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

JOINT LEGISLATIVE HEARING

In the Matter of the
2020-2021 EXECUTIVE BUDGET ON
PUBLIC PROTECTION

Hearing Room B
Legislative Office Building
Albany, New York

February 12, 2020
9:40 a.m.

PRESIDING:

Senator Liz Krueger
Chair, Senate Finance Committee

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

PRESENT:

Senator James L. Seward
Senate Finance Committee (RM)

Assemblyman Edward P. Ra
Assembly Ways & Means Committee (RM)

Senator Brad Hoylman
Chair, Senate Committee on Judiciary

Assemblyman Jeffrey Dinowitz
Chair, Assembly Committee on Judiciary

Assemblyman Joseph Lentol
Chair, Assembly Committee on Codes

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

2020-2021 Executive Budget
Public Protection
2-12-20

PRESENT: (Continued)

Assemblyman David I. Weprin
Chair, Assembly Committee on Correction

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

Senator Zellnor Myrie
Chair, Senate Committee on Elections

Assemblyman Charles D. Lavine
Chair, Assembly Committee on Election Law

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

Assemblyman Michael Montesano

Senator George M. Borrello

Senator James Skoufis

Assemblyman Joseph M. Giglio

Senator Gustavo Rivera

Assemblyman Philip A. Palmesano

Senator Todd Kaminsky

Assemblyman Kenneth P. Zebrowski

Senator Elizabeth O'C. Little

Assemblyman Andrew R. Garbarino

Senator Brian Benjamin

Senator Robert Jackson

2020-2021 Executive Budget
Public Protection
2-12-20

PRESENT: (Continued)

Assemblyman Harvey Epstein

Senator Fred Akshar

Assemblyman Anthony H. Palumbo

Senator Rich Funke

Assemblywoman Aravella Simotas

Senator George M. Borrello

Assemblywoman Rebecca Seawright

Senator Andrew J. Lanza

Assemblywoman Latoya Joyner

Senator John C. Liu

Assemblywoman Marianne Buttenschon

Senator Patty Ritchie

Assemblyman Michael Reilly

Assemblyman Al Taylor

Senator Sue Serino

Assemblywoman Alicia Hyndman

Assemblyman Charles D. Fall

Senator Robert G. Ortt

Assemblywoman Carmen N. De La Rosa

Assemblyman Angelo J. Morinello

Assemblywoman Nicole Malliotakis

2020-2021 Executive Budget
Public Protection
2-12-20

PRESENT: (Continued)

Assemblywoman Marjorie Byrnes

Senator Joseph A. Griffo

Assemblyman Félix W. Ortiz

Assemblywoman Latrice Walker

Assemblyman Mark Walczyk

Assemblyman Michael Blake

Assemblyman Walter T. Mosley

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Executive Director
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CHAIRWOMAN KRUEGER: Hi. We're going to get started, if everybody could please take their seats. Thank you.

Good morning. I'm Senator Liz Krueger, chair of the New York State Senate Finance Committee and cochair of today's budget hearing. Today is the 11th of 13 hearings conducted by the joint fiscal committees of the Legislature regarding the Governor's proposed budget for the state fiscal year 2020-2021.

These hearings are conducted pursuant to the New York State Constitution and Legislative Law.

Today the Senate Finance Committee and the Assembly Ways and Means Committee will hear testimony concerning Executive Budget proposals for the Judiciary's Office of Court Administration, the Commission on Judicial Conduct, Division of Homeland Security & Emergency Services, Division of Criminal Justice Services, Department of Corrections and Community Supervision, Division of State Police, Office of Information Technology

Services, Office of Indigent Legal Services, the Board of Elections, and a host of other community stakeholders.

Following each testimony there will be some time for questions from the chairs of the fiscal committees and other relevant committee legislators.

I will now introduce members of the Senate, and Assemblymember Helene Weinstein, chair of the Assembly Ways and Means Committee, will introduce members from the Assembly.

I'm just going to go over just some of the rules of the road. Can I borrow that?

Before I do that, for everyone who will be testifying today, please pay close attention to the time clocks. Chairpersons of relevant committees have a 10-minute allotment for questions and answers of governmental witnesses. That means, my colleagues and friends, do not start a whole new set of questions when you see the clock has 30 seconds left, because the math isn't going to work for you.

All other legislators who are members of the relevant committees receive five minutes to ask questions.

Except for five minutes for the relevant chairs, there will be no second round of questions. Some people don't love that rule, but you just heard how many speakers there are, even if you didn't look at the schedule yet. And the government representatives tend to go on an exceptionally long period because there are so many questions for them. We're already estimating this will be a hearing that lasts till 10 o'clock tonight.

So we're going to try to be fairly strict with limiting the questions, both the length of time and also specific to the Governor's budget. There's lots of issues we all love to talk about in government and we all care about, but these are budget hearings with a specific time frame. So we ask both the people testifying and the people questioning to stay on message with we are looking at the Governor's Executive Budget

and responding to his proposals.

But any legislator who feels the need to ask additional follow-up questions and they just are not going to be given the time, if you're an Assemblymember, reach out to Helene Weinstein. If you're a Senator, reach out to me. We are each, as chairs, allowed some flexibility in asking questions. But I suspect we're aren't going to be so friendly to that today. I will not speak for Helene.

For nongovernmental witnesses, they get five minutes to testify and legislators have three minutes to ask them questions. For governmental, they have 10 minutes to testify.

We urge everyone who testifies: Don't read your testimony. If you have a written testimony that you're submitting and it's more than two pages long, I guarantee you you can't do it in the ten minutes or the five minutes. So every day we watch people go: "But the most important part was on page 15!" Then start on page 15. Because we all will have the full testimony; it will be up

online. You have seven additional days to submit your testimony after this hearing.

Use your time talking to us about what you think are the most relevant points, from your perspective, that you want us to remember when you leave the table today. And we are all capable of reading the full testimony, as will the entire public be able to do so.

Finally, for my colleagues who are here, these mics are not great. Maybe by next year we'll have a new system. But watch whether the red light is on or not. If you accidentally leave it on, which is hot, you may not hear yourself, but people who are watching from home streaming these hearings from computers somewhere, they are hearing every single thing that is said into a hot mic.

So sometimes Helene and I get these texts saying "We're listening to a fascinating conversation between so-and-so and so-and-so down the aisle from you." So watch whether your mic is on or off

appropriately, or you might have one of those little problems to explain later.

Okay, so finally getting to introducing my colleagues who are here. I see we have Zellnor Myrie, we have Diane Savino, we have Robert Jackson, we have John Liu. We have Brad Hoylman, Luis Sepúlveda, Gustavo Rivera.

And I'm going to turn it to Jim Seward, who's my ranker on Finance, to introduce his members.

SENATOR SEWARD: I'm pleased to introduce the members of my conference who have joined us this morning. The ranker on Crime and Corrections, Senator Fred Akshar, Senator Rich Funke, and Senator George Borrello.

CHAIRWOMAN KRUEGER: And Assembly for introductions.

CHAIRWOMAN WEINSTEIN: We have with us chair of our Codes Committee, Assemblyman Lentol; chair of our Judiciary Committee, Assemblyman Dinowitz; chair of our Corrections Committee, Assemblyman Weprin;

chair of our Government Operations Committee, Assemblyman Zebrowski.

We also have with us Assemblywoman Joyner, Assemblywoman Seawright, Assemblyman Epstein, Assemblyman Taylor, Assemblywoman Buttenschon, and Assemblywoman De La Rosa.

We also have our ranker, Assemblyman Ra, who will introduce the members of his conference.

ASSEMBLYMAN RA: Thank you. Good morning.

We're joined this morning by Assemblyman Joe Giglio, ranking member on the Corrections Committee; Assemblyman Angelo Morinello, ranking member on the Codes Committee; Assemblyman Anthony Palumbo, ranking member on the Judiciary Committee; Assemblyman Michael Montesano, member of the Codes and Ways and Means Committees; and Assemblyman Andrew Garbarino, member of the Codes Committee.

CHAIRWOMAN KRUEGER: Thank you.

Good morning, Judge.

CHIEF ADMIN. JUDGE MARKS: Good

morning.

CHAIRWOMAN KRUEGER: We're going to have our first testifier, Honorable Lawrence Marks, Chief Administrative Judge, Office of Court Administration.

CHIEF ADMIN. JUDGE MARKS: Good morning, Chairperson Krueger, Chairperson Weinstein. Good morning to everyone else here. I'm Lawrence Marks. I'm the chief administrative judge of the state courts. And thank you for the opportunity to be here this morning to talk to you about the Judiciary's 2020-2021 budget request.

And I'll just -- I've given you more complete written testimony, and I won't get into all of the issues addressed in the written testimony, but I want to hit on just some of the highlights so that I stay within the 10-minute limitations.

Our budget request this year, the Judiciary's budget request, is modest and straightforward, as it was for the current fiscal year. We seek an increase in Judiciary spending of $45.9 million. That's

a 2 percent increase over the current year operating budget. This is in keeping, the 2 percent increase, with the Governor's benchmark. The increase will permit us to ensure adequate court staffing so that we have a sufficient number of court clerks, court officers, court interpreters, and other courtroom and back office positions. The personal service component of our proposed budget includes funding for all judicial and nonjudicial filled positions, the annualized cost of the four new judgeships that the Legislature created last year, and anticipated Court Officer Academy classes.

Among the nonpersonal service components of our request includes funding for attorney-for-the-child representation costs, new contractual obligations associated with court appearance notifications under the new criminal justice legislation, operational costs arising from our new presumptive alternative dispute resolution initiative, which I'll talk about in a moment, and the cost for expansion of centralized arraignment

parts in counties outside of New York City.

Our budget also seeks a separate $25 million capital appropriation to address infrastructure, technology and security equipment and records management needs. And that's the amount that we received in the current year's budget.

So support for the Chief Judge's Excellence Initiative continues to be a principal driver of the annual Judiciary Budget request. The Excellence Initiative was begun in 2016, and it's an ongoing self-critical data-driven analysis of the efficiency of our courts. It involves all the participants in the justice system -- our trial judges, our administrative judges, our court staff, the bar. The focus is on tackling backlogs and delays and includes steps such as redeployment of personnel where that's needed, modification of case management processes where that's needed, all to ensure that the courts deliver timely and efficient justice. And it's been broadly successful to date in reducing calendar

congestion and moving older cases to resolution. And we've seen success in every jurisdiction in the state and every level of court.

And obviously the Excellence Initiative can't be successful without sufficient resources. We need judges to preside over the cases that are filed and enough court clerks, court security and other personnel to support the work of the judges, and we also need modern technology to facilitate their efforts.

So as always, our budget is built to meet these fundamental needs. But also in our budget we would continue funding related to many important programs through which the judiciary serves the community. And I just want to mention some of those, foremost among them being our civil legal services grants, which for 2020-2021 we're asking to continue the present level of state support for this program.

This includes $85 million to be distributed to over 80 nonprofit legal

services organizations across the state that help thousands of New Yorkers with critically important legal matters such as housing-related disputes, family disputes, access to healthcare and education, and efforts to secure subsistence income.

In addition to the 85 million with the civil legal services grants, we're again seeking $15 million that would be passed on to the IOLA fund, which is also dedicated to supporting legal services organizations and helping the economically disadvantaged.

Another important program, one that's particularly important to the success of the Excellence Initiative, is our presumptive alternative dispute resolution initiative. This program provides some form of court-sponsored ADR -- in particular, mediation -- at the earliest possible stage of civil cases. ADR, when successful, can reduce the high cost of litigation, it can improve the quality of case outcomes in civil cases, and it can help ameliorate case backlogs and delays.

And since the program's inception this past fall, nearly 40 cases have participated in some form of ADR in Supreme Court, in lower Civil Courts, in Family Court, and in Surrogate's Court.

We're also seeking an additional million dollars in our budget request for the nonprofit Community Dispute Resolution Centers. They're a key component of our ADR efforts, and they provide mediation services in a wide range of cases and communities across the state.

The budget of course includes funding to meet the state's obligations under collective bargaining agreements with our unions representing all the Judiciary's approximately 14,000 represented employees. And the current agreements cover terms and conditions of employment through March 31, 2021.

I just wanted to mention very briefly the issue of compensation for 18-B attorneys and attorneys for the child. A rate increase is long overdue. It's been 16 years since

18-B rates, attorney for the child rates were last increased. And as you know, the attorney for the child costs are a state expense that's carried in the Judiciary Budget, and the 18-B costs are local government expenses.

So again, 16 years have now passed since the last rate increase, and it's growing increasingly difficult to attract lawyers to serve as 18-B counsel and as attorneys for the child, and we strongly urge -- and the Chief Judge has emphasized this on numerous occasions -- we urge that attention now be paid to this issue.

So I just want to end my remarks with a call for your attention to what is today the most important priority for the Chief Judge and the Unified Court System, and that's consolidation of New York's complex, outdated and inefficient trial court structure.

In New York we have 11 separate trial courts, far more than any other state in the nation. California has one, Illinois has

one, Florida has two, New Jersey and Pennsylvania have three. New York has 11 trial courts. The result is a bewildering system, certainly for lawyers and litigants, most certainly for self-represented litigants, but even for judges and court administrators. For over 50 years we've labored under the constraints imposed by this system. For over 50 years governors, chief judges and legislators have tried to change the system to reduce the number of courts, to make the system more comprehensible and more navigable for the bench, the bar and the public. And for over 50 years, those efforts have failed.

But we've resurrected the call for reform. The Excellence Initiative can never achieve full success without modernization and simplification of our trial court system.

By the way, I want to thank Senator Hoylman and Assemblyman Dinowitz for holding public hearings on the Chief Judge's proposal in November. And I've had the opportunity to speak individually with many of you in the

last several weeks, and I hope to be able to speak with each of you in the next several weeks about this proposal.

I just want to add we're gratified that the Governor has included trial court consolidation in the State Budget and that he's submitted an Article VII bill, proposal, to amend the Constitution accordingly. The Governor's proposal is substantially the same as the proposal announced by the Chief Judge last fall, and we will work with him and his staff to promote its adoption through first passage by the Legislature. And we urge your support for this vital reform.

So just to conclude, the Judiciary's 2020-2021 budget request seeks a 2 percent increase in the courts operating budget which will permit us to maintain staffing levels at levels needed to realize the goals of the Excellence Initiative. Along with our budget request we call for legislative adoption of a constitutional amendment consolidating the state's trial court structure. Only in taking that step can we keep faith with the

commitment we all have to provide the public with a justice system worthy of the name, one that ensures the best use of limited tax dollars to deliver fair and timely resolution of all legal disputes.

So thank you for your attention. Thank you for your support of the Judiciary. And I'd be happy to answer any questions.

CHAIRWOMAN KRUEGER: Thank you very much, Judge.

Just also to clarify, the Assembly and the Senate alternate the days that one or the other of us run the hearing. So today is a Senate day, which means we will call on a Senator, then an Assemblymember, a Senator, Assemblymember, till we get through it all, just for people to understand.

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

SENATOR HOYLMAN: Thank you, Senator Krueger, and Chairperson Weinstein and my colleague in the other house, Assemblymember Dinowitz.

Good morning, Judge.

CHIEF ADMIN. JUDGE MARKS: Good morning.

SENATOR HOYLMAN: I appreciate your testimony and everything you've been doing to make our courts more efficient but also more effective in distributing justice. That's, I know, your goal, and I share it.

And from your testimony, we know that court consolidation is a top priority for the Chief Judge. And I do appreciate your willingness to appear at the two hearings on the Chief Judge's proposal that we held in November.

However, I've heard since the hearing, from colleagues, a number of concerns and questions that I'd like to give you the opportunity to address.

First, over the years OCA has developed administrative initiatives to mitigate those structural inefficiencies that you speak of in the court system -- community courts, integrated domestic violence courts, for example. And these initiatives have been

largely successful.

So why aren't these creative administrative solutions sufficient to address the problems the court consolidation proposal is intended to address?

CHIEF ADMIN. JUDGE MARKS: Well, it's sort of -- a lot of the -- you mentioned the integrated domestic violence courts. It's kind of a jerry-rigged system sort of within this very complicated complex trial court structure. They've been fairly successful. We have them in many jurisdictions, not all, around the state, but many of the counties.

And the idea is to when a family has a matrimonial divorce proceeding, a child custody dispute, and where there are allegations of domestic violence, all three of those components have to be present, and then we try to consolidate all those issues before one judge and one court.

But that's sort of a limited example of where -- and one of the great benefits of trial court consolidation would be to end once and for all this system where an

individual litigant or an individual family has multiple legal issues and they have to be litigated in multiple courts before multiple judges. You know, with true trial court consolidation, multiple legal issues involving individual litigants -- and this often comes up with families, it's one of the best examples -- they probably can be resolved once and for all not in a patchwork jerry-rigged kind of way with administrative orders. Some have suggested that some of these procedures are of dubious legality and constitutionality. I don't know if that's true or not, but why sort of work around the edges, why not confront this problem head on and reduce and consolidate the panoply of trial courts that we have now in New York, more than any other state in the country has.

SENATOR HOYLMAN: Thank you.

I've heard from many of the nonjudicial court personnel unions that they have concerns about the court consolidation proposal, that it's too vague, and concerns about what will happen to them and their

unions if the 11 separate trial courts are merged into just two courts. What could be done to address these concerns?

And assuming that court consolidation moves forward, there is a significant amount of work that needs to be done to change the various laws and address the kind of details the unions are worried about. Do you think there's value in trying to iron these details out ahead of time?

CHIEF ADMIN. JUDGE MARKS: First let me say that no employee would be hurt by this; some would actually be helped. There's a modest cost that would come with full consolidation of the trial courts under our proposal, and some employees would see modest grade increases, which would translate into salary increases.

But more importantly than that, no one will lose a job under this. Obviously the goal is to make the trial courts operate more efficiently. But we're down -- I didn't mention this in my remarks, and I've mentioned it in past years testifying at this

hearing, but we're still down 1500, 1600 employees from where we were a decade ago. And we're an underresourced court system, and we have been for a number of years, going back to the severe budget cuts a decade or so ago, followed by flat budgets, followed by very modest 2 percent increases in our budget, which we're again asking for this year.

So we ideally need more employees. And even though we could become more efficient with trial court consolidation, we need all the employees we have, if not more. So no one need be concerned that their job will be at risk, that we won't replace people when they leave. We absolutely have to do that to be able to function effectively given the reduced size of our workload.

To answer the last question you raised, there are a lot of details that -- statutory changes, administrative rule changes and the like -- that would have to follow amendment of the State Constitution to consolidate the trial courts. And that's why

we built in a five-year implementation period. I mean, if this were to receive first passage this year, second passage next year with the newly elected two-year legislative session, and then go on the ballot in November of next year, and we're fortunate enough to see passage twice and approval by voters on the ballot, we've built in five years in this proposal to address all of the details that will have to be addressed conforming statutory changes, administrative rule changes.

It would really be not the best use of time to try to resolve all of those issues now -- and there will be many issues -- but before there's even first passage. But probably next year --

SENATOR HOYLMAN: So have there been any conversations, ongoing conversations with the personnel unions? There's a general sense that they were not included before this plan was released. Are you taking steps to include them in conversations now, or are there other steps you might be able to take

before we as a Legislature vote on this?

CHIEF ADMIN. JUDGE MARKS: Absolutely, there have been meetings -- when the Chief Judge announced the proposal last September, it was a draft proposal. We've said from the beginning that nothing here is etched in stone. We have no expectation that the proposal as drafted will sail through, be passed twice, and be approved by the voters on the ballot. There need to be constructive changes in the proposal. That's why the proposal was put out as a draft in September.

Since then there's been tremendous input from a lot of interested stakeholders -- court system participants, including the unions. Our human resources and labor relations people have had meetings with the unions. There will be further meetings. And the goal is get their support in the end for the proposal.

SENATOR HOYLMAN: Thank you.

And I know that you're aware of the concern of many of our colleagues about the diversity of New York's judiciary. And thank

you for your feedback on the legislation that Senator Sepúlveda and I introduced to require reporting in that regard.

While the court consolidation proposal increases the raw number of minority judges who would be eligible for appointment to the Appellate Division, there are concerns that it would also decrease the relative percentage of minority judges who would be eligible for appointment.

What can be done in the proposal to address the issue of judicial diversity?

CHIEF ADMIN. JUDGE MARKS: Well, it's a critically important issue, judicial diversity. I testified about this at the second hearing, the one here in Albany, in November. And, you know, without judicial diversity in our court system, the public will not have trust and confidence in what the courts do, the work of the courts. So it's a critically important issue.

We should all be talking about how to -- the best ways to evaluate and to increase diversity on the bench. And it's --

frankly, that is not the primary goal of the Chief Judge's court consolidation proposal. The goal is to make the courts more efficient, which --

SENATOR HOYLMAN: Shouldn't it be a parallel goal, though, overall?

CHIEF ADMIN. JUDGE MARKS: Absolutely. Yeah.

So we're open -- of course we don't select the judges in the court system. Where we do make appointments, our appointments have been very diverse. Ten of the 15 of our downstate administrative judges are judges of color or LGBT members. We appoint the New York City Housing Court judges; 45 to 50 percent of them are judges of color.

So certainly we agree 100 percent that diversity is important. And we could work on a parallel track with court consolidation to address that issue, and you'd have our full cooperation.

And I think your proposal and Senator Sepúlveda's proposal that was announced a few days ago is an important first step, because

we should be measuring the extent of judicial diversity and where there are shortfalls and shortcomings and develop strategies to address them.

SENATOR HOYLMAN: Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Since we began, we've been joined by Assemblywoman Malliotakis and Assemblywoman Byrnes.

We now go to the chair of our Judiciary Committee, Assemblyman Dinowitz, for 10 minutes.

ASSEMBLYMAN DINOWITZ: Good morning, Assemblymember Weinstein, Senators Krueger and Hoylman, all my colleagues, and thank you again for being here. And I do appreciate the time you've put in attending our hearings on the court consolidation.

My first question involves personnel. As you probably know, one of my biggest concerns has been that we do not have enough court personnel from judges to court officers, court clerks, court reporters. In

many of the counties, including the Bronx, we have huge caseloads, large backlogs. And it seems to me that since we can't get rid of most of the cases, we have to add personnel in order to address that.

In the past two years, we have added eight Supreme Court justices to the system, two each in the Bronx, Queens and Staten Island, one in District 9, one on Long Island. Do you think that that's something we should continue to try to do in order to help alleviate some of the backlog that we have?

CHIEF ADMIN. JUDGE MARKS: Yeah, I mean, you know, the court system can always make good use of additional judge resources, additional judges. There are limits, as you know, and we've talked about this, constitutional limits on the number of Supreme Court justices that can be established within judicial districts.

Our proposal, our court consolidation proposal, would eliminate that constitutional limitation and leave it up to the Legislature

to determine how many Supreme Court judgeships there would be, which would be a much better approach.

We rely very heavily on acting Supreme Court judges because of the -- really because of the constitutional limitation on the number of Supreme Court judgeships. To get the work done as best we can, we have to elevate lower court judges to Supreme Court, particularly in the criminal term of Supreme Court in a jurisdiction like New York City. And then that leaves the Criminal Court short of judges. So we generally will take Civil Court judges in New York City, at least for the first two years after they're elected, and put them in the Criminal Court.

So it's kind of a crazy system, you know, moving the resources around constantly to try to meet the need and to maintain judicial caseloads at manageable levels.

I should say, despite limited resources, we have done extremely well under the Excellence Initiative in tackling backlogs and delays across the state,

including in places like Bronx County, where we've had formidable delays and backlogs, certainly. So, you know, we have made success within existing resources, but the court system could always use more resources, judicial and nonjudicial. And -- but the court system could also use a more simplified structure within which to do our work.

ASSEMBLYMAN DINOWITZ: I should point out one thing which kind of distressed me this year. In the Bronx, and I hate to use the Bronx as the example all the time, but that's the area I know best. I actually don't hate to use it as an example because it's a good example.

We just elected in the Bronx four new Civil Court judges this past year, and all four of them were assigned to other boroughs, I think mostly Manhattan. And I just -- it seems to me that when somebody is elected to a jurisdiction, it's probably better if they serve that jurisdiction. And, you know, I understand you need to have the flexibility to move people around, either by area or by

whether it's criminal or civil. But the fact that all four of them were assigned to other boroughs I just found unusual.

CHIEF ADMIN. JUDGE MARKS: Yeah, that might be aberrational. And off the top of my head, I can't really speak directly to that example. But they're probably, I would think, serving in the Criminal Court, which is a citywide court, the New York City Criminal Court, the court of lower criminal jurisdiction in New York City. And that's as I was saying before, because of the constraints on the number of Supreme Court judgeships and the need to appoint acting Supreme Court judges and to borrow from the Criminal Court to make acting Supreme Court judges to handle felony cases. And then we need to go to the Civil Court to backfill judicial positions in Criminal Court.

That's kind of what we have -- are dealing with on a day-to-day basis. It's not ideal. But I will go back and look at that, certainly, now that you've raised it. And I can tell you at worst that's just a temporary

arrangement for a year or at most two years. And then those Civil Court judges will be able to return, if not sooner, to the Bronx and sit in the Civil Court, which is the court to which they've been elected.

ASSEMBLYMAN DINOWITZ: Right. I should also point out that even under the current constitutional limitations, there's still room to add more Supreme Court justices in the Bronx, I believe in Queens, Staten Island, and probably Brooklyn as well.

So you indicated that, on another area, 85 million is what you're proposing for civil legal services, and then the other 15. That's the same numbers as in recent years, is it not?

CHIEF ADMIN. JUDGE MARKS: I'm sorry, it's what?

ASSEMBLYMAN DINOWITZ: The 85 million for civil legal services, plus the 15 with IOLA, those are the same numbers as in recent years.

CHIEF ADMIN. JUDGE MARKS: The last several years, that's correct.

ASSEMBLYMAN DINOWITZ: So in essence, that's kind of like a cut, since the cost of living has gone up. Wouldn't it make more sense for those numbers to be higher?

CHIEF ADMIN. JUDGE MARKS: It would, certainly. And the Legislature should look at that. But, you know, the Judiciary Budget, within 2 percent increase constraints which we've been laboring under -- although I should add we're not technically bound by that, as a separate branch of government, but we could seek more than 2 percent from year to year. In some years we have. This year we're not seeking more than 2 percent.

But within that constraint, if more money were allotted for programs like the civil legal services grants, there would be less money to fill vacancies, the issue you just raised a moment ago. So it's a balancing act.

But you're right, when the civil legal services funding is stagnant for several years in a row, that really results in less spending, because costs for civil legal

services providers generally go up from year to year, they don't go down.

You know, I should add that what we do in New York is extraordinary, that we have $100 million in the Judiciary Budget. There's no other state in the country where that kind of money is in the court system's budget. I'm involved in national judicial organizations, and I think there's another state that may have $5 million in their budget for civil legal services organizations. A couple of states have, you know, very nominal amounts, $400,000 or $500,000. But very few states have any money in their budget.

We have $100 million in our budget. Not an easy thing to do given, you know, the other challenges that we face. But if we were to get more money for civil legal services not charged against the 2 percent increase, and if the Legislature and the Governor were on board with that, that would be a good thing.

ASSEMBLYMAN DINOWITZ: And as you

know, each year the Assembly puts in additional money for civil legal services, so hopefully that will continue and maybe even be expanded this year.

On just one other area, the homeowner protection services, the programs that have been funded. In the past it was funded through the AG's office, and now it's through the budget, the regular budget itself. Very briefly, what's your assessment of the effectiveness of those programs?

CHIEF ADMIN. JUDGE MARKS: This is to provide lawyers in mortgage foreclosure cases, residential mortgage foreclosure cases?

ASSEMBLYMAN DINOWITZ: Yes.

CHIEF ADMIN. JUDGE MARKS: It's an essential program. I mean, some of our money goes to providers to represent homeowners in foreclosure cases where they qualify financially.

But, you know, when you're at risk of losing the roof over your head -- I mean, there are not many legal matters that could

be more important than that. And when homeowners try to navigate the foreclosure process themselves, they're obviously at a tremendous disadvantage. You know, lawyers are critical to that process. So there really almost couldn't be enough money to provide for something like that for lawyers to homeowners who are facing foreclosure.

ASSEMBLYMAN DINOWITZ: Okay. Well, as per Senator Krueger, there's only 32 seconds on the clock, so I won't start another question. But I just wanted to reiterate that in my view having enough personnel, whether it's judges, court officers, court clerks, court reporters, that really makes the big difference in terms of making our system run properly and giving people timely justice.

Thank you very much.

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: We've been joined by Assemblywoman Walker.

CHAIRWOMAN KRUEGER: I think we were

joined by Senator Betty Little and Senator Rich Funke.

And next up is Senator Luis Sepúlveda.

CHIEF ADMIN. JUDGE MARKS: Good morning.

SENATOR SEPÚLVEDA: Hello. Good morning, Judge Marks. And thank you for meeting with me after the hearing on the merger.

What I agree with you so far is that absolutely 18-B attorneys need a considerable increase in their fees. And the Senate had requested that last year in the budget. I don't know why it didn't go through, but it didn't go through. And we're going to be asking for another increase.

You know that I am, as of right now, strongly opposed to the merger. The Senate has a Subcommittee on Judicial Diversity. To this day, no one from OCA has reached out to our offices to talk about the merger. I've met with judges who represent communities of color, I've met with attorneys, organizations that come from communities of color.

I appreciate your honesty; you just indicated that diversity was never part of the consideration with the merger. And that's unfortunate that that's the case. Because as you have indicated, diversity is extremely important to a fine-tuned judiciary system in the State of New York.

During the deliberations of this plan, not a single bar of color was consulted. Only bar associations that are dominated by white males were included as part of the considerations to create this plan. You indicated that downstate you look at the appointments where OCA has been more diverse, but that's more a reflection of who's applying for these positions. Upstate there are very few, relatively speaking, attorneys of color.

And so the argument about how this is going to increase the pool for future judges for the appellate courts, I just don't see it. I don't accept it. I've tried all kinds of permutations, and I disagree with that argument.

You indicated that you're happy that the Governor has included, in part of his Article VII, the consolidation plan. But there's one major difference where the Governor's plan differs from what OCA has done, is that the Governor actually reached out to myself, to judges associations that are predominantly judges associations of color.

I've spoken with you about some of the advisory committees that OCA has where I believe there's potentially 120 individuals that can be appointed. And I believe there's six or seven of that 120 that are either attorneys of color, be it female or male.

So the associations of judges and the bar associations of judges that represent communities of color have very little faith in OCA's goal to diversify the judiciary. I think it's sad that these communities of color, these associations, were never consulted from the very beginning. I think it's borderline insulting. I've conveyed that to you in private.

But as it stands now, you're here to speak about your testimony today and again, not a single sentence in your testimony about diversity. So that, if anything, enhances the concern that I have.

We have a state that has many attorneys of color, many women. And the judiciary is not a reflection of what we have in the state. And in fact it's a poor reflection of OCA's desire to want to diversify the bench.

Now, I know this is not the current Chief Judge's fault. I mean, there's been a line of chief judges that have ignored this fact. And I believe that yourself and the Chief Judge, everything being considered, now understand how important it is to us and want to do something about it.

But I myself could never support this plan until I see something concrete that's going to satisfy myself and the individuals that I've spoken to about the merger, until there's something solid that I can say this is a path to diversifying the bench. There's

just no way that I can support this consolidation plan. And I've made that sentiment clear to my colleagues in the Senate.

Thank you.

CHIEF ADMIN. JUDGE MARKS: May I respond to that?

CHAIRWOMAN KRUEGER: I'm sorry, no, because our Senator took his full five minutes giving a presentation. So you may respond after the hearing by talking with him. And perhaps someone else will ask a similar question who has time. But I'm sorry, it's the Assembly's turn now.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Lentol, chair of Codes Committee.

ASSEMBLYMAN LENTOL: Thank you, Madam Chair.

I thought I was going to hear an explanation from you, so I'm not quite prepared to speak. But I think I will anyway.

So welcome here, Judge Marks. And I'm glad that you're here, because I'm sure that

there are many who will want to detract from the bail reform measure that we had passed last year. And I just wanted to ask you some questions about that. Not to get into the substance of whether bail reform, the way we presented it to the public in the law that we passed, is right or wrong, bad or good, but just to ask you a couple of questions about bail. Because after all, you are the chief administrative judge.

And when I went to law school, I learned that the purpose of bail was to ensure a person's return to court. Am I correct in that, sir?

CHIEF ADMIN. JUDGE MARKS: In New York, that's always been the purpose of bail, as set forth in the Criminal Procedure Law.

But other states, that is not necessarily the sole purpose of bail. But in New York, that's right, that's --

ASSEMBLYMAN LENTOL: I understand that, that other states have gone astray from what should be the purpose of bail.

So I just want to put in perspective that bail is not for preventative detention; is that correct?

CHIEF ADMIN. JUDGE MARKS: Under New York law, that's correct.

ASSEMBLYMAN LENTOL: And bail is not for remand of an individual if the judge sees fit to do so.

CHIEF ADMIN. JUDGE MARKS: That's right.

ASSEMBLYMAN LENTOL: And I guess the next question I had is if we have a bail statute that requires either -- oh, oh, wait, let me ask you another question.

New York State has never had public safety nor has it had preventative detention as part of its law, is that correct?

CHIEF ADMIN. JUDGE MARKS: Not in my lifetime. I don't believe so.

ASSEMBLYMAN LENTOL: Not in my lifetime either. Maybe in the 1800s, but I don't go back that far.

So my question is, if we were now to install either a public safety or, by its

better name, a preventative detention statute, wouldn't that statute almost require judges to set bail in every case? Because why should they be the ones to take a chance on an individual, especially when you consider all of the rhetoric now surrounding the current law and the possibility of a judge being wrong about what he's doing to a particular defendant before him when he sets bail or doesn't set bail.

CHIEF ADMIN. JUDGE MARKS: Well, Assemblyman Lentol, I really don't want to get drawn into a public debate about the merits of the bail legislation --

ASSEMBLYMAN LENTOL: I don't either. I just really want your impressions. Because as a judge and as the chief administrative judge, these are questions that are going to come before you, Judge.

And I'm just afraid, I'm not -- I love the judges of the State of New York, I think they're very good judges. But they too are human beings. They see what's going on. They see all of the fearmongering as well as

the truth that has gone on about bail reform. And they're going to be hard put, maybe, to allow bail in a particular case if we change the statute. That's just my view.

CHIEF ADMIN. JUDGE MARKS: It's difficult sometimes to speak generally for all judges. You know, we have over 1300 state-paid judges in the state, and we have about 1800 local town and village court judges. So I certainly can't speak for the mindset of all of them.

But I would say I think that on the whole, judges follow the law and, you know, their goal is to follow the law.

ASSEMBLYMAN LENTOL: I understand that. But if the law says that it's their job, only their job, to determine public safety, then it's on them -- it's not on the State of New York, who's passed the bail reform statute, it's on them to determine whether the person before them is going to be the one to commit a crime when they let him out on bail.

CHIEF ADMIN. JUDGE MARKS: Look, I

think judges will follow the law. The Legislature determines the law, at least with respect to statutory law. And judges will follow the law. They are following the law now. And, you know, I think they can be trusted to do that.

ASSEMBLYMAN LENTOL: All right, my time is up. But you realize that we have given the judges a lot of tools with this bail statute that they can -- electronic monitoring, et cetera and so forth. I just wanted to point that out. I know you know that.

Thank you, sir.

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN WEINSTEIN: Senate?

CHAIRWOMAN KRUEGER: Thank you.

We've been joined by Andrew Lanza.

CHAIRWOMAN WEINSTEIN: We've been joined by Assemblyman Blake.

CHAIRWOMAN KRUEGER: We knew they weren't all here yet.

And our next questioner is Senator Akshar.

SENATOR AKSHAR: Your Honor, thank you very much. Sorry, Your Honor, give me one second. (Mic not on.)

CHAIRWOMAN KRUEGER: Again, not all the mics work. So when you go to speak, if yours isn't, grab somebody else's next to you.

SENATOR AKSHAR: Sorry about that, Your Honor.

CHIEF ADMIN. JUDGE MARKS: Sure.

SENATOR AKSHAR: Just a couple of questions, if I may. I want to just bring you back to last year's Public Protection meeting. In that meeting, you said discovery reform would impact courts very favorably. Do you still believe that?

CHIEF ADMIN. JUDGE MARKS: I think in the court system for -- the New York State court system for decades has taken the position that enhanced and earlier discovery is a positive development. It's not only fairer to the litigants, but it can lead to earlier and fairer dispositions. So that's still our position.

SENATOR AKSHAR: I read an article this morning about the Manhattan district attorney saying that he's fearful that he'll have to dismiss many cases because of the discovery laws. Do you agree with that?

CHIEF ADMIN. JUDGE MARKS: I really can't speak to the inner workings of his office. I know that the district attorneys' offices are struggling to comply with the new law. I mean, I've talked to prosecutors about that, I've read the same news stories that you have. But I can't speak to that particular issue.

SENATOR AKSHAR: Do you agree that the new discovery laws, though, have created issues in terms of the district attorneys complying with the new rules enacted by the Legislature?

CHIEF ADMIN. JUDGE MARKS: I think it's fair to say -- and you should speak to them directly, but from my vantage point, that it's fair to say district attorneys' offices are struggling to comply with the new law, yes.

SENATOR AKSHAR: Last year you also said that bail is a worthy endeavor, but it needs to be done very carefully, there are a lot of consequences. Do you currently agree with the way that the Legislature and the Governor implemented bail changes?

CHIEF ADMIN. JUDGE MARKS: Everyone has his or her own views on this, but I would say from an institutional perspective, we haven't taken a position on the new law.

Many judges feel that their discretion, a lot of their discretion has been taken away from them under the new law and that they're not able to evaluate cases individually based on the circumstances of the alleged crime and the personal circumstances of the individual defendants before them. But the law is the law, and judges will follow it. They are following the new bail law.

SENATOR AKSHAR: So from your perspective, are you supportive of either repealing or making changes to the current bail and discovery reforms that were enacted

by the Legislature?

CHIEF ADMIN. JUDGE MARKS: Well, let me say this. And interesting to hear the quote from my remarks last year, and I still would adhere to those remarks.

But, you know, the bail statute had problems. And I think the Governor and the legislative leaders and the members of the Legislature deserve a lot of credit and respect for trying to address those problems.

But whether improvements could be made in the statute, they probably could be, and I think it's worth the effort on their part to consider that. But at the same time, I think they deserve a lot of credit for addressing an issue that is very controversial, obviously, is certainly a touchstone issue, and they deserve a lot of credit for trying to address the bail statute and trying to improvement it. And there probably are further improvements that could be made.

SENATOR AKSHAR: Yeah, I agree with you. My line of questioning, please don't take it as though I am anti-reform. I'm anti

reforming a system when you hastily do it.

If you look at New Jersey, they took three years. They were pragmatic about their reforms. And they don't seem to have nearly the issues that we're currently having.

Let me ask you specifically about the budget as it pertains to bail reform, specifically around the pretrial services. To your knowledge, are there any additional funds in the budget to address those issues?

CHIEF ADMIN. JUDGE MARKS: In the Governor's budget?

SENATOR AKSHAR: Yes.

CHIEF ADMIN. JUDGE MARKS: Not that I'm aware of. And I would say there should be.

That there's a very robust and effective supervised release program in New York City, well funded. There was previous to the new legislation. And -- but there's -- that can't be said for many, probably most of the counties around the state. They have limited or no pretrial services. I think that's a critically

important part of the new legislation. And if it's going to succeed, we're going to need well-funded and effective supervised release services.

So that's something that certainly the Governor and the Legislature should consider very carefully.

SENATOR AKSHAR: Your Honor, thank you for your time.

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Montesano.

ASSEMBLYMAN MONTESANO: Thank you, Madam Chair.

Judge, just to touch on something. With the bail reform now in place, can you give us some indication of what's going on in the specialized courts, the quality of life courts dealing with drug courts, veterans courts, and things of that nature? Do the judges still have an ability to deal with defendants that violate the terms set forth

by those specialized courts, whether it be, you know, a time out for the violation of the conditions of probation, missed appointments, failed drug tests, counseling, and things of that nature?

CHIEF ADMIN. JUDGE MARKS: I think the drug courts and the problem solving courts in general are -- you know, will continue to be effective under the new legislation.

But the fuller options that judges had in these courts may not be as full now as they were, for example. And part of this depends on whether the participant is in the program having pled guilty or not having pled guilty. In the pre-guilty plea situations, I think the judges have fewer options now than they may have had before the new legislation. But in the post-plea situations, I believe that the courts will be able to function very effectively under the new law.

ASSEMBLYMAN MONTESANO: Judge, in the issues of the domestic violence victim, is there any impact on the court's ability to protect them during these cases now because

of the bail reform? I mean, I know the court still has the ability to issue an order of protection, but as we all know from our experiences, it's a piece of paper, it doesn't necessarily stop someone from doing something.

Is there any problem in the DV courts that they're not able to protect the safety of the domestic violence victim?

CHIEF ADMIN. JUDGE MARKS: Well, it may be a little early to know that for sure. I know that violation of an order of protection I believe is still a bail-eligible offense under the new legislation. So that's important.

But whether there would be a broader negative impact on domestic violence cases -- hopefully not, but we'll see that. You know, and I should emphasize that we're now collecting extensive information on the new law -- you know, cases where bail is set, cases where bail is not set, a lot of data on the additional hearings that are required under the new law, hearings for protective

orders -- there's actually appellate review of the trial court's judge's decisions on granting or denying a protective order. Hearings when defendants who are released don't return to court.

We're collecting a lot of data on this. And it's early --

ASSEMBLYMAN MONTESANO: Well, I'll get to the concern, is that so someone's arrested for domestic violence, there's no bail set, they get an order of protection, then they're back out on the street. And there's been several instances where when they get back out on the street, they go revisit that victim and inflict more harm.

So that's one of the concerns that we have, and we think that needs, you know, to be addressed, and the judges have to exercise some discretion on that.

And I just want to jump ahead on one issue that maybe the judges would enjoy some information on. Is there anything in the proposal for the consolidation of courts to increase the retirement age for the

municipal-level court judges, such as city courts, district courts when they become a municipality court?

CHIEF ADMIN. JUDGE MARKS: The mandatory retirement age for judges, which is the end of the year the judge turns 70, is not addressed in our proposal.

As you may recall, there was a constitutional amendment on the ballot, I think it was in 2013, that went down to resounding defeat by the voters. So in their wisdom, the voters rejected that. That was a somewhat limited proposal; it only applied to Supreme Court justices and Court of Appeals judges. But I think the vote was like 80 percent against 20 percent for.

So we don't return to that in our proposal.

ASSEMBLYMAN MONTESANO: Thank you. Thank you very much, Judge.

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN WEINSTEIN: Senate?

CHAIRWOMAN KRUEGER: Thank you.

Senator James Seward.

SENATOR SEWARD: Thank you, Madam Chair.

And Your Honor, good to see you this morning.

CHIEF ADMIN. JUDGE MARKS: Good morning.

SENATOR SEWARD: You know, in last year's legislative session there were many changes in statutes in New York State that were enacted, including rent reforms, discovery and speedy trial, just to name a couple. There were others as well. Many of these legislative changes took effect shortly after the enactment.

Did this short time frame in terms of passage of legislation and the enactment, effective date of the legislation, did this create any challenges, fiscal or otherwise? And if so, could you describe how the court system worked through these challenges?

CHIEF ADMIN. JUDGE MARKS: Let me just say as a general principle it's always better, from our perspective, if significant legislation includes sort of enough leeway

before it takes effect so that the parties affected by the legislation can prepare for that.

I thought the Raise the Age legislation was kind of the model example for that. In addition to which, there was a lot of opportunity for input on that. I think the Governor had a commission -- actually, he did have a commission, I was a member of it, and there was a lot of full debate on that.

And the effective date was about -- for the first phase, I think there was an 18-month-out date before it took effect. So there was plenty of time to prepare for that. And I think the result showed that, that the implementation of the Raise the Age legislation has been pretty seamless and uneventful and has worked extraordinarily well.

So as a general principle, you know, when there's sufficient time before a new law that's going to have a big impact takes effect, that's almost always going to be a good thing.

With respect to the criminal justice legislation, I mean, there was time to prepare. I mean, we did a lot of training of judges. We prepared materials for judges. Mostly training was required for implementation of the new criminal justice legislation.

You know, whether the effective date could have been farther out than it was might have been helpful to prosecutors. Again, I don't want to speak to them. But I would suspect they would argue that they could have benefited from more time. But I think we were prepared in the court system for the new law.

SENATOR SEWARD: So as a general rule, though, the longer the time to react to the changes in statute, the better?

CHIEF ADMIN. JUDGE MARKS: When that's possible, yes.

SENATOR SEWARD: Right. With regard to the bail reform, you know, there was no funding included last year for the cost of the implementation of that program. Has the

court system considered providing any funding to cover these -- some of the additional costs? You know, for example, has the court system considered providing funding for the monitoring devices for individuals released on bail pending trial? Because I know that's causing some problems out there.

CHIEF ADMIN. JUDGE MARKS: Yeah, we -- we have not considered funding that. I would submit that that's more appropriate for the executive branch than the judicial branch to --

SENATOR SEWARD: Would you -- from the court system's point of view and what you're hearing from judges on the front lines, would you say there are additional costs associated with, let's say in this case -- that's just one example -- the monitoring devices?

CHIEF ADMIN. JUDGE MARKS: Yes, I would agree with that.

Supervised release, which was mentioned before, supervised release is another area where there's a need for funding.

SENATOR SEWARD: Thank you. I would agree. It was not included in the changes made last year.

Just one final question regarding the proposal to restructure the Judiciary. It would authorize the Legislature to increase or decrease the number of judicial departments every 10 years. Do you have any estimates on how much it would cost to add a judicial department if the Legislature chose to do so, and the estimated additional staffing that would be required with a new judicial department.

CHIEF ADMIN. JUDGE MARKS: We have not tried to quantify that, but there would undoubtedly be some facilities costs and some additional staffing costs by creating a fifth appellate department. Which I should say is urgently needed.

When the four departments were created in the 1890s, there was roughly equal population among the four departments. And today, the Second Department has 50 percent of the population in the state, and about

50 percent of the appellate workload. So that is arguably a crisis situation that really should be addressed, and we try to address it in our proposal.

SENATOR SEWARD: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Garbarino.

ASSEMBLYMAN GARBARINO: Thank you, Madam Chair.

Thank you, Judge, for coming.

I just had a couple of quick questions. You mentioned judicial discretion about the bail reform, some judges have brought up that they thought their discretion has been taken way. Does OCA have any position on possibly adding a judicial discretion rule back into the bail reform laws?

CHIEF ADMIN. JUDGE MARKS: We have not done that. As I said, many judges feel that their discretion has been limited by the new legislation, and they feel that that's a bad

policy. And they're not able to do what judges generally are elected or appointed to do. But we have not offered any amendments or any statutory language to address that.

ASSEMBLYMAN GARBARINO: There's also been claims that judges, you know, aren't applying the law correctly, they don't understand the law. You know, I believe in Jersey --

CHIEF ADMIN. JUDGE MARKS: The new law?

ASSEMBLYMAN GARBARINO: The new law, yes.

In Jersey there was training. Is there anything in the budget here -- similar to like when a judge is first elected, they go to judge school, is there anything here to go back and retrain the judges, is there any money in the budget for that?

CHIEF ADMIN. JUDGE MARKS: Well, we do have money for training in our budget. And there isn't money earmarked for this particular topic. But as I said, we did do extensive training with the judges. We

prepared training materials which we've shared with them.

And I think judges on the whole understand the law, understand how it applies, how it works. There have been a few mistakes made, from what I've learned and what I've read, and that's probably inevitable. I mean, this is a sea change in criminal practice, the new legislation, with respect to bail, criminal discovery and speedy trial.

So unfortunately, there have been a few mistakes, but that hasn't been widespread. And it's probably inevitable, you know, when there's legislation of such significant change in prior practice.

ASSEMBLYMAN GARBARINO: But overall, most of the stories that we're hearing in the newspaper or on TV, the judges are following the law and they're applying this new law, and these stories that we're hearing on TV are because of the new law, people being released and not being held on bail?

CHIEF ADMIN. JUDGE MARKS: Yes, I

think the stories that have gotten a lot of publicity, in those cases judges have been applying the law.

ASSEMBLYMAN GARBARINO: Correctly.

CHIEF ADMIN. JUDGE MARKS: Correctly.

ASSEMBLYMAN GARBARINO: Is there any proposed changes possibly for consideration of failure to appear? I know one of my colleagues spoke about how the bail was never supposed to be meant for pretrial detention, it was just supposed to be whether they're supposed to appear.

My understanding of the law is it also ties judges' hands on certain crimes, whether or not they can consider failure to appear on previous charges for a new charge. So if somebody doesn't appear on a burglary, they were released and they don't appear, and then they're charged with a DWI, they can't use that previous failure to appear to issue bail in that case. Is there something that OCA would be behind, maybe changing the bail reform bill that way?

CHIEF ADMIN. JUDGE MARKS: Perhaps. I

mean, we -- as I said, we're collecting a lot of data on the new legislation. And when people don't return to court, that's very bad for the court system, it's bad for society, it undermines the credibility of the court system when people don't return to court.

But I have no information, and I don't want to suggest in any way that that's happening in a greater frequency now under the new law.

That's something we have to look at. And when there's enough data available, we can all look at that. And if it turns out that there's a problem, that's something that the Legislature may want to address.

ASSEMBLYMAN GARBARINO: Have you spoken to any of your judges or have there been any reports back to you about the amount of cases that could possibly be dismissed under the new discovery laws in -- starting in April? Because with misdemeanors, they have 90 days to comply for a certificate of readiness.

I have spoken to a couple of judges

that have cases coming up. One judge told me he's got 1300 cases on his docket and there's only -- he only has two certificates of readiness now.

So have you heard this from other areas, that a whole bunch of cases could be dismissed starting in April?

CHIEF ADMIN. JUDGE MARKS: Well, let's hope not. But, you know, as we discussed, the DAs are struggling to comply with the new law. The speedy trial clock continues ticking until they do comply and, you know, they are able to announce readiness for trial.

But hopefully that won't happen. But, you know, that's something that we're obviously keeping a close eye on.

ASSEMBLYMAN GARBARINO: Thank you, Judge.

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Betty Little.

SENATOR LITTLE: Thank you. (Mic issue.) The second time seems to work.

I really appreciate you being here today and looking at the budget. I have a question specific to my district, really. I thank you for the amount of money, the $117.5 million for the Court Facilities Incentive Aid Program and the Justice Court Assistance Program. I represent six counties and many, many towns, and allocations from that is really, really appreciated.

But I'm looking that you have $103.7 million for court and agency operations, a personal service increase of 94 million. And then for Raise the Age there's a 22.1 million suballocation from the executive branch that's in there, and that is also for providing additional court staff.

So I've been requesting for the last few years to see if we could get an Essex County Family Court judge. We haven't had new Family Court judges in several years. And in Essex County, we do not have a sitting Supreme Court, they travel there. We have a County Court judge who sits in Family Court, Supreme Court, Surrogate Court, and sometimes

in Court of Claims cases.

While it's a county of 32,000 people, there are many second-home residents -- Lake Placid, Saranac Lake, the tourist area, many, many tourists who come here. And with Raise the Age and more attention to having Family Court judges deal with real family issues and young people -- I know we have talked about it, but I just -- I've talked to the Chief Judge about it as well.

But if there's any way -- I have legislation that would do it, but it won't do it unless there's money there. If there's any money in those allocations where we could come up with an Essex County Family Court judge, we'd truly appreciate it. I know the Chief Judge has -- and this is going to be something that we're all going to look at, reforming the court system and looking at more efficiencies. But in the meantime, we still have an overworked County Court judge in Essex County.

So appreciate any help. And I don't know if they have any ideas for it or if

there's a way to get any money out of this.

But thank you.

CHIEF ADMIN. JUDGE MARKS: Well, let me just ask you, are you talking the need to transfer a judge to Essex County from another county? Or are you talking about creation of a brand-new judgeship?

SENATOR LITTLE: Creation of a brand-new judge. They do not have a Family Court judge position in Essex County.

CHIEF ADMIN. JUDGE MARKS: So of course that would require an act of the Legislature to create a brand-new judgeship.

SENATOR LITTLE: Right. I have that act of the Legislature that I've been trying to get passed, but I need to have the money.

CHIEF ADMIN. JUDGE MARKS: Look, if the Legislature in its wisdom enacted a new judgeship for Essex County, we would find the money to pay for that.

SENATOR LITTLE: Thank you. All right, thank you very much. I appreciate that.

CHIEF ADMIN. JUDGE MARKS: Sure.

CHAIRWOMAN WEINSTEIN: Thank you.

Assemblyman Zebrowski.

ASSEMBLYMAN ZEBROWSKI: Thanks, Chair Weinstein.

Good morning, Judge.

CHIEF ADMIN. JUDGE MARKS: Good morning.

ASSEMBLYMAN ZEBROWSKI: Good to speak to you again.

In the court consolidation plan, I know that the court system did not address the justice court system, probably for perhaps regional, political, other reasons, not getting sort of embroiled in debates that we've had up here and around the state for a number of decades.

But from my perspective, if we're going to reorganize the courts, I'm concerned that discussions aren't happening within that context. And so, specifically, you have nonlawyers still around the state dispensing justice. And I recognize we are a big, diverse, regional state, that the availability of lawyers may be a challenge.

That doesn't mean that the discussion shouldn't be had.

And then also the jurisdictional limits of our court systems and justice courts in particular haven't been raised since I believe 1977. It's going on 40 years. Small claims court or a justice court system in a lot of parts of the state, in my county in particular, which is the downstate suburban County of Rockland, the jurisdictional limit is $3,000. I believe $3,000 in 1977 is worth something around $12,000 or $13,000 today.

And those are where a lot of our residents are supposed to go in order to seek justice for small matters so that they can avoid the cost and expense, the time necessary of going into the Supreme Court. And I know the consolidation plan talks about the need to deal with congestion in the courts and to better administer justice.

So my question would be, does the court system believe that these are discussions that are worth having in the

context of this consolidation plan, some of these things can be dealt with by statute and not necessarily done within the context of a constitutional amendment? Does the court system have any opinions regarding those other tangential issues?

But in my mind, if we're talking about access to our courts, when you don't modernize a system, when you don't raise jurisdictional limits, when you don't talk about nonlawyers in the court system, you are creating a barrier to justice at a level that may be smaller but that is very important to people around the state.

CHIEF ADMIN. JUDGE MARKS: Well, it's correct that we don't address the town and village courts in this proposal. There are issues that arise out of the town and village court practice that are important issues. They're different issues from what's sought to be addressed in the proposal to consolidate the state-paid trial courts.

But -- and again, most of -- around the state, not so much in your jurisdiction,

but as you go upstate, most of the town and village judges are not lawyers. Frankly, if the Legislature mandated that they be lawyers, there wouldn't be nearly enough lawyers to sit in all these courts. There's approximately 1200 town and village courts around the state. And I can tell you without a doubt there would not be enough lawyers to staff the 1200 town and village courts. You'd have to consolidate town and village courts. I'm not proposing that, but the one would have to follow from the other.

But the town and village courts don't have the problem of delays that the state-paid trial courts do. So raising the jurisdiction of the town and village courts, that might contradict your suggestion that they should all be lawyers, because you'd be giving them more work by raising the monetary threshold.

But these are issues that we absolutely should be discussing. We should be discussing these issues with the State Magistrates Association. And I agree with

you, they are different issues than the issues being addressed in the court consolidation proposal, but they're important issues that we should be discussing.

ASSEMBLYMAN ZEBROWSKI: And I only have 15 seconds, but I would point out in terms of delays, theoretically, increasing the jurisdiction of lower courts could help those delays. Or if it wouldn't, then nobody is seeking justice within that level, between 3,000 and whatever people are going into Supreme Court for, 20,000 or so.

Thanks.

CHAIRWOMAN WEINSTEIN: Thank you.

Senate.

CHAIRWOMAN KRUEGER: Thank you.

Second round for the Judiciary chair, Senator Brad Hoylman.

SENATOR HOYLMAN: Thank you, Judge. Just a quick question as to -- understanding that we need more money for personnel, as you say, and things like civil legal services, why don't you provide a budget request that exceeds the self-imposed 2 percent cap?

CHIEF ADMIN. JUDGE MARKS: Because we tried to be good partners in government. And we -- I don't think we would turn down money if it were given to us, but we've tried to be good partners in government. You know, you go back less than a decade ago, the state was facing extraordinary deficits. And that's when the 2 percent kind of paradigm began. Well, actually, I think the first couple of years there were flat budgets, no increase, followed by 2 percent increases.

And this year there was another deficit that exists now, sort of looming for next year. So we've tried to maintain ourselves to the 2 percent limit where we can do that. We haven't done that every single year, but we've tried to stay within the 2 percent limit. That's the reason.

SENATOR HOYLMAN: Speaking of court resources, this week marks the halfway point through the one-year window created by the Child Victims Act to file civil claims retroactively. How have the courts been handling the influx of cases so far?

And it's my understanding that OCA put a temporary stay on the discovery phase, which I have spoken to you and one of your colleagues about. Can you explain to my colleagues as to how that is being managed?

CHIEF ADMIN. JUDGE MARKS: Well, we're giving those cases special attention, as you know. We've designated dedicated judges to handle those cases. Particularly when they go to trial, we have a core of judges we've designated around the state to try the cases when they're ready for trial.

And then we have a smaller group of judges handling the pretrial proceedings. And the discovery was stayed to provide time to issue -- to prepare and issue case management orders that the judges handling the pretrial proceedings felt would be very helpful to them and to the lawyers and the litigants in managing these cases so that they could be fast-tracked and sped along more quickly.

So I think we're only six months or so into the new law, if I'm correct. There are

about 1500, 1550 cases that have been filed -- less at this point than some were suggesting at the beginning, but it's still a significant number of cases. There will be more filed in the coming months. And we're fully committed, particularly because of the serious nature of these cases and also because of the age, the great age of some of the -- how long ago some of these incidents allegedly occurred, so we're treating them specially and they will be handled expeditiously in the end.

SENATOR HOYLMAN: Thank you.

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Palumbo.

ASSEMBLYMAN PALUMBO: Thank you, Madam Chair.

Good morning, Your Honor. How are you?

CHIEF ADMIN. JUDGE MARKS: Good morning.

ASSEMBLYMAN PALUMBO: Now -- and you and I have discussed this before. As you know, I've been practicing for 20 years, so I've been pulled aside by many people -- judges, staff and so forth. So I just have a few quick questions regarding the criminal justice reform.

And you had mentioned that it was implemented quickly, and I think we can all agree that that was really a short period of time to adequately prepare. And you did mention before that it was repeated to you that many in the judiciary felt it was bad policy and that they did not offer any specific changes.

Do you have any specific changes that you would recommend? Or let me put it this way, that you would be willing to recommend publicly?

CHIEF ADMIN. JUDGE MARKS: Are you asking me personally or --

(Laughter.)

ASSEMBLYMAN PALUMBO: Sure. Or just in your experience. That if there are any

ways that it could have been done a little bit better. Absent a full reform, which we don't think is happening, there have been some members of the Legislature and the Governor who said this is a fluid thing, obviously, and that there are some changes that would obviously make it go a little bit more smoothly, if not a lot more smoothly.

Do you have any proposed changes that you would suggest, in the event that would be considered?

CHIEF ADMIN. JUDGE MARKS: I'm not speaking for the Judiciary when I say this. But speaking personally, my experience --

ASSEMBLYMAN PALUMBO: If you're comfortable.

CHIEF ADMIN. JUDGE MARKS: -- in the criminal justice system for 35 years or so, if I ruled the world, I would do what New Jersey did.

Bail is inherently discriminatory against poor people. If you have money, you can buy your liberty. And if you don't have money, you wait in jail. There's something

fundamentally wrong about that, and obviously discriminatory against poor people.

But I think what New Jersey has done -- I would eliminate bail entirely, including for the most serious offenses. But you can't eliminate bail entirely unless you allow judges to factor in risk to public safety. So New Jersey has done that. It's worked. There was initial controversy and hand-wringing about it, you know, which is not surprising for sort of a landmark change in practice like that.

But New Jersey, three years into it, it's been a success story. They've eliminated bail. Judges I think carefully and prudently weigh the risk to public safety. It hasn't led to, you know, record numbers of defendants being detained.

And that's what I would do personally. But I'm not speaking for the court system. There are --

ASSEMBLYMAN PALUMBO: Thank you. I appreciate that.

CHIEF ADMIN. JUDGE MARKS: Individual

judges have -- there's a wide array of individual viewpoints about this.

ASSEMBLYMAN PALUMBO: Certainly. And they're actual judges. They are supposed to implement their discretion. Right? And I think we can all agree that our judges will do it in a fair manner, without personal bias, by following maybe some statutory factors that we could outline that would be considered regarding public safety. Would you agree with that?

CHIEF ADMIN. JUDGE MARKS: I would agree that judges feel that they should have discretion to address the case based on the individual circumstances of cases that come before them.

ASSEMBLYMAN PALUMBO: Certainly. Thank you, Your Honor.

And I believe the Governor's original proposal in his Executive Budget last year had a statute similar to New Jersey which allowed some discretionary choices to be made by the court.

Now, regarding just another layer of

that criminal justice reform as far as the notification of defendants -- and I know that some of it is of course executive branch, dealing with probation departments and so forth, ankle monitoring and a lot of unfunded mandates there.

But can you tell us what the fiscal impact has been regarding courts' requirement to now notify defendants? Was that just absorbed by clerks, that they do it by mail, they do it -- obviously there's some personnel needed there. Have there been any adverse fiscal impacts that you know to the judiciary and court staff?

CHIEF ADMIN. JUDGE MARKS: Well, under the new law defendants are entitled to notification of the subsequent court appearances, and they can choose the manner in which they're notified. It can be by text message, by phone call, by email, or by first-class mail.

And what we have done -- and we have the authority under the new law to delegate that to a pretrial services agency. And so

we've done that in New York City. So New York City is incurring the cost of that. But we may, depending on whether we get our full budget request approved in the coming weeks, we may help them defray some of the costs of that.

Outside of the city, as I mentioned before, we don't have as robust pretrial services in most counties around the state outside of the city. We didn't feel it was fair to impose that burden on the local governments, so we are contracting with several businesses that are handling the defendant notification.

So there has been some cost to us in the Judiciary Budget but, you know, we for the most part have been able to absorb it.

ASSEMBLYMAN PALUMBO: Terrific, Judge. I'm out of time.

CHAIRWOMAN WEINSTEIN: Senator Krueger.

CHAIRWOMAN KRUEGER: Thank you.

Judge Marks, before, I wouldn't let you answer Senator Sepúlveda's question

because the time was up, but I have some time so I'm giving it to you to answer Senator Sepúlveda's question.

CHIEF ADMIN. JUDGE MARKS: Okay. I'm trying to remember.

No, let me just say I have tremendous respect for Senator Sepúlveda's concerns about this. As I said before, judicial diversity is very important. I just want to emphasize that the court system doesn't pick the judges. With the exception, of course, of our administrative and supervising judges and Housing Court judges, who are not -- who technically are quasi-judicial officers. They're not constitutional judges, they're statutory creations, and we pick them.

But we don't pick the judges. And if the system for selecting judges, be it elected or appointed, is failing us with respect to cultural -- with respect to judicial diversity, that's not a problem that we can solve within the court system.

And I think this is an obvious point, and I know you're aware of this. But the --

it would -- so we need to do better, all of us need to do better, not just the Judiciary. To the extent that we have a role in diversifying the bench, we all need to do better and to come up with strategies to increase judicial diversity.

But that problem shouldn't sink the support for court consolidation, which has so many benefits that it would be a shame if cultural diversity, important as it is, undermined and, you know, diminished the prospects for passage of trial court consolidation. Which in the end is going to help economically disadvantaged communities, communities of color. The courts, like the Family Court, where the litigants are overwhelmingly economically disadvantaged people, courts like the Housing Court, those courts are going to benefit tremendously under our consolidation proposal.

So it's not one or the other. I think it has to be both. And I'm sure you would agree with that, that these are important proposals that both -- important issues. The

court consolidation proposal has tremendous benefit and tremendous advantages for society and for people who use the courts. And at the same time, we should come up with strategies to enhance judicial diversity. But the court system can't do that on its own. We don't select the judges. But we'll do what we have to do to contribute to that effort to improve judicial diversity in the New York courts.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblywoman Walker.

ASSEMBLYWOMAN WALKER: Thank you, Madam Chair.

Your Honor, just last year African-American people across the world dubbed 2019 as the Year of Return because it is understood that slavery began in the United States in the year 1619. So arguably, we've been living with this disgrace for over 400 years.

And when we speak of bail, it's always

about the Constitution, particularly because we recognize that slavery was abolished except in the case of criminal punishment. And I recognize that that's a paraphrase of the actual Constitution.

But do you agree that that's basically the sentiment of the abolition of slavery?

CHIEF ADMIN. JUDGE MARKS: I think I would generally agree with that, sure.

ASSEMBLYWOMAN WALKER: And we also recognize that bail should not be cruel and unusual punishment, which is also in the Constitution. Would you agree with that?

CHIEF ADMIN. JUDGE MARKS: Bail should absolutely not be cruel and unusual punishment.

ASSEMBLYWOMAN WALKER: It also goes on further to read that bail is also not required. I'm not going to ask whether or not you agree with that.

But either way, I would just like to bring your attention to a few Department of Criminal Justice Services statistics. In the year 2016 there were 29,300 people held on

bail. Do you know how many of those individuals were African-American?

CHIEF ADMIN. JUDGE MARKS: How many?

ASSEMBLYWOMAN WALKER: 16,300. Do you know how many were white? 2,800. Do you know how many were Hispanic? 9,300.

There were a number of people who were released to the community where they actually set bail. That amount was 12,900 individuals. Of that number, 6,100 were black, 4,400 were Hispanic, 1,600 were white.

Do you agree that there are racial disparities in those numbers?

CHIEF ADMIN. JUDGE MARKS: I'm sorry, do I agree that what?

ASSEMBLYWOMAN WALKER: There are racial disparities in those numbers.

CHIEF ADMIN. JUDGE MARKS: Those numbers obviously don't lie.

ASSEMBLYWOMAN WALKER: Well, do you also agree, Your Honor -- I know I've heard a lot about judicial discretion. But many of the judges utilize these sort of risk assessment tools in order to help them come

up with their discretion. Do you agree with that?

CHIEF ADMIN. JUDGE MARKS: I think the risk assessment tools have been controversial, and in my own mind I question at times whether they're helpful or unhelpful.

ASSEMBLYWOMAN WALKER: But do judges rely on these risk assessment tools, like the CJA, in order to make their determination as to whether or not to release someone on their own recognizance or set bail?

CHIEF ADMIN. JUDGE MARKS: Yes, in New York City. Not so much outside of New York City.

ASSEMBLYWOMAN WALKER: Now, can you tell me what some of those questions are that are asked?

CHIEF ADMIN. JUDGE MARKS: Well, I don't have one in front of me, but they're questions --

ASSEMBLYWOMAN WALKER: Let me help you out. Do they ask questions about whether or not a person has a place to live?

CHIEF ADMIN. JUDGE MARKS: Yes.

ASSEMBLYWOMAN WALKER: Do they ask whether or not a person has a job?

CHIEF ADMIN. JUDGE MARKS: Yes.

ASSEMBLYWOMAN WALKER: Do they ask about their level of education?

CHIEF ADMIN. JUDGE MARKS: I believe they do.

ASSEMBLYWOMAN WALKER: Now, do you believe that those items are predictors for dangerousness, Your Honor?

CHIEF ADMIN. JUDGE MARKS: For dangerousness? No, not for dangerousness.

ASSEMBLYWOMAN WALKER: Well, are they predictors of behaviors that would lead to someone needing to be incarcerated pretrial?

CHIEF ADMIN. JUDGE MARKS: Some think that they are.

ASSEMBLYWOMAN WALKER: One of the things that also has come up was about the short period of time that this bill was passed. But it was originally passed in the year 2018.

So I will not, you know, stand by idly

to listen to people say that something was done hastily when they didn't recognize the seriousness of it and the need for it and the urgency of it. Because I recognize -- again, in the beginning of my statements I mentioned that we've been living with this for 400 years. And do you think that 400 years is a short period of time, Your Honor?

CHIEF ADMIN. JUDGE MARKS: Obviously not.

ASSEMBLYWOMAN WALKER: Thank you, Madam Chair.

CHAIRWOMAN WEINSTEIN: Thank you.

Senate?

CHAIRWOMAN KRUEGER: Thank you.

We have one more Senator, Senator Andrew Lanza.

SENATOR LANZA: Thank you, Senator Krueger.

Your Honor, thank you for being here.

And I want to thank you for your service. We really are blessed, in my opinion, to have your leadership of our courts throughout the state, and I enjoy the

many conversations you and I have had over the years.

I'm glad that you mentioned the Raise the Age legislation, the law of the State of New York. As you might recall, I spearheaded those efforts on the Senate side for the Republicans. Assemblyman Lentol, on the Assembly side, spearheaded the efforts.

There were lots of people who said, Lanza's not serious, Republicans will never do anything with respect to criminal justice reform. People said Democrats didn't really want a result, they just wanted the issue. And lo and behold, we met for two years, a diverse group of legislators from both sides of the aisle, both houses, we met with Governor Cuomo many, many times, enjoyed his leadership on the issue.

I personally spoke to scores of judges from around the state, dozens upon dozens of district attorneys, Legal Aid attorneys, defense attorneys, advocates, people who actually know what they're doing with respect to the issue.

And we hammered out a law, as you said, that was implemented in a way that it allowed it to have an effect seamlessly. And I think we did very good work and we made a difference and we made things fairer and we gave young people an opportunity to right themselves. And I'm proud of that effort.

Sadly, with respect to bail reform, that did not happen, and I think we all see the consequences. I'm not going to beat around the bush. I'm not going to ask your opinion about the law. The verdict is in. Crime is increasing in every corner of the state. People can say what they want, but you cannot ignore that fact. And the people of the State of New York see that in their communities.

And the only thing that changed between last year and this year relevant to that issue is that law, which truly was hastily made.

You know, with Raise the Age, we didn't engage in dog-and-pony hearings. I know people are calling for those. We sat

down, we rolled up our sleeves, we yelled at each other, we argued, we debated, we sought counsel from people who knew what they were doing, and we hammered it out.

I see now that this perfect law, as it was stated to be last year -- if you voted against it last year, you were a racist. Now all of a sudden people are talking about changing it and tweaking it. And the thing I hear most from both sides of the aisle, Republican and Democrat, is judicial discretion. That's how we're going to solve this problem. I disagree.

Your Honor, how many judges across the State of New York have criminal justice -- criminal jurisdiction, approximately?

CHIEF ADMIN. JUDGE MARKS: Well, are you including the town and village courts?

SENATOR LANZA: Yes.

CHIEF ADMIN. JUDGE MARKS: Okay. Well, there are 1800 town and village court judges. They all have lower criminal jurisdiction. And of the 1300, 1350 state-paid judges, how many have criminal

jurisdiction? I'm not sure. I would -- maybe a third, 40 percent, something like that.

SENATOR LANZA: So, Judge, there are a couple of thousand judges that have criminal jurisdiction; correct?

CHIEF ADMIN. JUDGE MARKS: Yes.

SENATOR LANZA: So if we were to so-called fix this law by allowing for judicial discretion, wouldn't that in effect mean that we would have 2,000 different bail laws across the State of New York?

CHIEF ADMIN. JUDGE MARKS: Well, I think you'd have one bail law, but it would be applied by many judges.

SENATOR LANZA: Your Honor, allowing judges to exercise discretion would mean that one judge would rule one way and another judge can rule another way, which would in effect mean that we would have two different results for the same offense and under the same circumstances.

And I just don't understand how that would be fair. In fact, I believe it would

be less fair, so to speak, than the last --

CHIEF ADMIN. JUDGE MARKS: Well, let me --

SENATOR LANZA: And if we're worried about bias, then we're going to subject defendants across the state to the bias that I know everyone is talking about.

CHIEF ADMIN. JUDGE MARKS: But we do that with sentencing. Judges are authorized to determine the sentence -- you know, the ultimate penalty in the case, based on the circumstances of the case and the circumstances of the individual appearing before them.

SENATOR LANZA: Exactly. And I have heard from many of my colleagues that we end up with unfair, unjust and racist results in that regard, and that's why I believe that judicial discretion not only is not the answer, but I think it will compound the problem.

Thank you, Your Honor.

Thank you, Senator Krueger.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblywoman Byrnes.

ASSEMBLYWOMAN BYRNES: Thank you very much. Thank you, Your Honor.

I apologize we weren't able to meet before today; I know your office had to cancel a couple of appointments.

CHIEF ADMIN. JUDGE MARKS: We will meet.

ASSEMBLYWOMAN BYRNES: I'm Marge Byrnes. I represent southern Monroe County, all of Livingston and northern Steuben. I'm retired from the New York State Court system. I served 19 years at different capacities in the Hall of Justice in Rochester, including 10 years as a city court judge. And the last 11 years before I retired, I was a law clerk to a county court judge in Livingston County.

I want to change a little bit and go back to where we started at the beginning of this discussion about the overall court consolidation. And my question for you, sir, with a slight explanation for people who

aren't that familiar with the system, is that I want to talk about certified Supreme Court judges and how consolidation will affect these ranks.

Right now a Supreme Court judge -- all full-time OCA elected judges have to retire at 70, but Supreme Court judges can, without running for election, remain certified until the age of 76. So that they are still using chambers, they still have a right to chamber staff. They are still using a courtroom, they're still using courtroom staff. They're fulfilling all the roles of a Supreme Court judge, with all of the expenses that go along with it, but they're not elected. But their seat is up and becomes elected when they turn 70. So then you in essence have two judges where you used to have one.

And as a result -- this has been going on for a long, long time -- that there's already a strain in the system with not enough staff, not enough chambers, not enough people to man all of the Supreme Court judges, both elected and those that are

certified.

My question for you, sir, is if we take Family Court and County Court and Surrogate Court judges -- and I'm not even getting into whether or not they should be required to retire at 70. Putting that aside. But if these individuals all become Supreme Court judges that now have that opportunity to remain to 76 in a certified category with all of the benefits that go with it, with new elected judges, how can this not, sir, mushroom up the ranks of the judiciary and the costs that are associated with it?

CHIEF ADMIN. JUDGE MARKS: Well, there's a simple answer. It's a very good question. The answer is not all of the judges who would become eligible for certification under this proposal would in fact end up being certificated, or certified, because that would be excessively expensive and we wouldn't have sufficient facilities and space for them to sit. So --

ASSEMBLYWOMAN BYRNES: Right. But a

lot of them do.

CHIEF ADMIN. JUDGE MARKS: Well, now the certification process is limited to the Supreme Court justices. Under our proposal, other judges would become Supreme Court judges --

ASSEMBLYWOMAN BYRNES: Supreme Court, which would give them that opportunity.

CHIEF ADMIN. JUDGE MARKS: The courts would be folded into Supreme Court. They would all be theoretically eligible for certification. But they could not all be certificated, for the reasons that I said -- it would be too expensive and there wouldn't be space for them.

ASSEMBLYWOMAN BYRNES: Right. How would you differentiate who got to stay, who didn't get to stay? Because I know that both County Court judges in Livingston that were just forced to retire at age 70 this year -- at the end of last year and were replaced, both of them, had they been Supreme Court judges, would have loved to have stayed and continue working, as they were both very

viable gentlemen.

How would you ever distinguished who got to stay and who was told, Oh, no, not you?

CHIEF ADMIN. JUDGE MARKS: Well, we do it now, to some extent. We evaluate -- first of all, under the law, the judges have to be certified by an independent physician that they're physically and mentally able to continue on the bench.

But we also look at a whole range of factors, including a judge's productivity. I mean, how many trials have they done, how many motions have they decided over the recent years, how many of the older cases, what we call standards and goals cases that we have -- that's done now. And granted, most of the judges, the great majority of the judges do end up getting approved and get to stay on after these additional two year stints, but not everybody does get certified. Not everybody is qualificated -- we look at if there are any problems that they've had with the Judicial Conduct Commission. So

it's a whole analysis that's done, and it's done now.

And that analysis would become more rigorous under the proposal where many more judges would become eligible for the certification process.

ASSEMBLYWOMAN BYRNES: Thank you, Judge.

CHAIRWOMAN WEINSTEIN: Thank you. As Senate has no more questioners, so we'll go to Assemblyman Giglio.

ASSEMBLYMAN GIGLIO: Thank you, Madam Chair.

Thank you, sir, for being so patient today.

I have a quick question. About 10 years ago the OCA formed the Justice Task Force, okay, and the role of that task force, I believe, was to study vital issues relating to the criminal justice system. Is that correct?

CHIEF ADMIN. JUDGE MARKS: Yeah, the role initially was to study and evaluate the causes of wrongful convictions in the

New York State courts.

ASSEMBLYMAN GIGLIO: And as it evolved, one of the last things it did, starting in 2017, was look at bail reform.

CHIEF ADMIN. JUDGE MARKS: That's right.

ASSEMBLYMAN GIGLIO: And after two years of looking at bail reform, on February 11th of 2019 you released that report?

CHIEF ADMIN. JUDGE MARKS: The Justice Task Force released the report.

ASSEMBLYMAN GIGLIO: Who did they release it to?

CHIEF ADMIN. JUDGE MARKS: They released it to the Chief Judge, to the Legislature, to the Governor, to the public at large.

ASSEMBLYMAN GIGLIO: Okay, who in the State Legislature did it go to?

