

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
2015-2016 EXECUTIVE BUDGET ON
5 PUBLIC PROTECTION

6 -----

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

9 February 26, 2015
10 10:00 a.m.

11 PRESIDING:

- 12 Senator John A. DeFrancisco
- Chair, Senate Finance Committee
- 13
- 14 Assemblyman Herman D. Farrell, Jr.
- 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 John J. Bonacic
- Chair, Senate Committee on Judiciary
- 21
- 22 Assemblywoman Helene Weinstein
- Chair, Assembly Committee on Judiciary
- 23
- 24 Senator Patrick M. Gallivan
- Chair, Senate Committee on Crime Victims,
Crime and Correction

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2 2-26-15

3 PRESENT: (Continued)

- 4
- 5 Senator Michael F. Nozzolio
- Chair, Senate Committee on Codes
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- Assemblyman Joseph Lentol

Chair, Assembly Committee on Codes

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- Senator Thomas D. Croci
Chair, Senate Committee on Veterans,
Homeland Security and Military Affairs
- Assemblyman Daniel O'Donnell
Chair, Assembly Committee on Correction
- Assemblyman Michael Montesano
- Senator Diane Savino
- Senator Elizabeth O'Connell
- Assemblyman Al Graf
- Senator Velmanette Montgomery
- Assemblyman Jefferson L. Aubry
- Senator Ruth Hassell-Thompson
- Assemblyman David Weprin
- Senator Martin Golden
- Senator Joseph P. Addabbo, Jr.
- Assemblyman James F. Brennan
- Senator Michael Venditto
- Senator James Sanders, Jr.
- Assemblywoman Crystal Peoples-Stokes

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3 PRESENT: (Continued)

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- Senator Daniel Squadron
- Assemblyman William Colton
- Assemblyman Joseph S. Saladi no
- Senator Catharine M. Young
- Assemblyman Joseph M. Gli o
- Assemblyman N. Nick Perry
- Assemblyman Anthony H. Palumbo
- Senator Jesse Hamilton

13 Assemblywoman Patricia Fahy
14 Assemblyman John T. McDonald III

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1 CHAIRMAN DeFRANCISCO: All right, it's
2 10 o'clock, and we have a long day and night
3 ahead.
4 Pursuant to the State Constitution and
5 Legislative Law, the fiscal committees of the
6 State Legislature are authorized to hold
7 hearings on the Executive Budget proposal.
8 Today's hearing will be limited to a
9 discussion of the Governor's proposed budget
10 for the Office of Court Administration,

11 Division of Homeland Security and Emergency
12 Services, Division of Criminal Justice
13 Services, Department of Corrections and
14 Community Supervision, Division of State
15 Police, Commission on Judicial Conduct, and
16 the Office of Indigent Legal Services. As I
17 said, it's limited to those topics.

18 Following each presentation, there
19 will be some time allowed for questions and
20 so forth and so on.

21 And basically we have a rule that
22 there's limited time for questions. And what
23 we learned from our past 10 days of hearings,
24 I believe, that if the person being

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1 questioned can answer succinctly and to the
2 point and not filibuster, we'll be able to
3 get to the late speakers a lot earlier. So I
4 would appreciate that.

5 I'm here with Senator Mike Nozzolio,
6 Senator John Bonacic, and other Senators are
7 on their way.

8 CHAIRMAN FARRELL: I'm here with
9 Assemblyman Wepri n, Assemblywoman Weinstein,
10 Assemblyman Lentol and Assemblyman Aubry.

11 And Mr. Oaks?

12 ASSEMBLYMAN OAKS: Yes, we also have
13 Assemblyman Graf, Assemblyman Montesano, and
14 Assemblyman Giglio.

15 CHAIRMAN DeFRANCISCO: Thank you.

16 The first speaker is the Honorable

17 Gail Prudenti, chief administrative judge of
18 the Office of Court Administration.

19 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
20 Thank you. Thank you, Senator DeFrancisco.
21 It's wonderful to see you.

22 CHAIRMAN DeFRANCISCO: Can you move
23 the speaker up, the mic up, and turn it on?

24 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

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1 Sure. Is that better?

2 CHAIRMAN DeFRANCISCO: It's better,
3 but you can lean back again.

4 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
5 Okay, thank you. Wonderful.

6 It's wonderful to see you, Assemblyman
7 Farrell, Senator Bonacic, Assemblywoman
8 Weinstein, and of course all the committee
9 members and staff and the ladies and
10 gentlemen that are here today.

11 First, before I begin -- and I promise
12 you this will be a short presentation in the
13 sense that I will not be reading --

14 CHAIRMAN DeFRANCISCO: Excuse me one
15 minute. Can you hear back there? Okay,
16 great. Thank you.

17 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
18 I will not be reading from my prepared
19 remarks.

20 But now that I have been the chief
21 administrative judge for over three years, I
22 would like you to know that you all have made

23 a very challenging and a very difficult job
24 less difficult. I'm grateful for your

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1 courtesies and I'm grateful for your advice,
2 and I look forward to continuing our
3 relationship, which I truly believe and I
4 hope you realize that I feel great respect
5 for you. We've been straightforward with
6 each other. And I think that our
7 relationship of trust is a very, very good
8 one.

9 Having said that, in consideration of
10 these time constraints, I'd just like to say
11 a little bit about last year and then go
12 forward into our budget for this year.

13 Last year I came before you with a
14 fairly simple and straightforward message,
15 that the Judiciary was at a crossroads and it
16 was time that we needed an increase in our
17 budget. You were kind enough to hear that
18 call so that we could keep our courtrooms and
19 courthouses open until 5 o'clock to meet the
20 justice needs of all New Yorkers.

21 After five years of essentially flat
22 budgets, we believed that the increase would
23 put us on what we refer to as a road of
24 recovery. And I am proud to tell you that

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1 you listened, you assisted us, and I truly
2 believe not only have we done that, but with
3 your help we have responded to the needs of

4 families and children in crisis throughout
5 the State of New York by creating additional
6 Family Court judgeships.

7 So on behalf of our Chief Judge,
8 Jonathan Lippman, and the entire New York
9 State court system, I would like to express
10 our appreciation for your ongoing support of
11 the Judiciary.

12 Our current budget, which is I'm sure
13 what is of interest to you this morning, has
14 enabled us to keep -- will enable us to keep
15 our courtrooms open until 5 p.m. whenever
16 necessary, and allow us to maintain our
17 staffing levels. Actually, it will allow us
18 to increase those staffing levels just a bit.

19 We have had to rely on in the past, as
20 you know, an attrition budget. But for the
21 first time in several years, as people have
22 been leaving the court system, we have been
23 able to fill their positions. And we will
24 try to continue to do so.

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1 As I explained in my remarks last
2 year, we did not submit a wish budget. It
3 was not a wish-list budget, it was instead a
4 carefully crafted budget with the smallest
5 increase that we could possibly come up with.

6 While this has been welcome relief --
7 and I tell you, my friends, things are a bit
8 better, we are on that road to recovery. But
9 to prevent us -- and to continue to hire

10 personnel, it means that we have not cured
11 all our problems. I know that and you know
12 that. And so the increase in our budget this
13 year will allow us to prevent any
14 backsliding.

15 We are well aware of our operational
16 changes that we need in our various courts.
17 We are aware and I'm sure you will bring to
18 my attention some of your concerns, whether
19 it be lines outside of the courtroom or
20 processing of backlogs. And as you know, the
21 consequences of losing 2,000 employees within
22 the space of a few years has taken its toll.

23 I have frequently remarked that it
24 will take us years to recover from our

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1 losses, and that our progress will be slow
2 and incremental given the state's ongoing
3 fiscal constraints. But we are here for the
4 long haul and are committed to addressing
5 operational needs and problems.

6 I have to tell you I have been very
7 blessed, very blessed with my deputy chief
8 administrative judges as well as a talented
9 team of administrative judges in each and
10 every district. I am proud of them, I would
11 like to publicly thank them for all of their
12 hard work and commitment.

13 Last year you put us on the road to
14 recovery. This year I am asking you to allow
15 us to take the next step toward that end.

16 Therefore, the Judiciary is requesting a
17 2 percent cash increase in its budget, which
18 represents an additional \$36.3 million. The
19 2 percent General Fund increase will allow us
20 to continue to keep the courthouses and
21 courtrooms open whenever necessary, continue
22 to operate a nonattrition budget, and do some
23 hiring, increase our nonjudicial staffing
24 level by even greater numbers for critical

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1 positions, provide for civil legal services
2 to ensure equal justice for all of those who
3 come to us at some of the most difficult
4 times in their life, worried about whether
5 they will have the essentials of life to help
6 their families and to keep a roof over their
7 heads.

8 We will also be able to offset the
9 increase of the new judges and the mandatory
10 increments for our represented nonjudicial
11 employees.

12 Once again, we are not submitting a
13 wish-list budget. There are existing
14 partners and programs to which we would very,
15 very much like to give additional resources,
16 but we are very mindful of our role as
17 responsible partners in government. We have
18 worked very hard to assist the executive and
19 legislative branches by limiting spending
20 during these extraordinary times. We fully
21 understand the Governor and the Legislature

22 in their quest to cap government spending at
23 2 percent, and we fully support and will be
24 good partners in doing that ourselves.

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1 We believe that we have a very good
2 team of players, and we believe that we have
3 been faithful stewards of the public trust.
4 However, we also are equally charged with the
5 responsibility of adjudicating cases in a
6 very fair, timely and efficient manner. It
7 is for that reason that I am compelled to
8 seek the 2 percent increase in our budget.
9 We must ensure that our judges and our
10 nonjudicial employees have the resources they
11 need to provide timely justice to every
12 individual who comes to the courthouse.

13 If we were not to receive this
14 2 percent increase, we'll be right back at
15 the crossroads I mentioned last year. We
16 will be facing another disruption -- more
17 disruptions in court operations, and we will
18 have more difficulty in staffing our parts.
19 Indeed, we hope to continue our recovery by
20 focusing our resources on hiring back-office
21 and courtroom team titles that are critical
22 to providing service to the public, including
23 clerks, court officers, court interpreters
24 and court reporters.

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1 I want to reassure you that we will

2 carefully monitor each and every expenditure
3 and identify further savings and efficiencies
4 that will maximize our resources. We
5 constantly are taking that good hard look and
6 rethinking our court operations, reinventing
7 ourselves and how we do business so that we
8 can spend money where it is needed.

9 We have been able to keep to the
10 2 percent budget by spending less money in
11 the area of travel, telephones, legal
12 resources and supplies. We have identified
13 additional savings in information technology
14 and equipment which will allow us to live
15 within the means of this budget.

16 We are in the process of creating and
17 implementing a variety of new automated
18 case-management systems which will enable us
19 to process filings more efficiently and will
20 continue to advance e-filing cases. Many of
21 these initiatives are detailed in our budget
22 submission.

23 In closing, I want to thank you for
24 allowing me the opportunity to present the

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1 Judiciary's needs. I want you to know that I
2 will do my best to continue to meet our
3 constitutional mandate while balancing our
4 obligation to manage the public's resources
5 in the most cost-effective way.

6 On behalf of the Chief Judge, you have
7 my word that the Judiciary will continue to

8 work together with you to meet the best needs
9 of all New Yorkers. We are very much
10 appreciative of your support and look forward
11 to another year of progress.

12 Thank you for your time and attention.
13 I will be happy to answer any questions, but
14 I want you to know that when any questions
15 come up, whether it be about the budget or
16 any other subject, I am but a phone call away
17 and I will make myself available to see you
18 in person at a mutually convenient time.

19 Thank you so much, and I am ready for
20 your questions.

21 CHAIRMAN DeFRANCISCO: Thank you.

22 We're joined by Senator Krueger. And
23 I want to apologize, I shouldn't have started
24 till she was here. She was about 2 minutes

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1 late.

2 SENATOR KRUEGER: Sorry.

3 CHAIRMAN DeFRANCISCO: But I tried to
4 keep things moving.

5 We're also joined now by Senator
6 Vendi tto, also Senator Gallivan and
7 Senator Croci .

8 CHAIRMAN FARRELL: And I've been
9 joined by Assemblywoman Crystal
10 Peoples-Stokes.

11 ASSEMBLYMAN OAKS: And Assemblyman
12 Saladi no.

13 CHAIRMAN DeFRANCISCO: The first

14 questioner is chairman of the Judiciary
15 Committee, John Bonacic.

16 SENATOR BONACIC: Judge Prudenti, good
17 morning.

18 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
19 Good morning, Senator.

20 SENATOR BONACIC: I want to thank you
21 for the excellent job you always do on behalf
22 of the Court of Appeals and the Office of
23 Court Administration.

24 I also want to thank you for the

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1 increase in CASA funding, which I talked at
2 length last year about the importance of that
3 program.

4 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
5 Yes.

6 SENATOR BONACIC: There's a couple of
7 things that I'd like to review with you, if I
8 may.

9 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
10 Of course.

11 SENATOR BONACIC: I'd like to start
12 off by talking about the Community Dispute
13 Resolution Center program. I'd like you to
14 strongly consider giving them about a million
15 dollars to keep them going. They're
16 hemorrhaging. And this is a program that
17 deals with mediation, arbitration, without
18 attorneys. And what they try to do is
19 resolve disputes in a variety of areas, as

20 you know, before it gets to the courts. So I
21 think short-term it's a very good filter
22 system to prevent extensive litigation that
23 comes in the courts and long-term becomes
24 more expensive.

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1 So we -- and even on your website I
2 see that you talk about the importance of
3 that program.

4 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
5 Absolutely.

6 SENATOR BONACIC: And I see it's been
7 cut about a million dollars. I'd ask you to
8 strongly consider restoring that million
9 dollars.

10 The other thing I'd like to mention is
11 that in the civil legal services funding,
12 which I know is dear to the heart of Judge
13 Lippman, last year you had an increase of
14 \$15 million --

15 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
16 Correct.

17 SENATOR BONACIC: -- and this year
18 you're asking for an additional \$15
19 million --

20 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
21 Yes.

22 SENATOR BONACIC: That brings you up
23 to \$70 million, which is quite a bit of money
24 for that area. And I'm not saying it's not

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1 justified. But I'm asking you to consider
2 the Community Dispute Resolution.

3 In your initial budget you came in
4 with a 2.5 percent increase, and you
5 indicated that you were going to get down to
6 the 2 percent cap. That would require a
7 reduction of \$9 million.

8 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
9 That's correct.

10 SENATOR BONACIC: Can you tell us --
11 if you can, at this time -- what you would
12 cut to get rid of that \$9 million?

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
14 Yes, Senator Bonacic. I have to tell you we
15 have been working carefully with the
16 Department of the Budget and we have been
17 looking for savings with regard to our
18 budget, to be good partners in government and
19 make sure that our budget also reflects that
20 partnership as well as the 2 percent
21 increase.

22 SENATOR BONACIC: Could you speak
23 louder?

24 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

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1 Let me tell you some -- yeah.

2 Let me tell you some areas that we
3 have looked at and it looks like we will be
4 able to get some savings from. One is
5 equipment. Okay? And we're taking a careful
6 look at the monies that were budgeted for

7 equipment and where we can make savings and
8 maybe incrementally replace things rather
9 than replace them all at one time.

10 We are renegotiating with regard to
11 legal reference materials. We have had our
12 vendors in, we continue to have our vendors
13 in, and those negotiations are going very,
14 very well.

15 We are looking at supplies and
16 materials. You know, for many years when
17 things were good, there was ordering of
18 supplies and materials in great bulk. But we
19 really can save a substantial amount of money
20 in limiting the orders of supplies and
21 materials.

22 The other area is IP telephones. You
23 know, Internet telephones save us an
24 incredible amount of money each and every

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1 year. So by installing and having IP
2 telephones throughout the system, we can save
3 an incredible amount of money. As well as on
4 travel. We carefully monitor our travel
5 budget so that there is less travel going on,
6 there is more that we do with conferencing,
7 you know, not only telephonically but, in
8 this new age of technology, we have many,
9 many conferences that we used to have in
10 person we now have -- you know, we now have
11 set up in various locations and communicate
12 with each other.

13 So we are looking at nonpersonnel
14 areas to save money. Not about people, about
15 better management of our nonpersonnel budget.

16 SENATOR BONACIC: Okay. Just confirm
17 for me now, all the courts are open 9:00 to
18 5:00, and no longer at 4:30 do they close up?

19 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
20 Senator Bonacic, to make it clear, all the
21 courtrooms are open until 5 o'clock where
22 they are being used -- meaning where they are
23 on trial and where there is a need.

24 The courthouses are all open until

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1 5 o'clock, and the courtrooms that are in
2 operation are all open to 5 o'clock. We have
3 had no further complaints. Actually, some of
4 the counsel has come to us and said that some
5 of the problems they experienced in the past
6 really have been resolved this year.

7 SENATOR BONACIC: Okay.

8 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
9 I would just like to say one thing in comment
10 to Community Dispute Resolution.

11 I have to tell you that I too think it
12 is a very, very good project and I am very
13 supportive of it. But I would like everyone
14 to know that our Judiciary budget does
15 include \$5.3 million for Community Dispute
16 Resolution Centers. And also that's a
17 2 percent cost of living increase for this
18 year.

19 There are so many wonderful programs,
20 like the CASA program, which I used when I
21 was a matrimonial judge. They did all of the
22 supervised visitation for me, so I know what
23 a wonderful program that is. And so many
24 people come to us with programs that we

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1 embrace but we do not have the funds to
2 totally support them, that they must find
3 support from other resources. And I know
4 they try to do that.

5 But I can assure you I too share in
6 your concern for these type of organizations
7 and centers that really help the court system
8 very much. And I promise you, we will take a
9 good, hard look.

10 SENATOR BONACIC: I appreciated that
11 footnote. But I had pointed out that civil
12 legal services got a \$15 million bump up last
13 year, another \$15 million bump up this year.
14 And we're suggesting an increase of a million
15 to the Community Dispute Resolution. So I
16 know things are tough all over, but that
17 might be a good area to look at.

18 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
19 I understand exactly what you're saying, and
20 I'd just like to take a moment to talk about
21 civil legal services. And I know you know
22 how the Chief Judge feels about it and how I
23 feel about it.

24 You know, all of the programs that

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1 we're talking about are excellent programs.
2 But with regard to civil legal services,
3 civil legal services provides direct
4 representation to -- Senator, I'm sorry.

5 CHAIRMAN DeFRANCISCO: No, I don't
6 think there was a question about that point.
7 And I'm sure you'll get some questions. I
8 just want to keep it moving --

9 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
10 Good, fine.

11 CHAIRMAN DeFRANCISCO: Okay?

12 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
13 Absolutel y.

14 CHAIRMAN DeFRANCISCO: And when
15 someone asks you, then we can go.

16 Senator Bonacic?

17 SENATOR BONACIC: I'm all done.

18 And thank you very much, Judge
19 Prudenti .

20 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
21 You're wel come, Senator.

22 CHAIRMAN DeFRANCISCO: And we've been
23 joi ned by Senator Golden.

24 CHAIRMAN FARRELL: Thank you.

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1 Next, Assembl ywoman Weinstei n.

2 ASSEMBLYWOMAN WEINSTEIN: Thank you.

3 Thank you, Judge Prudenti . Let me ask
4 you that questi on about civil legal services,

5 how the court sees the need for civil legal
6 services, how the unrepresented litigants
7 affect the functioning of the courts, has the
8 funding that the Judiciary has asked for and
9 that we've approved in the past as civil
10 legal services had an impact on both the
11 litigants' ability to get justice and the
12 functioning of the court system?

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

14 You know, civil legal services really is
15 about our core values in the court system,
16 seeing that people come to us and that they
17 receive justice and that they -- we all know
18 that when people are represented by counsel,
19 not only does the system work better, that
20 they experience a type of justice that other
21 people who are represented experience as
22 well.

23 Civil legal services is all about
24 providing representation to individuals with

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1 regard to the essentials of life -- with
2 regard to the roof over their head, with
3 regard to consumer debt, with regard to
4 foreclosures, with regard to children who are
5 in need of supervision or juvenile
6 delinquents. So when we talk about civil
7 legal services, we are talking about direct
8 representation.

9 Let me give you just one number that I
10 think points it out, and that's in the area

11 of foreclosure. Right now, with the funding
 12 that we have, 58 percent of the pro se
 13 litigants who come to us, who came to us at
 14 one time pro se, are now represented. But as
 15 you can see, there is still a great need.
 16 Fifty-eight percent is great, but it would be
 17 great if that number was even greater.

18 So the Chief Judge and I think many of
 19 us in this room truly believe that when it
 20 comes to the essentials of life, that's what
 21 the core mission of the court is all about,
 22 seeing that people have an even playing
 23 field, that there's justice for all, that
 24 they are not overwhelmed by a very difficult

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1 system to maneuver, and that they have the
 2 benefits that many other people who have more
 3 resources have.

4 ASSEMBLYWOMAN WEINSTEIN: Thank you.

5 And I did note that in the recent task
 6 force report, the Chief Judge's report on
 7 civil legal services, that it addressed not
 8 only the process of litigants through the
 9 court system, but the tremendous amount of
 10 dollars that our state saves by being able to
 11 resolve the issues that these litigants bring
 12 to court.

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

14 Many times litigants bring to us issues like
 15 with regard to Social Security benefits and
 16 benefits that they should be receiving from

17 the federal government but they have not been
18 able to receive. The analysis that's been
19 done by the task force shows that every
20 dollar that we spend on civil legal services,
21 the state recoups \$6 from the benefits that
22 they do not have to pay out that they are
23 reimbursed for from the federal government.

24 ASSEMBLYWOMAN WEINSTEIN: Thank you.

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1 And I too want to applaud the court
2 system for, after a couple of years of very
3 lean times, being able to take the increase
4 last year to be able to do some hiring and to
5 have the courts remain open.

6 I was just wondering, we have spoken
7 before at prior hearings about the childcare
8 centers, and I was wondering how we've done
9 in terms of being able to increase hours or
10 increase locations of those centers.

11 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
12 With regard to the childcare centers, we are
13 asking for a 2 percent cost of living
14 adjustment for the providers. We do still
15 have 27 childcare centers. You know, I'm a
16 true believer that it's a sanctuary for
17 children. Especially having sat and
18 adjudicated matrimonial cases that involve
19 the custody of children, the courtroom really
20 isn't a place for children. And these
21 centers really provide a sanctuary.

22 Last year we were able to also make

23 many referrals to social services agencies.
24 But under the present conditions, we thought,

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1 when taking a good hard look at our budget,
2 that our 2 percent increase, our cost of
3 living increase at this time, at this time
4 would be our budget recommendation.

5 ASSEMBLYWOMAN WEINSTEIN: And I
6 wanted, just lastly, to -- as of January 1st,
7 of the new Family Court judges, their terms
8 took effect. And I was just wondering, I
9 know it's a very short period of time, but if
10 you have any feedback on what those
11 additional judges have meant in terms of
12 processing of cases, amount of time spent,
13 and where we are -- I know obviously, out of
14 New York City, judges were elected. I don't
15 know if the judges have been appointed in
16 New York City yet. Maybe you could just give
17 us an idea of where things are and the impact
18 it's had.

19 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
20 Many of the judges in New York City have been
21 appointed, but not all.

22 But I will say that the new Family
23 Court judges, as you know, especially in the
24 City of New York, but elsewhere as well, are

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1 much needed.

2 We have been able to fund additional
3 staff for them, so they are working as of

4 this date. The help is much needed. And
5 while it is premature, and of course we are
6 watching the statistics and carefully
7 monitoring, you know, we have taken a sigh of
8 relief that the families that we help no
9 longer, you know, will take years to get
10 through the system and hopefully be helped in
11 a much more timely fashion.

12 We are preparing for the additional
13 five Family Court judges that we will
14 receive, and we are budgeting, you know, for
15 the support staff as well in this budget.

16 ASSEMBLYWOMAN WEINSTEIN: And
17 obviously I assume some of this 2 percent
18 increase in this year relates to the added
19 costs of adding --

20 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
21 Exactly right.

22 ASSEMBLYWOMAN WEINSTEIN: -- of the
23 annualization of these Family Court judges
24 and all the support staff.

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1 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
2 Exactly right.

3 ASSEMBLYWOMAN WEINSTEIN: Thank you
4 very much.

5 CHAIRMAN FARRELL: Thank you.

6 CHAIRMAN DeFRANCISCO: Senator
7 Nozzolito.

8 SENATOR NOZZOLITO: Thank you,
9 Mr. Chairman.

10 Judge Prudenti, it's always great to
11 see you.

12 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
13 Thank you, Senator.

14 SENATOR NOZZOLIO: Thank you for your
15 great work through the years.

16 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
17 Thank you.

18 SENATOR NOZZOLIO: My questions are
19 going to center on the issue of the Raise the
20 Age, something promoted by the Governor and
21 Judge Lippman. What in the Judiciary budget
22 are you planning to deploy for funds related
23 to this subject?

24 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

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1 Thank you, Senator Nozzolio. It's my
2 understanding that, as you know, there are a
3 number of proposals outside there at the
4 present time. There's the Governor's
5 proposal, there's the proposal that the Chief
6 Judge submitted years ago. And that these
7 proposals would still need your good wisdom
8 and the Legislature to act to become a
9 reality.

10 But when we look at it from the
11 Judiciary side and we plan for the future --
12 because I truly believe that criminal justice
13 reform is needed this year more than ever
14 before, in the area of juvenile justice as
15 well as in the area of grand jury reform.

16 But what I say to you is that from our point
17 of view, we've taken a look and we think that
18 approximately 6800 cases, additional cases,
19 depending on which plan were to become law,
20 there will be a shift of resources that we
21 will have to do in the Office of Court
22 Administration.

23 SENATOR NOZZOLIO: Judge, if I may
24 interrupt, are these cases going directly to

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1 Family Court?

2 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
3 Depending on what proposal, Senator Nozzolio.
4 In --

5 SENATOR NOZZOLIO: Is your plan -- are
6 you anticipating -- and let me just try to
7 refine the question a little.

8 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
9 Sure.

10 SENATOR NOZZOLIO: Have you done any
11 analysis of what additional caseloads would
12 do to Family Courts in our state?

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
14 Well, we have taken a look and we have come
15 up with -- we believe it's approximately, at
16 the present time, 6800 additional cases that
17 we would have to deal with, whether it's done
18 in the Superior Court first and then
19 transferred to the Family Court or, under the
20 Governor's proposal, transferred directly to
21 the Family Court.

22 And what we have seen with regard to
23 our resources, if it was the Chief Judge's
24 plan we feel that, number one, we would have

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1 to shift resources. And, number two, we
2 would also be coming back to you in the
3 future when it became a reality and talking
4 about, you know, law guardian services,
5 meaning attorneys for the children. We'd
6 probably see an increase in costs in the
7 attorneys for the children.

8 But I would like to point out, because
9 I did carefully take a look at the report
10 that came out from the Governor with regard
11 to the executive branch proposal -- and the
12 Governor, being the straightforward
13 individual he is, clearly stated that the
14 executive branch would pick up the cost for
15 putting all of those cases in the Family
16 Court and all of the resources that would be
17 needed by the Office of Court Administration
18 as well.

19 SENATOR NOZZOLIO: But we don't know
20 at this point, Judge, what that impact would
21 be.

22 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
23 Exactly right. Exactly. We can guess. We
24 have guessed with cases, we've taken a look.

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1 But a lot depends on what proposal gets

2 passed.

3 SENATOR NOZZOLI O: Those are all my
4 questions, Chairman. Thank you, Judge.

5 CHIEF ADMI NI STRATI VE JUDGE PRUDENTI :
6 Thank you.

7 CHAI RMAN FARRELL: Thank you.

8 We' ve been j oi ned by Assemblyman Ni ck
9 Perry.

10 And next to questi on, Assemblyman Joe
11 Lentol .

12 ASSEMBLYMAN LENTOL: Thank you,
13 Mr. Chair man. Is thi s on?

14 I' m encouragi ng you to move your
15 microphone forward. Maybe it' s just me that
16 has trouble hearing you, but maybe there are
17 others in the room too.

18 CHIEF ADMI NI STRATI VE JUDGE PRUDENTI :
19 Okay. I' m sorry, Assemblyman.

20 ASSEMBLYMAN LENTOL: Thank you, Judge
21 Prudenti , for the excell ent report and the
22 way in which you and the Chi ef Judge have
23 really brought the court system into the
24 21st century. I' m very proud of that, of the

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1 work that you' ve done.

2 I did want to get into also the issue
3 of raising the age of criminal responsibility
4 and the work that you and the Chi ef Judge
5 have done on that issue, but it pi qued my
6 interest, when hearing the di scussi on about
7 civil legal servi ces, how maybe we' ve

8 forgotten a little bit about the veterans
9 that are returning from foreign wars; we've
10 had so many of them since 2003. And I just
11 don't know if the civil legal services has
12 caught up to the need for the kind of
13 services that veterans are going to require,
14 whether it's to get their job back, to sue
15 because they've lost their home, to sue
16 because of a variety of reasons -- involving
17 their marriage, maybe -- and how veterans can
18 better be helped.

19 ASSEMBLYMAN LENTOL: I think it's a
20 point very well taken.

21 And just to assure you, from our point
22 of view they have not been forgotten. Our
23 problem-solving courts, we have -- in January
24 of 2014, we had 18 Veterans Courts in the

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1 State of New York. Now, as of January 2015,
2 we have 23.

3 We have also given our judges
4 extensive training with regard to dealing
5 with the specific problems that veterans
6 face. And I am sure, with regard to civil
7 legal services and the direct legal services
8 that are provided, each and every year when
9 we put out the RFP for direct provision of
10 legal services, I can assure you -- I sit on
11 that board, and I can assure you I share your
12 concern. My father was a veteran. That's
13 how he met my mother. My father was in the

14 last of the occupation troops in Germany.
15 And I share your concern. And especially in
16 the environment where we're living, you know,
17 so many of my friends, even their children
18 are coming back having suffered and, you
19 know, in need of assistance.

20 So I can assure you that legal
21 services providers who do provide services to
22 veterans will be seriously considered for
23 funding if they put in proposals for civil
24 legal services. But we in the court system

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1 are doing what we can to address the problems
2 and the concerns that come to the courthouse.

3 ASSEMBLYMAN LENTOL: Thank you. I
4 just wanted to put that on the table.

5 But of course I'm interested, since
6 I'm the sponsor of the bill to raise the age
7 of criminal responsibility. And Senator
8 Nozzolio asked some questions about the
9 resources; I'm also concerned about that.

10 But maybe you could give us an update
11 or a status report on how the adolescent
12 courts are working that the Chief Judge has
13 set up in --

14 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
15 Well, I have to tell you that with regard to
16 the Adolescent Diversion parts that we have,
17 we have eight of them throughout the State of
18 New York. From our perspective, they are
19 doing well. But there are statutory changes

20 that are needed in order to come up to the
21 standards that you personally have set out in
22 I know your bill, that the Chief Judge has
23 set out in his proposal as well as the
24 Executive has set out in his proposal.

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1 So while we are doing what we can
2 under the present statutory plan, much more
3 could be done. And as you know so well --
4 and I know that you have great interest in
5 this area, and I know you've been working on
6 this for a number of years -- you know, to be
7 one of two states in the United States that
8 don't treat 16- and 17-year-olds in the
9 Family Court or in courts that are given the
10 authority to treat them differently than
11 adults are treated, especially with regard to
12 nonviolent situations -- I think we're doing
13 very well with our Adolescent Diversion
14 parts, but they're not solving all the
15 problems.

16 ASSEMBLYMAN LENTOL: Well, this may be
17 the year.

18 (Laughter.)

19 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
20 I hope so. I hope so.

21 ASSEMBLYMAN LENTOL: So in your
22 experience now, has the use of these court
23 parts resulted in improved outcomes for 16-
24 and 17-year-olds charged with crimes?

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1 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :
2 What I am being told by our Department of
3 Policy and Planning is yes, that they are
4 being carefully monitored. You know, it
5 hasn't been very long. We're only in our --
6 like we've finished one year. They started
7 in 2014, and now we're continuing in 2015.

8 I believe they're helping. I believe
9 they're a step in the right direction. I
10 believe legislation is needed.

11 ASSEMBLYMAN LENTOL: Thank you.

12 CHAIRMAN DeFRANCISCO: Senator
13 Krueger.

14 SENATOR KRUEGER: Thank you.

15 Good morning, Judge Prudenti .

16 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :
17 Good morning, Senator.

18 SENATOR KRUEGER: So very recently the
19 Governor, the mayor of New York City, the
20 Attorney General announced a massive new
21 effort to address tenant harassment and to
22 encourage people to come forward with their
23 problems and reports. The mayor of New York
24 City has proposed additional funding targeted

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1 to lawyers for tenants in Housing Court.
2 That, combined with the just growing pressure
3 on affordable housing, and increased bad
4 behavior by some percentage of people owning
5 buildings, all are likely to translate to an
6 enormous increase in Housing Court filings in

7 the next several years. How do we plan on
8 dealing with that since, speaking as one
9 resident of New York City, you and I both
10 know, through discussions we've had, that the
11 Housing Courts, particularly in certain
12 boroughs, are already at the breaking point?

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

14 Right. The Housing Courts, you know, face a
15 tremendous volume of cases even now. But I
16 think that both -- I especially -- the Chief
17 Judge and I have had a meeting with the
18 mayor, and we've talked about a lot of
19 issues, and this is one of them. And what we
20 have seen and what the Chief Judge addressed
21 in his State of the Judiciary was our court
22 navigators program and to expand the use of
23 court navigators.

24 You and I both know that when people

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1 are not represented by counsel, especially at
2 times in their life when, you know, they
3 can't sleep at night because they worry about
4 their problems and they worry about their
5 children and they worry about the roof over
6 their head, that when they come to court
7 alone or that they don't have any advice,
8 that these proceedings take longer and longer
9 and longer.

10 We have had a pilot program going on
11 with regard to court navigators, who are not
12 attorneys. A report has come out basically

13 stating how much they have been able to help
14 people, why just setting the stage -- this is
15 what you're going to experience at the
16 Housing Court, this is what you can expect,
17 this is what you need to bring with you.

18 And we have legislation this year that
19 we are going to propose which I think would
20 help and address your concern with regard to
21 court navigators. These are people -- even
22 the Bar Association acknowledges these are
23 people who would never, ever be represented
24 by counsel, you know. So that the fact that

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1 we would give them additional assistance
2 would help the overburdened Housing Court.
3 And I think if the Housing Court judges were
4 here -- and I know Judge Fisher is here
5 today, who obviously supervises the Housing
6 Courts and is my deputy chief administrative
7 judge for the courts inside of New York. I
8 think she would agree that any help that we
9 can give individuals coming to the Housing
10 Court will help any additional plans.

11 We've also -- and the mayor is well
12 aware of additional funding that would be
13 necessary. I think he's sensitive to the
14 fact that we have to continue discussions
15 with regard to additional Housing Court
16 judges. And I think all of these things, in
17 working together -- and I assure you we have
18 started working together -- could help make

19 new proposals and a better way of doing
20 business a reality.

21 SENATOR KRUEGER: How much growth are
22 you expecting in number of navigators today
23 versus new additional navigators? You said
24 you have a pilot project now. How large do

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1 you expect to grow that program?

2 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
3 Well, let me just put it in this perspective.
4 The pilot project was, you know, in the City
5 of New York in one county. Okay?

6 What we hope to do -- and actually it
7 may have been -- I should ask Judge Fisher; I
8 don't know where she is. It may have been in
9 one of -- another one of the Housing Courts.
10 We hope to do this citywide, you know, so
11 that there will be a great increase in court
12 navigators.

13 SENATOR KRUEGER: We added Family
14 Court judges. What impact has that had on
15 the caseload and the movement forward in the
16 Family Court backlog?

17 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
18 I'm the first person to tell you it's early
19 days. But I'm also telling you that we are
20 very optimistic. We have been able to open
21 the parts, give them the support staff that
22 they need.

23 We also have had conversations with
24 the mayor's office with regard to making sure

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1 that appointments of Family Court judges in
2 the City of New York are done in a timely
3 fashi on.

4 I think that it is going to be of
5 great assistance to us. I can tell you just
6 from being the complaint department, I've had
7 less complaints. But having said that, to
8 report to you two months into new judges
9 sitting in parts, I think that -- I don't
10 want to be overly optimistic, but I am very
11 posi ti ve.

12 SENATOR KRUEGER: Thank you. Thank
13 you.

14 CHAIRMAN FARRELL: Assemblyman Graf.

15 SENATOR KRUEGER: I'm sorry, we have
16 also been joined by -- I'm so sorry, Denny --
17 Senator Hassell-Thompson --

18 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
19 Oh, wonderful.

20 SENATOR KRUEGER: -- and Senator
21 Sanders.

22 CHAIRMAN FARRELL: We've been attended
23 by Assemblyman Will Colton.

24 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

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1 Great.

2 CHAIRMAN FARRELL: Mr. Graf?

3 ASSEMBLYMAN GRAF: Thank you, Judge.

4 Judge, as a retired New York City

5 police officer, part of the Governor's budget
6 is to basically, with grand jury
7 investigations and stuff, treat police
8 officers differently than they would anybody
9 else that was subject to a grand jury
10 investigation.

11 Now, grand juries have been around
12 since -- they've evolved over time. They've
13 found problems with it, from England in the
14 12th century moving all the way up to
15 modern-day times. And the monarchs back then
16 interjected themselves into the grand jury
17 process.

18 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
19 Excuse me, I'm sorry, I just didn't hear.

20 ASSEMBLYMAN GRAF: The monarchs, the
21 kings.

22 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
23 Oh.

24 ASSEMBLYMAN GRAF: And this is how it

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1 started to evolve. And they used it to
2 punish their enemies. They politicized the
3 process.

4 And then what happened was when in
5 America we adopted the grand jury system, it
6 was like 1635, and one of the things we did
7 was take the king's influence out of the
8 grand jury.

9 And what we have now is the Governor's
10 looking at appointing his own person to

11 review grand jury testimony, grand jury
12 evidence. And we don't know who this person
13 is going to be, it's going to be a political
14 appointment.

15 There's a reason for secrecy on the
16 grand jury. So one of the things they wanted
17 to protect, centuries ago, was to prevent
18 witnesses from being tampered with. And, I
19 mean, throughout the centuries, secrecy was
20 very important. With the Governor, do you
21 see problems with what he's proposing here?
22 And I just see it as he's corrupting, okay,
23 the grand jury process.

24 I don't think the Governor's trying to

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1 put himself in the position of a king or a
2 monarch where he can influence what the grand
3 jury's rulings are.

4 Now, the court, over the years, has
5 made tough decisions that politically were
6 maybe not, you know, good for them, but their
7 role is to make sure it's the right decision,
8 it's the fair decision no matter what the
9 public outcry is.

10 Do you have any opinions on this,
11 quickly? Because I'm limited to four minutes
12 and 26 seconds.

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
14 Okay. Okay, Assemblyman Graf. Well, let me
15 just tell you quickly what I think. There's
16 a number of proposals with regard to the

17 grand jury and grand jury reform, and I think
18 those proposals need the Legislature, both
19 the Senate and the Assembly, to take a good,
20 hard look. Because it's all about public
21 trust and confidence in our system.

22 And what's the perfect solution? I
23 don't think it's for me to say. The
24 Governor's proposal -- the Governor has a

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1 thoughtful proposal, the Chief Judge has a
2 thoughtful proposal, there's been other
3 proposals mentioned by the District Attorneys
4 Association and others that have come to us.

5 Why I think the Chief Judge felt it
6 was incumbent upon him in the State of the
7 Judiciary to speak about it, because it was a
8 core issue with regard to the Judiciary's
9 mission of trust and confidence in our
10 system.

11 But I think it's up to you, up the
12 Senate and the Assembly now, to wrestle with
13 what is the proper proposal. I don't quite
14 know what that is --

15 ASSEMBLYMAN GRAF: Well, with that,
16 Judge, one of the things the Chief Judge
17 talked about was putting judges in the grand
18 jury.

19 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
20 Right.

21 ASSEMBLYMAN GRAF: Right? Through the
22 evolution of the grand jury process, they

23 actually did have judges at one point. And
24 they removed the judges from the grand jury

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1 process, okay, because they didn't want undue
2 influence. They didn't want a political
3 outcome on this. I mean, the purpose of it,
4 you go all the way back to U.S. v. Amazon
5 Industrial Chemical Corp., and it was there
6 to protect people from an oppressive
7 government.

8 So, I mean, we shouldn't -- I mean,
9 people should be looking at the history and
10 the evolution of the grand jury process, and
11 they shouldn't be putting us back into this
12 12th century. I mean, would you agree with
13 that?

14 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
15 Well, what I do agree with is that I do agree
16 that there's a great need for criminal
17 justice reform. Do I agree that I know all
18 the answers and I could give you the perfect
19 answer of what should be done here this
20 morning? No, I do not.

21 But I know that people of goodwill,
22 very smart, intelligent, focused individuals
23 like the Chief Judge, like the Governor, and
24 I am sure like many of the Senators and

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1 Assemblymen, are taking a good hard look at
2 this issue and want to make sure that a
3 system that dates back to, you know, ancient

4 England, make sure that that system works and
5 it works -- still works in these days, in
6 these times in which we're living, in
7 New York and throughout the country.

8 ASSEMBLYMAN GRAF: Well, wouldn't you
9 agree that the grand jury system as we have
10 it now works really well?

11 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
12 I agree that there's need for criminal
13 justice reform in the area of juvenile
14 justice and grand jury reform. That's how I
15 feel, that's my personally held belief.
16 Whether it be with regard to disclosure --
17 just to ensure that there is public trust and
18 confidence in our system.

19 ASSEMBLYMAN GRAF: Okay. Well, I have
20 a real problem with the Governor saying he
21 wants to appoint a political appointee.

22 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
23 I could understand you may have a problem
24 with that. I can understand many members may

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1 have a problem with other proposals as well.

2 But I think this is the year, my
3 friends, that criminal justice reform must be
4 addressed in the Senate and the Assembly.

5 ASSEMBLYMAN GRAF: Thank you, Judge.

6 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
7 You're welcome.

8 CHAIRMAN DeFRANCISCO: Senator Golden.

9 SENATOR GOLDEN: Thank you,

10 Mr. Chair man.

11 Judge, on a follow-up questi on on
12 that, we obvi ously woul d need directi on from
13 the court. You haven' t narrowed down any
14 posi ti on as to whi ch woul d be a best route to
15 take -- moni tor, judge, nei ther? Grand jury
16 report? You have not come up wi th any
17 posi ti on on any of thi s?

18 CHIEF ADMINI STRATIVE JUDGE PRUDENTI :

19 No, that' s not -- Senator, I' m sorry i f I
20 gave that -- you know, i f you took that from
21 my remarks, I' m very sorry. That i sn' t the
22 case.

23 You know, I thi nk the Chi ef Judge
24 clearl y, i n hi s State of the Judi ci ary,

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1 mapped out what he thought woul d be a good
2 soluti on to -- and proper grand jury reform.
3 And hi s proposi ti on had a judge who woul d be
4 avai lable i n the grand jury -- not to do
5 questi oning, okay, just to be i nvolved i n the
6 grand jury process, as i t i s i n jury
7 selecti on, whatever. Not to be the
8 questi oner, not to take any other role other
9 than to ensure, proper proceedings that
10 somebody was i n the room to give confi dence.
11 And then, of course, the di scl osure
12 proceedi ng.

13 That' s j ust one proposal . I thi nk
14 what the Chi ef Judge was trying to do, and I
15 know thi s from di scussi ons that I had wi th

16 him, is come up with a proposal and a
17 starting point for people of goodwill to come
18 to consensus on and to come to agreement on
19 what would be the best way to handle grand
20 jury reform.

21 I am sure you are going to hear from
22 the District Attorneys Association, defense
23 lawyers, the Governor's office with regard to
24 many, many proposals. I have great

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1 confidence in the Senate and the Assembly
2 that you'll come up with the right decision.
3 But I don't think it's right for me at a
4 budget hearing to tell you what I think you
5 should do.

6 SENATOR GOLDEN: Well, the only reason
7 the question was asked, obviously, there is
8 going to be a financial cost to this, and
9 that's the reason I'm looking to you as to if
10 you had thought out any proposal that you
11 thought would work that's feasible dollarwise
12 for your system.

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
14 I think that the Chief Judge's proposal is
15 feasible for our system. I think that we
16 would not be looking to you for any great
17 additional resources to put his proposals in
18 place.

19 SENATOR GOLDEN: The judge's system,
20 Judge Lippman's system is just for police
21 officers, the --

22 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :
23 You know, not only that situation, it also
24 has a disclosure provision as well with

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1 regard, of course, to redacting certain
2 information, you know, with regard to
3 civilian witnesses or witnesses. But just so
4 you know, that disclosure provision is for
5 all grand jury proceedings.

6 SENATOR GOLDEN: That would be for all
7 grand jury proceedings. Have you figured out
8 a cost to that?

9 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :
10 No, I'm sorry, I don't.

11 SENATOR GOLDEN: No, okay. And the
12 monitor, you don't have any position on --
13 you're staying with Judge Lippman's route
14 versus the monitored route?

15 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :
16 No, I really don't. I think that Judge
17 Lippman's position would not be any
18 additional financial cost. And I think that
19 it is one possible solution to a problem that
20 we find ourselves in.

21 And I would just like to say to
22 everyone, my truly held feeling -- and I
23 don't believe it's for me to say, because I
24 am very respectful of legislative authority,

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1 and I always have been, I've been in my

2 20-some-odd years as a judge. But what I do
3 believe -- we are at a crisis point, and I do
4 believe that there's criminal justice reform
5 that is needed and is needed now.

6 SENATOR GOLDEN: We all agree.

7 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
8 Thank you. Thank you, Senator.

9 SENATOR GOLDEN: Thank you for coming
10 here today. But the district attorneys
11 across the state and the police departments
12 across the state are all in different places,
13 and --

14 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
15 Exactly right.

16 SENATOR GOLDEN: So we're not getting
17 helped here from the courts in its direction.
18 I personally don't believe Judge Lippman's
19 proposal works, but the -- that's not for me
20 to decide. We will sit down and obviously
21 come together as a legislature in the near
22 future to see what we're going to do there.

23 But thank you very much.

24 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

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1 Thank you.

2 CHAIRMAN FARRELL: Assemblyman
3 Montesano.

4 ASSEMBLYMAN MONTESANO: Thank you,
5 Chairman.

6 Good morning, Judge.

7 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

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Good morni ng, Assembl yman.
ASSEMBLYMAN MONTESANO: Just if I
could take you back for a moment, I know
we've gotten away from the subject. But just
getting back to the \$15 million for the civil
legal services, could you tell us, how does
the Office of Court Administration parcel out
this funding?

CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
Thank you, that's a very good question. And
I'm sure that many people don't understand
that it's not the Office of Court
Administration that parcels out the money,
that there is a three-person -- and I sit on
that board. There's a three-person board.
It's headed by the head of the Task Force on
Civil Legal Services, Helaine Barnett; she is

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the chair. And there are two other members,
one of which -- I'm on the board as well.
We put out an RFP each and every year,
and we ask for providers to give us proposals
with regard to direct provision of civil
legal services. They then -- we then -- all
the proposals come in, they are vetted.
There is very different criteria -- how long
has someone been in business, you know, as
far as providing those services, what does
their other funding look like, how many cases
are they handling at the moment, what type of
program are they proposing and why do they

14 need these additional monies and services?
15 Some are to hire attorneys, some are to hire
16 all the staff, some are to go into a
17 different county or a different area and
18 duplicate what they've been doing
19 successfully other places.

20 And then the money is awarded on an
21 annual basis. So that's the way it's done.

22 ASSEMBLYMAN MONTESANO: Judge, if I
23 may, just to follow up. So presently, like I
24 know in Nassau and Suffolk, we have

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1 Nassau-Suffolk Legal Services.

2 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

3 Yes.

4 ASSEMBLYMAN MONTESANO: And I know
5 they're very popular in the landlord-tenant
6 parts, I think they've branched out into
7 others.

8 But this particular organization and
9 others like them, they're already funded
10 through county money, are they not?

11 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

12 Yes. You know what, I think that all the
13 civil legal services providers have found
14 that yes, they do receive some county money
15 or some local money or some city money, but
16 they have all found that it's just not
17 enough. So they are seeking additional
18 funding wherever they think it's appropriate,
19 whether it be other grants or whether it be

20 civil legal services through, you know,
21 through the state, through the Judiciary
22 budget.

23 So yes, you're absolutely right, they
24 are funded in other areas.

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1 ASSEMBLYMAN MONTESANO: Thank you,
2 Judge.

3 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
4 You're welcome.

5 CHAIRMAN DeFRANCISCO: Senator
6 Hassell-Thompson, please.

7 SENATOR HASSELL-THOMPSON: Thank you,
8 Mr. Chairman.

9 Good morning. Judge, I apologize that
10 I was not here to hear your presentation, but
11 I've had the opportunity to read it very,
12 very, very quickly. So I may be asking a
13 question that's already been posed.

14 But I know that you have spent some
15 time answering questions around Raise the
16 Age.

17 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
18 Yes.

19 SENATOR HASSELL-THOMPSON: I would
20 still like you to entertain a few additional
21 questions, if you would.

22 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
23 Absolutely.

24 SENATOR HASSELL-THOMPSON: Thank you.

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1 You've talked about how Judge Marks
2 has been part of the Raise the Age
3 recommendati on for the commi ssi on and called
4 for the 11 parts. But I'd like to know who
5 will be -- ongoing, who will be in charge of
6 the i mplementati on and pl acement of these
7 youth parts and court attorneys?

8 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :

9 At the present time, Senator, if you were to
10 ask me, and knowing the Office of Court
11 Administrati on very well, where it would fit
12 in the best, it would really fit into our
13 Policy and Planni ng Department. Thi s is
14 where we moni tor, you know, all of our
15 problem-solvi ng courts. If we put in a new
16 program to see how it's worki ng, Policy and
17 Planni ng is the place that moni tors -- and
18 not only moni tors, but answers any questi ons,
19 helps the di stricts, helps the admi ni strati ve
20 judges and goes out into the fi eld on our
21 behal f.

22 So i ni ti al ly I would see that these
23 parts would be under our Office of Policy and
24 Planni ng. I'd like to say that Judge Marks

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1 does supervi se that offi ce, so I thi nk that
2 he, wi th hi s extensi ve knowl edge i n the area
3 of cri mi nal ju sti ce, woul d be an excel l ent
4 supervi sor i n the area. But that's how I see
5 it at thi s moment. Of course, dependi ng on
6 what -- and I'm very hopef ul -- on what

7 statutory provisions would pass this year, we
8 would adjust accordingly.

9 SENATOR HASSELL-THOMPSON: The
10 Governor has proposed \$25 million for
11 planning and seeding for diversion programs
12 in order to gear up to be prepared for this.
13 We also added 20 Family Court judges last
14 year.

15 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
16 Yes.

17 SENATOR HASSELL-THOMPSON: I wanted
18 25, but -- I'm hopeful that the additional
19 judges will certainly expand to cover the
20 need for this particular programmatic format.
21 But I'm also fairly sure, having done budgets
22 myself in the past, 25 does not meet the
23 need.

24 How do you see yourself not only

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1 phasing in the age, as has been proposed, but
2 how do you see phasing in the amounts of
3 money made available, doing capital
4 improvements that are necessary, and still be
5 able to have the kind of successful outcomes
6 that you anticipate to make sure that when we
7 get to adding the 18-year-olds to this pool,
8 that there won't be pushback because we
9 haven't had the successes that we're hoping
10 for?

11 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
12 Senator Hassell-Thompson, I think those are

13 all great questions, and those are questions
14 that we've been talking about at the Office
15 of Court Administration. But to answer more
16 specifically, which I think will be more
17 helpful, we have had ongoing discussions with
18 the Governor's office and with his Department
19 of Budget, who has been very forthcoming, I
20 have to say, with regard to the fact that the
21 Governor has said that he will be -- you
22 know, he has assured us that he will be
23 picking up the necessary costs.

24 He also in his provision -- and again,

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1 this doesn't come from him personally, it
2 comes from his Department of Budget, who we
3 have had a very straightforward relationship
4 with, assures us that he understands the need
5 for more Family Court judges, he understands
6 the need that -- what this would cost, what
7 this legislation would cost, and assures us
8 that he would be the person who would -- you
9 know, the executive branch would put up the
10 cost and give to the Office of Court
11 Administration a certain amount of resources
12 that he believes they need.

13 Our biggest -- I think our biggest
14 hurdle we face is what you brought up with
15 regard to facilities. Facilities are always
16 an issue for us, from operation to even where
17 can we create another courtroom. That's an
18 issue we would be, you know, struggling with,

19 planning for. But my understanding is that
20 the legislation as proposed would not take
21 effect for at least a year or two and give us
22 the opportunity to do the planning of
23 facilities. And we would have to work
24 carefully with each and every district in

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1 planning, you know, for those additional
2 parts.

3 SENATOR HASSELL-THOMPSON: Last
4 question. What do you expect the average
5 length of a case to last in the Family
6 Courts, or how long to reach certain
7 dispositions in the average cases? Which I
8 think makes a difference to all of this
9 planning as well.

10 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
11 It does. I think you're absolutely right.
12 And when I was at the Appellate Division, you
13 know, immediately it struck me that these
14 cases, by the time they got to us, were years
15 old and, you know, really some of those
16 problems had just existed too long.

17 It's my understanding that with the
18 new Family Court that we were given by this
19 Legislature, that it will be approximately
20 14 months for disposition. And believe me,
21 that is a great improvement. Not that we
22 can't always do better. And again, it's an
23 estimate because you know that it's only been
24 two months since we've had some additional

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1 resources to do what we have to do.

2 It's not perfect, I tell you, but it
3 is better.

4 SENATOR HASSELL-THOMPSON:

5 Mr. Chairman, I'm sorry, I did say that that
6 was the last question, I apologize. I do
7 have one other. Because I know that
8 certainly the Judiciary has a great deal more
9 to deal with than just Raise the Age, but I
10 also know that my colleagues have picked the
11 bones of most of those fairly well. But
12 there's one that we haven't discussed
13 today that you and I have discussed in the
14 past, and I'd really like to have some
15 understanding as to where we are.

16 We've talked about the fact that we're
17 clear that a lot of the empirical data shows
18 us that the pipeline to prison also is
19 attached to the disproportionality of
20 children in foster care. And so we want to
21 begin to look at the course to say, what are
22 we doing to interrupt that pipeline in terms
23 of how do we adjudicate some of those cases
24 in a way that interrupts that continued

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2 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

3 Senator, the Chief Judge and I -- and a
4 number of members of our staff, and also a

5 number of members of his staff -- had a
6 meeting with regard to ACS and with regard to
7 a lot of other issues. And while of course
8 this problem exists statewide, you know, the
9 vast majority of these type of cases that we
10 worry about, you know, are located in the
11 City of New York.

12 And there seems to be -- and we are
13 working on, we have a working committee
14 between the Office of Court Administration
15 and city government to work on a number of
16 problems, but this is one of them.

17 So it's not a problem that's been
18 forgotten, it's not a problem about
19 getting -- that we don't all want to get
20 children out of foster care. It is in, you
21 know, our plans for the future. And we talk
22 to anybody who will listen. But I have to
23 say that the city, under this mayor's
24 leadership, has heard our call. And it was a

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1 very good meeting; I think he shares your
2 concerns and the concerns of so many of us.

3 And we are going to be working on what
4 if anything we can do to improve. And as we
5 both feel, we have to improve, because this
6 is going to set the stage for the rest of
7 these children's lives.

8 SENATOR HASSELL-THOMPSON: Thank you,
9 Judge. Thank you, Mr. Chairman.

10 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

11 Thank you.

12 SENATOR KRUEGER: Al so we' ve been
13 joi ned by Senators Dani el Squadron,
14 Vel manette Montgomery, and Joe Addabbo.

15 CHAI RMAN FARRELL: Assembl yman
16 Sal adi no.

17 ASSEMBLYMAN SALADINO: Thank you,
18 Judge. Appreci ate your time today. And a
19 l i t t l e d i f f i c u l t w i t h t h e a u d i o s y s t e m , b u t
20 we have been hearing some very good news.

21 I want to thank you. In the time --
22 12 years -- I' ve been here, I' ve been
23 watchi ng very careful ly. Your work has been
24 rather amazing. And these latest initiatives

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1 to provide for virtual courtrooms, to provide
2 for the extended hours in the courthouse, the
3 effici encies you have brought have been
4 frankl y rather remarkabl e.

5 We do understand that this is an art
6 and not a science, and that it takes time for
7 these initiatives to show the -- to catch up
8 with the goals that we' re speaki ng of.

9 You spoke earl ier about the
10 effecti veness that you' re seei ng by addi ng
11 those new Family Court judges. Since the
12 budget process is i n full swing now, but
13 sometimes takes more than a year to catch up
14 with our real needs --

15 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
16 Defi ni tel y.

17 ASSEMBLYMAN SALADINO: -- what are
18 your needs going forward in terms of more
19 judges? Would adding judges to the Family
20 Court and the other courts be of assistance
21 in reaching our common goals?

22 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
23 Thank you, Assemblyman. I have to tell you
24 that I know that many people have questioned,

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1 and I put it very straightforward to you, the
2 need for acting justices of the Supreme
3 Court. And they're disappointed in that,
4 because the system we have now is an elective
5 system for Supreme Court justices, but our
6 needs demand acting Supreme Court justices,
7 because we don't have enough Supreme Court
8 justices. And even if you look at the
9 Constitution, the Constitution says that
10 there should be one Supreme Court judge for
11 every 50,000 people in population.

12 Having said that, in some areas, like
13 the City of New York, they may have met that
14 mandate. But outside the city, that hasn't
15 been done. I respectfully request, you know,
16 the careful consideration of additional
17 judges, whether they come -- wherever they
18 come from, I'm happy. Because, you know, I
19 know from the deputy chief administrative
20 judges, both Judge Coccoma and Judge Fisher,
21 when we come to make assignments at the end
22 of the year, it is very, very hard for us to

23 find enough judges to sit in all the parts.
24 So any additional judicial resources

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1 would be very much appreciated.

2 ASSEMBLYMAN SALADINO: In all
3 levels -- the Criminal Courts, the Family
4 Courts?

5 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
6 All levels. Court of Claims -- you know, at
7 all levels.

8 ASSEMBLYMAN SALADINO: Do you have a
9 sense, whether it be just for this year or
10 over a number of years, of what kind of an
11 expenditure you could use to bring about that
12 efficiency?

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
14 It's -- you know, it's my understanding that
15 it will be over a number of years. You know,
16 some people have said to us, Well, you know,
17 your filings are down just a little bit, a
18 modest amount, so why do you need more
19 judges? Or why do you need more resources?

20 But I tell you this -- and having been
21 a judge, I'm in my 24th year, and having so
22 many colleagues on the bench, that the cases
23 that now come before us are much more complex
24 than years and years and years ago. And

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1 complex cases take a lot of time. And
2 trials, as you know, take a lot of time. So
3 that I just see this as a problem going

4 forward. You know, at least in my career, my
5 l i f e t i m e.

6 ASSEMBLYMAN SALADINO: Thank you.

7 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :

8 And with regard to costs, I think that's
9 something that we have to do a cost analysis
10 of each and every year.

11 ASSEMBLYMAN SALADINO: Thank you for
12 your response, thank you for your time, but
13 especially thank you for your effectiveness.
14 In a very difficult situation in our courts,
15 your mannerisms, your effectiveness, your
16 leadership proves to us that we can get so
17 much more done with honey than vinegar, and
18 that's something -- a great lesson for all of
19 us.

20 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :

21 Thank you, Assemblyman. I appreciate your
22 kind words.

23 ASSEMBLYMAN SALADINO: Thank you,
24 Judge.

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1 CHAIRMAN DeFRANCISCO: We've been
2 joined by Senators Montgomery and Addabbo.
3 And I understand Senator Montgomery now wants
4 to ask some questions.

5 SENATOR MONTGOMERY: Good morning,
6 Judge.

7 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :

8 Good morning, Senator.

9 SENATOR MONTGOMERY: Thank you so much

10 for your comments.

11 And I was looking through the written
12 testimony that you gave us, and I see a
13 number of areas where you are actually
14 improving the system, the court system,
15 tremendously. But I didn't see a reference
16 to what we're doing on the -- I think I may
17 be wrong with the organizational title, but
18 what I'm talking about is the Committee on
19 Modern Courts, the group that assists
20 communities in establishing community courts.

21 And the reason that I'm particularly
22 interested in that is that there is a
23 Community Court in my district that has been
24 very much a part of looking at early

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1 intervention and also actually prevention.
2 And it's especially helpful as it relates to
3 the youth part of that court. So I'm just
4 wondering if you have looked at that as being
5 one of the important parts of the movement to
6 change the juvenile system in Raising the
7 Age.

8 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
9 The answer, Senator, is yes. The community
10 courts have been very, very effective.

11 And what we have done in that regard,
12 and as I have mentioned, we have been
13 meeting, especially in the City of New York,
14 with the mayor, because that's where these
15 courts are located. He is very supportive,

16 as is the Chief Judge. And we are in the
17 process, and I hope it will work out in the
18 very near future, of opening another
19 Community Court in Bronxville. It's a matter
20 of funding, but I have to tell you, there is
21 a united front to get that funding.

22 So we have been -- you know, we
23 constantly look to our community courts as
24 our success model. So there is absolutely no

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1 plans to diminish the community courts; we'd
2 only like to improve them, we'd like to have
3 more community courts if we can. But as you
4 know -- I know you know this so well -- it's
5 a matter of funding. But I think we have a
6 good partner in the City of New York.

7 SENATOR MONTGOMERY: Thank you for
8 that. I just -- I know that these are the
9 areas that often are not part of the big
10 discussions --

11 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
12 Yes. But I can assure you, this year
13 especially -- you know, we've been working
14 with the Center for Court Innovation on
15 Bronxville, we have been talking about
16 funding from various areas. Because we too
17 think this is very important.

18 SENATOR MONTGOMERY: Okay. And that
19 really will help us on the ground to actually
20 have an alternative that we know is working,
21 especially since we're bringing in more youth

22 into the system in a different way. So I'm
23 hopeful that we'll be able to work together
24 on making that -- not overlooking what we

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1 know we already have in place that works, and
2 building on that, as opposed to trying to
3 look for brand-new things that we don't know
4 if they will work or not.

5 So thank you for that.

6 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

7 Thank you. I look forward to working with
8 you.

9 CHAIRMAN DeFRANCISCO: Thank you.

10 I'll be the last questioner; I'll make a deal
11 with you.

12 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

13 Okay.

14 CHAIRMAN DeFRANCISCO: If your answers
15 are succinct, I'll make my questions
16 succinct, we'll be done in less than seven
17 minutes.

18 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

19 It's a deal.

20 CHAIRMAN DeFRANCISCO: All right.

21 Question No. 1, concerning the judge being in
22 the grand jury process. What is the judge
23 supposed to do while sitting there, if he's
24 not going to ask questions? Is he going to

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1 make rulings, is he going to -- what is he

2 going to do? Since there's no defense
3 attorney in the grand jury, what's he going
4 to do?

5 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

6 It's my understanding -- and again, trying to
7 be very succinct about it -- that he is going
8 to be sitting in the room, observing, you
9 know, observing the proceedings and making
10 sure that the law as it exists now is being
11 followed in the grand jury.

12 CHAIRMAN DeFRANCISCO: Okay. So he
13 actually can interrupt the proceedings if he
14 says that they're not fair?

15 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

16 Very similar -- I think, you know, the
17 simplest way to describe it, very similar to
18 a judge supervising voir dire.

19 CHAIRMAN DeFRANCISCO: I didn't hear,
20 I can't --

21 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:

22 I'm sorry. Very simple, similar to a judge
23 that is in the courtroom supervising voir
24 dire. You know, making sure that the

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1 procedures and protocols that are in place
2 are being followed.

3 CHAIRMAN DeFRANCISCO: All right. And
4 aren't there frequently, right now, motions,
5 once someone is indicted, to get a dismissal
6 based on the fact that there are improper
7 procedures in the grand jury; is that fair?

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Yes.

CHAIRMAN DeFRANCISCO: Okay. Now, why can't the judge continue what the judge is doing now, get a transcript, when there's such a motion, read the transcript that there's bad procedures, throw out the indictment?

CHIEF ADMINISTRATIVE JUDGE PRUDENTI: I can understand what you're saying, and it's a valid point, and I will talk to the Chief Judge with regard to your concerns.

CHAIRMAN DeFRANCISCO: Okay. Number two, I'm really happy that the courts are back open to 5 o'clock. But, you know, it was so ridiculous to me. I know it was a bargaining position back then. And I hope

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that you never feel you've got to close the courts, which is the main thing that the court system is supposed to do, early because you can't find any other place that's less important to make the cuts.

And I just wanted to say it now, hopefully we'll never see this again. I mean, we're talking about childcare centers. That's wonderful. But the court system is supposed to adjudicate things. If you're really in a bind, you don't cut out the main function of the court system, other than maybe a negotiating tool so all the lawyers

14 and everybody calls us.

15 So I would hope that we're over that
16 period of time in history and that that
17 doesn't happen again.

18 Number three, you say there's
19 technological changes to save money. Are you
20 contemplating now cutting court reporters in
21 any courtrooms in order to have a tape
22 recorder to record the proceedings?

23 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
24 The simple answer is no. We have no plans to

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1 increase the use of those machines.

2 CHAIRMAN DeFRANCISCO: Okay. And I --
3 Senator Golden made this point earlier, and I
4 just want to emphasize it. I think you said
5 there will be no additional resources needed
6 because of the judges proposal with the grand
7 jury. But we're continuously asked for more
8 judges in various courts. And it seems to
9 me, I just -- I'm going to get a copy of that
10 transcript. Because if the judges proposal
11 comes through, I will guarantee you within
12 two years you will be back here for
13 additional funding for that reason.

14 But there's got to be an additional
15 cost, and I think it's a valid question in
16 determining which way the Legislature wants
17 to go, as to what the additional cost will
18 be. Because you don't have enough judges
19 now. There's a lot of judge time that's

20 going to be lost.

21 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :

22 Senator DeFrancisco, you may be right and my
23 answer may have been premature.

24 But having said that, maybe by that

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1 time I'll have served my time. Thank you.

2 (Laughter.)

3 CHAIRMAN DeFRANCISCO: And lastly --

4 I've still got three minutes. I'll do it in
5 two.

6 Do you have statistics as -- the
7 question was asked earlier, the time frame
8 between the time a proceeding begins and the
9 time it is ultimately -- just in Supreme
10 Court -- ultimately over by. Six months,
11 eight months? I know you keep these
12 statistics all the time.

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI :

14 Yes, we do.

15 CHAIRMAN DeFRANCISCO: I have the
16 impression, and I don't try many -- I don't
17 try any cases anymore. But I have the
18 impression -- and the other point I need, how
19 many cases have been actually tried over the
20 last five years? Because I get the
21 impression nobody tries cases anymore. And
22 the reason is there's an adjournment, a
23 delay, this happens, that happens, it clogs
24 the system.

