

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

2 -----

3 JOINT LEGISLATIVE HEARING

4 In the Matter of the
5 2021-2022 EXECUTIVE BUDGET ON
6 PUBLIC PROTECTION

6 -----

7 Virtual Hearing
8 Held via Zoom

9 February 10, 2021
10 9:40 a.m.

11 PRESIDING:

12 Senator Liz Krueger
13 Chair, Senate Finance Committee
14 Assemblywoman Helene E. Weinstein
15 Chair, Assembly Ways & Means Committee

16 PRESENT:

17 Senator Thomas F. O'Mara
18 Senate Finance Committee (RM)
19 Assemblyman Edward P. Ra
20 Assembly Ways & Means Committee (RM)
21 Senator Brad Hoylman
22 Chair, Senate Committee on Judiciary
23 Assemblyman Charles D. Lavine
24 Chair, Assembly Committee on Judiciary
25 Senator Jamaal T. Bailey
26 Chair, Senate Committee on Codes
27 Assemblyman Jeffrey Dinowitz
28 Chair, Assembly Committee on Codes

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3 PRESENT: (Continued)

4 Senator Julia Salazar
Chair, Senate Committee on Crime Victims,
5 Crime and Correction

6 Assemblyman David I. Weprin
Chair, Assembly Committee on Correction

7
8 Senator John E. Brooks
Chair, Senate Committee on Veterans,
Homeland Security and Military Affairs

9
10 Assemblyman Kenneth P. Zebrowski
Chair, Assembly Committee on Governmental
Operations

11
12 Senator Diane J. Savino
Chair, Senate Committee on Internet and
Technology

13
14 Senator Gustavo Rivera

15
16 Assemblyman Harry B. Bronson

17
18 Senator Pete Harckham

19
20 Assemblyman Edward C. Braunstein

21
22 Assemblywoman Deborah J. Glick

23
24 Senator Andrew Gounardes

Assemblyman Erik M. Dilan

Assemblywoman Jenifer Rajkumar

Assemblyman Phil Steck

Assemblywoman Dr. Anna R. Kelles

Senator James Tedisco

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3 PRESENT: (Continued)

4 Senator Anna M. Kaplan

5 Assemblywoman Karen McMahon

6 Assemblyman Demond Meeks

7 Assemblyman Ron Kim

8 Assemblyman Philip A. Palmesano

9 Senator Todd Kaminsky

10 Assemblyman Andy Goodell

11 Assemblywoman Catalina Cruz

12 Assemblyman Mike Lawler

13 Senator Kevin Thomas

14 Assemblyman Michael Tannousis

15 Assemblywoman Patricia Fahy

16 Assemblyman Harvey Epstein

17 Assemblyman Anthony H. Palumbo

18 Senator George M. Borrello

19 Assemblywoman Rebecca Seawright

20 Assemblywoman Latoya Joyner

21 Senator John C. Liu

22 Assemblyman Michael Reilly

23 Assemblywoman Alicia Hyndman

24 Assemblywoman Carmen N. De La Rosa

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3 PRESENT: (Continued)

- 4 Senator Jeremy A. Cooney
- 5 Assemblywoman Marjorie Byrnes
- 6 Assemblyman Angelo J. Morinello
- 7 Assemblywoman Latrice Walker
- 8 Assemblyman Daniel J. O'Donnell
- 9 Assemblyman Chris Burdick
- 10 Assemblyman Mark Walczyk
- 11 Assemblyman Jake Ashby
- 12 Senator Elijah Reichlin-Melnick
- 13 Assemblyman Kevin M. Byrne
- 14 Assemblywoman Linda B. Rosenthal
- 15 Assemblyman Jeffrion L. Aubry

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5 Manuel M. Vilar
 Vice President & CAO
 6 Police Benevolent Association
 of New York State
 7 -and-
 Timothy M. Dymond
 8 President
 New York State Police Investigators
 9 Association
 -and-
 10 Richard Wells
 President
 11 Police Conference of New York State
 -and-
 12 Michael O'Meara
 President
 13 New York State Association of
 Police Benevolent Associations
 14 -and-
 Thomas H. Mungeer
 15 President
 New York State Troopers Police
 16 Benevolent Association 532 549

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5 J. Anthony Jordan
 Washington County District Attorney
 6 -on behalf of-
 District Attorneys Association
 7 of the State of New York
 -and-
 8 Susan C. Bryant
 Executive Director
 9 NYS Defenders Association
 -and-
 10 Laurette Mulry
 President
 11 Chief Defenders Assn. of NY
 -and-
 12 Audrey Sample
 Founder and Group Lead
 13 Students Demand Action Rochester
 -and-
 14 Regina Ritcey
 Executive Director
 15 NYS Dispute Resolution Assn. 568 586

16 Elizabeth Gaynes
 CEO and President
 17 The Osborne Association
 -and-
 18 Shayna Kessler
 Senior Planner
 19 Vera Institute of Justice
 -and-
 20 Yonah Zeitz
 Policy Coordinator
 21 Katal Center for Equity,
 Health and Justice
 22 -and-
 Barry Graubart
 23 Deputy Chapter Leader
 Moms Demand Action for
 24 Gun Sense in America,
 New York Chapter 596

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5 Sarah Bertozzi
Managing Attorney and Director
6 of Immigration Legal Services
Journey's End Refugee Services

7 -and-

Terry Lawson
8 Executive Director
UnLocal

9 -and-

10 Elena Sassower
Director
Center for Judicial
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1 CHAIRWOMAN KRUEGER: Good morning.
2 I'm Senator Liz Krueger, chair of the Senate
3 Finance Committee. And I'm joined today by
4 many people but most importantly my cochair
5 of today's budget hearing from Ways and
6 Means, Assemblywoman Helene Weinstein.

7 Today is the joint legislative hearing
8 for fiscal year 2021-2022 on
9 Public Protection, issued within the
10 Executive Budget.

11 It's Wednesday, February 10th, around
12 9:40 in the morning. Check back at 9:40
13 tonight -- we'll still be here, I'm going to
14 tell you, because today will be a very long
15 hearing because there are so many different
16 overlapping agencies within the rubric of
17 public protection.

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

21 Today the Senate Finance Committee and
22 Assembly Ways and Means Committee will hear
23 testimony concerning the Governor's proposed
24 budget for the Judiciary, the State

1 Commission on Judicial Conduct, the Office of
2 Indigent Legal Services, New York State
3 Division of Homeland Security & Emergency
4 Services, New York State Office of
5 Information Technology, New York State
6 Division of Criminal Justice Services, the
7 State Department of Corrections and Community
8 Supervision, and the State Division of State
9 Police.

10 Following each testimony there will be
11 time for questions from the chairs and
12 rankers and other legislators. Following the
13 eight representatives from state government,
14 we will move to testimony from the public who
15 has asked to testify here today.

16 All testimony is available online and
17 can be read by each and every legislator and
18 everyone in the public.

19 If you asked to testify but you were
20 turned down because it was too crowded, you
21 are still welcome to submit testimony even
22 past today's date. And for those of you who
23 are just listening in and want to read along,
24 you should have access to quite a bit of the

1 testimony online already.

2 I'm now going to introduce members of
3 the Senate, and Helene will introduce members
4 of the Assembly. Following, we'll have
5 introductions by the Senate --

6 (Zoom interruption.)

7 CHAIRWOMAN KRUEGER: Oh, somebody
8 please mute yourself if you're not me talking
9 at the moment.

10 SENATOR O'MARA: Sorry.

11 CHAIRWOMAN KRUEGER: That's okay.
12 Thank you. That's another rule for these
13 hearings: Remember to mute yourself if
14 you're not the one who's supposed to be
15 actually speaking.

16 We have so many Senators here today,
17 but Jamaal Bailey, John Brooks, Julia
18 Salazar, Brad Hoylman. I'm just going
19 through the -- Gustavo Rivera, Pete Harckham,
20 Diane Savino, Anna Kaplan, John Liu.

21 Let's pass it to Tom O'Mara, the
22 ranker, to name his members who are here
23 today.

24 SENATOR O'MARA: Good morning. Thank

1 you, Senator Krueger.

2 We are joined on the Minority side by
3 Senator Jim Tedisco. I'm sure others will be
4 joining as we progress throughout the day.

5 CHAIRWOMAN KRUEGER: Thank you.

6 And now I'll pass it over to
7 Assemblywoman Helene Weinstein to introduce
8 Assemblymembers.

9 CHAIRWOMAN WEINSTEIN: Thank you.

10 We are joined by Assemblyman Lavine,
11 chair of our Judiciary Committee; Assemblyman
12 Dinowitz, chair of our Codes Committee;
13 Assemblyman Zebrowski, chair of our Gov Ops
14 Committee. And members of those committees:
15 Members Braunstein, Bronson, Dilan, Epstein,
16 Hyndman, Joyner, Kelles, McMahon, Meeks,
17 Rajkumar, Seawright, Steck. And we probably
18 will have additional members joining us as
19 the hearing continues.

20 Let me turn it over -- let me just
21 have Assemblyman Ra, the ranker on Ways and
22 Means, introduce his colleagues.

23 ASSEMBLYMAN RA: Thank you, Chair.

24 We are joined this morning by

1 Assemblyman Mike Lawler, the ranker on our
2 Gov Ops Committee; Assemblyman Morinello,
3 who's the ranker on our Codes Committee;
4 Assemblywoman Byrnes; Assemblyman Walczyk;
5 Assemblymen Goodell, Reilly and Tannousis.

6 SENATOR O'MARA: If I may add, Senator
7 Krueger, I understand that we're also trying
8 to be joined by Senator Palumbo. I think
9 he's in the waiting room awaiting admission.

10 CHAIRWOMAN KRUEGER: Okay. So one of
11 the moderators please let the Senator in.
12 They'll figure that out. Thank you, Tom.

13 All right, continuing along, I'm just
14 going to list out the testifiers for today,
15 and then we'll just call up each one. Just
16 know when they start to testify, right before
17 they start, we'll announce who the chairs of
18 the relevant committees are for that specific
19 testifier, because the rules of the road
20 changed slightly.

21 Our guests have 10 minutes to do their
22 presentations. Chairs have 10 minutes, if
23 it's appropriate for the committee, to ask
24 and get answered their questions. Rankers or

1 chairs of other committees related to this
2 hearing get five minutes to ask and get
3 answered their questions. Other members get
4 three minutes to ask and answer.

5 Only the relevant chair for that
6 committee gets a second-round possibility, if
7 they need it, at the end.

8 I'll go over this a few times today.
9 But so, for example, our first testifier will
10 be Lawrence Marks, chief administrative judge
11 of the Office of Court Administration, and
12 the relevant committee is Judiciary, so
13 Chairs Hoylman and Lavine will go first and
14 have the first 10-minute opportunities. And
15 then their rankers have five minutes. The
16 flow -- you'll figure out the flow as the day
17 goes along, and I'll continue to explain.

18 So again, we have Chief Administrative
19 Judge Lawrence Marks. And I'm going to
20 introduce the others as we go along.

21 Good morning, Judge.

22 CHIEF ADMIN. JUDGE MARKS: Good
23 morning, Senator Krueger. And good morning,
24 everyone. It's good to see everyone. And

1 thank you.

2 I'm Lawrence Marks. I'm chief
3 administrative judge of the Unified Court
4 System, and I'm pleased to appear this
5 morning to discuss the Judiciary's budget.

6 So for the upcoming fiscal year, which
7 as you know is fiscal year 2022, we are
8 asking for the same level of appropriations
9 we received for the current fiscal year.
10 However, our spending plan has changed from
11 the one presented to you a year ago.

12 For fiscal year 2021, spending under
13 the Judiciary has been reduced by
14 \$291 million. That's a 10 percent reduction.
15 In the fiscal year 2022, the Judiciary State
16 Operating Spending Plan assumes continuation
17 of this reduced spending level of 2.25
18 billion.

19 And I will address this shortly, but
20 first I'd like to put our budget submission
21 in its proper context by briefly summarizing
22 for you the Judiciary's experience over the
23 past year. And this experience, of course,
24 could not have been anticipated in February

1 2020 when I last appeared before you to
2 report on our budget.

3 Since that time, New York's Judiciary,
4 along with the rest of the state, has faced
5 multiple challenges as a result of the
6 COVID-19 pandemic. These challenges include
7 the unprecedented task of keeping the courts
8 operating consistent with a rapidly evolving
9 understanding of public health needs.

10 Back in March as the extent of the
11 pandemic first became apparent and as the
12 state began instituting aggressive measures
13 to protect the community, the Judiciary took
14 the first of several critical steps affecting
15 court operations. While determined to keep
16 the courts open for business, we initially
17 limited our operations to essential and
18 emergency applications only. Over the next
19 few weeks, however, we put into effect a
20 program of virtual court operations to permit
21 the widest possible delivery of justice
22 services to litigants and lawyers. This made
23 it possible and continues to make it possible
24 for judges and staff to safely conference

1 cases in all of our courts across the state,
2 to the point where more than 20,000 cases a
3 week are now conferenced to produce
4 settlements, referrals to virtual alternative
5 dispute resolution, and decisions on motions.