CHIEF ADMIN. JUDGE MARKS: I'm not sure.

ASSEMBLYMAN GIGLIO: Okay. So therefore, it was around on February 11,

2019 -- release took about two years to do -- and had a bunch of recommendations about what -- how effectively to do bail reform. And you studied that issue because it was so relevant at the time and we were moving towards -- everybody realized that times were changing.

My question is, if it was released on February 11th and we passed the bill, the budget bill, on March 31st going into April 1st, do you know what happened to this report and why we haven't heard about it since?

CHIEF ADMIN. JUDGE MARKS: I think you haven't heard from it since because the Legislature acted and passed the new legislation.

But is the question why didn't you know about it at the time?

ASSEMBLYMAN GIGLIO: Yes, sir.

CHIEF ADMIN. JUDGE MARKS: You said it was February of last year --

ASSEMBLYMAN GIGLIO: February 11th.

CHIEF ADMIN. JUDGE MARKS: -- February

2019?

No, there was publicity about it, there were newspaper stories. It's possible the report was not as widely disseminated as maybe it could have been. Those reports -- that task force has issued a number of reports since its inception -- it was 2010, I think you said. I think that's right. All their reports are on their website.

But it may be that the report was not as widely disseminated at the time as it could have been.

ASSEMBLYMAN GIGLIO: Okay. So they spent two years doing it. And who did it? Who were part of this task force?

CHIEF ADMIN. JUDGE MARKS: The Justice Task Force is cochaired by former Court of Appeals Judge Carmen Ciparick and current acting Supreme Court Justice Mark Dwyer, who sits in -- handles felony cases in Manhattan. There are defense attorneys, district attorneys, law enforcement officials, academics. And it's sort of a -- it's a broad cross-section of people with exercise

and experience in the criminal justice system.

ASSEMBLYMAN GIGLIO: Were pretrial folks involved in it too, taking that part of the component of the justice system?

CHIEF ADMIN. JUDGE MARKS: They certainly would have consulted with people like that.

ASSEMBLYMAN GIGLIO: And these people were from across the State of New York?

CHIEF ADMIN. JUDGE MARKS: Yes.

ASSEMBLYMAN GIGLIO: Okay. Thank you very much, sir.

CHIEF ADMIN. JUDGE MARKS: Sure.

CHAIRWOMAN WEINSTEIN: We now go to Assemblyman Weprin.

ASSEMBLYMAN WEPRIN: Thank you, Judge Marks. You've been very patient. And I know this is an annual routine, but I do appreciate your coming and going into some of these issues.

I'm just quickly going to touch on an issue that hasn't been addressed, and I know it's something that we were advocating for,

the central arraignment process, which I know has been in effect for the last three years. And I want to know if that's -- if you have any statistics on the increased time on arraigning individuals and preventing some unnecessary pretrial incarceration due to individuals not being arraigned prior to that.

CHIEF ADMIN. JUDGE MARKS: Well, they've been very successful. The centralized arraignment parts kind of arose out of the Hurrell-Harring lawsuit that was brought a number of years ago that was settled, and that led to landmark legislation, I think 2017 was the year -- it was several years ago -- passed by the Legislature, signed by the Governor, that addressed, you know, a number of fundamental problems in the statewide criminal justice system, including the lack of an attorney at the first appearance in a criminal case, the arraignment, which is a critical appearance in almost every criminal case.

And the Hurrell-Harring settlement

proved to be kind of an expensive way of dealing with the problem where people get arrested in less populated jurisdictions of the state in the middle of the night, and the police don't have holding facilities or anywhere to temporarily detain the arrestee. And, you know, under the old system a town or village judge would get a call in the middle of the night and come and do the arraignment. That didn't always work that well.

So the Hurrell-Harring settlement provided money -- the Hurrell-Harring litigation only involved five counties in the state, so there was money provided to those counties. It was a partial solution because the problems existed, you know, throughout the state, not just in those five counties. But there was money provided in those counties to pay for lawyers to cover the whole county, you know, in the middle of the night seven nights a week, 52 weeks a year.

So the centralized arraignment parts came up with sort of an ingenious idea that rather than have defense lawyers responsible

for covering these large counties, have the police, when they arrest someone, bring them to a central location, usually the county seat of the county, and there would be a judge, you know, who would be available. Rather than have all the judges in the county theoretically available at all times, you know, 365 nights a year, have one judge maybe do -- a town or village judge do a week stint in the centralized arraignment part, which would be staffed by a criminal defense lawyer and usually the prosecutor from the DA's office.

So it was an ingenious idea. It's worked very well. We've been expanding them to counties throughout the state. And I know you're going to hear from Bill Leahy of the Office of Indigent Legal Services today, and you should ask him as well about how successful that these centralized parts have been.

There's state funding to implement the Hurrell-Harring settlement terms throughout the state, and we felt this was an idea that

could actually save some money and even better serve the goal of ensuring that, you know, everyone is represented by counsel at arraignment.

ASSEMBLYMAN WEPRIN: I fully support that. And thank you, I'm glad to hear that.

In my remaining 50 seconds I just want to reiterate, as Chairman Dinowitz did, the Assembly's position on constantly increasing funding for civil legal services, that what we have in the budget is really not enough and we really need more money for that. So I would hope you'd be supportive of that as well. And thank you very much.

CHAIRWOMAN WEINSTEIN: Thank you.

We go to Assemblyman Ra.

ASSEMBLYMAN RA: Thank you. Thank you, Judge Marks, again for the meeting a few weeks ago discussing the court consolidation proposal. It was very informative.

I just want to go back to the bail reform issue. And you had stated earlier to one of the other questions that you felt that bail in and of itself may be inherently, you

know, racially discriminatory. And one of the things that obviously has come up in this conversation --

CHIEF ADMIN. JUDGE MARKS: Discriminatory against poor people in particular.

ASSEMBLYMAN RA: Yes. Yes, okay.

One of the things that has come up as we talk about judicial discretion is also that topic, that giving more discretion is going to have, you know, outcomes that may be discriminatory, that may be racist in nature.

Is OCA doing anything or what can OCA do to dispel that notion with regard to the judiciary? We elect our judges in many parts of the state; in some places they're appointed. But I think people run for judicial office because they want to be part of a system of doing justice. And I've heard complaints from judges on Long Island -- Republican judges, Democratic judges -- frustrated with what's going on and not having discretion. And too often when we talk about giving discretion, that's the

answer we get back in public, is about, you know, that it will give them the opportunity to make judgments that will be racist or discriminatory in nature.

CHIEF ADMIN. JUDGE MARKS: Well, let me say this. If the judge's rulings or actions are discriminatory in nature, I can't think of a problem -- not just in the justice system, but in society -- that's more troubling than that.

I don't think that judges are deliberately racist. I don't know every judge in the state, but I know many, many judges in the state, and I do not feel that judges act in a deliberately racist fashion.

Our judges' rulings, do they have a discriminatory effect? I don't know. That's a good question. That's something that should be studied. Because if it's true, it's obviously a serious, serious problem.

But in general, you know, we -- in my opinion, there's no such thing as too much training. And, you know, we do a lot of training of judges. And we could do more

training than we do now, including training on a topic such as implicit bias. Which I participated in implicit bias training, and it can be very eye-opening to everyone who receives that training.

So I would say, to answer your question, if the actions of judges have a discriminatory effect, that's a serious problem and it's something that at a minimum we could be addressing through training.

ASSEMBLYMAN RA: And then another topic that we've seen, I'm sure you're aware there's been news reports, we've had a couple of incidents on Long Island of judges who, you know, express frustration with the laws and may have taken a step further in setting bail where they weren't legally able to.

You know, but the flip side of that is also true for them, that they may be identified in public as having let out maybe a recidivist offender where they didn't really have any discretion as to whether or not bail could be set on that person because the only factor that was before them is

whether that charged offense was a qualifying offense under the law.

So how is OCA handling that end of it from a public perception of protecting those judges who are just following the law, not -- they don't have necessarily the option to do something with regard to a particular defendant that they may otherwise feel could be dangerous to the public?

CHIEF ADMIN. JUDGE MARKS: Well, sort of the first part of your question, I'm only aware of one judge who deliberately declined to follow the law. I think it was -- from what I read, the judge clearly understood the new law and its provisions and ramifications and declared that he wasn't following it, that -- and he set bail on an offense where bail was not statutorily authorized.

Judges can't do that. That's wrong. Judges have to follow the law. If judges don't follow the law, that leads to anarchy and lawlessness. And we would strongly advise all of our judges that they need to follow the law whether they agree with it or

not.

And by the way, judges can speak out -- under judicial ethics rules, they're entitled to and authorized to speak out on reform of the law. I don't think judges should do that from the bench. But judges can participate in public discussions and panels and express their views on how they think the law should be improved.

But judges have to follow the law whether they agree with it or not. They take an oath to do that. And that's critically important that they do that. And, you know, sort of the Chief Judge and I and the leadership of the court system could not feel more strongly about that. Judges must follow the law.

ASSEMBLYMAN RA: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

We go to Assemblyman Morinello.

ASSEMBLYMAN MORINELLO: Thank you, Judge Marks, for your comments and being here this morning. Madam Chair.

In the sense of fairness, I was a

judge for 14 years, and I was assigned to domestic violence for 10 of those. I did all the specialized trainings.

Would it be a fair statement to say that one of the most dangerous times in the life of a victim is when either the victim, a neighbor or a family member does call the authorities to come and protect that person?

CHIEF ADMIN. JUDGE MARKS: That can be dangerous, yes.

ASSEMBLYMAN MORINELLO: You did indicate that they can get an order of protection, but that's a piece of paper.

And here's my concern -- and I don't know if OCA has addressed it, because I know they've talked about it during my tenure -- is that this reform does not allow for any cooling-off period or any time for a victim, if they have to make a safe escape, because it allows the offender to be right back there.

Has this been discussed or looked at? And I'm not talking about the whole bail reform, but I'm focusing on just the domestic

violence piece.

CHIEF ADMIN. JUDGE MARKS: Well, I think that's an issue you've identified that has been discussed not just recently, but over the years.

ASSEMBLYMAN MORINELLO: Yes.

CHIEF ADMIN. JUDGE MARKS: It's sort of a potentially dangerous situation that could be created, you know, in that circumstance. So I think that's a -- it's been a topic of discussion and concern for many years, not just recently.

ASSEMBLYMAN MORINELLO: But do you find that with the new bail reform not addressing that issue, or excluding certain domestic violence crimes, it is creating a more dangerous situation for victims?

CHIEF ADMIN. JUDGE MARKS: It could be. And again, it's something that we want to -- rather than speculate about, look at the -- you know, the actual data and circumstances of what's happening in the cases under the new law.

ASSEMBLYMAN MORINELLO: Thank you.

I want to address one other issue. And you did indicate that under the new bail laws, our quality of life courts have less tools to work with. Those weren't your exact words, but that was the concept of what you had talked about.

I did diversion. I was certified as a county court. I did drug court also. And the difficulty I find with the reform is many of the crimes that are authorized to be put into those programs do not provide for a time-out ability to put somebody in with a bail. And part of that question also is now take diversion. There's an actual contract signed between the defendant and the court with certain parameters, okay?

So I would ask that maybe OCA -- I'm not going to ask you to answer today -- would consider, when it's specific to quality of life courts, if they might make some suggestions on how we can prevent those individuals that need the treatment from walking away. Because I think we know recidivism is very low when the programs are

working, and they've been working in the state.

CHIEF ADMIN. JUDGE MARKS: No, it's a good point. It's something that should be looked at, I agree.

ASSEMBLYMAN MORINELLO: I'm going to ask a question on the court changes. And at this particular point, is there any part of the proposal to amend the court system to look at how Supreme judges are nominated for election? And right now, outside of New York City, it's by party bosses.

So right now diversity is a problem, I believe, because of the way they are selected. So if you're not part of the system, if you're not part of the party boss network, you lose the ability to even attempt. Okay?

So has that been addressed in the reforms?

CHIEF ADMIN. JUDGE MARKS: Our proposed reforms stay away from the question of how judges are selected and would freeze in, you know, how that works now.

The reason being that there are some people who think all judges should be elected, that's the better way to pick judges. There are other people who think all judges should be appointed, that that's a better way to pick judges.

You know we have -- in New York we have about 75 to 80 percent of our judges are elected, about 20, 25 percent are appointed. And actually from my perspective, from our perspective, that hybrid system works pretty well. You know, we have great elected judges, we have great appointed judges. And it doesn't strike me that there's much of a difference in the ability and quality of the judges depending upon how they're selected.

But we don't address that. There has been criticism of the process for selecting Supreme Court judges, and that may be something the Legislature might want to look at.

ASSEMBLYMAN MORINELLO: Thank you very much.

CHIEF ADMIN. JUDGE MARKS: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

We go back to the Senate for Senator Serino.

SENATOR SERINO: Good morning, Your Honor. Thank you for being here.

CHIEF ADMIN. JUDGE MARKS: Good morning.

SENATOR SERINO: I have a question with regard to -- with the merger. And right now if you have a Family Court judge -- and I apologize if this was covered already -- but a Family Court judge would cover their county, from what I understand.

With the joining together with the Supreme Court, and they have five counties, the merger in place, will that cover when it comes time for their reelection, that they would just have their county? Or is this -- because -- it was a concern, I understand, from a rural part of the state, because the state is so diverse, and they were very concerned about that.

CHIEF ADMIN. JUDGE MARKS: Yeah. Again, the proposal would freeze in how

judges are selected now.

So take a Family Court judge outside New York City -- in New York City, they're appointed by the mayor. Outside New York City, all 57 counties, they're elected to 10-year terms. They run on a countywide basis. Those judges would now become, under the proposal, Supreme Court justices. And when their term was up, the 10-year term was up, they would still run, but on a countywide basis, not a judicial -- a multicounty, judicial district-wide basis.

So they would run countywide for Supreme Court for a 10-year term, not the 14-year term that Supreme Court justices run. And when that judge left the bench, retired one day, his or her successor would be selected in the same way -- would run for Supreme Court on a countywide basis for a 10-year term.

SENATOR SERINO: Okay, great. Thank you very much.

CHIEF ADMIN. JUDGE MARKS: Sure.

CHAIRWOMAN WEINSTEIN: Thank you,

Judge Marks. It's a pleasure to see you here.

And I'm refraining from asking some of the past questions I asked as chair of judiciary, but I did want to follow up on a couple of things on behalf of some of my colleagues and myself.

So I know Senator Sepúlveda talked about his concerns about diversity in terms of the judiciary, but also in terms of the reach-out to a diverse group of organizations in planning the court merger and talking about the court merger. So I would hope that as talks go on that there is a reach-out to the Judicial Friends Association, which as you know is a group of local, state and federal African-American judges here in New York State. I think that it would be a worthy group to include in some discussions.

And then I know that there's been a lot of discussions about bail, which was really not part of the budget, but there's been discussions about the need for discretion, judicial discretion, now that

we've eliminated cash bail. But as you know, the new law did give judges greater discretion and new tools for monitoring and supervising judges, such as electronic monitoring and supervision.

And I was wondering if there was training of judges in some of these new tools that they didn't have before that allows them discretion in assuring that a defendant returns to court for trial.

CHIEF ADMIN. JUDGE MARKS: Yeah, yeah, there's been training of judges on that particular issue, yes. And they're aware that's an option. It's not yet an option, by the way, in New York City, because the program is not underway yet in New York City. It will be.

You know, my understanding of electronic monitoring, it doesn't always work that well technologically, particularly in densely populated areas or if you go, say, into the subway, the signal might be lost. A tall building, similar problems. So there are limitations to electronic monitoring.

But the judges have received training on the options that are available to them under the new law.

CHAIRWOMAN WEINSTEIN: And these are, in some instances, new tools and new areas where they can exercise discretion to ensure a defendant returns to court, correct?

CHIEF ADMIN. JUDGE MARKS: I'm sorry, I didn't hear that.

CHAIRWOMAN WEINSTEIN: In some instances these are new options or additional options where they can exercise discretion to ensure that a defendant would return to court.

CHIEF ADMIN. JUDGE MARKS: Correct. That's right.

CHAIRWOMAN WEINSTEIN: Thank you.

I believe that we are finished with Judge Marks. So Senator Krueger, back to you.

CHAIRWOMAN KRUEGER: Thank you. Thank you very much, Judge, for being here with us today.

CHIEF ADMIN. JUDGE MARKS: Thank you.

appreciate it.

CHAIRWOMAN KRUEGER: Next up, from the New York State Commission on Judicial Conduct, Robert Tembeckjian.

Good morning.

ADMINISTRATOR TEMBECKJIAN: Good morning. Thank you, Senator Krueger, Assemblywoman Weinstein.

And I would like to express first my appreciation to this committee, and particularly the ranking chairs, Senator Krueger, Assemblywoman Weinstein, Senator Hoylman, and Assemblyman Dinowitz, for the careful attention that you've been paying to issues of judicial conduct during your tenures, the assistance that you gave to us last year, which has helped us turn a corner, which I will discuss briefly and then respond to whatever questions you may have.

Public confidence in the courts requires a judiciary that is both independent and accountable, accountable for adhering to rules of ethics. And the only way to really ensure that is to have a properly funded and

robust ethics enforcement system, which we have in New York State, in the form of the Commission on Judicial Conduct, which I am proud to represent.

The commission is created in the State Constitution, and its responsibility is to investigate and adjudicate complaints of ethical misconduct by judges throughout the Unified Court System. And that's without regard to whether they are full-time or part-time, lawyers or nonlawyers, city, county or Supreme.

We have a very active record, but as you know, for the greater part of the last decade we were operating underfunded. The commission's budget is submitted to the Legislature in the Executive Budget, but we are not an executive agency that reports to the Governor. The reason for our budget being submitted to you in this fashion is to avoid the obvious conflict of the Judiciary controlling the funding and, through that, the operations of the one entity that can enforce disciplinary rules on the judiciary

itself.

So since 1978, our budget has been coming to you in the Executive. But unlike any other Executive Budget submission where the commission might disagree with the Executive, we can ask for your assistance. And last year you responded to that by increasing the proposed executive budget recommendation for the commission by $330,000. And I am respectfully asking that you do the same this year.

For the ninth time in 10 years, the Executive has recommended a flat budget for us, which is essentially regressive financing, because we do need additional funds to cover cost-of-living increases, the increasing costs of contracts and nonpersonal services, as well as mandatory obligations in the way of personal services.

Last year's assistance to us allowed us to make a first but significant step in reversing 10 years of stagnation. We receive on average, over the last four years, over 2,000 complaints a year. And we pay

individualized attention to each one of them. Last year we either removed from office or negotiated the permanent resignation of seven judges throughout New York State for what I think we would all agree is egregious behavior. And we publicly censured six others for less egregious behavior.

The fact that the commission can actively and robustly enforce judicial ethics I think plays a significant role in the overall conduct of the New York State judiciary being stellar. It is very, very good. And I think the public can have confidence that where there is misconduct, it is being addressed.

Now, last year we were able to start a turnaround, and the proposal that we made last year was essentially pitched as the first part of a two-year effort to bring us up to speed. Back in 1978, when we had 611 complaints a year, we had a budget that supported a staff of 63 full-time employees. Last year, on a budget of just under 6 million, we were able to support a staff of

38. In the last 10 years, while our workload went up by 25 percent, our full-time staffing went down by 25 percent. And that resulted in a slowdown in our ability to dispose of cases properly.

With the funding that you increased for us last year, we were able to make a significant change. And to take a cue from a question that Assemblyman Dinowitz asked me last year, we actually were able, in 2019, thanks to your help, to cut down on the average disposition time of complaints from 115 days from inception to disposition, to 97. And given that the average time to dispose of a case which results in both investigation and discipline of a judge is over 200 days, it means that the vast majority of our complaints are disposed of in 30 to 45 days, which is a pretty good turnaround.

But we'll only be able to maintain that pace and deal with the increasing backlog of cases because we receive more complaints each year -- even though we can

turn them around faster, cases pending at year end went up from 207 to 235 last year, because of an influx in fourth-quarter complaints. Partially that's due because of our profile being raised, partially that's due because of the sophistication of people who are aggrieved and know how to research on the internet, find us and make complaints. Partially because we have tried to facilitate the making of complaints by opening a portal which allows an individual to make a complaint directly onto our website, as opposed to having to mail it in with full and bulky documentation.

We're trying as best we can to use the resources we have to make an impact, fulfill our constitutional mission, and to do it independent of the executive and the judicial branches, which is the constitutional scheme by which we have discipline in New York State.

We were able for the first time in years last year to afford court stenographers to come in to transcribe our transcripts

rather than doing them in-house, tediously, by audio recording and then using our in-house staff to type them out, which slowed down the disposition of our cases tremendously.

I think one of the things that led to our reduction in the overall average disposition time of a complaint is the fact that, with your assistance, we were able to resume the use of certified shorthand reporters to transcribe our transcripts. We produce over 12,000 pages of transcription every year.

We take our responsibilities very seriously. I think an undercurrent to many of the questions that you were asking of Chief Administrative Judge Marks suggest that the importance of an effective ethics enforcement entity over the judiciary cannot be understated. And despite the Executive recommendation that we remain flat, I would certainly hope that you would be able to, in this $178 billion budget, find, as you did last year, the relatively modest increase of

$330,000, which we're asking for, which would allow us to get our staff back up almost to our authorized level -- we're authorized for 50. We were just able to get up to 42. I'd like to get us up to 46 -- and keep the stenographic services and other nonpersonal service reforms that we were able to initiate because of that assistance that you gave us last year.

As you know, for years, as our budget remained flat, the only way we could make up or keep even was to reduce staff. And it was quite a welcome relief last year to actually be able to replenish the staff. And I think you're seeing the results in the numbers.

With that, whatever questions you have, I'm very happy to respond.

CHAIRWOMAN KRUEGER: Thank you. Thank you. I'll just take mine first this time. Five minutes -- less than five minutes.

So I want to thank you again for not just testifying every year but educating us to what is I believe one of the most important functions of state government, and

that you pretty much do your work overlooked and unnoticed 11 months and 29 days a year, and then one day a year you come and ask us not to leave you flat again, which means that you have been falling behind the historical rate of money to do your work.

Why I think you are so important is I believe fundamentally that if we do not have independent, legitimate courts and judges, there is no democracy. And we're under threat every day at this point in history; I don't feel like I should have to remind people of that. So we need independent, qualified judges.

But of course we also know that many of our judges are elected or appointed, but then are independent. We want them independent. But if there's not somebody to make sure that those few who aren't doing their job right, who don't understand the responsibilities of their job, then I believe actually all is lost.

And I've talked to the Chief Judge, over multiple Chief Judges, about how much

they can rein in a judge when they think there's a problem. And the answer is not that much. Right? They can advise, they can point out this is the law, but really your commission is the entity responsible for making sure that when a member of the judiciary crosses the line -- and not that many do, but when they do, that there is someone who will say no and not allow this to continue.

And so I just want to recognize that I think you and the work of your staff -- who I've never met -- are incredibly important for democracy.

And now I'll turn it over to the Assembly, having given my little speech, because I didn't have a question for you.

CHAIRWOMAN WEINSTEIN: We're going to go to our Judiciary chair, Assemblyman Dinowitz.

ASSEMBLYMAN DINOWITZ: How are you?

ADMINISTRATOR TEMBECKJIAN: I'm very well, thank you. And how are you?

ASSEMBLYMAN DINOWITZ: Thank you again

for everything you've done. I know we had a very good discussion last year; I'm just going to be very brief.

So the budget is flat this year, the proposal.

ADMINISTRATOR TEMBECKJIAN: Correct.

ASSEMBLYMAN DINOWITZ: What, in your opinion, would it take to stay where you are? What kind of increase would -- there's been cost of living, you know, growth in the past year, there's been inflation.

ADMINISTRATOR TEMBECKJIAN: Yes. We've asked for $330,000 additional over what the Executive recommends. That would allow us to maintain our current level and add another three to four staff, and meet some of our rising nonpersonal service expenses such as contractual obligations for software licenses, a modest increase in rent this year. We just had OGS renegotiate a 10-year lease for us which went into effect last year, but -- they did a very good job of negotiating in a way that the increases would not kill us.

So the $330,000 extra that we're asking for would allow us to maintain the status quo and -- and -- some additional staffing so that we can get as close, I think, as reasonable to our target of 50. And that would get us up to about 46.

ASSEMBLYMAN DINOWITZ: Right. I'm very pleased to hear that your -- the time that it takes to resolve your matters has diminished. And now that we know you can lower it, I bet you can lower it even more next year.

ADMINISTRATOR TEMBECKJIAN: I would suspect that we can, with the additional staff. Because obviously when you have a finite number of staff but a growing number of complaints, it means that the workload for each individual attorney and investigator is essentially increasing. Without being able to return to a responsible level of staffing, we're going to fall back on the amount of time it takes to dispose of cases.

If a lawyer is conducting a trial for five or eight days, that lawyer is not

working on any other case in the office. But the complaints are still coming in. And we have found that 50 is the ideal number, but I'll be more than happy with 46 in the coming fiscal year if you can see your way to help us get there with that additional 330,000.

ASSEMBLYMAN DINOWITZ: Okay, thank you.

ADMINISTRATOR TEMBECKJIAN: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Brad Hoylman, chair of Judiciary.

SENATOR HOYLMAN: Thank you.

It's good to see you again.

ADMINISTRATOR TEMBECKJIAN: Likewise.

SENATOR HOYLMAN: And I'm glad we were able to fight for you to get the $330,000 last year in the budget.

As you know, the Executive has included that --

ADMINISTRATOR TEMBECKJIAN: Yes. There was some discussion that that might not happen, late in the budget year.

SENATOR HOYLMAN: But I think we

should take a minute and celebrate quietly that that 330 is permanently now in your budget.

ADMINISTRATOR TEMBECKJIAN: Yes.

SENATOR HOYLMAN: But we will continue to fight. As Senator Krueger said, there's really nothing more important than making certain we have judges who act with the greatest comportment in their role administering justice.

I wanted to ask you about your testimony, briefly, about the number of cases where you've removed judges or sought resignation of judges. I think there were six such determinations last year.

How many of those are town and village justices?

ADMINISTRATOR TEMBECKJIAN: Last year, they all were.

SENATOR HOYLMAN: All were.

ADMINISTRATOR TEMBECKJIAN: Yes.

SENATOR HOYLMAN: How many of those town and village justices were actually lawyers?

ADMINISTRATOR TEMBECKJIAN: I believe one was a lawyer.

SENATOR HOYLMAN: One out of the six.

ADMINISTRATOR TEMBECKJIAN: Yes. And --

SENATOR HOYLMAN: One out of the six removed --

ADMINISTRATOR TEMBECKJIAN: I'm sorry, two. Two out of six were lawyers.

SENATOR HOYLMAN: Two were lawyers, all were town and village justices.

ADMINISTRATOR TEMBECKJIAN: Yes.

SENATOR HOYLMAN: Do you think there's any correlation in the work that you do, the analysis that you provide, the conclusions that you come to as it pertains to someone who in one instance, as I read, had four days to prepare to be a town and village justice and then was caught up in a scandal.

Is there any correlation between these individuals not having the practice -- not having practiced law and being requested to administer it?

ADMINISTRATOR TEMBECKJIAN: We

actually have 40 years of statistics and a record on which we can rely to answer that question. And it's a nuanced question, and the numbers are nuanced.

The commission has, since 1978, publicly disciplined 865 judges. Seventy percent of those were town and village court justices. And about --

SENATOR HOYLMAN: Since 19 -- I'm sorry.

ADMINISTRATOR TEMBECKJIAN: Seventy percent of the judges that we have disciplined since 1978, so that's 865 judges disciplined overall, and about 609 of those were town and village court justices. That's about 70 percent.

Town and village court justices make up about 65 percent of the overall court system. So there's a slight edge in the number, 70 percent disciplined are town or village, but they make up 65 percent of the judiciary.

However, the vast majority of the town and village court justices who have been

disciplined are nonlawyers. At the same time, we have fewer complaints numerically, overall raw numbers, against town or village court justices than we do against full-time justices. So that two-thirds of the complaints that we get are against the law-trained, full-time judiciary.

One-third of the complaints that we get are responsible for two-thirds of our discipline, and most of those are the nonlawyer justices. Now, you can draw whatever conclusions those numbers suggest, but the implication of your question, Senator, I think tends to be borne out by the raw numbers over a 40-year period.

SENATOR HOYLMAN: There was just a case -- thank you for that. That's very interesting. There was just a case, I think yesterday, where an upstate judge in Herkimer was charged with yelling obscenities and belligerent with first responders after a December 12th crash, admitted he was coming from a bar and had consumed alcohol but refused to take field sobriety tests.

Instead he yelled, "No, f--- you," to a police sergeant. The commission's report said he was charged later that night with driving while intoxicated and refused to take a Breathalyzer test.

This town justice, I understand, is going to be censured.

ADMINISTRATOR TEMBECKJIAN: Correct.

SENATOR HOYLMAN: Is that a steep enough -- is that a steep enough punishment?

ADMINISTRATOR TEMBECKJIAN: Let me indicate what our general approach is --

SENATOR HOYLMAN: I mean, I would never want to appear before a justice who had that kind of brush with the law.

ADMINISTRATOR TEMBECKJIAN: Our assumption is that when you did appear before him, he would be sober. And I think that there is every evidence to support that.

But on this particular occasion, he made a grave mistake. And judges are humans, and they sometimes make those kinds of mistakes. And it was compounded in this case by his behavior after the arrest, some of

which was no doubt fueled by his lack of mental control over the fact that he was drunk.

Generally speaking, because judges are obliged, under the rules of judicial conduct, to respect and comply with the law, and to behave at all times in a manner that promotes public confidence in the integrity of the judiciary, they're expected to obey the law. Any judge who is found guilty of an alcohol-related driving offense at a minimum will be publicly admonished, which is the lowest form of public discipline that we can impose. Any judge who compounds that with aggravating circumstances -- throwing the weight of office around to try to get out of the consequences of the arrest, belligerence, causing injury, physical property injury -- personal injury would be something significantly egregious, and I would argue a judge in that situation should be removed from office. But a judge who compounds the original per se act of driving while under the influence of alcohol will be publicly

censured, which is a more severe public reprimand.

We do not, under the law, have the power to suspend a judge, although we've advocated that for 40 years.

We also take into account the judge's rehabilitation. If a judge, as in the case of the one that you were just referring to, avails him or herself of counseling, makes a serious effort to attempt to address and control the alcohol problem, we will take that into consideration, as we did in this case, and give the judge the opportunity to redeem himself.

SENATOR HOYLMAN: So if I could just interject, so you do not have the power to remove a judge.

ADMINISTRATOR TEMBECKJIAN: We have the power to -- yes, we could recommend removal in a case like this. We do not have the power to suspend a judge.

SENATOR HOYLMAN: Suspend. Okay, thank you.

ADMINISTRATOR TEMBECKJIAN: And in

this case the Office of Court Administration, while the DWI and the commission proceeding was pending, effectively suspended the judge by relieving him of his calendar until our disciplinary case --

SENATOR HOYLMAN: So you think -- something you've been seeking is the power to suspend --

ADMINISTRATOR TEMBECKJIAN: Yes.

SENATOR HOYLMAN: -- short of removal.

ADMINISTRATOR TEMBECKJIAN: Yes. And I think that that sometimes is a very effective final remedy, particularly in a case like this, which would also take into account that the judge has really made serious efforts to rehabilitate himself and so far has shown success at that.

But as with any judge guilty of an alcohol driving offense, if it happens a second time, they can pretty much expect to be removed from office. And we've had circumstances like that in recent years.

SENATOR HOYLMAN: So speaking of your resources and how you're stretched, do you

think the public should have access to the transcripts of these matters that you hear?

ADMINISTRATOR TEMBECKJIAN: We're guided by a confidentiality mandate, under the law, which -- unless and until a judge is publicly disciplined, all of those records are confidential. But once the judge is publicly disciplined, then the record of that proceeding is made public.

So in the case you're referring to, this judge agreed to the censure, so he waived a hearing, so there wouldn't be a transcript of a disciplinary proceeding. But there are transcripts of the investigation depositions, which under the law would not become public.

There are occasions where it would be certainly in the public interest to make those public, but it would require a change in the law.

SENATOR HOYLMAN: Thank you.

And just finally, I want to again commend you for your service. We look forward to supporting you again this year in

the budget cycle, and thank you for appearing today.

ADMINISTRATOR TEMBECKJIAN: Thank you.

CHAIRWOMAN KRUEGER: Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Morinello.

ASSEMBLYMAN MORINELLO: Good morning.

ADMINISTRATOR TEMBECKJIAN: Hello.

ASSEMBLYMAN MORINELLO: I have a complimentary comment.

ADMINISTRATOR TEMBECKJIAN: I'll take one anytime.

ASSEMBLYMAN MORINELLO: In last year's hearing there was a discussion on the inability to expedite disposition of cases because of financial constraints on stenographic services.

ADMINISTRATOR TEMBECKJIAN: Yes.

ASSEMBLYMAN MORINELLO: I think you know I'm a retired judge. So we ran through that in my court --

ADMINISTRATOR TEMBECKJIAN: And everyone should know that we've never had any professional interactions, you and I, from

the time you were on the bench.

(Laughter.)

ASSEMBLYMAN MORINELLO: But I'm pleased to see in your report that you did address with the increase from last year, and the recognition that when you do electronic, it delays justice. And I thank you for addressing that, including it, and recognizing it. Thank you.

ADMINISTRATOR TEMBECKJIAN: It's very, very important, and it was really what was most responsible for cutting down that time. And frankly, there's no substitute for human beings doing a good job.

ASSEMBLYMAN MORINELLO: So I'm hoping OCA throws a little in their budget to cut back on the electronics.

Thank you. I yield my time.

CHAIRWOMAN KRUEGER: Thank you.

Senator Myrie.

SENATOR MYRIE: Thank you, Madam Chair. And thank you for your testimony.

I have one question. Does the commission currently have any mechanism by

which they can examine the results of a judge's opinions or orders and, after examining that, determining whether their opinions or orders examine -- result in a racially disparate impact?

ADMINISTRATOR TEMBECKJIAN: We don't have a mechanism for that, and I think that it would be in some ways a very difficult undertaking. I think it would require separate funding because you're looking, particularly in more prolific jurisdictions, at reviewing a lengthy history and often determining, by a deep dive into the case, what the racial and ethnic components are.

When we evaluate a complaint of misconduct against a judge, we as best as possible do that colorblind, without respect to the race or ethnicity of the judge and without respect to the race or ethnicity of the aggrieved party. Sometimes it is in the nature of the complaint to raise an issue that has to do with race. And we've seen that, and our approach has always been to analyze the merits of the complaint and, in

determining whether or not an ethical rule was violated, let the chips fall where they may.

Let me give one example, if I may. And it's germane to the bail discussion that you were having with Chief Administrative Judge Marks. We've been on both sides; we've disciplined judges on both sides of the bail and discretion issue. We recommended the removal, and it was upheld by the Court of Appeals, of a city court judge, a law-trained city court judge in upstate New York, who was abusing discretion in the setting of bail by, among other things, in four cases imposing $25,000 bail on individuals who were charged with bicycle equipment violations -- not having a bell, riding the bike on the sidewalk.

Those individuals couldn't make the bail, big surprise. Turned out, of course, that they were poor. And the majority of them -- and these weren't the only cases in which he did this -- were people of color.

We examined those cases by going into

that judge's adjudicative history and amassed a record which indicated that in at least a dozen cases there had been this outrageous abuse of bail, and ultimately determined that the judge should be removed from office, because we were responding to a specific ethics complaint.

We don't consider that it's our role to pick a judge, do a study of that judge's adjudicative record, and reach some sort of judgment on whether or not there's bias there. But if there is an individual complaint of bias, we will examine the judge's record -- transcripts, decisions, appeals, and appellate reversals -- to determine whether or not there is some substance to the allegation. And if there is, as in the case of the city court judge I was just indicating, we will take action.

SENATOR MYRIE: Okay, I'm sorry, just because I know my time is --

ADMINISTRATOR TEMBECKJIAN: I apologize.

SENATOR MYRIE: And so just so I'm

clear, and thank you for that explanation, you can only examine this by way of a complaint. There is no other mechanism by which this can happen.

ADMINISTRATOR TEMBECKJIAN: Under the law, the commission can, on its own motion, choose to investigate a matter. But typically we will do that when information comes to our attention from a source other than an individual complainant -- something we read in the newspapers, something that we stumbled across in the course of another inquiry.

But we don't have the time or the resources to engage in a broad-scale analysis of the adjudicative record of all of the judiciary. And I think it would be something that we should be especially wary of because of the potential chilling effect it could have on the independence of the judiciary. And that's a line, Senator, as Senator Krueger alluded, that we try to walk very, very carefully: To discipline where they cross the line, but not to create a climate

in which judges are fearful that they'll be disciplined essentially for deciding a case on the merits, even if they get it wrong and they're reversed on appeal.

CHAIRWOMAN KRUEGER: I have to cut you off. Thank you.

SENATOR MYRIE: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Garbarino.

ASSEMBLYMAN GARBARINO: Thank you, Madam Chair.

Just a quick question about something that's going on down in my district. We have a judge who was charged with a crime back in March of 2018, was suspended by OCA, pled to a felony in September of 2019, sentenced in November of that year. When he was suspended by OCA, he was suspended with pay. I think they finally -- the Court of Appeals removed it at the end of September of 2019. However, there's still no vacancy.

So now this judge has been suspended,

since March of '18 there's been nobody sitting in his courtroom, his cases have been sent to other judges to make their caseload bigger. I know OCA deals a lot with this, but we're dealing with vacancies. What kind of mechanism do you have, as the commission, to create a vacancy here? Because his term doesn't end until March of -- or till December of 2021. And to go without a judge for that long and put all that on all the other judges is just going to create a bigger backlog.

ADMINISTRATOR TEMBECKJIAN: It is a problem. Under the law in New York, a judge who is charged with a felony can be suspended by the Court of Appeals, but a judge who is convicted of a felony is automatically removed from office as a matter of law when the conviction is final.

So we recommended to the Court of Appeals that they suspend the judge during the pendency of the charge, and we have recently notified the judge that -- he pleaded guilty, and I believe he is scheduled

to be sentenced in March, if we're talking about the same person.

ASSEMBLYMAN GARBARINO: Yeah, I thought it was -- I thought November 15th was his sentencing date.

ADMINISTRATOR TEMBECKJIAN: I think the sentence is actually coming up in March.

So technically the conviction is not yet final -- when, as a matter of law, the office would be vacated.

The only way for the commission to act in this case would be from the point of his pleading guilty to commence the disciplinary proceeding, which would take us the better part of nine months to conclude because of all the due process obligations that we have.

What should have happened in this case, particularly once the guilty plea was entered and the judge's salary was suspended, is that the judge should have resigned and created the vacancy that way. Which is the easiest and quickest way for it to happen. And in most instances, historically, judges who have pleaded guilty to felonies have

resigned rather than held on to the office until the last possible moment.

It's a conundrum that the federal judiciary, on occasion, will confront, when a judge is convicted of a crime -- and this happened twice in the last 15 years -- federal judges convicted of crimes go to jail, but the only way to remove a federal judge is by impeachment in the House, conviction in the Senate, and they stay in jail, drawing their salary, until the Congress gets around to removing them from office, which also strikes me as a flaw.

Most judges who -- and fortunately we're not seeing a rash of judges charged and convicted of felonies. But most judges, in my experience, when convicted of a felony, have the good sense and the public spirit to resign from office so that they can be replaced.

ASSEMBLYMAN GARBARINO: Especially if you're not being paid, because the judge has been suspended without pay now.

ADMINISTRATOR TEMBECKJIAN: Correct,

right. Now, in this case the Office of Court Administration did send an outside judge to assist the caseload of the one who was sidelined, but that's a temporary solution.

ASSEMBLYMAN GARBARINO: So if the sentencing -- I guess I was misinformed. But if the sentencing is supposed to be in March now, once that's final, there should be --

ADMINISTRATOR TEMBECKJIAN: I would look for a formal removal order by the Court of Appeals almost immediately after.

ASSEMBLYMAN GARBARINO: And there can't be any appeal because it's a plea, correct?

ADMINISTRATOR TEMBECKJIAN: That's true. And it's a matter of law that conviction is final on a felony, and that office is vacant as a matter of law.

ASSEMBLYMAN GARBARINO: Thank you very much.

CHAIRWOMAN KRUEGER: We have one more Senator, Senator Funke.

SENATOR FUNKE: Hi. Good afternoon. Is it afternoon yet? Yes, it is.

You referred to a City Court judge in Rochester -- I represent the Rochester area -- and you're well aware of that case. That was a situation that seemed to drag on forever. There was charge after charge after charge after charge. It ran through the media, it became an embarrassment to the city, it became an embarrassment to every judge who does good work in the City of Rochester.

And I'm wondering if, number one, if there's a way to speed up the process, so this does not drag on for as long as it did, without violating somebody's rights. But, number two, if you learned anything from that case that would help you to speed up the process and bring it to a quicker conclusion.

ADMINISTRATOR TEMBECKJIAN: Yes, I think we all did. One of the points that I made I believe two years ago, in testifying about that very same case, was that the financial limitations on us, which didn't allow us to use court stenographers to create transcripts, delayed us by about six months

in that case, because we had thousands of pages of transcripts to transcribe, and we did them all laboriously in-house.

But there's another interesting element to the case, and you're talking about the case of Leticia Astacio, the former, now, Rochester City Court judge whom we did remove. There were a number of things with which she was charged as to which she was acquitted. And as to the two charges that were found against her, she appealed both. From the time of the affirmation of her conviction to our removal of the judge, the time span was only four months.

The case was notorious for a year and a half because of the constant trouble she was getting herself into and the new charges that were being filed against her, some of which she was acquitted of. And one of our concerns was that if we rushed to a judgment and removed her from office for a violation of law as to which she was ultimately acquitted on appeal, there would be no way to put her back on the bench, and we would have

created a vacancy.

The other thing that was difficult about that case was that because of the confidentiality statute, we were legally prohibited from explaining to anyone what it was that we were doing, to demonstrate that we were actually working the case for the entire time that she was under the eye of the criminal justice system. Which is how our disciplinary ended so fast after the second conviction was affirmed on appeal.

This is part of the sense that I was trying to convey that as important as it is for us to discipline a judge who violates the rules, it's also important for us to allow the criminal justice system the time it needs, particularly when it's dealing with a judge who we can't put back in office if we remove them, to make sure that they are in fact upheld -- their convictions are upheld on appeal.

With your help, having reverted to stenographic services, we were able to cut down the average time in disposing of our

cases, and I would say that in the Astacio case, had we had the same resources then as you gave us last year, her removal would have been even closer in time to the affirmance of the criminal conviction.

SENATOR FUNKE: Thanks.

CHAIRWOMAN KRUEGER: Thank you.

Assembly? The Assembly's done, the Senate's done. We thank you very much for being with us today --

ADMINISTRATOR TEMBECKJIAN: I thank you all very much. Thank you.

CHAIRWOMAN KRUEGER: -- and for your work all year long.

Our next testifier is the New York State Division of Homeland and Security Services, Patrick Murphy, executive deputy commissioner.

We've also been joined by John Brooks, who's our chair of the committee, and Gustavo Rivera -- I don't think I introduced him earlier. Maybe I did. Anyone else feel that they were unduly not introduced?

CHAIRWOMAN WEINSTEIN: We were joined

by Assemblyman Reilly since we began.

CHAIRWOMAN KRUEGER: Hello. Welcome. Feel free to start.

DHSES COMMISSIONER MURPHY: So good morning. Thank you, Chairwoman Krueger, Chairwoman Weinstein, and distinguished, members of the committee. I am Pat Murphy, commissioner of the Division of Homeland Security & Emergency Services. Thank you for the opportunity to discuss the division's exceptional work over the past year as well as a few highlights of the Governor's budget.

I have spent the past year working with the dedicated men and women that make up the division. They've worked tirelessly to ensure New Yorkers are prepared for, protected against, and able to recover from both natural and manmade disasters. It's an honor to share their accomplishments with you.

The Executive Budget provides the resources we need to accomplish our mission and enhance public safety, with a total appropriation of $1.6 billion. Also included

in the Executive Budget is a $12 million allocation to further strengthen New York's emergency response posture and enhance response capabilities across the state.

Emergency management and response remains one of our primary missions, and at the state level, our Emergency Operations Center was activated 16 separate times in 2019. These activations required coordinating multiple agency responses with other state agencies and localities and could last anywhere from several hours to 125 days, in the case of Lake Ontario flooding.

In regards to Lake Ontario, what was once an isolated response operation in 2017 has now evolved into a year-round effort to protect the shoreline from flooding. During the flooding in 2019, the division oversaw the deployment of more than 1.5 million sandbags, more than 11,000 feet of water barrier, hundreds of pumps, and numerous other resources. In addition to those efforts, our Office of Emergency Management has worked with state and local partners over

the past several months on a wide range of planning and data collection efforts to better inform preparations for potential flooding in 2020.

As New York's most prevalent natural threat, flooding has not been limited to the shores of Lake Ontario. On the evening of October 31st and into the morning on November 1st, a massive storm system impacted the majority of the state, resulting in devastating flooding throughout the Mohawk Valley, North Country and Capital Region. The storm and subsequent flooding caused more than $33 million in damages to public infrastructure, including more than 300 homes sustaining damage, with 18 being completely destroyed.

The division coordinated all state and local recovery operations, and among the most impressive was our Office of Fire Prevention and Control's Swift Water Team evacuating 65 individuals from their homes as floodwaters were rising. Once ground operations concluded, our Disaster Recovery Office

worked with our county emergency management partners as well as federal officials to assess the damage.

These events demonstrate the danger of flooding and underscores the need for high quality swift water training for both state and local first responders. Thanks to your support in previous budgets, the state's Swift Water Flood Training Facility has been operational at the State Preparedness Training Center for more than one year now. This world-class training facility provides specialized training opportunities for first responders which they would otherwise not be able to obtain.

Since the facility's inception, more than 1,100 state and local first responders have received this training.

The division's counterterrorism efforts have also continued to expand and adapt to address the latest threats. In 2019, the division's Office of Counterterrorism completed more than 1,000 Red Team assessments across the state,

for the second year in a row. These assessments play a critical role in determining the effectiveness of suspicious activity reporting, as well as strengthening the relationships between law enforcement, businesses, and the public.

Our efforts to enhance public preparedness continue through the Governor's Citizen Preparedness Corps trainings as well. During 2019, with your assistance, we partnered with the National Guard and the Red Cross to train more than 56,000 New Yorkers. Since the program's inception, nearly 334,000 New Yorkers have been trained in our all-hazards approach to prepare for and respond to emergency situations.

While it is not possible to cover all the great work the division has done during this testimony alone, I do appreciate the opportunity to sit here before you, and I'm happy to answer any questions that you would have.

CHAIRWOMAN KRUEGER: Thank you. Thank you for your testimony today.

Our first questioner will be John Brooks, the chair of our Homeland Security and, and, and Committee.

SENATOR BROOKS: Thank you, Madam Chair.

Commissioner, good to see you again. In part of your presentation you spent a great deal of time addressing the flooding problems we've seen up at the lakes and made reference to the Swift Water Rescue programs. In our state unfortunately we have many types of flooding. We have what we saw in the lakes, we see what happens with our rivers and streams at times, and then we have the coastal flooding problems, as you're aware of, on Long Island. Each of them different.

In the case of Long Island, we see significant changes in climate and changes being made in our sea level itself. It's presenting ongoing flooding problems for Long Island. Not just a major storm, but any deviation in tides now in some areas is resulting in considerable coastal flooding in the low-lying communities.

There's been an effort by some on Long Island to study the possibility of putting, installing a number of floodgates in to try to mitigate and control that.

The project itself was originally being done by the Army Corps of Engineers here in New York. That study has been shifted to Pennsylvania and basically is stalling.

First, what's your opinion on the use of floodgates? Do you think they would be effective? And second, is there anything your office can do to get that program or that study shifted away from Philadelphia and back to New York?

DHSES COMMISSIONER MURPHY: So personally I'm not as familiar with the floodgates and the operations that they have. I know we have talked previously about the opportunity with those floodgates and what kind of protection it would offer the residents of those communities.

I think our role in this is to continue to work with you and the rest of the

community to be able to advocate for that -- for those tools to prevent the flooding. And that is something that we are more than willing to do, is to continue that process to either further a study that provides the right information to take action, and then also to advocate for those through the Army Corps of Engineers or through FEMA dollars to work those problems.

SENATOR BROOKS: Okay. Because it is -- it's an ever-increasing problem at this point with the storm change.

In here too you mentioned the Swift Water Rescue programs, which I think are important. And as I said, we have different types of flooding. I know the fire service on Long Island has been working on a flood rescue program more in line with what we see -- basically, the coastal waters coming in. And I would just urge that the state play a role in that so that we get a certified program from a training standpoint to address that flooding situation.

In the budget itself, there's a

significant cut in the funding provided to the Red Cross. You know, obviously when it comes to disasters, storms or other, it's hard to predict what's going to happen, when it's going to happen, how many storms we're going to see. We recognize that the frequency of the major storms is ever-increasing. And I wonder what the basis -- if you could explain why such a significant cut is being made to the Red Cross funds.

DHSES COMMISSIONER MURPHY: Yes, sir. So what we've done is in the budget, at 3.3 million, have gone to back where to where we were a year ago with a flat budget. And then through your generosity, you added in another 600,000 through your legislative add. And so that number that you see in the current budget simply takes us back to where we were before, and we're back to what the budget had in it last year at 3.3.

SENATOR BROOKS: Are you comfortable with that?

DHSES COMMISSIONER MURPHY: The Red

Cross does tremendous work across the board for a number of storms that come up. We used them in the Mohawk Valley, we used them in New York City with the most recent sewage problems that occurred in the Ozone Park area.

But they have been a tremendous asset. We were with them yesterday with a meeting to coordinate activities as we move forward into the next year. I think they're a valuable resource for the state when it comes to housing and taking care of our residents.

SENATOR BROOKS: Okay, thank you. And I also thank you for the assistance you gave us in getting some of those funds from the federal government on the rescue boat. Appreciate that.

DHSES COMMISSIONER MURPHY: Yes, sir.

SENATOR BROOKS: Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Garbarino.

ASSEMBLYMAN GARBARINO: Thank you, Madam Chair.

Just a couple of questions. Thank you for coming.

DHSES COMMISSIONER MURPHY: Sure.

ASSEMBLYMAN GARBARINO: According to the Division of Budget, the Emergency Services Revolving Loan Fund provides assistance to fire departments throughout the state to purchase equipment and finance the construction and renovation costs. The balance is currently $8.9 million. How much does that fund loan out on an annual basis?

DHSES COMMISSIONER MURPHY: So I don't have the number specifically in front of me. But as those requests for loans have come in, I don't think that we have -- I'd have to check, but I don't think that we have denied anyone that has asked for that loan out of that account. There's enough resources in the account to be able to continue that movement.

I know that most recently I've signed off on fire apparatus as well as safety

equipment for our first responders, and those were not reduced numbers for what they were asking for. So I'd have to get back to you on what actually has been put against those loan requests.

ASSEMBLYMAN GARBARINO: But there is enough in the fund to meet requests that come in, we haven't had to deny any or lower any amounts?

DHSES COMMISSIONER MURPHY: We have not had to lower amounts based on the amount of money in the fund at this point.

ASSEMBLYMAN GARBARINO: Okay, thank you. Just another one.

Part 1 of the Public Protection and General Government bill suspends the 1.5 million annual subsidy in the Public Safety Communications Surcharge into the Emergency Services Revolving Loan Fund. It doesn't stop the PSC surcharge, it just suspends it into the Emergency Services Revolving Loan Fund. What's that money going to be used for, that 1.5 million, do you know?

DHSES COMMISSIONER MURPHY: So I don't have a specific purpose in mind other than the administration of what we do for the -- for those programs itself. So I would have to get back to you on what that specific 1.5 is on the program. But we continue to support, through the public safety assessment, through the public safety charge, those functions that support 911 PSAP interop.

ASSEMBLYMAN GARBARINO: Do you know how much there is in the actual Public Safety Communications account now?

DHSES COMMISSIONER MURPHY: So the account that I think you're referring to is the annual grants that we work through. If that's the case, we start out with $75 million, we carve out 10 million for the PSAP program, the 911 program. Forty-five goes to the formula-based grants for interoperability to the counties. And then there's 20 million for targeted grants that improve those interoperability across regional lines. Is that what you're

referring to?

ASSEMBLYMAN GARBARINO: Yes. Yes.

DHSES COMMISSIONER MURPHY: Yes, sir.

ASSEMBLYMAN GARBARINO: Okay. Thank you very much.

DHSES COMMISSIONER MURPHY: Yes, sir.

CHAIRWOMAN KRUEGER: Thank you.

The next questioner is Senator Borrello.

SENATOR BORRELLO: Thank you, Madam Chair.

Commissioner, thank you very much.

First of all, I wanted to say with regards to the Halloween storm, I was still county executive in Chautauqua County, and we suffered some major damage on the Lake Erie shoreline. And I want to say thank you for all that your office has done, not only as part of that day and that event, but in the following follow-up to ensure that we were able to tap into some critically needed funding. So thank you very much for that.

My question is more on security and counterterrorism. You're aware, obviously,

after 9/11 that many, many millions of dollars were spent to try and secure that large open border we have along Lake Erie with Canada. And in particular, there was money spent to provide a very advanced radar system to detect activity on the lake.

This is something that's improved our ability to secure that border, correct?

DHSES COMMISSIONER MURPHY: So, sir, I'm not as familiar with that particular radar.

You know, in a previous position we provided assets to augment those protective measures that were there on a rotational basis through the Department of Defense. But I'm not familiar with the specific radar --

SENATOR BORRELLO: Well, the Department of Homeland Security I was told was involved with this -- obviously U.S. Department of Homeland Security, not necessarily your division.

And, you know, the concern that I have when it comes to that border security is the fact that there's a proposal now put forth by

the Governor to put industrial wind turbines into the lake. And in addition to being, you know, horrible for the ecosystem for the lake and water quality and quality of life, the U.S. Department of Homeland Security has said that this would jeopardize and render useless that radar system.

So with your counterterrorism efforts, how could be that impacted by rendering useless this multi-million-dollar 10-year plan to secure the border with this boondoggle wind turbine project?

DHSES COMMISSIONER MURPHY: So I think there's a number of opportunities within homeland security to look at the border security and work with our partner agencies. I'm not familiar with the wind turbine proposal itself and have not had a conversation with the Department of Homeland Security. But I will go back and do some research in terms of what the Department of Homeland Security has provided.

SENATOR BORRELLO: Thank you. I would appreciate that.

So what you're saying is even though this proposal has been out there and the Governor has been communicating with an organization that intends to do this in Lake Erie, there's been no discussions on how it could impact border security, this project has not been discussed with your department on how it could impact border security so far with this proposal.

DHSES COMMISSIONER MURPHY: I can only say that it hasn't been discussed -- since I've been in the position, we have not had that discussion. If it's been an ongoing effort, I have not been involved in that discussion at this point.

So my predecessor could have been, and I will get familiar with what the issue is, sir.

SENATOR BORRELLO: Yeah, I would appreciate that if you could. Because, you know, this is -- you know, could have a horrible impact on the ability to really maintain border security along this, you know, many miles of water with Canada that

goes across Lake Erie. And certainly, you know, being the home of 9/11 here in New York State, a dubious thing to begin with, the fact that we would, you know, jeopardize our border security so that the Governor can pretend that he's doing something about climate change is really troubling to me.

So I would appreciate you looking into that. Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Thank you. We go to Assemblywoman Malliotakis.

ASSEMBLYWOMAN MALLIOTAKIS: I didn't think I was going to be up so soon. I took a bite of my snack bar.

Thank you very much for attending today and testifying. I wanted to speak a little bit about the Green Light Law and the situation that we're having currently with the federal government in terms of access throughout Global Entry and Trusted Traveler programs.

It's my understanding, and I've spoken

with the Department of Homeland Security over the weekend about this, and it's really quite a simple fix. It's just restoring access to CBP, Customs and Border Patrol, to our DMV database.

Have you spoken with the DHS about this, and have they verified that to you as well?

DHSES COMMISSIONER MURPHY: So I talk to DHS, my counterparts at DHS, on a routine basis about a number of subjects. In terms of this, the only thing that we've had a conversation was about a letter that was being sent to the state in regards to actions to be taken.

But let me take it from a public safety perspective, from our perspective, in that if we have a public security or public safety issue at hand and we have the JTTF, the Joint Terrorism Task Force accessibility to information on any kind of criminal activity or security information that we need, and if we go back to the FBI as part of that JTTF as the lead, we have been able to

accomplish anything that we needed to with that route into security information.

ASSEMBLYWOMAN MALLIOTAKIS: Okay. And -- I mean, have -- can you please bring it back to the Governor that it is just quite a simple fix? I mean, I understand he's doing this lawsuit; I don't think that's really necessary. Every other state that provides illegal immigrants with driver's licenses, and there's 14 others, they all comply with this requirement that they give access to CBP. And so it seems very logical in a post 9/11 world that we would just give them the access to the information. It seems illogical that we would prevent a federal law enforcement agency under the Department of Homeland Security to be able to access this information.

And so I just wanted to talk about that. If you could please relay the message, and I will be doing so in my own way.

And additionally, are there any concerns that you have with expired foreign documents being utilized to apply for

driver's licenses here in the State of New York, particularly after the New York State County Clerks Association has said that they don't have the ability to verify that they are authentic?

DHSES COMMISSIONER MURPHY: So we are not a criminal justice agency in itself. But our concern is as we relate to other law enforcement agencies and their investigations, and to keep the public safe, what we do is go back to those connections through our information center, through the NYSIC, back to the Joint Terrorism Task Force, back into the FBI that runs that force. And we have great relationships with them and have been able to gain access to information that's needed to provide security.

So from our perspective as the agency and our responsibilities and tasks, we've been able to connect with the right sources.

ASSEMBLYWOMAN MALLIOTAKIS: Okay. But as a criminal -- I guess a security expert, would you say it's problematic that the

New York State County Clerks Association is saying its members are unable to verify foreign documents that are being utilized to apply for driver's licenses here in the State of New York?

DHSES COMMISSIONER MURPHY: So I'm not familiar with what the county clerks' responsibilities are in collecting or verifying that information. From our perspective, from a public safety perspective, for the activities that we take a look at, it is -- we have the venues, the avenues to get to the information that we need to be able to provide that public safety.

ASSEMBLYWOMAN MALLIOTAKIS: Okay. I mean, I think it should be something that should be on your radar, though, given that the County Clerks Association has said that they can't verify these documents. That in itself is problematic. And certainly in a post-9/11 world, with the 9/11 Commission saying that we should be more stringent when issuing government identification instead of

less stringent, that may be something we actually want to take seriously.

So if you could please look into that and speak with your counterparts about whether this is something that is important or not. I would say that they would agree that it is important that we know who is actually applying for and who we are giving legitimate government identification to.

And I appreciate your time. I may have another question, but I've run out of the time at this moment. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Savino.

SENATOR SAVINO: Thank you, Senator Krueger. (Mic off.)

(Discussion off the record.)

SENATOR SAVINO: See, all it took was Nicole to insult me.

(Laughter.)

SENATOR SAVINO: Good afternoon, Commissioner.

DHSES COMMISSIONER MURPHY: Senator.

SENATOR SAVINO: Good to see you

again. I wanted to follow up on a conversation we had earlier this week. Because as you and I both are aware, that one of the biggest threats to county, state and local governments as well as individuals these days is the threat of cybersecurity breaches, ransomware attacks, and particularly in local government and our departments of education, police departments, hospitals.

So can you share with us what some of the methods are that Homeland Security is engaging to help our state, local, town, village governments deal with these threats of ransomware and how to improve their practices so that they are less likely to be victims of cybersecurity? Because what we don't want to see is a major disruptive attack, because as you and I both know, it's that little town and then it just spreads like a spider web.

DHSES COMMISSIONER MURPHY: Yes, ma'am. So thanks for that question, because we have an incredible team. It's small but

mighty. There's an eight-member cyberincident response team that we have on our staff. They have been charged with working with our municipalities, working with schools as needed, working with other entities out in the community to be able to address their needs as it relates to cybersecurity and the continual barrage of attacks on those systems.

They tend to be underresourced in terms of cybersecurity professionals. In those smaller areas, they just can't afford those things. And so what our team does is provide either technical assistance to be able to work with their network, within their network, provide them best practices, how do you provide the best hygiene, cybersecurity hygiene, in any given instance. And then if attacked, the team will go out and start working forensics with them to be able to help look at how do they rebuild their networks and to bring themselves back up to the public information that they have stored in a usable way.

That, in combination with ITS, with -- with -- with the Information Technology Services, excuse me --

SENATOR SAVINO: We call it "OITS."

DHSES COMMISSIONER MURPHY: -- with ITS, they have a fairly robust operation in cybersecurity. And so collaboratively, we work together. They are responsible for that state network. We've been very fortunate with the state network and what they do. But so many of the communities tie into that state network as well. And so it's not two separate issues anymore, it's how do we protect the small community, how do we provide the assistance so that they are protected. And we do that through engagement and outreach.

SENATOR SAVINO: Thank you. I notice that we're seeing on a regular basis articles in papers about local governments or hospitals or villages or police departments -- right here in Albany, the police department was hit with a ransomware attack. And I have some -- I know there is

some interest on the part of some of the members here that we should introduce legislation banning the payment of ransomware. Do you have an opinion on whether or not that's effective, is that something we should pursue? Or quite honestly, does it even matter? Once they have your data, they have your data. It's not really going to change.

DHSES COMMISSIONER MURPHY: Right. you know, the -- so the idea that we don't -- we don't know everybody that gets attacked. Some entities will pay the ransom, and then we never know about it and they go on with their business.

So if there was a rule in place, a law in place that says you cannot pay, I'm not sure that that is going to stop the activity. In fact, it's still going to leave in place that opportunity to steal that and use it in other ways, to restrict data or code data so that we're not able to recover it.

So the law itself, I'm not sure --

SENATOR SAVINO: -- it would solve

anything.

DHSES COMMISSIONER MURPHY: -- how that would affect -- it would require I think a little more study to be able to bring it to fruition. It's really about how somebody manages their network in the end, and do they seek help to manage their network when needed.

SENATOR SAVINO: Thank you. My time is almost up, but I thank you. And I look forward to following up with you on these issues.

DHSES COMMISSIONER MURPHY: Yes, ma'am.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We were joined by Assemblyman Lavine.

And we go to Assemblyman Reilly.

ASSEMBLYMAN REILLY: Commissioner, thank you. I have a question, I want to shift gears a little bit, about the support that you give to local municipalities and towns, local governments. More on the front

of maybe grant opportunities and support for school security, basically doing drills, providing resources for these local education agencies and our local law enforcement agencies to conduct drills, but also maybe some training for parents, maybe having some independent like study courses, like the federal government does. Because oftentimes we see, when there's an emergency at a school or something that's classified in the media, we find that parents of course want to rush up to the schools because they want to get their little darlings, right? We all care about our kids, and we want to make sure that we protect them.

But unfortunately we know that that sometimes is counterproductive to responding to emergencies. So if you can touch on that a little, please.

DHSES COMMISSIONER MURPHY: Okay, so I think there's a number of things that we do in terms of outreach and support to the education system at the lower grades and through our first level of education.

First of all, we do a -- we're part of the Governor's School Safety Program. We provide inputs as needed for those schools that ask for specific instruction or training of some kind. So -- and we adapt whatever they're asking for. We think that's in -- it's part of our job to be able to engage them.

Secondly, we do an active shooter program that we've reached out to communities and to the school systems to be able to support that. We do that in partnership with other agencies as well. That ties into other school safety as well. It seems that the realities of active shooter school instance is something to be taken very seriously, and many school systems do. So we support that as well.

And as we take a look at parents or those that are supporting that local community, we also have the Governor's Citizens' Preparedness Training where we come in and put on a program to talk about how they respond, how are they prepared to

respond in an emergency as well.

And so I think those are some of the basic things that we do with our school systems.

And then I'd just wrap up with one of the things that we worked with the New York State county emergency managers with is we just published here, before the school season started, a guide on school violence and active shooter as well. And so there's a checklist item that we can work with that institution and provide best practices from those kinds of things as well.

So I think that's kind of a collection of parts but, in whole, provides support to those school systems.

ASSEMBLYMAN REILLY: So it's basically based on the all-hazards approach, right, the all-hazard approach, where it doesn't necessarily mean that our preparedness is for all the time for an active shooter, it could be for any other disaster or an incident.

One thing that I try and highlight to parents when I'm speaking to them is just

because there's an emergency at a school and you may have a shelter-in or what the media is calling a lockdown doesn't necessarily mean that there is a significant threat to the school. We can have a shelter-in because maybe there's a horrific car accident out front and you don't want your kindergartners or first-graders to leave the building and see that.

Is there some way that we could maybe incorporate a training like that and make it available, maybe a video that the department can put together and share through a partnership, maybe, with the New York State Education Department?

DHSES COMMISSIONER MURPHY: So I think -- to your point, I think it offers us a great opportunity just to present to everybody that we do work within the School Safety Program.

And you're exactly right, we can shelter in place, we can lockdown, we can evacuate. The idea of having a fire drill is completely different than having an active

shooter, and how you react to that at the same time.

And those training programs, we do have a portfolio of that opportunity, and we continue to work with Department of Ed to work those as well. So the more we can do, and I think we can continue to look at what you're asking. And we will to continue to adapt to the requests that come as well as continue to push -- be proactive and pushing those things out.

ASSEMBLYMAN REILLY: Thank you, Commissioner. Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you. We have more, yes. Sorry, we're just doing a little chair rearranging.

Senator Seward.

SENATOR SEWARD: Right, the music stopped and everybody's trying to find their seat here.

Mr. Murphy, I appreciate your being here this morning. And more than that, I appreciate what you and your agency does to protect the people of New York State.

I had a question regarding -- we've all been very disturbed over the rash of hate crimes in the state. And it's my understanding that your division has been administering $70 million for the safety and security projects for at-risk facilities. I understand the appropriation is actually housed at SED, but you've been administering that.

Can you elaborate on how that program is progressing?

DHSES COMMISSIONER MURPHY: So I think -- yes, I'd be happy to. There's a couple of things that have gone on.

So in the 2018 round, the Legislature provided $25 million in hate crimes grants. Those were for nonprofits, at-risk facilities. Those grants went out in two pieces. There were enough applicants to provide funding to everyone that applied in the first round. And then the second round, we had more applicants than we had money because of the outreach and the informing of the process. That's separate for 2018.

Currently there is a 28 million and 20 million grant program. The 25 million is currently for those nonprofit at-risk, includes just nonpublic schools, daycare centers, community centers, cultural museums and residents. And that is a grant program where somebody can apply for up to $50,000 for facility hardening. It could be for cameras, doors, some training of security folks to get that done.

The additional 20 million that's being worked at this point is one that is more targeted towards simply -- well, what it does is it adds day camps to the portfolio. And so where you had residents camps before, now you have day camps in this.

So those two are being worked right now, the --

SENATOR SEWARD: By your division.

DHSES COMMISSIONER MURPHY: So we are administering.

SENATOR SEWARD: Right.

DHSES COMMISSIONER MURPHY: These are -- these funds go through the State

Education Department, and so they are linked to educational-type activities.

SENATOR SEWARD: Let me follow up on that. It's my understanding the Executive has provided a similar program, about $25 million, at DCJS. You know, I -- my question is, is that some redundancy? Or why isn't your division, you know, handling those funds as well, administering them?

DHSES COMMISSIONER MURPHY: Yeah, thanks for that question.

So as those grants were associated with the Department of Ed, then they were educational linkages. The nexus was to education.

As the next 25 that's being asked for in this upcoming budget, which we are not currently working but will work, if approved in the budget, that is simply a -- the language goes for a nonprofit at-risk. And so a nonprofit at-risk under the DCJS expands those that could apply for it. And so a house of worship that might otherwise meet that criteria of the application grant now

would be included in, because there's a nexus to some sort of criminal activity.

SENATOR SEWARD: But is DCJS going to administer those, or is your division?

DHSES COMMISSIONER MURPHY: So we haven't got to that point yet, but we are available to support any agency that works through grants, because we have an expertise with grants applications and distribution of those grants.

SENATOR SEWARD: In my remaining time I just wanted to ask for an update on -- you know, last year's enacted budget provided $5 million in capital money for improvements out at the State Preparedness Center in Oriskany. That's not in my district, it's right next door to my district.

Can you give us some details on what projects were completed and maybe what projects may be coming out in the future in terms of that center in Oriskany?

DHSES COMMISSIONER MURPHY: Yes, I can, sir.

So thanks for the $5 million a year

ago. We've gone through the start of a design program to put it in place. The decision was made to put in a -- I'm going to call it a theater-type facility. It would serve two functions. It would serve an educational function in the theater-type setting, but it would also create a training venue, because some of the incidents that we see, the threats that we see today are to mass gatherings in a theater-type setting.

So we would have a training venue as well as an educational venue, and that's where the money is targeted.

SENATOR SEWARD: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: I just would like to follow up on what Senator Seward was asking about the new $25 million that's in capital funding that's in DCJS.

How does -- I guess it's also a question for DCJS. But how does that differ from the past funding in terms of who would be eligible and how those grants would be

allocated?

DHSES COMMISSIONER MURPHY: So under Criminal Justice it would take some of the restrictions off that have a nexus solely to education. And so it would broaden our application pool to be able to bring in, potentially, houses of worship specifically, if they were otherwise qualified underneath the current RFA.

So as an example, if a house of worship does qualify, if a religious institution wants to apply, now they're not excluded from applying for that grant.

CHAIRWOMAN WEINSTEIN: And DCJS would administer that, or that's still to be -- that's still unclear whether Homeland would or DCJS?

DHSES COMMISSIONER MURPHY: So we are available to support any agency in terms of grant administration and how we do that. That decision -- because we don't have the dollars in front of us yet, we haven't made that decision.

CHAIRWOMAN WEINSTEIN: And is it

anticipated it would be the same $50,000 ceiling for those grants?

DHSES COMMISSIONER MURPHY: My understanding is that current grants would be -- an individual grant would be at the $50,000 level. However, there can be multiple grants given to a single organization, depending on if they have multiple facilities to be able to apply for it.

CHAIRWOMAN WEINSTEIN: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator John Liu. Oh, Senator John Liu walked away.

Okay, then Senator Brad Hoylman.

SENATOR HOYLMAN: Thank you. Thank you very much. Thank you for being here.

A quick question on these grants for resiliency, I guess, against hate crimes or vulnerable populations who might be subject to them.

Would an LGBTQ center be eligible to apply for such grants?

DHSES COMMISSIONER MURPHY: Under this

25 million that's being worked? Yes, if it was -- if it was a nonprofit at risk based on threat. Even under the current grants, those -- if it had an educational nexus, under current, and broadened on the second grant.

And I would say yes. I mean, it's -- They're not excluded from applying for those grants.

SENATOR HOYLMAN: Thank you.

DHSES COMMISSIONER MURPHY: Yes, sir.

CHAIRWOMAN KRUEGER: Assembly? We're going to keep rolling, then, with the Senate.

Senator Ortt.

SENATOR ORTT: Good afternoon, Commissioner. How are you?

DHSES COMMISSIONER MURPHY: Good.

SENATOR ORTT: I want to thank you. I don't want to be redundant, so I will dispense -- I do want to -- on Lake Ontario, I do want to thank you for your department's work this past year. I'd like to say we won't see you again, but I suspect we will. As you well know, we are 10 inches above

where we were last year at this time, and last year was of course a record flooding year. So I anticipate we're going to see a lot more of your folks up my way as well as along our Lake Ontario shoreline.

You said there was $12 million new for posturing for, you know, putting you in a better position, forward leaning. Is any of that specifically for Lake Ontario or with Lake Ontario in mind, knowing that we're going to continue to see the damage, in all likelihood, that we've seen the last couple of years?

DHSES COMMISSIONER MURPHY: So I think the best way to answer that is to say that we have gaps in the resources that we have in order to answer a multitude of disasters. And flooding is one of the things that we see most often in this state, whether it be on the shoreline or off. And if it's the equipment or supplies, resources to be able to address that, yes, we're going to use that up against those same kinds of things that we used a year ago. We are already generating

sandbags as of the start of this week, and starting to -- we've already made the first deliveries out to the counties. The eight counties that are involved in this, most affected, will most definitely benefit from the additional resources that we're acquiring for that 12 million.

SENATOR ORTT: But you're doing some of this stuff now in this year's budget. I mean, absent -- not knowing what the final budget is going to look like.

DHSES COMMISSIONER MURPHY: Correct. We are working towards that -- we have to, because --

SENATOR ORTT: It's going to happen.

DHSES COMMISSIONER MURPHY: We are going forward as if Lake Ontario is going to cause flooding of personal and public property.

SENATOR ORTT: I think that's a good strategy.

I know I will -- I was going to ask you about the Green Light Law, but my colleague in the Assembly I think addressed

that. I'm going to save my questions on that for your -- for the next person in the hot seat.

But I'm going to ask you about something sort of -- it doesn't get a lot of press. But the 9/11 surcharge, which I'm sure you're familiar, which is the tax on cellphones, the purpose of that was to go back into local 911 centers, you know, to pay for new equipment upgrades, to make sure that our local governments had the best technology to service their residents.

Do you know -- last year it's estimated we brought in $235 million -- or, I'm sorry, fiscal year '21 it's projected we would receive 235 million.

Do you know in the past how much went to its stated goal and how much went to other purposes?

DHSES COMMISSIONER MURPHY: So in New York it's -- we don't refer to it as a 911 surcharge, it's -- in statute, it talks to it as a Public Safety Surcharge. And so that's what I'm most familiar with, is the

Public Safety Surcharge.

Out of that Public Safety Surcharge, then, we have allocated a portion of those dollars back to the PSAPs, or the 911 program.

I mentioned earlier, in regards to another question, about the $75 million that is pushed back out to the counties for their use in projects to create additional interoperability. And so that public surcharge is used across the board for communications, the parts that we have responsibility for, and then pushed back out.

So it's that county-by-county formula-based allocation of resources. Same thing with the PSAP and the targeted grants.

SENATOR ORTT: You are aware that the federal government has actually taken issue with how we appropriate that money.

DHSES COMMISSIONER MURPHY: I am, yes.

SENATOR ORTT: And I know I've heard from a lot of local communities that there is a good portion of those funds that are generated from that, whatever we call it, I

guess -- but that surcharge generates a significant amount of money that goes back into the General Fund. And I think that I would like to see, you know, us push more of that money back out to its original stated goal. I think, you know, which was more on the local level.

I know we're fond of taking money not -- this isn't directed really towards you, but directed towards others -- sweeping money to cover budget holes or budget gaps. I'd like to see that money go back out to our local governments, more of that money.

So thank you very much for your time.

DHSES COMMISSIONER MURPHY: Thanks.

CHAIRWOMAN KRUEGER: Thank you.

Okay, any more Assembly?

CHAIRWOMAN WEINSTEIN: Not to speak. But we have been joined by Assemblyman O'Donnell.

Back to the Senate.

CHAIRWOMAN KRUEGER: Okay. Senator John Liu. I called on you, and you were gone. So I'll try again.

SENATOR LIU: I'm sorry, Madam Chair, I had to take a call. Call of nature.

But thank you, Commissioner, for being here. Very quick question. I was just wondering, because our chairman, John Brooks, had mentioned some partners or nonprofit partners that your agency works with. Have you ever worked or heard of an organization called the Civil Air Patrol?

DHSES COMMISSIONER MURPHY: Yes, sir.

SENATOR LIU: Is there a significant amount of work done with that organization?

DHSES COMMISSIONER MURPHY: So we have worked with them in the past in exercises. And the organization is a great group of people. I personally am a pilot. I enjoy a relationship with several of the CAP pilots themselves. But they offer a very cost-effective means of aerial surveillance or just damage assessment types of things. A good organization within the state.

SENATOR LIU: Terrific. Good to hear. I happen to be a search-and-rescue-mission pilot myself with Civil Air Patrol.

Two other organizations that have provided a great deal of relief to our communities. One would be the Tzu Chi Buddhist Foundation, who many say were much more helpful than the Red Cross during superstorm Sandy. Has your agency or do you --

DHSES COMMISSIONER MURPHY: Which organization?

SENATOR LIU: It's called the Tzu Chi Buddhist Foundation.

DHSES COMMISSIONER MURPHY: I'm not familiar with that organization.

SENATOR LIU: They are based in Taiwan, but they I believe are equivalent to the Red Cross in many ways.

DHSES COMMISSIONER MURPHY: I'm not familiar with the organization. We may be connected to them through our nonprofit arm that we connect with.

SENATOR LIU: Great. One last organization would be the BAPS Swaminarayan organization. They are another relief agency, based out of India, but they have

significant operations here in New York, downstate.

I'd love to introduce these organizations to you because I think in the future -- hopefully we never need them. But if the need arises, the Red Cross is a great organization, but so are some of these others who are very efficient in getting help onto the ground very quickly.

DHSES COMMISSIONER MURPHY: If we are not connected, I will take a note on both of these organizations and personally take a look to see where we are with them.

SENATOR LIU: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

We've been joined by Senator Joe Griffo. And our next questioner is Andrew Lanza.

SENATOR LANZA: Thank you, Senator Krueger.

Thank you, Commissioner, for being here.

Commissioner, my daughter Abigail is a student at SUNY New Paltz. And for the last

several weeks she and some friends, students there, have been complaining about the water, and it seems to have fallen on deaf ears until this weekend. And as of yesterday, SUNY New Paltz sent its 7,000-plus students home, closing the campus, due to the water problem.