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1 And it seems to me that -- this shows
2 that I'm really old -- in the old days,
3 judges would have specific dates for trial,
4 no excuses, no delays, and somehow most of
5 them would still settle. But to allow these
6 continuous adjournments is a disservice to
7 everybody.

8 So the number of cases that have gone
9 to trial, so I can see over the last five
10 years. And then, number two, the average
11 time from a case -- in Supreme Court -- to
12 begin and end.

13 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
14 We'll get you that --

15 CHAIRMAN DeFRANCISCO: I want to start
16 it from note of issue till final disposition.

17 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
18 I understand what you need, and we'll get you
19 that information in a very timely fashion.

20 CHAIRMAN DeFRANCISCO: Very good. We
21 both kept our promises, and we have saved a
22 minute and 35 seconds. Thank you.

23 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
24 It's a wonderful thing. Thank you.

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1 CHAIRMAN FARRELL: We're going to ask
2 Joe Lentol to take that minute 35.

3 ASSEMBLYMAN LENTOL: Sorry,
4 Mr. Chairman.

5 CHAIRMAN DeFRANCISCO: I assign my one
6 minute and thirty -- oh, one minute and

7 10 seconds to Assemblyman Lentol.

8 ASSEMBLYMAN LENTOL: But your question
9 actually prompted me to ask this, so I'm
10 sorry to do this to elongate the proceeding.

11 Has the Chief Judge considered the
12 possibility, since he's introduced a judge in
13 the grand jury proceeding, replacing the
14 grand jury proceeding with a Superior Court
15 preliminary hearing which would have the
16 additional advantage of being open to the
17 public to see and scrutinize what goes on at
18 the preliminary hearing? As well as
19 providing a measure of discovery for defense
20 counsel, because we don't enjoy that luxury
21 in New York State today.

22 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
23 Senator -- sorry, Assemblyman Lentol, I have
24 not had those discussions with the Chief

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1 Judge.

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2 ASSEMBLYMAN LENTOL: Thank you. Thank
3 you, Judge.

4 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
5 You're welcome.

6 CHAIRMAN DeFRANCISCO: Thank you very
7 much.

8 CHAIRMAN FARRELL: Thank you.

9 CHIEF ADMINISTRATIVE JUDGE PRUDENTI:
10 Thank you, ladies and gentlemen.

11 CHAIRMAN DeFRANCISCO: The next
12 speaker is John Melville, executive deputy

13 commissioner of the New York State Division
14 of Homeland Security and Emergency Services.

15 Whenever you're ready. Thank you.

16 DEPUTY COMMISSIONER FEENEY: Good
17 morning.

18 CHAIRMAN FARRELL: Good morning.

19 CHAIRMAN DeFRANCISCO: Shhhhhhh.

20 Okay, you're on.

21 DEPUTY COMMISSIONER FEENEY: Good
22 morning. Thank you, Chairman DeFrancisco,
23 Chairman Farrell, and distinguished members
24 of the joint committee.

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1 I'm Andrew Feeney, deputy commissioner
2 at the New York State Division of Homeland
3 Security and Emergency Services. With me
4 today is Mike Perrin, deputy commissioner for
5 administration and finance.

6 Thank you for the opportunity to
7 highlight DHSES's accomplishments over the
8 past year and to outline our plans to further
9 fortify our state's infrastructure, heighten
10 our communities' preparedness and resiliency,
11 and strengthen our capacity to protect our
12 citizens from future emergencies and
13 disasters.

14 As outlined in our proposed budget,
15 Governor Cuomo remains committed to building
16 and maintaining the most effective and
17 efficient emergency management system in the
18 nation to address the diversity and

19 persistence of threats affecting the state.
20 In response to this ongoing threat of
21 terrorism, Governor Cuomo has earmarked
22 \$40 million for counterterrorism activities,
23 including a thorough examination of
24 prevention and preparedness efforts,

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1 increased international collaboration, and
2 visibly ramping up our security presence with
3 National Guardsmen and state troopers at key
4 transportation infrastructure locations in
5 New York City through Task Force Empire
6 Shield.

7 To continue our progress in emergency
8 communications, DHSES has fostered 13
9 regional partnerships with public safety
10 agencies across the state to create
11 interoperable emergency communications
12 systems for first responders. Toward this
13 goal, \$225 million has been awarded in all
14 57 counties and the City of New York to date.
15 The 2015 Executive Budget appropriates an
16 additional \$75 million to support the
17 continuation of key programs, including
18 \$50 million for competitive grants to
19 counties for large-scale radio projects,
20 \$10 million in grants to counties to support
21 ongoing operations of public safety
22 communications centers, and \$15 million for
23 technology to interconnect state and local
24 radio systems and public safety dispatch

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1 centers, within and between regions.

2 This past year New York State
3 experienced two federally declared disasters.
4 Severe flooding in 11 Western New York
5 counties in May has resulted in the receipt
6 of more than \$18 million in public assistance
7 grants to repair and replace infrastructure
8 including roads, bridges, utilities and
9 schools.

10 A Federal Disaster Declaration was
11 also approved for the November storm that
12 descended on Buffalo rapidly, dumping seven
13 feet of snow.

14 These are the ninth and tenth Federal
15 Disaster Declarations in New York State since
16 2011.

17 Response and decision-making are only
18 as good as the information at hand. With a
19 \$23 million federal investment, we will
20 install 125 state-of-the-art weather
21 detection stations around the state, to
22 provide a broader picture of current weather
23 conditions by collecting real time weather
24 data minute by minute.

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1 To better coordinate emergency
2 response across the state, New York State
3 will develop a comprehensive emergency
4 program, aided by technology, named the State

5 Operations Response Management System, or
6 STORM. When fully implemented, STORM will be
7 used by all state and local emergency
8 managers. The system and training will
9 improve on our ongoing efforts to strengthen
10 our ability to manage disasters. STORM will
11 be establishing uniform protocols in command
12 and control, communications and tracking of
13 assets.

14 This unified approach, supported by
15 the latest technology, will also incorporate
16 tracking of disaster damage and response
17 expenses to speed potential Federal Disaster
18 Declarations and the funding that they make
19 available.

20 With the increased transport of crude
21 oil through the State, Governor Cuomo ordered
22 a thorough review of the accident prevention
23 and response capacity related to rail and
24 water shipments of crude oil from the Bakken

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1 oil fields in North Dakota, Montana and
2 Alberta, Canada. Among the study's
3 recommendations is the state's need to acquire
4 and stockpile firefighting foam so that our
5 Office of Fire Prevention and Control may
6 better assist in the unfortunate event of a
7 crude oil tanker fire.

8 We ask for your support for Governor
9 Cuomo's proposal to expand the state Oil
10 Spill Fund cap from \$25 million to

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\$40 million to support this initiative.

The Governor recognizes an urgent need to train and educate our future homeland security and emergency management leadership, public officials, and citizens to confront modern-day threats and challenges. As such, the Executive Budget outlines a \$15 million investment to open the nation's first emergency preparedness college. The proposed College of Emergency Preparedness, Homeland Security and Cybersecurity within SUNY will grant advanced degrees in both academic and professional aspects of law enforcement, security, public and international affairs,

counterterrorism, emergency management, cybersecurity and forensics.

This proposal envisions the college to be located at the University at Albany, with a satellite campus in Oriskany.

Under the Governor's leadership, the state preparedness training center in Oriskany last year coordinated training for 17,262 students, well in excess of our annual goal of 15,000.

In June of this year, New York State will proudly partner with the U.S. Departments of Defense and Justice to host the 2015 Ravens Challenge exercise, which is aimed at enhancing the operational coordination between public safety bomb

17 squads and military ordnance disposal units.
18 In conjunction with this, last year
19 the Governor directed DHSES to train chief
20 executives, county emergency managers, and
21 other local officials as part of the
22 Emergency Management Certification and
23 Training Program. To date, 31 trainings have
24 been completed for more than 950 individuals.

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1 In addition, during the past year
2 DHSES conducted the training of 1356 first
3 responders through the Office of Emergency
4 Management, 50,000 members of the fire
5 service through the Office of Fire Prevention
6 and Control, and 27 exercises supported by
7 the Office of Interoperable and Emergency
8 Communications.

9 The training of our citizens is also a
10 priority for the Governor. We are
11 approximately halfway through the Governor's
12 goal of 100,000 citizens trained. The
13 Executive Budget includes \$3.2 million in new
14 funding to continue offering a citizens
15 emergency preparedness course in
16 collaboration with the National Guard.

17 These are just a few of the highlights
18 of what New York State is doing to address
19 the spectrum of natural and manmade threats
20 we face. We appreciate your continued
21 support of past programs and of the homeland
22 security proposals in the Governor's current

23 Executive Budget.

24 And I and my colleague would be

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1 pleased to answer any follow-up questions.

2 CHAIRMAN DeFRANCISCO: Before I call
3 on Senator Croci, what is your name?

4 DEPUTY COMMISSIONER FEENEY: I'm
5 sorry, my name is Andrew Feeney.

6 CHAIRMAN DeFRANCISCO: Okay. All
7 right. Because we had it on the list that
8 Melville was coming. Do we know why he
9 wasn't here? Because we didn't hear that.

10 DEPUTY COMMISSIONER FEENEY:
11 Commissioner Melville just recently joined
12 the department. He thought it would be more
13 helpful for my colleague and me to answer any
14 questions. He's looking forward to meeting
15 with the committees during his confirmation.

16 CHAIRMAN DeFRANCISCO: Okay, thank
17 you.

18 The first questioner is Senator Croci,
19 chairman of Veterans and Homeland Security.

20 SENATOR CROCI: Thank you,
21 Mr. Chairman.

22 Thank you, Mr. Feeney, for joining us
23 today and for your continued service to the
24 state.

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1 Superstorm Sandy struck New York two
2 and a half years ago. According to my
3 numbers, in my 3rd Senate District alone, on

4 Long Island, there at least a hundred people
5 whose claims are still outstanding. These
6 are families that are not in their homes. In
7 Nassau County and across Suffolk County,
8 there are hundreds more. And in the boroughs
9 of New York that were affected, hundreds
10 more.

11 I notice in the Governor's proposed
12 budget an \$18.3 million increase in state
13 operations funding to hire more disaster
14 assistance representatives to manage these
15 cases. I'd like to know how the planned
16 oversight -- or how they intend to see or
17 measure metrics for success for closing out
18 these cases and ensuring that we're getting
19 families back into their homes and wrapping
20 these cases up by end of calendar year.

21 DEPUTY COMMISSIONER FEENEY: Senator,
22 you're speaking about home repair and --

23 SENATOR CROCI: I'm talking about the
24 Sandy disaster relief and the programs to

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1 ensure that we get our residents back in
2 their homes after a disaster. It seems like
3 we handled the response okay, but the
4 recovery is ongoing. And I think two and a
5 half years later there's some frustration.

6 DEPUTY COMMISSIONER FEENEY: So there
7 are several programs that are available.
8 Certainly within the City of New York, the
9 city is managing its own program for repair

10 and rebuild of homes; it's called Build It
11 Back.

12 The State Office of Storm Recovery is
13 managing Community Development Block Grant
14 funds that are directly funding the state's
15 program for that. So I can't speak directly
16 to that program.

17 I can tell you that we're very
18 sensitive -- in DHSES we run a program that
19 relates to case management for people, so
20 those individuals that are working through,
21 you know, different types of rules from the
22 different agencies that relate to their
23 rebuilding efforts are coordinated. And our
24 staff is fully involved in assisting people

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1 to really work through that process.

2 SENATOR CROCI: I'm specifically
3 speaking of the additional funding that's
4 been requested by the Governor for additional
5 disaster assistance caseworkers to manage
6 these cases. I'm curious as to their
7 qualifications, how many are going to be
8 hired, and then what kind of oversight and
9 management of those caseworkers will there
10 be, and will that management then provide
11 updates, metrics as to how the process is
12 going, be able to predict the speed of the
13 process?

14 DEPUTY COMMISSIONER PERRIN: Yes,
15 Senator, I believe the appropriation that

16 you're referring to in the budget is to cover
17 the state's share of the DAR program. So
18 it's not specifically aimed at adding
19 disaster assistance representatives, it's
20 simply an appropriation to cover the state's
21 share versus the federal share.

22 And with respect to hiring new and
23 additional DARs, we have sufficient
24 appropriation authority and cooperation with

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1 Division of the Budget and OGS, as our HR
2 provider, to hire any disaster assistance
3 representatives we need.

4 SENATOR CROCI: And will there be
5 mid-level management overseeing these
6 disaster claims that then coordinates the
7 metrics that we can actually see and touch
8 and update our residents with? Because
9 that's something that seems -- you can hire a
10 lot of disaster recovery folks to help with
11 the claims, but there needs to be some sort
12 of mid-level management that is then
13 reporting that up the chain. So I'm just
14 hopeful that that's part of the equation.

15 I want to move on to cybersecurity.
16 The Governor has proposed transferring
17 authority, \$10.8 million as well as
18 programmatically cybersecurity from your
19 department to Office of Information
20 Technology. And I just wanted to hear your
21 thoughts about that, if there's a certain

22 expertise that's lacked in your department,
23 which as I understand has a great deal of
24 expertise in this area, why that transfer is

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1 occurring.

2 DEPUTY COMMISSIONER FEENEY: So the
3 responsibility for cybersecurity was in fact
4 transferred to ITS, Information Technology
5 Services, in 2013. Our role in cybersecurity
6 is really -- well, in 2013 also the state
7 actually consolidated its cybersecurity
8 efforts in one location, joining together the
9 Center for Internet Security, the New York
10 State Intelligence Center, and the Multistate
11 Information Analysis and Sharing Center.

12 We have analysts in that collocated
13 facility, both us and the State Police, and
14 we currently monitor threats through that and
15 share information.

16 SENATOR CROCI: Are those employees
17 going to be transferred to the Office of
18 Information Technology?

19 DEPUTY COMMISSIONER FEENEY: No,
20 that's actually independent of the ITS
21 effort, which is mostly focused on monitoring
22 the state networks.

23 SENATOR CROCI: So your division has
24 employees there working in their division

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1 doing cybersecurity work?

2 DEPUTY COMMISSIONER FEENEY: In the --
3 right, that's correct. In the collocated
4 center.

5 SENATOR CROCI: Well, it begs the
6 question, if the resident expertise
7 analytically is in your division, why is it
8 being transferred into, programmatically and
9 budgetarily, why is it being transferred
10 wholly into Information Technology?

11 DEPUTY COMMISSIONER FEENEY: I think
12 my colleague can speak to some of the
13 appropriation -- mechanical pieces of that.

14 But again, the intelligence analysis,
15 the looking at the critical infrastructure
16 and those pieces, are done by analysts with
17 both DHSES and again the State Police also
18 have individuals in the actual center that's
19 looking at the threat, and that's really what
20 our strengths are, is the threat orientation.

21 Whereas ITS's role is really to
22 monitor -- actually monitor appliances on
23 state networks and look at anomalous traffic
24 and then, you know, work through the

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1 technical aspects of pushing out information
2 to the different types of users and IT
3 professionals in the agencies so that they
4 can then, you know, do things like apply
5 patches, rewrite rules, and make the networks
6 safe against the ongoing threats that are
7 posed by malicious code and things like that.

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So they have more of a technical aspect. We're more threat-oriented.

SENATOR CROCI: Are those resources best placed in technology services, or are those resources best placed in DHSES?

DEPUTY COMMISSIONER FEENEY: We think that our current role is -- our current role of really analysis of threats, analysis of infrastructure and information sharing is appropriate for us.

SENATOR CROCI: I see I'm out of time, Mr. Chairman. May I have an additional --

CHAIRMAN DeFRANCISCO: If you have more questions, we'll get back to you.

SENATOR CROCI: Thank you.

CHAIRMAN DeFRANCISCO: Okay, thank you.

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CHAIRMAN FARRELL: Assemblywoman Crystal Peoples-Stokes.

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

And thank you, gentlemen, for your remarks this morning.

I would agree with the Senator; I was a little concerned that Mr. Melville was not here. I was hoping that he didn't have a cold, since the weather is so inclement. But you're saying that he's in good health and just couldn't be here this morning.

DEPUTY COMMISSIONER FEENEY: Yes.

14 ASSEMBLYWOMAN PEOPLES-STOKES: That's
15 good.

16 Regarding the \$150 million
17 appropriation for public safety, some of it
18 is \$60 million for bulletproof vests, body
19 cameras and bulletproof glass. How do you
20 know which communities are in need of these
21 things? Have there been requests of you? Or
22 are you doing some sort of analysis to see
23 who has a need for this sort of equipment?

24 DEPUTY COMMISSIONER PERRIN: Yes,

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1 Assemblymember, I believe that \$60 million
2 portion of the --

3 ASSEMBLYWOMAN PEOPLES-STOKES: I'm
4 sorry, I can't hear you.

5 DEPUTY COMMISSIONER PERRIN: The
6 \$60 million that you referred to is part of a
7 \$150 million allocation, as you noted. That
8 \$60 million portion is being managed by DCJS.
9 So they'd be best equipped to advise as to
10 how they're going to allocate that equipment.

11 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
12 I recall, probably in the fall, the Attorney
13 General using asset forfeiture dollars to
14 provide a lot of bulletproof vests across the
15 state to a number of law enforcement
16 agencies, including some of those in Western
17 New York.

18 And so I'm wondering who actually is
19 making these decisions about how many forces

20 are still in need of new equipment, or has
21 there been some upgrade in the quality or the
22 technology in the equipment that our
23 departments need to have greater access to
24 bulletproof vests or -- how are we making

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1 that decision?

2 DEPUTY COMMISSIONER PERRIN: Well,
3 those decisions I think are being led by
4 DCJS, in consultation with State Police and
5 other law enforcement. You know, that law
6 enforcement function is outside the scope of
7 what our division is involved in.

8 ASSEMBLYWOMAN PEOPLES-STOKES: So
9 we're working with the Attorney General's
10 efforts to disseminate this equipment as well
11 so we're not duplicating in departments?

12 DEPUTY COMMISSIONER PERRIN: Right.
13 DHSES has no law enforcement role, so we
14 leave those decisions -- even though some of
15 the funding may appear in public safety,
16 those decisions are guided by DCJS, State
17 Police and the law enforcement community.

18 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
19 So how about emergency vehicles and -- I
20 think there's \$50 million being allotted for
21 that, and for snowplows. Are districts
22 requesting this of you, or are you going to
23 issue some sort of opportunity for them to
24 apply to get the resources?

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1 DEPUTY COMMI SSIONER PERRIN: I 'm
2 sorry, I di dn' t understand the last part of
3 your questi on.

4 ASSEMBLYWOMAN PEOPLES-STOKES: Wi ll
5 you offer an opportuni ty for localities to
6 apply to get access to this \$50 million, or
7 do you know where already it wi ll be
8 disseminated to?

9 DEPUTY COMMI SSIONER PERRIN: The State
10 Department of Transportati on is managing the
11 snowplow acqui siti on and di stri buti on porti on
12 of that. DCJS -- excuse me, DHSES wi ll be
13 acquiring the hi gh-axle vehi cles that have
14 been referred to. And our di vi si on, together
15 with OEM, wi ll be managing where they are
16 deployed in the state.

17 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
18 Well, perhaps you can elaborate a l i t t l e b i t
19 on the International Securi ty Task Force.

20 DEPUTY COMMI SSIONER FEENEY: So the --
21 obvi ously, you know, i t' s part of our broader
22 effort on preparedness, because we know that,
23 you know, other countries have had di fferent
24 experi ences wi th combati ng terrori sm. So the

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1 intent is to bring together those experts to
2 share information with us. It' s part of,
3 again, our conti nui ng preparedness.

4 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
5 How wi ll the di vi si on conduct the
6 comprehensive audi t of the state' s existi ng

7 preparedness and prevention efforts, and is
8 there a cost attached to that?

9 DEPUTY COMMISSIONER FEENEY: We don't
10 have a -- I don't have a -- do you have a
11 specific cost for that?

12 DEPUTY COMMISSIONER PERRIN: No.
13 You'll note that there is a \$40 million
14 provision that was also discussed in the
15 Governor's budget brief. With that
16 \$40 million, there are three or four
17 components that are envisioned to be funded
18 out of that amount of money. One is Task
19 Force Empire Shield, to continue the
20 deployment of National Guard at key
21 locations, primarily in the New York City
22 transportation sector, together with New York
23 State Police.

24 This international task force, and the

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1 audit that you referred to, could well be
2 funded out of that \$40 million as well. So
3 we don't have a hard dollar value to be
4 shared right now.

5 ASSEMBLYWOMAN PEOPLES-STOKES: So will
6 there be an RFP put out for the audit, or is
7 this something you will conduct internally?

8 DEPUTY COMMISSIONER FEENEY: We're
9 just in the process of scoping that now. We
10 just have had initial discussions and are
11 looking at the staffing and the scope of the
12 effort right now.

13 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
14 But you probably do have the potential to do
15 the audit in-house?

16 DEPUTY COMMISSIONER FEENEY: We're
17 still determining that.

18 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.
19 Can you then also elaborate on the \$500,000
20 Department of Financial Services
21 suballocation to your Homeland Security and
22 Emergency Services contractual service
23 expenses related to the repair and
24 rehabilitation of state fire training

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1 academies? And what the status of the
2 rehabilitation is, and what are the general
3 plans for the state's fire academy?

4 DEPUTY COMMISSIONER PERRIN: Well, I
5 think what you referred to is an increase in
6 the suballocation from the Insurance Fund.
7 That's been a bit of a budgetary --

8 ASSEMBLYWOMAN PEOPLES-STOKES: For
9 insurance, I'm sorry, did you say?

10 DEPUTY COMMISSIONER PERRIN: You're
11 referring to the insurance suballocation
12 to -- that is used for the Office of Fire
13 Prevention and Control for their operations
14 and facility maintenance. So that increase
15 that -- you'll see that an increase in that
16 allocation in this budget year was largely a
17 transfer of funds from other funding sources
18 and an increase in funding from the insurance

19 subal l ocati on.

20 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.

21 Here' s another thi ng I had some questi on
22 about. Who' s going to make the deci si on
23 about where the addi ti onal uni forme d offi cers
24 for New York Ci ty train stati ons go? Is that

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1 going to be the New York Ci ty Law Enforcement
2 Department, or is that coming out of your
3 agency?

4 DEPUTY COMMI SSI ONER FEENEY: That wi ll
5 be a coll aborati on between the National
6 Guard, New York State Pol ice, MTA and all
7 their securi ty partners and law enforcement
8 partners, primari ly in the metropol itan area.

9 ASSEMBLYWOMAN PEOPLES-STOKES: Cl early
10 you don' t have any numbers on that yet, how
11 many offi cers that might entai l or how many
12 locati ons that may entai l ei ther?

13 DEPUTY COMMI SSI ONER PERRIN: DHSES is
14 not i nvol ved in the actual deployment. So we
15 assi st i n provi di ng the fundi ng to the law
16 enforcement agenci es.

17 ASSEMBLYWOMAN PEOPLES-STOKES: Wel l ,
18 there certai nly, cl early, is nothi ng more
19 i mportant than protecti ng our safety. So I
20 woul d be i nterested i n those numbers when you
21 have some i dea of where you' re wi th i t.

22 DEPUTY COMMI SSI ONER PERRIN: Sure.

23 ASSEMBLYWOMAN PEOPLES-STOKES: And I' m
24 sure my col leagues from the New York Ci ty

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1 area will be interested as well.
2 DEPUTY COMMISSIONER FEENEY: Sure.
3 ASSEMBLYWOMAN PEOPLES-STOKES:
4 Mr. Chairman, I think that's it for now.
5 Thank you very much. Thank you, gentlemen.
6 DEPUTY COMMISSIONER PERRIN: Thank
7 you.
8 CHAIRMAN DeFRANCISCO: Okay, thank
9 you.

10 Senator Addabbo.
11 SENATOR ADDABBO: Thank you,
12 Mr. Chair. I want to thank Deputy
13 Commissioner Feeney for his time and effort
14 today, of course Commissioner Melville for
15 his efforts throughout the state.
16 I share the concerns of Senator Croci.
17 My area too is a district affected by
18 Hurricane Sandy. The communities of Howard
19 Beach, Hamilton Beach, Broad Channel, the
20 Rockaways are still affected, people are
21 still out on their own. So the recovery and
22 the rebuilding of course still concerns us.
23 And also we use Sandy and other storms
24 and other emergencies as a learning

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1 experience. That's why I am pleased to see
2 the \$3 million funding for the Citizens
3 Emergency Preparedness and Management Course.
4 So my question pertains to that. How

5 do we encourage residents to get into that
6 program? Are you targeting certain
7 geographic areas and the residents of those
8 areas to participate in that program?

9 DEPUTY COMMISSIONER FEENEY: We
10 obviously have a -- it's a statewide
11 initiative, and certainly we work closely
12 with all of our local partners as well. I
13 know in New York City, the New York City
14 Office of Emergency Management has a lot of
15 information to point people to different
16 types of preparedness. Obviously, it's a
17 huge -- having people prepared is the
18 essential part of their being able to make
19 good informed decisions during disasters.

20 So again, our initiative, as
21 discussed, was 100,000 people in our initial
22 allotment, and we're just about halfway
23 there.

24 SENATOR ADDABBO: I'm sorry,

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1 currently, how many people, individuals --

2 DEPUTY COMMISSIONER FEENEY: The
3 Governor directed the agency to train 100,000
4 people, and we're halfway through that at
5 this point.

6 SENATOR ADDABBO: The statewide
7 emergency management response system that's
8 set up, how do you work with local entities?
9 Again, the outreach, how do we plan on
10 working with local entities to partner with

11 them in getting information out to the
12 communities or, again, preparing for the next
13 emergency?

14 DEPUTY COMMISSIONER FEENEY: So
15 there's obviously, with counties, there are
16 county-level plans, emergency plans, there
17 are local emergency plans that are -- that
18 people have, you know, been refining and
19 using.

20 A plan is not like a book here, it's
21 actually -- preparedness is a cultural thing.
22 We prepare, we continue to improve
23 preparedness. So we work with the counties
24 and with local governments through training,

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1 exercise, those types of activities.

2 In terms of getting information out to
3 the people, annually, through the Governor,
4 we do different campaigns that coincide with
5 weather. So we do winter weather awareness,
6 hurricane awareness, different types of
7 campaigns that put information out that
8 really make the public aware that threats are
9 out there.

10 And again, any more targeted efforts
11 we respond to at the request of local
12 government.

13 SENATOR ADDABBO: Deputy Commissioner,
14 just to be more specific, the means by which
15 you get the information out there?

16 SENATOR HASSELL-THOMPSON: Excuse me,

17 Mr. Chairman, can we ask if you could speak a
18 little bit closer into your mic?

19 DEPUTY COMMISSIONER FEENEY: I'm
20 sorry.

21 SENATOR HASSELL-THOMPSON: Thank you.
22 I appreciate it.

23 DEPUTY COMMISSIONER FEENEY: Yeah.
24 So the means by which we get out,

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1 obviously Internet. We also do direct, you
2 know, mail type -- not direct mail, but
3 direct pamphlets, like palm-card types of
4 documents that we distribute at local
5 meetings and at other types of venues.

6 But it's always, it's through the air,
7 through Internet and also, you know, with
8 written material. There's an awful lot
9 available through the Internet, obviously,
10 that -- at every level of government on
11 preparedness.

12 SENATOR ADDABBO: I always felt you
13 have the best program in the world, but if
14 people don't know about it or they're not
15 actively engaged, it's -- you know, again,
16 not the value that we need it to be.

17 And lastly, I couldn't help but notice
18 "Acting Commissioner" in front of
19 Mr. Melville's name. The process in which
20 we're selecting the commissioner, is there a
21 time frame in the process?

22 DEPUTY COMMISSIONER FEENEY: The

23 commissioner is pending scheduling of his
24 confirmation hearing.

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1 SENATOR ADDABBO: Okay. Thank you for
2 clarifying.

3 Thank you, Mr. Chair.

4 CHAIRMAN FARRELL: Assemblyman Joe --
5 never mind.

6 ASSEMBLYMAN LENTOL: You answered my
7 question, I just didn't pay attention, I
8 guess.

9 CHAIRMAN DeFRANCISCO: Senator
10 Nozzolio.

11 SENATOR NOZZOLIO: Thank you,
12 Mr. Chairman.

13 Good morning, gentlemen.

14 DEPUTY COMMISSIONER FEENEY: Good
15 morning.

16 SENATOR NOZZOLIO: Thank you for your
17 testimonies.

18 I want to follow up on a question that
19 Assemblywoman Peoples-Stokes brought up
20 regarding snowplowing. The area between
21 Utica and Buffalo has a lot of snow. And
22 it's an interesting plan, it's something that
23 we appreciate, the addressing of these storms
24 in Western New York by the state in a

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1 coordinated effort. That was the good news.
2 And we hope that this additional deployment
3 of equipment will be something very positive.

4 But the Assemblywoman asked you a
5 question about how these snowplows were going
6 to be acquired and deployed. I'd like you to
7 go further into that situation. That if you
8 took the local roads of our state and added
9 them end to end, it would circumnavigate the
10 globe and at least once, maybe more.

11 More state employees are going to be
12 necessary to drive these new snowplows. And
13 what is the plan, once they're acquired by
14 the state, in terms of location, additional
15 staff, the kinds of things that are normal
16 questions when you add basically a new state
17 department, or expand a state department?

18 And the question begs the real concern
19 I have, is why not simply engage in local
20 support and have a coordinated effort with
21 our town and county highway departments to
22 make this a more effective approach to
23 disaster control?

24 CHAIRMAN DeFRANCISCO: Our role in

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1 DHSES is --

2 SENATOR NOZZOLIO: Could you pull your
3 mic up? Just pull it closer to you.

4 DEPUTY COMMISSIONER FEENEY: Good?

5 SENATOR NOZZOLIO: Good.

6 DEPUTY COMMISSIONER FEENEY: Okay.

7 Our role at DHSES is that coordination. And
8 we -- certainly the Department of
9 Transportation is actually directly involved

10 in the management of snow in the different
11 corridors, the different state roads. But
12 we're -- again, we'll be working with them on
13 operationalizing the different resources that
14 will be brought to bear on the -- on that.

15 SENATOR NOZZOLIO: I understand that.

16 I live in the country. It takes me a
17 while to get -- at least a mile to get to a
18 road that would be plowed by a government
19 entity. There are a lot more county roads,
20 local roads, that require this addressing.
21 And I guess the state -- which at times may
22 or may not plow county roads, may not have
23 jurisdiction or authority to plow town roads,
24 village streets -- that is something that you

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1 do oversee, and the intercoordination of
2 this. I mean, it's one thing to have a state
3 road plowed; it's another thing if you can't
4 get to the state road. If you've got to walk
5 to the state road, your car is -- the other
6 roads are impassible.

7 So have you given thought -- probably
8 haven't, it doesn't sound like you've given
9 much thought to this intercoordination that's
10 necessary.

11 DEPUTY COMMISSIONER PERRIN: Well,
12 Senator, I believe you're touching on another
13 program that the Governor announced in his
14 State of the State, and that's what has been
15 termed Project STORM, which is an integrated

16 system to provide a uniform mechanism,
17 uniform training across all local
18 jurisdictions within the State of New York,
19 all supported by a technological solution
20 that will allow local jurisdictions, together
21 with the State EOC, to communicate real time
22 situational on-the-ground information,
23 together with allowing, you know, the State
24 EOC to deploy resources to places where they

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1 are most needed. So this --

2 SENATOR NOZZOLI: Including local --
3 normally locally controlled --

4 DEPUTY COMMISSIONER PERRIN: Correct.
5 You know, the Governor's vision is to start
6 with local emergency managers, having them
7 all on a common system, having them all set
8 up on a basis of common training and a common
9 protocol. So everyone is speaking the same
10 language and using the same technological
11 tools to stay in contact in real time so that
12 tactical decisions can be made, in the event
13 of a snowstorm, much more readily and much
14 more efficiently.

15 SENATOR NOZZOLI: That's very good.
16 But, I mean, I think that -- what I guess I'm
17 suggesting is that you don't step back on
18 logistical problems of getting snow removed.

19 You have integration with our
20 excellent State Police force and our local
21 police force on all matters of homeland

22 security, our local forces and our state
23 forces. This shouldn't be any different.
24 And that's what I'm -- I guess I'm hopeful

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1 that it's a coordinated effort.

2 And where are you going to put these
3 150 or so snowplows? Are you going to --
4 what area? Have you planned as to where
5 you're going to be locating them?

6 DEPUTY COMMISSIONER PERRIN:

7 Deployment has not yet been determined. But
8 I think, you know, the Governor is spot-on in
9 that additional resources would be necessary
10 to provide a surge capacity.

11 And again, how -- you know, the
12 tactics behind how those deployments are
13 determined in the event of a storm, within
14 those hours, will be dramatically enhanced by
15 the new emergency management system,
16 supported by a technological solution. So I
17 think we can get to some of the issues that
18 you raise with that proposal.

19 SENATOR NOZZOLIO: Look forward to
20 hearing about those plans. Thank you very
21 much.

22 DEPUTY COMMISSIONER PERRIN: Thank
23 you, Senator.

24 SENATOR NOZZOLIO: Thank you,

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1 Chair man.

2
3 Weinstein.

4 ASSEMBLYWOMAN WEINSTEIN: Thank you.

5 I wonder if you could elaborate on the
6 enhanced training for oil spill preparedness
7 and what's the breakdown for resources,
8 full-time employees versus equipment and
9 supply purchases? And also how it
10 coordinates with DEC's.

11 DEPUTY COMMISSIONER FEENEY: Sure. So
12 the -- I can address the DEC. I think I'll
13 ask my colleague to talk to you about the
14 numbers.

15 Obviously when the threat was
16 recognized by the transportation of the
17 crude, the Governor directed, through
18 executive order, that State DEC and DHSES,
19 you know, work closely. And we've been
20 working very closely with the -- work closely
21 together as state agencies, but also we've
22 been working closely with the EPA and U.S.
23 Army Corps of Engineers that have actually a
24 geographic planning process.

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1 So our planning with them has really
2 ramped up in the last year, and we've made
3 some great strides with that.

4 Our goal is to obviously, in the
5 testimony, buy foam to supplement what's
6 available already locally, enhanced training
7 for that foam, and also continue with the

8 planning effort in order to address that
9 threat that's posed by the increased volume
10 of crude that's coming.

11 ASSEMBLYWOMAN WEINSTEIN: Are you
12 hiring additional -- do you anticipate hiring
13 additional staff or --

14 DEPUTY COMMISSIONER FEENEY:
15 Additional training staff, yes.

16 ASSEMBLYWOMAN WEINSTEIN: Because
17 there's a couple of million dollars in the
18 budget?

19 DEPUTY COMMISSIONER PERRIN: There's
20 no direct line item, but a couple of million
21 dollars is about what OFPC envisions as
22 necessary to hire the six new fire protection
23 specialists that the Governor talked about in
24 his budget briefing, together with

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1 fire-fighting equipment and, you know, all
2 the vehicles that go along with equipping a
3 state fire protection specialist.

4 ASSEMBLYWOMAN WEINSTEIN: Thank you.

5 CHAIRMAN DeFRANCISCO: Senator
6 Squadron.

7 SENATOR SQUADRON: Thank you very
8 much.

9 And as to the issue Senator Addabbo
10 and some others have raised, the volunteer
11 training in my district has been robust, and
12 we really appreciate that.

13 We'll have to see the continued

14 coordination between New York Rising and the
15 city's resiliency efforts in Lower Manhattan.
16 We also had significant impacts from Sandy.
17 And we love a lot of what New York Rising has
18 done, and we think it's great. It's just so
19 important, with federal dollars flowing to
20 each level of government, that the
21 coordination continues.

22 I have a question on a different
23 matter. And forgive me for this, because
24 it's something on which I will acknowledge

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1 knowing nothing. It may not be the only
2 issue on which I know nothing today, but this
3 one, I will acknowledge it.

4 This weather system, so just explain
5 to me sort of the added value for the
6 dollars, because I just don't understand it
7 at all, of the state having its own weather
8 forecasting system, as opposed to what's
9 available from the federal government and
10 from any number of private providers.

11 DEPUTY COMMISSIONER FEENEY: So the
12 Mesonet system is actually going to give the
13 state -- and we've been working closely with
14 the National Weather Service, a partner in
15 this project with us. It's going to give the
16 state 125 stations that will read ground
17 level and, in several cases, atmospheric
18 levels of readings on things like
19 temperature, humidity and those sorts of

20 thi ngs --

21 SENATOR SQUADRON: Ri ght. So what' s
22 the use of that?

23 DEPUTY COMMI SSIONER FEENEY: It vastly
24 i ncreases the amount of data that we have

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1 that' s going to be able to be used by, i n
2 thi s case, SUNY and also the National Weather
3 Servi ce to enhance predicti on, to also do
4 what' s called "nowcasti ng," whi ch gi ves a
5 much more accurate and more detai led read of
6 condi ti ons on the ground, and also, agai n,
7 through somethi ng called the profiler, to
8 read upper atmosphere, so that you can
9 actual ly see what' s happeni ng above the
10 ground and make better predicti ons out of
11 that.

12 SENATOR SQUADRON: So thi s I' ve heard
13 before, and I guess I' m sti ll real ly
14 confused. So that' s --

15 DEPUTY COMMI SSIONER FEENEY: So --
16 so --

17 SENATOR SQUADRON: -- why I' m aski ng.
18 So let me just fi ni sh i t.

19 So I' m confused on two l evel s. I
20 can' t qui te fi gure out i f thi s i s a research
21 tool , a predicti ve tool , an
22 acti onabl e-real ti me-i nformati on tool . So
23 among those three, and sort of how we' re
24 defi ci ent i n those. And then I' m also sort

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1 of separately confused as to sort of where
2 this information is going to go, and so sort
3 of to whom, in any one of those three
4 scenarios, it will actually provide a
5 service.

6 DEPUTY COMMISSIONER FEENEY: So in
7 answer to your first question, it's all of
8 the above. So it is a predictive tool, in
9 that, again, it's going to give us real time
10 readings.

11 Right now there are 27 what are called
12 ASOS systems that are operated by the
13 National Weather Service. So we're
14 increasing a type of -- it's very similar --
15 the stations that we're putting in are very
16 similar to ASOS, but we're going to increase
17 to 125, at least one in every county. And so
18 again, in that case, it is predictive.

19 There will also be a great deal of
20 research that's developed out of having that
21 much weather data being monitored, which is
22 good for, again, the study of weather and
23 also for commerce, essentially.

24 And in answer to your second

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1 questions, the information will be used by
2 many partners. For example, the emergency
3 management community will get forecast
4 information from the system. The National
5 Weather Service, who's forecasting weather,
6 will use the data to enhance their

7 forecasting, and other partners may also --

8 SENATOR SQUADRON: I guess let me try
9 again a little specifically on the first
10 question, and briefly here, if you don't
11 mind.

12 The first is so in real time, this data
13 is going to be shared, obviously, among state
14 agencies, with the National Weather Service,
15 and with local emergency management personnel
16 and agencies?

17 DEPUTY COMMISSIONER FEENEY: We
18 envision -- obviously, the project is still
19 forming up, but we envision web-based
20 interfaces that will enable governments to
21 see weather area clusters in real time.

22 SENATOR SQUADRON: And the second
23 question is -- and I understand the
24 difference between 15 and 125; 125 is more

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1 than 15. But I guess -- maybe let me ask the
2 question this way. We've had a lot of
3 instances in the last couple of years, as you
4 point out in your testimony. Can you
5 describe an instance where our ability to
6 respond, you know, from the perspective of
7 citizens of the state, would have been better
8 had this been in effect?

9 DEPUTY COMMISSIONER FEENEY: So I can
10 use an example of icing conditions. So by
11 having more information about temperature --

12 SENATOR SQUADRON: Just a specific

13 instance. I mean, you know, I think we've --
14 you in fact mention a number of them in your
15 testimony.

16 DEPUTY COMMISSIONER FEENEY: I can go
17 back to my experience in Irene and Lee where
18 we were reading stations in Greene County
19 that, you know, showed 6, 7 inches of rain,
20 and there was eventually, after the flooding
21 came through, there was a station only a
22 couple of miles away that had 14, 15 inches
23 of rain. That's a specific example of where,
24 if you knew, because you had more

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1 instrumentation, that they had 15 inches of
2 rain there, we could, again, do better in
3 terms of public safety.

4 SENATOR SQUADRON: Right. So we
5 didn't know that in real time, in the case of
6 Irene.

7 DEPUTY COMMISSIONER FEENEY: That's
8 correct.

9 SENATOR SQUADRON: And how would we
10 have acted differently had we known that in
11 real time?

12 DEPUTY COMMISSIONER FEENEY: It's an
13 aid for local government, who has to make
14 decisions about road closures, evacuations,
15 and other protective actions.

16 SENATOR SQUADRON: So because of this
17 reading, roads were not closed in the case of
18 Irene?

19 DEPUTY COMMISSIONER FEENEY: I can't
20 speak to that. Again, it's local. I can't
21 give you that. That's as specific as I can
22 get for you.

23 SENATOR SQUADRON: Again, thank you
24 very much.

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1 SENATOR KRUEGER: Thank you.

2 Senator Gallivan.

3 SENATOR GALLIVAN: Now good afternoon,
4 Commi ssi oners.

5 I have questions in several areas. I
6 want to follow up on a prior topic that you
7 discussed -- or that in your answer you had
8 talked about in responding to Senator
9 Nozzolio, and that's the notion of uniform
10 protocols in control and command.
11 Specifically, you talked about the
12 introduction of either a new technology or a
13 technology with the acronym STORM.

14 My observation of recently in the
15 snowstorms out in Western New York, and in my
16 experience in some other things -- although I
17 did not have any firsthand observation or
18 experience with the hurricane or superstorm
19 at the other end of the state -- was that
20 police, fire, EMS, other government emergency
21 responders are all trained and have worked
22 well over the years, including in their
23 response, although there are some hiccups, in
24 either incident or unified command.

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1 What does this do that is different,
2 what you're proposing?

3 DEPUTY COMMISSIONER FEENEY: Currently
4 across the state there are different systems,
5 varying systems at the state levels, at the
6 county levels --

7 SENATOR GALLIVAN: And are those
8 systems the technology-type systems
9 versus human systems?

10 DEPUTY COMMISSIONER FEENEY:
11 Technology systems, that's one piece of it.
12 So there are -- and we've been working
13 closely with -- I talked about the training
14 that we did before. So it essentially builds
15 on that effort to make the information in
16 terms of communication, resource ordering,
17 those activities more uniform across all
18 levels of government. This is really what
19 STORM is going to do, enable that aspect of
20 it as well.

21 SENATOR GALLIVAN: So would I be
22 accurate in saying that your role in this
23 would be more the providing of the training,
24 technology, and things surrounding that as

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1 more of a supportive role than being in a
2 command role in a situation?

3 DEPUTY COMMISSIONER FEENEY: Depending
4 on the events that are transpiring.

5 SENATOR GALLIVAN: Are you proposing
6 any changes to who ultimately would be in
7 command in any particular incident than what
8 happens today?

9 DEPUTY COMMISSIONER FEENEY: Not
10 through STORM at this time, no.

11 SENATOR GALLIVAN: All right, thank
12 you.

13 The next area, State Interoperable
14 Communications Grant, the particular program.
15 So we know that that comes from a surcharge
16 that is placed on telephones of subscribers
17 across the state; \$1.20 on every telephone is
18 collected and goes to the state for that
19 purpose. Fifty cents goes into the General
20 Fund and is not used for 911 purposes. We
21 are pursuing that through separate
22 legislation so it's used for its intended
23 purpose.

24 I want to focus on that other

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1 70 cents, and that's where the \$75 million
2 for this program comes from. The question I
3 have, though, is the \$50 million geared
4 towards the competitive grants, how is it
5 determined who gets these grants? And who
6 makes that decision?

7 DEPUTY COMMISSIONER FEENEY: Our
8 division works, again, through a competitive
9 process to award those funds.

10 SENATOR GALLIVAN: So counties will

11 be. Where do they submit their application,
12 to Homeland Security?

13 DEPUTY COMMISSIONER FEENEY: Correct.

14 SENATOR GALLIVAN: And Homeland
15 Security then makes the decision?

16 DEPUTY COMMISSIONER FEENEY: Plus our
17 Office of Interoperable and Emergency
18 Communications.

19 SENATOR GALLIVAN: The concern that
20 comes up from various counties is the ongoing
21 -- the sustainability of -- or the support of
22 their operations on the regular basis. So if
23 we look at a particular county and we look
24 out to Western New York, we have a county

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1 that last year contributed I think in the
2 neighborhood of \$8 million if you just
3 calculate what the surcharge is. The county
4 didn't, but the residents who live there, the
5 subscribers, did. They might have gotten
6 \$200,000.

7 In a different year, they were the
8 recipient of a grant and got \$6 million,
9 which was wonderful. But that up, down with
10 monies that ostensibly started to support the
11 operation and maintenance of 911 centers
12 across the state, including the state's
13 participation in that, it presents problems
14 for counties.

15 Do you have any suggestions on how to
16 overcome that?

17 DEPUTY COMMISSIONER FEENEY: I'm
18 sorry, could you repeat the question? I'm
19 having trouble hearing you.
20 SENATOR GALLIVAN: No (laughing).
21 DEPUTY COMMISSIONER FEENEY: It's the
22 last part.
23 SENATOR GALLIVAN: Here's the deal.
24 Counties can't count on this money. The

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1 money is collected from subscribers, and if
2 you look on their bill, they believe that all
3 of their money is going to support 911
4 systems where they live and across the state.
5 Only 70 cents of that, out of the \$1.20
6 collected, does. That amounts to tens of
7 millions of dollars over the course of a
8 year.

9 But specifically, \$50 million, it's
10 been determined, goes to this competitive
11 grant program, and counties have to compete
12 against each other. Some counties aren't in
13 a position to compete, especially the smaller
14 counties. And I am wondering, or I'm looking
15 for suggestions about how we can better
16 support 911 centers and operations across the
17 state.

18 DEPUTY COMMISSIONER FEENEY: So,
19 Senator, I believe we do, and we've worked
20 very closely to form the consortiums that I
21 spoke about. There's 13 across the state
22 that address all of the 57 counties.

23 So we do have consortiums that have
24 worked together, and that's really been the

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1 philosophy for our program, is because of the
2 need for interoperability and the challenges
3 that the smaller counties face, that we work
4 kind of jointly with the counties that have
5 come together as consortiums. That's really
6 one thing we have done.

7 SENATOR GALLIVAN: My last question is
8 in the area of that \$40 million for the
9 various counterterrorism activities. And
10 questions in two areas. The review, the
11 top-down review of prevention and
12 preparedness is one area, and I'd like to
13 know who is doing that and what that entails.

14 And then the second area, what are the
15 Guardsmen and the troopers going to be doing?
16 And it's better to defer to the State Police
17 superintendent on that question, I can do
18 that.

19 DEPUTY COMMISSIONER FEENEY: No, I
20 believe that, again, we're just at the
21 beginning of the effort to scope out our
22 top-down review of our preparedness programs.
23 So I don't have a tremendous amount of detail
24 for you on that at this point. But, you

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1 know, obviously we want to learn from what
2 we've been doing.

3 SENATOR GALLIVAN: Understood, and

4 we'd like to follow up with that.

5 DEPUTY COMMISSIONER FEENEY: Sure.

6 SENATOR GALLIVAN: Thank you.

7 CHAIRMAN DeFRANCISCO: Senator
8 Krueger.

9 SENATOR KRUEGER: Good afternoon.

10 So the cost of the two major storms in
11 the last few years -- but maybe it was
12 three -- we've received authorization for
13 \$10 billion from FEMA for what they
14 categorize as their public assistance
15 programs. One, is that number correct? Two,
16 how much have we received? And three, how
17 much have we distributed?

18 DEPUTY COMMISSIONER FEENEY: So the
19 \$10 billion, which I think is upped again to
20 about 12 --

21 SENATOR KRUEGER: Twelve billion.

22 DEPUTY COMMISSIONER FEENEY: -- is an
23 estimate. So that's a projection based on
24 projects that FEMA has identified, with the

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1 state and local governments, and that really
2 reflects that. That's not money that we have
3 on hand yet, that's money that's estimated to
4 be obligated to the state and available for
5 rebuilding projects through the Public
6 Assistance Program.

7 SENATOR KRUEGER: So do you know how
8 much we have received or put in for based on
9 the process, whatever that is?

10 DEPUTY COMMISSIONER PERRIN: Total
11 obligated so far has been \$6.9 billion, and
12 that's for Sandy only.

13 SENATOR KRUEGER: I'm sorry, can you
14 move the mic a little closer?

15 DEPUTY COMMISSIONER FEENEY: I'm
16 sorry, \$6.9 billion has been obligated --
17 that means provided to the state for Sandy --
18 and about \$3.5 billion disbursed. The
19 difference between the two numbers is this,
20 is that when FEMA obligates funding, they
21 obligate an entire amount, but we pay based
22 on completed project. It's a reimbursement
23 program. So that's the difference between
24 the 6 and the 3.5.

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1 SENATOR KRUEGER: So whomever is
2 eventually going to get this money from the
3 feds has to pay up-front and then get
4 reimbursed?

5 DEPUTY COMMISSIONER FEENEY: Yes.

6 SENATOR KRUEGER: I'm just going to
7 take a leap that there's a lot of projects
8 that can't come up with the money up-front.
9 What do we do about that?

10 DEPUTY COMMISSIONER FEENEY: And we're
11 very aware of that. So on some of the larger
12 projects that we're working on, we've worked
13 with agencies to advance funds, you know,
14 with internal controls that are appropriate
15 so that we can avoid any concerns about, you

16 know, funds going into different places. Not
17 so much from a point of view of anything
18 improper, but just from the scope of the
19 project.

20 Our projects are approved, and there's
21 a specific scope for them. And if an
22 applicant or a local government were to
23 deviate, the federal government can pull
24 funds back. So we work closely to manage

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1 that process to ensure that doesn't happen.

2 SENATOR KRUEGER: So if I'm just
3 adding those two numbers up, we've gotten
4 about 4.2 billion, either gotten or in the
5 hopper, out of potentially 12 billion. And
6 most of this, I'm assuming, attaches to
7 Sandy?

8 DEPUTY COMMISSIONER FEENEY: Correct,
9 that's Sandy. That was the number I gave you
10 for Sandy.

11 SENATOR KRUEGER: So that's several
12 years ago. What can we do as a state to make
13 sure we're maximizing the draw-down on the
14 federal money and helping get all of these
15 projects rebuilt as soon as possible?

16 DEPUTY COMMISSIONER FEENEY: We're
17 doing everything we can. We work very
18 closely with our partners in the city
19 government, as well as in the state agencies
20 that were affected -- you know, again,
21 transportation infrastructure, mainly. These

22 are large projects, in some cases, you know,
23 several hundred million dollar or billion
24 dollar projects that require a great deal of

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1 engineering. So it is, admittedly, a process
2 that moves somewhat slow. But by the sheer
3 size is really what the reason is there for
4 that.

5 SENATOR KRUEGER: I guess I'd worry
6 about the smaller projects in the areas
7 outside of New York City, where we spent all
8 day yesterday hearing from localities that
9 they don't have, you know, enough money to
10 respond to emergencies that aren't
11 storm-related. So I would imagine they would
12 have an enormous amount of trouble coming up
13 with the money up-front to do the work to
14 then get paid back.

15 Do we have any models where we can
16 help with the smaller projects as well?

17 DEPUTY COMMISSIONER FEENEY: Well,
18 again, we can consider -- we really work on
19 an individual-by-individual basis with what
20 we call applicants, which are local
21 governments and county governments. And, you
22 know, we're receptive to working to try to
23 meet cash-flow needs. We recognize the
24 problem that's out there with that.

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1 SENATOR KRUEGER: But I'm right, you

2 do hear this from localities that they
3 have --

4 DEPUTY COMMISSIONER FEENEY: I have
5 heard it more from larger projects. But we
6 know that it's an ongoing concern, just the
7 sheer cost of repetitive disasters over the
8 last several years, and the fact that local
9 governments, many of which are not declared
10 by the federal government, then there is
11 not -- you know, again it places a strain on
12 them.

13 SENATOR KRUEGER: Right. Is there a
14 timeline where if we don't get our
15 applications into the federal government for
16 this additional \$8 billion, we lose our
17 opportunity to get it?

18 DEPUTY COMMISSIONER FEENEY: No.
19 Really not in the macro way like that.
20 Essentially when a project is approved,
21 there's about a four-year window that FEMA
22 puts on us. But we can get extensions based
23 on legitimate reasons like complexity or
24 delay for certain other factors that would

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1 delay projects.

2 SENATOR KRUEGER: And this does not
3 include the MTA FEMA money, that was
4 separate?

5 DEPUTY COMMISSIONER FEENEY: There was
6 different -- there were different funds. The
7 MTA does have projects that are funded

8 through the Public Assistance Program, but
9 there's also other funding I believe through
10 FTA, through Federal Transit that was
11 allocated to them that we don't manage at
12 DHSES.

13 SENATOR KRUEGER: The Governor had
14 also announced several buyout models after --
15 I think it was Sandy. Do you know how many
16 properties the state has gone forward with
17 buying out? And what are you doing with
18 those properties?

19 DEPUTY COMMISSIONER FEENEY: Our
20 buyout program as the state was somewhat
21 limited. I believe that we had properties --
22 and I don't have that number handy unless my
23 colleague does, in terms of we had some
24 buyouts on Staten Island that we used our

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1 allocation from Community Development Block
2 Grant funds for.

3 But essentially there are more buyouts
4 for rebuilding within the City of New York
5 with the Build It Back program. So I believe
6 that -- I'm not sure that the city had a lot
7 of buyout activity. But mostly we were
8 funding rebuilding and some elevation efforts
9 with our funding.

10 SENATOR KRUEGER: So as far as you
11 know, the state hasn't taken ownership of
12 properties --

13 DEPUTY COMMISSIONER FEENEY: I can

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follow up with you on that and get
information back.
SENATOR KRUEGER: Okay. Because I was
always wondering what we were going to do
with the property, and we would have legal
responsibility for it going forward. So
whatever you can find out, I'd appreciate
your following up.
DEPUTY COMMISSIONER FEENEY:
Certainly.
SENATOR KRUEGER: Thank you.

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CHAIRMAN DeFRANCISCO: Senator Croci
to close.
SENATOR CROCI: Thank you,
Mr. Chairman.
Gentlemen, one final question. I'm
very interested in some of the communications
efforts that the division is undergoing, and
certainly in light of the disasters that
we've experienced in New York.
There was a lot of work done,
preliminary work, on a microwave
communications system. I know Suffolk
County, where I'm from, did a lot of that
work. And that communication link, I think
IOEC, is supposed to link us via microwave
communication network up to Albany so that in
the event of a disaster and a breakdown in
communications, there'll be a redundant
system that we can use.

20 I'm curious as to the status of that
21 program.

22 DEPUTY COMMISSIONER PERRIN: I can say
23 that program continues in development. We've
24 done some significant engineering and some

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1 quote -- and doing some estimating of what
2 the equipment will cost. So that program is
3 underway and continues.

4 SENATOR CROCI: Can you give me a
5 timeline? I mean, has it been let so that we
6 can begin contracting work? Is it in the
7 engineering phase? Is there a timeline for
8 completion?

9 DEPUTY COMMISSIONER PERRIN: I know we
10 were bidding some equipment late last year.
11 I can get you a status on where we are with
12 the -- there are about 12 or 13 microwave
13 hops between Albany and New York City. So
14 I'll be able to provide you with the status
15 of that project, Senator.

16 SENATOR CROCI: I look forward to
17 that. Thank you, gentlemen.

18 DEPUTY COMMISSIONER PERRIN:
19 Certainly.

20 CHAIRMAN DeFRANCISCO: Thank you very
21 much. You're all set.

22 DEPUTY COMMISSIONER FEENEY: Thank
23 you, Senator.

24 DEPUTY COMMISSIONER PERRIN: Thank

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1 you, Senator.

2 CHAIRMAN DeFRANCISCO: Okay, the next
3 speaker is Michael C. Green, executive deputy
4 commissioner, New York State Division of
5 Criminal Justice Services.

6 The next speaker, by the way, is
7 Anthony Annucci. If he would please start
8 moving down -- okay, good thinking. Already
9 is doing it.

10 You're on whenever you'd ready.

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

13 Good afternoon, Chairman DeFrancisco,
14 Chairman Farrell, and distinguished members
15 of the Legislature. I am Mike Green, the
16 executive deputy commissioner of the Division
17 of Criminal Justice Services. Thank you for
18 the invitation to appear before you today.

19 Governor Cuomo's proposed budget for
20 fiscal year 2015-2016 builds on the success
21 of the last four years, continues our fiscal
22 discipline and expands our commitment to
23 accountability and results. The budget will
24 allow DCJS to continue to meet its mission to

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1 enhance public safety and improve criminal
2 justice.

3 During the last four years, crime in
4 New York State has remained at historically
5 low levels, with reported murders declining
6 more than 17 percent between 2010 and 2013.

7 Additional reductions are expected when data
8 are finalized for 2014. The FBI statistics
9 show that New York continues to be the safest
10 large state in the nation, and the fourth
11 safest state overall. At the same time,
12 New York's prison population has declined
13 steadily since 1999, from a high of more than
14 72,000 inmates to a current population of
15 approximately 53,000. Notably, New York has
16 the lowest imprisonment rate of any large
17 state in the nation.

18 New York State began its Gun-Involved
19 Violence Elimination or GIVE initiative in
20 July of 2014, focusing on using proven
21 strategies to reduce shootings and save lives
22 in the 17 counties outside of New York City
23 that report 87 percent of the violent crime.

24 In addition to providing more than

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1 \$13.2 million in funding to our law
2 enforcement partners in those counties, the
3 GIVE initiative provides all participating
4 agencies with training and technical
5 assistance so they have the knowledge
6 necessary to implement programs that have
7 been proven effective.

8 For example, more than 270 law
9 enforcement professionals from GIVE agencies
10 attended the state's first-ever
11 evidence-based policing symposium, where they
12 heard national experts detail proven

13 strategies.

14 We' re provi di ng our funded partners
15 with the best qual i ty traini ng and assi stance
16 avail able, all at no cost, so they have the
17 knowl edge and tools to succeed.

18 Parti ci pati ng agenci es have embraced these
19 added benefi ts and have begun i mplementi ng
20 these strategi es.

21 Recogni zi ng that law enforcement
22 agenci es cannot reduce gun vi ol ence on thei r
23 own, GIVE promotes communi ty engagement.
24 DCJS has worked to foster coll aborati on among

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1 GIVE agenci es and SNUG street outreach worker
2 programs.

3 Procedural justice, which centers on
4 the concept of fair ness, is another key
5 component to GIVE and is a topic that DCJS
6 focused on throughout 2014 as we i mplemented
7 the i ni ti ative. Law enforcement efforts that
8 are fair, and perceived by the communi ty to
9 be fair, undeni ably foster trust and respect
10 from the communi ty and result in safer
11 communi ti es.

12 Through GIVE, we are commi tted to
13 hel pi ng our law enforcement partners build
14 bridges with the communi ti es they serve. The
15 Governor' s budget proposal preserves GIVE
16 fundi ng at the same level as the current
17 budget.

18 In addi ti on to i nvesti ng i n programs

19 designed to reduce crime, we also are
20 strengthening our community-based Alternative
21 to Incarceration network. We have
22 implemented a fidelity and evaluation system
23 and are providing training and technical
24 assistance to the providers we fund.

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1 In his State of the State message,
2 Governor Cuomo proposed a comprehensive
3 package of reforms to restore trust between
4 the community and law enforcement. The
5 proposal includes a process for the Governor
6 to appoint an independent monitor, and
7 potentially, a special prosecutor where an
8 unarmed civilian dies as a result of an
9 encounter with police and the case is not
10 presented to a grand jury, or a grand jury
11 does not indict.

12 While New York State's juvenile justice
13 system has undergone significant
14 transformational steps under Governor Cuomo's
15 leadership, there is one critical area where
16 New York has lagged behind. All 16- and
17 17-year-olds who are arrested are currently
18 processed in the adult criminal justice
19 system, regardless of their offense. Only
20 North Carolina and New York draw this line of
21 criminal responsibility at age 16.

22 Last month, Governor Cuomo's
23 Commission on Youth, Public Safety and
24 Justice released a comprehensive set of

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1 recommendations that were fully embraced by
2 the Governor. His proposal raises the age of
3 criminal responsibility to 18 by phasing in
4 juvenile jurisdiction for 16-year-olds in
5 2017 and 17-year-olds in 2018.

6 The Executive proposal is carefully
7 designed to preserve public safety by
8 maintaining district attorney control over
9 serious crimes of violence, allowing for
10 violent felony offenses given "youthful
11 offender" status to be considered in
12 subsequent sentencing for a violent felony
13 offense, and providing for the capacity to
14 impose adult sentences for certain of the
15 most egregious crimes of violence.

16 We all should be proud of the
17 tremendous strides that New York State has
18 made over the past quarter of a century to
19 enhance the safety and security of its
20 residents. The Governor's budget is designed
21 to continue the progress we have made. But
22 perhaps more importantly, it will allow us to
23 continue to support innovative programs and
24 proven strategies in communities where gun

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1 violence takes too many young lives.

2 Thank you for the opportunity to
3 address you.

4 CHAIRMAN DeFRANCISCO: Senator

5 Nozzol i o.

6 SENATOR NOZZOLI O: Thank you,

7 Mr. Chai rman.

8 Commi ssi oner Green, always good to see
9 you.

10 EXEC. DEP. COMMI SSI ONER GREEN: Good
11 afternoon, Senator.

12 SENATOR NOZZOLI O: Good afternoon.

13 A couple of questi ons about the
14 fundi ng of Rai se the Age. And, Commi ssi oner,
15 I know you are a law enforcement
16 professi onal , you always have been. In your
17 role as di strict attorney, you carried that
18 role with great professi onal i sm. And what
19 we' re trying to do is ascertain the impact of
20 Rai se the Age on a lot of di fferent areas.

21 The Governor appropriated, as you
22 know, \$25 milli on for thi s year to bear some
23 of the costs of the proposal . But we don' t
24 know where those \$25 milli on are to be

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1 deployed. Law enforcement, di versi on,
2 detenti on, court costs, probati on costs, the
3 placeme nt costs -- those costs are still up
4 in the ai r and we don' t really have any
5 defi ni ti ve gui del i ne.

6 I guess the first questi on I would
7 have to you, Commi ssi oner, regardi ng the
8 Executi ve' s proposal is the costs to local
9 probati on. That they' re goi ng to be called
10 upon, under the proposal as we see it, to

11 evaluate, to decide, and that this evaluation
12 process certainly will add to their
13 caseloads. What exactly will those probation
14 departments be required to do?

15 EXEC. DEP. COMMISSIONER GREEN: Thank
16 you. It's a very good question. Probation
17 is undeniably one of the keys to this
18 proposal if this proposal is going to do what
19 I think all of us would like it to do, and
20 that is help the 16- and 17-year-olds in our
21 state that need help. Probation will be a
22 key player.

23 I think most importantly, the Governor
24 is committed to fund 100 percent of the

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1 additional costs to probation incurred in
2 providing intake services, adjustment
3 services, and supervision of 16- and
4 17-year-olds that are -- I shouldn't say
5 transferred. But where they get additional
6 responsibility in those areas under this
7 proposal, the Executive is committed to
8 funding 100 percent of the additional
9 probation costs in those areas.

10 I know there are estimates that the
11 Division of Budget has put out that I do
12 believe have been shared, either with
13 legislators or legislative staff, that
14 estimate those costs to probation going out
15 in the outyears where this is fully
16 implemented, to be in excess of \$56 million.

17 And the Executive is committed to funding
18 probation to that level.

19 SENATOR NOZZOLI: That is initially,
20 Commissioner, very good news. Although
21 whatever proposal is decided will be moving
22 target; I know we'll have to look at that
23 prospectively.

24 But clearly you're indicating the

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1 intention of this program is not to establish
2 another unfunded mandate from the state.

3 EXEC. DEP. COMMISSIONER GREEN:
4 Absolutely. The intention of this program is
5 to get better results for the 16- and
6 17-year-olds in our state to try and break
7 the cycle. You know, and from a human
8 perspective, obviously, help them, make our
9 state safer. And frankly, in the end run, if
10 we can, working with local probation
11 partners, get youth into -- get them screened
12 through the intake process, through the
13 diversion process, get them connected with
14 services and ultimately address the
15 underlying issues that get them in the
16 system, on the back end we'll save more money
17 because experience has shown that we'll be
18 able to reduce recidivism.

19 SENATOR NOZZOLI: Commissioner,
20 moving to another subject, that the issue of
21 prosecutorial management and control of this
22 entire process is important. And we know

23 each other long enough to call each other
24 Mike, and that you were very instrumental

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1 when I was involved a number of years ago in
2 the creation of the Willard Drug Treatment
3 Prison, the very first of its kind in the
4 state of that, and you were involved in every
5 step of that process, and I appreciate that
6 involvement and guidance through the years.

7 But the key to that program was to
8 have the district attorneys control the
9 process and have veto power, veto authority
10 over the process. Because you are the
11 elected representative to -- you were, at the
12 time, in your old job, prior job, being that.

13 And I guess what I see this on the
14 surface is that yes, your testimony indicated
15 that there would be district attorney
16 control. But it's clear it's not going to be
17 total control. And I'd like your comments on
18 that subject. Aren't we concerned, I guess,
19 that why, particularly for very violent
20 offenders, the district attorneys then cede
21 control of this situation to others?

22 EXEC. DEP. COMMISSIONER GREEN: And
23 again, I think your question raises a very
24 valid and excellent point.

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1 This proposal is an attempt to balance
2 a number of different issues and to strike
3 that balance in a way that enhances, not

4 compromises, public safety. And I think when
5 you look across the entire system, you're
6 constantly looking at how do you balance
7 power between the courts, the judges, the
8 district attorney, the other players.

9 You know, in different areas we strike
10 that balance. Right now, even if you take
11 this proposal off the table, district
12 attorneys don't have unfettered discretion.
13 In some areas they have discretion, in some
14 areas courts can impose a sentence whether
15 the district attorney agrees or not. So
16 we've made decisions going along as to how we
17 strike that balance.

18 This proposal tries to continue to
19 strike that balance in a way that's
20 appropriate. On serious crimes such as
21 murder, such as rape in the first degree,
22 such as criminal sex act in the first degree,
23 any armed violent felony offense, this
24 proposal maintains district attorney control.

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1 So that case comes in, there's an arrest
2 made, it goes to an adult court -- it will be
3 a youth part of an adult court, but it will
4 be a criminal court. And on those cases,
5 ultimately if the district attorney says no,
6 this case should not be transferred to Family
7 Court and should stay in adult court, it will
8 stay.

9 Other cases, for example,

10 misdeemeanors, 16- and 17-year-olds will go
11 straight to Family Court.

12 So you're right, that balance is very
13 important. And this proposal that the
14 Governor put forth has looked very carefully
15 at that balance and tried to strike it in a
16 way that does the best that we can do for our
17 16- and 17-year-olds without in any way, on
18 the most serious cases, compromising district
19 attorney control or compromising public
20 safety.

