

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

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November 4, 2019

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Honorable Andrew M. Cuomo
Governor
Executive Chamber
Albany, NY 11224

Dear Governor Cuomo:

Along with our Legislature, you have ushered New York State's criminal justice system to a crossroads where we are seeing dynamic changes to what it means to enforce our laws, protect public safety, safeguard the rights of those accused of crimes, and treat victims and witnesses with the dignity and care they deserve. The next phase of the new reality of criminal justice will be upon us in upcoming months. New Yorkers will continue to see radical changes to how we enforce laws and prosecute those accused of crimes.

The District Attorneys Association of the State of New York (DAASNY) represents the elected and appointed prosecutors of the sixty-two (62) New York State District Attorney's Offices, the New York State Attorney General's Office, the Justice Center for the Protection of People with Special Needs, and the Office of the New York City Special Narcotics Prosecutor.

Prosecutors and our partners in law enforcement must be part of the planning and the conversations about the implementation of new laws and public policies. As you continue to lead the way in making changes to our justice system, DAASNY stands ready to offer the collective perspective of our State's prosecutors.

Change is happening at a rapid pace. New York is leading the way when it comes to achieving new heights in the criminal justice system. We must continue to make sure that the changes are responsible and adequately funded. This is critical to making sure the criminal justice system works for all New Yorkers.

Year after year, New York remains the safest large state in the nation. We should all be proud of that, as well as of the many new laws that will improve disparities in the criminal justice system. For example, New York's sealing law allows individuals convicted of petty offenses to have their records sealed by default. Prosecutors supported this law and even before the law was effective we have been helping those with

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minor offenses remove them from their records so they do not impact employment or housing opportunities.

We all know we must take care of victims. They have gone through trauma and are often questioned, traumatized, and exposed. Some of the most vulnerable are victims of sexual assault, child abuse, domestic abuse, and elder abuse, to name a few. You expanded the crime victims website to enable crime victims to find resources and obtain help. Victims are often faced with many challenges, even long after a crime has been committed. It is important that they know how to connect with resources to put their lives back together. You extended the statute of limitations on rape, recognizing that sometimes it can take years for survivors to come to terms with their abuse and to seek justice. You signed the Revenge Porn law, which allows victims of revenge porn to seek a court-ordered injunction to require websites to take down offending intimate images. As we move forward and continue to make changes to our criminal justice system, we must continue to prioritize the victims and witnesses of our state who are at the heart of criminal justice system.

By most accounts Raise the Age is being touted as a success. Prosecutors have long known that 16- and 17-year-olds should not be treated like adults. Prosecutors continue to find ways to get juvenile offenders the help they need, early on. Much of the success of Raise the Age can be attributed to careful planning and a significant investment of resources from the state. Over \$200 million was dedicated to Raise the Age. The Raise the Age Task Force continues to examine the issue and look at ways to improve the process. I hope all of our state's new laws are afforded the careful scrutiny, planning, and investments that have been dedicated to Raise the Age.

Unfortunately, many District Attorneys' offices are underfunded and understaffed. Adequate resources must be provided so that prosecutors can serve the residents and visitors of our state at the highest professional level possible.

I would like to highlight DAASNY's budget priorities for Fiscal Year 2020-2021. These are costs that are necessary to keep the public safe.

### **New Bail and Discovery Laws**

These landmark laws were the result of years-long discussions and pressure from advocacy groups to help make the system fairer to those accused of crimes. The success of those laws will depend upon the attention, planning, and resources we devote to them at all levels. We are redefining the criminal justice system in our State and the resources this requires far exceeds what prosecutors currently have. Those laws will also change the way all of our police departments operate, including town and village police, campus police, and many other law enforcement agencies that exist throughout our state.

I ask that you work with prosecutors, County Executives, Boards of Supervisors, and stakeholders from all of the impacted entities to find solutions on funding the reforms that do not unduly burden county finances. This includes funding for new computer equipment to facilitate electronic discovery, which will now be required in all cases within 15 days of arraignment. This also includes secure software programs and costs for licensing agreements. We will need additional staff at all levels to retrieve and review documents and camera

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footage and to provide that information to defense.