Can you tell us anything about what's happening with the situation there?

DHSES COMMISSIONER MURPHY: So our agency has not been involved in the university's decision to release the students.

But what I can tell you is the source of the contamination I believe has been identified now, through a pipeline that -- a fluid pipeline that was there. The water system has been -- they've start flushing the system and switching their source to be able to take care of that. It took them a little bit of time to discover where it was. But all agencies -- it was -- I can tell you once it surfaced, no pun intended, once it surfaced it was all-hands from state

agencies -- Department of Health, DEC and many others -- to find the source and identify what the problem was.

I think now that they have that source, it will clear up. And by the time everyone comes back from their break, as she will probably be eating off your -- from your table, now that she's coming back home -- I think they're going to be in good shape going back the other way.

SENATOR LANZA: That's good news, Commissioner. Do we have any idea how long it will be? My understanding is that the Town of New Paltz is considering issuing a statement of emergency today.

DHSES COMMISSIONER MURPHY: So New Paltz had issued a "no drinking" warning previously. I've not heard about the emergency that they would put in place. And maybe oftentimes that is for -- to be able to get past some procurement rules that they may have, to be able to address the emergency itself. I don't know that for certain.

But I'm confident that, from being on

phone calls with the Department of Health and DEC, that they're working it and they're very serious about clearing it up. I know they took additional tests today for -- of water samples. And so it continues to be worked as we speak.

SENATOR LANZA: Thank you, Commissioner.

You know, just to put this on your radar, I understand that your agency typically comes in to mop up after the fact, but we need some preventative measures as well in these types of instances.

I Googled "New Paltz water problem," and what I learned is that there's been a problem for 25 years. That in fact beginning in 1995, the town was warned by both the DEC and the DEP that the reservoir that was being utilized would need to be closed and maintained, and that they ought to seek alternate water sources, and that in fact the local leaders there have received millions upon millions of dollars from both the state and from the DEC to do that.

And it seems like nothing has been done about that, and here we find ourselves in this situation. Doesn't it seem, I think, prudent that we -- if we're going to give local municipalities money to avoid these types of emergencies, that perhaps the state needs to take over and make sure that something actually happens?

DHSES COMMISSIONER MURPHY: So in grants that we provide from the agency, from our agency, we do provide an oversight of the funding, a report back on how the funds are spent, to be reimbursed for money spent.

The area of the water supplies and sources doesn't fall within the agency, within our agency. So I would imagine others have the same oversight -- fiscal oversight, project oversight -- that we would have, but I can't specifically answer to the -- to this one on the water supplies.

SENATOR LANZA: And just to pick up on some of the questions with respect to the Global Entry and Trusted Travelers program, do you think it makes sense that we have a

law in New York -- especially in the wake of 9/11, we learned that one of the problems was that law enforcement agencies were either unable or unwilling to communicate with each other. Do you think it makes sense to have a law in this state that does not allow law enforcement to talk to each other?

DHSES COMMISSIONER MURPHY: Well, in the -- with the folks that I work with in law enforcement, with the Joint Terrorism Task Force and others, my experience is that we do collaborate extremely well across lines with law enforcement. And again, I kind of -- I defer back to the Joint Terrorism Task Force, but that's where we have State Police, we have all the other resource agencies, responsible agencies in place, and we have great communications with them.

SENATOR LANZA: Thank you, Commissioner. Thank you, Senator Krueger.

CHAIRWOMAN KRUEGER: Thank you.

And then I believe to close for the Senate, Senator Akshar.

SENATOR AKSHAR: Thank you, Madam

Chairwoman.

Commissioner, good to be with you. We don't have much time, so I'm going to get right after it. I want to piggyback on some of the questioning of Senator Ortt, if I may.

But before I get there, would you share with me the current state of the comm system statewide, either at a state level or the local level?

DHSES COMMISSIONER MURPHY: So I think the grants, the interop grants that have been put out over the last two, three years specifically have increased our ability to communicate across regional lines. The team tells me, when we do tests from Lake Ontario all the way to the Pennsylvania border and east and west, we're gaining additional capability every year to be able to have that cross-communication and network that supports somebody coming from another jurisdiction in to support another law enforcement agency -- for example, that you're most familiar with, I'm sure, in that to be able to pick up a radio and talk to each other.

And so I would say that the assessment that the team gives me is we've made great strides, given the resources, for the counties, but yet we require that they have a regional flavor from a county perspective. And that requirement has broadened that capability.

SENATOR AKSHAR: So you're working directly with county OEM personnel and folks in the local PSAPs.

DHSES COMMISSIONER MURPHY: Correct. And not just them, but they may have a different communications coordinator in that county, as you know. And because of that, oftentimes they are our conduit into that county.

SENATOR AKSHAR: So back to the Public Safety Surcharge dollars. How much money does that generate per year?

DHSES COMMISSIONER MURPHY: So it's somewhere -- I don't have the specific number in front of me. I think the number was stated a little bit earlier. But it's over $200 million in the total number.

SENATOR AKSHAR: So in terms of DHSES's effort to increase interoperability and increase both the hardware and the software that's out statewide, are you using that as the sole funding source to do your -- to put forth your grants?

DHSES COMMISSIONER MURPHY: That is the -- that is a funding source that we use, is that 75 million that's allocated to the agency to be able to go back out to the counties, through a formula base. And then through project-based targeted grants, where we see weaknesses, to bring those up and then back to the PSAP program.

SENATOR AKSHAR: I'll just end on this point. I think that if you look at the state of readiness of this state, I think we're in a very good position. The Governor and I don't always agree on things, but in this space I think the Governor has made significant -- the Governor and the Legislature have made significant investments to invest in both personnel, equipment and training. And I think that has put us in a

much better spot.

You're doing great work in terms of making the comm system statewide much better, much more robust. But I would argue, as Senator Ortt has argued, that we are falling short in terms of the dollar amount that is being allocated. And rather than the State of New York hoard the money that is generated from the Public Safety Surcharge, we should in fact be getting that out the door for this particular reason.

We're not allocating enough money to this, as far as I'm concerned because we are seeing across the state -- and I'm sure you're aware of this -- many counties now advancing legislation locally and then asking their elected leaders in state government to pass legislation to allow them to increase a tax or a fee on wireless and non-wireless phones, because they in fact have to generate more money that is available than what we're giving in terms of the interoperable grants.

So I think your advocacy there, Commissioner, would be great -- you know,

your division. It would be important for us to continue to work together to not take that money -- I know you're not making the decision. I'm making the point that we shouldn't be taking that money, spending it elsewhere. We should in fact be funneling it to where it belongs, it's right here, to make our comm system as robust as it possibly can be.

I just want to thank you, in my last 18 seconds, for all the work that the division is doing. Again, I feel very good about the state of readiness of this state because of the investment of the Legislature, the Governor, and all the good work that your men and women are doing.

DHSES COMMISSIONER MURPHY: Thank you, sir.

SENATOR AKSHAR: Madam Chairwoman, thank you.

CHAIRWOMAN KRUEGER: Thank you.

I do have one final question. What percentage of your work ends up being in the natural disaster category versus the, I

guess, security preparedness category, if I was breaking it into two?

DHSES COMMISSIONER MURPHY: You know, great question. And it varies depending on if you want to take it on an annual basis or you want to take it on a shorter period.

But the majority of the work that we do is in the emergency response area. Preparedness. It's not just emergency response, but it's preparedness, it's first responder education. You know, the State Preparedness and Training Center, the Montour Fire Academy, our responsibilities with investigations on the fire side. Just a whole host of preparedness kinds of things we do in the work that we do with the counties and municipalities.

So if I had to guess today, I would say that probably 80 percent of our time spent from this level is probably spent on preparing for and responding to and recovering from, in those areas.

CHAIRWOMAN KRUEGER: Thank you.

And I made the mistake of opening this

up, so now Senator Griffo wants to have the final question.

Senator Griffo.

SENATOR GRIFFO: Thank you, Senator Krueger. Thank you, Senator Seward.

General, thanks for being here. Appreciate your past service and your continued service to our state, and your leadership.

I know Senator Seward has already asked you about the Homeland Security Training Center, so I'm hopeful that you will continue to not only invest but to expand the opportunity there, not only from a state perspective but also dealing with federal partners. I think we have great potential there.

DHSES COMMISSIONER MURPHY: World-class facility. And we appreciate, every year, the support that we get from the funding for capital improvements. And I think this next one, as asked by Senator Seward on the new $5 million facility that we're putting in, the theater for training

and that, is going to be an excellent opportunity to continue that excellence.

SENATOR GRIFFO: And hopefully grow partnerships, too, across our nation.

DHSES COMMISSIONER MURPHY: Yes. Yes, sir.

SENATOR GRIFFO: The second question is severe weather. I know that's been brought up, and I know it's your auspices. I think we've done a tremendous job, appreciate the Governor and all of the state agencies for the rapid response in dealing with many of the weather-related events that we've experienced across the State of New York.

Do you think now it's time that we put a specific initiative -- we were talking about how we should review what we do and how we do it and how we can improve that. But beyond that now, relative to relationships with the FEMA and things of that nature now, when we know that they may not step up, there is a role and a responsibility for us as a state to assist those communities to rebuild, including looking at programs that we've seen

some precedent for this after the hurricanes in the metropolitan area, for opportunities for people to sell their homes. And then when you have a flood plain, we have a number of pieces of legislation.

But would you agree and do you believe we should have an opportunity now to create -- define policy and initiative relative to severe weather?

DHSES COMMISSIONER MURPHY: So I think -- thanks for that question, Senator. I think what we've done this year is we have a FEMA rep now within our structure. That's new this year. That's to be able to address more of the mitigation effort, mitigation dollars that we can bring into the state to be able to gain those resources that we need to do just what you're saying, is address those threats from the weather.

SENATOR GRIFFO: So that would allow us to obviously improve our response, look at mitigation and where the state agencies coordinate and could make more of a difference long term, and in addition to that

we're going to have to look at funding to assist those communities, particularly in cases where FEMA does not meet the FEMA threshold. But we do have a role and responsibility, in my operation, to be supportive of both businesses and residents that have been impacted.

Would you agree?

DHSES COMMISSIONER MURPHY: And I think the Ready program, the resiliency initiative along the lakeshore, has been an example of that this past year.

SENATOR GRIFFO: And hopefully we can expand that, because we see that in many other areas, particularly and now more recently, in our case, in the Mohawk Valley.

Again, General, thank you so much for being here. Appreciate that.

Senator Krueger, thank you. Senator Seward, thank you.

CHAIRWOMAN KRUEGER: And thank you very much, Deputy Commissioner. Appreciate it. You're now free to go off and solve the state's problems.

DHSES COMMISSIONER MURPHY: All right. I just want to make sure that my deputy commissioner, who's sitting in the back, knows that I'm still the commissioner, so that I'm not taking up two jobs.

CHAIRWOMAN KRUEGER: Excuse me. I apologize. Executive.

So I have written down executive deputy commissioner, but it's just -- that's not correct.

DHSES COMMISSIONER MURPHY: It is not. But that's okay. The executive testified last year, and it looks like it got left on the thing.

CHAIRWOMAN KRUEGER: So we will fix that.

DHSES COMMISSIONER MURPHY: But that's okay. And the person in the back, no, you're not taking his job, sorry.

(Laughter.)

CHAIRWOMAN KRUEGER: Thank you very much.

Next up, Michael C. Green, New York State Division of Criminal Justice Services.

Are you by chance the executive deputy commissioner?

EX. DEP. COMMISSIONER GREEN: Yes, I am.

CHAIRWOMAN KRUEGER: So I think we just duplicated that on two people in a row.

Thank you. Welcome.

Good afternoon. Whenever you'd like to start.

EX. DEP. COMMISSIONER GREEN: Good afternoon, and thank you.

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

New York continues to experience reductions both in reported crime and its prison population. Reported crime declined for the sixth consecutive year in 2018, again reaching an all-time low. And we maintain our standing as the safest large state in the nation.

While numbers for this past year are not yet final, preliminary data show that crime declined even further, and 2019 will mark another historic low. For the third year in a row, there will be fewer than 600 homicides, something that has not occurred since we started keeping statewide data 45 years ago.

Our Gun-Involved Violence Elimination initiative, SNUG street outreach program, Crime Analysis Center network and strong alternatives to incarceration network contribute to this success and continue to be nationally recognized for their accomplishments. Our investment in proven practices to reduce gun crimes and save lives is paying dividends. But in the 20 GIVE jurisdictions, shootings declined 4 percent in 2019. They were also 16 percent below the five-year average and 18 percent below the total reported in 2006, when tracking of shooting data in these jurisdictions began. These aren't just numbers: 145 fewer people had their lives impacted by gun violence in

2019 compared to 2006 in those jurisdictions.

Governor Cuomo's proposed budget will allow DCJS to continue supporting evidence-based programs and the criminal justice system in communities across the state and developing and implementing innovative programs that continue to distinguish New York as a national leader in effective public safety policy.

Last year the second phase of the Raise the Age law took effect, and its successful implementation was possible because of a productive collaboration with the Office of Court Administration and our state and local agency partners. More than 80 percent of felony cases arraigned in newly formed Youth Parts are transferred to Family Court or probation intake, where these youth are connected to programs and services. All 16- and 17-year-olds arrested on misdemeanors are now treated as juveniles, and most are diverted through probation or the courts.

This year's Executive Budget builds

upon prior years' accomplishments and includes proposals that will improve protections for vulnerable populations and individuals targeted for their actual or perceived race, ethnicity, gender, religion or any other characteristic protected under the law.

The Governor's proposal strengthens existing laws to better protect New Yorkers from serial sex offenders and convicted sex offenders who use social media platforms to identify and exploit victims. It also eliminates the rape intoxication loophole, which continues the state's commitment to updating its laws to help ensure justice for victims.

The budget also includes commonsense changes to regulate ghost guns and restrict gun ownership by individuals convicted of domestic violence-related offenses, which will save lives. A report issued last year by Everytown for Gun Safety detailed the deadly connection between firearms and domestic violence. Abusers with firearms are

five times more likely to kill their victims. The Governor's proposal will address this connection and help ensure the safety of domestic violence victims.

Public safety is our highest priority. This 2020-2021 budget proposal will allow DCJS to continue its support for programs and initiatives that promote fairness, respect, and transparency in the state's criminal justice system, and keep New Yorkers safe. Your support of our work will allow the state to sustain its historic reductions in crime and continue to reduce the number of individuals who enter the criminal justice system.

Thank you for the opportunity to speak with you today.

CHAIRWOMAN KRUEGER: Thank you.

Our first questioner is Luis Sepúlveda.

SENATOR SEPÚLVEDA: Good morning.

I want to talk about the issue of the ghost guns, the prohibition of ghost guns. The Article VII proposal has a proposal that

would attempt to ban so-called ghost guns by limiting the sale and purchase of unfinished frames and receivers, which do not need to carry serial numbers under federal law.

What is the goal of this proposal, and how would the proposal achieve that goal?

EX. DEP. COMMISSIONER GREEN: The Governor's proposal would require that anyone who wants to possess what's referred to as a ghost gun would have to go through a licensed firearms dealer to obtain the parts. The information about the person would have to be registered and kept by the firearms dealer, and the firearms dealer under the proposal would have to contact DCJS for a serial number for that receiver or part and stamp the item with the serial number before it was assembled into the gun.

If anyone was found in possession of a ghost gun that did not follow that process and was not entitled to have a gun, that would be a Class D felony under that proposal.

SENATOR SEPÚLVEDA: Why is no

background check required for the purchase of an unfinished frame or receiver?

EX. DEP. COMMISSIONER GREEN: All I can say is it is not required under the proposal.

SENATOR SEPÚLVEDA: So is DCJS considering requiring a state or federal background check for the purchase of these things?

EX. DEP. COMMISSIONER GREEN: Again, all I can say is as written, the proposal does not require that. It requires that the individual register their information with the firearm dealer, that the part be registered with DCJS, and provides penalties if someone possesses a gun that they're not entitled to possess.

SENATOR SEPÚLVEDA: The proposal requires purchasers to have unfinished frames or receivers engraved with a serial number within 30 days of purchase. How does DCJS anticipate this procedure is going to work?

EX. DEP. COMMISSIONER GREEN: As I understand the proposed legislation, the

licensed firearm dealer would contact DCJS for the serial number information, we would provide that to them, and they would be involved in putting the serial number on the part.

SENATOR SEPÚLVEDA: How will it be enforced?

EX. DEP. COMMISSIONER GREEN: I believe the same way our other gun laws are enforced now. If someone is found to be in possession -- you know, right now, putting ghost guns aside, if someone is found to be in possession of a gun and they don't have a lawful permit, law enforcement takes the appropriate action. I believe this would be enforced the same way.

SENATOR SEPÚLVEDA: Is there some concern that failure to engrave will be a common occurrence and, if so, essentially render the proposal ineffective?

EX. DEP. COMMISSIONER GREEN: Again, I'm not aware of any data from which I could intelligently speak to how often this happens, because I don't think we track these

in any way right now. So I don't know how I could answer that.

SENATOR SEPÚLVEDA: Did you consider any proposal from any other state or any other jurisdiction?

EX. DEP. COMMISSIONER GREEN: I'm sorry.

SENATOR SEPÚLVEDA: Did the Executive consider a proposal similar to this of other states or any other jurisdiction?

EX. DEP. COMMISSIONER GREEN: You know, again, I -- you know, I assume that this proposal, like any other, would be subject to negotiation. You know, I think the intent, the Executive's intent is clear here.

You know, certainly if there are additional things that could be put in there to further that intent, I would assume that those would be relevant discussions for the negotiations that are going to take place.

SENATOR SEPÚLVEDA: Now, is the statewide database required by the SAFE Act up and running?

EX. DEP. COMMISSIONER GREEN: With regard to -- well, I guess in fairness, the State Police keep that database, and I think any questions regarding that should be addressed to the State Police.

SENATOR SEPÚLVEDA: Okay. One more question. Will DCJS ensure that the SAFE Act database be implemented before requiring DCJS to participate in issuance and tracking of serial numbers of unfinished frames and receivers?

EX. DEP. COMMISSIONER GREEN: I'm sorry, I didn't follow the connection between the SAFE Act and the serial numbers.

SENATOR SEPÚLVEDA: Will DCJS ensure that the SAFE Act database be implemented before requiring DCJS to participate in the issuance and tracking of serial numbers for unfinished frames and receivers?

EX. DEP. COMMISSIONER GREEN: I guess that would depend on the effective date that's ultimately in the bill. But if a bill passes and is signed into law and has an effective date that requires DCJS to do

something, our intention would be to do it by the effective date.

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

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Lentol.

ASSEMBLYMAN LENTOL: Good afternoon, Executive Deputy Commissioner.

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

ASSEMBLYMAN LENTOL: So bail reform.

EX. DEP. COMMISSIONER GREEN: I'm surprised you're asking.

ASSEMBLYMAN LENTOL: I seem like a broken record now, because I've had to go to so many places. But I'll try to ask a different kind of question.

It has resulted in the reduction of the number of people held in local jails, obviously awaiting trial. So I'm wondering, has DCJS been able to estimate the cost savings to county taxpayers from a reduction

of the local jail population?

EX. DEP. COMMISSIONER GREEN: No, I think it's too early for us to be able to do that, you know, with any degree of accuracy.

What I can tell you, though, is that in the three years prior to bail reform taking effect, jail populations went from about 24,000 people being held pretrial in jails around the state to under 15,000. And we're seeing that number go down.

But again, we're just over one month into it, so it's too early for us to, first of all, really understand the impact on populations and, secondly, try and put any cost to that.

But clearly populations are going down, and going down significantly.

ASSEMBLYMAN LENTOL: But we do have now a certified pretrial supervision agency in place, do we not?

EX. DEP. COMMISSIONER GREEN: The statute as I read it requires the Office of Court Administration to certify such an agency in every county in the state. But I

think you'd have to ask them in terms of where they are and whether or not that's been done. It's my understanding that it has, in most if not all counties.

ASSEMBLYMAN LENTOL: If you know, what other organizations other than county probation departments now are providing pretrial services?

EX. DEP. COMMISSIONER GREEN: And again, I think this would be more fairly addressed to OCA, since the statute puts that responsibility on them.

But speaking from experience, I know in Monroe County there's a very robust pretrial service agency, led by Craig McNair, that provides the pretrial services in Monroe County. And as you referenced, I know in other counties probation departments provide that service. So I think it's a mix, depending on where you are in the state.

ASSEMBLYMAN LENTOL: As you know, this is very important for the success of a bail reform law like this, because it gives judges different tools than just setting bail, like

electronic monitoring. Everybody likes to talk about it, but it has a variety of different tools for judges to use instead of just worrying about imposing bail all the time.

So since bail is still an option in cases involving violent felonies, I saw that the Governor vetoed legislation to allow more charitable bail organizations to operate in this state. Why is that? Can you --

EX. DEP. COMMISSIONER GREEN: Again, I can't speak to why he vetoed that particular bill, but I do agree with you that pretrial services are important. They were important before this law took effect, and they're equally important if not more important afterwards.

ASSEMBLYMAN LENTOL: So a very interesting Article VII is the establishment of the District Attorney Discovery Compensation Fund that the Governor has proposed to require the Manhattan district attorney to annually transfer 2 million from the Deferred Prosecution Agreement Fund to

help counties pay for costs associated with now the new discovery law. And everybody is talking about discovery as well as bail reform, the cost as well as the timing.

But given that the office has control -- meaning the district attorney's office -- over larger sums of money acquired in negotiated agreements, deferred prosecutions, and forfeitures in the name of the people of the State of New York and the district attorney's office, shouldn't these monies be placed in the General Fund of the state? Why shouldn't other criminal justice initiatives be paid for with these public funds as well as what the Governor wants to do with them now to pay for the discovery law?

EX. DEP. COMMISSIONER GREEN: I think that question goes well beyond anything that's in the Governor's Article VII proposals, and I couldn't comment on that broad a question. You're right that there is an appropriation for $2 million to support law enforcement and district attorneys in an

attempt to help make information more readily available through electronic transfer and communication of information. And that the money does come from the fund you identified.

ASSEMBLYMAN LENTOL: So also there's another Article VII regarding a domestic violence misdemeanor that the Governor has put in the budget, regarding or including a procedure for determining whether a crime involving domestic violence among family members, added to Section 370-15 of the Criminal Procedure Law.

Doesn't this section already work well in determining when a crime involves domestic violence without, you know, cluttering it up?

EX. DEP. COMMISSIONER GREEN: I don't believe that this proposal changes the provision of 370 that you referred to. My understanding is that what it does is create a new misdemeanor crime of domestic violence. And that crime doesn't criminalize any conduct which is not criminal already, but it provides an alternate route to document crimes of domestic violence that someone is

convicted of, to ensure that the proper ramifications with regard to gun ownership kick in.

One of the things through the data that we've seen, the current Section 370 requires a district attorney, in addition to prosecuting the charge, to file a notice with the court indicating that it is a crime of domestic violence. If there's a conviction, it requires the court to hold an additional hearing, make a finding with regard to the misdemeanor crime of domestic violence, and then ultimately make sure that that finding is documented and filed with DCJS so that that information can then be passed to NICS and make sure that it goes on someone's report for a NICS check.

We found, looking at data, that it does not appear that that process is followed for every case of domestic violence because of -- you know, at least one theory is because of the extra steps that are required.

So creating a crime that encompasses those elements would eliminate the need for

the filing of an extra statement, it would eliminate the need for holding an extra court hearing. And those same elements, which ultimately wind up being litigated through that other process, would all be included in the initial misdemeanor complaint, would all get litigated if the case got litigated, and if there's a conviction, that conviction would automatically trigger the NICS information instead of requiring that other process.

But this proposal does not get rid of that first process, it just adds a second process as well to try and make sure that cases don't slip through the cracks because that process isn't followed.

ASSEMBLYMAN LENTOL: Thank you. Thank you.

Talking about data collection and privacy, can you give us an update on the Protection Cloud RMS initiative, which is a cooperative program as you go around the state talking to law enforcement?

EX. DEP. COMMISSIONER GREEN: I'm not

familiar with the Protection Cloud concept. I'm familiar with the proposal for a records management system.

Previously the state, through DCJS and the Office of Technology Services, offered a records management system to the 550 law enforcement agencies across the state at no charge. And I know a lot of smaller agencies relied on that service.

That system is outdated, is unsupported, and I believe it was about six years ago that there was a proposal in the Executive Budget for a new records management system that would replace that system and that would be available to the 550 law enforcement agencies across the state, at no cost.

It was my understanding that that proposal passed in the budget but that there was a provision put in that it was subject to the approval by the Legislature, the Senate and the Assembly, of a plan that was submitted by the administration and by DCJS and other public safety agencies.

I know we've submitted multiple versions of that plan, and it's my understanding that to date it has never been approved by the Legislature. So I believe there's a $10 million appropriation that we've not been able to use because of that.

ASSEMBLYMAN LENTOL: I was going to ask you about that.

So as you know, I've expressed concerns about data collection before and the need to assure basic privacy in New York State. Specifically, how will the privacy considerations be incorporated into your agency's data collection efforts?

EX. DEP. COMMISSIONER GREEN: Are you speaking specifically of the proposal for the records management system? Because I can address it -- clearly address it in that context.

ASSEMBLYMAN LENTOL: Not only, but yes. Not only, others as well.

EX. DEP. COMMISSIONER GREEN: In that context, right now, without a centralized system, you're relying on 550 agencies, some

of which are very small and don't have the resources to dedicate to issues like data security and privacy.

This would allow them to rely on the state's expertise. You'd have one system, they'd all have, in effect, their locked area of the system. You know, but all of the safeguards that are put in place by the state for state data and all of the protections would be incorporated into that system, instead of pushing that responsibility out to 550 agencies, many of which don't have the ability to do it.

CHAIRWOMAN KRUEGER: Thank you.

ASSEMBLYMAN LENTOL: As usual, I've only scratched the surface, but my time is up.

CHAIRWOMAN KRUEGER: Negotiate with your leader here.

(Laughter.)

CHAIRWOMAN KRUEGER: Senator Hoylman.

SENATOR HOYLMAN: Thank you.

Good to see you, now that I'm on.

EX. DEP. COMMISSIONER GREEN: Good to

see you as well.

SENATOR HOYLMAN: Yes. A question for you, sir. Back a few months ago Assemblywoman Nily Rozic and I sent a letter to you requesting when the hate crimes data for 2019 will be published. We haven't heard back yet, but I was wondering if you had a response to that.

In addition to that, the hate crimes data for 2017 and 2018 were only released a month ago or so, and I wanted to know why it was taking so long. And actually, I'm sorry, I have to correct myself -- we did hear back from you. But I was interested to know when the 2019 data will be available, why the 2017 and 2018 data was taking so long to release to the public.

EX. DEP. COMMISSIONER GREEN: As you indicated, the '17 and '18 data are up. We're working on '19.

You know, the first issue is there's a lag in reporting. We don't automatically get the full data for the year on January 1st, as I'm sure you can appreciate. We're trying to

get that data from, as I just indicated, 550 different police departments, you know, with different levels of sophistication in terms of their recordkeeping.

And then once we do get all of the data, our research office has a process where they go through the data, they look for anomalies, they look for completeness. Oftentimes it involves, on a very granular case level, you know, bases reaching out to departments to try and verify or confirm information or understand things that don't look right.

You know, and we go through that process because we want to make sure that when we publish data, as I know you appreciate as much or more than anyone the importance of this data, we want to make sure it's accurate and it's right and that there aren't anomalies or mistakes in it.

So unfortunately that process takes time, but we are working very hard on the 2019 report now. You know, it's hard to give an estimate, but it's my hope that it will be

out much sooner that the '17 and '18 reports came out.

SENATOR HOYLMAN: How much confidence do you have in local law enforcement being able to identify hate crimes? And are you providing them with guidelines to do so?

The State Comptroller recently audited NYPD and their practices in collecting hate crime data and had a number of suggestions for them that they're following.

I was struck by looking at some of the hate crime data statewide and seeing some very large jurisdictions that are effectively reporting no hate crimes. Which on the surface seems like a good thing, but it does raise questions as to whether they are accurately identifying hate crimes.

EX. DEP. COMMISSIONER GREEN: I certainly, you know, from looking at the data understand why you would question that. You know, I think there are very large discrepancies between jurisdictions that at least on their face, in terms of size, you would think have similarities.

You know, so I do think that's an issue, you know, in terms of whether or not there's a consistency in reporting across those 550 agencies. And yes, it is an issue that we've done extensive work on.

We've worked in the past to do trainings with police departments, with prosecutors' offices. We recently worked with the Municipal Police Training Council to update the MPTC model policy with regard to handling of hate crimes investigations. We're currently working with them to update the basic training that every police officer gets with regard to hate crimes. I think that will be on the agenda at the March council meeting.

We're working with the Human Rights Division and the State Police on additional hate crimes trainings to offer for law enforcement agencies.

So, you know, I would agree with you that that is an area that deserves focus, and we're doing a lot of work in that area.

SENATOR HOYLMAN: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Reilly.

ASSEMBLYMAN REILLY: Thank you, Commissioner.

I have a couple of questions about the discovery aspect of the criminal justice reform. I know that with the 15 days, I was wondering if there's any support that DCJS has been giving to local law enforcement agencies.

I know like the NYPD has spent upwards of or even more than $50 million on technology and personnel training. And with the budget passed last year, there was no funding, so it was an unfunded mandate.

So I'm hoping that there's something that we're going to look into about assisting.

EX. DEP. COMMISSIONER GREEN: I have talked with the Chiefs Association and the Sheriffs Association. I've had extensive conversations with the New York Prosecutors

Training Institute on this issue. And I believe that at least in part the $2 million appropriation that Assemblyman Lentol referred to was as a result of some of those discussions and, you know, the intent is to be used for those purposes.

ASSEMBLYMAN REILLY: All right. Well, 2 million is going to be -- it wouldn't even cover one precinct in New York City. I think that we need to really look further into that and realize that, you know, if we have agencies that are spending upwards of almost $100 million, say, there's got to be some relief from us.

The other aspect I wanted to talk about was we mentioned the ghost guns. Right after we passed criminal justice in the budget last year, we picked up a legislation about banning 3-D firearms. One of the things that I highlighted was that 3-D firearms are undetectable. Currently under the Penal Law, if you have a firearm with a defaced serial number, it's a Class D felony. Right? Wouldn't be subject to a desk

appearance ticket. But we made a 3-D firearm, possession of it, a Class E felony. That is automatically a desk appearance ticket.

My stand with that was we're actually going to limit the opportunity of possibly investigating something more nefarious than just possessing a firearm.

Being that you touched on the ghost guns, and I heard you mention that it's a Class E felony in this proposal, we're going down the same rabbit hole. And for me, with my prior law enforcement experience, that's a serious concern I have. Because if we're not able to notify and perform an investigation, say, with JTTF, all because we have a mandate that at the precinct level we have to issue a desk appearance ticket -- and unfortunately, many agencies have a protocol in place where you have to be released with a desk appearance ticket within two hours.

There's a lot of shortfalls there. So I'm hoping that we can adjust that.

EX. DEP. COMMISSIONER GREEN: I don't

believe either of those pieces of legislation that you referred to in any way negate the ability of law enforcement to charge other relevant sections. So if someone possesses something which under your hypothetical is a 3-D gun and also qualifies as a firearm and a Class C felony under the Penal Law, you know, there's nothing in either of the proposed legislation of the Governor or the piece you referred to that would prevent law enforcement from charging, as they do in many cases, every charge that applies.

ASSEMBLYMAN REILLY: So if it's unloaded, it's automatically a Class E felony, so it has to be a desk appearance ticket, under the current law.

EX. DEP. COMMISSIONER GREEN: Again, I think I would need more facts than just that to know what charge or charges would be appropriate. I spent 25 years as a prosecutor doing this. And you know, as you know full well, every case is driven by its facts: You know, does someone have a record, do they not, was the gun loaded, what type of

gun was it.

ASSEMBLYMAN REILLY: The point that I'm trying to make is that maybe if we have a firearm with a defaced serial number that's unloaded on the street and you do a stop and it turns out that he has that firearm and there's a filed-off serial number, it's automatically a Class D felony. Not eligible for a desk appearance ticket.

We should not be treating 3-D firearms and ghost guns that are unloaded differently than an actual firearm that can be detected but it has its serial number defaced. Just my opinion.

Thank you.

EX. DEP. COMMISSIONER GREEN: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Ortt.

SENATOR ORTT: Thank you, Madam Chairman.

Commissioner, thank you for being here.

Regarding probation, you know,

probation departments, as you well know, across the state have been tasked with a lot of the pretrial services, you know, especially in counties where there is no other pretrial organization. I know before we passed these changes many probation departments were screaming that they didn't have enough resources, enough people to handle the caseload, especially with Raise the Age, which you talked about in your opening testimony.

Is it your contention that probation departments across the state have enough resources? And if not, then shouldn't we be allocating more funding in the budget for probation?

EX. DEP. COMMISSIONER GREEN: I listened to Judge Marks's testimony, and that question takes me back to one of his answers. And it's a very tough question for anyone to answer, because all of us, whether we're in criminal justice or anywhere else, if the question is could we constructively use more money, I think everybody could answer yes.

But I think to take a step back and look at this a little more broadly, probation, the number of people in the state under probation capped out at about 126,000, and we're now down below 90,000. So there's far fewer people under probation now than there were. I believe it capped about 22 years ago.

If you look at the number of intake and adjustments that probation departments are required to do, I think that number capped out around 23,000 and we're now down below 10,000. We provide about $45 million to probation departments across the state in aid to probation. We provided over the last two years I believe $32 million to the counties outside of New York City in Raise the Age support. Much of that went to probation departments. We provide money to probation departments and not-for-profits in communities that do pretrial work through our different aid to -- or alternative to incarceration funding streams, and we're in the process of working with those recipients

to give them the flexibility to allow them to use that money for these purposes.

So, you know, I have tremendous respect for the work probation departments do. And if a probation director said, I need more resources, you know, I could certainly understand where they're coming from. But by the same token, when you stop and put things in historical perspective, you know, I think there's more to it than -- you know, I think there's a lot of things that need to be looked at.

SENATOR ORTT: And just to be clear, the premise of my question -- I mean yes, anyone can use more money, right, and would take more money. The premise of my question was as a result of changes that were made by this Legislature and signed into law by this Governor, does that increase the caseload and does that require more resources for this --

EX. DEP. COMMISSIONER GREEN: I don't believe any of this will increase caseloads above, for example, the 2010 level. So, you know, were they underresourced in 2010, so

they still -- you know, I just think it's a very difficult question for me to answer.

As I said, I have tremendous respect for the work probation departments do. Particularly when we're trying to shrink our populations under criminal justice control, you know, we want to be shrinking that on prisons, jails, probation. But they play an important role. And so, you know, we should take the resource concern seriously. We communicate with them regularly, we work with them, and we do everything we can to assist in properly resourcing them.

SENATOR ORTT: Sure. Okay. I'm sure you're aware of some of the statistics we have seen across New York State -- I'll use New York City as a specific example -- where recidivism rates across all major indexes are up from where they were over this time last year.

I know bail has only been in place for 30 something days or whatever, 40 something days, whatever it is. Do you believe that bail and the changes that we made last year

in criminal justice have any determining factor on those increases that we're seeing at this point on recidivism rates?

EX. DEP. COMMISSIONER GREEN: First of all, we don't have any good statewide data yet to tell whether crime is up or down. Generally there's at least a 30-day lag for when jurisdictions report, and then it takes another 30 days. So we wouldn't start getting good January data till sometime in march. So statewide, there is no way to say is it up or down.

You know, I've read a lot of things in the news media, I've heard people say crime is up, in certain places it's down. But I've also seen people say things related to bail reform that they then came out and said, No, I'm sorry, that wasn't true.

So I think it's too early to say with any certainty, you know, what's happening with crime rates. And 30 days, even if we knew, you know, 30 days is an awful short period of time over which to start making judgments, I think, in my opinion.

SENATOR ORTT: Thank you, Commissioner.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Lavine.

ASSEMBLYMAN LAVINE: Thank you, Deputy Commissioner.

And this is out of a -- we're both lawyers, so I have this horrible --

EX. DEP. COMMISSIONER GREEN: You won't hold that against me, will you?

(Laughter.)

ASSEMBLYMAN LAVINE: Well, I was a defense lawyer. I know you were a district attorney. But I bet I have -- I got more convictions than you ever got.

(Laughter.)

ASSEMBLYMAN LAVINE: And so this is out of a sense to protect the record. And I'm following up on Senator Sepúlveda's question about ghost gun legislation.

And this is not offered in the finest spirit of shameless self-promotion. Please,

trust me. But that's not simply a matter that's pending in the Senate, there's an Assembly bill as well. It's my bill in the Assembly. It's in front of the Codes Committee, and I'm sure it's going to get good consideration there. And it's Senator Anna Kaplan's bill on the Senate side.

And thanks for being here today, and thanks for what you do.

EX. DEP. COMMISSIONER GREEN: Thank you.

CHAIRWOMAN WEINSTEIN: We've been joined by Assemblywoman Hyndman and Assemblyman Fall.

CHAIRWOMAN KRUEGER: Thank you. All right. I'm going to take a few minutes to ask the tough questions. (Mic off.)

Thank you.

So last year we passed, at the end of the session, a bill on marijuana expungement, so low-level marijuana possession offenses would be expunged from New York State records. And there have been several reports that very small numbers have been expunged.

So help me understand, one, how many we think we are going to be expunging and, two, why we haven't been able to get there yet.

EX. DEP. COMMISSIONER GREEN: Sure. So thank you for the question.

We are working with the Office of Court Administration right now to carry out the expungement. Our records reflect what happens in courts, so we need the courts to basically seal and send us the sealing order, and then we seal our records that that happened.

What we've done in the meantime to try and make sure that the intent of the legislation is carried out is on the effective date of the legislation -- and if I remember right, it was either October or November -- we suppressed all of the marijuana convictions that ultimately will be subject to seal. It's my understanding that there were 202,000 convictions that we suppressed on the criminal history, that they related to 140,000 individual people, and

that they left 24,000 people who otherwise would have had a record with no record at all.

What that suppression does is if there's a -- what we call a civil inquiry, if someone is required to get fingerprinted for a job application, for example, that fingerprint comes to DCJS. When that history is returned, anything that we suppressed will not in any way be reflected on the history.

So those changes that we could make at DCJS have been made already. The numbers I gave you I believe reflect what's happened. And we're now in the process of working with OCA to make sure that they're permanently expunged.

CHAIRWOMAN KRUEGER: So as far as I know, I don't have a criminal record, which is why I don't know the answer to this question. If I was one of those people and I was applying for a job and it asked me if I had a criminal record, would I include -- or what criminal record might I have? Do I no longer have to include any of that when I

answer the question?

EX. DEP. COMMISSIONER GREEN: Again, I don't feel like I'm in a position to provide someone legal advice like that. All I can say is that when -- if that person's fingerprint hits DCJS's system in connection with that job application, what we are going to send back is not going to in any way, shape or form reflect anything to do with that case or conviction.

CHAIRWOMAN KRUEGER: And do you have any sense on how long it will take the whole system to complete the steps that need to be done?

EX. DEP. COMMISSIONER GREEN: So the suppression will remain in place. We're not going to change that. I believe the last estimate I heard was that they think it may be a five-or-six-month period. But it really has to be a coordinated project because we need OCA to send us the information.

CHAIRWOMAN KRUEGER: And then in follow-up to a couple of my colleagues' questions, have you ever heard of anyone, in

researching crime trends or statistics, use one month as their basis for analysis?

EX. DEP. COMMISSIONER GREEN: I guess I've heard a lot of things. But I've never heard any credible criminal justice researchers tell me that they thought that you could draw valid conclusions with that time period.

CHAIRWOMAN KRUEGER: And do crime rates reflect weather patterns? When it's colder and people stay home, something happens, and when it's warmer, something else happens?

EX. DEP. COMMISSIONER GREEN: There are countless possibilities of things, you know, that they may or may not reflect. And I think sometimes it's impossible to parse out all of those things. But certainly there are people that posit the hypotheses that that's one of many factors that might affect crime patterns.

CHAIRWOMAN KRUEGER: Thank you very much for your work.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Weprin.

ASSEMBLYMAN WEPRIN: Thank you, Madam Chair. Thank you, Commissioner Green, for coming.

You know there have been a number of planning meetings and discussions about the need for robust pretrial service at the county level. And I know there's also discussions about alternatives to incarceration, which I'm very interested in. What role can your agency play going forward in expanding the use and availability of pretrial services and alternatives to incarceration?

EX. DEP. COMMISSIONER GREEN: So I think the total amount of funding in this proposed budget that would fall under the larger umbrella of what we call our alternative to incarceration portfolio is roughly $24 million, $25 million.

And that covers things like county reentry task forces, it covers cognitive behavioral intervention programs in local

jails. It covers pretrial agencies that do work both with people who are out and people who are in, trying to get them out. You know, so it covers a wide variety of things.

Within that portfolio, as I indicated earlier, we are working with grantees who do pretrial work to make sure that we give them the flexibility to use the money in a way that reflects the changes that were made to the criminal justice system last year.

ASSEMBLYMAN WEPRIN: Well, it's not enough, but it's a good start. And, you know, I think -- I would strongly support working with you on some of that and possibly expanding funding when appropriate.

EX. DEP. COMMISSIONER GREEN: And I know we have worked with you in the past and certainly look forward to continuing to do that, and very much support -- you know, this is a very important area of our portfolio.

ASSEMBLYMAN WEPRIN: Thank you. Thank you, Madam Chair.

CHAIRWOMAN WEINSTEIN: Senate.

CHAIRWOMAN KRUEGER: Thank you.

Senator Myrie.

(Mic issues.)

SENATOR MYRIE: Thank you, Madam Chair, and thank you, Deputy Commissioner. I want to focus my questioning on two things, the gang prevention money and the gang violence prevention money.

So the Executive Budget provides for 10 million for gang prevention. I'm hoping you can give us some insight into which counties will be receiving that and how that decision was made.

EX. DEP. COMMISSIONER GREEN: I believe the funding that you refer to, if I'm not mistaken, includes a specific $1 million carve-out for Long Island, the $1.5 million carve-out for New York City, and the rest of the money, if I'm not mistaken, contains language about being subject to a plan submitted by DCJS and approved by the Budget Office.

Traditionally we've used those type of appropriations to try and support preventative activity. So we've used them on

Long Island to support activities in both schools and not-for-profits geared toward at-risk youth. You know, I think with the New York money traditionally we've worked through the Mayor's Office for Criminal Justice with that money, since they're on the ground there.

You know, but those are the types of activities generally that we've looked at for those pots of money.

SENATOR MYRIE: Okay. And on the SNUG money, I know that you in your both written and oral testimony spoke to the importance of gun violence prevention, investment.

The state, I think to its credit, has shown that this is something that they care about, and you've provided for this money in the past. My concern is that there have been a number of instances where the Legislature has to put in additional money for SNUG, and every year it is the same fight that we have, that there is investment in some counties and legislators have to come back and fight for

SNUG money in their districts, including mine.

And so I'm just wondering why this has to happen every single year and why we can't baseline the funding for something that, to the state's own admission, is evidence-based. We know that this drives gun violence down. We know that it prevents it from happening in the first place. And this isn't something that we believe we should be having to fight for every year.

EX. DEP. COMMISSIONER GREEN: So I certainly appreciate your question. And again, I think it's important to understand the historical context here.

You know, shortly after I started at DCJS, I think maybe six years ago, the funding for SNUG was about $1.4 million and supported SNUG programs in a small number of jurisdictions.

The funding in this budget I believe is 4.8 or $4.9 million, which is a sizable increase over the course of six years, at a time when most other programs' funding isn't

increasing, when we're in a stay-flat environment.

In addition to that, we've worked with the Office of Victim Services and they've committed about $2.3 million, which is currently being spent by the SNUG jurisdictions to incorporate social work into the SNUG program. So we've actually provided the programs with resources to hire case managers, to hire certified social workers.

So the total state commitment now is up at about $7.5 million for the SNUG programs from about $1.4 million at a time when we started. So against that context, you know, I think we should be very proud of the way we've supported collectively and grown the SNUG programs.

In addition to that commitment that goes out to the programs, we've made a significant commitment on the state side to support that work. We have a state SNUG director who visits the sites once a month and provides overall direction. We have a state training director, who's developed our

own New York State curriculum for both our outreach workers and our supervisors and provides training to every single outreach worker and supervisor hired throughout the SNUG program. We have a state social worker director -- again, none of that paid for out of the SNUG appropriation, all paid for out of state General Funds to support the SNUG work in addition to that appropriation.

So, you know, while I certainly understand your points, you know, I think again this is another one of those areas where there's a lot of work to be done. I think we should be proud of the way we've grown these programs. And, you know, frankly, I don't think there's anybody else in the country that can point to a network of SNUG programs as robust and as good as ours are.

SENATOR MYRIE: No, and I appreciate the state's investment and the increase over that time period. I would just note that, you know, I represent part of the County of Kings, as do some of my colleagues here on

the panel, and it has demonstrated to reduce violence and prevent violence.

And I don't think that this is an issue that the Legislature should have to fight for every year, as we have recognized that this is an evidence-based program and an evidence-based solution.

Thank you.

EX. DEP. COMMISSIONER GREEN: Thank you.

CHAIRWOMAN WEINSTEIN: We've been joined by Assemblyman Mosley, and we go to Assemblywoman Walker for questions.

CHAIRWOMAN KRUEGER: We've also been joined by Senator Kaminsky.

ASSEMBLYWOMAN WALKER: Thank you, Madam Chairwomen.

And thank you for your testimony today. It was quite insightful, as is a number of the reports that your office puts out in order to keep us adequately informed.

One of the -- please allow me also to support the comments of my colleague Senator Myrie, particularly with respect to the SNUG

resources. Many of the resources which were delineated for specific counties throughout the State of New York were done that way, based on COMPSTAT reports and reports where the largest number of gang and/or gun violence was taking place. And I recognize that we've removed many of these specific appropriations in this year's budget. Is it because it was connected to some level of a decrease in gang affiliation and/or gun violence?

EX. DEP. COMMISSIONER GREEN: In terms of the Executive Budget, it's my understanding that the Executive Budget proposal contains the same amount of money for SNUG programs as the Executive Budget proposal did last year.

ASSEMBLYWOMAN WALKER: Oh. Well, I'm not talking about the resources, I'm actually talking about there was specific appropriations for Queens, Staten Island, Brooklyn, Kings County, and Wyandanch.

EX. DEP. COMMISSIONER GREEN: If I recall correctly, I believe that with the

exception of Wyandanch, I think everything was a legislative add last year, the programs that you referred to. I think the executive proposal this year is the same as the Executive's proposal was last year.

I don't -- you know, I think you're right, it does not include any legislative adds that were put on last year.

ASSEMBLYWOMAN WALKER: Okay, well, thank you.

So getting back to bail, one of the reports that we also recognize is that your agency keeps outcomes by race. And one of the things we've noted from earlier, that 29,300 people were -- bail was set on them, and they have not paid their bail within five days. 16,300 of those individuals were black, 9,300 of those individuals were Hispanic, and about 2,800 of them were white.

Do you have any updated records with respect to the number of people who have been released thus far, which also looks at those numbers by race, that you'd be able to speak to?

EX. DEP. COMMISSIONER GREEN: No. Again, it's way too early, we're just 30 days in. But as you indicate, we have started posting race-based data. We have data for the last three years -- well, for '16, '17, and '18 posted. We're working on the '19 data right now. You know, and it's our intent to continue that. But we don't have anything, nor could we possibly have anything, for the last 30 days.

ASSEMBLYWOMAN WALKER: Well, we also noted that based on the numbers that your office -- agency delivered, there was a report that indicated 12,900 people paid bail last year. Of that amount, 6,100 were black, 4,400 were Hispanic, and 1,600 of those individuals were white. And I think that those particular statistics are glaring. I think the writing is definitely on the wall.

And it was really through the thoughtfulness that you put into this report that really recognized that the need was very urgent in order for us to do something about bail, because we know that the result was

damning and it was cancerous on our communities.

One of the other things that I'd like to note here as well, we're just looking for eight counties upstate, and that there were 11,609 individuals who were held on bail for $1,000 or less; 7,067 people, $500 or less; 2,499 people at $250 or less.

And so again, one of the things that I want to submit to you and the important work that you're doing, and that you've done so far, is that there are a number of individuals who are being positively affected by bail and its outcomes. And while I recognize that there may be some reports of five, 10 stories, I think that tens of thousands of individuals who have been impacted -- and that your work has shown have been impacted -- truly and greatly thank you for all the work that you've done so far. So thank you.

EX. DEP. COMMISSIONER GREEN: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Savino.

SENATOR SAVINO: Thank you, Senator Krueger.

Good afternoon, Commissioner.

Not to harp on an issue, but I feel I have no choice, I have to harp on it. because you mentioned historical -- the historical prospect of the SNUG and the gun violence program. And from history, the SNUG program was created by the Senate Democratic Conference back in 2009 and '10, the last time we held the majority. It was an idea of former -- the current borough president of Brooklyn, Eric Adams, and the former majority leader, Senator Malcolm Smith. And we believed then it was going to successful.

And you have noted in your testimony, and I'm going to refer to it, that "our" -- and you're testifying on behalf of the administration: "Our Gun-Involved Violence Elimination initiative, SNUG street outreach program, Crime Analysis Center network and strong alternatives to incarceration network contribute to this success" of crime

reduction, gun violence reduction. You then reference it again, that "Governor Cuomo's proposed budget will allow DCJS to continue supporting evidence-programs and the criminal justice system and communities across the state," blah, blah, blah.

The only problem I have with that, because I'm happy you guys support it, is that the Governor, in his budget, he has zeroed out all of these programs. So I'm just confused as to how you can claim that your programs -- and I don't mean you personally -- but your programs, as in the department, are incredibly successful, but you don't provide the funding in your budget, anticipating that the Legislature will put it in as a legislative add.

And I think Senator Myrie referred to it like this happens -- he's very new; I've been here a long time -- this happens every year.

It's not that it happens every year, it's why. At what point when you have successful programs, when you have

evidence-based to show that they're actually doing what the initiative was set out to do, at what point do we baseline them so that we can go on to create new programs?

EX. DEP. COMMISSIONER GREEN: So first of all, I apologize if you read "our" to exclude you. I thought I was very clear in my response to Senator Myrie that I felt that this was a collective effort and that I appreciated the support of the Legislature.

And secondly, I think all I can say is the Executive Budget, proposed Executive Budget, provides the same amount of funding that was in last year's proposed Executive Budget for the SNUG programs. That money funds the programs that we directly support.

You know, some of the programs that you refer to, while I am familiar with them, they don't fall under the same umbrella. Traditionally, when the Legislature puts adds in for New York City programs, that money goes to MOCJ, and MOCJ gives that to the programs because MOCJ coordinates the street outreach in New York City and we don't want

to be running competing street outreach programs in the same area.

One program that has jurisdiction in New York City that's under our DCJS kind of umbrella that you so generously help us support is the Jacobi program.

The other New York City programs that I know have been subject to legislative adds in the past don't fall under that same umbrella. And it doesn't mean they're not just as good, I just don't have the same information. They don't go through our training, you know, they don't have the same -- they're not under our supervision umbrella. I don't know if they're incorporating social work the same way we do it. They may well be, we just don't get that same level of information back. That goes through MOCJ.

So, you know, I know the Governor's support for those programs under that umbrella is the same. And you're right, the legislative adds are not included in. I can't speak to why.

SENATOR SAVINO: And the legislative adds for all DCJS programs adds up to a little more than $15 million. And I will tell you, every one of these programs, whether they be a $90,000 allocation or a million-dollar allocation or a quarter-million-dollar allocation, has contributed to the reduction of gun violence, gang violence, and crime across the board, working in cooperation with communities and our local police department and sheriffs, et cetera.

And I would just say that, you know, it gets a little frustrating whenever we have to put the money back, because that means we're not investing in new ideas. We're just basically treading water on these programs. And so that's a bit disappointing, because we could come up with some other ways to spend some money, and hopefully we would be able to work together on that.

My time is almost up. I would just say --

EX. DEP. COMMISSIONER GREEN: I can assure you that we're --

SENATOR SAVINO: -- I appreciate what you do, I really do.

EX. DEP. COMMISSIONER GREEN: I appreciate your comments, and I can assure you within that pot of money, it does not stay the same. We're working on new ideas every day. There's a team, you know, right now at DCJS working with national experts providing us technical assistance, you know, to improve one of the programs within that funding stream. So we're constantly looking to improve them.

But I appreciate your comments.

SENATOR SAVINO: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assemblymember Ra.

ASSEMBLYMAN RA: Thank you, Madam Chair.

Good afternoon, sir.

EX. DEP. COMMISSIONER GREEN: Good afternoon.

ASSEMBLYMAN RA: So I believe our conference has forwarded a report we did to your department. A number of our members

during the fall had met with local law enforcement, DAs, you know, to talk about what they were doing preparing for the bail changes, the discovery changes. And I hope that those in your department will take the time to read what we learned and what they were anticipating.

One of the things that was a concern that was raised and, you know, we've seen maybe -- perhaps a few situations, one locally here, that involved a domestic violence situation where an individual was out fairly quickly, went back to the house, thankfully was apprehended for violating an order of protection.

But do you have any thoughts on how we can work with law enforcement to make sure in those types of situations, you know, emotionally charged situations, domestic violence situations, that we're ensuring we're protecting the victim from fear of having somebody who has perpetuated a crime against them or violence against them from returning and doing further?

EX. DEP. COMMISSIONER GREEN: There are provisions in the bail reform statute that passed that, for example, allow someone to be held if they're out on release on a felony and commit a new felony. There's provisions that allow a judge to hold someone if they're charged with violating an order of protection in a domestic violence-related situation.

So, you know, there are protections in there. You know, I believe the Governor has publicly stated that he's certainly open to conversations about whether we can continue to improve. And I think frankly, no matter what the area, we should always be looking to improve our system, and this is no different.

So, you know, if there are additional things we can do -- I can tell you from a training side, you know, we're at the tail end of the project, we've completely redone the basic course for police officers and the types of issues that you talked about, you know, were definitely included in that training. You know, we've worked with the

Municipal Police Training Council on these issues. So, you know, they are issues that we are constantly engaged with law enforcement on.

But your point is well-taken, and we certainly have to engage further.

ASSEMBLYMAN RA: And also, you know, in certain sensitive informations, I don't know if your department has discussed this or you might have some thoughts on it. But with regard to discovery and disclosure of witness information, obviously there is -- you know, the way the law is written, 15 days is kind of a default, but the judge does have that ability to extend that time period.

But as far as potentially making some changes that would enhance that ability and maybe have some type of presumption or other direction in certain types of cases to protect that information, you know, particularly if -- it could be a domestic violence situation where the person is going to stay with somebody else and doesn't want it to be known to the perpetuator of the

violence where they're staying or something of that nature.

EX. DEP. COMMISSIONER GREEN: I think, you know, it's important with any conversation about the discovery reform to recognize the fact that the prior law allowed the prosecutor to pick a jury and then, after jury selection, walk in and dump a pile of materials on the defense table and say, Okay, let's open and try the case. And I think all of us would agree that that just simply is not fair and can't be the system.

So from that perspective, change was needed. I believe one of the changes that was included in the reforms last year actually increased the scope of prosecutors' ability to seek and judges' ability to obtain orders of protection in cases where the issues that you just discussed are relevant and need to be addressed.

That said, again, I think, you know, we should always be, no matter what area it is, looking to say how can we continue to improve. And if there's ways that we can

continue to improve on it, you know, I think the Governor has indicated he's open to those conversations.

ASSEMBLYMAN RA: Thank you. And I think, you know, many of us -- I have practiced very limited, you know, as a prosecutor on local matters. I would agree that is not a -- that way of just dumping that information on the defense right on the eve of trial is not proper. I think we just have some concerns, but striking that proper balance.

So I thank you for your answers.

EX. DEP. COMMISSIONER GREEN: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Todd Kaminsky.

SENATOR KAMINSKY: (Inaudible; mic issues.)

EX. DEP. COMMISSIONER GREEN: Good afternoon.

SENATOR KAMINSKY: Hello? There we go. Thank you.

I just want to ask about your agency's

role going forward administering security funds for religious institutions. Could you tell me what parameters now exist and what role you will be playing?

EX. DEP. COMMISSIONER GREEN: Yes. I believe you're talking about the $25 million appropriation?

SENATOR KAMINSKY: Yes.

EX. DEP. COMMISSIONER GREEN: And I think Commissioner Murphy did testify -- and I agree with what he said -- in the past, the funding that was allocated for these purposes was specifically geared, as I understand it, toward educational institutions. The intent here was to expand the scope of institutions that would be eligible. So for example, if there were a not-for-profit religious institution that would be eligible that didn't do educational services --

SENATOR KAMINSKY: And so by that you mean mosques, synagogues, churches.

EX. DEP. COMMISSIONER GREEN: Potentially, yes.

SENATOR KAMINSKY: Okay. And so

that's -- that is a pretty big change, but it also matches the federal funds that are available for that same purpose.

EX. DEP. COMMISSIONER GREEN: Correct.

SENATOR KAMINSKY: Okay. And at what point will institutions know what the guidelines are, how to apply, and what is available and in what increments?

EX. DEP. COMMISSIONER GREEN: So again, the first step is the budget has to pass or nothing's available. If the budget passes and --

SENATOR KAMINSKY: That's true for many things.

EX. DEP. COMMISSIONER GREEN: Yes, it is. If it passes in the form it's in now, then my understanding is that the language in the appropriation, again, talks about it being subject to a plan submitted by DCJS, approved by the Division of Budget. I've already had conversations with Commissioner Murphy about working with his agency to develop those guidelines. You know, as he referenced, the intent of the money is things

like facility hardening, training, screening, other things to make these facilities and institutions safe.

SENATOR KAMINSKY: Okay. I appreciate that.

I am hoping that we could work on having as direct and easy-to-use a process as possible. I represent an area on Long Island called the Five Towns, but I also represent a lot of other areas that have vulnerable religious institutions. But the Five Towns is particularly one that is a pretty serious target in light of the fact of the concentration of religious institutions, schools, and individuals in one place about 12 minutes from JFK Airport.

And I would love to invite you to come to that community and see firsthand what those security concerns are, the amount of money spent on security, which is never enough, and the difficulty that some of these smaller institutions have with navigating the bureaucratic hurdles that come with the Securing Communities Grant, which we are

grateful for, and is important and has led to tremendous improvements in hardening of institutions.

But the need is great, and the ability to tap into that has been very cumbersome and difficult and lengthy. And if we could do anything to help expedite that process and frankly let individuals know what the state is trying to do, which I think is important for all of us, it would be very welcome.

EX. DEP. COMMISSIONER GREEN: I'm certainly not opposed to visiting your district with you and looking at those places.

And, you know, I can tell you I do think DCJS has an expertise in this area and working with not-for-profits and trying to administer the grant process in a way that's as friendly as possible. You know, we put a real focus on that, and I can assure you that we'll do the same thing with this particular funding stream if it's approved.

SENATOR KAMINSKY: I appreciate that. And while, you know, a lot of the focus is on

antisemitic violence, which is a tremendous problem, you know, whether it's a shooting in the church, a shooting in the temple, violence in a mosque -- you know, it's crazy that in the 21st century we're having these conversations about what we could do to harden some of the most important sanctuaries that we want to walk into with our families. But unfortunately in this day and age it is an important reality, and the state has to continue to play a critical role in securing those institutions and, I would say, in light of the rhetoric and violence we've seen, step that up.

I'd like to work with you on helping to do that and get our institutions as hardened as possible and have trained professionals as trained as possible so we make sure that we're protecting individuals who just want to exercise their First Amendment rights and their God-given rights to do that.

EX. DEP. COMMISSIONER GREEN: Thank you, and look forward to working with you on

it.

SENATOR KAMINSKY: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Epstein.

ASSEMBLYMAN EPSTEIN: Good afternoon.

EX. DEP. COMMISSIONER GREEN: Good afternoon.

ASSEMBLYMAN EPSTEIN: And thank you for being here. I know it's grueling after a while; I do appreciate it.

I wanted to talk to you about the additional needs for people with mental health issues seen in the criminal justice context. And the great work we did last year around bail reform has really exposed a lot of weaknesses in supporting people with mental health issues.

I'm wondering to see how you think your role is in ensuring that people who are in the criminal justice system who have ongoing mental health issues get enough support within the system, and what

additional help do you need to ensure they can get the services they need?

EX. DEP. COMMISSIONER GREEN: I think you're absolutely right in terms of the importance of the intersection between mental health and the criminal justice system. I think one of the things with bail reform is to try and make sure that we're not holding people in jail because they're poor. And when mental illness is involved, I think that's arguably even more important. You know, it's a terrible place, all other things being equal, to try and provide mental health treatment.

You know, in terms of our direct role, that's one of our areas of focus throughout our alternative to incarceration funding stream. I can assure you that we'll continue to make that an area of focus.

ASSEMBLYMAN EPSTEIN: And do you feel like there's additional support we need to do in that context? Honestly, like you said, the importance of what we did around bail was to ensure that people who were only being

incarcerated because they were poor and didn't have the resources to get out on bail, you know, now that we've changed the system in a way that makes it a more parity system, you know, what additional support do you need for those people with mental health issues? Are there direct things that we should be doing in the context of the budget to provide you that additional support for people with mental health troubles?

EX. DEP. COMMISSIONER GREEN: And again, I hate to deflect, but I think this is a question that may be more accurately posed to the Office of Mental Health, since they are -- you know, we're not the front-line service provider.

You know, we do certainly try and support law enforcement in making sure that the links are provided to the services, but, you know, I think looking to law enforcement to be the service provider is the wrong place to look. I think we have to try and help law enforcement make the links and look to the mental health treatment community to do the

treatment.

ASSEMBLYMAN EPSTEIN: Well, I appreciate that answer.

I want to go back to the questions Assemblywoman Walker was asking you earlier, just around racial breakdown in the data and really exposing the issues that we had before really around bail again, showing that there was a racialized component with people who couldn't make bail who were continuing to be incarcerated.

What is your timeline to get us that data for 2019? And the second question is, what do you think is an appropriate timeline to take the information for 2020 to get a sense of how that's changed, people who are now being kept pretrial?

EX. DEP. COMMISSIONER GREEN: I know that the people who do all the work in my data unit are probably cringing now. You know, but I think generally for us to go through and get all the data in and, you know, review it, make sure of the accuracy, you know, I think best-case scenario, it's

usually April or later before we can get good data for the prior year posted that we have confidence in. And we certainly don't want to be putting out data that we don't have confidence in this area.

You know, and to the first part of your question, we are posting now this data on racial disparity because as the Assemblywoman pointed out, there are very significant disparities when you look at the data. And, you know, we post it not to point fingers at anybody, because I don't think people are waking up in the morning, going to work saying we want to disadvantage people. But we have a structure and a system that is producing results that you just can't argue with the data. It was disadvantaging, and it is disadvantaging people. And one of the ways it was doing it was through cash bail. When the amount of money you have determines whether you get out or not, that favors the rich, disadvantages the poor. And when you look at the data that the Assemblywoman referred to, I don't think you can rationally

argue that it didn't have disparate impacts on certain groups within the state.

So we believe it's very important to put the data out there so people can be aware of the data, understand the data, and try and work toward a better and more fair system. And I think Judge Marks said it very well this morning when he said, you know, everybody -- Legislature, Governor -- I think should be very proud of the fact that they took a step last year to address one of the very significant, fundamental unfairnesses in the criminal justice system.

ASSEMBLYMAN EPSTEIN: I want to thank you, and I look forward to seeing that data in April and getting good information going forward. This is exactly what we're trying to do.

I'm just concerned just that moving forward on anything now won't have sufficient data to support that.

EX. DEP. COMMISSIONER GREEN: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Senate.

CHAIRWOMAN KRUEGER: Thank you.

Senator Jim Seward.

SENATOR SEWARD: Thank you, Madam Chair.

Mr. Green, I wanted to return to a discussion of the District Attorney Discovery Compensation Fund. The Executive Budget contains $2 million for this. How specifically can that money be utilized by the district attorneys?

EX. DEP. COMMISSIONER GREEN: The appropriation, as I understand it, again is subject to a plan submitted by DCJS and approved by the Division of Budget. So I don't believe the appropriation lines out exactly how the money is to be used.

I can tell you I've had extensive conversations, my agency has, with the New York Prosecutors Training Institution. They have built a statewide electronic discovery system that will -- or is available, as I understand it, to every district attorney in the state and will

assist in getting records electronically from police departments, making them available to the DAs, and allowing the DAs to make them available to the defense electronically.

It's my understanding from my conversations with them that $2 million a year would be more than enough to allow them to support and run that system. But again, that's not lined out. I'm just saying that as an example of how $2 million could be used to achieve that purpose.

SENATOR SEWARD: Did anyone talk with the district attorneys in terms of what their needs are? Because, you know, I represent parts of nine counties; my DAs are telling me they need personnel and staffing, that's what they need to address this, the new -- the speeded-up putting cases together, et cetera, under the new law. They need personnel and staffing.

Of course $2 million would not anywhere near cover the personnel needs that are out there in our various counties. So is there any funding at all for additional

personnel?

EX. DEP. COMMISSIONER GREEN: I have talked with, among other entities, the District Attorneys Association. But no, there is no money that I'm aware of in the budget for additional personnel.

SENATOR SEWARD: How about probation departments in our counties? They are -- would you agree that they now have substantially more work to do under the changes in the law from last year?

EX. DEP. COMMISSIONER GREEN: If you're saying from last year to this year do they have more work, I think that might be fair, yes.

If you're saying over a historical time period, you know, if you look at caseloads and work output in other areas like intake and adjustment in 2010, and you look at them for 2019, you know, they are down significantly.

So from year to year, yes, that might be a fair statement. From ten years to now, I don't know that it's a fair statement or

not.

SENATOR SEWARD: Once again, I'm hearing from my probation folks that they are also in great need of additional staffing. And that, once again, an unfunded mandate, unless we come up with funds from the state, on our -- in upstate, anyway, the counties fund both the DAs' operation as well as the probation departments.

The source of the monies, that $2 million for the DAs Discovery Compensation Fund is, I understand, coming from the Manhattan DA -- some would say extorted from the Manhattan DA, the DA's office.

(Laughter.)

SENATOR SEWARD: Is that accurate?

EX. DEP. COMMISSIONER GREEN: I guess we haven't heard anyone other than you say it's extorted from them. But to my understanding, that it is coming from a fund related to settlements obtained by the Manhattan DA's office, yes.

SENATOR SEWARD: I was quoting others when I used that word "extorted."

Do you know how much money the Manhattan DA currently has in their account?

EX. DEP. COMMISSIONER GREEN: No, they don't report that to DCJS.

SENATOR SEWARD: I see. Okay.

Because, you know, it strikes me this is a -- in terms of helping to fund the changes in law from last year, it seems to me that should be a state responsibility. The $2 million that we're talking about here today is a drop in the bucket, as compared to the needs that are out there. And the expenses of these changes in the law are falling on the backs of local governments and local taxpayers.

But thank you very much.

CHAIRWOMAN WEINSTEIN: We go to Assemblywoman Malliotakis.

EX. DEP. COMMISSIONER GREEN: Good afternoon.

ASSEMBLYWOMAN MALLIOTAKIS: I had asked the Department of Homeland Security commissioner about these questions relating to the Green Light Law. Surprisingly, he

didn't have those answers, and so he asked that I direct them to you.

So I just wanted to first ask about the --

EX. DEP. COMMISSIONER GREEN: He didn't really do that, did he?

ASSEMBLYWOMAN MALLIOTAKIS: He did. Believe it or not. Which -- which --

EX. DEP. COMMISSIONER GREEN: No, no, I'm just kidding.

(Laughter.)

ASSEMBLYWOMAN MALLIOTAKIS: It does sound like it was a joke, right?

The MOU agreement between the local law enforcement and the state -- your agency, can you tell me how many local agencies have signed that -- what I would call a gag order?

EX. DEP. COMMISSIONER GREEN: I'm not familiar with any gag order. I'm familiar with a MOU that the Department of Motor Vehicles drafted. We were asked to basically be a middle person and help communicate with law enforcement as that process unfolded, and we did that.

And it's my understanding that of the 550 or more -- actually, I think in this case it wasn't just the 550 police departments, it was a broader -- it may have been upwards of 600. I believe all but maybe 25 or 26 have signed and returned those. And of those, it's my understanding that most if not all of those had either little or no usage of that function in the prior year.

ASSEMBLYWOMAN MALLIOTAKIS: Okay. And the reason why I call it a gag order is because it's preventing them to provide information with our federal partners.

So 25 or 26 local agencies are now restricted from accessing the DMV database?

EX. DEP. COMMISSIONER GREEN: I think, if I'm not mistaken, it asks them to comply with the law that was passed last year, correct?

ASSEMBLYWOMAN MALLIOTAKIS: Which is not to provide any information.

EX. DEP. COMMISSIONER GREEN: But it's not -- yeah, it's asking them if they will comply with the law in exchange for having

access to this information.

ASSEMBLYWOMAN MALLIOTAKIS: So the 25 or 26 that are -- did not sign, are they now prohibited from accessing the DMV database?

EX. DEP. COMMISSIONER GREEN: Yeah, my agency doesn't control the access. You know, DMV makes the decisions. I think the Office of Information Technology Services actually controls the access and has firsthand information.

But it's my understanding that if they didn't execute that, those agencies don't have access.

ASSEMBLYWOMAN MALLIOTAKIS: Do you think it puts perhaps these officers in harm's way that they are trying to perhaps obtain information on an individual at a stop and they can't?

EX. DEP. COMMISSIONER GREEN: I can't speculate as to why they chose not to. But the fact that most if not all of those agencies didn't access the information the prior year would cause me to wonder whether or not that's true or not.

You know, if they are not using the information, they chose not to sign the MOU, I think there's a reasonable interpretation that the answer would be no.

ASSEMBLYWOMAN MALLIOTAKIS: As it relates to the Department of Homeland Security no longer allowing New Yorkers to enroll in the Trusted Traveler programs like Global Entry, do you see a resolution in the near future?

I spoke to DHS over the weekend; they told me that they simply just need Customs and Border Protection to have access to the DMV database. And do you believe that's going to be resolved?

EX. DEP. COMMISSIONER GREEN: I can't speak to the DMV data because it's not ours, it's DMV's.

I can tell you with regard to DCJS data there's been no impact whatsoever on the federal government's ability to access DCJS data.

ASSEMBLYWOMAN MALLIOTAKIS: Okay. So maybe my question is not for either of you,

it's for the DMV commissioner then.

Well, then, last question. Do you find it important -- I mean, do you find it problematic that the state is now requiring DMV employees to not -- to give license holders a three-day heads up if a federal agency is looking for them? Do you find that to be perhaps problematic or unsafe?

EX. DEP. COMMISSIONER GREEN: Again, I think that would have to be directed to the Department of Motor Vehicles.

ASSEMBLYWOMAN MALLIOTAKIS: Well, I think it's a criminal justice question. I mean, I think it's a public safety question.

EX. DEP. COMMISSIONER GREEN: I'm not in a position to answer that.

ASSEMBLYWOMAN MALLIOTAKIS: Okay, that's great. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

I don't think we do have any more Senators. Any Assemblymembers?

CHAIRWOMAN WEINSTEIN: Yes.

Oh, there he is. We were joined sometime ago by Mr. Palmesano, and we go to

him now for questions.

ASSEMBLYMAN PALMESANO: I know we were talking about the MOU a little bit, and I just wanted to ask a question that I don't know if this is in your area or not. But is it true that other law enforcement agencies such as the FBI and the Secret Service, who conduct investigations within New York, could have access to the database revoked if they were to subsequently share information with immigration officials, particularly Customs and Border Patrol, working with the FBI on a counterterrorism task force in New York?

EX. DEP. COMMISSIONER GREEN: Again, I think that would have to be directed to the Department of Motor Vehicles with regard to DMV data.

What I can tell you is with regard to DCJS data, and the criminal history data we have, the federal access has not changed.

ASSEMBLYMAN PALMESANO: Okay, let me skip over to -- maybe this one will work.

According to reports that have been issued by the New York City Police Department

statistical database, COMPSTAT, they index that crimes have increased significantly since the beginning of the year as compared to the same time last year, using their stats tracking from week to week. Does DCJS have a similar database that tracks crime statistics in a similar fashion here in New York, or do we have to wait till next year to get a comprehensive report?

Because there's been a lot of talk about the criminal justice reform relative to the bail reform and that we're seeing a spike in crime. Do you have statistics that -- in realtime that can be shared to compare now, or do we have to wait a year for that report?

EX. DEP. COMMISSIONER GREEN: No, we have our own data collection systems. They're separate from the State Police.

With regard to reported crime, we rely on reports from each of the 550 law enforcement agencies. So they report to us. They do that on a monthly basis. And there's a one-month delay.

So, you know, we don't have any good

data from this year yet, but we will have data before the end of the year. We'll get it probably about March, we'll start to have a good picture of January. You know, we have other data sources -- arrest data, for example, for fingerprintable arrests come to us, and we keep data.

You know, but again, there's a lag. So, you know, I can't answer to the State Police data, you'd have to ask them. We will have data before the end of the year -- for example, partial-year data -- but we don't have anything now.

ASSEMBLYMAN PALMESANO: And will we be able to identify with that the increase in crime, or will you be able to tell if the individuals were people who -- individuals who were released without a hearing or without --

EX. DEP. COMMISSIONER GREEN: No, we don't get data from the Office of Court Administration with regard to release decisions across courts that would allow us to aggregate data like that.

You know, one example, town and village courts, we have not gotten any release data from those courts. So -- and I think they make up about 40-something percent of the arraignments. So the association you're asking for we couldn't do with the data that we have.

ASSEMBLYMAN PALMESANO: I know also as a result of criminal justice reforms, probation departments, pretrial agencies have now been tasked to monitor a much larger population of individuals, putting more of a burden on localities. Is there funding out there that's going to be provided to localities to help in this regard, to help probation departments, to help deal with these new responsibilities and these new costly mandates?

EX. DEP. COMMISSIONER GREEN: So it's interesting -- if I understand the question right, the premise is that it would have been cheaper to hold them in jail, but we're not going to hold them in jail. But if probation's asked to monitor them, that will

cost more money.

You know, and I struggle with that premise. I'm not sure that I agree with it. You know, but that aside, I would agree that probation played a critical role in the system before this, they continue to play a critical role in the system. As I indicated before, we provide almost $45 million in aid to probation departments in block grant every year. We provided about $32 million over the last couple of years to probation departments in the course of -- well, actually, I shouldn't say to probation departments. The bulk of it has gone to probation departments, with Raise the Age funding. We provide funding to all entities that do this pretrial-type work through our alternatives to incarceration network.

So we do robustly support, I would contend, the work that probation departments do.

You know, that said, can they make the same argument that the courts and police and everybody else in the system do? You know,

there's always work and --

ASSEMBLYMAN PALMESANO: And certainly with the criminal justice reform, our counties and our municipalities are being hit with higher costs, especially with the discovery laws that, you know, are having to put on additional stamps. I hear smaller counties, three or $400,000, that's the impact to the taxpayer for sure.

And then even when the correctional facilities, they might have less people in them, but if the jail's certified for 230 beds, you have to have the staff to certify that capacity, so you're not saving any costs on that because you still have to pay for the employees to be there to certify the cost of that to meet the need that's there with that particular facility.

EX. DEP. COMMISSIONER GREEN: It's an interesting argument, that it's cheaper to lock people up than it is to provide them pretrial services.

I don't -- I don't know that it's that simple. I don't think it's that simple on

either side, actually. I think it's more complicated. And I can tell you, within the funding streams that we have, we're working very hard with all of our partners, including probation departments, to do everything we can to help them effectively do their work.

ASSEMBLYMAN PALMESANO: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

So I don't have a question myself, but I do have a question on behalf of my colleague Assemblywoman Griffin, who represents the villages of Freeport, Rockville Centre, Lynbrook, Malverne and East Rockaway. And I know there's been a lot of discussion about the potential costs for implementing new discovery rules and that there's only $10 million -- I mean, I'm sorry, $2 million in the budget, though we know the source of that 2 million has hundreds of millions more that perhaps could be added.

So the Assemblywoman has heard from her villages that they estimate the costs of the discovery reforms to be $7 million, and

that they would be seeing cost savings from this reform. And the question is, how is the department planning to ascertain the actual costs of implementation and then to address them so that the costs don't get passed on to the localities?

And I know you just now had had a discussion about how you calculate, but is there a plan to try and calculate what the actual costs are so we can help out any localities if in fact there are additional costs beyond these estimates they're suggesting to us?

EX. DEP. COMMISSIONER GREEN: I certainly appreciate the question. You know, and the only thing I'm aware of in the Executive Budget that addresses this is the $2 million appropriation to work with prosecutors to help with the electronic moving of records.

CHAIRWOMAN WEINSTEIN: Thank you. Thank you so much, Deputy Commissioner.

So I believe that is all the questions from the Assembly and the Senate. Thank you

for being here, and look forward to continuing to work with you in some of these various --

EX. DEP. COMMISSIONER GREEN: Thank you. I appreciate the support from both houses for the work that we do. Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

So I know some people will be leaving, but next up will be the New York State Department of Corrections and Community Supervision, Acting Commissioner Anthony Annucci.

Just a moment while people leave, and then we'll be right with you.

So, Commissioner, feel free to begin.