21 SENATOR NOZZOLIO: It's certainly a
22 concern we have going forward, and I look
23 forward to our discussions to ensure that
24 occurs.

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1 One last question, Commissioner, is
2 the proposal where police officers are to
3 obtain information regarding an individual's
4 race. Justice is blind. The apprehension of
5 an individual also should be neutral. That
6 we have been involved in demographic
7 information for a number of years, and the
8 issue of asking a police officer to be a
9 census taker, to be a reviewer of an
10 individual or a decider, if you will, of an
11 individual's race as he or she characterizes
12 that on the arrest form, it appears to be an
13 unreasonable request to our law enforcement
14 officials.

15 Would you comment on the background of

16 why this is being proposed?

17 EXEC. DEP. COMMISSIONER GREEN:

18 Certainly. And again, I think your question
19 goes to one of the seven points in the
20 Governor's proposal with regard to criminal
21 justice reform.

22 Currently, DCJS collects information
23 with regard to all fingerprintable offenses.
24 So whenever there's an arrest made for a

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1 fingerprintable offense, that fingerprint,
2 along with demographic information and charge
3 information, comes to DCJS, we collect it,
4 and when we're asked, many times by the
5 Legislature in connection with policy
6 decisions that you have to make, we provide
7 information to the Legislature on, you know,
8 how many people were arrested for a
9 particular crime, where in the state did they
10 come from, what was the age breakdown of
11 those offenses, what was the race or
12 ethnicity.

13 I think the marijuana debate that
14 happened a year or two ago was a good
15 example, where I know we got many legislative
16 requests asking about, you know, the
17 particular demographic information of people
18 arrested for possession of marijuana. And we
19 provided that so that you could use it in any
20 way that you saw fit to make policy
21 decisions.

22 The intent of this provision that you
23 refer to is that we don't get the same
24 information for non-fingerprintable offenses.

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1 So any time there's an arrest for a
2 non-fingerprintable offense, we can't provide
3 that information to you right now so that you
4 would have it in making policy decisions.
5 And the intent here was to close the loophole
6 so that we would have the same level of
7 information for both fingerprintable and
8 non-fingerprintable offenses.

9 SENATOR NOZZOLIO: I regret our time
10 is up, but thank you very much for your
11 cogent and thoughtful responses,
12 Commissioner. Thank you.

13 EXEC. DEP. COMMISSIONER GREEN: Thank
14 you.

15 CHAIRMAN FARRELL: Assemblyman Joe
16 Lentol.

17 ASSEMBLYMAN LENTOL: Thank you,
18 Mr. Chairman.

19 Thank you, Mike, for very good
20 testimony so far. I have a series of
21 questions I want to ask you, though, about
22 many of the proposals that the Governor has
23 put forward in Article 7 bills.

24 And I guess just to go back, since we

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1 can continue on the questions that

2 Mr. Nozzolio asked about demographic
3 information. Rather than go over the same
4 territory again, maybe I can just ask about
5 the non-printable offenses. You know, those
6 category of offenses classically we know as
7 summonses -- they're not desk appearance
8 tickets, as defined in the law, they're
9 summonses that are given out by judges -- I'm
10 sorry, by judges as well, but also by police
11 officers from their summons book.

12 And it doesn't seem that those type of
13 things are included, those summonses are
14 included in the Governor's proposal. Am I
15 correct on that?

16 EXEC. DEP. COMMISSIONER GREEN: My
17 understanding is that they are, or certainly
18 the intention was that they are included.
19 But, you know, certainly we'd look forward to
20 working with you if you think there's issues
21 with regard to the language. But my
22 understanding is that the intent was to get
23 that level of information so that we have
24 information, uniform information across the

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1 whole system.

2 ASSEMBLYMAN LENTOL: And so I guess --
3 and you did mention marijuana cases. So if a
4 police officer in New York City issues a
5 summons in a marijuana case, that demographic
6 information that the Governor provides in
7 this Article 7 would have to be required to

8 be placed on the summons?

9 EXEC. DEP. COMMISSIONER GREEN: That's
10 my understanding of the language, yes.

11 ASSEMBLYMAN LENTOL: What about
12 misdemeanors that aren't required to be
13 fingerprinted? Would demographic information
14 be included on those?

15 EXEC. DEP. COMMISSIONER GREEN: Again,
16 it's my understanding of the language that
17 it's meant to cover, you know, the whole
18 spectrum of arrests that are not
19 fingerprintable right now.

20 ASSEMBLYMAN LENTOL: What about
21 summonses for violations for disorderly
22 conduct and harassment, would those
23 summonses --

24 EXEC. DEP. COMMISSIONER GREEN: Again,

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1 it's my understanding that they are included.

2 ASSEMBLYMAN LENTOL: So I currently
3 sponsor legislation to require the reporting
4 of similar data. I don't know if you've seen
5 that. How about the location of the alleged
6 offense, so that we can get an idea of what
7 part of, in my case, New York City or
8 Brooklyn, those summonses are being issued?

9 EXEC. DEP. COMMISSIONER GREEN: I
10 believe location is included. I don't know
11 how granular that is, though. I don't know
12 if it will be within a particular borough,
13 you know, and how granular the location would

14 be.

15 But we do currently -- when we provide
16 data, you know, we do provide locati on
17 i nformati on, you know, whether i t' s New York
18 Ci ty or whether i t' s by county. So I believe
19 there would be some level of geographi c
20 i nformati on i ncl uded.

21 ASSEMBLYMAN LENTOL: And what about
22 the di spositi on of the case and how the case
23 i s di sposed of?

24 EXEC. DEP. COMMI SSI ONER GREEN: On

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1 non-fi ngerpri ntable cases, no, I do not
2 believe that that would necessari ly be l i nked
3 to di spositi ons.

4 We keep cri mi nal hi story i nformati on
5 ri ght now for a fi ngerpri ntable offense.
6 We' re able to match i t up wi th the
7 i nformati on we get from OCA. Thi s would not
8 put that i nto the cri mi nal -- put these level
9 offenses i nto the cri mi nal hi story.

10 ASSEMBLYMAN LENTOL: So I' m j ust --
11 j ust let me say thi s. I' m concerned that i f
12 our obj ecti ve -- and I thi nk the Governor' s
13 obj ecti ve i s ri ght. I f our obj ecti ve i s to
14 ease communi ty tensi ons where there' s a l ack
15 of trust between the communi ty and the poli ce
16 department, we would want to have a
17 transparent si tuati on i nvolvi ng al l of the
18 summonses, al l of the desk appearance ti ckets
19 that appear.

20 And I'm not sure if all of that is in
21 the proposal, because a lot of this isn't
22 going to be -- this demographic information
23 is not going to be given online so that
24 somebody can see it. And I suspect that a

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1 lot of this information will be required to
2 be FOI'ed, Freedom of Information Act, rather
3 than making it transparent and allow an
4 individual to go online to see if -- what
5 type of information is given on the summons
6 or whatever it is.

7 EXEC. DEP. COMMISSIONER GREEN: First
8 of all, it sounds from what you say like our
9 intention is the same here. And, you know,
10 we certainly look forward to working with you
11 to accomplish that intent.

12 ASSEMBLYMAN LENTOL: Yes.

13 EXEC. DEP. COMMISSIONER GREEN: We at
14 DCJS have endeavored to put a great deal of
15 information online. It's never everything
16 that people want. And we respond to, you
17 know, many, many requests every month without
18 FOIL requests getting data. You know, but
19 certainly we -- you know, we are trying to be
20 as open and transparent as we can in making
21 the criminal justice data we have available,
22 not only to the Legislature but also to the
23 public.

24 ASSEMBLYMAN LENTOL: So I'm just

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1 suggesting this because it appears as though
2 the Governor wants transparency from us in
3 ethics reform, and I want to do that too.
4 But I also want transparency in a lot of
5 these other processes in order to make
6 constituents in especially minority
7 communities that I represent and a lot of my
8 colleagues represent, to feel secure in the
9 fact that the process is being fair and we
10 would know how the policing occurs. And
11 maybe we can make a judgement about it -- we
12 don't have to -- but at least we know what's
13 going on. And that's really where I'm coming
14 from.

15 EXEC. DEP. COMMISSIONER GREEN: And
16 again, I think we share the goal there. And
17 at DCJS in the last four years we've
18 increased tremendously the amount of data
19 that we've posted online for public review.

20 ASSEMBLYMAN LENTOL: And it was better
21 in the past than it has been, I think. And
22 this is my first time looking at it more
23 carefully than before in my tenure as chair
24 of the Codes Committee, but I believe more

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1 demographic information had been supplied on
2 summonses that were issued, but somehow that
3 decreased and was left off summonses and the
4 nature of the summons was changed so that
5 race wasn't required to be put on them. And
6 I think that was a mistake.

7 So then, of course, there's going to
8 be suspicion by the public as to why that
9 happened. And that's the problem.

10 EXEC. DEP. COMMISSIONER GREEN: Again,
11 it sounds like we agree on the intent, and we
12 look forward to working with you.

13 ASSEMBLYMAN LENTOL: All right, I want
14 to move on. I don't want to talk about that
15 all day, because I'm really interested in
16 talking about the -- I don't know how much
17 territory I'm going to be able to cover in
18 the time I'm allotted. But the independent
19 monitor.

20 For those who don't know, the
21 Governor's proposal would review instances of
22 law enforcement's use of deadly force that
23 results in the death of an unarmed person
24 only, for the monitor to be appointed. Is

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1 that correct?

2 EXEC. DEP. COMMISSIONER GREEN: Yes.

3 ASSEMBLYMAN LENTOL: So how would this
4 work, and how many times do you estimate that
5 the monitor would be used?

6 EXEC. DEP. COMMISSIONER GREEN: I
7 can't give you a number estimate, but it's
8 not often.

9 And the way it would work would be
10 that if the case was presented to a grand
11 jury and the grand jury did not indict, or if
12 the district attorney made a decision that

13 the case was not going to be presented to a
14 grand jury, an independent monitor would be
15 appointed to review the case.

16 There's a standard established in the
17 legislation, and basically the independent
18 monitor would have to make a finding that
19 there were either substantial errors that
20 were, you know, of such an egregious nature
21 that they created a very real possibility
22 that a different result would have resulted
23 but for those errors, or that there was newly
24 discovered evidence that, again, is of such a

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1 character that it creates a substantial
2 probability that a different result would
3 have been arrived at had that evidence been
4 available.

5 If in fact that standard is met, then
6 the independent monitor can recommend to the
7 Governor the appointment of a special
8 prosecutor.

9 ASSEMBLYMAN LENTOL: So the monitor
10 would receive certain records from the
11 prosecutor and the grand jury?

12 EXEC. DEP. COMMISSIONER GREEN:
13 Basically everything would be provided to the
14 monitor -- the case documents, the grand jury
15 minutes. It would not be made public, it
16 would be provided to the monitor. So the
17 monitor, in essence, could review everything
18 involving that case -- and, if there was a

19 grand jury presentation, the grand jury
20 presentation.

21 ASSEMBLYMAN LENTOL: And does he or
22 she have subpoena power?

23 EXEC. DEP. COMMISSIONER GREEN: I'm
24 sorry, but I don't know the answer to that.

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1 I can get back to you on that.

2 ASSEMBLYMAN LENTOL: And should the
3 monitor be authorized to question someone
4 under oath?

5 EXEC. DEP. COMMISSIONER GREEN: I
6 believe that the questioning under oath
7 ultimately would be done if a special
8 prosecutor was appointed.

9 You know, I think there's a
10 distinction here in that, you know, when you
11 get into subpoena power and you get into
12 questioning under oath and moving more into
13 the area of a special prosecutor, the
14 independent monitor was meant to -- you know,
15 right now, frankly, the Governor has a power
16 to appoint special prosecutors, and you don't
17 have this standard.

18 And I think the District Attorneys
19 Association referred to this in a statement
20 that they made in support of the general
21 proposal, where they indicated that one of
22 the things this does is put a standard in
23 place as to when the special prosecutor would
24 get appointed or not get appointed. And that

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1 monitor, you know, in essence conducts the
2 middle step of looking at everything that
3 currently exists and saying, you know, were
4 there huge errors here that need to be
5 addressed. Or, you know, is there additional
6 new evidence that's of such a nature that we
7 need to address it?

8 ASSEMBLYMAN LENTOL: And I'm concerned
9 about a proposal like this because it may
10 actually limit the power of the Governor to
11 appoint a special prosecutor in a case,
12 because if he didn't get the recommendation
13 from this independent monitor, then how could
14 he go against the person that he appointed
15 and then appoint a special prosecutor?

16 And then that brings in the question
17 as to whether or not he should be the
18 appointing authority for the independent
19 monitor, if that's the direction we're going
20 in.

21 EXEC. DEP. COMMISSIONER GREEN: I
22 guess I wouldn't agree with the -- I wouldn't
23 characterize it as limiting. What I would
24 say is that if the goal here is to enhance

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1 the public confidence in the system, then
2 providing clear and understandable standards
3 by which these decisions are made, so that
4 it's not an arbitrary decision but there's a

5 standard that, you know, has been agreed on,
6 that's set forth that the public
7 understands -- and if you meet that standard,
8 someone gets appointed, and if you don't meet
9 it, they don't -- I think is a positive step
10 forward in terms of enhancing the public's
11 confidence in the system.

12 ASSEMBLYMAN LENTOL: Well, not if he
13 doesn't appoint a special prosecutor when it
14 may be called for and the independent monitor
15 says, well, I'm not sure, I want to do
16 this -- is my time up?

17 CHAIRMAN FARRELL: Yup.

18 CHAIRMAN DeFRANCISCO: It's been up
19 for about five minutes.

20 (Laughter.)

21 ASSEMBLYMAN LENTOL: I just have one
22 last question -- one last statement, maybe,
23 to make, and you can comment if you want.

24 The Executive proposes no funding for

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1 this, so I'm just also concerned about that.
2 Because there's no staff, and how can an
3 office be expected to do a job when there's
4 no staff attached to it and he's just -- you
5 know, why not just appoint a special
6 prosecutor who's funded to do the job?

7 EXEC. DEP. COMMISSIONER GREEN: And I
8 know the intention is to make sure that the
9 special monitors have the resources necessary
10 to do the job.

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ASSEMBLYMAN LENTOL: Thank you.

CHAIRMAN DeFRANCISCO: Senator Squadron.

SENATOR SQUADRON: Thank you very much. And I'm of the opinion Assemblymember Lentol didn't have enough time, so I'll continue his line of questioning, if you don't mind.

I guess on the independent monitor, if the independent monitor does recommend a special prosecutor, who can the Governor appoint as special prosecutor?

EXEC. DEP. COMMISSIONER GREEN: I don't believe that changes current law in

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terms of who could be appointed.

SENATOR SQUADRON: And what is current law?

EXEC. DEP. COMMISSIONER GREEN: I know the Attorney General. And I'd have to double-check and make sure how far beyond that it goes. But I know the Attorney General can appointed.

SENATOR SQUADRON: So under current law, if nothing happens, the Governor already has the power to appoint the Attorney General as special prosecutor?

EXEC. DEP. COMMISSIONER GREEN: The Governor has that power, yes.

SENATOR SQUADRON: Great. If this law passed, would the Governor still be able to

17 appoint the Attorney General as a special
18 prosecutor regardless of what the independent
19 monitor found, or would the Governor no
20 longer have that power?

21 EXEC. DEP. COMMISSIONER GREEN: I
22 don't know how that would be read. I think
23 that might ultimately be something that would
24 have to be interpreted by the courts.

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1 Clearly the Governor would still have
2 the power in cases that don't fit within this
3 narrow group. Within this narrow group --

4 SENATOR SQUADRON: Within this narrow
5 group, would it prohibit the Governor from
6 appointing a special prosecutor?

7 EXEC. DEP. COMMISSIONER GREEN: I
8 don't know how that would be interpreted.

9 SENATOR SQUADRON: So it might?

10 EXEC. DEP. COMMISSIONER GREEN: The
11 intention is to have a special monitor review
12 those cases and only have a special
13 prosecutor appointed on the recommendation of
14 the special monitor.

15 SENATOR SQUADRON: I just -- I worry
16 about limiting the Governor's power.

17 And secondly, so I can understand
18 this, under current law couldn't the Governor
19 appoint anyone -- you or anyone else, we have
20 a lot of audience members today -- to look at
21 what came out of a grand jury? Obviously a
22 lot of the information is confidential. But

23 isn't this really just an information-sharing
24 proposal?

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1 EXEC. DEP. COMMISSIONER GREEN: An
2 information-sharing?

3 SENATOR SQUADRON: On what's happened
4 within the sealed grand jury room.

5 EXEC. DEP. COMMISSIONER GREEN:
6 Certainly part of it is to allow access to
7 information by the special monitor so that
8 there can be a review and at least some --
9 you know, an intelligent recommendation based
10 on the facts, the evidence, what happened in
11 the grand jury, made to the Governor as to
12 whether or not it's appropriate.

13 So yes, part of this does provide
14 provisions for that information to be given
15 to a special monitor.

16 SENATOR SQUADRON: Now, under current
17 law, if the special prosecutor is appointed,
18 that special prosecutor obviously immediately
19 gets access to all of that information, in
20 addition to subpoena power and the other
21 powers that Assemblymember Lentol asked
22 about.

23 EXEC. DEP. COMMISSIONER GREEN: Yes.
24 But the change would be that the Governor

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1 would not have access to that information in
2 making a decision as to whether or not to
3 appoint a special prosecutor under current

4 law. So this in fact would allow the
5 Governor to make a more informed decision as
6 to whether or not that step is necessary.

7 SENATOR SQUADRON: So let me ask
8 another question. As that information
9 becomes available to the Governor and to the
10 independent monitor, does that information
11 become available through any kind of required
12 report or anything of the independent
13 monitors at the time of their recommendation?

14 EXEC. DEP. COMMISSIONER GREEN: The
15 information would be -- information in terms
16 of grand jury minutes, the case file, the
17 other information, would be available to the
18 special monitor. The special monitor would
19 be required to make a recommendation to the
20 Governor, you know, that falls within the two
21 categories that I mentioned before.

22 SENATOR SQUADRON: Public
23 recommendation?

24 EXEC. DEP. COMMISSIONER GREEN: I

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1 believe so, yes.

2 SENATOR SQUADRON: And is there any
3 required information or justification of
4 that, or could it be "I recommend yes"?

5 EXEC. DEP. COMMISSIONER GREEN: I
6 don't believe there's any legal requirement
7 in the proposal set forward so far that says,
8 you know, what type of a finding has to be
9 made. Other than the standard that's set

10 out.

11 SENATOR SQUADRON: And who would the
12 moni tor have the authori ty to share that
13 otherwi se sealed i nformati on wi th?

14 EXEC. DEP. COMMI SSI ONER GREEN: I
15 don' t believe they have the authori ty to
16 share i t wi th anybody. I thi nk they have the
17 authori ty to make a recommendati on to the
18 Governor after revi ewi ng i t.

19 SENATOR SQUADRON: Wi th anybody
20 i ncl udi ng wi thi n the executi ve branch?

21 EXEC. DEP. COMMI SSI ONER GREEN: I' d
22 have to get back to you for sure. But as I
23 read i t, I believe that the provi si on gi ves
24 the authori ty to the speci al moni tor to

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1 access that.

2 SENATOR SQUADRON: The speci al moni tor
3 and hi s or her team, or j ust the speci al
4 moni tor al one on an i sl and wi th the
5 i nformati on?

6 EXEC. DEP. COMMI SSI ONER GREEN: I f the
7 speci al moni tor has an empl oye e, I can' t
8 believe that i t would be read to say that the
9 speci al moni tor hi m or her sel f coul d access
10 i t but thei r empl oye e coul d not.

11 SENATOR SQUADRON: Ri ght. But the
12 appoi nti ng authori ty cannot?

13 EXEC. DEP. COMMI SSI ONER GREEN: I
14 don' t -- agai n, I' ll have go back and l ook at
15 the l anguage agai n and get back to you. But

16 I did not read it to say that the provisions
17 extended that information-sharing to the
18 appointing authority.

19 SENATOR SQUADRON: I guess I'm really
20 concerned that the Governor can't appoint a
21 special prosecutor anymore, potentially; has
22 to appoint this independent monitor. This
23 independent monitor gets the information,
24 can't share it with anybody, comes back to

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1 the Governor and says yes. Then what does
2 the Governor do?

3 EXEC. DEP. COMMISSIONER GREEN: I
4 guess if you look at current law, the
5 Governor can't access the grand jury minutes,
6 can't access sealed files now. So you're not
7 taking away access to information that the
8 Governor has now in making that information.
9 In fact, you're giving additional access,
10 because you're going to have a recommendation
11 from somebody who was appointed based on
12 their experience and who's had the ability to
13 review that information.

14 SENATOR SQUADRON: Well, actually
15 today the external and generally available
16 public facts are what a Governor has to rely
17 only. And so there's some level of
18 interaction with the public, when we talk
19 about public confidence, about that decision.
20 It's in fact definitionally based on
21 information available to everyone.

22 In this case, it would be based on a
23 recommendation made by somebody who can't
24 share the information -- or alternatively,

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1 since I'm not sure it's as clear as we've
2 just determined, although I appreciate it,
3 that that information can't be shared with
4 the appointing authority, it may be that
5 we've created a criminal justice component to
6 the Governor's role to actually him or
7 herself review the grand jury information,
8 which is an entirely different and more
9 extensive kind of set of questions being
10 raised.

11 So I would like clarification on that
12 sharing of information, please, because I
13 think we'd both agree it's a little
14 ambiguous, and also information on whether
15 the special prosecutor could in fact still
16 be, in these instances, appointed.

17 I only have a minute or so left, and I
18 wanted to ask about the summons information
19 as well because I think it's very important,
20 and also follow up on where Assemblymember
21 Lentol was.

22 The summons information, would the
23 summons information reported to DCJS be
24 available in an identical way to the

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1 currently reported information by local law

2 enforcement to DCJS?

3 EXEC. DEP. COMMI SSI ONER GREEN: I
4 anticipate it would, yes.

5 SENATOR SQUADRON: Is there any
6 language ensuring that?

7 EXEC. DEP. COMMI SSI ONER GREEN: It
8 would be governed by the same rules that we
9 have right now. So for example, you know,
10 when we get data requests, we're provi di ng,
11 you know, data on how many arrests and where
12 they came from, demographic; we're not
13 provi di ng names.

14 So I guess I'm not sure where you're
15 going with thi s. But it would be governed by
16 the same rules that govern all the other data
17 that we --

18 SENATOR SQUADRON: They'd be governed
19 by the same rules. And there's no additional
20 statutory requirements on the public
21 disseminati on of informati on that's already
22 reported, I know in many di fferent
23 categori es, under statute.

24 EXEC. DEP. COMMI SSI ONER GREEN: No.

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1 SENATOR SQUADRON: And it's created in
2 an i denti cal way, or that's the intent?

3 EXEC. DEP. COMMI SSI ONER GREEN: Yes.

4 SENATOR SQUADRON: Great, I appreciate
5 it.

6 And then, final questi on, has there
7 been any thought given to l i nki ng thi s desk

8 appearance, summons, low-level misdemeanor
9 information to higher-level misdemeanor and
10 felony information, fingerprintable
11 information?

12 One of the things that I think DCJS
13 has done so well -- I'm very worried about
14 racial disparities in marijuana enforcement
15 and some other areas -- has been sort of
16 linked types of violation to draw an accurate
17 picture. That's how we knew that we had this
18 kind of terrible racial disparity in
19 marijuana enforcement. Has thought been
20 given to how those kinds of different types
21 of crimes would be -- excuse me, different
22 types of activities would be treated in
23 relation to each other?

24 EXEC. DEP. COMMISSIONER GREEN: If the

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1 question is, you know, once we -- assuming
2 this passes and we get this data and you have
3 a request that says I want information about
4 a particular area that crosses both
5 fingerprintable and nonfingerprintable, could
6 we get that to you, my anticipation is
7 absolutely we'd be able to.

8 SENATOR SQUADRON: It's all a single
9 database. Thank you so much.

10 CHAIRMAN FARRELL: Thank you.
11 Assemblyman Graf.

12 ASSEMBLYMAN GRAF: Hi, how are you?

13 EXEC. DEP. COMMISSIONER GREEN: Good,

14 thank you.

15 ASSEMBLYMAN GRAF: Okay, now the
16 special monitor here, is there a list of
17 qualifications he has to have?

18 EXEC. DEP. COMMISSIONER GREEN: I
19 don't believe the statute contains any list
20 of qualifications, no. I should say the
21 proposed legislation.

22 ASSEMBLYMAN GRAF: Can the Governor
23 appoint somebody, say, with a degree in
24 political science?

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1 EXEC. DEP. COMMISSIONER GREEN: Again,
2 I don't believe there's a list of
3 qualifications in the proposed legislation.
4 You know, I think it would be in the
5 Governor's best interest to appoint somebody
6 who was experienced in dealing with criminal
7 law and dealing with those types of matters.
8 Because, you know, I would think that the
9 Governor would want a qualified person to
10 make the best possible recommendation in a
11 very serious situation like this.

12 ASSEMBLYMAN GRAF: Okay. And now,
13 currently, in order for you to take a look at
14 grand jury testimony, the only one that can
15 release it is a judge.

16 EXEC. DEP. COMMISSIONER GREEN:
17 Correct.

18 ASSEMBLYMAN GRAF: And what we're
19 going to do in this case, we're going to keep

20 that protection for anybody else that's in
21 front of the grand jury, but if it's a police
22 officer, we're going to get rid of that. So
23 we're going to treat police officers
24 differently than anybody else that's under a

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1 grand jury investigation.

2 EXEC. DEP. COMMISSIONER GREEN: The
3 proposal would not allow for public release
4 of the minutes. It would allow for release
5 of the minutes to the monitor only. At least
6 that part of the proposal.

7 ASSEMBLYMAN GRAF: Okay. And the
8 judge doesn't have to approve that? Or a
9 panel of judges don't have to approve that?

10 EXEC. DEP. COMMISSIONER GREEN: Not to
11 the monitor. But the monitor can't publicly
12 release it. So, you know, under no
13 circumstance is there going to be -- with
14 that part of the proposal is there going to
15 be public release of the minutes.

16 ASSEMBLYMAN GRAF: Okay. And now
17 what's happening is for some reason the
18 newspapers come out, they don't like what the
19 grand jury decided, so what the Governor is
20 going to do is get a second bite at the apple
21 for the grand jury, right, through this
22 monitor and say: Let's make the public
23 happy. And it's a great political move, so
24 let's put it in front of the grand jury

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1 again.

2 How many bites at the grand jury apple
3 are they going to get? Is there any limit?
4 So if they don't like the second result, can
5 they put it in for a third result or a fourth
6 result or a fifth result until they get the
7 disposition that they want from the grand
8 jury? Is there any limit to this?

9 EXEC. DEP. COMMISSIONER GREEN: Right
10 now, under current law, if you have a case
11 that falls within this type of case, the
12 Governor could appoint a special prosecutor
13 with no standard articulated in law as to
14 what criteria has to be met before that
15 appointment. That special prosecutor could
16 go to a judge and ask for permission to
17 re-present the case to a grand jury, could
18 get permission, and the case could be
19 re-presented.

20 As I indicated before, I know the
21 District Attorneys Association issued a
22 public statement indicating their support for
23 the concept. And I think one of the reasons
24 for that support is this provision provides a

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1 structure so everyone knows ahead of time
2 what the standard is that has to be met
3 before there's a recommendation of the
4 special prosecutor and there can be a second
5 bite.

6 ASSEMBLYMAN GRAF: Yes. But if they

7 don't like the result the second time?

8 EXEC. DEP. COMMISSIONER GREEN:

9 There's no provision for the appointment of a
10 second, third, and fourth special monitor.

11 It's that one time.

12 ASSEMBLYMAN GRAF: Is there any
13 provision prohibiting it?

14 EXEC. DEP. COMMISSIONER GREEN: It
15 authorizes the appointment of a special
16 monitor, one time.

17 ASSEMBLYMAN GRAF: Okay, and that
18 language is in there.

19 Last thing, the youthful offender.
20 You're talking about violent felonies. So
21 you're talking rape in the first degree? Are
22 you talking about murder in the first degree?
23 Which crimes?

24 EXEC. DEP. COMMISSIONER GREEN: Murder

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1 is not eligible for youthful offender --

2 ASSEMBLYMAN GRAF: Rape in the first
3 degree?

4 EXEC. DEP. COMMISSIONER GREEN: Rape
5 in the first degree, currently, under
6 currently law, is eligible for youthful
7 offender only if a judge makes a finding that
8 there are extenuating circumstances or
9 mitigating circumstances that would justify
10 the imposition of youthful offender status.

11 This proposal --

12 ASSEMBLYMAN GRAF: And we're going to

13 take that away from the judge and give it to
14 the prosecutor?

15 EXEC. DEP. COMMISSIONER GREEN: This
16 proposal does not change current law in that
17 regard.

18 ASSEMBLYMAN GRAF: So what's the
19 purpose of it if it's not changing current
20 law?

21 EXEC. DEP. COMMISSIONER GREEN: With
22 regard to rape in the first degree, as I
23 understood your question, it was can the
24 judge give youthful offender status on a

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1 first-degree rape. And the answer is under
2 current law right now, yes, they can. And
3 under this proposal, it would be the exact
4 same finding that would have to be made.

5 One -- well, two things,
6 significantly, that will change with youthful
7 offender. Right now you can get youthful
8 offender 18 and under. This will extend the
9 possible group of people eligible for
10 youthful offender protection to 19 and 20.

11 And secondly, right now, under current
12 law, if you get youthful offender
13 adjudication, that adjudication can never be
14 used again as a predicate felony offense.
15 Under the proposal that the Governor has put
16 forward, if you're adjudicated a youthful
17 offender on a violent felony and you go out
18 and commit and get convicted of a second

19 violent felony, that youthful offender
20 adjudication can now be used as a predicate
21 violent felony offense and you can be
22 sentenced as a predicate violent felony
23 offender for that second crime, something
24 that you cannot have happen right now under

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1 existing law.

2 ASSEMBLYMAN GRAF: So what we're
3 pushing, the age is up to 18 and 19 for a
4 youthful offender, is that what you're
5 saying?

6 EXEC. DEP. COMMISSIONER GREEN: Right
7 now it covers 18 and below. This would
8 include 19- and 20-year-olds.

9 ASSEMBLYMAN GRAF: And just so we're
10 clear, if you're talking first-degree rape,
11 that would be a 19-year-old, right, engaged
12 with someone under 10 years old?

13 EXEC. DEP. COMMISSIONER GREEN:
14 First-degree rape, that would be one way.
15 The most common way is a forcible rape. You
16 know, I can tell you, I was a prosecutor for
17 25 years, and I don't remember one case in my
18 25 years where I saw a judge find those
19 mitigating factors and actually give someone
20 a youthful offender on a rape.

21 You know, the more common scenario we
22 deal with, you know, may be a burglary, you
23 know, other types of --

24 ASSEMBLYMAN GRAF: First-degree

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1 burglary?

2 EXEC. DEP. COMMISSIONER GREEN:

3 Murder, you're not --

4 ASSEMBLYMAN GRAF: First-degree

5 burglary?

6 EXEC. DEP. COMMISSIONER GREEN: I'm

7 sorry, what?

8 ASSEMBLYMAN GRAF: First-degree

9 burglary?

10 EXEC. DEP. COMMISSIONER GREEN: Again,

11 that would depend on the burglary. If it's

12 first-degree burglary and it's an armed

13 offense, they would not be eligible for

14 youthful offender, again, unless the judge

15 found mitigating circumstances. That's

16 current law, and that doesn't change going

17 forward.

18 ASSEMBLYMAN GRAF: Okay. Arson, too,

19 right, would be covered under this?

20 EXEC. DEP. COMMISSIONER GREEN: Again,

21 current law for arson in terms of who's

22 eligible and not eligible for youthful

23 offender, the only way it changes is the

24 ages. It doesn't change the criteria in

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1 terms of when you're eligible and when you're
2 not.

3 So the criteria that applies today, if
4 you decided to adopt the Governor's proposal,

5 would continue to exist after that became
6 law. The only thing that would change would
7 be the two things I mentioned. The age would
8 go up so that 19- and 20-year-olds would be
9 eligible.

10 And secondly, if you get in trouble
11 again and commit another violent felony, your
12 youthful offender going forward could be used
13 as a predicate, which cannot happen right now
14 under existing law.

15 ASSEMBLYMAN GRAF: Okay, thank you.

16 My time is up.

17 CHAIRMAN FARRELL: Thank you.

18 Senator?

19 SENATOR KRUEGER: Senator Montgomery.

20 SENATOR MONTGOMERY: Good afternoon,
21 Commissioner.

22 EXEC. DEP. COMMISSIONER GREEN: Good
23 afternoon, Senator.

24 SENATOR MONTGOMERY: I want to just

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1 continue with the discussion around the issue
2 of raising the age.

3 And you talk about -- first of all,
4 can I just ask, do you know if there was
5 anyone, on the task force that looked at the
6 whole issue of raising the age and made the
7 recommendations, was there someone from the
8 Center for Court Innovation on that extensive
9 list of people?

10 EXEC. DEP. COMMISSIONER GREEN: I'm

11 sorry, I was not on the task force, and I
12 don't know. I know it was a very diverse
13 group of people. It was law enforcement, it
14 was youth advocates, it was -- you know, they
15 tried to get everybody from across the
16 system. I don't know if they were
17 specifically represented.

18 SENATOR MONTGOMERY: Okay, so neither
19 of us know exactly whether or not there was
20 someone on that task force. Have you made a
21 determination for -- in relationship to how
22 this whole area is going to be handled in
23 your agency as it relates to how you will
24 connect to the other related agencies to

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198

1 determine what we do going forward?

2 EXEC. DEP. COMMISSIONER GREEN: We've
3 been very actively engaged in planning for
4 how this will impact our agency if it's
5 adopted.

6 We're working with the Office of Court
7 Administration to make sure that, you know,
8 going forward, if the Family Court pool
9 increases, that we have the communication we
10 need to keep accurate records there.

11 We've been working with the other
12 state agencies in terms of providing them
13 with the criminal justice data we have so
14 that they can make projections about capacity
15 and about budgeting issues and other issues.

16 On the service provision end, you

17 know, part of this proposal and a very
18 important part of the proposal is to provide
19 significant additional services for 16- and
20 17-year-olds, and we've been looking at the
21 way that we do that in the adult system with
22 the ATI money that you've provided us with
23 and planning for how that would be done in a
24 most effective way.

♀

199

1 So yes, there are a number of
2 different areas where this touches our
3 agency, and we've been very actively involved
4 in planning.

5 SENATOR MONTGOMERY: And so you will
6 have a person or a group within your agency
7 that's going to be specifically charged with
8 this process? That's what I think I hear you
9 saying.

10 EXEC. DEP. COMMISSIONER GREEN: It
11 touches on many different parts of our
12 agency, and all of those parts of the agency
13 have been very actively involved in looking
14 at this and planning for it.

15 SENATOR MONTGOMERY: Okay. I wonder
16 if I may pursue -- you know, it's very
17 interesting; obviously I'm very happy that
18 we're moving in this direction, that we're
19 going to remove 16- and 17-year-olds under
20 circumstances, especially those who are
21 currently tried in criminal court for
22 offenses that may not really -- not be

23

necessarily placed there.

24

And because of the tremendous amount

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200

1

of success in putting together the court

2

system with the community, with the entire

3

criminal justice area, the success of a

4

Community Court we already have evidence of.

5

And my anticipation is that you will be able

6

to divert a lot of young people who may

7

otherwise end up going further into the

8

system, costing more money.

9

It is a way that we know the community

10

can be involved, and in a very positive way,

11

and so building the trust factor. It is a

12

way that alternatives to incarceration can be

13

implemented very successfully. And I'm sure

14

that if we had two hours with Judge

15

Calabrese, who runs the Community Court in

16

Red Hook in Brooklyn, he could give us a

17

whole litany of ways in which we could be

18

extremely successful in implementing this

19

part of our justice system.

20

Why and where are you going to be

21

placing some of your resources into those

22

programs, enhancing the Community Court

23

system, building on what we've already

24

started, what we know that works, as opposed

♀

201

1

to creating new things that may or may not be

2

as effective and efficient? Do you have a

3

plan? Because I didn't see in the budget

4 where that may come into play in terms of
5 your agency in particular.

6 EXEC. DEP. COMMISSIONER GREEN: One of
7 the areas that this will touch our agency is
8 probation. We have our Office of Probation
9 and Correctional Alternatives. They work
10 with the probation departments across the
11 state. They're obviously a key player here.

12 You know, I absolutely agree with your
13 assessment that one of the pieces of this
14 bill that I think is significantly different
15 than what we do right now, and I believe has
16 the potential to really give us much better
17 results, involves the intake, screening and
18 potential diversion of 16- and 17-year-olds
19 who commit low-level offenses such as
20 misdemeanors. And instead of putting them
21 through the criminal justice services,
22 diverting them and connecting them with
23 appropriate services, based on the screening,
24 so there's some scientific level of

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202

1 assessment, and that assessment is used to
2 connect them with the appropriate level and
3 types of services in the community to make
4 sure that we break the cycle and they don't
5 just keep cycling back through the system.

6 How Community court -- and we're very
7 involved and plan on being involved, if this
8 is passed, working with the probation
9 departments and working to set up the network

10 of service providers to make sure they're the
11 right providers, they're operating in the
12 right way, and we're getting the best results
13 for our youth.

14 How Community Courts will play that, I
15 don't know. And I think I would really have
16 to defer to OCA on that. The structure
17 that's set up right now in the legislation
18 would provide for youth parts to hear the
19 case in Superior Court, in Criminal Court,
20 and then Family Courts to hear cases that go
21 to Family Court. And it really would be up
22 to OCA to see, you know, what if any role
23 Community Courts would have there.

24 But I think we agree in terms of the

♀

203

1 assessment, diversion and services that are
2 needed here.

3 SENATOR MONTGOMERY: Yes. And I
4 just -- I think I'm out of time. Yes, I'm
5 out of time. But I just will say that I
6 certainly hope that we can build on a program
7 that is already in place, that is part of the
8 community, that is part of the solution
9 already, and that we will strengthen our
10 capacity in that area and not to send young
11 people further into another kind of system
12 that may or may not work.

13 So thank you for your recognition of
14 that, and I look forward to working with you
15 in any way that is possible and appropriate

16 that we can.

17 EXEC. DEP. COMMISSIONER GREEN: Thank
18 you. We look forward to working with you as
19 well.

20 SENATOR MONTGOMERY: Thank you.

21 SENATOR KRUEGER: Assembly?

22 CHAIRMAN FARRELL: Assemblyman Danny
23 O'Donnell.

24 ASSEMBLYMAN O'DONNELL: Good

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204

1 afternoon.

2 EXEC. DEP. COMMISSIONER GREEN: Good
3 afternoon.

4 ASSEMBLYMAN O'DONNELL: I have three
5 different brief areas of questions. One has
6 to do with grand jury reform.

7 You know, when the public doesn't like
8 an outcome, you know, people start beating
9 the drum, and the drum starts beating, and
10 inevitably we have people who would throw the
11 baby out with the bathwater. Right? So
12 without opining on the grand jury system in
13 its totality, obviously there are times when
14 the outcomes frustrate the public.

15 So in the Staten Island case, since
16 the DA is an elected official and beholden to
17 the people who elect him, don't you think it
18 would be appropriate for the public to know
19 what charges the DA presented to the grand
20 jury? Because I totally understand the
21 secrecy part -- I mean, I was a public

22 defender in Brooklyn for eight years. And
23 the protection that people should be able to
24 speak freely I think is a very important part

♀

205

1 of our system. But a DA is an elected
2 official. And if the people of Staten Island
3 don't like what he charged to that jury, then
4 they can choose to unelect him.

5 And you know, because of your history
6 that there are a lot of crimes -- most crimes
7 require intent to commit the crime, but there
8 are some that have nothing to do with intent.
9 And call me Kreskin, I know they did not
10 charge nonintentional crimes in that grand
11 jury. You know how I know that? Because the
12 defendant, when he was interviewed the day
13 of, said "I didn't intend," "I didn't
14 intend," "I didn't intend." And I'm a good
15 enough criminal defense attorney that that's
16 what I would have told my client to say to
17 the press.

18 So what do you think of a proposal
19 that would simply say that the public has a
20 right to know what charges the DA submitted
21 to a grand jury?

22 EXEC. DEP. COMMISSIONER GREEN: I've
23 been in a situation where I presented a case
24 to a grand jury that involved a shooting and

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1 killing of a young man by a police officer,

2 and the case was not billed. And I would have
3 loved to have been able to have gone out
4 publicly and say "These were the charges that
5 were presented." I wanted to give
6 information out, but was told by statute I
7 could not.

8 Part of the proposal the Governor puts
9 forward will provide two different vehicles
10 by which district attorneys will have the
11 ability to get that information to the
12 public. The first is it provides a separate
13 vehicle in addition to what exists in law
14 right now for district attorneys to do a
15 formal report. They can lay out, among other
16 things, what happened in the grand jury.

17 And secondly, the provision would
18 allow district attorneys to write, in effect,
19 a letter, a public letter that again would
20 spell out what happened in the grand jury and
21 why, without disclosing things like
22 witnesses' names or details of individual
23 witnesses' testimonies, but clearly could
24 spell out for the public what charges were

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207

1 given to the grand jury and what they
2 considered. So I certainly --

3 ASSEMBLYMAN O' DONNELL: Well, we're
4 the statute-writing people up here, right?

5 EXEC. DEP. COMMISSIONER GREEN: I'm
6 sorry, what?

7 ASSEMBLYMAN O' DONNELL: We write the

8 statutes, right, so we could change that.
9 Because it seems to me that it's only
10 appropriate for the public to know what their
11 elected officials do in their official
12 capacity. We're in transparency mode, right?
13 We want everyone to be transparent. And I
14 think the people who elect those DAs have a
15 right to know that information in the cases
16 that they're concerned about.

17 Let me just talk briefly --

18 EXEC. DEP. COMMISSIONER GREEN: Wait,
19 wait, no, I -- you know, you did interrupt me
20 in the middle of my answer. But I --

21 ASSEMBLYMAN O' DONNELL: I apologize.
22 I didn't realize.

23 EXEC. DEP. COMMISSIONER GREEN: But I
24 think the bottom line here is I think we both

♀ 208

1 agree that a higher degree of care of
2 transparency, and particularly in certain
3 types of cases, would be a very good thing.
4 And we would certainly look forward to
5 working with you to find the language that we
6 could agree on to get that transparency.

7 ASSEMBLYMAN O' DONNELL: Well, there's
8 a difference between what the witnesses and
9 what the police officers say and who the
10 witnesses are. And that is one group of
11 information. The information about what the
12 elected official did with that information to
13 me is at a different level, and it needs a

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different level of transparency.
The Attorney General -- the Governor currently has the power to appoint the Attorney General as a special prosecutor. In July of this year, I called on the Governor to appoint a special prosecutor for Rikers Island, and I've heard nothing from the Governor or from anybody else.

Don't you think it's long overdue that we have a special prosecutor for Rikers Island to look at the violence that is

209

occurring there?

EXEC. DEP. COMMISSIONER GREEN: I'm sorry, but I -- this is the first I've heard of that request, and I would have to see the request and get more information before --

ASSEMBLYMAN O'DONNELL: Well, I'd be happy to send you a copy of my letter.

The last thing I want to say is this town can be very frustrating to work in. Announcements are made with great fanfare, with PowerPoint presentations. I mean, we've gotten to the point now that almost every announcement that's made almost brings their own marching band about how this -- whatever the announcement is is the panacea for all things that we know of.

Last year's panacea was the Council on Community Reentry. Since that was announced with the marching band, we have heard nothing

20 about it. We have heard nothing about what
21 they're going to do. I've heard of no pieces
22 of legislation that the Governor intends to
23 introduce as a result.

24 Can you tell us what is going on with

♀

210

1 this group?

2 EXEC. DEP. COMMISSIONER GREEN: I'm
3 not on the council, but I know that the
4 council has made requests from my agency on a
5 regular basis for data, we've provided them
6 with data. They've requested information
7 we've given them.

8 I do know, among other things, that
9 they're looking at barriers that exist within
10 government in terms of things like licensing,
11 for example, or identification for people
12 coming out of correction systems.

13 So I know the group is active because
14 we're responding to their requests. But I'm
15 not on the group, so I can't give you detail
16 about what they're doing.

17 ASSEMBLYMAN O'DONNELL: Well, the
18 issue around the DMV and licenses and
19 identification is actually one that I've
20 worked very closely on, because I chair the
21 Corrections Committee. The bigger problem is
22 actually not out of DOCCS. Mr. Annucci will
23 be happy to hear this; that's not where the
24 problem is.

♀

211

1 The problem is actually with local
2 jails, where somebody may be held for 18
3 months or 24 months and they don't have any
4 capacity to prove who they are. So now
5 you're sending someone back into the society
6 with not even the most basic ability to get
7 access to medical care, get access to
8 discharge planning, get access to whatever
9 they have, because they can't even establish
10 who they are.

11 So those things need to get looked at.
12 But I would hope that the council would pick
13 up the pace a little bit on what they're
14 doing and bring proposals to us so we can
15 begin trying to solve this problem. The
16 easiest thing in this building is problem
17 identification. The hard thing is getting to
18 solutions that people who view the world
19 differently can agree to. And until we have
20 proposed solutions, we really can't do that.

21 Thank you very much.

22 CHAIRMAN FARRELL: Thank you.

23 Anthony Palumbo.

24 ASSEMBLYMAN PALUMBO: Thank you,

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1 Mr. Chairman.

2 Hi, how are you? I'm Anthony Palumbo.
3 I'm the Assemblyman out in the 2nd District.
4 And just regarding the disclosure suggestions
5 by one of my colleagues, I was an assistant
6 DA and I spent many hours in grand juries.

7 What do you think as far as -- I
8 oppose disclosure of any charges or grand
9 jury testimony. At the discretion of the
10 public in many respects, I think that secrecy
11 needs to be held intact and the discretion of
12 the charges presented as well.

13 But the Governor, who is suggesting
14 that some certain types of cases may require
15 disclosure, to what extent would you have an
16 opinion in that regard, regarding the general
17 policy that the Governor is suggesting?

18 EXEC. DEP. COMMISSIONER GREEN: The
19 Governor's proposal would put the decision
20 with regard to disclosure in the hands of the
21 district attorney. It would give the
22 district attorney the ability, if they
23 choose, to either issue a report or issue a
24 letter.

♀

213

1 And again, having been in that
2 position as both (a) the elected district
3 attorney and (b) the person who presented
4 cases to the grand jury, I would have loved
5 to have been able to stand up and tell my
6 community that the grand jury heard from X
7 number of witnesses and they saw X number of
8 exhibits and the testimony lasted, you know,
9 X number of weeks, and here's the charges
10 that they considered and here's the defenses
11 that were read to them and here's the result
12 they came to. I think it would have gone a

13 long way toward, you know, giving people some
14 information to enhance the confidence in the
15 system.

16 So, you know, from that perspective I
17 think the way the proposal is framed is a
18 good idea. And as I indicated before, the
19 District Attorneys Association did put out a
20 public statement and it's my understanding
21 did indicate that they also felt that it was
22 a good concept.

23 ASSEMBLYMAN PALUMBO: That it was
24 what, I'm sorry?

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214

1 EXEC. DEP. COMMISSIONER GREEN: It was
2 a good concept.

3 ASSEMBLYMAN PALUMBO: It was a good
4 concept. Would you support -- or they didn't
5 indicate any position, to my knowledge, that
6 they would support mandatory disclosure, is
7 that accurate?

8 EXEC. DEP. COMMISSIONER GREEN:
9 Correct. And the Governor's proposal does
10 not include mandatory public disclosure. The
11 only mandatory disclosure would be to a
12 special monitor, if the special monitor was
13 appointed. And again, that would just be to
14 the monitor.

15 ASSEMBLYMAN PALUMBO: Very good.
16 Thank you.

17 EXEC. DEP. COMMISSIONER GREEN: Thank
18 you.

19 CHAIRMAN FARRELL: Thank you.
20 CHAIRMAN DeFRANCISCO: Thank you very
21 much.
22 EXEC. DEP. COMMISSIONER GREEN: Thank
23 you.
24 CHAIRMAN DeFRANCISCO: Appreciate your

♀ 215

1 answers and your patience and the patience of
2 all of those who are waiting their turn.

3 Anthony Annucci, acting commissioner,
4 New York State Department of Corrections and
5 Community Supervision.

6 On deck, Joseph D'Amico.

7 Whenever you're ready.

8 ACTING COMMISSIONER ANNUCCI: Thank
9 you. And good afternoon, Chairman
10 DeFrancisco and Chairman Farrell and other
11 distinguished chairs and members of the
12 Legislature.

13 My name is Anthony J. Annucci, and I
14 am the acting commissioner for the New York
15 State Department of Corrections and Community
16 Supervision. It is my honor to be here today
17 to briefly sketch some highlights of the
18 department's proposed budget.

19 In the interests of time, I will not
20 read my entire written testimony but instead
21 will briefly touch upon some key points.

22 Our agency budget is driven in large
23 part by the overall criminal justice picture
24 for the state. New York continues to be one

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216

1 of the safest large states in the country, as
2 both crime and incarceration rates continue
3 to decline.

4 On July 26, 2014, in accordance with
5 the enacted budget, four correctional
6 facilities were closed. In the wake of these
7 closures, funding for 275 correction officer
8 positions was reinvested in the system.
9 Altogether, 13 facilities have closed during
10 the first term of Governor Cuomo, eliminating
11 5,500 unneeded prison beds. In January of
12 this year, for the first since 1990, our
13 in-prison population fell below 53,000. And
14 we anticipate that this decline will
15 gradually continue.

16 Moving forward, facility safety and
17 security will remain a top priority. Last
18 year, as required by the budget, we entered
19 into a memorandum of understanding with
20 NYSCOPBA and Council 82 to conduct a review
21 of the security staffing at each facility
22 and, with the union's input, to develop a
23 three-year plan to enhance safety in our
24 institutions. We have completed one-third of

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1 the facility reviews and are awaiting
2 additional union feedback.

3 Also, last September, as required by
4 the budget, we established four graduated

5 categories of employee and inmate injuries to
6 better reflect the types of injuries
7 resulting from assaults. The prior three
8 categories of "minor," "moderate" and
9 "serious" were reconfigured, and a new
10 category of "severe" was added.

11 In addition, to improve institutional
12 safety, the department assembled a workgroup
13 to examine the rise in assaults and develop
14 recommendations for short-term and long-term
15 remediation. The workgroup, which is called
16 the Security Management Assessment Review
17 Team, reviews and analyzes facility
18 operations, population management strategies,
19 and a host of available data. This will be
20 an ongoing endeavor in partnership with the
21 unions.

22 We have also recently launched a
23 special training module for facility
24 employees to safely and effectively handle

♀

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1 difficult situations with inmates. It is
2 called Awareness, Understanding and
3 Prevention of Aggressive Behavior, and it
4 reviews verbal and nonverbal techniques to
5 safely diffuse a situation.

6 Shifting to our parolee population, a
7 recent recidivism report shows that just 9
8 percent of ex-offenders released in 2010 were
9 sent back to prison based on new felony
10 convictions within three years of their

11 release. The figure is the lowest since
12 monitoring started in 1985, and it validates
13 the Governor's vision for a safer New York
14 when he directed the merger of the former
15 Department of Correctional Services and the
16 former Division of Parole in 2011.

17 The department will also continue to
18 leverage technology to improve supervision
19 outcomes. We recently launched a pilot
20 program whereby a total of five Applio
21 employment kiosks were installed in the
22 Bronx, Manhattan, Brooklyn, Queens and
23 Nassau. The device is a tablet PC that
24 allows an individual to access a secure web

♀

219

1 application and conduct an online job search.

2 Another upcoming challenge is the need
3 to reduce the high rates of overtime. In
4 recognition of our dual responsibility to
5 operate the system in both a safe and
6 cost-effective manner, this past January the
7 department implemented an overtime review
8 process. For the first time, overtime
9 targets were established for each facility
10 and for each program area therein. On a
11 monthly and quarterly basis, overtime hours
12 will be compared to the targets, providing
13 superintendents with a barometer to
14 immediately assess their progress in meeting
15 their established targets and develop
16 strategies for course correction.

17 Finally, we have launched a pilot
18 Opioid Overdose Prevention Training Program
19 at Queensboro for inmates preparing for
20 release. They will receive education about
21 the dangers of opioid use, training in the
22 use of Naloxone, the medication used to
23 counter an overdose, and, upon their
24 discharge, an intranasal Naloxone kit. This

♀ 220

1 past August, the department became the first
2 New York State agency to be certified as an
3 Opioid Overdose Prevention Program.

4 In conclusion, there again will be
5 many challenges and expectations in the
6 upcoming fiscal year for this agency. The
7 Governor's proposed budget will allow us to
8 fulfill these expectations in a fundamentally
9 sound and fiscally prudent manner, and
10 develop new initiatives to increase safety,
11 lower recidivism, and achieve better
12 outcomes.

13 Thank you for your time, and I would
14 now be happy to try and answer any questions
15 you may have.

16 CHAIRMAN DeFRANCISCO: And thank you
17 for summarizing the testimony.

18 Senator Nozzolio.

19 SENATOR NOZZOLIO: Thank you,
20 Mr. Chairman.

21 Good afternoon, Acting Commissioner.

22 ACTING COMMISSIONER ANNUCCI: Good

23

afternoon, Senator.

24

SENATOR NOZZOLI O: When I say that

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221

1

"acting" part, you've been in the service for

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a long time, Commissioner, and thank you for

3

your service.

4

CHAIRMAN DeFRANCISCO: He's a good

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actor.

6

(Laughter.)

7

ACTING COMMISSIONER ANNUCCI: I'm

8

waiting for my Academy Award nomination.

9

(Laughter.)

10

SENATOR NOZZOLI O: Commissioner, I

11

have two areas of questioning. The first is

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the levels of deployment of correction

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officers, the numbers. I'm particularly

14

concerned about the attrition situation and

15

how you're dealing with that.

16

The second issue I'd like to also get

17

to is the caseload of parole commissioners.

18

So let's go to COs first. How many

19

COs do you have in your system today?

20

ACTING COMMISSIONER ANNUCCI: I'd have

21

to go back and get you the exact count, but I

22

think it's in the neighborhood of 19,000 and

23

change right now.

24

And you are correct, it is a serious

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222

1

challenge keeping up with attrition. I think

2

every pay period we lose 54 correction

3

officers.

4 Last year we did schedule 18 training
5 academy classes, 16 of which have already
6 started and either been completed or started,
7 two of which --

8 SENATOR NOZZOLI O: How many do you
9 expect -- and if we could just go in a
10 conversati on, how many do you expect thi s
11 year, classes?

12 ACTING COMMI SSIONER ANNUCCI : Ni neteen
13 is what we're projecti ng.

14 SENATOR NOZZOLI O: Ei ghteen?

15 ACTING COMMI SSIONER ANNUCCI : Ni neteen
16 for next year, thi s comi ng year.

17 SENATOR NOZZOLI O: And how many COs in
18 a class?

19 ACTING COMMI SSIONER ANNUCCI : It
20 varies dependi ng upon who accepts. I thi nk
21 it's close to 85, 90. And I did have a new
22 training academy di rector, who's very good at
23 tryi ng to keep recruits from leavi ng who
24 mi ght get di scouraged. He works one-on-one

♀

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1 with them, and our graduati on rates are
2 higher than they've been in years.

3 SENATOR NOZZOLI O: So it's about 1600,
4 give or take a few, in terms of a yearly
5 preparati on for class. But your attriti on,
6 parti cularly as the COs who were hi red in
7 late '80s and early '90s are turni ng, that's
8 got to be an enormous drain on deploy ment.

9 ACTING COMMI SSIONER ANNUCCI : It

10 clearly is. And it's also a concern because
11 I'm losing the best, most experienced
12 officers. The more experienced an officer
13 is, the better he is at professionally
14 handling tough situations. Which I think may
15 be one of the factors that causes a rise in
16 assaults.

17 SENATOR NOZZOLIO: We looked to a
18 specific number. After the last round of
19 closures last year, the expectation was that
20 there would be 275 new officers in addition
21 to the load at the time, or the numbers at
22 the time.

23 And the characterization, and to my
24 understanding the commitment from the Budget

♀

224

1 Division, the Governor's key staff, maybe
2 even the Governor directly -- and I wasn't
3 party to those discussions, but was informed
4 of them afterward -- that there would be
5 275 more correction officers by the end of
6 this month than there was a year ago.

7 Is that -- where are we?

8 ACTING COMMISSIONER ANNUCCI: What I
9 can say about that is this, Senator. We
10 identified four facilities for closures last
11 year. And in those four facilities there
12 were 493 security staff. As part of our
13 representation, we said instead of all
14 473 {sic} being lost, we will reinvest
15 275 positions elsewhere in the system. So

16 our authorized fill level was increased by
17 those 275.

18 I honestly think there was a
19 misunderstanding. I don't think anyone acted
20 in bad faith. Perhaps the union thought that
21 those 275 would be added to the security
22 staff that were already in the four
23 facilities. I understand the
24 misunderstanding. But trust me, I was at the

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225

1 meetings, I was at the discussion; no one
2 tried to be duplicitous about this. There
3 was a misunderstanding. It's an honest
4 misunderstanding.

5 But those 275 officers are now part of
6 the system. We've had funding for them as
7 well.

8 SENATOR NOZZOLIO: Well, that's an
9 issue in dispute, and that we need to
10 continue to discuss this in further detail.
11 And I expect we'll be doing that in the very
12 near future as we deliberate for the next
13 budget.

14 The attrition crisis, really. I think
15 that's what, as you plan ahead, you've given
16 us a clarion call that our correction
17 officers are going to be leaving state
18 service as they are retiring. Eighteen
19 classes a year is a lot, but it's not --
20 doesn't seem to be enough. What should we be
21 proposing to meet the need?

22 ACTING COMMISSIONER ANNUCCI: Well, we
23 still have to see things play out. And part
24 of the possibility, should we need to be, is

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226

1 the ability to reopen a second training
2 academy. We don't yet see that need, but we
3 did do that once before, I think it was at
4 Willard. So that is an option that, should
5 the need arise, we can consider that.

6 SENATOR NOZZOLIO: Well, I appreciate
7 your consideration of recognizing this dip as
8 it goes in terms of attrition and deployment.

9 And I drove by the billboard today on
10 787, it's -- the numbers move, it's something
11 like 871 attacks on staff in the past few
12 months. Again, that's something I know
13 you're trying to control. But we need
14 deployment appropriately to resolve that
15 question.

16 Let me ask you to put on your parole
17 commissioner hat. What is the average
18 caseload of a program officer today versus
19 what it may have been a few years ago?

20 ACTING COMMISSIONER ANNUCCI: That is
21 a difficult question. I can try and research
22 that and get back to you.

23 But the way we staff right now is
24 dependent upon the risk level that a parolee

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1 is assigned. And we use a risk and needs

2 assessment to do that assessment.

3 And so if you're a Level 1, the
4 highest risk, I think the ratio is 20 to 1;
5 the second is 40 to 1, and then 80 to 1, I
6 think, and then 160. If you're handling SIST
7 cases, which are the sex offenders that
8 require civil management, the ratio is 10 to
9 1. So I don't know if I can give you just an
10 average number across the board.

11 SENATOR NOZZOLIO: Here is our
12 concern, Commissioner, that we see,
13 anecdotally, a growing number of violent
14 crimes committed by those who are out on
15 parole. In our Rochester region this last
16 year we had a very heinous rape and a murder
17 of a police officer by someone who was out on
18 parole for a very short time.

19 Now, I can only speculate that greater
20 supervision may have prevented those crimes.
21 But the fact of the matter is those who are
22 very violent and are out on parole because
23 the courts couldn't and others couldn't keep
24 them, and you couldn't keep them, retain them

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1 anymore behind bars, what does that do for
2 the safety of the people on our streets in
3 the cities and communities of our state?

4 ACTING COMMISSIONER ANNUCCI: Senator,
5 your points are very well taken. And in the
6 wake of those terrible tragedies, we have
7 resolved to work a lot closer with all of our

8 local police departments. We are sharing
9 information, we are sharing information on
10 who we consider to be our high-risk parolees.
11 We've always had a good partnership, but I
12 really want to work harder and make it
13 better. And a good starting point is sharing
14 better information, working together. And I
15 think going forward we'll see a lot more
16 progress in that area.

17 SENATOR NOZZOLIO: We need that. And
18 we need the ratios, particularly those of
19 case managers of violent criminals, to
20 develop. And we've got to work together on
21 this.

22 So thank you, and we will move forward
23 together with it.

24 ACTING COMMISSIONER ANNUCCI: Thank

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1 you, Senator.

2 SENATOR NOZZOLIO: Thank you,
3 Mr. Chairman.

4 CHAIRMAN FARRELL: Thank you.
5 Danny O'Donnell.

6 ASSEMBLYMAN O'DONNELL: It's very nice
7 to see you again, Commissioner. You know,
8 when I first got the job you used to come to
9 me on all my prison visits, and now you don't
10 come anymore. You send your minions. So I
11 don't know what that's about.

12 I'm going to first talk about medical
13 parole. I've been told that it costs upwards

14 of \$100,000 per year for you to keep elderly
15 and infirm inmates in prison. Is that an
16 accurate number?

17 ACTING COMMISSIONER ANNUCCI: That
18 number could be accurate if we're talking
19 about keeping people in one of our regional
20 medical units. It is very expensive.

21 I do have a concern with an aging
22 population. I think it's close to -- I think
23 19 percent are 50 or older. And we use 50 as
24 the benchmark because somebody in prison

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1 who's 50 or older is like a 60-year-old with
2 medical problems and aging issues and stress.

3 ASSEMBLYMAN O'DONNELL: So if you were
4 successful in making the medical parole
5 system more efficient, you would be saving a
6 lot of money, because you would be taking
7 these people, many of whom are bedridden, and
8 not having to pay the \$100,000 per year on
9 your dime; correct?

10 ACTING COMMISSIONER ANNUCCI: That is
11 correct. And we do have an Article 7 bill in
12 there on that.

13 ASSEMBLYMAN O'DONNELL: Right. So I
14 have a question about that, because it -- I'm
15 hoping it was just an oversight. There are
16 two different provisions of the Executive Law
17 that deal with these issues, 259R and 259S.
18 And it seems like you only are applying these
19 new streamlined rules to one of them. Why

20 would you not apply them to both of them so
21 that those very expensive inmates would no
22 longer be in your custody?

23 ACTING COMMISSIONER ANNUCCI: Well,
24 basically the rationale was this. We are

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1 considering the cohort of individuals who are
2 terminal, right, where time is of the
3 essence. This is avoiding the Parole Board
4 actually having to separately consider and
5 making the parole release decision.

6 We borrowed on an existing statute,
7 which is in the correctional one now. It's
8 called presumptive release for nonviolent
9 inmates. It's in 806. And it was enacted in
10 2003 to allow us to make the release decision
11 on indeterminately sentenced individuals who
12 weren't controversial -- there's no victim,
13 there's no homicide, it's not violent,
14 there's no sex offense. It's a certain
15 category of offenses where it's
16 noncontroversial.

17 At one time we made 1700 release
18 decisions ourselves, without having to go
19 through the board on a paper review.

20 When you changed the drug laws and
21 went determinate, that eliminated a whole
22 class of individuals that we used to consider
23 for presumptive release. But it's the same
24 cohort.

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1 And we felt, because it gets to my
2 level from our medical staff, when someone
3 reaches the point that they're (a) terminal
4 and they're no longer a danger to society and
5 very minimum risk to reoffend, time is of the
6 essence -- the Parole Board does move
7 expeditiously, but it's still an additional
8 step when time is of the essence. By having
9 this authority in me, I move quicker.

10 And then the real challenge is finding
11 the placement outside the prison. That is
12 where the holdup is, it's finding a nursing
13 home --

14 ASSEMBLYMAN O' DONNELL: I understand
15 that challenge, but I'm trying to figure out
16 why you would not include the second
17 provision on getting people released.

18 So let me just educate my colleagues
19 here. What happens if someone gets released
20 on medical parole and they miraculously get
21 better? They get sent back to prison; right?

22 ACTING COMMISSIONER ANNUCCI: I'm
23 unaware of someone getting sent back to
24 prison, but I think that's possible.

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1 ASSEMBLYMAN O' DONNELL: Well, that's
2 because the ones you release die. Right? So
3 if they're dead, they can't come back to
4 prison. But the law requires them to check
5 in. And if their medical condition is no
6 longer what it was, they get returned to

7 finish their sentence; right?

8 So why would you not use 259S to have
9 the same expedited process that you're
10 proposing for 259R?

11 ACTING COMMISSIONER ANNUCCI: Again,
12 the rationale is because there's an urgency
13 with someone who's terminal.

14 And this is a bit of a change from
15 normal procedure. And sometimes you start
16 with small steps and if it works well and the
17 Legislature is satisfied with it, we can
18 always come back and expand it.

19 ASSEMBLYMAN O'DONNELL: I'm a
20 bold-step kind of guy, Mr. Annucci. Okay?

21 (Laughter.)

22 ASSEMBLYMAN O'DONNELL: I'd like to
23 talk a little bit about staffing. In 2014,
24 PEF listed 2200 vacancies in your department.

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1 And you're proposing the hiring of 156
2 people. Where are these people going to go,
3 and which of the 2200 vacancies are they
4 filling?

5 ACTING COMMISSIONER ANNUCCI: I can't
6 give you the specifics right now. I do
7 know -- and your points are well-taken in
8 your many letters to me of the need to try
9 and more quickly fill program services
10 positions.

11 And we now have a new arrangement with
12 the Division of the Budget where we basically

13 get a blanket waiver, the same way we can
14 fill medical position vacancies rapidly.
15 Because I want to keep the population
16 engaged, I want to keep them active, not just
17 for purposes of rehabilitation but for also
18 running safer institutions. And so going
19 forward, we'll be able to fill these
20 positions more rapidly.

21 I can try and get you that breakdown
22 better. I know this is a very generic
23 response. But I can't tell you right now
24 where they are.

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1 ASSEMBLYMAN O' DONNELL: As you know
2 from my correspondence, I'm very concerned
3 about Albi on Correctional Facility. I
4 wouldn't say it's the worst of the 25 I've
5 been to, but it is troubling on many levels.
6 And much of that is driven by the inability
7 to provide the staffing for them. I mean,
8 obviously when we closed those women's
9 prisons, and now there are only three of
10 them, they all need more -- they're -- people
11 in there to provide the services to the
12 inmates who were absorbed didn't go up. And
13 you see that in the letters that I receive,
14 and some of them I choose to send along to
15 you.

16 Are you going to focus on filling
17 those positions so that those --

18 ACTING COMMISSIONER ANNUCCI: Oh,

19 absolutely. And I know I owe you a response
20 from your last letter following up on Albi on.

