

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

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2021 Joint Budget Hearing Testimony
Public Protection
District Attorneys Association of the State of New York (DAASNY)
February 10, 2021

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Thank you for the opportunity to speak to you today on behalf of the District Attorneys Association of the State of New York.

There is no doubt that this will be one of the most challenging budgets that our state will face. All of you and the Governor have difficult decisions to make. In addition to an estimated fifteen billion dollar budget gap, COVID-19 has redefined nearly every aspect of our world including the court system, how law enforcement functions and how crimes are reported, investigated and prosecuted. I commend you for your attention and commitment to improving the criminal justice system in our state and I am here to encourage you and your staff to have meaningful conversations with District Attorneys from all parts of our state. Together, we can continue to ensure a safe, fair and efficient criminal justice system for all New Yorkers.

We have reviewed the Public Protection items in the proposed Executive Budget and as you go forward and make important decisions, 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 help those who are in need of assistance, such as drug and alcohol treatment programs and mental health services.

New York State's new discovery laws took effect shortly before COVID-19 essentially required most of the workforce to work from home, including prosecutors. While many prosecutors were forced to work from home, many also appeared in courtrooms every day, in person, to ensure defendants were properly arraigned. They also met with vulnerable witnesses and presented cases to grand juries and performed hearings and trials. Assistant District Attorneys in all offices remained on call to assist police officers and go to major crime scenes. Prosecutors kept the criminal justice system operating to ensure the rights of the accused and make sure the rights of crime victims were protected. This was also during a time when just about every part of our state was experiencing a significant rise in homicides and gun violence that continues today.

Prior to the pandemic, District Attorney's offices spent months preparing for compliance with the new laws that provided for expanded and expedited discovery. Our offices spent a lot of time establishing new mechanisms for retrieving, preparing and exchanging discovery, which required new and updated technology, additional cloud storage, additional staff and specialized staff training. When the stay at home orders took effect we quickly realized that the focus on electronic discovery enabled our offices to shift to working remotely and to continue exchanging evidence with defense attorneys. I cannot stress the importance of funding for updated technology and staff training.

Funding for statewide efficient discovery should dedicate money for the Prosecutors Case Management System (PCMS) and its companion program, the Digital Evidence Management System (DEMS). This is a web-based system that is already in place and is administered by the New York State Prosecutors Training Institute (NYPTI). Currently, 55 of New York's 62 Counties are already using this platform that tracks information, automatically generates required notices, tracks discovery and provides a mechanism to deliver discovery to defense timely.

To help offices comply with the new discovery laws, NYPTI added DEMS that connects prosecutors, police agencies, crime analysis centers, 911 call centers, defense attorneys and others. DEMS is an efficient, secure solution to all of the individual components related to the exchange of discovery. Prosecutors are able to manage documents, review body worn camera footage,

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surveillance videos, photos and almost any digital evidence in an online platform. Law enforcement agencies that are trained and equipped to utilize DEMS can upload their case files and it is directly accessible to defense attorneys. The continued, proper investment in DEMS hardware, software, storage, staff and training will maintain efficient and secure streamlining of discovery.

Last year's budget established a District Attorney Compensation fund that would direct \$40 million to prosecutors across the State for discovery costs. While this is a great start and an acknowledgement that funds are needed to comply with discovery, money from this fund has not yet been made available to our offices. Further, when it becomes available, we have been advised by DCJS, that it will be through a grant solicitation process available to the 57 counties outside of New York City. While this will certainly help our offices, there is no guarantee that all offices will be adequately funded to keep up with rising personnel costs, technology costs and data storage costs.

Pursuant to a state law that will take effect on April 1, all New York State Police officers on patrol will be required to wear body worn cameras. The Executive Budget includes funding for body worn cameras for the state police. Across the state, many larger police agencies have been equipping officers with body worn cameras for many years now. District Attorneys are committed to the use of body worn cameras by law enforcement. These cameras memorialize police-civilian encounters from a visual perspective and foster public trust. However, maintenance and storage of digital evidence is costly. Specialized software is needed to "tag" camera footage in a way that connects it to the correct arrest record with a transcription of dialogue. In addition to ongoing expenses, body worn camera footage requires a great expenditure of staff time to review, redact, transcribe, translate and disclose thousands of hours of recordings. It is estimated that for every 100 cameras on the street, a District Attorney's office will need at least one additional staff member. There are also significant costs associated with storage. A 2018 report conducted by the Police Executive Research Forum found that the median annual costs related to storing electronic files containing video footage from the cameras was \$1000 per month on average and in one large department it was \$4 million a year just to store video files. These costs do not include administrative and personnel costs. I urge that you consider allocating money to District Attorney's offices and police departments for costs associated with body worn cameras so that the materials can be securely and efficiently provided to courts and defendants.

Since the start of the pandemic, virtual hearings have become part of the new normal and continue to allow essential court functions to operate in our state. The Governor's budget proposes to allow for the continued use of electronic court appearances (excluding hearings and trials) for criminal cases in any county as long as the chief administrator of the courts has authorized the use of electronic appearances and the defendant consents on the record. As you continue to explore this necessary tool, I ask you to consult with prosecutors as well as the defense bar to ensure the success and efficiency of virtual proceedings in every county as well as safeguard the rights of both those accused of crimes and the victims. Further, adequate and up to date technology, equipment and secure broadband connections must be fully funded for successful virtual hearings.

With the inclusion of marijuana legalization and the creation of a statewide cannabis industry in the Executive Budget, District Attorneys remain concerned about road safety, which has been the biggest challenge in states that have legalized adult recreational use marijuana. The way the human body metabolizes THC makes it a challenge for those who are responsible for roadway safety to properly hold people who drive under the influence of marijuana accountable. Additional drug recognition experts will be needed in police departments as well as additional money for training. I encourage you to continue to have a dialogue with prosecutors and police agencies so that we can help make sure that the creation of a statewide cannabis industry is done in the safest and most responsible manner.

I thank you for the opportunity to speak here today and I want to reiterate that District Attorneys want to be part of all of these conversations. We stand ready to continue this dialogue in the coming weeks and months. I have also submitted a copy of our annual budget letter where we highlight and expand on our additional priorities and budget needs.