ACTING COMMISSIONER ANNUCCI: Thank you. Good afternoon, Chairwoman Krueger, Chairwoman Weinstein, and other distinguished chairs and members of the Legislature. I am Anthony J. Annucci, acting commissioner for the Department of Corrections and Community Supervision. It is my honor to discuss some of the highlights of Governor Cuomo's Executive Budget plan.

Since the Governor took office, the incarcerated population has decreased by nearly 13,000, representing a 23 percent reduction, marking the lowest total since 1987. More significantly, the total population reduction for 2018 and 2019 combined was approximately 6,000. Even with these drastic reductions to incarceration, New York proudly remains the safest large state in the country.

With the drastic reduction in our prison population, the state can safely eliminate excess capacity, while supporting the department's hardworking men and women. Last year the department successfully closed Livingston and Lincoln Correctional Facilities, enabling the transfer of staff to vacancies at other facilities or offices, while transitioning the incarcerated population into vacant beds elsewhere. Based on the continued decline of the incarcerated population, we anticipate additional facility closures in the upcoming fiscal year.

In 2017, the Governor successfully

passed legislation to gradually raise the age of criminal responsibility from 16 to 18 years old. By all accounts, the implementation has been a resounding success. But the department currently houses a total of only 32 individuals under the age of 18. Hearkening back to his initial Raise the Age proposal, the Governor has advanced legislation to remove all individuals under the age of 18 from DOCCS and to divert future adolescent offenders to the Office of Children and Family Services.

This change will allow youth sentenced to state incarceration to receive consistent and comprehensive developmentally appropriate services at OCFS. It will also position DOCCS to focus on the rehabilitation of our adult population by repurposing the two AO facilities for the treatment of individuals with an identified substance abuse need or who have used illicit substances while in custody.

The incarcerated population is not immune to the opioid epidemic plaguing

society at large. To counter this epidemic, under Governor Cuomo's leadership we expanded access to treatment and currently provide MAT services in 11 facilities through a partnership with various community providers. This year the department will expand access to MAT by providing buprenorphine in those facilities, while seeking national certification and accreditation to operate a systemwide Opioid Treatment Program, creating the nation's first state corrections-operated OTP in the country.

The safety of our staff and the security of our facilities and offices remain a top priority for the Department. Last year we continued to leverage technology by expanding the installation of our fixed camera systems. We also successfully deployed tablet technology for the entire population at no cost. Incarcerated individuals now have access to free e-books and educational material and games, with an opportunity to purchase additional services such as movies and the ability to send secure

messages to friends and families, thus strengthening family ties and reunification.

In the coming months, we will pilot an electronic grievance module, which will be rolled out statewide by year's end. I am proud to say that these tablets have already provided a noticeable improvement for both staff and the incarcerated population.

Building upon the success of the historic NYCLU settlement agreement, last year the Governor, along with the leaders of both houses, jointly agreed to further overhaul segregated confinement through administrative action. DOCCS issued regulations for public comment that are currently under review. Simultaneously, by utilizing the $69 million in capital funding allocated last year, we have begun the necessary infrastructure upgrades to develop residential rehabilitation units so that individuals serving a confinement sanction will receive apartment out-of-cell programming.

When fully implemented, these reforms

will restrict the use of segregation for vulnerable populations, cap the amount of time someone can spend in segregation, and expand the number of specialized units available for individuals leaving segregated confinement. Through these ongoing reforms, I am confident we will successfully provide incarcerated individuals with the services and treatment they need, while continuing to keep staff, the population and visitors safe.

In conclusion, many challenges and expectations lie ahead for the department as it continues to develop transformative programs and initiatives while relying upon a professional, well-trained and dedicated workforce that performs its responsibilities in an exemplary manner, often under dangerous and difficult circumstances.

The Governor's budget positions the department to successfully execute its mission while addressing the dramatic decline in the population, to the benefit of the agency and all New Yorkers.

Thank you, and I will be happy to

answer any questions.

CHAIRWOMAN WEINSTEIN: So we go to Senator Sepúlveda.

SENATOR SEPÚLVEDA: Good afternoon, Commissioner.

ACTING COMMISSIONER ANNUCCI: Good afternoon, Senator.

SENATOR SEPÚLVEDA: Always good to see you. I'm going to be quick because I only have 10 minutes, I think.

So first of all, let's talk about segregated confinement. We know that DOCCS's attempt to implement the NYCLU agreement began last year. Can you discuss the impact these regulatory changes have had on state facilities?

ACTING COMMISSIONER ANNUCCI: Oh, yes.

So far I think it's had a very positive impact. And we are still very much in a state of ongoing implementation. For example, we converted 252 beds at Southport Correctional Facility. We are gradually filling them. That's a phased program where you earn more incentives as you go along. We

have the step-down program at Green Haven and Wende Correctional Facility. We have one at Mid-State. We have programs for earned incentives at Upstate and other facilities as well. And we've changed and implemented disciplinary guidelines so that certain infractions no longer can even result in placement in SHU, and that has increased the number going to Keeplock confinement.

But we've found that the tablets that we've implemented I think will have a very dramatic impact on conditions in SHU. Every individual serving an SHU sentence is provided with a free tablet, and they can access games and books and videos as well. And we are in the process right now of activating the telephone coverage feature so that they can be able to make calls from their SHU cell to family members, to friends, to whomever, in the same manner as if they were using the phone for the general population in the yards.

We just learned that we went from 700 calls, in Upstate, to about 7,000 calls.

So they really enjoy that feature. I think it will have a very positive impact.

And like anything else, when you roll out new initiatives, there are bumps along the way. It didn't work perfectly, and therefore we leaned on the vendor, and he agreed: None of the inmate families will be charged for any of those calls. So $4500 of revenue for that vendor will not be collected.

SENATOR SEPÚLVEDA: The rehabilitation has been constructed in all the facilities? Have you started that process? How far in the process are you?

ACTING COMMISSIONER ANNUCCI: We have let out the design and construction. That has all been ready for bid now. There was a lot of work with OGS. We are moving as expeditiously as we can. We hope to have them start to bid out for actual vendors -- contractors, rather -- to come on site and start the construction at the eight sites that we have, or --

SENATOR SEPÚLVEDA: The funding that's

been allocated through the budget, is that sufficient for you to implement everything that you need for the --

ACTING COMMISSIONER ANNUCCI: Yes. We have sufficient funding to do the necessary construction.

The key to all of this is not just to provide out-of-cell space for people to congregate, but to really provide meaningful opportunities to address the underlying behavior. That's classrooms where everybody can feel safe, and we then will structure the necessary program. Our goal is to not just give them meaningful out-of-cell time; we want to get to the root of what caused them to land in a special housing unit to begin with.

So we have a lot of plans for that going forward. We think we have sufficient capital to make this all happen. We're going to bring it on as expeditiously as we can.

SENATOR SEPÚLVEDA: Now, the -- you don't keep -- in your reports, you don't keep -- or you don't report Keeplock

statistics in your reports, only SHU statistics in your daily population reports.

How many people are in Keeplock at DOCCS facilities now?

ACTING COMMISSIONER ANNUCCI: I think we do have those statistics. I can't give you them off the top of my head.

But as you probably know from reading our proposed change in the regulations, we're going to dramatically change how Keeplock will be structured. We're going to provide five hours per day, Monday through Friday, of out-of-cell time for those individuals in Keeplock.

They will also, of course, still keep their own tablets, which are different from the SHU tablets, but they'll all be able to send secure messages. They'll have access to thousands of books. I accessed the itemization of them, and there's over 33,000 books that they can have access to on the tablet. And they also continue to get time to visit. So whatever the visiting schedule is of the facility they're in, they still

have outside-of-the-cell time for visitation.

But most importantly, going forward, what we're going to change are the conditions. And they will have five hours per day of out-of-cell time to continue to participate in programs as they're serving the penalty for whatever infraction was imposed.

SENATOR SEPÚLVEDA: Now, one of the things that I hear from some of the officers that are in the facilities is that somehow these changes are leading to an increase in attacks on correctional officers. Is that a statement that you agree with, or do you disagree with that?

ACTING COMMISSIONER ANNUCCI: No, I am concerned about any assaults on my officers. They have a tough job. They're very professional. They don't get nearly the credit they should get.

And the numbers are going the wrong way. And I think that is more the result of some of the individuals that we're getting lately, and even some of the old-timers in my

system will complain about that. I fight a constant battle against gang violence, and a lot of that is that kind of attitude that comes in.

I'm happy to say that even though the raw numbers of assault are going up, assault, as you know, for our system is different from assault in the Penal Law that requires physical injury, which is impairment of physical condition and pain. Any attack, including just bumping an officer with your shoulder, laying your hands on him, is an assault. It's not acceptable. It has to be responded to appropriately. But I'm happy to say 97 percent of the total assaults are for minor or no injuries.

But nevertheless, the officer that got punched in the face, suffered a broken eye or a little -- or a broken nose, possible concussion -- and I've called those officers afterwards. First of all, it's a shock to the system to suffer an unprovoked attack, and it has an effect, a long-lasting effect on stress.

The job is very stressful, they don't get thanked enough for the job they do. I'd like to see them get more credit for the work they do.

SENATOR SEPÚLVEDA: And I agree with you they don't get credit for having one of the most stressful jobs the state has.

Now, let's talk about TAP and the impact it has on people that are incarcerated. Obviously you know that the recidivism rate for individuals that get an education is minimal compared to the rest of the population. Do you support the expanded access to educational programs within correctional facilities and the expansion of TAP?

ACTING COMMISSIONER ANNUCCI: Well, Senator, I support all forms of education. There's no question in my mind that all programs of treatment of one form or another are successful when they're educational.

We have robust educational programs, we have wonderful relationships with all of the different outside colleges. We have

about 1100 or 1200 or even more individuals that registered for college. We're looking at new ways to deliver education through the tablets, et cetera --

SENATOR SEPÚLVEDA: So you are in favor of expanding, as much as possible, these educational programs, is that an accurate statement?

ACTING COMMISSIONER ANNUCCI: I'm generally supportive of any means of expanding access to higher education. I go to as many graduations as I can, and I make it a point to thank all of the many contributors. And as you may or may not know, there are very-well-known people in the country that are associated both with liberal causes and very conservative causes who are supporting college. And I make it a point to thank them for their support and being there during the graduations.

SENATOR SEPÚLVEDA: Thank you. We agree on that, and I appreciate the mindset you have about introducing that.

I have just a couple of questions.

I'm running out of time, but then I'll get more time later on, I believe, so.

Are you aware how many suicides occurred in DOCCS facilities last year?

ACTING COMMISSIONER ANNUCCI: Do I remember the number?

SENATOR SEPÚLVEDA: Do you know the number of how many suicides last year?

ACTING COMMISSIONER ANNUCCI: Yeah, there were 18, Senator. It's a very high number, and very troubling for me and my staff.

SENATOR SEPÚLVEDA: Now, did they incur SHU or Keeplock or any type of administrative segregation? Is that where most took place?

ACTING COMMISSIONER ANNUCCI: Some of them may have been in SHU, some of them may have been in Keeplock. It's hard to discern an absolute pattern.

I can tell you that I am working very closely with my partners in OMH. We have previously had an expert in this suicide prevention, Lindsay Hayes. He's come to our

system, he's walked through the facilities, he's given us advice.

We're going to get another expert in, we're going to jointly pay for that. He's going to give us forensic advice.

We have made accessible on the tablet a video for suicide prevention. As an incentive, if you download it, you will get a free stamp. We have videos that are shown to inmates when they come into reception when they transfer to new facilities. We have suicide screening forms.

And sometimes even months, several months before someone is due to release, they will take their own life. It is a complex problem in society at large as well as in our facilities. We continue to look to do many new things.

One very important initiative that we will do with OMH is a new peer supporter initiative. For those individuals that are at risk coming out of an observation cell, we're going to have carefully selected other incarcerated individuals to partner with them

to be responsible to watch them and give them support.

We have found that when we have done something similar as part of our hospice program, right, that you are there to provide comfort to somebody who's dying, it's been a positive experience and shared by many different individuals. So we hope that that would be another successful initiative.

We have a TTSU program where it's a step-down where instead of just going out to the general population from an observation cell, you're in a special program to be watched carefully as you transition back to general population.

CHAIRWOMAN KRUEGER: All right, Commissioner, I have to close this one down, sorry.

SENATOR SEPÚLVEDA: Thank you, sir. Hopefully I can come back and ask more questions. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

As chair you can, yes.

Assemblymember Weprin.

ASSEMBLYMAN WEPRIN: Thank you, Commissioner Annucci. It's been a pleasure to work with you these past three and a half years that I've been chair of Corrections. And I do appreciate your commitment to expanding many programs.

Just a quick follow-up while the subject started, to Senator Sepúlveda's question about education. And I know of your commitment, and I know we've had a number of forums and conferences at John Jay College where we were on a panel together, where you expressed your interest in expanding programs. And I know Senator Sepulveda and I both, you know, are committed to restoring the TAP that was cut by Governor Pataki for inmates to continue their education and get reimbursed.

I think at that forum you had indicated that you supported -- I have a bill for an educational release program, and I know you've attended a lot of college graduations, as you mentioned. Basically they're -- it's not appropriate, I assume,

for all incarcerated individuals, but certainly would be for many, similar to a work-release type of program where we can actually allow them to leave the correctional facility for a college-type atmosphere and then return at a later time.

I assume you're still in support of that? Because I have legislation on that.

ACTING COMMISSIONER ANNUCCI: Well, let me say that I do have to follow the standard protocol of not commenting on any item of pending legislation, Assemblyman. But I do appreciate the incentive behind that.

What I can tell you that is definitely going on is that we do bring in outside students who come into our facilities and share the classroom with the incarcerated individuals. There will be a professor from my alma mater, Fordham University, who's going to come into Bedford Hills with his students, they're going to take the same class together. And it opens up eyes to the outsiders on what is happening behind our

facilities, that these are individuals that made a mistake, but they're all together studying as students.

As you also know, we have an enormous initiative with the Manhattan district attorney's office where we bring in prosecutors to share a criminal justice classroom with incarcerated men and women at Edgecombe and at Queensboro, and then when they graduate they together present on a criminal justice project that they've worked together on. And it's really been eye-opening for both sides, and it's something that I think, under the guise of education, really furthers different perspectives in learning.

ASSEMBLYMAN WEPRIN: I appreciate that.

Turning to potential prison closures, the Executive Budget, as you know, proposes to expedite the prison closure process by giving the Governor authorization to close prisons this year after giving 90 days notice instead of the one year notice that's

currently in the law.

How many correctional facilities do you plan on closing?

ACTING COMMISSIONER ANNUCCI: How many do we have? There's 52 right now.

ASSEMBLYMAN WEPRIN: No, I know you have 52 now. How many are you planning on closing, if any, this year?

ACTING COMMISSIONER ANNUCCI: Assemblyman, we didn't specify a number. But in discussions with staff we've indicated roughly 2500 beds would be impacted.

ASSEMBLYMAN WEPRIN: So it could be as much as two or three prisons, two or three correctional facilities?

ACTING COMMISSIONER ANNUCCI: That would be within the realm of possibilities.

ASSEMBLYMAN WEPRIN: Okay. As of yesterday, February 11, 2020, the total bed capacities of New York State's special housing units or SHU units totaled 2831, and the current SHU population totaled 1626. As the prison population continues to decline, has there been any consideration of reducing

or closing any of the state's special housing units?

ACTING COMMISSIONER ANNUCCI: Well, last year, Assemblyman, as you may remember, we did take offline 1200 SHU beds. And going forward, what we're planning to do is actually set up the RRUs at a lot of these sites where the 200-bed SHUs were originally constructed many years ago. So they will serve the alternative purpose of SHU confinement.

ASSEMBLYMAN WEPRIN: Okay. Well, as you know about those -- and I know you don't want to commit to it today -- would you be able to notify us as to where you're planning on closing which facilities? You know, as --

ACTING COMMISSIONER ANNUCCI: I can't speak for the administration on that, Assemblyman. I can tell you that I've had to make a lot of difficult decisions as acting commissioner. The toughest decision, the toughest responsibility was to pick up the phone and call the superintendent and tell him or her that the decision has been made to

close their facility.

I go back to 1984 when there were 33,000 individuals in prison. And, you know, there was a lot of stress, we couldn't build prisons fast enough, the Assembly and Senate were in disagreement as to which way to go, alternatives. We had to fully double-bunk a number of facilities -- you know, 90 in a dorm -- we put 200 inmates in gyms, we had to expand work-release to like 6300.

And so it is such a dramatic turnaround. In a 20-year period we have reduced the population by 28,000 -- over a generation, 28,000 less, from a high of 72,773 in December of 1999.

But what's really more eye-opening is that more recently, and this is well after the Rockefeller drug laws took effect and right-sized the system in terms of the number of drug offenders in our system, that the decline keeps rapidly occurring. 2019, the single biggest decline in the history of this agency, 3,183.

ASSEMBLYMAN WEPRIN: I appreciate

that. I have about three and a half minutes for this round of questioning, so I just want to cover a couple of other areas.

The current budget authorizes the transfer of adolescent offenders from DOCCS to the Office of Children and Family Services. The Executive proposes to allow the Department of Corrections and Community Supervision to transfer them, and will allow the current facilities, Adirondack and Hudson, allocated for youth, to be repurposed into medium security facilities.

How many adolescent offenders are currently in DOCCS custody, and how many of these adolescent offenders are currently at Adirondack Correctional?

ACTING COMMISSIONER ANNUCCI: The total combined is 32. And I'm not sure, I'll have to get back to you of what the breakdown is, how many are in Hudson and how many are in Adirondack.

ASSEMBLYMAN WEPRIN: Okay. And in these closures, I know last year you testified about closing the two facilities

last year, which didn't result in the loss of any jobs. Do you anticipate the loss of any DOCCS jobs or correction officers jobs in these closures?

ACTING COMMISSIONER ANNUCCI: Assemblyman, our number-one priority when the decision is made to close a correctional facility, to work closely with the unions and the staff at the closed facility so that we can advise them of what their rights are and offer opportunity to a facility as close as possible.

Happy to say last year we didn't have a single layoff. And we have gotten very good at that, unfortunately, in terms of our ability to really explain to people what their rights are and get them to other openings as quickly as possible. Naturally we do some maneuvering in central office, holding certain vacancies, so that people will have a place to go when a facility is closed.

ASSEMBLYMAN WEPRIN: Okay. And as you know, we've discussed over the years and a

couple of years ago we had a little difference in opinion, and then, you know, the Governor jumped in and restored seven-day visitation in maximum securities.

I have a bill which I expect to pass -- it's on the floor, actually -- to pass shortly which would codify seven-day visitation in all facilities, minimum, medium and maximum. And we've been contacted by thousands and thousands of family members and there's a huge advocacy community regarding that.

And we all agree that we want to reduce recidivism, and all the studies have shown that if an incarcerated individual has close family ties, you know, has regular contact with the community they came from, they're less likely to be recidivists.

And it's a small budget item, it's a very small item in a multi-billion-dollar correction budget. I would hope you'd support that concept, that legislation, without committing to a specific bill, but to really clarify that there should be seven-day

visitation in all the facilities.

ACTING COMMISSIONER ANNUCCI: Well, I respect your efforts in this regard, Assemblyman. I can't comment on pending legislation. Obviously if we were asked to do an analysis of what the cost would be to restore that, it would be -- we would have to do that. And there's -- it's not a small dollar figure to reopen the visiting rooms in our medium-security facilities.

But that is why I pursue all the other alternatives to continue to enforce family ties. Our tablet program, to be able to send now secure messages at 33 cents, less than the cost of a stamp.

We continue to expand or attempt to expand our family reunion program -- it already exists -- by bringing in other facilities. That's a very important initiative, because people need to be able to come together as a family, to share a meal, and to really have some secluded time together. And that's a program that I strongly support and will continue to

support. So we're looking at ways to involve more individuals to participate in that.

ASSEMBLYMAN WEPRIN: Okay, I'm out of time, so I may come back. But I just want to say briefly these are all good programs, but I don't think they should -- they should supplement visitation but not be in substitute for in-person visitation.

CHAIRWOMAN KRUEGER: Thank you.

Senator Zellnor Myrie.

SENATOR MYRIE: All right, great, thank you, Madam Chair. And thank you, Commissioner.

I first want to appreciate the recognition that we can reduce the prison population and still keep the public safe. I think that is important for us to highlight, especially in light of the fact that we spend nearly $70,000 per incarcerated individual while only spending approximately $20,000 per public school student in this state.

I want to continue on this line of keeping the public safe as it relates to our correctional facilities, and I really want to

focus on the incarcerated that are older. I don't know if you are aware that the National Institute of Corrections and Bureau of Prisons considers incarcerated individuals of the age of 50 or more to be elderly. And they do so because being incarcerated accelerates the aging process.

And we're also aware that those who are between the ages of 50 and 64 have a 5 percent recidivism rate because all studies and all indications are that the older you are, the likelihood that you will commit a crime drops drastically.

So in light of the fact that we know that we can still protect public safety by reducing the prison population and those who are older pose less of a threat to public safety, can you speak to whether you support giving these people the opportunity to return to their communities?

ACTING COMMISSIONER ANNUCCI: Are you asking me to support a particular item of legislation?

(Laughter.)

SENATOR MYRIE: Without commenting on any specific bill.

ACTING COMMISSIONER ANNUCCI: I can't comment on any pending legislation.

I can tell you that, generally speaking, it's been known for many, many years that people typically age out of their criminogenic tendencies. The older they get, the more mature, less rambunctious, less impulsive.

I can tell you that my population continues to get older. That helps drive medical costs. As people live longer, they get more diseases, et cetera.

But I also can reiterate that we have developed special programs to deal with the elder population. For example, we have a senior living dorm. It's kind of like what you would get for a senior community, where the dorm is for 50 individuals and it's a therapeutic community and people of like mind and age can participate in activities that are beneficial to them.

I can also tell you that we do

continue to get some very old individuals sent to state prison for the first time. The oldest individual who was sent to state prison in 1919 -- I'm sorry, 2019, was 91 years of age. So that can happen. And it does happen that people in their 60s or 70s or whatever do commit a violent crime, what have you, and then they can end up coming to my system. So that means we have to have the wherewithal to provide for their safe and humane confinement.

We have a unit for the cognitively impaired at Fishkill Correctional Facility. We have our regional medical units that are capable of providing skilled nursing care for these individuals. Whatever someone's medical situation is, we have to provide for that.

SENATOR MYRIE: Okay, so I'm going to let some of my other colleagues continue this line of questioning because my time is short.

This past summer the Governor stated publicly that he would support the raising of the wages for the incarcerated who work in

correctional facilities. As you know very well, all of the license plates in the State of New York are produced by those who are incarcerated. We know that Corcraft, to the tune of $52 million a year, makes a pretty significant profit while many of those who work in these facilities, some make cents on the dollar.

And so would you be supportive of there being a wage increase, as the Governor has stated publicly?

ACTING COMMISSIONER ANNUCCI: If, at the end of the day, a wage increase is part of the final budget plan, I certainly am not going to be opposed to that.

I'm sensitive to inmate wages; they haven't been raised in quite some time. For that reason, I've taken a number of steps to try and hold harmless the population.

For example, many years ago you passed a statute that said we cannot make any commissions on the inmate phone-home program, because the families don't have a lot of money. So none of the operational overhead

comes back to this department.

When we initiated the tablet program -- they're free of charge, there's no cost to the individual to have a tablet free of charge. We also leaned on the vendor that if they have any rates elsewhere in the country for the services that they're providing -- because if you want additional services like downloading a movie or something like that, there's a cost. We put a provision in the contract that says if they go lower elsewhere, that we can renegotiate the rate that is in the contract to provide for the inmate population.

I have the authority to collect a dollar a week general incarceration fee. That was enacted in 1995. I don't do that. I have the authority to collect sales tax from sales in the commissary. We don't do that. So we try as much as we can to hold harmless for any additional costs.

We're also mindful that prices go up. So if that's part of the final budget that's enacted, I certainly am not going to object

in any way if it's possible to find a way to do that.

SENATOR MYRIE: Thank you.

CHAIRWOMAN KRUEGER: Thank you. I'm going to cut off that conversation, and back to the Assembly.

ASSEMBLYMAN LENTOL: Assemblymember Giglio.

ASSEMBLYMAN GIGLIO: Thank you, Mr. Lentol.

Hello, Commissioner. How are you guys doing?

I have a question. Back in 2018, you ran a program in your thing for posttraumatic stress disorder. And --

CHAIRWOMAN KRUEGER: Can you place your microphone a little closer?

ASSEMBLYMAN GIGLIO: Okay.

CHAIRWOMAN KRUEGER: Thank you.

ASSEMBLYMAN GIGLIO: And when you did that, you had an associate commissioner named Bryan Hilton that wrote a letter and said how good it was.

I'm asking, did you ever implement

that program further?

ACTING COMMISSIONER ANNUCCI: You know, Assemblyman, I don't know the answer off the top of my head, and I will find out for that.

But I can tell you this, that I have tasked Associate Commissioner Bryan Hilton with the responsibility of chairing a wellness committee, because we're concerned about our staff, the stress that they suffer. Some of them have tragedies in their lives, and it's a stressful job. So we are looking at a lot of practical things that we can do for the staff.

We do respond for incidents that are very stressful, such as the witnessing of the death of a co-employee. So we have what's called a system critical incident stress management team that he oversees and he sends to a facility to respond and give the appropriate counseling and sensitivity that is needed for those kinds of situations.

So --

ASSEMBLYMAN GIGLIO: In his letter he

claimed they were 8 to 10 percent higher than the general population to experience this disorder, and that the program that you ran he felt was very successful.

But again, this is a 2018 letter. At that point I was just -- I'm kind of surprised that we don't know anything further about it. You guys just said how stressful the job is, and I don't seem to hear a lot about what we're doing for the men and women that work for you, versus for the men and women that stay in your facilities. So that's why I asked that question, because I think it's important to know. And you've said it yourself, and it's been agreed upon how difficult the job is on a daily basis.

ACTING COMMISSIONER ANNUCCI: It is.

ASSEMBLYMAN GIGLIO: And how to get over all the things you see and do inside the halls is not always easy, and a lot of people take it home with them and cause them more problems at home. So that's why I was just hoping that -- this program supposedly worked so well, and your own associate commissioner

said that it did -- that you guys would have implemented it.

All right, I have another question, then. You guys are right now running dormitories at about 60 inmates to one CO. I understand that the old law was that there was only supposed to be 50 to one, and that you had a variance from the COC.

Is that still necessary, by the ability to do that, since you've had a drop in population that's so drastic?

ACTING COMMISSIONER ANNUCCI: Well, were we to dismantle those bunks, we would not be able to do facility closures, basically. The facility closures do contemplate approximately $51 million in savings this year, and annualized at 89.

I can tell you that having those bunks arranged the way they are, fully compliant with the State Commission of Corrections minimum standards. They have rules and regs, Title IX, Part 7600, you can have a maximum of 60 in a multiple occupancy unit. And we arranged the 10 in the back row to be doubled

so that the officer can have a full view of everybody there.

But basically bear in mind also it's not a long period of time that any individual will be assigned to a double bunk, because our system is constantly having intake and movement throughout. On an annual basis we released over 24,000 individuals, we accepted into our custody 21,000-plus, the difference was 3,183 last year. That's why our population went down.

So people are not inconvenienced for an extensive period of time.

ASSEMBLYMAN GIGLIO: I'm not talking about inconvenience, I'm talking about danger. The fact that you have one person per 60 inmates. And especially on the midnight shift, when you don't have a lot of responders, what happens when an incident happens? What's the protocol?

ACTING COMMISSIONER ANNUCCI: We do have ways for the officer to pull his pin, that people can respond.

Even then, it's rare that you're going

to have a full 60 occupying a dorm. The population has dropped so much, even this year -- you know, we're not even at the midpoint of February, we've dropped another nearly 400.

ASSEMBLYMAN GIGLIO: Again, if you're able to drop that much, you should be able to stop double-bunking.

Thank you, sir.

ASSEMBLYMAN LENTOL: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Akshar.

SENATOR AKSHAR: Commissioner, thank you very much for being here.

I just want to piggyback on something my colleague said about the elderly that are incarcerated.

I was pleased to hear you talk about how many good programs currently existing within the facility are for those who are elderly and incarcerated, because there are some people, Commissioner, who in my humble opinion should spend the rest of their waking days in prison. Like David Sweat. To think

a man like David Sweat, who killed a colleague of mine at the Broome County Sheriff's Office, could maybe one day get out simply because he was a certain age, really is -- it's for me, personally, kind of a disgusting thought.

So I'm pleased to hear that the department is doing such a good job of creating so many good programs for the elderly who find themselves incarcerated. And I say that with the utmost respect to my colleagues who are asking those questions in regards to that.

Commissioner, my question. Who makes the decisions on a daily basis when it comes to the department? Are you given that leeway to make decisions on a daily basis, or do you find yourself always having to run decisions up the flagpole?

ACTING COMMISSIONER ANNUCCI: The administration gives me all the responsibility I need to run the system. I am blessed to have a wonderful executive staff underneath me. I have a deputy

commissioner for every area, from health services to mental health services and administration and security and, you know, people underneath them for labor relations and facility infrastructure, security, investigations, OSI, MIS responsibilities, grievance -- I have a wonderful staff. I rely on them to really help carry out the broad policies I announce.

And I'm blessed to really have a wonderful staff, so -- and a wonderful administration to work with. This Governor, this administration has given us all of the resources that we need, in my judgment, to run a safe and sound system, but also one that's responsible to the taxpayer. Because as he reminds us, that's whom we all work for, the taxpayer.

SENATOR AKSHAR: Thank you, Commissioner.

In terms of assaults and injuries, you said the numbers are going in the wrong direction. What is the department currently doing to ensure that we're preventing those

types of assaults and injuries on members?

ACTING COMMISSIONER ANNUCCI: I can tell you that we continue, as best we can, to import new technologies for everybody's safety, such as cell sense detectors and the heartbeat detectors and new devices to find contraband hidden in crevices in cells, et cetera.

We provided the entire security staff with pepper spray, which has been a very good means of defusing a situation quickly from someone that may be a combatant, whether it's two individuals fighting or somebody attacking another officer.

There are many, many other things that we're doing. I'll have to provide a more detailed answer. But we continue to look at many things, because the safety of staff is of the utmost priority for everyone involved.

We run very good programs only because security staff are there to do their jobs.

SENATOR AKSHAR: Commissioner, what's the current capacity of double-bunk units and double-bunk cells?

ACTING COMMISSIONER ANNUCCI: Well, first of all, we don't have any more, other than a very small number of double cells in the male maximum security facilities where we had converted, in 13 of 14 facilities, about 5 percent for double cell use.

Brian Fischer started it, I continued to take down those double cells. They were very crowded. There's only a very small number still left, some at Downstate, some at Auburn, and maybe a couple at Clinton. I'll get you the total number. Very small number.

The ones that were constructed for the purpose of double cell, that's a different number. They're the cells that are 105 square feet, such as at Upstate and Five Points Correctional Facility. And the S blocks, but they're not general confinement. So those are for double-cell use, and I can get you the total there.

The double bunks, in terms of the physical double bunks, there are thousands. But there are none per se that require a variance from the State Commission of

Correction. In order for us to exceed what's the rated maximum facility capacity, we'd have to get a variance in order to exceed, in a particular dorm, the rated capacity, et cetera. And it's not the raw numbers, it's the ratio of sinks, showers and toilets and square footage. We'd have to get variances.

Years ago, when we were fully double-bunked, we had to do that. We don't do that anymore.

SENATOR AKSHAR: If you would be so kind just to provide us with that information --

ACTING COMMISSIONER ANNUCCI: Yes.

SENATOR AKSHAR: -- in terms of what facilities currently have double-bunk units and double cells --

ACTING COMMISSIONER ANNUCCI: Yes.

SENATOR AKSHAR: -- and what the current population of the entire inmate population is, that would be helpful.

ACTING COMMISSIONER ANNUCCI: Sure, we'll do this.

SENATOR AKSHAR: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

And since I didn't say it all day, any information that you're asked for, if you would also just get it to the chair, Helene Weinstein and myself, and we'll make sure everyone gets the answers.

ACTING COMMISSIONER ANNUCCI: Absolutely, Senator.

CHAIRWOMAN KRUEGER: Thank you.

And we are now going to Assemblymember --

ASSEMBLYMAN LENTOL: Palmesano.

CHAIRWOMAN KRUEGER: -- Palmesano. Thank you.

ASSEMBLYMAN PALMESANO: Thank you, Commissioner. I have a few questions. I want to do them at the end; because of my time, I want to make sure I get them in. There's a couple of things I just want to talk about first to kind of set the preface for it.

I know with the prison closures, the Governor's often talked about not looking at

it as an economic development or jobs program, but I really want to say that I think this fast-tracking of these 90-day prison closures really shows a lack of respect for those individuals who work in those facilities, those families, and those communities.

And I know the Governor's talked often about the number of prisons he's closed. I'm concerned about -- and a number of us are concerned -- about the dangerous powder-keg environment we're seeing with these closures, these closures and other policies are creating in our facilities. And I can get to some of that, because it's like we're jamming more dangerous individuals in these -- in fewer facilities.

And if you look at the assault stats -- I know we talked about it -- since 2014, inmate-on-staff assaults are up 38 percent, inmate-on-inmate assaults are up 47 percent. And at the same time this is happening, Commissioner, we're taking away more tools and resources for our corrections

officers to be safe, like restricting and eliminating the use of special housing units to separate dangerous inmates from other inmates. That doesn't help them become more safe, that creates a more dangerous environment.

The other issue that's created this atmosphere is the drug and contraband issue. We know the main ways they get in is through visitation and mail packages. So why not look at expanding the use of K9s at every facility?

And also the secure vendor program, which was started and canceled by this administration, it's my understanding that just three facilities today received suspicious packages and were in lockdown, 10 facilities in the past week. So obviously we have a problem that's not being addressed and needs to be addressed, and soon, because it's a dangerous environment.

I also want to get into the issue of double-bunking and double-celling. It's a dangerous and inhumane practice. No

individual should be cooped up in a double bunk or in a double cell. And by the numbers, we can look at the numbers, some of the numbers I have is there are 6,000 double bunks and double cells in the system.

And I believe, and I think a lot of us believe, before we can talk about closing that one facility, we should eliminate -- first eliminate the dangerous and inhumane practice of double-bunking and double-celling inmates.

So as for my questions, how high does the violence and contraband numbers need to go and increase before the Governor and DOCCS implements meaningful reforms to keep the staff safe, like putting K9s into every facility? Or instituting a secure vendor program to stop the drugs from getting in, or investing in technology, almost like TSA-type scanners to watch the drugs, and putting those types of things in there? That was one question.

And the other question is, again, when are we going to end the dangerous practice of

double-bunking and double-celling inmates? Let's get rid of those beds first. We should be eliminating that first before we close down any facility.

ACTING COMMISSIONER ANNUCCI: Assemblyman, I respect your position on those two issues.

With respect to the first issue, we continue to look at all technology that's out there. This is a problem that many other systems are experiencing. I happen to belong to an association that consists of every corrections commissioner in the country, correctional leadership association, and they are presently engaged in a study of what other systems are doing, getting best practices for screening mail.

That is something I'm going to look at. It's a step that if we have to take it, we might have to do that to keep our staff safe.

We also have I believe 14 different K9 teams right now, seven with our OSI, seven with facility operations, and they've been

very effective. They're not a hundred percent, because a K9 will not detect drugs secreted within an incoming package, such as a can of vegetables, if it's sealed correctly. Nor will they necessarily indicate the type of drug that activated them to indicate drugs are present. It could be medical marijuana, et cetera.

So there's no one thing that's an absolute saving solution. But I am -- I've instructed my staff, let's go back to the drawing board, let's revisit the secure vendor package protocols, let's sit down with the advocates, let's talk to our superintendents where it was in effect briefly, and if we can satisfactorily address all of those issues, we may very well be able to implement that.

ASSEMBLYMAN PALMESANO: And my last question, with my time left, it really goes back to this prison closure issue. Is in fact this fast-tracking these 90 days, does it now show, from your perspective, a lack of respect and dignity to the brave men and

women who are working in these facilities, putting their lives on the line in a dangerous environment? Why do we have to do it in 90 days? At least give them the one year. That still disrupts their life; at least it gives them a little more time for planning.

I really believe this 90-day push that the Governor and the administration is making adds insult to injury, it just pours salt on the wound. It's wrong --

ACTING COMMISSIONER ANNUCCI: I respect your position, Assemblymember, but I've been around in the system for every single facility closure with one exception. And I've been involved with closures prior to the enactment of 79-A and B and closures afterwards, some that we closed notwithstanding that and others that we closed with the one-year notice.

The challenge with following the one-year notice is that it actually does a disservice to the concerned staff, because it really creates a campaign that people embark

on thinking that they can stop the closure. And so staff are caught in the middle, not knowing if the facility will actually close or not, and that has happened on prior occasions.

When you do it this way, it is a tough pill to swallow, there's no question about it. But like we did last year, there was not a single layoff. So when the decision is made, we would move very quickly to be able to transfer, give as many options as we can to the concerned staff.

I believe you may have been at some retired superintendents parties. And when you are, and you go through the list of positions, you'll see that someone may start as a correction officer in one facility and transfer in their career to three or four different others, then promote to sergeant in another one, then promote to lieutenant after that, then captain, then deputy superintendent -- they may have worked in eight or ten different facilities.

So our workforce is a transient one

that, when they promote, they go to different facilities or they move closer to home or for different opportunities. So I am not for one minute underplaying the impact on the concerned individuals. People are traumatized when you move their office from the third floor to the fourth floor; that's the way of the world.

But we are very sensitive to that. They are our top priority. And if this decision is made, if this budget is enacted as is, it will be the same procedure that you followed in 2011 when you gave the same authority to the Governor, except it was 60 days. And thereafter, seven facilities were closed. It was a tough pill to swallow. But I don't remember anyone criticizing the discretion that the Governor exercised at that time.

CHAIRWOMAN KRUEGER: Thank you. We're going to cut off that discussion just because of timing.

Next up is Senator Brad Hoylman.

SENATOR HOYLMAN: Thank you.

Nice to see you, Acting Commissioner. You're still "acting," right, you're "acting commissioner"?

ACTING COMMISSIONER ANNUCCI: Yes.

SENATOR HOYLMAN: Why are you still "acting"?

ACTING COMMISSIONER ANNUCCI: I'm happy to be part of this administration in any capacity, Senator.

SENATOR HOYLMAN: Okay, thank you.

(Laughter.)

SENATOR HOYLMAN: That's the right answer, I believe.

I wanted to ask you, just to follow up on my colleague's questions about older incarcerated individuals, what is the age that you determine, classify someone as an older incarcerated individual?

In 2018 when you testified, you said that was age 55. Is that still the number, is that still your operational number?

ACTING COMMISSIONER ANNUCCI: That's an informal classification that we use kind of for research purposes, and it's either 50

or it's 55. Because as --

SENATOR HOYLMAN: It could be as low as 50.

ACTING COMMISSIONER ANNUCCI: Okay. But as we've said on prior occasions, generally individuals who come to prison already have deficits in their basic health situation, and the stress of being in prison is said to age people a little {indistinct}, so someone 65 may be the equivalent of -- 55 on the inside may be the equivalent of 65 on the outside.

But it's not a formal classification, it's kind of used for research purposes or when we issue reports.

SENATOR HOYLMAN: And how many of these older incarcerated individuals are in the system now?

ACTING COMMISSIONER ANNUCCI: I don't have that number right with me, but it's one I can easily get.

And the age 55 is what we use as the baseline to enter into our senior dorm at Ulster, and we will look to replicate that at

other places depending upon the success of that.

SENATOR HOYLMAN: And would you agree there's a greater cost associated with these individuals?

ACTING COMMISSIONER ANNUCCI: Healthcare costs clearly go up with the older population -- you know, hypertension, diabetes, the population with AIDS and HIV. We didn't have a single AIDS death last year, but they are expensive to continue to treat with protease inhibitors and other medications.

SENATOR HOYLMAN: I'd be really interested to know -- I would not guess you have it at your fingertips -- but what that additional cost is to the system for the older incarcerated individual. I think it's something that New Yorkers and my colleagues would be very keen to understand, like what are those additional costs, as we look at the issue of elder parole.

Of course I think there are great benefits to the community, to families, to

individuals. But there's also, I think, a benefit to the system, and a cost savings. So I'd love if you could follow up with me on understanding what that number is.

ACTING COMMISSIONER ANNUCCI: Yeah, I don't know if it will be possible. I'll explore it. But the way our healthcare budget is crafted, it's hard to piecemeal it out and say this is exactly what we spend for the, quote, older population.

SENATOR HOYLMAN: Thank you.

In 2018 I sponsored a bill that was signed into law requiring your agency to complete a study of the surveillance, prevention, treatment and prevalence of hepatitis C among the inmate population in your facilities. The report required by the bill was due to the Governor and Legislature by December 21, 2019. Do you know if the report's been completed?

ACTING COMMISSIONER ANNUCCI: I can't remember. Yeah, no, you're right, I think we did complete that report, I did review it recently.

SENATOR HOYLMAN: Oh, fantastic. So we'll be getting that soon?

ACTING COMMISSIONER ANNUCCI: I believe so, yes.

SENATOR HOYLMAN: Okay.

Do you have any sense of what the findings are in the report that you could share with us today?

ACTING COMMISSIONER ANNUCCI: I remember reading the numbers, I remember reading about the treatment, I remember reading that we do screening up front right now. The overall cost of the medications is coming down slightly; it was very expensive for a while. I just have general recollections.

But I know the report went into a lot greater detail. We have a wonderful partnership with the Department of Health on initiatives like that and care and treatment of people with HIV. And so I think it will -- if it hasn't been sent out, it will be sent out soon.

SENATOR HOYLMAN: Yeah. I mean, I

know you know this, but unlike HIV, hep C is essentially curable. And to get an individual on treatment before they are released is important to reduce rates of transmission. So I'm interested to see what those results are.

ACTING COMMISSIONER ANNUCCI: And I do know on the hepatitis C, we worked hard and we have a continuity program so that if individuals start the course of treatment with us but can't complete it, we have liaisons with health homes and others to find continuing treatment providers in the community so that they complete the course. It's at every stage of hepatitis C that we'll commence the treatment, it doesn't have to be in Stage 3 or 4 like it used to be. And, you know, it is a disease that is prevalent. I should remember the percentage off the top of my head, what it is, but I can't at this time. But we'll get it for you.

SENATOR HOYLMAN: Thank you. I look forward to seeing those results. Thanks.

ACTING COMMISSIONER ANNUCCI: Sure.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

ASSEMBLYMAN LENTOL: Assemblymember Byrnes.

ASSEMBLYWOMAN BYRNES: Thank you. Thank you, Mr. -- Ms. Chair.

All right, I appreciate this opportunity. And Mr. Commissioner, acting Commissioner, in the beginning you talked about the successful closure of two correctional facilities last year -- and part of this discussion we've had previously.

ACTING COMMISSIONER ANNUCCI: Yes.

ASSEMBLYWOMAN BYRNES: But it really wasn't a successful closure because ultimately doing it 90 days versus a year had a devastating effect on the community.

As you know, I represent both the area with Groveland Correctional Facility as well as Livingston Correctional Facility. At the time, in May, Livingston Correctional Facility had over 800 inmates and over 300 employees, and it was virtually at capacity. It was closed very soon, within 90

days. This had a tremendous impact on the people -- your employees, their families, their children. How in 90 days do you get out of a lease, do you get out of a mortgage? Does your spouse change jobs? Do your children leave school? These stresses, these uncertainties, these factors are scary to people who are losing their job.

So for you to minimize that it's more important to do it in 90 days than a year because, heaven forbid, we allow people to mobilize and step up and fight for their jobs -- that's just an awful thing. These are the people that are affected.

And the inmate families too. There's a lot of inmates who have families that have come to our communities so that they can be closer to the people they love and visit them. And now, all of a sudden, where are they when, within days, their loved ones are gone and they're left behind to have to move to another community?

But it's not just the people, it's also the communities involved. While many

people -- not all, but while many were able, through trickle-down, to move to other jobs, over 300 jobs were lost to the community. Those are people who went to the stores, who went to the shops, who went to the pizza parlor. So as a result, there are people within these communities who lost their jobs because the population base wasn't there to support the business anymore.

So there's a residual effect too, and it's made worse by the 90 days versus a year. And ultimately for what? I toured Livingston Correctional Facility one month before you announced it was going to close. I witnessed the double bunking. Now I find out today that the way to get rid of double bunking apparently is to make it, rather than 50 to 1, 60 to 1. That's not a big improvement. It's still security and scary concerns, not only for the people who work there but for the people who have no choice but to reside there as inmates -- because they want to go home too, safe and sound.

This put everybody at danger. But

that facility was one of the newest in the state. You put -- you talk about taxpayer money. Five-point-five million dollars was put into a new roof that wasn't even finished when you emptied it. It was finished after you emptied it. And now we've got this beautiful building with a brand-new shiny roof, empty. And it's been sitting empty since September of last year.

Eight-point-four million was put into new water, a new water line going to the facility. And that water line, which was never actually connected because even though it was -- 8.4 million was spent, it was still $300,000 short of a transition area in order to actually hook it up. So that money gone, the pipeline to nowhere.

But what's worse than that money is gone is you left Livingston County holding the water hose on it, because they had a substantial investment into that line. They needed the revenue from Livingston Correctional Facility in order to support the infrastructure that was put in, and you

pulled the plug on 90 days notice and left them literally holding -- I would say holding the bag, but you left them holding the water hose. And that is just demonstrably wrong.

And DOCCS says to me it was the condition of the buildings. We know it wasn't the condition of the buildings. You have a right to close whatever facility you want for whatever reasons. But when you do that, remember what you do to the communities that you've left devastated in your wake. And when you do it in 90 days versus a year, that again makes it all the worse.

I don't want anyone in this room to have to go through -- I don't want any more prisons to close, but I certainly don't want them to close the way you did it. And it --

CHAIRWOMAN KRUEGER: Assemblywoman, I'm going to need to cut you off, I'm sorry. You didn't really ask a question in your five minutes, you presented an argument, so -- thank you.

Senator Seward.

SENATOR SEWARD: Well, I just want to say, Assemblywoman, that I agree with everything you said in your five minutes in terms of the impact of a year versus 90 days on people.

Commissioner, good to see you. And I just wanted to get back to the discussion of safety in our facilities. You outlined some of the things that have been done, you know, with new technology, et cetera. I know in talking with some of the correction officers in my district, you know, packages have been identified as a common way for contraband to enter the facilities. And what's the department done to address this specific issue of packages entering the facilities?

ACTING COMMISSIONER ANNUCCI: We do have x-ray machines and staff to examine the contents of the packages to determine if they potentially might contain contraband. Some of them are very skillful at observing that a can that should weigh a lot less or a lot more might be holding something other than vegetables or whatever it's supposed to

contain.

As I mentioned earlier, we're going to take a serious look at trying to resurrect the secure vendor package program. If we do, that will eliminate a major source of drugs coming into the facility. And good training, good professionalism by the staff, and the K9s as well help us with identifying potential contraband.

We have a pilot program at two facilities, it's a device called the VeroVision Panel to screen mail. We're just going to see how that pilot works out. That might be worth expanding if it proves worthwhile to identify drugs within the mail.

So the potential expansion of technology is something we're always looking at to increase better outcomes.

SENATOR SEWARD: You mentioned the K9s, and I know -- I don't want to steal her thunder, but a colleague of mine, Senator Ritchie, has a bill to require drug-sniffing dogs at every correctional facility. How many facilities have these -- currently these

K9 units?

ACTING COMMISSIONER ANNUCCI: We circulate teams, Senator. There's about I think a total of 14 teams that they go from different facilities and --

SENATOR SEWARD: Oh, they move from facility to facility?

ACTING COMMISSIONER ANNUCCI: Yes.

SENATOR SEWARD: I see.

Getting back to the closure and the consolidation of facilities, the remaining facilities become fuller. And is there any concern on your part that they will become less safe with being crowded?

ACTING COMMISSIONER ANNUCCI: No, crowding is not an issue in this system anymore. I lived through crowding when we were building and expanding and fully double-bunking and double-celling. I do not see, from any of the indicators we look at, from the usual incident reports and the facility operation reports that we get, that there is any nexus between the living arrangements and violence.

Violence is on the rise in certain respects. I think that's driven by certain elements that are coming into the system now. To try and counter that, in addition to the security things we have done, I try to promote all of the pro-social things, all of the volunteer programs that come in -- things like Puppies Behind Bars, things like rehabilitation through the arts, Carnegie Hall coming in. And the individuals that get involved in that, they are very different from the other individuals that are buying into still the ganglike lifestyle or whatever else they're doing.

So it's a whole multifaceted approach. But to argue that by closing, right, and we're going to somehow make facilities crowded as we're continuing to go down -- 6,000 we lost, combined, '18 and '19. Almost 400 this year. All of my research people, they do not see on the horizon when we're going to start to bottom out. We don't even see that point yet.

SENATOR SEWARD: Just one final point.

I happen to be on the board of the Glimmerglass Opera Company in Cooperstown, and once a year a number of the opera singers go out to Attica --

ACTING COMMISSIONER ANNUCCI: Yes.

SENATOR SEWARD: -- to spend the day and give a presentation, and some of the inmates actually participate. As I understand it and I read about it, it's a good diversion for everyone, for sure. You've got some opera fans among your inmates.

ACTING COMMISSIONER ANNUCCI: We actually had two of the original actors and actresses from the movie "It's a Wonderful Life" come to Attica. And the movie was playing for the population, and then they met with the population to talk about the significance of that movie, which as you know is basically everybody's life matters, every life touches so many others. And so it was really gratifying to have the original actress who played Zuzu and the actor who played Tommy, there in person at Attica.

SENATOR SEWARD: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

ASSEMBLYMAN LENTOL: Assemblymember De La Rosa.

ASSEMBLYWOMAN DE LA ROSA: Good afternoon, Commissioner.

Following the line of thought of Senator Myrie and Senator Hoylman on older people in prison, what is the number of people that are given medical parole in New York State? Given the high cost, as you elaborated.

ACTING COMMISSIONER ANNUCCI: I don't have the numbers right now. I know that we put together a whole initiative to try and expedite the process, because many times you're working against time if you're dealing with the terminal population.

It's a collaborative effort with Chairwoman Stafford, who's a wonderful colleague, and her staff. They are part of the department, but they are independent. I've had my chief medical officer work with

his staff.

One of the things I said -- because you have to be able to predict when someone is terminal and reaches the point where they're potentially not a threat, I said: Start the process a little bit earlier, because there's always a time delay built in by when we have to send the notice to the district attorney, defense lawyer and the judge and get their response back. And then it has to get scheduled in front of the Parole Board.

So we start the process earlier, with the possibility that someone might actually meet the criteria, so that the board can judge that they should be released.

I have those numbers, I don't have them with me right now, how many have been medically paroled.

ASSEMBLYWOMAN DE LA ROSA: And does the department keep track of any people who die in custody who are awaiting parole?

ACTING COMMISSIONER ANNUCCI: Yes.

ASSEMBLYWOMAN DE LA ROSA: Do you have

them, who are --

ACTING COMMISSIONER ANNUCCI: I'm sorry, died before medical parole?

ASSEMBLYWOMAN DE LA ROSA: Who are awaiting parole, yeah.

ACTING COMMISSIONER ANNUCCI: All deaths are accounted for. We have to keep track of every one. Every time there is a death, it requires an autopsy by the coroner in the county where the correctional facility is. And our research unit keeps track of that. Some natural causes, some sudden illness, whatever, all different reasons why people lose their life while still serving their sentence.

ASSEMBLYWOMAN DE LA ROSA: And if they're older and they're released, do you track if they pass away after release?

ACTING COMMISSIONER ANNUCCI: Oh, no, we don't track when they pass away in the community. Unless -- well, if they're still being supervised, if they're released on parole, then we supervise them. But there's no formal accounting method that says this is

when the person died.

Another challenge with medical parole is not just the process itself, but it's finding suitable placement for them. There's a lot of individuals that require skilled nursing care, which is why we have a big initiative to get everybody enrolled into Medicaid before they're released, because many nursing homes will not accept someone unless they see Medicaid.

Even so, if you happen to be a sex offender on Medicaid, most nursing homes are very reluctant to take anybody with that kind of criminal background. So it's a very uphill battle trying to find placements for them.

ASSEMBLYWOMAN DE LA ROSA: And diverting from elders to children, in New York State there's about 100,000 children with incarcerated parents. And from 1973 to 2011, there was a visiting bus service that was provided for free for those families, and that was cut to save $1.5 million in the budget.

Would you be willing to voluntarily bring that program back?

ACTING COMMISSIONER ANNUCCI: We support everything that's reinforcing family bonds. If the Assembly finds a way, or the Senate, the Legislature, to pay for that -- because it is a cost -- we'll start it up again.

In the meanwhile, I do many other things, as I've already mentioned, with the tablets, with the cheapest phone rates. There's televisiting, which I know is not a substitute for regular visiting.

And we even have an initiative that I'm very proud of, it's called Celebrate Your Children, where the parents or the caregiver will bring the child to the facility, solely to bond with the parent -- we've done it only at the male facilities now. We have a program off site to take care of the caregivers, to feed them.

But it's designed -- we make the environment almost like a Disney World experience. We have photographs, we have

people with pets or dressed in clown outfits, magic acts. We want to create a special memory between the father and child. We've done that very successfully at a number of facilities, and we have three more planned for 2020.

ASSEMBLYWOMAN DE LA ROSA: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Borrello.

SENATOR BORRELLO: Thank you, Madam Chair. Thank you, Commissioner.

First of all, as someone who's now crossed into his 50s, a little disturbing to hear that 55 is now old. So I don't know how you feel about that, but --

ACTING COMMISSIONER ANNUCCI: I'm pretty old myself, and getting older by the minute.

(Laughter.)

SENATOR BORRELLO: I don't even think I can get free coffee at McDonald's at that age, but anyway.

So my question is, you know, we have a lot of rotting, decrepit buildings in upstate

New York, and most of them are government buildings -- old schools, where there is no plan in place once they close the schools.

So my question to you is, number one, what's the cost to close a prison? And what's the plan? What's going to happen with these facilities once you close them, and how are they going to impact the community? Because I think the last thing we want is another abandoned building courtesy of New York State government.

ACTING COMMISSIONER ANNUCCI: Well, we work with our partners in state government, ESD and OGS. We have had at least seven -- if I'm remembering correctly -- that have been repurposed, been sold, like Fulton, in New York City, is being overseen by The Osborne Association. Arthur Kill, I think, is by a movie company. Mid-Orange is being used by a public/private partnership.

Some others are a little more difficult, we continue to have to maintain them so that if there is an ability for a reuse or a resale, they're in ready

condition.

There's no question there is some cost with maintaining these facilities. But there would be much greater cost to have not closed any correctional facilities.

SENATOR BORRELLO: When you go to close a facility, what does it cost? I mean, this is -- you know, anytime you close down something, it costs a lot of money to -- you know, I'm assuming it costs money to do it properly and secure it and everything else. You know, what's it cost to close a prison?

ACTING COMMISSIONER ANNUCCI: It dependents on the facility. We have some staff that will stay there that will monitor, that will keep intruders out, to make sure the water and everything is still running. But there's no specific cost that I can give you for any particular correctional facility.

SENATOR BORRELLO: So do you close it down and no heat, no water? Or is there still -- you said there's still people in there, there's still heat and water or there's still a cost --

ACTING COMMISSIONER ANNUCCI: We don't keep the boilers and the heat going, obviously, if they're not there. We try to decommission them so that they can be started up if there is a reuse. Just like you would close a house that -- you know, you're going to Florida, and you close your winter home. Or you close your Florida home. There's certain things you do so that it can be started up again.

SENATOR BORRELLO: So in Livingston County with those closures, what's the plan there with those facilities? What's going to happen with those facilities that, you know, Assemblywoman Byrnes was just discussing? What's the plan for those facilities?

ACTING COMMISSIONER ANNUCCI: We will continue to work with ESD and OGS to see if there is another reuse for that structure or for the property.

SENATOR BORRELLO: And with the planned closures, how many of your employees will be impacted with the planned closures that are coming up this year that are

proposed?

ACTING COMMISSIONER ANNUCCI: It depends on which facilities are selected.

SENATOR BORRELLO: So you don't have at least the number of how many would be impacted?

ACTING COMMISSIONER ANNUCCI: It's -- the -- we're looking at about a reduction of 2500 beds, and that would roughly be about 1200 staff impacted.

SENATOR BORRELLO: Twelve hundred. And are those people going to be transferred? What's the plan there?

ACTING COMMISSIONER ANNUCCI: We are going to work with them very carefully to try and provide them with employment opportunities elsewhere. Many of them will take advantage of the opportunities; some may choose to retire, some may choose to work at other state agencies or private employment. But they are my number-one concern when the closure decision is made.

SENATOR BORRELLO: And also just while we still have a minute here, you know, with

the so-called bail reforms, we've been told that there were going to be savings at the local level, the county level. I just have come off being county executive in Chautauqua County, and in my 2020 budget we had a lot of strains on the budget due to the unpredictable nature of this.

But they talked about savings, but the reality is in Chautauqua County and most other upstate counties, they're already at minimum staffing levels. So is there any plan for you to change that, the minimum staffing levels set by the state for these -- for county jails?

ACTING COMMISSIONER ANNUCCI: I can't speak to staffing levels for county or local jails --

SENATOR BORRELLO: Well, there's a state minimum, there's a state minimum set --

ACTING COMMISSIONER ANNUCCI: The State Commission of Corrections establishes standards for local jails. Not -- not my job.

SENATOR BORRELLO: All right. Thank

you.

ACTING COMMISSIONER ANNUCCI: Sure.

CHAIRWOMAN KRUEGER: Thank you.

Next, the Assembly.

ASSEMBLYMAN LENTOL: Assemblymember Rosenthal.

ASSEMBLYWOMAN ROSENTHAL: Thank you.

Hi, Commissioner.

ACTING COMMISSIONER ANNUCCI: Hi, Assemblywoman.

ASSEMBLYWOMAN ROSENTHAL: So I have questions about medication-assisted treatment in prisons. So in the Executive proposed budget there's $3,750,000. The Assembly put in an extra million last year, which the Governor did not keep in his proposed budget.

Ulster County was supposed to come online mid-January but appears to be receiving grants from NIH and Columbia. So in terms of the 3.75 plus the 1, was this money spent in either of the last two years?

ACTING COMMISSIONER ANNUCCI: Assemblywoman, I think what you're referring to is money from OASAS for county facilities,

not for the State Department of Corrections.

ASSEMBLYWOMAN ROSENTHAL: Okay. Okay. Oh. Okay.

Well, so tell me, how many prisons are there?

ACTING COMMISSIONER ANNUCCI: How many prisons we have? It's 52.

ASSEMBLYWOMAN ROSENTHAL: Okay. And how many of those 52 have medication-assisted treatment programs?

ACTING COMMISSIONER ANNUCCI: We presently have 11 that offer some form of MAT.

Let me back you up and just say that we have substance abuse treatment at all 52 of our facilities. We have a partnership with OASAS that goes back many, many years. In fact, it was the Legislature that passed, as part of the Rockefeller drug laws, I think in 2009, a requirement that they monitor our programs and establish guidelines for all of our substance abuse treatment programs.

ASSEMBLYWOMAN ROSENTHAL: Right. Right.

ACTING COMMISSIONER ANNUCCI: They regularly come to our facilities, they visit the facilities that are going to accredited. There's about 30 a year they do that. And so all of our substance abuse treatment, which consists of the CASAC program, which consists of ASAT, which consists --

ASSEMBLYWOMAN ROSENTHAL: What about medication?

ACTING COMMISSIONER ANNUCCI: For the Medicaid assisted treatment programs, first we started with Naloxone, making that available.

ASSEMBLYWOMAN ROSENTHAL: That just -- you know, overdose.

ACTING COMMISSIONER ANNUCCI: Right, which is a prevention.

ASSEMBLYWOMAN ROSENTHAL: Yes.

ACTING COMMISSIONER ANNUCCI: Then we move to Vivitrol --

ASSEMBLYWOMAN ROSENTHAL: Vivitrol was under a program with the --

ACTING COMMISSIONER ANNUCCI: With Edgecombe, and it's been expanded in PDPs --

ASSEMBLYWOMAN ROSENTHAL: But it was the manufacturer-provided Vivitrol.

ACTING COMMISSIONER ANNUCCI: Right. Alkermes is the manufacturer of that. Next the --

ASSEMBLYWOMAN ROSENTHAL: Wait, is that a pilot? Was that a pilot, or was that reduced-price? How did that work?

ACTING COMMISSIONER ANNUCCI: It's a pilot that's been expanded to several facilities. From Edgecombe to the PDP programs, which are Willard, which are Orleans and Hale Creek. And if they -- we explain to them, in conjunction with outside providers, that they can accept the first shot and if they do, willingly, then when they get released back into the community, we hook them up for the second shot. There's counseling along the way. And it is one means, one important means of preventing potential overdoses.

We have methadone --

ASSEMBLYWOMAN ROSENTHAL: What about buprenorphine? Buprenorphine, where is that

available?

ACTING COMMISSIONER ANNUCCI: Okay, so buprenorphine right now is provided at Bedford Hills together with methadone. And what we've done is the plan is to now have buprenorphine at those facilities that now have methadone.

So we expanded methadone from Queensboro to Downstate and then Elmira and then the three facilities, which are Cayuga, Wallkill, Marcy. In order for us to be able to provide the buprenorphine, we have -- our medical doctors have to have what's called the X waiver, which we're doing all the training for. It's almost complete. And we're pretty close to implementing it at those facilities.

ASSEMBLYWOMAN ROSENTHAL: Okay. So you have 52, and only -- how many will have buprenorphine?

ACTING COMMISSIONER ANNUCCI: Seven.

ASSEMBLYWOMAN ROSENTHAL: Seven.

So in -- the Governor has a plan to, you know, expand to all the prisons, but

in-house, OTPs. But my question is, what about partnering with community organizations until that time that DOCCS can be in charge of administering the medication?

ACTING COMMISSIONER ANNUCCI: We already partner with outside providers. That's how we're able to do --

ASSEMBLYWOMAN ROSENTHAL: But for every -- 52, every one of the 52.

ACTING COMMISSIONER ANNUCCI: Let me back you up, Assemblywoman. There's no question that MAT is the appropriate response to deal with this opioid epidemic. A big proportion of our population has a substance abuse need.

ASSEMBLYWOMAN ROSENTHAL: Yes.

ACTING COMMISSIONER ANNUCCI: Not everyone has an opioid need.

We don't provide certain health services at every facility. For example, if you need dialysis, we don't have dialysis at every facility.

ASSEMBLYWOMAN ROSENTHAL: And what if you need buprenorphine at a particular

facility?

ACTING COMMISSIONER ANNUCCI: We are moving aggressively with our partners, we are establishing it at these facilities, and we can build capacity after that. And if we're able to get --

ASSEMBLYWOMAN ROSENTHAL: I just want a -- I want a timeline, because people need it now or they need it yesterday. And so building capacity is great, but when will you get there?

CHAIRWOMAN KRUEGER: And you're going to get back to us with that answer in writing afterwards.

ASSEMBLYWOMAN ROSENTHAL: Thank you.

CHAIRWOMAN KRUEGER: Thank you, Linda.

Next, Senator Ritchie.

SENATOR RITCHIE: Commissioner, earlier you stated that it was 2500 beds and that 90 days was somewhat acceptable because the workforce at the correctional facility is a transient workforce.

I, for one, represent a number of facilities. The facilities are important to

my area. Many that live in my area, because we are economically challenged, go eight hours away to be a correction officer. And the only reason they are so-called transient is because they are moving and uprooting in order to get closer to home.

So that means for all these workers, correction officers and staff, that have gone downstate and spent time away from their families are now only going to be given 90 days to figure out where they're going to be.

So that, along with the communities -- I know that you said earlier one of the reasons why it was 90 days is that you didn't want the communities to rally around and try to stop it. Some of these communities are places that accepted correctional facilities when no one else would. So once again, you know, that's a hardship for the community.

And the reuse program, I have a psychiatric center right in the middle of the city, and there are dozens and dozens of buildings that are just falling down. We

have done everything we could to try to entice the state to try to help us, do something with them for economic development.

So, you know, saying this, do you really think 90 days for those families, for the community, for the potential that these buildings are never going to be used again, that 90 days is really acceptable?

ACTING COMMISSIONER ANNUCCI: Senator, I am very sensitive to the impact. I do not underestimate what it does to the staff, what it does to the community.

The fact is we have to think of all New Yorkers. All New Yorkers are funding, with their taxpayer dollars, the entire operation of this agency. Which, even with closures, is nearly $3.4 billion.

SENATOR RITCHIE: And I understand that.

And I had the opportunity to tour a number of facilities, many of them are medium, and they are still double-bunked. And when we're talking about being, you know, good citizens and doing the right thing, when

you go to a dorm and you see multiple double bunks, for those that are incarcerated, for the staff, for the safety -- for those individuals to be in an area as big as a parking spot, with two beds, with two lockers, with two human beings trying to live there, and officers trying to keep them safe and other officers safe -- do you not think it would be a better use of the money to take down those double bunks and use some of those vacant beds?

ACTING COMMISSIONER ANNUCCI: We wouldn't be saving any money if we did that, Senator.

SENATOR RITCHIE: Well, sometimes there are things that are a little more important than saving a few dollars.

The facilities are already there. You already have the trained staff. And like I said, going in there and seeing it firsthand, the small spot that you're trying to keep people safe, staff and those that are incarcerated, it really doesn't make much sense that we're leaving people to live in a

space as big as a parking spot.

So I would truly ask, before you go ahead with this, can you take another look at the double-bunking issue? Thank you.

ACTING COMMISSIONER ANNUCCI: I respect your position, Senator.

SENATOR RITCHIE: Thank you.

Assembly.

ASSEMBLYMAN LENTOL: Assemblymember O'Donnell.

ASSEMBLYMAN O'DONNELL: Good afternoon, Commissioner. It's nice to see you again.

ACTING COMMISSIONER ANNUCCI: Nice to see you, Assemblyman.

ASSEMBLYMAN O'DONNELL: Have you missed me?

ACTING COMMISSIONER ANNUCCI: Yes, so much. I miss all your weekly letters.

ASSEMBLYMAN O'DONNELL: Yeah, I wrote many letters. And I don't write those letters anymore, do I? No.

So when I was corrections chair, I visited 38 prisons, as you are aware. In the

beginning you used to come with me, but then you just gave up. So when I would meet with the inmates, they often expressed frustration about the lack of ability to transition out because of the lack of training for real-life jobs that they were not getting.

So one of the things that I proposed previously was putting in solar panels on the correctional facilities to train the inmates to install them, keep them up. And I know that there is a program in three facilities. So is that program continuing?

ACTING COMMISSIONER ANNUCCI: Best of my knowledge, that training program is continuing.

But we are limited by the constitution in any public/private partnership, so we couldn't bring in a private company to work with. We do have a voc program that I believe does train the population. I'll have to double-check to make sure, though, if it's still in operation.

ASSEMBLYMAN O'DONNELL: Many of the environmental advocates are very excited

about this prospect, because we have all this property. Some of my colleagues here have talked about the closed prisons in their neighborhoods. So Mt. McGregor, for example, is that in use currently? After you close it, is it --

ACTING COMMISSIONER ANNUCCI: No. No use.

ASSEMBLYMAN O'DONNELL: So, you know, couldn't you install solar panels on Mt. McGregor and bring people in from nearby to work on those, as a mechanism both to give them training as well as teach them how to do that for when they get released?

ACTING COMMISSIONER ANNUCCI: I'm not sure it would be cost-effective to bring big numbers of individuals from another facility. They'd have to be taken under guard, et cetera. It would be another huge additional cost.

But we are pursuing many energy-saving initiatives, including the installation of solar panels on various unused portions of our facilities, because we do have a lot of

property where sunlight can be harvested for energy.

ASSEMBLYMAN O'DONNELL: Well, I would encourage you to do as much as you can. We're trying to go green, right.

ACTING COMMISSIONER ANNUCCI: Sure.

ASSEMBLYMAN O'DONNELL: There's much discussion about double-bunking and double cells, so I just want to make sure I understand, it hasn't changed since I was around.

When there's a dorm setting and the inmates have like a twin bed, the back wall has bunk beds. But the rest of it, it doesn't. Right?

ACTING COMMISSIONER ANNUCCI: Correct.

ASSEMBLYMAN O'DONNELL: So in any one facility, you couldn't have very many, because every dorm setting there's only one place for those bunk beds. Correct?

ACTING COMMISSIONER ANNUCCI: In the prototype dorms that you're describing, that's correct, it's the back 10 that are doubled.

And even then, they're not always fully occupied because the population keeps moving. We keep releasing people, we keep moving them down to minimum security, new ones come in. And the protocols usually say, okay, you're the new guy in, you have the double bunk for now. That may not last too long before there's another vacancy and someone else takes this person's place.

ASSEMBLYMAN O'DONNELL: Much discussion has gone on about the elderly in the prisons. I know in Connecticut, for example, they actually built what you would call to be a nursing home for those people who could not be released on medical parole or whatever else it was. In my recollection, there were places in your system where these mostly men can't even get out of bed. So they're really not a risk to run anywhere, because they can't get out of bed. Right?

So you don't really need the circle of security that you provide for everyone else for someone who's on their deathbed. Right?

So have you thought about that

possibility of sort of changing the way you use some of the facilities, creating all elderly people who don't have the ability to move around?

ACTING COMMISSIONER ANNUCCI: Well, basically for the infirm, we have to keep them -- because we have to take care of them in the regional medical units if they are that bad that they required skilled nursing care.

ASSEMBLYMAN O'DONNELL: No, but I would expect that you would provide that for them in a facility that may be less expensive because you don't need to have the kind of security that you would need, say, in Attica or Clinton.

ACTING COMMISSIONER ANNUCCI: We haven't really thought of that. I certainly would give it some thought to see if there's a practical way.

But bear in mind, when you get to that point, you usually do require a lot of additional medical care of some sort.

ASSEMBLYMAN O'DONNELL: Yes, the

medical care. And lastly, I just want to let you know I'm coming to Bedford Hills next week, I'll give you a call later. Okay?

(Laughter.)

ASSEMBLYMAN O'DONNELL: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Savino.

SENATOR SAVINO: Thank you, Senator Krueger.

Good afternoon, Commissioner, how are you?

ACTING COMMISSIONER ANNUCCI: Good afternoon, Senator, good to see you again.

SENATOR SAVINO: So I just want to say I strongly agree with the comments of Assemblywoman Byrnes, Senator Ritchie, Senator Akshar, a few others that have spoken about the issue of prison closure.

As you remember, we closed Arthur Kill in Staten Island 10 years ago, and it was very painful because most of the members who had moved to Staten Island to live then had to uproot their families, not to mention the effect it had on family members of the

incarcerated, because Arthur Kill was a downstate reentry facility and it was much easier for people to visit.

So I just wanted to lay that out there. I have serious concerns about that.

I'm also still very concerned about the level of inmate-on-correction-officer violence. Apparently the numbers continue to be pretty startling, 6 percent increase over last year. And I think part of it is, again, the population is getting smaller but you have more people in maximum. And when you double bunk them -- we used to have the display out here in the lobby every year. It's an inhuman way to treat people, and I think it greatly contributes to violence.

But I want to talk about two specific issues. Because in the Governor's budget he's proposing 27,556 full-time equivalents, which is a decrease of 1247 FTEs over last year. Are you anticipating laying members off?

ACTING COMMISSIONER ANNUCCI: No. We're not planning to lay anyone --

SENATOR SAVINO: Are they just disappearing?

ACTING COMMISSIONER ANNUCCI: That would be associated with the closures.

SENATOR SAVINO: But what's happening to the 1247 -- if you're going to have 1247 less employees from last year, how are you achieving that number without laying them off?

ACTING COMMISSIONER ANNUCCI: Vacancies and attrition, Senator. Every month of every two weeks we lose, what, 58 every two weeks? Because when we built in the late '80s and early '90s, we hired massive numbers of individuals. They're all reaching or past the retirement age right now.

SENATOR SAVINO: So you're just not backfilling the spaces. You're not going to rehire.

ACTING COMMISSIONER ANNUCCI: Even with planned closures, we still have a certain number of classes that we're going to have to have at the Training Academy because

the attrition is that significant.

SENATOR SAVINO: I just want to make sure that we're not talking about layoffs.

ACTING COMMISSIONER ANNUCCI: One other thing, Senator, if I didn't make this point earlier. Seventy-five percent of the assaults on staff are in my maximum-security facilities.

SENATOR SAVINO: Excuse me, I'm sorry?

ACTING COMMISSIONER ANNUCCI: Seventy-five percent of the assaults on staff take place in the maximum-security facilities, not in the dorm -- not in the medium-security facilities where the dorms are.

SENATOR SAVINO: Okay. It's still an unacceptable number.

There's something else, I noticed that you're utilizing technology in ways to improve experience for everybody in the facilities, which is a good thing. But you indicate in your testimony that you are using tablets and e-books, educational material and games, and providing the ability to send

secure messages to friends and family.

I'm now the chair of the Internet and Technology committee, and every day I'm more and more acquainted with the risks of data breaches, security breaches. And so I'm curious, what are you doing to protect the network --

ACTING COMMISSIONER ANNUCCI: These are secure networks, Senator. There's no way they can access --

SENATOR SAVINO: There is a secure network.

ACTING COMMISSIONER ANNUCCI: -- the internet or anything like that.

SENATOR SAVINO: That's what I wanted to hear.

Thank you.

ACTING COMMISSIONER ANNUCCI: Glad to make you happy.

CHAIRWOMAN WEINSTEIN: So we go to Assemblyman Ortiz.

ASSEMBLYMAN ORTIZ: Thank you, Madam Chair.

Good afternoon, Commissioner.

ACTING COMMISSIONER ANNUCCI: Good afternoon, Assemblyman.

ASSEMBLYMAN ORTIZ: Always a pleasure to see you.

I have a quick -- I have a few questions. They are very detailed. So if you don't have the answer, you always can send information to our chair, if you will.

The first question is I know you spoke about the reduction of population, the inmate population in the facilities. What is the inmate population as we speak right now?

ACTING COMMISSIONER ANNUCCI: What is the inmate population right now? Forty-three thousand eight hundred and something.

ASSEMBLYMAN ORTIZ: Okay. From that number and something, how many are Hispanics, black, white, LGBT or those who do not identify by any sex?

ACTING COMMISSIONER ANNUCCI: Yeah, I -- I'm going to do this off the top of my head and confirm what the actual numbers are. But it's around 48 percent, I believe, are African-American. The white population is

slightly more than the Hispanic population -- no, 20 something. Because there's other, there's Asian. We're breaking it down.

ASSEMBLYMAN ORTIZ: You can send it to us, the numbers. I don't want to put you on the spot. But that would be something that would be useful.

And also don't forget the LGBT community, those who identify as LGBT that are in jail as well, and also those who identify with no sex, if it's any. I really appreciate.

I understand you are a psychologist, correct, by profession? You are a psychologist as a profession, you have a degree in psychology?

ACTING COMMISSIONER ANNUCCI: Yes, I do have a degree in psychology. I haven't ever practiced.

ASSEMBLYMAN ORTIZ: I can believe that.

So I know one of the members asked you how many prisons do we have, 52. You spoke very lengthy about the substance abuse

program. I used to be the chair of Mental Health, if you recall, many years ago. I just wanted to touch on the mental health issue of our population.

What kind of assessments get done to our inmate population from the mental health perspective or from the physical perspective, and what protocol and guidelines is in place to deal with their mental health well-being?

ACTING COMMISSIONER ANNUCCI: Mental health is a big challenge. There is over 10,000 individuals in my system right now that are on the mental health caseload. And a certain number, I think 2300 or so, are diagnosed with SMI.

We continue to try and roll out a lot of different specialized programs, together with OMH. We have all kinds of acronyms, we're expanding our ICPs, we have the RMHTUs for those individuals that have a disciplinary sanction in excess of 30 days, we have transitionalized CPs, we have TTSUs for those individuals that are coming out of our observation cells.

For those individuals that really warrant it, they can no longer safely remain in a correctional facility, we'll place them in an observation cell and OMH will then make a determination for -- under the law it's called an involuntary commitment. Then they'll transfer them to the Central New York Psychiatric Center.

We're working together to identify that population that not only is SMI but has a V, meaning they have a violent history. So when they're identified, we place them into one of two special programs prior to release to get them ready. I think one is at Auburn, and I forget where the other one is.

We will then drive them, at the day of the release, to the program in wherever it is. If it's in New York City, we don't want someone to simply be placed on a bus, get there by themselves. We want to take every precaution, get them there.

We enroll them in Medicaid so if they're on psychotropic medication, they can continue that when they're there.

We have a new alternative program whereby, if you are on parole and are mentally ill -- it's called a PDP, it's a 45-day program, if you have potentially violated parole but we want to just get your attention and get you into a program, get you back out into the community again. We just started that. And the individual will go to Sing Sing, which also houses the CORP program, which is another program for the mentally ill.

So there's a lot that we are doing, but we're continuing to explore many, many new initiatives with our partner, OMH.

ASSEMBLYMAN ORTIZ: I just would like to say that I do get a lot of letters, as you probably know, from family members who are -- inmates are -- have mental health issues. And I hope that they're being taken care of.

Let me just close by saying quickly that despite the fact that two facilities have been closed, I thank you for that, because we should be investing more in education and removing those who doesn't

belong to be there, to put them on the street.

And I would also like to commend you for everything you're doing so far. Thank you very much.