21 (A) we did fill those other two
22 posi ti ons. The superintendent had her deputy
23 superintendent actively advertise for those
24 two posi ti ons. They were just filled. We're

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1 expanding our treatment programs there.
2 We're going to add 30 beds. To the extent
3 that there's someone that can't get the
4 treatment there in time for a Parole Board,
5 we can transfer them to Taconic where they
6 can have their drug treatment need filled.

7 We're trying to expedite the work
8 release review process and get the women who
9 are eligible into work release as quickly as
10 possible. So we are proceeding on a number
11 of fronts there, and I think we'll make a lot
12 more progress for --

13 ASSEMBLYMAN O' DONNELL: Well, please
14 understand, Commissioner, I read every letter
15 that I get from the inmates. Sometimes it's
16 300 or 400 a month. So it's rather
17 disconcerting to me that one of your
18 institutions -- I get ten times more letters
19 about Albi on than I do about Attica or
20 Clinton. Okay? That's not a good sign to
21 me.

22 One more questi on, bri efl y. Obvi ousl y
23 the federal government enacted PREA, and I
24 understand that you are trying to -- you have

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1 money to try to be in compliance with PREA,
2 which is the Prison Rate Elimination Act.

3 Can you tell us what is happening with
4 that?

5 ACTING COMMISSIONER ANNUCCI: Well,
6 that's a big initiative, and it plays right
7 into Raise the Age. There's many different
8 components to PREA, but the thing that's of
9 most concern to me is that, separate and
10 aside from Raise the Age, I have to keep 16-
11 and 17-year-olds separate from the adult
12 population, which is a major challenge.

13 We have a big initiative for the 16-
14 and 17-year-olds for the males at Woodbourne
15 and Coxsackie and Greene, and to separately
16 discipline them so that they're not in a
17 traditional SHU and they'll get five hours a
18 day with programming and out-of-cell
19 treatment.

20 For the women, it's much more
21 complicated because the numbers are so
22 reduced. I only have five, right now,
23 17-year-olds in the system. So try and craft
24 a program where they will be separate from

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1 the adult population is almost like you have
2 to do it on a case-by-case basis as they come
3 in. And then, if they turn 18, I have to
4 pull them from the program. So even though

5 we're investing all of this energy and time
6 into doing this, it is going to be a huge
7 challenge for me going forward.

8 So if the first part of Raise the Age
9 is passed, it will be an enormous relief for
10 me to comply with PREA, which is changing
11 70/20 the place of incarceration. If you're
12 not yet 18 when you get sentenced, you will
13 now instead go to OCFS. If your sentence is
14 long enough, ultimately you'll get
15 transferred back to me, but otherwise you
16 will go there. That will help me enormously
17 with PREA.

18 There's many other aspects to PREA.
19 We've hired PREA coordinators, we plan to do
20 the audits, we have training programs out
21 there, many different aspects to it going
22 forward that we're ready to implement.

23 ASSEMBLYMAN O' DONNELL: But when I was
24 at Greene --

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1 CHAIRMAN DEFRANCISCO: Excuse me.
2 Excuse me --

3 ASSEMBLYMAN O' DONNELL: One second.
4 When I was at Greene --

5 CHAIRMAN DeFRANCISCO: No, excuse me.
6 Excuse me. We've applied the rule to
7 everybody. I gave you extra time. We'll
8 come back to you again, to be fair to
9 everyone.

10 ASSEMBLYMAN O' DONNELL: Thank you very

11 much, Mr. Annucci .

12 ACTING COMMI SSI ONER ANNUCCI : Thank
13 you.

14 CHAI RMAN DeFRANCI SCO: Senator
15 Hassel l -Thompson.

16 SENATOR HASSELL -THOMPSON: Thank you,
17 Mr. Chai rman.

18 Hopefully I wi ll somewhat begi n where
19 Assemblyman O' Donnell l e ft off, because those
20 are some of the same questi ons I wanted to
21 pose.

22 My questi on was going to start wi th
23 what i s your role wi thi n the Rai se the Age
24 platform, and wi ll the faci l i t i e s that are

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1 closed i n recent years be consi dered as
2 possi ble si tes for the new secure faci l i t i e s?
3 Number one. And then how wi ll you i nteract
4 wi th other agenci es that are i nvol ved wi th
5 Rai se the Age?

6 ACTING COMMI SSI ONER ANNUCCI : Senator,
7 good poi nt. Li ke any other maj or i ni ti a ti ve,
8 we' re not operati ng i n si los here i n thi s
9 admi ni strati on. We are al l part of the
10 Executi ve.

11 So we al ready have a team of peopl e.
12 We are going to be meeti ng, we are going to
13 be exami ni ng every possi ble i ssue and put
14 together an i mplementati on pl an that wi ll be
15 a credi t to the peopl e of thi s state and
16 enhance publ i c safety.

17 We already have a working group that
18 met even before Raise the Age so that a
19 relationship could develop between OCFS and
20 State DOCCS, because so many of the juvenile
21 offenders under current law with OCFS have to
22 appear before a Parole Board. We share
23 information how to prepare cases for
24 consideration by the Parole Board.

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1 To the extent that OCFS under this
2 proposal will get older inmates that we
3 currently have, we have shared all the
4 information about that cohort. We've told
5 them, for example, at the end of the year
6 there were 97 individuals who were 16 or 17,
7 not yet reached their 18th birthday. We gave
8 them data to predict what the flow would be
9 every month. I think the current estimate is
10 18. We have a grand total of over 3,000
11 offenders in the system who were either 16 or
12 17 when they committed their crime. So we
13 have shared a lot of data on what the
14 demographics would look like.

15 We're also prepared to meet with them
16 to give them any assistance they may need --
17 our training academy, our protocols, our
18 security training protocols, anything that
19 will assist them to implement this going
20 forward.

21 In terms of whether or not any closed
22 correctional facility might be appropriate

23 for their needs, like any other situation, we
24 stand prepared to give them -- or any other

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1 entity considering one of our closed
2 facilities for reuse -- all of the
3 explanations, site visits, all the
4 information on the buildings, the
5 infrastructures. We spend time and money and
6 staff to take care and preserve those assets
7 so that they are potentially useful for
8 reuse.

9 So if OCFS going forward -- and we're
10 going to have a workgroup that's going to
11 really sit down and map everything out and
12 identify what each person's role can be here.
13 If they want to consider one of our
14 facilities, we will give them all the
15 information they need to make an intelligent
16 determination as to whether it will fit their
17 needs going forward.

18 SENATOR HASSELL-THOMPSON: Based upon
19 the plan that was somewhat laid out by Judge
20 Prudenti, these facilities don't seem to --
21 the needs of those facilities don't seem to
22 be the same as they are for the general
23 population. So is there the money in the
24 budget?

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1 Because some of those prisons are
2 very, very old. You know that I've visited
3 most of them, and they're not up to standard.

4 So what does that mean in terms of capital
5 improvement and the money that's currently
6 being placed in the budget solely in this
7 category?

8 ACTING COMMISSIONER ANNUCCI: I'm
9 really not equipped to address that part of
10 it because I haven't -- we haven't yet met to
11 get to that aspect of things.

12 I can tell you that among the closed
13 facilities -- and I'm not saying, you know,
14 that this would be appropriate for OCFS's
15 needs -- Chateaugay is not that old of a
16 facility. And the Butler that we closed is
17 not that old. I have no idea if they would
18 be suitable for their purposes, but those two
19 institutions were not that old in the grand
20 scheme of things.

21 SENATOR HASSELL-THOMPSON: We also
22 closed some of the minimum securities, and
23 some of those -- would any of those be
24 applicable?

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1 ACTING COMMISSIONER ANNUCCI: They
2 would be accessible, if that would fit their
3 needs. I don't know if they're going to need
4 a secure facility with a fence. And if you
5 take a minimum, can it be retrofitted to be
6 secure to meet their needs if they're going
7 to be holding these individuals in secure
8 facilities? These are a lot of
9 yet-to-be-determined questions.

10 But if you look at the plan, this is
11 done over a gradual period of time --

12 SENATOR HASSELL-THOMPSON: I'd love to
13 look at the plan, but unfortunately in this
14 group that you just described, this working
15 group, that's not made up of legislators.
16 And that I think is unfortunate. Which is
17 why we have so many questions that we have to
18 ask, because we're not included in any way in
19 that kind of planning. And I think that
20 that's negligible, but that's just me.

21 ACTING COMMISSIONER ANNUCCI: I
22 respect that, Senator. Thank you.

23 SENATOR HASSELL-THOMPSON: Go to
24 another question for me, and thank you.

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1 We just did Fulton, and I wanted to --
2 I should have started by thanking you and the
3 administration, but particularly you and your
4 office for the work that you've done with us
5 to help us to, you know, take Fulton as the
6 model and as part of the adaptive reuse. And
7 the work of Osborne in the community of the
8 Bronx is extraordinary.

9 ACTING COMMISSIONER ANNUCCI: Thank
10 you, Senator.

11 SENATOR HASSELL-THOMPSON: And I would
12 like, where possible, for us to replicate
13 that across the state, because I think that
14 it speaks to the things that Betty Little and
15 some of the others of us who have looked at

16 the facilities in different areas have said:
17 We can do something different. And if we're
18 going to close prisons, then how do we make
19 sure that we maximize their reuse as well as
20 raise the economy of the neighborhoods and
21 communities in which they are located?

22 So I wanted to thank you for that.
23 And certainly it puts the Bronx on the map.

24 ACTING COMMISSIONER ANNUCCI: Thank

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1 you, Senator.

2 SENATOR HASSELL-THOMPSON: Since
3 New York State has one of the highest
4 incidences of hepatitis C, can you elaborate
5 on the steps that DOCCS has taken to deliver
6 medical care, treatment and preventive
7 measures for inmates throughout the system?

8 ACTING COMMISSIONER ANNUCCI: Medical
9 is a big, big area. And, you know,
10 addressing the needs of the population,
11 particularly as it's aging -- my average age
12 is going up right now. The last few years
13 it's kicked up, the number that are 50 and
14 older and the challenges they present --
15 hypertension, diabetes, heart conditions, and
16 of course cancer.

17 Hepatitis C is huge, and we have a
18 recent law that's going to require us to
19 offer testing for anyone between the ages of
20 45 and 65. And the medication can be
21 extremely expensive. And we estimate, I

22 think, 10 percent ultimately might be found
23 to have hepatitis C.

24 We have very good medical care. We

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1 have regional medical units that provide
2 skilled nursing care where needed. We have
3 arrangements with over 1100 outside providers
4 of sorts, whether it's individuals that come
5 into our clinics, provide specialty care as
6 needed. We're also going to be expanding our
7 bed capacity at the Walsh Medical Center,
8 which was the very first regional medical
9 unit, in response to the aging population and
10 the needs that they present.

11 The needs of the female population
12 also are high. And even though their
13 numbers are very low -- less than 5 percent
14 now of our population are female -- the
15 spending per capita is double for them than
16 we spend on the males. It's an average of
17 something like \$12,000 per female, but it's
18 \$6,000 per male.

19 So it is a challenge for us, and it's
20 a major public health challenge, a major
21 public health opportunity. I think the
22 results that we've had for conditions like
23 AIDS are very promising. I think we only had
24 one AIDS death last year. And I've been

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1 around a long time. I started in '84 when

2 the AIDS crisis first came about and we
3 didn't know what we were dealing with and
4 there was a lot of panic in the system.
5 We've come so far.

6 The treatment is expensive, the
7 protease inhibitors that we deliver to the
8 inmate population, but they prolong life. We
9 have a cooperative relationship with the
10 Department of Health, which does have some
11 oversight responsibilities for us with
12 hepatitis C and HIV. And the measurement for
13 success is the viral load reduction, which is
14 very good; for our system, better in many
15 ways than the community.

16 So I think our system, overall,
17 fundamentally very sound. And as we go
18 forward, we'll be able to meet all of our
19 challenges.

20 SENATOR HASSELL-THOMPSON: Thank you,
21 Commissioner.

22 ACTING COMMISSIONER ANNUCCI: Thanks.

23 SENATOR HASSELL-THOMPSON: Thank you,
24 Mr. Chairman.

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1 CHAIRMAN FARRELL: Nick Perry.

2 ASSEMBLYMAN PERRY: Thank you,
3 Mr. Chairman.

4 CHAIRMAN DeFRANCISCO: Excuse me just
5 one second.

6 Your answers are extremely thorough,
7 excruciatingly thorough.

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(Laughter.)

CHAIRMAN DeFRANCISCO: And I want to make sure that you get the answer, but if there's a follow-up question, they'll do it. Otherwise you will be here for several hours.

ACTING COMMISSIONER ANNUCCI: Okay, Senator.

CHAIRMAN DeFRANCISCO: Thank you.

CHAIRMAN FARRELL: Nick.

ASSEMBLYMAN PERRY: Thank you, Mr. Chairman.

Good afternoon, Commissioner.

ACTING COMMISSIONER ANNUCCI: Good afternoon, Assemblyman.

ASSEMBLYMAN PERRY: I just want to thank you for your service to our state. You're serving a very important and

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challenging position. And we know you do that as best as you can, to the best of your ability.

That said, I must bring to your attention some very disturbing information that has recently come to me regarding a bill -- or a law that was enacted in 2009 and the efforts in your department to operate in compliance with that law. And that is a law relating to a very serious part of the prison system. It's described as -- this is about shackling of pregnant women, and it's been described as dangerous, degrading, a practice

14 that violates basic standards of human
15 rights. That's what motivated me to pass
16 that law in 2009.

17 I have very disappointingly learned
18 that in our prison system women prisoners
19 during labor, after labor are still being
20 unlawfully shackled.

21 And I have learned also that in 2012,
22 Cook County jail system settled a case in the
23 federal court for over \$4 million because in
24 Illinois they passed a similar bill outlawing

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1 the shackling of women prisoners. And to
2 have that practice continued in New York
3 State certainly puts us in jeopardy of a
4 similar case. And I'm sure that in
5 New York's dollars, a settlement might be
6 significantly more.

7 Are you prepared in your budget
8 presentations to deal with a potential
9 lawsuit in excess of \$4 million because of an
10 unlawful practice continued in the prison
11 system in New York?

12 ACTING COMMISSIONER ANNUCCI:
13 Assemblyman, let me reassure you of one
14 thing. If I thought any of those accusations
15 that you read about were true, I would be
16 apoplectic. That's not happening.

17 What we've done, to set the record
18 straight, please go to our website, read a
19 very detailed white paper -- and I'll spare

20 you, Senator, from reading it -- on exactly
21 what's happening. We do not violate the
22 anti shackling law. We have never, under any
23 circumstances, handcuffed a female who's
24 giving labor in a hospital bed. We have

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1 checked seven ways to Sunday to make sure the
2 hospital has their records on that as well.

3 There are so many proactive things
4 that we do. We want to be ultracautious.
5 We've made seven trips for a woman who even
6 thinks she's in labor rather than avoid the
7 risk that she might deliver in an
8 institution. So read our fact paper on our
9 website.

10 These accounts were based on surveys
11 that were anonymous. I've never been
12 provided with specific names to investigate.
13 Everything I have done reveals that we are in
14 complete compliance with the shackling law.

15 ASSEMBLYMAN PERRY: I want to accept
16 your word, Commissioner, but I have here
17 verbatim responses by prisoners, women
18 prisoners. And listen to this. "They kept
19 one of my ankles shackled to the bed. They
20 only took it off when it was time to start
21 pushing."

22 That seemed to me to be a very clear
23 violation of the law.

24 "While I was in the ambulance, I was

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1 being cuffed. I was surprised because the
2 EMT told the officer that restraints aren't
3 used."

4 Another one: "I was shackled going to
5 the bathroom. I had to sleep with shackles
6 on my feet. The only time they were off is
7 when I had to take a shower."

8 It seems to me that there needs to be
9 some more attention paid to complying with
10 that law. And I want to hold you responsible
11 for that. And based on your credible,
12 commendable service in your position, I would
13 expect to get some really good answers. And
14 if that is happening, I would also expect
15 that you act immediately to bring this to an
16 end so that the state will not continue to
17 face a potential multi-million-dollar lawsuit
18 that will wrack your budget.

19 Thank you.

20 ACTING COMMISSIONER ANNUCCI: Okay.

21 CHAIRMAN DeFRANCISCO: Senator
22 Gallivan.

23 Excuse me, I neglected to announce
24 Senator Hamilton has been here for a while,

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1 and so has Senator Savino.

2 SENATOR GALLIVAN: Thank you,
3 Chairman.

4 Good afternoon, Commissioner.

5 ACTING COMMISSIONER ANNUCCI: Good
6 afternoon, Senator.

7 SENATOR GALLIVAN: I wanted to talk
8 about two different areas that I think go
9 hand in hand, staffing and security. And I
10 just want to follow up on some of your
11 conversation with Senator Nozzolio to make
12 sure I have the right understanding.

13 I know that you discussed those
14 additional 275 positions. Separate from
15 that, in the budget this year there are two
16 decreases in funding. One area is
17 \$9.9 million to eliminate funded vacant
18 positions -- I'm sorry, \$6.5 million to
19 reduce a hundred funded vacant positions.
20 And I just want to make sure that I have the
21 right understanding. Are these security
22 positions, or are those non-sworn positions?

23 ACTING COMMISSIONER ANNUCCI: I
24 believe what you're talking about, if I heard

♀

255

1 you correctly, is the transfer of positions
2 to the BSC {ph}. Those are where we're going
3 to lose some human service positions as that
4 initiative unfolds. They're not security
5 positions that are being reduced.

6 SENATOR GALLIVAN: Non-security
7 positions.

8 ACTING COMMISSIONER ANNUCCI: Yeah.

9 SENATOR GALLIVAN: Thank you.

10 The other area, though, with the
11 funding is a decrease, a \$20 million decrease
12 for overtime expenses. And the idea is to

13 have tougher oversight of it. I understand
14 overtime is necessary. I understand the
15 reasons for it. And while I don't have the
16 numbers in front of me, it seems to me, year
17 after year, we revisit the issue and overtime
18 increases from year to year.

19 I mean, is it really practical
20 that you think you can estimate that you're
21 going to save \$20 million in overtime without
22 compromising security at the facilities? And
23 how will you do that, if so?

24 ACTING COMMISSIONER ANNUCCI: Well,

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256

1 there's a lot of things that we have in the
2 air right now that we have to look at.

3 And we did sign an MOU with the union
4 as to the security staffing analysis that
5 we're doing, and obviously some number of
6 security staff will have to be increased
7 going forward.

8 But at the present time we need to
9 look at exactly the need for overtime.
10 There's several things that drive overtime
11 that are big. One of course is dealing with
12 the mental health situation, one-on-one
13 watches, which can be very expensive. And
14 we're working out protocols with the Office
15 of Mental Health to try to have the ability,
16 the psychiatrists are making an evaluation,
17 not necessarily to have that person on
18 suicide watch, which can be very expensive

19 for the full period of time.

20 One of the other things that I need to
21 look at -- and I don't have any answers right
22 now, I have more of a big question -- we have
23 a significant amount of security staff that
24 are out on workers' comp at any one time.

♀

257

1 We've averaged over 500 through the month of
2 January. But between 75 and 80 percent of
3 the comp incidents did not involve any inmate
4 contact at all.

5 So I don't have any answers. That's
6 an area I need to look at. We have to
7 operate under the contract that's in effect.
8 But I think it's for the benefit of
9 everyone -- for the state, the taxpayers --
10 to ask whether or not it makes sense to have
11 this kind of benefit for any type of injuries
12 that happen in a correctional facility.

13 Everybody understands the danger of
14 inmates. I have high rates of assaults in my
15 maximum security prisons. But slip-and-falls
16 are very commonplace, and they drive a lot of
17 workers' comp absence, which then drives
18 overtime. So if I can cut into that number,
19 I can reduce overtime and have a safer prison
20 for everybody.

21 SENATOR GALLIVAN: Thank you.

22 You mentioned the MOU with the union
23 regarding the security staffing review at
24 each facility. And your testimony indicates

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1 that you're about one-third of the way
2 through that.

3 ACTING COMMISSIONER ANNUCCI: Yes.

4 SENATOR GALLIVAN: Are you able to
5 accelerate that? Or when do you anticipate
6 completing that? And are you able to
7 accelerate it at all?

8 ACTING COMMISSIONER ANNUCCI: Well,
9 the plan envisioned is taking place over a
10 three-year period. So we've completed --
11 this was the first fiscal year. We've
12 completed one-third, or 18. We've been
13 having a dialogue with the unions. They've
14 gotten us some feedback. The last piece of
15 the feedback we're expecting. And it is our
16 expectation that as the budget gets agreed
17 to, there will be funding for some additional
18 number of security staff going forward.

19 SENATOR GALLIVAN: And that would be
20 the -- the outcome you'd anticipate would be
21 a recommendation for additional staffing in
22 certain positions?

23 ACTING COMMISSIONER ANNUCCI: Each
24 year for three years. Yes.

♀

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1 SENATOR GALLIVAN: Are there any other
2 recommendations from that analysis regarding
3 safety?

4 ACTING COMMISSIONER ANNUCCI: Oh,

11 ACTING COMMISSIONER ANNUCCI: I have
12 absolutely no reason to try and soft-pedal
13 what really is happening in the institutions.
14 As I explained last year, the word "assault"
15 is very different in the prison context than
16 it is in the real world. In the Penal Law,
17 assault requires physical injury --

18 SENATOR GALLIVAN: No, I understand.
19 And let me -- I want to get to the issue.
20 Whatever we call it when inmates are doing
21 something to cause injury to the staff
22 members, how do we fix that and how does
23 management and labor get on the same page as
24 far as dealing with that?

♀

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1 ACTING COMMISSIONER ANNUCCI: Well,
2 what we did is -- for better reporting is
3 reconfigure the categories of injuries. The
4 union was correct when they felt that certain
5 injuries that were moderate were much more
6 serious. And so we changed that. But still
7 the overwhelming majority of assaults don't
8 involve injury. Right?

9 So I'm not aware of anything lately
10 that says we are not accurately counting the
11 raw number of assaults nor the degrees of
12 injuries. I think their complaint lately is
13 the number is too high.

14 Any number is too high. But overall,
15 when I compare the system today with what it
16 was in 1990, the assault rate was much higher

17 then. It's still too high, whatever the
18 number is. And officers have a very tough
19 job. Even if there's an attack that's
20 classified as an assault that doesn't result
21 in an injury, whether it's throwing a glass
22 of water at somebody or just elbowing them,
23 that takes its toll on their health. It's
24 very stressful. They have a very tough job.

♀

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1 I don't want to soft-pedal what's really
2 happening, they have a tough job.

3 But still the numbers aren't anything
4 that indicates a crisis. It represents a
5 challenge. We have ongoing meetings, I have
6 my teams that go out there and examine
7 facility by facility and invite input from
8 the unions. Safety is everybody's concern.
9 I will welcome any additional suggestions --
10 I know what they want, they want a lot more
11 security staff. That's not always the answer
12 to everything. It's not going to necessarily
13 prevent an inmate who's just angry from
14 lashing out however he's going to lash out.
15 That's the reality we have to deal with.

16 We have aggressive laws to protect our
17 staff. If you throw urine or feces or even
18 the contents of a toilet bowl on a staff,
19 that's an E felony punishable by 2.5 to 5,
20 consecutive sentence of imprisonment. And we
21 have very solid relationships with all the
22 DAs to pursue that, as well as any Penal Law

23 seri ous assaul ts.

24 So we try everythi ng we can to keep

♀

263

1 the safest possi ble envi ronment, because
2 nothing else will work in our system if the
3 staff and the inmates don' t feel safe.

4 SENATOR GALLI VAN: Thank you,
5 Commi ssi oner.

6 SENATOR KRUEGER: Thank you.
7 Assembl y? No?

8 CHAI RMAN FARRELL: Nope.

9 SENATOR KRUEGER: All right. Senator
10 Vel manette Montgomery.

11 SENATOR MONTGOMERY: Thank you.
12 Good afternoon, Commi ssi oner.

13 ACTI NG COMMI SSI ONER ANNUCCI : Good
14 afternoon, Senator.

15 SENATOR MONTGOMERY: First of all, I
16 want to thank you for what you' ve done to try
17 and make sure that we are able to accommodate
18 people who are returni ng to communi ty from
19 i ncarcerati on.

20 I do want to ask you, you know, you' re
21 doi ng a faci lity in Brookl yn. And it' s my
22 understandi ng that you' ve been in court
23 around that faci lity and that there is some
24 resoluti on to that. And that you' re

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1 planni ng, based on that agreement, the court
2 deci sion, to establi sh some other si tes in
3 the borough.

10 important, it's your relationship with the
11 parolee.

12 It's also a philosophy. We want to
13 reinforce to them that we want you to
14 succeed, we don't want to have you fail, we
15 don't want to return you to state prison.

16 And we've also heard when the
17 legislature merged us to come up with much
18 more graduated sanctions. So sometimes we
19 have to react to behavior, but the array of
20 options that we have right now, much more
21 diverse than what we had years ago. We have
22 the 45-day program if you lapse with drug
23 treatment, so instead of sending you upstate
24 you go into Edgecombe or you go to a couple

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266

1 of others around the state, you complete the
2 program, you're back in the community, you're
3 on parole supervision.

4 So I will separately get you that
5 number that we agreed to. And it's, you
6 know, public record, it's a document. I
7 think it's no more -- I'm absolutely very
8 comfortable that that won't happen, I think
9 it's 2,000 in any one week.

10 But we have a number of other
11 locations, low-key locations where we can
12 report and also deal more closely with the
13 individuals right where they live. And
14 Brooklyn is, as you know, a very large city.
15 I think it's the fourth largest in the

16 country.

17 SENATOR MONTGOMERY: Absol utel y. I
18 appreciate that.

19 ACTING COMMI SSI ONER ANNUCCI: But
20 we're happy to move forward wi th that.

21 SENATOR MONTGOMERY: Okay. I j ust
22 felt a l i t t l e l e f t o u t o f t h e l o o p. I d i d n' t
23 know exactly what you were planni ng. And I
24 would l i k e t o k n o w w h a t a r e y o u p r o p o s i n g a n d

♀

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1 planni ng as an al t e r n a t i v e t o t h e r e p o r t i n g
2 process that you've had.

3 And can I j ust ask, related to that,
4 you i n d i c a t e d t h a t y o u w e r e g o i n g t o i n c l u d e,
5 i n v o l v e t h e c o m m u n i t y a r o u n d a n a d v i s o r y
6 i n v o l v e m e n t p r o c e s s.

7 ACTING COMMI SSI ONER ANNUCCI:
8 absol utel y.

9 SENATOR MONTGOMERY: What i s t h a t, a n d
10 w h e r e a r e y o u w i t h t h a t, a n d w i l l t h a t a l s o
11 i n c l u d e t h e e l e c t e d o f f i c i a l s w h o r e p r e s e n t
12 t h e a r e a, e s p e c i a l l y t h e o n e s w h o r e p r e s e n t
13 t h e c o m m u n i t i e s w h e r e m a n y o f t h e p a r o l e e s
14 c o m e f r o m a n d l i v e?

15 ACTING COMMI SSI ONER ANNUCCI: I t h i n k
16 t h i s w a s s p e c i f i c t o t h e l a w s u i t i t s e l f a n d
17 w h o t h e p l a i n t i f f s w e r e. I u n d e r s t a n d
18 t h e r e ' s o n e i n d i v i d u a l t h a t t h e y ' v e s e l e c t e d
19 t o b e t h e l i a i s o n w i t h t h e c o m m u n i t y. I
20 d o n ' t k n o w w h o h e i s, I ' d h a v e t o g e t t h e
21 s p e c i f i c s. I k n o w m y d e p u t y c o m m i s s i o n e r f o r

22 community supervision is very attuned to
23 this, has been regularly going to the
24 meetings.

♀

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1 But we can include any elected
2 officials, any community leaders. We want to
3 involve the community as much as possible in
4 everything we're doing with parolees. These
5 individuals, you know, they made a mistake
6 but they're coming home, they have family, we
7 want them to have jobs, we want them to
8 succeed. They're part of the community that
9 they originally came from. So we want
10 everybody involved, community-wise, to make
11 them succeed, and we'll build a stronger
12 community as a result.

13 SENATOR MONTGOMERY: All right, thank
14 you. I just want to say that as the elected
15 official who represents a large part of the
16 area, including the site itself, I was a
17 little taken aback when I hear that you are
18 moving forward to establish an involvement
19 with the community and I don't know anything
20 about it. So I hope you'll keep me in the
21 loop, at least, and let me know what you're
22 doing and how I can be working with you.

23 ACTING COMMISSIONER ANNUCCI:
24 Absolutely, Senator, we'll make sure of that.

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1 Thank you.

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SENATOR MONTGOMERY: Thank you.

SENATOR KRUEGER: Thank you.

Senator Jesse Hamilton to close.

SENATOR HAMILTON: Thank you, Chair.

Thank you, Madam Ranker Chair.

Good afternoon, Commissioner.

ACTING COMMISSIONER ANNUCCI: Good afternoon, Senator.

SENATOR HAMILTON: I just have a couple of questions. I just want to say I want to commend you for doing a wonderful job. It's a difficult job because you're having to deal with failed policies from other agencies that didn't do their job, and now it's up to you try to correct and rectify the situation.

I cover a large district, I go from Brownsville to Park Slope. And I just want to ask you just questions to keep me abreast and informed.

What percentage of the people who are incarcerated do you think have a mental disability?

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ACTING COMMISSIONER ANNUCCI: Oh, it's very high. It's a huge challenge for us. I think it's -- the percentage of my population that is on the OMH caseload, meaning they're rated as either Level 1, 2, 3 or 4 -- that means they require either a great deal or at least some degree of mental health

8 services -- it's close to 18 percent right
9 now. And I think I have 2100-plus that have
10 been diagnosed as having serious mental
11 illness.

12 But the good news is that we have
13 invested so much into so many programs in the
14 correctional facilities that 1900 of the 2100
15 are able to be taken care of in a general
16 population setting with special programs.

17 Traditionally, years ago, they were a
18 big problem, they'd get into disciplinary
19 problems and get long SHU sanctions. Now
20 that small cohort that are still acting out,
21 we get them into the programs. But it's
22 about 160 or less -- I'm sorry, 137 right now
23 that fit that category. So we've made a lot
24 of progress.

♀

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1 SENATOR HAMILTON: Can you give me a
2 suggestion on how we can do preventive
3 measures? Any suggestions on how to get to
4 these individuals prior to them coming into
5 the criminal justice system, to alleviate the
6 burden?

7 ACTING COMMISSIONER ANNUCCI: I
8 think -- you're talking about front-end
9 changes. And I think what's good in this
10 state is that the path that's being followed
11 by the front end, by DAs and by judges and by
12 defense lawyers, is similar to what was done
13 with the drug crisis when, on their own,

14 progressive DAs started programs like DTAP,
15 to divert people from going to state prison.
16 You have Mental Health Courts, you have
17 people trying to prevent people from falling
18 into the criminal justice cycle.

19 It's a challenge because many problems
20 are driven by the fact that if they don't
21 take medication, that's when you have
22 problems. Or if they self-medicate, that's
23 when they have problems. It's more
24 complicated than the drug problem, because

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1 sometimes the acting-out behavior is violent.
2 But at the front end I think we have a lot of
3 progressive thinkers in this state that are
4 making progress in that area.

5 SENATOR HAMILTON: Okay. I see you
6 have another great program called the RESET
7 program, the Recidivism Elimination,
8 Supervision and Enhancement Team. I know in
9 Brooklyn a challenge could be housing, due to
10 the price of housing. Do you need any
11 additional help from us as far as providing
12 transitional housing for inmates when they do
13 come out so they're not --

14 ACTING COMMISSIONER ANNUCCI: I could
15 use all the help that anybody can give me
16 with respect to finding housing for parolees.
17 It's a big challenge. It's a huge problem
18 for anybody that's a sex offender. That is a
19 problem. Many of them can't go home to their

20 families because many times that's who was
21 the victim originally, there's orders of
22 protection. And then we have residency
23 restrictions -- a thousand feet of a school,
24 keep them away. So it is an enormous

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1 challenge.

2 Any offers out there for housing, we
3 will certainly welcome and try and partner
4 with anybody, because it is a challenge for
5 us.

6 SENATOR HAMILTON: Thank you,
7 Commissioner. Another question. When
8 inmates come into the correctional facility,
9 are they tested for HIV?

10 ACTING COMMISSIONER ANNUCCI: I'm
11 sorry --

12 SENATOR HAMILTON: Are inmates tested
13 for HIV when they come into the correctional
14 facilities?

15 ACTING COMMISSIONER ANNUCCI: When --
16 new-coming inmates?

17 SENATOR HAMILTON: Yes.

18 ACTING COMMISSIONER ANNUCCI: No, I
19 don't think that's automatic. I'll have to
20 double-check. But we do offer it, the
21 testing to anybody that requests it, I
22 believe. It used to be you had to be
23 symptomatic of some sort or have some
24 high-risk history.

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1 This is my general recollection, I
2 have to double-check, but I think we will
3 offer the test upon request.

4 SENATOR HAMILTON: Because I think
5 it's a correlation in the black community
6 with inmates going in HIV negative and coming
7 out HIV positive due to the fact that there's
8 no distribution of condoms in the prison.
9 But it has been told to me there is sexual
10 intercourse in the prisons. So I'm not sure
11 how we attack that, and I'll talk to you
12 offline about that. But that's something
13 that's come across my desk and I'd like to
14 look into it a little bit further.

15 So that's about it, Commissioner. And
16 keep up the good work. You have a difficult
17 job ahead of you, and whatever I can do to
18 help you, I will be there. Thank you so
19 much.

20 ACTING COMMISSIONER ANNUCCI: I
21 appreciate that very much. Thank you.

22 SENATOR KRUEGER: Assembly?

23 CHAIRMAN FARRELL: Anyone? No?

24 SENATOR KRUEGER: I think we've

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1 actually finished with you. Thank you,
2 Commissioner.

3 ACTING COMMISSIONER ANNUCCI: Thank
4 you, Senator.

5 CHAIRMAN FARRELL: Thank you.

6 SENATOR KRUEGER: And next is Thomas

7 Beilein, and I'm sorry if I pronounced it
8 wrong.

9 SENATOR HASSELL-THOMPSON: You missed
10 the superintendent.

11 (Discussion off the record.)

12 SENATOR KRUEGER: I'm so sorry.
13 Superintendent D'Amico, I apologize, I missed
14 you.

15 Whenever you're ready, thank you.

16 SUPERINTENDENT D'AMICO: Good
17 afternoon. Thank you, I was heartbroken. I
18 thought you were going to skip me.

19 Thank you, Chairman DeFrancisco,
20 Chairman Farrell, and distinguished members
21 of the committees for the opportunity to
22 discuss with you Governor Cuomo's budget for
23 the Division of State Police.

24 I would like to take this opportunity

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1 to thank the Legislature for its past support
2 of the New York State Police. Because of
3 this support, the State Police continues to
4 enjoy its well-deserved reputation as one of
5 the best law enforcement agencies in the
6 nation.

7 Since its inception nearly a century
8 ago, the State Police has consistently
9 provided service through its core mission:
10 to prevent and detect crime, to apprehend
11 criminals, and to cooperate with any other
12 agency, whether federal, state or local.

13 Our current mission priorities include
14 reducing the number of deaths, injuries and
15 property damage caused by motor vehicle
16 accidents through vehicle and traffic
17 enforcement and education; providing
18 professional police services to communities
19 and investigative support to departments
20 around the state; engaging in emergency
21 preparedness, planning and response
22 activities; and serving a crucial role in the
23 state's counterterrorism efforts, working
24 with federal, local and other state agencies.

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1 The continued safety of the people of
2 New York State is the utmost priority for the
3 State Police and all of our partners.

4 As you are aware, 87 percent of the
5 appropriations made for State Police
6 operations are in support of personnel
7 service obligations, of which approximately
8 90 percent supports the salaries and overtime
9 expenses of our sworn members. The vast
10 majority of the non-personal service
11 appropriations made in support of
12 State Police operations are best
13 characterized as non-discretionary
14 expenditures. These are expenditures for
15 vehicles, equipment, facilities and
16 communications, which are all essential tools
17 necessary for the men and women of the
18 State Police to fulfill their law enforcement

19 mi ssi on.
20 An entrance exam for new troopers was
21 recently held for the first time in several
22 years. We continue to conduct academy
23 classes so that adequate staffing levels are
24 maintained to perform our core mi ssi on

♀ 278

1 pri ori ti es. We make the necessary,
2 reasonable and prudent staffing deci si ons to
3 maintain the levels of servi ce while ensuri ng
4 the safety of our members. We conti nuously
5 assess and evaluate our deplo yments to
6 maxi mi ze provi sion of poli ce servi ces, and we
7 always pri ori ti ze maintaini ng the staffi ng
8 levels of our troopers on patrol .

9 My first and foremost pri ori ty
10 continues to be the safety of the publi c and
11 the safety of the troopers who protect them.
12 Toward that end, we will continue to provide
13 our troopers with the necessary equipment and
14 other valu able resources to achi eve the
15 highest levels of safety as they go about
16 their duties.

17 The Governor has dedi cated fundi ng i n
18 his budget to the joint task force Empire
19 Shield to enhance our efforts to deter and
20 detect terrorism at a time when these acts
21 are a constant threat to the safety of
22 New Yorkers. As a result, New Yorkers live
23 in one of the safest large states in the
24 nati on. Usi ng speci fi c targeted enforcement

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1 strategies, state troopers are assigned to
2 potential target locations with federal and
3 local partners to provide greater visibility
4 and protection for the public.

5 The State Police is unique as the only
6 law enforcement agency in New York State with
7 the ability to deploy large numbers of
8 professionally trained, sworn police officers
9 anywhere in the state on short notice in
10 response to an emergency or a natural
11 disaster. The State Police is also available
12 for large-scale deployments to meet a
13 particular immediate need for law enforcement
14 services in any community.

15 The Governor has identified the
16 experiences from past disasters as an
17 opportunity for improvements in disaster
18 preparedness and response readiness. We
19 actively participate in this effort through
20 our partnerships with the Office of Emergency
21 Management and the Division of Homeland
22 Security and Emergency Services. We dedicate
23 staffing and resources and maintain a
24 cooperative working relationship with these

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1 partners and others.

2 Efforts will continue this year to
3 combat illegal drug use. Many of our
4 communities have experienced increased

5 incidents of heroin and opioid abuse. The
6 State Police has received a COPS
7 Anti-Methamphetamine Program grant which will
8 provide additional funding to investigate
9 illicit activities related to the manufacture
10 and distribution of methamphetamine. This
11 award will be used to provide better
12 equipment to troopers and laboratory
13 personnel who are handling methamphetamine,
14 and will effect improvements in our data
15 tracking to allow increased and more
16 effective enforcement strategies.

17 Our troopers, as first responders,
18 have actively administered the drug Naloxone
19 to save lives in medical emergencies
20 involving drug overdose, which have resulted
21 in 25 successful saves to date.

22 The use of social media to foster the
23 relationship between the agency and the
24 citizens we serve has been successful in

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1 improving cooperation with law enforcement
2 efforts in the communities that we serve. By
3 posting safety and crime alert information on
4 Twitter and Facebook, the State Police have
5 successfully enhanced investigative
6 capabilities resulting in fugitive arrests
7 and cases solved.

8 The New York State Police Forensic
9 Laboratory System provides a majority of the
10 counties with services inside New York State.

11 For instance, we perform over 60 percent of
12 impaired driving toxicology criminal casework
13 for all state agencies. Of those cases,
14 approximately 50 percent are for agencies
15 other than the State Police. The lab
16 provides certification of breath testing
17 reference materials for every law enforcement
18 agency in the state.

19 The State Police Laboratory also
20 serves as the sole data entry point in the
21 state for the FBI Combined DNA Index System,
22 also known as CODIS. The success of DNA in
23 the identification and exoneration of
24 suspects in criminal investigations is

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1 well-documented. DNA helps prevent crime
2 through expedited identifications, exonerates
3 the innocent, and convicts the guilty.
4 Efficiencies have been implemented in the DNA
5 casework section of the lab, resulting in a
6 60 percent decrease in the time required for
7 the overall analysis process to be completed.

8 The Governor's budget provides funding
9 to keep necessary scientific equipment and
10 technology up-to-date and to allow effective
11 and efficient provision of service to all of
12 the agencies who are customers of the State
13 Police Laboratory System.

14 Throughout the coming year, we will
15 continue to seek and effect improvements to
16 technology for our investigators, our office

17 staff, as well as our troopers in the field.
18 Improvements to in-car technology and
19 providing increased investigative tools to
20 our people are underway and will continue.
21 Interoperability with our local law
22 enforcement partners is imperative for
23 ensuring that we can provide the best level
24 of public safety and police services for

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1 New Yorkers.

2 We will continue to look for
3 additional efficiencies through our
4 partnerships with other law enforcement
5 agencies throughout the state and through
6 consolidation of state government services
7 where practical and possible.

8 New Yorkers have come to expect
9 excellent service by a stable, well-deployed
10 and adequately resourced State Police. I am
11 proud to say that New Yorkers can be
12 confident their expectations are being met.
13 It is the integrity, knowledge, dedication
14 and quality of our men and women that
15 distinguishes the New York State Police. I
16 am honored and privileged to be a part of
17 this premier police agency and its great
18 traditions.

19 I thank you for your support of the
20 State Police and for this opportunity today
21 to address you. I would be happy to answer
22 any questions, and I'll be concise if

23 possi bl e.

24 (Laughter.)

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1 CHAI RMAN DEFRANCI SCO: Knowi ng you as
2 I do, you wi ll be, I' m sure. And the people
3 out there thank you.

4 Senator Gall i van.

5 SENATOR GALLI VAN: Thank you,
6 Chai rman.

7 Good afternoon, Superi ntendent. I
8 have questi ons in several di fferent areas.
9 The first has to do wi th the publi c safety
10 communi cations account. And what I beli eve,
11 if I' ve read thi s correctl y, the Govern or has
12 propos ed shi fti ng \$9.5 mi lli on from that
13 account -- that i n the past was dedi cated to
14 the State Poli ce -- to go to the General
15 Fund. What chal lenges does that present for
16 the agency, and what servi ces might we be
17 doi ng wi thout?

18 SUPERI NTENDENT D' AMI CO: Wel l, for the
19 State Poli ce it means no change i n our
20 budget. The money that comes from the 9/11
21 surchar ge goes i nto the General Fund, whi ch
22 then supports personnel and non-personal
23 servi ces. So our budget remains the same.
24 There wi ll be no decrease i f the money is

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1 adj usted.

2 SENATOR GALLI VAN: All ri ght, thank
3 you.

4 The Governor's original budget
5 proposal included \$18 million for the
6 replacement of equipment and vehicles, and
7 I'm hearing -- we get many reports from the
8 field, many of my colleagues from across the
9 state have heard the same thing, about the
10 fleet and, in some areas of the state,
11 concern about the condition of the fleet and
12 the need for replacement vehicles.

13 The Governor's 30-day amendments
14 changed this somewhat, and monies have been
15 lumped together in some sort of special
16 infrastructure account in general terms,
17 without delineating what it's going to be
18 spent on specifically.

19 To your knowledge, is \$18 million
20 still planned for the replacement of vehicles
21 and equipment for the State Police?

22 SUPERINTENDENT D'AMICO: To my
23 knowledge, yes.

24 SENATOR GALLIVAN: And will that

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1 address your vehicle needs?

2 SUPERINTENDENT D'AMICO: It will
3 address -- it won't completely address my
4 vehicle needs, obviously. There were a
5 couple of years between 2010 and 2013 where
6 we purchased limited vehicles, especially
7 non-patrol vehicles. There were changes to
8 OGS procurement and the contract process that
9 had to be overcome. And last year we were back on target

10 with contracts and purchasing and funding.
11 Our concern every day is the mileage
12 and the condition of our cars. You know, we
13 continue to maintain it with our own
14 mechanics and some outside mechanics, and
15 safety is our concern. But the mileage
16 obviously, from a couple of years of not
17 buying cars, the average mileage of our fleet
18 has gone up. And the money that's
19 appropriated in the budget will help us to
20 bring down the average mileage of all of the
21 vehicles.

22 Am I going to attain the goals that
23 I'd like to see this year? No. But I think
24 over a two-year period we'll be able to make

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1 up what we lost in the years we didn't buy.

2 SENATOR GALLIVAN: Regarding staffing,
3 the Governor has included funding for
4 additional new troopers for an academy class
5 from his original budget, which of course I
6 think many of us across the state welcome.
7 My question is, is it sufficient so that --
8 are you able to keep up with attrition, or
9 are you ahead of it, behind it, what?

10 SUPERINTENDENT D'AMICO: Yeah,
11 generally we attrit somewhere around 230, 240
12 sworn officers a year, not including the
13 losses on the civilian side. We're getting
14 prepared at the beginning of March to put on
15 an academy class of 225, and we've had

16 discussions with Budget all along about a
17 second academy class during the year to
18 adjust attrition.

19 I believe there's an appropriation in
20 the budget for a second class, and it's just
21 a matter of kind of figuring out what the
22 attrition ends up with for the year. And
23 we'll follow up -- I hope to follow up with
24 this -- with another class.

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1 So for right now, we'll be putting,
2 you know, 250 people into the academy. So I
3 think we're -- we are kind of flat with
4 attrition at this point.

5 SENATOR GALLIVAN: The other area I
6 wanted to touch on was the SAFE Act, and I
7 wanted to delve very briefly into two
8 different areas.

9 The first has to do with the pistol
10 permit recertification process. And many of
11 us have heard concerns from our constituents
12 regarding the implementation by the State
13 Police, or the planned implementation. And I
14 quite honestly don't know if what's been
15 reported to me is accurate or not, but some
16 of the things that are in there that are
17 reported to me that are part of the planning
18 is that an indication if somebody's a permit
19 holder would be designated on their driver's
20 license, and that the pistol permit data
21 would be linked to DMV data.

22 Two questions. Is that accurate? And
23 what stage are you in the planning for the
24 implementation of that part of the SAFE Act?

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1 SUPERINTENDENT D'AMICO: The first
2 part, that's not accurate. There was
3 erroneous information that was distributed a
4 couple of months ago. After a meeting of the
5 county clerks, there was a memo prepared by a
6 county clerk that had at least eight or nine
7 points that were incorrect, and that was one
8 of them. There's been no discussion, there
9 is no plan to put any of that information on
10 a driver's license. So that is incorrect.

11 SENATOR GALLIVAN: If I can jump in
12 real quick, if you're able to, would you be
13 able to share that with us, if you had a
14 response to that specific point?

15 SUPERINTENDENT D'AMICO: I'm sorry,
16 can you say that again, Senator?

17 SENATOR GALLIVAN: If you are able to,
18 if you had a response to that memo that you
19 referred to, would you be able to share that
20 with us to confirm or refute the various
21 points of it? Not right now, at a future
22 point in time.

23 SUPERINTENDENT D'AMICO: No, we had
24 communication from a number of legislators

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1 after that memo, and we provided them with a

2 response. So I'd be happy to provide you
3 with the same response.

4 SENATOR GALLIVAN: Okay. The status
5 of that process now, or where you are on that
6 process.

7 SUPERINTENDENT D'AMICO: Where we're
8 at. So during 2015 we'll be starting
9 recertification. The SAFE Act requires it to
10 be completed by January of 2018. We're in
11 the process now of putting in the plan to do
12 a pilot project with three counties
13 throughout the state, using a random
14 selection of permit holders. And like I
15 said, 2015 and it has to be completed by
16 January of 2018.

17 SENATOR GALLIVAN: Do you anticipate
18 that any costs will ultimately have to be
19 borne by counties in this process?

20 SUPERINTENDENT D'AMICO: You know, I
21 don't know what the costs to the counties
22 are. The State Police, as part of the act,
23 are going to do most of the work here, and
24 the heavy lifting. You know, we do have

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1 staff that was included in the original
2 funding of the SAFE Act which are actively
3 involved in this, as well as New York State
4 ITS.

5 And, you know, I think that most of
6 the letters will be -- or the letters will be
7 sent out by the State Police. The responses

8 will come in, and we'll determine the
9 discrepancies. And only the follow-up action
10 that's required will be sent out to the
11 counties.

12 SENATOR GALLIVAN: All right, thanks.

13 Finally, the requirement of the SAFE
14 Act that background checks on ammunition
15 sales and be required ultimately won't be
16 implemented until the State Police
17 superintendent certifies that there is a
18 system in place. I'm wondering where you are
19 on that. And my question is, is there
20 something -- I mean, is there a technological
21 solution for this in sight?

22 SUPERINTENDENT D'AMICO: Well, there's
23 two parts to the ammunition background check.
24 The first one was registering the dealers,

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1 which we've completed. The second part of
2 this required a point-of-sale background
3 check for purchasers and recordkeeping by the
4 retailers.

5 We continue to work on this. I think
6 that the solution is a technology solution,
7 if there is one. Currently we don't have
8 anything in place. There are a number of
9 notional ideas on how to solve this problem.
10 But as of right now, there is nothing in
11 place to do seamless point-of-sale background
12 checks. And I think it's important that
13 before I can certify any kind of system, that

14 I'm happy to know that there's no delay at
15 all for either the buyer or the seller in
16 selling ammunition.

17 So as of today, like I said, we
18 continue to work with the technology people
19 to find a solution, but nothing is in place.

20 SENATOR GALLIVAN: Thank you.

21 Thank you, Chairman.

22 CHAIRMAN FARRELL: Mr. Saladino.

23 ASSEMBLYMAN SALADINO: Thank you.

24 Superintendent D'Amico, I appreciate

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1 all you and your members have been doing for
2 quite a long time. As someone who survived
3 the devastating effects of Superstorm Sandy,
4 there was no more comforting feeling during
5 the day when our community was devastated,
6 literally looked like a war zone, to see that
7 state trooper car go by. And at night, when
8 it was pitch black, when you could just see
9 silhouettes of people walking through the
10 neighborhood, not knowing if they were going
11 to be looting, not knowing what was going to
12 happen next. I really appreciate those
13 efforts.

14 SUPERINTENDENT D'AMICO: Thank you.

15 ASSEMBLYMAN SALADINO: As I read your
16 comments, you speak to the priorities of
17 reducing the deaths, injuries and property
18 damage caused by motor vehicle accidents.
19 And Senator Gallivan touched on this briefly,

20 but I just wanted to make sure I'm clear on
21 where we are and what resources are needed to
22 provide for that safety of your members and
23 the general public.

24 Approximately how many vehicles are

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1 currently owned by the State Police?

2 SUPERINTENDENT D'AMICO: In the area
3 of over 2500.

4 ASSEMBLYMAN SALADINO: And what
5 percentage of those vehicles have over
6 180,000 miles?

7 SUPERINTENDENT D'AMICO: A very, very
8 small number. We've made an effort over the
9 last year to replace anything that had any
10 kind of high mileage.

11 I think that most of our high-mileage
12 vehicles, my definition is between 125 and
13 150. If there's anything with 180, it should
14 be cycled out already, or on its way to
15 cycled out. I think the last thing that I
16 saw, our highest vehicles would be the
17 unmarked vehicles, not our patrol vehicles,
18 and some of those were in the 160s.

19 ASSEMBLYMAN SALADINO: Is it true to
20 assume that those vehicles, as you mentioned
21 between 125,000 and 150,000 miles, start to
22 become a problem in terms of safety for the
23 employee as well as the public?

24 SUPERINTENDENT D'AMICO: Well, I think

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1 that we are very careful with our maintenance
2 and our inspection. We have an excellent
3 maintenance program. Do I think that after
4 125,000 miles the vehicle is unsafe? I
5 don't. Do I think we have higher maintenance
6 costs and do we have a greater frequency of
7 breakdowns? You do, obviously.

8 I think that probably the best years
9 of the car are up to 100,000, and after that,
10 you know, it quickly diminishes. Do I think
11 they're unsafe? I would never put a trooper
12 or an investigator in any vehicle that I
13 thought was unsafe.

14 ASSEMBLYMAN SALADINO: What do we need
15 to assist you in terms of future resources or
16 additional resources to guarantee that we can
17 keep the -- to get those high-mileage
18 vehicles off the road?

19 SUPERINTENDENT D'AMICO: With the
20 money that's allotted in this year's budget,
21 I think we're going to make a tremendous dent
22 in reducing -- our goal is to get them down
23 to 125 would be the max for any -- 125,000
24 would be the maximum mileage for any of our

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1 vehi cl es.

2 As I said, I don't think we're going
3 to do it this year, based on the budget. But
4 I think over a two-year period we'll not only
5 achieve that but we'll be able to have a
6 decent reserve fleet.

7 ASSEMBLYMAN SALADINO: And now in
8 terms of other types of safety equipment and
9 the cost, so we have a good sense of what the
10 needs are to best protect the members of your
11 agency -- whether it's vests, other types of
12 equipment, firearms -- what are your highest
13 priorities in other equipment beyond the
14 vehicles?

15 SUPERINTENDENT D'AMICO: I think
16 obviously our highest priorities are, I would
17 say, vehicles. You know, when it comes to
18 safety equipment, you know, we equip our
19 members with, you know, lethal and nonlethal
20 equipment. We use pepper spray and Tasers
21 and firearms, there's patrol rifles,
22 shotguns. There's a sufficient amount that
23 are out there. We also have some safety
24 features on our cars.

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1 I think our members are safe. You
2 know, if I had more money, could I buy more
3 equipment? There's, you know, technology and
4 equipment -- you know, the opportunity is
5 tremendous of what's on the market there.
6 But I think what we have is sufficient, and I
7 think our members are safe.

8 ASSEMBLYMAN SALADINO: And in terms of
9 the vests?

10 SUPERINTENDENT D'AMICO: In the vests,
11 we've always maintained the five-year rule on
12 the vests. The vests are rated for five

13 years, and after that there's no guarantee
14 that they're up to the same quality.

15 We've always used five. We used to
16 get federal funding for that. Last year we
17 took advantage of forfeiture money from the
18 Attorney General. But whether we receive
19 outside funds or not, that's our priority,
20 and five years is our limit. So we're in
21 good shape that way.

22 ASSEMBLYMAN SALADINO: Thank you. And
23 in closing, we greatly appreciate all the
24 highest priority made to keeping those

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1 high-mileage vehicles off the road. And
2 whatever you need from us, we'll certainly be
3 very motivated to do everything possible to
4 push the budget in a direction that keeps the
5 mileage down on those vehicles, so therefore
6 we can be more efficient as well as safer for
7 the public and for the people who protect the
8 public.

9 SUPERINTENDENT D'AMICO: Thank you.

10 CHAIRMAN DeFRANCISCO: Senator
11 Nozzolio.

12 SENATOR NOZZOLIO: Thank you,
13 Mr. Chairman.

14 Superintendent, good afternoon.

15 SUPERINTENDENT D'AMICO: Good
16 afternoon.

17 SENATOR NOZZOLIO: It's hard to
18 believe you're in your fifth year. It seems

19 I like only yesterday that --

20 SUPERINTENDENT D'AMICO: Don't jinx

21 me, Senator.

22 (Laughter.)

23 SENATOR NOZZOLIO: Well,

24 Superintendent, I appreciate your candor and

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1 forthrightness in response to our questions.

2 I was very pleased the Governor's 30-day

3 amendments placed an additional class. I

4 think that's critical.

5 You may have heard my questioning to

6 the commissioner of Corrections, or the

7 acting commissioner of Corrections that we

8 have, in effect, a demographic challenge with

9 attrition in the ranks of the COs. Do we

10 have that same demographic challenge coming

11 up with State Police officers?

12 SUPERINTENDENT D'AMICO: Well, we've

13 experienced increased attrition over the last

14 couple of years. In the mid-'80s there was a

15 tremendous push for hiring by the State

16 Police. And, you know, with an average of 25

17 years for most troopers, you know, we are

18 seeing it over the last couple of years.

19 Thankfully, other than the first year

20 that I was here as superintendent, we've had

21 steady academy classes since that time, and

22 we've gained ground on our personnel numbers.

23 We've been staying not only ahead of

24 attrition but, you know, making some leaps

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1 there, so ...

2 SENATOR NOZZOLIO: That's good news
3 indeed.

4 Shifting gears a second to follow up
5 on Senator Gallivan's questions regarding the
6 pilot program that you're initiating, the
7 statute didn't tell you to do this, but the
8 statute didn't tell you that you couldn't do
9 it, either, in terms of a pilot program
10 relative to SAFE Act implementation.

11 Please advise us and go beyond the
12 points that you indicated with Senator
13 Gallivan, about the voluntary nature of this
14 recertification. Because we do not have, in
15 that act, a requirement that certification
16 take place prior to 2018, what are you
17 telling individuals about whether or not this
18 is something that is voluntary? Tell us the
19 protocols that you've established for this.

20 SUPERINTENDENT D'AMICO: And you're
21 correct, it is basically voluntary, not
22 required by the act until January 2018.

23 You know, we're beginning with a
24 pilot project because it is pretty large in

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1 scope and we want to make sure we get it
2 right. We want it to be seamless. We're
3 going to have an online application where
4 licensees can go on and submit -- obviously,

5 if they're not on the Internet, they can do
6 it by mail. We want to make sure we get it
7 right before we expand, you know, into larger
8 numbers.

9 We're starting now because, honestly,
10 every five years you'll have to recertify.
11 So the more people that voluntarily recertify
12 early will allow us to spread out, you know,
13 every five-year cycle so that we're not
14 tremendously delayed. If we wait till
15 January 2018 to start recertifying, you know,
16 license holders, there's going to be a
17 tremendous delay. You know, I don't think we
18 could put enough people on it to make it work
19 smoothly. And that's the reason.

20 SENATOR NOZZOLI: And,
21 superintendent, for the record, you indicated
22 you responded to a number of members who have
23 inquired about this driver's license issue,
24 that the pilot program is not going to check

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1 against DMV records or have at least an
2 indication on the license that an individual
3 is a permit holder. You declaratively state
4 that that's not going to be the case; is that
5 correct?

6 SUPERINTENDENT D'AMICO: I'm not sure
7 where that came from, Senator, honestly. I
8 think maybe programs that the state has
9 undertaken in the last two or three years to
10 put fishing licenses and hunting licenses,

11 things like that on the driver's license for
12 convenience, probably made somebody take that
13 leap.

14 But I'm telling you there is no plan
15 to put it on the driver's license. Nor is
16 there any reason to check, you know, driving
17 record.

18 SENATOR NOZZOLIO: Superintendent, the
19 issuance of plastic recertification cards
20 that need to be carried with the permit
21 holder at all times, is that part of the
22 program?

23 SUPERINTENDENT D'AMICO: That's what
24 it is. We don't issue the permits, the

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1 counties do. So at the time where we
2 recertify, there will be a card issued just
3 saying, with the date and the number, when
4 you recertified. And it's -- we would ask
5 that it be carried with the permit.
6 Obviously it will be databased and it could
7 be checked if it was, you know, in question.

8 SENATOR NOZZOLIO: Is that
9 recertification card going to indicate
10 whether the holder has been a recipient of
11 alcohol or drug treatment or mental illness
12 or any type of Family Court petition or
13 charges against that individual?

14 SUPERINTENDENT D'AMICO: No, not at
15 all. The recertification card actually just
16 says that -- you know, your pistol license

17 number and the date and that you properly
18 recertified. None of that other information,
19 you know, is included anywhere.

20 Part of the recertification process is
21 to collect changes in address, changes in
22 firearms owned. Obviously, you know, we're
23 concerned about licensees who are now
24 deceased and anybody who's become a

♀ 304

1 prohibited owner because of mental health
2 issues or, you know, criminal conviction, you
3 know, in the past that wasn't caught.

4 SENATOR NOZZOLIO: What are the
5 counties that you're going to be deploying
6 this pilot program in?

7 SUPERINTENDENT D'AMICO: Well, you
8 know, I would rather not announce it today
9 because it may change. But it's three in the
10 Capital Region.

11 SENATOR NOZZOLIO: Thank you very
12 much, Superintendent. Appreciate your good
13 work.

14 SUPERINTENDENT D'AMICO: Thank you.

15 CHAIRMAN DeFRANCISCO: Senator Savino.

16 SENATOR SAVINO: Thank you, Senator
17 DeFrancisco.

18 I was going to ask you also about the
19 high-mileage vehicles, but I think you've
20 been sufficiently grilled on that issue.

21 I do want to ask you about one thing
22 which you didn't mention in your testimony,

23 but as you know is very important to me. The
24 last time I think we saw each other was at

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1 the signing of the bill implementing the
2 medical marijuana statute, which your agency
3 and you are going to play a tremendous role
4 in.

5 The Department of Health issued their
6 draft regulations in December, I think
7 December 31st, and the public comment period
8 is closed. But in the draft regs it really
9 doesn't have a lot of detail as to what role
10 the Superintendent of Police is going to
11 play. So can you give me briefly what your
12 department is doing and how you're working in
13 collaboration with the Department of Health
14 to roll out this program?

15 SUPERINTENDENT D'AMICO: The
16 Department of Health is responsible for the
17 regulations. And they submitted them to us
18 for review, we offered some comments. And,
19 you know, some of it was taken and changed,
20 others were just noted.

21 The State Police role really from the
22 beginning was if an issue is determined
23 because of the medical marijuana that creates
24 some sort of public safety issue, that I have

♀ 306

1 the ability to voice to the Governor my
2 concerns, as does the Commissioner of the
3 Department of Health.

4 As far as the regulations, you know,
5 we really have no role in the everyday
6 enforcement of regulations concerning medical
7 marijuana.

8 SENATOR SAVINO: One of the
9 responsibilities is for the state to
10 establish the price, which is unlike any
11 other industry. And I remember at the point
12 of negotiations we had a discussion as to how
13 that would come about. One of the
14 discussions was that your department would
15 help them develop the pricing structure.
16 Have those discussions happened yet?

17 SUPERINTENDENT D'AMICO: No, not at
18 all. You know, honestly, I don't recall
19 that, Senator, that we were going to be
20 involved in the pricing piece. It doesn't
21 seem to me to be, you know, a function of
22 police.

23 But no, like I said, our only role has
24 been offering advice and review of the

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1 regulations. And going forward, you know,
2 we're going to -- we're concerned and we're
3 going to keep a close eye on the whole system
4 to make sure that there are no public safety
5 issues.

6 SENATOR SAVINO: I also have submitted
7 some comments to the Department of Health
8 based on the draft regulations, areas that I
9 think they could possibly amend. I don't

10 know if you'd be willing to share your
11 comments with me -- not here today, but after
12 this meeting. But I would be interested to
13 see what your take on some of the security
14 measures would be.

15 SUPERINTENDENT D'AMICO: I'd be happy
16 to speak with you, Senator.

17 SENATOR SAVINO: Thank you.

18 CHAIRMAN DeFRANCISCO: Senator
19 Hassell-Thompson.

20 SENATOR HASSELL-THOMPSON: Thank you,
21 Mr. Chairman.

22 A couple of years ago when we began to
23 have discussions about the collection and
24 storage of DNA, we had a lot of controversy

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1 back and forth -- not with your agency, but
2 with us in terms of ensuring that the way in
3 which we developed the legislation, that the
4 samples and whatever would be protected.

5 And so I just want to sort of update
6 where we are and with the expansion of the
7 DNA database and hundreds of cases hinging on
8 the scientific results used, who's overseeing
9 these labs? And I guess I'm concerned
10 because of some cheating scandals among the
11 analysts and some other things that have been
12 going on with the labs, so I guess it just
13 sort of falls into that category.

14 SUPERINTENDENT D'AMICO: Senator, I'd
15 just like to say that any kind of

16 i nvestigation, you know, regarding the lab
17 does not affect casework in any way. There
18 was no impact on DNA casework wi th anything
19 that we're currently looking at.

20 As far as the expansion, to give you
21 some statistics, since the expansion in 2012
22 there have been 757 hits from DNA that was
23 matched. That's as a total of -- that's
24 18 percent of the 4200 or so hits that did

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309

1 happen since then. So what I'm saying is 757
2 hits that would n't have occurred wi thout the
3 expansion of the DNA program.

4 At the present time there are over
5 600,000 offender samples in CODIS. There are
6 approxi mately 50,000 forensic samples in
7 CODIS. And since the inception of the
8 database, we've made approxi mately 22,000
9 matches and, you know, give or take, affected
10 19,000 cases. So I think it is effective.

11 SENATOR HASSELL-THOMPSON: Okay, just
12 speaking to the effecti veness, I want to know
13 who's mi nding the store.

14 SUPERINTENDENT D'AMICO: Well, I can
15 assure you, you know, as someone who runs the
16 state lab system, we're very concerned about
17 integrity on every aspect of the state lab.
18 We're concerned that any ki nd of mi sconduct
19 or di screpancy can affect credi bi lity of the
20 entire lab system.

21 You know, we do oversight not only by

22 technical review but, you know, we have a lot
23 of levels of supervision between casework,
24 between review and between the final product

♀ 310

1 that comes out, and I think that we're
2 satisfied.

3 We also report to ASCLD, which is our
4 accreditation body, and to the New York State
5 Commission on Forensic Science, who oversees
6 us. And we report any kind of changes in
7 management. Discrepancies, internal
8 investigations. So there is a lot of
9 oversight in the lab system.

10 And I do, I worry it about it every
11 day. And we're very concerned, and we take
12 the appropriate measures to make sure that
13 the integrity is not questioned.

14 SENATOR HASSELL-THOMPSON: Last
15 question. The Executive has proposed a
16 statewide use of force policy for law
17 enforcement. What is the use of force policy
18 currently for the State Police?

19 SUPERINTENDENT D'AMICO: There's a
20 policy on deadly physical force which
21 complies with the Criminal Procedure Law, and
22 we've had it for many years. It's been
23 vetted and proven. And it's basically, you
24 know, we would not use deadly physical force

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1 unless it's being used against us or another.

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And it's always a last means.
You know, we've resorted to nonlethal measures, you know, over the past years through pepper spray and batons, ASP batons, and lately Tasers as a means to bring people under control or to apprehend people without the use of deadly physical force. And I think that through all three of these means, there have been many people that previously we would have needed deadly physical force to bring them under control.

SENATOR HASSELL-THOMPSON: Thank you.
Thank you, Superintendent.

Thank you, Mr. Chairman.

CHAIRMAN DeFRANCISCO: Thank you.

That ends the questioning, and I appreciate it very much. You were succinct, and you were a great example for the rest of the speakers.

SUPERINTENDENT D'AMICO: Thank you, Senator.

CHAIRMAN DeFRANCISCO: Excellent.
Excellent.

CHAIRMAN FARRELL: Thank you.

CHAIRMAN DeFRANCISCO: The next speaker is Thomas Beilein, chairman of the New York State Commission of Corrections.

As they're coming down, I have an announcement to make. I calculated how much time is left to where we're likely going to

8 end, and it's 8 o'clock. Now, this is
9 totally up to you. I'm just giving you this
10 option. In the event that this is a problem
11 for you and you want to submit your
12 testimony, there's a young lady down here,
13 right in the front row there. You can submit
14 it, and we'll make sure the Senators and
15 Assembly people get copies.

16 I'm not encouraging -- we're going to
17 be here no matter what, it doesn't make any
18 difference.

19 So we just want to mention that if
20 you're running into a problem timewise, you
21 have that option, and we'll make sure
22 everybody gets your testimony.