6 Virtual court operations now also make
7 it possible to conduct hundreds of
8 evidentiary hearings and bench trials each
9 week.

10 As we took these steps to institute
11 and expand a virtual court system, we were
12 also planning for the resumption of in-person
13 proceedings. Closely adhering to applicable
14 public health protocols, we instituted a
15 range of safety measures to protect the
16 health of all who enter and work in the
17 courthouses. This permitted us to resume
18 certain in-person proceedings during the
19 summer and fall months, including, among
20 other things, impaneling of grand juries in
21 all of the state's counties, and some civil
22 and criminal jury trials.

23 With the resurgence of the virus since
24 the holiday season, we have had to curtail

1 many of these in-person proceedings, but we
2 are ready to resume them in the days ahead
3 once public health authorities make clear
4 that it is safe to do so.

5 So now, just going back to the budget,
6 the projected multi-billion-dollar deficit
7 the state faces as a result of the pandemic
8 has had a major impact on the Judiciary.
9 Last spring the Governor, in his revised
10 financial plan, urged the Judiciary to reduce
11 its current fiscal year spending by
12 10 percent. Notably, that amount was then
13 deducted from the financial plan. As a
14 result, and as a responsible partner in state
15 government, we went ahead and reduced our
16 spending by that amount.

17 A spending reduction of this
18 magnitude -- a reduction significantly larger
19 than the reduction we absorbed in 2011 when
20 the state faced its last budget crisis -- is
21 an enormously challenging task for the court
22 system. Our annual budget is overwhelmingly
23 made up of personnel costs, with roughly 90
24 percent of the budget going to salaries of

1 judges and nonjudicial staff, along with
2 health, pension and other fringe benefit
3 costs.

4 So it follows that any effort to
5 substantially reduce our spending must entail
6 reductions in personnel costs.

7 In making these reductions, there were
8 no easy choices. Like much of state
9 government, the Judiciary has been living for
10 years with very-limited-growth budgets.
11 Although in many respects we are faced with a
12 need to provide more services than a decade
13 ago, our annual budgetary allocation has only
14 marginally increased since then. This has
15 left us with little budgetary flexibility
16 when there is a need, as now, to economize.

17 Also complicating our effort has been
18 the fact that coping with the pandemic and
19 keeping the courts open as much as possible
20 for virtual and in in-person proceedings has
21 necessitated substantial expenditures for
22 technology, enhanced court cleaning, PPE and
23 courthouse retrofits. In addition, overtime
24 costs have increased for our technology and

1 public safety staff.

2 Early on we took a necessary first
3 step: We instituted a strict hiring freeze.
4 And so far this fiscal year more than
5 730 positions that were lost to attrition
6 remain vacant. While this has cost no one
7 their job, its impact on court operations
8 cannot be overstated. Our nonjudicial
9 workforce is the lifeblood of the court
10 system. With no end in sight for the hiring
11 freeze, the Judiciary staffing level now
12 stands below 15,000 employees across the
13 state. This is 2,200 fewer employees than we
14 had 12 years ago, a 13 percent reduction in
15 our workforce.

16 If the hiring freeze must remain in
17 effect much longer, we can expect a
18 diminished staffing level not seen by the
19 courts in several decades.

20 While the Chief Judge's Excellence
21 Initiative in recent years has helped the
22 courts become more efficient than ever
23 before, our short staffing will make it
24 increasingly difficult to conduct the

1 Judiciary's work in effective and timely
2 manner.

3 Particularly post-pandemic, when
4 things return to a more normal course of
5 business, this can have particular
6 consequences for operations in courts that
7 primarily serve economically disadvantaged
8 litigants, including Family Court and Housing
9 Court.

10 Among the other hard choices we made
11 this year was the decision not to certificate
12 most of the Supreme Court justices who,
13 having reached 70 and older, were seeking to
14 remain in judicial service. Obviously this
15 was a very difficult decision, and toward the
16 end of 2020 some of you asked that we
17 reconsider it. In fact, some of the justices
18 impacted by this decision have sued to have
19 the decision overturned in the courts.

20 As difficult as this decision may have
21 been, we had no choice. By not certificating
22 these justices, the Judiciary will save
23 \$55 million over two calendar years. The
24 grim alternative for us, in order to find

1 comparable savings elsewhere in the budget,
2 would be to lay off 325 or more nonjudicial
3 employees -- and again, that's in addition to
4 the 730-plus positions left open so far
5 through the hiring freeze. This was simply
6 unacceptable, both operationally and morally.

7 First, as we learned from our
8 experience in 2011 when the need for fiscal
9 austerity required layoffs of several hundred
10 employees, such a reduction can have a
11 crippling effect on court operations. And as
12 I have noted, this effect will be felt most
13 in courts that primarily serve economically
14 disadvantaged litigants, who rely heavily on
15 advice and direction from court staff to be
16 able to navigate the court process.

17 Second, because of the way civil
18 service rules apply to layoffs, requiring
19 layoffs now would fall most heavily on
20 younger court employees not eligible to
21 collect their pensions and strand them
22 without income in what is a very difficult
23 job market.

24 The remaining austerity steps we've

1 taken include limitations on nonpersonal
2 service spending. And I won't go through
3 that; they're listed in my written testimony
4 that you have.

5 So as we approach the start of the
6 2022 fiscal year, some have suggested that we
7 should make more optimistic assumptions that
8 before long the federal government will
9 provide financial assistance to New York and
10 other states, and that assistance will cut
11 New York's large deficit and enable agencies
12 of government, including the Judiciary, to
13 ease up on their austerity measures. We
14 certainly hope they are right, but we cannot
15 base our plan on their hopes.

16 For this reason, we've submitted a
17 flat spending plan that maintains the
18 reductions implemented this fiscal year.
19 However, our budget seeks the same level of
20 appropriations that was approved for the
21 current fiscal year. So if the state's
22 fiscal situation does improve in the days
23 ahead and the Judiciary is able to share in
24 the benefits of that, we will have the

1 spending authority to meet all or at least
2 more of our needs. But if that situation
3 does not improve, we are prepared to continue
4 operating under the spending reductions we
5 have imposed during the current year.

6 Our overarching goals will be to keep
7 all courts open and to avoid layoffs of
8 nonjudicial personnel. The present hiring
9 freeze will remain in place, as will the
10 reductions in various Judiciary programs, but
11 we will fulfill our constitutional mandate
12 notwithstanding these cutbacks.

13 And so just if I could conclude, I
14 want to emphasize that now more than ever, as
15 the state works to manage an enormous fiscal
16 deficit while fighting the worst public
17 health threat in our lifetime, the courts
18 remain dedicated to ensuring the fair and
19 prompt administration of justice.

20 The budget we have submitted will, if
21 approved, enable us to continue our mission
22 regardless of what's in store for us in the
23 days ahead. If it turns out that the state's
24 present fiscal crisis requires that we

1 continue to operate within a reduced spending
2 level, we can do so under this budget. If
3 instead the state's fiscal condition
4 improves, this budget will permit us to
5 resume more normal operations.

6 Thank you for your attention, and of
7 course I'm happy to answer any questions.

8 CHAIRWOMAN KRUEGER: Thank you very
9 much.

10 The first to question will be chair of
11 the Judiciary Committee in the Senate,
12 Senator Brad Hoylman.

13 SENATOR HOYLMAN: Thank you, Chair
14 Krueger and Chair Weinstein. Thank you for
15 all of your work on these hearings.

16 And it's good to see you, Judge. I
17 appreciate the difficult circumstances under
18 which you and your colleagues are operating.

19 And let me just say from the outset
20 I'm concerned about the fact that a separate,
21 coequal branch of government is imposing
22 austerity measures -- I'm not talking about
23 the Legislature, I'm talking about the
24 Judiciary -- because I don't think the

1 austerity and the meting out of justice go
2 hand in hand. But that's my editorializing
3 as I open this hearing.

4 I wanted to ask you specifically about
5 what public health guidance you're following
6 in terms of opening in-person proceedings, as
7 you mentioned in your testimony. Frankly,
8 I'm concerned about the health and well-being
9 of many of our judges. And correct me if I'm
10 wrong, most of those judges are not getting
11 vaccinated unless they're eligible otherwise.

12 CHIEF ADMIN. JUDGE MARKS: That's
13 correct. Judges are not among the categories
14 of groups eligible for testing under the
15 phases that have been implemented so far.
16 And we've strongly urged the executive branch
17 to include judges and render them eligible
18 for the vaccine, because that's critically
19 important to eventually resuming to more
20 normal operations.

21 SENATOR HOYLMAN: Thank you. And as
22 you mentioned, your budget request keeps the
23 All Funds operations appropriations flat at
24 2.4, 2.5 billion. And as you note, last year

1 you cut your budget by 300 million. If we
2 approve your budget as requested this year,
3 so you're going to cut your budget again? Is
4 that what I'm hearing?

5 CHIEF ADMIN. JUDGE MARKS: No, we will
6 maintain the 10 percent reduction that we
7 experienced this fiscal year.

8 So it's -- what we're seeking -- I
9 mean, obviously, like everything, this is a
10 little more complicated this year. We're
11 seeking the same amount of cash as we have in
12 the current fiscal year, factoring in the
13 10 percent reduction this fiscal year, but
14 our appropriation level is significantly
15 higher. It's what was approved by the
16 Legislature last year. It represents a
17 2 percent increase over the year before that.

18 And the reason why we want to maintain
19 that higher appropriation level is that if
20 there is federal aid forthcoming and New York
21 receives federal aid and the Judiciary
22 benefits from that, we will be able to
23 receive and spend more money up to that
24 higher appropriation level.

1 SENATOR HOYLMAN: So what does that
2 mean for civil legal services? You know,
3 obviously a very important function to make
4 certain that the most underserved have legal
5 representation, particularly during these
6 difficult times.

7 Can you commit, Judge, to keeping that
8 100 million in funding for civil legal
9 services intact and not cutting it moving
10 forward?

11 CHIEF ADMIN. JUDGE MARKS: Well, what
12 we did, as part of the 10 percent
13 reduction -- the 100 million is in two parts.
14 Fifteen million of that is a pass-through in
15 our budget that we suballocate to the IOLA
16 fund, which uses that money in awarding
17 grants to legal services organizations.

18 That was untouched, and that
19 15 million has been passed through this
20 fiscal year to IOLA. And that will -- if our
21 budget is approved, that will continue in the
22 upcoming fiscal year.

23 What we did reduce by 10 percent was
24 the remaining \$85 million, which is money

1 that we award in grants to approximately
2 80 civil legal services organizations. We
3 did, in this 10 percent cut, reduce that
4 85 million by 10 percent, by \$8.5 million.

5 And because we're seeking a flat
6 budget, we've put in for a flat budget for
7 the upcoming fiscal year, that lower level of
8 money in grants for civil legal services
9 organizations would continue, it would be
10 \$8.5 million left in the upcoming fiscal
11 year, unless we get more money in our budget.

12 SENATOR HOYLMAN: Well, Judge, I don't
13 have to tell you, as a representative -- and
14 I bet everyone who's on this Zoom would
15 agree -- we want you to spend the
16 100 million. We want our constituents
17 represented in court. I would urge you to
18 spend that, Judge. It's just so crucial,
19 particularly given the complicated legal
20 factors now at play for so many folks who are
21 seeking legal representation.

22 How about the -- OCA's contract with
23 Housing Court Answers? Are we looking at a
24 23 percent reduction there, as I understand

1 it?

2 CHIEF ADMIN. JUDGE MARKS: That's news
3 to me. I can check that. But Housing Court
4 Answers is one of the 80 or so organizations
5 that receive grants out of the 85 million.
6 They would have -- I'll have to check this,
7 and I will get back to you on this. But they
8 should not have been reduced more than the 10
9 percent reduction that was imposed across the
10 board.

11 But I will check that.

12 SENATOR HOYLMAN: And -- thank you.
13 We'll follow up with you on that.

14 And obviously an issue that rankles a
15 lot of the members of the judiciary is the --
16 is one you touched on, the certification of
17 judges. Because, you know, we believe -- I
18 think, again, many of my colleagues agree --
19 that this is penny-wise, pound-foolish to
20 decertify these 46 judges that had reached
21 the constitutional retirement age of 70.

22 Just -- I wanted to point out
23 something, Judge. Article 6 of the
24 Constitution and the statute governing the

1 certification process requires that the
2 services of judges be "necessary to expedite
3 the business of the court" and that "he or
4 she is mentally and physically able and
5 competent to perform the duties of the
6 office."

7 Is it your contention that these
8 46 judges have failed to satisfy this
9 two-prong test?

10 CHIEF ADMIN. JUDGE MARKS: That is our
11 position.

12 And that's based on the much broader
13 interpretation of the language in the
14 Constitution that courts have applied in how
15 they've interpreted that language over the
16 years, including Court of Appeals decisions,
17 including a relatively recent Court of
18 Appeals decision in 2017. That that language
19 has always been interpreted far more broadly
20 than how it literally reads, and with very
21 good reason. And I could go into that if we
22 have the time.

23 But so -- and as I mentioned in my
24 opening remarks, this issue is now in

1 litigation. In fact, the case was argued
2 before the appellate division just yesterday
3 morning. So I don't want to get into too
4 much of a discussion about it because I'm a
5 named defendant in that lawsuit.