I also urge you to consider the formation of a statewide pretrial services agency similar to New York City's Criminal Justice Agency (CJA). Such an agency would provide reminders to those accused of crimes who are released pending the disposition of their criminal cases. This would encourage court attendance for the increased number of people who will be released statewide at arraignment after January 1, 2020. In addition, such an agency could provide referrals for services ranging from housing and vocational training to mental health and substance abuse treatment.

### New York Prosecutors Training Institute (NYPTI)

The creation of NYPTI nearly 25 years ago transformed the way prosecutors throughout the state receive training. NYPTI provides high-level training, including ethics instruction, to prosecutors all over the state. Beyond traditional classroom training, NYPTI provides personal and online assistance and resources. From their public website, NYPTI provides CrimeTime, an online sentencing calculator relied upon by judges, defense attorneys, and prosecutors. It also includes searchable compilations of criminal statutes, caselaw, and appellate decisions as they are released.

NYPTI provides short term emergency assistance to threatened victims and witnesses statewide for their basic needs in mostly domestic violence, gang related, and sexual assault cases. Prosecutors and law enforcement firmly believe that new discovery and bail laws will result in an increase in witness intimidation and will increase the need for money for witness protection and relocation.

56 of New York's 62 counties use NYPTI's Prosecutors Case Management System (PCMS), a web-based system, to track information, automatically generate required notices, track discovery, and generate indictments for their prosecutions.

NYPTI's Digital Evidence Management System (DEMS) is a critical, recently added component of PCMS that connects prosecutors, the police and defense attorneys. Using DEMS:

- **Prosecutors** manage documents, review body camera/surveillance videos, photos, and most digital evidence in an online platform.
- **Law Enforcement Agencies** upload their case files and multimedia evidence directly to District Attorneys.
- **Defense attorneys** access an easy-to-use, nearly state-wide portal to access discovery materials from prosecutors

Rather than each county investing hundreds of thousands or millions of dollars in new technology/infrastructure, adequately funding NYPTI is a fiscally sound solution to help most of New York's prosecutors to meet the demands of the 2020 criminal justice reforms.

NYPTI has **NOT** received a funding increase in almost a decade, despite significant cost increases. To maintain current services, DAASNY requests an appropriation of \$2.75 million for NYPTI and \$375,000 to continue NYPTI's witness protection program.

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### **Committee on the Fair and Ethical Administration of Justice & Best Practices Subcommittee**

In 2009 DAASNY created the Committee on the Fair and Ethical Administration of Justice (CFAJ) to develop statewide law enforcement best practices that will promote fairness and reliability in the criminal justice system while protecting public safety and the rights of the accused. Under CFAJ are three sub-committees, one of which is the Best Practices Committee. This committee is made up of elected and senior prosecutors that reflect the geographical diversity of the State with upstate and downstate, urban, rural and suburban representation and has built collaborative relationships with the over 550 police agencies around the State.

The role of a prosecutor is constantly evolving. There is an increasing need to share information among prosecutors and others seeking to improve the criminal justice system. We are engaged in transformative innovations and initiatives and we are constantly making improvements in prosecution techniques and programs that offer diversion and prevention. The Best Practices Committee provides a unique forum for New York's prosecutors to discuss, share and evaluate new ideas and reforms. New York's prosecutors then bring these ideas back to their offices for review and implementation. The Committee has been meeting monthly since 2009.

DAASNY's Best Practices Committee has become a national role model in developing innovative strategies aimed at improving the criminal justice system and preventing wrongful convictions. Statewide, the committee has been a leader in initiatives such as enhanced identification procedures, video interrogation protocols, as well as many other issues important to modern day prosecutors. The Committee also developed *The Right Thing*, an ethics handbook that collects in one place the most significant cases and rules that govern ethical behavior by prosecutors. The handbook has been adopted by every District Attorney's office in the State and has served as an example for other jurisdictions drafting similar ethical handbooks.