23 Okay, you're on.

24 CHAIRMAN BEILEIN: Thank you.

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1 Chairman DeFrancisco, Chairman Farrell,
2 members of the legislative fiscal committees,
3 good afternoon. I have a very short
4 introductory statement.

5 The New York State Commission of
6 Corrections is an autonomous Executive
7 Department correctional oversight and
8 technical services agency first established
9 within the New York State Constitution in
10 1895. Its organization, functions, powers,
11 and duties are set forth in Article 3 of the
12 New York State Correction Law. The
13 commission's jurisdiction extends to every

14 correctional facility throughout the state,
15 including the facilities of the Department of
16 Correctional and Community Services, county
17 jails and penitentiaries, the New York City
18 Department of Corrections, secure juvenile
19 facilities of the Office of Family and
20 Children Services, and each and every
21 municipal and county police lockup and court
22 detention pen.

23 The commission promulgates and
24 enforces minimum standards for correctional

♀ 314

1 facility management and operations; monitors,
2 adjusts, and enhances prison and jail
3 population and capacity; oversees new
4 correctional facility development; provides
5 staffing plan services; investigates and
6 reports on inmate mortality; and develops
7 inmate health and mental health services.
8 The agency's mission is to provide for a
9 safe, stable, and humane correctional system
10 and for the delivery of essential services
11 therein.

12 Thank you.

13 CHAIRMAN DeFRANCISCO: That's it?

14 CHAIRMAN BEILEIN: That's it.

15 CHAIRMAN DeFRANCISCO: All right. You
16 get a medal today.

17 Do you want to -- okay, I don't know
18 if there are any questions.

19 Senator Nozzolio.

20 SENATOR NOZZOLI O: We' re not going let
21 the chairman off that easily, Mr. Chairman.

22 Good afternoon.

23 CHAIRMAN BEILEIN: Good afternoon.

24 SENATOR NOZZOLI O: It' s been fi ve

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1 years, I think, or close to that since I had
2 the pleasure of meeting you during our
3 confirmati on process for the job you have
4 now.

5 CHAIRMAN BEILEIN: Yes.

6 SENATOR NOZZOLI O: And I believe it' s
7 important to renew acquaintance of the
8 Legi slature wi th the role of the
9 commi ssi on --

10 CHAIRMAN BEILEIN: Thank you.

11 SENATOR NOZZOLI O: -- and what ki nds
12 of issues that you have been involved wi th.
13 Your statement gives us a nice outline, and I
14 appreciate that.

15 Can you tell us, in the overall, you
16 recall as a former sheriff -- I believe that
17 was your job -- that you saw among sheriff' s
18 departments throughout the state the
19 commi ssi on establ i shi ng a lot of requirements
20 to the indi vi dual counti es to build new
21 j ai ls.

22 CHAIRMAN BEILEIN: Yes.

23 SENATOR NOZZOLI O: I haven' t heard
24 that there have been many addi ti onal requests

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1 in that area. Could you comment on what sort
2 of things you're doing with their counties?

3 CHAIRMAN BEILEIN: Are you speaking
4 just about building projects?

5 SENATOR NOZZOLIO: Building projects,
6 renovation projects, requirements of the
7 commission in terms of putting counties into
8 new projects, new jails.

9 CHAIRMAN BEILEIN: There are several
10 jails out there that are in excess of
11 100 years old. We are working with those
12 counties -- obviously, a 100-to-110-year-old
13 jail at some point is going to fail. We're
14 working with those counties and moving
15 forward to make sure that they have a good
16 solid foundation for their jail and their
17 building program going forward.

18 And giving them the leeway to choose
19 the size of the jail they want to build, but
20 also at the same time telling them what we
21 think they'll need -- giving the advice what
22 we think they'll need, but making sure that
23 it's a local decision. And that being said,
24 there's probably less than a half-a-dozen

♀ 317

1 issues out there with building projects.

2 SENATOR NOZZOLIO: About how many
3 counties are you engaged with now in those
4 types of discussion?

5 CHAIRMAN BEILEIN: I would say four
6 counties. I would say four counties over the

7 near term.

8 SENATOR NOZZOLIO: Over the near term,
9 do you anticipate there's in a longer-run way
10 more counties that would fall under this?

11 CHAIRMAN BEILEIN: I think that our
12 jail system throughout the state is very
13 robust. And going forward, I think those
14 jails that need to either build new
15 facilities or add onto the facilities have
16 recognized that and are doing -- moving
17 forward.

18 SENATOR NOZZOLIO: One of the things
19 that has been troublesome in the past -- I'm
20 not suggesting it's a trouble under your
21 leadership -- but it was apparent to
22 counties, many of them said this was an
23 enormous unfunded mandate requirement of the
24 state, certain compliances that the state

♀ 318
1 didn't support financially.

2 Now, I just have a question and a
3 comment. The comment deals with that issue,
4 and that if you would be helpful in letting
5 this body, and in particular our budget and
6 finance staff, understand what is on the
7 horizon for our counties in terms of the
8 kinds of programs and projects you have to
9 implement.

10 The other comment is that one of the
11 requirements a few years back was to build a
12 new jail in my home county, and I was very

13 pleased that it was not only built but it was
14 built -- it's one of the first correctional
15 facilities I believe anywhere that has a
16 massive solar project adjacent to it, or in
17 conjunction with it, and Sheriff Stenberg
18 from Seneca County did a tremendous job with
19 that. You might want to look at that as a
20 model for other correctional facilities in
21 the state.

22 Lastly, my question gets to the issues
23 that are going to be on your lap over the
24 next few months relative to, potentially

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1 relevant to -- if the Raise the Age question
2 is adopted by this Legislature, what type of
3 Office of Children and Family Services
4 interaction are you going to have? There's
5 \$100 million in the budget, is that correct?
6 A hundred million for the construction and
7 rehabilitation of buildings, new construction
8 of buildings, to change the juvenile
9 detention facilities structure.

10 How are you prepared to make any types
11 of analysis regarding those new structures?
12 What different types of items are you going
13 to have to be aware of in overseeing those
14 facilities?

15 CHAIRMAN BEILEIN: Well, I think one
16 of our mandates is to review any construction
17 plans. So --

18 SENATOR NOZZOLIO: By the state?

19 CHAIRMAN BEILEIN: Yes.

20 SENATOR NOZZOLIO: By the State of
21 New York?

22 CHAIRMAN BEILEIN: Yes. So we have to
23 review the construction plans, and we have to
24 approve those construction plans.

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1 We have a staff member that does, that
2 is dedicated to doing any kind of remodeling,
3 any kind of new construction. We are able to
4 give advice and actually say that this is the
5 way it needs to be built regarding security
6 and safety issues within it. So I see us --
7 if there's a hundred-and-some million dollars
8 going to be spent in capital projects, we
9 will be heavily involved with OCFS.

10 SENATOR NOZZOLIO: And it'll all be
11 state projects, that's for sure.

12 Senator Hassell-Thompson asked
13 Commissioner Annucci about the conversion of
14 closed minimum- and medium-security
15 facilities as a priority for this. And will
16 you be involved in the retrofitting of
17 whatever project is established or whatever
18 construction project the Commissioner of
19 Corrections will, by statutory authority,
20 required to be involved with?

21 CHAIRMAN BEILEIN: Yes, we will be.
22 We will have to inspect that facility, we
23 will have to set the capacity, the maximum
24 facility capacity for that facility. So yes,

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1 we will be involved in that.

2 SENATOR NOZZOLIO: Will you be doing
3 that, Mr. Chairman, before the facility is
4 chosen? Or before it's retrofitted? Where
5 in the planning process does the commission,
6 would the commission interface?

7 CHAIRMAN BEILEIN: We would have to
8 approve the plans. So before it went out to
9 bid, we would have to look at the plans and
10 approve the plans.

11 SENATOR NOZZOLIO: Thank you very much
12 for your comments.

13 And thank you, Mr. Chairman.

14 CHAIRMAN DeFRANCISCO: Senator
15 Gallivan.

16 SENATOR GALLIVAN: Good afternoon,
17 Chairman.

18 CHAIRMAN BEILEIN: Good afternoon,
19 Senator.

20 SENATOR GALLIVAN: I wanted to ask
21 briefly about the role of the commission
22 which you outlined -- testified to right at
23 the very beginning. And the jurisdiction
24 extends to all facilities, as I understand

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1 it: state, local, county.

2 And then when we look at your yearly
3 agency operations, we see on-site inspections
4 of each county facility, New York City

5 facilities, daily monitoring of county inmate
6 populations. To what extent are you involved
7 in oversight of the state corrections and
8 state correctional facilities?

9 CHAIRMAN BEILEIN: Would you repeat
10 that, Senator?

11 SENATOR GALLIVAN: Your written
12 testimony -- your testimony described your
13 jurisdiction going back to the Executive Law
14 and, if I understand correctly, it extends to
15 some sort of oversight authority over every
16 correctional-type setting or facility in the
17 state, state and local.

18 In your written testimony, what's
19 mentioned is some of the various yearly
20 operations of the commission, which include
21 inspections and evaluations of county
22 facilities, the daily monitoring of county
23 inmate populations. And what my question has
24 to do with, to what extent are you doing this

♀ 323

1 with State Department of Corrections
2 facilities and the State Department of
3 Corrections --

4 CHAIRMAN BEILEIN: We --

5 SENATOR GALLIVAN: -- as far as
6 oversight?

7 CHAIRMAN BEILEIN: Yeah. Yeah. We
8 get -- as far as oversight is concerned, in
9 2009 our evaluation of the state facilities
10 was removed from the jurisdiction of the

11 Commission of Corrections. That was through
12 legislation.

13 What we do with the state facilities
14 is we continue to approve their construction
15 plans, to review and approve the construction
16 plans. We do all the inmate mortality
17 investigations or inmate health problems --
18 if there was a deficient health issue
19 treatment, we will do that investigation.
20 Those are the main things now that we
21 interact with. We also handle complaints,
22 individual complaints from DOCCS or from
23 people outside of DOCCS writing on behalf of
24 a DOCCS inmate.

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1 SENATOR GALLIVAN: And you conduct
2 those investigations, or your agency conducts
3 those investigations?

4 CHAIRMAN BEILEIN: We can do it. For
5 the most part, we refer it to the IG at DOCCS
6 to do it. We're limited in our resources to
7 do something like that, so we do refer that.

8 SENATOR GALLIVAN: So in a a case like
9 that where you make a referral, do they
10 then -- the DOCCS IG reports back to you,
11 then?

12 CHAIRMAN BEILEIN: Yes. We would get
13 a final report from them.

14 SENATOR GALLIVAN: Understood. Thank
15 you. Thank you, Chairman.

16 CHAIRMAN BEILEIN: Okay.

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CHAIRMAN DeFRANCISCO: Senator
Krueger, to close.
SENATOR KRUEGER: Hi. Good afternoon.
CHAIRMAN FARRELL: Oh {inaudible}.
SENATOR KRUEGER: Sorry? Maybe not to
close.
In follow-up, I think, to some of the
questions of Senator Gallivan, so we went

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over some of the structural issues of
buildings and counts of people, but your
testimony also details you follow through on
grievances, significant correctional facility
incidents and events, suicides, healthcare
problems.
Could you explain to me what
statutorily you do when you find a problem?
CHAIRMAN BEILEIN: Okay. I think
you're referring to the grievances that are
submitted to us -- there are -- part of the
commission, there's a commissioner,
Commissioner Loughren, is a commissioner who
chairs the CPCRC, the grievance and review
complaint committee. They meet once a month.
We get approximately 130, maybe 140
grievances a month from various inmates
throughout the state. The jail population
throughout the state is approximately -- runs
in range between 16,000 and 17,000 inmates.
We review those, and then the
committee meets, and they -- this is an

23 appeal process for an inmate. The grievance
24 held is filed at the local facility, the

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1 grievance officer reviews it and makes a
2 decision. If the inmate does not like that
3 decision, or doesn't agree with it, he can
4 appeal it to this board.

5 The board looks at them and makes a
6 judgement and then determines whether the
7 grievance is valid or could be upheld, or
8 whether the facility acted properly, and that
9 is communicated back to the inmate. If in
10 fact the facility acted improperly, that is
11 communicated back to the facility with
12 directions on how to rectify that.

13 SENATOR KRUEGER: And what's your role
14 versus the Citizen's Policy and Complaint
15 Review Council role?

16 CHAIRMAN BEILEIN: What is --

17 SENATOR KRUEGER: You described in
18 conjunction with the Citizen's Policy and
19 Complaint Review Council. So do you work
20 jointly on each case? How does -- who has
21 what role?

22 CHAIRMAN BEILEIN: Well, the entire --
23 the staff at the commission has that role.
24 And they report -- that staff reports, takes

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1 those grievances directly to that committee.
2 That committee is appointed by the Governor.
3 They're volunteers. There's a statutory

4 requirement on who they should be. There's a
5 statutory requirement that one has to be a
6 former veteran of a combat area, and so
7 forth. So it's a diverse committee that sits
8 and reviews those grievances.

9 SENATOR KRUEGER: So in your testimony
10 you say you review and appropriately -- "the
11 review and appropriate inquiry of
12 approximately 4,000 reports of significant
13 correctional facility incidents and events."

14 I'm assuming that's annually?

15 CHAIRMAN BEILEIN: That's annually.

16 SENATOR KRUEGER: So that would be
17 more than 140 to 180 cases per month.

18 CHAIRMAN BEILEIN: Yeah. Those are
19 reportable incidences, those aren't
20 necessarily grievances. The 130, 140 were
21 inmate grievances. The reportable incidences
22 could be a disturbance at the facility, a
23 fight at the facility, use of force at the
24 facility, contraband introduction at the

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1 facility, sexual assault at the facility.
2 Those are all reportable incidents to the
3 administration that we end up investigating.

4 SENATOR KRUEGER: And then what do you
5 do with your findings for those kinds of
6 incidents?

7 CHAIRMAN BEILEIN: It depends.
8 Sometimes we'll find -- go back to the
9 facility and tell them, you know, lookit,

10 you're wrong here, this isn't the way you
11 should have done it, and then give them
12 technical advice on how to handle that right.

13 Sometimes some of these things are
14 just reported for -- so that we can continue
15 to collect the statistics of what's going on
16 out there. Contraband, for example, what
17 type of contraband is it.

18 SENATOR KRUEGER: And if you make a
19 finding of bad behavior in a facility, do you
20 have the authority to make the facility make
21 the changes you believe they need to do?

22 CHAIRMAN BEILEIN: Yes. Yes, we do.

23 SENATOR KRUEGER: Good, the authority.

24 And if I went on your website, would I

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1 find statistical reports on the types of work
2 you're doing and the outcomes? I'm assuming
3 I wouldn't find personal names of people
4 involved.

5 CHAIRMAN BEILEIN: Right. I think
6 that would all come up in our
7 year-end report --

8 SENATOR KRUEGER: Your year-end
9 report.

10 CHAIRMAN BEILEIN: -- that we send
11 out. Yes.

12 SENATOR KRUEGER: And that would be on
13 your website?

14 CHAIRMAN BEILEIN: Yes.

15 SENATOR KRUEGER: Thank you very much.

16 CHAIRMAN DeFRANCISCO: Assemblyman
17 O'Donnell, to close.

18 ASSEMBLYMAN O'DONNELL: Thank you very
19 much. I apologize for missing the beginning
20 of this part of the testimony here today.

21 So part of your job, the
22 commissioner's job, is to investigate inmate
23 deaths. So how long does it take -- if
24 someone were to die today, how long would it

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1 take for you to conduct an inquiry into what
2 caused that person's death?

3 CHAIRMAN BEILEIN: That varies. As we
4 go into it, we first determine if there is a
5 criminal investigation into that death going
6 on simultaneously and if there is a --

7 ASSEMBLYMAN O'DONNELL: Do you
8 encounter many criminal investigations into
9 deaths of inmates at correctional facilities?
10 Because I don't.

11 CHAIRMAN BEILEIN: Pardon me?

12 ASSEMBLYMAN O'DONNELL: Do you
13 encounter many criminal investigations into
14 the death of an inmate at correctional
15 facilities?

16 CHAIRMAN BEILEIN: We do encounter
17 them, sir.

18 ASSEMBLYMAN O'DONNELL: Okay.

19 CHAIRMAN BEILEIN: And if that is the
20 case, we step back to wait for that
21 investigation to conclude.

22 We continue to collect documents
23 regarding that investigation. And at that
24 point -- so, it varies, it could take up to a

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1 year. It could take more than a year due to
2 accumulating the reports. Our medical review
3 board, I think as you know, is chaired by
4 Dr. Ross and meets four times a year.

5 ASSEMBLYMAN O' DONNELL: Well, I've
6 been told that it usually takes up to
7 16 months, and I wondered whether or not you
8 think you're fulfilling your duty to do your
9 job if it takes a year and a half to look
10 into the cause of a death of somebody who's
11 in custody.

12 CHAIRMAN BEILEIN: It is problematic.
13 And one of the most problematic things is
14 trying to obtain the autopsy reports.
15 Sometimes we just don't -- we have to go to
16 court to get the autopsy reports.

17 ASSEMBLYMAN O' DONNELL: You have
18 oversight over Rikers Island, right?

19 CHAIRMAN BEILEIN: That's correct,
20 sir.

21 ASSEMBLYMAN O' DONNELL: Okay. And
22 during the last six or eight months we have
23 been given a lot information about the
24 appalling conditions at Rikers. The federal

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1 government is contemplating having oversight

2 over Rikers Island for the failure of the
3 city to properly run Rikers Island, and one
4 of the things they concluded was there was an
5 overuse of solitary confinement as a
6 punishment on Rikers Island.

7 So I was very concerned to read your
8 letter where you wrote that the problem at
9 Rikers Island was that they weren't using
10 solitary confinement enough. So how is your
11 position so contrary to the conclusions of
12 the federal government?

13 CHAIRMAN BEILEIN: I think, sir, when
14 we walked into the situation at Rikers island
15 and we saw that there was a thousand
16 infracted inmates that were waiting to serve
17 out the sanctions, that was a case where it
18 was an unattainable thing to do. My letter
19 to the commissioner at Rikers Island was to
20 push that process forward so that something
21 would be done with the thousand infracted
22 inmates.

23 My conversations with him were,
24 lookit, you need to either have more

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1 graduated sanctions, I don't care how you
2 address it. But the fact is that if you have
3 a thousand infracted inmates waiting to serve
4 out their sanctions, that that's an
5 impossibility and it only creates unrest
6 within the facility. Guards become
7 dissatisfied that whatever infraction it is

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isn't -- the sanctions weren't there.
And I think the letter served a purpose, because they now have developed their special housing units that they're going to use. So that was the -- the letter was to move that process forward.

ASSEMBLYMAN O' DONNELL: I would humbly suggest to you, in my opinion and the opinion of many other people, you moved that process backwards. That your job, given by us, is to be the oversight for the conditions and to make the situation better, not to wait for the federal government to come in and say this is a problem.

And so I'm not sure how you could conclude, having been at Rikers island and having oversight for all these years, that

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the solution to the problem would be additional solitary confinement time.
And yes, they did create new units. And many people, many people feel that those units are as punitive as the other solitary units. So Rikers has been a mess for a very long time, and you're the guy and you're the commission that we empower to go in, investigate, and make recommendations to fix it. Sending more people to solitary confinement did not do that.

Thank you.

CHAIRMAN DeFRANCISCO: Thank you very

14 much, and I appreciate your testimony and
15 your patience.

16 The next witness is Margaret Miller,
17 chief information officer, New York State
18 Office of Information Technology Services.

19 And as she's coming down, I have to
20 make another announcement. In order to keep
21 this budget schedule going forward, there's a
22 date set, which happens to be today, for a
23 hearing on economic and revenue consensus.
24 The Governor's said what the revenue's going

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1 to be this year, so we know his opinion. The
2 Senate and the Assembly hear testimony today
3 in 3 minutes to try to get information as to
4 whether our consensus, the Senate or the
5 Assembly consensus, is the best, trying to
6 come up with one number. And we will come up
7 with one number.

8 I shall return. And so will Denny
9 Farrell, so will Bob Oaks. And I promise
10 I'll review every piece of testimony that I
11 miss as a result of being gone, and I'm sure
12 Denny pledges the same.

13 CHAIRMAN FARRELL: Me too.

14 CHIEF INFORMATION OFFICER MILLER:
15 Good afternoon. I'm joined by my executive
16 deputy, Mahesh Nattanmai, to my right.

17 SENATOR KRUEGER: Could you pull that
18 a little closer to you?

19 SENATOR NOZZOLI: A lot closer.

20 SENATOR KRUEGER: A lot closer to you.

21 CHIEF INFORMATION OFFICER MILLER:

22 Okay.

23 SENATOR NOZZOLIO: Keep coming. You
24 want us to hear you.

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1 CHIEF INFORMATION OFFICER MILLER: Is
2 that better?

3 Good afternoon, distinguished members
4 of the Legislature. I'm Margaret Miller, the
5 state's chief information officer and
6 director of the Office of Information
7 Technology Services, or ITS.

8 I joined the state on December 8,
9 2014, and am honored and excited to have this
10 opportunity to serve the citizens of
11 New State. I join the state with over
12 40 years' experience in the IT industry. I
13 began my career writing engineering systems
14 for Concorde, then progressed through the
15 ranks before holding CIO positions in sectors
16 including financial services, travel, retail,
17 technology, media, public sector, and
18 nonprofit, with organizations based in the
19 U.S. and Europe, several of which have
20 multinational operations.

21 My specialism has been in working with
22 complex organizations undergoing major
23 transformations. I am committed to the
24 development of the next generation of IT

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1 leaders and am a mentor for Columbia
2 University's master's program in Information
3 Systems Management and chair the
4 international advisory board of my business
5 school.

6 Thank you for the opportunity to
7 highlight the technology component of
8 Governor Cuomo's Opportunity Agenda.

9 ITS is nearly two and a half years
10 into a multiyear transformation that will
11 bring efficiencies and cost-savings to the
12 state. Our collective strength and scale
13 have already enabled us to deliver
14 significant value to citizens and agency
15 business partners.

16 Prior to IT transformations, state
17 technologies were agency-specific. This
18 resulted in incompatible and overlapping
19 systems that were inefficient, costly to
20 maintain, and not intuitive for our citizens
21 or our agency partners to use.

22 Centralizing the state's IT within ITS
23 will enable the state to manage its entire IT
24 portfolio and make smart investment decisions

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1 to save money and better support our
2 citizens. And that's our mission.

3 Last year, ITS discussed the major IT
4 consolidation projects. I have updates on a
5 couple of those and information on some of
6 our plans for this year.

7 First, the Data Center Consolidation
8 Project, which is a public-private
9 partnership success story. Last year the
10 state signed a lease with the Colleges of
11 Nanoscale Science and Engineering of the SUNY
12 Polytechnic Institute to allow us to create a
13 single state data center into which we will
14 consolidate more than 50 legacy agency-run
15 data centers. The new center has a
16 state-of-the-art design which will result in
17 greater availability and more resilience for
18 the states IT. To date, 11 agency data
19 centers have been migrated and closed.

20 SUNY Polytechnic Institute is
21 nationally recognized for business-funded
22 research and development. State employees
23 working at the new data center can easily
24 collaborate with innovators, students, and

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1 researchers there, bringing that award-
2 winning innovative culture back to the state.
3 And this distinguishes our state as a thought
4 leader.

5 The second initiative I'd like to
6 mention is email upgrade and consolidation.
7 ITS has rolled out a single suite of tools
8 that allow staff to securely access email,
9 documents, a statewide address book and
10 calendars from desktops, laptops, and mobile
11 devices. These capabilities are
12 revolutionizing collaboration and increasing

13 productivity within and between state
14 agencies.

15 We have migrated 52 state
16 organizations with just under 150,000
17 mailboxes. Over 20 different legacy email
18 systems have been decommissioned, and the
19 state saves more than \$3 million annually by
20 eliminating multiple licensing costs,
21 reducing hardware and software costs, while
22 also improving customer support.

23 This fiscal year, one of the areas ITS
24 will continue to focus on is cybersecurity.

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1 With the decentralized model of the past,
2 every agency had independent information
3 security officers who would interpret and
4 implement the statewide cyber-policies
5 established by the Division of Homeland
6 Security and Emergency Services, often in an
7 inconsistent manner. With the cybersecurity
8 function centralized under ITS, which now
9 manages all state IT assets, the state can
10 not only implement the policies consistently,
11 but more importantly can react swiftly across
12 all the IT assets when intelligence about
13 potential threats is received.

14 For 2014-2015, the Legislature
15 supported increased funding for cybersecurity
16 up to \$11 million, and the Governor's
17 Executive Budget for 2015-2016 proposes
18 further increasing funding to \$18 million.

19 We are using these funds to invest in
20 technologies, processes, and personnel that
21 enhance the state's ability to prevent,
22 monitor, and respond to incidents. We are
23 also focusing on the processes that assure
24 security by design in all products and

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1 services we offer and procure for the state.

2 It is important to remember technology
3 controls are only one part of what is
4 required to mitigate cyber-risk. According
5 to a global industry report, the most
6 frequent causes of security incidents in the
7 public sector are human error, at 34 percent.
8 Accordingly, ITS is investing in increasing
9 workforce security awareness training for
10 state staff so they are vigilant and aware of
11 their own security responsibilities, and
12 recognize malware, email hoaxes, phishing
13 scams, and other threats that can compromise
14 our technical environments.

15 ITS works closely with intelligence
16 analysts at the New York State Police and the
17 Department of Homeland Security and Emergency
18 Services to identify cyberthreats and protect
19 New York State's IT assets from cyberattacks.
20 These entities have received cyber-specific
21 training, and are fully integrated at the
22 New York State Intelligence Center, the
23 state's designated all-crimes fusion center.

24 The administration charges ITS with

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1 using technology to deliver government
2 services more efficiently, effectively, and
3 securely, making it easier for citizens to
4 interact with government, and ensuring that
5 businesses grow in New York State. We at ITS
6 are excited to play an integral part in this
7 State of Opportunity.

8 Thank you for the opportunity to speak
9 with you today. I welcome your questions and
10 comments.

11 SENATOR FLANAGAN: Senator Gallivan.

12 SENATOR GALLIVAN: Good afternoon.

13 Thanks for your patience.

14 I have only one question, and that is
15 in the area of the email consolidation, which
16 you testified to, and I know that you've
17 publicly talked about increasing efficiency.
18 And we've seen in recent days in the news, in
19 media accounts, about the purging of the --
20 the policy, I think, implemented in perhaps
21 2013 of purging emails of state employees
22 older than 90 days.

23 The concerns that have been raised
24 publicly are accountability -- the

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1 transparency and accountability of New York
2 State government. Could you please comment
3 on that?

4 CHIEF INFORMATION OFFICER MILLER:

5 Certainly. A 90-day retention policy was
6 actually implemented in 2013 and, as we moved
7 to consolidate those outdated and expensive
8 and incompatible systems into a single
9 cloud-based system that we -- I mentioned
10 earlier, as the migration was completed, the
11 existing policy is being applied to those new
12 systems. Or that new system.

13 SENATOR GALLIVAN: Yes, but do you
14 have -- the criticism, publicly, from good
15 government groups and others raises questions
16 about -- raise questions that this flies in
17 the face of transparency in state government
18 and the accountability of state government to
19 the citizens that it serves.

20 And I'd ask you to comment on that,
21 whether you agree with that or disagree with
22 that, and why.

23 CHIEF INFORMATION OFFICER MILLER: In
24 my experience, the policy is consistent with

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1 generally accepted practice, and I do support
2 the policy. It's also a matter of actually
3 encouraging good behavior, prudent and
4 responsible use of state resources. I'm old
5 enough to remember when your inbox was
6 actually for papers on your desk, and I think
7 we'd all agree that if something of that
8 matter languished in your paper inbox for
9 three months without responding to it, that
10 wouldn't be appropriate.

11 And the same is true in the digital
12 era. We want to encourage staff to be
13 responsive to their colleagues and to
14 citizens, and so if something is in your
15 inbox unattended to for three months, it can
16 probably go.

17 SENATOR GALLIVAN: So do you share
18 that concern, that this decreases the
19 transparency and accountability of state
20 government to its citizens?

21 CHIEF INFORMATION OFFICER MILLER: I
22 fully support the policy, sir.

23 SENATOR GALLIVAN: All right. Thank
24 you.

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1 SENATOR FLANAGAN: Senator Krueger.

2 SENATOR KRUEGER: Thank you.

3 I just want to follow up on -- oh, I'm
4 sorry, Assemblymembers, do you have questions
5 first?

6 ASSEMBLYMAN O' DONNELL: Thank you,
7 Senator Krueger. It's frightening I'm in
8 charge, just so you know.

9 May I say that you are the most
10 pleasant-sounding witness we've had all day,
11 and I enjoy it immensely.

12 I want to follow up on Senator
13 Gallivan's questions, and I want to ask this
14 as it relates to FOIL. First of all, I think
15 if the New York Assembly announced tomorrow
16 that we were going to take up this policy,

17 Preet Bharara would be at the court door
18 making sure that we did not.
19 So what about FOIL? What about the
20 ability of citizens to access information
21 that has been deleted? And -- I'm really bad
22 at technology. I wish I wasn't, but I'm much
23 older and -- my age is much older than how
24 bad I am at technology. But I can't find

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1 anything. I've never bought anything on the
2 Internet. I'm just really bad. But it has
3 become now that that process of communication
4 between elected officials and staff, between
5 a variety of people in government, is almost
6 exclusively done through the email process.
7 And sometimes things don't become relevant,
8 slash, important until after that 90-day
9 period.

10 So isn't there some at least
11 legitimate concern that the time period that
12 you're suggesting eliminates the ability of
13 review and scrutiny of decision-making?

14 CHIEF INFORMATION OFFICER MILLER:
15 Well, the policy does allow for exceptions
16 for litigation holds and of course for FOIL.
17 Indeed, all my email is available for FOIL
18 purposes. And so those can be retained for
19 longer than the 90-day process. So anything
20 that is subject to legal hold or FOIL is
21 retained.

22 ASSEMBLYMAN O' DONNELL: Right, except

23 that litigation doesn't start in 90 days.
24 Ever.

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1 So you're talking about, you know,
2 causes of action which may have a three-year
3 statute of limitation, or maybe more, where
4 somebody's going to come along and, you know,
5 a whole five months later say, Look at all
6 this stuff, we have to go and bring this
7 case, and the information that is needed to
8 provide the information is gone.

9 You don't seem to be concerned about
10 that.

11 CHIEF INFORMATION OFFICER MILLER:
12 I -- all I can say is that I fully support
13 the policy. And I believe that under
14 previous email systems, where actually the
15 amount of email retained was limited by the
16 size of your mailbox, you would have been
17 subject to the same issue, I believe, sir.

18 ASSEMBLYMAN O' DONNELL: Well, I'm not
19 sure that that's a really sufficient answer.
20 We spend a lot of money and hire people like
21 you because the capacity is growing and the
22 information is growing. And so, obviously,
23 we can't grow into a newer world of
24 communication strategies without

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1 acknowledging the other parts of the world,
2 which is there's litigation, there's law,
3 there's the ability for groups to know what's

4 in that information.

5 I think that you folks need to take a
6 little closer look as to whether or not there
7 are real risks involved in implementing this
8 policy.

9 CHIEF INFORMATION OFFICER MILLER:

10 Noted, thank you.

11 ASSEMBLYMAN O' DONNELL: Thank you.

12 SENATOR FLANAGAN: Senator Krueger.

13 SENATOR KRUEGER: Thank you.

14 We're all following up on the same
15 issue.

16 So in your testimony you're very proud
17 of the fact that the state is expanding or it
18 has rolled out a single suite of tools that
19 allows staff to securely access email,
20 documents, a statewide address book,
21 calendars, et cetera, et cetera, bringing us
22 into the 21st century. Wonderful.

23 You're an IT expert. You would agree
24 that it's not a big deal to have the storage

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1 capacity for emails for state employees for
2 extended years, would you agree?

3 CHIEF INFORMATION OFFICER MILLER:

4 Honestly, I think I would return to the fact
5 that if you've got something unattended to in
6 your inbox --

7 SENATOR KRUEGER: Can you get closer
8 to the mic?

9 CHIEF INFORMATION OFFICER MILLER: Oh,

10 I'm sorry. I beg your pardon.

11 It's important to understand that the
12 deletion policy applies to inbox and those
13 already marked for deletion. So if someone
14 has decided to retain emails because they're
15 required for future reference, they can be
16 retained.

17 And so that's in line with normal
18 practice. I mean, I'm just thinking back to
19 my 40 -- well, email hasn't been around for
20 40 years, but my whole experience in use of
21 email systems, that this would not prove to
22 be a hindrance on my normal business
23 processes.

24 SENATOR KRUEGER: So if you were

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1 dealing with constituent complaints in one of
2 endless numbers of agencies and you just
3 weren't going to get to solve that problem by
4 the three-month mark, you should just go
5 ahead and delete that complaint?

6 CHIEF INFORMATION OFFICER MILLER: No,
7 I'd take steps to make sure that I retained
8 information. And the policy does allow for
9 that.

10 SENATOR KRUEGER: I want to believe
11 that every single employee of New York State
12 government is perfect in intent and
13 application, but I would suggest that
14 significant numbers of times things get
15 behind, complaints don't get followed up

16 with. We can actually go over wait lists of
17 complaints and inquiries in specific agencies
18 being years behind. The State Controller's
19 done a number of them recently in a number of
20 agencies.

21 This policy seems to encourage people
22 to disappear the problem rather than
23 systemically solving the problem or
24 individually solving the problem. Would you

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1 agree?

2 CHIEF INFORMATION OFFICER MILLER: I
3 would hope not. I'd hope it would do the
4 opposite, as I mentioned earlier, that it
5 would encourage responsiveness to both
6 colleagues and citizens.

7 SENATOR KRUEGER: Why? If you
8 disappear the email, it's all gone. There
9 was no complaint.

10 CHIEF INFORMATION OFFICER MILLER:
11 Well, I hope that people will make sure that
12 they deal with things within 90 days. It's
13 three months. I think that's ample time for
14 deal expeditiously with any incoming mail.
15 In fact, I would hope they would deal with
16 any such matters much faster than that.

17 SENATOR KRUEGER: Isn't part of the
18 purpose of consolidation and centralized data
19 and tracking to have systems in place that
20 make sure things do get taken care of,
21 instead of buried under the rug?

22 CHIEF INFORMATION OFFICER MILLER:
23 That's really a matter for the individual
24 agencies and the commissioners. And from

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1 what I've seen as I meet with different
2 commissioners, they all take their service to
3 citizens very, very seriously and have in
4 place business processes to make sure that
5 they deal expeditiously with all matters that
6 come to them.

7 SENATOR KRUEGER: And in the memo
8 you're referencing implementing, does it
9 specifically say commissioners can choose to
10 not follow this policy because it wouldn't
11 make sense given the tracking that they are
12 trying to do of their own system and their
13 own workers?

14 CHIEF INFORMATION OFFICER MILLER: No,
15 I think that any agency can ensure that their
16 staff is so trained that any incoming emails
17 are appropriately saved. I think that's
18 really a matter for every commissioner to
19 make sure that they do that.

20 SENATOR KRUEGER: So you believe a
21 commissioner can override this memo and make
22 a different decision for their own agency.

23 CHIEF INFORMATION OFFICER MILLER: I'm
24 sorry, I'm not being clear. It's not a

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1 matter of overriding, it's a question of

2 making sure that any incoming mails are
3 appropriately saved and filed away. Just as
4 you would with physical letters.

5 SENATOR KRUEGER: You said that you
6 think this is common practice. Can you tell
7 me any other government anywhere that has a
8 policy to delete all their emails within
9 90 days?

10 CHIEF INFORMATION OFFICER MILLER:
11 Well I'm aware that some of the states
12 actually have a shorter time period, but I'm
13 not sure of -- I haven't surveyed all states.

14 SENATOR KRUEGER: Could you do that
15 and get back to us?

16 CHIEF INFORMATION OFFICER MILLER:
17 Surely.

18 SENATOR KRUEGER: Thank you.

19 CHIEF INFORMATION OFFICER MILLER:
20 Thank you.

21 SENATOR FLANAGAN: Senator Flanagan.
22 I appreciate you being here.

23 And I'm a little bit like Assemblyman
24 O'Donnell. Technologically, I'm a good

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1 listener but not a good practitioner.

2 So following up on some of the things
3 that were said, I saw part of an article this
4 morning that said we have the capacity to
5 save up to at least 30 years' worth of data,
6 in a general capacity. So would you agree
7 with that?

8 CHIEF INFORMATION OFFICER MILLER: I

9 can't comment on that, sir, I'm afraid.

10 SENATOR FLANAGAN: I'm sorry?

11 CHIEF INFORMATION OFFICER MILLER: I

12 don't know the exact number.

13 SENATOR FLANAGAN: Okay. Do you have
14 a rough guess?

15 CHIEF INFORMATION OFFICER MILLER:

16 I -- I wouldn't guess, I'm afraid.

17 SENATOR FLANAGAN: I would appreciate
18 it if you could come back with a direct
19 answer as to -- now, I'm reading this. Just
20 because I read it doesn't mean it's accurate.
21 But the contention is that it was 30 years.

22 And the benchmark that was mentioned
23 in this article was that the federal
24 government has a policy of maintaining for

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1 seven years. So if they're doing seven
2 years, do you believe that that is
3 appropriate?

4 CHIEF INFORMATION OFFICER MILLER: I
5 can't comment on other people's policy, I'm
6 afraid.

7 SENATOR FLANAGAN: You have to bring
8 the mic in closer.

9 CHIEF INFORMATION OFFICER MILLER: I'm
10 sorry. I can't comment on anybody else's
11 policy.

12 SENATOR FLANAGAN: All right. Well,
13 let me ask it this way. If you got a

14 directive or you came up with a
15 recommendation, it's within your purview, I
16 would imagine, to say I've reviewed this with
17 my team and we now believe that seven years
18 is appropriate. Do you have the discretion
19 to do that?

20 CHIEF INFORMATION OFFICER MILLER: I'm
21 not sure it's helpful to deal with a
22 hypothetical. I would -- I would consult
23 widely with commissioners and other users of
24 the email system.

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1 SENATOR FLANAGAN: Okay, then let me
2 ask you this. If you don't want to delve
3 into a hypothetical, who made the decision on
4 90 days?

5 CHIEF INFORMATION OFFICER MILLER: It
6 was already in place, I'm afraid, so I don't
7 know. It was a decision and the policy was
8 put in place in 2013.

9 SENATOR FLANAGAN: Okay. So you're
10 not sure about the 30 years, you don't want
11 to opine on the seven years, and you don't
12 know who came up with the 90-day policy.

13 CHIEF INFORMATION OFFICER MILLER:
14 That's right, sir.

15 SENATOR FLANAGAN: Okay. Now, this is
16 where my ignorance becomes apparent. When
17 you talk about deleting, I heard you make a
18 reference to the cloud. These emails that
19 get deleted, are they permanently gone? Or

20 are they stored out in some universe that
21 we're just not aware of?
22 CHIEF INFORMATION OFFICER MILLER: No,
23 they are deleted.
24 SENATOR FLANAGAN: Permanently?

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1 CHIEF INFORMATION OFFICER MILLER:
2 Yes.
3 SENATOR FLANAGAN: Okay. And
4 following up on what Senator Krueger said,
5 ultimately you and your staff in your office
6 oversee all of these systems.
7 CHIEF INFORMATION OFFICER MILLER:
8 Indeed.
9 SENATOR FLANAGAN: Okay. Do you have
10 the wherewithal and the authority to go and
11 say -- I'll just pick out -- and I'm not
12 trying to pick on any agency, I'll just say
13 the Department of Health or OPWDD. Your team
14 goes in and does a review and says we only
15 have like 10 percent compliance so, you know,
16 we're going to send out a memo that if this
17 is not done in its entirety in 60 days, we're
18 going to wash the whole system ourselves.
19 CHIEF INFORMATION OFFICER MILLER: In
20 compliance with the 90-day policy?
21 SENATOR FLANAGAN: Correct.
22 CHIEF INFORMATION OFFICER MILLER: Oh,
23 that policy is implemented centrally because
24 we have a single email system.

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1 SENATOR FLANAGAN: So if I'm a line
2 employee in the Department of Health and
3 there's a 90-day rule --

4 CHIEF INFORMATION OFFICER MILLER:
5 Yes.

6 SENATOR FLANAGAN: -- technically
7 you're telling me I don't have to do anything
8 because it gets done for me?

9 CHIEF INFORMATION OFFICER MILLER:
10 Yes.

11 SENATOR FLANAGAN: Okay. And what if
12 you have, arguably, quote, unquote, folders?
13 It's not necessarily right in your inbox but,
14 you know, you create a folder on Case Number
15 1. Is that considered just in the inbox, and
16 does that get deleted?

17 CHIEF INFORMATION OFFICER MILLER: If
18 you create the folder in which you want to
19 retain emails for a longer period, you can do
20 so.

21 SENATOR FLANAGAN: But I would imagine
22 that it's still within your power to override
23 that and delete those emails.

24 CHIEF INFORMATION OFFICER MILLER:

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1 That is not what the policy says right now.

2 SENATOR FLANAGAN: But it is within
3 your power to do that.

4 CHIEF INFORMATION OFFICER MILLER:
5 Technologically? Yes. But that's not what
6 the policy says. What I'm doing is

7 implementing the policy. We'd have to change
8 the policy to make that happen.

9 SENATOR FLANAGAN: Okay. I would
10 appreciate if you could also get information
11 as to who made the decision on the 90 days
12 and, frankly, do we have any emails that kind
13 of underscore that, so we might be able to
14 take a closer look. I daresay not,
15 considering 90 days has passed, but --

16 (Laughter.)

17 CHIEF INFORMATION OFFICER MILLER:
18 Certainly.

19 SENATOR FLANAGAN: Thank you.

20 CHIEF INFORMATION OFFICER MILLER:
21 Thank you.

22 SENATOR FLANAGAN: Senator Hamilton.

23 SENATOR HAMILTON: Thank you, Chairman
24 Flanagan.

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1 I just wanted to say hello, how're you
2 doing today?

3 CHIEF INFORMATION OFFICER MILLER:
4 Good.

5 SENATOR HAMILTON: I'm new to the
6 Senate, so I'm just -- and I'm using the
7 computers and the technology in the office,
8 and it's fairly decent. And I know you want
9 to combine the state offices on one platform.

10 Now, as a State Senator, would I be
11 able to log in to other agencies that are
12 part of my committees to see what they're

13 doi ng?

14 CHIEF INFORMATION OFFICER MILLER: I'm
15 afraid ITS doesn't support technology for the
16 Legi slature.

17 SENATOR HAMILTON: Say that again,
18 pl ease?

19 CHIEF INFORMATION OFFICER MILLER: I
20 don't -- ITS doesn't have responsi bility for
21 technology for the Legi slature.

22 SENATOR HAMILTON: No? But for the
23 state agenci es, though, ri ght?

24 CHIEF INFORMATION OFFICER MILLER:

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1 That's ri ght.

2 SENATOR HAMILTON: Each agency -- but
3 as a State Senator, wou ld I be able to get
4 access, or no? No?

5 CHIEF INFORMATION OFFICER MILLER: I
6 don't believe so.

7 SENATOR HAMILTON: All ri ght. Well,
8 then, that's all my questi ons. Thank you.

9 CHIEF INFORMATION OFFICER MILLER: All
10 ri ght.

11 SENATOR FLANAGAN: Thank you very
12 much.

13 Next we have the New York State
14 Commi ssi on on Judi ci al Conduct, Robert
15 Tembeckj i an.

16 MR. TEMBECKJIAN: Thank you.

17 And I certainly hope that Assemblyman
18 O'Donnell thi nks that I'm the second ni cest

19 voice that he's heard here today.

20 I'm sorry to say that the Executive

21 Budget --

22 ASSEMBLYMAN O' DONNELL: That would

23 depend on your brevity.

24 (Laughter.)

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1 MR. TEMBECKJIAN: I'm sorry to say
2 that the Executive Budget shortchanges the
3 New York State Commi ssi on on Judi ci al
4 Conduct. And I must say that I'm extremely
5 di ssa ppo i nte d that, in a period of time when
6 ethi cs in government is getting such a lot of
7 attenti on, that what is arguably the most
8 effecti ve ethi cs enforcement enti ty in state
9 government is, for the fi fth year in a row,
10 bei ng asked by the Executive to operate
11 wi thout any i ncrease at all .

12 And that has enforced on us certain
13 economi es such as a staff reducti on of
14 18 percent; an i ncrease in the amount of time
15 that i t's taki ng to di ssa ppo se of compl ai nts; an
16 i ncrease in the amount of time i t's taki ng to
17 di sci pl i ne judges who are found to have
18 vi olated the rules; an i ncrease in the amount
19 of time that i t's taki ng to exonerate those
20 who are found, after exami nati on of
21 compl ai nts, not to have vi olated the ethi cs
22 rul es.

23 And in a time when the Legi slature,
24 the Governor, and I daresay the publi c is

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1 expecting more from us in terms of ethics
2 attention, it just doesn't seem to make any
3 sense that the entity that disciplines judges
4 should be asked to make do with less.
5 Because a flat budget is effectively a cut.

6 We have \$273,000 in increased mandated
7 expenses next year, and if I don't get that
8 assistance from the Legislature -- which I'm
9 happy to say in the past you have come
10 through for us when the Executive has
11 declined to give us an increase -- it means
12 that I'm going to have to cut 5 percent of my
13 budget. And we're already down 18 percent in
14 staff. We have eliminated stenographic
15 services, even though we're still required
16 under the law to provide transcripts of all
17 of our proceedings -- we do them in-house,
18 which really slows things down. There are
19 any number of ways in which we are hamstrung
20 by a budget which doesn't increase us by one
21 penny. And that is most unfortunate in this
22 time.

23 The commission, in its 36 years of
24 existence, has publicly disciplined

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1 786 judges throughout New York State. That
2 includes 168 removals and 51 stipulated
3 resignations with a pledge or a commitment
4 never to return to judicial office. That is

5 a record that is unmatched in any state in
6 this country, and I daresay it is unmatched
7 by any ethics enforcement entity in the State
8 of New York.

9 So once again, as I did in 2007 and as
10 I did last year, when I disagree with the
11 Executive Budget recommendation for us, I
12 come to the Legislature to ask for help. If
13 you don't come through for us this year as
14 you have the two other times that I've made
15 the request of you, then it's going to mean a
16 draconian change in our operations. It's
17 going to mean a diminution of effective
18 judicial ethics enforcement in New York
19 State, and I don't think we can afford it.
20 And I don't think either the Executive or the
21 Legislature should say to the people of
22 New York that this is our policy.

23 So with all due respect for the
24 Executive Budget, I vigorously disagree with

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1 it. I've asked and I've outlined in my
2 written statement the reasons why the
3 \$273,000 increase is necessary and important,
4 and I certainly hope that the Legislature
5 will come through for us this year as they
6 have in the past when requested to do.

7 How was that, Assemblyman O'Donnell?
8 You like my voice?

9 SENATOR FLANAGAN: Very brief, and no
10 notes. Even better.

11 MR. TEMBECKJIAN: When you believe
12 passionately and you prepare, you don't
13 really need notes.
14 SENATOR FLANAGAN: Counsel, well done.
15 No one has any questions. Thank you for your
16 testimony.
17 MR. TEMBECKJIAN: Well, then, I'll
18 take this to mean an endorsement of my
19 request, and I look forward to the
20 \$273,000 increase.
21 SENATOR NOZZOLIO: Acquiescence by
22 silence I don't think is approval, but I do
23 thank you for your testimony.
24 We were just asking staff -- last year

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1 you came in with a very compelling argument.
2 We were able to make some restorations.
3 MR. TEMBECKJIAN: And you, Senator
4 Nozzolio, were one of the leaders of that,
5 and I really appreciate that. Thank you.
6 SENATOR NOZZOLIO: Well, and you're
7 doing a very good job. I know Senator
8 DeFrancisco is a very full supporter of your
9 efforts, and we'll try to do whatever we can.
10 MR. TEMBECKJIAN: I realize and
11 appreciate that.
12 And I also know that the bill he has
13 proposed for a Commission on Prosecutorial
14 Misconduct is modeled on ours, which sort of
15 underscores the point that I'm making. If
16 we're a model for other entities and we far

17 surpass the ethics enforcement record of
18 other state agencies, what sense does it make
19 to ask us do more with less?

20 SENATOR KRUEGER: And now you've
21 opened yourself up to another question.

22 Do you get a lot of your complaints by
23 email?

24 (Laughter.)

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1 MR. TEMBECKJIAN: Yes, as a matter of
2 fact we do, and we retain them in perpetuity.
3 In fact, one of the ways that we saved money
4 several years ago was to move to a complete
5 paperless recordkeeping system. So we PDF
6 everything. And obviously it cuts down on
7 the amount of space that we need to keep
8 documents, letters, briefs, and the
9 voluminous paper trail that can be created in
10 any complaint and certainly in any
11 investigation.

12 And once the case is over, we keep the
13 electronic file and record of that case.
14 Because the judge might violate the same
15 rules again or a complainant might make a
16 follow-up complaint, so we don't discard any
17 of that information. And it costs nothing in
18 terms of physical plant to keep it.

19 And not only do we maintain those
20 records permanently, but we have them in
21 two -- in three locations altogether. So
22 that if we were to have a technological

23 meltdown at our principal office in New York
24 City, we have a backup file system in our

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1 Albany office and in our Rochester office.
2 So the entire state would basically have to
3 go dark for us to lose that documentation.

4 And, Assemblyman O'Donnell, two years
5 from now, if I were to have to demonstrate
6 the legitimacy of a decision that we had
7 made, I could demonstrate it with the
8 electronic records of that case because we
9 don't get rid of it.

10 SENATOR KRUEGER: Thank you.

11 MR. TEMBECKJIAN: And we're a small
12 agency. I mean, you know, we've got a
13 \$5 million budget and we can manage to do
14 this. It seems to me that with all of its
15 resources --

16 SENATOR KRUEGER: I didn't mean to put
17 you on the spot, but --

18 MR. TEMBECKJIAN: -- obviously they
19 could do the same.

20 SENATOR KRUEGER: -- I knew what your
21 answer was going to be. So thank you very
22 much.

23 MR. TEMBECKJIAN: Okay. You're
24 welcome.

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1 SENATOR FLANAGAN: Thank you.

2 SENATOR NOZZOLIO: Thank you very
3 much.

4 SENATOR KRUEGER: Thank you.

5 SENATOR FLANAGAN: Next is New York
6 State Office of Indigent Legal Services,
7 Mr. Leahy.

8 OILS DIRECTOR LEAHY: Good afternoon,
9 Senators and Assemblyperson. It's good to be
10 here with you again this year.

11 Let me start by just stating at the
12 outset the two things I'm seeking from you in
13 this year's budget. One is your approval of
14 the Executive Budget increase that allows our
15 office to implement the historic settlements
16 of the Hurrell-Harring litigation which was
17 widely reported last fall, and I'll speak a
18 bit more about that.

19 Second is to increase our Aid to
20 Localities funding by a total of \$28 million,
21 \$20 million of which is for caseload
22 reduction in the upstate 52 counties which
23 are not covered by the litigation settlement
24 and which include, of course, many of your

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1 districts if not most -- if not all of them.
2 And, secondly, \$8 million to further the
3 progress we have made with providing counsel
4 at first appearance.

5 Both of these issues are foundational
6 components of the settlement in which the
7 state has accepted that this is a state
8 responsibility: Number one, that these are
9 legal requirements; and number two, that the

10 state, not the counties, have the
11 responsibility to fulfill them.

12 And so this is quite wonderful for the
13 counties of Suffolk, Onondaga, Ontario,
14 Schuyler, and Washington, who will begin to
15 receive some of the same benefits that the
16 institutional defense providers in New York
17 City have been receiving since 2010. The
18 caseload relief was completed in 2014.

19 So if I could refer you to our
20 Attachment A, on the theory that pictures
21 sometimes suffice for a number of words,
22 you'll see the chart of New York State in
23 which we have New York City in red, which has
24 the caseload caps, \$57 million in the

♀ 371

1 current-year budget, the year that we're
2 still in, full funding of appropriate
3 caseload numbers in the City of New York.

4 There is a study that's about to come
5 out to look at the impact of that. We've had
6 some conversations with the Center for Court
7 Innovation, which is doing that study. It's
8 going to say some inappropriately good things
9 about the benefits for clients of reducing
10 attorneys' caseloads.

11 We also have the five counties in
12 green which are covered by the settlement.

13 And this is a very good settlement.
14 We are proud and honored to be able to
15 implement it with the executive branch, with

16 the plaintiff counsel, and so forth. It is
17 going to reduce caseloads, it is going to
18 provide counsel at first appearance, it is
19 going to include a number of other quality
20 improvements in those counties -- access to
21 investigators, access to sentencing
22 advocates, access to forensic assistance and,
23 perhaps most importantly, a requirement that
24 there be personal private consultation in

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1 every case with every client, something which
2 the Kaye Commission and many other studies
3 have suggested is not routine throughout the
4 State of New York right now.

5 So our request to you is founded on
6 our statutory obligation, which is to assess,
7 to evaluate, and to improve the quality of
8 representation statewide -- not just in
9 New York City, not just in the five lawsuit
10 counties, but in every location in New York
11 City. And there's probably no more
12 fundamental principal of justice than that
13 the quality of the justice that you
14 receive -- or, here, the quality of the
15 counsel, the quality of the representation
16 you receive -- must not be dependent on where
17 you happen to be arrested or where your
18 custody dispute -- because we are responsible
19 for parental representation in Family Court
20 as well -- where that takes place.

21 And so we come to you -- this is

22 essentially the first year of our five-year
23 remediation plan. It is founded on equal
24 justice, fundamental fairness, and also on

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1 something much more practical, and that is
2 that the state has signed off in this
3 settlement in such a way that leaves every
4 one of these additional counties vulnerable,
5 and leaves the State of New York vulnerable,
6 to endless litigation. And if nothing is
7 done in this budget -- and there is nothing,
8 regrettably, in the Executive Budget to
9 further support the 52 forgotten counties, as
10 we call them -- then every single one of
11 those counties and the State of New York is
12 definitely vulnerable to future lawsuits
13 modeled after the Hurrell-Harring lawsuit.

14 So that is our basic premise, that is
15 our basic support. We are very pleased that
16 yesterday, at a little bit after this hour in
17 the Local Government hearing, Anthony
18 Picente, the Oneida County executive and the
19 president of the New York State Association
20 of Counties, spoke in support of this budget
21 request. It's a principle that addresses the
22 unfunded mandate in all counties, not just
23 some. And we were very pleased -- I was
24 personally here to hear his support and very

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1 pleased that it's on record.

2 So I'm here, I have four minutes left,
3 and I'm happy to answer your questions during
4 that time.

5 SENATOR FLANAGAN: Senator Krueger.

6 SENATOR KRUEGER: Thank you. Hi.

7 So I agree you need the money. I've
8 been advised that there's actually a
9 special -revenue other fund for OILS that is
10 significant in size, it's just that the money
11 isn't let go for you to use.

12 OILS DIRECTOR LEAHY: It's presently
13 significant in size, and we believe it is
14 sufficient to fund the request that we seek.
15 I wouldn't want to speak in downstream years,
16 especially as the settlement takes hold. But
17 right now, yes, you're correct.

18 SENATOR KRUEGER: So if the
19 Legislature or the Governor actually opened
20 up use of some of that money, we could in
21 fact meet your need without increasing costs
22 to the General Fund. Would you agree?

23 OILS DIRECTOR LEAHY: That's correct.

24 SENATOR KRUEGER: Thank you.

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1 Follow-up question. With all of the
2 proposed changes, and there's been much
3 discussion of it today, with changing the age
4 for criminal penalty going up 16, 17, 18,
5 what impact would that have on legal service
6 representation throughout the county? Would
7 it actually decrease demands on you?

8
9 on how the representation is provided. One
10 of the unfortunate aspects of the Raise the
11 Age process to date is there really was no
12 indigent defense representation on that
13 commission that did, you know, such thorough
14 work. And, of course, exactly how the
15 legislation will provide for where those
16 cases go.

17 I would tell you one area of grave
18 concern, and that is the suggestion I have
19 heard that in a case that starts in Criminal
20 Court with a public defender and then is
21 transferred to Family Court, that there might
22 be a different lawyer come in at the Family
23 Court stage. That violates two things. One,
24 it violates the American Bar Association

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1 principle of vertical representation. But
2 more importantly, it violates the client's
3 right to the continuous representation by one
4 lawyer who knows that child, who knows the
5 child's background, has been successful in
6 getting the case diverted to Family Court for
7 all the benefits and purposes that we've been
8 talking about.

9 So it's our position, certainly will
10 be, that that lawyer must follow that case.
11 And if that requires changes in 18-B or 722,
12 those changes really need to be made. We
13 will have a strong interest in following that

14 discussion, which as I understand it really
15 has not been addressed yet.

16 SENATOR KRUEGER: And would that
17 require statutory change beyond the language
18 the Governor offers in his budget? Or more
19 of a policy that needs to come out of the
20 program going forward?

21 OILS DIRECTOR LEAHY: I'm not prepared
22 to say yet. We're just taking a look at the
23 draft legislation now. We certainly will
24 want to be weighing in on that in the coming

♀ 377

1 weeks.

2 SENATOR KRUEGER: I'd be very
3 interested in learning. Thank you very much.

4 SENATOR FLANAGAN: Assemblywoman
5 Weinstein.

6 ASSEMBLYWOMAN WEINSTEIN: Thank you
7 for being here.

8 First, I guess, I should just
9 associate with comments that Senator Krueger
10 made in terms of I would like to see an
11 expansion beyond just the -- to the counties
12 beyond just the settlement, the counties
13 affected by the settlement. And we do know
14 that there are funds available, there are
15 fund in the indigent legal services funds
16 that could provide those resources.

17 Just specifically, and maybe -- I
18 looked through your testimony, and I didn't
19 see it; maybe you mentioned it before I

20 arrived. Is the \$4 million in the budget to
21 carry out this settlement plan sufficient?
22 Or are there additional resources needed for
23 the office to effectively carry out the
24 settlement plan?

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1 OILS DIRECTOR LEAHY: In the
2 settlement counties?

3 ASSEMBLYWOMAN WEINSTEIN: Yes.

4 OILS DIRECTOR LEAHY: There are
5 sufficient funds. Everything that the
6 Executive agreed to in the October 21st
7 settlement -- which, by the way, is not yet
8 finalized with the judicial approval, but
9 it's binding, I think -- is in the Executive
10 Budget, including the funding for at least a
11 start-up and implementation unit within our
12 office.

13 So that part of the Executive Budget
14 is adequate for this fiscal year. Next year
15 will be a different story as we set caseload
16 limits and we -- and the cost of the first
17 six to nine months basically is setting the
18 game plan. And then the implementation will
19 probably be a 2016-2017 issue in those
20 counties, and it will have additional fiscal
21 ramifications at that time.

22 ASSEMBLYWOMAN WEINSTEIN: Thank you.

23 SENATOR FLANAGAN: Thank you very
24 much.

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1 OILS DIRECTOR LEAHY: Thank you very
2 much.

3 SENATOR FLANAGAN: Next we have the
4 New York State Troopers PBA, Thomas Mungeer.
5 I hope I'm saying it correctly.

6 MR. MUNGEER: Distinguished members of
7 the Legislature, it's been a long afternoon.
8 I'll make this very brief.

9 That is the sixth time I've addressed
10 you. Time after time we've come and asked
11 for more manpower. Things are getting
12 better. You heard my superintendent. We've
13 also asked for better equipment, rifles, and
14 Tasers. I'm going to ask for more manpower
15 again. The superintendent says we're just
16 about there to break even. We need probably
17 another hundred people this year in a class
18 just to keep our heads above water.

19 The Governor has different initiatives
20 for us -- a heroin detail, plus he's sending
21 50 troopers down to New York City, so we do
22 need more troopers on the road.

23 More importantly is the fact that we
24 don't have or we're losing the fact that we

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1 don't have the ability to get to these
2 complaints and help people. Ninety-eight
3 years ago, when we were formed, one trooper
4 had 1 horsepower. Now the Dodge Chargers
5 have 370 horsepower, but unfortunately our
6 fleet is aging considerably. Twenty percent

7 of our marked patrol vehicles have over
8 150,000 miles.

9 When I came on the job over 20 years
10 ago, about 100,000 miles was what we drove
11 the cars. It's not like your family sedan
12 where you get in and go from Point A to
13 Point B. We get in the car, they're driven
14 almost 24 hours a day, seven days a week,
15 zero to 100, back down to zero, all day long
16 out on the major highways and stuff.

17 We need an additional \$5 million in
18 the State Police budget to bring these --
19 replace these vehicles. The superintendent
20 did mention that he would like to see them
21 replaced at 125,000 miles. That's fine for
22 the future. I think the immediate change is
23 50,000 miles, and to make things a little bit
24 safer for my troopers. We've had five axle

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1 failures in this past year where the axles
2 failed, wheels fell off the cars. Thank God
3 it wasn't in a high-speed pursuit or operated
4 at a high speed where a trooper was hurt.

5 In the last decade we've lost 17
6 members in the line of duty. I would hate --
7 hate to see one of my members hurt or killed
8 because the car that they're driving did not
9 function properly and because of its age.

10 So I again, I ask and respectfully
11 request an additional \$5 million to bring up
12 our reserve fleet, and we can start replacing

13 these high-mileage vehicles so our troopers
14 can get out and help your constituents in a
15 safe manner.

16 Thank you.

17 SENATOR FLANAGAN: Thank you. Senator
18 Nozzol i o.

19 SENATOR NOZZOLI O: Thank you, Senator
20 Flanagan.

21 Good afternoon.

22 MR. MUNGEER: Good afternoon, sir.

23 SENATOR NOZZOLI O: You're not as
24 constrained as the superintendent was for

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1 response to questions that you may have heard
2 me ask about, so let me ask you those same
3 questions.

4 MR. MUNGEER: Absolutely, sir.

5 SENATOR NOZZOLI O: Just the
6 demographics of the United States indicate
7 that we have a large population that is
8 shrinking in terms of its work years, growing
9 in terms of its retirement years. The
10 New York State Police is not immune from that
11 demographic problem. Tell me about attrition
12 in the ranks.

13 MR. MUNGEER: The superintendent did
14 state 230, 240 members will probably retire
15 this year. I think it's probably going to be
16 a little bit higher, just based on the number
17 of retirements I see already. You're
18 probably looking in terms of 250 members

19 retiring. So you need, you know, you need at
20 least that to replace -- you know, the new
21 troopers coming in to replace the troopers
22 retiring.

23 The problem is that the Governor has
24 given us new initiatives also. Right off the

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1 bat there's 50 troopers going down to
2 New York City. So those 50 troopers are
3 coming off the top. So we do need additional
4 troopers to fill into the regular road
5 patrol, plus these other -- for the other
6 initiatives. That's why I said 100 troopers
7 would probably give us a little bit of
8 breathing room for this year with the
9 attrition that we're expecting.

10 SENATOR NOZZOLIO: I'm pleased, and
11 I'm sure you were too, to see in the 30-day
12 amendments a new class supported financially
13 for the State Police. But you're right, the
14 fill level is -- just simple math shows that
15 the fill level is not going to be met by
16 those classes, particularly if there is any
17 type of jump based on retirements in that
18 demographic. And I think we just have to
19 assume there will be, as population ages out.

20 So that's going to be a very stressful
21 situation. And I guess we certainly would be
22 advocating for more State Police classes. Is
23 that something you're going to be pushing for
24 or you have pushed for?

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1 MR. MUNGEER: Oh, absolutely, every
2 year.

3 The problem was -- I've got to say
4 Governor Cuomo has been very good about
5 putting classes in. We went through a stage
6 from 2009 to 2012, it was actually three and
7 a half years in that time space where we
8 didn't have any classes. And it took a long
9 time to dig out of that hole.

10 We're really not totally out of the
11 woods yet, so to speak. We're about
12 break-even where -- I say at a tipping point.
13 If we fall below that tipping point, we're in
14 trouble again where the backup isn't there or
15 a call might not be answered immediately.

16 So, you know, we have to keep ahead
17 because, no matter what, people still do
18 retire and again, I -- you know,
19 unfortunately, we have lost members in the
20 line of duty. That's the ultimate sacrifice
21 where we lose members.

22 SENATOR NOZZOLIO: Thank you very
23 much.

24 MR. MUNGEER: Thank you, Senator.

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1 SENATOR FLANAGAN: Senator Gallivan.

2 SENATOR GALLIVAN: Thank you,
3 chairman.

4 Good afternoon, President Mungeer.

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MR. MUNGEER: Senator.

SENATOR GALLIVAN: The \$5 million that you mentioned, asking for an additional \$5 million in the State Police budget for vehicles, is that in addition to the \$18 million that we believe is in there that the Governor proposed?

MR. MUNGEER: I believe -- the number that I have, and I'll have to double-check that, it was \$15 million that was appropriated. I believe around \$20 million would bring us up -- and again, it's not going to solve it, but it's at least going to, in my mind -- 150,000 miles on a car is way too much. And if we can replace that 20 percent above that, that that should at least make things a little bit safer. And as the superintendent said, it might be a two-year solution to this problem, and then next year we can whittle away at those other

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cars.

But that \$5 million would be on top of the appropriation, which I believe is \$15 million instead of the \$18 million.

SENATOR GALLIVAN: Okay, thank you. Thank you for the work of you and your members to keep our community safe.

MR. MUNGEER: Thank you, Senator.

SENATOR FLANAGAN: Thank you very much.

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MR. MUNGEER: Thank you.

SENATOR FLANAGAN: Next is the Police Conference of New York, Richard Wells.

MR. PATERSON: Good afternoon. We're going to make it brief also because we know you've been here all day.

My name is Pete Paterson. I'm the legislative chairman of the New York State Association of PBAs. I'm also vice president of the Nassau County Police Department.

SENATOR NOZZOLIO: Pete, could you pull your microphone closer to you? Just pull it close.

MR. PATERSON: I have also with me

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Rich Wells. He's president of the PCNY, he represents over 25,000 active police officers from Montauk to Buffalo.

We appreciate you giving us a little of time to speak on Senate Bill 2011, which is in the budget. With the use of force -- it's a statewide use of force policy. My association and Rich's association, we have concerns -- we have two major concerns with it. One concern we have with it is the way the legislation is written, if you adopt this law as such, you're opening up a point where you're adopting a blind policy. You're giving the state -- you're allowing the state to mandate a policy which may or may not be good.

17 But the problem is we haven't seen the
18 policy, we couldn't even say if it's good or
19 bad policy. We have a lot of police
20 commissioners and sheriffs throughout the
21 state -- and like my department represents
22 2500 members, and Suffolk has approximately
23 the same. They would have to adopt a policy
24 without our commissioners, our chiefs getting

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1 involved. And once again, it may or may not
2 be good, but I don't believe adopting a law
3 with a blind policy would be good at this
4 time.

5 The second issue, and probably more
6 importantly, opposing any standard that
7 categorically rules out any particular mode
8 or technique of force regardless of
9 circumstances. We believe it's
10 inappropriate.