6 But we strongly believe that there was
7 -- that this is entirely legal, it was
8 appropriate as a matter of good public policy
9 and good fiscal policy. It was an extremely
10 difficult decision, don't get me wrong about
11 that, but that it was entirely legal and we
12 expect to prevail once the lawsuits are
13 resolved in the courts.

14 SENATOR HOYLMAN: If you get
15 additional funding through federal aid, for
16 example, will you bring those judges back?

17 CHIEF ADMIN. JUDGE MARKS: Well,
18 that's a good question. Because there's some
19 dispute about whether that would be
20 authorized under the provision in the
21 Constitution, because those judges are
22 retired now from the court system.

23 But to answer your question, because
24 of the litigation I can't really -- basically

1 you're saying can we settle the case if there
2 was money forthcoming. That's something that
3 could be discussed, but I'd rather not do
4 that in this venue.

5 SENATOR HOYLMAN: And may I ask,
6 Judge, how is the refusal to certificate
7 these judges going to impact the nonjudicial
8 employees that work with and for those
9 judges?

10 CHIEF ADMIN. JUDGE MARKS: You mean
11 their personal staff?

12 SENATOR HOYLMAN: Yes.

13 CHIEF ADMIN. JUDGE MARKS: We -- we --
14 this is unfortunately not widely understood
15 and known, but that was about 90 or so
16 personal appointees of these judges who
17 weren't certificated. For those who wanted
18 to continue employment in the court system,
19 we have placed all of them with other judges
20 and a few in other positions in the court
21 system.

22 So they've been saved, those who have
23 asked to continue. Some retired themselves,
24 voluntarily, but those who wanted to stay on

1 we've placed with other judges in other
2 positions in the court system, fortunately.

3 SENATOR HOYLMAN: Thank you. And my
4 time is up, Chair.

5 CHAIRWOMAN KRUEGER: Thank you very
6 much, Chair.

7 SENATOR HOYLMAN: Thank you, Judge.

8 CHIEF ADMIN. JUDGE MARKS: Thank you.

9 CHAIRWOMAN KRUEGER: Assemblywoman.

10 CHAIRWOMAN WEINSTEIN: Before we go to
11 our chair of Judiciary, we've been joined by
12 Corrections Chair Assemblyman Weprin,
13 Assemblywoman De La Rosa, Assemblywoman
14 Glick, Assemblywoman Cruz, Assemblywoman Fahy
15 and Assemblyman Burdick.

16 So now we go to Charles Lavine, the
17 chair of our Judiciary Committee, for
18 10 minutes.

19 CHAIRWOMAN KRUEGER: And just a
20 reminder, as Chuck is starting to talk --
21 sorry -- if you want to be on the questioning
22 list, you have to raise your hand, which is
23 at the bottom of your screen in the center.
24 Thank you.

1 Sorry, Assemblymember Lavine.

2 ASSEMBLYMAN LAVINE: I accept your
3 apology, and thank you, Chair Krueger. And
4 thank you, Chair Weinstein.

5 It certainly seems to me that at a
6 time of savage and unprecedented attacks on
7 our institutions of government, today's
8 hearing takes on unprecedented significance.

9 In his classic book On Tyranny,
10 Professor Timothy Snyder teaches us that in
11 times of great civil crisis our institutions
12 of government, such as our courts, cannot
13 protect us, the citizens, unless we protect
14 them as well.

15 So with that in mind, good morning,
16 Your Honor. It's always a pleasure to see
17 you. And please convey my gratitude to our
18 judges, our administrative staff, and
19 everyone who works in our courthouses.
20 Including court officers, court reporters,
21 and those who have the challenging task of
22 cleansing and sanitizing our courthouses as
23 well.

24 So on this subject of the

1 non-certificated judges, we anticipate --
2 meaning the courts anticipate -- that there
3 will be approximately 55 million in
4 savings -- over the course of this year and
5 next year?

6 CHIEF ADMIN. JUDGE MARKS: Well, it's
7 over the course of this calendar year and the
8 next calendar year, because the terms of
9 certificated judges are not coterminous with
10 our fiscal year.

11 So the savings would be in the last
12 three months of this fiscal year, the full 12
13 months of the upcoming fiscal year, and nine
14 months of the fiscal year after that.

15 ASSEMBLYMAN LAVINE: So does that
16 amount of money, that 55 million,
17 approximately, does that also include judges
18 who this year will reach the age of 70 and
19 may request to be recertificated or
20 certificated, whatever the word is? And does
21 it also include the judges who had been given
22 certificates to continue past 70 whose
23 two-year term will expire this year?

24 CHIEF ADMIN. JUDGE MARKS: No, the 55

1 million pertains only to the 46 judges who
2 were not certificated to start the beginning
3 of this calendar year, January 1, 2021.

4 The judges who are currently
5 certificated and those whose certification --
6 you know, you're right, it's difficult to
7 pronounce. Those who would be up for
8 recertification, recertification at the end
9 of this calendar year are not impacted by the
10 decision that was made this fall.

11 And hopefully later this year the
12 administrative board of the courts will be
13 able to certificate and recertificate all or
14 most of those judges.

15 ASSEMBLYMAN LAVINE: So there's a
16 movement to make permanent virtual or remote
17 arraignments in our criminal courts.

18 Do you have any particular view on
19 whether that would be beneficial or
20 detrimental to the concerns of due process?

21 CHIEF ADMIN. JUDGE MARKS: Well, you
22 know, we've been -- out of necessity --
23 forced to convert to virtual proceedings
24 throughout the court system, including for

1 criminal arraignments. The -- it's been
2 successful. It was obviously done for health
3 and safety reasons, and a lot of this
4 experiment, if you will, with virtual court
5 proceedings I believe will continue
6 post-pandemic, post-vaccination.

7 But whether that makes sense for
8 arraignments is something we would have to
9 look at. We'd be interested in the views of
10 our judges, how they feel about that. We'd
11 be interested in the views of the district
12 attorneys, we would be interested in the
13 views, of course, of the criminal defense
14 bar, we'd be interested in the Legislature's
15 view on that. That's something we'd have to
16 look at.

17 It has been very successful. Tens of
18 thousands of arraignments -- everyone who's
19 been arrested in this state has been
20 arraigned, the vast percentage of which have
21 received arraignments within 24 hours. It's
22 been all virtual since the last week in
23 March. So it's been successful.

24 Whether it makes sense to continue

1 that is something we would have to look at at
2 the appropriate time.

3 ASSEMBLYMAN LAVINE: So as an old
4 public defender from many years ago, I might
5 simply add that something is really missing
6 in terms of due process and in terms of
7 interaction, basic interaction with those who
8 are charged with crimes where there is this
9 lack of personal immediacy between defense
10 counsel, even prosecutors and those accused,
11 and the judges and those accused as well.

12 But that's my two cents, as someone
13 who's been --

14 CHIEF ADMIN. JUDGE MARKS: I think
15 that's --

16 ASSEMBLYMAN LAVINE: -- defense
17 counsel in the past.

18 CHIEF ADMIN. JUDGE MARKS: Interested
19 in hearing about, you know --

20 ASSEMBLYMAN LAVINE: Thank you.

21 So we're going to end up with
22 substantial case backlogs in our courts as we
23 come to terms with how to best protect
24 ourselves in the COVID crisis. Do you think

1 that there are going to be changes in law
2 that will be required in order to help
3 address those backlogs?

4 CHIEF ADMIN. JUDGE MARKS:

5 Absolutely. You know, one of the things we
6 need to do to address backlogs -- I mean,
7 there's a series of things that we're going
8 to need to do, and we are doing, which
9 follows up on the Chief Judge's Excellence
10 Initiative, which was four years in the
11 making a year ago when we began to experience
12 the pandemic -- and was a very successful
13 initiative, dramatically successful in some
14 courts, in reducing delays and reducing
15 backlogs and resolving older cases.

16 So we know how to do this. And it's
17 by looking at the data and sharing the data
18 and focusing on older cases. And
19 importantly -- and this has happened to some
20 extent during the pandemic -- being able to
21 move resources around, judges and staff, to
22 address backlogs in the most efficient way.

23 So to answer your question, yeah, I
24 think that the most helpful and important

1 thing that the Legislature could do was to
2 revisit the chief judge's proposal that was
3 made last year to consolidate the trial
4 courts.

5 I don't want to go into a long
6 discussion about this today, but as you know,
7 we have 11 separate and distinct trial courts
8 in the state. It's far more than any other
9 state in the country. It's a complicated,
10 redundant, byzantine process. It makes it
11 much more difficult to administer the courts.

12 So if there was one thing in
13 particular that the Legislature should do, in
14 our opinion it would be to revisit that
15 proposal and pass it -- or at least, since
16 it's a constitutional amendment, see to first
17 passage of our proposal this legislative
18 year.

19 ASSEMBLYMAN LAVINE: Thank you, Judge.

20 Finally, the events of January 6th are
21 fresh on our minds and will forever be seared
22 on the mind and the heart of our nation.
23 We've never seen anything like this before.
24 Our courthouses represent our government.

1 Throughout the entire State of New York -- I
2 don't even know how many courthouses we have.
3 I bet we have more than a hundred courthouses
4 --

5 CHIEF ADMIN. JUDGE MARKS: Over 300.

6 ASSEMBLYMAN LAVINE: Over 300. See, I
7 wasn't even close. Close enough for
8 government work, as they say, but not close
9 enough.

10 What steps are anticipated to be taken
11 in order to provide protection to those
12 representatives -- those courthouses which
13 are so representative of our governmental
14 authority?

15 CHIEF ADMIN. JUDGE MARKS: It's an
16 excellent question. And in fact we did take
17 steps last month and, you know, we continue
18 to be on alert for the problem that you
19 raise.

20 Our public safety command, our
21 leadership of our court officer command, are
22 in regular contact with law enforcement, FBI
23 and other law enforcement, State Police, with
24 regard to credible threats, you know, to

1 government buildings in the state, including
2 courthouses. So we -- and I don't want to
3 get into too much detail about what we do if
4 there is a credible threat, but we have
5 measures in place and provide additional
6 resources where that's necessary when we
7 learn of a credible threat or a possible
8 credible threat.

9 So it's something we're very mindful
10 of. It's a very real issue, as you point
11 out. And we do have protocols in place to
12 protect the courthouses, you know, if and
13 whenever that's necessary.

14 ASSEMBLYMAN LAVINE: Thank you so very
15 much, Your Honor.

16 CHIEF ADMIN. JUDGE MARKS: Thank you.

17 ASSEMBLYMAN LAVINE: I yield my seven
18 seconds.

19 CHAIRWOMAN KRUEGER: Thank you.

20 Assembly, I'm going to pass it back to
21 the Senate, if it's all right with you.

22 And our next speaker is our chair of
23 Codes, Jamaal Bailey, for five minutes.

24 SENATOR BAILEY: Thank you. Five

1 minutes and seven seconds, as time was
2 yielded by Chair Lavine.

3 Good morning, Madam Chair, good
4 morning, Madam Chair Weinstein. Liz, I'm
5 very sad that we won't have budget pizza
6 today.

7 Judge Marks, good to see you.

8 I'm going to jump right into it. This
9 is my fifth budget hearing, and in each of
10 the times we've had a conversation at the
11 budget we've spoken about diversity, not just
12 within the ranks of OCA via the LEO Program,
13 which is great, but also diversifying the
14 bench.

15 And one of the things that Senator
16 Hoylman wasn't able to touch on was the
17 effect that it had on diversity within the
18 ranks of the bench in the Borough of the
19 Bronx and also Queens. Many of the judges
20 that we are losing as a result of OCA's plan,
21 the decertification plan, are people of
22 color. And as individuals of color are
23 disproportionately affected by the justice
24 system, we are disproportionately not

1 represented within the ranks of the
2 judiciary.

3 I'm asking, were bar associations such
4 as the MBBA, Dominican Bar Association, PRBA
5 or community organizations, were they -- did
6 you have conversations with them when this
7 was taking place?

8 CHIEF ADMIN. JUDGE MARKS: No,
9 frankly, we didn't. It was a strict
10 budgetary decision. We felt it was a
11 necessary and unavoidable and difficult
12 budgetary decision. And it was not discussed
13 with bar associations or other groups.

14 I could say fortunately -- look,
15 you're absolutely right, and we've talked
16 about this in the past. The judiciary can
17 be -- should be more diverse, has to be more
18 diverse. It has become more diverse over
19 time, but a lot of work left to do on that.
20 But I would say fortunately, of the 46 judges
21 who were not certificated, there were only
22 six judges of color. So -- and again, I'm
23 not minimizing that; that's six judges of
24 color fewer than we have now than we did in

1 December. But fortunately it was not a
2 larger number than that or a larger
3 percentage.

4 And I think if -- and these judges by
5 definition are all 70 or older. But if for
6 some reason a younger group or bloc of judges
7 left the court system, it would be far more
8 likely that proportionally that younger bloc
9 of judges would be more diverse and would
10 include more judges of color than this group
11 of 46 judges.