ACTING COMMISSIONER ANNUCCI: Thank you very much, Assemblyman.

CHAIRWOMAN KRUEGER: Thank you. I think I am the next Senator.

Hi. I'd like to talk a little bit about women in prison and some of the services that they may need. One, do you believe that New York State is now following, in your prisons, Correction Law 611 regarding pregnancy and labor and, during the weeks after labor, not using restraints on pregnant inmates, requiring reports be made if someone is restrained under any of the exceptions?

ACTING COMMISSIONER ANNUCCI: We scrupulously follow that law. As the old superintendent of Bedford would instruct her staff, under no circumstances do you ever use restraint on a pregnant female.

I think there is a report that we have

to prepare, it's ready. I think there was one mistake that we made, it was someone in their seventh week after delivery, and I think the law requires that you extend it to eight weeks. We have taken corrective action to ensure that doesn't happen again.

But when we were taking the pregnant females out for their methadone when they were receiving it on the outside, we have to take them one at a time because there was no restraints. So that meant one vehicle, one trip, each woman treated by themselves and then escorted back to the facility.

CHAIRWOMAN KRUEGER: And as far as prenatal care, do we know that pregnant women in prison are getting correct prenatal care, including appropriate diets and supplements --

ACTING COMMISSIONER ANNUCCI: Oh, yes. Oh, yes.

CHAIRWOMAN KRUEGER: -- and their prenatal visits?

ACTING COMMISSIONER ANNUCCI: And also for the nursery unit. It's very important

that we take good care of their children while they're with us. I have an initiative to install air-conditioning on that unit so it's -- it can get pretty hot in the summer, and we don't want anybody terribly uncomfortable, so that's another initiative we're pursuing for Bedford Hills.

CHAIRWOMAN KRUEGER: And do you have arrangements for women who have given birth to be able to express milk so that the milk can be used by their babies even if the baby's not in jail with them?

ACTING COMMISSIONER ANNUCCI: Oh, yes.

And beyond Bedford Hills, we've issued instructions in our visiting rooms that that's to be allowed, and it's -- you know, this is the year 2020.

CHAIRWOMAN KRUEGER: Great.

ACTING COMMISSIONER ANNUCCI: We have places for staff to do that as well.

CHAIRWOMAN KRUEGER: Do women prisoners have access to contraception and even abortion? I mean, they may be actually raped while in jail.

ACTING COMMISSIONER ANNUCCI: If they're participants in the family reunion program, yes, absolutely.

CHAIRWOMAN KRUEGER: Yes, you have those services available? If they request those services, they get those. And do they have to pay for contraception?

ACTING COMMISSIONER ANNUCCI: No.

CHAIRWOMAN KRUEGER: No. Okay.

ACTING COMMISSIONER ANNUCCI: And I believe we give it as part of the release package as well. I'll double-check that.

CHAIRWOMAN KRUEGER: Okay, thank you.

So I think almost the very first question you got, which was about the violent incidents in your jails -- and of course there's always some level of violence, unfortunately, in our jails. Is there a specific behavior management deescalation training program that you use systemwide, or there are different ones?

ACTING COMMISSIONER ANNUCCI: We have a new program that we're just bringing online, my program staff did a lot of

research, they selected a curriculum that -- from an established provider that is evidence-based, it's advanced aggression treatment that we hope to be unveiling very soon. And if it works, we're going to spread it to other facilities.

So -- and that's on top of the traditional ART program. But this new program is really designed to get to the root cause, to understand especially the impact that trauma may have had on an individual at a very early age. And so many individuals in our system unfortunately had childhood traumas, and maybe more, which in turn led them to cope by, you know, engaging in drug activities, selling drugs, whatever, which led then to other things.

So we're trying to have a new program to unwind that one thread at a time and hopefully make a difference in what they're doing.

We also have, at our annual use-of-force training for all of our security staff, deescalation training, the skills

needed to try and help manage a situation before you have to use force. That's part of our annual training now. And certainly the pepper spray, which I've given to all the correction officers, part of the training is that everybody experienced that, including the commissioner, who's also a peace officer, and my executive staff, we had to experience what it's like to be sprayed in the face with this. And it is very debilitating, I can tell you that.

So it's effective. The complication comes in if you're wrestling around with somebody you may not be able to get a direct shot in the face. But once you do, it's very, very effective. And it's one of the tools that we hope to continue to get those numbers turned around.

CHAIRWOMAN KRUEGER: I'd love to know what your response is to the trauma-informed training, because I've been doing some reading of some of the other large prisons in the country that have gone down that road --

ACTING COMMISSIONER ANNUCCI: Yeah,

that's a big initiative.

CHAIRWOMAN KRUEGER: -- and seen dramatic improvements.

ACTING COMMISSIONER ANNUCCI: Yeah.

CHAIRWOMAN KRUEGER: Because you're absolutely right, when you're dealing with people who have been traumatized, perhaps at ages much younger than they're even aware that things happened, and they're in a prison population and things start to escalate, you know, if you're not aware of how you can deescalate the right way, you just get worse.

But I think what they're finding in a number of prisons around this country is that those models can have extraordinary impacts.

So I look forward to hearing, perhaps in next year's budget, whether you've found some success from those models.

ACTING COMMISSIONER ANNUCCI: Yup. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly?

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Walczyk.

ASSEMBLYMAN WALCZYK: Thank you, Chair.

Commissioner, thank you for being here. I share in many of my colleagues' -- in some of these common-sense approaches, like removing double bunks for the safety of our inmates as well as our corrections officers. That if you are going to close a prison, 90 days is not an acceptable timeline for a family to relocate and have any stability. And if you are going to close a facility, having a plan for that facility after its closure, and picking facilities that have good resale value, just makes common sense.

It says "acting" in front of your title, but someone once told me when I was given command of a company in the Army Reserve: "You're never the acting commander, you take command." And I think that's true when you're the commissioner -- the Governor expects you to give him recommendations. And I hope you take this back to him.

Another commonsense approach that

you've heard today is the secure vendor program. And I understand that the inmates and their families may have some issues with that, with packages. But as you know, the contraband is coming into the facilities. How many drug dogs would you need to cover each facility in New York State?

ACTING COMMISSIONER ANNUCCI: I'd have to get back to you. I don't think you need one for every facility to expand what we're currently doing. Obviously, you know, you go to the facilities where there's the most contraband. It is a big expense to add it. But if we're able to do -- like I hope we will be able to do -- the secure vendor package program, that will have a huge impact.

ASSEMBLYMAN WALCZYK: And how much -- you said a big expense. How much does each drug dog cost?

ACTING COMMISSIONER ANNUCCI: $150,000 a team, I believe.

ASSEMBLYMAN WALCZYK: A team, okay.

ACTING COMMISSIONER ANNUCCI: A dog,

I'm sorry. But it's a team, you pair with the officers that are assigned to it.

ASSEMBLYMAN WALCZYK: So that would be the officer and the handler -- or the dog and the handler for the dog?

ACTING COMMISSIONER ANNUCCI: Yes.

ASSEMBLYMAN WALCZYK: And if you had one drug dog per facility, would that dog be able to handle the mailroom contraband as well as any that comes in through the visitor area?

ACTING COMMISSIONER ANNUCCI: No, I don't think so. That would be a lot for one single dog.

ASSEMBLYMAN WALCZYK: Okay. Well, in closing, I think you've heard some commonsense ideas that you're collecting up today. The Governor has consistently been about saving money in this budget. He looked at the $6.1 billion, and I hear him, we've got to make cuts. But he's also very much about smart money, investing money in areas that's going to make common sense. And when you look at inmates getting high, hurting

other inmates, hurting corrections officers, you look at the overtime, the medical bills, the expense in overhead that you see in your agency, I think some of the investment in making sure that those drug dogs aren't -- or the drug dogs are keeping the drugs out of our facilities in the first place is probably smart money on the back end. And it's going to make everybody safer at the end of the day.

So I thank you for your time.

ACTING COMMISSIONER ANNUCCI: Thank you, Assemblyman.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Assemblyman Ra.

ASSEMBLYMAN RA: Thank you.

Thank you for your answers today.

I just wanted to quickly follow up on something that one of my colleagues was talking about, and then I have some other questions.

The closures, is there a target towards medium security, maximum security, or is that not determined at this time?

ACTING COMMISSIONER ANNUCCI: Every facility is under consideration.

ASSEMBLYMAN RA: Okay. And I ask because -- I know you mentioned earlier, you know, the frequency of assaults at maximum, but I know that they have been on the rise as well in the medium-security facilities.

But the main item I wanted to ask about, I know you recently had an issue with fentanyl exposure in a facility, in a mailroom, that caused I believe it was 11 folks that were hospitalized as a result of it.

So what's the department doing in terms of protocols and equipment to help protect the staff in those situations, you know, should those type of substances find their way in again?

ACTING COMMISSIONER ANNUCCI: Well, my deputy commissioner for security just reissued a memorandum to advise staff of what the basic protocols are should you open a letter that may have a suspicious substance in it -- you don't move it, you leave it in

place, you secure it, and you summon the hazmat team to come and determine what it is.

I'm still studying the pilot program that I have with a device called the VeroVision mail scanner, to see if that could be effected. I mentioned that our association, the correctional leadership association, with every corrections commissioner in the country, is currently doing a study to see what other systems are doing. I know one system has an off-site vendor that takes all letters, they scan it and then they send it back to the facility, so what comes back is actually a copy of the original letter, not the letter itself.

So that is one. It's a very drastic approach. I believe Pennsylvania may have done that. I'm open to anything. My number-one priority is to keep staff safe.

ASSEMBLYMAN RA: And one other item I just want to mention. I know there are I guess a specific type of gloves that are designed to protect individuals who come into contact with these substances that are more

sophisticated and protective than, you know, the typical latex gloves that we're used to seeing.

Are those types of items being made available to staff?

ACTING COMMISSIONER ANNUCCI: Yes.

ASSEMBLYMAN RA: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Actually we have Luis Sepúlveda for a second round, as the chair of Crime and Corrections.

SENATOR SEPÚLVEDA: Welcome back.

Commissioner, I have visited several facilities, as you know, in the last few months. And one of the things I want to know is a lot of times the corrections officers ask me what are we doing to provide them with mental health training for themselves and to provide them with training for mental health related to the individuals that are incarcerated.

Do you have that plan in the offing? What are you doing to face the fact that they're looking for this additional training

and personal help?

ACTING COMMISSIONER ANNUCCI: So we have extensive training for mental health. For new recruits, I forget the total number of hours, but on suicide prevention and a new hour of annual training, not only on suicide training for the population, but also for health.

There are experts that I know our associate commissioner brought in to advise us as to what to include. We've done training of the trainer on it, and its been well received.

As I mentioned earlier, there's a wellness committee that he is in charge of where, for example, there will be on our website practical tips, what to do. We're getting feedback from all of our different facilities. Each one has a new initiative that they may do for staff, because it is a stressful job, as I said, and we're trying to as best we can come up with practical ways to use stress in a constructive manner. Sometimes that could be, you know,

meditation, practical tips that people can use in their everyday lives.

SENATOR SEPÚLVEDA: Is this both for the actual correction officer's own mental health and dealing with the individuals that are incarcerated?

ACTING COMMISSIONER ANNUCCI: Yes.

SENATOR SEPÚLVEDA: It's for both.

ACTING COMMISSIONER ANNUCCI: So the additional funding that is out there for law enforcement purposes, we'll work with our partner, OMH, to help develop the appropriate programming for our individuals. Included in that law enforcement are our correction officers.

So I know OMH is a wonderful partner to work with in this area to come up with the best program that we can to help deal with the stress that is inherent in this type of work. Stressful for when tragedies happen, if you're on a unit where there's a suicide or a serious cutting or there's a blood exposure -- there's a lot of things that staff deal with regularly. And it takes its

toll after a while.

SENATOR SEPÚLVEDA: There are about a thousand people sentenced to life without parole, a virtual life without parole sentence with a minimum of 50 years at least. Is there currently any mechanism that allows for their cases to be reviewed before they die in prison? What's the incentive for them to rehabilitate themselves?

ACTING COMMISSIONER ANNUCCI: There's a lot of ways that individuals who are incarcerated can find meaning and purpose in their lives. There's so many programs that they are involved in where they can give back to the outside world.

For example, people that are serving life without parole sometimes are the best credible messengers we have for our youth. We have what's called youth assistance programs where with schools or other areas proximate to a correctional facility, they'll bring in the youth, and these individuals will speak to them to not make the same mistakes that they made.

We also have ways that they give back. For example, if they are participants in Puppies behind Bars, at a graduation they'll give a service dog to a wounded warrior from one of our wars or to a first responder who's suffered serious post-traumatic stress disorder.

We have a cooperative where we will grow food and then donate that to food pantries on the outside. We'll have knitting classes where we will knit wear for newborn infants.

So the ability to give back to the outside world I think is a very important way that you still can maintain dignity while you're incarcerated. You can't undo whatever it is that you did to end up in prison, but your life still has importance and meaning. That was the precise message that we had when we had the actor and actress from "It's a Wonderful Life."

We also had a TEDx event at Attica, it was a staff member who talked about the tragedy of suicide in her life and hammered

home the message every life is important, every life matters, you matter, you need to think before you do something.

And by the way, one of those men who was also a presenter talked about how gratified he felt when a young girl who had been part of his youth assistance presentation wrote him a letter and said, I had been thinking about taking my own life, but after hearing what you told me, I think I can go on with my life and not have suicidal thoughts.

SENATOR SEPÚLVEDA: I have a multitude of many more questions to ask you, but obviously I'm out of time. But we'll ask you off-campus, I guess. Thank you.

CHAIRWOMAN KRUEGER: I bet the commissioner would come to your office and talk to you about those left. Wouldn't you, Commissioner?

(Laughter.)

CHAIRWOMAN KRUEGER: Yes, he would.

Thank you. Any other Assembly?

CHAIRWOMAN WEINSTEIN: Yes, for

seconds, Assemblyman Weprin, chair of Corrections.

ASSEMBLYMAN WEPRIN: Thank you for your patience, Commissioner. I know it's been a long day, but I think we're -- the end is in sight.

So I -- my first round I didn't get into the issue of parole and parole issues. And when I first became chair of Corrections, I think we had only about 13 parole commissioners that were in effect. Statutorily, now we're allowed to have 19.

What is the current status of the number of commissioners, and what is the plan to fill those, getting it up to 19?

ACTING COMMISSIONER ANNUCCI: We presently have 16, and that includes the chairwoman. We're funded for 17. I can't speak to whether or not there's plans to fill another parole commissioner.

But I will remind you that as the population decreases -- and we've lost, as I said, 6,000 -- there's less need for new parole interviews. And as we continue to

move more toward having a population that is serving determinate sentences, there's no parole interview for someone who's serving a determinate sentence.

Right now every person convicted of a VFO, every drug offense, and every sex offense now is required to be sentenced with a determinate sentence. They are released by CR or LCTA, if that applies, but they do not get paroled. They're not eligible to appear before the Board of Parole. So that's about two-thirds of our population right now.

ASSEMBLYMAN WEPRIN: Okay. So while we're on that subject, those that are entitled to a parole hearing, I know -- what percentage of parole hearings are done by video, and what percentage is done in person? Because I personally believe that the in-person parole interviews are much more meaningful and can really make a better overall evaluation than the video interviews.

ACTING COMMISSIONER ANNUCCI: I believe that the board still makes personal appearances at Fishkill and Downstate. I

don't know if there are any more. And most others are done with the televideo. I'll have to double-check on if they make appearances at the OCFS facilities at Central New York, et cetera, the other locations.

But for the most part, for my facilities, other than I think Downstate and Fishkill, they're using the televideo conferencing for that.

ASSEMBLYMAN WEPRIN: Okay. You're probably aware that I had some legislation which became law, the Governor signed it, regarding parole. And one of the things was -- one of the laws was requiring inmates to get into a program as soon as possible if they were already seeing a parole board, and instructed to go to that program.

My understanding is that is not always happening. I don't know what your understanding is. But if you could look into that, that law for me.

ACTING COMMISSIONER ANNUCCI: Yeah, absolutely. Will do.

ASSEMBLYMAN WEPRIN: Okay. Thank you,

Madam Chair.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you. So we have no more.

CHAIRWOMAN KRUEGER: Thank you very much for your time, appreciate it.

ACTING COMMISSIONER ANNUCCI: Thank you.

CHAIRWOMAN KRUEGER: I know for people following the schedule, it still looks like we're on page 1, and we are.

So the Division of State Police, Keith Corlett, deputy superintendent.

Now we're testing out the true, the true government people who are prepared to be here till 10 o'clock tonight.

Hi. Welcome. Feel free to start your testimony.

DEPUTY SUPT. CORLETT: Good afternoon.

CHAIRWOMAN KRUEGER: You're welcome to start, absolutely.

DEPUTY SUPT. CORLETT: Okay, great.

Thank you, Chairs Krueger and Weinstein and distinguished members of this

joint committee, for the opportunity to discuss Governor Cuomo's Executive Budget for the Division of State Police. I am Keith Corlett, Superintendent of the New York State Police. I have served as a Trooper for nearly 35 years, and I am honored to lead the dedicated sworn and civilian members of our great agency.

I would also like to thank the Legislature for recognizing our critical mission, to protect and serve all New Yorkers. Your unwavering support has enabled the State Police to earn its reputation as one of the top law enforcement agencies in the nation.

For more than 100 years, the State Police has consistently provided a high level of professional public service. We learn and adapt to the needs of a constantly changing society, and we strive for continuous improvement in every aspect of our work. Our mission priorities remain improving highway safety; providing professional police services and

investigative support; preparing for and responding to emergencies and disasters; and detecting and preventing terrorism.

The Governor and the State Police recognize the dynamic nature of terrorism around the world and the persistent threats within New York. Our ever-increasing role in the state's counterterrorism efforts help provide a wide range of counterterrorism initiatives and capabilities, enabling New York to remain one of the safest states in the country.

New York City remains a top terrorist target, and our expanded presence in the city, primarily at mass transit hubs and bridge and tunnel crossings, has enhanced the collective efforts of the state and our partner agencies to detect, deter and respond to terrorism.

An emerging problem for New York State is an increasing number of serious, bias-motivated incidents, which included the horrific attack in Monsey, Rockland County, on December 28th of last year. We stand with

the Governor, all of you, the Legislature, and all New Yorkers to condemn these incidents.

We continue to strengthen our ability to deal with these types of crimes, and assist our local partners as needed. Last year, in 2019, we conducted hate crime trainings around the state attended by more than 400 law enforcement members.

The State Police now has 120 investigators statewide who are specially trained in hate crimes investigation. Additionally, we strengthened our partnership with the New York City Police Department by assigning a State Police investigator to work full time on the NYPD's Hate Crimes Task Force. Moreover, the Governor has added additional funding to the Executive Budget to further our investigative commitment and training.

The State Police is unique as the only law enforcement agency within New York with the ability to deploy large numbers of professionally trained police officers

anywhere within the state and beyond, on short notice, in response to emergencies or natural disasters. We continue to partner with the Division of Homeland Security and Emergency Services to enhance disaster preparedness and response readiness. This partnership has enabled the State Police to better coordinate with state agencies and provide support to local communities following significant events.

Illegal drug use, in particular the availability of heroin, opioids and synthetic drugs such as fentanyl, along with the toll they inflict upon families and local communities, remains a critical public safety issue. Building on the resources and training provided over the past few years, the State Police will aggressively investigate drug-related offenses, particularly criminal trafficking, and assist local police agencies with their investigations whenever requested.

Our highest priority remains the safety of the public and the Troopers who

protect them. With your support, the Executive Budget continues to provide our Troopers with the necessary equipment, training and other valuable resources to achieve the best levels of safety as they carry out their duties. To that end, this Executive Budget enables us to hold additional Basic School Academy classes, ensuring staffing levels remain at appropriate levels.

Again, I am honored and exceedingly privileged to represent the nearly 6,000 dedicated men and women of the Division of State Police that serve and protect the people of this great state. They do so selflessly, with tremendous pride and at times with great personal sacrifice.

Thank you for your support for all of them, for the State Police, and for the opportunity to address you this afternoon. And I welcome any questions that you may have.

CHAIRWOMAN KRUEGER: Thank you. The first up is Senator Akshar.

SENATOR AKSHAR: Madam Chairwoman, thank you.

Superintendent, it's good to be with you.

Let me just direct your attention, if I may, to bail reform and the discovery changes. Do you think that these changes in bail or discovery changes will negatively impact manpower in the division?

DEPUTY SUPT. CORLETT: Thank you for the question, Senator. I have not seen any evidence, anecdotal or otherwise, that has affected manpower thus far. But to Commissioner Green's point -- and I believe also that the time frame to make that analysis, we're only in the few short weeks of bail reform, so it's difficult to make that decision.

But again, to answer your question directly, I haven't seen anything of that nature.

SENATOR AKSHAR: Are you hearing any concerns from the troopers on the ground that they're spending additional times dealing

with these new reforms, taking them away from their duties out in the street?

DEPUTY SUPT. CORLETT: I have not heard that personally, Senator, but I think logic would dictate that any new reform and any time that you do something new, there's a bit of a learning curve. So perhaps they are spending more time learning the new processes.

The number of forms that have to get filled out remain the same, so it's really just aggravating -- aggregating that data and then sending it on to the appropriate district attorney's office. So again, if there's a learning curve involved, that will easily shorten. And I'll also add that the academy class that's about to graduate on March 18th, they're learning the new procedures now. So there should be no learning curve for them. They know no different than the bail procedures that are in place today, so.

SENATOR AKSHAR: Superintendent, is there any place to track that information or

that data associated with both of those changes in both discovery and bail and how it's affecting the Division of State Police?

DEPUTY SUPT. CORLETT: Again, the time frame right now is short, but we do hold regular executive meetings and meetings with the troop commanders, and it's certainly a topic of discussion.

SENATOR AKSHAR: Let me just switch gears, if I may, a little bit to the crime lab. How is the crime lab dealing with the new discovery changes? Some of the district attorneys that are elected in my particular district have suggested that the crime lab is going to be inundated with cases and going to need to speed up the process and such, and they simply don't have the staff to do that, and they're fearful that the crime lab won't be able to address their needs and their concerns.

Do you share those concerns?

DEPUTY SUPT. CORLETT: The crime lab is a busy place, no doubt. They prioritize cases that come in, and they work on those

cases to get them out as fast as possible. It has not been a concern that I'm aware of with regard to bail reform.

SENATOR AKSHAR: Thank you.

How many Troopers are assigned to the five boroughs?

DEPUTY SUPT. CORLETT: Uniform Troopers is about 125. Total uniform members is 207.

SENATOR AKSHAR: Two hundred and seven?

DEPUTY SUPT. CORLETT: Two hundred and seven, yes, sir.

SENATOR AKSHAR: Can you just -- I want to shift gears a little bit, if I may, with my remaining time and just talk a little bit about the consolidation of the Park Police and that proposal by the Governor.

There seems to be some concern that it's not going to be a total consolidation, it's simply going to be where if this in fact happens as proposed by the Governor, there will only be certain employees from the

Park Police that will be absorbed by the State Police. Can you just talk to me a little bit about the Governor's proposal and what your thoughts are there?

DEPUTY SUPT. CORLETT: We were directed on December 3rd to take operational control of the Park Police, and we did that. And during that time we were also instructed to conduct a six-month analysis of the Park Police's operations and also juxtapose those to our operations and try to identify gaps between how we police our operational model and how they police.

Also within that, we're looking for operational efficiency. So we're looking now at post assignments, staffing, response time, anything that has to do with police operations, we're examining that and going to make those determinations after the six months' analysis.

SENATOR AKSHAR: Superintendent, it would be my hope that in this process -- I'm a former member of law enforcement -- it would be my hope that we would keep all of

the men and women of the Park Police whole in whatever we decide to do, and there be no members that were disenfranchised because of this move. Just my thoughts.

I appreciate your time. I'll end on this. I firmly believe and deeply believe that the men and women who work for the division are incredibly professional and you are incredibly lucky to lead them.

DEPUTY SUPT. CORLETT: Indeed I am. Thank you, Senator.

SENATOR AKSHAR: Madam Chairwoman, thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Ra.

ASSEMBLYMAN RA: Thank you.

Just to reiterate the Senator, certainly I've heard from a lot of Park Police members within the district I represent, and I think this can be a positive thing if done properly and we ensure that none of those members are hurt and that they

can continue to do the job of protecting our parks alongside additional manpower that would come with a merger. So I just want to echo the sentiments of my colleague.

But what I wanted to ask you about in particular, again this year there is a recreational marijuana proposal in this budget. There is a -- within the tax structure there's 5 percent that's supposed to be distributed to DCJS that will be grants to, my understanding is, state and local law enforcement. I don't know if you might have any information as to how that might work or what resources might be coming to the State Police, in particular for things like drug recognition experts. And additionally, you know, what do you see the need that would be within the State Police to have enough trained drug recognition experts that would be required as a result of this change in the law?

DEPUTY SUPT. CORLETT: So as part of our discussions about marijuana legalization, that exact question came up. So we've

started training every academy -- every recruit that went through the academy in what's called ARIDE training, which is advanced roadside drug interdiction. So with that skill set, it helps identify anyone that's intoxicated with marijuana.

I just should make it clear that there is a big distinction between being impaired by alcohol and being impaired by marijuana. And the distinction being you're both impaired; marijuana -- the THC in marijuana is an intoxicant.

There's no roadside test to determine whether you're intoxicated with marijuana. Your body metabolizes marijuana different than it does alcohol. So there are challenges to determine whether someone's intoxicated by marijuana.

So again, we've had a buildup of ARIDE-trained troopers, and we're also building up a number of drug recognition expert troopers. That's a lot harder. The training to become a drug recognition expert, not only is it a two-week training period

within New York State -- and we collaborate with the Governor's Traffic Safety Conference. They do all the training for DREs. That third week of training is a clinical phase, and that has to be done out of state.

So we have trained up -- last year we trained 39 DREs. So we have a total of about 109 DREs right now. My estimate, if we could do 39 a year or 40 a year, we'd probably need another 200 DREs. That's going to take five years.

ASSEMBLYMAN RA: Thank you very much.

CHAIRWOMAN WEINSTEIN: Senate?

CHAIRWOMAN KRUEGER: Thank you.

Senator Diane Savino.

SENATOR SAVINO: Good afternoon, Superintendent.

So I just have two questions, quick ones. If -- over the past several years, one of the issues that comes up regularly is the age of the fleet and the cars. So if you could just tell me where we are in terms of replacement and the average life span and the

number of miles that we generally see on the cars.

DEPUTY SUPT. CORLETT: Yes, this does come up every year.

SENATOR SAVINO: Every year. They keep driving them, that's what happens.

DEPUTY SUPT. CORLETT: I mean, that's the point. These cars are run basically 24 hours a day. And I'll just have to start by saying that the safety of our troopers and investigators that drive these cars is paramount.

That said, we get a $15 million appropriation every year for our fleet. We have a large fleet. We have 4400 vehicles. The number of high-mileage cars -- and I kind of use that term loosely, high mileage, meaning cars that are over 125,000. And that's a standard that's set by OGS. Right now it is about 230. So that represents 5 percent of the fleet.

That's a moving number. That 230 was probably given to me about a month ago. So of that 230, it might be down to 75.

However, cars that were 115,000 miles have now moved into the 125,000-mile range. So it's always a moving target.

I can tell you that the price of vehicles has gone up since that $15 million number has -- we've been using that $15 million. We've expanded our fleet by 207 vehicles. But we work -- equipment for the vehicles has increased as well. So to work within that $15 million parameter gets a little more difficult. However, not unattainable.

So again, it's 230 vehicles. But probably as I'm giving this testimony, most of those vehicles now have been surplused and other vehicles have come into the fold. So --

SENATOR SAVINO: If I recall, though, you used to do this in-house. Now you have OGS bid them out. Is that slowing down the process? Do you think it would be faster if you went back to the State Police actually doing their own purchasing?

DEPUTY SUPT. CORLETT: We use OGS's

vehicle marketplace. It -- initially I think there were some hiccups, but we've been now using the OGS vehicle marketplace for a number of years now, and it -- it has streamlined the process for us.

SENATOR SAVINO: As they say, the wheels keep turning.

One other question. I heard in your response to one of the members, I'm not sure -- I don't recall which one it was -- a question about the cost of discovery.

The DAs are going to be in later on, and we've been hearing from them that the cost of compliance with the 15-day discovery is creating problems for them with respect to additional resources. If they have a problem, how come you don't? How is it that you're able to process the discovery without having additional costs associated with it?

DEPUTY SUPT. CORLETT: Because we planned ahead. We're a large, nimble agency with a tremendous amount of resources. You know, we're not asking troopers to figure out this problem. We have a planning and

research section. We have a traffic section. We have counsel. We have field command. We have a number of sections that are dedicated to solving problems, changes in the law, making us, you know, be able to adhere to those laws.

And we started planning this -- for this months ago. And we partner with our stakeholders, with DAASNY and NYPTI and the Office of Court Administration, and we leveraged -- we basically all came up with leveraging the DA's office, you know, DEN {ph} system. So we came up with a system that basically you process all the paperwork, you aggregate it, scan it, put it through the NYPTI system --

SENATOR SAVINO: You're just better at it.

DEPUTY SUPT. CORLETT: Listen, we're a very efficient agency, thank you.

SENATOR SAVINO: I don't want to cut you off, but I only have 57 seconds now, and I do have one question about marijuana.

So again it's in the budget, it's

being proposed that we do an adult-use program. Eleven other states have adult use, there's 33 states that have medical marijuana programs. And I'm just curious if you or anyone in your department has gone to any one of those states to talk to them about what happened when they implemented marijuana, how it's affected vehicle safety, how it's affected public safety, how the police in those states have interacted with a legal market.

DEPUTY SUPT. CORLETT: Yeah, we've had conversations with Pennsylvania, Connecticut, New Jersey, Colorado, Washington State --

SENATOR SAVINO: But have you visited? Have you gone out, has anyone gone to visit those states? Or are these just correspondences back and forth?

DEPUTY SUPT. CORLETT: We've had regional meetings with Connecticut, Pennsylvania, New Jersey and had very robust discussions on this topic. During one of these meetings, someone from Colorado, their cannabis control manager, I forget the title,

but had come out and discussed some of the issues that you're bringing up, Senator.

SENATOR SAVINO: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Reilly.

ASSEMBLYMAN REILLY: Thank you, Superintendent. I appreciate you giving your testimony today.

Thank you, Madam Chair.

One of the questions I had was basically about discovery and the cost of implementing some of the procedures. And I know some of my colleagues touched on it. I want to just touch on that in New York City, the New York City Police Department, they're upwards -- I found out that they're upwards of spending 85 million for the first two years, assuring that they have enough training and the resources.

Of the 77 precincts, they actually have civilian employees assigned to assist. And I know maybe based on the arrest --

overall numbers of arrests, it might be a higher quantity of arrests.

Was there specific stuff, a specific budget that you had to allocate to make sure that you implemented the discovery in the proper way? And training, like in-service training, because I know that's what a lot of the spending was going towards with the NYPD.

DEPUTY SUPT. CORLETT: So there was no specific increase in our budget to implement this. Again, we have a lot of capacity within the State Police to handle these things. We've been an agency -- you know, we're over 100 years old. And any changes in legislation, we follow the law and we again have a lot of resources and a robust staff to take care of these changes.

ASSEMBLYMAN REILLY: Touching on the DREs, I know that it's very expensive to train them. NYPD only has approximately 15, I think, for their -- for the entire city.

One of the things that I tried to advocate for before I got elected to office was increasing the DREs. I spoke with the

highway sergeant who was in charge of it, and they came up with a plan, it was kind of like an offshoot of the DRE program. Of course the officer isn't labeled an expert when they go in to testify because of that training. But I know that it's a hefty price tag.

Is there any way that you can maybe look into partnering with New York City, with the New York City Police Department, and allowing -- with marijuana rolling out potentially, right, we want to make sure we're ready for that -- if the State Police will collaborate with the NYPD on letting the DRE assist them.

DEPUTY SUPT. CORLETT: It's a great question. And I have a great answer. We collaborate and have a great partnership with the NYPD. Of the 207 troopers that were assigned to New York City, we do a lot of highway work with the highway section of NYPD. And Commissioner O'Neill had -- prior to his retirement, he gave the New York State Police credit for actually reducing the number of serious physical injury accidents

and fatalities all throughout New York City for last year.

So we do a lot of partnerships, a lot of programs -- speed enforcement, DWIs -- with the PD, and that's a great -- another partnership that we can do with them. So it's a great idea, thank you.

ASSEMBLYMAN REILLY: Thank you for the work in New York City. I represent Staten Island, I'm a former member of the NYPD. And I see troopers around all the time, and it's good to see. It's good to see the partnership that they have.

But that really sticks out to me, that DRE part, because there's an opportunity there that we can make sure that we stay ahead of that.

DEPUTY SUPT. CORLETT: I agree, thank you. Have we cleared up the problem in the HOV lane on the --

ASSEMBLYMAN REILLY: Ah, no, unfortunately it's still there, right? But you know what, we just can't be there all the time.

(Laughter.)

ASSEMBLYMAN REILLY: So it's -- but thank you for all the efforts in that as well, especially with the highway unit too. So thanks again, appreciate it.

DEPUTY SUPT. CORLETT: Thank you.

CHAIRWOMAN WEINSTEIN: Senate.

CHAIRWOMAN KRUEGER: Okay, Senate. Okay, I think we're -- Senator Seward.

SENATOR SEWARD: Thank you, Madam Chair.

And Mr. Superintendent, good to see you again. And congratulations again on your nomination and confirmation last year.

DEPUTY SUPT. CORLETT: And thank you. Thank you for your vote.

SENATOR SEWARD: I wanted to return to a discussion on the crime lab.

DEPUTY SUPT. CORLETT: Yes.

SENATOR SEWARD: Which is so critically important, you know, to putting cases together around the State of New York.

It was reported about a month ago that the crime labs are facing a substantial

backlog and the new speedy trial and discovery reforms will only add to that backlog. Is that a true statement in terms of a backlog?

DEPUTY SUPT. CORLETT: The backlog -- if you can clarify, is that regarding the sexual offense evidence kits or is there some other backlog?

SENATOR SEWARD: Yeah, I -- just a backlog at the crime lab.

DEPUTY SUPT. CORLETT: Okay, so there is a backlog in the sexual offense evidence collection kits, and that's been given in previous years' testimony. And there were reasons for that.

I will say that we've increased capacity in being able to get through those sexual offense kits by increasing -- we had approval to have -- increase our FTE number for a scientist by 30. We've increased that number today by 25. It takes a long time to hire a scientist. Very smart people, but they still have to pass our background to work in the crime lab.

So we've increased the capacity, we've got another five scientists to increase capacity even further. We've improved processes and work flow. We've developed a new -- or not developed, we're utilizing a new test, the male or Y chromosome test to speed through the kits. With that method, it's half the time to actually test a kit.

So with all those efficiencies now, and capacity, we've outstripped the number of kits that are coming into the lab. So that first year that the sexual offense evidence collection kits came in, 2017, we collected over 2200 kits. The past years, between 500 and 600. And subsequent years after that now, we've doubled our -- we've taken in about a thousand kits. So we usually take in 90 a month -- did 45 a month, now we're doing 90.

But again, we've -- our capacity in and out is above that, the kits that we take in. So we are knocking down that backlog. I'm sorry to say we haven't gotten rid of it all, but we are moving in the right

direction.

SENATOR SEWARD: Does the Executive Budget provide any additional resources and funding for the crime labs from -- particularly since the new reforms were enacted.

DEPUTY SUPT. CORLETT: Not that I'm aware of, Senator.

SENATOR SEWARD: Okay. The Onondaga County district attorney, Fitzpatrick, I noted in the Times Union back in early January -- and I'd like to read a quote that was included in that article from the DA of Onondaga County. He said: "Prosecutors have been advised that, for the first time I can remember, the State Police may be taking evidence from their cases to local crime labs. In addition to that, prosecutors have been told that cases will be prioritized at the state lab, with deference given to A felonies, and other felonies will be dealt with in order unless a special request is made. I'm not sure why anyone would need to make a special request on getting DNA results

from the rape of a child, but that's where we are."

Could you respond to that statement from the DA of Onondaga County?

DEPUTY SUPT. CORLETT: First of all, we're not sending out kits to other labs. Those kits are coming to us. That's why, you know, we used to take in 500 to 600, because now we're taking in a thousand to 1100 a month. Those kits are coming to us.

A case that needs to go to trial, we prioritize and we get it done. It's as simple as that.

SENATOR SEWARD: So is -- how does the crime lab prioritize their workload?

DEPUTY SUPT. CORLETT: Cases that are going to trial, the kits are -- evidence is going to be tested, the report's going to be written and it's given to the DA's office.

SENATOR SEWARD: Okay, thank you.

DEPUTY SUPT. CORLETT: Okay, thanks.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Ortiz.

ASSEMBLYMAN ORTIZ: Hello? Thank you,

Madam Chair. Good afternoon, Superintendent.

DEPUTY SUPT. CORLETT: Good afternoon, Assemblyman.

ASSEMBLYMAN ORTIZ: I have a few quick questions. And, you know, you have a great career of 35 years, so you have seen everything, from the evolution --

DEPUTY SUPT. CORLETT: Perhaps not everything, but enough.

ASSEMBLYMAN ORTIZ: Well, you have seen enough, let's put it that way. And so I hope that you can have a great vision for the future to really revolutionize the department and bring some diversity into it.

My quick question is about cultural diversity training. Can you talk about it a little bit, about what you do in the Academy?

DEPUTY SUPT. CORLETT: Sure. So every recruit in the Academy goes through a number of modules, of training modules. Those would include implicit bias training, cultural sensitivity and diversity, LGBTQ training. That's done for every recruit that goes through the Academy.

After that, in-service training would include further modules about cultural sensitivity, workplace violence, things of that nature.

ASSEMBLYMAN ORTIZ: And the other question I have is regarding what steps you have taken -- and again, 35 years in service, you have seen everything, almost to see a lot of stuff coming up -- that you have taken in order to increase diversity within the department. And I'm talking about the new recruitment, to make sure that that body becomes -- to be a little more diverse and reflect the State of New York.

DEPUTY SUPT. CORLETT: I've been preaching diversity in recruitment for years now. And I've made it one of the priorities of my administration.

The issue that we're having is not only minority recruiting, it's recruiting in general. And when I have discussions with the law enforcement executives across the United States at various IACP meetings or different meetings, they all say the same

thing: They're having problems with recruiting in general. Which, by extension, creates additional problems for minority recruiting.

ASSEMBLYMAN ORTIZ: Well, I think that we can probably be helpful to that, if you -- if someone can be able to reach out to the diversity that we have in the Assembly in our districts, and then we can take the message to our high schools and trying to work together. You know, whatever procedure you might have, I think we'll be able to probably maybe begin to close the gap if that's something that's interesting to you and the department.

Because I think diversity is very clear, I go to the next question. I represent Sunset Park and Red Hook. As you know, the Hugh Carey Tunnel is right there. You have a lot of troopers now visible, very visible, in the areas of Sunset Park and Red Hook. And we do -- in my community, we do have a very strong diversity, which is we have a lot of Asian immigrants; as you know,

we have a lot of Hispanics in that site as well, and I represent another constituency of African-Americans.

You know, when they see the State Trooper vehicle, they really -- sometimes they even call my office: What are those guys doing here, who are they? Are they military people? I say, no, they are the Troopers, they are people that -- you know, put by the Governor to make sure that they tend to public safety. But it's a little scary sometimes for my people, as you can probably see.

And also the barrier of the language. Sometimes when they stop some of the Chinese, I will tell you that sometimes I have pulled to the side and the Trooper says, "Get behind your car, don't get out of the car," because they sometimes don't speak the language.

And sometimes it's difficult to communicate, and especially when you have Asian drivers. So that -- you know, they're coming from a country that they are not so crazy about the government, and seeing

government officials who look different than the NYPD, so in reality it brings some kind of threat to them.

So I hope that this message that I'm bringing to you will be taken very seriously, to make sure that those Troopers -- which I like every one of them -- you know, they are aware of some of these probably challenges that they will face, and that they don't come too rude to them and, you know, they will come to be a little more to every single one of the members in my community.

And the last question I have is about you mentioned you have 6,000 Troopers under your belt, under your umbrella.

DEPUTY SUPT. CORLETT: That's all employees. That includes civilians as well.

ASSEMBLYMAN ORTIZ: Okay. So that's civilians and also officers as well.

DEPUTY SUPT. CORLETT: Yes.

ASSEMBLYMAN ORTIZ: If you can report to us, you don't have to -- I have only 20 seconds -- you know, how many Hispanics do we have, how many Asian, how many

African-American, white. And that will be something that will be useful in order for us to begin to figure out how can we be helpful to you.

And lastly, can I touch quickly on CPR. You know, that was my bill, Briana's Law. We went through this a lot back and forth --

DEPUTY SUPT. CORLETT: Yes.

ASSEMBLYMAN ORTIZ: -- but we got it done. Please, thank you.

DEPUTY SUPT. CORLETT: Thank you, Assemblyman.

CHAIRWOMAN KRUEGER: Thank you.

Hi. I think I'm the last Senator. So I appreciated your responses that you have the resources to get your job done as far as responding to lab tests and other things that discovery will require. Discovery has always required that, and New York State is the greatest state in the country; I'm pretty sure we can meet our constitutional obligations. And I also think if there's need for more labs to move things more

quickly, we should absolutely talk about that.

DEPUTY SUPT. CORLETT: Yes, thank you.

CHAIRWOMAN KRUEGER: So thank you for that.

You also got a couple of questions about marijuana and driving. So I think you know, I carry the bill to legalize marijuana. It's slightly different than the Governor's. But we also know, you certainly know, as the State Police -- I think all of us in here know this -- we already have people using marijuana and driving. New York State is the largest user of marijuana in the country, even though we don't have legal marijuana yet.

So how do the Troopers handle it now? If they observe someone driving in what appears to be an intoxicated manner, they pull them over and they do what?

DEPUTY SUPT. CORLETT: They do field sobriety tests. So yeah, I mean your point I think you're trying to make, or at least, you know, feeding into a question, is that, you

know, yes, we make marijuana arrests now. We see someone who's committed a traffic violation or who appears to be driving intoxicated, we make that traffic stop, pull them over, engage in a dialogue with the driver or the operator of the vehicle, we make observations of intoxication, field sobriety tests. There's no alcohol involvement, seems to be that this person is somewhat intoxicated, seems to be impaired by driving, there doesn't seem to be an alcohol component, it's got to be something else.

So today, there's usually some -- there could be some evidence in the ashtray, there's smoke in the car, do their clothes smell like burnt marijuana -- there's usually some kind of evidence, the probable cause to arrest the person or the operator for driving while ability impaired by marijuana.

That person then is brought back to the barracks, and then urine or blood is drawn. It's a lengthy process.

CHAIRWOMAN KRUEGER: And then you talked about the DRE program and also the

A -- what's the other one?

DEPUTY SUPT. CORLETT: ARIDE.

CHAIRWOMAN KRUEGER: ARIDE, thank you.

-- and that those are models that are tested and recognized and effective. And you said that it would take you five years to get everybody that you thought you needed through the two programs in the right ratios -- I don't want to misspeak for you --

DEPUTY SUPT. CORLETT: Again, so we have a little over 100, 109 DREs. I'm looking to increase that by 200, so about 300 DREs.

Please bear in mind that a DRE -- again, that they're trained to take respiration and blood pressure. It's a science that really requires a lot of training.

CHAIRWOMAN KRUEGER: Right. So in the bill that I carry, we would provide you $6 million a year towards training of more officers. I think that's significantly more than what the Governor has given you in the budget. So do you believe that you could

move more quickly if you had $6 million a year towards these program expansions?

DEPUTY SUPT. CORLETT: Like I stated, it's not just a function of money, though I would gladly take the $6 million.

CHAIRWOMAN KRUEGER: You'll take it.

DEPUTY SUPT. CORLETT: Because obviously money does, you know, push things along.

The problem is the second phase of DRE training, where you actually learn or you test on what you learn on real people, drug addicts, people who are high on drugs and coming down. You need to find that -- those people to -- you know, to do that.

So there's only three places in the United States that allow the police access to clients. So it's -- the only way to really build capacity quicker is to identify places where we can do that second phase of training. One was Maricopa County in Phoenix, Arizona, and we used to use them. The problem is that -- and that's a jail. So that by the time we got access to those

clients, they were already coming down, they were already metabolizing the drugs, so the readings that the Troopers and officers were getting were not good. So that it was almost -- it was -- we had to find another place.

So we found a place in Jacksonville, Florida, that was a drug rehabilitation -- I think called Rivers or Rivers Rock in Jacksonville. And that was much better. But then everyone in the country started going there, and then they didn't have enough capacity to handle the influx of people.

So yes, money is good, and I'll take it, but we need to build the capacity to have that second phase of training, and I'm not sure how to do that.

CHAIRWOMAN KRUEGER: So we have a challenge to figure out a problem that we have now but would not be automatically fixed by going to a legal marijuana model.

But thank you for clarifying that for me. Because I don't want anybody driving intoxicated, it doesn't matter what the item

is that they'd be using. I don't want them drinking and driving, I don't want them using marijuana and driving, I don't want them, you know, using heroin and driving.

DEPUTY SUPT. CORLETT: Neither do we.

CHAIRWOMAN KRUEGER: Right? I know.

DEPUTY SUPT. CORLETT: Thank you, Senator.

CHAIRWOMAN KRUEGER: So it's really the question -- and yet we know all of that happens now, so the question is how do we all get smarter and better prepared and trained to document that people are doing it this way, and stop them.

DEPUTY SUPT. CORLETT: Yes. So if the technology can actually catch up to the legislation, that would be the best of both worlds. So today we -- for an intoxicated driver for alcohol, we have a breath-screening test, a roadside breath-screening test, and we have -- if you're coupled with observations of intoxication and impairment, then we bring you back to the barracks and you hopefully --

you take a Breathalyzer. And if you have a per se quantity of intoxication in the law, .08, you're intoxicated. That seems pretty simple.

If we can duplicate that with a swab, a roadside swab for marijuana that says that you've ingested marijuana, and then some kind of breath test that says yes, you're intoxicated with a per se law of one of 5 nanograms per milliliter of blood -- or whatever the legislation comes up with -- that would solve the problem.

But the technology hasn't caught up to the legislation yet.

CHAIRWOMAN KRUEGER: Right. And I do think the technology's out there. There's more people and companies piloting models in different states. And I think if you just showed up in my office and sat there every day, you would meet the people who are trying to convince me they have the magic -- you know, they've got the magic combination.

But I do know we are so close to having the right answer, and several states

and Canada are piloting. So I think we're both going to get what we want pretty soon.

DEPUTY SUPT. CORLETT: Great. Thank you, Senator.

CHAIRWOMAN KRUEGER: Thank you.

So one more question for you. I'm sorry, just following up on the concern about how your cars are all dying, what's the average car cost when you buy a State Trooper vehicle?

DEPUTY SUPT. CORLETT: The average car is about $40,000. And believe it or not, the equipment that we put in that car is more than the car. It's about $44,000. So $84,000 to set up a troop car.

CHAIRWOMAN KRUEGER: Thank you very much.

DEPUTY SUPT. CORLETT: Thank you.

CHAIRWOMAN KRUEGER: From the Assembly, we have Assemblymember Walczyk.

Is he still here?

ASSEMBLYMAN WALCZYK: Yeah, don't get me in trouble with Senator Ritchie.

(Laughter.)

ASSEMBLYMAN WALCZYK: I appreciated that.

CHAIRWOMAN KRUEGER: Whose district are you in? You're Senator Ritchie's district?

ASSEMBLYMAN WALCZYK: I am.

CHAIRWOMAN KRUEGER: You're right, we can't mess with you.

(Laughter.)

ASSEMBLYMAN WALCZYK: First of all, Mr. Superintendent, thank you for your 35 years of service in the thin purple line that is the difference between chaos and order in our society. I appreciate your service.

DEPUTY SUPT. CORLETT: Thank you for saying that. Thank you.

ASSEMBLYMAN WALCZYK: The $3.2 million we've traditionally put in, or the state has traditionally put in for SAFE Act enforcement, was that included in this year's budget?

DEPUTY SUPT. CORLETT: I'm not really sure. I would believe it's part of our

normal general budget funding, so I would think that it was, but I don't know that for sure.

ASSEMBLYMAN WALCZYK: What did you use that funding for in the past?

DEPUTY SUPT. CORLETT: To -- probably personnel in the pistol permit section, so that that SAFE Act recertification of pistol permits can occur.

ASSEMBLYMAN WALCZYK: Okay. Do you recall how many crimes were solved in the old COBIS system?

DEPUTY SUPT. CORLETT: I don't, I'm sorry, no.

ASSEMBLYMAN WALCZYK: I think we came up with zero. But I'm wondering if just anecdotally you could sort of give us some perspective. There's been some proposals, even included in budget conversations, about microstamping of gun parts and serial numbers to gun parts.

How will that help you solve crimes in New York State?

DEPUTY SUPT. CORLETT: Police work

sometimes is a lot of gumshoe and talking to people, and a lot of luck. So if we can serialize parts of a gun or parts of a crime scene that part of a gun or ballistics or cartridges are left at the scene, any piece of evidence that we can develop an investigative lead from is crucial to any case.

So if that -- again, you know, anything that gives us a lead in a case would be beneficial.

ASSEMBLYMAN WALCZYK: All right. Just shifting gears for a second, with catch-and-release in place and domestic violence perps on the loose in New York State, or at least released with the bail reforms that we've had, how do Troopers handle safe hand-off when it comes to victims of domestic violence? Do you have practical protocols in place for that?

DEPUTY SUPT. CORLETT: I'm not exactly sure about your question, I'm sorry.

ASSEMBLYMAN WALCZYK: So when you've arrested someone and the new bail reform law

has them either, you know, issued -- has your Troopers issue an appearance ticket or they're immediately released, the domestic violence advocates, many of them have brought forward concern that that has expedited the timeline for domestic violence victims to be able to find safe places to go.

Do you have any protocols that the State Police have taken on for the domestic violence victims?

DEPUTY SUPT. CORLETT: Well, we have crime victims advocates in every troop, and they are trained to address those issues.

But again, I haven't heard of any issue that has come up in the last couple of weeks. But your question generates certainly some concern, and I'd be happy to talk to you about it.

ASSEMBLYMAN WALCZYK: Okay, great.

Do you have any -- in general, do you have any concerns about the recently enacted Green Light Law?

DEPUTY SUPT. CORLETT: (Pause.) I think, as Senator Krueger said, there's more

people smoking marijuana in New York State -- we're the highest users of marijuana in this state. And I would tend to say there may be a number of people who don't have driver's licenses that if you gave them driver's licenses, they passed the standard to drive, it could -- I would say that it makes the roads safer to have people with driver's licenses. They're going to drive anyway, so an undocumented alien given a driver's license I would say makes the roads safer.

ASSEMBLYMAN WALCZYK: One concern that recently came up was that there were hundreds of people outside of the DMVs in New York City to sign up right after Green Light went into effect.

Someone brought the concern forward to me that some of these people may in fact be seeking a second identity or a false identity. Has your agency explored any concerns there, or do you have any reaction to that?

DEPUTY SUPT. CORLETT: We haven't -- we haven't seen any uptick in that. And DMV

has their own investigators that actually are very good at spotting fraudulent identification. But we partner with them, and I haven't heard anything to the -- that there was an uptick in that, no.

ASSEMBLYMAN WALCZYK: I see the time is expiring. And I again thank you for your service and keeping us safe every day, and appreciate your answers.

DEPUTY SUPT. CORLETT: Thank you very much, sir.

CHAIRWOMAN KRUEGER: Thank you.

Next up is Senator Funke.

SENATOR FUNKE: Thank you, Madam Chair.

Superintendent, thank you for your service.

Not a question, really, just a comment, and it kind of goes along with the discussion we've been having about testing for marijuana use or other drug use in the field. And I just wanted to make you and my colleagues aware of the fact that there's a company in Rochester called Cognivue that has

a device that does exactly that, it tests cognitive function in the field.

And Sheriff Baxter in Monroe County and Sheriff Henderson in Ontario County and myself and a couple of doctors -- I'm not sure the State Police were present -- saw a demonstration of this several months ago. It's FDA-approved, it does work. There's a little device, and you've got to go through a little series of tests to find out if you're straight enough to drive a vehicle.

The problem with it at that point was it took about -- the test took about eight or nine minutes, and there's no cop in the field who's going to stand out there for eight or nine minutes in freezing cold doing that.

Now they have reduced that to several minutes. So it does -- it does work. It is available. And the reason I bring this up, and I'm going to bring this up with the technology experts in a moment too -- is that there should be pilot program and there should be money in the budget for a pilot program, if possible, to allow officers to

test-run this device in the field, or something similar to that, before we go down this road of marijuana legalization.

That's my comment. I hope you'll remember that there is technology available to do that right in our own state. That's it. Thank you.

DEPUTY SUPT. CORLETT: Thank you, Senator.

CHAIRWOMAN KRUEGER: Thank you, Senator. I have to look that up also.

Assemblymember O'Donnell.

ASSEMBLYMAN O'DONNELL: Good evening.

I want to share my concerns that Mr. Ra raised about the merger of the Park Police. And so there are two concerns.

One, I would find it unacceptable if you created two divisions in the force. So they have to be paid the same, and their seniority has to be respected. So I would not want to see somebody have their pay not equal to somebody else who's a 20-year veteran of the force.

The second concern has to do with the

parks themselves. I chair the Parks Committee. They're very large spaces. It takes a particular kind of knowledge about what a park is and what's in it to properly police it. And so I would hate to think that that expertise will get lost by you merging these two things incorrectly. So I would like you to keep that in mind when you go forward in coming up with your plan, because I can't see us going along unless those two things are part of that.

DEPUTY SUPT. CORLETT: Your concerns are well-noted. We've had a great relationship with the Park Police, they're a very professional organization and agency. But that's the reason for the transition period. We're going to -- we're learning about those nuances that you're speaking of about how to patrol a park, those gaps that I don't know as a member of the State Police, but their leadership and their people know.

So we're looking to create a model where we're creating a better public service for the people. So I will keep your comments

in mind, and I thank you for them.

ASSEMBLYMAN O'DONNELL: And is it your intention to take all of the Park Police under your jurisdiction, or just some of them?

DEPUTY SUPT. CORLETT: Within this evaluation phase we're creating a pathway for a member of the Park Police to apply to become a New York State Trooper.

ASSEMBLYMAN O'DONNELL: And would that pathway honor their seniority?

DEPUTY SUPT. CORLETT: Those are details that, again, are being worked out.

ASSEMBLYMAN O'DONNELL: I want to address briefly Mr. Ortiz's concerns about diversity.

And I do appreciate how difficult it is. But there is nothing less diverse than the New York City Fire Department. They all look like you and me, if you understand. And they were under court order and they hired a deputy commissioner -- my friend, Michele Maglione, who designed a system for recruiting people to take the fire test and

was so successful that the federal judge acknowledged her as the only thing in the Fire Department that was working. And the last time they had a test, 52 percent of the people taking the test were people of color.

So there are people out there, and there are paths. It takes a lot of work, but I think you can do it. And it would be really important for this body, for our body to ensure that that in fact is what you do the next time you have a round of hiring for Troopers.

DEPUTY SUPT. CORLETT: I will say we have a very robust recruiting program. When I was a trooper commander in New York City, every troop in the state had a recruiting program. When I was in New York City, I had five times the amount of recruiters. I brought down people from upstate New York to help recruit in New York City, I thought it was that important.

And I know there was pushback initially years ago to have New York State Troopers in New York City, but it's a win

because we can do so much better a job recruiting in New York City when people see a Trooper in uniform, know the opportunities that we provide. So it's only 207 uniformed Troopers. We partner with New York City. We are making a difference down there. And I hope that we make a difference in the recruiting effort with our presence in New York City.

ASSEMBLYMAN O'DONNELL: Thank you very much.

DEPUTY SUPT. CORLETT: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator John Liu.

SENATOR LIU: (Mic issue.)

Light's on. There you go. I feel like there's got to be some kind of five-second delay between when the light comes on and then when the mic is actually functional. Right? It's gotta be. Because every one of us keeps doing that all day long.

Anyway, that's not the reason why I wanted to ask -- what I wanted to ask the

superintendent. There's a lot of talk about what to do when marijuana becomes legalized. Did I say when? Yes, I did say when. All right. But we still have problems with drunk driving, and I don't want that to be lost on anybody.

And I have a bill that's sponsored by Assemblymember Ortiz in the other house that would lower the definition of DWI from .08 down to .05 blood alcohol content. I know you don't opine on legislation or pending legislation, but from your experience or the experience of your officers, is there a significant difference in ability between .08 and, say, .06 blood --

DEPUTY SUPT. CORLETT: I think my anecdotal experience would be that I -- I just -- I don't know. I don't remember, you know, when you gave somebody a Breathalyzer for .05 to .08 -- at that time when I was on the road, there was a very -- you could arrest someone for the .08, but it was a violation. Point-oh-five -- I think it's a very difficult determination to say.

But I would like to go back on your comment that I'd prefer not to comment on pending legislation, so.

SENATOR LIU: Okay. But it is true that every year for the last seven years the National Transportation Safety Board has recommended that states enact this kind of legislation to lower the BAC from .08 to .05 as the definition for driving while intoxicated.

And I think about a hundred nations around the world, including countries like Japan, Russia, many European countries, they have also lowered their definition of DWI to .05. So I feel like it's time for New York to do the same.

My question for you would be, is there any difficulty for your officers to determine that there is in fact a .05 blood alcohol content, as opposed to a .08 blood alcohol content?

DEPUTY SUPT. CORLETT: During the legislative process, if you change the law, we'll enforce the law to .05.

SENATOR LIU: No, but I'm actually being serious, because I don't know how the devices work. Do the devices, can they measure down to like .01? Or does it have to achieve certain kind -- does it have to go beyond a certain threshold.

DEPUTY SUPT. CORLETT: Current Breathalyzer will determine that you're at .05, .06, .08.

SENATOR LIU: All right, so there's no new equipment that will be needed.

DEPUTY SUPT. CORLETT: Right. There is -- there is -- there's no deterrent in determining .05.

SENATOR LIU: Got it. All right, thank you very much. Good to see you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

ASSEMBLYMAN LENTOL: Assemblyman Palumbo.

ASSEMBLYMAN PALUMBO: Thank you, Mr. Chairman.

Superintendent, how are you?

DEPUTY SUPT. CORLETT: I'm doing well,

sir, how are you?

ASSEMBLYMAN PALUMBO: Very well. Thank you for your service. I'm a cop's kid, and my dad was a detective on Long Island. I'm a former prosecutor. So you truly do God's work, so thank you.

DEPUTY SUPT. CORLETT: Thank you. And thank you for your service.

ASSEMBLYMAN PALUMBO: Just a little bit more on the Park Police, if you don't mind. In my understanding, so they're not all going to be assimilated necessarily, there may be some that are not? Is that accurate? And can you just explain that to me a little more as to what the plan currently is?

DEPUTY SUPT. CORLETT: Again, the plan is to have an evaluation during the six-month period. So it would be a little premature for me to comment on all the aspects of that.

I will tell you that I'll waive the age requirement, eyesight requirement, hearing requirement commensurate with age, your physical fitness requirements

commensurate with age. We're trying to create the best path to have as many -- to have Park Police officers apply to become a New York State Trooper. Waiving the entrance exam. There's a number of things that are being waived or at least the standard being lowered to allow the path forward to become a New York State Trooper.

ASSEMBLYMAN PALUMBO: Understood. So in the event someone is not necessarily eligible, would they have any other pathways or would they continue along as a Park Police officer?

DEPUTY SUPT. CORLETT: I'm not sure that that has been discussed. And that's really not what my evaluation phase is looking at.

ASSEMBLYMAN PALUMBO: Okay. And just when I hear "pathway," that was what my concern is, because I've had some concern from the Park Police themselves that there may be layoffs or some sort of a preferred hire list, which would mean essentially that they're no longer a police officer of any

kind and they would be on the preferred list, right? That there would be some that would be left out.

And that's really the biggest concern, I think, for that membership. Or that they would be transferred to another part of the state. Has there been any talk in that regard, that they might -- if they don't necessarily become absorbed, that they would be sent someplace else?

DEPUTY SUPT. CORLETT: The concerns are valid.

I'll tell you that the one thing that I'm not going to compromise on is integrity. Everybody has to pass our background test. Everybody.

ASSEMBLYMAN PALUMBO: Absolutely.

DEPUTY SUPT. CORLETT: So if somebody is left behind because of that, there's just no way to, for them, a pathway forward.

I'm trying to maximize the number of people that that pathway is created for, but it doesn't mean everybody -- because everyone -- I don't know. But whether

everybody can pass the background exam, I can't answer that yet. But that's the one standard that's not going to be compromised.

ASSEMBLYMAN PALUMBO: Certainly. I understand. And thank you for your candor, Superintendent.

DEPUTY SUPT. CORLETT: Thank you.

ASSEMBLYMAN PALUMBO: That's all I have.

ASSEMBLYMAN LENTOL: Thank you very much. Assemblymember Palmesano.

ASSEMBLYMAN PALMESANO: Yes, thank you, Superintendent, for your service. We appreciate it very much.

Also I had one main question I wanted to ask, I've been sticking around to ask. But I just -- before that, I just wanted to say if you could please convey to the brave men and women who serve us in the State Police, to convey to them our thanks and appreciation for their service and sacrifice to keep us safe. I'd appreciate that.

DEPUTY SUPT. CORLETT: Thank you. I'm sure it means a lot to them as well.

ASSEMBLYMAN PALMESANO: Well, it means a lot for what you do for us.

Also, I was happy to hear -- I was going to ask originally about the discovery. I was happy to hear that you have the resources and are able to comply with the new discovery mandates. But I'm sure probably the conversations you've heard with -- through the grapevine with local law enforcement, some of them aren't so fortunate and are looking for resources to help them. I know that's an issue that we're hearing out there. So you would probably agree that some of them aren't as fortunate as you are with resources.

The issue I wanted to bring up to you -- that came up to me actually from the local level, I wanted to get your input and thoughts on. Specifically, we were hearing from local police departments and our local municipalities and local fire departments and highway workers, specifically -- I know it's outside the police service -- but with the issue of legalization of marijuana.

Now, under the law, a police officer, a Trooper would be able to smoke marijuana or have marijuana in their system. And where it comes to -- where I want to -- the point I'm getting to is about liability. And God forbid a Trooper was in an incident where someone was killed or a sheriff's deputy or a local police officer was in an incident where someone was killed. And I guess the question is whether they had any marijuana in their system at the time or where they can measure that, or say there was someone wanted a subpoena and said they had to get tested, maybe they found marijuana in their system -- but maybe it wasn't from the day of that incident, it was from three days or four days before, because it's still in their system.

Doesn't that potentially open up a lot of liability for that municipality or for the State of New York if there's not -- and I guess what I'm getting at, should there be some sort of carve-out or exemption to say -- to allow the State Police or to allow a local municipality to say police officers, fire

department individuals or snowplow truck drivers shouldn't be able to have it or smoke it if they're going to do this job, because it's about protecting the safety?

I just wondered if you had any thoughts on that, because that's what I was hearing a lot about, that there's a lot of concerns about liability, especially at the local level, that can happen. And would that same liability translate over to the State Police or the State of New York if someone wanted to file a lawsuit because a State Trooper was involved with someone who was killed, and then they wanted to go and get that with discovery and test their blood, and they found marijuana in their system, maybe that impaired them.

Isn't that a possibility that, you know, we could open up the doors for a lot of liability and lawsuits for situations like this with this? So should we be looking for some type of a carve-out or exemption for the police and fire and things of that nature? I guess that's -- I don't know if I explained

it well enough. That's what I'm trying to get at, if you think it --

DEPUTY SUPT. CORLETT: Well, I'll answer your question this way. Right now marijuana is still a federal violation. So when you become a police officer, you swear to uphold the United States -- the laws of the United States Constitution and the laws of the State of New York. So possession of marijuana would still be a federal offense.

So our initial thinking would be that, you know, if you're a police officer, you can't commit any crimes. So that -- that is inherently you -- you cannot do.

If the federal government ever decriminalized marijuana, it -- it doesn't -- just because marijuana perhaps becomes legal doesn't relieve the police officer or operator of a tow truck -- a plow truck the responsibility to not be intoxicated. Just because alcohol is legal, you still can't come to work, you still can't drive a motor vehicle intoxicated. If you have a prescription for opioid drugs, you can't take

those drugs, be intoxicated and come to work. The responsibility is still on the individual.

ASSEMBLYMAN PALMESANO: I guess with that question, what I'm trying to get at -- and I apologize if I'm not explaining it the way the I want to try to explain it. But say when an incident happened, whether it was a State Trooper or a law enforcement officer or someone else, or a local police officer, say they weren't impaired at the time. Say they, because they're allowed to under New York law, to smoke it and have it, and then somehow there's a lawsuit and there's a subpoena, they have to get blood-tested. And then they go back and yeah, there's marijuana in their system. But it wasn't from the date of the incident where it happened, it was from three or four days ago.

Does that not open up the potential for a liability or a lawsuit to the State of New York, to that local municipality, if someone wanted to pursue that? Isn't that a possibility with that, if they're doing their

job and they can make the claim, Well, we don't know you had it in your system, but we also don't know that you didn't have it in your system, because you can't measure it at that time.

That's, I guess, the point I'm getting at. Aren't we opening the doors for liability and lawsuits to our -- whether it's the State Police or the State of New York or the local agencies, the local municipalities, if someone wanted to sue if there was an incident where someone was killed or hurt? Isn't it a possibility?

DEPUTY SUPT. CORLETT: I'm not an attorney, so I'm --

ASSEMBLYMAN PALMESANO: Me either.

DEPUTY SUPT. CORLETT: -- I'm not sure.

ASSEMBLYMAN PALMESANO: That's fair enough. Thank you again. Appreciate it.

ASSEMBLYMAN LENTOL: Assemblymember Epstein.

ASSEMBLYMAN EPSTEIN: Thank you for your time here today. I really do appreciate

all your responses to the questions.

Just quickly, a couple -- I appreciate your comments on Green Light, and I think your assessment about more people getting licenses makes for a safer -- have you seen any data to see about hit-and-runs and people who are engaging in hit-and-runs who didn't have licenses? And I'm wondering how high that percentage has been and whether you think people now with a license may actually stay at the accident because they have a license and they'll have insurance. Do you see a potential change in that in the last couple of months, or is it too early to tell?

DEPUTY SUPT. CORLETT: I haven't seen any data to that effect, and quite frankly I'm not sure we keep data that would indicate that someone had had a vehicle crash and they were an undocumented alien. It's just do you have a valid driver's license or not.

So I haven't seen any data; I'm not even sure we collect it that way.

ASSEMBLYMAN EPSTEIN: All right, thank you.

And I want to just follow up. Assemblymembers O'Donnell and Ortiz talked about diversity, and it's such a critical piece of our police force to have a diverse force really representing the vast diversity of New York. And I would encourage it if you're thinking about, you know, his example, the fire department was a really good example, and we've seen a real shift there. And there's really good lessons they learned about how you attract a diverse workforce. And I know there's a lot of people who would love a job as a state trooper, and I think the more recruitment and outreach into communities all over the state, I think, you know, we'd be able to find more opportunities to have diversity in our workforce, because I think it's a job that people would love.

So I would encourage you to work with people around the state, and I know the Assembly and Senators and I know each of us around the state would love to see more diversity in the trooper force.

DEPUTY SUPT. CORLETT: I would as

well, and I couldn't agree with you more. I'd be happy to meet with anybody about the subject. Truly.

ASSEMBLYMAN EPSTEIN: Great. And I'm happy to do that.

And I know you mentioned earlier about needing more police vehicles. You said it was 40,000 per vehicle, is that what you thought was the cost per vehicle for new vehicles?

DEPUTY SUPT. CORLETT: That's about the average cost for a patrol vehicle, 40,000 for the vehicle, 44,000 for equipment. But when we put a new vehicle in service, sometimes we take the equipment from the old vehicle and put it, so it's -- you know, I'm talking new to new.

ASSEMBLYMAN EPSTEIN: Let me ask you a question. How many electric vehicles do you have in your force right now?

DEPUTY SUPT. CORLETT: What was the question?

ASSEMBLYMAN EPSTEIN: Electric vehicles, do you have --

DEPUTY SUPT. CORLETT: We don't have any electric vehicles.

ASSEMBLYMAN EPSTEIN: And I'm wondering, obviously we passed the most progressive climate change bill in the United States and are moving towards -- you know, the biggest polluter, cause for greenhouse gases are cars. So I'm wondering what process you're going into to move to more electric vehicles. You've got to think about getting charging stations, you know, at your offices, moving towards more electric vehicles. I'm wondering what your internal plan looks like for that.

DEPUTY SUPT. CORLETT: We looked at electric vehicles, and they seem to work better in a more urban environment.

We put hundreds of miles on our vehicles every day. And perhaps if you're on a -- low on charge when you're at the end of your day and now you have a vehicle pursuit and your battery runs out, I just -- we haven't found an electrical solution that really meets the needs of the State Police.

ASSEMBLYMAN EPSTEIN: How many hybrids or hybrid combo electric vehicles do you have in your force?

DEPUTY SUPT. CORLETT: I will say that we could look at vehicles that are pool cars that people -- that we don't use as patrol cars. Pool cars could be an issue.

And the same about hybrid cars. We don't have any hybrid cars. But it's certainly a --

ASSEMBLYMAN EPSTEIN: I would encourage you to. One, there are these hybrid plug-in combinations that if you run out of electric plug-in, you still have a hybrid engine, so it would reduce the amount of fuel you use, it's better for the environment.

And so -- and then if you could get a plug-in station, not only would you be able to potentially use it when the mileage goes up -- we've seen cars now with 600 -- doing 600 miles on one charge.

DEPUTY SUPT. CORLETT: Your point's well-taken. But the problem is the

manufacturer as well. These are patrol cars. They're specifically designed for high speed and patrol -- the frames, the brakes. Nobody makes that in a hybrid vehicle right now. So it's -- we have ballistic panels on the doors. So there's a -- you know, this is why they're $84,000.

So your point's well-taken, we could look at pool cars or things of that nature to meet your --

ASSEMBLYMAN EPSTEIN: Or even just for staff who are driving to -- you know, not getting into a patrol car, they have their own cars. If you had charging stations available for them they could have them for their own personal use, you would encourage people to move towards electric. We all, over the next 10 years, really need to move towards electric.

So whether it's your patrol cars, it's people's personal cars, we need to create systems and structures in place to move everyone towards electric. And I would love to see the State Troopers really be a leader

in this, because the Governor is now, We need charging stations all over the state, in every government building. I would love to see you guys move in that direction as well.

DEPUTY SUPT. CORLETT: Thank you so much, sir.

ASSEMBLYMAN LENTOL: Thank you.

Assemblymember Blake.

ASSEMBLYMAN BLAKE: Superintendent, good to see you. Good evening.

DEPUTY SUPT. CORLETT: Good evening.

ASSEMBLYMAN BLAKE: Several questions, and we'll try to move quickly due to the time.

If an individual was an NYPD officer who then became a State Trooper, would you have access to their personnel records?

DEPUTY SUPT. CORLETT: I don't know the answer to that question, sorry.

ASSEMBLYMAN BLAKE: I guess specifically, would you have access to someone's previous personnel records if they applied to become a State Trooper?

DEPUTY SUPT. CORLETT: We do

backgrounds on that individual. Whether we would have access to their personnel files from NYPD, I don't know the answer to that question. I could find out. But my -- but I think that those records are NYPD records, and my gut feeling would be that we would not have those, we would establish our own record from there.

ASSEMBLYMAN BLAKE: Understand. Would that be concerning to you that you would be hiring an individual that you would not have access to their previous personnel records as previous law enforcement?

DEPUTY SUPT. CORLETT: We do a very robust background investigation on anyone that becomes a New York State Trooper. We only accept one out of 10 applicants.

ASSEMBLYMAN BLAKE: Understand.

DEPUTY SUPT. CORLETT: So we create our own record for backgrounds. We do check with previous employers. We go back to where people lived. And so it's --

ASSEMBLYMAN BLAKE: Understand. But just very --

DEPUTY SUPT. CORLETT: Whether --

ASSEMBLYMAN BLAKE: Very concretely, yes or no, would you have access to their previous personnel records in law enforcement if they were an NYPD officer who then becomes a State Trooper?

DEPUTY SUPT. CORLETT: I don't know the answer to that. But I can find out and get back to you.

ASSEMBLYMAN BLAKE: Absolutely.

Separately, is there any data to demonstrate that New York State is less safe due to bail discovery or speedy trial?

DEPUTY SUPT. CORLETT: I think Commissioner Green answered the question, and I'll answer it the same as him. There's just not enough data right now -- we're only a couple of weeks into this -- to suggest that we're less safe. New York is one of the safest large states in the nation. Crime has been declining since we probably kept stats, and it continues to do so.

ASSEMBLYMAN BLAKE: Understand. So it's again fair to say there is no actual

empirical data right now to demonstrate that New York State is actually less safe due to these three laws.

DEPUTY SUPT. CORLETT: It's fair to say that there is no empirical data to suggest otherwise, that's correct. New York is a large state.

ASSEMBLYMAN BLAKE: Thank you. Understand.

Number three, can you just very briefly convey the change around the Trusted Traveler program? That obviously has been changed, and Global Entry and others, in large part due to what's going on with driver's licenses for our undocumented immigrants. And we don't call them aliens, we call them immigrants. Right?

Is New York State less safe because of that change that's happening from the federal level?

DEPUTY SUPT. CORLETT: I'm not sure -- if -- if -- let me have you phrase the question a different way. With regards to the --

ASSEMBLYMAN BLAKE: I guess very concretely, there's an argument being made that our safety concerns are in large part rising because we've given driver's licenses to undocumented immigrants. Is there any data to suggest that that's actually true?

DEPUTY SUPT. CORLETT: I thought that was a different question. But I would say no, there is no --

ASSEMBLYMAN BLAKE: But it's tied to the TTP program.

DEPUTY SUPT. CORLETT: I'm not -- I don't have access to any data that shows that we're less safe because of the -- that giving driver's licenses to undocumented.

ASSEMBLYMAN BLAKE: Thank you, sir.

If an emergency occurs in New York City, are you -- do you all have the jurisdiction to supercede NYPD?

DEPUTY SUPT. CORLETT: We work collaboratively with NYPD. We're the only state agency that has police jurisdiction throughout the entire state.

ASSEMBLYMAN BLAKE: But so just--

if -- and just basing this off your testimony, if an emergency does occur, do you have jurisdiction to supercede NYPD?

DEPUTY SUPT. CORLETT: We have jurisdiction. We don't have jurisdiction to supersede any police agency.

ASSEMBLYMAN BLAKE: Understand.

Speaking of preparation and emergencies, et cetera, would you determine that maybe climate change is the biggest threat to the New York State right now?

DEPUTY SUPT. CORLETT: I'm not going to -- I'm not --

ASSEMBLYMAN BLAKE: The reason I bring that up is there is connection as it relates to law enforcement and preparedness. I mean, just basing it off the testimony around emergency preparedness.

DEPUTY SUPT. CORLETT: I think that's a question that could best be answered by the DHSES commissioner or, you know, someone that -- a scientist. Listen, I'm a police officer. I couldn't tell you whether -- to answer that question properly.

ASSEMBLYMAN BLAKE: Understand. I was just basing -- the second page of your testimony conveys that you are the only law enforcement agency in New York State with professionally trained police officers specifically in response to emergencies and natural disasters. That's the reason I was asking that question.

DEPUTY SUPT. CORLETT: Well, I mean, we have floods and snowstorms in this state for -- but I can't answer the question whether climate change is the cause of that. I'm not a clim -- a weather -- you know, a weather person or a scientist.

ASSEMBLYMAN BLAKE: Thank you very much.

DEPUTY SUPT. CORLETT: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

ASSEMBLYMAN LENTOL: (Inaudible remarks; microphone off.) I'm sorry I missed your -- I was out of the room. But I will actually ask a quick question, instead of saying I'm going to ask a quick question. And I've heard you talk about marijuana and

the possibility of coming up with a test to determine whether somebody is under the influence of cannabis. And I wonder what's wrong, if anything, or what's right about the old-fashioned coordination tests that one would be subjected to in the old days when they didn't have Breathalyzer tests to determine whether someone was under the influence.

DEPUTY SUPT. CORLETT: There's nothing wrong with that test. We use that test every day.

But if -- if you want to show that someone is intoxicated with marijuana or opioid or some other intoxicant, there's -- usually you want to determine what that intoxicant is.

ASSEMBLYMAN LENTOL: Thank you. And I understand that --

DEPUTY SUPT. CORLETT: To answer your question directly, no, that's the -- driving while intoxicated, you know, that's how we used to arrest people and we still do when we never -- when we didn't have the

Breathalyzer.

ASSEMBLYMAN LENTOL: But I guess the answer really is, is it a -- or the question really is, is it a successful test, one that you can prosecute somebody for in court? Or is it less successful or more successful than trying to prosecute somebody for being -- driving under the influence?

DEPUTY SUPT. CORLETT: Well, I think it all comes down to the Trooper or police officer or sheriff's deputy's testimony and observations of the operator.

ASSEMBLYMAN LENTOL: All right, something we'd have to know for the future.

And I understand that Mr. Aubry has a question. Thank you, sir.

DEPUTY SUPT. CORLETT: Thank you.

ASSEMBLYMAN AUBRY: I don't know which one is going to work.

