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November 13, 2020

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

RE: Budget Priorities
FY 2021-2022

Dear Governor Cuomo:

Since this trying year began, you have managed multiple crises in New York State. Our residents, businesses, and visitors are looking forward to better days ahead. COVID-19 has redefined how we interact with one another and with many other aspects of our world, including courts, law enforcement, and the criminal justice system. You know more than anyone that with hard work, planning, and resources we can minimize the spread of the novel Coronavirus and regain some normalcy. The pandemic, however, has had collateral effects on the economy, unemployment, homelessness, drug addiction, mental health, and other social issues. It has also impacted the criminal justice system and how crimes are reported, investigated, and prosecuted.

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

History shows that coming together and working together can help us achieve goals that benefit everyone. You led New York in becoming one of the first states in the country to enact major changes in law enforcement practices, essentially reimagining the future of policing. As those laws have taken effect, we have begun to see fundamental shifts in how we enforce the law and prosecute those accused of crime. As you continue to lead our State in creating a safe and more-just system for all New Yorkers, DAASNY wants to be part of the planning and conversation, and to offer the collective perspective of our state's prosecutors.

For many years, under your leadership, New York State was proud to be the safest large state in the nation. Unfortunately, this year we have seen an uptick in some violent crimes, especially in our cities. The rise in shootings and murders instills fear in those who live and work in urban and suburban areas. Depending on the jurisdiction, the murder rate has increased anywhere from 26% to 66% over last year. Motor vehicle thefts have increased to unimaginable numbers, even at a time when most cars are equipped with modern anti-theft technology. In 30 counties outside of New York City, motor vehicle theft increased by 47% in just the first half of 2020. The number of domestic violence assaults has increased by 13% so far this year.

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*** PAST PRESIDENT OF DAASNY**

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As you make important decisions regarding New York State's budget, I urge you to prioritize programs and initiatives that help stop violence and maintain public safety, in addition to investing in programs that prevent crime and that help those who are in need of assistance, such as drug and alcohol treatment programs and mental health services. I suggest the following priorities for the FY 2021-2022 Executive Budget. Those suggestions reflect crucial expenditures that will help keep New York State's businesses, residents, and visitors safe, while safeguarding the rights of those accused of crime and treating victims and witnesses with the compassion they deserve.

State Aid to Prosecution

This essential aid is one of the most important components of the funding of all 62 District Attorney's offices and provides money to support the enhanced prosecution of repeat, violent, and serious felony offenders. Funding for the grant, however, has been reduced significantly over the past ten years. Those reductions in Aid to Prosecution have come at a time when the responsibilities of prosecutors have increased dramatically. Prosecutors are increasingly expanding the duties of their staffs, utilizing new technologies, and adapting to new crime trends.

Funding for Aid to Prosecution must be restored to a more reasonable level. We strongly urge that this essential funding for Fiscal Year 2021-2022 be increased to \$15 million.

Bail and Discovery Laws

New York State's trailblazing new bail and discovery laws were enacted after years of discussions and pressure from advocacy groups. While the goal of those laws was to help make the system fairer to those accused of crime, shortly after they took effect you and the leaders of the Legislature recognized that changes needed to be made to them. As part of this year's budget, improvements were made in the bail statute that helped protect public safety and further protect victims of and witnesses to certain crimes. In addition, after it became apparent that the expedited time to exchange discovery materials was unmanageable, changes were made to allow for additional time to retrieve, prepare, and exchange discovery.

Going forward, the success of those laws will continue to depend upon the attention, planning, and resources that we devote to them at all levels. We must continue to examine the impact of those laws, both positive and negative, and be open to a dialogue on further improvements, if necessary. In addition, we are redefining the criminal justice system in our State and the resources that process will require far exceed what prosecutors currently have. The new discovery law has changed the way our police departments prepare, store, and transmit documents and evidence, including city, town, and village police, campus police, and other local agencies.

I ask that you continue to work with prosecutors, county executives, boards of supervisors, and stakeholders from all the impacted entities to find solutions to help fund the storage and exchange of discovery, solutions that do not unduly burden county and local finances. Those solutions should include funding for new computer equipment to facilitate electronic discovery, for secure software programs, and for costs for licensing agreements. We will need additional staff at all levels to retrieve and review documents and video footage, and to provide that information to the defense.