12 But again, I don't want to disagree
13 with you or argue with you on that point,
14 because losing six judges of color is losing
15 six judges of color. It's not a good
16 situation.

17 SENATOR BAILEY: And I would say those
18 six of 46, yes, in the aggregate that may not
19 be as much of a percentage. But again, if
20 you hyper-local focus on the Bronx, we have a
21 much larger percentage of judges of color
22 that we've lost within a borough that has a
23 majority minority population. So I would ask
24 that we keep these things in mind, always

1 based upon context.

2 The next question I have is related to
3 pretrials. Under the pretrial reforms that
4 we've -- that we were able to pass, the great
5 pretrial reforms that we were able to pass,
6 there are some reports that are due in of
7 November of '21 and January of '22. Are you
8 having data collection issues with those, or
9 do you anticipate that they would be
10 completed on time?

11 CHIEF ADMIN. JUDGE MARKS: Yeah, I
12 believe the first one is due early July of
13 this year. And we're hard at work on that.
14 We're working hand in hand with the Division
15 of Criminal Justice Services, and I know you
16 have the DCJS commissioner, Mike Green,
17 testifying a little later this morning.

18 So we are hard at work on that, have
19 been for months, and expect to meet the
20 statutory deadlines.

21 SENATOR BAILEY: Okay. So again, with
22 the -- and again, funding, right, funding
23 issues as related to the discovery reform
24 that the Governor has put in the budget, has

1 OCA taken a position on the amount of money?
2 Is it sufficient, should there be less,
3 should there be more?

4 CHIEF ADMIN. JUDGE MARKS: I think
5 you're talking about funding for prosecutor
6 offices?

7 SENATOR BAILEY: The discovery reform,
8 yes.

9 CHIEF ADMIN. JUDGE MARKS: Yeah. We
10 haven't taken a formal position on that. But
11 I can tell you from my own understanding of
12 this, and background and experience, that the
13 new legislation does impose substantial
14 additional burdens on district attorneys. So
15 if they're asking for additional funding, I
16 would offer that that's something that the
17 Legislature should look at seriously.

18 SENATOR BAILEY: Okay. I would add my
19 voice to the chorus of Chairman Lavine about
20 the in-person appearances being critical to,
21 I think, the -- to the integrity of our
22 justice system, as related to the Article VII
23 proposal.

24 And if there's time for a second

1 round, I will come back. But I yield my
2 seven seconds, Madam Chair. Thank you.

3 Thank you, Judge.

4 CHIEF ADMIN. JUDGE MARKS: Thank you.

5 CHAIRWOMAN WEINSTEIN: So we now go to
6 Assemblyman Dinowitz for five minutes.

7 ASSEMBLYMAN DINOWITZ: Good morning.

8 Five minutes and seven seconds.

9 Good morning, Judge Marks. It's good
10 to see you.

11 CHIEF ADMIN. JUDGE MARKS: Good
12 morning.

13 ASSEMBLYMAN DINOWITZ: I'm glad you're
14 here today. I think it's regrettable that
15 it's under these circumstances with the
16 horrible budget that you have to deal with.

17 I wish -- I wish OCA had participated
18 in the hearing that the Assembly had a few
19 months ago on the budget, because one of the
20 things I think is important is that when a
21 decision is made, it should at least bring in
22 some of the stakeholders, the Legislature --
23 because, after all, the Legislature has the
24 authority to review, modify and approve

1 budgets. But not only the Legislature, but
2 other stakeholders -- bar associations, the
3 New York State Trial Lawyer, defenders
4 associations, civil legal services -- all the
5 stakeholders that are really impacted by
6 these very crucial decisions.

7 So I would hope that on important
8 decisions like that, in the future, that
9 those things would be taken into account.

10 And I just wanted to say that the
11 46 judges, eight of them are from the Bronx.
12 We comprise, in the Bronx, 7 percent of the
13 state's population, yet 17 percent of the
14 judges that are being eliminated were working
15 in the Bronx -- the borough, the county that
16 is probably in the greatest need of every
17 county in the state.

18 And of the minority judges that you've
19 referred to, people of color, of the six
20 judges, three of them are from the Bronx, 50
21 percent. That's also a big problem, I think.

22 And the Borough of Queens, I think
23 they lost six judges. That's a very high
24 number. And the impact of this decision is

1 not evenly distributed throughout the state,
2 but in fact certain areas -- and I will say,
3 again, particularly the Bronx is most heavily
4 impacted {audio out} -- civil court judges,
5 criminal court judges to become acting
6 supremes, but that means that you're emptying
7 out the civil court and the criminal court,
8 which I think is another problem that you're
9 going to face.

10 But let me ask you this question. The
11 cost of -- that you're going to save by
12 eliminating a judge -- a judge makes a
13 salary, but that judge will then start
14 collecting pensions at a much earlier stage.
15 And the cost of the pension is very
16 significant. Now, I realize the pensions
17 don't come out of OCA's money, but it comes
18 out of the taxpayers' money one way or the
19 other at some point or another.

20 So given the fact that you're not
21 really saving money by -- or at least not a
22 significant amount of money by firing these
23 judges, how do you really justify that?

24 CHIEF ADMIN. JUDGE MARKS: Well, it's

1 true that the -- if you look at it from an
2 overall state perspective, I believe there's
3 still a savings for the state as a whole, but
4 not the full 55 million.

5 But the fact of the matter is, I mean,
6 our responsibility is to balance our budget
7 and operate within the money that's allocated
8 to us. And there's no question that there's
9 a \$55 million savings to the Judiciary, which
10 of course is our primary concern.

11 Assemblyman Dinowitz, could I just
12 respond very quickly to the -- what you said
13 about the Bronx and losing those judges?
14 It's seven judges. Two were in the Criminal
15 Term, five were in the Civil Term Supreme
16 Court. We through reassignments -- we
17 haven't waited. And we haven't even done
18 this by taking judges out of, as you said,
19 robbing the lower court, the lower criminal,
20 lower civil courts.

21 We've taken judges -- Supreme Court
22 justices and two Court of Claims judges who
23 were appointed by the Governor last summer,
24 and the five judges that the Civil Term lost

1 in Bronx Supreme Court -- because we are very
2 concerned about that, as you are, and please
3 believe me when I say that, because Bronx is
4 a court that's struggled with backlogs
5 historically over the years.

6 We have held the Civil Term of Bronx
7 Supreme Court harmless with respect to the
8 five judges in the Civil Term who were not
9 certificated by moving five other judges into
10 Supreme Court. And the administrative judge
11 of that court is very pleased that we were
12 able to do that, and is not complaining about
13 judicial resources -- at least for now.

14 ASSEMBLYMAN DINOWITZ: Oh, I'm sure
15 the complaints will be coming in the near
16 future.

17 But, you know, I understand what you
18 said about you're worried about the Judiciary
19 Budget, and rightly so. But we as
20 legislators have to look at the whole
21 picture, and the whole picture is that
22 ultimately the taxpayers really are not
23 saving much money at all, but yet we're
24 concerned about how that's going to affect

1 how justice is dispensed in every county in
2 the state.

3 And my time is up.

4 CHAIRWOMAN KRUEGER: Thank you.

5 CHAIRWOMAN WEINSTEIN: So we go to the
6 Senate now.

7 CHAIRWOMAN KRUEGER: Thank you very
8 much.

9 We're next going to Senator Tom
10 O'Mara.

11 SENATOR O'MARA: Thank you, Chairwoman
12 Krueger.

13 Good morning, Chief Judge. Thank you
14 for being with us today.

15 I want to first thank
16 Assemblyman Lavine for his opening quote
17 regarding tyranny, and the protection of our
18 government organizations. And that's
19 certainly never been made clearer than the
20 61-day siege of our federal courthouse in
21 Portland and the several-week siege of a
22 police precinct in Seattle.

23 What is the court system doing,
24 Your Honor, to prevent something like that

1 happening here in New York State?

2 CHIEF ADMIN. JUDGE MARKS: That's an
3 interesting question. It's not one that's
4 occurred to me, whether the judiciary has a
5 role in protecting attacks and assaults on
6 other governmental buildings. I mean, other
7 than if that occurs and people are arrested
8 and they're charged with crimes, the
9 judiciary will adjudicate those cases.

10 But other than that --

11 SENATOR O'MARA: I guess I'm talking
12 in particular, what efforts are being made to
13 protect courthouses in particular, since it
14 was a federal courthouse in Portland that was
15 under siege for 61 days.

16 CHIEF ADMIN. JUDGE MARKS: Yeah, as I
17 noted before, we have protocols in place to
18 deal with credible threats to our more than
19 300 courthouses throughout the state. And
20 we've instituted those protocols at different
21 times when there has been a credible threat.
22 And we are confident that we would be able to
23 protect our courthouses if they were under
24 assault. In anything remotely like what

1 happened in Washington, we would be able to
2 protect -- we would be ready for that in the
3 courthouses.

4 SENATOR O'MARA: Thank you. I hope we
5 are, because we certainly do not want to see
6 that here -- anywhere, but especially here in
7 New York State.

8 Moving on to virtual appearances, I'm
9 drawing a blank on the section of law right
10 now, but we've been working on it in our
11 judicial district on virtual criminal court
12 appearances. Some counties in the state
13 are -- had the ability to do virtual
14 appearances even before this pandemic, I
15 believe. Now others are allowed to do them
16 while this pandemic is continuing.

17 What are your thoughts on expanding
18 that type of virtual appearance activity to
19 these other counties that haven't been able
20 to do it before? Because I think, from what
21 I've been seeing, it has been very
22 successful, certainly in criminal cases with
23 the transporting of inmates back and forth.
24 And these appearances aren't for the purposes

1 of sentencing or live testimony of witnesses
2 at hearings and things, but for the more
3 run-of-the-mill control dates and things.

4 What's your thoughts on expanding that
5 to these other counties that won't be able to
6 continue that when the pandemic ends?

7 CHIEF ADMIN. JUDGE MARKS: Yeah, I
8 think under one of the Governor's executive
9 orders it's permitted across the state, video
10 court appearances and routine proceedings in
11 criminal cases.

12 I agree, it has been very successful
13 across the state. We would be supportive
14 that -- the provision in the Criminal
15 Procedure Law, I believe it's Article 182,
16 allows for this in a limited number of
17 counties. As I said, the Governor's
18 executive order allows it -- you know, for
19 now, at least -- across the state. So we
20 would be fully supportive of legislation that
21 would expand the current provision in the
22 Criminal Procedure Law to all 62 counties of
23 the state.

24 SENATOR O'MARA: Great. Thank you

1 very much.

2 Can you just briefly, in the minute
3 that's left here -- you've talked a little
4 bit about backlog, and we certainly have had
5 backlog in our court systems at both civil
6 and criminal levels for some time.

7 How has the pandemic to this point
8 exacerbated that backlog? And when this
9 pandemic ends and we get back to fully
10 functioning courtrooms, how long is it going
11 to take us to dig out?

12 CHIEF ADMIN. JUDGE MARKS: Backlogs
13 have grown, not necessarily across the board.
14 In fact, in Supreme Court, civil cases in
15 Supreme Court, the backlog interestingly has
16 not skyrocketed. It's been fairly modest.
17 And I think that's because virtual
18 proceedings have worked so well in Supreme
19 Court where, in the overwhelming number of
20 cases, the litigants are represented by
21 counsel. So when that's the case, as
22 compared to courts that handle a large
23 proportion of their cases are -- involve
24 self-represented litigants, who are not

1 always as able to navigate the technology to
2 participate virtually.

3 So -- but we do have backlogs that
4 have grown. Look, the court system has
5 always had backlogs. That's been the key
6 focus of Judge DiFiore in her tenure as chief
7 judge, is to attack backlogs and make the
8 courts more efficient and eliminate delays.
9 We have made tremendous success in that, as I
10 noted before, but we're really going to have
11 to redouble our efforts post-pandemic and,
12 you know, focus intensively on the older
13 cases, collect a lot of data -- because a lot
14 of this is data-driven -- and share that data
15 with our administrative judges and our
16 rank-and-file judges.

17 In high-volume counties, assign
18 dedicated judges just to focus on trying to
19 resolve the older cases; make greater use of
20 alternative dispute resolution; and be more
21 creative and flexible in how we move and
22 assign our judicial and nonjudicial
23 resources -- among other steps we're going to
24 have to take to address what are going to be

1 very substantial backlogs.

2 CHAIRWOMAN KRUEGER: Thank you.

3 SENATOR O'MARA: Thank you,

4 Your Honor.

5 CHAIRWOMAN KRUEGER: Thank you, Tom.

6 I'm passing it back to the Assembly.

7 CHAIRWOMAN WEINSTEIN: We go now for

8 three minutes to Assemblywoman Rajkumar.

9 ASSEMBLYWOMAN RAJKUMAR: Thank you,

10 Chairman Weinstein. Thank you to our

11 Assembly Judiciary chair, Chuck Lavine.

12 And thank you, Chief Judge Marks, for
13 your time and your testimony today and for
14 your efforts to maintain the integrity of our
15 justice system during the very many
16 challenges presented by this pandemic.