Deputy Commissioner, I have a quick statement to make, not a question. Fifteen years ago, in the State Police Academy, I had a heart attack. And three of your officers who were there were trained to respond to

individuals who have incidents such as mine.

And so I never miss an opportunity to thank you and to thank the department and thank those officers, because if they hadn't been as good as they were, I wouldn't be here.

Thank you very much.

DEPUTY SUPT. CORLETT: Thank you. I'm glad you're still here, sir.

CHAIRWOMAN KRUEGER: Thank you.

ASSEMBLYMAN LENTOL: Thank you very much, Superintendent.

CHAIRWOMAN KRUEGER: Now we thank you very much.

DEPUTY SUPT. CORLETT: Thank you so much.

CHAIRWOMAN KRUEGER: Thank you for being here with us.

All right, for people who are following, yes, we're still on page 1.

(Laughter.)

CHAIRWOMAN KRUEGER: And we are shifting to the New York State Office of Information Technology Services, Jeremy

Goldberg.

Okay, fine. Are the IT folks coming down? Good. All right.

Good evening.

INTERIM CIO GOLDBERG: Good evening.

Good evening, Chairs Krueger and Weinstein and distinguished members of the Legislature. My name is Jeremy Goldberg. I am the interim chief information officer at ITS. I am joined by today by ITS General Counsel Marcy Stevens.

I thank you for the opportunity to discuss Governor Cuomo's 2020 Executive Budget as it relates to the important work being done by ITS.

The concept of ITS, a unified technology enterprise, is a result of Governor Cuomo's vision: making New York State a global leader in the government-technology sector. Over the past six months, ITS leadership carefully considered how to best meet the agency's mission to deliver technology products, projects and services to New York State

government agencies. ITS understands that agencies rely on technology solutions and stable, secure infrastructure to deliver services to people and businesses across New York.

As we move forward in support of the critical state priorities, we do so with a focus on collaboration and responsible investments of state resources. Since the transformation efforts in 2012, ITS has reduced the number of agency CIOs from 37 to one; migrated off of 27 email systems into one; consolidated 53 data centers into two; and built a highly skilled, multi-disciplined Chief Information Security Office. As a result, ITS delivers secure and responsive technology to its customer agencies.

While the technology is impressive, it's the hard work of the ITS workforce that makes it all happen. ITS employees work around the clock to find solutions that solve customer pain points. Some recent accomplishments the ITS team has completed with our agency partners include:

To enhance the security posture of New York State, ITS led the effort to implement additional security controls for the ever-changing workforce; established a secure, private New York State government cloud that allows ITS and our partner agencies to deploy mission critical needs using cloud solutions; launched the Know Your NY Water map-based website with DEC and DOH that provides information about the state's public drinking water and the health of New York's lakes, rivers, and streams, as well as waters used for recreation and habitat protection; collaborated with the DOH Opioid Prevention Program to launch an Opioid Dashboard to provide comprehensive and useful data to the public regarding opioid use and misuse; and, partnering with OGS, we even deployed free Wi-Fi on the Empire State Plaza. Visitors can walk the entire length of the Plaza's Concourse without experiencing interruption in their wireless service.

The Executive Budget for this coming fiscal year will allow ITS to continue to

standardize investments, systems, and applications across state government, resulting in enhanced operations and security. It includes $580 million in General Fund support for ITS to maintain critical technology infrastructure. This infrastructure is relied upon by more than 40 executive branch agencies to meet the needs of New York State residents.

The budget for the next fiscal year highlights Governor Cuomo's continued commitment to leveraging technology to achieve his bold and progressive agenda. We will continue to address legacy systems and aging infrastructure to protect New York from cyber threats. ITS will continue to deepen its partnership with the Department of Homeland Security and Emergency Services to provide cybersecurity support to both state and local entities.

As cyber threats continue to grow and evolve, we will remain vigilant, working to keep pace with the challenges as they develop. As always, we remain committed to

keeping New Yorkers safe.

Thank you for this opportunity to address you this evening on behalf of ITS. I appreciate your support of our critical mission and thank you for your service to New York.

CHAIRWOMAN KRUEGER: Thank you.

We're going to start out with Senator Richard Funke.

SENATOR FUNKE: Thank you, Madam Chair. About 10 hours ago now --

(Laughter.)

SENATOR FUNKE: -- Judge Marks said that there was a greater need for better technology in the court system, and I spoke with some district attorneys who said the same thing. So in 2017 I authored -- and my colleagues in the Legislature passed and the Governor approved -- a bill to create an Innovation Technology Center in the State of New York, or an iCenter, to pilot technology products. Are you familiar with this?

INTERIM CIO GOLDBERG: I've heard a bit about it, but I'm not really briefed on

the details of that particular bill.

SENATOR FUNKE: Okay. Well, the director was required to issue a report each year, beginning last year, on what's been done -- to the Speaker, to the Senate Majority Leader, and the Governor, on what initiatives have been taking place. The problem with all of this, of course, is that it has never been funded.

Just as an overview for my colleagues, the idea is to draw the most advanced, innovative, and cutting-edge technologies and products to a center in New York State that in turn will allow public information technology pros to better understand the expanding and changing world that we live in in terms of technological advancements.

The constant evolution of technology obviously makes it very difficult for everybody to stay up-to-date, but allowing state agencies then to test out new products before purchasing them would save the state money and allow vendors the opportunity to showcase their wares.

Do you think this is a good idea, and should we be funding it?

INTERIM CIO GOLDBERG: Thank you for your questions, Senator, and I also, in the previous testimony with the State Police commissioner -- I also recognize that you had another creative idea in terms of thinking about technology solutions. And so I always appreciate and admire the creative thinking when it comes to technology.

Most of all, where I start out from and where we think about this at ITS is understanding it from the user perspective. Are we really, truly looking at the business need? So at the end of the day, our CTO team, for example, at ITS is constantly looking at emerging technologies, trends, things that are out there that may have an application in the public sector.

So I do think what you're suggesting and has been discussed over the past few years prior to my being here in this role is quite a good idea. And getting best practices and understanding from experts in

the technology space and best-in-class kind of approaches to doing this work, I think, is a worthy idea.

SENATOR FUNKE: Yeah, I think we've got a lot of smart people in this state.

INTERIM CIO GOLDBERG: We absolutely do.

SENATOR FUNKE: And in our community in particular -- in Rochester we've got a lot of high-tech companies that really know what they're doing, in the cyber world and elsewhere.

And just to give you an example, North Carolina, which is something we patterned this after, North Carolina created a similar innovation center that opened its doors in 2013. By October of 2014, more than $6 million worth of technology had been tested at their iCenter, which led to a savings of about $7 million to the State of North Carolina and $1.4 million a year in storage costs.

So North Carolina, as an example, is currently leading a national innovation

community coalition of 25 states that have come together now, dedicated to bringing innovative practice to government technology.

If we had this center in place, if we could have businesses around our state coming down here and being able to test their wares, not giving them any preferential treatment at all in terms of government contracts, but giving them that opportunity to test their wares on big data -- Cognivue is an example, in the marijuana legislation, a perfect example of a company that could have come down here and partnered with the State Police and pilot-tested this program in conjunction with the legislation.

So I would hope that you would do all you can to see that we can put some money in the budget to fund this and get it moving in the right direction.

INTERIM CIO GOLDBERG: I appreciate the spirit of the way that you're thinking about this in terms of the partnership perspective as well. I'm not familiar with the North Carolina example, but would like to

follow up and learn more.

We build upon the work that we do here on the Governor's bold vision to be a government technology leader, and so ideas that come up, such as this one -- we think New York can even do it better.

SENATOR FUNKE: Great, Secretary.

Thank you.

CHAIRWOMAN KRUEGER: Assembly.

ASSEMBLYMAN LENTOL: Mr. Zebrowski.

ASSEMBLYMAN ZEBROWSKI: Good evening.

INTERIM CIO GOLDBERG: Good evening.

ASSEMBLYMAN ZEMBROWSKI: I chair the Committee on Government Operations, so we have a few questions regarding technology service contracts and the language in the Executive Budget.

So the language authorizes the director to issue comprehensive technology service contracts. Could you just give us a little bit of information, could you elaborate on the types of technology service contracts that were envisioned by this section of the budget? And maybe talk about,

within that construct, how you currently procure technology service or how the agencies currently procure technology service and where you would envision it going in.

INTERIM CIO GOLDBERG: Yeah, so to clarify in your question, if I may, is it Article VII language that you're speaking of, Parts X and Y?

ASSEMBLYMAN ZEBROWSKI: Yeah, Part X.

INTERIM CIO GOLDBERG: Okay, so Part X, as I understand it, and in terms of our interpretation of the language -- and I'm still reviewing this -- was established as another tool for ITS to be able to procure large-scale technology projects and products, right?

In terms of this replacing any existing OGS comprehensive umbrella contract or other, that is not the case. As far as the comprehensive umbrella contracts that exist within the state that -- which we buy and procure technology, I defer to our colleagues who are the experts at OGS.

ASSEMBLYMAN ZEMBROWSKI: Okay. So

this isn't -- this language, you don't believe it to give you the authority to sort of procure these contracts on behalf of everyone else? I guess not.

INTERIM CIO GOLDBERG: No, it's another tool by which ITS can procure technology as it relates to larger-scale technology products.

So we look at several examples of this. There's one in existence right now, the Integrated Eligibility System, IES.

ASSEMBLYMAN ZEBROWSKI: Would you be stepping in the shoes of these agencies?

INTERIM CIO GOLDBERG: Absolutely not.

ASSEMBLYMAN ZEBROWSKI: Okay. So you see it as another tool.

As we sort of were evaluating the language, we were wondering is this an attempt to prevent, you know, within the contracts, the costs from changing. Are there like common issues in technology service contracts that are unique and arising that give -- that gave the Executive the impetus to put this in the budget?

INTERIM CIO GOLDBERG: Yeah, for specific follow-up on this question, and in terms of the way that we understand it and the way that we've reviewed it, again, it's another tool that's available for procurement as it relates to large-scale technology procurements.

ASSEMBLYMAN ZEBROWSKI: Okay. I guess I don't know if it makes sense to further drill down on it. Maybe I would just say that from the committee's perspective we haven't gotten a lot of information regarding this area of the Executive Budget.

So perhaps in subsequent meetings we could sit down and sort of understand what you've seen, how this would help, how it would affect the other agencies --

INTERIM CIO GOLDBERG: Absolutely.

ASSEMBLYMAN ZEMBROWSKI: -- you know, between now and when we're expected to develop our own resolution and of course come to a final budget.

Lastly, Part Y talks about a standardized definition technology. Could

you just kind of describe what that would do and how it would help?

INTERIM CIO GOLDBERG: As we interpret and understand it, the definition in terms of expanding the definition is to include voice as part of the technology definition, which is an attempt to try to keep up with the ever-changing and fast pace of technology that's out there.

ASSEMBLYMAN ZEBROWSKI: Okay. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Diane Savino.

SENATOR SAVINO: Thank you, Senator Krueger.

Good afternoon -- or evening, sorry. Evening.

So we had an opportunity to speak earlier this week, so we covered a lot of issues. And I just want to ask you here at the hearing about a couple of points.

One, we had a conversation about a piece of legislation that I wrote almost 10 years ago that was IT in-sourcing, a way

to create -- you know, I called it the state's own Geek Squad. And how do we develop a career path and how do we attract -- recruit and retain and attract people to work for government so that we're not constantly reliant on incredibly expensive consultants.

So have you had an opportunity to take a look at that? Any thoughts on what we can do? In the past two budget cycles the Governor had proposed almost an incentive to bring people in, and if they stayed long enough we would provide them some permanency. But there was some controversy about that, because in fact it was displacing people that had already been tested.

But it's a monumental problem: How do we in government recruit and retain IT professionals so that we're not constantly having to spend millions of dollars on private consultants?

INTERIM CIO GOLDBERG: Yeah, thank you for the questions. And I enjoyed the conversation earlier this week.

When I went back and spoke with the team following our conversation, one of the things that our finance team pointed out to me was that over the past three years, the number of full-time staff that have replaced consultants is 320. It's a savings of $49.3 million of consultant conversions.

SENATOR SAVINO: Very good.

INTERIM CIO GOLDBERG: So there's really good work that the ITS team is doing to approach it in this way, which is we know we have the talent within our agency. We know that the talent exists.

And we also recognize, with retirement and people moving on to pursue other careers outside of government, perhaps there is a war for talent. And that's not just a government topic or issue for this sector; this is a situation that the healthcare industry and many others also face.

And so what we'll continue to do at ITS is invest in the workforce that we have. We have a dedicated team that does leadership development and training -- over 70,000

hours, in fact, over this past year -- of both online and in-person, covering topics around engineering quality, test quality, QA testing, user experience, and then a number of different products that we work on and that we use every day with our partner agencies.

So we have to continue to double down in terms of our training and development of the workforce, and we do deeply believe that the folks that work in ITS are mission-driven and serve as a great example for those who might want to come in and work in government.

SENATOR SAVINO: And we also had an opportunity to talk about some of the concerns I have around procurement on technology. I know Assemblyman Zebrowski touched on it briefly, and I do think it's something we need to explore, whether it's during the budget process or outside the budget process.

With the existential threat of cybersecurity risks every day, your agency is now on the task force, the risk team that the

Governor referenced in the State of the State.

We have dozens and dozens of towns and villages and county governments, and each one of them has their own procurement rules. Most of them are required to put bids out to the lowest responsible bidder, and in the world that we live in now, that is the craziest way to approach cybersecurity issues.

So I really look forward to working with you on that to try and come up with better standards for government, an easier way to do it.

And then finally -- I think they're cutting me off even though I'm -- I should be entitled to 10 minutes, not five, but it's not a very big area of information here -- you mentioned legacy systems. As you know, many of the agencies, particularly on the social service side, they are utilizing systems that are 30, 35 years old.

The Office of Children and Family Services, local county social service

agencies, are required by the federal government to utilize a system called the Welfare Management System. You may as well have two cups and a string. It is the most antiquated system ever, and what I worry about are the cyber risks. So it's the Welfare Management System, and I don't know how -- how do we begin to work with our state agencies to update some of these legacy systems which have an incredible amount of information that really exposes these agencies, and the clients that they provide service to?

INTERIM CIO GOLDBERG: That's right. So many different discussions to follow up on here. And I especially look forward to meeting with members of your committee as well.

On the part here, the last point related to legacy systems, I can tell you that on a 24/7 basis the ITS teams not only in the Chief Information Security Office but from our chief operating officer's office are managing and maintaining putting in the

highest-level security controls and monitoring and enhancements to ensure that these systems keep running. Many of them are 30, 40 years old, we acknowledge that. But the hard work that they're putting in to make sure that these things are maintained, so those most in need get the benefits that they expect at the end of the day.

SENATOR SAVINO: And with respect to this cyber -- the Governor calls it his Cybersecurity Response Team -- have you all started meeting, or is this a newish thing for him? Or are you -- how are you coordinated with DHSES and county governments? If you're doing it at all yet.

INTERIM CIO GOLDBERG: Sure --

CHAIRWOMAN KRUEGER: You know, we've run out of time.

SENATOR SAVINO: I was entitled to 10 minutes. You only gave me five. I chair the committee.

CHAIRWOMAN KRUEGER: That's true. You should have gotten 10.

SENATOR SAVINO: Yeah.

CHAIRWOMAN KRUEGER: You do chair the committee.

Give her another five minutes.

SENATOR SAVINO: Thank you. I probably won't need the five minutes, but -- thank you.

INTERIM CIO GOLDBERG: So you point out a couple of really great points here related to the roles and responsibilities around cybersecurity, and our colleagues here earlier today from DHSES and State Police are -- we're in touch daily as it relates to security information, sharing and responding to the critical needs that exist to keep New Yorkers safe and our technology infrastructure safe.

It's important to point out -- and you reference, I believe, some of the towns and municipalities, as I understand it -- DHSES, the responsibility there is to help New Yorkers, local municipalities, and non-executive agencies, and this also includes critical infrastructure protection.

The New York State Police, on a

communication-sharing, law enforcement, intelligence-sharing basis, we work with them to understand what's happening, what's highlighted, what's relevant on a daily basis. At ITS they're -- by statute, under New York State Technology Law, we cover the network systems, architecture systems across the board, across all the different executive agencies.

What I will also underscore here is that it's important that any time a call goes in to one of these individual parties, a response will be there. We're into contact daily, we're coordinating and doing the best work that we can to ensure safety of all New Yorkers, businesses, residents, and others.

SENATOR SAVINO: Thank you.

And I look forward to meeting with you further and discussing some of these incredibly complicated issues.

INTERIM CIO GOLDBERG: Sure.

SENATOR SAVINO: Thank you.

INTERIM CIO GOLDBERG: Happy to.

CHAIRWOMAN KRUEGER: Is that all you need? Okay. Thank you.

Assembly, do you have any anyone else?

Okay, then Senator Seward.

SENATOR SEWARD: Thank you, Madam Chair.

Mr. Goldberg, I wanted to ask about the Integrated Eligibility System. Can you share with us where we are in that, the development and implementation of that system?

INTERIM CIO GOLDBERG: Sure. So for those that have yet to be briefed by the project director of IES, the Integrated Eligibility System, we're happy to set up a briefing with Anne Roest and her team to walk through the project, where we're headed.

What this program is about is modernizing a lot of the legacy systems that we were talking about just a moment ago with Senator Savino, modernizing all of the different systems at the county level to better integrate and provide one single door for New Yorkers most in need to be able to

access the services that they expect.

At this stage for the IES program, the timeline and schedule has been restructured, breaking down the delivery timeline into different phases with the scheduled final phases to be at the end of 2024. The program is staffed completely with multiple -- and multiple procurements have been awarded.

And the team, as I mentioned, from IES is available to go through a more detailed briefing following today's session.

SENATOR SEWARD: Do you anticipate any savings that will result from the creation of this IES system? Are there any savings, or is it just a more modern way of doing business?

INTERIM CIO GOLDBERG: Yeah. So I won't speculate on savings in terms of how we think about this from a cost perspective, but I believe the hope is that in terms of the time that it takes for an individual to go and receive the services that they would like, that that timeline is cut down and that they're able to get them more quickly and

efficiently, to take care of the urgent needs that they have for themselves and their families.

SENATOR SEWARD: So are there any concerns about completing this project on time and on budget?

INTERIM CIO GOLDBERG: I think the program is well positioned to move forward and to complete on time and on budget.

And we'll follow up with any of the committee members who would like to speak with the IES leadership team to talk in more detail.

SENATOR SEWARD: Thank you. Just shifting gears, you know, in case anyone hasn't noticed, this is a big political year here in New York State --

INTERIM CIO GOLDBERG: Is it?

SENATOR SEWARD: -- and across the country, for that matter. Has ITS worked with the State Board of Elections to examine New York's election security policies and procedures and to identify any potential vulnerabilities to outside interference?

INTERIM CIO GOLDBERG: Yeah, so it is an important question. And obviously in light of the fact that it is the 2020 election cycle -- and obviously I did see the news, as well as many others, of what took place in Iowa with the caucuses -- so when it comes to security and cybersecurity posture for the Board of Elections, say, I would defer to them in terms of how they are rolling out, planning for, and preparing for the elections.

We are in touch with them on a regular basis. We do provide support, consultation to them throughout this process, and we are on frequent phone calls and will continue to be as we get closer and closer to the primaries and other key points during the election season.

SENATOR SEWARD: So you're on it.

INTERIM CIO GOLDBERG: It's a collective effort --

SENATOR SEWARD: Yeah.

INTERIM CIO GOLDBERG: A lot of organizations, a lot of people that are on

top of it.

SENATOR SEWARD: Could you explain how the division of responsibilities protecting the executive agencies' IT infrastructure is split between the state agencies and the ITS?

INTERIM CIO GOLDBERG: Sure. So I'll just briefly -- I'll recap what I shared just a moment ago.

So ITS by statute is focused on -- and by law, we focus on the state infrastructure. So all of the -- all the executive agencies, we maintain and manage the security of that infrastructure.

DHSES manages and responds to non-executive-related agencies. So that would be local municipalities and towns as well as critical infrastructure response.

And the State Police, as I've noted earlier, they work on this with us in terms of coordination, of communicating policy law, intelligence gathering, and information that is required to ensure that we have ongoing enhancements to our security for the state.

SENATOR SEWARD: You know, when it

comes to cybersecurity threats, I mean, this is something that really is evolving --

INTERIM CIO GOLDBERG: Oh, it is.

SENATOR SEWARD: -- and has to be an ongoing process. But as we meet here this evening, do you believe the state's network is sufficiently prepared to face the challenges of these evolving threats?

INTERIM CIO GOLDBERG: Yes, it is. And we'll continue to invest time and resources to ensure that we're continuing to enable the security, the protocols, the policies, and all the modifications that are required to continue to keep us safe.

SENATOR SEWARD: Thank you, sir.

CHAIRWOMAN KRUEGER: Thank you very much.

ASSEMBLYMAN LENTOL: Mr. Aubry, please.

CHAIRWOMAN KRUEGER: Well, excuse me. I didn't realize you had another one.

ASSEMBLYMAN LENTOL: He's a late starter.

ASSEMBLYMAN AUBRY: Sir, could you

expound on the dashboard that you do in conjunction with -- or did with, in conjunction with the Department of Health? And how does that tie into the OASAS efforts? I know OASAS has a $750,000 advertising campaign that it's doing. How is that coordinated? Are you a part of that?

INTERIM CIO GOLDBERG: Yeah, so I will have to defer to our team at ITS to give you the full detailed overview of how that project was completed. It predates my work here at ITS.

However, one of the things to really note here was that it was emblematic of the vision that Governor Cuomo had in 2012 with the centralization of all IT resources coming into one singular agency, is that we have the team across the board that can sit at the table and design and map out a product that an agency is looking for to meet the need of that agency.

And that's the work that we continue to do as ITS, and the tremendous workforce that we have, to deliver on the expectations

that both the Governor has for our state and for the agencies on critical issues such as the ones you just referenced.

ASSEMBLYMAN AUBRY: And would you share the cost of that with the agencies that you service?

INTERIM CIO GOLDBERG: Would we share the cost as far as --

ASSEMBLYMAN AUBRY: In other words, would they -- would you get compensation back from the agencies that you do -- or is that entirely just on your own budget?

INTERIM CIO GOLDBERG: So it depends, is the answer.

ASSEMBLYMAN AUBRY: Isn't it always.

INTERIM CIO GOLDBERG: Some things are done -- you know, we do in-house, right? And we have people who are burning on both ends, literally, in terms of our engineers, which we talked about earlier, recruiting and attracting and retaining the IT talent that we need in this state. Engineers are very tough to come by.

However, when it comes to different

models of service that we offer to agencies, sometimes there's a chargeback model for the services that we offer, and sometimes we're successful in getting that payment from the agencies.

ASSEMBLYMAN AUBRY: So it would be helpful if I could hear from the technicians to tell me how that was done, at a later date.

INTERIM CIO GOLDBERG: Be happy to.

ASSEMBLYMAN AUBRY: Thank you very much.

CHAIRWOMAN KRUEGER: Okay. I think now we're saying goodnight to you. Thank you very much.

INTERIM CIO GOLDBERG: That's it? Thank you very much for the time. Thank you.

CHAIRWOMAN KRUEGER: All right. Next up, New York State Office of Indigent Legal Services, William Leahy.

Please start.

DIRECTOR LEAHY: Thank you, Senator Krueger, Assemblyman Lentol and Assemblyman Aubry, and friends old and new.

The Office of Indigent Legal Services was created nine years ago in belated response to the Kaye Commission report, which had identified New York as being in violation of its fundamental constitutional duty to provide adequate representation in criminal defense cases --

(Discussion off the record.)

CHAIRWOMAN KRUEGER: Please just keep going.

DIRECTOR LEAHY: I want to welcome Chairwoman Weinstein as well.

CHAIRWOMAN KRUEGER: We're an interesting family up here.

DIRECTOR LEAHY: -- in adult criminal defense and parent representation cases.

I am here today with respect to the criminal defense portion of our responsibilities. What we have accomplished, with the Legislature's support and the Governor's support, particularly over the past four years, has been really remarkable. And I date this to the settlement of the Hurrell-Harring lawsuit in 2014, the

implementation that began in 2015, and we have met all the benchmarks to the satisfaction of the plaintiffs' attorneys and the Governor's counsel during that -- it's about a four and-a-half-year period now that we have been implementing.

And there are two reports that are mentioned, I think, on the first page of my written presentation that are recently up on our website that I commend to your attention. One of them is fairly lengthy, the other one is not. They talk about how the counties, the five lawsuit counties, have achieved compliance with the terms of the settlement.

And for those of you who may not be familiar with that settlement, that is counsel at every arraignment, that is reasonable caseloads so that attorneys are not overburdened and they can devote adequate time to each client, and it is also the provision of adequate support and oversight. By "support" I mean investigators, social workers, experts in appropriate cases. By "oversight" I mean supervision, mentors,

training, certification requirements, fundamental quality control issues. And that's why we call it the quality improvement portion of that settlement. So that is a big success story.

And a bigger success story came in 2017, when the Governor proposed and the Legislature approved Executive Law 832(4), which extended those reforms from the five counties to include the entire State of New York. That was a five-year project. A five-year gubernatorial commitment, a funding commitment, and that commitment I'm happy to say today has been fulfilled in the Executive Budget for a third consecutive year.

And so I thank you for your support, and I urge your endorsement of the Executive Budget insofar as it continues to fulfill that commitment to the Hurrell-Harring settlement reforms extended across the state.

Now, with respect to parental representation, there is a very different

story. And that story is told in the report of 2019 of Chief Judge DiFiore's Commission on Parental Legal Representation.

I have two copies with me of that report. Many of the staffers already have it, but I have one for each chair -- if I could be permitted to have someone pass it up to the two chairs -- thank you very much, sir. That report details the exact opposite story with respect to the state's equal obligation under the law and the State Constitution to provide adequate counsel to parents who are facing the loss of their children and the disruption of the family unit.

And if I may, I would like to just quote a couple of sentences from the Executive Summary to that report. It's on page 6 -- excuse me, I'll get it in just a moment here. "The crisis in parental legal representation goes to the core of the judicial function, to make reasoned determinations of fact and proper orders of disposition. Without meaningful parental

representation, family courts lack the comprehensive information and evidence needed to make reasoned determinations and render proper dispositional orders. Without state funding and oversight, attorneys lack the resources necessary to deliver the effective assistance of counsel to which parents are constitutionally entitled."

Now, those findings are very clear. And the question is, is the state with respect to parental representation going to simply wait around to get sued again, as has happened with respect to criminal defense, or is the state going to step up and begin to address the deficiencies that are so thoroughly and comprehensively articulated?

Judge Karen Peters, former presiding Justice Karen Peters, was the chair of this commission. She worked very closely with former professor Angela Burton, who is on my staff and director of parental representation; she was special counsel to the commission.

And the findings are unassailable.

They're just out there, and they're just waiting for someone to come in and file a lawsuit.

Now, as I say in my written testimony, we don't subscribe to the idea that it takes a lawsuit to force New York State to do the right thing with respect to parental representation. We subscribe to two things.

First, the findings and recommendations of the Chief Judge's commission are absolutely appropriate and they're correct, and they should be undertaken. There is not legislation pending before you right now to do that.

So what does that mean? Well, that brings me to our second point. We go back to something this Legislature did in the very early days of my office, 2013 -- it was seven years ago -- and this Legislature added $4 million to our account, Aid to Localities, for the purpose of attempting beginning the effort to reduce caseloads and provide adequate support to counties upstate.

New York City at the time already had

caseload controls from the 2009 legislation. Nothing was happening upstate. And in Appendix B in my written testimony, I talk about replicating that.

And what we did then with the relatively small amount of money was we were able to make a fairly significant dent in the unconstitutional status of representation in criminal defense in upstate New York. This was before the settlement in the five counties, and it was long before the legislation that extended the settlement terms statewide.

So we know how to do this. We have done it. We can do it now. We need funding. We want to put out an RFP. We want to get the process of parental representation reform jump-started in advance and triggering more significant action next year, just as we did in 2013 before the 2014 settlement of the Hurrell-Harring lawsuit.

So this is not in the Executive Budget. So this is a legislative ask, and it's a big one. It's $5 million. And you

have got -- I've been sitting here all day, and I am probably about the tenth ask of significance that you've heard just in one day, and Lord knows what you've heard on all the other days.

And I know about the need for hourly rate increases and the 15 years that Judge Marks referred to, and that needs to happen. And there were so many other things. And people who are going to come after me whose needs have not been addressed adequately in the Executive Budget are going to be speaking to you as well, including my two good friends Susan Bryant and Karen Murtagh. And so I ask you, humbly but really insistently, let's get this ball rolling.

We've got statements in Appendix C, the last page of my submission, by some practitioners, people who have been in the parental representation field. And they are seeking and they've dedicated their careers to representing parents to the best of their ability. They are trying to keep families together.

We need parent advocates to assist parents in complying with orders that are put on by the court in a parental representation case. Which sometimes parents are resistant to, or they don't understand the need for parent advocates, who have successfully negotiated that process and can be of great assistance to their legal counsel in that regard.

So I'm here to beg you for help on this and to help us get the ball rolling so that New York can be compliant with both aspects of its constitutional responsibilities, not just criminal defense but parent representation as well.

And I'm happy to answer any questions you may have.

CHAIRWOMAN WEINSTEIN: Hold on one second. So Senator Seward goes first.

SENATOR SEWARD: Yes, thank you, Mr. Leahy.

DIRECTOR LEAHY: Hi, Senator.

SENATOR SEWARD: Have the changes in the bail and discovery laws from last year

that went into effect January 1 -- I know we're only about, what, six weeks into it, five or six weeks -- have they affected the indigent legal services around the state and in your agency in any way?

DIRECTOR LEAHY: Yeah, I --

SENATOR SEWARD: Have you seen any early signs of that?

DIRECTOR LEAHY: Yeah, I think that the criminal defense part, Susan Bryant and her organization deserve a lot of credit for this, and she'll be speaking to you a little bit later.

The defense bar, I would say, has used the time very, very well. There's been extensive training in all parts of the state, and training is critical. Because the -- what we learned during the long process -- there hasn't been much attention paid that I've heard today about the process of -- former counsel Alphonso David held a series of seminars and think sessions at which all aspects -- I was involved, prosecutors were involved, judges were involved.

And one thing that really stood out to me during that process was that while a lot of the publicity and the political pressure to reform the bail system was coming out of New York City, the prevalence of people charged with minor offenses being detained pretrial for want of bail was dramatically greater upstate. Dramatically greater.

And so this law, this bail law, was absolutely essential not just in New York City, which still gets most of the publicity, but throughout the state. And in some respects even more so upstate because, for want of 100 bucks or 200 bucks, thousands of people are crammed into county jails all over the state. That's wrong. And I'd be happy to debate anybody who thinks it's right.

So the tweaking, you know, that could be the subject of a whole host of hearings, and I'm sure they will take place. But the law itself, absolutely correct.

The discovery law? New York State has now joined -- I'm from Massachusetts, my career before I came here was in

Massachusetts. In 1979, Massachusetts passed this discovery. And that's when most states did it, in the late 1970s. So New York is just very belatedly joining the mainstream with respect to discovery. I know it's a shock because there hasn't been discovery, so of course it's a shock to the system. But New York is finally joining the mainstream.

SENATOR SEWARD: Would you -- under the circumstances, do you still feel that the approximately $250 million that is appropriated is the appropriate amount of assistance needed out there for indigent legal services, with the changes in Hurrell-Harring?

DIRECTOR LEAHY: With the statewide application of Hurrell-Harring?

SENATOR SEWARD: Yeah. Yeah.

DIRECTOR LEAHY: Well, that's what we hope to get to by 2023. That's right. We're at the third year right now. You know, the Governor and his fiscal people have been absolutely true to their word.

SENATOR SEWARD: So you feel that's

still an appropriate number?

DIRECTOR LEAHY: We believe it's appropriate. We are going to be looking at 2020 data, calendar 2020 data. We're going to be issuing a follow-up report in 2021 based on that 2020 data. So if we have any suggestions of change, you know, we'll bring them in at that time.

SENATOR SEWARD: What is the average amount of assistance that's provided to each county in this formula?

DIRECTOR LEAHY: Well, it really varies. You know, from -- what we did was an assessment of the needs, what it would take for each county and New York City to do three things: Provide counsel at every arraignment -- now, New York City was already doing that -- to meet the caseload standards that my agency set in the wake of -- that was one of our responsibilities under the settlement between the State of New York and the plaintiff class. So we set that 300 weighted cases as a standard, and five counties have met that standard already.

Eleven providers in the five counties, we've got an April 1, 2023 deadline, we're scrambling to get there, and then the provision of adequate support services.

And what this means, to bring it into the real world, at the time the statute was passed in 2017 I think there were eight counties that had no public defender system at all. It was just all 18-B, all private counsel. Three of those eight have already established public defender offices now, I think a lot of the rest of them are moving towards it, and many, many counties are creating real assigned counsel programs, as opposed to just one part-time administrator who, you know, signs the checks.

So, we -- the goal is that it shouldn't matter whether a client is represented by a public defender from a terrific New York City public defender office or whether that client is represented by an assigned counsel lawyer way upstate.

SENATOR SEWARD: Could we receive a list of the assistance that's provided each

county thus far?

DIRECTOR LEAHY: In terms of the amounts that go out to each county?

SENATOR SEWARD: Yeah, yeah.

DIRECTOR LEAHY: Sure.

SENATOR SEWARD: Yeah, we would like to see that. Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Bill, I have a question, and then Assemblyman Lentol will have.

The parental representation, you said something about $5 million. Was that to just develop a plan, or was that to actually provide services?

DIRECTOR LEAHY: Well, $5 million -- let's say 50 counties apply out of the 52 eligible. Maybe not that many will, but -- it's $100,000 per county. That's what I try to address in my written testimony.

Because sometimes you talk to people and they say, Well, that's not enough. Well, you're not the Executive. You don't do the Executive Budget. You have to do the legislative budget.

So it's -- it's a jump-start. It's to show what can be done with seed money, it's to show what can be done, the combination of some state money and a dedicated agency that knows how to put that money to work and has established excellent relationships with the 150 providers and with the 62 counties, 57 and New York City.

And this includes, by the way -- when I talk about assigned counsel programs, this very much includes New York City, which is a big focus of our efforts in New York City, is to make the assigned counsel representation on a par with the institutional representation.

CHAIRWOMAN WEINSTEIN: So, I mean, it's interesting that you -- that the numbers, the 5 million as a start. Because interestingly, in this budget, the Governor proposes to transfer Prisoners Legal Services, which is just over $2 million, to come out of the Indigent Legal Services Defense Fund and LSAF funding, also just under 3 million -- actually, is just about

the 5 million that you're looking for, would have been -- would be there in the revenues for the fund if not for transferring some programs to come out of that fund.

So, you know, we'll certainly take a look at it. Haven't been instrumental in setting the caseload standards in New York City, the law guardians. I know how important your recommendation is, and we certainly will give it the -- certainly give it its due consideration and see if we can't at least get some seed money to move in that direction.

DIRECTOR LEAHY: Thank you. And another point I should make is that in the parental representation area, there are several excellent programs in New York City. The Center for Family Representation, Bronx Defenders, Brooklyn Defenders, Neighborhood Defenders are doing it now.

So the programs exist. This is not rocket science. This is not mystifying. This is getting expertise and funding married together and to get it into the hands of

people who know what they're doing and know how to create good representational systems.

CHAIRWOMAN WEINSTEIN: Thank you.

At the moment there isn't another questioner from the Senate, but we would like to go to our Codes chair, Assemblyman Lentol, for some questions.

ASSEMBLYMAN LENTOL: Thank you, sir. Thank you, Mr. Leahy -- Bill.

So I know you're here with your hat in your hand, but I don't really have a question for you. But I just want to tell you how glad I am that you are here and that you've never come and asked for anything more than you needed. As a matter of fact, you've been, I think, underfunded. And you've made it work over the years.

And I'm very proud to say that the Office of Indigent Legal Services -- which started, as you said, in 2013 -- would not have been the same and would not be as good as it is without you.

And I know how important it is to you, and it's important to us, especially at this

time when we've enacted all of these criminal justice reforms and we need to make them work. And I know with your help and your guidance, those indigent folks will be able to navigate this new criminal justice system and do it and the -- I know that the innocent will be proven innocent and the guilty will do what they do.

But it's going to happen with you, and I'm very proud to say that I was there at the beginning, as you were, and you've done an excellent job, sir. Thank you.

DIRECTOR LEAHY: Well, thank you for all of the support that you've given us from -- really from birth.

So I've got my little Constitution here, and -- that's all we do, is we try to make sure that those words -- due process, equal protection, effective assistance of counsel -- that they mean something. And that we live up to our professed ideals.

So let's do it. Let's keep doing it.

CHAIRWOMAN WEINSTEIN: Thank you. I think that is all the questions, compliments

that we have for you at the moment. Thank you for spending time and for the work you do.

DIRECTOR LEAHY: It's a pleasure. Thank you all for your support.

CHAIRWOMAN WEINSTEIN: Next we have the New York State Board of Elections, the directors, Robert Brehm and Todd Valentine.

CO-EXECUTIVE DIR. VALENTINE: Good evening.

ASSEMBLYMAN LENTOL: Good evening.

CO-EXECUTIVE DIR. VALENTINE: Even though our testimony says good morning, it's good evening.

UNIDENTIFIED LEGISLATOR: Well, it may be morning soon.

(Laughter.)

CHAIRWOMAN WEINSTEIN: Slightly optimistic on your part.

CO-EXECUTIVE DIR. VALENTINE: We'll have to be brief, because we know questions are often what's most important when we come before the committee. My name is Todd Valentine. I'm one of the co-executive

directors. And then obviously with me is Robert Brehm, the other co-executive director.

And we have provided written testimony to the committee. And essentially what we want to do is bring to your attention a couple of things.

One is that we have requested more additional funds in the 30-day amendment period to the Governor's office, because structurally the budget itself missed two main things. One is approximately $1.5 million were not provided to support the state board operations itself. And then also not included in the Governor's proposed budget was what we estimate as approximately $2.6 million to provide for the public campaign finance program.

We have also included in our budget the status of how we work with our cybersecurity efforts, which we can touch on briefly -- I know that ITS had been asked about that -- as well as a brief summary of how we've implemented the 53 chapters that

were passed last year.

And then we've also included in our testimony a report on how we did with early voting and some suggestions about how there be some type of a funding mechanism long term for that. But, Bob, if you want to --

CO-EXECUTIVE DIR. BREHM: I don't want to belabor the point, because we provided written testimony. I know your day has been long.

Certainly the early voting, it was -- in hindsight, it was a very wise decision to roll it out last year. It is the lowest turnout year of the four-year cycle. We had about 3 million, just over 3 million voters last year, our estimate is over 8 million voters this year. So certainly trying to run a new program like that in a very busy presidential year would have been very difficult.

So it was a very effective program at the learning stages, and I think we can certainly build on the successes going into this year.

And then we have whatever questions.

CO-EXECUTIVE DIR. VALENTINE: And we're open for questions.

CHAIRWOMAN WEINSTEIN: Yes. No, we have some. We want to be here this evening with you.

We have first Senator Myrie, who I believe is the Elections chair, amongst other things, in the State Senate.

SENATOR MYRIE: There we go. Thank you, Madam Chair.

And thank you, Bob and Todd, firstly for your patience and for staying here all day.

I want to publicly congratulate you -- I also see some of my local board of elections folks here -- on a successful rollout of early voting. I think this was a rare instance where we had collective words of praise for something that was of that scale, and so thank you very much for your hard work on that. And we really do appreciate it.

On that note, the Executive Budget

proposes the removal of $10 million in aid to our local boards of elections as it pertains to early voting. And I was wondering if you could speak to how the board -- or if the board, the local boards, can conduct a successful early voting process this year and whether or not that hampers the ability for the expansion of early voting sites.

CO-EXECUTIVE DIR. BREHM: The -- we provide information at the end of our testimony with regard to the budget, how the counties are utilizing the $10 million Aid to Localities and the $14.7 million in the capital budget.

It's important to point out, of the early voting sites, and there are about 248 used last November, certainly the counties that utilized the new technology of e-poll books, ballot on-demand printers, and the associated effort to make security at many different sites for nine days, took a lot of the resources. Almost 80 percent of the counties that have submitted claims for the funds so far have submitted claims for the

full amount. And the documentation they've provided shows that they've spent far beyond what we've allotted for their use.

That was one election, in order to stand up the system. Counties learned what they didn't know. And what they learned was they probably will need more equipment, they would need more people. The counties that tried to run it on a shoestring without extra support said that they worked for, you know, over 29 days without a break, and that was more than they could handle.

The presidential election cycle will demand that they have more resources in order to meet the demands of the public. It's just such a busy cycle.

SENATOR MYRIE: Thank you for that.

And I'd just note to the timekeepers, I believe I was only given five minutes, so I want to make sure that we get the 10.

CHAIRWOMAN WEINSTEIN: You'll get another five.

SENATOR MYRIE: All right, just to be clear.

CHAIRWOMAN WEINSTEIN: When it goes down, he'll add.

SENATOR MYRIE: Thank you.

And so it's fair to say that we would need further investment -- in fact, not removal but investment -- in order to carry out the early voting operation that -- now, this year is three times as long as it was last year.

CO-EXECUTIVE DIR. BREHM: Counties will need more capital for equipment, voting machines, ballot marking devices, e-poll books, things of that nature. And the flexibility, with the Aid to Locality program, was critical for counties to pay for consumables and people to actually help with all the various tasks that are happening.

SENATOR MYRIE: Great. And last year when we consolidated the state and federal primaries, part of this discussion was that there would be a cost savings on that, and there were varying estimates. I think most folks said in the arena of 25 million.

And I'm wondering if those cost

savings will in fact be realized this year. And if so, does that help offset any of the potential costs here?

CO-EXECUTIVE DIR. VALENTINE: Well, this year is different. I don't think you'll see the cost savings because there's still a separate presidential primary. So you will also have the additional election as well, in addition to the last regular June primary. So there is still a separate federal and presidential primary.

And in addition, there are now an additional 27 days of early voting that didn't exist prior to that time. So I would be hard-pressed to say that there would be any cost savings, because we've now expanded from what were three days of voting to now 30 days of voting.

SENATOR MYRIE: Thank you. So I have two more questions, just a signpost for you.

The penultimate question is on manual recounts. There is a proposal in the Governor's budget on this. There are several bills floating around the Legislature on

this. And without opining specifically on any particular bill, I was wondering if you could speak to what the process is now and whether or not -- you know, there are proposals that say it should be .5 percent difference in the victory, .2 percent. And if you can speak to just in the administrative experience, what might be useful for a statewide standard.

CO-EXECUTIVE DIR. BREHM: So there are a number of methods for mandatory recount. New York State has not had a mandatory recount. We've had a mandatory recanvass, which is different than many states. If Florida probably had a mandatory recanvass, we probably wouldn't have had Bush v. Gore.

But New York has already had, built into our statute for many decades, a very intensive public access to the data and the stakeholders knowing every step of the way what is happening.

So certainly at very close elections, there are a few jurisdictions -- Columbia County is one, New York City is the other.

Ulster County has a local law that requires in certain instances a manual recount.

So they deal with a manual recount as a standard. They tend to use -- Columbia County does it for every election, so it doesn't depend that if you won by, you know, a 70/30 percent or if it's a really close election.

New York City has had it the longest as a standard. They've used it more. There are examples where there has been a difference with the outcome of the election, but those tend to be in really close elections. So a formula-driven system seems better if there's a statewide race or a local race if you won by a little or the next threshold. So I think the New York City example is probably slightly too high from our percentage point of view.

But certainly -- the other component is making sure that the rest of Article 9, what we do when we close the polls, between then and certifying the election, needs to be addressed at the same time to make sure that

we can give adequate information.

The New York City model is also -- needs to be reflected, because they certify first, they come to a number, and then that triggers the mandatory hand count. So that's an important step to get to so you know what your trigger is, and then you can get the other parts of the statute done in time.

CO-EXECUTIVE DIR. VALENTINE: Well, and I would add that the risk with that is that, you know, the academic studies have shown that hand counts are not the most accurate way to count ballots. And what we have stressed in the state, as Co-Executive Director Brehm had indicated, was we have an extensive and transparent pre-election testing process that occurs throughout the year and always right before an election, and then we have an extensive post-election process to ensure that the devices that we spend a great deal of money on work accurately so that you have confidence in those results.

To go to the hand count introduces an

element that -- of subjectivity that puts risk into the election. It is not the most accurate method of counting ballots, as academic studies have shown.

SENATOR MYRIE: Thank you. And that is a perfect segue into my last one minute and 35 seconds. The ballot marking devices that are being considered now by the board for usage, as you know, there have been expressed concerns around the security and the accuracy and efficiency. And it's been public that I believe that we should have a more extensive public conversation around whether this is the best tool for us to be using in our democracy.

And I'm wondering if you can speak to where the board is at in the certification process for a ballot-marking device and what you believe to be the future of whether we should be using these in our elections.

CO-EXECUTIVE DIR. BREHM: So we've used ballot-marking devices since 2009 as a pilot, and throughout the state in 2010 for voters with disability to be able to mark a

ballot independently, but also for any voter who wants to utilize a ballot-marking device.

I think where we're at now, the devices are applied for to be used either as a ballot-marking device or as a full scanner, you know, ballot-scanning system for any voter to use.

So certainly vendors have brought -- in this instance, ES&S has brought a product for us under both a ballot-marking device and as a ballot scanner. It is being evaluated. The vendor is still making upgrades to the software package to be delivered for testing. But also there's final evaluation on their application to make sure that everything is complete.

So we have a ways to go before testing is completed. At the end of testing, the reports will identify whether it meets New York State's requirements or not. And then that would be presented to our four commissioners for them to make a final decision. I don't see a decision in the next few months. I don't know that I would be

able to give you a better forecast today.

CHAIRWOMAN KRUEGER: Thank you.

SENATOR MYRIE: Thank you both. And thank you again for your service.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Lavine for 10 minutes, chair of the Assembly Election Committee.

ASSEMBLYMAN LAVINE: Thank you, Madam Chair. First of all, Todd and Bob, to you and to your extraordinary staff, we passed 53 new laws last year, and some of them were monstrously difficult to implement. But just for example, the work you did statewide to implement and help to implement early voting, which was a tremendous success, cannot be underestimated. So good work. Extraordinarily good work.

The public's trust in whatever voting machines we're going to utilize is of paramount importance, that's obvious. And you've spoken about this testing and certification process. I've got some other

questions for you. But can you briefly describe how that process is undertaken so that the public will have a better sense of what's involved in guaranteeing that their votes are actually counted?

CO-EXECUTIVE DIR. BREHM: I mean, that's very important, that people have confidence in the systems that we use to conduct elections so that they have confidence in the outcome of the elections. That is both with a very aggressive testing regimen to certify equipment. The statute requires that should we identify any issues that question the security or the operation of those systems, that we reexamine them at any time. It's already in Article 7 of the statute.

And we take that seriously. We did that last year, and we made some further refinements to the system because the technology and the issues continue to advance.

But most importantly, New York has been at the leadership of the country when it

comes to system standards, because we don't take the vendor's word for it. We hire the testing laboratory in New York State. We put the systems to the test. So we get to see the good news and the bad news. We get to see the break/fix. And we're not ready to recommend a system till it meets all of the federal requirements but also, more importantly, the New York State requirements.

And if a system gets to the end and we make a recommendation, it may be that it meets the requirement, it may be that it does not. We don't know that. We don't prejudge it, we just examine it.

CO-EXECUTIVE DIR. VALENTINE: And I'll also add part of the testing process is that we not only hire the original lab that does that, we also have an independent testing authority that helps identify cybersecurity issues and any security issues related to the voting system itself.

So it does take a long time for a system to get through the process, and that can be frustrating when people want to try to

get the latest and greatest and the most updates. But we don't want to take a chance of having any minor issue out there. And, you know, it does take time to get through the process.

ASSEMBLYMAN LAVINE: Thank you, gentlemen.

So the Governor is proposing $16 million in his initial for the state board to implement online voter registration. I have some questions about online voter registration. But can you describe what's involved with online voter registration so the public has a better sense?

CO-EXECUTIVE DIR. BREHM: Well, the bill that you passed last year to require online registration went into effect on April 12th. It requires the state board to build a system within two years. We, when we were sitting here a year ago, recommended that be three. And I'll give you a good example. The first year we had no money, very hard to build anything of this magnitude with no money. So we are on track for

building it now two years after we have money, so that would be 2022.

But it really would be a system where any individual will be able, through not a paper system, to complete a voter registration application to -- the statute requires that we work with DMV to allow an individual to attach their signature that's already on file. We have many signatures on file; they could use that if they're doing it. Or to also update their record. People are very mobile. Last year's transfer reform will also be fixed in this system. We have a temporary workaround, but it's also part of that effort.

Those systems will allow people -- you know, the simple question, when they go to a government agency and the number-one question on MVRA for 19 agencies covered by 5 to 11 of the statute, or the one agency, DMV, by 5 to 12 -- the number-one question asked of a voter or an applicant is, Do you want to register to vote? And they say, No, I've already done it. So they don't understand

the world that we live in, that, Oh, wait, you moved. Or something has changed.

So really it will allow people to update and modernize how they can communicate with government. Here I am, I need to register in time.

And it also will help to feed the new e-poll books to be able to get data in a usable manner so boards of elections don't have to do that, re-keypunch in your name or capture your signature -- the things that really slow down and bottleneck that deadline period now.

CO-EXECUTIVE DIR. VALENTINE: Right. Part of the process, you have to remember, with the voter registration system in New York as it's built is its -- it comes -- all the registration applications are approved at the local level by the county board of elections. So the question of it's gathering the information, putting it down to the locals for their review and entering it into the system -- because they have to determine where a voter votes so they can

give them the correct ballot -- and then putting it into the official statewide system.

So it's got to work in conjunction with the existing six different local registration systems we have that feed into the one statewide registration system.

CO-EXECUTIVE DIR. BREHM: Just one other item that is -- it's not apparent from that 16 million application for the capital budget, is that would allow up to the agency for automatic registration. So our plan right now is to build for it. We have a deadline in our plan. If the Legislature has not adopted automatic registration generally by the 1st of December this year, then we would put it on hold.

But we can -- assuming that it's still a legislative priority, it just needs to work out the procedure of what agencies, et cetera. But we will build it so that we can receive the information from the agency. But you need to fund the agencies that you decide how they need to change their business

rules to make it work at those agencies.

ASSEMBLYMAN LAVINE: Is the 16 million sufficient for you to accomplish what we need you to accomplish?

CO-EXECUTIVE DIR. BREHM: As long as there's not project creep. I've seen one bill that would require us to build something else as part of it. That's not part of our planning.

But we do have a very extensive project plan that we put together. The Governor's team did fund us for this year to the tune of about $700,000 to pay for this-year planning for the implementation of online voter registration. That's news that we didn't have when we were together in November. So that has successfully happened so we can help pay the bills. So we're very grateful for that collaboration. And this 16 million is 100 percent of what we've asked for. So I think we're on our way to make this happen.

ASSEMBLYMAN LAVINE: Assuming we don't have unanticipated glitches -- and I probably

shouldn't even say that, but assuming we're fortunate, when do you imagine this could be up and running?

CO-EXECUTIVE DIR. BREHM: Good question. Our goal is -- it was originally April, but we're looking at January of 2022.

ASSEMBLYMAN LAVINE: And finally, the Governor's proposal discontinues a $3 million allotment that had been utilized in appropriation for the testing of the voting machines. Now, I know there's a fairly elaborate process with the way that money is utilized when the testing goes on. But is that -- or the lack of that 3 million going to impact the board's ability to guarantee, I should say to the best humans can guarantee, the accuracy and reliability of the voting machines?

CO-EXECUTIVE DIR. BREHM: So we like to say that's a dry appropriation. That is a special revenue fund authority for the State Board of Elections. By statute, the voting system vendors have to pay for testing their systems. So we have to have an account to

put the money into and authority to spend the money out of that account to pay for testing.

We have reappropriation language with plenty of budget authority that would allow testing to happen with the expected level of testing over the next several years. So I don't think we need a new appropriation in that instance, because it's not real money anyway, it's just authority to receive and spend money, and we already have that covered.

ASSEMBLYMAN LAVINE: Thank you so very much.

CHAIRWOMAN KRUEGER: Thank you.

Senator Brad Hoylman.

SENATOR HOYLMAN: Thank you.

Good evening. Thanks for being here.

I just wanted to ask a quick question that's on a lot of minds of my constituents. We saw last week in Iowa a complete meltdown at the intersection of voting and technology.

I just wondered, you know, given the Governor's proposed legislation requiring manual audits, in the area of technology and

voting and audits, what did you learn from the Iowa debacle?

CO-EXECUTIVE DIR. BREHM: Well, Iowa is important to point out that that is an election run by the party, it's not run by the government. And there was a breakdown in their planning to receive information.

You know, before we learned of cyber as a problem in 2016 when those alerts started to come in, New York State has a wonderful team of people, between the State Information Technology, the State Police, the DHSES -- a whole group of people, including Public Service, so that we have every early voting site, every polling site plotted, we know who the service providers are for the internet. And we work together as a team.

And I know Deputy Secretary Jeremy Goldberg previously had spoke about, but a call to one is a call to all. We don't want to use precious government resources to reinvent the wheel. But we collaborate together. If somebody gets a complaint, we share it immediately. And of course if it's

health, safety, law enforcement goes first. Usually elections aren't on the immediate, you know, call, but we make sure everybody immediately responds, and then we can come up with a plan to put in place.

So we have a rapid response team, we've had one. We continue to work together collaboratively to make that happen.

But redundancy is the important part. And we already have an unofficial result, we have two portable memory devices. I can't imagine how big Iowa is, but in 24 hours I've got to think you can get from New York State to the other with a hand record, if all else fails. But we've had redundancy in place long before we had computers. I've been long enough to remember this, some people -- since I've been doing this part for 29 years. We didn't have any computers back then, and we ran the election pretty well with people getting the paper record and running it to the office and then having the recanvass the next day against that machine.

We have those procedures in place that

if this fails, we go to that system.

CO-EXECUTIVE DIR. VALENTINE: And that's the lesson you take whatever you see some issue with an election, is are we prepared for that. And yeah, preparation is the key before an election to ensure that your system is resilient and redundant and that we have a process in place, what if.

And we have spent a great deal of time, as Director Goldberg pointed out, you know, working with not just ourselves, because elections are much bigger than the state Board of Elections, but also with ITS, State Homeland Security, in addition to the federal Homeland Security, you know, to prepare for not just cyberincidents like that was, a breakdown in technology, but also physical incidents that are probably a little more troubling on us, as we had the October storm this past election, having the resources in place to make sure that the election could still function in that event.

So preparation is our key.

SENATOR HOYLMAN: Just to follow up,

what's the best practices when you use a private vendor? Shadow Inc. was the vendor that the Iowa Democratic Party used to tabulate results. How do you determine that a vendor is credible and reliable?

CO-EXECUTIVE DIR. BREHM: Certainly, I mean, last year the example with new electronic poll books, the statute itself required the State Board to do extensive testing.

We did do a collaborative effort with our security consultant, NYSTEC, with State Office of Information Technology, DHSES staff, and the center for Internet Security, which is a wonderful resource. It's right across the river in East Greenbush. But it's the go-to site that the federal Homeland Security has to help share information amongst states and jurisdictions within the state.

So we do this on a regular basis. This summer we're going to do another series right after the June primary, when we have a little time, of workshops with tabletop exercises

regionally throughout the state, and kind of COOP planning, you know, and what happens with thought-out projects for them. You know, you come in with your plan, but we're going to test it in that room and did you think of everything, and maybe you've got to go back and make it better in time.

CO-EXECUTIVE DIR. VALENTINE: And keep in mind, with the voting system vendors, while we have private vendors that operate -- you know, that sell the voting systems to us, the actual operation of those systems has to be done by the Board of Elections personnel. It's not done by the outside investor. It's all brought in-house. And, you know, the rigorous testing program and the protocols for pre-testing and post-election auditing help us verify that that equipment still works.

CHAIRWOMAN KRUEGER: Thank you.

Assemblymember Reilly.

ASSEMBLYMAN REILLY: Thank you, Madam Chair. Thank you, Executive Directors.

I have a couple of questions about

basically your take on and if the state board has given any direction to county boards about using schools during early voting.

In New York City, we've had a tremendous outcry for the use of -- you know, after the use of schools. I've highlighted several times that it's upwards of 33 days because you count the weekends, you count the day before the actual primary, the day before the actual election, so kids are being displaced from their classrooms -- I mean, from their lunchroom, cafeteria, gym. Not to mention the security aspect of it.

This year we're at a real telling point. During the presidential primary, there's going to be state exams. And that's where we're really going to come through with some issues.

You know, in New York City only 60,000 registered voters voted in early voting. In Staten Island it was a little over 4,000. So 1.4 percent of registered voters voted in early voting. With the mayor giving $75 million to early voting, that came out to

about $1,200 per vote.

I'm wondering if you have any guidance and maybe some support or maybe some funds that need to be used so we can help county boards not utilize schools.

CO-EXECUTIVE DIR. BREHM: Well, a couple of things.

The money that the city received was not just for early voting, because they utilize those e-poll books on Election Day. So I think, you know, you buy a house, it's hard to amortize the mortgage as your annual expenses. So the initial expenses in equipment, for security, et cetera, I think was part of that. So the ongoing costs I think will work.

But also there's many states that have had early voting that it takes a period of time for it to grow. The total number of voters who voted last year, of the 3 million, about 7 percent on average, in the state, voted early. But, you know, other states like Texas, Georgia, others, it's almost 60 percent of the voters that vote early.

And it's certainly a voter satisfaction to go on a day other than Election Day, especially in New York City. We're finding adequate facilities is a very big issue, especially in Manhattan. But in all of the boroughs it is a challenge, because you have about three times the number of people that can fit in the size of the room that you have. And then put people and equipment in that room also, it just leads to those long lines that are of concern.

But certainly, you know, we look at schools per se. In upstate New York there weren't many -- throughout the whole state, there weren't many early voting sites in schools, especially elementary schools, because that seems to take a slightly different concern, I think, than maybe high schools. Not a hundred percent, but slightly.

But it's no different than the fraternal, you know, facilities -- the town hall, the fire departments -- that are utilized throughout the state. You know,

nine days is an impact on them. And in our report I think we point out we need to come up with ways that can better provide incentives for additional poll sites. I know Senator Krueger has a bill that passed earlier this year that changed -- in addition to some of the other tweaks, it also looks at Article 4 to incentivize other areas in the law.

Because when you go to your county government to get funds as a Board of Elections, they say, You don't need funds for poll sites, it says right in there to use a tax-exempt site. Well, now, are you really going to sue the school district to come in and use it? You have to work together as a board and a municipality.

CO-EXECUTIVE DIR. VALENTINE: I mean, that's the advice we're giving to the county boards, is they have to work cooperatively. Because in many instances the location of the school is convenient for everybody. They are often centrally located, they have large rooms. But, you know, we remind them that

they need to be mindful of the security concerns.

And certainly with early voting covering -- you know, it covers two weekends. So for sites that aren't even -- that are -- churches, that's a problem. Community halls, there are events. Certainly in New York City the challenge is magnified because there's a lot more sites that they need. But the statute has a default of places like schools. And it's --

ASSEMBLYMAN REILLY: And that's something I raised during the debate on the bill. I support the early voting, I want to give access, but I think we went too far too fast. That's what I think.

CHAIRWOMAN KRUEGER: Thank you.

Senator Seward -- excuse me, Senator Sepúlveda first.

SENATOR SEPÚLVEDA: Sorry, I know there's a striking resemblance between the two of us.

(Laughter.)

SENATOR SEPÚLVEDA: I just have one

question for you. Thank you so much for being here this late.

So the -- there was 21.8 million in federal funding that the Executive included for the Help America Vote Act. Can you tell me how you plan to use those funds?

CO-EXECUTIVE DIR. BREHM: That's a good question. There's also a requirement for a 20 percent state match of those funds in order to qualify for the federal program.

In the Governor's capital budget for online voter registration, his language declaimed that a portion of that $16 million will be used to meet the state match. That can happen if we pick online voter registration as one of the allowable expenses under that program. And certainly the security components of building that system would qualify for the use of that money.

So I think we can meet the state match. So it's really a plan that equals about 26 million that we have to come up with.

We have an investment of what we've

been doing for three years already with the first 2018 grant money, that we put a plan together to set up the Secure Election Center, and we funded that through the presidential election, so the first quarter of 2021.

And that pays for the staff for the Secure Election Center, it pays for an intrusion detection device in every county in the State of New York who wanted one, and almost everyone wanted one. If they didn't have -- it was required, so if they didn't take ours for free, they had to have the functional equivalent on their own.

And we also paid for managed security services for those, which was voluntary for counties, and we put in place for 33 counties the use of those services. And we -- more importantly, we paid a vendor, Grant Thornton, to do a risk assessment, a baseline security assessment of every county board of elections. And that will be the basis of what we use the money for in the future.

The risks that were identified in that

report, how much of this money can we use to mitigate that? And we've been meeting with the county IT directors, we have meetings planned with the rest of the state security team to get their input on how best to spend it. But I believe we will extend the IDS for another two years, and probably the managed security service, because that will get us past the next statewide election in 2022 and give the counties a chance to put in place the mitigation services while keeping some level of security in place that's statewide.

So it's a combination of items. There's not just one item.

CO-EXECUTIVE DIR. VALENTINE: Right. And to summarize it very quickly, I mean, we're going to continue to plan the way we began two years ago, which was to assess the risk to the counties, to remediate the vulnerabilities that were identified in those risk assessments that we provide, continue to monitor the ongoing operations of the county boards and the State Board of Elections, and then to position ourselves to be able to

respond to incidents -- because they will occur. There's no way to completely defend things. So that's our plans.

CO-EXECUTIVE DIR. BREHM: We've given you some statistics in our report on the number. We've had 42 incidents in the two years that we've stood up the Secure Election Center. And we gave you some information on what kind of incidents they were -- more importantly, how many days, what are the average number of days.

Because one incident in a county -- well, two incidents was 40-some days or 50-some days of being impacted to the election infrastructure. So depending on where that is in the political calendar, that could be -- it's always a concern when it's any length of time.

But we've also given you information in the report on what we're seeing in the risk assessment and the trends across the state. So we've identified the top 10 items that we see, and the risks. So if there's something that's prevalent everywhere but the

risk is low, but it's low-hanging fruit, do we invest in it? But there are other items that are happening that are very high risk, should they happen. So that's what we will try to focus on first, where there's high risk. If it happens, we're in deep trouble.

SENATOR SEPÚLVEDA: That seems to be money well spent. Thank you. And if you could provide that report to the chair --

CO-EXECUTIVE DIR. VALENTINE: It's in what we have here --

SENATOR SEPÚLVEDA: Oh, it's part of your testimony. All right. Thank you so much. Right on time.

CHAIRWOMAN KRUEGER: Thank you.

Senator Seward.

SENATOR SEWARD: Thank you very much.

I had a question regarding in your testimony you're requesting an additional close to 1.6 million for additional funding for State Board of Elections operations. Is that personnel? And if that funding is not added, would the state Board of Elections have to lay off any employees? And if so,

how many?

CO-EXECUTIVE DIR. BREHM: That's a good question. Our personal needs, excluding enforcement, because that's a separate line of budgeting, is approximately $6.3 million. And the Governor's budget appropriated 4.1 million.

Now, there's a certain amount of transfer between nonpersonal service or technology funds that can help us to close that gap. But that's the money we need to implement the 53 chapter laws that you passed last year that we had to wait to get the money to actually implement. So it is a gap in actually paying people.

On average, if I just took the average employee, it would be about 18 positions out of 70, which is pretty big when we're a very small agency to start with. It's 25 percent of staff.

SENATOR SEWARD: I see.

I wanted to get into the early voting and the -- really the cost to local boards of early voting. You know, I've considered this

to be really an unfair unfunded mandate on local counties that operate the elections locally. This is the county board of elections.

Is there any funding -- I know last year there was some. Is there any funding for early voting for local boards of elections in this budget proposal? And do you have an estimate of -- in terms of the costs of early voting for this year for local boards of elections?

CO-EXECUTIVE DIR. BREHM: So there are no new funds appropriated in the Executive Budget. There were no funds appropriated or recommended in last year's Executive Budget. That was an agreement between both houses and the Governor in the final budget to put those two funds in there.

And we have asked the county boards of elections to give us the actual expenses for early voting last year. We've heard from 53 counties. We keep trying to get it out of those last few counties so we can give you a complete price list as provided by the

counties, what it cost them. But it certainly cost them far more than the $24 million in state resources that were made available. But those state resources were vital, especially for counties like Sullivan and others that were at their constitutional tax limit. They really had nowhere else to go.

And if you look at the plan they put in place to implement early voting, it was dollar for dollar what you made available to them. So making that money available was critical to those counties.

SENATOR SEWARD: I would agree with you. Otherwise, it's an unfunded mandate.

CO-EXECUTIVE DIR. BREHM: It's a lowly funded -- well, this year it's an unfunded mandate. Last year it was partially funded.

SENATOR SEWARD: Right, right. Without that funding, it is an unfunded mandate.

Thank you.

CHAIRWOMAN KRUEGER: Thank you very much for holding out this late.

CO-EXECUTIVE DIR. BREHM: Thank you.

CO-EXECUTIVE DIR. VALENTINE: Thank you.

CHAIRWOMAN KRUEGER: All right, next up is the League of Women Voters. Thank you.

Good evening.

MS. WILSON: Good evening, and thank you for sticking it out this late. I'm Jennifer Wilson with the League of Women Voters.

The great part about going right after the Board of Elections, I just get to say "Ditto" and then I'm pretty much done. I would say we agree with everything the Board of Elections has laid out.

Actually, I would say they deserve an even bigger increase than what they're asking for. They didn't mention this, but last year they had to dip into their cybersecurity fund to actually keep the lights on in the agency because they are just so conservative when it comes to spending money.

And we think they're a model in terms of cybersecurity. I don't think that

impacted cybersecurity at all, but it's just something to keep in mind, that this is an agency that is constantly underfunded and it's in charge of keeping one of our most basic democratic freedoms secure.

I was actually just at their office the other day picking up some voter registration forms, and I was really surprised to see that their line was out the door. Because of course it's 2020, and there are so many candidates running, they're constantly getting petitions in, and we really think that the time is now to beef up their funding and their staff.

So Bob and Todd hit most of the points I was going to make with regard to early voting and the funding for it, but I do want to just drive one more point home which gets to Assemblymember Reilly's point about using public spaces. And that is that a large majority of counties were told by these public spaces: Next year when you have all of these days of early voting, please do not come back and use our space.

And we think that this year we're going to see a lot of counties having to use private space instead, which is going to address a lot of inadequacies that we did see in 2019. I shouldn't say a lot, there weren't very many. But -- in our testimony we included our early voting voter satisfaction survey, and you'll see that most people loved early voting.

But there were some things like room size, electrical capabilities in New York City -- they had to run generators at a number of poll sites and pay close to $150,000 in gasoline for those generators.

So we think using private sites is great. We think that will really help with accessibility issues, parking, bathrooms, all those sort of things that some of these poll sites were lacking last year. But of course, this is a huge increase in funding, and so we just want you all to be very much aware of that.

We want to thank you again for passing all these fantastic reforms, and we really

think that in 2020 we're going to see that huge bump in voter turnout. And, yeah, just ditto to everything the Board of Elections says.

Thank you again for the opportunity to testify.

CHAIRWOMAN KRUEGER: We appreciate your testimony and we will (mic off).

MS. WILSON: Yes, thank you.

CHAIRWOMAN KRUEGER: Next up.

(Mic problems.)

CHAIRWOMAN KRUEGER: Sorry.

Common Cause has cancelled -- New York State Public Employees Federation? Ah, you know labor's going to hold strong and stick with us.

(Laughter.)

CHAIRWOMAN KRUEGER: Good evening.

MS. VOELKER: Good evening. Hello, and thank you for sticking it out here with us for this long.

My name is Jennifer Voelker. I'm a youth counselor for the New York State Office of Children and Family Services, otherwise

known as OCFS.

I work out of Buffalo, and I'm a member of PEF. I am the council leader for Division 337. I am the OCFS executive board member for Regions 1 through 7, and I'm also the OCFS labor management chair.

So I come to you today to ask that you reject the closing of the Sergeant Henry Johnson -- I can't talk this late at night -- Youth Leadership Academy that's proposed in the Executive Budget. I also ask that you consider the loss of the 63 positions within OCFS.

At this time the juvenile justice system, along with just the justice system, has been changing. I know earlier today we've heard testimony talking about Raise the Age and how it's been seamless. I disagree. I don't see it being as seamless as maybe some of our counterparts have. Our courts are backlogged due to the new processes of adolescent offenders, let alone the changing from adolescent offenders to juvenile delinquent and all of that.

Our detention centers right now are at a crisis with beds due to the enactment of Raise the Age and these backlogs within the courts. With the loss of YLA, we're going to lose spaces for these at-risk youth that we have in New York State. We're going to load this to the staff that -- we have to support these youth in New York State.

Also in part of the budget there's Article VII Part G, which is the movement of adolescent offenders from DOCCS facilities to OCFS facilities. So that just means adding more youth to the already expanding need for beds throughout the state and more youth to caseloads both in the facility and in the community, because OCFS not only provides facility space programming for youth, but we also provide community supervision.

We've seen an uptick on the number of appearances of violations of probation, which means there's more youth coming into our system than ever. And when I talked previously about Raise the Age, why I said it wasn't as seamless as I thought it may be, is

we've had some backlash from our law enforcement friends because this is too hard for them. When they have to arrest a 16- or 17-year-old at night, they have to find an accessible magistrate to arraign this youth. They have to find the parent. They have to get everybody in the same room, get them together, and then arraign the youth and then hopefully, maybe bring him to detention. So that's one reason that they don't want youth.

They're also seeing that our judges are just letting these youth go after they've been through all of this.

But what we're seeing now is those youth that were being, quote, unquote, let go because they were given probation are now coming back. And they're coming back on violations of probation. Just this week, my office alone has had at least six in the Buffalo region.

Our staff is already overloaded. We have staff that are doing out-of-title work within our facilities. I have some community

offices that have caseloads of upwards of 15 youth in the community. So therefore, having the closures and losing those 63 positions is going to put a strain on us.

We are already unsafe in our facilities. Taking away the members of staff -- we have staff that get bitten. We have staff that get assaulted on a daily basis. We have staff that get bodily fluids thrown at them on a daily basis. And if we just keep taking away the staff members, we're going to lose -- we're going to lose people.

We had, at one of our facilities, Finger Lakes Residential Center, we had to close a unit and not let more at-risk youth males in there because we had staff walk out, a whole unit walk out in one day.

And so that's why I'm saying that we're overworked. We're unsafe. My community workers don't have anything but a plastic badge that says who they are when they're working with these youth that are gang-involved. You know, we need more

protection. We need more people behind us, and not letting us close these facilities and not letting us lose these positions.

So I thank you for your time, I thank you for listening to me, I thank you for staying here late, and I am open to any questions that you guys may have of me.

CHAIRWOMAN KRUEGER: Senator Seward had a question for you.

MS. VOELKER: Okay.

SENATOR SEWARD: Yes. Thank you for your testimony. In fact, the -- at the Sergeant Henry Youth Leadership Academy -- it's South Kortright?

MS. VOELKER: Yes.

SENATOR SEWARD: It is in my district.

MS. VOELKER: Okay.

SENATOR SEWARD: And when the commissioner of OCFS came to see me to tell me about, you know, the planned closure, her point was that there are only eight residents there and, you know, close to -- approximately 60 positions.

Is that, to your knowledge, is that an

accurate reflection of the number of residents that are there? And would you say that that program is underutilized?

MS. VOELKER: Yes and yes. Yes, I would say at this time --

SENATOR SEWARD: I mean, maybe by design.

MS. VOELKER: Yes. So I mean -- so Youth Leadership Academy was built kind of almost like a military academy. And I think that some youth respond very well to that. Of course they don't have as many therapeutic programs as our other limited-secure facilities do. But this is for a different brand of youth.

So it's almost like in our DOCCS facilities -- we have shock camps, right? Like we have Brocton, or Lakeview Correctional, that does kind of a shock thing. That's kind of what we had within OCFS. YLA was kind of our shock camp, and then we had our therapeutics.

I think it's underutilized, yes. And yes, right now I think, you know, there is

about eight young men there at this time.

But moving forward, with, you know -- again, Article VII Part G I believe it is, having the AOs moved to DOCCS, we're going to have more youth in our system.

And I know that the testimony earlier today said it was only going to be about 18 youth from DOCCS, but we have a lot of kids that are going to be in the court system between now and October. So I think that 18 is the number now, yes, but we have to look forward to those youth that are going to be sentenced between now and then. And losing any space is going to lose space for those youth to move to us.

SENATOR SEWARD: Thank you for your perspective.

CHAIRWOMAN KRUEGER: Thank you.

Assembly?

Again, we appreciate your testimony, and it's the hour that makes us all urge you all to move quickly tonight. Thank you.

MS. VOELKER: All right.

CHAIRWOMAN KRUEGER: Get home safe.

MS. VOELKER: Thank you. I'm shuffling off to Buffalo.

(Laughter.)

CHAIRWOMAN KRUEGER: Well, then, drive carefully.

MS. VOELKER: Yes. Thank you.

CHAIRWOMAN KRUEGER: Next is a panel of New York State Troopers PBA, New York State Police Investigators Association, Park Police PBA, and New York State Correctional Officers and Police Benevolent Association.

I see four gentlemen coming down, and I'm going to ask if you -- oh, there's a fifth one? Just pull another chair over.

But we're going to -- Ian, let him have another chair. Thank you.

Hi, everyone. We're going to ask you if you can -- each take no more than three minutes, all right? And then that will give you three times five, 15 minutes total? So -- and we'll do clocks at three minutes, and you'll know.

And you can start in any direction you wish.

PRESIDENT MUNGEER: Thank you, Madam Chair.

Chairman Weinstein, Madam Chair Krueger, I appreciate the opportunity. Tom Mungeer, New York State Troopers PBA president. It's my eleventh time addressing this body, and I appreciate it. Every year I'm here asking for more equipment, more manpower, and this year is no different. More vehicles.

I'll really hit on the crux of it. I'm not going to debate the changes that took place with bail discovery, but how it impacts my members. I'm going to disagree with my superintendent, who testified earlier that he did not see a change. It definitely takes my people off the road. What used to be a simple arrest, say a DWI that took an hour administratively, now takes four hours.

Again, there is some built-in learning curve, but not an additional three hours. So once you take my people off the road for that additional time, there's not troopers out there patrolling. And I represent the

uniformed people out there making arrests and -- that you see on the roadways. So every trooper that makes an arrest and is off the road, that's one less trooper that's patrolling the communities, the roadways of New York State.

And as such, I'm requesting an additional bump in manpower. Usually I'm asking for 500 additional troopers for attrition and what have you. I'm asking for an additional 100 more on top of that. That on top of other funding -- I would hope that there's funding built in.

I know that Senator Krueger said with the marijuana legislation we do need the DREs. I have a little over 100, 101, I believe, trained DREs in the state. I would -- my superintendent testified he'd like to see 300, I'd like to up that to 400 -- but he's going in the right direction, which I do appreciate.

And also what he didn't state, that any cannabis dog that detects cannabis will have to be retired, so there's 40-some dogs

that have to be retired. Don't worry, they get to go home with the dog handler for the rest of their lives. But those dogs, that's another $350,000 that will have to come up to replace those dogs and for training.

We always need cars. I heard that before, the superintendent said, you know, the cars that are over 125,000 miles, about 5 percent, but that's the whole pool. My patrol car -- it's about 25 percent are over 125,000 miles. And those are the cars that are driven zero to 100 back down to zero all day long, a lot of wear and tear.

And that's going to be summing it up real quick, and I'll be open for questions, I guess, afterwards.

PRESIDENT QUICK: Good evening, Madam Chairs. Thank you for allowing me to testify tonight.

Again, just to ditto Tom's testimony, of course the BCI depends on the amount of members that are in the Troopers. Our bureau men come out of the Troopers' ranks.

This year, we're looking to assist

with the discovery laws that have newly been implemented. Division has come up with an idea of possibly putting investigators in each zone of each troop to assist in getting the discovery material to the local DAs within a timely manner to make the flow of the information more fluid.

So we're hoping that we can add approximately 35 investigators throughout the state just to assist with discovery information getting to the DAs.

On top of that, we also want to become a little more aggressive with fishing for the evils on the internet, ones that are going after the children, specifically child crimes. The computer crimes unit hasn't grown in a while, and they're looking to add an additional 19 members in that unit, specifically to start luring in the people that are out there that are doing these horrible crimes to our children.

Again, with attrition, we try to keep up with the members that are retiring -- you know, Tom comes every year asking for classes

of 500. The Governor has granted us 250 pretty regularly. Right off the bat, we lose 10 percent before graduation even comes. So I would ask the Legislature to consider adding an extra 10 before the class starts to adjust for that 10 percent decrease, so we do get an honest and true 250.

And the vehicles -- it has progressed. I thank you for paying attention to us. It still needs attention, but I do appreciate you locating the monies for our fleet to improve -- because there were lean times at the beginning of the decade where, you know, the fleet got into that dire state that it was in.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

PRESIDENT POWERS: Thank you Chairwoman Krueger, Chairwoman Weinstein, and members of the Legislature. My name is Michael Powers, and I'm the president of NYSCOPBA, the corrections officers' PBA.

