 Parish in Louisiana, Clark County in Nevada.

1 When a person jumps bail, the judge will
2 always, always invariably set bail on the
3 outstanding warrant case and implore that the
4 district attorney indict the defendant for
5 bail jumping.

6 Most of us in law enforcement feel
7 it's a big risk to the community to let these
8 people out. And that's just the way I feel.
9 And that's the way our union feels about
10 this. I welcome any questions.

11 One more thing I'd like to say is we
12 have a lot of programs in the courts now, a
13 lot of programs for defendants and people
14 that are convicted of crimes. And the
15 problem nowadays is we don't nip problems in
16 the bud. I watched how New York has changed,
17 I've been a New Yorker all my life. You
18 know, so many problems were nipped in their
19 infancy through community organizations,
20 fraternal organizations, people who would
21 take one person under their wing and change a
22 person's life.

23 It's so difficult to correct someone's
24 problems later in life when they're in their

1 teens and twenties. It's so much easier to,
2 you know, funnel effort into correcting them
3 when they're a child or a young teenager. We
4 don't do that anymore, unfortunately. I see,
5 you know, the closing of churches, the
6 closing of fraternal organizations. And we
7 pump too much money into these programs when
8 these people are unfortunately too far gone
9 and many of them are beyond help.

10 I think we should concentrate in
11 nipping problems in the bud when a lot of
12 these alleged criminals are very young.

13 SENATOR KRUEGER: Thank you.

14 CHAIRWOMAN WEINSTEIN: Yes, I was just
15 going to say thank you also.

16 PRESIDENT DAMATO: Thank you.

17 SENATOR KRUEGER: Our next testifier
18 is Patrick Cullen, president, New York State
19 Supreme Court Officers Association.

20 And for people who are just curious
21 who might be next, perhaps William Imandt,
22 Court Officers Benevolent Association of
23 Nassau County, could come closer to the front
24 to come up next.

1 Hi, sir, how are you?

2 PRESIDENT CULLEN: Good evening. It's
3 an honor to be able to once again appear
4 before you representing New York's court
5 officers. In doing so, I seek to present
6 some crucial information about our service to
7 the state and how this budget will affect our
8 duty to provide that service to our fellow
9 citizens.

10 For the first time in my five years of
11 addressing this committee, New York's court
12 officers are working under a new collective
13 bargaining agreement. In reaching this
14 agreement, we incur real increases in
15 compensation equitable with other state
16 agencies. We will also see increases to our
17 welfare fund, allowing us to continue to
18 provide our members with a generous benefit
19 package. It was a difficult process, but
20 after working under an expired contract for
21 seven years, we're finally moving forward.

22 Additionally, we were able to create a
23 new financial benefit for our uniformed law
24 enforcement personnel which recognizes the

1 hazards of our employment and aids in
2 supplementing the zero-growth years that all
3 states employees sustained. I thank the
4 members of the Legislature for their support
5 throughout the many years we fought to reach
6 this agreement.

7 The critical work of collective
8 bargaining is behind us. However, we face
9 many challenges as we proceed forward. We
10 are still short approximately 250 officers in
11 New York City and the 9th Judicial District.
12 The problem exists not in the amount of
13 people who want to accept employment as court
14 officers, but in the Office of Court
15 administration's absence of a policy to
16 steadily recoup our losses to retirement,
17 promotion and attrition outside the system.
18 We lose more people per year than we gain.

19 We are operating at a net loss while
20 non-uniformed personnel is not. For example,
21 Supreme Court justices, formerly entitled to
22 a court attorney and a secretary, are now
23 employing an extra court attorney instead of
24 the secretary, who is paid at a much higher

1 salary than a secretary. This drives budget
2 costs up dramatically and results in a clear
3 inability to hire new court officers. While
4 I understand the importance a court attorney
5 provides in the assistance of clearing
6 backlogs, not every justice requires the
7 addition of one, and certainly not on the
8 backs of security personnel, who continue to
9 do more work with less resources.

10 Plainly stated, over the course of the
11 last number of years the court system has
12 hired twice as many attorneys as it once
13 employed, while allowing the levels of
14 security staff to dwindle some 20 percent.
15 Similarly, administration has determined
16 that, due to budgetary constraints, it is
17 unable to properly promote our members above
18 the rank of officer. We have dozens of
19 sergeant and lieutenant positions that remain
20 vacant for exceedingly long periods of time.
21 I have been told that these positions cannot
22 be filled until budget clears them, when
23 people distinctly held these positions in the
24 recent past. In turn, we have people working

1 out of title and perhaps not trained or
2 qualified for the standards required of the
3 job which they are performing. This is
4 backwards and a perilous manner with which to
5 operate the safety of a branch of our state
6 government. If a position is vacated for
7 whatever reason, it should be filled in a
8 reasonable amount of time and not
9 unnecessarily withheld to play games with a
10 budget.

11 Furthermore, the Office of Court
12 Administration allowed its main training
13 facility to lose its lease without a
14 contingency plan. The New York City-based
15 training facility was vital in accepting
16 large groups of recruits and helping recover
17 staffing losses. Now the primary training
18 facility for new recruits is located
19 150 miles north of the city in Castleton,
20 New York.

21 A large majority of eligible recruits
22 hail from New York City and Long Island.
23 These folks are now asked to relocate for
24 14 weeks of training, and it is my firm

1 belief that we are losing interested, bright
2 and very qualified individuals based on the
3 inconvenience this presents.

4 What is even more baffling is that
5 completion of a stand-alone academy on
6 Classon Avenue in Crown Heights, Brooklyn,
7 was slated to be operational in 2012, with
8 approval in 2006 by Governor Pataki and
9 \$30 million earmarked by Governor Spitzer for
10 finalization, has yet to open its doors. Why
11 then in 2018 is the Office of Court
12 Administration losing a lease and unable to
13 open this new academy which will easily
14 provide a local, modern, accessible and
15 consistent location to address security
16 shortfalls? Irresponsible hiring practices
17 and out-of-control spending on items that do
18 not have a bearing on the day-to-day safety
19 of court users.

20 Governor Cuomo's Paid Family Leave
21 plan is the initiative that hardworking
22 New Yorkers need. In fact, it is something
23 organized labor has been clamoring for for a
24 long period of time. While well within its

1 rights, the Unified Court System has opted
2 not to participate, virtually conveying to
3 its employees that caring for a newborn or a
4 sick family member is less important than
5 your presence at work. These are critical
6 times in one's life, and the message being
7 sent here is misguided. As many other state
8 employees will deal with these major
9 mileposts in their lives, my members will
10 continue to deal with the stresses of
11 finances, job security and healthcare as
12 their employer forces them to use their
13 accrued time with such a lack of compassion
14 and understanding of the depths of human
15 experience these instances carry with them.

16 The Governor's mandate that state
17 employees under executive control are
18 actively negotiating the provisions of this
19 new important Family Leave Act and the Office
20 of Court Administration's abject failure to
21 recognize its responsibility to offer its
22 employees the same benefit is insulting and
23 devastating. Over 90 percent of the
24 Judiciary Budget is designated to the very

1 engine that runs the system -- people, the
2 citizens you represent. For the court system
3 to deny this assistance to those people is
4 reprehensible, and they should be held to
5 task to, at the very least, negotiate this
6 with its employees as has its coequal
7 partners in government.

8 The Office of Court Administration has
9 requested a 2.5 percent increase, which was
10 more than other state agencies, and of course
11 we fully support the added funding so it may
12 be applied to staffing. Governor Cuomo's
13 remarks of support for that increase were
14 based on the judges' working from 9 a.m. to
15 5 p.m.

16 My members do work from 9 to 5, and
17 many times longer, whether a judge is in the
18 courtroom or not. We are approaching a
19 decade with a serious lack of manpower in the
20 Supreme Courts, and many of the shortcuts
21 implemented have resulted in shorter days and
22 major backlogs. We independently endorse the
23 judicial system opening to the public for a
24 full eight hours every day, and beyond when

1 necessary. We already work full days and
2 don't get to leave on the schedule of the
3 judiciary. If there is a more accessible
4 system, it requires funds to staff the full
5 days the public deserves.

6 As I visit the court facilities that I
7 have the privilege to represent, it is an
8 ever-present occurrence that the security
9 infrastructure is below standard. In almost
10 every court, there are surveillance camera
11 systems that do not work. In this workplace
12 environment where we are short-staffed by
13 20 percent, these cameras aid in the secure
14 operations of our courts. Every day there
15 are incidents which require official law
16 enforcement action be taken. And to ensure
17 that action is proper and lawful, we rely on
18 this equipment to aid in the performance of
19 our duties. These systems must be brought
20 up-to-date to help provide the safe, orderly
21 function of the administration of justice.

22 Similarly, our radios, magnetometers
23 and x-ray machines must be up to the
24 standards of those used in federal courts. I

1 call on you to help guide the Office of Court
2 Administration to collaborate with federal
3 authorities to update all systems and
4 policies which continue to remain archaic and
5 substandard. In many of these court
6 facilities there are hundreds of boxes of
7 computers and other goods laying idle and
8 never used. They are representative of the
9 waste the court system finds acceptable and
10 their reckless and imprudent spending habits.
11 There are more pressing needs than more
12 computers every single year.

13 In order to claim the safest and most
14 efficient judicial system in the country, we
15 must be open to new and innovative
16 procedures. The creation of a specialized
17 K-9 unit to identify explosives in and around
18 all state courts is becoming a necessity.
19 Based on recent terror incidents in New York
20 City, it is only a matter of time before a
21 strike is made at the heart of American
22 justice and the hallmark of righteousness, a
23 courthouse. These highly effective units
24 have been proven to detect as well as deter

1 explosives incidents in public places around
2 the world. Many other agencies' units are
3 willing to assist in making this program
4 financially less burdensome, but the time has
5 come to introduce a program like this as
6 proactive before it is introduced as a
7 reaction to a deadly incident.

8 In closing, for five years I have come
9 here to Albany and been privileged to make a
10 presentation to this committee. The budget
11 process is enlightening and fascinating and
12 it makes so much of a difference to the men
13 and women who serve New York State. And I
14 ask you on this visit to keep in mind the
15 positive attributes as well as the negative
16 elements of waste that these agencies incur.
17 I ask you to take into account that all of
18 these decisions are not just numbers in a
19 line item, but real issues that impact the
20 quality of life of so many citizens. They
21 are your parents, your children, your
22 coworkers, your constituents, and so many of
23 the decisions made during this process
24 determine the type of year they will enjoy or

1 have to endure.

2 I thank you for your time and
3 consideration.

4 SENATOR KRUEGER: Thank you.

5 I think I may have just one question
6 from the Senate.

7 PRESIDENT CULLEN: Sure.

8 SENATOR KRUEGER: So explain to me how
9 your workers aren't eligible for the state's
10 Paid Family Leave Law.

11 PRESIDENT CULLEN: Right. The Unified
12 Court System recently issued a memo that they
13 were not going to opt into the paid family
14 leave mandate of the Governor, who set, I
15 believe, the mandate for members under
16 Executive control to negotiate that with
17 their collective bargaining units.

18 SENATOR KRUEGER: But it's also state
19 law for the private sector. So are you the
20 only ones out there left in New York who
21 aren't under --

22 PRESIDENT CULLEN: That I don't have
23 the answer to, Senator Krueger, but --

24 SENATOR KRUEGER: She knows the

1 answer.

2 PRESIDENT CULLEN: I'm sure.

3 SENATOR SAVINO: The paid family leave
4 bill that we passed and the Governor signed
5 into law allows an opt-in for public
6 employers because the vast majority of public
7 employers have collective bargaining
8 agreements with bargaining units that the
9 issue of paid family leave has to be
10 negotiated.

11 Right now the city is in negotiations
12 with the teachers union over it. They want a
13 better benefit than the state program
14 requires, and therefore there's a statutory
15 contribution from the employee. In order to
16 get a better benefit, it requires a larger
17 increase, so that would require negotiation.

18 That's the long answer to that
19 question.

20 PRESIDENT CULLEN: Thank you, as
21 always, for that clarification, Senator
22 Savino.

23 We stand ready to negotiate, with the
24 court system, the Paid Family Leave Act.

1 SENATOR KRUEGER: Thank you.

2 Assembly.

3 CHAIRWOMAN WEINSTEIN: Thank you for
4 the services of your members throughout the
5 state.

6 PRESIDENT CULLEN: Thank you.

7 CHAIRWOMAN WEINSTEIN: I've certainly,
8 over the years, observed them performing
9 their duty and helping to keep our courtrooms
10 safe.

11 Just as you were talking about the
12 training upstate, I turned to my counsel. I
13 said, I remember a few years ago we put in
14 the -- there was a capital appropriation for
15 a training site in Brooklyn. And I see that
16 you mention it.

17 Do you have any more detail of why
18 that site isn't open and --

19 PRESIDENT CULLEN: No. The court
20 officers were trained in a private building
21 on Williams Street in Lower Manhattan for
22 many years. And as of the end of 2016, we
23 were informed in short order that they had
24 basically lost their lease. There was no

1 contingency plan.

2 As I mentioned, the stand-alone
3 academy in Crown Heights was scheduled to
4 open in 2012. We sit here six years later,
5 and it's still not open, the details of which
6 I don't have. I would have liked to have
7 asked Judge Marks that question, but ...

8 CHAIRWOMAN WEINSTEIN: Well, we'll get
9 the answers to the question and be happy to
10 share with you. But as far as you know, the
11 plan is still to open up that facility in
12 Crown Heights?

13 PRESIDENT CULLEN: Yes. I believe
14 that they actually have expedited some of the
15 work. But again, we believe this should have
16 been completed, you know, over half a decade
17 ago.

18 So I believe that due to the issues in
19 moving upstate, they did expedite. I don't
20 have the reason why it took so long.

21 CHAIRWOMAN WEINSTEIN: Well, we'll
22 certainly find out that information. Thank
23 you.

24 PRESIDENT CULLEN: Thank you.

1 CHAIRWOMAN YOUNG: All set. Thank you
2 so much.

3 PRESIDENT CULLEN: Thanks for your
4 time.

5 SENATOR KRUEGER: Thank you.

6 CHAIRWOMAN YOUNG: Thank you.

7 Our next speaker is William Imandt,
8 president of the Court Officers Benevolent
9 Association of Nassau County.

10 Welcome.

11 PRESIDENT IMANDT: Good evening,
12 Senators.

13 CHAIRWOMAN YOUNG: Good evening. And
14 Assemblymembers.

15 PRESIDENT IMANDT: Well into the
16 evening. I want it to be noted that I know
17 you've all been here since 9:30 this morning.
18 We're going on close to 12 hours, so we do
19 appreciate your dedication to this.

20 CHAIRWOMAN WEINSTEIN: We're trying
21 for a record this year.

22 PRESIDENT IMANDT: Well, I hope you
23 don't reach it, because I know that means
24 you're here even longer.

1 I want to again thank you for letting
2 me speak. I'm the president of COBANC, the
3 Court Officers Benevolent Association of
4 Nassau County, representing about 80 percent
5 of the court workers in Nassau County. And
6 I'd like to -- this is my third time
7 speaking, and I'm so happy that I'm not
8 speaking about a contract this time. We do
9 have a collective bargaining agreement.

10 So I do want to speak about three main
11 issues. And basically what I want to ask you
12 is to keep an eye on how the Office of Court
13 Administration spends the money that they're
14 allocated for their budget.

15 Senator Savino brought up, and I'm
16 just going to put it in my terms, that I'm
17 glad that Judge Marks had the chutzpah to ask
18 for more money than the 2 percent. And I
19 think everybody knows that's in the court
20 system that we actually need more. But
21 you're going to give him what he asked for,
22 and that's what he asked for, so I appreciate
23 that.

24 My three topics are security,

1 staffing, and out-of-title work.

2 Security in Nassau County and COBANC
3 is down 15 percent from 2010. We had 301
4 court officers then; we now have 257. That's
5 a big, big hit for all the hard work that
6 they do.

7 In the District Court and the Supreme
8 Court, the information desk, or what we call
9 the "tubs," are sporadically staffed with
10 personnel. And anybody that works in the
11 court system knows that problems usually
12 happen in the hallway. It's not in the
13 courtroom, where they're on their best
14 behavior, and it's typically not at the
15 magnetometers, it's in the hallways. So
16 that's one place where we're lacking staffing
17 that I'd appreciate if you could keep an eye
18 and speak to Judge Marks and Judge DiFiore
19 about that.

20 We have a mobile security patrol that
21 is -- we had three cars in Nassau County, we
22 now have two. About a month ago, there was
23 an individual at a stoplight who was passed
24 out, and one of our officers in the MSP unit

1 was flagged down, and they were apparently
2 having a heroin overdose. They administered
3 Narcan, and they recovered; the ambulance
4 came and brought them to the hospital. So
5 these officers most likely saved somebody's
6 life.

7 Well, we have two now where we had
8 three. The Family Court in Nassau County is
9 so isolated from the rest of the court
10 complex, that's where the MSP car was -- is
11 now no longer patrolling. And I just wonder
12 what would happen if that person had that
13 seizure or whatever it was in the Family
14 Court and there was no one there to
15 administer the Narcan.

16 We have roving sergeants instead of
17 sergeants in each criminal part, which we
18 should have. They rove the back hallway and
19 they look in and check in to see how things
20 are going in the courtroom. And that's
21 certainly a Band-Aid, that's not fixing the
22 problem.

23 Our magnetometers, we used to have
24 three and four officers on it, we now have

1 two. Now, Judge DiFiore's Excellence
2 Initiative, they wanted a better experience
3 for people in the court, quicker trials,
4 quicker adjourn dates and things, and now
5 with the magnetometers down to two, you go to
6 any court facility in Nassau County, and I'm
7 sure most anywhere around the state or at
8 least the metropolitan area, the lines are
9 long and wrapping around the building because
10 there's only two officers instead of three or
11 four.

12 So that's another security issue that
13 I really think should be brought to your
14 attention.

15 In the staffing category, we have -- I
16 want to bring to your attention that COBANC
17 had 955 members in 2010 and now we have 770.
18 I note that that is about an \$18 million less
19 responsibility for the staffing in just
20 Nassau County. And I estimate there's about
21 \$200 million less, counting the salary and
22 benefits, that the Office of Court
23 Administration has to pay out. And I'm just
24 really wondering how, if we had the civil

1 legal service program that started at
2 \$50 million and went to \$100 million -- okay,
3 that's a very worthy program. I know you're
4 all in support of it, and so are we.
5 However, with the Governor throwing billions
6 of dollars for bridges to Connecticut and
7 things, one-tenth of one of those billions
8 would have funded that civil legal services
9 and left that money in the courts where we
10 wouldn't be in such poor condition and just
11 barely getting by.