17 I have three quick questions for you
18 this morning, and my first question is about
19 the discovery reform. How is the discovery
20 reform that we enacted last year working out
21 now in the New York State courts? I know
22 that prosecutors must disclose their evidence
23 earlier and that discovery is more enhanced.
24 How are the district attorneys adjusting?

1 CHIEF ADMIN. JUDGE MARKS: Well -- I'm
2 sorry.

3 ASSEMBLYWOMAN RAJKUMAR: Yeah, I
4 thought -- let me just get my three questions
5 out and then I look forward to your answers.

6 So I just wanted to know how it's
7 playing out in our courts.

8 And my second question will be no
9 surprise; I want to ask how the Office of
10 Court Administration is managing layoffs
11 generally during the pandemic.

12 And I know, as was mentioned here
13 several times, OCA was forced to lay off at
14 least 325 court employees, 92 non-judicial
15 chamber staff, and then of course compelled
16 those 49 judges to retire. So can you just
17 speak in more detail about how you're
18 managing the layoffs generally, giving us
19 insight into your strategy and thinking as a
20 manager as you run OCA.

21 And then, relatedly, given that we do
22 not have enough court personnel, can you talk
23 about the steps that OCA is taking to deal
24 with the backlogs in the courts and the

1 overworked staff? Thank you.

2 CHIEF ADMIN. JUDGE MARKS: Okay. Just
3 quickly on discovery, the Governor's
4 executive order stayed or suspended the --
5 you know, the swifter timetables that were
6 part of the discovery reform that was passed
7 by the Legislature.

8 So it's premature -- I think most DA's
9 offices are trying to comply because they --
10 you know, at some time the executive order
11 will be lifted and the full extent of the
12 legislation will take effect again. So I
13 think a lot of the DA's offices -- it would
14 be a good question for them, better for them
15 than to me. But that they're complying
16 nonetheless or, you know, gathering the
17 information that they're going to need
18 because the day of reckoning will come when
19 the executive order is lifted and the reform
20 takes full effect again.

21 As for layoffs, we have not had to
22 institute layoffs. And that was the primary
23 -- our primary goal and what led to the
24 decision not to certificate -- recertificate

1 the 46 Supreme Court justices, because it was
2 an either/or proposition. Either we saved
3 the money from not certificating the Supreme
4 Court justices or we laid off over 300
5 employees. And we made the difficult
6 decision that it made more sense, as
7 difficult as it was, to not certificate the
8 judges rather than to lay off the employees.

9 And that was motivated by operational
10 reasons, where we felt we could not afford to
11 lose more employees on top of the attrition
12 that's resulted from our strict hiring
13 freeze. And it was also, we felt, the humane
14 decision, given that if there were layoffs it
15 would be disproportionately younger employees
16 with lesser seniority who would not be
17 eligible for pensions and would have great
18 difficulty finding other employment, you
19 know, in this economic situation.

20 So I hope that answers your questions.

21 ASSEMBLYWOMAN RAJKUMAR: So when you
22 say -- I know my time is up, but when you say
23 there's no layoffs, I mean, it was reported
24 in the Daily News that there was 300 layoffs.

1 Can you clarify for me what you mean?

2 THE MODERATOR: Time has expired.

3 CHIEF ADMIN. JUDGE MARKS: Yeah --
4 well, it's important. There were no layoffs.
5 We avoided -- if the 46 judges had been
6 certificated, that would have translated into
7 and compelled us to lay off 325 employees.

8 CHAIRWOMAN WEINSTEIN: Judge -- Judge,
9 we're going to go back to the Senate now.
10 Thank you.

11 CHAIRWOMAN KRUEGER: Thank you very
12 much.

13 We next go to Senator Gounardes, from
14 Brooklyn.

15 THE MODERATOR: I do not see him in
16 here, Senator Krueger.

17 CHAIRWOMAN KRUEGER: All right, we'll
18 circle back to him.

19 Senator Kevin Thomas.

20 Kevin, are you there? There you are.

21 SENATOR THOMAS: Can you hear me?

22 CHAIRWOMAN KRUEGER: Yes.

23 SENATOR THOMAS: All right, excellent,
24 excellent, excellent.

1 Thank you, Chairwoman Krueger, and
2 thank you, Judge Marks.

3 I just want to take this opportunity
4 to say how disappointed I am with New York
5 City Courts and their handling of COVID.
6 There are several issues which I would like
7 to address, but I will focus my time on two
8 things.

9 First, the need for cleaning at the
10 courthouses. I remember talking about this
11 earlier on, but I specifically mention the
12 Bronx Supreme Court. Every other day a court
13 employee tests positive with COVID, but
14 proper cleaning is not done in the areas
15 where the employee worked. And there are set
16 guidelines for worker safety, and I don't
17 think the courts are following that.

18 Second, it's nearly impossible for
19 litigants to get their court file. You know,
20 this kind of delay is resulting in litigants
21 not being able to fight their cases. This is
22 a violation of due process.

23 I'm sure, again, this is not the first
24 time you're hearing about these issues, and I

1 cannot believe this is not rectified. Are
2 you putting pressure on supervising judges at
3 these courts to fix these problems?

4 CHIEF ADMIN. JUDGE MARKS: Okay, just
5 going to the first issue with court cleaning.
6 And you and I have talked about this, and
7 I've looked into it every time we've talked
8 about it, and there's no question in my mind
9 that there is extensive cleaning going on
10 when -- particularly when a court employee is
11 reported that they've tested positive for the
12 virus, there's extensive cleaning going on.
13 It's done by, in New York City -- the DCAS
14 agency is, as you know -- maybe not everyone
15 knows our courthouses are not owned by the
16 state court system or maintained by the state
17 court system, they're owned and maintained by
18 local government, New York City -- and
19 outside the city, the county governments.

20 And there is no question in my mind --
21 and we really have to get to the bottom of
22 this. It might be helpful if we knew who --
23 if we had specific information where people
24 believe that cleaning is not being done.

1 Because I've talked to many people about this
2 within the Office of Court Administration,
3 and we've talked to people within DCAS, the
4 responsible agency in New York State
5 government, and there is extensive cleaning
6 going on. Not just regular cleaning -- which
7 is elevated over the regular cleaning that's
8 done in normal times, and that was done
9 pre-pandemic -- but particularly when someone
10 -- we learn that an employee or someone else
11 has been in the building or has been in a
12 courtroom who subsequently tests positive,
13 there's very extensive state-of-the-art
14 cleaning going on in those situations.

15 So I'm not -- I'm not disputing what
16 you're hearing, but we -- you and I have to
17 talk further and get specific information
18 about where we think there have been
19 problems. And I can promise you, you know,
20 we will look into them. And if there are
21 problems, we will address them.

22 But -- but what I'm being told by
23 everyone involved in this is that -- what I
24 already knew is that we have very extensive

1 cleaning protocols in place in all of our
2 courthouses throughout the state.

3 As to your second question, if I could
4 quickly, about getting files, we spoke about
5 this as well, Senator Thomas. I looked into
6 it. It is in fact a problem. It's a
7 function mainly of limited and reduced
8 staffing in the courthouses. But you've
9 identified a legitimate problem, it's a
10 problem we need to address. The ultimate
11 answer is to do more scanning so that we have
12 fewer or no paper records and everything is
13 digital and online and accessible to
14 lawyers -- and the public, for that matter.
15 And that's something, you know, we will work
16 on. That's not a simple thing to do across
17 the board, but New York City Civil Court,
18 where you've identified the problem, does not
19 have efilings --

20 (Zoom interruption.)

21 SENATOR THOMAS: Will you mute,
22 please.

23 Judge, I know we are running out of
24 time. But in the meantime, what are

1 litigants supposed to do when they've filed
2 their --

3 CHAIRWOMAN KRUEGER: No, sorry, you've
4 already run out of time. So you can follow
5 up with him in writing or afterwards, all
6 right?

7 CHIEF ADMIN. JUDGE MARKS: We'll talk
8 further.

9 SENATOR THOMAS: All right. Thank
10 you, Judge.

11 Thank you, Chair.

12 CHAIRWOMAN KRUEGER: Thank you.

13 CHAIRWOMAN WEINSTEIN: We go to
14 Assemblyman Epstein, three minutes.

15 ASSEMBLYMAN EPSTEIN: Thank you, Chair
16 Weinstein.

17 And good to see you, Judge.

18 Just -- I wanted to second the point
19 about the money for legal services. I think
20 the cuts are going to be catastrophic for
21 millions of New Yorkers. I hope you
22 reconsider the 10 percent cut, because Judge
23 Lippman worked very hard to get to \$100
24 million, and it hasn't budged since then. We

1 want the number to go up, not down, during a
2 pandemic, and I hope you figure out a way to
3 just support additional funding.

4 On diversity of the bench, you know, I
5 know there's a huge issue with the lack of
6 diversity of the bench. And I'm wondering --
7 you know, a report came out last year saying
8 there's more diversity in judges that are
9 elected than appointed. And I'm wondering
10 about how you feel about moving towards more
11 of an elected bench where that will allow
12 more diversity in our judicial system.

13 CHIEF ADMIN. JUDGE MARKS:
14 Institutionally, we don't have a position on
15 that. I mean, we have great elected judges,
16 we have great appointed judges. We really
17 can't take a position and get -- that's a
18 politically charged issue, an issue for the
19 Legislature, not for the court system.

20 I will tell you, though, that the
21 one --

22 ASSEMBLYMAN EPSTEIN: Judge, just --
23 it isn't really, because the court makes
24 appointments, you make Housing Court

1 you know, we passed making sure that ICE was
2 no longer in the court system. I wanted to
3 make sure there wasn't any implications for
4 that.

5 I know I have less than a minute left,
6 so just before you answer that, I want to
7 just echo my colleagues about -- around
8 arraignments, how important it is for
9 in-person conversations between a lawyer and
10 their client. I've been a lawyer for over 25
11 years in New York, and I can tell you that,
12 you know, you can't really get the same thing
13 on Zoom as you can in person. And I think
14 especially people in criminal proceedings
15 really need to have that face-to-face time.

16 And if you could also ask -- answer
17 about the declaration form for commercial and
18 residential tenants, what are you hearing in
19 the court system, you know, about that. And
20 I'll give you the time you have to answer
21 those two quick questions.

22 CHIEF ADMIN. JUDGE MARKS: Okay.

23 With the declarations, about a half a
24 million were sent out by our office. We have

1 not gotten a lot of feedback yet, how that's
2 working. There have been -- and I can get
3 you, I don't have it at my fingertips, but I
4 can get you the number. And it's a
5 fast-moving target because it increases every
6 day, but -- the return of signed
7 declarations. But I can get you numbers on
8 that.

9 But the important news is we did get
10 out all of them several weeks ago. The form
11 that -- the manual form that's sent out is in
12 English and Spanish. But I think it's six or
13 seven most commonly spoken languages other
14 than English. The form is accessible on our
15 website, and that's noted in different
16 languages on the hard copy form that we sent
17 out.

18 So we're optimistic that this will
19 work out very well. And -- but more
20 information to come.

21 ASSEMBLYMAN EPSTEIN: Thank you.

22 CHAIRWOMAN WEINSTEIN: Thank you.

23 We'll go to the Senate, but before that I
24 just want to introduce some members who have

1 joined us since we began: Assemblyman
2 O'Donnell, Assemblyman Kim, Assemblyman
3 Byrne, Assemblyman Ashby and
4 Assemblyman Palmesano.

5 Now to the Senate.

6 CHAIRWOMAN KRUEGER: Thank you.

7 I was going to call on Senator John
8 Brooks -- ah, here he is in his chair.
9 Perfect timing. Senator John Brooks, chair
10 of Homeland Security and Veterans,
11 five minutes.

12 You need to de-mute. Unmute yourself,
13 John.

14 SENATOR BROOKS: Yeah, it wasn't
15 cooperating. Thank you, Madam Chair, I
16 appreciate it.

17 Judge, we appreciate you being with us
18 today.

19 I want to just move maybe to a
20 brighter note for just a moment and ask if
21 you would comment on the Veterans Treatment
22 Courts, the expansion of the program, the
23 success we're seeing, where you think that
24 can go, and how you see or don't see the

1 acceptance of other neighboring counties
2 accepting to participate in the program.

3 CHIEF ADMIN. JUDGE MARKS: The
4 Veterans Courts are terrific. We've expanded
5 them. We have 37 Veterans Treatment Courts
6 throughout the state, and that's not enough,
7 we need more in the remaining counties. We
8 have an office that's dedicated within the
9 Office of Court Administration to assisting
10 localities with problem-solving courts,
11 including the Veterans Courts.

12 And, I mean, I've never heard a word
13 of criticism, or at least as to the concept
14 of a Veterans Court, on either side of the
15 aisle or anyone, any stakeholder in the
16 justice system in this state, I've never
17 heard anything other than positive comments
18 and response about Veterans Courts. And
19 we're fully committed to them.

20 And as I said, we're not stopping at
21 37. Maybe when I come back next year to
22 testify it will be 62, or much closer to 62.

23 SENATOR BROOKS: That sounds good.
24 And I agree, I think that's a great tool and

1 great success. And I thank you, and I yield
2 back my time.