I have three issues that I'd like to discuss real quick here, one being the prison

closures; two, the double bunking within our correctional facilities; and some staffing and resource and training curriculums that we're looking at.

First and foremost, we take great exception to the Governor's proposal to close more prisons. He's looking to do it within a mere 90 days. Many of the legislators here may recall legislation that passed some time ago through us, with your assistance, that allowed for a one-year closure bill to be put in place. That allows as a closure -- if a closure were to occur, that gives us the opportunity and my members the opportunity to make the proper adjustments with their families, their communities, their schools, their children, and whatnot as we go forward.

You see that with these prison closures that are coming, one of the biggest issues that we have regarding that boils down into the double bunking. We have 10,500 empty beds amongst the state's correctional facilities -- 6,265 of those beds are top racks or top bunks. Bring those bunks down,

give our staff a better opportunity to operate in a safer environment supervising less inmates, allowing the dispersement {sic} of inmates throughout the system, and therefore there would be no need for closure. Of any facility.

You'll still have empty beds available to be able to have in emergency circumstances, and that would allow for a smoother transition not only for the staff that work at -- the hardworking members of NYSCOPBA and the civilian staff that work within it, but also amongst the inmate population.

We have a large rise in violence in our facilities that the commissioner -- the acting commissioner spoke of it earlier. Unfortunately, with a smaller inmate population which he mentioned, 3200 we lost in the last year, we have 1,033 assaults on staff last year, 1,215 inmate-on-inmate assaults on staff. Four thousand -- close to 4,000 cases of contraband coming into our facilities.

Many issues were talked about up here -- the secure vendor program, the double-bunking issue, a lot of the safety concerns that we have, the rise of violence in our facilities. All these topics are very, very serious topics that need to be looked at and addressed.

We understand there may be legislation that's looking to investigate the rise in violence in our facilities. We support that legislation. We want to work with the Legislature to see what is the cause of this, is it drug-related, is it contraband-related, is it territorial-related.

I apologize -- so with -- the prison population may be shrinking, but the concentration of dangerous inmates within the population is increasing. In spite of the changes, the inmate population -- the policy of double bunking in a medium facility is not warranted any more. With the changes from the NYCLU settlement and the SHU regulations of last year, which the Legislature passed along with the Governor, with those,

everything is being relayed back into the general population.

The need to bring down the double bunking to stop the inhumane practicing of putting two grown adults through the rehabilitation process kind of circumvents the rehabilitation process when you're putting two grown adults into the size of a space smaller than a parking space. That's the reality. Take that away, allow the dispersement {sic} of true rehabilitation process to take place to bring about the changes that are necessary to bring about the rehabilitation process.

To create a better environment, I'm confident that if the double bunks and the double-bunking policy were to come down and be eliminated, that may decrease some of the violence and contraband coming into our facilities. It just creates a very dangerous environment.

Resources, staffing and training -- I've spoken with the chair of the Senate Committee of Crime and Corrections, Senator

Sepúlveda. We spoke about training in one of his meetings. He supports additional training. I, as a 30-year employee of the Department of Corrections, receive 40 hours of annual training. I've been receiving that training since 1990.

The department's changed vastly in the last 30 years. There's more to do, our resources are capped, we don't have staff, we don't have the training, and we are in dire need of it.

In 2014 the department entered into a memorandum of understanding for staffing reviews. We are allotted a certain amount of staffing to be adhered to, and in 2017 I am still awaiting 192 security items for our correctional facilities.

CHAIRWOMAN KRUEGER: Thank you.

PRESIDENT POWERS: Now he wants to shutter prisons.

CHAIRWOMAN KRUEGER: Thank you.

PRESIDENT POWERS: Thank you.

CHAIRWOMAN KRUEGER: Hi.

VICE PRESIDENT VILAR: Hello, Madam

Chairwoman Krueger and Weinstein and members of the Public Protection Committee. My name is Manuel Vilar, I'm a 37-year veteran, a New York State Park Police sergeant, and founding president of the Police Benevolent Association of New York State.

New York State parks, by their very nature, are geographically challenging and beautiful places. They're also very dangerous places because of those geographic challenges. Our police officers perform multiple duties that aren't routine on a daily patrol activity. We receive extensive training similar to that of the State Police, and then afterwards we receive specialized training, from swiftwater rescue to high-angle rope rescues.

The PBA has current legislation to provide for a complete and full merger with the Division of State Police. It's Senate Bill 3676 and Assembly Bill 2736. And to that point, the Governor on December 3rd transferred command and operational control of the Park Police activities to the Division

of State Police.

Unfortunately, the similarities to the legislation sponsored and supported by members of this Legislature end there. The Governor's takeover plan presented to the PBA is different in the sense that it's just considerably more complicated than just simply changing the age requirements. There's pension liability issues for our members as well as issues of our -- serious questions that our members have about the actual process that's to be implemented.

We believe that any disenfranchisement of our members that would potentially lead to a layoff of Park Police officers, it's not fair or just for people that have dedicated their careers and lives to protecting the public and the people of the State of New York. They have families, they have mortgages, they have kids, they are hardworking dedicated individuals just like everybody here at this table.

I just, you know -- it's from the heart. We're asking the Legislature to

reject the Governor's proposal in the budget and to enact a full and complete merger and takeover as envisioned in our legislation, which is similar to the 1979 Parkway Police merger, the 1997 Capitol Police merger, and as well as a recommendation by the Division of State Police in 2003.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Any questions? I'm handing it to the Assembly.

CHAIRWOMAN WEINSTEIN: We have a number of members.

Assemblyman Weprin?

ASSEMBLYMAN WEPRIN: Thank you. Oh, wait --

CHAIRWOMAN KRUEGER: Oh, I'm sorry.

PBA SECRETARY CAUPAIN: Last but not least.

ASSEMBLYMAN WEPRIN: Please, go ahead.

CHAIRWOMAN KRUEGER: I apologize.

PBA SECRETARY CAUPAIN: That's okay, that's okay.

CHAIRWOMAN KRUEGER: We have four

listed, but five of you came down, so you get your three minutes.

Introduce yourself, please.

PBA SECRETARY CAUPAIN: Thank you so much.

Madam Chairwoman, distinguished panel, my name is Troy Caupain. I represent the Park Police Officers Association in the PBA. I'm here basically to speak on behalf of our members.

You have my written testimony, and I just want the members of the panel and the Legislature to understand that since December 3rd my members have been basically frustrated, full of anxiety, full of a lot of questions and uncertainty based on the Governor's memo that was put out.

When you say that we're being taken over operationally and administratively -- we've been through that before. Again, in 1998, 2003, the State Police took us over. I'm a product of that takeover. I started in 2000. So my training, my hiring standard, every class that I was taught in my academy

was taught by a Trooper, other than our outdoor recreational stuff. I mean the rope rescue, the ATV, the boats, and so forth.

I've gone through the background process. All of our members have gone through that background process. We go to the State Police to get polygraphed. We've taken psychological -- every time the State Police changes equipment, we change our equipment. When they change their policy, we change our policy. We've been a mirror image of them since Major Ellis of the State Police was our director of law enforcement and took us over for those five years.

So in 2003, when the state gave us back to OPR, they recommended two things. One was a full and complete merger. The second one, if OPR was going to keep us, continue down that path that they established. Start an IAB division, a detective division, a chain of command -- and we've done all of those things.

So now this announcement comes out, and it says we're being taken over again.

But now there's a different path for us. It's, well, if you want to become one of us, you have to now go through all of these processes all over again. So for my 20 years as a state police officer under Parks, I now have to be treated like I'm a new hire. I have to take a poly, a background, a psych, an age-adjusted medical and physical, I have to go through a possible residential academy once again, which I already did six months -- a six-month academy 20 years ago -- for another five to 12 weeks.

I understand that there's policy changes that we may have to get updated on, and a few different things here and there. But to go through that entire process again? To me, it's disrespectful for my 20 years of law enforcement service.

So my members are frustrated because -- not knowing what's going to happen to us if we don't go through this subjective process that they may put us through -- we don't know if the Park Police is going to remain.

Even the superintendent says today, when he was asked, Well, what happens to the remaining park police officers? He said he doesn't know. So that means that we could be sent anywhere across the state, we could be eliminated, we could lose our law enforcement jobs that we raised our hands and said we swore an oath to the residents and the visitors of the State of New York. It's unacceptable to us.

All we're asking for is let us know what this is about. There are some of my members that want to transition over; the younger guys are champing at the bit. But you know what? There are some of us that are established in our homes, in our families, and where we work -- where we've worked for 10, 15, 20 years. And we're saying if we can't all go over, then what's going to happen to us? What are some of the securities that they're offering us? That we'll be able to finish out our careers in the places that we lived and where we work?

And we're not getting those answers at

all.

CHAIRWOMAN KRUEGER: Thank you.

PBA SECRETARY CAUPAIN: So we're here to obviously ask for your assistance and support in us getting those answers or support our merger bill, and let us all go over and continue doing what we've sworn an oath to do.

CHAIRWOMAN KRUEGER: Thank you.

Assembly?

CHAIRWOMAN WEINSTEIN: Now we go to Assemblyman Weprin.

ASSEMBLYMAN WEPRIN: Thank you, Madam Chair.

Thank you, gentlemen, for waiting. I know it's been a long day. I've been here since 9:30 myself.

I have a couple of questions of Mr. Powers, President Powers. I enjoy a good working relationship with your union, as you know, and we've been working on a number of issues. One thing -- we don't agree on every issue, but you always have my ear and I always listen to what you propose, and

hopefully we can agree on more issues than disagree.

I am going to make a push to end double bunking this year, especially in light of the two closures last year and potentially anticipated closings this year. I think it makes more of a need to end double bunking once and for all, and I think it's something that's good for the incarcerated individuals as well as the correction officers. So I think it's a win-win.

I know there was some pushback last year, but I'm hoping to put it on the agenda of my committee and get it done this year, and I hope you'll actively support us on that.

And one thing I want to ask you, I know you mentioned the contraband issue and the safety issue. It was a two-year process, but we passed a bill for local jails, particularly important to Rikers Island, to get body scanners that were used, as opposed to the magnetometers that they used to use at Rikers Island. And that's eliminated a lot

of contraband, a lot of ceramic weapons that have come in that weren't detected by the magnetometer.

Do you think it makes sense to have some of these body scanners in the state facilities?

PRESIDENT POWERS: Absolutely. We encourage more technology, and not necessarily some of the same technology that -- you know, more of the technology that we already have.

But our brothers and sisters down in the New York City Department of Corrections have the body scanners, and they're quite effective. I know that they're costly, I know -- and we have a large state agency here, but, you know, you make a very good point regarding the ceramic-type weapons that are coming into our system quite frequently. We're seizing them quite often, and these body scanners prevent a lot of contraband from coming in and out of facilities. Along with the secure vendor package program would be a great program to have as well.

ASSEMBLYMAN WEPRIN: And when Commissioner Annucci was here this morning -- I think it was this morning, it seems like a long time ago -- we asked him about the double bunking and he seemed to say that there were very few double bunkings left at this point. And you seem to have indicated that there are more.

Can you give us an accurate count of which facilities in particular have double bunking? And how many, you know, double bunking -- how much double bunking is there?

PRESIDENT POWERS: They primarily exist in our medium correctional facilities. We have some in the maxes, as the acting commissioner testified to, but the legislation, the very legislation you're speaking of speaks more towards the dormitory-type settings of our medium correctional facilities.

So I would -- I mean, I can't -- I can get you the total number of top beds. But -- well, actually, 6,265. So that's --

ASSEMBLYMAN WEPRIN: So, who's

counting?

PRESIDENT POWERS: So -- that's not accurate either. I apologize.

ASSEMBLYMAN WEPRIN: Sounded good.

PRESIDENT POWERS: But that -- that's the -- but I can get you that number.

But, you know, I mean, we differ on that, obviously. He doesn't think that it will have much of an impact with the closure, but you know, we're in the trenches. We're the ones doing the grunt work. And we're the ones that are seeing it.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

ASSEMBLYMAN WEPRIN: My time is up.

CHAIRWOMAN WEINSTEIN: Thank you.

Assemblyman Palmesano.

ASSEMBLYMAN PALMESANO: Yes, thank you, gentlemen.

I just first wanted to say thank you to you and all your members for what you do to keep us safe. Thank you very much.

For the purposes of my three minutes, I really want to direct my comments to

Mr. Powers and NYSCOPBA. Back when the commissioner was here earlier and a lot of questions came up, particularly around the secure vendor program, the use of K9s -- and I was made aware earlier of recent examples of three facilities just today getting suspicious packages, 10 getting contraband in the past week.

And it also came up about a concern I have and a lot of our members have, is are you being provided the necessary equipment for your members to be safe, protected while doing their job?

Because I know the issue with the fentanyl up north where 11 individuals went to the hospital. And I keep hearing about these nitrile gloves, and that was brought up and the commissioner said yes, they are provided to your members. But I've also heard that while they're provided in restricted areas, are they readily available? Because you deal with cell searches and patdowns. Are these gloves readily available throughout for all your members, or are they

in restricted areas? That was one question I want to get to.

PRESIDENT POWERS: They're primarily in the medical departments, in some of the package rooms and in the mailrooms. Some of the contraband coming in -- the ones that you mentioned earlier regarding the three today at three correctional facilities had suspicious mail packages coming in that were deemed to be saturated with a chemical. And sometimes we worry about it being fentanyl or some type of Suboxone or synthetic drug of some sort.

But yeah, we have asked for them. We continually ask for them. We want all of our staff in the field to have access to these -- to that equipment, and to other equipment as well. But the nitrile gloves are something that we've been driving home for some time, yes.

ASSEMBLYMAN PALMESANO: Another question that I want to get to, I know there's going to be a transfer of youth offenders going to OCFS. And based on your

experience and what you've already encountered, is OCFS readily going to be available to handle this situation without the presence of corrections officers? Or what can they expect going forward with this change without corrections officers in these facilities with these youthful offenders coming to OCFS?

PRESIDENT POWERS: I can speak from our experiences with the adolescent offender program, but I can't speak for OCFS. I'm not familiar with their procedures or anything of that nature, so I don't want to get into that. But they'll have their hands full.

ASSEMBLYMAN PALMESANO: Okay. And then the other thing I wanted to ask you is, just because of the time left -- I mean, I and a number of my colleagues want to make sure your members can be safe doing your jobs, and if there were three things you would say to give us to help us -- if you give us these three things, they would help protect us so we can do our jobs safely and make it a better environment for our members

to work in, what would be those two or three things that -- if you were to just -- saying it out loud here to everybody.

PRESIDENT POWERS: Staffing. No question. We're owed staffing from 2017 that we've yet to receive. Additional training, equipment, resources to protect our members in the field. You know, a lot of the technology that's coming forward. And obviously to bring down the double bunks and make it a more secure environment for us to be able to operate in.

ASSEMBLYMAN PALMESANO: Thank you again for what you and your members do for us, all you do.

PRESIDENT POWERS: Thank you. I appreciate it. I'll be sure to convey that. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Assemblyman Reilly.

ASSEMBLYMAN REILLY: Thank you, gentlemen. I appreciate you coming and offering some testimony. I had a feeling I

was going to hear something different.

In regards to the state troopers with the discovery law, is there any way that we can -- maybe you can provide me with some information, maybe some literature that went out from the actual organization, from the agency, surrounding training on -- to the troops that are in the field?

Secondly, I wanted to touch on the request for additional troopers for the academy. I keep my eye out for this request for the MTA, the New York City Transit. I would not want them to relocate troopers just to the transit, because I could see that happening.

It's pretty ironic that we're also talking about mergers of different departments when, in 1995, some of my colleagues that were in transit and housing in New York City called it a hostile takeover when the New York City Police Department, which I was a member of, took over housing and transit. They are very delicate situations, and I truly appreciate them.

So we want to make sure that we stay on top of that, and thank you for giving me information on that.

Additionally, the 35 investigators just to support discovery -- New York City Police Department is doing that right now with civilians, and it's costing them a fortune. And I think that's the missing point that I had in my earlier question to the superintendent, was I know there's dollars that are attached to this, and that's what we need to find out.

So if you can maybe just share some information about specific training that may have taken place. Thank you.

PRESIDENT MUNGEER: Thank you, sir.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you. We go to Assemblyman Blake.

ASSEMBLYMAN BLAKE: Good evening, gentlemen. It's good to see you all. Chris, good to see you.

A few quick questions, just for clarification -- Troy, can you just -- I just

want to make sure I'm clear. So you said there's a December 3rd memo that there needed to be clarification around the takeover of the -- I'm just -- to make sure I'm understanding the impact of that memo, and the actual naming of that memo.

PBA SECRETARY CAUPAIN: I attached it with my testimony, so you should have that. It was basically sent from the Executive -- from the Governor's office, stating that the State Police is now administratively and operationally taking control of the State Park Police. And then it goes to say toward the end of it that --

CHAIRWOMAN WEINSTEIN: We need you to talk into the mic.

PBA SECRETARY CAUPAIN: Sorry.

-- that some members may be able to transition over, others may remain with Park Police until they age out or other things become available. And that's, again, the unknown that we're still trying to find out, sir.

ASSEMBLYMAN BLAKE: I appreciate that.

Thank you for that clarity.

To President Powers, I just wanted to -- I believe you shared that you are supportive of legislation to research the rise in violence.

PRESIDENT POWERS: Yes, sir.

ASSEMBLYMAN BLAKE: And equally when you're saying that there's a need for additional money for training, is there an approximate dollar figure?

PRESIDENT POWERS: I -- I don't know. We can get you one.

ASSEMBLYMAN BLAKE: You have a sense of --

PRESIDENT POWERS: It's pretty outdated. It'd be costly.

ASSEMBLYMAN BLAKE: I understand. You have a sense of -- what would be the particular type of training that is most needed that's not currently happening?

PRESIDENT POWERS: Well, it's pretty involved, sir. We've seen a lot of changes. There's a lot of mental health issues within our correctional setting that need to be

addressed.

And as I mentioned, I received 40 hours of annual training a year and, you know, I've been receiving that since 1989. And, you know, the department's changed, and there's much more need within the facilities that we need to be out in front of. And to cram that all into 40 hours, what I've had for 30 years, is not sufficient. We need that training, we need that time, we need those resources --

ASSEMBLYMAN BLAKE: Absolutely.

PRESIDENT POWERS: -- to be able to effectively treat and do our job sufficiently.

ASSEMBLYMAN BLAKE: Absolutely. And I want to say I appreciate the conversation around training and can respect and acknowledge the urgency around that.

I believe the legislation you're referencing is actually Senator Sepúlveda's legislation, so definitely we want to work with him on that.

And then, President Quick, Chris, good

to see you. Just again for clarity, I believe you said earlier an additional 35 persons for discovery, an additional 19 individuals I believe for all lines. I just want to make sure I have clarity on those two elements.

PRESIDENT QUICK: That's correct. There's 10 troops in the state, each troop is broken up into zones, we have approximately 33 zones, so we're figuring on approximately 35 investigators in a special detail that just addresses the discovery -- getting that, acting as a liaison to the district attorneys' offices -- and then the additional 19 investigators.

Division of State Police is looking to ramp up their computer crimes unit to be more proactive in, you know, addressing the evils on the internet as far as child crimes.

ASSEMBLYMAN BLAKE: I really appreciate it. Thank you, gentlemen.

PRESIDENT QUICK: Thank you.

PRESIDENT MUNGEER: Thank you, sir.

CHAIRWOMAN WEINSTEIN: Thank you all.

Thank you. Assemblyman Ra.

ASSEMBLYMAN RA: Thank you all, gentlemen, for the work all the men and women in your respective organizations do each day.

I just wanted to ask about -- there's -- one of the really tragic situations we've all seen over recent months have been law enforcement suicides. And we understand it's a very difficult job, and for whatever reason those individuals made that really unfortunate choice.

And I know that there's a little bit of an appropriation in this budget proposal to try to address that, but what can we do as a Legislature to provide adequate resources to address that problem, both in terms of funding and perhaps if there are policy changes that need to be made to help assist your members and make sure that the supports are there when they need them?

PRESIDENT MUNGEER: State Police has been hit hard with unfortunately the suicides, we have seen a spike over the last decade. And I will say this administration,

headed by Superintendent Corlett, they are addressing it, they are trying to come up with -- I don't want to say a solution, but help out there. Teamed with our Employee Assistance Program, they are trying to designate more resources in that direction.

But as far as the Legislature, you know, we'd be open to any increased funding. I couldn't sit here and put a dollar amount on it, but it's something that we definitely -- as cops, you usually don't -- you're helping people all the time, but you seem to get in a position where you don't ask for help yourself. And trying to break through that wall is the big thing.

And as a 27-year trooper, I don't have the answer to that. That's up to health professionals, mental health professionals and what have you. But it all comes down to funding and having the resources in order to, you know, accomplish a better program.

PRESIDENT POWERS: We've seen similar as well. We've seen a significant rise in suicides with our members, and not only that

but just within the correctional settings as well.

But obviously, more -- the more that you can give us to bring this about, to lower that rate or abolish that rate completely, I don't think you could ask for -- until you could eradicate that stigma and get rid of it completely, I -- you know, by all means, we'll accept as much as possible.

ASSEMBLYMAN RA: Thank you.

CHAIRWOMAN KRUEGER: Senator Sepúlveda.

SENATOR SEPÚLVEDA: Good evening, sir.

PRESIDENT POWERS: Good evening.

(Mic problems.)

SENATOR SEPÚLVEDA: Good evening to all of you.

This is a question for Mr. Powers. First of all, I want to thank you for agreeing to meet with us a couple weeks ago, several weeks ago, and being willing to listen to all sides on the issues involving your members' correctional facilities and things that we need.

I don't know if you heard earlier, I asked questions about these services that should be provided by DOCCS to the members for mental health services, both for them and training for them so they can deal with people who are incarcerated in a better way. And they told me the -- the commissioner indicated that in fact there has been some of that, a lot of it, and it has been successful.

And some of my colleagues have already asked you some of the questions that I wanted to ask you, but just two quick questions. I don't have a lot of time.

But according to DOCCS, previous closures have not resulted in any layoffs, but they require relocation by DOCCS employees. What is the rate of attrition of staff after a closure? Are you aware of that, Mike?

PRESIDENT POWERS: What's the rate of attrition that what?

SENATOR SEPÚLVEDA: When you close a facility -- can you hear me okay?

PRESIDENT POWERS: Yes.

SENATOR SEPÚLVEDA: Okay.

PRESIDENT POWERS: There's a bit of an echo in here.

SENATOR SEPÚLVEDA: With the current closures of facilities, DOCCS has indicated that there have been no layoffs. But they do require relocation of the employees. What is the rate of attrition of staff after closure of these facilities? Are you aware of the numbers?

PRESIDENT POWERS: I would imagine it's a small number. It depends on who's eligible upon -- you know, if they were to target a facility and that facility closed, some people may not be down for a relocation. They may have to opt out and retire.

I can get you those numbers, I'd be happy to get you those numbers. You know, that's -- I wouldn't think that it was too many. Maybe, out of a facility staffed with 300 security, maybe 10.

SENATOR SEPÚLVEDA: So it's --

PRESIDENT POWERS: Maybe. Just -- and

I'm just throwing that out there.

SENATOR SEPÚLVEDA: So it hasn't been a big issue with the membership about relocating once the facility is closed.

PRESIDENT POWERS: It's a very -- it's a significant issue, without question. When a facility shutters and your family has to get uprooted and moved on and -- you know, that's one of the reasons why we came to the Legislature years ago to pass that one-year bill, the one-year closure notification bill, to allow the facility closure -- you know, they don't announce them anymore.

They don't give us what facility is going to close, they don't allow it, and before you know it, 90 days and bang, you know, your life is turned upside down within a 30-day period.

You know, that's not fair, it's not consistent, it's not a way to treat your employees, in my opinion, you know. But that being said, you know, that's the burden that we have with that.

So when the relocation -- when a

closure happens and staff have to relocate, sometimes it's significant. And depending on -- you know, we're a seniority-based operation. So with that being said, it has a huge impact on not just the member and the community, but the families, the children in school and, you know, he could be an EMT in the community. There's a huge impact on that, huge.

SENATOR SEPÚLVEDA: But has DOCCS provided the kind of financial assistance needed by the membership to go to a new location?

PRESIDENT POWERS: Financial assistance? No. No. What we have is a working relationship when we do. We try to work with them so that we can adequately find a place for somebody. We work with them to try to soften the blow for the membership.

We don't condone it, we don't want to see the closure, we don't feel the closures are necessary. And then when that happens, we work with the department to -- through seniority and through reassignment lists and

within what's available to help relocate the staff. And if some can't get to a facility of choice by seniority, sometimes they're forced into a layoff.

SENATOR SEPÚLVEDA: So let's continue our discussion to see what we can do to alleviate --

PRESIDENT POWERS: Absolutely.

SENATOR SEPÚLVEDA: -- the pain that members have to go through, financial or otherwise. We can continue our discussion.

Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Assemblyman Lavine.

(Mic problems.)

ASSEMBLYMAN LAVINE: Free speech. Free speech, but not easy speech.

(Laughter.)

ASSEMBLYMAN LAVINE: A couple of things. We've all heard throughout the day a lot of people speaking speeches that are written. You all spoke from the heart, and we heard you, and that's appreciated.

And I think the people of the State of New York appreciate knowing that you and your members are there to watch out and protect everybody. So thank you, thank you all, gentlemen.

I just have one quick question for President Powers. And perhaps I misheard, but I think when you were describing some of the dangers inherent in corrections work, you used these words, "inmate-on-inmate assaults on officers." Did I hear you correctly?

PRESIDENT POWERS: Well, there are two different categories: Inmate-on-inmate assault and inmate-on-staff assault.

ASSEMBLYMAN LAVINE: All right. Okay. Thank you. Thanks for that clarification.

PRESIDENT POWERS: Yup.

ASSEMBLYMAN LAVINE: Thanks, gentlemen.

CHAIRWOMAN KRUEGER: Okay?

CHAIRWOMAN WEINSTEIN: Yes.

CHAIRWOMAN KRUEGER: I think now we're done with you gentlemen. Thank you very much for staying, and have a good night.

PRESIDENT POWERS: Thank you.

PBA SECRETARY CAUPAIN: Thank you.

PRESIDENT MUNGEER: Thank you.

PRESIDENT QUICK: Thank you.

CHAIRWOMAN KRUEGER: We appreciate it.

All right, our next panel is Prisoners' Legal Services of New York and Release Aging People in Prison Campaign.

Okay. So you're two different groups, each group gets five minutes. So if it's four of you and you want to split it up 2 1/2, 2 1/2, that's fine -- 2 1/2, 2 1/2, whatever you like. Within that context.

So clock for five, and then we'll ask questions, if any, after both groups.

And Prisoners' Legal Services, it looks like you're set up and ready to go. Are you ready?

MR. CURRAN: Yeah. My name is Tom Curran. I'm the vice chair, not the chair of Prisoners' Legal Services. I don't want John Kiernan thinking I've committed a coup.

CHAIRWOMAN KRUEGER: They demoted you.

MR. CURRAN: I'm going to defer most

of my time to Karen. I came up here today and appreciate the opportunity to represent the board. Prisoners' Legal Services means a lot to us, and it's been fighting for a long time doing wonderful work, sometimes on a shoestring.

I have heard a lot of requests for money, and you all have very difficult priorities to set and decisions to make. Prisoners' Legal Services has an ask of you of 1.8. We'd like to reopen the New York office -- that was one of the offices closed because of the Pataki administration's punitive action towards Prisoners' Legal Services. It's taken us a long time to fight back from that.

So I'll defer the rest of my time, but thanks again.

MS. MURTAGH: Thank you, Madam Chair Krueger, Madam Chair Weinstein.

I'd first like to thank you all for your past support of PLS. The Assembly and last year, for the first time in the history of PLS, the Senate has contributed to PLS,

and it makes all the difference in the world.

We are in the Executive Budget for 2.2 million, the same amount we've been in for the past four years, and we are asking for an additional 1.8 million to be added by the Legislature. Last year, collectively, you added 1.1 million. The additional 700,000 we would like to maintain our current services and open the New York City office. But that office would be a little different than the rest of the other PLS offices.

You know, currently we have five offices across the state. We respond to 10,000 letters a year. We have different units at PLS: We have an immigration unit, a rapid response unit that also does immigration work. We have an education unit that focuses on children under 22 who are in prison that have special needs. We have a mental health project that focuses on youth and veterans. And we have a pro bono project and a lot more.

But in New York, what we would like to open is what I'm calling a prerelease and

reentry project, PREP. And I have the full support of Commissioner Annucci, and the focus would be that we would work with people that are going to max out of prison six months to 12 months before they max out.

Because people who are paroled or post-release supervision, they have a safety net, they have somebody that's saying, Are you going to your programs, do you have a job, do you have housing? People that max out have nothing.

And in 2017, there were 2300 people that maxed out to New York State: 181 of those individuals went to the Bronx, 286 went to Upper Manhattan. Why am I talking about those two places? Because I think the place PLS should have an office is in the Bronx or Upper Manhattan. Probably the Bronx, only because on the merits it's much closer to the prisons. We'd be closer to Sing Sing, we'd be closest to the only maximum-security prison for women, Bedford Hills.

We also, if we're able to open a New York City office, will have a much better

ability to leverage our resources by securing foundation funding. There are a number of foundations in New York City that would provide PLS funding, but unless we have a New York City office, we're not eligible for that funding.

So the PREP project would work with people in prison for six to 12 months before they're released. We would work with them on issues in prison, get them out of disciplinary confinement, get their medical and mental health issues addressed, make sure their education issues are addressed, reestablish family connections or make sure they continue, and then upon their release we would work to make sure that they had the reentry services they need.

We have relationships with the Osborne Association, the Doe Foundation, Fortune, a number of reentry organizations in the city. And we would work with these individuals, because 8.5 percent of people that are on parole return to prison for new crimes, but it's almost 18 percent of people that max out

that return for new crimes. So if we could just reduce recidivism a little bit, we would save New York State a substantial amount of money.

I see that time is just about up, so thank you again for your support. I appreciate everything you've done for us in the past, and I hope that you're able to add additional funding to our budget. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Hi.

MR. SALDANA: Okay. My name is Jose Saldana, I'm the director of Release Aging People in Prison Campaign, otherwise known as RAPP.

RAPP is a grassroots community organizing campaign that works to end mass incarceration, a crisis that was created by mass incarceration. That is, longer sentences on the front end and little opportunity on the back end for people to be released from prison have created this crisis of men and women languishing in prison for years and decades past the minimum sentences

set by the courts and getting old, sick, and dying.

Earlier today someone asked Acting Commissioner Annucci how many older incarcerated men and women are there in New York State prisons. Offhand, he didn't know. According to DOCCS records, there are slightly over 10,000 older men and women incarcerated in New York State. Also, according to DOCCS records, it cost us approximately $100,000 for each of these older people.

We do the math, it comes to roughly $1 billion to incarcerate older men and women who, for the most part, pose the least risk to public safety and the least to return back to prison.

RAPP offers a more -- a safer, humane, and fairer and just solution to this crisis of just letting people needlessly die in prison just to satisfy a need for revenge.

This solution is in the form of two legislative bills. The first bill is the Elder Parole Bill, which provides a person

reaching 55 years and has served 15 years, he would be entitled to -- he or she would be entitled to a parole interview. No guarantees, just a parole interview to determine whether at this person's point in life, whether this person should be returned back to his family and community.

And the other bill is the Fair and Timely Parole Bill. This bill simply changes the Parole Board standard of making determinations that risk to public safety, based on the crime that was committed -- most people, decades ago.

This bill will also provide the means for people to be judged according to their worth and their human value. And they will also reunite families and communities.

I just want to add that the worst of these elder men and women -- the acting commissioner, he called them the best credible messengers. And that's a bold statement, because that very concept of credible messengers came from those who were incarcerated.

Until roughly two years ago, I walked among these best credible messengers. And they are responsible for not only me transforming my life, but for helping countless others -- in fact, thousands of others -- transform their lives.

The credible messengers that we see today in our worst communities of New York City, we see kids who for the most part are neglected and abandoned and forgotten by society. These credible messengers were taught in prison along with me, and they are the reason why I am the man I am today.

I want to mention a story about Val Gaiter, the longest-serving woman in a New York State prison. She died at 61 years old. Sixty-one. She was an iconic woman at Bedford Hills, she helped an entire generation of younger women transform their lives, yet she died. Had the Elder Parole Bill passed, she would be alive today. This bill would save so many lives.

Since Governor Cuomo took office, 675 elderly people, people 50 and over,

passed away in New York State prisons -- 675. It's no surprise to anyone that the majority of these people are people of color. What may surprise you is that the average age at death was 57 -- 57 years old, and they passed away in our prisons.

So this bill is a humane -- it's really a first-step solution to the crisis of death by incarceration. Sentences that should be corrected, but unless a bill of this nature is passed, they will not be corrected and hundreds upon hundreds of others will continue to die. Right now, as I'm speaking to you, every four days an elder person in our prison system is dying. Every four days, one person 50 or older is dying in New York State prison.

That's something that we can correct. And I ask all of you, the Elder Parole Bill and the safe and -- Fair and Timely Parole Bill is the first step towards correcting this crisis. Thank you.

CHAIRWOMAN KRUEGER: Any questions?

Oh, hello. Senator Luis Sepúlveda.

(Mic problem.)

SENATOR SEPÚLVEDA: I don't have a question per se. I just want to say that I really admire the work that all of you do.

Prisoners' Legal Services is certainly a lifeline for many people that I consider the most marginalized people in our society, and it's really -- the resources that you have are not what you would need to service the entire state, and you work miracles with a small budget.

And certainly as I visit the facilities, I see that the work that you do is God's work, and I want to personally thank you for that.

And Jose, you know, you may not know this, but you're one of my -- someone I admire greatly. To hear your story, to hear what you're doing today and that you didn't forget those that are no longer living with you, but that you're advocating for these individuals.

And I think it says a lot about your character and about what happens or what

should happen to individuals that are incarcerated -- the rehabilitation process, the entire change of life. So that now you are leading the charge for many others, and I want to thank you for the work that you do.

MR. SALDANA: Thank you.

CHAIRWOMAN WEINSTEIN: Assemblyman Weprin.

ASSEMBLYMAN WEPRIN: Thank you, Madam Chair.

Thank you, Ms. Murtagh, Mr. Curran. I want to say this is my fourth year as Corrections chair, and you were one of the first organizations I met with. And I've personally referred you many, many clients, and you've always been terrific in taking them, particularly when we had that ICE fight a little while ago with so many people that were being threatened with deportation, and you were really champions on that.

I fully support your additional revenue request. I know what you do with a little amount of money, and I would love to see a New York City office open. So I fully

support it, and it's nice that we have a partnership with the Senate, I believe. And last year, as you mentioned, was a historic year for your funding with the Senate, and we hope that it will expand this year under Senator Sepúlveda's leadership and the Democratic majority in the Senate.

My friends at RAPP, I want to thank you for your advocacy -- without any real funding that I know of from us, but you're constantly there and, you know, I do appreciate your advocacy. As you know, I've met with you on many, many occasions and will continue to do that. And I really feel your advocacy is really from your heart.

And, José, your story is a real inspirational story to so many people, and I hope you continue to inspire me. And I hope we'll be able to do some good things together. Thank you.

MR. CURRAN: Thank you.

MR. SALDANA: Thank you.

CHAIRWOMAN WEINSTEIN: Assemblyman Blake.

CHAIRWOMAN KRUEGER: Sorry. Senator Hoylman. Sure. We're going back and forth.

SENATOR HOYLMAN: Thank you. We lose track of who's up.

Thank you for being here. It's good to see you.

Just a quick question, Karen and Thomas. In terms of the New York City office that you're seeking, what would that practically mean, if you could just restate that briefly, for your clients?

MS. MURTAGH: I'm sorry, what would it mean for our clients?

Well, under the Pataki administration, prior to that, we had seven offices across the state. So when we were defunded, we had to close our New York office, our Poughkeepsie office and our Watertown office. So our Albany office had to pick up the 30 prisons that were in the corridor, and we didn't have any increased staff.

So we have always triaged, but for the past 15 years we've really triaged because we don't have additional staff in Albany. So

last year, with the funding to open the Newburgh office, we were able to open that office and hire two attorneys, so they can pick up three of those 30 prisons.

But the prisons below them, having a New York City office to drive to those prisons -- because we have found that our presence in the prison significantly reduces violence in the prisons and helps keep the prison, the COs, everybody safer. So it would make a huge difference for us to have that office there.

MR. CURRAN: It would make a big difference in funding as well. Karen's worked with a number of organizations, foundations, but one of the preconditions to their giving us grants is a presence in New York City.

SENATOR HOYLMAN: And to Dave and José, what did you hear from the acting commissioner that you think bolsters your case for elder parole?

MR. SALDANA: With the acting commissioner, and I'm repeating what he said,

that these elder people who have languished in prison for their days, he said they are the best credible messengers. They have been an asset to every prison they have been in for three our four decades. If we release them, they will be an even greater asset to society in our communities.

MR. GEORGE: If I may just quickly add, you know, we meet with a lot of the members about this bill, probably everybody on the dais. You know, a lot of members are in their 50s or early 60s or mid-60s and they say, I just ran a 5K, I just ran a marathon, I'm not old, I'm not an elder, I shouldn't qualify for elder parole.

But I think the commissioner, not for the second time in front of you all, underscored that accelerated aging is a fact in state prisons in New York and across the country. That somebody, as you said, age 55 is more like age 65. I think it's very important that we understand that prisons are not a place where people healthily age and grow old.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Now to Assemblyman Blake.

ASSEMBLYMAN BLAKE: Thank you, Chairwoman.

Good evening. Good to see everybody again.

Karen, just a few initially for you. On page 5 of your testimony it talks about the family matters unit, and it would be helpful just to get a sense of the impact on the children because of the work.

MS. MURTAGH: Yes, so we opened our family matters unit a couple of years ago, and we focus primarily on two things. One is when someone is disciplined in prison, part of that discipline almost always is to lose visitation with the family. So you're put in solitary, you lose commissary packages, phone privileges, and you lose your visitation.

So we actually were able to get a social worker who had a parenthetical in child adolescence, and she provided us with an affidavit about the impact on the child

even if you interrupt visitation for a month -- it doesn't have to be a year, which it often is.

And then we took that, in one case, and we sent it to the Department of Corrections, and we were able to restore the visitation. And now we've been able to do that in almost all of the cases, based on that argument.

ASSEMBLYMAN BLAKE: It's immensely helpful to talk about the familial impact of everything.

On page 6 it talks about your immigration unit and, in particular, also your rapid response immigration unit. Could you give a sense of the numbers of how many immigrants and families have benefited from the work?

MS. MURTAGH: Yes. And our immigration unit, just so everyone knows, is funded separately and apart from all our other funding. It's funded through the NYIFUP program through the Vera Institute of Justice.

And I know that there was testimony at the local government table a couple of days ago by the New York Immigration Coalition to increase the immigration funding, which they desperately need.

But we represent anyone incarcerated that's facing deportation in the regular immigration unit, and anyone that is in Albany County or the seven surrounding counties or in the North Country that is detained, picked up. So this summer in Saratoga when people were walking to work, you know, they got picked up -- ICE was just parked on the sidewalk, and they picked people up. We handled over 300 deportation cases last year.

And prior to PLS being involved, if an individual did not have an attorney at their deportation hearing, they only had a 2 percent chance of winning. Since PLS has started taking cases, we have a 38 percent success rate.

ASSEMBLYMAN BLAKE: And very quickly -- I see I have 10 seconds here --

how many New York City residents are benefiting from your work? I know you had to close the office, but what would be the impact in New York City?

MS. MURTAGH: I would say thousands of people are benefiting, New York City residents, because --

MR. CURRAN: Including families.

MS. MURTAGH: Including families. But over 50 percent of the DOCCS population is from the New York City area, and we represent all of those individuals and their families.

ASSEMBLYMAN BLAKE: I know my time is done. But José, always good to see you. You are a blessing to all of us.

Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

We go to Assemblyman Reilly.

ASSEMBLYMAN REILLY: Thank you for sharing your testimony, and it's really insightful.

And one thing that really sticks out to me, and I wanted to touch on this a little bit more, in your testimony I see ensuring

adequate education. And I see the part about sticking to the federal mandate of the IEP where we see that -- special education students that are incarcerated.

Can you tell me a little bit more about the program and the funding aspect of it, and what the Legislature can do, maybe in partnership with NYSUT, to try and provide more resources? Because I think that's something that -- definitely which you allude to in here about stopping and reducing recidivism.

MS. MURTAGH: Thank you so much for that question.

Yes, we -- a couple of years ago we settled a case called the Cookhorne case, and it involved putting a juvenile, a 16-year-old, in solitary for four years. And part of that settlement was to not put juveniles in solitary and allow PLS to monitor the facilities where 16- and 17-year-olds were being held.

So for the past three years we've been going into the facilities and talking to all

the youth. And we found out, by doing that, that many of them come to prison with an IEP. And yet DOCCS does not follow any of the rules, mandates with respect to the IEP.

So we sat down with DOCCS last year, we got a grant from the Herb Block foundation and we were able -- for $10,000, and we were able to hire a few experts, education experts, and we sat down with DOCCS and they rewrote their directive on special education, which now lays out what needs to be done if a person comes in with an IEP.

But implementing that is a whole other thing. And it's not just 16- and 17-year-olds, as I'm sure you know, it's anybody under 22. And so two years ago, for the first time in the history that we know of, we brought a case together with disability advocates challenging the failure to provide one of -- a child, a youth in DOCCS, with appropriate education. And the decision from the hearing officer in that case was to mandate that DOCCS provide 600 and some hours of compensatory education for

this person, who had since been released from DOCCS.

So finding some way to have oversight -- we can't even really figure out who has oversight on DOCCS with respect to education, and whether DOCCS is its own school district. So --

ASSEMBLYMAN REILLY: That's a great point. And I think this is something to bring to the Board of Regents and see if maybe that can be part of their agenda, the ask for every year of funding. And it's a discussion that I think we should have.

MS. MURTAGH: Thank you.

MR. CURRAN: Thank you.

MS. MURTAGH: I agree.

CHAIRWOMAN WEINSTEIN: Senator Krueger.

CHAIRWOMAN KRUEGER: Thank you. Thank you all for all the work you do.

I'm sorry, it's not on.

(Mic problems.)

CHAIRWOMAN KRUEGER: There we go. Thank you for all the work you do.

It's a warning, both for people coming out of prison because they've maxed out their sentences, and for people we hope to get out of prison because they're no longer a risk to society: Don't trust this town. The solution cannot be releasing them to the streets of New York City as homeless people. That will be a crueler punchline than what we have now.

So I urge everybody working on these issues to remember that a plan for what happens next cannot be $40, dropped off at the Bellevue Men's Shelter, and imagine that we -- that that's a success story, because that's not.

Thank you. Thank you for your work.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Dinowitz.

ASSEMBLYMAN DINOWITZ: Thank you.

This is for Mr. Saldana and Mr. George. I don't think you addressed this, so let me just ask. Are you aware of how many people in New York State are serving sentences of life without parole?

MR. GEORGE: So there are roughly 300 people in the State of New York -- this is data from January 2018, so the numbers are probably a little bit higher these days -- but 300 people serving life without parole; an additional 700 people serving sentences that we call virtual life without parole, where they have a minimum sentence of 50 years or greater. It's essentially life without parole, because they'll never see the parole board in their natural lives.

So there are more people in the State of New York actually serving virtual life without paroles, so we say usually 1,000 or so people are serving those sorts of sentences that frankly amount to a living death sentence.

ASSEMBLYMAN DINOWITZ: So are you advocating that those two groups of people also be eligible for this -- be eligible to be reviewed for parole at age 55 as well as everybody else?

MR. SALDANA: Yes, we are. And this is based on our experience of -- where you're

formerly incarcerated. And it did not take me 38 years to transform my life. At an earlier point, I believe that it was probably just -- more just to evaluate whether I was ready to return to my family. Because I'm not the only one hurting, my family was hurting too. And I should have been given that opportunity, just an opportunity. If I'm denied, then I'm denied. But give human beings the opportunity, give them hope.

That's all this bill does. It doesn't do anything else but offer hope to people who have no hope.

ASSEMBLYMAN DINOWITZ: Okay, I only have a minute left.

So what crimes would cause somebody to be sentenced to life without parole? What are the main circumstances?

MR. GEORGE: It really varies. Generally it's people convicted of violent crimes, which makes up the extreme majority of people in our state prison system. But it varies from multiple robberies, where somebody got two 20-year-to-life sentences or

three 30-year-to-life sentences, or something more serious like killing another individual.

ASSEMBLYMAN DINOWITZ: Well, I'm talking about people who were sentenced to life without parole, not your virtual life without parole. What crime would somebody have to commit to be sentenced to life without parole?

MR. GEORGE: Those are usually murder-related convictions.

ASSEMBLYMAN DINOWITZ: Murder.

MR. GEORGE: Murder-related convictions, yes. If I may --

ASSEMBLYMAN DINOWITZ: Sure.

MR. GEORGE: We are an international outlier -- a national outlier in this regard, but an international outlier more generally. We're one of only a few countries that sentences people to die in prison. Countries, not just in the Netherlands or in Scandinavia, don't do this.

More people, for instance, from the Bronx, where you represent, are serving life without parole than in the entire

United Kingdom, the entire country. So we are off the charts.

Criminologists and psychologists have studied this issue for a long time, know that sentencing people to death inside -- it doesn't keep us safe, it doesn't deter crime, much like the death penalty, and often doesn't meet the many needs and desires of victims.

So if we want to be more in line with the rest of world with regard to criminal justice, then we will no longer sentence people to die in prison without any hope or chance at release.

ASSEMBLYMAN DINOWITZ: If it was my family member who died at the hands of the person serving life without parole, I'm not sure I'd be so eager to see them eligible for parole.

Thank you.

CHAIRWOMAN KRUEGER: Thank you all very much.

MR. CURRAN: Thanks a lot.

MS. MURTAGH: All right, thank you.

CHAIRWOMAN KRUEGER: And we'll call up the next group, the District Attorneys Association of the State of New York, and the New York Police Department. Oh, they're not a panel. So just the Association of District Attorneys.

We started to believe that people got together and said this was a 13-and-a-half-hour hearing two years ago, and we're going to beat that tonight. Well, I don't know. Those of you cruel enough to want us to beat it, just think about that again.

(Laughter.)

DISTRICT ATTORNEY FITZPATRICK: Well, I was told to be here at 9:30 sharp, I just --

(Laughter.)

DISTRICT ATTORNEY FITZPATRICK: No one told me 9:30 p.m.

(Laughter.)

CHAIRWOMAN KRUEGER: There, you did it perfectly.

DISTRICT ATTORNEY FITZPATRICK: Senator Krueger and Assemblywoman Weinstein,

it's -- first of all, it's very good to see both of you again. My name is Bill Fitzpatrick. I am the elected DA of Syracuse, New York, Onondaga County. I also serve on the board of directors of DAASNY, the DAs Association of the State of New York. I am the chair of the New York State Prosecutors Training Institute, I'm the president emeritus of the National DAs Association, and I'm a long-time member of the Forensic Science Commission.

I know you have my remarks, so I'm going to go through them quickly, streamline them, and hopefully take your questions that you have.

I couldn't agree more with Bill Leahy, who testified earlier about the need for discovery reform. And I think anybody that would deny that prior to January 1st of this year really doesn't understand the dynamic of trying a case, defending a case, and being a victim in a case.

I spent five years as a defense lawyer prior to taking office as the district

attorney, and I recall vividly a case where I was retained to represent a young man charged with vehicular manslaughter. And upon approaching the DA to get discovery on the case, I was told: "You'll get discovery the way everybody else does in this county, after jury selection and before opening statement."

That, of course, is a Kafkaesque way to run a criminal justice system. Which is why, when I took office in '92, I had then and I still have an open file discovery process.

So let's try to discuss this realizing that change desperately needed to be made, but that in your desire to correct a wrong, in my judgment you have developed some unintended consequences that will have a dramatic budgetary impact on the State of New York, will in some instances adversely affect public safety, and will ultimately result in disparate treatment for poor and indigent defendants.

Let me point out that DAs have historically changed over the years. We had

draconian sentences laws in the '70s and '80s as a result of a skyrocketing crime wave, but it was prosecutors that started diversionary programs, it was prosecutors that started family justice centers, child advocacy centers, mental health courts, opioid courts, and so many more. I have eight diversion courts in Onondaga County, which is approximately 500,000 people.

New York's prison population, I think as a result of innovative prosecution and smart prosecution, has dropped by over 25 percent in the last decade and a half, and yet we still maintain our status as the safest large state in America, and in addition to that we have the lowest per-capita ratio of prison population of any large state in America. Those things did not happen in a vacuum.

So on behalf of my 61 colleagues, I'm asking you just to do -- consider four things. Number one, change the requirement that all physical evidence be tested prior to the entrance of any plea. My laboratories in

the State of New York -- and I say mine, because I serve on the Forensic Science Commission -- they are backlogged, they cannot do this testing.

If someone comes in with 80 bags of fentanyl, the process now is to test a certain number of bags and then try to reach a disposition between prosecutor and defense lawyer. Now I can't even talk to a defense lawyer until all 80 of those bags are tested. That's ridiculous.

The second thing. Expand the amount of time the prosecutors have to comply with the certificate of compliance from 15 days to at least 45 days, if not 60 days.

I have young men and women who are in debt to six figures who are working 12 hours a day to fill out a myriad amount of forms, they're checking 911 tapes, surveillance tapes, police reports, they're trying to interview witnesses -- and I'm paying them $56,000 a year. It can't be done. It cannot be sustained.

Thirdly, invest in funding for PCMS,

which you have done, Prosecutors Case Management System, and DEMS, Digital Evidence Management System, which are going to help us as prosecutors comply with the discovery laws.

And finally and most importantly, let judges be judges, let defense lawyers practice law, let prosecutors do justice.

Because what you've done is you've created a disparity between the retained lawyers and the assigned lawyers. The assigned lawyers right now are being directed not to waive any of the these provisions. Retained lawyers come into my office all the time and quickly dispose of cases in a fair manner because they are representing their clients zealously but have waived some of these provisions.

So I'd ask you just to consider those four things. Thank you for your time. Myself and my 61 fellow elected DAs are ready, willing and able to sit down with you and discuss reasonable solutions to what I believe was a good faith effort, and I

sincerely hope you'll take us up on that offer.

CHAIRWOMAN KRUEGER: Senator Zellnor Myrie.

SENATOR MYRIE: Thank you, Madam Chair.

And thank you for your patience.

I want to pick up on something you said about the interests of public safety and the interests of justice and judges. So is it fair to say that DAASNY's position on the expansion of judicial discretion is based in the interests of public safety?

DISTRICT ATTORNEY FITZPATRICK: No question. And along with that, of course, justice.

We heard from a lot of proponents of the "We want to model this after New Jersey." We'd agree with that tomorrow. Let's model it after New Jersey, where judges still have discretion.

SENATOR MYRIE: And would it be fair to say that this interest in the expansion of judicial discretion is applied to pretrial

detention?

DISTRICT ATTORNEY FITZPATRICK: Absolutely.

Yeah, I have a -- Senator, not to interrupt, but I have a policy for 15 years in my office, in writing, that nominal bail is not to be set. So this -- this is not -- the bail statute has not had an incredible impact on Onondaga County. It has had an impact on other communities, with anecdotal, you know, quote, unquote, horror stories. But those can be solved readily easily.

SENATOR MYRIE: So would DAASNY be supportive of the expansion of judicial discretion for post-trial liberty? That is, in the interests of justice, for those who have served certain sentences, for those who may have served unfair sentences, to people who pose no threat to public safety, would DAASNY be supportive of allowing a judge to free that person?

DISTRICT ATTORNEY FITZPATRICK: I would have to -- I can't speak on behalf of my 61 colleagues and say yes.

I can tell you that in certain instances I have vacated convictions. For example, I've vacated on four occasions the convictions of people who were going to be deported by ICE because they had been convicted of drug charges years ago and they were living absolutely productive lives with families and jobs. It made absolutely no sense.

I don't know if I can say to you, Senator, that all 61 of my colleagues agree with that.

I don't accept the premise that someone such as a William Wood, in my community, just a few days ago -- or a few months ago, marched four people into a cooler and shot two of them in the head systematically and is now serving life without parole, and I sat in a room full of victims' families and said, "That means he will never see the light of day again."

I don't want to tell them when he hits 55 that every two years, you have to appear before a parole board.

So I would not abdicate that to judicial discretion or judgment.

SENATOR MYRIE: Okay. May I suggest that I see a double standard in supporting the expansion of judicial discretion as it pertains to determining whether or not someone has liberty before they've been convicted, and to not hold that same position after they've served a sentence and been convicted after the facts have been gone over and then not allow there to be any discussion on whether or not that person should be free.

Thank you.

DISTRICT ATTORNEY FITZPATRICK: The reason it's not a double standard is because the first category you talk about, the individual is presumed innocent. The second category you talk about, the person has been convicted beyond a reasonable doubt, either by a judge, a jury or a plea.

CHAIRWOMAN WEINSTEIN: Thank you.

We go to Assemblyman Ra.

ASSEMBLYMAN RA: Thank you for being here this evening.

DISTRICT ATTORNEY FITZPATRICK: Yes, sir.

ASSEMBLYMAN RA: You talked about this $2 million fund and how it really pales in comparison to what the costs are seemingly going to be and the counties are already incurring. Can you just speak more about that in terms of the -- you know, what your county system -- how large is the office, your district --

DISTRICT ATTORNEY FITZPATRICK: In my office I have 50 assistant DAs and a support staff of over 100.

And you already -- you, the Legislature, both houses -- already support financially PCMS, Prosecutor Case Management System. It allows any one of my assistant DAs to sit at a computer and be updated about the status of the case, court appearances, et cetera, et cetera.

DEMS is the Digital Evidence Management System which the Superintendent of the State Police referred to earlier -- which by the way, the State Police lab is not

online with DEMS. We wish they were. But every other major police department and criminal justice agency outside of New York City is online with DEMS, which allows us to comply with our discovery obligations.

That we would request be funded to the amount of $2 million. And I understand that -- I don't know the word -- Cy Vance has volunteered to donate $2 million to that. I haven't talked to Cy about that, but I'll take your word --

CHAIRWOMAN KRUEGER: He won't even notice. He has a lot of --

DISTRICT ATTORNEY FITZPATRICK: He's got a lot of forfeiture money too, Senator Krueger. You ought to talk to him about that.

ASSEMBLYMAN RA: So is it your understanding that that database would qualify for that funding as -- because I know it's for digital evidence transmission technology, so that DEMS system would qualify for that funding?

DISTRICT ATTORNEY FITZPATRICK: Yes.

And that $2 million cost would be the initial start-up cost, with training. And I expect the cost to be less than that in the subsequent years.

ASSEMBLYMAN RA: Thank you.

DISTRICT ATTORNEY FITZPATRICK: Thank you.

CHAIRWOMAN WEINSTEIN: Assemblyman Blake -- oh, I'm sorry.

CHAIRWOMAN KRUEGER: That's okay.

CHAIRWOMAN WEINSTEIN: Senator Sepúlveda.

CHAIRWOMAN KRUEGER: No, actually Senator Hoylman.

CHAIRWOMAN WEINSTEIN: Okay.

SENATOR HOYLMAN: One of us.

Thank you. Thank you. Thank you for being here.

In terms of this $2 million District Attorney Compensation Fund -- I'm from Manhattan. And the District Attorneys Association's okay with you taking $2 million from one of your colleagues and redistributing it across the state?

DISTRICT ATTORNEY FITZPATRICK: If he says it's okay, it's okay with me. I --

SENATOR HOYLMAN: Has he said it's okay?

DISTRICT ATTORNEY FITZPATRICK: I have not spoken to Cy about that.

SENATOR HOYLMAN: Well, you've endorsed it in this testimony. You didn't ask him first?

DISTRICT ATTORNEY FITZPATRICK: No. I did not talk to Cy because the first I --

SENATOR HOYLMAN: He's a member, though, of your association.

DISTRICT ATTORNEY FITZPATRICK: The first I heard about $2 million coming from Cy was today. I thought it was coming from other sources.

SENATOR HOYLMAN: Okay. So the principle of taking money from one district attorney office and redistributing it, you don't necessarily endorse.

DISTRICT ATTORNEY FITZPATRICK: I -- you know, it's -- it's -- it's Cy's decision, Senator.

SENATOR HOYLMAN: That's $2 million that might be used for, you know, securing NYCHA's cameras, night basketball, a lot of programing that might be directed specifically to Manhattan.

DISTRICT ATTORNEY FITZPATRICK: He has $500 million in his forfeiture account. I'm sure he can afford the 2 million.

SENATOR HOYLMAN: Well, it --

DISTRICT ATTORNEY FITZPATRICK: But again, I'm not speaking for Cy Vance.

SENATOR HOYLMAN: It's his fund this year, it could be yours, sir, next year.

DISTRICT ATTORNEY FITZPATRICK: If I have $2 million in that fund, I guarantee you I'm not sharing it with Oswego or anywhere else.

SENATOR HOYLMAN: I'm just surprised that district attorneys, when it comes to, you know -- are -- easily turn on each other when it comes to $2 million.

DISTRICT ATTORNEY FITZPATRICK: No, actually we -- we normally don't turn on each other about $2 million. If Cy says no, it's

no.

SENATOR HOYLMAN: Okay. And finally, the -- I just want to associate my comments with my colleague Senator Myrie.

Thank you for being here.

DISTRICT ATTORNEY FITZPATRICK: Thank you, sir.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Now we go to Assemblyman Blake.

ASSEMBLYMAN BLAKE: Thank you, Chair.

Good evening.

DISTRICT ATTORNEY FITZPATRICK: Good evening, sir.

ASSEMBLYMAN BLAKE: Can you give us context as to why, going back to 1971, "potential dangerousness" was removed as a consideration?

DISTRICT ATTORNEY FITZPATRICK: Say again?

ASSEMBLYMAN BLAKE: In 1971, "potential dangerousness" was removed as a consideration when it came to determination

of bail. Can you just give us context as to why?

DISTRICT ATTORNEY FITZPATRICK: Oh, I'm sorry. I don't know the history of that.

I know that 47 states allow future dangerousness to be considered in the issue of bail. In New York --

ASSEMBLYMAN BLAKE: We can acknowledge the fact that going back to 1971, "potential dangerousness" has been removed. That is an accurate fact, correct?

DISTRICT ATTORNEY FITZPATRICK: I started practicing in 1977, and it's been true since '77. And I will take your word that it's been true since '71.

ASSEMBLYMAN BLAKE: Understood. But we also acknowledge for a fact pattern that violent felonies, sex-related charges and some domestic violence charges are still subject to bail.

DISTRICT ATTORNEY FITZPATRICK: Yes.

ASSEMBLYMAN BLAKE: So then I'm trying to understand, why would the DA position want to include back "potential dangerousness"

when it has not been in consideration since 1971, then.

DISTRICT ATTORNEY FITZPATRICK: Because it's a fiction. Okay?

ASSEMBLYMAN BLAKE: I'm sorry?

DISTRICT ATTORNEY FITZPATRICK: It's a fiction.

ASSEMBLYMAN BLAKE: It's a fiction of potential dangerousness?

DISTRICT ATTORNEY FITZPATRICK: Yes. Let me explain. May I explain?

ASSEMBLYMAN BLAKE: What is the -- I just want to make sure, what is the fact point of potential dangerousness being fiction?

DISTRICT ATTORNEY FITZPATRICK: When a individual comes in front of a judge, there are criteria that the judge is allowed -- I'm talking pre-January 1st.

ASSEMBLYMAN BLAKE: Understood. As of right now, I just want to be very focused, because our time is limited. You just stated, on behalf of the DAs Association, that potential dangerousness, the reason why

it should be considered is because it's a fiction.

DISTRICT ATTORNEY FITZPATRICK: No, that's not what I said. I said -- I said the notion that in the past judges did not consider future dangerousness of a defendant in front of him or her is a fiction.

ASSEMBLYMAN BLAKE: That wasn't my question, though. I was specifically mentioning the fact -- but let's continue.

Your testimony here states that there was not meaningful input from everyone. Are you stating on behalf of the DAs Association that the DAs were not a part of conversations last year on criminal justice reform?

DISTRICT ATTORNEY FITZPATRICK: I was -- I was certainly not part of this. But if --

ASSEMBLYMAN BLAKE: Not you, sir.

DISTRICT ATTORNEY FITZPATRICK: -- of my colleagues -- my colleagues tell me, to a man and woman, that their input was either ignored or not requested.

ASSEMBLYMAN BLAKE: Just a very --

just a factual point based upon your first question. Are you saying, on behalf of the DAs Association that the DAs were not a part of the conversation last year?

DISTRICT ATTORNEY FITZPATRICK: Not to my knowledge.

If you tell me you had a conversation, Assemblyman, with your DA --

ASSEMBLYMAN BLAKE: Not just mine. I mean, there are multiple of record that we would be clear with.

I just want to be clear, also, just on the data standpoint. Where are you attributing, on your third paragraph, the range would be upwards of $100 million to $400 million would be necessary for this implementation. Can you just give me a source on how you determined that number?

DISTRICT ATTORNEY FITZPATRICK: I can't, because that's not in my testimony.

ASSEMBLYMAN BLAKE: I'm sorry, I'm literally reading it from your document here. It says it in the third --

DISTRICT ATTORNEY FITZPATRICK: There

were two documents submitted, Assemblyman --

ASSEMBLYMAN BLAKE: It says the District Attorneys Association of the State of New York, in the third paragraph, quote, Most estimates range upwards of $100 million, with some estimates at $400 million. I'm specifically asking --

DISTRICT ATTORNEY FITZPATRICK: You're talking about the -- it's a different thing.

I understand your question.

ASSEMBLYMAN BLAKE: Okay.

DISTRICT ATTORNEY FITZPATRICK: Those estimates come from the following things. For example, in Onondaga County my budget has been increased a half a million dollars to comply with discovery. So if you extrapolate that out statewide, and you include in that the hundreds of thousands of dollars that upstate DAs have already spent on outsourcing DNA analysis because of the backlog at the State Police lab, that's where that figure comes from.

ASSEMBLYMAN BLAKE: So forgive me, I know our time is ending. There is -- just

for the record, there is not a uniform source on how that number was determined. Just for my specific question.

DISTRICT ATTORNEY FITZPATRICK: I think clearly it's an estimate --

ASSEMBLYMAN BLAKE: Understood.

DISTRICT ATTORNEY FITZPATRICK: -- it's fair to say.

ASSEMBLYMAN BLAKE: Of a $300 million range.

DISTRICT ATTORNEY FITZPATRICK: Yes.

ASSEMBLYMAN BLAKE: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Luis Sepúlveda.

(Comments off the record.)

SENATOR SEPÚLVEDA: DA Fitzpatrick, first of all, I want to associate my -- with the comments of Senator Myrie. And any -- either you are terribly misinformed or you're being disingenuous when you say that we, in our deliberations about criminal justice reform, did not reach out to the DAs, to law enforcement, to the individuals with know-how on this issue.

Because the truth is that we did. And most, if not all, decided to ignore our request and are now doing what they're doing, which is going after the reforms. And a lot of the fearmongering that you're hearing is coming from law enforcement and DAs.

Second of all, you said, to a question --

DISTRICT ATTORNEY FITZPATRICK: Senator, fearmongering has two parts to it, fear and mongering. Okay? If I'm sounding an alarm because my apartment building is on fire, there's fear associated with that but it's not mongering.

I'm trying to tell you that with some simple fixes, you can make this better, achieve every goal that you had in mind --

SENATOR SEPÚLVEDA: Yeah, but if you're saying here that we didn't invite the DAs or law enforcement to participate, that is pure fearmongering no matter how you want to sanitize it.

DISTRICT ATTORNEY FITZPATRICK: Who did you speak to from the DAs Association?

SENATOR SEPÚLVEDA: We reached out to everyone. I know that --

DISTRICT ATTORNEY FITZPATRICK: Name the person.

SENATOR SEPÚLVEDA: -- in my conversations with --

DISTRICT ATTORNEY FITZPATRICK: You personally, who did you speak to?

SENATOR SEPÚLVEDA: Sir, you can speak over me all you want. It's not going to change the realities of what happened. We reached out to law enforcement to have a genuine discussion on reforms, and you guys ignored our requests.

Number two, you said that --

DISTRICT ATTORNEY FITZPATRICK: And the name of the DA that you spoke to?

SENATOR SEPÚLVEDA: Sir, we are short on time. We can discuss it.

You said that dangerousness, the input of dangerousness was a fiction. Can you explain what you meant by that?

DISTRICT ATTORNEY FITZPATRICK: That's not what I said. I said that prior -- that

after --

SENATOR SEPÚLVEDA: That's exactly what you said, sir.

DISTRICT ATTORNEY FITZPATRICK: The statute allows a judge, prior to January 1st of 2020, to consider a number of things. Future dangerousness was not one of them.

SENATOR SEPÚLVEDA: Correct.

DISTRICT ATTORNEY FITZPATRICK: But it's a fiction to say that no judge setting bail in 1980 didn't consider the dangerousness potential of the person in front of them.

SENATOR SEPÚLVEDA: But that was not the question.

DISTRICT ATTORNEY FITZPATRICK: If that had been in the statute, Jill Cahill would be alive today. But she's dead because a judge let her killer out on bail, not considering his future dangerousness.

SENATOR SEPÚLVEDA: Was dangerousness supposed to be part of the consideration when you were setting bail, yes or no?

DISTRICT ATTORNEY FITZPATRICK:

Dangerousness is not enumerated as a criteria. The strength of the evidence is, prior to January 1st.

SENATOR SEPÚLVEDA: So then describe to me what is the fiction that you were discussing?

DISTRICT ATTORNEY FITZPATRICK: Because judges considered that. They're human beings. They looked at an individual. They're going to --

SENATOR SEPÚLVEDA: But they were not supposed to, correct?

DISTRICT ATTORNEY FITZPATRICK: They're going to treat David Berkowitz, in setting bail, different than they're going to set bail on a shoplifter, even though both are likely to come back to court.

SENATOR SEPÚLVEDA: So they were not supposed to consider fiction, according to the rules in the statute, correct?

DISTRICT ATTORNEY FITZPATRICK: You want to play games with my words, go right ahead, Senator. That's not what I said.

SENATOR SEPÚLVEDA: DA Fitzpatrick, I

find you highly offensive when you make comments like that. This is supposed to be a discussion. We may disagree on policy, but I find it highly offensive, the position that you're taking here.

I have no further questions.

CHAIRWOMAN KRUEGER: Assembly.

CHAIRWOMAN WEINSTEIN: Okay. We go to the chair of our Codes Committee, Assemblyman Lentol.

ASSEMBLYMAN LENTOL: Good evening, sir.

DISTRICT ATTORNEY FITZPATRICK: Good evening.

ASSEMBLYMAN LENTOL: I'm glad that you're here tonight, because I'm tired but I think we have to have a discussion, because your facts are a little bit skewed about dangerousness.

You may be right that some states did add "dangerousness" to the statutes in 1971, as you suggest, around these United States of America. But the year was 1965 when the Penal Law of the State of New York was

amended, and it was amended by a conservative Republican legislature and a Republican governor. And they specifically rejected dangerousness and preventative detention in the statute that would have changed bail forever in New York State. They didn't want to do it, they refused to do it.

And so when you talk about adding dangerousness to the statute, I have to tell you that I believe that to do that under the present conditions that we have with the bail reform that we've enacted, that what you'll be doing with judges that never in the history of New York State have had preventative detention or public safety in the law, they will let nobody out. Because the onus will be on them, not on the State of New York, to determine public safety. And why should they have it on their heads that they let somebody out after all the fearmongering going on about the statute that we've enacted?

That's what's going to happen in New York State.

DISTRICT ATTORNEY FITZPATRICK: You know, Assemblyman, my comments today really were focused on discovery, which is my concern. I get the fact that the bail is a sexy issue, that there are people that are mentioned on page 6 of the Post and people get up in arms about that.

I can live with the bail situation that you people have developed. I can live with that, I can deal with that. I wish there were some minor changes to it. I wish we could discuss that rather than what's happened between myself and Senator Sepúlveda. I didn't come here for that.

I think you'll find that myself and my 61 colleagues care as much about public safety as you do. And I just think that in some minor instances the bail law could be tweaked, but the discovery statute needs the overhauls that I discussed -- that will still allow for the objectives that you have.

ASSEMBLYMAN LENTOL: I'm sure that we can work through that. But I just want to tell you to suggest that a minor or a simple

change of the statute by including public safety is something that we should look at is something I don't believe in.

And I don't believe in it not because I don't believe in public safety -- I believe in public safety wholeheartedly, with all my heart. But what we'll be doing is just destroying the bail reform statute that we've passed. The poor kids, the poor adults will still go to jail, and there will be pretrial detention for most of those kids just like there is today. That's what will happen if we add public safety, because the judges never had it.

Now, I agree with you also in what you said that the judges did consider dangerousness in the statute before the statute was passed. Because it wasn't in the statute. So they could say that they were doing it because they thought the person not was a risk to public safety, but was a risk not to come back to court and get away with it. That's why they did it.

But if you have public safety in the

bill, they have nothing to hang their hat on except public safety. And all of those people that we want to see get out of jail because they don't have the money to afford it will be put in jail.

DISTRICT ATTORNEY FITZPATRICK: I agree with much of what you said, Assemblyman.

ASSEMBLYMAN LENTOL: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator John Liu.

SENATOR LIU: (Counting silently.) Five, four, three, two, one.

DISTRICT ATTORNEY FITZPATRICK: Sorry, sir, I can't --

SENATOR LIU: (Mic activated.) Now he can.

DISTRICT ATTORNEY FITZPATRICK: Now he can.

(Laughter.)

DISTRICT ATTORNEY FITZPATRICK: Why is it your mic?

SENATOR LIU: Thank you, Madam Chair.

Thank you for joining us today. It's

been a long day. But, you know, there are still some things that I would like to get out clearly on the record based on your testimony.

First and foremost, I don't believe that the New York County district attorney has any of the slush fund any longer, ever since at the end of Morgenthau's tenure it was discovered by the city that that slush fund existed. So if you're counting on Cy Vance for the 2 million or however other million, that money is probably not on its way.

DISTRICT ATTORNEY FITZPATRICK: I think Cy would -- it would behoove me to say it's not a slush fund, in case Cy is listening. But Cy has been very generous with his forfeiture money. For example, he donated $35 million to rape kit backlogs throughout the United States of America.

SENATOR LIU: The point is that it should be in the public budgeting process. It's not up to one person to decide how that forfeiture money --

DISTRICT ATTORNEY FITZPATRICK: No argument from me, Senator.

SENATOR LIU: Okay. Thank you.

Your responses to one of my colleague's questions about that $100 million estimate, or $400 million estimate, I mean, at best, based on what you're saying, it's like a quick back-of-the-envelope calculation. That's part of the credibility that we're finding as legislators, many of us as unbiased as possible, finding it very difficult to believe some of the public statements that DAs across the state have made.

And you sit here representing the DAs across the State of New York, and you're making these kind of -- these kinds of statements which we find, first and foremost, to be incredible and, upon further questioning, you have absolutely no basis. I mean, your testimony, as Assemblymember Blake points out, says explicitly most estimates -- most estimates range from $100 million, with some estimates at $400 million. And you're

telling us that in your county, it costs maybe a half a million dollars and you're extrapolating that to the rest of the state. That, sir, is disingenuous.

And my last point -- or you can answer this question, is that in your testimony -- not in your written testimony, because I can't find it. But you said something about the fact that our law muddies the waters or clouds the different roles that prosecutors play versus judges play. Is that -- do you recall saying something like that or --

DISTRICT ATTORNEY FITZPATRICK: Yes.

SENATOR LIU: -- am I mistaken?

Okay. But then you go on to say that prosecutors sometimes -- prosecutors such as yourself will sometimes move to vacate a conviction.

DISTRICT ATTORNEY FITZPATRICK: Yes.

SENATOR LIU: And I certainly agree with that. But aren't you playing the judge there when you're supposed to be the prosecutor?

DISTRICT ATTORNEY FITZPATRICK: A

prosecutor's job is to do justice. And sometimes that requires vacating a conviction.

SENATOR LIU: I don't think a prosecutor has any capability to be the judge.

Now, in the example that you cite, I actually agree with what you have done, and I applaud you for that. But when you say that our law is muddying the waters and clouding the different roles that people of position play, I mean, you're testifying against yourself there, sir.

DISTRICT ATTORNEY FITZPATRICK: With all due respect, sir, that's not apples and oranges, it's apples and elephants. You're talking about two different things.

My testimony -- and I apologize, you keep referring to this letter that was written by the DAs Association, which I did not write. And I did not talk about $100 million in my testimony.

But be that as it may, what I'm talking about in terms of letting lawyers do

their job, under the statute a defense lawyer who walks into my office, I can't say to him or her: "Do you want to waive the discovery process? Your client is out on bail or out released, can we discuss a negotiation?" I can't do that now. I have to comply with these rules and regulations even if ultimately the case may be plea bargained.

The situation I talked about with I think Assemblyman Blake was a woman who had been convicted long before I took office who for some reason ICE was coming to deport because they had just learned about her felony conviction. And that had to be validated by a judge, but it was done so with my consent and absolutely my application.

SENATOR LIU: Okay, I will just end with saying that I do appreciate, on a positive note, your testimony about how creating this kind of statewide system between DEMS and PCMS will be helpful to all the localities. And even though that might cost money up-front, it would probably save money overall in the long term. So I do

appreciate that suggestion.

DISTRICT ATTORNEY FITZPATRICK: Yes.

SENATOR LIU: And finally I would suggest, going forward, if you didn't write testimony or didn't approve the testimony, it's probably a good idea not to read the testimony.

Thank you.

CHAIRWOMAN KRUEGER: Thank you, Senator.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Reilly.

ASSEMBLYMAN REILLY: Thank you, Madam Chair.

Thank you, sir, for coming and offering the testimony.

I wanted to touch on discovery; specifically, the $2 million. And I know that prior discussion touched on the electronic recording being able to transfer the discovery. But I want to touch on something about how short it falls. Sixty-two DAs, right, $2 million spread out

over 62 offices? That's $32,258. That equates to one person working 40 hours at $15 an hour. That's where I think the shortfall comes in.

Would you agree on that?

DISTRICT ATTORNEY FITZPATRICK: Yes. Again, it's a start-up cost. Just so there's no confusion, the PCMS is already funded. You have been very generous about that. This is a start-up cost to allow not every county in the state, but counties that are willing to use it to just electronically share evidence back and forth, judge, court, defense lawyer, prosecutor.

ASSEMBLYMAN REILLY: How much extra funding for your office -- I think you mentioned it earlier, but just give me the number again.

DISTRICT ATTORNEY FITZPATRICK: For my county?

ASSEMBLYMAN REILLY: Yeah.

DISTRICT ATTORNEY FITZPATRICK: As a result of discovery, my county legislature budgeted an extra $500,000. And preliminary

indications are that it might not be enough.

ASSEMBLYMAN REILLY: In Staten Island, in Richmond County, part of New York City, we're upwards of over a million, just the DAs office. And as I've stated earlier, the NYPD put upwards of $85 million for the first two years, and 25 million going forward. That's for training and databases.

The next point I wanted to bring up, we're talking about remand for certain crimes, we're talking about the bail. New Jersey has a system where they put it in a database and it spits out a recommendation to the judges. Massachusetts also uses that system. They can remand up to 180 days for felonies, and also it actually ensures a speedy trial.

Is that something that you think New York State should move forward with, my colleagues in the Senate and the Assembly, where we put a cap on the amount of time just so we make sure we give them a speedy trial?

DISTRICT ATTORNEY FITZPATRICK: Yes. As I think I mentioned earlier, many of the

advocates for criminal justice reform pointed to New Jersey as a model, and that model would be acceptable to myself and my members.

ASSEMBLYMAN REILLY: Thank you, sir.

DISTRICT ATTORNEY FITZPATRICK: Thank you.

ASSEMBLYMAN REILLY: Thank you, Madam Chair.

CHAIRWOMAN WEINSTEIN: Senator Seward.

SENATOR SEWARD: Yes.

Mr. Fitzpatrick, good to see you this evening.

And I just wanted to get -- you know, I know there's been a lot of discussion in terms of the pros and cons of the bail reform, discovery reforms of last year. But let's get down to some basic facts here and the impact of the law as it currently reads.

I'm hearing from some of my DAs -- smaller counties in New York State -- that close to half of the cases they would normally pursue are not being pursued because they just can't, cannot meet the requirements of the discovery, the new discovery statute.

Is that your experience and what you're hearing from your members?

DISTRICT ATTORNEY FITZPATRICK: Yes. In fact, Cy Vance sent out a memo at the end of January to his staff indicating that in the very near future he may decline prosecution on a number of major cases. He hasn't indicated what crimes.

But the -- the actual net effect is going to be legalizing misdemeanor amounts of narcotics in the State of New York because the labs are simply not going to be able to test them. The State Police lab, contrary to what you heard earlier, they will only test major felony cases, and only for the top count of the drugs involved.

SENATOR SEWARD: So in other words, crimes have been committed, there's been an arrest made, but no prosecution.

DISTRICT ATTORNEY FITZPATRICK: In some instances, that's true.

SENATOR SEWARD: And also I was going to follow up with a question on the crime lab, because I don't know if you were here, I

read a quote that I had seen of yours in the TU describing --

DISTRICT ATTORNEY FITZPATRICK: Yes.