To continue to maintain the Best Practices Committee DAASNY asks for \$50,000 to help fund staff for the committee including a part-time independent chair and expenses related to meetings, travel, communication, data collection and analysis.

### **State Aid to Prosecution**

This essential aid is one of the most important components of the funding of District Attorney's offices. However, the funding of the grant has been reduced significantly over the past ten years. The reductions in Aid to Prosecution have come at a time when the responsibilities of prosecutors have increased exponentially. Prosecutors are increasingly expanding the duties of their staff, utilizing new technologies, and adapting to new crime trends.

Funding for Aid to Prosecution must be restored to a more reasonable level. We strongly urge that funding for 2020-2021 be increased to \$15 million.

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### **District Attorney Salary Reimbursement Program**

In December 2015, the New York State Commission on Legislative, Judicial, and Executive Compensation voted to increase the salaries of New York State judges. State Judiciary Law 183-a requires that a District Attorney's salary match the County Court Judge or Supreme Court Judge in a county, depending on the population of that county. In the last two State budgets, the legislature did not allocate funding to help counties meet the District Attorney salary increases that were tied by statute to judicial salary increases. Cash-strapped counties were reluctant to pay for that unfunded mandate. As a result, not all district attorneys are being paid what the law requires them to be paid for their services, and they are in a political quandary if they demand what is rightfully owed to them by statute. With due consideration to this new and ongoing financial obligation, it is essential that the budget be modified to provide this support.

In 2019-2020, \$4.2 million was appropriated to salary reimbursement. For the 2020-2021 budget year, we strongly request increasing the funding by \$2 million to cover the salary increase. This would bring total funding to \$6 million.

### **Gun Involved Violence Elimination (GIVE)**

The Gun Involved Violence Elimination (GIVE) initiative focuses on the reduction of firearm-related homicides and shootings in communities in the 17 counties outside of New York City that collectively report 86% of violent crime. This program, under the leadership of DCJS Commissioner Michael Green has been very successful in both reducing gun violence in many counties and in enhancing gun-involved crime reduction strategies. Despite the program's success and New York's leadership in gun safety, this program has, unfortunately, seen repeated cuts in funding. From a high of \$15.6 million in 2010-2011, GIVE received \$14.39 million in last year's budget. This shortfall will continue to impact the success of GIVE. DAASNY recommends an appropriation of \$15.5 million for GIVE.

### **Videotaping Interrogations**

In 2010, DAASNY and New York's law enforcement community, along with DCJS and the New York State Bar Association, stood together to announce their endorsement of video recording of interrogations of suspects in custody. DAASNY continues to reiterate its endorsement of this practice.

DCJS has been a strong partner in this endeavor and has funded the majority of the interview rooms built in the state. While embracing this technology, district attorneys are now experiencing first-hand the ongoing costs that come with using this technology, such as transcription, translation, photocopying, storage, presentation software for courtroom use, and equipment maintenance and replacement. Investment in video recording of interrogations is money well spent. It directly contributes to a fair, strong, and transparent criminal justice system.

DAASNY recommends \$750,000 in additional funding for police departments in order to enable them to continue to develop and maintain video recording locations.

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### **Crimes Against Revenue**

The Crimes Against Revenue Program (CARP) was initiated in 2004 as a means to hold accountable those who defraud the state of revenue from taxes owed, as well as programs such as Medicaid, public assistance, and worker's compensation. This program is not just self-sustaining, it is *revenue-generating*.

The CARP program has been increasing and expanding every year, but funding has been decreasing. The budget for Fiscal Year 2016-2017 provided for \$14.3 million for CARP. Last year's budget provided for \$13.5 million. The cost of investigating CARP matters continues to increase. In the 2010-2011 budget year, on the recommendation of DCJS and the New York State Department of Taxation and Finance, the CARP program was expanded to allow all counties to participate in the program, which was then funded at \$16 million to account for the additional anticipated requests. The number of district attorney's offices taking part in CARP has expanded accordingly from 13 to 28, plus the office of the Special Narcotics Prosecutor, for a total of 29 offices.