12 Okay, the last issue I want to bring
13 up is the out-of-title work. Now, when we
14 had a 15 percent reduction in our staffing,
15 that left 85 percent of the people to do the
16 rest of the work. That has now caused a lot
17 of our staff, and in particular our court
18 clerks, to take on responsibilities of job
19 titles that are higher than they're paid, two
20 to four grades higher. And they've been
21 doing it for five, six years. And we've had
22 meetings with Judge Marks to address the
23 court clerk issue, we're having another one
24 coming up at the end of February. And I

1 certainly hope that at this point that with
2 the savings of the salaries being less than
3 they have to pay out, and the fact that our
4 workers are covering all, you know --
5 covering the gap, I guess is the way to put
6 it, that we'll get some good news on that
7 court clerk reassignment or reallocation.

8 One other thing I want to bring up is
9 we have in the commissioner of jurors in
10 Nassau County a Grade 12 clerk who's training
11 Grade 21s around the state at half the salary
12 that the Grade 21s make. And these are the
13 type of things that happen when you're trying
14 to get by with chewing gum and Band-Aids just
15 to get by. And this is the situation that
16 we've been living with.

17 Again, Judge Marks thankfully asked
18 for more than the 2 percent, and that should
19 help, but I just want to ask the committee
20 members if you could just stay in touch with
21 Judge Marks and stay in touch with Judge
22 DiFiore throughout the year and ask them
23 how's the staffing going, how's the security
24 issues, how's the court clerk situation

1 going. And just please keep an eye on it.
2 Because if you only meet once a year and talk
3 about summaries, it's very easy to talk about
4 what you only want to talk about in the
5 summary, and if you don't ask the right
6 questions, they're not going to be
7 volunteered.

8 So I would appreciate it, again, if
9 you would stay in touch with Judge Marks and
10 Judge DiFiore -- you can certainly always
11 call me and let us know -- and ask them how's
12 it going and are you meeting your goals that
13 you strive to meet.

14 If you have any questions, I'd be more
15 than happy to answer them.

16 CHAIRWOMAN YOUNG: Thank you.

17 Senator Savino.

18 SENATOR SAVINO: Thank you, Billy. I
19 want to thank you, I think you were one of
20 the first people here this morning, and all
21 of you were here for the whole day. I
22 appreciate it.

23 I just have one question, because you
24 said you have a lot of members who are

1 working out-of-title. Do you have
2 out-of-title language in your contract?

3 PRESIDENT IMANDT: We do have
4 out-of-title language in our contract.
5 There's the grievance procedure, which we --
6 you know, we understand the fiscal
7 restraints, so we've been trying to work with
8 Judge Marks and our local administrators.
9 But we do have -- we had one grievance, the
10 one I just referred to, the Grade 12 training
11 the Grade 21s at half the salary. We lost
12 that grievance. It was fairly ridiculous
13 that we lost that grievance. So now we have
14 a lawsuit pending on that.

15 The talks with Judge Marks, I hope
16 they're going to be fruitful. If they're
17 not, then there will be a lot of out-of-title
18 grievances filed.

19 SENATOR SAVINO: I would suggest that
20 that should be something that you should all
21 pursue. If you have contract language that
22 protects your members from doing out-of-title
23 work for a specified period of time, they
24 need to file those claims, because that's the

1 only way to get the court's -- if OCA winds
2 up having to pay out several of these
3 out-of-title cases in large sums of money,
4 they'll be forced to do something. If people
5 volunteer for work, guess what happens when
6 they volunteer? They don't get paid. So I
7 would just encourage you, I would encourage
8 you to tell your members to do so.

9 PRESIDENT IMANDT: The one that was
10 the most egregious we thought was that
11 Grade 12 reference that I made, and we just
12 said, okay, we're going to file this one, and
13 we lost that. We couldn't believe we lost
14 it.

15 So again, it's going through the court
16 system now.

17 SENATOR SAVINO: That was a particular
18 case. But if it's a practice of OCA to
19 continuously assign your workers or any of
20 the workers to do work that's not within
21 their title and there's out-of-title language
22 in the -- and it's a higher title, then they
23 should be pursuing out-of-title grievances to
24 protect their right to be paid back to the

1 date of the assignment.

2 PRESIDENT IMANDT: If the talks don't
3 become fruitful, then we certainly will.

4 SENATOR SAVINO: Okay.

5 PRESIDENT IMANDT: Thank you, Senator.

6 SENATOR SAVINO: Thanks. Bye.

7 PRESIDENT IMANDT: Any other
8 questions?

9 CHAIRWOMAN YOUNG: Any questions? No
10 other questions. Okay, thank you so much.

11 PRESIDENT IMANDT: Thank you very
12 much.

13 CHAIRWOMAN YOUNG: Good luck with
14 everything. Appreciate all you do.

15 Our next speaker is President William
16 Dobbins, Suffolk County Court Employees
17 Association, Inc.

18 And welcome to you. Good to see you
19 again.

20 PRESIDENT DOBBINS: Hello, Madam
21 Chairperson, Senators, Assemblypeople. Thank
22 you for allowing me to speak here tonight.

23 As Senator Savino said, we have been
24 here all day; we were here when Judge Marks

1 gave his testimony this morning. And one
2 thing that sticks out is he talks about
3 staffing levels in our courts. As a result
4 of the workforce reduction in 2010-2011, we
5 lost 2,000 jobs statewide. Today he tells us
6 that in seven years, they've only gained
7 about 350 jobs back. That's ludicrous.

8 We have a chief judge that speaks of
9 excellence in the courts. Short staffing
10 doesn't exude excellence in the courts. We
11 have long lines at our magnetometers, people
12 waiting out in the cold in January -- doesn't
13 speak about excellence in the courts. We
14 have people waiting on lines at information
15 windows. That doesn't speak about excellence
16 in the courts. We have lack of security
17 staffing. That definitely does not speak
18 about excellence in the courts.

19 Our courts, as Senator Croci spoke
20 about this morning, is located in Central
21 Islip. We all know about the gangland issues
22 in Central Islip. It's a nationwide concern.
23 It's the focus of President Trump, Governor
24 Cuomo, United States Attorney General

1 Sessions, and County Executive Steve Bellone,
2 but it seems to have fallen on deaf ears by
3 the people that hold the purse strings at
4 OCA.

5 We don't have enough court officers.
6 We're 22 percent down in court officer staff.
7 These gangland killings occurred a half-mile
8 from our courthouse. They're in our courts,
9 they're in our parking lots, they're dealing
10 drugs in our courts. Their very presence in
11 our courts intimidates witnesses, intimidates
12 court users, and yet we don't have enough
13 security.

14 There's something wrong with this
15 picture. This is the third year that I'm
16 testifying, and nothing has changed.
17 Nothing. They get an increase to their
18 budget year after year after year, and
19 nothing has been done to help with the
20 staffing issues.

21 Governor Cuomo talks about the
22 backlogs. We've been concerned about
23 backlogs for the last several years. All of
24 a sudden it's a concern for Governor Cuomo,

1 and he says it's because we don't have the
2 judges working eight hours a day. Well, you
3 know what? The judges can't take the bench
4 until 10 or 11 o'clock in the morning because
5 we don't have enough staff. We don't have
6 court clerks to cover the parts. We don't
7 have court officers to cover the parts. We
8 can't move prisoners. We have a prisoner
9 team, prisoner escort team in Central Islip,
10 they can't get together until 2 o'clock in
11 the afternoon.

12 We have attorneys that come in at
13 9 o'clock in the morning, they have
14 in-custody defendants, they can't even get
15 the people brought up to see the judge until
16 the afternoon. What happens to the attorney
17 who has cases in various different courts, in
18 Nassau, in the city, out in Riverhead? They
19 say, you know what, we'll adjourn the case.
20 That seems to be the typical thing that
21 happens, the revolving door where they just
22 keep adjourning cases.

23 You want to solve the issue? You want
24 to make the courts really excellent? Spend

1 the money for staffing. It's like that old
2 saying several years ago, I forgot what
3 campaign it was: It's the economy, stupid.
4 Well, you know what? It's the staffing
5 issue, stupid. We need something done.

6 You want to try to control these
7 problems of people sitting in jail, 30.30
8 problems? 30.30 time doesn't get charged
9 when the court's not available; it becomes a
10 court adjournment. It's not a defense
11 adjournment, it's not the people's
12 adjournment, it's the court's adjournment.

13 We have judges who can't come out and
14 take the bench and they tell the clerk, you
15 know what, let's get some adjournments to try
16 to get the calendar moving. Nothing gets
17 done. It's ludicrous. It's backwards. It's
18 almost like Alice in Wonderland, Through the
19 Looking-Glass.

20 It's a simple problem. If you start
21 staffing the courts, things will get done.
22 If you start staffing the courts with court
23 officers, the place will be more secure. We
24 need to do something. The people in our

1 court system are being let down, the people
2 who use our courts are being let down -- I'm
3 talking litigants and attorneys.

4 The men and women who work in our
5 courts, as I've always said, are the
6 heartbeat of the courts. Without them, it
7 doesn't work. It doesn't seem like OCA
8 understands that. It seems like we keep
9 shoveling stuff against the tide and it keeps
10 pouring right back on us. And yet the answer
11 is we need more judges. Are you kidding? It
12 does no good to have more judges if you don't
13 have the personnel.

14 Civil legal services, a great idea.
15 But what is the point if they can't have
16 access to the court? What's the point if
17 they can't even see a judge? What's the
18 point if the case keeps getting adjourned?
19 It just doesn't make any sense to me. It's
20 like when you have the ceiling leaking and
21 you change the rug without fixing the roof.
22 What sense does that make? It's just going
23 to get wet again. You've got to fix the
24 overall problem.

1 Bring the staffing back. It doesn't
2 have to be back to where it was in 2010, but
3 we need substantially more people than
4 another 350 that we've gained in the last
5 seven years. There is something wrong. And
6 what do we do? We just keep spinning our
7 wheels, chasing our tail, saying it's this
8 problem, it's that problem. It's the
9 staffing issue, stupid. That's the answer.

10 How do we do it? We've got court
11 reporters -- District Court, we're down two
12 court reporters since November. Those
13 positions haven't been filled. If they can't
14 get a per diem court interpreter, what do
15 they do? Pull out the old tape machine. Now
16 the problem is they've got to operate the
17 tape machine, so now they've got to pull
18 somebody from the information window to cover
19 the tape machine. That means there's one
20 less window open to handle problems at the
21 counter.

22 We don't have enough court officers to
23 patrol hallways, to go into the bathrooms to
24 see what's going on. We don't have enough

1 court clerks to open parts. Again, in
2 District Court, we have probably this year
3 seven or eight court clerks that are eligible
4 to retire. If they retire in the next three
5 or four months, or in the next year, we're
6 not going to have the personnel to replace
7 them. Because of the system that OCA has to
8 replace, it takes months. It doesn't happen
9 overnight. In fact, they have to wait until
10 they have the vacancy before they can even
11 replace them. It makes no sense to me.

12 I remember when I was growing up my
13 parents would say to me, your lack of
14 planning does not become my emergency. Well,
15 you know what? OCA's lack of planning is not
16 our emergency, it's not the attorney's
17 emergency, it's not the defendant's
18 emergency, it's not the prosecutor's
19 emergency. It's OCA's emergency, and they've
20 got to do something. We're tired.

21 Year after year after year, and we
22 have all these policymakers that come up with
23 these ideas, but the answer is hire people.
24 Hire people. You'll be able to get a lot of

1 things done. There will be no more crazy
2 adjournments for no reason at all. There
3 will be no wasted resources. More things
4 will get done. The courts would be more
5 efficient. And yes, the Excellence in the
6 Courts Initiative would absolutely make
7 sense. Right now it's just a fantasy, it's a
8 goal, and I'm not sure we're ever going to
9 see that until OCA puts their minds together
10 and starts to hire the people necessary to
11 make the courts work.

12 We need your help. OCA has submitted
13 their budget, and we hope, we really do hope
14 that you pass it. And we hope that the
15 Governor signs it. And we hope that, as
16 Senator Savino said, OCA continues to ask for
17 more and more money, but spend it the right
18 way. We can't do it without the funding. We
19 can't do it without the staffing. The system
20 is crumbling. Despite the rosy picture that
21 Judge Marks paints, it's crumbling. He
22 talked about the upstate courts, how well
23 things are going. Yeah, the Excellence
24 Initiative is doing well.

1 There was a gentleman here, I forgot
2 his name, I'm sorry, from an upstate
3 district, an Assemblyman, and he talks about
4 how well it's doing. He said, You know what,
5 we're doing so well, you should send some of
6 the judges downstate.

7 But you know what? They're not doing
8 so well downstate. In Suffolk County we
9 still have the backlogs, we still have
10 foreclosure issues. It's gotten a little bit
11 better, but it's not over. In the city
12 they're having their issues. There's just
13 not enough people. Things can't get done.
14 There are motion backlogs because there are
15 not enough law clerks. We don't have enough
16 court interpreters. With all the people that
17 speak different languages in our court
18 system, we don't have the interpreters to
19 handle it.

20 The remote system, somebody brought up
21 the remote system. Well, you know what, it's
22 not that easy to get an interpreter on remote
23 either. These things have been tried, and
24 they've failed. We need live people. We

1 need live bodies.

2 The same thing goes for court
3 reporters. We need people to actually take
4 the minutes instead of record the minutes.
5 That way we can have a clear record. It's
6 laughable.

7 And I implore you, please talk to
8 Judge Marks. The Judiciary Committee, I
9 implore you, do something to help us. Bail
10 out our courts. Hire people. We need them.
11 The state needs them.

12 Thank you.

13 CHAIRWOMAN YOUNG: Thank you. Any
14 questions? Thank you.

15 CHAIRWOMAN WEINSTEIN: Thank you.

16 SENATOR KRUEGER: Thank you.

17 CHAIRWOMAN YOUNG: Our next speaker is
18 Dan De Federicis, who is joined by Manuel
19 Vilar and Troy Caupain, from the Police
20 Benevolent Association of New York State.
21 These are Park Police officers, I believe,
22 and University Police officers.

23 Good evening.

24 MR. DE FEDERICIS: Good evening. I

1 wrote "Good afternoon" on my thing, and I see
2 that's changed.

3 CHAIRWOMAN YOUNG: That's changed.

4 MR. DE FEDERICIS: In recognition of
5 that, we will certainly give you just our
6 highlights and not the full testimony.

7 CHAIRWOMAN YOUNG: Perfect. Thank
8 you, Dan.

9 MR. DE FEDERICIS: My name is Dan De
10 Federicis. I am the executive director and
11 counsel of the Police Benevolent Association
12 of New York State.

13 PBA of New York State is a law
14 enforcement labor union representing New York
15 State University Police, New York State
16 Environmental Conservation Police, State Park
17 Police, and the State Forest Rangers.

18 We have three points that I want to
19 make about this budget, and one of those is
20 that a number of our members do not have
21 three-quarters accidental disability
22 coverage, and that's almost unheard-of in law
23 enforcement.

24 Most police officers have this

1 coverage. It's just a number of members in
2 our unit do not have that, and that is simply
3 wrong. When I worked on the road as a State
4 Trooper, I had that coverage. Village
5 police, town police, county police, city
6 police, they all have that coverage. Our
7 police officers, a portion of our police
8 officers do not have that, and that's an
9 injustice.

10 And that's no better illustrated than
11 telling the plight of EnCon Officer James
12 Davey, who just over a year ago walked into a
13 cornfield investigating poaching at night,
14 and he suffered a gunshot wound from a rifle
15 from a poacher who shot him in the torso.
16 James Davey took a rifle bullet, a
17 high-powered rifle bullet, for the people of
18 this state, and he does not have
19 three-quarters disability.

20 Yet virtually every other police
21 officer in the state has it. That is wrong,
22 that's an injustice, and you can correct that
23 injustice by including our three-quarters
24 accidental disability legislation in your

1 respective one-houses -- and as well as in,
2 of course, the final budget. That is very,
3 very important to us, and that's just an
4 injustice.

5 Another issue we have, another
6 priority of ours that we also view as very
7 unfair is our New York State University
8 Police do not have heart presumption, often
9 called the "Heart Bill" legislation. Again,
10 virtually every other police officer in the
11 state, city, town, village, trooper -- they
12 have that coverage. But for some reason,
13 through accidents of history, New York State
14 University Police do not have that coverage.
15 They work stressful jobs, they work difficult
16 jobs. These have become more dangerous jobs
17 with the active shooters that I will touch on
18 in a minute.

19 The fiscal note on this is listed as
20 negligible, this costs virtually no money to
21 add this into the budget this year. We ask
22 that the New York State University Police
23 "Heart Bill" legislation be added to the
24 budget.

1 Continuing on with the university
2 police, it was almost 11 years ago that we
3 had the horrible shootings at Virginia Tech
4 where 32 people were killed, several others
5 were injured. Here we are 11 years later,
6 there have been several other attacks at
7 colleges, fatalities with shootings -- and to
8 its credit, SUNY to a certain degree has
9 woken up, but they still need funding.

10 They still need funding because, for
11 instance, one patrol rifle costs \$1,500. A
12 ballistic vest, \$500. A ballistic helmet,
13 \$400. I can go on and on. You times that by
14 the number of members in your department,
15 that adds up quickly.

16 We're asking for \$75,000 to be
17 distributed by SUNY systems administration to
18 these police departments. And that's not
19 much, but at least it will help them if they
20 spread it around a little bit for these
21 number of SUNY police departments at the
22 state universities protecting our staffs and
23 certainly our students at these universities.

24 I will turn it over to Manny Vilar,

1 thank you.

2 CHAIRWOMAN YOUNG: Thanks, Dan.

3 OFFICER VILAR: Good evening, Madam
4 Chair Young, Madam Chair Weinstein, esteemed
5 members. My name is Manuel Vilar, I am the
6 founding president of the Police Benevolent
7 Association of New York State, and I
8 currently serve as its vice president. I'm
9 also a 34-year sergeant veteran with the
10 New York State Park Police.

11 My testimony today is going to focus
12 on the issue of inadequate staffing of State
13 Park Police officers and the risk it presents
14 to public safety and what we believe is the
15 only viable and fiscally responsible
16 solution.

17 When Governor Cuomo took office in
18 2011, state park attendance was at
19 57 million. Since then, there's been a
20 21 percent increase to just over 70 million
21 in 2017. A recent 2016 study titled "The
22 Economic Benefits of New York State Parks"
23 stated simply that in addition to the many
24 noneconomic benefits, New York State Parks

1 were responsible for a total spending by
2 local and nonlocal visitors to the tune of
3 \$4 billion, and supported the creation of
4 54,000 jobs and added an estimated
5 \$2.9 billion to the state GDP. In fact,
6 state spending of \$543 million, plus visitor
7 spending, resulted in a total spending of
8 about \$5 billion. That equates to \$9 spent
9 in sales for every \$1 spent on State Parks.

10 Protecting this economic engine for
11 our state economy is the New York State Park
12 Police. Our officers patrol from vehicles,
13 four-wheel drives, ATVs, snowmobiles, they
14 respond to environmental disasters, they
15 perform cliff, gorge, high-angle, wilderness,
16 marine rescues. They deal with the potential
17 threat of active shooters routinely, as well
18 as terrorism in highly populated events and
19 concert venues.