3 CHAIRWOMAN KRUEGER: Thank you very
4 much.

5 Assembly.

6 CHAIRWOMAN WEINSTEIN: Yes, we go to
7 Assemblyman Goodell, three minutes.

8 ASSEMBLYMAN GOODELL: Thank you very
9 much, Chairman.

10 Chairman, can you hear me?

11 CHAIRWOMAN WEINSTEIN: Yes.

12 ASSEMBLYMAN GOODELL: Thank you very
13 much, Chairman, and thank you very much to
14 Judge Marks.

15 As you noted earlier in your testimony
16 that Judiciary curtailed many in-person
17 proceedings earlier this year, and of course
18 that's creating even more backlogs. And as
19 you acknowledged in earlier testimony, the
20 backlog is substantial and growing. Of
21 course one of the largest and most
22 significant backlogs is in the Housing Court,
23 because we haven't had any evictions now --
24 it looks like it will be over a year.

1 My question, though, is at the same
2 time that the court system is closing down
3 in-person proceedings and creating more
4 backlog, virtually every private-sector
5 business has been reopening. And the court
6 system itself has been giving several
7 decisions striking down regulations that keep
8 the private sector closed.

9 So my question is why are the courts
10 closing to in-person proceedings while the
11 private sector is doing everything it can to
12 open? And isn't the closing of the courts to
13 in-person proceedings merely exacerbating the
14 already horrific backlog that exists in
15 Housing Court and some of our other courts?

16 CHIEF ADMIN. JUDGE MARKS: Well, with
17 all due respect, I think the analogy to
18 business organizations, you know, may not be
19 a sound one.

20 Courts are different in many respects
21 from most private organizations in that we
22 have tens of thousands -- in normal times we
23 have tens of thousands of people coming into
24 our buildings every day. And, you know, to

1 suggest that we should go back to -- now,
2 coming out of a second resurgence, that we
3 should go back to normal in-person operations
4 is just contrary to the advice of every
5 public health expert we've talked to,
6 including our own public health expert.

7 And, you know, we haven't -- we did
8 very early on in the pandemic, in late March
9 and April and part of May, shut down all
10 in-person operations, and we were conducting
11 business entirely virtually. And then we --
12 in the spring, the later spring, we started
13 to expand in-person operations. We brought
14 back, among other in-person operations, grand
15 juries and criminal and civil jury trials,
16 along with other in-person operations.

17 But we -- with the onset of the second
18 resurgence, we did cut that back again. We
19 have not suspended grand juries. Every
20 county in the state continues to have at
21 least one functioning grand jury. And, you
22 know, when we're advised by the experts that
23 it's safe to resume jury trials, we will do
24 that. In fact, we've been talking about that

1 recently.

2 And if things go well -- and we can't
3 predict the future with this pandemic, but if
4 things continue to improve, we will resume
5 jury trials, which are clearly a critical
6 part of the justice system, both on the
7 criminal and civil side. We can't have a
8 fully functioning court system without jury
9 trials. To some extent it's what drives the
10 court system, because although as you all
11 know a very small percentage of cases
12 actually go to trial, the opportunity to try
13 a case is what drives settlements and pleas
14 and other dispositions.

15 So we're entirely guided by public
16 health experts and what they're saying, what
17 they're advising us. And hopefully we will
18 be able to resume more in-person proceedings.
19 We haven't suspended all of them, but
20 hopefully we'll be able to resume more and
21 continue that and return things as close to
22 normal before everyone is vaccinated as best
23 we can.

24 ASSEMBLYMAN GOODELL: Thank you,

1 Judge. I do note that I sent you some
2 questions back in November of last year
3 relating to the budget. I hope and trust
4 you'll be providing me with a response to
5 those?

6 CHIEF ADMIN. JUDGE MARKS: Sure. I
7 can call you or respond in writing or both.

8 ASSEMBLYMAN GOODELL: Thank you very
9 much, Judge.

10 CHIEF ADMIN. JUDGE MARKS: Thank you.

11 CHAIRWOMAN WEINSTEIN: Thank you. We
12 go to Assemblywoman Joyner, three minutes.

13 ASSEMBLYWOMAN JOYNER: Okay, thank
14 you. Good morning, everyone.

15 I want to just say fantastic job by
16 our chairs who are running all of these
17 hearings. Thank you so much.

18 Good seeing you again, Judge Marks.

19 CHIEF ADMIN. JUDGE MARKS: Good to see
20 you.

21 ASSEMBLYWOMAN JOYNER: I have a couple
22 of questions. As you know, this pandemic has
23 placed a strain and an unprecedented backlog
24 on the New York State court system. And, you

1 know, I want to echo the concerns that my
2 Bronx colleagues have brought up of, you
3 know, it's concerning that OCA didn't consult
4 with the Legislature or with the Governor's
5 office, with key stakeholders, trial lawyers,
6 bar associations. It's very concerning
7 because, you know, we're all partners in this
8 whole thing, and it would be helpful that,
9 you know, we can all be included in the
10 discussions to help make sure that the court
11 system is running smoothly for all litigants.

12 So my first question is, did OCA
13 conduct any study on the impact of
14 eliminating these 46 judges from the court
15 system and its impact on the backlog of the
16 court system?

17 CHIEF ADMIN. JUDGE MARKS: No, we
18 conducted no formal study. But the decision
19 was based on our long and in-depth experience
20 in administering and managing the courts.

21 And the judges -- by definition, the
22 judges who were not certificated are judges
23 who sit in the Supreme Court. And we felt
24 that the alternative -- if the judges were

1 certificated, we would have to lay off
2 employees. That would have impacted
3 disproportionately on courts that have large
4 numbers of self-represented litigants who of
5 necessity have to rely on court staff --
6 court officers, court clerks, help desk
7 employees -- for advice and direction on how
8 to navigate the court system.

9 And we felt that -- not that this was
10 a simple decision or an easy decision. It
11 wasn't. Don't misunderstand me -- but that
12 given the two bad choices, the worst choice
13 would have been to certificate the judges and
14 have to lay off hundreds of employees.

15 ASSEMBLYWOMAN JOYNER: Well, I hope
16 that there will be a follow-up and a review
17 of the impact of this.

18 And I have 30 seconds left, but you
19 and I worked very closely on making sure we
20 had a Legal Hand site in the Bronx. It has
21 closed, unfortunately. It would be great to
22 figure out how we can revamp that and revive
23 that.

24 And then we've also worked on the

1 language access problem in the Housing Court.
2 Are there any plans from OCA to expand this
3 in other courts?

4 CHIEF ADMIN. JUDGE MARKS: The simple
5 answer is yes. We need to do more with
6 language access. It's a very challenging
7 area. It can involve more resources. We
8 don't have a lot more resources.

9 But the simple answer to your question
10 is yes, language access initiatives can be
11 expanded to other courts, and that's
12 something we will look at.

13 ASSEMBLYWOMAN JOYNER: Thank you.

14 CHAIRWOMAN WEINSTEIN: Thank you.

15 We're going to go -- I believe the
16 Senate does not have any other --

17 CHAIRWOMAN KRUEGER: Correct.

18 CHAIRWOMAN WEINSTEIN: Okay, so we're
19 going to go now to Assemblywoman Seawright,
20 three minutes.

21 ASSEMBLYWOMAN SEAWRIGHT: Thank you,
22 Chair Weinstein, and Judge Marks for your
23 testimony today.

24 I just have a couple of questions.

1 Under Judge DiFiore's proposed simplification
2 plan, certain courts like Family Court and
3 Surrogate's Court would join the Supreme
4 Court. Family Court facilities have
5 designated areas that Supreme Courts lack,
6 like childcare and a help desk for litigants
7 who are unrepresented. How will OCA take
8 this into account?

9 CHIEF ADMIN. JUDGE MARKS: We would
10 take it fully into account. Under the
11 proposal, Family Court -- we would have a
12 consolidated Supreme Court, which would
13 include Family Court, but we would have
14 divisions within the Supreme Court, including
15 a Family Law Division.

16 So sort of the unique layout in
17 resources that Family Courts have now would
18 continue. I mean, those facilities obviously
19 would continue to be used and the design of
20 those facilities would continue to support
21 the way that the cases would be handled,
22 although they would be Supreme Court cases,
23 not Family Court cases, under our proposal.

24 ASSEMBLYWOMAN SEAWRIGHT: Okay, thank

1 you.

2 The pandemic has reduced the ability
3 of OCA to host events, trainings, in-person
4 conferences, saving money in your budget.
5 Have you put a dollar amount on how much has
6 been saved from all of these in-person
7 trainings and hotel stays for your senior OCA
8 officials now that don't travel?

9 CHIEF ADMIN. JUDGE MARKS: We can
10 calculate that number. I don't have it with
11 me at the moment, but we will get you that
12 number.

13 So there's been -- we've done a lot of
14 training, though, I just want to emphasize
15 that. It's been online primarily for health
16 reasons, but it's also had the benefit of
17 saving us some money. And I will get you
18 that number.

19 ASSEMBLYWOMAN SEAWRIGHT: Okay, thank
20 you.

21 CHAIRWOMAN WEINSTEIN: So now we go to
22 Assemblywoman Fahy.

23 ASSEMBLYWOMAN FAHY: Thank you, Judge.
24 I know this -- a couple of questions have

1 been asked already, but I just want to go
2 back to a couple of them.

3 One, I just want to reiterate my
4 sharing of the concerns with the courts being
5 closed for the access. And certainly I've
6 seen a lot of concerns raised about that
7 we're not processing those who are accused
8 and -- so very concerned about, you know,
9 what is needed with technology and what have
10 you. But I also -- in order to keep them
11 open and keep them full functioning as well
12 as to address the backlog.

13 But my question, though, is also on
14 the retirements. What is the plan to reduce
15 the number of elected Civil Court judges by
16 appointing them to the Supreme Court? And
17 I'll get back to the retirements.

18 CHIEF ADMIN. JUDGE MARKS: Just -- if
19 I understand your question, you mean what is
20 the plan for designating lower court judges
21 as acting Supreme Court justices who can then
22 sit in Supreme Court and handle Supreme Court
23 cases? Is that your question?

24 ASSEMBLYWOMAN FAHY: Yes, reduce --

1 yes, to reduce the number of elected
2 Civil Court judges by appointing them to the
3 Supreme Court. How do you plan to reduce
4 that?

5 CHIEF ADMIN. JUDGE MARKS: And are you
6 --

7 ASSEMBLYWOMAN FAHY: As well as, you
8 know -- as well as -- I'll combine it with
9 the next one, which is to increase the number
10 of Court of Claims judges, the plan to
11 increase the Court of Claims judges appointed
12 to the Supreme Court. So however you want to
13 broadly address that.

14 CHIEF ADMIN. JUDGE MARKS: Well, Court
15 of Claims is entirely the province of the
16 Governor. And there are Court of Claims
17 vacancies. And, you know, those nominations
18 and appointments are usually made at the end
19 of the legislative session.

20 So I'm not aware that there's been any
21 discussion yet about that. But there will
22 be, you know, later in the spring, I would
23 think.

24 In terms of elevating lower court

1 judges, Civil Court judges to Supreme Court,
2 we have not done that yet this year. That's
3 usually done at the beginning of every
4 calendar year when we go through and rethink
5 all judicial assignments throughout the
6 state. We haven't done that this year at
7 all. We haven't appointed new acting Supreme
8 Court justices with judges from the lower
9 courts. We will do that if we determine that
10 it's needed.

11 But I think, as someone suggested a
12 while before, it's kind of a zero-sum game.
13 Because if you take judges out of the lower
14 courts and you put them in Supreme Court,
15 you've helped Supreme Court but you've robbed
16 the lower court. So it's kind of an art, not
17 a science, I would say.

18 But it's an option that we have, and
19 it's a critical option that will help us
20 attack backlogs as we go forward,
21 particularly post-pandemic.

22 ASSEMBLYWOMAN FAHY: Okay. Just
23 overall, just want to share the concerns on
24 the retirements, especially the diversity

1 among the retirements.

2 Thank you so much, Judge, and I think
3 I've used my time. Thank you, Chair.

4 CHIEF ADMIN. JUDGE MARKS: Thank you.

5 CHAIRWOMAN WEINSTEIN: We go now to
6 Assemblyman Lawler.

7 ASSEMBLYMAN LAWLER: Thank you,
8 chairwoman.

9 Judge, thank you for joining us this
10 morning, appreciate your testimony.

11 I want to focus in on the
12 Ninth Judicial District, which is where I
13 live; Rockland County is part of that
14 district. Currently, there are 40 judges
15 within that judicial district -- 29 of them
16 come from Westchester, 11 of them come from
17 the other four counties: Rockland, Orange,
18 Putnam and Dutchess.

19 So roughly 72.5 percent of the judges
20 that are elected come from Westchester
21 County. Westchester makes up about 47
22 percent of the total population of the
23 judicial district; the other four counties
24 make up about 53 percent.

1 I have put legislation in to create a
2 new judicial district to ensure that there is
3 adequate representation for the other
4 counties within this judicial district.
5 Clearly, you know -- and obviously that is in
6 part a political problem, where these judges
7 are being elected from. But clearly the
8 other four counties are not getting equal
9 representation.

10 I'm just curious if you have any
11 comment as to whether or not it might make
12 sense to create a new judicial district to
13 ensure equal representation within those
14 other four counties.