11 What happened is Article 35 of the
12 Penal Law allows us to use deadly physical
13 force in certain circumstances. Actually, it
14 also allows civilians to use it under certain
15 circumstances. When a police officer is
16 faced with that, it's often within seconds.
17 He's got to make a critical decision. He's
18 got to be reasonable and it's got to be
19 necessary. And he will be judged -- when
20 he's done doing it, he will be judged by the
21 department, by internal affairs, CCRBs, grand
22 juries, district attorneys and such, and

23 rightfully so. We must prove why we did it,
24 and we have no problem with it.

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1 The issue we have when you do take --
2 when you have to use the use of deadly
3 physical force, it's often, like I said
4 before, within seconds. And to have a
5 technique or mode strictly prohibited is
6 going to cause our officers to step back a
7 bit, and it could cause a fatal result to
8 either the officer or an innocent civilian, a
9 third person standing by.

10 You know, we use this example. I
11 mean, like I said -- you legislators are
12 allowed to use deadly physical force under
13 certain circumstances. You walk into your
14 house and you see one of your loved ones
15 getting -- ready to get stabbed to death --
16 reasonable and necessary, that's what you
17 need to do. Is it reasonable to stop it?
18 Yes. What necessary force are you going to
19 use? Well, you're going to use pretty much
20 whatever you can to stop it. You don't want
21 to sit back and say this technique might not
22 be a good technique, that technique might not
23 be bad. You are going to be judged by
24 reasonable and necessary, and we don't feel

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1 that it should be limited.

2 Article 35 was written in that way.

3 Article 35 -- if you look at it, it realizes

4 that not one size fits all, particularly when
5 something is as serious, as critical as the
6 use of deadly physical force.

7 We have a couple of other issues we'd
8 like to speak to, and I'll turn it over to
9 Rich Wells from PCNY.

10 MR. WELLS: Good afternoon. One of
11 the other issues is the independent monitor.
12 Under this legislation, if a police officer
13 uses deadly physical force against an unarmed
14 subject and a grand jury does not return a
15 true bill of indictment, the Governor will
16 appoint an independent monitor who will serve
17 for a three-year term.

18 Now, that independent monitor, first
19 of all, will not be independent. It's a
20 political appointment, which means there will
21 be a political review of the district
22 attorney's integrity. District attorneys
23 make their decisions whether to put something
24 to a grand jury and how it's put to a grand

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1 jury based on evidence and fact, not on
2 public opinion.

3 The other problem is this section
4 treats police officers differently than the
5 rest of the citizens of this state. It
6 removes DA prosecutorial discretion during
7 the process of deciding not to present to a
8 grand jury, and the bill as written would
9 include a very broad number of cases.

10 Because an unarmed subject is not defined,
11 nor is an armed subject defined, and you
12 cannot find a definition of either of those
13 in either the Penal Law or the Criminal
14 Procedure Law. It's just not there. So what
15 is an unarmed person? We don't know, because
16 the bill does not specify.

17 Grand jurors, not district attorneys,
18 hand down decisions. This bill would
19 second-guess the existing jury system, one
20 that has been in place for a very long time.

21 The monitor considers two issues,
22 evidence not presented and new evidence.
23 Current law provides that a judge can cause a
24 case to be presented to the grand jury again

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1 if these issues exist, thus negating the need
2 for a special monitor.

3 It has reporting requirements that all
4 local police agencies will have to now
5 conform to, including on any summons issued
6 to ascertain the race and ethnicity of the
7 persons stopped. That's going to cause
8 needless confrontations out on the street.
9 We're trying to reduce these tense
10 situations. We don't need to exacerbate them
11 with reporting techniques such as this.

12 A couple of general points. We
13 question why this is even included in the
14 budget. The only expense contemplated by
15 this bill is for the compensation of the

16 special monitor. When you look at the entire
17 New York State budget, that is so minuscule
18 that this should not be part of the state
19 budget, this bill.

20 Secondly, up until the fall of 2014,
21 there has never been any outcry, that I'm
22 aware of or anyone in our organization's
23 aware of, to reform the grand jury system.
24 It's functioned for over two centuries. And

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1 now critics are calling it antiquated and it
2 should be completely revamped. We don't see
3 where that's necessary.

4 Cops lose cases in the grand jury all
5 the time. They spend their time with
6 prosecutors putting cases together, and
7 sometimes juries come back with no true bill.
8 That's what the way it is. That's the
9 system. You're frustrated with it, you're
10 disappointed, but you move on and you go on
11 to the next case. The system is not broken.

12 One controversial finding by a grand
13 jury is no reason to change what has served
14 this state well for many years.

15 Thank you.

16 SENATOR FLANAGAN: Thank you,
17 gentlemen.

18 Senator Nozzolio.

19 SENATOR NOZZOLIO: Thank you, Senator.
20 Good afternoon, gentlemen.

21 Just because the hour is late doesn't

22 mean that this issue is not of critical
23 importance to the future of the state. That
24 normally we're visited by police officers

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1 discussing issues from various police
2 departments -- I speak for upstate. This
3 year there was one issue on the minds of
4 those officers, and that's the issues that
5 you're addressing today regarding treating
6 them as second-class citizens, establishing
7 an infinite tail onto the proceedings that
8 have no end, which in and of itself creates
9 an anxiety-ridden job with needless anxiety
10 in perpetuity for this profession.

11 So your comments today are certainly
12 taken very seriously. That we -- Senator
13 Gallivan, myself, Senator Golden, Senator
14 Marcellino, Senator Croci, and Senator
15 Lanza -- participated in a hearing a few
16 weeks ago in New York City; we're going to be
17 having one in two weeks in this city, in
18 Albany, in the capital, to look at the entire
19 reform of the criminal justice system or
20 changes in the criminal justice system. But
21 certainly this proposal is one that we have
22 taken testimony from our New York City
23 representatives, and now having your input is
24 extremely important.

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1 Let's comment, if you would for a

2 second, on the lack of finality in the
3 process. You've addressed it, you've
4 analyzed it. Expound upon your opinions
5 regarding what this procedure would do.

6 MR. WELLS: Well, what it does is if
7 the special monitor does not agree with what
8 the grand jury did, he then goes to the
9 Governor and will recommend that a special
10 prosecutor be appointed. And under current
11 law, the special prosecutor would be the
12 Attorney General. This bill does nothing to
13 change that statute.

14 So the Attorney General then would
15 have to go back, empanel either another grand
16 jury or the same grand jury, assuming, and
17 present the case all over again. So it's --
18 you know, you could consider it double
19 jeopardy.

20 SENATOR NOZZOLIO: That double
21 jeopardy that --

22 MR. WELLS: Well, we've already had a
23 determination by a grand jury that there's no
24 evidence or not enough evidence to go further

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1 for a trial. But now we're having a special
2 monitor look at it and then a special
3 prosecutor and perhaps a second grand jury
4 empanel ed.

5 MR. PATERSON: If I may, the bill also
6 addresses two components when the special
7 monitor can do that. And if evidence has not

8 been presented, that may or may not -- that
9 may or should have affected the outcome of
10 the grand jury, or if you have completely new
11 evidence -- and we believe, unless we're told
12 otherwise, that that can be done now as a
13 matter of law and it can be done in any grand
14 jury.

15 One way we look at it -- like I've had
16 five police officers killed in the line of
17 duty, the State Troopers unfortunately have a
18 lot more. If one of -- we call them the bad
19 guys -- get put before the grand jury and he
20 doesn't get indicted, he walks, you know? We
21 just want to be treated basically the same as
22 everybody else in the state.

23 SENATOR NOZZOLI: In New York City,
24 in our hearing, District Attorney Donovan

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1 from Staten Island indicated that there
2 already is a monitor on grand jury
3 proceedings in the form of a judge. When a
4 grand jury makes its decision to indict, the
5 judge needs to certify that decision.

6 There isn't the identical process when
7 the grand jury indicates it has no reason to
8 indict or it has not found sufficient
9 evidence to recommend indictment. But that
10 should in itself be a vote that was taken, a
11 vote that's out there and a vote that was
12 done in the normal course of business.

13 So your comments, I believe, also

14 could be related to expand upon them relating
15 to the issue of having those proceedings be
16 subject to a report, if you will, of the
17 district attorney. Would you further
18 elaborate on your concerns?

19 MR. WELLS: Well, one concern with
20 that is that the report will be required if a
21 a police officer uses deadly physical force.
22 However, if deadly physical force is used
23 against a police officer, no report is
24 required. So once again, we're being treated

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1 like second-class citizens.

2 Also the police officers' names will
3 be released in any of those reports, but no
4 one else's. In certain circumstances -- I
5 should clarify that -- other public employees
6 will be.

7 SENATOR NOZZOLIO: And I think that
8 your questions about privacy and safety are
9 something that should be also elaborated on.
10 That the placement of an officer's name,
11 address -- the names also of witnesses in
12 that type of open process -- what does that
13 do in terms of a chilling effect for both
14 officer and potential witness?

15 MR. PATERSON: Our detective
16 association spoke about it. If it does cause
17 a problem, particularly with potential
18 witnesses in this circumstance, it's if they
19 have -- let's say it goes, it expands a drug

20 case or whatever where you have confidential
21 informants or whatever. Not that you're
22 going to expose their names, but it would
23 have to be done in a way where their identity
24 is -- they have enough trouble getting people

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1 to come in to testify before a grand jury as
2 it is, so the detectives had concerns -- the
3 detectives that we represent throughout the
4 state had a lot of concern about that.

5 SENATOR NOZZOLIO: I think that --
6 getting to the issue of the report, that a
7 prosecutor would have to establish a grand
8 jury report made public, basically would end
9 any principle of protection, of identity
10 protection. And then I think that it may get
11 to witnesses, it may not get to witnesses,
12 but the fact is the danger is always there.

13 MR. WELLS: Absolutely.

14 SENATOR NOZZOLIO: Well, thank you for
15 bringing this issue to the forefront today.
16 It's an important issue, it's one we're going
17 to have to wrestle with.

18 I for one don't believe it should be
19 part of the budget process, because it's
20 certainly something that deserves full airing
21 and analysis beyond the budget in terms of
22 outside of the budget, which is normally, as
23 you know, a very intense process in and of
24 itself. The issues here are too significant,

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400

1 in my view, to be put and squeezed and
2 sandwiched between the normal budgetary
3 processes here in the state.

4 Thank you, Mr. Chairman.

5 SENATOR FLANAGAN: Thank you, Senator
6 Nozzol i o.

7 We're going to go to Assemblyman
8 Lentol , then Senator Gallivan, then
9 Assemblyman Saladi no.

10 Assemblyman Lentol .

11 ASSEMBLYMAN LENTOL: Thank you very
12 much, Mr. Chairman.

13 Thank you, gentlemen, first of all for
14 the services that you've given as police
15 officers for these many years. I certainly
16 respect the way in which you've represented
17 your constituency, just like I try to
18 represent mine.

19 I thought -- I didn't get a chance to
20 hear your testimony, but I looked it over and
21 I understand the way you feel about the
22 change of the grand jury system, the way in
23 which the Governor has presented it in his
24 budget. And I floated a question earlier

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401

1 today with the Chief Administrative Judge,
2 and I just wanted to bounce it off you,
3 because everybody who has spoken has talked
4 about the grand jury system and some of the
5 members here have talked about the antiquated
6 grand jury system that we have in this state

7 that's part of the common law of England.

8 And I wondered if a major change in
9 the grand jury system is in order for
10 somebody to consider, because we've had it
11 for so many years and maybe we ought to think
12 of a more transparent grand jury. Or maybe
13 even scrapping the grand jury system
14 altogether and not give district attorneys
15 the ability to hide behind a grand jury and
16 have a preliminary hearing in the Supreme
17 Court -- Superior Court of the counties, and
18 allow witnesses to be called in a transparent
19 manner.

20 I heard what you said about
21 confidential informants and about how other
22 accommodations would have to be made for
23 those type of witnesses, but I wonder if we
24 should bring the system, the criminal justice

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402

1 system into the 21st century and have a
2 hearing that would have the benefit of
3 allowing transparency in the process by
4 allowing everybody to be hear what the
5 witnesses have to say.

6 I don't know if there still exists any
7 reason for secrecy in the procedure, but, you
8 know, I'm not a historical expert. But you
9 guys are part of the criminal justice system,
10 and I wanted to get your opinion about it,
11 because what I'm envisioning is a transparent
12 system whereby witnesses would be heard,

13 everybody could see what the witnesses said
14 at a grand jury -- just like you have on
15 Court TV.

16 And by the same token, you would also
17 allow a little bit of discovery to everybody
18 to see what the evidence is against -- the
19 prosecutor would be able to see the kind of
20 witnesses and the kind of case he has, the
21 defense would see some of the witnesses and
22 what kind of case is against his client, and
23 it would probably move the wheels of justice
24 even faster.

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403

1 So I'm saying that -- I'm preaching, I
2 know -- but I'm just trying to maybe get your
3 take on that.

4 MR. WELLS: As I said earlier,
5 Mr. Lentol, we don't feel the system is
6 broken.

7 And the history of the grand jury was
8 to protect the individual from being dragged
9 into court by an oppressive government. It
10 goes back to common law in Great Britain, as
11 you said.

12 We feel that it has functioned well,
13 there is no major reason to change it other
14 than there have been a couple of high-profile
15 cases that have been unpopular. But we don't
16 change things based on public opinion, we
17 change them on if there is a need.

18 As far as bringing it into the

19 21st century -- it's been modified over the
20 years, but basically it's there to protect
21 the individual. And if you're accused of a
22 crime but there's not enough evidence to even
23 go forward with a trial, this saves people
24 from having their name dragged out into the

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404

1 public. I mean, again, that was one of the
2 initial reasons for it.

3 And we don't see a need for a major
4 overhaul at this time. And certainly not to
5 be done in the context of the time frame of
6 the state budget.

7 MR. PATERSON: Yeah, that's one of the
8 major concerns. Obviously we feel it's
9 working and we don't want it changed. But
10 during the discussion that you're talking
11 about -- we understand in certain
12 circumstances how people get frustrated. We
13 get frustrated as police officers.

14 We present the case to a grand jury
15 and they return no true bill. We worked on
16 it for six months. We know, we believe in
17 our heart of hearts that that guy was guilty.
18 The grand jury had the luxury of having all
19 the facts and circumstances and all the
20 testimony, and they return no true bill. And
21 we don't get a copy of the testimony.

22 So we understand your point of people
23 being frustrated not knowing what's going on,
24 but that -- like Richie said, that would be a

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405

1 major, major change, a major overhaul. And
2 you quite frankly -- again, we're not at that
3 point yet, but you'd have to have law
4 enforcement experts speak on it. Because
5 like I stated earlier, our detectives
6 association emphatically said they have a
7 hard enough time to present a case to the
8 grand jury in certain cases where people are
9 scared. You know that yourself.

10 And one of the components -- like I
11 said, the biggest, I guess, issue that we
12 have to start this off with is the change of
13 the grand jury just deals with police
14 officers. It's kind of like we feel we
15 should be treated like everybody else.

16 ASSEMBLYMAN LENTOL: Right. I mean,
17 that's the reason I floated that proposal,
18 because it would treat everybody equally.
19 That wouldn't be a grand jury just for police
20 officers, that would be for everyone.

21 Thank you.

22 MR. PATERSON: Okay. Thank you.

23 SENATOR FLANAGAN: Senator Gallivan.

24 SENATOR GALLIVAN: Thank you,

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406

1 Chairman.

2 Good afternoon, gentlemen. Thank you
3 for your testimony. Your points are very
4 well taken regarding the Governor's criminal

5 justice proposals that you commented on.
6 There's one other particular area in
7 criminal justice that the Governor has put
8 forward in his budget, the concept of what
9 we're calling now raise the age of criminal
10 responsibility. There's a number of
11 different points in there.

12 But what my question has to do with is
13 that set of proposals and what are the
14 implications for the police officers that you
15 represent across the state if the Raise the
16 Age was enacted or implemented.

17 MR. WELLS: Well, we talk about
18 raising the age, so now we're going to have I
19 guess it's two more ages, correct, that will
20 be considered juveniles and must be charged
21 juveniles --

22 SENATOR GALLIVAN: Well, it's a series
23 of proposals, but essentially raising the age
24 of criminal responsibility from 16 up several

♀ 407
1 years.

2 MR. WELLS: Well, there are
3 17-year-olds that are children and there are
4 13-year-olds that are hardened thugs. Just
5 to blanketly raise the age, I don't think
6 it's wise.

7 SENATOR GALLIVAN: But are -- and I
8 appreciate that. Are there any implications
9 for the police officers you represent across
10 the state on a daily basis?

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MR. WELLS: I'm sorry?

SENATOR GALLIVAN: Are there implications for the police officers that you represent on a daily basis? Does it make their job easier, harder, communities safer, communities less safe? Or no effect at all?

MR. WELLS: Well, juveniles must be treated differently. So you -- depending on the size of the department and many issues like that, you have to have different -- more juvenile officers assigned, trained, facilities to house these individuals when they're brought in because there's a separate set of rules for juveniles. So yes, it would

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cause a major change.

SENATOR GALLIVAN: Thank you. That was all I had.

Thanks, Chairman.

SENATOR FLANAGAN: Thank you.

Assemblyman Saladi no.

ASSEMBLYMAN SALADINO: Thank you for being here with us today and being so cooperative. My question relates to this issue, which I agree with my colleague should not be part of the budget. It's kind of amazing that instead of talking about dollars and saving lives, we're talking about policy issues that have a place here but not as part of the budget.

If this policy becomes law -- and we

17 have seen a tremendous change in the way the
18 media reports on stories. And as many of my
19 colleagues know, I'm a former journalist,
20 former broadcaster, master's degree in
21 journalism. And I'm truthfully amazed at the
22 change in the way in which stories are
23 reported on and the lack of balance as
24 compared to just 20 years ago.

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1 We know that -- and I think that's
2 something that all of my colleagues from
3 everywhere in the state would agree upon. We
4 see hype like never before. We see the need
5 to sell papers and battle for airtime
6 becoming the predominant issue rather than
7 reporting a balanced story. It's rather
8 amazing.

9 Do you feel, if this was to take
10 place, and in the environment with the media
11 that we know today, that if a case has a
12 media charge of just a tremendous amount of
13 hype, would that affect, as we've seen over
14 and over, would that affect the outcome?
15 Would that affect the ability for government
16 to deal fairly and equally with an officer?

17 MR. PATERSON: Well, like we said
18 before with respect to the grand jury
19 proceedings, obviously the more you expose or
20 the more open it is, media -- the media will
21 weigh in on it and people -- like I said,
22 grand jurors, police officers, legislators,

23 we're all the same, we're all people. You
24 know, we can say, you know, we believe in

♀

410

1 this and we believe in that. We do. But
2 we're all people, at the end of the day, and
3 we have our concerns.

4 Grand jurors are no different. You
5 sit on a grand jury, you're going to come out
6 with a decision that a lot of times, as we've
7 seen, it's going to be a major, major
8 decision and be a major impact within the
9 state or within this country. The concern is
10 yes, the media -- being a police officer,
11 they're not really -- let's put it this way,
12 they're not really big of fans of me --

13 ASSEMBLYMAN SALADINO: They don't
14 always treat you fair.

15 MR. PATERSON: -- but the media will
16 generate and will ignite the issue, and
17 that's one of the concerns we have with it.
18 I mean obviously, yes, that would be a
19 concern.

20 MR. WELLS: And all of these cases
21 seem to take on a larger proportion of life
22 now because it's a 24-hour news cycle. You
23 know, they have to find something to speak
24 about. And, you know, I go back to the night

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411

1 of the Ferguson grand jury decision, you
2 know? I was up to 3:00 in the morning,
3 basically because I have no life, so I watch

4 this stuff. But you watch Fox News, and it
5 was the end of the world as we know it; you
6 switch over to MSNBC and there was nothing to
7 see here, just move along. So it goes back
8 and forth depending on the media venue.

9 But yeah, the increased -- increased
10 amount of news coverage certainly is going to
11 have an effect on this.

12 ASSEMBLYMAN SALADINO: My bigger
13 concern was -- my concern is that with so
14 much bias in the media today that we would
15 not -- and a changed system, that there'd be
16 a big impact on that outcome based on that --
17 the very biased environment.

18 Well, you've answered my question.
19 Thank you.

20 MR. WELLS: Thank you.

21 SENATOR FLANAGAN: Gentlemen, thank
22 you very much.

23 Next, New York State Police
24 Investigators Association, Jeff Kayser,

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412

1 president.

2 MR. KAYSER: Good afternoon, esteemed
3 members of the Senate and Assembly. I
4 appreciate your patience. I know this is a
5 long day.

6 My name is Jeffrey Kayser, and I am
7 the president of the New York State Police
8 Investigators Association, the union that
9 represents a little over 1,100 investigators

10 and senior investigators of the New York
11 State Police Bureau of Criminal
12 Investigation, more commonly referred to as
13 the BCI.

14 It is an honor for me to speak here
15 today on behalf of the men and women of our
16 group, and I would like to thank you for
17 affording us the opportunity to be heard.

18 The New York State Legislature has
19 always been a good friend to the State Police
20 Investigators Association and the work that
21 our hardworking members do, and I'd like to
22 extend to you our thanks on behalf of all our
23 members for your past support. Especially
24 last year, your support was outstanding in

♀

413

1 helping us secure safety issues that we
2 hadn't been able to secure in years.

3 The job of a State Police investigator
4 is a very unique and challenging one, and the
5 members of the BCI perform a broad range of
6 duties. We're the plainclothes and
7 undercover arm of the New York State Police,
8 and some of the investigations that we carry
9 out are extremely dangerous, especially in
10 the arena of undercover investigations.

11 In an undercover investigation
12 anything can happen in a matter of seconds
13 that turns into a life-threatening situation,
14 and our members have been shot and killed in
15 these undercover operations.

22 members, we're down 200 members. And let me
23 now say that I believe our staffing would be
24 much worse if not for the steadfast efforts

♀ 415

1 of Superintendent D'Amico. He has
2 continuously worked with the state to try and
3 secure ongoing academy classes, and a lot of
4 the credit has to go to him.

5 But these classes are not keeping up
6 with the attrition rate of the State Police,
7 and I need to underscore what my counterpart
8 President Mungeer from the PBA stated, that
9 we are not meeting that -- we need more
10 people. We need a second class this year.

11 Our staffing levels were gutted a few
12 years ago due to a lengthy period of time
13 without any academy classes. The Division of
14 State Police sees on an average of 200 to 250
15 retirements a year. Basic math demonstrates
16 that we need every one of those spots to be
17 filled, and we also need to increase our
18 current staffing levels.

19 In order to get new investigators
20 placed into the BCI, we need an adequate
21 number, amount of troopers on the road in
22 order for the troopers to be able to be
23 promoted to investigators. I hope that you
24 recognize how important additional academy

♀ 416

1 classes are, not only to the uniformed force

2 but to the members of the BCI as well.

3 Currently for 2015, you heard earlier
4 that the division has in place a promise for
5 a class of 250 people. As my predecessor
6 President Mungeer mentioned, there's going to
7 be 50 new trooper spots that go to New York
8 City under a Governor's initiative. Plus
9 with the increased amount of retirements,
10 basic math shows that we're not going to be
11 keeping up with the attrition rate.

12 And I'd like to mention that last year
13 there was a big public relations point made
14 by the Governor's office that there would be
15 100 new State Police investigators assigned
16 to the scourge of heroin. We only got 25 of
17 those 100 members. To this day, we still
18 never saw those 75 additional investigators.

19 There needs to be a second academy
20 class in 2015, and that goes without saying.
21 I think you've all heard enough on that point
22 already.

23 The second issue that I'd like to
24 explain to you again relates directly to the

♀

417

1 safety of our members, and it was touched on
2 earlier, and that is the deterioration and
3 the age of our fleet of BCI vehicles.

4 State Police vehicles, both marked and
5 unmarked, respond every day in emergencies at
6 high speeds, and our vehicles need to be
7 maintained at a level that reflects that

8 dynam ic. BCI i nvesti gators are operati ng
9 vehi cles that are greater i n age and wi th
10 higher mi leages than the State Pol ice has i n
11 the past 36 years. There are approxi mately
12 1172 vehi cles i n the BCI fleet. Over hal f of
13 our fleet has over 105,000 to 211,000 mi les.

14 I have provided you a spreadsheet of
15 the mi leage of the vehi cles, and that is as
16 of two weeks ago. They are the most current
17 numbers that are avai lable.

18 I can tell you stories of rotted-out
19 holes i n floorboards, wheels falli ng off
20 vehi cles, brakes faili ng because of
21 rotted-out brake li nes, roofs bei ng replaced,
22 and a host of other i ssues relati ng to rot
23 and damage. And there' s vehi cles that we
24 have replaced motors i n more than once.

♀

418

1 I want to explai n to you, on
2 January 6th of thi s year a BCI i nvesti gator
3 wi th 16 years of experi ence was operati ng a
4 vehi cle, hi s BCI vehi cle, traveli ng down a
5 mountai n road i n Waverly, New York. The
6 brakes on hi s vehi cle complet ely fail ed
7 hal fway down the mountai n. The vehi cle that
8 I am referri ng to was 10 years old and had
9 172,993 mi les on that pol ice vehi cle.

10 The road where thi s occurred was a
11 steep downhill secti on of road that comes to
12 an end i n a T i ntersecti on of the vi llage of
13 Waverly. Fortunate ly, our i nvesti gator who

14 was operating this vehicle was familiar with
15 this road and because -- as he was traveling
16 down this mountain road without any brakes,
17 he knew that he had two intersections to go
18 to before he came to this T intersection.

19 Luckily, he made it through both of
20 those intersections without colliding with
21 any vehicles or pedestrians. The
22 investigator was finally forced to use the
23 transmission and the emergency brake on his
24 vehicle to make it come to a stop just prior

♀

419

1 to where it would have crashed into a
2 building at that T intersection. Only the
3 skill of our investigator and a good amount
4 of luck prevented a catastrophic accident
5 that day.

6 Unbelievably, two days later, a BCI
7 lieutenant was operating a BCI vehicle with
8 over 160,000 miles on it on the New York
9 State Thruway when he had a complete brake
10 failure, for the same reason. Both of these
11 vehicles' brake failures were due to
12 rotted-out, corroded brake lines.

13 Now, I've attached to my testimony
14 package photos of the undercarriage of the
15 BCI vehicle involved in the Waverly Mountain
16 incident. The photos clearly show a
17 disturbing amount of corrosion, especially
18 along the brake lines.

19 So mileage is not the only factor in

20 determining vehicle serviceability; the age
21 of the vehicle also has to be considered. We
22 have 10-year-old vehicles in our fleet.
23 These vehicles are rotting from all that time
24 in the corrosive atmosphere of upstate New

♀

420

1 York and -- excuse me -- the entire New York
2 State area through the winters.

3 What kind of calamity would we cause
4 on an interstate highway when one of our
5 vehicles loses its brakes or a wheel falls
6 completely off? The public expects the
7 New York State Police to make operating on
8 New York State's highways safer, but in those
9 two instances that I just explained to you,
10 ladies and gentlemen, we're actually making
11 the roadways more dangerous with vehicles
12 that should not be on that road.

13 And I can't underscore enough the poor
14 condition of the BCI fleet. A point that
15 needs pondering is what amount of money is a
16 life worth. And I ask you if that was your
17 family walking along the village streets in
18 Waverly that afternoon or driving down the
19 Thruway that afternoon, what that would be
20 worth to you.

21 I find it perplexing that the BCI does
22 not benefit from the fruits of their labor,
23 and that the seized assets that I spoke
24 about, millions of dollars each year, go into

♀

421

1 the state General Fund while the BCI is left
2 to plead for equipment and vehicle
3 improvements that would afford us a much
4 safer work environment. And I'm here today
5 to ask you what can we do to make the
6 budget-makers understand that police vehicles
7 need to be maintained at the highest levels,
8 and that the interest of public safety
9 demands that.

10 Now, I've provided you with a
11 spreadsheet of our vehicles, and that's as of
12 February 10th of this year. The average
13 replacement cost for a BCI vehicle is \$18,000
14 to \$19,000 apiece. If you notice, in 2005,
15 back then we were replacing vehicles with
16 100,000 to 125,000 miles. In that year the
17 BCI got 450 vehicles replaced. The next
18 year, in 2006, 300. In 2007, down to 225.
19 In 2008, down to 150. In 2009, none. In
20 2010, none. In 2011, none. And in 2012,
21 none.

22 We went four years without a new
23 vehicle in our fleet. And because of that,
24 well, in 2013 they allowed us 80 new

♀

422

1 vehicles, and last year we got 165 new
2 vehicles. But it hasn't touched the problem.
3 There's 585 vehicles in the BCI fleet with
4 over 105,000 miles. That's 50 percent of our
5 BCI fleet. There's 162 vehicles with 105,000
6 to 120,000 miles. There's 159 with 120,000

7 to 135,000. There's 127 with 135,000 to
8 150,000. And most shocki ngly, there's
9 137 vehi cles wi th 150,000 to 211,000 mi les on
10 poli ce vehi cles.

11 Now, thi s year the di visi on i s hopi ng
12 to purchase 185 vehi cles for the BCI. That
13 wi ll leave us wi th at least 400 BCI vehi cles
14 that have over 105,000 mi les. One of my
15 contact s i s a long-ti me employ ee of the
16 di visi on, and he' s been i nvol ved wi th the
17 fleet for years, and he sai d thi s i s the
18 worst condi ti on that the State Poli ce fleet
19 has been i n i n 36 years.

20 I don' t know i f you' re aware of thi s,
21 but i n 2013, OGS contract ed wi th the Mercury
22 Associ ates Group to conduct a study of al l
23 New York State agenci es' fleets i n order to
24 ascertain ri ght fleet si zi ng as wel l as

♀ 423

1 appropri ate li fe cycl e of fleet vehi cles i n
2 the agenci es' fleets. I' d li ke to know what
3 the resul ts of that study were.

4 That study cost the state hundreds and
5 hundreds of thousands of doll ars, and my
6 source s clai m that the study recommend ed that
7 the li fe cycl e of a fleet vehi cle, before i t
8 becom es a li abi li ty, shoul d be no ol der than
9 fi ve years or have 125,000 mi les on i t. And
10 that' s for ci vi li an fleet vehi cles. We' re
11 not talki ng about poli ce fleet vehi cles.

12 I' d li ke to know why the Di visi on of

13 Budget in this state fails to recognize these
14 recommendations, especially in the realm of
15 State Police vehicles.

16 Current maintenance costs for the
17 State Police fleet are astronomical. The
18 State Police is spending an average of
19 \$750,000 a month and will soon be reaching
20 \$1 million a month in vehicle repairs. These
21 repair costs are double of what we used to
22 spend on a vehicle when we replaced it by
23 125,000 miles.

24 Vehicles with over 125,000 miles have

♀ 424

1 so much repair costs in them, you could have
2 replaced them with a new vehicle. I can tell
3 you stories of vehicles with over 125,000
4 miles that we put \$10,000, \$15,000, \$20,000
5 into in repairs. Newer cars are much
6 cheaper, and they have virtually little or no
7 maintenance costs until the vehicles reaches
8 60,000 miles.

9 I don't understand why we can't
10 consider leasing BCI vehicles. These are
11 unmarked vehicles, they can be resold, traded
12 in on a lease. There is no state contract
13 for leasing that I'm aware of.

14 You heard earlier in the testimony --
15 and, Senator Gallivan, you asked the
16 superintendent about \$18 million,
17 \$18.5 million appropriated for vehicles and
18 equipment. Well, only \$14.5 million is going

19 to be allocated for the vehicles. The rest
20 will be for equipment.

21 They need \$20 million for vehicles
22 this year to bring us up to the 125,000 mark
23 for the entire fleet. They need another
24 \$4.5 million in their budget just for

♀

425

1 vehi cl es.

2 SENATOR FLANAGAN: Mr. Kayser, I would
3 ask you respectfully if you could wrap up,
4 because we have about twenty other speakers.
5 And Senator DeFrancisco, if he were here, the
6 clock stopped --

7 MR. KAYSER: I'm sorry.

8 SENATOR FLANAGAN: -- a good six or
9 seven minutes ago.

10 MR. KAYSER: Sorry. I'm an advocate
11 for our members, and I can't tell you how
12 much I fear that one of our members is going
13 to be involved in a catastrophic accident in
14 a vehicle that shouldn't be on the road.

15 I apologize, I become --

16 SENATOR FLANAGAN: You don't need to
17 apologize.

18 MR. KAYSER: -- too emotionally
19 involved. I'm sorry.

20 SENATOR FLANAGAN: You've made your
21 points concisely and sincerely.

22 So Senator Gallivan.

23 SENATOR GALLIVAN: Thanks, Chairman.

24 Thank you, President Kayser, for your

♀

426

1 testimony.

2 I want to follow up on the vehi cles,
3 and you j ust talked about the budget
4 proposal .

5 MR. KAYSER: Yes.

6 SENATOR GALLI VAN: Do you know, is
7 there any di sti ncti on in the budget proposal
8 for the purchase of BCI versus uni form
9 vehi cles? Or is that j ust a lump sum?

10 MR. KAYSER: No, that' s a lump sum.
11 And I' m told that the di visi on plans on
12 replaci ng 165 BCI vehi cles in that
13 \$14.5 mi lli on. I don' t know how many
14 uni form-force vehi cles that wi ll be.

15 SENATOR GALLI VAN: I know you have
16 given us a breakdown, but in your opi ni on --
17 so that wou ld be, what, roughl y 10 to
18 15 percent of the fleet bei ng replac ed?

19 MR. KAYSER: I wou ld -- I don' t have
20 the math in front of me.

21 SENATOR GALLI VAN: I thi nk your chart,
22 I thi nk, provi ded that there was li ke 1100 or
23 somethi ng vehi cles.

24 MR. KAYSER: It' s 1172 BCI vehi cles.

♀

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1 SENATOR GALLI VAN: Cl earl y your
2 testi mony is you beli eve that' s i nsuffi ci ent.
3 How much addi ti onal fundi ng wou ld you thi nk
4 wou ld be needed to make your fleet safe and

5 adequate for the force?

6 MR. KAYSER: Well, the entire division
7 fleet would be \$4.5 million. I haven't
8 broken it down just to BCI cars, but you can
9 see on that spreadsheet how many cars we need
10 to get down below 125,000.

11 SENATOR GALLIVAN: That's good. Thank
12 you.

13 Thank you, Chairman.

14 SENATOR FLANAGAN: Thank you,
15 Senator Gallivan.

16 Assemblyman Lentol, and then Senator
17 Nozzolio.

18 ASSEMBLYMAN LENTOL: Thank you, Jeff,
19 for the testimony. I have two questions.

20 First of all, do you maintain your own
21 fleet or is it -- in-house or somewhere else?

22 MR. KAYSER: No, for the most part
23 it's outsourced to local garages.

24 ASSEMBLYMAN LENTOL: Okay.

♀

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1 MR. KAYSER: Some vehicles that are in
2 our troop headquarters are maintained at
3 those troop facilities, but most of the
4 vehicles are in outlying areas and they're
5 maintained by outside garages and service
6 centers.

7 ASSEMBLYMAN LENTOL: Second question.
8 I can't understand for the life of me why
9 forfeiture funds cannot be used to defray the
10 costs to purchase vehicles or to repair them.

11 This is an appropriate use of forfeiture
12 funds and probably what it was designed for
13 in the first place.

14 MR. KAYSER: Oh, I would agree. I
15 can't dispute that fact.

16 ASSEMBLYMAN LENTOL: Thank you.

17 SENATOR FLANAGAN: Thank you,
18 Assemblyman.

19 Senator Nozzolito.

20 SENATOR NOZZOLITO: Thank you,
21 Mr. Chairman.

22 Jeff, always good to see you.

23 MR. KAYSER: Thank you, Senator.

24 SENATOR NOZZOLITO: You've got a lot of

♀

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1 passion on this issue and did a lot of
2 homework. I looked at your photos while you
3 were discussing this.

4 MR. KAYSER: I'm an investigator.

5 (Laughter.)

6 SENATOR NOZZOLITO: I have driven some
7 clunkers in my time, and these certainly
8 rival the worst that I've ever had to drive.
9 I guess the questions that we raise to you
10 are, are these vehicles inspected on a
11 regular basis?

12 MR. KAYSER: Yes, they are.

13 SENATOR NOZZOLITO: Then how did that
14 brake failure occur on an inspected vehicle?
15 Really, I'm not just talking about the
16 initial inspection which is required for

17 registration, but I'm not sure how, if the
18 State Police or other state service has to
19 comply with a normal everyday inspection
20 process at least once a year, I would think
21 for something as important as the security of
22 your State Police force you'd have vehicles
23 inspected on a regular basis.

24 Does that take place?

♀

430

1 MR. KAYSER: Yes, but by outsourced
2 agencies, for the most -- outsourced service
3 centers, for the most part.

4 Years ago we had more mechanics
5 working -- civilian mechanics for the State
6 Police. The civilian force is down, just as
7 the sworn force is, so they outsource much
8 more repair work now than they ever did in
9 the past. Our State Police mechanics are
10 just trying to cover the best that they can,
11 setting vehicles up. They can't repair all
12 the vehicles that we have.

13 SENATOR NOZZOLIO: Well, that gets to
14 Senator Gallivan's point raised to me, it was
15 mentioned why aren't we leasing these
16 vehicles as opposed to owning them? I
17 thought it was security-based, but if we're
18 outsourcing the maintenance of the vehicle --
19 which I understand, that's not a -- that
20 could be a very prudent thing to do. But at
21 the same token, why wouldn't it be the
22 smarter thing to do, then, to lease?

23 Although the mileage, I would assume, is
24 pretty high; that might be a chiller.

♀

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1 Your comments are very well taken to
2 us. Your dedication and passion on behalf of
3 your members is significant and well-known.
4 We look forward to working with you over the
5 upcoming weeks.

6 It's very difficult for the
7 Legislature to add a major fleet -- enough
8 vehicles that would enhance the State Police
9 fleet, if you will. You're talking hundreds
10 of vehicles, really, that you are indicating
11 today are deficient. That's something we
12 certainly will continue to understand the
13 concern.

14 Just one last question I have, Jeff.
15 We mentioned this to our superintendent, the
16 officers, now BCI. We have an attrition
17 issue based on demographics in the
18 State Police. Would you address that a
19 little more?

20 MR. KAYSER: Well, the attrition
21 issue, the superintendent hit on it
22 perfectly. In the '80s we had a big push to
23 increase more members. It was the crack
24 epidemic, we needed more members in the

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1 field, so in the '80s we took on a lot of
2 members. I've got 28 1/2 years on the job
3 and, you know, those members are retiring and

4 we have to keep up with the attrition. And
5 that's the problem, it was big hiring years
6 in the '80s.

7 SENATOR NOZZOLIO: Well, thank you for
8 your testimony, bringing these issues up.

9 MR. KAYSER: Thank you, Senator.

10 SENATOR FLANAGAN: Mr. Kaiser, thank
11 you.

12 MR. KAYSER: Sorry I took so long.
13 Thank you very much for your patience.

14 SENATOR FLANAGAN: No, no, don't
15 apologize.

16 Next, the PBA Association of New York
17 State.

18 MR. VILAR: Good afternoon,
19 Mr. Chairman and members of the legislative
20 budget committee. My name is Manuel Vilar,
21 and I'm president --

22 SENATOR FLANAGAN: Pull that mic in a
23 little bit, please. Just pull -- thank you.

24 MR. VILAR: My name is Manuel Vilar.

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1 I'm president of the Police Benevolent
2 Association of New York State. I'm also a
3 sergeant in the New York State Park Police
4 out of Long Island.

5 Next to me is Pete Barry, PBA vice
6 president and a State University police
7 officer at SUNY Albany.

8 On behalf of the Police Benevolent
9 Association of New York State and its

10 1,200-plus uni formed police officers, we want
11 to thank you for this opportunity to testify
12 this afternoon.

13 The Police Benevolent Association of
14 New York State, PBANYS, is the certified
15 collective bargaining union representing
16 police officers assigned to the State
17 University Police, the Environmental
18 Conservation Police, the State Park Police,
19 and the State Forest Rangers. At this time
20 I'd like to turn the floor over to Vice
21 President Barry.

22 MR. BARRY: Thank you. We are here
23 today to discuss three issues relating to the
24 protection of the citizens we serve in

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434

1 New York.

2 First and foremost, staffing defi cits
3 impact each unit of the PBA and their ability
4 to best meet the needs of the general public
5 and their fellow officers. Nowhere is this
6 more evident than on State University
7 campuses.

8 We respectfully request that the
9 Legislature include Senator Robach's bill
10 S3221 and Assemblyman Abbate's bill A4519 and
11 the appropriate funding in the 2015-2016
12 budget. This legislation would allow State
13 University police officers the option of
14 transferring into the New York State Police
15 and Fire Retirement System from the New York

16 State Employees Retirement System. Five
17 hundred and sixty-three police departments
18 have a police pension and only one, the
19 University Police, does not.

20 The pension disparity between
21 University Police and other police agencies
22 has created a serious turnover and stability
23 issue for the State University System. It is
24 a simple fact that campuses are much safer

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1 with a stable police force. SUNY's officers
2 are highly and uniquely trained for their
3 environment.

4 With the passage of the Tier 6
5 retirement bill, all newly hired State
6 University police officers are required to
7 work until age 63, at least twice as long as
8 officers in all other departments. This
9 would require a new 21-year-old SUNY cop to
10 work 42 years in a community of students in
11 their teens and early twenties. All other
12 police officers in the P&F were exempted from
13 this Tier 6 change.

14 Tier 6 also changed death and
15 disability benefits for SUNY police officers,
16 creating an indefensible and highly offensive
17 structure of vastly inferior benefits for one
18 department of police officers in New York
19 State.

20 The state clearly believes in the
21 strength and ability of our men and women.

22 In recent years you've added many new
23 responsibilities to the force, including the
24 creation of START-UP, an increased role in

♀ 436

1 fighting the heroin epidemic, new sexual
2 assault reporting measures and rules,
3 mandatory active shooter training, and the
4 deployment of officers to respond to natural
5 disasters.

6 We strive for diversity in our ranks
7 so our force reflects the population we
8 serve. However, young State University
9 police officers are receiving training and
10 experience at SUNY only to leave that
11 department for a different state or local
12 police agency offering the P&F plan. The
13 fact is many police departments are seeking
14 qualified women and minority officers, and
15 SUNY police officers are often targeted for
16 recruitment by municipalities because they
17 are well-trained and disgruntled by the lack
18 of retirement parity with their fellow
19 officers.

20 We have become a training ground for
21 other departments, and SUNY is eating the
22 cost. It is a ridiculous waste of resources.
23 And as the economy improves, municipal police
24 agencies are seeing their hiring budgets

♀ 437

1 increase. Conversely, SUNY police chiefs

2 have indicated that they expect to see the
3 number of resignations from SUNY police
4 officers to increase. After all, 95 percent
5 of municipal police departments offer a
6 20-year plan with appropriate disability
7 benefits, and the remaining 5 percent offer a
8 25-year plan.

9 Attrition rates on some campuses top
10 100 percent. The situation has gotten so bad
11 that SUNY administration officials are using
12 the term "critical" to describe police
13 staffing. Those same officials estimate that
14 it costs between \$85,000 and \$100,000 to
15 properly recruit and train police officers
16 for duty. And this figure does not include
17 the intangible cost of losing continuity and
18 valuable experience. According to SUNY
19 officials, the system has lost well over
20 \$5 million since 2008, and they project to
21 lose \$10 million over the next five years.

22 It is significant that this issue has
23 long received the support of both labor and
24 management. Chancellor Zimpher's own written

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438

1 budget testimony includes the need for
2 pension equity and calls for the Legislature
3 to help her system compete with other police
4 entities. Both sides recognize the problem
5 the SUNY pension disparity causes with police
6 morale and campus safety, and the ultimate
7 fiscal implications caused by the turnover

8 need to be dealt with immediately.
9 The inclusion of parity legislation
10 for SUNY police officers in the budget would
11 put an end to an enormous amount of fiscal
12 waste at an already underfunded SUNY system.
13 For all those above reasons, I strongly urge
14 you to include this legislation in an
15 Article VII budget bill and add it to the
16 funding in the final enacted budget.

17 I will turn it back over to
18 President Vilar to present the rest of this
19 testimony.

20 Thank you.

21 MR. VILAR: The second item we want to
22 discuss is the outdated radio system used by
23 uniformed officers at the Department of
24 Environmental Conservation.

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439

1 Environmental conservation officers
2 and forest rangers protect our citizens as
3 well as public lands and the overall
4 environment. We respond to levels of
5 environmental complaints, crises, natural
6 disasters, fires, citizens in distress. We
7 protect natural resources, whether it's
8 investigating a commercial enterprise dumping
9 tons of toxic waste into our waterways, or a
10 lone poacher killing a protected species of
11 animal. We respond to plane crashes in
12 remote areas, hikers stranded on mountains,
13 and people who have fallen through the ice on

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waterways.
Forest rangers and environmental conservation Officers are forced to use a variety of outdated, dysfunctional equipment every day due to budget cuts and flat spending. A prime example of this is our radio system, which has not been upgraded in decades and is completely useless when trying to communicate with other police, fire and rescue entities.

The DEC has for many years maintained

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communications systems composed of radio towers, base stations, mobile and portable radios. DEC emergency response personnel and the public depend on this system to allow for the timely dispatch of resources and the exchange of information during environment and manmade disasters, searches, rescues and law enforcement responses throughout the state.

Unfortunately, the DEC continues to operate an analog radio system, and its components, some of which date back to the 1970s, are so obsolete they are incompatible with THE newer digital systems which are being used today by most local law enforcement. Today, DEC emergency responders are frequently unable to communicate with local or statewide emergency response organizations or even with their own agency's

20 central di spatch.

21 Our officers often spend entire shifts
22 in remote areas such as the Adirondack Park,
23 and they are typically alone while on duty.
24 In emergencies, they have to resort to using

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1 their personal cellphones to relay important
2 information or create communication chains
3 across a region in order to broadcast
4 important messages from an emergency site to
5 command. As you know, cell service is not
6 available in every part of the state, and the
7 other option is an enormous waste of talent
8 and resources.

9 The issue not only creates safety
10 concerns for our officers, but for the
11 general public as well. Routinely,
12 environmental conservation officers and
13 forest rangers miss calls for assistance and
14 backup because they cannot receive
15 transmissions from municipal PDs or the State
16 Police. Recently our officers missed calls
17 for domestic disputes and an officer-related
18 shooting minutes away from where they were
19 working. This is unacceptable in this day
20 and age of advanced technology.

21 We are asking for a one-time capital
22 grant to the Department of Environmental
23 Conservation of \$6.5 million for a radio
24 system upgrade. This is the perfect use of

♀

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1 surplus funds.

2 Our third and final item we would like
3 to discuss with you today concerns the lack
4 of adequate patrol vehicles for members of
5 the New York State Park Police. We are
6 currently in need of everything from police
7 sedans to trailers.

8 The 265 members of the New York State
9 Park Police are the first responders
10 entrusted with the protection of over
11 61 million visitors each year to New York
12 State parks and campgrounds as well as
13 historic sites, wilderness areas, waterways,
14 snowmobile and recreational trails. We can
15 be found in every corner of the state, from
16 Niagara Falls to Montauk Point, and are
17 highly trained police professionals with
18 unique skills and duties.

19 State Park Police officers protect
20 lives and natural resources on public and
21 private lands. We police criminal activity,
22 are the first responders during times of
23 emergencies and extreme need such as natural
24 disasters like Superstorm Sandy, and the

♀

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1 recent blizzards or the constant threat of
2 terrorism in state parks attended by millions
3 of people. State Park Police often make
4 courageous rescues in the ocean waters off
5 Long Island, on the brink of Niagara Falls,
6 the gorges of Genesee, or a snowy

7 mountainside snowmobile trail.

8 In order to continue to conduct these
9 patrols and provide these lifesaving
10 services, we must replace our aging patrol
11 vehicles and transportation equipment. As
12 with DEC, years of cuts and flat budgets at
13 OPR have created conditions ripe for failure
14 that could ultimately cost lives.

15 Currently, State Park Police members
16 have operationally unsafe vehicles. And they
17 need modern transportation equipment so they
18 can respond expeditiously to the needs of the
19 public. We are in dire need of police
20 sedans, four wheel drives, snowmobiles,
21 all-terrain vehicles, boats, bicycles, and
22 transportation trailers to patrol and provide
23 the rescue services in areas that are
24 normally inaccessible to normal vehicles.

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444

1 The Office of Parks and Recreation has
2 indicated that they anticipate purchasing law
3 enforcement vehicles out of the State Parks
4 Infrastructure Fund in the capital budget.
5 However, it remains unclear how much will be
6 designated to law enforcement vehicles at
7 this time. We ask the Legislature to ensure
8 that the final enacted budget contains an
9 appropriation of \$2.2 million dedicated to
10 the purchase of law enforcement
11 transportation vehicles and the equipment
12 this year.

13 We again thank you for this
14 opportunity to speak today, and we're happy
15 to take your questions.

16 SENATOR FLANAGAN: Thank you very
17 much.

18 Senator Gallivan.

19 SENATOR GALLIVAN: Thank you,
20 Chairman.

21 Thank you, gentlemen, for your
22 testimony.

23 I only have one question. Assuming,
24 Mr. Barry, that --

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1 MR. BARRY: I'm sorry, sir?

2 SENATOR GALLIVAN: I'm assuming you'll
3 be the one to answer this. It has to do with
4 the pension proposal.

5 I know that we have -- in the past,
6 the Senate and the Assembly has passed this
7 proposal, but it has yet to be signed into
8 law. Nonetheless, you made a compelling case
9 for this proposal, not just in terms of
10 public safety and stability to the agency and
11 your officers but the fiscal impact, the
12 negative fiscal impact on the SUNY budget of
13 the various campuses.

14 So here's my question. Your testimony
15 indicates that the SUNY system has lost over
16 \$5 million because of attrition since 2008
17 and is projected to lose another \$10 million
18 in the next five years. What is the cost of

19 the pension proposal?

20 MR. BARRY: There's a first-year cost
21 of approximately \$2.4 million. There's a
22 past-service contribution cost of 9.7. This
23 is decreased from last year's Comptroller's
24 Office fiscal number.

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1 But as I've described in the past,
2 that's a phantom number. Essentially there's
3 a good number of members in the department
4 that are going to stay in the current system.
5 They've locked so many years in with SUNY
6 that they're going to benefit financially by
7 staying in the ERS, so they're going to stay.
8 So after the first year, you're going to see
9 that number drop exponentially.

10 SENATOR GALLIVAN: Do you have any
11 projections for the annual costs going
12 forward?

13 MR. BARRY: That would be impossible
14 to get a finite number on until after the --

15 SENATOR GALLIVAN: Approximate?

16 MR. BARRY: The first year, I'm
17 looking at \$2.4 million. Beyond that, if you
18 just say that half the people don't go into
19 that, I guess you can cut that 9.7 in half.

20 And then there's also other numbers,
21 just over time, to fill up slots that have
22 been vacated for people who have gone to
23 other departments. That has to be filled
24 with overtime. And a lot of times that's a

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1 detriment to the department, because if an
2 officer leaves, you have to train, recruit.
3 It takes about nine months.

4 SENATOR GALLIVAN: So without knowing
5 exactly, it's fair to say that in addition to
6 the campus and safety benefits, the officers'
7 safety benefits, the morale benefits --

8 MR. BARRY: Absolutely.

9 SENATOR GALLIVAN: -- there will be
10 fiscal benefits to the SUNY system?

11 MR. BARRY: To sum it up, to not pass
12 this is going to cost the state money. If
13 you pass this --

14 SENATOR GALLIVAN: So the answer's yes
15 to my question, right?

16 MR. BARRY: If you pass this bill, the
17 state will save money, and all those other
18 benefits that go along with it.

19 SENATOR GALLIVAN: So the answer's
20 yes.

21 MR. BARRY: Yes.

22 SENATOR GALLIVAN: Thank you.

23 Thank you, Chairman.

24 SENATOR FLANAGAN: Senator Gallivan.

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1 Senator Savino.

2 SENATOR SAVINO: Thank you.

3 Thank you to both of you. I have to
4 tell you, after listening to all of you

5 testify about the condition of your vehicles,
6 I'm getting -- I'm getting a little afraid to
7 be out there on the Thruway with you guys.

8 In all seriousness, though, one of the
9 issues that the Governor has talked about
10 this year is reducing sexual assault on
11 campuses. And I'm wondering has there been
12 any training, any additional supports offered
13 to the SUNY campus police to help deal with
14 this problem?

15 MR. BARRY: Yeah, there's a limited
16 amount of training, approximately six or
17 eight hours. I don't know that all people
18 have done it. I received it about three
19 weeks ago, so I don't know if it's flushed
20 through the SUNY system altogether.

21 SENATOR SAVINO: Mmm-hmm. What
22 exactly are they -- what does the training
23 consist of?

24 MR. BARRY: It's statistics of --

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1 these are being reported, how many are
2 actually being reported. We deal -- we get
3 training in sexual assault on how to deal
4 with empowering victims upon getting a call.
5 Sometimes we even get that in service
6 training in the academy, or in service
7 training after the academy.

8 But I couldn't expand upon that
9 initial training. If I would have known, I
10 would have brought the --

11 SENATOR SAVINO: I'm just curious
12 because I noticed he did a press conference
13 on it yesterday, announcing again that we're
14 going to do everything possible to reduce
15 sexual assault on campus, and obviously
16 that's something we all support.

17 But beyond reporting it when it
18 actually occurs -- because that's been one of
19 the problems, where campuses have not wanted
20 to make reporting to the local police
21 department. That's going to be a
22 requirement. But how do we prevent it? I'm
23 curious as to whether or not that's part of
24 the training.

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1 Is there a role for the SUNY campus
2 police to play in raising awareness of what's
3 inappropriate or appropriate behavior, what
4 they should look out for, and how to maybe
5 avoid sexual assault as opposed to just
6 reporting it when it occurs?

7 MR. BARRY: Senator, about four or
8 five years ago I testified before you and you
9 asked me some questions -- it was on a bill
10 that would consolidate SUNY police
11 departments into one department. So
12 unfortunately that never came to fruition, so
13 I couldn't talk for other SUNY departments.

14 I know that my department, when you
15 get -- and I work at SUNY Albany -- the
16 sexual assaults are dealt with a lot with the

17 DA's office. So if you get a sexual assault
18 call and it's founded, you -- the officer's
19 going to rely on their initial training and
20 then, beyond that, to get either to the
21 hospital or beyond that, to make a case, the
22 DA's office has to come in and debrief the
23 victim.

24 But I don't have an answer for you on

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1 a macro level within SUNY, because we are 29
2 different campuses.

3 SENATOR SAVINO: Right. Thank you.

4 MR. BARRY: My pleasure.

5 SENATOR FLANAGAN: Thank you, Senator
6 Savi no.

7 Gentlemen, thank you very much. We
8 appreciate your patience.

9 MR. BARRY: Thank you, Senator.

10 MR. VILAR: Thank you.

11 SENATOR FLANAGAN: All right. Next,
12 Correctional Association of New York -- I'm
13 going to try and do this right. Is it
14 Soffiyah Elijah?

15 MS. ELIJAH: Yes.

16 SENATOR FLANAGAN: Okay. Good
17 afternoon.

18 MS. ELIJAH: Good afternoon. Or I
19 guess it's almost good evening.

20 Good evening. My name is Soffiyah
21 Elijah, and I'm the executive director of the
22 Correctional Association of New York and an

23 attorney who previously worked in Family
24 Court and Criminal Court in New York State.

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1 I also served as cochair of the Governor's
2 Commission on Youth, Public Safety and
3 Justice. Thank you for the opportunity to
4 address you today.

5 The Correctional Association is a
6 170-year-old nonprofit organization granted
7 unique authority by the New York State
8 Legislature to inspect prisons and report its
9 findings and recommendations to the
10 Legislature, the public and the press.

11 Thank you, Chairman Farrell, Chairman
12 DeFrancisco, and members of the Assembly Ways
13 and Means and Senate Finance Committees for
14 this opportunity. My testimony will focus on
15 the portions of the budget impacting the
16 treatment of young people in New York's
17 justice system. My written testimony
18 provides separate analysis related to the
19 DOCCS proposed budget.

20 As you know, New York is one of two
21 states that automatically prosecutes 16- and
22 17-year-olds as adults in the criminal
23 justice system. New York also houses all 16-
24 and 17-year-olds in adult jails and prisons

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1 if they've been prosecuted as adults
2 initially. In 2013 there were over 33,000
3 arrests of 16- and 17-year-olds in New York

4 State. New York's current law is not smart
5 on crime, unfortunately. Scientific evidence
6 has shown us, and other states' experiences
7 have proven, that prosecuting children as
8 adults increases crime, including violent
9 crime. The adult criminal justice system is
10 simply not equipped with the kinds of
11 evidence-based interventions proven to work.

12 Children prosecuted as adults can
13 carry permanent criminal records, forever
14 impacting their ability to obtain stable
15 housing, employment, and education, each of
16 which are key to successful community
17 re-entry. And all of these harms are
18 disproportionately borne by black and Latino
19 children.

20 The Governor's Commission on Youth,
21 Public Safety, and Justice included
22 representatives from law enforcement,
23 advocates, probation, the court system, the
24 service provider field, and two district

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1 attorneys. We were tasked with reviewing the
2 science on what works and proposing concrete,
3 actionable recommendations to improve public
4 safety and outcomes for young people in
5 New York State's justice system.

6 There are many models for raising a
7 state's age of criminal responsibility. The
8 commission carefully studied all of them and
9 recommended the one that seemed best for

10 public policy for New York State. The
11 recommendations of the commission were
12 unanimous, which speaks to their balanced
13 approach. The system reform that was
14 proposed is designed to maximize positive
15 outcomes and change young people's behaviors
16 and life trajectories. It also is designed
17 to ensure that tax dollars are well spent.

18 In sum, the recommendations which have
19 generally been adopted by the Governor in his
20 proposed Executive Budget would move most,
21 but not all, cases of 16- and 17-year-olds to
22 Family Court. Certain serious violent cases
23 would remain in adult criminal court, where
24 they would be heard in specialized youth

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1 parts by judges who have received special
2 training in working with young people.

3 Concrete proposals included in the
4 budget would also improve the Family Court
5 system so that they can best match youth to
6 appropriate services and interventions.
7 Under the recommendations of the commission,
8 no youth arrested before age 18 would be
9 housed in an adult jail or prison, a change
10 that would both keep children safe and
11 improve public safety by reducing the risk of
12 recidivism.

13 The commission's recommendations were
14 pragmatic, middle-of-the-road, and
15 bipartisan. There is no magic potion for

16 public safety, but there is a lot of solid
17 research about what works, and that research
18 drove the findings of the commission.

19 Taken together, the full set of
20 proposals based on the commission's research
21 and included in the Executive Budget lays out
22 a roadmap to make our justice system for
23 youth more effective and cost-efficient.
24 Passage of all pieces of the proposal is

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1 critical to success.

2 I will now address some of the
3 Executive Budget's proposals with additional
4 detail.

5 First, the Executive Budget proposal
6 would age the age of criminal responsibility
7 to 17-year-olds in 2017 and 18-year-olds in
8 2018. This phased implementation will allow
9 for an initial integration of the smaller
10 group of 16-year-olds into the Family Court
11 system before full implementation in January
12 of 2018. This type of phased-in approach was
13 used successfully in Connecticut.

14 The proposed Executive Budget would
15 move youth under 18 who are charged with all
16 misdemeanors and most non-violent felonies
17 into Family Court. The proposed Executive
18 Budget does not raise the age for all youth.
19 Youth charged with more serious violent
20 crimes will continue to have their cases
21 filed in adult criminal court.

22 Moving the bulk of youth cases to
23 Family Court is good for public safety. If
24 New York were to implement a range of

♀ 457

1 evidence-based services currently used in
2 juvenile justice for its population of 16-
3 and 17-year-olds in the adult system, the
4 state is estimated to eliminate between 1,500
5 and 2,400 crime victimizations every five
6 years.

7 A strong body of scientific research
8 proves that prosecuting youth as adults
9 increases recidivism, including for violent
10 crime. A rigorous study compared New York
11 and New Jersey youth charged with serious
12 offenses. The New York cases, which
13 originated in adult criminal court, and the
14 New Jersey cases, which originated in
15 juvenile court, were compared. The research
16 found that New York youth were 100 percent
17 more likely to be rearrested for a violent
18 offense and 47 percent more likely to be
19 rearrested for a property offense.

20 When Connecticut moved the majority of
21 its cases for 16- and 17-year-olds out of
22 adult court, arrests plummeted, including for
23 violent crime.

24 While not without flaw, New York

♀ 458

1 State's youth justice system currently

2 includes a wide range of appropriate tools
3 for effectively and efficiently responding to
4 youth who break the law. The state court
5 system has stated that Family Court is
6 equipped and able to accommodate these new
7 cases, and the proposed Executive Budget
8 would further strengthen the options
9 available in Family Court.

10 Second, the Executive Budget would
11 stop the confinement of youth in adult jails
12 and prisons. The Correctional Association,
13 as the only organization with the legislative
14 authority to visit New York State prisons and
15 monitor conditions, has provided me the
16 opportunity to personally visit DOCCS
17 facilities and witness firsthand the myriad
18 ways in which young people are harmed.

19 And those facilities are highly
20 inappropriate for youth. Children in adult
21 jails are 36 times more likely to commit
22 suicide than children in adult detention
23 facilities, and are at great risk of rape and
24 sexual abuse.

♀

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1 In some although not all adult
2 facilities, children may be placed in
3 solitary confinement, including for months at
4 a time or longer. Solitary confinement has
5 been shown to both cause and exacerbate
6 mental illness in adolescents. Just last
7 week I visited Southport and met a young man

8 who had been incarcerated since he was 16 and
9 he was now 26. Eight of those years he had
10 spent in solitary confinement.

11 SENATOR FLANAGAN: Ms. Elijah, you're
12 coming up relatively close to your time. You
13 have very extensive testimony, so if you can
14 kind of just quickly summarize the balance,
15 that would be --

16 MS. ELIJAH: I can do a quick summary.
17 Please adopt the complete budget that
18 would raise the age of criminal
19 responsibility and the complementary
20 provisions that would make it possible for us
21 to ensure success for our young people and
22 not have them suffer from collateral
23 consequences for their entire lives.

24 Thank you.

♀

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1 SENATOR FLANAGAN: That was so well
2 done I know even Assemblyman O'Donnell will
3 be happy.

4 Senator Montgomery.

5 SENATOR MONTGOMERY: Thank you very
6 much, Soffiyah.

7 I want to just ask you, in terms of
8 your engagement, your involvement on the task
9 force, we can't find anywhere where there is
10 an indication as to how this actually going
11 to work. In other words, is there something
12 that I'm not able to see in your
13 recommendations that relates to exactly how

14 you envision the state actually implementing
15 this complex new system for young people?

16 MS. ELIJAH: Thank you, Senator.

17 That's very good question, of course.

18 So you will see that there is a
19 one-year planning process before any of the
20 children, starting with the 17-year-olds,
21 would be moved into -- excuse me, the
22 16-year-olds, would be moved into the Family
23 Court system, and that's because there are a
24 lot of moving parts. The Family Court system

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1 is very complex, the adult system is complex,
2 and there's no way to rush in doing this
3 properly.

4 So the recommendation of the
5 commission is to take a full year to actually
6 make sure that all the moving parts fit
7 correctly and that adequate planning is put
8 in place, particularly for the probationary
9 support services that would be available not
10 only for the children in Family Court but
11 also for the young people who would still be
12 prosecuted in adult court. And that will
13 also allow time for OCFS to start looking at
14 what kinds of facilities will be needed and
15 will also give us time to understand what
16 will exactly be the number of young people
17 that will be actually caught in the system.

18 Because as you may have heard me say,
19 Connecticut was expecting a lot more young

20 people to come into their system, and that's
21 not actually what the experience was. We
22 have conservatively looked at the numbers,
23 but we think New York is going to be much
24 better off than even those conservative

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1 numbers we came up with.

2 SENATOR MONTGOMERY: I appreciate
3 that, and I totally agree with you. But you
4 mentioned that you're looking at models, and
5 of course I appreciate that. But you know
6 there's a number of programs that actually
7 work, but they never seem to be at the table
8 when we're discussing what kinds of things,
9 what should we be doing, what should we be
10 strengthening, implementing, working with the
11 people, bringing the people to the table who
12 actually know what to do and they've been
13 successful, they can tell us what we need to
14 be doing.

15 How do we engage those people? How
16 will you include them in this planning
17 process?

18 MS. ELIJAH: Well, many of them were
19 part of the focus groups that we had. We had
20 quite a number of focus groups as we were
21 moving forward to come up with the
22 recommendations that we came up with.

23 SENATOR MONTGOMERY: Okay.

24 MS. ELIJAH: And there's family

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1 support centers that are being recommended to
2 help families throughout this state. Many
3 young people who find themselves engaging
4 with the criminal court system really need
5 supports, and their families need supports.
6 Anyone who has raised a teenager knows that
7 any parent needs supports. But the teenager
8 also does, and we think that that's a very
9 important thing.

10 We looked at a model in Schenectady
11 with their probation department that seems to
12 be working very well; we want to expand that.
13 We also looked at the Missouri model, which
14 is kind of a state-of-the-art goal, and we
15 are looking to try to implement that in
16 New York State. But it will take time.

17 SENATOR MONTGOMERY: Yes, and I
18 appreciate that. I do question using
19 \$12 million for planning. But if you say
20 that's what you absolutely need in order to
21 make it work -- right?

22 MS. ELIJAH: Yes.

23 SENATOR MONTGOMERY: At least I would
24 give you half of that.

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1 But I can tell you right now, before
2 you leave tonight, where half of that
3 \$12 million would make a huge difference in
4 the lives of young people, certainly in my
5 district and I think all over Brooklyn, in
6 many of the communities in Brooklyn. Just so

7 you know how I feel about spending
8 \$12 million for people to sit at the table
9 and plan while we have young people who
10 actually need the support of those services
11 right now, and I can tell you where they are.

12 MS. ELIJAH: I agree with you,
13 Senator.

14 SENATOR MONTGOMERY: Thank you.

15 SENATOR FLANAGAN: Thank you, Senator
16 Montgomery.

17 Senator Krueger.

18 SENATOR KRUEGER: Thank you, and I'm
19 sorry about the time. It doesn't permit us
20 to let you do the whole testimony. And I'm
21 going to ask you a question, not to follow up
22 today but to follow up afterwards. I'm
23 easily findable.

24 You focused your testimony on youth

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1 issues in the prisons, which makes sense
2 given the broad discussions about dramatic
3 changes in our policies. But I'm also very
4 interested in what you have to say about the
5 aging population in our prisons, because I've
6 been reading some federal and national
7 reports showing that beyond a certain date,
8 people who are in prison and get out don't
9 reoffend.