20 Despite the massive economic benefits
21 I have detailed, the State Park Police are in
22 a retention and recruitment crisis.
23 Currently there is an annual attrition rate
24 of about 40 percent. Contrast that to the

1 earlier testimony you heard from Tom Mungeer
2 in the State Police, where their attrition
3 rate is below 8 percent. State Park Police
4 attrition rate is at almost 40 percent.

5 Despite continuous and ongoing
6 recruitment at the yearly State Park Police
7 academies, we continue to lose our highly
8 trained skilled members to municipal police
9 departments and the State Troopers. And this
10 is due to substandard pension and low pay
11 remaining the two most significant causes of
12 attrition.

13 The loss of personnel is so severe
14 that since 2000, State Park Police have hired
15 over 600 -- closer to 700 -- police officers
16 to maintain an understaffed police force of
17 250, where at one time it was at around
18 500 FTEs. In short, since 2000, New York
19 State has hired more police officers that
20 have been employed in other agencies than
21 they actually currently have working, times
22 three. Times three. Seven hundred is only
23 250 -- it's almost, at times, a times-three
24 equation.

1 This is a whopping 100 percent
2 turnover rate in less than 10 years. The
3 average cost to train a State Park Police
4 officer can exceed \$100,000 per member, with
5 each academy costing over \$3 million a year.

6 To stop this colossal waste of
7 taxpayers' money, we submitted legislation in
8 both the Senate and the Assembly to merge the
9 State Park Police into the New York State
10 Troopers. We believe the State Park Police
11 force has been neglected for so long and the
12 attrition is so terrible that at this point
13 we feel that this is truly the only viable
14 option.

15 Despite the high degree of training
16 and dedication of our members, it is not
17 enough to make up for years of neglect. And
18 we no longer have confidence in the Office of
19 Parks and Recreation to maintain a proper
20 State Park Police force and protect the
21 public. A merger will result in a cost
22 savings for academy and training for both
23 forces.

24 Additionally, the merger will address

1 the high rate of attrition faced by the State
2 Park Police while eliminating duplication of
3 services and equipment. It will also reduce
4 overtime costs incurred by the State Park
5 Police as a stand-alone unit.

6 We need your help, the state needs
7 your help, the citizens that attend state
8 parks need your help. This is really a model
9 that's broke. We're operating at 50 percent
10 staffing. We have a real serious, serious
11 consequence here. You're going to be reading
12 about the crisis that happened at a state
13 concert venue, whether it's Jones Beach or
14 out in Niagara, and it's going to be because
15 of a lack of staffing.

16 Thank you for your time.

17 CHAIRWOMAN YOUNG: Thank you.

18 OFFICER CAUPAIN: Good evening,
19 members of the committee. Obviously you have
20 my testimony this evening, so I just want to
21 make some points in reference to a study that
22 was attached with my testimony.

23 It was a study that was commissioned
24 by then-Commissioner Lehman of the Office of

1 Parks and Recreation. It was done back in
2 1986. They convened in Saratoga State Park
3 to try and rectify the issues that were going
4 on within the State Park Police force, and
5 the study was then put together between 1986
6 and 1988.

7 Unfortunately, I've tried -- through
8 the state archives, through DCJS, as well as
9 the New York State Public Library -- to get
10 the entire study, but I located the piece
11 that's been attached, which is 41 pages,
12 which basically gives the relevant
13 information that I want to bring to your
14 attention.

15 Basically, in 1986 the staffing for
16 Park Police was 227, and this survey
17 recommended an additional 80 officers. Well,
18 32 years later, as Sergeant Vilar stated, we
19 have just under 250 officers. And Civil
20 Service has recognized our staffing numbers
21 to be 382.

22 Now they also in this study -- on
23 page 13, if you're following along -- they
24 recognize 12 problems within the State Park

1 Police. The first one is budget, the second
2 one is staffing, and it goes down from
3 supervision to patrol to morale. It's all
4 the things that are plaguing the Park Police
5 today.

6 It also talks about officer safety, it
7 goes into the environments that we patrol, it
8 talks about how we as Park Police officers --
9 most of our patrol, if not all of it, is
10 initiated by that patrol officer. A lot of
11 our calls are not dispatched. So what
12 happens is we're doing this on routine
13 patrol, and we're doing it alone.

14 And if you go to page 6 of this
15 report, and I'll be very brief, you'll see
16 what the numbers were then in 1988 and then
17 what they proposed. And I can tell you what
18 they are now. So if you go to Niagara, which
19 had 24 sworn officers in 1988, they
20 recommended 29. Well, Niagara right now only
21 has 18 officers in 2018. If you go to the
22 Taconic region, where it says they should
23 have had 12 officers -- and they had 12
24 officers in '88 -- we only have seven police

1 officers in 2018. Long Island, which had 56,
2 we only have 33 officers.

3 And yes, OPR has been putting on
4 academies for us. But as Sergeant Vilar
5 said, our attrition rate is through the roof,
6 and we're losing them to everyone. In
7 Niagara County, between the sheriff's
8 department and the other local PDs, they
9 roughly have 47 of our members that we've
10 trained over the last 14 academies. They're
11 literally being trained and they're walking
12 out the door.

13 So what I'm asking this committee and
14 the Legislature for this coming session is to
15 please fund another comprehensive study.
16 Let's look at this again, because if you
17 change the name on the front of this study
18 from Governor Mario Cuomo and you put
19 Governor Andrew Cuomo on it, and you change
20 the department heads, you're literally
21 looking at the Park Police as it was in 1988.

22 So again, I would ask that we again
23 fund this study, and hopefully we can get
24 some answers to what has obviously been a

1 problem for way too long.

2 Thank you for your time.

3 CHAIRWOMAN YOUNG: Thank you.

4 Appreciate that testimony.

5 MR. DE FEDERICIS: Thank you.

6 OFFICER VILAR: Thank you.

7 CHAIRWOMAN YOUNG: And we appreciate
8 what your members do.

9 And Mr. De Federicis, I want to say
10 I'm glad that you brought up DEC Officer
11 James Davey, and he truly is a hero. He made
12 sacrifices on behalf of us. And also the
13 person who saved his life, Lieutenant Liza
14 Bobseine. I'm very proud to say I've known
15 her since she was a little girl, and her
16 family's -- her father was an EnCon officer,
17 and she's carrying on the tradition. And
18 we're very proud of her also.

19 But all of your members, thank you so
20 much.

21 MR. DE FEDERICIS: Thank you.

22 OFFICER VILAR: Thank you.

23 OFFICER CAUPAIN: Madam Chair? Madam
24 Chair, if I may? I just want to make one

1 more point, I'm sorry.

2 When the superintendent of State
3 Police was here, Senator Croci asked him
4 about the MS-13 epidemic on Long Island.
5 Well, obviously I work out of Long Island.
6 We're not a part of that. I mean, initially
7 we were -- of course, the president came and
8 did his speech there, and it was a huge, huge
9 media event and everything that was going on,
10 and initially we put an officer there.

11 But it was basically smoke and
12 mirrors. We only did that for about four
13 weeks, because that's all OPR wanted to pay
14 for overtime. But since then, since pretty
15 much August of last year, we don't have a
16 dedicated patrol at Brentwood State Park.

17 Basically, the MOU that was created
18 then was the State Police would patrol
19 outside of the park and the Park Police would
20 obviously patrol inside the park. Well, we
21 don't have an officer there. And because of
22 our staffing levels on Long Island, that post
23 has been eliminated for the upcoming summer.
24 As well as the two posts at Heckscher State

1 Park and Sunken Meadow that are closest to
2 them, those posts have also been eliminated.

3 So when they ask about that situation
4 and they say, Oh, we're working with the
5 State Police and so forth, it's not
6 happening. Can't do it due to our staffing.

7 CHAIRWOMAN YOUNG: I would recommend
8 that you let especially Senator Croci know
9 about that.

10 OFFICER CAUPAIN: I sure will.

11 CHAIRWOMAN YOUNG: And we'll see what
12 we can do to rectify the situation.

13 OFFICER CAUPAIN: Thank you so much.

14 CHAIRWOMAN YOUNG: Thank you.

15 SENATOR KRUEGER: Thank you.

16 MR. DE FEDERICIS: Okay. Thank you.

17 CHAIRWOMAN YOUNG: The next speaker is
18 Deputy Director Susan Bryant, from the
19 New York State Defenders Association.

20 Again, if you could please summarize.
21 But we're glad to have you here.

22 MS. BRYANT: Good evening, Chairperson
23 Young and Chairperson Weinstein and the rest
24 of the members who have stayed here this

1 evening. Thank you for allowing --

2 CHAIRWOMAN WEINSTEIN: Can you just
3 pull the mic a little closer?

4 MS. BRYANT: Oh, sure. Thank you for
5 allowing me to testify here today. Our
6 executive director, Charlie O'Brien, is
7 unfortunately unable to be here.

8 But I am here to talk about the Backup
9 Center. The New York State Defenders
10 Association has run the Public Defense Backup
11 Center since 1981. And our Backup Center is
12 an integral part of our public defense
13 system. As Bill Leahy, the Indigent Legal
14 Services director, testified to earlier,
15 defenders around the state rely on the
16 Backup Center to do their work, both criminal
17 and family court representation. We
18 centralize our services to provide training,
19 research and consultation, publications, and
20 our public defense case management system,
21 which is in 70 offices in 45 counties.

22 We save the money for both the
23 counties and New York State by our existence.
24 And we also work with the Indigent Legal

1 Services Office on the Hurrell-Harring
2 settlement and the expansion that this
3 Legislature and the Governor approved in the
4 past budget year.

5 But we need our full funding to do
6 this. The Governor has proposed an
7 appropriation of \$1,030,00 for the New York
8 State Defenders Association. What we are
9 asking for is the full amount that we
10 received last year, which is \$2,089,000.

11 In addition to that, we run our
12 Veterans Defense Program with this
13 legislative support for the last several
14 years, and you'll be hearing from Art Cody,
15 the deputy director of the Veterans Defense
16 Program, at the Human Services committee
17 hearing next week.

18 But I wanted to just emphasize the
19 work that they do in representing -- or
20 helping public defenders represent veterans
21 and active duty military around the state.

22 Also, I want to echo Bill Leahy's
23 testimony as to supporting full Aid to
24 Defense Services funding as well as the

1 Indigent Parolee Program and both the
2 Hurrell-Harring expansion and the other Aid
3 to Localities funding that is in the Indigent
4 Legal Services Office budget.

5 We are grateful for the legislative
6 support for the Backup Center and for the
7 Veterans Defense Program and for all of the
8 support for the public defense system in
9 general recently.

10 And I just want to emphasize on the
11 proposals, the Article VII proposals, that I
12 want to say that public defense clients that
13 are facing criminal charges are presumed
14 innocent. And some of the conversation and
15 testimony we've heard today has been
16 troubling, that that principle, that
17 constitutional principle, is not fully
18 understood.

19 I just wanted to emphasize that, and I
20 look forward to answering any questions or
21 talking to you now or in the future about our
22 work.

23 CHAIRWOMAN YOUNG: Thank you.

24 Well, we appreciate your testimony. I

1 know it's been submitted to us. I don't
2 believe that there are any questions, but
3 thank you so much for taking part in such a
4 long day.

5 MS. BRYANT: Thank you very much.

6 CHAIRWOMAN WEINSTEIN: Thank you for
7 the work that your office does over the
8 years.

9 MS. BRYANT: We appreciate it. Thank
10 you.

11 CHAIRWOMAN YOUNG: Our next speaker is
12 Senior Policy Associate Grant Cowles, from
13 the Citizens' Committee for Children.

14 Thank you for being here.

15 MR. COWLES: Thank you.

16 Good evening, my name is Grant Cowles.
17 I'm the senior policy and advocacy associate
18 at the Citizens' Committee for Children. CCC
19 is a privately supported child advocacy
20 organization dedicated to ensuring every
21 New York child is healthy, housed, educated,
22 and safe. CCC does not accept or receive
23 public resources, provide direct services nor
24 represent a sector or workforce. We just

1 advocate on behalf of kids.

2 I'd like to thank Chairwoman Weinstein
3 and Chairwoman Young and all of the members
4 of the Assembly Ways and Means and Senate
5 Finance Committees for holding today's
6 hearing. Our full written testimony includes
7 comments on the Executive Budget relating to
8 juvenile justice and public protection, but I
9 will briefly summarize here, focusing mainly
10 on our points around Raise the Age and Close
11 to Home, and I promise to keep my comments
12 well under the 10 minutes.

13 We would once again like to thank
14 Governor Cuomo and the State Legislature for
15 passing and enacting legislation to raise the
16 age of criminal responsibility to 18 in
17 New York State. As one of the organizations
18 co-leading the Raise the Age New York
19 campaign with Children's Defense Fund of
20 New York, we were very pleased for this
21 tremendous improvement. And while passage of
22 the Raise the Age legislation was momentous,
23 ensuring that the law is implemented well is
24 critical to ensure that our justice system

1 effectively supports and rehabilitates 16-
2 and 17-year-olds while protecting public
3 safety.

4 Throughout the negotiation process
5 leading to passage of the law and in the
6 statutory language, the Governor has
7 committed to funding all county costs
8 associated with Raise the Age. We urge the
9 Legislature to hold the Governor to his word,
10 and most of our recommendations focus on this
11 guarantee.

12 So we have five quick points. First,
13 we appreciate all the efforts that the Office
14 of Court Administration has been putting into
15 Raise the Age implementation. CCC is
16 encouraged by our participation in OCA's very
17 thoughtful court processing workgroup. CCC
18 was one of the cochairs of New York State's
19 Coalition for More Family Court Judges, which
20 a few years ago successfully advocated for 25
21 much-needed new Family Court judges.

22 While the first partial fiscal year of
23 Raise the Age implementation may not require
24 additional Family Court judges, we look

1 forward to working with our colleagues to
2 ensure that additional Family Court judges
3 are included next year.

4 Second, regarding funding for the
5 counties and localities, CCC supports the
6 Executive Budget proposal for \$100 million
7 for county expenses for programming related
8 to Raise the Age and \$50 million for capital
9 costs. But we are extremely concerned about
10 how these funds will be distributed.

11 Among some other minor concerns, our
12 biggest concern regards New York City. It
13 appears that New York City will not receive
14 any of the \$100 million of Raise the Age
15 funding, this despite New York City
16 representing approximately half of the
17 juvenile justice population in New York.

18 Assurances to all counties from the
19 Governor were given that the counties would
20 be and the localities would be reimbursed for
21 all expenses associated with raising the age
22 of criminal responsibility. But the Raise
23 the Age legislation requires counties to
24 remain within the 2 percent property tax cap

1 or demonstrate financial hardship to receive
2 Raise the Age reimbursement. New York City
3 does not seem eligible for either.

4 There is no proposal in the Executive
5 Budget to accommodate New York City's need
6 for Raise the Age funding if the city isn't
7 able to meet those requirements, a whammy for
8 New York City's juvenile justice system.

9 CCC urges the Legislature to negotiate
10 an adopted budget with the Governor that
11 upholds the state's commitment to include
12 state funding needed for all localities,
13 including New York City, to implement Raise
14 the Age.

15 A third, Close to Home. The Executive
16 Budget proposes to reauthorize Close to Home
17 for another five years but eliminates all
18 \$41.4 million of state support for the
19 program. For the past five years, Close to
20 Home has been providing effective, small
21 residential placement facilities in New York
22 City, and Close to Home has been an essential
23 component of many of the positive trends in
24 juvenile justice, including the plummeting

1 youth and young adult crime rates.

2 New York City needs state support for
3 its current juvenile justice youth in the
4 Close to Home system, but shockingly the
5 Executive Budget is proposing to cut all the
6 state funding precisely when the system is
7 due to grow from its implementation of Raise
8 the Age, as these 16- and 17-year-olds
9 needing placement will go into the Close to
10 Home system. This cut to all Close to Home
11 funding is especially unconscionable in light
12 of the fact that the city doesn't seem posed
13 to receive any of the \$100 million for Raise
14 the Age. A double whammy to New York City's
15 juvenile justice system.

16 CCC strongly urges the Legislature to
17 reject the Executive Budget proposal to
18 completely defund Close to Home and to
19 negotiate a budget with the Governor that
20 restores \$41.4 million for the Close to Home
21 youth and increases funding to ensure that
22 New York City can implement Raise the Age and
23 serve the anticipated influx of 16- and
24 17-year-olds.

1 Four, regarding the preventive
2 services cap. Since 2002, New York State has
3 had a child welfare financing scheme that
4 incentivizes preventive services that keep
5 children safe and in their homes with
6 open-ended 62 percent state reimbursement
7 funding. Juvenile justice youth have been
8 able to access this preventive service
9 funding stream through alternative detention,
10 alternative placement, and after-care
11 services. This financing scheme, which
12 incentivizes the services that produce the
13 best outcomes, has led New York City to
14 become a national model with regard to
15 preventive services.

16 The Executive Budget proposes to cap
17 this uncapped reimbursement structure for
18 New York City, effectively making the
19 open-ended funding stream into a block grant.
20 A third whammy to the New York City juvenile
21 justice system, especially when they're about
22 to expand it to 16- and 17-year-olds. CCC
23 strongly urges the Legislature to negotiate
24 an adopted budget with the Governor that

1 rejects this proposed cap on child welfare
2 services reimbursement to the New York City.

3 Fifth and finally, regarding the Ella
4 McQueen facility. The Executive Budget
5 proposes Article VII legislation to enable
6 OCFS to close the Ella McQueen facility
7 located in Brooklyn with 30-days notice
8 rather than the 12-months notice. We
9 understand that New York City has requested
10 that it take over Ella McQueen as part of
11 Raise the Age implementation.

12 While the Article VII legislation
13 appears to be a step towards addressing the
14 city's request, it is our understanding that
15 no agreement has yet been reached between the
16 state and the city over the long-term plan
17 for this facility, and we urge the
18 Legislature to include this Article VII bill
19 in the adopted budget but recommend that if
20 the transfer agreement is not reached soon,
21 the adopted budget specifically include an
22 agreement that Ella McQueen will be
23 transferred to New York City to assist the
24 city with Raise the Age implementation.

1 In conclusion, CCC is confident that
2 New York can be a leader in community safety
3 and the juvenile justice with the proper
4 investments, including truly funding all the
5 changes needed to Raise the Age for
6 localities, including New York City.

7 We look forward to continue working
8 with you to ensure that all of New York's
9 children are safe and supported.

10 CHAIRWOMAN YOUNG: Thank you.

11 Any questions?

12 SENATOR KRUEGER: One.

13 CHAIRWOMAN YOUNG: Oh, Senator
14 Krueger.

15 SENATOR KRUEGER: Thank you very much.

16 I know the hour is late and we're
17 trying not to ask questions, but since you in
18 your testimony talked about addressing the
19 issue of the Child Victims Act, I'm wondering
20 if Citizens' Committee for Children also has
21 a position on the fact that we make almost
22 everyone in the State of New York a mandated
23 reporter if they work with children -- the
24 schools, the charter schools, every

1 not-for-profit -- but it turns out we don't
2 require the same of private schools.