Last year, as part of the budget process, a statewide District Attorney Discovery Compensation Fund was created in the amount of \$40 million, funded by the Manhattan District Attorney's

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Office, for services and expenses related to discovery implementation. However, no mechanism has yet been established for district attorneys to access that money. In addition, going forward, that one non-renewable funding stream from one county is not a sustainable or equitable method to ensure that all the DA's offices in the State have a reliable source of funds to finance their discovery obligations. We ask that that funding be expanded to benefit more counties, and that the allocation of money be increased accordingly.

When it comes to New York State's new bail laws and the release of many more individuals at arraignment, I urge you to consider the formation of a statewide pretrial services agency, like New York City's Criminal Justice Agency (CJA). Such an agency would provide appearance reminders to those accused of crimes who are released pending disposition of their cases. Those reminders would encourage court attendance for the increased number of people statewide who are released at arraignment. In addition, such an agency could provide referrals for services ranging from housing and vocational training to mental health or substance abuse treatment.

New York Prosecutors Training Institute (NYPTI)

For 25 years, NYPTI has provided superior training for New York's prosecutors on all aspects of criminal prosecution, including ethics and diversity. During the COVID-19 NYS PAUSE shutdown, NYPTI transformed their traditional classroom trainings to online formats, giving prosecutors the training needed to navigate recent criminal justice reforms, executive orders, and the issues related to the partial shutdown of the criminal justice system.

Beyond training, prosecutors across the State regularly contact NYPTI's experienced attorneys for practical advice and assistance on individual cases. NYPTI's comprehensive online resources are available 24/7 and have been accessed more than a million times this year. From their public website, NYPTI provides CrimeTime, an online sentencing calculator relied upon by judges, defense attorneys, and prosecutors. NYPTI's public website also includes searchable and continually updated compilations of criminal statutes, caselaw, and appellate decisions.

NYPTI also provides short term emergency assistance statewide for the basic needs of threatened victims and witnesses in mostly domestic violence, gang-related, and sexual assault cases. Prosecutors and law enforcement are concerned that last year's changes to discovery and bail laws will lead to an increase in witness intimidation, and that more funding and resources will be needed to keep our witnesses safe.

55 of New York's 62 counties use NYPTI's Prosecutors Case Management System (PCMS), a web-based system, to track information, automatically generate required notices, disclose and track discovery, and generate documents. NYPTI added a Digital Evidence Management System (DEMS) to PCMS that connects prosecutors, the police, and defense attorneys. Because PCMS and DEMS are both cloud-based, they are critical tools for the 55 DA's offices who, while working remotely during COVID-19, relied heavily on these tools to maintain operations. Using PCMS:

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

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NYPTI has not received a funding increase in over a decade, despite significant cost increases. To maintain current services, DAASNY requests an appropriation of \$2.5 million for NYPTI and \$375,000 to continue NYPTI's witness protection program. DAASNY also requests continuing NYPTI's \$1.75 million allocation for costs related to cloud processing, storage, and maintenance of PCMS and DEMS.

Gun Involved Violence Elimination (GIVE)

The Gun Involved Violence Elimination (GIVE) initiative uses a coordinated, multi-agency approach to target and prevent violent gun crimes in 20 jurisdictions in 17 counties that collectively report 85% of the violent crime outside of New York City. The GIVE program has been very successful in reducing gun violence and in enhancing gun-involved crime reduction strategies. The program integrates hot-spot policing, focused deterrence, street outreach, crime prevention through environmental design, procedural justice, and problem-oriented policing.

Despite the program's success and New York's leadership in gun safety, the GIVE program has, unfortunately, seen repeated funding cuts. From a high of \$15.6 million in 2010-2011, GIVE received \$14.39 million in last year's budget. That shortfall will continue to impact the success of GIVE.

DAASNY recommends an appropriation of \$15.6 million for GIVE.