10 And so I have a serious question about
11 whether we are asking the right questions
12 about why we keep people in prisons beyond a

13 certain age. Obviously it depends on the
14 type of crimes they were committing, and
15 obviously with appropriate evaluation. But
16 I'm just wondering whether the Correctional
17 Association is aware of any research on that
18 or whether you've done any yourself.

19 MS. ELIJAH: Well, we've done quite a
20 bit. I couldn't be happier that you asked me
21 that question, in fact.

22 We've been looking at the fact that
23 people, once they -- actually, once people
24 hit around age 40, their likelihood to engage

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1 in criminal activity starts to go down.
2 Recidivism rates also start to go down
3 drastically. And we've found that by
4 age 50 -- and I think if Mr. Annucci was
5 here, he would agree with me, we've had this
6 conversation -- that the population over 50
7 is very unlikely to cause much of any
8 disciplinary problems inside the facilities.

9 So people mature, they kind of age
10 out, and what happens is we find that we're
11 spending a lot of money on people who are not
12 any longer a threat to public safety.

13 So the Correctional Association has
14 been looking at this. In fact, we've hosted
15 a program called RAPP, Release Aging People
16 from Prison, that says that if the risk of
17 reoffending is low, then those people should
18 be released from prison.

19 It would cost the state a lot less
20 money if people were under communi ty
21 supervisi on than if they were incarcerated,
22 because the costs -- and I think Mr. Annucci
23 spoke to this earlier today -- the costs of
24 incarcerating people as they get older, just

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1 because of their medical needs, is much, much
2 higher. We have people in their 80s
3 incarcerated in New York State who pose no
4 risk.

5 So if we start being smarter about the
6 age at which we really take a firm look at
7 releasing people from prison, we would save
8 the state a lot of money, we would not
9 increase any risk to public safety, and it
10 would be the more humane and forward-thi nki ng
11 thing to do.

12 SENATOR KRUEGER: Thank you.

13 SENATOR FLANAGAN: Thank you very
14 much.

15 CHAI RMAN DeFRANCI SCO: Thank you.

16 MS. ELI JAH: Am I done?

17 SENATOR DeFRANCI SCO: You're all set,
18 thank you very much.

19 MS. ELI JAH: Thank you.

20 CHAI RMAN DeFRANCI SCO: And the next
21 speaker is Michael Powers, president of the
22 New York State Correcti onal Offi cers PBA.

23 And while he's coming down, I have
24 some more announcements.

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1 Glenn Lau-Kee, president of the
2 New York State Bar Associati on, has submi tted
3 his testi mony -- so i f you're keepi ng track,
4 that's towards the end of the second page --
5 as has the National Alli ance on Mental
6 Illness, Wendy Burch, executi ve di rector.
7 She's submi tted her testi mony. So some of
8 you have moved up i n the order.

9 Whenever you're ready.

10 MR. POWERS: Thank you.

11 Chair man DeFranci sco and esteemed
12 members of the State Legi slature, I know i t's
13 been a long day for all of you, and I gi ve
14 you my word my testi mony wi ll be bri ef,
15 focusi ng on one i ssue, and I wi ll take up
16 fi ve minutes i n my testi mony.

17 Thank you for provi di ng me the
18 opportuni ty to share the views of the
19 New York State Correcti onal Offi cers and
20 Pol ice Benevol ent Associ ati on, Inc. , commonl y
21 known as NYSCOPBA, on the cri ti cal i ssues
22 associ ated wi th the proposed Executi ve Budget
23 for state fi scal year 2015-2016.

24 My name i s Mi chael B. Powers, and I

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1 have the pri vi lege of servi ng as presi dent of
2 NYSCOPBA. I n that capaci ty, I represent over
3 26,000 of the fi nest, bravest, most dedi cated
4 publ ic servi ants i n New York State. Wi th me

5 today are two of NYSCOPBA's other statewide
6 elected officials, Executive Vice President
7 Tammy Sawchuk and Treasurer John Telisky.
8 Also present are several members of our
9 executive board.

10 Obvious to everyone in this room is
11 the fact that correctional facilities by
12 their very nature are extremely dangerous,
13 not only to the employees working within the
14 prison setting, but also to those
15 incarcerated. What is extremely troubling to
16 me, however, is the fact that correctional
17 facilities in New York State are becoming
18 more dangerous, not less. And this trend is
19 occurring even as the number of offenders in
20 the state correctional facilities declines.

21 It is NYSCOPBA's position that this
22 decline in safety can be reversed with the
23 right investment from the state, and it must
24 be reversed for the well-being of both the

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1 people supervising inmates and for the
2 inmates themselves.

3 The following charts, created with
4 data collected and made publicly available by
5 the Department of Corrections and Community
6 Supervision on their website, illustrates
7 this phenomenon.

8 The first chart illustrates the
9 14.5 percent decline in the number of inmates
10 between 2007 and 2014. With fewer inmates

11 within the state system, a reasonable person
12 might expect the number of assaults to
13 decline accordingly. This has not been the
14 case. As the next chart illustrates, the
15 number of assaults on staff has increased by
16 nearly 34 percent during this period. The
17 increase is especially dramatic over the last
18 two years.

19 The picture does not meaningfully
20 change if we look at assaults by inmates on
21 other inmates. Here you see an increase of
22 more than 25 percent, with the same spike
23 since 2012. The pictures get even more
24 alarming when you put these two phenomena

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1 together. When controlling for the decline
2 in inmate population, the number of inmate
3 assaults on staff has risen more than
4 53 percent during this seven-year period.
5 And it has risen nearly 47 percent when we
6 look at inmates assaulting each other.

7 Regrettably, this disturbing trend
8 shows no sign of abating. In fact, it is
9 getting worse. Through 46 days in 2015,
10 DOCCS reports 114 inmate-on-staff assaults.
11 If this trend continues, there will be
12 904 assaults on staff in 2015, an increase of
13 nearly 21 percent from 2014 and an
14 astonishing increase of more than 72 percent
15 from the low-water mark during this period in
16 2012.

17 Now, some observers might downplay the
18 significance of these trends. After all,
19 they might say, the overwhelming majority of
20 assaults do not result in any injury. What
21 this sentiment does not illustrate, but the
22 graph below does, is the significant increase
23 in the number of injuries resulting from
24 assaults on staff. As this 59 percent

♀ 472

1 increase demonstrates, even at a time of
2 declining inmate population, violence and the
3 consequences of violence are rising at an
4 alarming rate.

5 As we all know, the groups that care
6 about public protection often disagree. They
7 probably disagree on the causes of this
8 increase in violence. But I believe we can
9 all agree that this dramatic and unexpected
10 rise in the amount of violence in New York
11 State correctional facilities must be
12 reversed. And that we must take prudent
13 steps to reverse this trend in this budget.

14 One year ago, NYSCOPBA endured the
15 closure of four correctional facilities. It
16 was able to do so because of the commitment
17 by the Governor that some of the savings from
18 those closures would be used to improve the
19 safety of the facilities that remained open.
20 Unfortunately, as this data shows, that
21 commitment was insufficient.

22 It also appears that the number of

23 training classes held by DOCCS is not keeping
24 up with the increase in attrition as large

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1 numbers of corrections officers hired in the
2 late '80s and early '90s opt for retirement.
3 Some are no doubt doing so because their
4 workplace is becoming more and more violent.

5 NYSCOPBA believes that New Yorkers of
6 all political persuasions agree that
7 corrections officers and the inmates they
8 supervise should be as safe as possible.
9 Clearly that is not happening. We
10 respectfully urge the Legislature to make a
11 prudent reinvestment in the one option proven
12 to improve safety in our correctional system.
13 That option is the addition of 475 fully
14 trained and equipped corrections officers who
15 risk their lives every day to keep New
16 Yorkers safe.

17 I believe the final chart vividly
18 summarizes the state of affairs in New York's
19 correctional facilities. Inmate population
20 and staff are declining, and violence against
21 inmates and staff is rising. I hope all who
22 care about public protection in this state
23 will agree that this is not a positive
24 development and will join together to do

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1 something meaningful about it not only in the
2 forthcoming fiscal year, but also in the
3 remaining month of this current budget

4 season.

5 Thank you once again for the
6 opportunity to share the views of NYSCOPBA on
7 this critical policy and budget issue. The
8 men and women of NYSCOPBA are the finest
9 correctional officers in the nation. With
10 continued and improved communication between
11 the administration and the union, we can
12 continue to be seen as such. With that, I
13 would be happy to answer any questions.

14 Thank you.

15 CHAIRMAN DeFRANCISCO: Senator
16 Gallivan.

17 SENATOR GALLIVAN: Thank you,
18 Chairman.

19 Thank you, President Powers, and
20 everybody that is here to testify, and the
21 administrative support over on the side as
22 well.

23 The numbers are disturbing, of course.
24 It's troubling to see, and I would agree with

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475

1 your testimony that anybody should be
2 concerned with increased violence in prisons.
3 You look at the assaults on staff, the
4 inmate-on-inmate assaults -- what is causing
5 it, in your opinion?

6 MR. POWERS: We believe there's
7 multiple factors. But one is we lack staff,
8 plain and simple. We have places in our
9 facilities that aren't staffed anymore,

10 not-manned posts, we have a shortage of
11 staff, we have issues of enduring post
12 closings, we have the -- just four short
13 years ago, our maximum-security prisons were
14 staffed at 120 percent capacity. That's not
15 the case now, but they're down to
16 100 percent.

17 And with the facility closures phasing
18 out the minimum aspect of their mission
19 statement, and the closing of the
20 minimum-security facilities, we've seen a
21 reclassification from the maximum-security
22 inmate reclassified to a medium-security
23 classification. And when you have a more
24 violent felon coming in from the street and

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1 you have an individual who's done a period of
2 his time in a maximum-security prison and
3 he's put into a medium setting in a
4 double-bunk situation, it is a recipe for
5 disaster.

6 We have additional issues in our
7 facilities. We've got the reintroduction of
8 heroin in our facilities. We have the
9 synthetic drugs such as Suboxone, as the
10 acting commissioner mentioned earlier. You
11 have the synthetic marijuana that comes in
12 that renders people's judgment to a point
13 where they don't recognize what they're
14 doing.

15 SENATOR GALLIVAN: Your testimony

16 spoke last year of the closing of
17 correctional facilities and a commitment of
18 the Governor that a certain portion of the
19 savings would be used to improve the safety.
20 What's your understanding of what that
21 specific commitment was?

22 MR. POWERS: I'll quote the acting
23 commissioner. There's a misunderstanding.
24 The -- as far as --

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1 SENATOR GALLIVAN: No, no. What is
2 your understanding of that commitment that
3 you testified to?

4 MR. POWERS: We have done a very
5 complex analysis of the plot plan levels, the
6 budget fill lines and the actual items in our
7 facilities, and those numbers are
8 ever-changing due to the high rate of
9 attrition.

10 As the acting commissioner mentioned,
11 he had also said that they're having a
12 difficult time keeping up with attrition.
13 How can we get 275 new boots on the ground,
14 if you will, if they're not even meeting
15 attrition? We don't have a new boot on the
16 ground, and our analysis shows that. And
17 we'd be happy to show --

18 SENATOR GALLIVAN: Now, when you say
19 your analysis, NYSCOPBA's analysis?

20 MR. POWERS: NYSCOPBA's analysis.

21 SENATOR GALLIVAN: Okay. The DOCCS

22 undertook, according to the commi ssi oner' s
23 testi my, a securi ty staffi ng survey
24 analysi s. It was supposed to take place over

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1 the years. Roughly one-third of -- the
2 commi ssi oner testi fi ed --

3 MR. POWERS: That' s correct.

4 SENATOR GALLI VAN: The commi ssi oner
5 testi fi ed that about one-third --

6 MR. POWERS: They' re called staffi ng
7 revi ews. And a third of the faci li ti es have
8 been -- we have done our staffi ng revi ews.
9 And what they' re trying to do, in our
10 opi ni on, is magic math, if you wi ll. The
11 rei nvestme nt of staff that they' re proposi ng
12 at ti mes is actual ly creati ng more of an
13 unsafe worki ng envi ronment.

14 The whole staffi ng revie w and the
15 concept of a memorandum of understandi ng was
16 to provide i nput and new boots i n our
17 faci li ti es. New i tems, bodi es, eyes and ears
18 i n our faci li ti es. And their -- some of
19 their analysi s is comi ng back and taki ng some
20 of these faci li ti es.

21 SENATOR GALLI VAN: Do you have i nput
22 i nto the analysi s of each of the faci li ti es?

23 MR. POWERS: We meet -- part of the
24 MOU is -- and thi s i s, I believe, because of

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1 our cri es over the years have, for the fi rst

2 time in our history, whether -- in NYSCOPBA's
3 history do we now get a voice at the table.
4 But that voice tends to fall to the wayside.

5 SENATOR GALLIVAN: Now, you testified
6 that one of the potential solutions to help
7 address the violence or to minimize the
8 violence and make prisons safer is the
9 addition of 475 new officers. And is that
10 475 above the current strength that is
11 authorized, or plus 475 as currently staffed,
12 including vacant positions?

13 MR. POWERS: That was the full
14 impression that we had. I wasn't present in
15 the meeting; my treasurer, John Talisky, was.
16 The impression that the executive board and
17 the -- you know, with the success -- or not
18 success, I mean with -- the savings from the
19 four facility closures were to put 475
20 additional brand-new jobs in our facilities.

21 To give you some insight on that would
22 explain that not in the last 15 years, as a
23 statewide staffing level, has the Department
24 of Corrections increased their staff. We

♀

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1 were told that we would be 475 stronger than
2 what we were when we went in.

3 SENATOR GALLIVAN: And my last
4 question has to do with the decrease in the
5 overtime line in the budget, the \$20 million
6 decrease that the Governor has proposed.
7 What is your opinion of what that impact will

8 be? And of course I mean as it refers to
9 safety in the facilities.
10 MR. POWERS: It's already
11 compromising. They're calling it the
12 superintendent's matrix. Every facility is
13 looked to cut back on their overtime in their
14 facilities. And what they do initially is if
15 there's a need to close an area of an aspect,
16 we have what are called plot plans. And
17 every day we go into our facilities and those
18 plot plans are to be fulfilled.
19 And what happens typically is a post
20 will be closed to avoid hiring the overtime.
21 And with that post closing comes the
22 compromising of a security area in our
23 facility. And that -- that's what they're
24 doing to impress upon their savings, is to --

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1 you know, they're doing it on our backs.
2 SENATOR GALLIVAN: Thank you.
3 Thank you, Chairman.
4 MR. TELISKY: Excuse me, Senator.
5 Could I comment on that for one second,
6 please? If you take it down to a micro --
7 SENATOR GALLIVAN: You can, but I'm
8 out of time.
9 MR. TELISKY: I'm sorry?
10 SENATOR GALLIVAN: You can, but I'm
11 out of time. Go ahead.
12 MR. TELISKY: If you take it down to
13 the micro level, if you just take a facility

14 that's closest to Albany, like Coxsack or
15 Greene, and the department or the agency says
16 it takes 450 correction officers to run that
17 facility, at the current level of attrition
18 they're not keeping up with that at all. We
19 have no extra resources to man what's
20 currently there.

21 So with that depletion, that's going
22 to be the driver of overtime, because you
23 have mandatory posts you need to fill. We're
24 not like -- no offense -- a secretary sitting

♀

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1 at a table. We have to man our facilities to
2 a full complement of what we need to run
3 them.

4 So if they close down a post to save
5 overtime, there's a depletion of safety in
6 numbers. So if the agency says 450 and
7 they're running at 435 right now, plus they
8 have call-ins for sick or snow or whatever
9 the case may be, or the violence goes up and
10 have people get injured on the job, there's
11 no reservoir or replenishment to fix that.
12 There's no way to back that up.

13 So they go into the next shift with
14 less staff. Hence less eyes and ears on the
15 ground, hence more ability to commit crimes
16 inside our institutions.

17 SENATOR GALLIVAN: Thank you.

18 CHAIRMAN DeFRANCISCO: Senator
19 Nozzolo.

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SENATOR NOZZOLI: Thank you,
Mr. Chairman. It's good to have you back.
One of the things that I have
continually characterized in relationships
and the admiration that I have for the

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correction officers is that in New York State
the correction officers of this state walk
the toughest law enforcement beat in America.
That you do so without a firearm to protect
you, you do so only with your co-officers,
which is -- I don't mean to minimize that,
but it's the difference between being safe
and not being safe.

And that's why deployment has always
been an important issue within our
correctional system. Those numbers are very
important. What we see is an incidence of
violence on a percentage basis that is
dramatic, on a real basis and percentage
basis. The intensity of the violence comes
through your numbers because, as the inmate
population has declined, the incidence, by
increasing, means that the intensity of
violence within the facilities is increasing.

And I drove by the billboard today.
It seems like it's changing daily. The
numbers, I believe, were in the 800s today.
I forget exactly what the number was, it was
a long time ago and I'm a little fuzzy on

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♀

1 numbers right now, after being at this for
2 eight hours.

3 But I want to come back to what
4 Senator Gallivan was discussing regarding the
5 deployment of correction officers. And
6 before we can look to 2015, we have to
7 analyze what did occur in 2014. And I wasn't
8 part of the negotiations, nor was Senator
9 Gallivan, nor was anyone in this conference
10 with the Governor and the Governor's key
11 staff in discussing the numbers that would be
12 established moving forward.

13 I don't know if you heard me discuss
14 with Commissioner Annucci when he testified
15 earlier at my inquiry relative to these
16 numbers. The numbers we were led to believe
17 represented a 275 percent increase in
18 deployment for our COs on the front line.

19 Is that your understanding?

20 MR. POWERS: That's correct.

21 SENATOR NOZZOLIO: Did you hear the
22 commissioner when I asked him the question?
23 He responded about a miscommunication
24 regarding this account. Would you reiterate

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1 for us what is the understanding of NYSCOPBA?
2 And, President Powers, I know you were not in
3 the room, I believe, at the time.
4 Mr. Telisky, you indicate you were.

5 MR. TELISKY: Yes.

6 SENATOR NOZZOLIO: Would you, for the

7 record, indicate exactly your understanding
8 of what took place in that discussion between
9 the Governor's key people relative to the
10 closure of facilities and the deployment of
11 correction officers moving into fiscal year
12 2014-2015?

13 MR. TELISKY: Sure. When we met, when
14 we first walked in, they were going back and
15 forth with dialogue about our safety, because
16 that was our utmost concern. The Governor
17 offered bulletproof vests, stab-proof vests
18 as a solution right off the beginning. And
19 we said we need numbers, we need bodies, we
20 need boots on the ground, physical boots.

21 Our system is so large, and with
22 attrition that -- you know, you can look at a
23 number, take a picture of it today, it's
24 19,000; tomorrow it could be 18,950 members,

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1 because 50 of them retired. And it happens
2 this fast. So with that knowledge, we said
3 we need physical bodies. You can take a
4 picture anytime you want throughout the whole
5 year, and it's going to change and it's going
6 to evolve.

7 The class in the academy, that's in
8 the academy, is going to be added into the
9 Correction Department's number, but that's
10 not boots on the ground. They're in
11 training, they're in eight weeks of training.
12 So that's going to be added into the number

13 so it looks like we have 75 new bodies. We
14 don't. We don't have them at any of the
15 facilities.

16 So what we talked about is 275 this
17 last fiscal year that's ending in four weeks
18 or five weeks, 100 and 100, would bring us
19 up -- physical boots -- would bring us up to
20 a complement where we could sustain running
21 our facilities and bring our safety level up
22 because that's what we're supposed to be
23 doing with our numbers.

24 SENATOR NOZZOLIO: Would you

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1 reiterate the number, Mr. Telisky? Would you
2 indicate --

3 MR. TELISKY: Excuse me?

4 SENATOR NOZZOLIO: The number.

5 MR. TELISKY: Two seventy-five.

6 SENATOR NOZZOLIO: Two seventy-five.

7 MR. TELISKY: Correct.

8 MR. POWERS: An appropriation of 275
9 for this fiscal year coming to an end, 100
10 for next year, 100 the following year,
11 because --

12 SENATOR NOZZOLIO: I wasn't privy to
13 the conversation -- I wasn't in the
14 conversation. You were, Mr. Telisky. And
15 that's very important that we understand
16 this, because it's my belief that you have a
17 very serious attrition problem, that people
18 are retiring. We're in a demographic-

19 challenged time when -- kind of a perfect
20 storm demographically -- you have major
21 employment now 20, 25, 30 years ago that is
22 ready to retire. And you have them ready
23 because of the demographics, the age, the --
24 just the general time frame.

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1 So 275 -- if you lose 1,000 correction
2 officers during the year, that means that
3 you've got to deploy 1275. And I couldn't --
4 and I believe you have yet to get an answer
5 from the department as to are we at the
6 275 level plus the numbers that have
7 attrited. I think that's what you're looking
8 to find out, right? The number that attrited
9 plus 275. That's your --

10 MR. TELISKY: We need to see active
11 members on the ground. They can say whatever
12 number they want to utilize for the date. We
13 need to see extra bodies in the facility.

14 SENATOR NOZZOLIO: Is that per
15 facility?

16 MR. TELISKY: Correct. And you talk
17 about the staffing reviews. They did
18 one-third, we haven't seen one extra body.
19 If they're saying they need five more
20 correction officers up at Franklin, then put
21 five more correction officers in that job, in
22 that facility.

23 And they can do that. They need to
24 open a second academy to do that. '89 and

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1 1990 was the biggest wave. I came in in
2 1982. '81, '82, and '83, our department blew
3 up. '89 and '90, it blew up again.
4 Twenty-five years hence, '14 and '15, you
5 have all these people retiring because our
6 death rate is 58½ to 59, depending upon who
7 you talk to. It's stressful in a facility.
8 So they get out with 25 years on the job,
9 they want to get out.

10 So that's the fact, that we need extra
11 bodies to replenish what these people are
12 leaving on top of the 275.

13 SENATOR NOZZOLI O: The Governor has
14 proposals for additional academies. Have you
15 analyzed those proposals?

16 MR. TELISKY: There's no new -- they
17 used 18 last year, they didn't stay up with
18 it, you heard the commissioner say that.
19 They're using 18 or 19 this year. There's a
20 refusal on our agency's part to open a second
21 academy. They mentioned Willard this
22 morning, they need to open that second
23 academy.

24 I used to work at the Albany Training

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1 Academy, I was an instructor there. They
2 cannot put more than three classes through
3 that system at one time. It's impossible to
4 train them. So they do have to open up a

5 second academy, or you're going to be right
6 back to the same situation you are now that
7 you were last year, next year.

8 SENATOR NOZZOLIO: We've asked for
9 clarification about this miscommunication. I
10 hope that -- you certainly have helped
11 clarify it from your standpoint and
12 standpoint of the correction officers.

13 Thank you very much for your good
14 work.

15 MR. TELISKY: Thank you.

16 MR. POWERS: Thank you.

17 CHAIRMAN DeFRANCISCO: Thank you very
18 much -- oh.

19 ASSEMBLYMAN OAKS: Just if I might ask
20 a quick question.

21 The training time to go through the
22 academy is what?

23 MR. TELISKY: Eight weeks.

24 ASSEMBLYMAN OAKS: Eight weeks?

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1 MR. TELISKY: Yeah. Eight weeks to
2 put them in the academy, then we put them on
3 OJT inside the facility, so you're partnering
4 up with an experienced correction officer.
5 And then they release them to --

6 MR. POWERS: A total of 12 weeks in
7 training, with one month on-the-job training.

8 MR. TELISKY: Correct.

9 ASSEMBLYMAN OAKS: So to bring you up
10 to speed, go through all of that -- certainly

11 there's a period of time, three months,
12 whatever, at a minimum to do that.
13 MR. TELISKY: Correct.
14 ASSEMBLYMAN OAKS: Thank you very
15 much.
16 CHAIRMAN DeFRANCISCO: Thank you very
17 much.
18 MR. POWERS: Thank you.
19 CHAIRMAN DeFRANCISCO: Appreciate it.
20 Is there a Francine Perretta here?
21 She didn't sign up.
22 MS. PERRETTA: Right here.
23 CHAIRMAN DeFRANCISCO: Did you sign in
24 when you came in, at the top desk? Francine?

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1 MS. PERRETTA: I know.
2 CHAIRMAN DeFRANCISCO: Did you sign in
3 in the front? Did you give the copies of
4 your testimony down here?
5 MS. PERRETTA: They told us to bring
6 our testimony down here.
7 CHAIRMAN DeFRANCISCO: All right.
8 Okay, that's -- could you give it to that
9 lady right here?
10 MS. PERRETTA: So sorry. (Inaudible.)
11 CHAIRMAN DeFRANCISCO: New York State
12 Council of Probation Administrators, Francine
13 Perretta, deputy commissioner, Westchester
14 County.
15 MS. PERRETTA: Thank you very much.
16 CHAIRMAN DeFRANCISCO: You're on.

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MS. PERRETTA: Thank you.

CHAIRMAN DeFRANCISCO: You're welcome.

MS. PERRETTA: I'm here with Robert Iusi, the probation director from Warren County, and we have some other probation directors in the room.

Like you said, I'm Francine Perretta, Westchester County deputy commissioner.

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We're here representing the New York State Council of Probation Administrators, COPA. We've given you our written testimony, which is more detailed, so we'll sail through our testimony for you.

We're here to talk about Raise the Age. Since the beginning of the discussion on raising the age of criminal responsibility, COPA has been at the forefront in supporting the concept of raising the age. We have testified before the Governor's commission, we have provided written testimony on at least three occasions, and we have been proactive in our support for this concept. We have been clear, however, that we could only take on this new mandate with 100 percent funding for personnel and services.

Based on conversations with the Governor's office and the briefing book each of you have received, the state also agrees to this 100 percent funding. We thank the

23 Governor for acknowledging that probation is
24 a key player in making this proposal work,

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1 and we thank him for his 100 percent
2 financial commitment.

3 We believe there are many positive
4 aspects of this proposal that we have lobbied
5 for for quite some time. A few specific ones
6 are the option for probation to assist
7 parents in obtaining an order of protection
8 from the court through the diversion process,
9 thus saving the need to file JD petitions
10 solely for that purpose.

11 Increasing the time for diversion
12 services from 120 to 180 days will allow us
13 the needed time to successfully adjust a
14 case.

15 While we are supportive of this
16 proposal and know that raising the age of
17 criminal responsibility is the right thing to
18 do, there are a few programmatic issues that
19 we believe need to be amended.

20 We believe youth, 16 and 17, should
21 not be housed in county jails or state
22 prisons. We believe juvenile detention
23 facilities can provide for their safety, the
24 safety of the community, and also provide

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1 needed evaluations, assessments, and services
2 to those youths while they are detained.
3 However, in order to do this, counties who

4 run detention facilities will need
5 100 percent state funding to increase their
6 capacity and services.

7 Also, the state will need to increase
8 beds for those counties who do not run their
9 own detention facilities. They will need to
10 make them regionally located for more
11 convenient transportation for the county
12 sheriff or the county police while assuring
13 bed availability for smaller counties.

14 While understanding the commission's
15 desire to have no PINS youth in non-secure
16 detention, we must also carefully weigh what
17 is best for the safety and well-being of the
18 youth. Some youth need to be detained or
19 placed for their own protection. Runaways by
20 definition are PINS. It appears the wording
21 in this legislation will prohibit the court
22 from issuing warrants for runaways, which
23 then gives no one the authority to look for
24 or provide for their safety. We do not

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1 believe that this is good public policy.

2 We recommend the court, the Family
3 Court, still have the authority to place PINS
4 in non-secure detention if the court feels it
5 is in the best interest of the youth and of
6 the community.

7 We concur that the concept of family
8 support centers is very good. However, we
9 recommend that they be available to all

10 counties. We believe arrests under the
11 Vehicle and Traffic Law should be included in
12 the pending Raise the Age list of eligible
13 crimes. A youth could be arrested for DWI
14 and be in a stolen car. In this case, part
15 of his case or her case would be treated as a
16 juvenile delinquent while the DWI would be
17 treated as an adult offense.

18 The basis of much of the change in the
19 age of criminal responsibility has to do with
20 the development of the brain and its effect
21 on the reasoning of youth. We submit that
22 driving under the influence or other VTL
23 arrests fall into this category. We
24 recommend that all VTL arrests be considered

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1 under the new proposal.

2 In a recent article in the New York
3 Law Journal, Henry Scudder wrote, and I
4 quote: "Local probation departments, aptly
5 described as the 'workhorse' of the juvenile
6 justice system, will surely bear the brunt of
7 responsibility for the influx of young
8 offenders. Probation departments cannot be
9 expected to screen the cases at intake,
10 determine if they should be diverted or sent
11 to Family Court, prepare investigation
12 reports, monitor compliance with court
13 ordered services, and provide supervision,
14 without a significant infusion of dollars.
15 The state must reimburse counties for their

16 additional probation and detention expenses,
17 and not simply shift the new costs to the
18 county taxpayers." We could not have said it
19 any better ourselves.

20 Probation is the expert in juvenile
21 justice. We handle more cases than any other
22 agency. We can make this new proposal work
23 with proper resources.

24 We thank you for the opportunity to

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1 provide you testimony on this very important
2 matter, and we very much look forward to
3 being part of the reform, for making New York
4 State's juvenile justice system once again
5 top in the nation.

6 Thank you. We'll be happy to answer
7 any questions.

8 CHAIRMAN DeFRANCISCO: All right.
9 This quote from Henry Scudder, you said you
10 couldn't have said so you yourself. Was he a
11 prior probation officer in his other life?

12 MS. PERRETTA: You know, we do not
13 know him.

14 CHAIRMAN DeFRANCISCO: You couldn't
15 have got a better quote.

16 Senator Nozzol i o.

17 SENATOR NOZZOLIO: Chairman, I believe
18 know Henry Scudder. He's a judge, and we
19 know him in the Seventh Judicial District.
20 He's presiding judge in that district, the
21 Supreme Court.

22 President Wi l mot {sic}, are you
23 currently a probati on offi cer?

24 MS. PERRETTA: Me? I 'm the deputy

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1 commissioner of the Westchester County
2 Probati on Department.

3 SENATOR NOZZOLI O: And you' re also the
4 president of the associ ati on?

5 MS. PERRETTA: I am not. I 'm a past
6 president. The president coul d not be here
7 today.

8 SENATOR NOZZOLI O: I don' t know if you
9 were here -- it seems l i ke hours ago. It
10 was.

11 MS. PERRETTA: We' ve been here si nce
12 10: 00.

13 SENATOR NOZZOLI O: So you heard the
14 testi mony of Mi ke Green.

15 MS. PERRETTA: Absol utel y.

16 SENATOR NOZZOLI O: And I don' t know if
17 you recal l some of the questi ons I asked hi m
18 regardi ng probati on. I thi nk from -- it
19 appears to be, from a good news perspecti ve,
20 that whatever is establi shed, it' s not
21 i ntended to be an unfunded mandate. Is that
22 your understandi ng?

23 MS. PERRETTA: Yes, si r, we got that
24 from Commi ssi oner Green l ast ni ght al so.

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1 SENATOR NOZZOLI O: Wel l , I 'm gl ad he

2 was able to reiterate it today for the record
3 of this hearing. That's the good news.

4 The bad news is that I guess I don't
5 share your enthusiasm for the youth detention
6 facilities of our state. And as a practicing
7 probation officer, it -- I don't know how
8 they are in Westchester, but I know
9 throughout upstate we've had horrendous
10 issues regarding OCFS-managed facilities.
11 Attacks on staff, considerable deaths in
12 Western New York on staff from OCFS who are
13 working the so-called youth detention
14 facilities -- when in fact even before this
15 policy was changed, under current policy
16 we've seen very violent individuals who
17 happen to be young, but they're very
18 dangerous.

19 So I guess I looked at your comments
20 and saying, are we really sure that this is
21 the right type of place that we should be
22 putting more young people into? I'm not
23 suggesting that prison is a great place, but
24 it may in fact be more secure, particularly

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1 for those who have committed violent crimes.

2 What's your response to that?

3 MS. PERRETTA: Well, Senator, we
4 happen to run a secure detention facility in
5 Westchester County, and it is run by the
6 County Probation Department.

7 SENATOR NOZZOLI: Not OCFS?

8 MS. PERRETTA: Not OCFS.
9 SENATOR NOZZOLIO: Big difference.
10 MS. PERRETTA: And we believe -- and
11 we believe it's run very well, and we have
12 many programs and service for the juveniles
13 that we detain. And while they're in
14 detention, we provide a plan for them, so
15 wherever they end up going, they go with a
16 plan.

17 We think it's that type of facility --
18 if we're going to increase detention in
19 New York State, it's that type of facility
20 that needs to be -- needs -- those are the
21 types of beds that need to be in --

22 SENATOR NOZZOLIO: Well, that's all
23 well and good for Westchester County, and I'm
24 glad you're doing that, but we have counties

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1 in this -- first of all, every county in the
2 state can't afford one of these. And, I
3 guess, then what happens? It's left up to
4 the state to manage and to perform. I mean,
5 if all -- I'm sure you're doing a good job.
6 But that's not the case for state-run
7 facilities.

8 So please know that -- we respect your
9 organization -- we respect the job you do,
10 your organization does, and that certainly
11 we'll look into how you do it better in
12 Westchester, but we've got to develop
13 something for those counties that are much

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poorer than Westchester.
MS. PERRETTA: Absolutel y, si r.
SENATOR NOZZOLIO: Thank you very
much.
MS. PERRETTA: You' re wel come.
CHAI RMAN DeFRANCI SCO: Thank you very
much. Ni ce j ob.
MS. PERRETTA: Thank you very much.
CHAI RMAN DeFRANCI SCO: And the next
speaker is Patrick Cullen, president of the
New York State Supreme Court Offi cers

Associ ati on.
As I sai d before, the presi dent of the
Bar Associ ati on submit ted their testi mony, so
the person to start comi ng down and get close
to the front next is Jonathan Gradess,
executi ve di rector, Publ ic Defenders.
Yes, si r, whenever you' re ready.
MR. CULLEN: Good eveni ng, Chai rman
DeFranci sco, Chai rman Farrell , and esteemed
members of the Legi sl ature.
I' m grateful for the opportuni ty to
appear before you today to present some
i nformati on about the court offi cers of
New York State and how thi s year' s judi ci ary
budget affects both the professi onal and
personal l ives of the New Yorkers that I
proudly represent, brave ci ti zens who place
the safety and well -bei ng of their fellow
ci ti zens as the primary obj ective of their

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professional lives.
I believe that last year's Road to Recovery budget that the court system received was --
CHAIRMAN DeFRANCISCO: Excuse me.

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Excuse me. You're the first speaker I've ever had to say would you move back from the mic.

MR. CULLEN: I'm sorry, I apologize.

CHAIRMAN DeFRANCISCO: It's because we're -- okay. That's fine. Go ahead.

MR. CULLEN: I just want to be heard.

I believe that last year's Road to Recovery budget that the court system received was in name only. It was barely sufficient to keep the entire branch afloat. As Judge Prudenti states in this year's budget, "At last, we were not sinking."

I must report to this committee that while that may be true as a whole, the men and women that I represent feel as if they have sunk even further, in fact, on certain levels, abandoned by the system which they operate on the most essential of bases. We are clearly today no closer to recovery.

Our staffing levels are still suffering terribly. New recruits have been hired at a fair consistency; however, these new officers are still just filling the void

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1 left by five years of historic losses. We
2 find ourselves continuing to face a shortage
3 of at least 300 court officers from where we
4 stood in fiscal year 2009. The failure to
5 recoup these devastating losses of manpower
6 has quite evidently diminished the safety and
7 security in our ever increasingly busy
8 courthouses and the public which they serve.

9 Frankly, the Office of Court
10 Administration has been haphazard and
11 apathetic through its inaction regarding
12 these most serious issues. Allow me to
13 illustrate the effect of this neglect and
14 underestimation. Currently in Manhattan
15 Supreme Court a case is being tried in the
16 murder of young Etan Patz. This is a case
17 which has been in the public eye for some
18 36 years. Historically, a case of this
19 interest and magnitude would have been
20 staffed by a supervisor and four to five
21 officers, with an additional three to four
22 officers on an exterior patrol to handle a
23 very large media contingent and overflow of
24 onlookers unable to fit in a courtroom

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1 already filled to capacity.

2 I visited this trial within the last
3 week, and it is regularly being staffed by
4 one supervisor and two officers, with only
5 one additional officer on the exterior
6 handling hundreds of court users.

7 Further examples include an upcoming
8 trial of a police officer accused of shooting
9 an unarmed man in Brooklyn which is sure to
10 bring massive protest and attention, certain
11 to stretch the security resources beyond a
12 safe condition.

13 A gang problem in the Bronx, that the
14 Office of Court Administration readily
15 acknowledges is at such a volatile level it
16 is only a matter of time before something
17 catastrophically violent occurs.

18 Additionally, places like Richmond
19 County, Newburgh City Court, and Middletown
20 City Court, which saw a fatal shooting in the
21 recent past, are not the country courthouses
22 of old. They are overcrowded public spaces
23 acting as petri dishes for violence and
24 revenge.

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1 Furthermore, I reference staffing
2 standards and guidelines which the Office of
3 Court Administration saw necessary to create
4 in 2008, which they continue to ignore by not
5 implementing it as policy. By adhering to
6 their very own suggestions in this document,
7 many of the ills and deficiencies I have
8 cited, along with scores more, would be
9 addressed in sufficient terms.

10 Currently 24 percent of the entire
11 state court's workforce is eligible for
12 retirement. We could legitimately see a

13 further loss of a quarter of our staffing in
14 a very short period of time. Needless to
15 say, this would cripple an already injured
16 system. We are losing more younger officers
17 than ever before. As many people used to
18 join our ranks from other civil service and
19 law enforcement careers, the complete
20 opposite has begun to occur. Our job used to
21 be a final destination and has now become a
22 steppingstone to careers elsewhere in the
23 public sector.

24 This unanticipated attrition can be

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1 attributed to two main factors. Morale has
2 never been lower because of the dangerously
3 low staffing levels with no relief in sight.
4 Also, many other jobs within the public
5 sector have become more lucrative, mainly
6 through steady cost of living adjustments,
7 something the court system has seen fit to
8 disregard for a number of years.

9 In order to retain these officers, the
10 Office of Court Administration must increase
11 compensation and benefit packages or allow
12 court officers to be made eligible for the
13 police and fire retirement system. We very
14 plainly cannot afford to lose any more
15 officers.

16 Finally, I would like to address some
17 concerns about the equipment we use in the
18 administration of our duties. I applaud

19 Judge Prudenti for her initiative to supply
20 and mandate body armor for court officers
21 statewide. It is the beginning of what I
22 hope is a sustained effort to modernize this
23 law enforcement agency from all angles.

24 The introduction and usage of our

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1 Special Response Team is another positive
2 progression toward innovation, and I wholly
3 support the continuation of supplying this
4 highly trained unit with cutting-edge
5 equipment.

6 I also believe that an effort to
7 upgrade cameras in all of our facilities is
8 necessary. While cameras may be in place, a
9 better attempt to keep them online must be
10 made in order to make the program more
11 viable. Our screening and communications
12 equipment is dated and beginning to fail.
13 There needs to be an endeavor to see that
14 funding be made available to bring
15 magnetometers, x-ray machines, and radio
16 systems up to the standards used in federal
17 facilities.

18 Finally, I am requesting that a plan
19 be funded and launched introducing a K-9
20 program utilizing bomb dogs at all of our
21 facilities. These proposals will strengthen
22 our ability to ensure that New York's
23 courthouses become the safest in the country.

24 I thank the committee for this

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1 valuable opportunity to express serious
2 concerns about potentially devastating
3 effects recent austerity budgets have levied
4 on our courts. I am proud to report from the
5 front lines that our training,
6 professionalism and pride have buffered the
7 system from facing tragic consequences for
8 short changing the safety of the public.
9 However, we all know this is an alarming and
10 perilous posture to sustain. We cannot cross
11 our fingers and hope violent and dangerous
12 conditions avoid us. We must all do our part
13 to take every contingency to avoid them.

14 Thank you again for your time.

15 CHAIRMAN DeFRANCISCO: Thank you very
16 much.

17 Senator Savino.

18 SENATOR SAVINO: Thank you, Senator
19 DeFrancisco. I will be brief.

20 Pat, good to see you. You referenced
21 in your testimony 2009, and that was, I
22 believe, when the state, in the fiscal
23 crisis, then implemented an early retirement
24 plan and I believe you guys lost a

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1 significant number of people through early
2 retirement.

3 Has there been any effort to backfill
4 any of those that left? Any real effort?

5 MR. CULLEN: Anybody that has been
6 hired since a hiring freeze was lifted about
7 two years ago has begun to fill the spots
8 from 2008-2009. So we're still getting to
9 the point of just recovering from 2009.

10 As I heard earlier today from a number
11 of other people representing law enforcement
12 agencies, folks in academies are not in
13 facilities. And as I said, in a fair
14 consistency we're seeing hiring, but we need
15 these people active in our facilities fully
16 trained and ready to take on the task.

17 So yeah, I think, again, hiring has
18 been at fair-based consistency, but we're
19 backfilling three years' prior time.

20 SENATOR SAVINO: You mentioned also
21 the rise of violent incidents in some of the
22 courts. And I wasn't here this morning to
23 listen to Gail Prudenti, but I've met with
24 her previously and she's talked about how she

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1 thinks that they're moving -- you know,
2 they're moving in the right direction where
3 they're no longer bleeding money, but the
4 fact is that they have a flat budget so it's
5 no different this year than it was last year
6 and the year before.

7 At the same time, the courts have been
8 directed to close at 4 o'clock in the
9 afternoon and you have cases that are
10 backlogged. And I'm wondering, do you think

11 that that compressed time frame for people to
12 get justice -- whether it's in our Criminal
13 Courts, our Supreme Courts, our Family
14 Courts -- is contributing to the rise in
15 violent incidents in the courthouse?

16 MR. CULLEN: Absolutely. Frustration
17 by failing to have justice properly
18 administered, which the public has every
19 right to believe and reasonably expect that
20 to happen -- it doesn't occur, it angers
21 people, and that -- you know, people lash out
22 when -- like you say, Senator, in Criminal
23 Court, in Family Court, in Civil Court,
24 things are at risk for these people, whether

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1 it be freedom, money, children, family.
2 That's frustrating enough. When they have
3 trouble getting what they reasonably should
4 expect from the court, that raises the
5 specter of potential violent incidents.

6 And then couple that with a lack of
7 security, a completely empty courthouse at
8 4:30, you can imagine that incidents that
9 would occur are unable to be quelled in the
10 way they used to be.

11 SENATOR SAVINO: And finally, I know
12 you guys have been without a contract for
13 quite some time now as well.

14 MR. CULLEN: Yes, ma'am.

15 SENATOR SAVINO: Is that true for most
16 of the court unions?

17 MR. CULLEN: Some. Some large amount
18 of the court unions are still without a
19 contract.

20 SENATOR SAVINO: How long has it been
21 since your last contract?

22 MR. CULLEN: March 31st, it'll be four
23 years.

24 SENATOR SAVINO: Four years. So you

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1 and the court officers and court clerks and
2 stenographers and whoever else is in there,
3 it doesn't appear that they're budgeting for
4 any labor settlements.

5 MR. CULLEN: No, ma'am.

6 SENATOR SAVINO: Thank you.

7 MR. CULLEN: Thank you.

8 CHAIRMAN FARRELL: Hi. Where were you
9 working when you were working?

10 MR. CULLEN: Umm --

11 CHAIRMAN FARRELL: No, that doesn't
12 sound right. When you were on the --

13 MR. CULLEN: I'm always working.

14 Bronx Supreme Court, criminal
15 division.

16 CHAIRMAN FARRELL: Oh, Bronx, yes. I
17 was in 100 Center Street.

18 MR. CULLEN: I'm well aware.

19 CHAIRMAN FARRELL: About 50 years ago,
20 100 Center Street. I worked for Supreme
21 Court judge, confidential aide -- do you
22 remember, they used to have those guys?

23 MR. CULLEN: I've heard many stories
24 about your time at Center Street, Chairman

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1 Farrell.

2 ASSEMBLYMAN OAKS: Would you please
3 share those for the record with us?

4 MR. CULLEN: Absolutely not.

5 (Laughter.)

6 CHAIRMAN DeFRANCISCO: He wasn't there
7 50 years ago.

8 CHAIRMAN FARRELL: I didn't want to
9 get into that.

10 CHAIRMAN DeFRANCISCO: Just -- you
11 mentioned about the courts closing early.
12 Judge Prudenti testified this morning that
13 courts are open until 5 o'clock now.

14 MR. CULLEN: There is a -- they may be
15 open until 5 o'clock in certain cases,
16 certain trials that need to be expanded
17 depending on particular testimony being
18 heard, that they don't want to cut short and
19 have to have somebody come back the next day.

20 There is an effort in calendar parts,
21 where trials are not being heard, to rush to
22 get done. And oftentimes, if attorneys are
23 not present, judges are rushing to get the
24 calendar done and waiving the appearances of

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1 these defendants in the criminal division to
2 maintain a timely finish to the day.

3 CHAIRMAN DeFRANCISCO: Thank you.

4 MR. CULLEN: To avoid the payment of
5 overtime.

6 CHAIRMAN DeFRANCISCO: That's
7 interesting. Okay, thank you very much.

8 MR. CULLEN: Thank you.

9 CHAIRMAN DeFRANCISCO: Jonathan
10 Gradess, executive director, New York State
11 Defenders Association.

12 On deck is Cheryl Vallee.

13 MR. GRADESS: I want to thank you for
14 your patience. If it were a training
15 program, I'd probably say why don't you all
16 stand up and jump your arms a little bit. I
17 won't.

18 I think this is a unique year for all
19 us, for counties, for the Legislature, for
20 NYSDA, for the Indigent Legal Services
21 Office, and I want to just talk about that a
22 little bit.

23 The Hurrell-Harring settlement is a
24 formal acknowledgment of state responsibility

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1 for the maintenance of an adequate public
2 defense system. That is something that I
3 have been whining about here for many, many
4 years, and I think that we now have the
5 beginning of an opportunity, and I want to
6 ask you to take advantage of it. I think in
7 a very real way the Governor stepped up to
8 the plate, but in a more real way he kind of
9 wrote a check and has asked you to be the

10 guarantor of it.

11 I have talked to you for a number of
12 years about urging the Governor to come to a
13 global solution. In fact, I spent the last
14 year urging the Governor to come to a global
15 solution. And the reason for that was the
16 judge who first handled the Hurrell-Harring
17 suit is the person responsible for adding the
18 five county defendants.

19 The United States Supreme Court did
20 not say Onondaga County should be responsible
21 for public defense services, or Ontario or
22 Schuyl er or Washington or Suffolk. They
23 said the state is responsible, and for many
24 years they've been urging you to create a

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1 state system.

2 I know that's not the most popular
3 idea in the world, but it all emanates in the
4 same way that you will hear, I think, all
5 year, that where we are now is we're five
6 down and 57 to go. The five counties were
7 emblematic in this lawsuit. They could have
8 thrown a dart at the state map and named five
9 other counties. The original lawsuit was
10 against the State of New York.

11 And where we stand with this
12 settlement, I think, is important for you to
13 see what it does is it arbitrarily elevates
14 these five counties above all the other
15 counties in the State of New York. And it's

16 sort of by accident, in a way. But I think
17 it's an opportunity because there will be a
18 template, there will be a model for what to
19 do with New York State.

20 So I'm here in part to say despite the
21 non-global solution, I would like you to see
22 this as the beginning of a moment for you to
23 really finally do what you have been urged to
24 do and what I think is the only fair thing

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1 that can be done.

2 The other counties will, as some of
3 you already know, be coming to you and
4 saying: What are we, Swiss cheese? You
5 know, Suffolk County got a Christmas present,
6 and Nassau got coal in its stocking. There
7 isn't any real distinction between Onondaga
8 County, with an assigned counsel program, and
9 its bordering counties of Oswego and Cayuga.
10 If you're Warren County and you're looking
11 across the border at Washington and saying
12 they're going to get state funding to improve
13 on eligibility, to improve on caseload, to
14 fix the problems associated with quality, to
15 get counsel at arraignment, you have to sit
16 and scratch your head. And I think that
17 scratching of the head is an opportunity.

18 So at first blush, the ILS request
19 NYSDA full supports. I think it is modest
20 when you look at the reports of the last
21 several years of ILS that indicated that

22 \$111 million was required for the purpose of
23 bringing caseloads down. A \$20 million
24 request is really kind of charitable in a

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1 way. You know, if I were the head of ILS
2 you'd be getting a \$111 million request.

3 But you've got a 20, and I urge you to
4 fund it. Because the reality of what happens
5 if you have workload and caseload problems is
6 that the representation of clients as it is
7 supposed to be can't take place. You can't
8 see your client, you can't investigate the
9 case. You can't find the facts, you can't
10 read the law, and in fact can't do what is
11 legally required. And it's only a matter of
12 time before the equal protection issue
13 associated with five counties versus 57 will
14 explode again.

15 So I urge you to put the \$20 million
16 for caseload relief and \$8 million for
17 counsel at arraignment into the budget. I
18 thought the remarks earlier that said the
19 money is there would be a good way -- it's a
20 great start, and it also should be viewed, I
21 think, by you as a way to really look at the
22 state as a whole, eliminate the inequalities
23 that have been created by this settlement,
24 and use it as a template for the future.

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1 Speaking of the future, the Governor

2 has cut the New York State Defenders
3 Association by 48 percent. Last year he put
4 us in at \$1.089 million, you added a million
5 dollars. I certainly want you to do that
6 again, but I also want in my remaining time
7 to talk to you about an initiative that we
8 have opened that needs to be funded at a
9 million dollars as well.

10 Our request of you this year is 3.089.
11 Our request to the Governor and the Executive
12 Budget, which since 1981 has always been a
13 reflection of what we contended is the amount
14 needed for the state to perform its backup
15 function, was \$3.5 million. But we need
16 3.089 because last year, after eight years of
17 coming to you and coming to the feds and
18 coming to DCJS and the Executive, we finally
19 were forced to open our Veterans Defense
20 Program. We opened it last April. By April
21 of this year, it will have cost a million
22 dollars.

23 We don't want to close it. It is a
24 program that is responding to the 50,000

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1 wounded warriors in this state who have
2 returned and who are post-9/11. And in
3 New York City, that number includes Vietnam
4 veteran defendants. There are a lot of cases
5 which have gone unrepresented by public
6 defense attorneys in this very same system
7 that we urge you to fix.

8 Our program has opened, it has three
9 employees at the moment who are directly
10 involved in day-to-day work in this, several
11 others who are able to be an adjunct to that.
12 Our legal director is a 30-year naval veteran
13 who graduated with his wife from West Point.

14 There are cases everywhere of
15 post-traumatic stress disorder and traumatic
16 brain injury and depression. I think
17 probably all of you know that 22 veterans a
18 day are committing suicide. This has become
19 a crisis. And when the Supreme Court held a
20 few years ago in Porter v. McCollum that
21 effective assistance of counsel requires that
22 these issues be raised, we went to the
23 Division of Budget, we said we can wait no
24 longer. We were not funded last year. With

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1 one-time seed funding, we opened the office.

2 I am here to urge you, in your own
3 capacity -- I think this is a public
4 protection issue, but I also think veterans
5 is at another table. We're meeting with both
6 the Senate and Assembly Veterans Committees.
7 We have tremendous support in the Assembly
8 for this proposal. We're going come to the
9 Senate and seek your help. If it ends up as
10 a joint recommendation to the mothership, or
11 to leadership, or you fund it -- we just want
12 your help.

13 We want your support. When we don't

14 have the clock running, we'd like to sit with
15 you and talk about the value of this program,
16 how it has worked. Our very first case was a
17 case to which we were referred by Assemblyman
18 Butler, who had found a veteran who had sat
19 in jail in a small county for 22 months
20 without representation -- who, if there was
21 that was picture in the dictionary next to
22 the definition of PTSD, his face would be
23 there.

24 He was not well-represented, and that

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1 is what we're trying to interdict. We want
2 to train lawyers to appreciate military
3 culture, to work and to make sure that they
4 have that culture in order to teach
5 prosecutors and to teach judges and to seek
6 resolutions which are fair.

7 We're working with Clear Path, we're
8 working with others. We have a directory of
9 all the services in New York that is
10 underway. We're working with the Center for
11 Court Innovation to develop a restorative
12 healing circle for vets in Western New York;
13 we have an office in Batavia in Senator
14 Ranzenhofer's district.

15 So I want to continue this dialogue
16 and seek your help, and that is really the
17 major thing that I'm asking for NYSDA this
18 year. I'm hopeful that the long-standing
19 dance whereby the Governor cuts us in half

20 and the Legislature restores us will work,
21 but I also want the assistance.

22 And I would welcome the opportunity
23 both to answer your questions now and to come
24 visit with you later. Thank you.

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1 CHAIRMAN DeFRANCISCO: Just to show
2 that I'm paying attention, you said the head
3 of your veterans program is a West Point
4 graduate that was a naval officer?

5 MR. GRADESS: Yeah, he served as a
6 helicopter pilot after he joined the Army,
7 and then he made an interservice transfer and
8 finished with the Navy for the next -- the
9 remainder of his years.

10 CHAIRMAN DeFRANCISCO: Okay,
11 secondly -- I know that I've heard much about
12 this from Bill Leahy, who's crazy enough to
13 still be here. That shows how he is invested
14 in getting this funding done this year. But
15 in any event, you indicated about the
16 inequities of the settlement. I think what
17 you really mean -- you know the judge can't
18 frame a remedy unless somebody's a plaintiff
19 in a case, right?

20 So it's not the inequities of the
21 settlement, it's that the settlement has
22 maybe -- has put other counties in a bad
23 position because they're not --

24 MR. GRADESS: I agree with you, yeah.

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1 CHAIRMAN DeFRANCISCO: Okay. That's
2 number one.

3 And number two is, was there any
4 reason the other counties could not join in
5 the lawsuit and help pay for the expenses of
6 getting the benefit?

7 MR. GRADESS: Well, that's a very
8 interesting question.

9 It was my position with NYSAC years
10 ago, and my position with these counties
11 nowadays, why in the Lord's name are you not
12 joining up against the state? And the
13 reason, I think, was a level of resistance
14 that flowed I think from -- I don't know what
15 it flowed from. It was a mystery to me, and
16 it remains so.

17 CHAIRMAN DeFRANCISCO: Okay. Okay.
18 But it doesn't in any way cut across your
19 basic point, is that if there's a rule it
20 should apply all the way, and that's where
21 the Legislature should jump in. And I happen
22 to agree with that.

23 MR. GRADESS: Thank you.

24 CHAIRMAN DeFRANCISCO: Okay. Thank

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1 you very much.

2 MR. GRADESS: Thank you very much.

3 CHAIRMAN FARRELL: Thank you.

4 CHAIRMAN DeFRANCISCO: Cheryl Vallee,
5 executive director of the Center for
6 Community Justice?

7 MS. VALLEE: Yes, sir.

8 CHAIRMAN DeFRANCISCO: Okay. CASA of
9 New York State.

10 You were here early this morning when
11 Judge Prudenti testified?

12 MS. VALLEE: No, I'm afraid I was not.
13 I've only been here since about 2 o'clock
14 this afternoon.

15 CHAIRMAN DeFRANCISCO: Well, you're
16 smart. But I just want to let you know,
17 Senator Bonacic was here advocating for the
18 Office of Court Administration also to
19 provide more funds.

20 MS. VALLEE: And we have great respect
21 for Judge Prudenti, by the way.

22 CHAIRMAN DeFRANCISCO: Oh, okay. Very
23 good. Thank you. You're on.

24 MS. VALLEE: Thank you, and good

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1 evening. My name is Cheryl Vallee, and I'm
2 the executive director of the Center for
3 Community Justice located in Schenectady,
4 New York. And I'm also a board member of the
5 Court Appointed Special Advocates Program of
6 New York State, known as CASA-NYS.

7 I would like to thank Chairman Farrell
8 and Chairman DeFrancisco and the members of
9 the Assembly Ways and Means and Senate
10 Finance Committees for this very important
11 opportunity to testify today. Today I'm here
12 to thank you, on behalf of our board members,

13 our program directors, our volunteers, and
14 the children we serve throughout the state,
15 for your ongoing support of CASA programs
16 statewide and specifically for your support
17 during last year's budget session.

18 Due to this support, this year 19
19 local CASA programs across the state have
20 continued to advocate on behalf of more than
21 2600 abused and neglected children in foster
22 care. We have been included in the 2015-2016
23 proposed OCA budget, and we are pleased and
24 thankful to Judge Prudenti and OCA that we

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1 will be able to continue to offer crucial
2 assistance to a critical mass of New York
3 State's most vulnerable children.

4 We are also pleased and thankful that
5 the Senate last year passed legislation that
6 would recognize the enormous value CASA
7 provides to the Family Courts and to codify
8 the existing court rules which govern CASA
9 programs, and that again this year the same
10 bill is being considered for passage by the
11 Senate. Legislation will further enable
12 Family Court judges to utilize CASA
13 volunteers and will strengthen this vital
14 program throughout the state.

15 All CASA programs strive to achieve
16 the same goal, and that is to ensure that
17 every abused and neglected child be placed in
18 a safe and permanent home while taking into

19 consideration each of their emotional ,
20 educational , and physical needs. CASA
21 volunteers are screened, trained and
22 supervised in their activities. They come
23 from a variety of professional , educational ,
24 and ethnic backgrounds.

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1 By being assigned only one or two
2 cases at a time, the CASA volunteer can
3 dedicate a sufficient amount of time and
4 energy to fully explore the needs of each
5 assigned child and engage in dialogue
6 directly with the child, the parents, foster
7 parents, family members, medical and mental
8 health care providers, case workers, school
9 officials, and other service providers
10 involved in the child's life.

11 The CASA volunteer typically submits a
12 written report to the Family Court judge
13 prior to each court hearing with copies of
14 that report provided to all attorneys. This
15 report provides a Family Court judge with
16 critical information on the child's
17 well-being, and whether there are any unmet
18 needs which need to be addressed. The
19 information and perspective which a CASA
20 advocate can supply is often instrumental in
21 helping the judge determine what is in the
22 child's best interests.

23 Studies have shown that children who
24 have been assigned CASA volunteers spend less

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1 time in foster care than those who do not
2 have CASA representati on. Judges have
3 observed that a child assigned a CASA
4 volunteer also has a better chance of finding
5 a permanent home than a child where no such
6 assignment has been made. In 2012, of the
7 103 family court judges in the State who
8 handle abuse and neglect proceedings, 94
9 judges or 91 percent assigned CASA volunteers
10 on a regular basi s.

11 As Judge Prudenti noted in the
12 New York Law Journal, over the past three
13 decades, while Family Court filings have
14 increased by an astounding 90 percent, the
15 number of Family Court judgeships has been
16 increased by only 8.8 percent. At a time
17 when Family Court judges are facing ever more
18 burdensome dockets and fewer resources, CASA
19 volunteers are a great safeguard in assuring
20 that the physical and emotional needs of
21 these most vulnerable children, who are the
22 victims of abuse and neglect, remain a
23 priority and get the judicial attention which
24 is needed.

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1 For this reason alone, CASA should
2 continue to be supported and even nurtured.
3 Since the lion's share of CASA's work is
4 performed by dedicated volunteers, CASA

5 programs could not be any more cost
6 efficient. And they are not solely dependent
7 on government sources. In fact, that's only
8 a very small percentage. We are independent
9 nonprofits and rely primarily on the support
10 of foundations, corporations, religious
11 organizations and individuals to enable
12 continued operation.

13 In 2012, 700 volunteers in 30 counties
14 served over 2600 children. Together,
15 volunteers in 2012 contributed 73,619 hours.
16 Based on the independent sector's 2010
17 calculation of \$27.32 per hour for a
18 volunteer in New York State -- a figure used
19 to quantify volunteer contributions -- this
20 amounts to over \$2 million a year in donated
21 time. Most of the financial support received
22 by CASA programs is used to recruit, train
23 and supervise these volunteers by staff.
24 This is as sound an investment in our

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1 children as our state could ever make.

2 With your continued support, we will
3 continue to serve this population of
4 vulnerable children in New York State and
5 continue to build on the success of the
6 programs already in existence. Court
7 appointed special advocates are, and must
8 continue to be, critical partners with all
9 other civil legal service providers in the
10 family courts to ensure that, for these

11 seriously at-risk children, justice is fully
12 served.

13 I thank you, and I'm open to any
14 questi ons.

15 CHAIRMAN FARRELL: Thank you.

16 CHAIRMAN DeFRANCISCO: So you're happy
17 with the fundi ng.

18 MS. VALLEE: Yes, sir.

19 CHAIRMAN DeFRANCISCO: And you're
20 thanki ng us.

21 MS. VALLEE: I am thanki ng you.

22 CHAIRMAN DeFRANCISCO: That would have
23 been a lot quicker. I'm just making a poi nt.

24 No, I appreciate your comi ng here. I

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1 know that you've got to keep the issue alive
2 because it was so close to deep trouble a
3 couple of years ago. But in any event, thank
4 you, and we're now on to the next witness.

5 SENATOR NOZZOLIO: It's a good
6 program. We support it, have done so, and
7 will continue to. Keep up the good work.

8 MS. VALLEE: Thank you, Senator.

9 CHAIRMAN DeFRANCISCO: Great, thank
10 you.

11 MS. VALLEE: Thank you all.

12 CHAIRMAN DeFRANCISCO: New York State
13 Di spute Resol uti on Associ ati on, Charl otte
14 Carter and Mark Leuthauser. Is that close
15 enough?

16 MR. LEUTHAUSER: Close enough.

17 CHAIRMAN DeFRANCISCO: Okay. And on
18 deck is Connie Neal, New York State Coalition
19 Against Domestic Violence.

20 MS. CARTER: Good evening,
21 distinguished members of the Legislature, and
22 thank you for this opportunity to speak with
23 you.

24 We are here today on a behalf of a

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1 statewide community dispute resolution
2 network, the CDRCs. I'm Charlotte Carter.
3 I'm the executive director of NYSDRA, which
4 is both a contract program administrator and
5 a professional membership association of
6 which the CDRCs are amongst our members.
7 Together we provide free or low-cost dispute
8 resolution services to all the residents in
9 the state.

10 We're here also to request \$1 million
11 in legislative add to stabilize the network
12 and to begin to restore the base of state
13 funding.

14 I've also had the honor of being a
15 community volunteer mediator for 20 years,
16 and I've sat with angry neighbors,
17 disgruntled customers and business owners,
18 troubled young people, landlords and tenants,
19 and parents who are separating and attempting
20 to resolve their disputes.

21 It's amazing to watch how, with the
22 support of mediation, people are able to

23 become creative and collaborative and solve
24 problems for themselves even when they come

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1 in initially in great pain and conflict.
2 CDRCs are a critical community resource.
3 They've been helping your constituents
4 resolve disputes peacefully using mediation,
5 arbitration, and other processes since 1981,
6 when the Office of Court Administration
7 created and funded the network to respond to
8 the needs for access to justice that were not
9 met by the court system.

10 Since then, the CDRCs have evolved to
11 meet additional local community needs. For
12 example, they provide restorative justice
13 services and training in schools and
14 workplaces, collaborative governing training
15 for county legislators, and new programming
16 for veterans, elders and their families,
17 at-risk juveniles and young adults. They do
18 this mostly under the radar, which is why
19 many of you may not be aware that this
20 network for social justice even exists.

21 I'm going to gloss over some of the
22 statistics because you have to those before
23 you in our written testimony, but I'll give
24 you some of the high points. Last year the

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1 CDRC network served over 70,000 individuals
2 and handled 30,000 cases. Mediation saves
3 the state money and resources. From start to

4 finish, the average mediation costs \$333,
5 which is far less than the cost in the court
6 system for even fairly minor civil or
7 criminal matters. Also, the CDRCs are able
8 to quadruple the value of every dollar that
9 they receive in public funding.

10 There are over a thousand community
11 mediators. Mediation is not just a shortcut.
12 It's effective, and it results in durable and
13 workable agreements because it's the people
14 themselves who are able to reach those
15 agreements. So there's over 75 percent
16 agreement rate for mediations and an
17 extremely high level of compliance, and
18 92 percent of participants feel that the
19 process is fair.

20 Mediation services help strengthen our
21 communities. They preserve important
22 business and personal relationships and they
23 make our communities safer as well as more
24 productive. OCA funding for the CDRCs has

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1 been cut by 44 percent since 2009. We have
2 strong relationships with OCA, but the budget
3 constraints limit their ability to support
4 the network financially. And CDRCs have
5 worked so hard to maintain their essential
6 services, but the losses in staffing have led
7 to cuts in office hours, shrinking volunteer
8 panels, and a reduced capacity to partner
9 with other community organizations, even when

10 there's a potential for funding involved.

11 Given the many ways in which the
12 CDRCs' services benefit communities beyond
13 the courts, we come to you to diversify our
14 base of state funding. We've been meeting
15 with legislators in their districts and here
16 in Albany and have had great response from
17 some of you and your staff.

18 The \$1 million legislative add would
19 make it possible for the CDRC network to
20 continue to provide responsive, effective,
21 and accessible dispute resolution services to
22 all your constituents.

23 Thank you.

24 CHAIRMAN DeFRANCISCO: Thank you.

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1 Do you provide these services
2 statewide?

3 MS. CARTER: Yes, we do.

4 CHAIRMAN DeFRANCISCO: And secondly,
5 some -- I don't know what it is throughout
6 the state, but in Central New York there's a
7 small claims court where people file. Do you
8 ever get in conflict with them, or is there a
9 reason one is better than the other? Or do
10 you get different-type cases?

11 MS. CARTER: There are -- I myself
12 have spent a lot of time in small claims
13 court, and there have been judges who are
14 very enthusiastic and send people regularly
15 for mediation before and with the alternative

16 of scheduling a hearing if mediation doesn't
17 work or -- it's voluntary in this state, so
18 there's no real competition. Mediation
19 across the state is always voluntary.

20 CHAIRMAN DeFRANCISCO: Okay.

21 Thank you very much.

22 MS. CARTER: And I'll let --

23 CHAIRMAN DeFRANCISCO: Oh, you're
24 going too?

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1 MS. CARTER: Mark?

2 MR. LEUTHAUSER: Yes.

3 CHAIRMAN DeFRANCISCO: What else can
4 you add succinctly?

5 MR. LEUTHAUSER: I will proceed with
6 all deliberate speed, I promise.

7 CHAIRMAN DeFRANCISCO: I know you
8 will, because your time is up. Go ahead.

9 MR. LEUTHAUSER: My name is Mark
10 Leuthauser. I'm the executive director of
11 the Peacemaker Program. We're a small
12 independent nonprofit located in Utica,
13 New York, and we're the dispute resolution
14 center for Oneida and Madison Counties.

15 I wanted very quickly to speak to you
16 about some of the ways that my agency has
17 been affected by the funding crisis. In
18 response to the reduction in funding that our
19 centers have seen, we've reduced staff, we've
20 streamlined services, we've cut our hours and
21 secured any other sources of funding we could

22 to keep our doors open.

23 We have done everything that we can to
24 maintain our caseloads. One center went from

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1 a staff of 23 to 13. My own agency went from
2 12 staff to four, only two of which are
3 full-time. That means we're not able to
4 respond to our community's needs the way that
5 we need to and the way that we want to.