3 Does CCC have a position on that?

4 MR. COWLES: Mandated reporting is
5 obviously a very important protection for
6 kids across the state. I don't know if we've
7 taken an official position on that, but we'd
8 be happy to investigate it and have more
9 discussions.

10 SENATOR KRUEGER: Thank you.

11 MR. COWLES: Yeah.

12 CHAIRWOMAN YOUNG: Thank you.

13 Okay. Our next speaker is Chief
14 Operations Officer Melanie Blow, Stop Abuse
15 Campaign.

16 Glad you could be with us.

17 MS. BLOW: Thank you very much for
18 having me, Senator Young, Assemblywoman
19 Weinstein, and everybody else who has been so
20 kind. Thank you for letting me come here
21 today and speak as the chief operations
22 officer of the Stop Abuse campaign and as an
23 incest survivor.

24 We typically talk about child sexual

1 abuse as though it is the most significant
2 victimization a person can live through.
3 That's not entirely wrong, but it's very much
4 overly simplified. The more significant
5 victimization when you're an adult is calling
6 the police and telling them about what
7 happened to you and hearing the words
8 "There's nothing I can do."

9 An even more significant victimization
10 is seeing a picture of your abuser on
11 Facebook or at somebody's house or however
12 else with a child, and knowing that this same
13 person you have already talked to the police
14 about is above the law because you are over
15 the age of 23 at the time when you reported
16 your crime.

17 That is the situation all child sex
18 abuse survivors who were abused before 2006
19 are in and most child sex abuse survivors
20 abused after are in. And this is the
21 situation the Child Victims Act aims to fix.

22 The bill that's in the budget now
23 would lengthen the statute of limitations
24 going forward and allow a one-year

1 retroactive civil window by which adult
2 victims, victims already over the age of 23,
3 can have their day in court. This is the
4 only constitutional mechanism available for
5 that.

6 This is crucial. It's the only way we
7 have to identify who these abusers are, to
8 generate publicly accessible documents, to
9 generate a body of public knowledge about who
10 these people are.

11 Last week, everybody was cheering the
12 sentencing of Larry Nassar, who is accused
13 of -- credibly accused of sexually abusing
14 about 200 children. Michigan State made the
15 same miscalculation that's made countless
16 times across the country in every imaginable
17 institution. They believed the adult, they
18 covered for the adult, they got away with it
19 for many years at the expense of countless
20 children's lives. They took the path of
21 least resistance, and it worked out well for
22 them.

23 Unfortunately, we know that
24 institutions across the board behave as badly

1 as the law allows them to, and right now
2 New York's laws are among the most
3 predator-friendly in the nation. Increased
4 liability motivates institutions to do
5 better, to implement the best practices that
6 prevent children from lurking predators.
7 Critics have told false narratives of adult
8 victims using this legislation to ruin the
9 "good names" of "good people" and
10 institutions, and these fears successfully
11 denied justice for most victims for more than
12 a decade in New York State.

13 Justice denied systematically over
14 time is always harmful. In this case it help
15 birth the #MeToo movement, where disempowered
16 victims have tried their abusers in the court
17 of public opinion, the only court open to
18 them. This has led to cries for due process.
19 The way to ensure due process is to give
20 adult victims access to the courts. That's
21 what the Child Victims Act does.

22 New York cannot say it values children
23 if it's unwilling to take significant action
24 to protect them from sexual abuse. The Child

1 Victims Act has languished in the Legislature
2 for more than a decade. Now, in this budget
3 bill, we have a real chance to pass it. Our
4 state's children, our future, and countless
5 victims are counting on us. We ask you to do
6 the right thing this year. Thank you.

7 Any questions?

8 CHAIRWOMAN YOUNG: Any questions?

9 SENATOR KRUEGER: Thank you for your
10 work.

11 CHAIRWOMAN YOUNG: Thank you.

12 CHAIRWOMAN WEINSTEIN: Thank you for
13 coming here.

14 CHAIRWOMAN YOUNG: Our next speaker is
15 Executive Director Karen Murtagh, Prisoners'
16 Legal Services.

17 Thank you for coming. Thank you for
18 waiting.

19 MS. MURTAGH: Thank you for still
20 being here.

21 With me is PLS board member Tom
22 Curran, and he'll speak and then I'll speak,
23 and we won't go over our time.

24 CHAIRWOMAN YOUNG: Thank you. We

1 appreciate that.

2 MR. CURRAN: Thanks. I'm here as the
3 vice chair of the board; I think I was
4 promoted from the brevity at these sessions,
5 so just bear with me for a second.

6 Fifty-four prisons, 10,000 requests
7 for assistance a year, 18 lawyers in four
8 offices. That's down from their highs. This
9 is an organization that I support simply
10 because they are tremendously effective. The
11 help you give them is used to advance their
12 mission. They have tremendous relationships
13 with the Department of Corrections, with
14 their adversaries, people reach out to
15 them -- I know that prison reform, and
16 rightfully so, is something that is creeping
17 into the national consciousness.

18 These are issues that Prisoners' Legal
19 Services has been on the forefront of for
20 literally decades. They've never been cited
21 for frivolity in any litigation by any
22 tribunal, federal or state, period, full
23 stop.

24 I'm not here to ask for lavish

1 funding. We're not here to ask for new cars.
2 We're here to say if you give us the money
3 that we're asking for, Prisoners' Legal
4 Services will use it and use it effectively.

5 I am a former prosecutor. I'm a
6 third-generation former prosecutor, now a
7 defense lawyer. I can tell you my father was
8 the chair of the board before I became a
9 member of the board. I can tell you that he
10 did not go light on punishment. As one of
11 his seven children, I may be the one most
12 familiar with the concept -- he was no
13 opponent of punishment. But what we did
14 share is a common core belief that a system
15 of justice that deems people's conduct to
16 have violated the social contract such that
17 their liberty must be taken away and they be
18 placed in custody -- they need to understand
19 that that system of justice can work for them
20 too on basic fundamental and meaningful
21 rights.

22 And that's what Prisoners' Legal
23 Services does. It's not very controversial,
24 but the work they do is vital.

1 Thanks so much.

2 CHAIRWOMAN YOUNG: Thank you.

3 CHAIRWOMAN WEINSTEIN: Thank you.

4 MS. MURTAGH: Madam Chair Young, Madam
5 Chair Weinstein, remaining esteemed members,
6 I would first like to thank you for your past
7 support. Without the support of the
8 Legislature, PLS would not exist today.

9 Before I begin, I'd also like to
10 commend Corrections Chair Assemblyman Weprin
11 for your leadership this past year on so many
12 corrections issue, especially the visitation
13 issue. It's been a joy working with you, and
14 I look forward to working with you this
15 session.

16 I'd just like to touch on a few things
17 that PLS has done this past year so you can
18 appreciate what 18 attorneys do for a
19 population of 51,000 prisoners.

20 As Tom said, we receive about 10,000
21 requests a year, and of the cases we accept,
22 we have about a 70 percent success rate.
23 Because of this, this past year our advocacy
24 resulted in 55 years of solitary confinement

1 being expunged from people's records,
2 20 years of good time being restored, and
3 25 years of jail time and sentencing errors
4 being corrected.

5 Our work in the area of medical and
6 mental health care has also resulted in
7 hundreds of people being provided the medical
8 and mental health care they need.

9 In one case, we had a 19-year-old who
10 came to prison with Type 1 diabetes. And he
11 had no problem managing that diabetes in the
12 community, but when he came to prison, for
13 some reason DOCCS limited the number of units
14 of insulin he was allowed to have every day,
15 and his blood sugar went crazy. His family
16 contacted us, we intervened, and his mother
17 recently wrote to us and said that his health
18 has improved dramatically.

19 Those are the types of things that PLS
20 does that helps continue to prepare people
21 for reintegration back into society.

22 Our work on behalf of youth has also
23 been monumental this past year. We brought
24 the Cookhorne case, which resulted in the

1 creation of Hudson Correctional Facility that
2 eliminated solitary confinement for
3 juveniles, that made age per se a mitigating
4 factor at disciplinary hearings.

5 Also this past year we brought the
6 first ever IDEA -- the Individuals with
7 Disabilities Education Act -- claim on behalf
8 of a youth under 21. That had never been
9 done before in the history of New York. We
10 filed it with the Department of Education, we
11 prevailed, and the hearing officer found that
12 DOCCS was in gross violation of the IDEA and
13 ordered compensatory education of over
14 500 hours for this individual, who, at the
15 time of the decision, had actually been
16 released from DOCCS custody. So then DOCCS
17 had to pay for this education on the outside.

18 So the importance of having PLS there
19 to police what is going in terms of education
20 of our youth, which also translates into
21 successful reentry, is incredibly important.

22 I'd also like to note we partner --
23 Tom mentioned it, but we partner very well
24 with the Department of Corrections. I've

1 known Acting Commissioner Annucci for over
2 30 years. He was willing to begin a
3 telephone program at Albion Correctional
4 Facility two years ago, and this year we
5 expanded it to Bedford Hills Correctional
6 Facility.

7 We used to not hear from women. Our
8 average caseload was about 150 cases a year
9 from women. Now that we have the telephone
10 program, last year we had over 500 cases from
11 women talking to us about their issues in the
12 prisons.

13 But while we do all of this, we really
14 can only take about 20 percent of the cases
15 that come into PLS, and that's because of our
16 staffing. So I am here today to ask the
17 Legislature to add to the \$2.2 million that
18 Governor Cuomo has appropriated in our
19 budget. That was what was in the budget last
20 year from the Executive. This body added to
21 it last year.

22 I'm asking you to add \$1.3 million to
23 that, which will help us maintain our current
24 staffing and will also help us address the

1 increased population that is going to occur
2 with Raise the Age. DOCCS is adding about
3 250 new beds for juveniles, as Commissioner
4 Annucci testified to, and we do not have the
5 staff in our Buffalo or Plattsburgh office to
6 address those needs.

7 So thank you for your time, your
8 support in the past, and I'm more than
9 willing to answer any questions you might
10 have.

11 CHAIRWOMAN YOUNG: Senator Krueger.

12 SENATOR KRUEGER: I know the hour is
13 late, and I appreciate so much your both
14 coming to testify. I feel like our dialogue
15 is always when it's late and we're all
16 exhausted.

17 Two proposals that were discussed at
18 different times today: One, geriatric
19 release. I'm assuming you would think this
20 is a good idea.

21 MS. MURTAGH: It was a good thing. It
22 is a very good idea. We met with the
23 Governor's executive team, and DOCCS and PLS
24 proposed a number of reforms that we would

1 hope would see the day of light. One of them
2 was geriatric parole, and the other was the
3 creation of veterans units in maximum
4 security facilities, and that is included in
5 the Governor's budget also.

6 SENATOR KRUEGER: At least from where
7 I am, in New York City we see -- or my
8 district is where the entry to the men's
9 shelter system is at the Bellevue Hospital.
10 There seems to be a disproportionate growth
11 in mentally ill people being released from
12 State DOCCS, literally directly to the
13 streets of New York City.

14 Am I right to imagine we're seeing an
15 even larger number of people with mental
16 illness in our prisons and coming out of our
17 prisons? Or is there something else that I
18 should be aware of?

19 MS. MURTAGH: No, I think you're
20 correct. The estimate is 25 percent of the
21 population of DOCCS suffers from some form of
22 mentally illness. Many of our clients suffer
23 from mental disease.

24 What we have seen on a number of

1 occasions is that they are either
2 misdiagnosed or just missed within DOCCS. We
3 had a client who was in solitary for
4 10 months, and after 10 months he started
5 throwing feces. And they wrote a ticket, and
6 they wrote a ticket every day for 40 days.
7 And at the end of 40 days and 40 hearings, he
8 had built up 14 years of solitary
9 confinement.

10 And when OMH was brought in to do an
11 assessment, they said there's nothing wrong
12 with him. But then when he was prosecuted
13 for throwing feces, he was found unfit to
14 stand trial and immediately sent to New York
15 Psychiatric Center.

16 So there is something happening in the
17 prison in terms of not properly identifying
18 and treating mental illness.

19 SENATOR KRUEGER: Thank you.

20 CHAIRWOMAN YOUNG: Thank you.

21 CHAIRWOMAN WEINSTEIN: Assemblyman
22 Weprin.

23 ASSEMBLYMAN WEPRIN: Yes,
24 Ms. Murtagh -- thank you for coming in,

1 Mr. Curran. I know firsthand what you do,
2 and I've seen it in action, I've seen it
3 through my visits to many, many correctional
4 facilities. So I just want to thank you for
5 doing everything you do and waiting around
6 all day. But I know we can talk offline, but
7 we'll obviously try to be as supportive as we
8 can as we were last year.

9 But I recognize and the Assembly staff
10 at least on the majority side recognizes the
11 wonderful work that PLS does, and thank you
12 for continuing to do that.

13 MS. MURTAGH: Thank you, Assemblyman.

14 CHAIRWOMAN YOUNG: Senator Bailey.

15 SENATOR BAILEY: I will just be brief.

16 I just also want to thank you. I
17 remember a meeting last year, and you were
18 proving invaluable to some constituent work
19 that we had in the district. So I just
20 wanted to briefly go on the record and say
21 thank you for the work that you do as well.

22 MS. MURTAGH: Thank you, Senator.

23 ASSEMBLYMAN WEPRIN: Thanks a lot.

24 CHAIRWOMAN WEINSTEIN: Thank you for

1 the work of PLS. Thank you.

2 MS. MURTAGH: Thank you.

3 CHAIRWOMAN YOUNG: Next, from the
4 Legal Aid Society, I believe it's Clare
5 Degnan. No one?

6 Okay, moving on, from the Legal Action
7 Center, Sebastian Solomon. Sebastian
8 Solomon?

9 From the New York Legal Services
10 Coalition, Maha Syed, executive director.

11 If you could please introduce
12 yourselves.

13 MS. SYED: Hello. My name is Maha
14 Syed. I'm the executive director of the
15 New York Legal Services Coalition.

16 MS. ERICKSON: Hi, and I'm Anne
17 Erickson with the Empire Justice Center. And
18 I'm the vice president of the coalition.

19 CHAIRWOMAN YOUNG: Thank you.

20 So if you could summarize your
21 testimony, that would be --

22 MS. ERICKSON: I'm just here.

23 CHAIRWOMAN YOUNG: -- most helpful.

24 MS. SYED: Thank you so much for the

1 opportunity to testify.

2 The coalition consists of 50 legal
3 service organizations, and we serve every
4 county in New York State. Collectively, our
5 members provide high-quality civil legal
6 services to hundreds of thousands of
7 low-income New Yorkers in matters relating to
8 the essentials of life.

9 The coalition's testimony today will
10 focus on two key budgetary issues. The first
11 is support for the budget of the Unified
12 Court System and the funding proposed for the
13 Judiciary Civil Legal Services; the second is
14 restoration of funding for civil legal
15 services through the Legal Services
16 Assistance Fund, which the Executive Budget
17 has eliminated.

18 Civil legal aid essentially serves as
19 the last line of defense for victims of
20 domestic violence seeking safety and
21 stability, families facing eviction or
22 foreclosure, elderly victims of financial
23 abuse seeking restitution, and parents
24 seeking healthcare for their children.

1 Redress, protection, security, and
2 stability is often available if one can
3 navigate daunting legal systems against
4 overwhelming odds. An estimated 1.8 million
5 litigants come into civil courts across
6 New York each year without representation.
7 And those are the individuals and families
8 that actually make it to court; thousands
9 more undoubtedly give up before they ever get
10 to the courthouse door.

11 Starting in 1992, the Legislature,
12 through the leadership in the Assembly, has
13 allocated funding for civil legal services
14 in the state budget. This funding was later
15 supported through the Legal Services
16 Assistance Fund, or LSAF, through the
17 Division of Criminal Justice Services, and
18 supported by a share of the revenue raised
19 through payments for criminal records
20 searches.

21 Through the joint efforts of the
22 Assembly and the Senate, these funds are now
23 allocated each year for a variety of
24 purposes, including civil legal services and

1 legal assistance for veterans and victims of
2 domestic violence.

3 The LSAF is proposed in this year's
4 Executive Budget at \$14,194,000, which is the
5 same level as last year. However, the
6 Executive proposal eliminates the allocation
7 of \$4,389,000 for civil legal services. As
8 Assemblywoman Weinstein pointed out earlier
9 today, these funds were designed for civil
10 legal services, and we urge that these
11 allocations be fully restored.

12 In 2010, then-Chief Judge Jonathan
13 Lippman launched the effort to provide stable
14 funding for civil legal services through an
15 annual appropriation in the state's Unified
16 Court System's budget. Incrementally
17 increasing this Judiciary Civil Legal
18 Services fund, the allocation now stands at
19 \$100 million, a level that remains constant
20 in this year's proposed Judiciary Budget.
21 We urge full support for the investment in
22 the JCLS.

23 Investing in civil legal services
24 saves New York State money. For every dollar

1 New York State spends on civil legal aid, \$10
2 in economic benefit is generated. Our
3 prepared remarks provide further details on
4 this benefit.

5 The funding made available through the
6 Judiciary Legal Services has had a
7 significant impact on access to justice in
8 New York State, with the number of
9 unrepresented litigants in civil matters
10 dropping from 2.3 million in 2009 to
11 1.8 million in the most recent estimates.
12 Civil legal aid providers have been able to
13 reduce New York's justice gap from 80 percent
14 to an estimated 63 percent, meaning we are
15 now meeting approximately 37 percent of the
16 civil legal needs of low- and moderate-income
17 households.

18 The 63 percent of the civil legal
19 needs of low-income New Yorkers still remain
20 unmet. We urge full restoration of funding
21 through the Legal Services Assistance Fund
22 and ongoing support for the OCA budget,
23 including full funding for the Judiciary
24 Civil Legal Services funding so that we can

1 continue to make strides towards access to
2 justice for all New Yorkers.

3 Thank you for your time, and we're
4 happy to take questions.

5 CHAIRWOMAN YOUNG: Questions?

6 Senator Bailey.

7 SENATOR BAILEY: One brief question.

8 Does the right-to-counsel law that was
9 recently enacted in New York City affect your
10 need for funding? And if so, how?

11 MS. SYED: It should not, because it's
12 a city initiative.

13 SENATOR BAILEY: Okay. Thank you.

14 CHAIRWOMAN YOUNG: Anyone else?

15 Thank you.

16 MS. SYED: Thank you so much.

17 CHAIRWOMAN YOUNG: Next is Director of
18 of Strategic Partnerships Dipal Shah, Center
19 for Court Innovation.

20 Welcome. We appreciate you being
21 here. If you could please summarize, that
22 would be very helpful.

23 MR. SHAH: Absolutely. Thank you for
24 having me.

1 Greetings, members of this committee,
2 Madam Chair Young and Madam Chair Weinstein,
3 it's a pleasure to be here. My name is Dipal
4 Shah, and I'm the director of strategic
5 partnerships at the Center for Court
6 Innovation. Thanks for giving me the
7 opportunity to speak today.