Crimes Against Revenue Program (CARP)

The CARP Program was initiated in 2004, to hold accountable those who deliberately fail to pay state tax obligations or who commit Medicaid, welfare, labor law, workers compensation, or unemployment fraud. The program assists prosecutors in investigating and prosecuting those who cheat the system.

The best part about CARP is that it is self-sustaining. It returns revenue to the State through fines and restitution. In the first five years of the program, approximately \$26.7 million was invested by the State, and \$84.2 million in revenue was returned.

The number of counties participating in the CARP program has increased, but funding has been decreasing. Based on the recommendation of DCJS and the New York State Department of Taxation and Finance, the CARP program was expanded to allow all counties to participate. The number of District Attorney's offices now taking part in CARP has expanded from 13 to 22. The cost of investigating CARP matters continues to increase. Last year's budget, Fiscal Year 2020-2021 provided for \$13.5 million for CARP.

We propose the appropriation of CARP funds be set at \$15 million in Fiscal Year 2021-2022.

Prosecutor Recruitment and Retention

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

That appropriation has been completely defunded. DAASNY strongly recommends reinstating

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the program at the previous funding level of \$1.5 million to help ensure the integrity of the statewide prosecution infrastructure.

Crime Laboratories

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

The new discovery law requires prosecutors to provide all discovery in their possession as soon as practicable, but no later than 20 days after a defendant's arraignment if the defendant is held in custody and no later than 35 days if the defendant is not in custody. That disclosure includes any forensic or lab reports, including scientific tests, reports, electronic raw data, and bench notes, as soon as they are completed. The law also restricts prosecutors from stating that they are ready for trial until the materials are provided to defense counsel. Although changes in the law now allow for extensions in certain situations, the prosecution still risks preclusion of those materials by the court if they are not turned over in a timely manner.

The law also requires the exchange of data provided by crime labs in all cases, not just cases that are going to trial. That information must also be gathered and exchanged on all cases where a plea is taken. In addition, lab protocols, audit reports, and "pre-decisional" findings must be turned over in all cases. Laboratory nonconformities and proficiency examination summaries for each testifying analyst also must be turned over and are particularly time consuming to organize.

Prosecutors all over the State are faced with crime labs that are overwhelmed and backlogged with work. They need additional staff as well as more space for workstations. Last year's budget provided \$6.2 million dollars for laboratory services. We are asking for an additional \$3 million, for a total of \$9.2 million, so that laboratories can better handle the additional and expedited testing and exchange of information.

Motor Vehicle Theft and Insurance Fraud Protection

Motor vehicle theft and motor vehicle insurance fraud cost New York State's law-abiding motor vehicle owners and insurance policy holders hundreds of millions of dollars in higher insurance rates. The New York Motor Vehicle Theft and Insurance Fraud Prevention Demonstration Program (MVTIFP) was created in 1994 and targets theft and fraud.

In recent years, great strides were made in reducing motor vehicle theft in New York State. In 2016, there were 14,255 motor vehicles stolen in New York State, the lowest since the MVTIFP program began. However, in 2020, motor vehicle thefts have been on the rise in counties all over the State. According to DCJS statistics, thefts of motor vehicles mid-year in 2020 were up between 30% and 47%, depending on the county. According to the NYPD, auto thefts in New York City were up almost 60% since the beginning of the year.

Although the cause of the rise in motor vehicle thefts is not immediately clear, the sheer increase in auto thefts points to a need for money for the MVTIFP program.

The budget for Fiscal Year 2020-2021 allocated \$3.7 million for services and expenses related to local anti-auto theft programs.

DAASNY requests \$4 million for this important program to combat motor vehicle theft statewide.

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Office of the Special Narcotics Prosecutor (SNP)

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

Since 1990-1991, the SNP budget has been cut by 74.6%, from \$3.5 million to \$825,000 in 2020-2021.

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

DAASNY requests that \$900,000 be provided to SNP in the Fiscal Year 2021-2022 budget.

Sincerely,



Sandra Doorley
President, DAASNY
Monroe County District
Attorney

CC:

Robert F. Mujica, Director of Budget
Andrea Stewart-Cousins, NYS Senate Majority Leader
Carl Heastie, NYS Assembly Speaker