6 We've had to focus primarily on cases
7 referred by the courts, and that means we
8 can't do as much of the community-based work
9 that we need to. In short, we've been
10 hanging on by our fingernails for five years,
11 and we're starting to slip.

12 Dispute resolution centers have had
13 reduce or eliminate services. Some of these
14 services have served veterans, aging adults,
15 their caregivers, kids, families, and those
16 leaving the correction system. At my agency,
17 Peacemaker Program, we've had to pull back on
18 programs that were meant to bridge the gap
19 between law enforcement and the community or
20 that were meant to deliver very much needed
21 skills into schools.

22 The average parent in Family Court has
23 got about ten minutes to make their case. I
24 don't know about you, but that's not long

♀ 542

1 enough for me to explain why I need to spend

2 time with my kids or how I'm going to raise
3 them.

4 The fact of the matter is Family
5 Courts are sharply limited in their
6 resources. They have X number of judges, Y
7 number of hours, and Z number of cases, and
8 they're doing the best they can. We can
9 provide something the Family Courts can't.
10 We can provide families the time that they
11 need, whether that be hours or days or even
12 weeks, to build good solutions to complex
13 problems.

14 The legislative add that we're asking
15 for would allow us to restore some of these
16 services and better respond to the needs of
17 vulnerable populations. The \$1 million would
18 be spread across 21 centers in all
19 62 counties statewide. For example, if the
20 current formula holds, my agency would be
21 looking at an increase of probably a little
22 over \$20,000. That would allow me to make my
23 part-time staff into a full-time staff, and
24 then we could start outreach to families all

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1 throughout our service area, whether or not
2 they filed a petition with Family Court.

3 And that's just one example. Other
4 centers would be able to apply those funds to
5 program salaries, outreach, juvenile justice.
6 In fact, one of the biggest strengths of our
7 network is that each individual agency can

8 customize their spending according to local
9 needs.

10 Just like you heard Judge Prudenti
11 testify this morning, the Office of Court
12 Administration works hard to support our
13 program. They're big boosters. We currently
14 receive just about \$5 million across the
15 entire network, including a desperately
16 needed 2 percent increase. While we're
17 grateful and this represents a good start,
18 that's considerably less than the
19 \$9.5 million that we estimate we would have
20 access to if there hadn't been any cuts.

21 The \$1 million we're asking for is a
22 fraction of what we would need to fully
23 restore our network to the previous level of
24 state funding. We think the request is

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1 reasonable at a time when funding is just
2 starting to become available. It's just
3 enough to stop the bleeding and to give our
4 centers the opportunity to start growing
5 again.

6 Thank you very much for your time.

7 CHAIRMAN DeFRANCISCO: Thank you very
8 much.

9 Connie? Connie Neal, executive
10 director, New York State Coalition Against
11 Domestic Violence.

12 And on deck is Karen Murtagh and
13 Thomas Curran, Prisoners' Legal Services of

14 New York.

15 MS. NEAL: Good evening. My name is
16 Connie Neal, and I am the executive director
17 of the New York State Coalition Against
18 Domestic Violence. I want to thank you for
19 this opportunity to speak with you tonight
20 about the budget and public protection issues
21 and the intersections of how they impact
22 victims of domestic violence across New York
23 State.

24 The New York State Coalition Against

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1 Domestic Violence is a statewide membership
2 organization which consists of local domestic
3 violence service providers and allied
4 organizations. Together we share a
5 commitment to create and support the social
6 change necessary to prevent and confront all
7 forms of domestic violence.

8 Across the State of New York there are
9 162 domestic violence shelters who serve well
10 over 15,000 victims of domestic violence and
11 their children. In addition, there are 87
12 non-residential domestic violence programs
13 which serve more than 41,000 victims
14 annually.

15 If I were to summarize my message to
16 you in a single sentence tonight, it would be
17 this: I am deeply concerned for the safety
18 of thousands of New Yorkers from urban,
19 suburban, and rural communities across our

20 state.

21 Over the past year, it is clear that
22 high-profile domestic violence cases, sexual
23 assault cases, and stalking cases have
24 focused unprecedented attention on the

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1 experiences of victims and subsequent system
2 responses. Also, with emerging spotlights on
3 college campuses, professional sports and the
4 military, across the nation more victims are
5 coming forward for help, at the same time
6 that victim service providers are facing
7 serious gaps with available resources.

8 As we are meeting here today, domestic
9 violence advocates are answering hotline
10 calls, and are providing lifesaving support
11 in shelters and non-residential programs
12 across the state. And simultaneously,
13 victims of domestic violence are dialing 911,
14 requesting orders of protection, are fleeing
15 their homes for safety, and are simply too
16 afraid to do anything at all.

17 In the first two months of 2015, a
18 brief scan of news headlines across New York
19 State are very disconcerting and emphasize
20 domestic violence as a significant public
21 protection issue. Some of those headlines
22 include the following: TV tech responding to
23 service call uncovers domestic disturbance;
24 Troy man arrested on multiple charges

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1 following a domestic dispute; Domestic attack
2 At Attica supermarket; Man kills girlfriend,
3 her daughter, then self in Suffolk County
4 murder-suicide; Cornell sophomore indicted in
5 shotgun slaying Of CEO dad -- Lawyer says
6 father abusive to family; New York City
7 reports of LGBTQ intimate partner violence
8 see 26% increase; Slayings put spotlight on
9 domestic violence; Jealous ex pleads guilty
10 in shooting at Wal-Mart; Ossining man accused
11 of stalking ex-girlfriend with GPS; and Deaf
12 man stabbed teen girlfriend 38 times, stuffed
13 her in a drum.

14 Tragically, these headlines represent
15 only a small fraction of what is really
16 happening across the state every day. A DCJS
17 report found that 144 domestic homicides were
18 committed in New York State in 2013,
19 accounting for almost a quarter of all
20 homicides in New York State.

21 Also a report from the New York State
22 Office for the Prevention of Domestic
23 Violence found that while homicides decreased
24 statewide in 2013, intimate partner homicides

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1 increased by 16 percent. Data from the same
2 report also revealed that in 2013 police
3 across New York State responded to almost
4 470,000 domestic incident calls. And of the
5 300,000 orders of protection issued by courts
6 in New York State in 2013, nearly 210,000

7 were required to be registered in the Unified
8 Court Systems Domestic Violence Registry.

9 To place some of these statistics in
10 context, data collected in the 2013 yearly
11 census conducted by the National Network to
12 End Domestic Violence shows that New York
13 State is number three in the country
14 regarding demand for domestic violence
15 services. In the course of one day through
16 this census, more than 1100 hotline calls
17 were answered, almost 2500 domestic violence
18 victims found refuge in emergency shelters
19 and transitional housing programs at the same
20 time. Also, there were 572 requests for
21 services that went unmet due to a lack of
22 available staff and funding. This is
23 especially concerning in light of the fact
24 that 119 domestic violence advocate staff

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1 positions in New York State were eliminated
2 during the course of that year.

3 In addition to the NNEDV census, the
4 National Domestic Violence Hotline, which is
5 based in Texas, has also indicated that
6 New York State is ranked number three in the
7 country for calls to the National Hotline.
8 In 2014, the national hotline received over
9 7500 contacts from New Yorkers, whose top
10 three requests were for domestic violence
11 shelter, legal advocacy, and individual
12 counseling.

13 The needs of victims of domestic
14 violence in New York are significant, and now
15 is the time to affirm our collective
16 commitment to ending domestic violence by
17 increasing investments in these vital
18 programs.

19 Domestic violence is an issue that
20 crosses through all systems in our
21 communities. Survivors may need police
22 assistance, criminal or civil court
23 assistance, emergency shelter, social welfare
24 assistance to provide them with support they

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1 need to be independent from their abuser, and
2 health care services to address physical
3 injuries or long term health consequences
4 that result from abuse and trauma.

5 Throughout all of this, survivors need
6 support and guidance from advocates at local
7 domestic violence programs that provide
8 survivor-centered, trauma-informed services.
9 Sadly, the New York State Executive Budget
10 contains little state-originated funding to
11 support these services, and relies heavily on
12 federal funding sources. And clearly that
13 federal funding is not enough.

14 My request for support for domestic
15 violence services in the public protection
16 budget involves two components: civil legal
17 services, and stable funding for domestic
18 violence programs.

19 First, regarding civil legal services.
20 The Executive Budget proposes to eliminate
21 the Legal Services Assistance Account and
22 proposes a new funding stream of \$5.5 million
23 for civil and criminal legal services. This
24 funding would be distributed most likely by

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1 DCJS. And at face value, it seems to be a
2 reasonable reallocation of funds, but the
3 constant reallocation of funding can
4 oftentimes create instability for legal
5 services programs dedicated to victims of
6 domestic violence.

7 I'm asking the Legislature to
8 stabilize the funding of civil legal services
9 so that programs can focus on the services
10 that they provide to victims rather than
11 concerns related to unpredictable funding
12 streams. As a part of the stabilization
13 process, I ask the Legislature to ensure that
14 there is a specific and stable line dedicated
15 to civil legal services for domestic violence
16 victims, and also that the distribution of
17 such funding be done in a way that ensures
18 services in each county are adequately
19 funded.

20 Civil legal services, like all
21 critical domestic violence services, should
22 be consistently and broadly supported through
23 the use of formula grants. Oftentimes
24 competitive RFPs place a significant burden

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1 on the limited staff capacity of domestic
2 violence programs across the state. Most
3 successful proposals, for example, require
4 the undivided time and attention of
5 professional grant writers. As many programs
6 simply do not have the resources to support
7 specialized grant writers, the competitive
8 RFP process creates an uneven playing field,
9 and may place vital services in jeopardy in
10 many communities around the state.

11 Now, secondly, stable funding for
12 domestic violence services. Some of the
13 lessons that we've learned from an August
14 2014 report indicated the following:
15 "It is important to ensure that emergency
16 services are stable and available for victims
17 throughout a state. That is, victims, their
18 communities, and states are best served by
19 the presence of a network of local programs
20 whose sole purpose is to ensure that services
21 and support for victims and their children
22 exist, and that gaps and needs are identified
23 and met. Frequently, this includes the need
24 for victims to flee their homes and

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1 communities in order to remain safe. This is
2 a complicated situation that is best handled
3 when the network of local programs see this
4 situation as part of their collective

5 responsibility. It is difficult to achieve
6 these goals when programs are competing with
7 one another for limited funds, are constantly
8 facing the threat of losing funding and grant
9 administrators view local programs as vendors
10 instead of as experts that offer
11 comprehensive solutions to a serious social
12 problem. "

13 The consequences and costs of domestic
14 violence homicides can be devastating not
15 only for the victims and their families, but
16 also for neighborhoods and communities in
17 which the murders occur. The average cost
18 per murder can exceed \$17.25 million when
19 considering medical care costs, lost future
20 earnings, public program costs, property
21 damage and losses, and quality of life
22 losses.

23 A clear goal for the Legislature,
24 then, is to consider a public protection

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1 budget allocation in the amount of
2 \$17.25 million, and that can provide a stable
3 and continuing funding stream for domestic
4 violence programs across the state. State
5 originating funds in many states include a
6 combination of general fund support, marriage
7 license fees, divorce fees, perpetrator
8 fines, and court fines. Also, innovations in
9 the work to end domestic violence have come
10 largely from states with stable,

11 non-competitive funding practices and strong
12 state coalitions. Furthermore, it is
13 observable that constant changes to funding
14 levels and cuts to agencies have a
15 deleterious affect on the ability of programs
16 to meet the needs of victims.

17 So in conclusion, I'm thinking quite a
18 bit about some milestones that we've
19 experienced in our country and in our state.
20 in September 2014, Vice President Biden spoke
21 at an event honoring the 20th anniversary of
22 the Violence Against Women Act. Back in 1994
23 he noted that advocates from shelters,
24 coalitions, and rape crisis centers were

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1 operating on "no more than bake sales and
2 good intentions."

3 Over the past 20 years, we have seen
4 incredible progress with policies and
5 additional legislation to support efforts to
6 end domestic violence. However, we still
7 have much work in front of us. I urge you to
8 explore and implement strategies within the
9 budget to meet the goal of providing
10 resources to the extent that no one asking
11 for shelter or other domestic violence
12 services will ever be turned away. Quite
13 simply, if we are not able to reach this
14 goal, we will continue to see preventable
15 tragedies across our state.

16 I look forward to working with you on

17 these issues, and want to thank you again for
18 the opportunity to present this testimony.

19 CHAIRMAN DeFRANCISCO: Amazing. You
20 got it all done right on time.

21 MS. NEAL: Perfect.

22 CHAIRMAN DeFRANCISCO: Excellent job.

23 MS. NEAL: Very good.

24 CHAIRMAN DeFRANCISCO: Senator

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1 Nozzol i o?

2 SENATOR NOZZOLIO: Thank you,
3 Mr. Chair man.

4 Good afternoon, or I should say good
5 evening. Great testimony, wonderful
6 encapsulation of the focus on protecting or
7 at least supporting the victims of domestic
8 violence. Shelters, orders of protection,
9 places where counseling can be received,
10 helping the victims, I know, an important
11 part of your mission, and I congratulate you
12 for that and the work you do.

13 What I don't see in this testimony is
14 how we can prevent domestic violence victims
15 from happening in the first place. The
16 prevention of domestic violence is as
17 important, if not more so, and we haven't
18 looked at that enough, I believe. That's why
19 I'd like you to consider analyzing Brittany's
20 Law.

21 Brittany's Law establishes a database
22 of those who have been already convicted of

23 violence, violent acts. In an effort to be
24 forewarned -- as you may know, Brittany's Law

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1 is named after Brittany Passalacqua, who was
2 the granddaughter of Dale Driscoll, who, on
3 one fateful day, Dale lost her daughter and
4 granddaughter to the perpetrator who had
5 propensities of violence, was actually
6 incarcerated for violent acts, and that was
7 unbeknownst to the family that brought this
8 perpetrator into their home.

9 Focus on prevention, and we would also
10 be better off. And I hope that you can maybe
11 even consider having additional suggestions
12 to this panel and all legislators about how
13 to prevent this very heinous crime, how to
14 prevent victims before they become victims.

15 MS. NEAL: Thank you very much for
16 your comments about prevention. I think
17 that's key.

18 And in the 10 minutes I had, it's
19 really looking at the issues that we have
20 right now in order to maintain and improve
21 upon the quality of services that are
22 available for victims of domestic violence.
23 But I believe you're right on point. When
24 we're looking at the question how do we

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1 prevent domestic violence from occurring in
2 the first place, we have to get at those
3 underlying belief systems that support and

4 condone violence, that bystanders are
5 involved in very appropriate ways, that we
6 look at ways that we can involve youth and
7 students and our school system and all
8 members of our community to have that shared
9 belief system that behaviors are not
10 appropriate.

11 And there's a way that we can really
12 get at some of those core beliefs before it
13 gets to the point that someone needs to pick
14 up the phone and call a hotline or seek out
15 shelters or seek out an order of protection
16 or to have multiple systems involved at that
17 point.

18 So it's my hope that we can build on
19 this process of awareness about the realities
20 of domestic violence in our state, that we
21 can, simultaneously making sure that everyone
22 is safe, also build in these primary
23 prevention initiatives that can really help
24 us get to the place where we have shared

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1 belief systems.

2 SENATOR NOZZOLIO: Well -- and that's
3 very good to hear you say. And if you could
4 help give that message to other advocates --
5 yes, I agree that in your last paragraph you
6 said how far we've come in providing these
7 services. Now I think the next generation,
8 if you will, of effort needs to be placed on
9 prevention. As well as supporting the

10 victims who have been victimized, let's try
11 to prevent them from happening in the first
12 place.

13 Thank you very much.

14 CHAIRMAN DeFRANCISCO: Thank you very
15 much. Appreciate it.

16 Next, Karen Murtagh, Thomas Curran,
17 Prisoners' Legal Services of New York.

18 On deck, Anne Erickson, president and
19 CEO of Empire Justice Center.

20 MS. MURTAGH: Good evening.

21 CHAIRMAN DeFRANCISCO: Good evening.

22 MS. MURTAGH: I'm Karen Murtagh, the
23 executive director of Prisoners' Legal
24 Services. And John Dunne sends his regrets.

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1 He's usually with me, but he is overseas --

2 CHAIRMAN DeFRANCISCO: Excuse me. Is
3 your mic on? And could you pull it closer if
4 it is?

5 MS. MURTAGH: Is that better?

6 CHAIRMAN DeFRANCISCO: Just pull it
7 closer.

8 MS. MURTAGH: Okay. So with me I
9 brought Tom Curran, who is on our board of
10 directors and is the son of the late Paul
11 Curran, who was a chair of the Prisoners'
12 Legal Services board of directors for over
13 two decades.

14 So Tom is going to start.

15 MR. CURRAN: Thank you very much.

16 I'm pretty sure that John Dunne isn't
17 happy that I'm standing in for him, and I'm
18 absolutely sure that my father is not happy,
19 wherever he may be, with invoking me.

20 As Karen said, I'm a third-generation
21 former prosecutor and a lawyer practicing --
22 I practice a great deal of criminal law. I
23 have, and I was trained -- I don't have any
24 problem with the criminal justice system. My

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1 father didn't have any problem with
2 punishment, I can attest to that. But there
3 has never been, and I was trained that there
4 has never been two sides to the criminal
5 justice system. There was justice to be
6 served.

7 And in my view, incarceration as the
8 result of the functioning of our criminal
9 justice system -- which is the best system
10 that I am aware of -- when society, through
11 the fair operating of the system, deems that
12 a person's conduct is such that the loss of
13 liberty is required, it's not the end of the
14 story.

15 If we're going to take liberty, it is
16 because we've deemed a person's conduct so
17 violated the social compact that binds us
18 all. Through the application of our criminal
19 justice system, we're bound to be certain
20 that justice continues to apply.

21 And at least since 1976, the year that

22 Prisoners' Legal Services was founded,
23 New York has recognized that this basic
24 principle, that a commitment to justice for

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1 those in our custody is a continuing
2 obligation. I'm very proud to serve on the
3 board of Prisoners' Legal Services, and I
4 will leave it to Karen's far better ability
5 to speak to PLS's many and myriad
6 accomplishments.

7 I can assure this body that not a dime
8 given to Prisoners' Legal Services is wasted.
9 And indeed, during my tenure, I've seen them
10 do increasingly more with increasingly less.
11 They've never, to my knowledge, been
12 sanctioned for any frivolous conduct,
13 litigation, or pursuit of claim. They work
14 well, as I've witnessed, with the Department
15 of Corrections. And I think in the system,
16 they act very well as an advocate.

17 On a personal note, I very much
18 appreciate the opportunity to be before this
19 body. My father took great pride and I grew
20 up on stories of the greatness of this body
21 and the work it does for the great people of
22 the State of New York. I know that in
23 tabloids and elsewhere, this body's been
24 somewhat under attack, and I regret that. I

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1 I look forward to the day that somebody stands

2 up to defend this great body, because it
3 deserves it.

4 Thanks.

5 CHAIRMAN FARRELL: Thank you.

6 MS. MURTAGH: So I am here to be the
7 detail person and to ask the Legislature to
8 add funding to the Executive funding that was
9 put in this year's budget.

10 Once again, Governor Cuomo put in
11 \$1 million for Prisoners' Legal Services.
12 This is the fourth year in a row that he's
13 done so. But that simply is not enough for
14 PLS to do the work that we need to do. We
15 are asking for a legislative add of
16 \$2.5 million, and I will lay out the reasons
17 in a minute for that request.

18 I would like to just note that if we
19 were to account for the increase in the
20 number of prisons, the number of prisoners,
21 and inflation since PLS was created in 1976,
22 I would be sitting here asking for
23 \$16 million to fund 12 regional offices and
24 120 lawyers. Obviously I am not going to do

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1 that. But we do need additional funds.

2 We need them because we have seen
3 complaints rise over the past year with
4 respect to solitary confinement issues,
5 disciplinary cases that we review. Those
6 cases went up 256 from 2013. Jail time,
7 sentencing, and good time computation cases

8 went up 342 from 2013. You have all heard
9 from NYSCOPBA today about the increase in
10 assaults on corrections officers. PLS has
11 witnessed similar percentage increases of
12 guard brutality on our clients. While the
13 prison population has gone down by 6,000 over
14 the past six years, the complaints of guard
15 brutality have remained the same. So
16 percentagewise, they have actually gone up.
17 All of these statistics demonstrate that the
18 tensions in our state prisons are rising.

19 We should take heed of this, just as
20 the state should have taken heed of this in
21 1971. For those of you who don't know, five
22 months before the Attica uprising a group of
23 prisoners sent a letter to Governor
24 Rockefeller and they laid out complaints very

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1 similar to the issues that PLS works on every
2 day. They complained about solitary
3 confinement, lack of medical and mental
4 health care, they complained of jail time and
5 sentence computation errors and of guard
6 brutality and harassment. Unfortunately,
7 Governor Rockefeller never answered that
8 letter.

9 The state has done much over the years
10 since that time to take a different path.
11 But we now have to take the critical step of
12 adequately funding PLS. We should do this
13 not only because PLS saves the state money in

14 the work that we do -- last year we saved
15 63 years of solitary confinement time and
16 56 years of jail time, sentencing time, and
17 good time.

18 But because PLS has become an
19 essential and critical partner with criminal
20 justice at New York State -- two examples of
21 this is how closely we work with the
22 Department of Corrections. In this past
23 year, we have worked with the department to
24 create a training video on reentry that is

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1 shown to all inmates coming into state prison
2 at reception.

3 We have partnered with the AG's office
4 to do CLE training that was originally done
5 for the Appellate Division judges and their
6 staff, but now the Department of Corrections
7 is using our training video to train their
8 disciplinary hearing officers on how to hold
9 proper prison disciplinary hearings.

10 And this past year we partnered with
11 the department on the creation of a pilot
12 project at Albion Correctional Facility which
13 is a phone program where female prisoners are
14 now allowed to call Prisoners' Legal Services
15 for assistance so they don't have to be
16 limited to just writing to us.

17 We also partner with the judiciary.
18 Last year the chief of the Second Circuit,
19 Chief Judge Robert Katzmann, contacted PLS

20 and asked us to start taking immigration
21 cases in the prison, and we did so. Over the
22 past three months, the New York State Court
23 of Appeals has reached out to us on two
24 occasions, asking us to accept two pro se

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1 cases on which they granted leave to appeal.
2 We have accepted those cases.

3 PLS needs a total funding of
4 \$3.5 million. Right now we only have 15
5 attorneys across the state. And the prison
6 population today is three times that of what
7 it was in 1976, but our staff is less than
8 half of what it was at that time. We have
9 one lawyer to every 3,600 prisoners.

10 And I'd like to just close with this:
11 PLS is, if you will, just like a prosecutor's
12 office. We don't have any control over the
13 number of cases that come into our office.
14 We receive 10,000 letters a year asking for
15 help. We have to read through all of these
16 letters, investigate the cases, assess them
17 for merit -- we don't have the money for
18 investigators like prosecutor's offices have,
19 or paralegals. We barely have enough money
20 to employ the attorneys to do the work. So I
21 am imploring this body to once again, as you
22 always have in the past, to support PLS and
23 add \$2.5 million to the current
24 appropriation.

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1 Thank you.

2 CHAIRMAN DeFRANCISCO: I don't have a
3 question, I just want to make a comment.

4 There's another point that I think is
5 the most important, to me, anyway.

6 We get a lot -- we get the same
7 letters, not in that volume. But whenever
8 I've called PLS, they get somebody to talk to
9 the person. And to me, merely the release
10 valve of pressure that that inmate is
11 experiencing -- I mean, at least the
12 opportunity to talk to a lawyer -- and if
13 there's no remedy, there's no remedy -- and
14 it seems like it helps the system avoid
15 incidents of violence.

16 But I just want to make that point,
17 because that to me is very important as well.

18 MS. MURTAGH: Thank you very much.
19 That's very true. There are a number of
20 cases where we have to write back and simply
21 say "You don't have a claim." But even in
22 those cases, we receive thank-you letters for
23 at least responding.

24 CHAIRMAN DeFRANCISCO: And thank you

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1 for your patience.

2 SENATOR NOZZOLIO: I'd like to speak,
3 Mr. Chair.

4 First of all, thank you for your
5 attention and being involved. And that
6 certainly your dad and John Dunne are the

7 most respected individuals we know. So thank
8 you very much for being involved in this.

9 MR. CURRAN: Thank you, Senator.

10 SENATOR NOZZOLIO: I make no secret, I
11 have been a constant critic, certainly a
12 significant critic of PLS for a number of
13 years. And I would welcome being educated
14 about PLS of today.

15 The PLS of a couple of decades ago was
16 one that I saw as misdirected in terms of
17 litigation that just made you scratch your
18 head, about melted ice cream cones and cake
19 that was the wrong flavor in the
20 commissary -- and which you, Mr. Curran,
21 indicated was something that is very telling,
22 that you don't believe that any citations
23 have been made -- and that, I certainly will
24 take your word -- any citations made that

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1 have gotten to the frivolity of the cases,
2 frivolous cases in terms of sanctions. And
3 that -- what I am -- Senator DeFrancisco's
4 comments are well-taken.

5 What I'd like to have is the kind of
6 cases that you have been involved with over
7 the past couple of years. Not as a major
8 homework project, but it's something that I
9 would be interested to know and that we have
10 a responsibility to explore. So is there a
11 way that I could find out that information?

12 MS. MURTAGH: Yes, I would be happy to

13 provide you with our annual litigation
14 report, as well as an advocacy report that I
15 put together that lays out all of the cases
16 where we've obtained relief for our clients.

17 SENATOR NOZZOLIO: Now, I was chair of
18 the Crime and Corrections Committee when we
19 banned the solitary confinement for mentally
20 ill individuals --

21 MS. MURTAGH: Thank you for that.

22 SENATOR NOZZOLIO: -- and so I'm
23 sensitive to your concern, although I do
24 believe there's a place for solitary

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1 confinement. And everyone's that sentenced
2 there may be sentenced there for their own --
3 many may be sentenced there for their own
4 protection. As opposed to special housing,
5 it's not necessarily a box, if you will.

6 But in any event, rather than belabor
7 the discussions today, please feel free to
8 give me a roster of cases, termination of
9 those cases and -- how many of them do you
10 engage in each year?

11 MS. MURTAGH: In terms of litigation?

12 SENATOR NOZZOLIO: Mm-hmm.

13 MS. MURTAGH: Probably only between 35
14 to 40 cases in litigation.

15 The majority of our work and good
16 results is obtained through our advocacy. We
17 file administrative appeals of disciplinary
18 hearings, and in many, many cases we prevail

19 at the administrative level because the
20 department takes our appeals very seriously.
21 So they correct the errors before we even
22 have to go into court.

23 MR. CURRAN: Which is telling -- sorry
24 to interrupt -- which is very telling, from

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1 my point of view as a litigator. If you're
2 winning before the very administrative agency
3 that you're appealing the decision for,
4 that's very telling. And it speaks to their
5 working relationship with DOCCS.

6 SENATOR NOZZOLIO: The concern that
7 we've had in the past has been, certainly,
8 cases being out there in terms of subject
9 matter, but also the pointed opposition to
10 corrections officers who feel under siege
11 normally in their workplace.

12 So I guess that's what they -- the
13 North Star I want to be guided by is how you
14 have approached corrections officers in terms
15 of their day-to-day work, and are you a
16 friend or a foe? And that has to be
17 analyzed.

18 But thank you for being here.

19 MR. CURRAN: From what I've seen,
20 Senator, and I can speak from this -- I think
21 I'm the only Republican associated with PLS,
22 I think that's a safe statement.

23 From my point of view, from a law
24 enforcement background, I was very and had

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1 been very struck by the very close working
2 relationship that PLS and Karen certainly has
3 with DOCCS and its people. At their 40th
4 anniversary dinner recently, fairly recently,
5 at our table was the Commissioner of DOCCS.
6 And I -- you know, the working relationship
7 really struck me. PLS and its lawyers are
8 grownups, and they comport themselves that
9 way.

10 SENATOR NOZZOLI O: Thank you both.

11 MR. CURRAN: Thank you very much.

12 MS. MURTAGH: Senator DeFrancisco, I
13 would just like to say one more thing.

14 Last year you asked me about the
15 Medicaid savings because we were trying to
16 encourage prisoners to sign up for Medicaid.
17 I reached out to Commissioner Annucci to get
18 that number, because they would have that --
19 and I think he was working on his
20 excruciatingly detailed testimony that he
21 gave this morning, so he didn't get back to
22 me. But I can tell you that I have over 200
23 letters from prisoners who signed up for
24 Medicaid simply because PLS urged them to do

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1 so.

2 CHAIRMAN DeFRANCISCO: Great.

3 Terri fic.

4 And thanks for telling me you were a

5 Republican. I would have never guessed.

6 (Laughter.)

7 MR. CURRAN: It's shocking, right?

8 CHAIRMAN DeFRANCISCO: Thank you very
9 much.

10 MR. CURRAN: Thank you very much.

11 MS. MURTAGH: Thank you very much.

12 CHAIRMAN DeFRANCISCO: Anne Erickson,
13 Empire Justice Center, to be followed by
14 Corey Stoughton for the New York Civil
15 Liberties Union.

16 MS. ERICKSON: Good evening.

17 CHAIRMAN DeFRANCISCO: Good evening.

18 MS. ERICKSON: Thank you. So my name
19 is Anne Erickson, and I'm president and CEO
20 of the Empire Justice Center. And we are a
21 statewide organization that works on civil
22 legal services. We do a combination of
23 training, support, technical assistance.
24 We're a backup center for the civil legal

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1 services community. We provide direct
2 representation in our offices in Rochester,
3 Albany, Westchester, and out on Long Island,
4 and we do policy advocacy work. And we do
5 that across probably about 30 areas of
6 substantive law at this point.

7 I also just wanted to start by saying
8 first thank you so very much for being here
9 and for taking the time to really listen and
10 engage throughout a very, very long day. So

11 I definitely appreciate that. I recently
12 celebrated 25 years of being with legal
13 services, so I've done a lot of growing up
14 professionally, and I think I've been at
15 these tables for many of those years. So
16 thank you.

17 I also wanted to note that I am a
18 member of the Chief Judge's Task Force to
19 Expand Access to Civil Legal Services in
20 New York. And as you know, he has made
21 significant investments in legal services
22 over these last couple of years, which has
23 just been absolutely phenomenal.

24 So my notes tonight are both thank you

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1 and we need to stay the course. Just to put
2 some of this in context, as you know, over
3 the years we have barely met 20 percent of
4 the legal needs of the poor in this state and
5 indeed across the country.

6 One of the things the task force did
7 in its report just this past November is that
8 we have asked Judge Prudenti to take a new
9 look at those numbers to see what kind of an
10 inroad we are now making. Maybe we've gone
11 from meeting less than 20 percent of the
12 legal needs of the poor to maybe meeting less
13 than 30 percent. We have made inroads, but
14 we are nowhere near where we need to be.

15 We are blessed in this country and in
16 this state to be founded on the rule of law.

17 And in order for that rule of law to be
18 maintained and honored and respected, we need
19 to make sure that when people go into court
20 there is a fair fight. We are premised on
21 both sides being vigorously represented and,
22 from that, in front of an impartial judge or
23 administrative hearing officer would come
24 some measure of justice.

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1 And unfortunately what we're seeing
2 when we looked at the numbers recently is we
3 had 99 percent of the tenants in New York
4 City courts in eviction proceedings were
5 unrepresented, walking into court on their
6 own. Ninety-seven percent of parents seeking
7 child support orders were walking into very
8 complicated legal matters without
9 representation. Ninety-nine percent of
10 consumers facing consumer debt and collection
11 practice problems were unrepresented when
12 they walked into court.

13 We continue to see this with the
14 economic fallout. We are not out of the
15 woods by any measure. We recently did a
16 survey of the legal services providers, and
17 if you look at page 5 of my written testimony
18 you can see the areas of increased need are
19 those essentials of life, as Judge Lippmann
20 calls them: housing and homelessness,
21 consumer law, domestic violence, employment,
22 immigration -- the things that hit the very

23 core of somebody's ability to live and thrive
24 and be functioning members of our society.

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1 I would also note the economic impact
2 of providing legal services. Judge Prudenti
3 touched on this this morning. But the task
4 force over the last couple of years has
5 engaged some pro bono economists to work with
6 us. And as you can see from the testimony on
7 page 6, we see legal services generating
8 about \$6 for every dollar that is invested in
9 the services. Reduced emergency eviction
10 costs, reduced costs associated with domestic
11 violence, and the securing of federal
12 benefits for folks in New York who are
13 entitled to them.

14 So very simply, my request here
15 tonight is to really look at two things. One
16 is the Legal Services Assistance Fund which
17 is part of the budget. It is included in the
18 Executive Budget, but the allocation of funds
19 is not, and that's something that the
20 Legislature generally has done of its own
21 volition. And we would urge you to restore
22 those line-item funds so that there is
23 stability in that. And then of course to
24 support the OCA budget and its request for

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1 funding for legal services.

2 I would also note that over 70
3 organizations around the state have been part

4 of that new funding stream. As Judge
5 Prudenti noted, it's a competitive RFP
6 process every year. At last count there were
7 over 385,000 cases closed by those providers.
8 So it's a robust and statewide system of
9 legal services that we are now moving towards
10 in this state, which is just wonderful to
11 see.

12 So we have a long way to go. We have
13 made tremendous inroads, and I thank you for
14 your support as always. I'm happy to answer
15 any questions.

16 CHAIRMAN DeFRANCISCO: And happy 25th
17 anniversary.

18 MS. ERICKSON: Thank you.

19 CHAIRMAN DeFRANCISCO: Senator
20 Krueger.

21 SENATOR KRUEGER: Thank you.

22 Also, happy 25th anniversary.

23 You know, the night's going on and
24 we're not asking questions. But I just want

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1 to repeat one thing from page 6 of your
2 testimony. In total, the task force found a
3 return of more than \$6 for every dollar of
4 funding invested in civil legal services.

5 And I know that we sit here in these
6 budget hearings going, everybody wants more
7 money, how can they all have more money. But
8 I think it is critical when people actually
9 take the time to do the work to show it's

10 actually an investment in having significant
11 wins for the people of the State of New York,
12 at the same time as we are legitimately and
13 justifiably able to say no, no, we made an
14 investment here and we saved \$6 there.

15 So I appreciate you for highlighting
16 that as well.

17 MS. ERICKSON: Thank you. And that
18 was the task force's work of these
19 independent economists that really took a
20 look at things.

21 And I think it also points to the
22 preventive nature of some of what we're able
23 to do by preventing evictions and not
24 engaging in some emergency shelter costs and

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1 stabilizing families. It makes a lot of
2 sense. Thank you.

3 CHAIRMAN DeFRANCISCO: Thank you.

4 Corey Stoughton, senior staff attorney
5 for New York Civil Liberties Union.

6 The next speaker, who submitted, was
7 Wendy Burch. So on deck is Terry O'Neill
8 from The Constantine Institute.

9 You're on.

10 MS. STOUGHTON: Good evening. Good
11 evening, Chairman DeFrancisco, Chairman
12 Farrell, and all the members of the joint
13 budget committee. My name is Corey
14 Stoughton. For more than seven years I have
15 been lead counsel in litigation seeking

16 reform of our state's indigent criminal
17 defense system, Hurrell-Harring v. State of
18 New York.

19 I appear before you today to seek your
20 support for provisions in the Governor's
21 proposed budget that implement the settlement
22 of that litigation and begin the long-overdue
23 process of essential reform of the public
24 defense services in five New York counties.

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1 I also appear before you today to seek your
2 support for the expansion of those reforms
3 statewide.

4 This is a story with a long history,
5 but I'll begin in 2007 when we filed a
6 lawsuit on behalf of five counties, Onondaga,
7 Ontario, Schuyl er, Suffolk, and Washington,
8 challenging the decision that dates back to
9 the 1960s when the state delegated
10 responsibility for public defendants to
11 county governments. The result of that was
12 what former Chief Judge Judith Kaye described
13 as a patchwork system that fails to satisfy
14 constitutional and statutory obligations to
15 protect the rights of the indigent accused.

16 This result is also responsible for
17 what the New York State Association of
18 Counties has labeled one of the top five
19 unfunded mandates borne by county
20 governments.

21 In October of last year, on the very

22 day before trial was to begin, the NYCLU and
23 the Governor's office reached a settlement in
24 the Hurrell-Harrington litigation. This was an

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1 important day, it was an historic moment.
2 And with that settlement, the state's leaders
3 have acknowledged the call that was long
4 unheeded for the state to take responsibility
5 for the failed public defense system.

6 That settlement has four major
7 components. First, it guarantees counsel at
8 every arraignment, funded by the state. This
9 marks the end of an era for these five
10 defendant counties, in which defendants are
11 brought before a judge, charged with a crime,
12 issued a bail order, and sometimes
13 incarcerated, all without legal counsel.

14 Second, the settlement sets
15 state-funded caseload limits for public
16 defenders. This is intended to ensure that
17 each attorney has sufficient time to provide
18 adequate representation to every client. For
19 these five counties, gone are the days when
20 criminal defense practice is practiced by
21 triage -- when lawyers are juggling hundreds
22 of cases and don't have the capacity to
23 ensure that justice is done.

24 Third, the settlement commits state

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1 resources to develop quality improvement

2 plans for those five counties to insure that
3 lawyers are capable of providing the basic
4 elements of representation that are necessary
5 to ensure that a prosecution's case is
6 tested, that the right person has been
7 accused of the crime, and that the sentence
8 and outcome is fair and just.

9 Fourth and finally, the settlement
10 creates statewide financial eligibility
11 criteria to ensure that all people charged
12 with crimes who cannot afford a lawyer are
13 provided one.

14 The Hurrell-Harring settlement will
15 transform five New York counties from a
16 symbol of New York's failed public defense
17 system into exemplars of how an effective
18 public defense system should work.

19 On behalf of the New York Civil
20 Liberties Union, I commend Governor Cuomo for
21 introducing an Executive Budget that fulfills
22 the promises made in the Hurrell-Harring
23 settlement. The Governor's leadership for
24 vision for reform will be transformative for

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1 the five counties named in the litigation.

2 As proud as the Governor's office
3 should be about that settlement, however, it
4 leaves unanswered a critical question, one
5 that has been posed by previous people here
6 today, including Mr. Gradess and Mr. Leahy,
7 which is: Why only five counties?

8 That question has no good answer. Why
9 should indigent defendants in Ontario County
10 and Onondaga County be guaranteed counsel at
11 arraignment when defendants in Yates County
12 are not? Why should Legal Aid lawyers in
13 Nassau County be looking to Suffolk and
14 asking why the state is not addressing the
15 caseload problem that they have in their
16 Legal Aid Society? The five counties of
17 New York City have had caseload controls for
18 almost five years now, funded by the state.
19 We have heard advocates here today and in
20 other places asking about the forgotten 52
21 counties. They are calling for statewide
22 reform.

23 We ask you to heed those calls and
24 endorse the settlement of Hurrell-Harring as

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1 a framework for statewide reform.

2 Therefore, we also ask that you
3 support the budget request submitted by the
4 Office of Indigent Legal Services for the
5 funding needed to fully implement the
6 Hurrell-Harring settlement and to undertake
7 the work of replicating statewide the reforms
8 prescribed by the settlement -- in
9 particular, the provisions that address
10 caseload relief for public defenders and the
11 requirement to provide counsel at arraignment
12 across the state.

13 ILS, under the leadership of Director

14 Leahy, has developed a track record of
15 improving the quality of public defense
16 representation at the county level. ILS has
17 a key role in the Hurrell-Harring settlement
18 implementation. It has primary
19 responsibility for that implementation and
20 great discretion and authority to shape the
21 details of that settlement. That role
22 reflects Governor Cuomo's confidence in the
23 capacity of ILS to insure the quality of
24 justice in New York.

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1 The staff of ILS possess the skill and
2 experience that's required to execute that
3 reform statewide. What's needed is the
4 state's commitment to that goal of statewide
5 reform, a commitment backed by the requisite
6 resources. Which are, much in the way they
7 are for civil legal services, as Senator
8 Krueger pointed out, an investment that
9 brings returns for the county, because
10 statewide reform will bring efficiencies
11 where services are not duplicated across
12 counties, where counties are working together
13 and combining resources and achieving
14 economies of scale.

15 Evidence emerging already from reform
16 efforts undertaken in counties like Onondaga
17 and Ontario has demonstrated that improving
18 the quality of public defense representation
19 reduces county-borne costs of pretrial

20 incarceration by making sure that the
21 indigent defendants, who are being held
22 pretrial for weeks and months simply because
23 they cannot afford bail and did not have a
24 lawyer available to advocate for bail that

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1 they could afford, at their arraignment are
2 released, reducing costs of pretrial
3 incarceration, making the criminal justice
4 system more efficient, more fair, and more
5 just.

6 And I thank you very much for hearing
7 us here today and again ask for your support
8 for the Governor's budget and to expand those
9 reforms in the Hurrell-Harring settlement
10 statewide.

11 SENATOR KRUEGER: Questions?

12 CHAIRMAN FARRELL: Nope.

13 MS. STOUGHTON: Thank you.

14 SENATOR KRUEGER: Thank you for being
15 here and staying so long.

16 Our next testifier is Terry O'Neill,
17 from The Constantine Institute.

18 And up next, if they're still here, is
19 Families Together in New York State.

20 MR. O'NEILL: Good evening, everyone.
21 Thank you very much once again this year for
22 your patience and forbearance in giving me an
23 opportunity to speak to you this late in the
24 day.

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1 As I explained last year, one of the
2 reasons that I come here is because I'm being
3 counted on by people in my community to tell
4 you about something that means a lot to them
5 and no one else is talking about it.

6 Now, we all know that in recent months
7 we found that we're actually facing something
8 of a civil rights crisis that comes out of
9 the poor state of relations between police
10 agencies and the people in neighborhoods of
11 color around the state -- around the entire
12 nation, as a matter of fact.

13 And one of the reasons that this has
14 come about goes back about 20 years when Bill
15 Bratton became commissioner of the New York
16 City Police Department and instituted his
17 COMPSTAT program, which has gone on to be
18 hugely influential all over the
19 English-speaking world, and I understand in
20 France as well.

21 What that has done is turned all of
22 our police agencies into numbers-driven
23 organizations, and they have basically drawn
24 apart from the people in those communities,

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1 those neighborhoods within their communities
2 where people have the most experience of
3 crime and the least level of satisfaction
4 with the police. And that's not getting
5 better, it's getting worse. And as we saw
6 with the Garner case and with the Brown case

7 out in Missouri, people all over the country
8 have suddenly realized that they're not happy
9 with the way things are going, they want that
10 to change.

11 And as you've heard down in New York
12 City, there's been a lot of the discussion
13 about the some of the concepts that descend
14 from Mr. Bratton's original COMPSTAT program
15 back in 1994, and that is the broken windows
16 concept, the stop and frisk practice. These
17 practices have become very objectionable to
18 people who are overwhelmingly affected by
19 them negatively. So they want that changed,
20 and I think it's our obligation to do that.

21 And the way to do it is a concept that
22 I was introduced to over 20 years ago, and
23 it's simply community policing. It is
24 something that sells very well in minority

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1 communities, it's very responsive to the
2 needs and concerns and sensibilities of
3 people who have had a history of
4 dissatisfactory relations with police. And I
5 have seen this work in a lot of places, most
6 recently and proudly here in the City of
7 Albany, where over the past five years I have
8 seen our police department become what I now
9 call the first truly community-policed
10 community in upstate New York. No one else
11 is doing quite what we've done here, and it's
12 something that could easily be replicated

13 elsewhere.

14 The vehicle that I'd like to suggest
15 that will help us do this -- and as I'm
16 saying, the State of New York has never taken
17 any role in promoting this simple concept in
18 all these years. Our major local assistance
19 program to law enforcement has been, in the
20 past, Operation IMPACT, which now has a new
21 name focusing on guns. And that money went
22 to police and prosecutors, not to anyone in
23 the community who had an interest in
24 promoting the community policing approach.

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1 So what Governor Cuomo has just done
2 is very interesting. He's proposed a new
3 program that he does not apparently perceive
4 as a public safety program. That is his
5 proposed office of Faith-Based Community
6 Development Services, which is, in effect --
7 has a tremendous potential to help create a
8 relationship or partnership between all of
9 the nonprofits, most of them faith-based,
10 that operate and positively affect quality of
11 life in communities, and to bring them
12 together in partnership with law enforcement.

13 So when Commissioner Green was here
14 this morning, I did not hear him mention in
15 program. I haven't heard anybody from the
16 state talk about community policing in all
17 these years. And I think that just at this
18 particular moment it's the way to go to

19 respond to all of this public dissatisfaction
20 that we've seen erupting all over the country
21 and certainly here in New York.

22 And that's all I have to say for you
23 today. If you have any questions, I'll be
24 glad to not -- okay.

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1 SENATOR KRUEGER: Thank you very much.

2 MR. O'NEILL: Thank you once again.

3 CHAIRMAN DeFRANCISCO: Thank you very
4 much.

5 Families Together in New York State,
6 Paige Pierce.

7 On deck, Stephanie Gendell, Citizens'
8 Committee for Children of New York.

9 MS. PIERCE: Good evening.

10 CHAIRMAN DeFRANCISCO: Don't tell me
11 you were here all day too.

12 MS. PIERCE: I've been here since
13 10:00. But I've watched you be here since
14 10:00 as well. So I really, really
15 appreciate the dedication of all of you that
16 have stayed this late. And I haven't seen
17 you eat lunch, I haven't seen you eat dinner,
18 so --

19 CHAIRMAN DeFRANCISCO: We sneak it in.
20 (Laughter.)

21 MS. PIERCE: Well, thanks for staying.
22 I'm Paige Pierce. I'm the executive director
23 of Families Together in New York State.
24 We're a nonprofit family-run organization

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1 serving families of youth with social,
2 emotional and behavioral challenges. I'm
3 also the parent of a child who has Asperger's
4 syndrome, a young man who has Asperger's
5 syndrome.

6 I've dedicated my career to serving
7 these most vulnerable citizens, connecting
8 them with community-based supports, and
9 advancing sound social welfare policies in
10 response to family-identified needs. As
11 such, throughout the decades I have heard
12 many horrifying accounts of children falling
13 through the cracks, many of whom have done so
14 as a result of an interaction with our
15 criminal justice system.

16 As you are well aware, New York State
17 continues to be one of only two states in the
18 nation that automatically processes,
19 prosecutes and incarcerates 16- and
20 17-year-olds as adults. Upon arrest, they
21 are interrogated -- without so much as a call
22 to their parents -- charged, should it be
23 deemed appropriate, and incarcerated with the
24 adult population in the local jail while

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1 awaiting trial.

2 Should they be found guilty of
3 charges, the majority of which are nonviolent
4 offenses, they are incarcerated with the

5 adult prison population, where they are five
6 times more likely to be sexually assaulted,
7 two times more likely to be injured by prison
8 staff, and five times more likely to complete
9 suicide than they are in the juvenile system.

10 They are also more likely to
11 recidivate upon release, do so at a higher
12 level, and perpetuate public safety concerns.

13 The emerging evidence overwhelmingly
14 demonstrates our current model to be archaic
15 in its design, an ineffective deterrent
16 model, and exorbitantly costly.

17 Neuroscientists, respected researchers and
18 even our nation's Supreme Court have all
19 registered concerns and recommended we
20 utilize the wide breadth of evidence laid
21 before us to build a better system.

22 Last year when I came before you, I
23 introduced you to a couple of the children we
24 represent, Daniel and James. If I may

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1 indulge your memory for a moment, Daniel is a
2 young man who was sent to an adult facility
3 for stealing Chinese food out of a delivery
4 car. Once incarcerated, he was sexually
5 assaulted. And though he has since been
6 released, he suffers from debilitating PTSD.

7 James, a young man with Asperger's
8 syndrome who was in custody for stealing a
9 pair of shoes, decompensated so severely
10 while inappropriately incarcerated, he was a

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scant 87 pounds upon release.
Since my testimony last year, the U.S. Attorney's office released a scathing 79-page report articulating the realities of youth who are incarcerated at Rikers Island, where they were routinely beaten, raped and remanded to solitary confinement for months on end. Most recently, right here in our own backyard, a young man challenged with mental health issues, imprisoned in an adult facility, took his own life in his prison cell. How many more children will we harm or lose before we implement reforms?

As you are aware, the Governor's

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Commission on Youth, Public Safety and Justice, an appointed body of experts with a range of perspectives, interests, and specific knowledge concerning juvenile and criminal justice, including judges, law enforcement officials, probation administrators, child welfare professionals, advocates, service providers, local government officials and other critical stakeholders, were charged with providing concrete, actionable recommendations regarding youth in New York's criminal and juvenile justice systems.

Several weeks ago, the commission released its comprehensive recommendations that, if enacted, will position New York

17 State as a leader in juvenile justice policy,
18 lead us to the development of a
19 smart-on-crime model, and keep intact a
20 strong response to violent offenses.

21 I've talked with some of you in your
22 offices, and I've heard a couple of questions
23 about recidivism rates and the revolving
24 door. And earlier you heard from -- I think

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1 it was from, yeah, Sonya {sic}, Sonya Elijah,
2 who talked about the MacArthur study. So I
3 won't go into detail, but it's in my written
4 testimony. The MacArthur study compared New
5 Jersey young people, 16- and 17-year-olds, to
6 New York 16- and 17 year-olds incarcerated
7 for the same crime and saw the different
8 outcomes.

9 So while we understand in some cases
10 the question is not should we incarcerate
11 juvenile offenders, but instead the questions
12 posed should be where do we incarcerate, what
13 support services should we be providing while
14 incarcerated, and what kind of human beings
15 do we want released back into society? When
16 the research so clearly proves better, safer.
17 Outcomes with a juvenile-centric based
18 system, why would we continue to choose one
19 that stymies the path to productive
20 citizenship and greater public safety?

21 We've also been asked about potential
22 costs. And while there are up-front capital

23 cost associated with the implementation, the
24 overall results are expected to decrease

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1 costs. Should we look at our neighbors in
2 Connecticut, the state that most recently
3 implemented Raise the Age legislation, we'll
4 see that Connecticut transformed its juvenile
5 justice system by reducing the state's
6 reliance on confinement and incarceration of
7 youth in expensive facilities, and they're
8 saving \$3 for every \$1 spent in moving older
9 teens to juvenile jurisdiction. So again, we
10 contend that the fears are unlikely to be
11 realized.

12 Lastly, one of the questions we've
13 received and believe should be addressed here
14 today is related to the concern that we
15 completely reform a system for, quote, so few
16 youth. Currently there are 800 teenagers in
17 adult facilities, and countless others who
18 are remanded to juvenile justice facilities
19 for lower-level crimes. Allow me to tell you
20 about the one who is missing from either of
21 these settings.

22 Ben Van Zandt by all accounts was a
23 normal, white, middle-class boy living in a
24 Capital Region suburb. He was a shy

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1 teenager, he excelled in school and was
2 destined for college and a great career. He
3 played the violin for six years. He was a Boy

4 Scout. He came from a loving and stable
5 family. At the age of 16, Ben started
6 suffering from depression, and over time it
7 became severe enough that he developed a
8 severe mental health diagnosis.

9 At the age of 17, Ben was arrested for
10 arson. Despite Ben's young age and the lack
11 of a criminal record, a forensic evaluation
12 detailing his mental illness and the
13 recommendation of youthful offender in the
14 presentence investigation report, he was
15 sentenced to 4 to 12 years in prison for
16 arson. There was no opportunity for Ben to
17 be sentenced in a mental health or youth
18 court. There was no opportunity for him to
19 receive the psychiatric care he badly needed.

20 Ben entered the correctional system as
21 a mentally ill, naive and very vulnerable
22 17-year-old incapable of handling prison
23 life. Within a few months, he was sexually
24 victimized by an older inmate, then placed in

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1 solitary confinement. He developed symptoms
2 of PTSD, and yet he did not receive the
3 mental health treatment he needed. He was
4 taken off his psychotropic medication and
5 suffered more harassment and abuse. Upon
6 being relegated to solitary confinement once
7 more, Ben made a rope from his bed sheets and
8 shoelaces and hung himself in his cell.

9 The criminal justice system completely

10 failed Ben. It treated him and punished him
11 like an adult that he was not, and they
12 placed him in a facility with adults he was
13 not mature or experienced enough to handle.
14 Ben was highly intelligent and could have
15 been rehabilitated and gone on to a
16 productive life if given other opportunities.
17 Regardless of his crime, he did not deserve
18 to die in prison.

19 So to answer to the question, how many
20 youth should propel us toward reform of our
21 system, we would contend that we've reached a
22 tipping point. Not one more youth and their
23 families should suffer the same path and
24 ultimate fate of Ben.

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1 Daniel should not be suffering from
2 severe PTSD as a result of a rape he
3 experienced while in an adult facility.
4 James should not have suffered such a severe
5 health and mental health decompensation while
6 incarcerated in an adult facility. And never
7 should we hear of another teenager completing
8 suicide while in custody of our justice
9 system.

10 The time has come to lay down the
11 misguided notion that our current system is
12 an effective tough-on-crime model. It has
13 failed. It was ill-conceived from the outset
14 and is contrary to all of the scientific and
15 cost evidence. It is contrary to public

16 safety.

17 There is a famous quote from Maya
18 Angelou that says: "When we know better, we
19 do better." We know better, and we need to
20 do better.

21 CHAIRMAN DeFRANCISCO: Thank you very
22 much. And thank you for your patience. The
23 lack of questions is due to exhaustion, not
24 the quality of your testimony.

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1 MS. PIERCE: I understand.

2 I do want to just invite you all to
3 our Legislative Lunch. Families Together has
4 our annual Legislative Lunch, and you've all
5 gotten invitations, but I wanted to
6 personally invite you. It's on Tuesday, this
7 Tuesday the 3rd, at the Convention Center,
8 from 12:00 to 2:30. And you're all welcome,
9 and we'd love to see you.

10 CHAIRMAN DeFRANCISCO: Thank you very
11 much.

12 SENATOR KRUEGER: I also want to thank
13 you for all the work your organization does.

14 MS. PIERCE: Thank you.

15 CHAIRMAN DeFRANCISCO: Stephanie
16 Gendell? Stephanie is not here? Okay.

17 Then I know Barbara Bartoletti is
18 here. And on deck is Sebastian Solomon. Is
19 he here?

20 MR. SOLOMON: Yup.

21 CHAIRMAN DeFRANCISCO: You are the

22 featured speaker, the last one.

23 MS. BARTOLETTI: And actually it's
24 going to be difficult to follow that previous

♀ 604

1 speaker, but I will try.

2 CHAIRMAN DeFRANCISCO: It is,
3 defini tely.

4 MS. BARTOLETTI: I think I probably
5 don't have to tell anyone sitting there who I
6 am, but I am Barbara Bartoletti, legislative
7 director for the New York State League of
8 Women Voters.

9 I also want you to know that for this
10 testimony we have been joined in our
11 testimony -- which I'm going to save you all
12 from having to listen to me read -- by
13 Citizens Union of New York, who has joined
14 us. They were not able to come to Albany
15 from New York, so they have joined us in this
16 testimony.

17 I think you have the testimony in
18 front of you. It is divided into three
19 parts. The first part deals with the State
20 Board of Elections, which is what we usually
21 testify to in this Public Protection hearing.
22 But this year we also are including not only
23 Part 1, which is the Board of Elections, but
24 Part 2, which addresses the Governor's ethics

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1 provisi ons, and Part 3, which addresses the

2 Governor's campaign finance reform proposals
3 in this budget.

4 I'm actually going to spare you my
5 reading of the ethics and the campaign
6 finance. I'm not sure that there's anyone
7 sitting up there that hasn't heard me talk
8 over the last three decades about either
9 ethics or campaign finance. And you can read
10 the testimony at your leisure. But I will --
11 and I will be happy to answer any questions
12 you have.

13 What I will say about the Governor's
14 ethics proposal is that although we
15 understand his frustration and why he has
16 felt the need to put it into the budget, we
17 are dismayed that we are now in a period in
18 this state where we feel that everything must
19 go into the budget in order to get
20 accomplished. And we would prefer that these
21 issues are done through the legislative
22 process, where we can have hearings, where we
23 can negotiate between the Assembly and the
24 Senate and then give it to the Governor for

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1 his final say.

2 So I did want you to know that the
3 League is dismayed that these are part now of
4 our budget appropriations, and therefore
5 there is a different light to this budget
6 this year.

7 But I'm going to continue with the

8 area that the League is of course always
9 concerned with when it comes to the Board of
10 Elections and the part it plays in our
11 budget.

12 As you are all very aware, the
13 League's mission is to promote the informed
14 and active participation of voters in
15 government by providing nonpartisan
16 information on the voting process, and is
17 closely allied with that of the Board of
18 Elections. Therefore we are regular
19 observers at the meetings of the State Board
20 of Elections commissioners in Albany and at
21 the New York City Board of Elections. Our
22 local leagues throughout the state work
23 collaboratively with the local boards of
24 elections in implementing our similar

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1 missions.

2 The agency has responsibility for
3 oversight of the county boards of elections'
4 compliance with New York State Election Law
5 and federal laws such as NVRA and the Help
6 America Vote Act and the Military and
7 Overseas Voter Empowerment Act, MOVE, done in
8 2009. With the passage of these three
9 federal acts, the State Board of Elections'
10 responsibilities have increased dramatically
11 since 1974 when the agency was established.

12 One of our most crucial areas this
13 year would be the component of HAVA that

14 requires all states to create a statewide
15 interactive database of voters. In New York
16 that statewide database, which perhaps all of
17 you are familiar with, is called the
18 NYSVoter, and it is an integrated list of
19 each of the county boards' voter registration
20 data, which serves as the single, official
21 voter registration list.

22 NYSVoter hardware and software was
23 installed in 2007 -- which for any of us who
24 have now grandchildren that deal with the

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1 Internet, that's a lifetime ago -- and the
2 components are soon to be obsolete. The
3 hardware and software are approaching their
4 end of life, and the hardware maintenance is
5 no longer available or requires very
6 expensive maintenance contracts.

7 The accuracy and usability of the
8 database, as a necessary and vital part of
9 the of the statewide interactive voter
10 registration system, depends on having those
11 adequate tools. When voters go to the polls,
12 they have the right to expect that voter
13 registration records are well-maintained,
14 accurate and up-to-date. Therefore, the
15 League recommends full funding in the
16 2015-2016 budget to go enable a timely and
17 complete upgrading of the NYSVoter.

18 We believe that the exercise of the
19 voting franchise is fundamental in a

20 democracy, and a well-funded State Board of
21 Elections will be better able to perform its
22 mission to enforce the Election Law and
23 educate voters.

24 In addition to these two mandates, i

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1 is important that the Governor, the
2 Legislature and the State Board of Elections
3 consider, one, how to modernize our voter
4 registration system and, two, how to help
5 county boards of elections encourage voter
6 participation and satisfaction both through
7 changes in law and through increased state
8 funding.

9 Voter registration modernization has
10 proven across the country to both save money
11 and increase accuracy in voter rolls. We
12 believe the State Budget should provide
13 funding for modernizing voter registration,
14 including Internet registration for all
15 voters, not just those registering through
16 the DMV, and electronic transmission by all
17 state agencies in the State Budget.

18 Electronic poll books should also help
19 speed up the processing of voters on Election
20 Days and facilitate shortening the deadline
21 for registration to the 10 days before an
22 election -- which, as all of you know, is the
23 constitutional deadline.

24 They could also play potentially an

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1 important role in implementing early voting
2 in pilot programs throughout the state. We
3 believe that the implementation of electronic
4 poll books should be guided by findings of
5 the 2014 electronic poll book pilot projects
6 in Chautauqua, Orange and Onondaga counties.

7 And we go on in this testimony to talk
8 about the five-points ultimatum of the ethics
9 overview, the per diem reform, campaign
10 finance reform. I will make note of the fact
11 that the LLC loophole is not a complete
12 closing of that loophole, it's for -- the
13 subsidiaries are not included. And actually
14 that does not appear in the appropriations
15 bill, it appears in an Article 7 bill, as
16 well as the public financing. Which of
17 course would need funding before it could be
18 implemented if it was indeed endorsed by the
19 Legislature.

20 So I would just add that we do think
21 that no matter whether we are able to do any
22 campaign finance reform or even ethics reform
23 this year, the most important aspect of
24 either is that we have strong enforcement.

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1 Without strong enforcement, then it is just
2 rhetoric and it doesn't have the ability to
3 actually make sure that either the ethics or
4 the campaign financing is truly recognized.

5 So I would be happy -- I see I have
6 two minutes. You have two minutes to ask me

7 questions. And I'd be happy to answer any if
8 you have them.

9 CHAIRMAN DeFRANCISCO: Okay, does
10 anybody have any questions?

11 SENATOR KRUEGER: Two.

12 CHAIRMAN DeFRANCISCO: Senator Krueger
13 has two.

14 MS. BARTOLETTI: Senator Krueger.

15 SENATOR KRUEGER: Thank you.

16 Do you agree that the Governor's
17 ethics proposals should at least be amended
18 to include the Executive as well?

19 MS. BARTOLETTI: Yes.

20 SENATOR KRUEGER: Thank you.

21 Were you listening earlier to the
22 back-and-forth around the new state policy to
23 destroy all emails within 90 days? And does
24 the League have a position on that?

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1 MS. BARTOLETTI: No, I wasn't here
2 then. And no, I don't believe -- you know
3 how the League operates, it takes us member
4 agreement, consensus, study, consensus. And
5 that's not something we have undertaken.

6 Although we have a convention coming
7 in May, so you never know, it might be
8 something our members would like to look at
9 more closely.

10 SENATOR KRUEGER: Thank you.

11 MS. BARTOLETTI: You're very welcome.

12 CHAIRMAN DeFRANCISCO: Thank you very

13 much, and thanks for hanging out.

14 MS. BARTOLETTI: Thank you. I would
15 just ask that you read the testimony that I
16 di dn' t. Thank you.

17 CHAIRMAN DeFRANCISCO: I will be happy
18 to, but --

19 MS. BARTOLETTI: Thank you.

20 CHAIRMAN DeFRANCISCO: Okay, thank
21 you.

22 Now, Sebastian Solomon, director of
23 state policy, Legal Action Center. Our
24 featured speaker.

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1 And about six hours ago, I predicted
2 that we would be done by 8:00. So your time
3 is up.

4 (Laughter; cross-talk.)

5 CHAIRMAN DeFRANCISCO: No, go ahead.

6 MR. SOLOMON: Good evening. Sorry to
7 keep you so late. I will -- I promise
8 I've -- you have my written testimony; I will
9 try to keep it brief.

10 My name is Sebastian Solomon. I am
11 the director of state policy for the Legal
12 Action Center. And I appreciate the
13 opportunity to address you today.

14 The Legal Action Center is the only
15 public interest law and policy organization
16 in New York City and the United States whose
17 sole mission is to fight discrimination
18 against and protect the privacy of people in

19 recovery from drug dependence or alcoholism,
20 individuals living with HIV and AIDS, and
21 people with criminal records.

22 We present these budget
23 recommendations on behalf of the ATI and
24 Reentry Coalition.

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1 Alternative to incarceration and
2 reentry programs have been critical to the
3 state's success in simultaneously reducing
4 crime, reducing the prison population, and
5 saving the taxpayers many millions of
6 dollars.

7 We are truly grateful to the Governor
8 for maintaining the funding that he
9 institutionalized two years ago for the first
10 time in the history of this initiative, as
11 well as the decades of support that we have
12 received from the Legislature. Placing the
13 money in the Executive Budget relieves our
14 programs of much of the continuous pressure
15 that we faced in previous years to find
16 additional funds to ensure our survival.

17 We look forward to working with the
18 Executive and the Legislature to ensure that
19 funding is allocated in the most effective
20 and efficient ways and captures the
21 complexity and full range of services
22 delivered by ATI and reentry programs.

23 At the same time, as much as ATI and
24 reentry programs are currently doing to

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1 improve public safety and save the state
2 millions of taxpayer dollars, they could do
3 much more given sufficient funding and
4 opportunity. We urge the Legislature to add
5 \$3 million to allow programs to develop
6 innovative strategies for addressing emerging
7 and underserved client and community needs,
8 including:

9 Underserved geographic areas. Large
10 swaths of the state, especially the upstate
11 urban areas, which are now responsible for
12 much of the state's crime and incarceration,
13 remain acutely underserved by ATI and reentry
14 services.

15 Services specifically targeting the
16 needs of women, young people, the elderly.
17 Between 2007 and 2014, as we heard earlier,
18 the proportion of the prison population over
19 the age of 50 increased by 61 percent. And
20 caring for the aging can be very expensive in
21 prison.

22 The mentally ill are also massively
23 underserved. Additionally, a number of
24 individuals eligible for diversion under drug

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1 law reform are still being incarcerated.

2 Additionally, we are calling on the
3 Legislature to add \$2 million in capacity
4 building to enable ATI and reentry programs

5 to work more closely with the healthcare
6 system. New York State is at the forefront
7 of efforts to link those in the criminal
8 justice system to the healthcare services
9 they need. Creating such links provides
10 opportunities for reducing
11 institutionalization in both the criminal
12 justice system, through reduced recidivism
13 and incarceration, and the healthcare system,
14 through the reduced use of emergency rooms
15 and detox facilities.

16 Furthermore, through the increased
17 federal Medicaid match, there is potential
18 for the state to realize significant
19 financial savings.

20 Additionally the Executive Budget
21 includes a proposal to dedicate \$5 million in
22 Medicaid funding to help link those in the
23 criminal justice system to the healthcare
24 services they need through Health Homes. The

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1 state has developed a number of Health Home
2 pilots focused on the needs of those involved
3 in the criminal justice system. These pilots
4 are identifying protocols to enhance
5 connections to care for this population. The
6 proposed resources would allow the state to
7 support many of the key needs identified by
8 these pilots.

9 We also want to express our support
10 for the Executive's proposals for raising

11 New York's age of criminal responsibility for
12 most crimes and increasing the use of
13 diversion for this population. And we also
14 want to express our support for the
15 Executive's proposal to authorize the DOCCS
16 commissioner to make the final determination
17 regarding medical parole release for
18 individuals convicted of certain crimes.

19 Thank you.

20 CHAIRMAN DeFRANCISCO: Thank you very
21 much. And thanks for summarizing your
22 testimony; we really appreciate it.

23 MR. SOLOMON: Okay, thank you.

24 SENATOR KRUEGER: Thank you.

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1 CHAIRMAN DeFRANCISCO: That concludes
2 today's testimony.

3 And thanks to the stenographers, who
4 made it through the longest one yet.

5 And just to not get you too
6 comfortable, we'll be back here at 9:30 in
7 the morning for Mental Health, and 1 o'clock
8 for Workforce Development. But on the
9 positive side, there's less witnesses for the
10 two hearings that there were today. So we'll
11 definitely be out tomorrow by 7:30.

12 (Laughter.)

13 CHAIRMAN DeFRANCISCO: Thank you.

14 (Whereupon, at 8:12 p.m., the budget
15 hearing concluded.)

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