We propose the appropriation of CARP funds be set at \$17 million.

### **Prosecutor Recruitment and Retention**

The 2008-2009 Enacted Budget appropriated \$1.5 million for district attorneys outside of New York City to recruit and retain prosecutors. This program enabled district attorneys to retain prosecutors with trial skills, legal experience, and familiarity with their communities. Well-trained, experienced prosecutors are desperately needed, but attorneys burdened by student loans and the rising costs of living expenses are forced to leave the public sector for higher paying jobs in the private sector, or even in public defenders' offices.

The appropriation of this program has been completely defunded. DAASNY strongly recommends reinstating the program at the previous funding level of \$1.5 million to ensure that prosecutors are able to staff their offices.

### **Crime Laboratories**

Crime laboratories utilize modern technology and expertise to help police and prosecutors solve crime. Analysts working in the labs provide invaluable data, analysis of information and access to modern technological resources.

The new discovery law requires prosecutors to turn over all discovery in their possession within 15 days of a defendant's arraignment on any accusatory instrument, including any forensic or lab reports. It also requires all lab case files, including reports, electronic raw data, and bench notes be turned over as soon as they are completed, and restricts prosecutors from stating ready for trial until such materials are provided to defense counsel, or the prosecution risks preclusion of those materials by the court.

The new discovery laws will require the expedited exchange of the important data provided by crime labs. The laws will also require the exchange of that information in all cases, not just cases that are going to trial. That information will also have to be completed and

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exchanged in all cases where a plea is taken. In addition, the legislation requires that lab protocols, validations, audit reports, and “pre-decisional” findings be turned over.

Currently, labs can only operate efficiently by prioritizing analysis and triaging the necessity to test or not test evidence when there is a resolution to a case or a potential resolution by plea. The overall impact on the labs will be a dramatic increase in workloads and backlogs. Many labs anticipate needing to hire additional analysts, in some cases doubling their staffs.

Last year’s budget provided \$6.2 million dollars for laboratory services. We are asking for an additional \$3.8 million, for a total of \$10 million, so that laboratories are able to handle the additional and expedited testing and exchange of information.

### **Office of the Special Narcotics Prosecutor (SNP)**

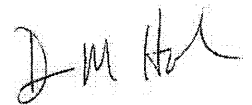
The Office of the Special Narcotics Prosecutor (SNP) has unique jurisdiction over felony narcotics cases. SNP spearheads investigations into narcotics importation rings and provides critical statewide leadership in combating the epidemic of prescription drug diversion and abuse and the seismic problems related to the explosion of heroin and fentanyl distribution throughout the state. The office has taken a major role in conducting investigations, developing strategies, and crafting legislation to curb the sale of pharmaceuticals by criminal rings, rogue doctors, and unscrupulous pharmacists. The black market for prescription drugs involves not only the sale of narcotic pills, but also Medicaid fraud and corrupt practices by doctors and pharmacists. The Special Narcotics Prosecutor works with local, state, and federal law enforcement, and partners with the Department of Health and OASAS to address the scourge of prescription drug abuse, which can lead to heroin addiction. The Office works hand in hand with the State Police and local authorities to find the sources of heroin and fentanyl that flood our communities.

Since 1990-1991, the SNP budget has been cut by 74.6%, from \$3.5 million to \$825,000 in 2019-2020.

Every week – if not every day – we hear news stories about how prescription drug abuse and heroin abuse are destroying the lives of people of all ages and of their families. This is not the time to reduce funding – it is time to shore up funding.

DAASNY requests that \$900,000 be provided to SNP in the 2020-2021 budget.

Sincerely,



President, DAASNY  
District Attorney, Orange County