8 The mission of the Center for Court
9 Innovation is to create a more effective and
10 humane justice system throughout New York
11 State. We serve more than 60,000 New Yorkers
12 annually through projects such as Bronx
13 Community Solutions, Brooklyn Justice
14 Initiatives, Red Hook Community Justice
15 Center, Queens Youth Justice Center, Harlem
16 Community Justice Center, Crown Heights
17 Community Mediation Center, and I could go on
18 and on.

19 We have programs upstate, in Syracuse,
20 Buffalo, Nassau, and Westchester, and our
21 work also includes sparking new leadership in
22 considering how to reform New York's onerous
23 bail system and advancing restorative justice
24 throughout the state.

1 Our funding is threatened. We receive
2 millions in federal funding every year, and
3 we are uncertain if that is going to
4 continue. We urge this body to support us to
5 ensure New York State's most vulnerable
6 citizens, which which include the poor,
7 communities of color, young people, women,
8 immigrants, and more have access to
9 opportunity to ensure safer, stronger, and
10 healthier communities.

11 As some of the members of this
12 Assembly know, the center has circulated a
13 letter seeking operational support for a
14 range of programs. Today's testimony,
15 however, focuses on a more limited funding
16 request for two specific projects -- namely,
17 the Queens Youth Justice Center and the
18 Harlem Community Justice Center.

19 The Queens Youth Justice Center, a
20 project of the center, was visited by
21 Assemblymember Weprin -- and thanks to him
22 for that -- just a few months ago, and it's a
23 comprehensive, community-based youth center.
24 It provides evidence-based, trauma-informed

1 case management and care coordination, family
2 engagement and support. It provides youth
3 leadership through programs such as the Youth
4 Justice Council, core competency skill
5 building, educational advocacy, and more.

6 Grounded in positive youth development
7 and positive youth justice principles, and
8 animated by procedural fairness, the Justice
9 Center's goal is to provide young people,
10 often poor and coming from communities of
11 color, with off-ramps.

12 The Queens Youth Justice Center is in
13 a unique position to provide an array of
14 services and support for 16- and 17-year-old
15 defendants who will be diverted to Family
16 Court as a result of the Raise the Age
17 legislation. The Justice Center has been
18 planning for these changes, developing
19 expanded programming and forming new
20 partnerships. Through our early diversion
21 programs and alternative to detention
22 programs, the Justice Center offers a range
23 of short-term services that hold hundreds of
24 youth accountable for their actions each year

1 while offering them a new path away from the
2 justice system.

3 The Queens Youth Justice Center also
4 offers youth leadership opportunities.
5 Community benefit projects such as
6 volunteering, tending to community gardens,
7 youth-structured opportunities, and
8 management of projects to give back to their
9 communities are part of the process.

10 I want to tell you a little about one
11 of our individuals, Magenta. Magenta is a
12 success story that reflects the tremendous
13 work of the Queens Youth Justice Center and
14 its staff. She was sent to the Justice
15 Center in 2015 for services through the
16 Alternative to Detention program. In 2017,
17 she became a mentor and a group facilitator
18 for other young women, and it is with deep
19 pride that I share that this past fall
20 Magenta began her freshman year at
21 New England College with a full scholarship.
22 And she credits the Youth Justice Center and
23 its transformative work for giving her the
24 mindset and framework to succeed in life.

1 With support in the amount of \$150,000
2 to the Youth Justice Center, it can fully
3 expand its existing diversion work and
4 develop new and effective programming to more
5 youth like Magenta. Funding would ensure
6 that youth ages 16 to 17 will have access to
7 age-appropriate services and assistance to
8 fully divert them from the justice system.
9 This support could allow the Justice Center
10 to serve dozens more young people each per
11 year.

12 Another one of our operating programs,
13 the Harlem Community Justice Center, in
14 partnership with DOCCS, has been home to an
15 innovative prison reentry program that
16 dramatically reduces recidivism and improves
17 life outcomes for individuals returning from
18 state prison to New York City.

19 The only reentry court in the state,
20 the Harlem Parole Reentry Court, brings
21 together a community-based parole reporting
22 site with designated state parole officers,
23 intensive case management support, treatment
24 partners, volunteers, and administrative law

1 judges to create a seamless community of care
2 for high risk individuals returning from
3 prison to New York City.

4 Prior to release from prison, inmates
5 who assess as high risk and who are returning
6 to New York County are assigned to a parole
7 officer at the Justice Center. After
8 release, participants are greeted at the
9 Justice Center by a welcoming community that
10 includes faith volunteers, parole officers,
11 case managers and partner providers. And
12 beginning from its first visit, clients are
13 given stabilization needs through housing,
14 identification, and attention to their
15 medical issues. Clients are also immediately
16 connected to programs that address their
17 criminogenic needs and parole conditions,
18 including employment, education, and
19 substance abuse programming.

20 Reentry Court participants are
21 predominantly male and from communities of
22 color, specifically black and Hispanic, and
23 have an average of eight prior convictions
24 and four custodial sentences. A study that

1 we conducted demonstrated that Reentry Court
2 clients drastically improved their life
3 outcomes: Clients were 22 percent less
4 likely to be reconvicted of a new crime,
5 including a 60 percent difference in felony
6 reconvictions, and were 45 percent less
7 likely to return to prison on a parole
8 violation.

9 Additional support in the amount of
10 \$150,000 from this body to the Harlem
11 Community Justice Center will allow the
12 Justice Center to expand case management
13 support to provide intensive services to
14 80 clients per year and offer prerelease
15 engagement at facilities when possible. This
16 support will also allow for enhanced outreach
17 to families, including home visits and
18 post-release, and allow staff to organize a
19 minimum of four family engagement events,
20 including the Family and Friends
21 Orientations, each year.

22 In closing, the Center for Court
23 Innovation believes that these two projects
24 exemplify the important and necessary work to

1 ensure improved communities and a reformed
2 system in New York State. Your support is
3 needed so that we can continue this work and
4 ensure that our state's most vulnerable
5 residents -- the poor, the young, and more --
6 can be productive and stable members of their
7 communities. On behalf of the center, we
8 look forward to working with our elected
9 leaders in both the Assembly and the Senate,
10 including those present here today, to expand
11 reentry opportunities, assist and improve the
12 lives of youth, increase public safety, and
13 change the lives of New Yorkers throughout
14 this great state.

15 I am happy to answer any questions you
16 may have.

17 CHAIRWOMAN YOUNG: Do you have
18 questions?

19 CHAIRWOMAN WEINSTEIN: Mr. Weprin.

20 ASSEMBLYMAN WEPRIN: I don't have a
21 question, but I just want to thank you for
22 the work you do.

23 The Queen's Youth Justice Center, as
24 you mentioned, is something I saw firsthand.

1 It's just out of my Assembly district -- not
2 too far, by probably only a couple of
3 blocks -- and I got to see firsthand this
4 past year the work that you've done through
5 the courts as well as with many youth. And
6 the work that you've done has not only been a
7 success story, like the young lady you
8 mentioned, but has really been a tremendous
9 vehicle for alternative to
10 incarceration success stories.

11 So thank you for your work.

12 MR. SHAH: Thank you very much,
13 Assemblymember.

14 CHAIRWOMAN YOUNG: Thank you.

15 MR. SHAH: Thank you.

16 CHAIRWOMAN YOUNG: Appreciate it,
17 Mr. Shaw.

18 Our next speaker is Associate Director
19 Dave George, Release Aging People in Prison
20 Campaign.

21 So just to remind everybody not to
22 read your testimony, but if you could
23 summarize it, that would be a wonderful
24 thing.

1 Welcome.

2 MR. GEORGE: Thank you. I'll be
3 brief, and I'll summarize what I've already
4 submitted.

5 CHAIRWOMAN WEINSTEIN: Thank you.

6 CHAIRWOMAN YOUNG: Thank you.

7 MR. GEORGE: My name is Dave George,
8 as you indicated. I'm the associate director
9 and an organizer with the Release Aging
10 People in Prison Campaign, or the RAPP
11 Campaign. I thank all of you for having me
12 present before you today and for hanging in
13 there for what I'm sure was a long day for
14 all of us.

15 RAPP, as far as we know, is the only
16 group in New York State and across the
17 country that seeks to end mass incarceration
18 and promote public safety and racial justice
19 with the central focus of releasing older and
20 aging people in prison.

21 We were founded in 2013 by my boss,
22 Mujahid Farid, who in the late '70s was
23 convicted of a serious crime, sentenced to
24 15 years to life, and after his 15-year

1 minimum sentence earned four college degrees,
2 two of them master's degrees. But despite
3 all of those accomplishments, and despite his
4 low if any risk to all of us in the outside
5 community, he was denied parole nine times
6 over the course of 18 years.

7 He served 33 total years in New York
8 State prison system and was released in his
9 60s. So after Farid's release, he founded
10 RAPP because he knew that despite being an
11 amazing person who is a mentor to many of us,
12 that his experience was not limited to
13 himself, that it was actually a broad policy
14 and practice applied to thousands of New
15 Yorkers who are currently confined in our
16 prison system.

17 There are currently, as we sit here
18 today, 10,337 people aged 50 or older;
19 21 percent of our state prison population is
20 older. Grandmothers, grandfathers, even
21 great-grandparents are inside. And this
22 hasn't always been the case. Since 1992,
23 we've seen a fourfold increase of older
24 people inside. Since the year 2000, when our

1 on medical parole. In 2017, eight people
2 were released on medical parole. It's not
3 that we don't have enough candidates for
4 medical parole, it's that the medical parole
5 program is largely ineffective. And all of
6 us need to take this on as an issue and
7 develop the political will that's required to
8 take it on.

9 So we think that this proposal is a
10 step in the right direction. I've submitted
11 my testimony which, you know, gets into the
12 the nitty-gritty details. There are some
13 components of it that are good, there are
14 some components that we believe should be
15 strengthened -- one of which is the process
16 takes far too long, as some people might
17 know.

18 There are no or very few, actually --
19 I think two total time limits that are
20 associated with the entire medical parole
21 process, so much so that many people who are
22 certified for medical parole die before they
23 get to the Parole Board. So just by way of
24 context, between 1992 and 2014, 108 people

1 who were certified by DOCCS for medical
2 parole died before they got to the Parole
3 Board.

4 What we believe to be tragic, what we
5 believe to show a real lack of compassion
6 is -- we hope to strengthen that proposal
7 with the administration and with all of you
8 to put in some time limits, to put in some
9 things that will encourage DOCCS's medical
10 staff to get this process started before
11 somebody is on death's door, and other
12 components that we think could strengthen
13 this.

14 Despite the fact that it might be
15 beautiful and potentially catchy for me to
16 talk about older people in prison just in the
17 context of people who are on death's door and
18 dying, the truth is we want people home who
19 are older before they're sick. We want
20 people home before they're dying. And the
21 truth is that the large majority of older
22 people in prison are not seriously ill. They
23 may have some minor, relatively minor chronic
24 condition or an illness, but they're not

1 going to be eligible for geriatric parole or
2 medical parole, which is why we at RAPP
3 believe that we need in this state to make
4 serious changes to policies and practices
5 associated with discretionary parole release.

6 Now, I outlined some of those changes
7 that we're going to be pushing for, hopefully
8 with many of you this year, but I want to
9 just name two. One is regardless of an
10 individual's age, we believe that parole
11 release should be determined based on
12 somebody's current risk to public safety.
13 And we believe that unless somebody poses a
14 current and unreasonable risk to public
15 safety, they should be released.

16 We think that this might be intuitive,
17 but that's not the way that the Parole Board
18 practices today. They largely deny the large
19 majority of people they see, not based on
20 their current risk of dangerousness, but
21 instead based on something they did 20, 30,
22 40, 50 years ago.

23 So we actually support legislation by
24 Assemblymember Weprin, it's A7546, and we

1 hope that many members of this body will do
2 so as well. And we look forward to
3 continuing to work with the Assemblymember,
4 who as chair of the Corrections Committee has
5 been much appreciated as it relates to our
6 issues. So we thank you for that.

7 In addition to presumptive release, we
8 really think that we need to give some folks
9 who are older inside a second look. Some
10 folks who aren't yet parole-eligible or who
11 may never be parole-eligible, they should get
12 a consideration of parole release after
13 they're aged 50 or older and after they've
14 served 15 consecutive years. We know the
15 numbers and rates of recidivism for those
16 folks, we know that 15 years is usually the
17 amount of time that people engage in
18 meaningful transformation, and we think that
19 those folks should get the opportunity for
20 parole release.

21 We believe that strengthening the
22 Governor's proposal, coupling it with changes
23 and reforms to discretionary parole release,
24 will be in the spirit of the values that the

1 Governor pushes for with his current proposal
2 for geriatric parole release, values of
3 compassion and mercy, redemption and
4 rehabilitation, and even cost savings --
5 which is, as we know, particularly important
6 with what's going on in Washington.

7 And so we hope that it is with those
8 values in mind that members of this body will
9 work with us to strengthen that proposal and
10 to push for meaningful parole release. And
11 we understand that this is not an easy
12 conversation to have and these are not easy
13 things to do. Because when we're talking
14 about older people, we fundamentally admit we
15 are not talking about people convicted of
16 nonviolent drug offenses, we are talking
17 about people who have committed, been
18 convicted of, serious harm.

19 But the question that we need to pose
20 to one another is, Are we okay with
21 guaranteeing that our punishments in New York
22 kill people? I've said before this body that
23 I believe aging in prison is the new death
24 penalty. Far more people die in their older

1 years of natural causes and diseases
2 associated with aging than have been
3 capitally punished. Those are the facts.
4 And so are we okay with that? We at RAPP
5 aren't, and we would hope and imagine that
6 some of you aren't either. We would hope and
7 imagine people in the State of New York
8 aren't either.

9 You know, despite being so bleak in
10 talking about death and dying and terminal
11 illness, I in fact am hopeful. I am hopeful
12 because I think we in New York have an
13 amazing opportunity. We have the
14 second-highest number of parole-eligible
15 lifers in the country behind California,
16 roughly 9,000 people. And we know that so
17 many of those folks could be released in the
18 relatively near future with benefits to all
19 of us, including cost savings, reconnecting
20 to families and communities.

21 And so with that, I'll take any
22 questions you might have. And again, I'm
23 really, really looking forward to working
24 with many of you in this budget and in this

1 session. Thank you.

2 CHAIRWOMAN YOUNG: Questions?

3 Senator Savino.

4 SENATOR SAVINO: Thank you.

5 Thank you, Dave, for your testimony.

6 With respect to the Governor's idea
7 about releasing people who are sick or
8 geriatric and sick, the concern I have is I
9 haven't seen anywhere in his proposal what
10 happens to them once they leave. Because,
11 one, there's a financial reason for doing
12 this -- we all know that -- because the state
13 picks up the cost of medical care for inmates
14 while they're in prison, and once they're
15 out, they're eligible for Medicaid, which
16 brings down a federal match to it.

17 But these are people who have been
18 away from society for a relatively long
19 period of time, who may not have the
20 connections anymore either with family or
21 with community. And to release them while
22 they're also having to now figure out how to
23 deal with their terminal illness or chronic
24 illness, is there a component for aftercare,

1 for some sort of a connection so that they,
2 you know, get connected to the type of
3 treatment that they need, that they are
4 placed in an environment where they're going
5 to have some security and some safety?
6 Because that's part of, you know, medical
7 care.

8 I haven't seen that. So can you
9 explain if there's been any discussion around
10 that?

11 MR. GEORGE: Sure. Absolutely, and
12 it's a great question. And I 100 percent
13 agree that meaningful opportunities in
14 reentry need to be coupled with meaningful
15 opportunities for release.

16 The medical parole program as it
17 stands today, and this proposal as I see it
18 and understand it, requires there to be some
19 reentry planning specifically around the
20 individual's healthcare. And I would bet
21 that that will be inadequate. And we hope
22 that, as we wrote in our testimony, that this
23 proposal, just like any proposal to release
24 older people or people generally from prison,

1 is coupled with better supports for people
2 coming home.

3 We know that, tragically, the majority
4 of older people who are released go directly
5 to a homeless shelter, especially in New York
6 City. And that isn't to say that all older
7 folks who are released do. My boss founded
8 an amazing group and campaign within two
9 years of his release and rents an apartment
10 and lives a great life, and there are many
11 others like him.

12 And so one of the recommendations we
13 have in here is to make sure that folks
14 aren't excluded in a blanket way from
15 accessing both housing and elder and senior
16 care in nursing homes as they are today.
17 There's a huge problem for folks coming home
18 that want to have access to and should have
19 access to a senior center or an old folks
20 home that are totally excluded based on the
21 crime of conviction.

22 So we think that those cases should be
23 looked at on an individual basis as opposed
24 to excluding them in general ways.

1 SENATOR SAVINO: Thank you. Because,
2 you know, compassionate release won't be
3 particularly compassionate if you just open
4 the door and let sick people out to fend for
5 themselves.

6 MR. GEORGE: Right.

7 SENATOR SAVINO: Thank you.

8 SENATOR KRUEGER: Assemblymember
9 Weprin.

10 ASSEMBLYMAN WEPRIN: Yes, Mr. George,
11 thank you for your advocacy.

12 As you probably know, people age much
13 quicker while they're incarcerated. So
14 someone that's 50 years old is probably
15 equivalent to 60 or higher, maybe even older
16 than that, because of conditions in prison.

17 My original bill had 60; I've amended
18 that down to 55. And of course with the
19 Governor's proposal, you know, at 55, and my
20 questions of Commissioner Annucci earlier
21 this year and other times when we had our
22 joint hearing with the Health Committee, he
23 indicated that they considered the aging
24 population or the senior citizen population

1 at 55. And so that seems to be the right
2 number now.

3 You know, obviously, it's a good step
4 if we can get that. So I look forward to
5 working with you and fine-tuning my
6 legislation and working with the Governor's
7 proposal as well.

8 MR. GEORGE: Absolutely. We really
9 look forward to continuing to work with you.
10 And thank you again for all that you've
11 already done.

12 SENATOR KRUEGER: Thank you very much
13 for your testimony tonight.

14 MR. GEORGE: Thank you.

15 SENATOR KRUEGER: Our next testifier
16 is Scott Paltrowitz, associate director of
17 advocacy and community engagement,
18 Correctional Association of New York.

19 And again, just reminding everybody --
20 no guarantee of more money in the budget, but
21 definitely brownie points if you summarize.

22 (Laughter.)

23 MR. PALTROWITZ: Thanks so much.

24 Yeah, unfortunately my son -- who some

1 of you may have seen at the beginning, so I
2 thank you for -- it got a little late for him
3 to stay for the testimony, otherwise he would
4 have been up here.

5 (Laughter.)