15 CHIEF ADMIN. JUDGE MARKS: Well,
16 remember, we do have authority within a
17 judicial district to move judges around. So
18 there are judges who are either elected from
19 Westchester or reside in Westchester who sit
20 in other counties. And we sort of every
21 year -- and throughout the year, for that
22 matter -- look at that to make sure that the
23 assignments are consistent with the caseloads
24 and the backlogs within all the counties of a

1 judicial district.

2 But in terms of creating another
3 judicial district, that's something we could
4 look at. And happy to talk to you about that
5 to see if that makes sense and, you know,
6 meets the district -- wisely meets the
7 district -- the needs and the circumstances
8 of the district.

9 ASSEMBLYMAN LAWLER: I appreciate
10 that, and I very much look forward to
11 speaking with you about that. I think the
12 caseload will show that the other four
13 counties certainly are on par with
14 Westchester, and certainly there is a need
15 for more judges to be sitting in those other
16 counties.

17 In the time I have left, I would also
18 just ask, currently, do you know how many
19 judges from the 9th J.D. have been assigned
20 to the Bronx or other judicial districts
21 outside of the 9th J.D.?

22 CHIEF ADMIN. JUDGE MARKS: I do not
23 believe any have been assigned to other
24 judicial districts. But there are some

1 judges who are assigned to the Bronx, that's
2 correct.

3 ASSEMBLYMAN LAWLER: Okay. And the
4 reason for that is based on caseload? Or
5 what's -- what's the reason why they are not
6 serving the people they were elected to
7 serve?

8 CHIEF ADMIN. JUDGE MARKS: It's based
9 entirely on caseload and the caseload needs
10 and backlogs in the Bronx.

11 And the judges who have been
12 reassigned -- and these are not permanent
13 reassignments. They're usually temporary
14 reassignments. It could be a year, it could
15 be less than a year, it could be longer than
16 a year. But they're temporary assignments,
17 and it's strictly based on need. And it's
18 with the cooperation and participation of the
19 individual judges, you know, who have agreed
20 to a temporary reassignment.

21 CHAIRWOMAN WEINSTEIN: Thank you.

22 ASSEMBLYMAN LAWLER: Okay, I'd like to
23 follow up with you on that. Thank you.

24 CHIEF ADMIN. JUDGE MARKS: Sure.

1 CHAIRWOMAN WEINSTEIN: Thank you.

2 We go to Assemblywoman Kelles.

3 ASSEMBLYWOMAN KELLES: Good morning,
4 Judge Marks. It's nice to e-meet you, for
5 starters. And thank you to both the --

6 CHIEF ADMIN. JUDGE MARKS: Good
7 morning.

8 ASSEMBLYWOMAN KELLES: Good morning.

9 Thank you to both chairwomen for their
10 endurance, if nothing else, through these
11 meetings.

12 I have one question related to a
13 comment earlier about the impact of the
14 discovery reform on district attorney
15 offices. I just wanted to share a bit of
16 information. I know in one of my counties
17 they've had to hire a third investigator and
18 an additional paralegal. They've had to add
19 their own dedicated wireless network due to
20 the bandwidth they're using. And they have
21 also had to send a lot of the labs out to
22 private labs because of a backlog at the
23 state labs, and those are, you know, multiple
24 times more expensive.

1 So I'm curious what data you're
2 looking at that shows that there's no real
3 impact on costs. I certainly think that
4 discovery reform was -- I personally think it
5 was a great idea, but the cost impact and the
6 lack of funding is concerning.

7 So I wanted to hear your response to
8 that and if there's any data or connection or
9 communication with the district attorneys on
10 that point.

11 CHIEF ADMIN. JUDGE MARKS: Yeah, I
12 think I said that I agreed that there -- the
13 new legislation imposes significant new
14 burdens on district attorneys' offices, and
15 it may well -- they might well benefit and
16 make a good case for additional resources.

17 I -- I haven't studied that particular
18 issue myself, but I think there's no question
19 the new law imposes significant new burdens
20 on the DAs, and we certainly -- it's not
21 really our issue. We're more concerned and
22 focused on additional burdens on the court
23 system and whether we would require more
24 resources as a result of this new legislation

1 or any new legislation.

2 But we certainly would be sympathetic
3 to district attorneys' pleas for additional
4 resources to help them better comply with the
5 new discovery law.

6 ASSEMBLYWOMAN KELLES: And I'm
7 curious, in other comments on -- we had many
8 questions before; some of the points I'm very
9 much in support of about funding concerns for
10 the 46 judges of course as well. And I'm
11 curious if there's any data on -- being
12 collected on the time to arraignments that
13 we're seeing. Is that being tracked? And
14 can that be shared in response to the loss of
15 the 46 judges?

16 CHIEF ADMIN. JUDGE MARKS: Well, these
17 46 judges did not sit in the arraignment
18 parts in the lower courts.

19 ASSEMBLYWOMAN KELLES: But it can
20 create a backlog, correct?

21 CHIEF ADMIN. JUDGE MARKS: I -- well,
22 I'm not so sure about that. I don't know if
23 I agree with that in terms of the -- we have
24 enough judges to staff the arraignment parts.

1 There really haven't been delays in
2 arraignment. There's a mandate from an old
3 Court of Appeals decision which says that
4 people who are arrested for crimes and held
5 in custody and brought to court for
6 arraignment should presumptively be arraigned
7 within 24 hours.

8 And we do have data on that, and we do
9 track that regularly. And we believe that
10 the 24-hour rule is being complied with,
11 particularly in New York City, where
12 compliance with that rule has been a
13 challenging issue for the courts and the
14 whole criminal justice system for many, many
15 years. Arrests are down now, and the
16 compliance for a speedy arraignment, if you
17 will, has been good, from all the numbers
18 that I've seen.

19 ASSEMBLYWOMAN KELLES: It would be
20 wonderful --

21 CHAIRWOMAN WEINSTEIN: Thank you.
22 Thank you, Judge.

23 We're going to move on now to
24 Assemblyman O'Donnell.

1 ASSEMBLYMAN O'DONNELL: Thank you very
2 much, Chair.

3 I've not been here for all of it; I
4 was conducting a committee meeting. But I
5 want to make sure that you are hearing us.
6 Many of us are disturbed -- I'm outraged
7 about your decision to not certify some of
8 the judges who are available to be
9 recertified. I'm disturbed because in my
10 days when I was a mere Legal Aid lawyer, I
11 would be accused of judge shopping if I
12 hand-picked who could and who could not get
13 certified.

14 Additionally, just before you
15 decertified those people, you put three new
16 Court of Claims judges in. Can you explain
17 the rationale for creating three new
18 judgeships when you're telling the most
19 talented and experienced judges they can't
20 stay on the bench?

21 CHIEF ADMIN. JUDGE MARKS: Well, we
22 don't appoint Court of Claims judges. The
23 Governor does that. So that was not our
24 decision and never would be our decision.

1 In terms of the --

2 ASSEMBLYMAN O'DONNELL: Do you play
3 any role in who gets those jobs, sir?

4 CHIEF ADMIN. JUDGE MARKS:

5 Occasionally we're asked for information if
6 there are judges who are under consideration,
7 as opposed to lawyers off the street.

8 Occasionally we're asked for information --
9 caseloads and information on judges who are
10 seeking nomination and apartment appointment
11 to the Court of Claims.

12 But in the end, that's the Governor's
13 decision, not our decision.

14 ASSEMBLYMAN O'DONNELL: So you're
15 suggesting to {inaudible} that you made a
16 money decision about the careers of these
17 extraordinary jurists and then the Governor
18 in the next moment put three new people on
19 the bench and you didn't know?

20 CHIEF ADMIN. JUDGE MARKS: Well, I
21 think the timing of it was the reverse. I
22 could be wrong about this, but I believe the
23 Governor made -- I think it was four Court of
24 Claims appointments in June, you know, when

1 those appointments are normally made, and the
2 decision about whether to certificate the
3 retired Supreme Court justices was made in
4 late September.

5 ASSEMBLYMAN O'DONNELL: Well, I could
6 hardly believe that the financial problems
7 that you bring up didn't exist in June but
8 did exist in September.

9 Having said that, I'm concerned about
10 the courts that are open, and I'm
11 particularly concerned about the judges who
12 are asked to staff them. Can you assure me
13 that all judges who are staffing in-person
14 courtrooms in the City of New York are
15 getting access to COVID vaccine?

16 CHIEF ADMIN. JUDGE MARKS: I can't
17 assure you of that. We have urged the State
18 Health Department to include judges among the
19 groups of people that are eligible for the
20 vaccine. We think it's incomprehensible that
21 judges are not included on the eligibility
22 list, and hopefully that happens soon. I
23 couldn't agree with you more on that one.

24 ASSEMBLYMAN O'DONNELL: Well, I can

1 assure you it is not happening currently, and
2 I can assure you that the other employees of
3 the court system who stand next to the judges
4 are in fact getting the shot, but the judges
5 are not.

6 CHIEF ADMIN. JUDGE MARKS: You're
7 absolutely correct about that.

8 ASSEMBLYMAN O'DONNELL: Well, what can
9 you do about that, Judge?

10 CHIEF ADMIN. JUDGE MARKS: We -- we --
11 the executive branch determines who is
12 eligible. We can't decide that on our own.
13 We can interpret the guidelines, the language
14 of the guidelines, and we have interpreted
15 the language of the guidelines as applying to
16 our staff. But the language of the
17 guidelines does not apply to judges, and
18 we've urged -- believe me, we have urged the
19 Health Department, the Governor's office to
20 include judges among the categories of people
21 and groups that are eligible and will
22 continue to urge them to do that.

23 CHAIRWOMAN WEINSTEIN: Thank you.

24 ASSEMBLYMAN O'DONNELL: Well, I would

1 certainly --

2 (Overtalk.)

3 CHAIRWOMAN WEINSTEIN: The time is --
4 we're a minute over. Thank you. Thank you,
5 Assemblyman.

6 ASSEMBLYMAN BURDICK: Thank you, Madam
7 Chair. And thank you, Your Honor, for your
8 presentation.

9 I have two questions. The first comes
10 from one of the town judges in my district,
11 who asks about the sufficiency of funding for
12 the local courts for dealing with COVID-19.
13 If you could address that.

14 And the second question stems from my
15 experience in local government regarding
16 specialized courts. And for example, in
17 Westchester County there are specialized
18 parts in several areas, including foreclosure
19 settlement and environmental claims. And my
20 experience is they work well, and I'm
21 wondering whether OCA is looking at
22 establishing other specialized courts and, if
23 so, what areas do you feel may be considered?

24 CHIEF ADMIN. JUDGE MARKS: Just going

1 to your first question, the town and village
2 courts are part of the unified court system,
3 but they're not funded by the state, they're
4 funded by -- unlike all the other courts in
5 the state, the county courts, the family
6 courts, the surrogate's courts, the city
7 courts, the Supreme Court -- the town and
8 village courts are locally funded.

9 And although we do have a grant
10 program that we've had in place for years --
11 there's several million dollars in the grant
12 program. That would be continued in our
13 proposed budget. But we -- we don't have the
14 money in our budget to fund the town and
15 village courts in terms of PPE and
16 retrofitting of courthouses.

17 We do have this grant program that
18 they could take advantage of, but ultimately
19 that's something the Legislature might want
20 to look at, because the town and village
21 courts are an important part of the court
22 system. They -- well over a million people
23 go through the town and village courts -- it
24 may be 2 million people -- year in and year

1 out. And we can't reopen the rest of the
2 court system to full in-person proceedings
3 and not do that for the town and village
4 courts.

5 So it's something that the Legislature
6 should look at in terms of supporting those
7 courts.

8 As for problem-solving courts, we are
9 fully committed to our problem-solving
10 courts. There are hundreds of
11 problem-solving courts throughout the State
12 of New York. We're committed to creating
13 more. I mean, they're all successful, they
14 all address their own unique and specific
15 problems. And to answer your question, we're
16 fully committed to our existing
17 problem-solving courts and we're committed to
18 expanding them to additional jurisdictions.

19 ASSEMBLYMAN BURDICK: Thank you.

20 I do know that the town and village
21 courts are supported locally, having been a
22 supervisor of a town. And I certainly will
23 pursue that suggestion about the Legislature
24 looking at supplemental funding.

1 Thank you very much.

2 CHIEF ADMIN. JUDGE MARKS: Thank you.

3 CHAIRWOMAN WEINSTEIN: We now go to
4 Assemblyman Byrne, three minutes.

5 UNIDENTIFIED SPEAKER: You're muted.

6 CHAIRWOMAN WEINSTEIN: Assemblyman --
7 yeah, please.

8 ASSEMBLYMAN BYRNE: Thank you. Can
9 you hear me now? Are we good?

10 CHAIRWOMAN WEINSTEIN: Yes.

11 CHAIRWOMAN KRUEGER: Yes.

12 CHIEF ADMIN. JUDGE MARKS: Yes.

13 ASSEMBLYMAN BYRNE: Okay. Thank you,
14 Chair. And thank you, Judge Marks.

15 My question is relating to the
16 Drug Treatment Courts General Fund. My
17 understanding is that it's from
18 \$15.8 million, and it's being decreased by
19 nearly half a million. My question is, how
20 does that affect the county drug treatment
21 courts in the 9th Judicial District?
22 Specifically, I represent Westchester and
23 Putnam, but Putnam County's drug treatment
24 court program has been lauded across the

1 state and even somewhat nationally. And I
2 know while we met often in the Legislature,
3 we may act in silos and say, This is my
4 county.