SENATOR SEWARD: -- the situation regarding the state crime lab.

Would you say there is a backlog at the state crime lab?

DISTRICT ATTORNEY FITZPATRICK: Yes. Yes.

SENATOR SEWARD: And would you say that that further hampers the ability to put a case together within the current statute's time frame?

DISTRICT ATTORNEY FITZPATRICK: No question. A colleague of mine -- it might have been one of your constituents, Senator -- was recently told that his DNA results would take five months to get, which does not comport with the statute that you have passed.

SENATOR SEWARD: Thank you. I think these basic facts in terms of exactly where we are today, on February 12th -- or since January 1st -- I think are very, very

telling. And thank you for being here.

DISTRICT ATTORNEY FITZPATRICK: Yeah, thank you, Senator. And I just emphasize again, if we have an opportunity to talk, these things can be corrected to everybody's satisfaction.

SENATOR SEWARD: Absolutely. I would hope that those -- we can't -- I can't speak to what went on last year in terms of talks or outreach, but no question, in my view we need to have these serious talks and make some changes in the current law.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Assemblyman Palmesano.

ASSEMBLYMAN PALMESANO: Yes, thank you, Mr. Fitzpatrick. I also want to talk on the discovery issue, if we could.

I can't speak to what it would cost statewide, but I can tell you my upstate rural counties are getting hammered with costs on this program. That's one of the problems involved with this law, is not providing the funding and the training to go

along with it.

What I want to talk about is a little bit about public safety and these issues in regards -- I also want to have you get into other examples of the problems with 15-day, meeting the 15-day discovery, in a moment.

But don't we run the risk of, you know, with trying to meet that 15-day discovery of possibly -- and I stress the word "possible" -- murderers, rapists, sex offenders, domestic violence abusers, cases being dismissed if they can't meet the 15-day discovery because of certain things that are in testing that's going on? Don't we run the possible risk of these possible dangerous individuals being released to the public if we can't meet these 15-day discovery laws?

DISTRICT ATTORNEY FITZPATRICK: Well, it's a provision in the statute that dismissal is a possible remedy for failure to comply. I have not seen that, it's too early, it's only six weeks. Certainly the discovery -- the speedy trial provisions haven't kicked in yet.

But to answer your question, that is a possible remedy. I would think that that would be draconian in the eyes of the judge, and unlikely, but nevertheless it would be legal.

ASSEMBLYMAN PALMESANO: Maybe not -- maybe not dismissing, but just not allowing certain evidence to come in just because --

DISTRICT ATTORNEY FITZPATRICK: Precluding certain evidence? You know, if I have a guy who commits a vehicular manslaughter tomorrow, in my county I'm going to think about not charging him or her because I can't get toxicology results in 15 days. It's not physically possible. In some cases it's not physically possible to do it in 45 days. So why would I start the clock running, and then you have the victim's family who are going to see this guy walking around uncharged.

ASSEMBLYMAN PALMESANO: Yeah, that was the other thing I was going to ask you to give. Maybe if you could cite some other examples of the problems and the logistical

problems of meeting this 15-day discovery and how it could compromise the case or jeopardize public safety.

I think one of the issues I've heard going on is about the amount of times it takes -- I think it came up just a few minutes ago -- about to get certain tests done and get them back, and then not being able to be meet that, and then those cases being dismissed or not being allowed in. That's another problematic issue with that,

And I just wondered, can you give us some other examples of that as well and how that -- the challenges you're facing with that 15-day? Just so my colleagues can hear what a problem it is.

DISTRICT ATTORNEY FITZPATRICK: It's a problem, yeah. And it -- for example, on DNA, with the backlog at the State Police lab, what a lot of my colleagues are doing are outsourcing the DNA to private labs at enormous expenses. And the alternative is to wait five months for the results to come in, and then the possible preclusion of those

results. Which might be dispositive in the guilt or innocence of the accused.

ASSEMBLYMAN PALMESANO: And we're not saying discovery shouldn't have been dealt with, but the time frame, this 15 days is certainly a problem. We need to fix this or public safety is in jeopardy, cases are in jeopardy.

DISTRICT ATTORNEY FITZPATRICK: The concept of improved discovery is admirable. It's supported by myself and my colleagues. It should have been done, it should have been done a long time ago. We're just asking for some minor changes.

ASSEMBLYMAN PALMESANO: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

We go to Assemblyman Lavine.

ASSEMBLYMAN LAVINE: Thank you, Chair.

And thanks, Bill, and it's good to see you again.

DISTRICT ATTORNEY FITZPATRICK: Yes, sir.

ASSEMBLYMAN LAVINE: I know that you have been a pioneer and a fighter for

open-file discovery, which is really the goal of the new discovery statute.

DISTRICT ATTORNEY FITZPATRICK: Right.

ASSEMBLYMAN LAVINE: And I for one am enjoying this spirited discussion. I do not believe that debate is hearsay, and I think this is a very healthy and a good debate. And I thank you for participating.

I have a couple of quick questions for you. I know you mentioned that you can't begin to go into plea bargaining until, I guess, you believe you have complied with all the discovery. And I suppose there's one way to read the statute that might support that proposition.

But what do you do if in the future, as almost always in the past, it's defense counsel who comes to you and says, What can we do?

DISTRICT ATTORNEY FITZPATRICK: The reality that's happening right now, Charles, is that retained lawyers -- and I'm not condoning this, I'm just telling you the reality of it. Retained lawyers are coming

into my office and saying: Look, here's a waiver signed by my client, they are waiving all the discovery provisions.

The indigent defense bar has been instructed not to do those waivers under penalty of being removed from the 18-B list of having a grievance filed against them. Those are -- those are the realities.

ASSEMBLYMAN LAVINE: So, Bill, is it the director of the 18-B panel who's imposing this mandate?

DISTRICT ATTORNEY FITZPATRICK: The director of assigned counsel in my county -- I just spoke to her yesterday, she's a fantastic person -- she has directed her members to that effect. Because of the danger of having someone suggest ineffective assistance of counsel.

So if I have two kids from different parts of my county with similar backgrounds, one gets a retained lawyer, steals $1500 at Walmart, they come in, they go, We waive all that stuff. Two weeks later, Walmart's going to get their money back and the kid's going

to get ACD'd and maybe counseling if he or she has a drug problem, or whatever the underlying need is.

The other person is not going to say anything. My assistant DA is going to spend hours and hours going through videotape --

ASSEMBLYMAN LAVINE: Bill, let me just do a quick interruption. By that same logic that you feel is being employed by the director of the 18-B panel, isn't assigned counsel going to run that very real risk of being accused of ineffective assistance for not seeking out a plea bargain?

DISTRICT ATTORNEY FITZPATRICK: Right. But the retained lawyer runs that same risk.

ASSEMBLYMAN LAVINE: Yes. All right. So perhaps -- and maybe we can have an offline discussion -- perhaps the head of whatever is the 18-B panel is looking at this from a -- perhaps a very reflexive, self-defensive, too self-defensive point of view.

But I hear what you're saying. And I do appreciate your testimony.

DISTRICT ATTORNEY FITZPATRICK: Look forward to it, yes.

ASSEMBLYMAN LAVINE: And thank you. Thank you.

DISTRICT ATTORNEY FITZPATRICK: Thanks.

CHAIRWOMAN WEINSTEIN: We have Assemblyman Zebrowski for a question.

ASSEMBLYMAN ZEBROWSKI: Thank you. Good evening.

DISTRICT ATTORNEY FITZPATRICK: Good evening, sir.

ASSEMBLYMAN ZEBROWSKI: let me just first say broadly I appreciate you coming here and testifying at this late hour. I appreciate your suggestions in your testimony. And I, for one, look forward to continuing to engage in these conversations, because I believe they're important and I do believe that there's a way we can keep this state safe and be fair at the same time.

DISTRICT ATTORNEY FITZPATRICK: I agree.

ASSEMBLYMAN ZEBROWSKI: I had a couple

of questions just regarding discovery and the labs and things.

So when you talk about sort of the delays and you also talk about, you know, your suggested amendments being longer specific time frames, what if you had the same delays at those time frames? You're suggesting more those longer time frames because you're sure you can hit them? Or would you rather language changes in order to allow time frame for labs?

And also, I guess, just more broadly, could you talk a little bit about you don't believe that within the current language of the statute that you would be able to convince a judge that you just don't have the results back, that that's not like a willful disregard of the discovery statute?

DISTRICT ATTORNEY FITZPATRICK: Well, the statute allows for judicial discretion regarding nondisclosure of certain things. And I think one of the things a judge would certainly look at is the reason for the nondisclosure. And if it's based on backlog

and time, I think the judge, he or she, would be more lenient towards the prosecutor.

But certainly the scenario that Assemblyman Palmesano brought up could be -- it could be more draconian than that. And that's an unnecessary danger. I wouldn't want to be put in that position of maybe the DNA will come in, maybe it won't come in.

So I'm not saying that, you know, the cases should be -- you know, we try cases faster in my county than anywhere else in the state in terms of violent felony offenses. And I don't know why that couldn't be done all over the state. But we don't -- we can't do it in 15 days.

If somebody had said, Well, why, don't you come to such-and-such a place and see it for yourself, or something -- I'd invite any of you to come to my office and see assistant DAs sitting around at 9, 10 o'clock at night, not having anything to do with justice or fairness, just doing paperwork. And that's why so many of my colleagues are losing staff.

ASSEMBLYMAN ZEBROWSKI: I appreciate that. And I may take you up on that, or at least the ability to have further discussions.

Just one last thing, because I only have 30 seconds. But in the statute it says that you have an additional 30 days for voluminous -- if the discover is voluminous. And I don't think you need approval from the judge or approval from the defense counsel.

So, you know, obviously we only have a few weeks of this, but what has been your experience in utilizing that term "voluminous," how have you seen it work with judges?

DISTRICT ATTORNEY FITZPATRICK: Yeah. We -- we -- the judges have granted us that.

But what I'm going to be asking my judges to do in the near future is for a blanket extension of 30 days. And I would suggest that if this body, the house and the -- or the Assembly and the Senate would do that legislatively, it would make life easier.

ASSEMBLYMAN ZEBROWSKI: Thank you.

DISTRICT ATTORNEY FITZPATRICK: Thank you, sir.

CHAIRWOMAN WEINSTEIN: Thank you. Thank you for spending the evening with us.

DISTRICT ATTORNEY FITZPATRICK: I'll be here at 9:30 anytime you ask, Assemblywoman. Thank you very much.

CHAIRWOMAN WEINSTEIN: Well, we're going to be back at 9:30 in the morning, so we're going to move on.

We have, from the New York Police Department, Oleg Chernyavsky, assistant deputy commissioner.

How'd I do? Welcome.

ASSEMBLYMAN LENTOL: Please begin.

ASST. DEP. COMMR. CHERNYAVSKY: Thank you. You know, my submitted testimony says good morning. I thought I was going to get on around -- wishful thinking -- around 9:30, but I'm about an hour and a half from being correct again.

ASSEMBLYMAN WEPRIN: If you hang around a little longer, it will be good

morning.

(Laughter.)

ASST. DEP. COMMR. CHERNYAVSKY: So Chair Krueger, Chair Weinstein, members of the Assembly and the Senate, I want to thank you for allowing us to come and testify before you today. On behalf of Police Commissioner Dermot Shea, we are pleased to testify before your committees.

I want to start off, before touching on the substance of my comments, to make one point clear, that we believe criminal justice reforms were necessary. There were injustices and inequities in the system as it existed before January 1st. For example, two individuals committing the same crime, one with the means, one with the money. The one that's poor and did not have the money would have been treated differently. One would be able to get out because they had the money, the other one would not be.

When it comes to discovery, it wasn't fair for an individual to take a plea bargain not having the relevant information to make

an educated decision. It also wasn't fair for an individual on the eve of trial to obtain information necessary for their defense.

With that said, we support the core, those we believe -- and based on the testimonies that -- based on comments made by elected officials, by the leadership, by advocates in favor of reform, those were the core principles of the reform, those were the wrongs that -- the main goals of the reform.

The proposals that we will propose -- and they're highlighted more thoroughly in my testimony -- do not cut at any of the substantive reforms. They leave the substance of those changes in place. What we are asking for is equity for the victims, equity for the witnesses of crimes.

And what I mean by that is an individual that truly poses a danger to public safety, whether we call it dangerousness or a public safety risk or whatever we call it. I don't believe it was the intent of any elected official that voted

for the reforms to allow an individual to go back out onto the street that has shown a propensity to be a recidivist and that goes out and takes advantage of the procedures that you set in place on January 1st to allow individuals that do not pose a threat to public safety, that did not have the financial -- the finances to get out of jail, to make bail. Individuals that, if they got out, when they get out now under the new law, are not recommitting crimes.

So in that case it's important to highlight that the reforms that were made do work in a lot of cases. Individuals that may have been placed in jail pre-trial are getting out now, and they are not posing a danger to the public.

But then again, on the flip side, there are a number of individuals that would have been in jail pre-trial because they pose either a flight risk or, as my colleague before me testified, a public safety risk, but they were held in on bail because they actually were a public safety risk under the

bail statute, under the "risk of flight" standard.

I don't believe it was anyone's intent to allow those individuals back into society to revictimize the individuals that you represent. I think the carve-outs, the discretion that we're advocating for for judges is really aimed at those individuals, that small number of individuals.

We do something at the NYPD, it's called "precision policing." We have been able to get crime down to historic lows at the same time that we've been able to significantly cut back on our enforcement footprint. In 2014 there were 400,000 arrests in the city; last year there were 200,000. We were down 80 percent in criminal court summonses. We were down from a height of 680,000 stop-question-and-frisk street stops to about 13,000 last year. At the same time, the Rikers population dropped from about 14,000 to around 7,000.

We did all of this, the lessened enforcement footprint, while at the same time

focusing on the small number of individuals that are driving crime in the city. Those are the individuals that we believe tweaks in the law should be aimed at. Those are the individuals that pose the public safety threat.

I know there's a bell, and I focused a little longer on the bail piece. Briefly on discovery. As I said, there were inequities in providing discovery late in the game. What we are proposing is a four-pronged approach.

One, staggered discovery. Initially, whether it's 15 or 30 days, there would be some basic discovery that's turned over to the defendant -- things like the arrest report, the complaint report, body-worn-camera footage, a field test if it's drugs, an Intoxilyzer test, DWI Intoxilyzer if it's a DWI case. Those pieces of information will allow an individual to make an educated decision about a plea bargain.

CHAIRWOMAN KRUEGER: I'm going to cut

you off. I'm sorry, your minutes are up.

ASST. DEP. COMMR. CHERNYAVSKY: I'll finish the other three during Q&A if I have the opportunity.

CHAIRWOMAN KRUEGER: Okay.

The hour is late. I want to recommend to all of my colleagues, you do not need to revisit the same debate you just had some time before on any issues that are before us with a new testifier. But I would recommend you all take a look at page 3, the four points that the NYPD is bringing to us that I cut him off at because his time was up, because I think those are -- they're at least new variations on proposals. And I would rather that people spend their limited time -- emphasizing limited, because it's 10:30, we have a new hearing starting soon.

(Laughter.)

SENATOR LIU: Point of information.

CHAIRWOMAN KRUEGER: Yes.

SENATOR LIU: How much time till we break the record?

CHAIRWOMAN KRUEGER: No, we're not

going for it, John, really.

(Laughter.)

CHAIRWOMAN KRUEGER: Because all you people making those jokes aren't going to be here tomorrow morning for two more hearings, and some of us will be.

So with that, I think Myrie was first, Zellnor Myrie was first on my list, if there's any new territory he would like to question.

ASST. DEP. COMMR. CHERNYAVSKY: I'll take the five seconds to drink a glass of water.

(Laughter.)

SENATOR MYRIE: Check, check. Okay, I'm on.

Thank you, Madam Chair.

And I want to thank you for your patience and for testifying at this hour.

I also want to underscore this Legislature's condemnation of the acts of violence against the police officers last week.

I am going to touch on new -- a new

topic, and I'll start with you would agree with me that public trust is paramount in the relationship between law enforcement and the community?

ASST. DEP. COMMR. CHERNYAVSKY: Absolutely. It's at the core of neighborhood policing.

And before you follow through, thank you for your thoughts about this weekend.

SENATOR MYRIE: Thank you. And would you agree with me that public trust is eroded when there is a perception that there isn't consequence for bad behavior?

ASST. DEP. COMMR. CHERNYAVSKY: Consequence of bad behavior on behalf of who?

SENATOR MYRIE: Of law enforcement.

ASST. DEP. COMMR. CHERNYAVSKY: Of law enforcement? Sure, if there's bad behavior.

SENATOR MYRIE: Now, in 2016 the Office of Inspector General for the NYPD found that 30 percent of arrest reports falsely reported that there was no use of force in the incident. In 2018, the City of New York spent $38 million on police

misconduct settlements. And in 2019, that number increased by $30 million to 68 million. And also in 2019, police misconduct complaints are up 20 percent.

So would you agree that there is a police misconduct problem?

ASST. DEP. COMMR. CHERNYAVSKY: No, I wouldn't agree with that.

So first I want to focus on the stats about lawsuits and payouts. You know, I did not come prepared to give you those numbers, but we do have -- I do have it on my desk, the numbers of payouts over I believe the last five or six years, and they are down significantly. Significantly.

With respect to the report, the 2018 report, I'll take a look at it. I'm not sure -- I'm really not sure what you're -- what points you're making on it.

But what -- there was a third piece to the question?

SENATOR MYRIE: Yeah. Let me just suggest the inspector general's report that found that there was a 30 percent rate of

mischaracterization of use of force, the NYPD rejected the recommendation to help rectify that.

And the reason I'm going through this is that as we'd spoke about earlier, I think it's incredibly important that there be trust between the community and between law enforcement. And when communities that have been the target of disproportionate enforcement see that there's misconduct for which there is no real consequence, that to me erodes the trust between the community and law enforcement.

And when we talk about public safety, we talk about things like neighborhood policing, I think it is paramount that the police department does what it can in order to show the public that there's consequence for bad behavior.

ASST. DEP. COMMR. CHERNYAVSKY: So we actually -- we do.

You know, a few years ago, I think it's -- it was a couple of years ago -- we rewrote our use of force policy, because you

had highlighted use of force. That data is posted on our website, publicly available, clearly defined what the categories of uses of force are.

With respect to discipline, we self-initiated a report and we have a report on our website of discipline in buckets {ph}, so it's clear to the public what -- what exactly we're doing in terms of discipline. What generally surprises members of the public is the number of terminations that are in any given year or every couple of years for wrongdoing. So there are penalties on the back end.

What I also want to highlight is last year Police Commissioner O'Neill impaneled a blue-ribbon panel of well-respected experts that took a look at our discipline system -- unfettered access -- and made 14 points of recommendation on how to improve that process. We have accepted each and every one of those recommendations, and we're well down the road. Some have been completed, some were more longer-term recommendations, and we

are well underway of actually complying with them.

CHAIRWOMAN KRUEGER: Thank you. I have to cut you off now and hand it to the Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Blake.

ASSEMBLYMAN BLAKE: Good evening.

ASST. DEP. COMMR. CHERNYAVSKY: Good evening, sir.

ASSEMBLYMAN BLAKE: I know our time is limited. Allow me to dive into a few particular things.

Can you convey the rationale as to any opposition to repealing 50-a?

ASST. DEP. COMMR. CHERNYAVSKY: Sure.

So we advocated for and we advocate for a balanced approach on 50-a. So that does not mean leave everything in place the way it is. It certainly doesn't mean repeal, because 50-a was put in place for a reason. That reason was to avoid harassment of officers on the stand on unrelated issues.

ASSEMBLYMAN BLAKE: Understand.

ASST. DEP. COMMR. CHERNYAVSKY: But we also acknowledge the fact that there are certain instances of misconduct --

ASSEMBLYMAN BLAKE: Understand.

ASST. DEP. COMMR. CHERNYAVSKY: -- that the public has been vocal about that wanted to know about. I testified on 50-a before Senator Bailey's committee over the summer --

ASSEMBLYMAN BLAKE: Absolutely.

ASST. DEP. COMMR. CHERNYAVSKY: -- and I laid out what our vision is for a reformed 50-a.

ASSEMBLYMAN BLAKE: Thank you. So --

ASST. DEP. COMMR. CHERNYAVSKY: That would achieve transparency.

ASSEMBLYMAN BLAKE: Thank you. Just -- forgive me, just because of the time.

So the repealing of 50-a obviously, as I raised earlier when it came to the State Police, I think it will be a concern of not having transparency around personnel records.

In that same vein, is there a reason why there has been opposition to releasing

the training of NYPD officers? As someone who myself has experienced police brutality as an elected official and as a high school student, I have repeatedly asked, is there a transparency around the training of officers?

ASST. DEP. COMMR. CHERNYAVSKY: So, I mean, I don't think -- I don't know that that's accurate. I know that --

ASSEMBLYMAN BLAKE: Not excessive force, is the training of officers available anywhere publicly?

ASST. DEP. COMMR. CHERNYAVSKY: Yeah, that's what I'm getting at. So I review packages of training on a regular basis. The one thing I'm not certain about, I know we provide it to the City Council --

ASSEMBLYMAN BLAKE: Forgive me, just for time's sake. Forgive me, sir. I just want to be --

ASST. DEP. COMMR. CHERNYAVSKY: I'm just trying to answer the --

ASSEMBLYMAN BLAKE: I just want it to be very clear. Where can we find publicly --

ASST. DEP. COMMR. CHERNYAVSKY: I was

answering that question.

ASSEMBLYMAN BLAKE: Just that part.

ASST. DEP. COMMR. CHERNYAVSKY: Right. So every quarter, I believe, I review a package of training material, amendments to our training protocols that we share. The thing I'm not certain about, sitting at the table, is I know we share it with the New York City Council; I'm not sure if that's actually shared beyond the Council, meaning publicly available.

But we do -- there is transparency. The Council is our oversight body.

ASSEMBLYMAN BLAKE: Understand. Understand. So just so we have absolute clarity on my question right there, my question specifically is where can we find it. The answer right there was it was given to City Council and we have to find it -- so let's, just because we have 30 --

ASST. DEP. COMMR. CHERNYAVSKY: And we routinely give it to the Council, but they're our local oversight body.

ASSEMBLYMAN BLAKE: I understand. We

have 30 seconds, sir. Just very briefly.

In your testimony on page 2 it references violent criminals are being returned to our communities --

ASST. DEP. COMMR. CHERNYAVSKY: Yes.

ASSEMBLYMAN BLAKE: -- which that language obviously has an intensity around it, because it's -- it's tied to discovery as a whole. There's no data around that in particular, so I guess there's concern on that.

So I'll conclude on this framing point around discovery, around bail, around speedy trial itself. The third point you have listed here is the prosecutor must be allowed to answer "ready." The second point you have here is that the burden should be on the defense to communicate these opportunities.

I think people should just understand, why is the NYPD taking the posture that the burden should be on the defense to convey why there should be transparency on information?

ASST. DEP. COMMR. CHERNYAVSKY: So I'm glad that you raised it, because that was the

part of the testimony I wasn't allowed to get to.

So what we're talking about in terms of the burden on the defense is in the staggered discovery approach that we're proposing, the last part of the staggered approach would be sensitive information. This is the part that we're advocating for a burden shift on.

So for example, we're talking about the initial infusion of discovery to make educated plea decisions. Then we're talking about, in the interim, after the initial and before the final, the sensitive, turning over information such as lab calibration machine reports and so on. Then we're talking about the final piece.

I put a blank, for example, X amount of days before trial, you all will decide if it's 30 days before trial, 15 days before trial -- sensitive information, which is the identity of victims, witnesses, or information that could tend to identify them.

The defense would get that information

about 30 days before trial, let's say. I'm leaving that a blank, I leave it up to you what's the right time. But if a defendant wants to get that sensitive information earlier in the process, it is -- the burden is on them to get it sooner.

This is only victim and witness identifying information. That is what we're talking about. We're not talking about all discovery, we're talking about protecting your constituents and the constituents of everybody sitting on the panel and everybody in both bodies.

CHAIRWOMAN KRUEGER: I'm sorry, gentlemen, I have to cut off this conversation now because of the timing. Thank you.

Senator Hoylman.

SENATOR HOYLMAN: Good evening, sir. I think you are familiar with, obviously, the fact that law enforcement across the country is using a new technology, facial recognition technology, to identify suspects and to -- I guess to assist with investigations. This is

obviously very powerful technology that can not only store billions of photographs of individuals who are unknowingly the subject of an investigation, but it captures even a wider net of people who may not be even a suspect but happen to be in the frame, quite literally, of an NYPD search online of facial likenesses.

My question is twofold. One, does NYPD use facial recognition technology? And two, what parameters do you operate under, if in fact you do use it, to protect the privacy of New Yorkers?

ASST. DEP. COMMR. CHERNYAVSKY: Sure. So thank you for the question. And yes, we do use facial recognition technology. And let me explain what we don't do and then explain what we do do.

One, we do not have realtime scanning of crowds in the street, capturing their faces to run a facial recognition.

Two, we don't use social media pictures on social media or DMV photos for purposes of facial recognition.

We have protocols in place, we have a specially trained unit of facial recognition experts. It's a very small number; I believe the head count is 10 trained detectives. So if we overlay facial recognition based on a surveillance video from the scene of a robbery or a burglary, we look at that, we compare that image to our arrest photo database -- these are arrest photos that we legally possess.

If we have a hit, a hit, these specially trained detectives overlay a human factor on top of that technology hit, and they verify and see if they agree that it is the same individual.

At the end of that process, it's returned back to the detective with a clear disclaimer: "This is not probable cause to make an arrest." That detective must then take a look at the outcome, the individual that the experts believe and the technology showed is the right individual, and then take a look at that individual. Was the individual out of the country at the time

that incident happened? Then clearly both the human factor and the technology was wrong, that individual is no longer a suspect.

The point is we do not use a facial recognition hit as probable cause to make an arrest. It is a tool in order to develop probable cause, one of the factors to develop probable cause to solve crimes.

And just as an aside, Senator, I certainly would love to make myself available to you. I know this is an issue that's important to you, you've introduced a bill which I'm sure you expect that we oppose in its current form.

But I certainly would love to sit down with you, whether it's up here or in your district office, and talk about what we're actually doing, how we're doing it, and it's important to highlight that the police commissioner has promised to put our policy out in the short term --

CHAIRWOMAN KRUEGER: Thank you.

ASST. DEP. COMMR. CHERNYAVSKY: --

publicly on our website.

CHAIRWOMAN KRUEGER: He accepts.

(Laughter.)

CHAIRWOMAN KRUEGER: Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Reilly.

ASSEMBLYMAN REILLY: Thank you, Assistant Commissioner.

ASST. DEP. COMMR. CHERNYAVSKY: You're welcome, sir.

ASSEMBLYMAN REILLY: Thank you for offering your testimony.

So I wanted to touch on discovery and find out the exact number or the estimated number of what the impact is on the police department for making the goal of complying with discovery, if you can offer me some details on that.

ASST. DEP. COMMR. CHERNYAVSKY: Sure.

So, I mean, it's significant. I mean, in terms of cost, I think the numbers that we've put out is the first two years it's -- the cost is around 85 million, and that includes technology, hires, the manpower.

We need to upgrade the lab. The NYPD has a police lab that does ballistics testing, fingerprints, drug testing. We don't do DNA testing at our lab, that's the OCME. But we have a significant function in our lab.

There needs to be certain upgrades to the tune of -- I believe we set it at about 28 or almost 29 million, just for the lab itself, in order to comply with a lot of the discovery laws. Then there's an ongoing cost, I believe it's 20.7 million moving forward year over year, and that's the cost of it.

In terms of manpower, again, it's significant. As you can tell, these numbers that we're giving you are based on -- a lot of them are personnel cost driven, and they're aimed at complying with the laws as written. So we need to gather, you would imagine --

ASSEMBLYMAN REILLY: Can I interrupt for a second? Has there been a mandate where you've had to assign police administrative

aides to assist ICOs and records processing officers?

ASST. DEP. COMMR. CHERNYAVSKY: I'm sorry, I didn't hear --

ASSEMBLYMAN REILLY: To assist the records processing officers, hire -- to realign police administrative aides and civilian employees to help?

ASST. DEP. COMMR. CHERNYAVSKY: Well, that's part of the costs that I gave you. It's not all uniformed costs, it's -- a large number of it is civilian costs to assist officers in complying the relevant paperwork.

I mean, it's important to recognize as the law is written, it's -- the prosecutor must turn over discovery to the defense in 15 days, which means we have a far smaller window to get the information to the prosecutor. And we need to leave the prosecutor with enough time to redact out sensitive information and move for protective orders. So they need enough time to actually see what they have and to see what needs protection. If the turnaround time is so

quick, they don't have time to --

ASSEMBLYMAN REILLY: Thank you. One of my colleagues mentioned earlier about the lawsuits in talking about 50-a. I have one comment, and if you have time to answer.

New York City corporation counsel is the one that makes the decisions on whether they settle lawsuits, is that correct? Yes or no.

ASST. DEP. COMMR. CHERNYAVSKY: Yes.

ASSEMBLYMAN REILLY: Yes. So police officers don't always get the opportunity to defend themselves in court when they're being accused of something in a lawsuit, is that correct?

ASST. DEP. COMMR. CHERNYAVSKY: That's correct, but I want to add one other piece.

That is correct, but what's also correct is when the lawsuit gets settled, oftentimes a number of police officers are named in the paperwork, because the plaintiff's lawyer gets a roster of all the cops at the scene, everybody gets named.

It doesn't mean that every one of

those officers actually participated in the cause of action, but they all are named. And when the case is settled, unfortunately it attaches to each and every one of them.

ASSEMBLYMAN REILLY: I know that firsthand. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Senator Luis Sepúlveda.

SENATOR SEPÚLVEDA: Good evening.

Quickly, the commissioner made a statement both publicly, in television and press, that the criminal justice reforms, and in particular bail, is the reason why there's been an increase in crime in the last month.

Can you tell me based on what information was that -- did he rely on to make that statement?

ASST. DEP. COMMR. CHERNYAVSKY: Sure.

So, I mean, Senator, he was looking at the crime numbers, he's looking at individual stories and examples that we see. But I think honestly the important part of -- I guess the real reason I'm here, and I truly don't want to go down the road that we're

about to go down for one reason: The result is going to be that folks that are against making any changes to the law are going to retreat to their side, folks that want to repeal the law --

SENATOR SEPÚLVEDA: But this is not a retreat, sir, with all due respect.

ASST. DEP. COMMR. CHERNYAVSKY: No, no. No, no, no, I'm not --

SENATOR SEPÚLVEDA: I want to know, based on what -- I want to know what -- regardless of where you think this is going, I want to know, based on -- what information did the commissioner rely on to make that statement?

ASST. DEP. COMMR. CHERNYAVSKY: Based on extensive crime numbers and crime statistics that we have access to, and --

SENATOR SEPÚLVEDA: Well, are you aware that a member of the State Police came here and indicated that there's no way any evidence or data that's available right now, you can ever conflate the two.

ASST. DEP. COMMR. CHERNYAVSKY: Well,

the New York State Police has jurisdiction outside of New York City, although there are police officers in New York City as well.

But the NYPD are the police officers and the police department in the City of New York. It is our data that we're looking at.

SENATOR SEPÚLVEDA: So it's your statement that you can connect the rise in crime to the criminal justice reforms in less than 30 days that the reforms have been a part of the law?

ASST. DEP. COMMR. CHERNYAVSKY: Senator, we're seeing significant anomalies in data. We -- I think the police commissioner made a statement, he stands by that statement.

And what I want to say to you, and I think the important part is that I think we all agree -- I would hope that we all agree that there are certain, a very small -- there are a number of individuals that the reforms are benefiting, rightfully so.

SENATOR SEPÚLVEDA: But when you make

a statement --

ASST. DEP. COMMR. CHERNYAVSKY: But there are -- but there are a small -- but there are a small number --

SENATOR SEPÚLVEDA: -- like that, it hurts, it hurts us that are trying to do a job here in the Legislature.

ASST. DEP. COMMR. CHERNYAVSKY: And that's why I started off by saying what you did was correct -- reforms --

SENATOR SEPÚLVEDA: Well, then he should have started off by saying that as well.

ASST. DEP. COMMR. CHERNYAVSKY: The police commissioner starts off -- yesterday the police commissioner met with the Black, Latino, Asian Caucus in the City Council. The first points out of his mouth were that the reforms were necessary, that what you did was correct, there were injustices, and these are small changes that we're recommending to close up the cracks and the loopholes that certain individuals, a small number of individuals --

SENATOR SEPÚLVEDA: Sir, with all due respect, I don't mean to cut you off, but I have very little time. With all due respect, that was not the tone that the commissioner took from the very beginning.

Let me ask you a question. Will you equate the 20 percent rise in stop-and-frisk to the rising crime in New York City?

ASST. DEP. COMMR. CHERNYAVSKY: Say that again?

SENATOR SEPÚLVEDA: Would you equate or conflate or create some relationship between the 20 percent rise in stop-and-frisks and the rising crime in New York City?

ASST. DEP. COMMR. CHERNYAVSKY: I think that if you take a look at the numbers, and I've stated them, in 2011 we had 680,000 stop, question and frisks. Right?

SENATOR SEPÚLVEDA: No, no, I understand that. But there's been a 20 percent increase --

ASST. DEP. COMMR. CHERNYAVSKY: Last year there -- last year --

SENATOR SEPÚLVEDA: -- this month. Is that why crime is going up?

ASST. DEP. COMMR. CHERNYAVSKY: It's not this month. What you're referring to is an article in the newspaper, I believe yesterday. It was not in the month of January. It was a look at 2018 and 2019, 2019 versus 2018.

What we are looking at is historic lows in the stop, question and frisks. We went from 680,000 in a year to 13,000 last year. There were 12,000 the year before. So there is an increase, but it is a small increase compared to where we were. We're being very judicious, our enforcement footprint is a fraction of what it was. Crime continued to go down to historic lows.

So we feel that we found the right recipe targeting specific small numbers of individuals that are driving the crime in the city. That is what our proposals are aimed at. If we make certain tweaks to these laws, those will be the individuals that these reforms will be aimed at.

CHAIRWOMAN KRUEGER: All right, I'm cutting this one off.

ASST. DEP. COMMR. CHERNYAVSKY: The victims of crimes and the small number of perpetrators, but not the masses that benefit from the reforms.

CHAIRWOMAN KRUEGER: So you're going to go meet with Brad Hoylman and you're going to meet with Luis Sepúlveda --

ASST. DEP. COMMR. CHERNYAVSKY: Absolutely.

CHAIRWOMAN KRUEGER: -- maybe back to back.

All right, thank you.

Senator John Liu.

SENATOR LIU: Thank you, Madam Chair.

Thank you for your testimony -- look, I mean, Alex, I know you're trying your best here, and I know the NYPD has changed -- has changed a lot since the days of stop-and-frisk. But there's still some biases, right?

And I just want to point out for you -- and you can check the video or the

record if you'd like -- you started your testimony today by talking about two people who committed crimes, one with money and the other one without. And that would have determined whether they were going to spend time in jail.

But those people did not commit the crimes. Those people were accused of crimes. It's a big difference. That's what this whole bail -- the lack of understanding of bail is all about. I mean, I talk to my constituents all the time; people are getting confused between suspects and criminals.

So I just wanted to point that out to you, not to be mean, but, you know, just to say that everybody's got biases. And people in law enforcement, including -- you know, I think very highly of you, I appreciated your testimony. But you still had that kind of like bias, because this is what you've got to deal with all the time. Right?

And this is what we were trying to address in the legislation that we passed last year, which I was proud to be part of

that passage.

You know, I think I'm going to stop at that.

CHAIRWOMAN KRUEGER: Thank you.

ASST. DEP. COMMR. CHERNYAVSKY: So, I mean, I -- I do need to -- to address the comment --

SENATOR LIU: Yes, please.

ASST. DEP. COMMR. CHERNYAVSKY: I don't think -- I certainly wouldn't characterize it as a bias where the concept of probable cause to make an arrest is a concept well-founded in our judicial system. So it's not -- a bias would be plucking a random person off the street and charging them with a crime when you have no evidence to establish they've committed one.

The examples of the two individuals that I set forth in the beginning, both of them fell into the bucket of we developed probable cause after a thorough investigation that both of them committed the same exact crime, but yet they were being treated differently. And the real question is -- and

we're not arguing for or advocating for, you know, add more crimes to bail eligibility, because I don't think that solves the dangerous problem.

The dangerous problem is there is a very small number of individuals --

SENATOR LIU: I know.

ASST. DEP. COMMR. CHERNYAVSKY: -- that are actually getting right back out --

SENATOR LIU: All right. Well, Alex --

ASST. DEP. COMMR. CHERNYAVSKY: And they're committing more crime and victimizing more people --

SENATOR LIU: You're going beyond what I had just -- I mean, I just gave you a very simple example and --

ASST. DEP. COMMR. CHERNYAVSKY: No, I appreciate it.

SENATOR LIU: -- even what -- even as you're saying it, even as you're explaining it now, it's to me just like digging a deeper hole. The reality is that your example should have talked two suspects or two people

accused, not two people who committed. They didn't commit it yet. (Overtalk.)

It is not up to the PD, the police department, to determine whether somebody did or not. And even when the police department makes statements about people they have arrested, they are very careful to use the word "suspects."

ASST. DEP. COMMR. CHERNYAVSKY: Sure. Sure.

SENATOR LIU: That's what I'm saying.

ASST. DEP. COMMR. CHERNYAVSKY: Again, we have probable cause that they've committed a crime --

SENATOR LIU: That's the bias I'm talking about.

ASST. DEP. COMMR. CHERNYAVSKY: -- and then there's -- and then there's convicted for committing the crime.

SENATOR LIU: Thank you.

ASST. DEP. COMMR. CHERNYAVSKY: So that's the -- but I appreciate your comment.

SENATOR LIU: Thank you. Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you for joining us tonight. We're going to ask you to step down now. But I think you can have many appointments following up with many of us.

ASST. DEP. COMMR. CHERNYAVSKY: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

All right. Next panel, New York Legal Services Coalition, New York State Defenders Association, Empire Justice Center.

Good evening.

MS. SYED: Good evening.

CHAIRWOMAN KRUEGER: And we're setting the clock for 3 minutes for each of them.

MS. SYED: Yes, absolutely. Thank you for the opportunity to testify.

My name is Maha Syed. I'm the executive director of the New York Legal Services Coalition. We are a statewide coalition of 50 organizations that collectively serve every county in New York.

We serve New Yorkers in matters relating to the essentials of life. The

essentials of life is not an overstatement. We're talking about the roof over people's heads, healthcare, defense for survivors of domestic violence, protecting elders from financial fraud, assisting veterans with accessing benefits, so on and so on.

So I really want to take a second and thank the Senators and Assemblymembers -- thank you -- who recognized the importance of these critical services in the conversation with OCA this morning.

We've been flat-funded through the judiciary for the past couple of years, but today I'm here to talk about the Legal Services Assistance Fund. Now, this fund was created for legal services, as the name implies, but we have been flat-funded since its inception. And what I'm asking today is that the Senate and the Assembly work together to not only restore the previous levels of civil legal services funding, but also add an additional $5 million for civil legal services.

We spoke a little bit about the cost

of living adjustment, and Assemblyman Dinowitz talked about how staying flat-funded is not actually treading water, it's moving backwards. And, you know, logic dictates that the cost of doing business goes up every year. But just to throw a couple of numbers at you guys, we did a survey of our members over the summer, and since 2016, our organizations are paying an average of 62 percent more in rent, 28 percent more in utilities, an astonishing 136 percent more in liability and malpractice insurance, and an overall 26 percent in OTPS.

So these are significant. These are not small increases in costs, these are really significant. And every year we've been asked to do a little bit more with a little bit less.

Sixty-three percent of the need for civil legal services in New York is still not being met. Studies show that every dollar that's spent towards legal services saves New York State $10 in economic benefit. And this comes in the form of, you know, public

benefits, avoiding shelter costs, and others that are outlined in detail in my written testimony.

So really I would really like for you to see this $5 million as an investment in New York -- and not only New York State, but the well-being of those who are in the most vulnerable positions, at a critical crossroads in their lives.

I also want to point out that the revenue for the Legal Services Assistance Fund has increased steadily over the years. Well, we have seen none of this gain. We have been flat-funded since its inception.

Wow, that was quick. And just in the current fiscal year, over $17 million was transferred into the General Fund. I'll stop because my time is over, but please give us $5 million.

(Laughter.)

CHAIRWOMAN KRUEGER: Thank you. Hi.

MS. BRYANT: Hi, good evening, Senator Krueger, Assemblymember Weinstein, and the rest of the Public Protection Budget

Committee. Thank you for giving me the opportunity to testify. My name is Susan Bryant. I am actually the executive director of the New York State Defenders Association. And I want to first thank the Legislature for, since 1981, funding our organization to provide what the state needs to do to meet its constitutional obligations for people accused of crimes as well as people in certain Family Court proceedings.

Our staff is dedicated to doing this work. And as my previous testifier said, you know, again, we are flat-funded. Although we're in a different position, because the Executive gives us one-half of our budget, and then we come every year to ask the Legislature for the other half, just to reach our flat funding. And that's been since 2012 we've been dealing with that.

At the same time, we've dealt with Raise the Age, we've dealt with the discovery, bail and speedy trial laws, we've dealt with the Domestic Violence Survivors Justice Act, all very important issues. So

we're asking the legislature to please restore us to our $2,089,000, as well as we're asking the Senate particularly to give us an additional $400,000 so we can more effectively help our defenders across the state provide representation under the new discovery, bail and speedy trial laws.

We are doing as much as we can. We're doing lots of training, as Bill Leahy spoke about earlier today, but there's so much more we can do. And we are extremely cost-efficient.

I also want to mention our Public Defense Case Management System. You talked to the prosecutors about their case management system. Well, we have a case management system that's in 51 counties and 84 programs. If we do not receive our continued funding, those offices will no longer have the case management services that are equivalent to what the prosecutors have.

So I will leave my time for questions and pass it along. Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

MS. BROWN: Good evening. My name is Kristin Brown, and I'm president and CEO of Empire Justice Center, and I'm also a board member of the New York State Legal Services Coalition.

I want to just touch on a few points, you know, picking up on what Maha shared with you about state funding.

First of all, I think it's just really critical to stress the three forms of state funding that are available to support civil legal services, which you all have been incredibly supportive of over the past many years, and we really appreciate that.

The funds from the Office of Court Administration are really essential to provide representation and the essentials of life that Maha talked about. The Interest On Lawyer Account funding is critical in providing general operating support. And then the legal services assistance fund, which is significantly smaller in size, is really a linchpin that allows my organization, which is a statewide civil

legal services provider, to do the pieces besides individual representation -- to do training, support, and the systems change advocacy that we do.

So those three pieces of funding are really the backbone of the civil legal services providers around the state, and the backbone of my program. And it's really -- as Maha said, we have not had an increase in funding for many, many years. Why is that important? New York is the leader in -- on the national level in state funding for civil legal services. We have closed the justice gap. We are meaningfully -- just over half of our civil legal needs are still being -- are unmet at this point, but that is a change from 80 percent of our civil legal needs not being met.

We can't afford to let that gap widen, which is why we're here to say please would you come together, both houses come together, to provide an additional $5 million for the Legal Services Assistance Fund on top of the restoration.

I think we all know that we're not going to get to 100 percent closing the justice gap without providing a right to counsel in civil matters. That's the only way we're going to get to 100 percent of meeting the civil legal need. But by continuing to invest and not allowing us to go backwards in filling that gap, that's just -- it's the right thing to do. And we thank you all for your time.

CHAIRWOMAN KRUEGER: Anyone?

CHAIRWOMAN WEINSTEIN: Assemblyman Blake.

ASSEMBLYMAN BLAKE: Good evening.

I'm reading here -- and this is on the New York State Defenders on page 4, around additional funding for the implementation of the discovery, speedy trial and bail. And so recognizing the point that's referenced here, both new and experienced public defense attorneys need to be educated on these reforms, et cetera.

I would love to just get your take on is this working so far in terms of speedy

trial, discovery and bail. If yes, why? If no, why?

And then second and finally -- I know our time is tight, so just answer this within two minutes -- do you believe there should be a change in the timetable of discovery?

MS. BRYANT: So as to the first, we don't know exactly on speedy trial because we haven't reached that time frame yet. However, with bail, we're seeing tremendous change. It's completely changed the lives of many clients all across the state.

And I'm grateful and thank all of you for doing the reforms last year, because it really has made a difference. It's kept people home with their families, childcare, people employed while they are fighting their charges.

And discovery is working. It's a little bit more difficult. I think certainly there's logistical issues that need to be dealt with. However, New York should have been doing that decades ago. So I don't want to hear complaints about how it takes some

time to get people who are accused of crimes the evidence that they are being used to be convicted.

And as to the second question, which is discovery changes as to time frames, I don't think that there's any need for that. The law does allow flexibility. There is an additional 30 days beyond the 15 days, when that's necessary, as well as the court can give discretion as to what is happening in the individual case.

So I hope that answers your question.

ASSEMBLYMAN BLAKE: It absolutely does. I appreciate that you stated for the record that there is that opportunity to request the additional 30 days, which would essentially satisfy the 45 days that we've heard from others.

And so in our final few seconds -- and we did hear you about the $5 million. Don't worry, we heard that at the end -- can you give any sense of number of how many people have benefited due to the changes in bail reform? We continue to hear the horror

stories on the other side. Is there a data point that you can share with us that we could take away so we understand?

MS. BRYANT: I wish I had more concrete numbers. I certainly hear from lots of public defenders, who call us every day, as to the amount of clients that are getting out. And you can look at the release rates in jails across the state as to showing that.

So thousands, I would say, but I look forward to more data.

ASSEMBLYMAN BLAKE: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Luis Sepúlveda.

SENATOR SEPÚLVEDA: Just one, one -- maybe you can help me clarify it. But I think there's a basic misunderstanding of some of the discovery provisions when it comes to, for example, DNA labs.

Is it your understanding -- because I've heard other speakers talk about how we can't do DNA, we can't do lab results in 15 days. Is it your understanding that the law says that it's 15 days after the

evidence, for lack of a better term, has matured, and not that it has to be delivered in 15 days?

MS. BRYANT: Well, the 15 days is the initial time period that's given. But there is an extension for it, not even -- you don't have even to request it -- for 30 more days.

And certainly if labs have delays, then the judge can take that into account. So --

SENATOR SEPÚLVEDA: But do you understand that if -- for example, DNA tests, right?

MS. BRYANT: Yes.

SENATOR SEPÚLVEDA: Clearly DNA tests take some time.

MS. BRYANT: Yes.

SENATOR SEPÚLVEDA: Normally you cannot get it within 15 days.

The 15 days don't start to kick in until after the DNA test has been completed by the lab and sent to the prosecutors. It's not that you have 15 days once the case starts, the arraignment, to deliver a DNA

test.

I think that's a basic misunderstanding that a lot of people have of the law on discovery with respect to things like DNA and crime labs.

MS. BRYANT: I think there are a lot of misunderstandings as to the discovery law. I think that the defense spent a lot of time since these laws were passed to educate ourselves and to do training all over the state. And sadly, it doesn't seem like there was that same attempt on the other side to do training and really focus on what the laws provide, versus making a case for this is too onerous.

SENATOR SEPÚLVEDA: Okay. Just wanted to clarify that, because I've heard several speakers mention this 15 day, 15 day -- and they don't understand that it's not immediately 15 days.

Obviously you cannot do a DNA test in 15 days. So the clock doesn't start ticking until the actual test is completed.

Thank you.

MS. BRYANT: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Ra.

ASSEMBLYMAN RA: Good evening. Thank you for sticking it out and being here.

I was wondering if you can -- I don't know if you were in the room earlier when the representative from the DAs Association was testifying --

MS. BRYANT: I've been here since 9:30.

ASSEMBLYMAN RA: Well, you may have stepped out to take a phone call or something.

MS. BRYANT: So no, I wanted to hear all of that testimony.

ASSEMBLYMAN RA: But just wondering if you can comment on what he had mentioned with regard to speaking to defense attorneys prior to having, you know, given over complete discovery and the concern with the potential for somebody alleging an ineffective assistance of counsel if they were to engage

in a discussion about a plea prior to that point.

MS. BRYANT: Well, certainly attorneys can engage in discussions as to pleas, but it would be not effective for the counsel to not get all of the evidence that is available to review with their client -- not just some of it, all of it -- to go over and determine what is the strength of the evidence and what are they looking at potentially for the charges and what the presentation of any kind of offer would be.

That is something I'm hearing about private attorneys doing that and going to prosecutors and getting offers earlier. That concerns me.

ASSEMBLYMAN RA: So in terms of like the training that you guys are providing and that's going on amongst your organizations, it would be to have that instruction that, you know, nothing should be agreed to until that discovery is --

MS. BRYANT: We provide information as to what the law says and what the court's

interpretations of what defense's obligation is. We do not command that defense attorneys do anything in particular. We provide support to them. So we provide interpretation of the law. It is up to them individually to make a determination of what the representation is for that particular client.

ASSEMBLYMAN RA: Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you for all being here today and the work you do. And have a good trip back to Brooklyn.

CHAIRWOMAN KRUEGER: Too late for the trains tonight. Thank you, ladies.

MS. SYED: Thank you. Thank you so much.

CHAIRWOMAN KRUEGER: Thank you.

Next up, New York State Coalition Against Domestic Violence, and ZA'AKAH.

MS. GERHARDT: Hello.

CHAIRWOMAN KRUEGER: Hello. Good morning. Oh, almost.

(Laughter.)

MS. GERHARDT: Really, almost.

May I start? Okay. My name is Joan Gerhardt. I'm the director of public policy and advocacy at the New York State Coalition Against Domestic Violence. I want to thank you for the opportunity to discuss highlights from the written testimony in front of you.

NYSCADV was established more than 40 years ago. We represent nearly 100 programs serving more than 50,000 survivors of domestic violence and their children across the state.

The demand for domestic violence services is higher than it's ever been. In fact, New York State has the highest demand for domestic violence services in the country for four years in a row -- four, four years in a row. According to a nationwide survey, in just one day in 2018, more than 7500 adults and children received domestic violence services in New York.

On that same day, importantly, more than 800 requests for domestic violence services went unmet. So let that sink in for

a second. Hundreds of victims seeking help couldn't get the assistance they were asking for, in just one day. And that happens every day.

Couple this with the fact that over the past four years, 313 domestic violence program positions in New York have been reduced or eliminated. Despite this growing demand, the gaps in available services and the elimination of jobs, funding for domestic violence services in New York is nonexistent, decreasing or flat.

Our written testimony sheds more light, but to summarize. Funding for nonresidential domestic violence services comes from two federal funding streams: TANF and FVPSA. Domestic violence programs were recently informed of the next five-year FVPSA grant allocations, which will take effect in April. At least 13 domestic violence programs received the devastating news that their funding will be cut, some significantly.

For example, funding for one downstate

program providing services to a marginalized community will be cut 75 percent. Funding for another program providing services to people with limited English proficiency was cut more than $277,000. Another upstate rural program was cut nearly $275,000. Many of these programs also recently received cuts to their OVS funding.

We're asking the Legislature to allocate the necessary funding to ensure no domestic violence agency has to close its doors or reduce services for victims.

Nonresidential services are also funded with a $3 million TANF set-aside. That amount of money hasn't been upped for 20 years, since the year 2000. Obviously we can't do increased services with the same level that it was set at 20 years ago. We're asking the Legislature to increase this TANF set-aside to $6 million.

CHAIRWOMAN KRUEGER: I wouldn't keep reading, you have five seconds. Is there one more point you'd like to make?

MS. GERHARDT: Yes, prevention. We'd

also like money for prevention so we can stop domestic violence before it happens in the first place.

CHAIRWOMAN KRUEGER: Thank you.

Hi.

MR. LOVY: Hi.

CHAIRWOMAN WEINSTEIN: Oh, yes, go ahead. Sorry.

MR. LOVY: I would like to thank both chairs and all the members for being here so late. I appreciate the fact that everybody stayed. In previous years, that hasn't been true, and I very much appreciate it.

My name is Asher Lovy. I'm a survivor of physical, emotional and sexual abuse at the hands of my mother. I'm also the director of ZA'AKAH, an organization that's dedicated to advocating for survivors of child sexual abuse in the Orthodox Jewish community.

One of the things that makes it particularly challenging to be involved in this work in the Orthodox Jewish community is that we have, particularly on the more right

wing of the Orthodox Jewish community, we have religious leaders and umbrella organizations such as Agudath Israel that mandate that survivors must ask rabbis for permission before reporting sexual abuse to police. This creates an intense stigma against the reporting of sexual abuse and being a survivor, openly, of child sexual abuse.

Survivors in the community who dare to report find themselves facing tremendous backlash, including the loss of their jobs, the loss of their homes, the expulsion of their children from schools, and complete ostracism from the community and all of their support systems.

ZA'AKAH in 2017 started advocating for the Child Victims Act, which passed last year thanks to the tireless efforts of Senator Brad Hoylman and Assemblymember Linda Rosenthal. And since that happened, since the window went into effect on August 14th, we've had a serious problem in the Orthodox Jewish community of getting the word out to

let survivors know about their rights under the Child Victims Act.

The largest victims services organization in the Orthodox Jewish community worldwide, an organization with an annual budget of $8 million, said on the record that it deliberately withheld information about the Child Victims Act from the community and from its own clients. Okay? It said this twice on the record -- once in an op-ed written by its director, and once to a reporter from the Jewish Week.

I've had no luck whatsoever penetrating this information into the community. Many members of the community do not use the internet. They read news sources that are censored by rabbinic censors. We have had no luck getting any information about the Child Victims Act into this community.

We attempted to speak to elected officials, like Simcha Felder and Simcha Eichenstein, and members that represent those communities, to ask them to send it out in

their newsletters, and they wouldn't. They wouldn't even meet with me about it.

So I'm requesting -- I know there's no line item in the budget right now for it, but I'm requesting, if possible, that money can be made available for public service announcements for something like this.

There are studies that show that on average, the cost of child sexual abuse per victim is about $268,000 over a lifetime, and that includes increased healthcare costs, lost wages and a whole bunch of other things, including criminal justice involvement, which has been the whole point of this hearing up until now.

I would also urge the Legislature to create a fund for survivors who are unable to find lawyers because their abusers -- I would ask for just -- their abusers are not wealthy institutions or wealthy individuals. It is in the state's interest to assist those survivors in outing these abusers. For every single abuser, there can be up to dozens of victims. And the financial impact is so

broad. Much of that comes from the state in the form of needs for public assistance and Medicaid claims and food stamp claims for people who cannot work and have to claim disability and similar benefits.

I would strongly urge the Legislature to act to provide funding for the awareness, and to create this fund so that we could fulfill the purpose of the Child Victims Act and expose these abusers.

CHAIRWOMAN WEINSTEIN: Thank you.

Senator Hoylman.

SENATOR HOYLMAN: Thank you. Thank you, Mr. Lovy and Ms. Gerhardt.

First I just wanted to say I spaced out, I -- with regard to the previous testimony, I just -- which is relevant to what you're discussing. I strongly support the $5 million addition that's being requested by the Legal Services Assistance Fund. I just wanted to get that on the record.

But secondly, thank you for being here.

Mr. Lovy, thank you for your advocacy on the Child Victims Act as well as speaking out now about mandated clergy reporting and, of course, a fund to help survivors who do not have the ability to pay for their own attorneys or are possibly suing entities or individuals who may be judgment-proof, therefore not likely to result in a commission for an attorney who may represent them.

Is it something you are hearing anecdotally, or do you have real evidence of survivors being in such a position where they don't have such representation?

MR. LOVY: Every single day I get contacted by survivors who ask me if I can help them find a lawyer because they haven't been able to. They have tried, you know, going to the attorneys I've been recommending. I've been working with a number of law firms that actually helped advocate for the Child Victims Act. None of them were able to take any of these cases. I've sent them to the National Crime Victims

Bar Association, who were unable to make any effective recommendations.

They are unable to find any attorneys, there are none available to do this work pro bono, and these abusers are not going to be exposed because their criminal statutes have already expired. I deal with these cases every day.

SENATOR HOYLMAN: And what's your opinion on extending the Child Victims Act further, as well as broadening it to include adult survivors?

MR. LOVY: Well, had I more time, I would have mentioned it, so I'm glad you allowed me this opportunity.

It's very much tied to the issue that I'm having in my community. And it's not unique to my community. There are many people in this state who actually don't know about their rights under the Child Victims Act, but particularly in my community.

The fact that six months have run on the clock on the Child Victims Act lookback window, and there are people who don't know

about it, means that if I'm somehow able to get funding for some sort of PSA for them, they're going to have to take the time to make these decisions, and they may actually not be able to do it in the time allotted. We need to extend that window for at least a year, if not more, to make sure that people who don't know about the Child Victims Act window yet can find out about it and have the time they need to make a decision about whether or not to pursue a case under the lookback window.

SENATOR HOYLMAN: You're very effective at your testimony, in part because you talk so quickly.

(Laughter.)

MR. LOVY: Thank you.

CHAIRWOMAN WEINSTEIN: Assemblyman Blake.

ASSEMBLYMAN BLAKE: Thank you to both of you for your words tonight.

Three specific questions to get guidance on, the first of which, there's been some talk around as relates to bail reform

that one of the considerations we should entertain are around domestic violence victims. And would just love to get your perspective on that in particular.

MS. GERHARDT: Well, in very short order, because I know we don't have a lot of time, we've taken a pretty conservative viewpoint on the new law.

We were very supportive of the criminal justice reform package for all of the reasons I think this panel knows. We saw gross inequity in the criminal justice system as it pertains to both survivors and offenders. So we were pleased to see the package move forward.

We think there's a lot of confusion amongst everyone within the system on what exactly was passed and what the consequences will be in the actual court system. So what we've been trying to do at NYSCADV is to really identify and to work with domestic violence programs statewide to see what they're seeing out in the field.

ASSEMBLYMAN BLAKE: Understand.

MS. GERHARDT: And I can tell you there's a lot of concern about the period of time that victims will have to safety plan. And if I was going to urge any kind of focus for this panel, it would be that. What supports can we be giving domestic violence survivors to ensure that their supports are enhanced for safety planning so when offenders do return back into the community whenever that might be, whether immediately or two days later, whatever it might be, that victims are safe.

ASSEMBLYMAN BLAKE: Thank you very much, and incredibly helpful.

Two other very quick questions. The second is around witness intimidation. It has come up a lot in conversation around discovery. So in that same vein, I just wanted to get a response and perspective from you on what if anything should be considered as relates to discovery on that point.

MS. GERHARDT: Well, there is a process in place for the prosecutor now to go to the judge and ask that the information be

withheld. I know that there are a lot of questions about when a survivor is in shelter, if the shelter address has to be given to the defense or defense attorney, which is prohibited by New York State statute. So we do have some questions about how that would really play out.

But with respect to the process, we think that, you know, before the prosecutor would be able to hold the information, now a judge would make that same call.

ASSEMBLYMAN BLAKE: Thank you.

And then lastly, I believe you mentioned that there -- you said there were two federal sources for funding, I think you said --

MS. GERHARDT: For nonresidential.

ASSEMBLYMAN BLAKE: And what were those two?

MS. GERHARDT: TANF.

ASSEMBLYMAN BLAKE: TANF and?

MS. GERHARDT: And FVPSA.

ASSEMBLYMAN BLAKE: And FVPSA.

And so just very quickly, would both

of those be impacted by the public charge rule that has been announced from the federal government, anyway?

MS. GERHARDT: No. No, I don't believe so.

ASSEMBLYMAN BLAKE: And so to tie this all together, what would be the funding needs for us to make sure we provide more support as relates to --

MS. GERHARDT: Well, with respect to the FVPSA cuts that I talked about, this is very new. We were just having a discussion with programs today, those 13 that I identified. I think it's at least seven figures, but I don't have a solid number for you yet. I'd say within two days I'll probably have a solid number. I just don't want to put a number out there because it's still so new for us.

ASSEMBLYMAN BLAKE: We appreciate that. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Mr. Lovy, when you talked about your community, is it New York City or New York?

MR. LOVY: The community in which I was raised. I'm currently part of a different community. But yes, I was raised in the ultra-Orthodox community in Borough Park.

CHAIRWOMAN KRUEGER: I mean, the reason I ask is because I'm from New York City and the TVs are filled with lawyers offering to take these cases, and they're not charging up-front.

So I'm trying to understand why people from the Orthodox community, if they go searching for a lawyer, are having so much trouble.

MR. LOVY: So there's two issues. The first is that in the communities I'm referring to, specifically, to give a few examples, the communities in Borough Park, Williamsburg and Kiryas Joel upstate -- I don't know if that counts as upstate -- but don't watch TV. They get most of their media from WhatsApp groups, shared clips on WhatsApp groups; Jewish news sources, primarily that are Orthodox Jewish sources

which all have rabbinical censors, which cut out any information that the rabbinical structure doesn't approve of. So they don't have the information about this.

You know, so the second -- I guess the second part of your question I'll answer a little bit more broadly. Yes, there are a lot of lawyers that are advertising that they'll take cases on contingency. And that's helped a lot to raise awareness, as people just see the ads around all over.

But they're only taking cases on contingency if there's a possibility of them recouping some money at the end plus, you know, plus a profit. In many cases, the vast majority of the cases filed, I think it's, what -- there's 1700 cases filed. The vast, vast majority, I think it's 98 percent of them, are against wealthy institutions.

But the majority of abuse that actually happens, happens outside of the institutional setting. So, you know, we were fighting for the Child Victims Act to make sure that abusers were exposed. And

effectively while many are, and it's going to be, you know, a conversation that we as a community and a society and a state are going to have, and that's very important, the actual abusers are going to keep on walking free.

Which also one of the other measures -- I didn't bring it up because I didn't have time. One of the other measures that we're advocating for is the complete elimination of the statute of limitations for felonies related to child sexual abuse because for many people the only avenue that they have to publicly name their abuser, if they can't find a lawyer for a civil trial, is the criminal justice system.

And as imperfect as the criminal justice system is, we cannot deny survivors that ability, because otherwise their abusers will just continue abusing with complete impunity.

CHAIRWOMAN KRUEGER: Thank you. Thank you both for staying so late tonight.

MS. GERHARDT: Thank you.

CHAIRWOMAN KRUEGER: All right, we have next the Center for Community Alternatives, The Osborne Association -- Osborne is gone. Is the Center for Community Alternatives here? Hello.

MS. SCHAFFER: Hello.

CHAIRWOMAN KRUEGER: Okay. And why don't we combine them with the Center for Court Innovation and the Fund for Modern -- well, a little different topic.

You know what? The Modern Courts folks just get ready. So just get close.

But why don't you go right ahead, Center for Community Alternatives.

MS. SCHAFFER: Hi. Thank you all. It is very late, and I appreciate you all being here.

My name is Katie Schaffer. I'm the director of advocacy and organizing at the Center for Community Alternatives. And I want to speak a bit about bail and discovery reform, which have come up many times tonight, on a couple of issues.

The first is about sort of how we

should be thinking about these reforms. We're in a moment of intense political backlash and fearmongering, and this is not a moment in which I think a reasonable policy debate is happening, but rather a political one.

And so I want to urge the legislators here to not be making changes to the bail statute in the context of this moment. The law has only been in effect for six weeks. We do not have solid data. And we need time to allow the law to continue to work, to allow the thousands of people who are benefiting from the law to be able to return to their families and their jobs, to not have their lives and their families destabilized by the loss of their job, by their pretrial incarceration.

We do have some numbers. DA Fitzpatrick spoke earlier and said that they were not incarcerating people on sort of low levels of bail in Onondaga County. In the past year, since the implementation of bail reform, there is a 200-person decrease in the

number of people incarcerated pretrial every day in the Onondaga County jails. This is a 25 percent reduction in the number of people incarcerated pretrial. Many were there on low-level bails.

And some very good reporting out of the Post-Standard in Syracuse found that the vast majority of those people were people who spent one to three days in jail pretrial. So these were not people who were not getting out under the old laws, these were people who are there for short periods of time, but plenty of time to lose your shift job, to not be able to make rent that month, to not be able to pick your kid up at school.

A few other things to mention. One is we've heard a lot -- and we heard it from the representative from the NYPD, and we've heard it from others -- that people are interested in tweaks. What we are seeing being proposed are not tweaks, they are not progressive, and they are not acceptable to the communities and families that have fought so hard for these changes.

We've been really dismayed to see the proposal coming out of the Senate that was announced in Newsday. On the most basic level, the demand of advocates and impacted communities across the state for bail reform has been for decarceration, for there to be many fewer people subject to the trauma of pretrial incarceration, and subject to the violation of their constitutional rights.

That our pretrial system is supposed to protect the presumption of innocence, and we cannot allow alternate systems that replace money bail with other forms of remand, preventive detention, that are fundamentally a violation of people's constitutional rights.

Instead, we should be looking at mental health services, supportive housing, and meeting the actual needs of communities. This is what will achieve true community safety. Thank you.

CHAIRWOMAN KRUEGER: Thank you. Thank you very much -- oh, I'm sorry, was -- thank you for your testimony tonight. Okay. And

now you are Center for Court Innovation.

Wait.

CHAIRWOMAN WEINSTEIN: Michael, did you want to --

ASSEMBLYMAN BLAKE: Yeah, we didn't know if we were waiting for both of them or not.

CHAIRWOMAN KRUEGER: Oh, no.

CHAIRWOMAN WEINSTEIN: No, we weren't. So did you both want to --

ASSEMBLYMAN BLAKE: Yes.

CHAIRWOMAN WEINSTEIN: So Senator Myrie first, and then Assemblyman Blake.

CHAIRWOMAN KRUEGER: Okay. Sorry.

SENATOR MYRIE: Great. So just one question for Katie. There have been a lot of horror stories about what people perceive to have gone wrong with bail reform. Can you talk about why the success stories -- why someone who has benefited from the reforms might not want to come forward and why that's not as easy to publicize?

MS. SCHAFFER: Thank you to Senator Myrie. That's a really good

question.

So there are two things about it. One is that the law has only been in effect for six weeks, so that is not enough time for the vast majority of cases to have been resolved.

And it is sort of unfair and scary and, frankly, against legal advice for people to be talking about their cases while their cases are still open. And so that is something, you know, that we are not interested in pushing people to do.

The other is about sort of what kind of sensationalist stories the media likes to cover. And I really appreciate Senator Liu earlier pointing out that there is a consistent misrepresentation of talking about people as having committed crimes rather than having been charged with crimes, and that that framing by the media motivates, I think, some of the ways that we are then comfortable violating people's presumption of innocence.

But they're more interested in telling a story of man does bad thing released than they are of telling a story, man goes home to

family, keeps job, returns to court. That is not the kind of sensationalist story that many of the sort of tabloids and some of the other dailies are interested in running.

CHAIRWOMAN WEINSTEIN: Assemblyman Blake.

ASSEMBLYMAN BLAKE: Thank you. Good to see you, Katie. Thank you for your work.

Just two quick things. One, on the back page of your testimony on page 6, you reference a study of risk assessment tools, and in particular in one study in 2016 researchers found that of people predicted to commit violent crimes, only 20 percent actually did. The algorithm was, quote, particularly likely to falsely flag black defendants as future criminals, wrongly labeling them this way at almost twice the rate as white defendants, end quote.

So first of all, using that as a reference point, is that a core reason why you oppose dangerousness and other risk assessments in that consideration?

MS. SCHAFFER: Yes, very much so.

Risk assessments are not objective, they are based in criminal legal system data that has been skewed by histories of racist policing.

And so the NYPD representative who was up here talked very proudly about how stop-and-frisk is down from 400,000 arrests, or stop-and-frisks and arrests every year, to 200,000. That is, to my mind, still an unbelievable footprint of the criminal legal system that does not target people who look like me, that targets overwhelmingly black and brown communities.

So that when you then use those arrests or convictions, often obtained by plea because people were incarcerated pretrial, as how you judge whether somebody is, quote, unquote, a future risk, that embeds and entrenches racial disparities into that system.

And that is true whether you use the language of "dangerousness" or whether you use the language of "repeat offender." But those evaluations reflect histories of racist policing.

ASSEMBLYMAN BLAKE: And then lastly, in this final six seconds, and recognizing there's limited ability to assess this because it was just based upon a story earlier today, you had mentioned that you're not comfortable on what you've seen thus far in terms of the proposal, consideration of changes from the Senate. As best as possible, can you share why?

MS. SCHAFFER: So there are a couple of reasons. One is that the proposal, again, as we've seen in Newsday -- we haven't seen anything more than what was released in the newspaper -- vastly expands the net of detention. So the number of people and the number of charges where judges can remand somebody has been enormously expanded.

And what we know from 30 years of judicial discretion is that means that we will see a tremendous number of people incarcerated pretrial, to the extent that we may see more people incarcerated pretrial under the system as proposed there than we do currently.

And so what matters is that net of detention. If that is really wide, then we will see both the racial disparities grow and also the numbers of people whose lives are devastated by pretrial incarceration grow.

CHAIRWOMAN KRUEGER: Thank you. Thank you. All right?

CHAIRWOMAN WEINSTEIN: Yes, we're set.

CHAIRWOMAN KRUEGER: Fine. All right, now we are shifting, thank you.

MR. CORREIA: Great. Thanks so much.

CHAIRWOMAN KRUEGER: I just want to double-check, is the Fund for Modern Courts --

MR. CORREIA: That is not my organization, just the Center for Court Innovation.

CHAIRWOMAN KRUEGER: No, but you were a panel with them, so I was wondering if they're still here. They're not. Okay, thank you.

MR. CORREIA: We're the Center for Court Innovation.

MS. SCHAFFER: So I'm Katie Schaffer

from the Center for Community Alternatives.

CHAIRWOMAN KRUEGER: Right. Osborne Association left, and Legal Action Center left. And now we're doing the Center for Court Innovation.

MR. CORREIA: Yes.

CHAIRWOMAN KRUEGER: And Modern Courts left, for those keeping ready on the scorecard. Okay. Very good.

MR. CORREIA: All right, excellent. So this is my first time testifying at the state level, and it's exciting to be a part of the longest budget hearing so far.

(Laughter.)

MR. CORREIA: So thank you for still being here. So my name is Shane Correia. I am the deputy director of strategic partnerships at the Center for Court Innovation, where our mission is to increase trust in the justice system.

We do this through a variety of programs from over 30 sites in New York State, whether it be in the judicial court setting with alternatives to incarceration or

on the basketball courts with our credible messengers in the Cure Violence programs.

In addition to being in my current role, I'm also a former participant of one of our youth programs when I was in high school and two of my siblings were arrested and convicted for a violent felony and I was a high school truant.

The reason why I bring this up and share it is because the skills that I learned through these programs were what I found critical in helping me navigate homelessness and law school to be here today. It also helps highlight the familial aspect of justice system involvement and the need for data in the way that we approach solving the complex issues facing our communities.

One of the programs that I want to focus on in moving from the anecdotal to the systematic is the Strong Starts program, which operates in child neglect petitions for children from infant age to 3 years of age, where they're either separated from their family or at risk of separation.

The Center for Court Innovation operates this program in only three counties in New York currently. But if you look at the testimony data on page 2, you can see that the families that are being screened by our clinical clinicians are intersecting with various systems, whether it be the 82 percent who flag for poverty, 63 percent who flag for untreated mental health issues, or the 50 percent who are also former child victims and child neglect petitions.

And this is not to say for the others who are flagging for things such as criminal justice involvement, substance abuse, incarceration, or current domestic violence.

In the traditional system these families are not receiving any support. With our model, we see this data and we add a clinical coordinator who meets with the judges and the courts on a a monthly basis, which differs from the traditional system where there can be months between adjournment dates for these infant cases.

The reason why I share all of this is

because in terms of repairing trust, 70 percent of these families who are receiving services for their underlying needs continue to come back after their case is resolved. This is to the same system that filed a neglect proceeding against them.

So we ask to expand this model to continue to increase trust for these families, to link them with the resources that can help intervene in intergenerational system impacts, but also to continue to invest in data-driven solutions in our justice system.

I represent many programs in my organization, all of which are piloting programs by shoestrings, trying to evaluate them and share them with decision-makers like yourselves. And we continue to appreciate your support.

Thank you.

CHAIRWOMAN KRUEGER: Thank you. I want to thank you both for being here tonight. Thank you.

And our last panel, if they're

existing -- yup, two people.

SENATOR HOYLMAN: Can I say something as he leaves?

CHAIRWOMAN KRUEGER: Sure.

SENATOR HOYLMAN: I just wanted to thank you for your work at the Midtown Community Court. It's an amazing program. Thank you so much. Look forward to assisting you and hopefully expanding it throughout my district.

MR. CORREIA: Thank you.

CHAIRWOMAN KRUEGER: All right, we have New York State Dispute Resolution and Mediation Matters. And thank you for hanging in with us.

And I also just want to quickly recognize that this is Senator Seward's last budget hearing, because he won't be able to be with us tomorrow --

CHAIRWOMAN WEINSTEIN: So we thought we'd stay till midnight.

(Laughter.)

CHAIRWOMAN KRUEGER: And he's announced that he's not going to continue

with the Senate after this year. So I know you'll miss us all desperately if this is your last one.

(Laughter.)

SENATOR SEWARD: Thank you.

CHAIRWOMAN KRUEGER: Thank you for your hard work and your stick-to-itness.

In whichever order you wish, ladies.

MS. RITCEY: Okay, thank you. Good evening, Madam Chair, Madam Chair, and distinguished members. We really appreciate the opportunity to speak with you today -- this evening. We're here on behalf of the statewide network of the Community Dispute Resolution Centers.

My name is Regina Ritcey. I'm the executive director of the New York State Dispute Resolution Association.

MS. RUDGERS-TYSZ: And I'm Sarah Rudgers-Tysz, the executive director of Mediation Matters, which is the CDRC in the Capital Region, six counties. I'm also on the board of NYSDRA.

MS. RITCEY: The New York State

Dispute Resolution Association, or NYSDRA, is a nonprofit organization, and it is the association of the network, of the statewide network of Community Dispute Resolution Centers, or CDRCs. And they're mediators as well as private practitioners.

There are currently 20 CDRCs serving every county in New York State. So all 62 counties are served by one of the centers.

The CDRCs match OCA funding nearly dollar for dollar through grants, fees and contracts. And their work helps people address conflict through a variety of processes, including remediation, conciliation, restorative justice, and a number of processes that help people address conflict and resolve it before it escalates into further problems.

Key to this is that most of the work is done pro bono. It's staffed by staff members, but the work itself is done by community members who are professionally trained volunteers. They donate their time and skill, and it's valued at about 2.3

million a year. So it really makes the CDRCs a fantastic return on investment. And it also makes New York State a real model. We are really seen as a leader in this model throughout the country.

MS. RUDGERS-TYSZ: CDRCs really value the partnership that we have with the Office of Court Administration, and never has that been more important than after the chief judge released her plans for presumptive dispute resolution. Now more courts are working with their local CDRCs, so more community members have access to dispute resolution programs, families are working out their parenting plans on their own, and more youth are finding their voice as they engage with the adults in their lives.

Centers are seeing double-digit percentage increases in case referrals and are increasing the number of courts with whom we partner. We're excited to provide these services in appropriate circumstances so that individuals who choose to work out these issues on their own have a forum to do so.

MS. RITCEY: CDRCs have actually been doing this work for a really long time, and this opportunity for about 35 years. And the opportunity to move into the presumptive dispute resolution realm and partner with OCA and with the bar is really an opportunity that we've been looking for. And the centers are really ready to take this on.

As Judge Marks mentioned earlier -- much earlier -- today, the --

(Laughter.)

MS. RITCEY: -- CDRCs are really key to this initiative. And they're prepared and really eager to move forward with this.

We're here today to actually ask the Legislature to help by preserving the $1.2 million appropriation that's in the Judiciary budget for contract programs, and to ask that the majority of that be directed to the CDRCs so that they can move forward and really take on this work.

In addition, we're actually asking that the preservation of the appropriation in the Executive Budget for the $10 million

that's laid out in the DCJS budget that was also mentioned much earlier today, and that's particularly directed for gang prevention, for youth justice, and for local crime reduction.

So there are a couple of different ways that we're really looking for help to move forward in this coming year.

MS. RUDGERS-TYSZ: And I just wanted to speak to the collaboration that we have with the juvenile justice and school districts in our area.

Each of the communities that we're serving, we're seeing the impact with our programming with the youth go even beyond the programs themselves. The youth are taking those skills and bringing them home, working -- they're telling us that they're engaging with their parents, with the other adults in their lives in different ways after learning the skills that they're learning in our programming.

And so this is really reaching the community on so many more levels than what we

originally thought and hoped would happen.

MS. RITCEY: And Sarah, in addition to serving on the board, represents her CDRC, which serves this district. And we are short on time -- even though I understand we may be making a record -- but there are just so many stories that the centers can share about the work that they're doing that really affects their community and makes it stronger.

And so we really appreciate the opportunity to meet with you and ask for your support to help all New Yorkers. Thank you.

CHAIRWOMAN KRUEGER: And I say thank you. I'm just looking in both directions.

Thank you for staying with us.

MS. RITCEY: Thank you very much.

CHAIRWOMAN KRUEGER: This is officially the end of the Public Protection hearing.

We will be starting up at 9:30 in the morning with the Economic Development hearing. So you can either -- and then Taxes at 1:00 p.m. You can sleep in your chairs, or you can go somewhere else and come back in

the morning.

(Laughter.)

CHAIRWOMAN WEINSTEIN: Thank you to all the members for staying.

(Whereupon, the budget hearing concluded at 11:48 p.m.)