6 MR. PALTROWITZ: And actually in that
7 vein as well, the next speaker who's supposed
8 to be here, Victor Pate, an organizer with
9 the Campaign for Alternatives to Isolated
10 Confinement, had to go back to New York City.
11 So he's not able to be here. I'm going to
12 try --

13 ASSEMBLYMAN WEPRIN: Extra credit.
14 Extra credit, too.

15 MR. PALTROWITZ: What's that?

16 ASSEMBLYMAN WEPRIN: Extra credit.

17 (Laughter.)

18 MR. PALTROWITZ: So I'll try to
19 incorporate some of his thoughts into what
20 I'm going to say.

21 Well, thank you all so much for giving
22 me this opportunity to speak with you all. I
23 want to start by asking you all who are left
24 with us today, and those would watch the

1 video later -- after this hearing, as you're
2 looking to the budget session, the
3 legislative session, to stop for a second and
4 pause and look not just at all the details --
5 there's a lot of details, and I'm going to
6 talk about some of them -- but to look at the
7 overall big picture of what we're doing with
8 regard to public protection and particularly
9 the incarceration system, and to see how it
10 comports with your individual and
11 professional values.

12 Because I believe that we can have a
13 system of incarceration -- a system of public
14 safety, I should say, that is based in
15 community empowerment, that is based in
16 healing, that is based in transformation and
17 redemption, that is based in real true
18 safety, and that is based in love. And I
19 believe that right now we have a system
20 instead that is rooted in punishment and
21 cruelty and vengeance, and that is rooted in
22 racism.

23 And so I'm asking all of you to look
24 at the whole big picture and to see that we

1 are all responsible for -- as taxpayers, as
2 citizens, as representatives -- a system that
3 is torturing, brutalizing, dehumanizing,
4 warehousing, and destroying people, people
5 who are incarcerated as well as people who
6 work in correctional facilities, families,
7 and our communities and ultimately our entire
8 state.

9 So I'm looking for bold leadership,
10 courageous leadership, and fundamental
11 transformation of what is happening.

12 I'm going to highlight five issues.
13 There is a lot more in our testimony from the
14 correctional association as well as from
15 CAIC.

16 Number one is solitary confinement. I
17 do want -- I know it's late, but I want to
18 take a moment to bring into this space the
19 words of an individual in solitary
20 confinement. Because we've heard from a lot
21 of people today; we have not heard from
22 anybody who's incarcerated. I'll be very
23 brief.

24 "Being in solitary confinement causes

1 me to experience anxiety, depression, panic
2 attacks, extreme weight loss. I barely
3 achieve sleep and constantly wake up in cold
4 sweats. I experience a feeling of death. I
5 feel as though I stopped breathing while I'm
6 sleeping. I wake up gasping for air. I am
7 losing my mind."

8 I urge you to read more narratives
9 like the individual here and more fuller
10 narratives in the Correctional Association's
11 recently released report "Solitary at
12 Southport," one of the prisons in New York
13 that's dedicated exclusively to solitary.

14 There are thousands of people in
15 solitary confinement as we sit here at this
16 hearing today -- 23 to 24 hours a day, no
17 meaningful human contact or programs, and
18 people are spending months, years, and
19 decades in solitary confinement. Thirty
20 years straight in a box the size of this
21 table. Thirty years.

22 This is outrageous. I mean, I can't
23 even say it, it's so outrageous. The
24 United Nations, the United States has signed

1 on to the Mandela Rules that says no person
2 should be in solitary more than 15 days --
3 15 days -- because it amounts to torture.

4 We need the Legislature to pass the
5 Solitary Confinement Act, which would end the
6 torture of solitary and create more humane
7 and effective alternatives, and we need the
8 Governor to sign that into law this
9 legislative session. And until that bill is
10 passed, we need the Governor to implement its
11 provisions administratively.

12 In Colorado, as mentioned earlier --
13 there was a question to the commissioner. In
14 Colorado they have implemented a 15-day
15 limit, and they reduced the number of people
16 in solitary from 1500 to 18 people. We need
17 that kind of bold, transformative leadership
18 in New York.

19 The second issue I'm going to raise
20 quickly is parole. I echo the sentiments of
21 Mr. George, who spoke earlier, and will just
22 add that thousands of people every year are
23 denied parole release, and people are
24 repeatedly denied over and over and over

1 again based on the nature of their original
2 crime, when instead we need a parole system
3 that focuses on people -- who they are today,
4 who is the person today, what risk do they
5 pose, what accomplishments have they had,
6 what transformation have they undergone, and
7 are they ready for release.

8 So we urge for the presumptive parole
9 bill from Assemblymember Weprin, we urge for
10 the second-look parole consideration, and
11 ultimately we just need to release more
12 people.

13 The third issue I'm going to briefly
14 mention is the Domestic Violence Survivors
15 Justice Act. So we commend Governor Cuomo
16 for putting forward some pre-incarceration
17 initiatives around bail, speedy trial,
18 discovery. We know those need some
19 improvements and some strengthening, but I
20 want to focus on an issue that was not in the
21 Governor's budget.

22 Domestic Violence Survivor's Justice
23 Act. We're in a #MeToo moment in this state
24 and in this country, as we all know. Well,

1 inside of our prisons, 90 percent of the
2 women who are incarcerated have suffered
3 physical or sexual abuse in their lifetime;
4 75 percent as adults, 80 percent as children.
5 This is a crisis.

6 Now, DVSJA addresses just one small
7 piece of this issue. It basically says that
8 if somebody has been a survivor of domestic
9 violence, and that domestic violence was a
10 significant contributing factor to the crime
11 that they were convicted of, that a judge at
12 least should have discretion to take that
13 into consideration when issuing a sentence,
14 and only if that sentence would otherwise be
15 unduly harsh.

16 This is a very limited measure that
17 would have tremendous impact on people. It
18 has had widespread support in the Legislature
19 for many years, and yet the Governor and the
20 leadership in both houses have not taken it
21 and passed it and made it law. So it's time
22 for, this session, DVSJA to passed.

23 The fourth issue I want to talk about
24 is the overall DOCCS budget. \$3.3 billion

1 are being spent just on the DOCCS budget
2 alone. That's not police, that's not jails,
3 that's just the DOCCS prison system --
4 \$3.3 billion dollars for one year.

5 Ultimately, we need to move away from
6 using the state's resources for caging people
7 and we need to bring the resources back into
8 our communities for the things that actually
9 make us safe and well.

10 In addition, within the budget the
11 Correctional Association has long-standing
12 testimony about the constant decline in
13 program and medical services over time at a
14 rate that far exceeds the decline of the
15 prison population and far exceeds the decline
16 in finances for security purposes.

17 What we need -- we all know what we
18 need in order to make people successful upon
19 release, and that is more programs, not less.
20 We need to restore college-eligibility for
21 all people who are incarcerated, and we need
22 to expand educational vocational programming
23 and shift away again from the paradigm of
24 punishment and move towards empowerment and

1 self-actualization.

2 The fifth and last issue I want to
3 mention is brutality. I want to read another
4 quote to you all, and again I'll be quick.

5 "People are held in facilities and
6 under conditions that we would condemn as
7 human rights violations if they were
8 occurring in another country. Our tolerance
9 for the ongoing injustice is repugnant to our
10 position as the progressive capital of the
11 nation. We must act with a new urgency to
12 safeguard the rights of all New Yorkers, too
13 long neglected. It is a statewide problem."

14 Those words are not from the person
15 who is incarcerated, those words are from
16 Governor Cuomo's State of the State book.
17 Yet in the budget there is nothing to address
18 the rampant brutality that is happening.
19 Governor Cuomo's State of the State book, I
20 believe, is referring to jails. But the
21 kinds of abuses that are happening in jails
22 are also happening in our prisons.

23 There is rampant racism, rampant
24 brutality. A little over a year ago, the

1 New York Times documented what they called a
2 scourge of racial bias. A series of
3 articles, very in-depth research. Governor
4 Cuomo at the time responded and said yes,
5 something has to be done. Nothing has been
6 done to address the scourge of racial bias.
7 It's now over a year along, nothing has
8 happened.

9 With regards to brutality, at the
10 Correctional Association we receive reports
11 on a weekly basis, if not a daily basis, of
12 serious staff brutality against people who
13 are incarcerated: Broken bones, punctured
14 lungs, people on the brink of dying, and
15 people being killed. Samuel Harrell, Karl
16 Taylor, Terry Kupers -- all of these
17 individuals reportedly have been beaten to
18 death by staff in prison -- Fishkill,
19 Sullivan, and Clinton. Some of those cases
20 are almost four years old, and still today
21 there has not even yet been an official
22 public statement by the Governor, by DOCCS,
23 by the state about what happened.

24 I know I'm running out of time. I

1 would just close by saying, again, we need a
2 fundamental transformation. We need to pass
3 pass the HALT Solitary Confinement Act, we
4 need to pass the Domestic Violence Survivors
5 Justice Act, we need presumptive parole and
6 second-look consideration, we need to close
7 prisons like Attica and Clinton and Great
8 Meadow and jails like Rikers Island, where
9 brutality is rampant.

10 We need bail and speedy trial and
11 discovery, we need to restore education and
12 voting rights for people who are inside, we
13 need to cut the draconian sentences that
14 plague our state, we need reentry --

15 CHAIRWOMAN YOUNG: Sir, could you wrap
16 it up, please?

17 MR. PALTROWITZ: I'm sorry?

18 CHAIRWOMAN YOUNG: Could you wrap it
19 up, please.

20 MR. PALTROWITZ: Sure. And I just
21 will remind -- I am going to wrap up -- I
22 just will remind you that I also was
23 speaking, you know, for the next individual
24 who's not able to be here.

1 CHAIRWOMAN YOUNG: But it's 9:30 at
2 night, and you're over your time.

3 MR. PALTROWITZ: I appreciate that,
4 Senator Young, and I realize how long
5 everybody has been here, as well as the
6 people who are still going to testify.

7 So let me just close by saying we need
8 fundamental transformation that is holistic
9 in nature. And again I urge you to pause,
10 take a step back, and look at the system as a
11 whole and what we are doing to people,
12 families, and communities.

13 Thank you so much.

14 CHAIRWOMAN YOUNG: Thank you.

15 SENATOR KRUEGER: Thank you.

16 CHAIRWOMAN YOUNG: Our next speaker is
17 President Sebastian Duggart, New York
18 Families Civil Liberties Union.

19 MR. DOGGART: Good evening. Thank you
20 for inviting me.

21 My name is Sebastian Duggart. I'm the
22 president of the Families Civil Liberties
23 Union. We represent families across New York
24 through direct knowledge and experience.

1 I stand here to comment and strongly
2 oppose the application of the Unified Court
3 System and its officers Lawrence Marks and
4 and Janet DiFiore to expand the budget for
5 the New York Judiciary. And I call on the
6 New York Legislature to freeze all funding
7 until an independent body can assert that the
8 funding is not causing incalculable harm to
9 millions of New Yorkers and wasting billions
10 of dollars.

11 I begin with the same quotes that
12 start the independent report, which I hope
13 that you've all been provided by the office
14 of Catharine Young. The first quote is from
15 the Honorable David Sachs, New York Appellate
16 Division justice, who received his \$200,000
17 salary from this body until his retirement
18 last year. Justice Sachs said in a recent
19 interview: "Our state court system is
20 absolutely insane. It has enabled political
21 people to control the courts, and they don't
22 want to give it up. So it's very hard to get
23 legitimate change that would be beneficial to
24 the public."

1 The second quote is from Dr. Stephen
2 Baskerville, author of two seminal books on
3 the judicial system. He says: "The family
4 courts are operating a kidnapping and
5 extortion racket."

6 Now, the Unified Court System runs our
7 family courts, and its budget application is
8 disingenuous from page one. It claims to be
9 seeking a 2 percent increase, yet even
10 Governor Cuomo says it's 2.5 percent -- more
11 than any other governmental entity. And the
12 Senate's White Book says it's 3.4 percent,
13 while the Blue Book says it's 2.98 percent.
14 Well, which is true?

15 Now, this esteemed Legislature is
16 tasked with ensuring that there is oversight
17 on expenditure. But no such independent
18 oversight has taken place on the Judiciary.
19 Last year the Center for Public Integrity
20 gave the State of New York's judicial
21 accountability and ethics enforcement
22 agencies a failing grade of an F. New York
23 ranked 48 out of 50 states in terms of
24 judicial accountability.

1 As our report shows, which I hope
2 you've all seen, the Commission on Judicial
3 Conduct, which Mr. Tembeckjian represented
4 earlier today, is a sham. It should not be
5 funded. Every facially meritorious complaint
6 and report presented by private citizens is
7 just ignored. As an example, I have a
8 complaint I can show the assembly made
9 against Justice Matthew Cooper, which
10 received the standard dismissal letter from
11 Mr. Tembeckjian. Yet he is asking for a
12 budget increase up to \$5.7 million. A
13 half-million-dollar increase.

14 The CJC, the Commission on Judicial
15 Conduct, does not need money. It does not
16 need reform. It needs to be shut down.
17 Tembeckjian and his associates need to be
18 investigated and audited and a new oversight
19 body set up that is truly independent. This
20 Legislature should not fund the foxes to
21 guard the henhouse.

22 Now, the Unified Court System is
23 asking for a 5 percent increase in funding
24 for family courts, up to \$185 million. This

1 assembly is constitutionally barred from
2 rubber-stamping the judiciary's application
3 for funding. It needs to do a line-by-line
4 audit of the application.

5 You need to ensure oversight over, for
6 example, the Attorney for the Child program,
7 which is seeking a whopping \$124 million.
8 Much of that will go to the Children's Law
9 Center. You need to provide oversight over
10 organizations such as the Children's Law
11 Center whose fraud, waste, and abuse we are
12 formally alerting you to. The Children's Law
13 Center has received hundreds of millions of
14 dollars from this Legislature, and in this
15 budget the UCS wants millions more. It
16 receives its contract with no public tender.
17 The Children's Law Center founder, Carol
18 Sherman, sits as chief judge in Queens County
19 Court, where she sends thousands of child
20 clients to the very body that has enriched
21 her.

22 This Children's Law Center has not
23 been subjected to any independent scrutiny,
24 and its attorneys enjoy judicial immunity

1 from parents it has treated with bias. It is
2 now involved in custody tampering, denial of
3 due process, encouraging friendly parents to
4 illegally record Skype calls between targeted
5 parents and 3-year-old children. And CLC --
6 the Children's Law Center -- is entirely
7 funded by your judicial budget.

8 Now, I urge this body not to provide
9 any funding to the Children's Law Center and
10 and other bodies in this application until
11 oversight is brought in. The Family Civil
12 Liberties Union can provide such oversight.
13 And to protect the public -- since that's
14 what this is about, public protection -- we
15 need this oversight.

16 We also urge the Legislature to insist
17 on a budget line item for cameras in the
18 courtrooms and to open up court documents so
19 that judges are no longer allowed to operate
20 in the shadows. We need a tangible record of
21 where these precious budget dollars are
22 going. The reason for the FCLU's opposition
23 to the request for funding is that the
24 New York judiciary has indeed become the

1 kidnapping and extortion racket that
2 Dr. Baskerville describes.

3 Now, when considering an application
4 for funding, surely the primary question to
5 ask is cui bono, who benefits. And in this
6 case, and in the case of the New York
7 judiciary, the answer is the judiciary
8 itself. Judges and attorneys enjoy the
9 status of huge unchecked powers.

10 Most judges already receive salaries
11 and benefits far exceeding that of even the
12 New York governor, who receives approximately
13 \$179,000. But most judges are receiving more
14 than \$200,000. And now they're asking for a
15 5 percent pay hike. Why? Why?

16 Now, our survey, which Judge DiFiore
17 has seen but not responded to, exposes the
18 level of fraud, waste, and abuse being
19 perpetrated by judges in the Family Court
20 system. It shows who really benefits from
21 your funding, focusing on 35 judges who have
22 no place on New York City's benches but are
23 still each receiving more than \$200,000 a
24 year in salaries and benefits.

1 Take Esther Morgenstern, for example,
2 who swans into work at 11 a.m., way after the
3 9 a.m. that Governor Cuomo has now asked for.
4 She delights in trafficking children into
5 single-parent homes or into the foster care
6 system.

7 Take Judge Matthew Cooper, who, in
8 breach of the shield law, has harassed
9 journalists such as myself who seek to
10 investigate him responsibly. Meantime, he
11 courts publicity from others, like Barbara
12 Ross, the wife of Robert Tembeckjian, even to
13 the extent of sending press releases out on
14 custody cases which have not been
15 adjudicated.

16 Or Judge Judith Kaplan {ph}, salary
17 \$205,000, who receives cash from wealthy
18 attorney Raoul Felder and then rules in his
19 favor every time.

20 Or the extraordinary case of Elizabeth
21 Shollenberger, a morbidly obese jurist who
22 turned the New York judiciary into a
23 laughingstock and fleeced the taxpayer and
24 this legislature out of hundreds of thousands

1 of dollars. As reported by the New York
2 Post, Shollenberger's 400-pound weight
3 prevents her from being able to climb the
4 three steps to her courtroom bench. Unable
5 to control her eating, she took indefinite
6 medical leave while taxpayers, through the
7 legislative funding, continued to pay her
8 \$175,000 a year salary.

9 Now, after a complaint to the
10 Commission on Judicial Conduct by the FCLU
11 and other media coverage, Lawrence Marks --
12 who was here today -- ordered in May 2017
13 that no additional judicial matters shall be
14 assigned to Judge Shollenberger. However,
15 Shollenberger has continued to receive her
16 salary and remains entitled to pension and
17 other benefits. Why has Judge Marks not
18 demanded the return of these wasted funds?

19 And Shollenberger is not an exception.
20 Fat and bloated has become a trademark of the
21 New York judiciary, as also exemplified by
22 another leech of the public purse, Judge
23 Daniel McCullough. He failed to show up to
24 work for over three years because his morbid

1 obesity kept him in the hospital, all the
2 while collecting a \$190,000-a-year salary.
3 Although he was forced to retire in 2017, he
4 will not have to repay the salary he received
5 without working and will still retire with a
6 hefty pension.

7 So I ask, why is the New York
8 Legislature paying for this? On what basis
9 is the Unified Court System asking for a
10 \$16.3 million pay increase to these judges?

11 And there's another question beyond a
12 budgetary question, beyond who benefits: Who
13 loses? Who are the people who are suffering
14 as a result of your funding? Our report
15 shows how many families are being wrecked by
16 these funds, especially by judges hell-bent
17 on maximizing federal funds from the type
18 of --

19 CHAIRWOMAN YOUNG: Sir, your time is
20 up. Could you please end it.

21 MR. DOGGART: I will wrap up.

22 CHAIRWOMAN YOUNG: Thanks.

23 MR. DOGGART: Now, time's up on sexual
24 abuse by public officials, and time should be

1 up on legal abuse which many, many families
2 are suffering. I ask you --

3 CHAIRWOMAN YOUNG: Thank you.

4 MR. DOGGART: -- I ask this august
5 body, when was the last time you had an
6 oversight hearing on the judiciary?
7 Seriously, when?

8 CHAIRWOMAN YOUNG: Thank you.

9 MR. DOGGART: When did you last have a
10 hearing on Family Court, on the impact of
11 Title --

12 CHAIRWOMAN YOUNG: Sir, we have other
13 people waiting to testify, so please.

14 MR. DOGGART: So I urge this body to
15 deny the Unified Court System's application
16 for renewed funding and to insist on
17 independent oversight, cameras in the courts,
18 a restoration of due process, and on the
19 rules of evidence.

20 CHAIRWOMAN YOUNG: Thank you.

21 MR. DOGGART: Any questions?

22 CHAIRWOMAN YOUNG: No. Thank you.

23 Next we have Call to Action Metro
24 New York, Connie Altamirano and Nancy

1 Lorence.

2 Thank you for waiting.

3 MS. LORENCE: Hi, and good evening.

4 CHAIRWOMAN YOUNG: I know it's been a
5 long day.

6 MS. LORENCE: Yes, thank you for
7 waiting to hear us. And thank you for giving
8 us the opportunity to speak about the Child
9 Victims Act, which is included in the
10 Governor's budget.

11 My name is Nancy Lorence, and I am
12 speaking today as a Catholic, a teacher, and
13 a grandmother of young children. I'm also a
14 board member, speaking as a board member of
15 Call To Action Metro New York, and I'm
16 speaking on their behalf.

17 Call to Action Metro New York is an
18 affiliate of a national social justice
19 organization. We are part of the Catholic
20 Coalition of Conscience, and we've come to
21 Albany many times to lobby for the passage of
22 the Child Victims Act with the
23 Catholic Coalition of Conscience.

24 In doing this work, we've recognized

1 many more than one victim, that pedophiles go
2 from one child to another as their victims
3 age out of the preferred age category of the
4 abuser.

5 It is such a prevalent public safety
6 issue for children and adolescents -- one in
7 four girls and one in six boys will be
8 sexually abused by age 18 -- that it makes me
9 concerned for my grandchildren.

10 We've seen from the #MeToo movement
11 and the recent Dr. Larry Nassar case, from
12 Penn State and from the Catholic Church, from
13 prep schools here in the State of New York,
14 that once a victim has the courage to come
15 forward, others will follow. Victims free
16 themselves from their guilt and shame by
17 finally handing it back to their abuser when
18 they go public. By doing so, they also alert
19 the public to keep children away from that
20 abuser.

21 Time is up. We have been working on
22 this bill for 14 years now. The Child
23 Victims Act would help bring predators in
24 New York out of hiding, predators that hide

1 behind the unrealistic and outdated statute
2 of limitations. In California, a similar
3 bill that lifted the statute of limitations
4 with a look-back window identified over 300
5 previously unidentified abusers. The
6 Governor's program bill will take us in the
7 right direction to do the same here in
8 New York.

9 The Catholic Church's Independent
10 Reconciliation and Compensation program is a
11 step in the right direction, but has serious
12 limitations in that it covers only those
13 victims abused by diocesan priests, not by
14 other church or school personnel, nor priests
15 or brothers from religious orders such as
16 Dominicans, Franciscans, or Jesuits.
17 Interestingly, though, this program did
18 provide an opportunity for justice for old
19 cases for which the legal statutes of
20 limitations had expired.

21 The Child Victims Act must do the same
22 for the general public. Lifting the statutes
23 of limitation for a specified amount of time
24 of one to three years in five other states

1 has brought to light hundreds of previously
2 hidden predators and prevented further abuse.

3 As Catholics we ask the Catholic
4 Conference of Bishops, and also the Boy
5 Scouts and Agudeth Israel, to stand aside, to
6 stop lobbying against this bill. It is a
7 bill that offers better protection for our
8 children and grandchildren. Our children's
9 future is at stake. It is their future that
10 the hidden predators prey on and ruin. It is
11 our responsibility as a society to protect
12 the most vulnerable, and we would like New
13 York to stand up to protect New York's
14 children.

15 Governor Cuomo, we thank you for the
16 program bill that stands on the right side of
17 justice and for the protection of New York's
18 children. We ask every New York senator,
19 Democrat and Republican, to join the movement
20 to expose predators and prevent them from
21 continuing to secretly abuse children by
22 hiding behind New York State's outdated
23 statutes of limitations. We ask that you do
24 this now. We have waited long enough.

1 And as part of the testimony I
2 introduce you to Connie Altamirano, a victim
3 and a survivor who found her voice by working
4 with us on this issue.

5 MS. ALTAMIRANO: Good evening, and I'm
6 sorry if I take a little bit of time, but I
7 just had some triggers.

8 My name is Connie Altamirano. I was
9 born in Brooklyn, New York, where I was
10 sexually abused and raped as a toddler by my
11 stepfather -- my step-grandfather,
12 step-grandfather, I'm sorry. I live in
13 Ridgewood, New York, where the sexual abuse
14 stopped in second grade. But the mental
15 abuse and verbal abuse did not stop until my
16 20s.

17 The man who abused me is Vicente
18 Sanchez, who was an alcoholic and a wife
19 beater. When he would finish assaulting me,
20 he would threaten to kill me and kill my
21 mother. He had a record of domestic violence
22 in Precinct 104 in Queens, the same precinct
23 that my mother called for help.

24 How my mother found out is something

1 horrific had happened that day. And he gave
2 me a dollar and put it in my hand and said
3 that I'd earned it. When my grandmother came
4 home, she said, "What are you doing staring
5 into space, and did you steal that dollar
6 from me?" So she took a belt and she beat
7 me, and I blurted out what her husband did to
8 me and that he said that I earned it. Then
9 when my mother picked me up after work, she
10 said: "Take your kid. She's a
11 troublemaker."

12 To me, it hurts that I hear how people
13 are asking for better care or safety for
14 prison people, but why is it so hard to treat
15 this safety matter as a whole? All safety
16 matters.

17 I have a 12-year-old daughter. It's
18 not only survivors that suffer, it's
19 co-survivors. My daughter is 12, my son is
20 8, and do you know how hard it is for them to
21 live with someone who's scared? I suffer
22 from PTSD, flashbacks, migraines -- a
23 gentleman who testified here, I thought he
24 was talking about me, everything that he was

1 saying.

2 When my mother called the cops, they
3 didn't do anything. They interviewed my
4 mother, interviewed me and relatives --
5 nothing happened. After a couple of days, a
6 social worker came and looked at me up and
7 down 15 minutes and left. My case fell
8 through the cracks. And this is why, Senator
9 Young and everyone else, I thank you because
10 this has been the day that I've been waiting
11 for my whole life to tell you that this
12 cannot happen to kids. And the reason why
13 I'm dressed in black is because -- I'm
14 dressed in black, I'm mourning the little
15 girl that could have been.

16 My 12-year-old daughter one day won't
17 be small, and she wants to be something big
18 bill to change laws, and my 8-year-old wants
19 to be a senator. (Weeping.) The three of us
20 go to therapy because of what happened to me.

21 I'm trying to summarize it so I won't
22 take too much time.

23 I've lived in the rapist prison half
24 my life, and now as an adult survivor I live

1 in prison by the effects that I suffer from
2 sexual child abuse. I was fine since I've
3 been here since 9 o'clock. And I don't even
4 know what time it is. And it's really hard.

5 I ask everyone in this room tonight:
6 What is the one worst thing that's ever
7 happened to you, and how much time do you
8 give it thought in your day? How does it
9 play out in your day-to-day living?

10 I thank you, Senator Young, for giving
11 me this opportunity to speak, because this is
12 validating my life here today. Allowing me
13 to speak indicates that my life does matter,
14 and my voice counts too.

15 As a citizen, an American citizen, I
16 love New York. And that's the only problem
17 that I have in New York, is that the statute
18 of limitations -- I need a one-year window
19 for justice and a day in court.

20 The importance of this bill passing is
21 to give me the opportunity for justice. For
22 me, for my children, for the girl inside who
23 still cries inside. But it's also to protect
24 the children of the State of New York and

1 many victims of child sexual abuse -- and
2 have committed suicide, that we can't hear
3 their voices no longer. We must not forget
4 them. They are my brother and sister
5 survivors.

6 I am among the 93 percent of victims
7 of children of sexual abuse where the
8 predator was within the family or a friend of
9 the family. My case fell through the cracks,
10 and I am here so it doesn't happen to another
11 little girl or little boy.

12 I ask New York State to please pass
13 the Child Victims Act this year, not next
14 year. The first year that the Child Victims
15 Act didn't pass, when I just started, I took
16 it really bad and I almost committed suicide.
17 No one knows that. This is something I'm
18 saying now. (Weeping.)

19 I'm sorry, I just need to -- I thank
20 you from the bottom of my heart, and I pray
21 that everyone remembers me and my face when
22 you see your kids, your grandchildren.
23 Because we want all kids safe in New York
24 State. We're supposed to be the leading

1 state -- you know, I'm the woman that if I
2 see an injustice, I call 911. I'm the woman
3 if I see a kid, even if I don't have money
4 because I'm poor, I see the kid doesn't have
5 a jacket and he's not even my kid, I'll get
6 that kid a jacket. I am the one that does
7 anything when it comes to the safety of
8 children.

9 And I thank you, and I'm sorry I can't
10 say -- my eyes are full of tears, I can't
11 pronounce everybody's name.

12 CHAIRWOMAN YOUNG: That's okay.

13 MS. ALTAMIRANO: But I thank everyone
14 for listening to me. And I pray that God
15 blesses you and takes care of your children
16 and your grandchildren.

17 CHAIRWOMAN YOUNG: Thank you. Thank
18 you for sharing.

19 MS. ALTAMIRANO: Thank you.

20 CHAIRWOMAN YOUNG: Thank you for being
21 here and waiting so long.

22 MS. ALTAMIRANO: Thank you.

23 (Applause.)

24 CHAIRWOMAN YOUNG: Our next speakers

1 are Upstate Call to Action, Bridie Farrell,
2 and Foundation for Survivors of Abuse, Mary
3 Ellen O'Loughlin, board member.

4 I apologize about the lateness. I
5 think this is a record for the length of a
6 Public Protection hearing, so thank you for
7 bearing with us.

8 Welcome.

9 MR. POWERS: Thank you very much,
10 Senator Young. My name is Steve Powers, and
11 I'm impersonating Robert Corliss, who wrote a
12 statement which you should have in your
13 hands.

14 CHAIRWOMAN YOUNG: Yes, we do. Thank
15 you.

16 MR. POWERS: He's our legislative
17 chair for the Upstate Call to Action. I've
18 been the leader of Upstate Call to Action for
19 a number of years. We represent Catholics in
20 the upstate dioceses of Albany, Syracuse,
21 Rochester, and Buffalo.

22 And it just behooves me to say that
23 our membership -- I'm representing our
24 membership across upstate New York who feel

1 so very strongly as Catholics that this
2 legislation, which would apply every place in
3 the state and to all religious and private
4 schools -- I think you're well aware of
5 that -- we have very obvious motivations for
6 getting started and wanting this kind of
7 legislation.

8 But our eyes have been opened up in
9 all walks of life and all different settings,
10 and I'm simply here to add our upstate
11 support in working together with our sister
12 chapter in New York City, which you just
13 heard from.

14 I would like to now turn the mic time
15 over to Bridie.

16 MS. FARRELL: Hi. Thank you, Senator
17 Young and Senator Weinstein {sic}, for being
18 here and staying so late as well.

19 My name is Bridie Farrell. I
20 currently reside in Brooklyn, New York. I am
21 one of the one-in-four. I grew up in
22 Saratoga Springs to Republican parents in a
23 Catholic household. My parents have two sons
24 and four girls, so I actually am the

1 one-in-four in our Catholic Irish family.

2 My story of child sexual abuse runs
3 parallel to the front pages we're seeing in
4 magazines and newspapers and websites around
5 the world with USA Gymnastics. While
6 training for the 1998 short-track speed
7 skating Olympic trials, I was repeatedly
8 molested by my teammate, training partner and
9 mentor, who was 33. I was 15. I have
10 attached a police report that was disregarded
11 by Northern Michigan University, the
12 Marquette, Michigan, police department, and
13 the United States Olympic Committee.

14 Though my abuser had raped someone
15 prior to me seven years before I was
16 molested, it could have all been prevented.
17 Numerous adults and named institutions in a
18 position to protect children is the reason
19 why I was molested. I was sexually abused in
20 Saratoga Springs in the rented house where he
21 lived. I was molested on a blanket he laid
22 out in Saratoga Springs National Battlefield.
23 I was molested at Saratoga Springs Spa State
24 Park. I was molested in ice rinks, I was

1 molested in restaurant parking lots, I was
2 sexually abused on the grounds of the
3 United States Olympic Training Center in Lake
4 Placid, New York. I was sexually abused in
5 my high school parking lot. I was sexually
6 abused in the back hall of my parents' house.
7 I was molested in my driveway after early ice
8 training before the sun had even come up.

9 The man who molested me perfected the
10 deceitful art of grooming. He established
11 trust with my family, he sought my father as
12 his doctor, he sought piano lessons from my
13 mother, he used his college degree to further
14 con my parents into his positive role in my
15 very impressionable life.

16 The man who molested me granted me
17 permission to attend my 10th grade homecoming
18 dance, with the agreement that I skip every
19 after-party and phone him while home.
20 Neither family nor friends were aware --
21 neither family nor friends were surprised
22 that I went straight home, but no one was
23 aware of the leash that I was on that got
24 shorter and shorter. At 15, I was the

1 disposable meat of a known 33-year-old child
2 sexual predator.

3 When he was done, he had torn apart
4 all he wanted. He left my picked-over
5 adolescent carcass to just decay and rot. My
6 body hurt, it hurt so badly -- I screamed,
7 sometimes out loud and sometimes in writing.
8 Sometimes into a bottle and frequently into
9 overtraining.

10 When I was 20 years old, about 20, I
11 asked a friend that should I die
12 unexpectedly, to rush to my parents' home and
13 recover my journals. Even in a hypothetical
14 death, I was too ashamed to let my parents
15 know I was sexually abused under their
16 purview.

17 While the man who abused me retired
18 from competition, he did not leave speed
19 skating. He quickly became management of our
20 national governing body as president of USA
21 Speed Skating. In 2000, we were at the World
22 Team Championships in Sheffield, England, and
23 he was at the competition representing the
24 United States Federation. He cornered me at

1 the banquet and -- a rhetorical threat,
2 asking if I had told anyone.

3 The first time I remember audibly
4 screaming that I want to die was in 2006. I
5 was done skating, I was trying to move on
6 from the nightmare. However, the pain inside
7 me only grew. Over my flip phone, I screamed
8 to my mom "I want to die." I was in pain.

9 After graduating from Cornell
10 University, I moved to Harlem, New York.
11 Countless mornings I wanted to jump in front
12 of an oncoming Metro-North train. Ten years
13 after child sexual abuse ended, I actively
14 wanted to end the pain. After only a year of
15 living in a Harlem apartment, I had to move
16 because the huge windows taunted me to jump.
17 It wasn't the lure of jumping, but it was the
18 knowledge of falling only three stories down
19 to a sidewalk would not end my pain.

20 In 2012, I thought I was at the
21 bottom. It certainly was the bottom for that
22 time. As my Mom sat next to me and I sobbed
23 in a chair, she asked to please tell her what
24 she could do. I asked my mother to kill me.

1 In 2013, I returned to speed skating
2 after a seven-year hiatus. I met a young
3 girl named Claire, a fearless girl. I was
4 moved to share my story. I knew the
5 insulting New York laws only opened me up to
6 legal repercussions. I had been through so
7 much pain. I was still living in decaying
8 pain. I decided I would sacrifice anything
9 and everything for Claire and all the future
10 Claires. I went public as a survivor of
11 child sexual abuse by a known, respected,
12 honored Andy Gabel.

13 My depression reemerged with the most
14 suffocating darkness in 2015. For my safety,
15 all medicine and anything I could use to
16 overdose was confiscated from my possession.
17 In September of 2016, again for my own
18 safety, I was not permitted to spend a night
19 alone in my own Brooklyn apartment.
20 Collectively, friends arranged who would
21 spend the night in my apartment, ensuring
22 that I would awake in the morning. I was
23 34 years old.

24 Two weeks ago I shook in fear as I

1 scheduled a gynecological exam. January 2018
2 marks 20 years. It has been 20 years since I
3 was abused as a child, and I am still haunted
4 by child sexual abuse.

5 Many people think that we're brave as
6 we speak as survivors, and the question to
7 you all is, Why do you think we're brave?
8 Because it's hard to tell these stories,
9 these stories that are 20 years old? Then
10 how in God's name do you expect a child to
11 come forward and tell these exact same
12 stories?

13 This hearing is not the symptom of a
14 Child Victim's Act bill, but this hearing is
15 caused by the New York State legislators'
16 inaction to pass meaningful protection for
17 children surrounding child sexual abuse. Do
18 not continue to delay. The average age a
19 child speaks of sexual abuse is into their
20 forties. For over a decade, opponents of
21 child sexual abuse have squawked {ph} from
22 overflowing the courts, and that was rebooted
23 this morning in testimony as well.

24 I'm trying to get through this really

1 quickly.

2 Research shows that pedophiles report
3 up to seven times before adults take them
4 seriously. So that means that kids are
5 reporting on the same person seven times
6 before adults listen to those kids. That's
7 what we saw in Larry Nassar, that's what we
8 saw with my guy.

9 So not only is the window going to
10 help people like us who our statutes have
11 expired, but it's also going to help allow
12 adults to recognize the problem, which is
13 just as bad. And we ask that you remove the
14 unjust muzzle that safeguards pedophiles at
15 the price of children.

16 Abuse of power enabled decades of
17 horror in pews, in pools, in vestibules,
18 lean-tos, gyms, stages, campfires, troops,
19 living rooms, orchestras, choirs, bands,
20 studios, rings, and ice rinks. Misuse of
21 power, inaction, will perpetuate child sex
22 crimes. Do not misuse your elected power,
23 please, and pass the Child Victims Act.

24 Thank you.

1 MS. O'LOUGHLIN: That summarizes my
2 first paragraph.

3 My name is Mary Ellen O'Loughlin. To
4 summarize, the most important part in here I
5 think is that I am a survivor of child sexual
6 abuse. I'm also serving on the board as a
7 director with the Foundation for Survivors of
8 Abuse. The organization is a national one
9 founded by Desirae and Deondra Brown. We are
10 committed to reform of statute of limitations
11 laws across the country.

12 Some quick points about Desirae and
13 Deondra. They are three of five siblings.
14 You may know them, the Five Browns, they play
15 classical piano. The three girls in their
16 twenties eventually figured out through a
17 series of conversations that all three had
18 been abused in different states.

19 So when all three decided -- by the
20 way, they were abused by their father. So
21 when they decided together and collectively
22 with their two brothers to go and prosecute
23 their father, because they feared that he
24 would harm additional children that he was

1 working with, they each got a different
2 answer in their ability to prosecute.

3 Desirae was abused in New York. She
4 was told she couldn't prosecute. Melody, in
5 Texas, she could, but the punishment would
6 not be as stringent as it would be in Utah.
7 So Deondra is the one who eventually
8 prosecuted, and their father is serving
9 10 years to life. He will most likely only
10 serve 10 years.

11 As for me, I was abused by my
12 stepfather, as were my siblings. I can tell
13 you, without going into detail, I remember
14 every detail. I'm 50. I was abused between
15 the ages of 12 and 14.

16 The statute of limitations for crimes
17 of sexual abuse vary widely from state to
18 state. The Foundation for Survivors of Abuse
19 is partnering with other national
20 organizations to work with Senator Kirsten
21 Gillibrand's office to introduce and further
22 federal legislation that will hopefully
23 change this.

24 New York is sadly in one of the worst

1 positions across the country and ranks in the
2 very bottom three for all states as it
3 relates to statute of limitations for child
4 sexual abuse.

5 I'd like to use my remaining time to
6 just talk about one additional thing, and
7 that's why don't victims report sooner.
8 There's a large body of research dedicated to
9 this question, because many survivors of
10 sexual abuse either do not disclose their
11 experiences or wait a very long time to do
12 so. We heard some of those reasons over the
13 course of the last 20 minutes or so.

14 Disclosure is a process. A victim has
15 to tell, disclose, and report.

16 Telling is when I told my cousin when
17 I was 14, 15 years old. She wasn't somebody
18 who could help me in any way, but it was
19 somebody that I told.

20 Disclosing is talking to somebody
21 who's in a position to be able to help. That
22 was my mother. I disclosed to her, and she
23 didn't think I was telling the truth, and
24 then she thought that I was leading him on.

1 Reporting is to a doctor or a law
2 enforcement officer. That is the crucial
3 step leading to investigation and
4 prosecution. Imagine the strength it takes
5 to withstand and have the wherewithal to be
6 able to go through that process.

7 Skipping, skipping, skipping -- so
8 just about me. In fact, I was not believed.
9 I lost relationships. I believed the
10 criminal justice process to be too invasive
11 and too intense, so I didn't pursue that.

12 Desi, Deondra, and Melody's father was
13 their professional manager, so well into
14 their twenties and early thirties they were
15 dependent upon this man for their livelihood.
16 At the same time, their two brothers were
17 also dependent on that same thing. They had
18 a very sincere, deep sense of responsibility,
19 as do many victims. Desi, in fact, didn't
20 even know that what happened to her was a
21 crime. That's also common.

22 In New York, an abuser only needs to
23 keep his or her victims quiet until he or she
24 is 23 -- not at all that difficult to do,

1 since most victims don't disclose until well
2 into adulthood, as we know from research and
3 testimony today. Because of this, New York
4 has become a safe haven for abusers. It is
5 because of this that a civil window for
6 reporting is crucial. Without it,
7 generations of abusers will remain
8 unidentified.

9 Largely due to the work done by
10 Foundation of Survivors of Abuse, Utah -- one
11 of the most conservative states and
12 faith-based states in the union -- has now
13 reformed their laws. They have eliminated
14 both the criminal and the civil statute of
15 limitations and opened a three-year window.

16 Will I prosecute all these years
17 later? Yes, I will. And not because he has
18 any money, but because people need to know
19 and they need to believe me and my siblings
20 that this happened.

21 Today there is broad support for
22 change. We call on Senate Republicans to
23 stop stonewalling. It's been happening, we
24 know that, we've had those conversations.

1 And we plead with you to stand with us, stand
2 with me, give me access to justice, allow
3 survivors the opportunity to stop abusers,
4 because we can. That's something that we can
5 do now.

6 I urge you to vote to reform
7 New York's statute of limitation laws for
8 child sexual abuse. Thank you.

9 CHAIRWOMAN YOUNG: Thank you. And I
10 want to thank all of you for being here
11 today.

12 CHAIRWOMAN WEINSTEIN: Thank you.

13 CHAIRWOMAN YOUNG: Thank you very
14 much.

15 Our next speaker is Gary Greenberg
16 from Protect New York Kids.

17 MR. GREENBERG: Good evening, Madam
18 Chairwomen Young and Weinstein, and
19 congratulations on your new position. I know
20 this is your first year, so congratulations.
21 And thank you for the other legislators for
22 staying here this late to hear us.

23 My name is Gary Greenberg, and I'm a
24 survivor of a different kind of child abuse.

1 I'm one of the ones -- 1 percent -- I was
2 abused visiting my father in Cohoes,
3 New York, where he was a patient in 1967.
4 And my life changed in the blink that you can
5 blink your eyes or snap your fingers.

6 I walked in there a healthy 7-year-old
7 boy, and I walked out a different boy because
8 I was molested by an evil man who went on to
9 abuse over 300 kids in a four-decade period,
10 was never stopped -- despite my parents in
11 1967 going over to the Cohoes police, and
12 other parents going over -- because people
13 did not want to deal with the subject.

14 And 50 years later, 50 years later, a
15 child has as much chance of being abused in
16 this state as I had 50 years ago. And that
17 is despicable.

18 This state is the worst state for
19 child abuse reform. The worst. And that is
20 not right. There's 43,000 kids a year being
21 abused in this state, 150 a day. And I don't
22 understand where legislators -- Senators,
23 particularly -- have a right to say that we
24 forget. That's an insult to me. I don't

1 forget.

2 Thirty years later, in 1996, I saw a
3 picture of my abuser on a local TV station.
4 He had been arrested, admitted to abusing
5 over 300 kids. I recognized him instantly.
6 I saw him for 20 minutes of my life, but I
7 recognized him and I called the Troy Police,
8 and they confirmed it. They confirmed he was
9 my abuser.

10 And do you know, 150 other victims,
11 when I went public, came forward and called
12 Steve Weber. You should have Steve Weber
13 come down here and testify, he'll tell you.
14 One hundred and fifty kids who are adults,
15 and there's not one thing these kids could do
16 as adults. One hundred and fifty. Can you
17 imagine that this person got away with
18 abusing four decades -- you talk about Larry
19 Nassar, we have that going on right here in
20 this state of New York. There's a case.

21 And do you know, last year, in
22 December of 2016, the New York State
23 Department of Corrections and Community
24 Supervision gave this individual, Louis

1 VanWie, an early -- a conditional early
2 release. They were going to let him out of
3 prison. Can you imagine that? He was going
4 go live in Cohoes, New York, with his sister.

5 And we fought it. Kayla Wittman, who
6 was a victim who came forward in 1996 at six
7 years old, who was abused 30 years after me
8 by the same individual -- do you know that
9 the state was going to let this individual
10 out, until we stopped them. Thank God for a
11 reporter named Ken Lovett. Kayla Wittman and
12 myself and other survivors, we stopped this.
13 We stopped this individual from getting out.

14 Do you know in this past August the
15 New York State Parole Board denied this
16 individual parole, Lewis VanWie, because they
17 had to have a parole hearing because he was
18 still in prison, because his sister wouldn't
19 allow him to come over to her house in Cohoes
20 after all the publicity. The New York State
21 Parole Board said of this individual: He is
22 a threat to the community, and there's a high
23 likelihood that he will abuse again.

24 He is 75 years old, and he should stay

1 in jail. And I don't care if he has cancer,
2 I don't care if he dies there, because I hope
3 he does and goes to hell, because that's
4 where he belongs. So that's how I feel about
5 prisoners getting out.

6 There's no -- there should be no
7 conditional release in this state, and that's
8 something the legislators should look at.
9 The Parole Board says, We're not going to let
10 him out, he's a threat. But now he's out, he
11 can get out on a conditional release. If he
12 finds housing tomorrow, he can be let out.
13 It's disgusting.

14 Also I wanted to say about the Larry
15 Nassar case, where it goes back to people
16 forget -- they don't forget. The judge in
17 that case -- you go back and read what she
18 said. She said, I'm going to open up my
19 court to victims in this state. You -- this
20 state won't allow -- I couldn't go into
21 court, because I wasn't part of the case.
22 But this judge, she's a hero, because she had
23 the guts to say for the last 30, 40 years
24 this man has abused kids, we're going to let

1 every victim into my court.

2 And do you know, every victim went in
3 there and gave vivid, detailed -- of what
4 Larry Nassar did to them, knocked on their
5 door at 11 o'clock, came in and gave them
6 exams, stuck his finger up their vagina,
7 stuck it up their anus.

8 I was hung over an elevator, head
9 down, by my feet. That's what abuse victims
10 go through. So don't tell me we forget. I
11 read Senator Bonacic yesterday, and he's the
12 chairman of the Judicial Committee, and
13 Senator John DeFrancisco, who has no respect
14 for victims, going to run for governor --
15 good luck. We'll be there for John
16 DeFrancisco. He's not going to become
17 governor of this state.

18 These individual senators are wrong.
19 We do not forget. And you know why? Another
20 reasoning I've heard from senators, the
21 courts will be all tied up. The courts
22 aren't tied up in California and Wisconsin,
23 Minnesota. You know why? Because we die
24 early. Because we have mental health

1 problems, we have alcohol problems. You have
2 an opiate problem here. I heard the DA of
3 Albany County say, I bet you 60 to 70 percent
4 of those people who take heroin have been
5 abused as kids.

6 Because if you're abused as a child,
7 you have a 100 percent chance better of being
8 a alcoholic. You have a 100 percent chance
9 better of being addicted to drugs, mental
10 illness.

11 Your courts won't be tied up. That's
12 just a bunch of hogwash. It's not right.
13 It's not right that the Republicans in this
14 state, the State Senate, are -- and I'm
15 looking at you, Chairwoman Young, because I
16 heard you say that the whole Senate is
17 against this. It isn't against this law.

18 I support the Governor in his No SOL,
19 because we need this state to become the
20 state -- a progressive state becomes the
21 number-one state in this nation to fight for
22 victims of child abuse. That's what we need.
23 We need a 50-year -- as the Governor said --
24 from the date of the person who's abused

1 incivilly, and the victims of this state, the
2 millions that I come here and represent who
3 have no voice, who are dead, who are
4 homeless -- I know victims of Lewis VanWie
5 who committed suicide, who took shotguns to
6 their head and blew their brains out, who
7 jumped over bridges because they were so
8 desperate and lonely and full of pain and
9 blamed themselves.

10 And myself, 15 years of therapy to
11 overcome low self-esteem. For the first 40
12 years of my life, I lived in a prison because
13 of what happened to me. Don't look at me as
14 a successful person, as someone who maybe can
15 do more than other victims. Think of those
16 who can't. Think of those in the inner city
17 who don't have the ability to come forward
18 and speak out. That's what this law is
19 about. That's what a look-back is about,
20 giving victims justice in a court -- their
21 day -- taking predators off the streets and
22 making our streets safer.

23 Thank you.

24 CHAIRWOMAN YOUNG: Thank you.

1 CHAIRWOMAN WEINSTEIN: Thank you.

2 MR. GREENBERG: Oh, can I say one
3 other thing?

4 CHAIRWOMAN YOUNG: Sure.

5 MR. GREENBERG: Besides -- since
6 Mr. Weprin is up there.

7 And I appreciate you, Senator; I know
8 Dale Driscoll's a friend of yours, and your
9 support of the Brittany's Law.

10 The reason that we need Brittany's Law
11 is because many victims of domestic violence,
12 I think 80 percent of them, were also abused
13 as children.

14 And we need a list of people that have
15 committed violent crimes against women, so a
16 woman can go on a list and look up and see if
17 that man that she is going to get involved
18 with has been ever convicted of a crime
19 against a woman.

20 And I would encourage you,
21 Assemblyman, to seriously bring that out for
22 a vote, and Assemblyman Nolan to bring out
23 Erin's Law for a vote, because Erin's Law --
24 we just don't need the Child Victim's Act, we

1 need education to prevent abuse. We need to
2 lower the numbers of children being abused in
3 this state, and those are the methods that I
4 believe will do it.

5 Thank you.

6 CHAIRWOMAN YOUNG: Thank you. Our
7 final speaker is Elena Sassower from the
8 Center for Judicial Accountability.

9 So we have 10 minutes on the clock, if
10 you could start, please.

11 MS. SASSOWER: My name is Elena
12 Sassower. I'm director and cofounder of a
13 nonpartisan, nonprofit citizens' organization
14 called Center for Judicial Accountability,
15 documenting corruption in the judiciary.
16 Because we're based in New York, we largely
17 document the corruption in the New York State
18 judiciary.

19 This is a Public Protection hearing.
20 And last year when I testified, I identified
21 that our foremost public protection is the
22 New York State Constitution, and that the
23 budget is off the constitutional rails.

24 You, the Legislature, are a defendant

1 in a lawsuit, a citizen taxpayer action, as
2 you know, suing you for your grand larceny of
3 the public fisc with respect to the judiciary
4 budget, the legislative budget, the executive
5 budget. It violates a succession of
6 constitutional provisions, statutory
7 provisions, legislative rules -- and you
8 don't care. You simply repeat from one year
9 to the next. You disregard our protections
10 that are the law.

11 Now, we are here now, 13 hours later,
12 in part because the budget is off the
13 constitutional rails. Most of this hearing
14 had nothing to do with what most people would
15 think a budget is about, which is numbers.
16 Math. Calculations. Most of this hearing
17 was devoted to policy. And the policy that
18 has been inserted and really has taken over
19 the budget doesn't belong, and it is
20 unconstitutional.

21 But you persist in allowing it to be
22 part of the budget, actually to crowd out the
23 numbers, because you want a budget that is a
24 slush fund. You want to steal taxpayer

1 money.

2 You have a budget deficit of
3 \$4.4 billion. As a condition for my
4 appearing today, I was required to provide
5 you in advance with a written statement which
6 identified that -- this is what I said, that
7 your first witness at this Public Protection
8 hearing would be Chief Administrative Judge
9 Marks, and that you needed to interrogate him
10 mercilessly because the Judiciary Budget was
11 unacceptable and was filled with all sorts of
12 deceit, was false and misleading, beginning
13 with how much money was being requested.

14 He testified this morning; he didn't
15 give you a cumulative figure. And your own
16 analyses, your color books, cannot agree, do
17 not agree, wildly diverge as to how much the
18 Judiciary is requesting. So according to the
19 Senate Majority White Book, it's
20 \$3.1 billion; the Senate Minority Blue Book
21 is \$3.04 billion; and the Yellow Book of the
22 Assembly Majority is \$3.06 billion. I guess
23 you can't figure out the Judiciary Budget.

24 And I furnished you with 46 questions,

1 and I sent it to each of the leaders of this
2 fiscal committee -- Senator Krueger,
3 Assemblywoman Weinstein, Assemblyman Oaks,
4 Senator Young. I sent it to every member of
5 the Judiciary Committee. And not a single
6 legislator saw fit to ask, Well, bottom line,
7 what is the cumulative dollar figure of the
8 Judiciary Budget? You don't know. And you
9 didn't care to find out.

10 And you also can't agree on the
11 percentage increase. According to the
12 Majority of the Senate, the White Book, it's
13 3.4 percent. According to the Blue Book of
14 the Senate Minority, it's 2.98 percent.
15 According to the Yellow Book of the Assembly
16 Majority, it's 2.96 percent. And of course
17 the Judiciary purports it's 2 percent.
18 Right?

19 But when the Governor orally presented
20 the budget, the Executive Budget, he
21 represented that it was 2.5 percent. He said
22 that that was the Judiciary's request. That
23 was false. But the Governor hasn't furnished
24 any commentary on the Judiciary Budget, which

1 he had always done. Governors had routinely
2 done that, because that is one of the aspects
3 that is identified in the constitution, to
4 make recommendations. And last year was the
5 first year he didn't make commentary. He
6 didn't make commentary this year; instead, he
7 made a misrepresentation.

8 And in the White Book of the Senate
9 Majority, it purports to reconcile how can it
10 be that the Governor says it's 2 percent but
11 the Executive {sic} says it's 2.5. And the
12 White Book purports that, well, it's because
13 \$11 million has been transferred from one
14 fund to another fund. Which obviously, in a
15 budget of \$3 billion, an \$11 million transfer
16 would not result in a 0.5 percent increase.

17 The bottom line is you don't know what
18 the worth of the budget is in any respect,
19 nor do you concern yourself with other
20 deceits of the budget -- with respect to the
21 judicial salary increases, that it was the
22 duty of the Judiciary to identify to you in
23 the executive summary. And to identify that
24 you have the duty, you have the prerogative

1 and the duty to override and prevent those
2 increases from taking effect.

3 Instead, what the Judiciary did,
4 without even identifying what the dollar
5 amount of the pay increases would be, was to
6 represent in its narrative that they were
7 mandated by what it calls the Commission on
8 Judicial and Legislative Salaries.

9 They're not mandated. What the
10 statute requires, the statute that created
11 the Commission on Legislative, Judicial and
12 Executive Compensation requires, is that you
13 examine whether or not you should abrogate,
14 modify them. It gives you that power. And
15 the Judiciary concealed that you have that
16 power. And your color books also don't
17 identify -- either they don't identify or
18 they make it appear, well, it's just part of
19 the budget.

20 The center's website is
21 www.judgewatch.org. And from the prominent
22 center link, entitled "Outing Corrupt and
23 Collusive Incumbents and Ending their Road to
24 Reelection and Higher Office with Evidence,"

1 is posted the 2018 legislative session. And
2 clicking on that, the public can see what a
3 charade this hearing was. That you
4 allowed -- you didn't -- the public can see
5 the kinds of questions that you did not see
6 fit to ask of the Judiciary.

7 There is no excellence in the
8 Judiciary. The Judiciary is as dishonest in
9 its budget as it is in its decisions. The
10 Judiciary is throwing cases that includes the
11 lawsuit against you, suing you for your
12 corruption with respect to the budget.

13 I leave with you -- my time is up -- I
14 leave with you the evidence, the judicial
15 misconduct complaint filed with the
16 Commission on Judicial Conduct against the
17 judge, and the complaint filed against
18 Attorney General Schneiderman, who is your
19 codefendant and has represented you with
20 litigation fraud, because you had no defense
21 to any of the causes of action.

22 Cases are perfect paper trails.

23 SENATOR KRUEGER: Thank you very much
24 for your testimony tonight.

1 MS. SASSOWER: The last thing I will
2 say is that DA Soares has been sitting on a
3 corruption complaint involving what you have
4 been doing with respect to the budget since
5 2013, and that is also the subject of a
6 misconduct complaint filed with the attorney
7 grievance committees.

8 Thank you.

9 SENATOR KRUEGER: This closes the
10 public hearing on Public Protection.

11 Join us again at 10 a.m. tomorrow
12 morning -- 9:30, excuse me, for Education at
13 9:30.

14 (Whereupon, the budget hearing
15 concluded at 10:37 p.m.)

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