5 It's important to note that many of
6 the people that benefit from the
7 Putnam County Drug Treatment Court Program do
8 not live in Putnam County. I would suggest
9 potentially even the majority of them may be
10 from all over the state. Putnam and
11 Westchester are both part of the federally
12 designated High-Intensity Drug Trafficking
13 Area. And in Putnam, unlike many other
14 counties, we actually take on felonies,
15 misdemeanors and alcohol-related offenses in
16 the Drug Treatment Court Program, including
17 DWIs, which I think is unique. And it's been
18 largely credited as a success to help give
19 these people positive pathways to recovery,
20 even making our roads safer.

21 But I'm concerned about that decrease,
22 and I'd like to just hear from you, sir, as
23 to how those state dollars flow through the
24 9th Judicial District into our local county

1 drug treatment courts.

2 CHIEF ADMIN. JUDGE MARKS: Well, it's
3 a very important court. We're fully
4 committed to it. Its operations are
5 continuing.

6 I wouldn't be overly concerned about
7 that, that the budget shows a modest reduced
8 funding. That may be the result of
9 attrition, it may be a single position will
10 continue to be vacant under our hiring
11 freeze. And if that turns out to be a
12 problem, if that's a critical position in
13 that court's operations, we will move staff
14 around to address that.

15 But I would not be overly concerned
16 about that -- the impact on that court. We
17 will make every effort to ensure that it
18 continues to be an effective and productive
19 court.

20 And if you're hearing anything to the
21 contrary, you know, please let me know and
22 we'll address it.

23 ASSEMBLYMAN BYRNE: Thank you, Judge.
24 I just want to make sure that they get the

1 resources that they need, because the
2 benefits go way beyond just the people in
3 Putnam County, even residents from
4 Connecticut that come by. So I think there
5 definitely is a state obligation to support
6 this type of program.

7 And in Putnam County we were blessed
8 with a judge named James Reitz for many
9 years, who sadly suffered a heart attack
10 while he was serving on the bench -- the man
11 actually got an Emmy for his promotion of the
12 Drug Treatment Court Program. And it's now
13 being managed by Judge Joe Spofford. They do
14 a tremendous job, but I just want to make
15 sure they get the resources and support they
16 need.

17 Thank you, Judge.

18 CHIEF ADMIN. JUDGE MARKS: Thank you.

19 CHAIRWOMAN WEINSTEIN: Thank you.

20 We go to the Senate now.

21 CHAIRWOMAN KRUEGER: Yes, thank you.

22 We've been joined by Senator Palumbo
23 and Senator Todd Kaminsky, and
24 Senator Palumbo has some questions.

1 SENATOR PALUMBO: Thank you,
2 Madam Chairwoman.

3 Judge Marks, good to see you again.

4 CHIEF ADMIN. JUDGE MARKS: Good to see
5 you.

6 SENATOR PALUMBO: How are you?

7 And I know I had to run down to the
8 floor for a little bit, so I'm sorry if I'm a
9 bit repetitive, but I just have two quick
10 questions regarding the certification.

11 Of those 46 judges -- I guess it was
12 39 Supreme and seven Appellate Division --
13 were any of those judges removed due to
14 either mental or physical incapacity?

15 CHIEF ADMIN. JUDGE MARKS: No.

16 SENATOR PALUMBO: Okay. And is there
17 any sort of a process regarding whether or
18 not that would have been evaluated at all?

19 CHIEF ADMIN. JUDGE MARKS: Oh,
20 absolutely. That's required under the
21 provision in the Constitution.

22 And under our rules, for a judge to be
23 certificated, they have to undergo an
24 independent medical -- physical and mental

1 examination. We contract with physician
2 firms who conduct those examinations, and
3 that's a critically important part of the
4 process.

5 SENATOR PALUMBO: Sure. So none of
6 those judges failed that aspect of their
7 recertification.

8 CHIEF ADMIN. JUDGE MARKS: That's
9 correct. They might not all have completed
10 the exam at the time that the decision was
11 made, but I'm not aware that any judge had
12 failed the independent medical examination.

13 SENATOR PALUMBO: Thank you.

14 And of course in light of the backlog,
15 they were not removed due to a smaller
16 caseload -- or I think we can all agree on
17 that issue as well, correct?

18 CHIEF ADMIN. JUDGE MARKS: No, it was
19 entirely about the extremely difficult budget
20 situation.

21 SENATOR PALUMBO: It was purely
22 financial, I would say, I guess.

23 CHIEF ADMIN. JUDGE MARKS: Correct.

24 SENATOR PALUMBO: Okay. Thank you.

1 And now just to move on to the
2 evictions. There were some administrative
3 orders, now we have legislatively allowed
4 someone to file a document that says that
5 they've been impacted by COVID or they're
6 having a tough time obtaining additional or
7 other means -- or other housing.

8 My question, Your Honor, is in the --
9 when this expires on May 1st, if there are
10 additional administrative orders, I had some
11 real concerns in my district where we had
12 multi-millionaires from Manhattan living out
13 on the East End of Long Island and refused in
14 residential situations to relinquish their
15 tenancy, indicating that it was because they
16 didn't feel like going back to New York City.

17 So the real -- my question is, in the
18 event that there are any further
19 administrative orders, would you be willing
20 to consider that it's only upon proof of
21 COVID, of being impacted by COVID, that these
22 folks would be able to stay and there would
23 be a moratorium on those evictions?

24 CHIEF ADMIN. JUDGE MARKS: Well, we

1 did have several -- there were executive
2 orders issues by the Governor, there were
3 several administrative orders issued by the
4 court system, signed by me. And then there's
5 been at least two pieces of legislation that
6 were enacted, the most recent one in late
7 December and then the Safe Harbor Act earlier
8 in the year.

9 So we -- at this point I don't
10 anticipate there will be any further
11 administrative orders. I mean, we're always
12 concerned about the health and risks of large
13 numbers of litigants and members of the
14 public coming into the courthouses during the
15 pandemic, and that's been an evolving --
16 obviously an evolving background to all of
17 this. But at the moment there's very
18 detailed legislation on the books, we're
19 complying with it, and at the moment we see
20 no need for any further administrative
21 orders.

22 SENATOR PALUMBO: Terrific. Thank
23 you, Your Honor. I appreciate your time.

24 CHIEF ADMIN. JUDGE MARKS: Thank you.

1 CHAIRWOMAN KRUEGER: Thank you.
2 Assembly.

3 CHAIRWOMAN WEINSTEIN: We go to
4 Assemblyman Reilly, three minutes.

5 ASSEMBLYMAN REILLY: Thank you,
6 Madam Chair. Thank you, Chief Judge Marks.

7 I was actually -- wanted to ask a
8 question about Mental Health Court here in
9 Staten Island. Currently for misdemeanor
10 cases we can't have them referred to
11 Mental Health Treatment Court. And I was
12 wondering if there was -- if you could touch
13 on that, and if there's an ability for us to
14 open up the opportunity. We can for felony
15 cases, but at this time I think it would be
16 great if we could open that up for
17 misdemeanor cases as well.

18 CHIEF ADMIN. JUDGE MARKS: That's an
19 interesting question. I'm not aware of that.
20 That on its face doesn't seem to make sense.
21 If felony cases are being referred to Mental
22 Health Court, why not misdemeanors?

23 I will have to take a look at that and
24 I'll get back to you. But you certainly --

1 you raise a very interesting question.

2 ASSEMBLYMAN REILLY: Okay, thank you.

3 I really appreciate that.

4 And I yield the rest of my time.

5 Thank you.

6 CHIEF ADMIN. JUDGE MARKS: Thank you.

7 CHAIRWOMAN WEINSTEIN: Great, thank

8 you. We now go to Assemblywoman McMahan.

9 ASSEMBLYWOMAN McMAHON: Thank you,
10 Madam Chair.

11 And good morning, Judge Marks. How
12 are you?

13 CHIEF ADMIN. JUDGE MARKS: Good
14 morning.

15 ASSEMBLYWOMAN McMAHON: I just have a
16 couple of questions.

17 Regarding the certification of the
18 judges over age 70, did I understand your
19 testimony correctly that the plan is to
20 follow the normal certification process for
21 judges who will be turning 70 this coming
22 year?

23 CHIEF ADMIN. JUDGE MARKS: In judges
24 who will be up for further recertification.

1 That is our hope. You know, there are
2 too many question marks about the economy,
3 about our budget, about our operational
4 needs. But certainly our hope is later this
5 year that judges will -- the judges who are
6 up for certification or recertification will
7 be able to be approved. But I can't predict,
8 and I certainly can't guarantee that. There
9 are too many variables.

10 ASSEMBLYWOMAN McMAHON: I understand.

11 And just one other question. Do you
12 know when the last time assigned-counsel
13 rates were adjusted in the state?

14 CHIEF ADMIN. JUDGE MARKS: I believe
15 it was -- I don't know why I remember this,
16 but I believe it was 2003 enacted by the
17 Legislature, taking effect in 2004. I could
18 be off a year.

19 ASSEMBLYWOMAN McMAHON: Has OCA had a
20 recent examination of those fees to look at
21 maybe the appropriateness of adjusting them
22 again?

23 CHIEF ADMIN. JUDGE MARKS: Yeah, they
24 need to be adjusted. It's been many, many

1 years.

2 We strongly advocated for raising the
3 assigned-counsel rates, the assigned-counsel
4 fees. The Chief Judge has been vocal on
5 this. Obviously at the moment there are, you
6 know, serious fiscal challenges. But there's
7 no question, after what I believe is 16,
8 17 years without an increase, it's time for
9 an increase. Very important.

10 ASSEMBLYWOMAN McMAHON: Thank you very
11 much. Appreciate --

12 (Zoom interruption.)

13 CHAIRWOMAN WEINSTEIN: We now go to
14 Assemblyman Walczyk, three minutes.
15 Thank you.

16 ASSEMBLYMAN WALCZYK: Your Honor,
17 thanks so much for the time. Wonderful to
18 see you.

19 District attorneys have a staggering
20 backlog of cases in some cases. What is the
21 Office of Court Administration doing to
22 ensure that speedy trial or speedy
23 presentment aren't the reason that these
24 cases are dismissed at the end of all of

1 this?

2 CHIEF ADMIN. JUDGE MARKS: Well,
3 we've -- we've -- at the moment, for
4 pre-indictment of felonies, the Governor's
5 executive order has suspended the speedy
6 trial statute, because that's in recognition
7 of the difficulty of presenting a backlog of
8 unindicted felonies to grand juries.

9 But what we've done is we brought back
10 grand juries over the summer -- in July
11 outside New York City, in August inside
12 New York City. And since then we've
13 continued grand juries. Every county in the
14 state has at least one. Some of the more
15 populous counties have more than one,
16 particularly in New York City.

17 So we're trying to facilitate the
18 easing of the backlogs by providing -- and,
19 you know, it's very impressive that people
20 are coming in to serve on grand juries. You
21 know, we weren't sure if we would get people
22 to come in and serve, and it's been kind of
23 remarkable that basically in the very similar
24 numbers to people in pre-pandemic times,

1 people are coming in and serving on grand
2 juries. So they're doing their public
3 service, performing their civic duty.

4 So we also have -- particularly in New
5 York City, we've made an effort to designate
6 judges to conference unindicted felony cases
7 to try to resolve them. And actually
8 that's -- we started doing that early in the
9 new year, last month, and there have been
10 thousands of cases that have been resolved
11 without the need to present those cases to
12 the grand jury.

13 So this is going to take a lot of
14 work, but it's a top priority for us. And,
15 you know, we'll get through it.

16 ASSEMBLYMAN WALCZYK: Your Honor, one
17 more.

18 Your weekly address referred to
19 electronic court systems as evolving into a,
20 quote, unquote, better normal. I was just
21 wondering if you could explain to the members
22 of the various committees that are
23 represented what you meant by that. And what
24 health metrics are you following to return to

1 in-person? What can, you know, locals look
2 to for those metrics in anticipation that
3 they will return to some of their normal
4 operations?

5 CHIEF ADMIN. JUDGE MARKS: By the way,
6 the weekly remarks are from Chief Judge
7 DiFiore, not from me.

8 But in terms of virtual proceedings,
9 our view on virtual proceedings -- you know,
10 we've tracked this very carefully, we've
11 examined how it's worked. In most instances
12 it's worked very well. But we're of the
13 opinion that it's not the answer to all
14 proceedings. We don't think that, for
15 example, grand jury proceedings or civil or
16 criminal jury trial proceedings are ideally
17 suited for a virtual presentation.

18 But there are many other, particularly
19 routine proceedings in civil courts where
20 it's not necessary to drag people into court,
21 that it's good for the lawyers, it's good for
22 their clients, it's good for the court
23 system. It will -- it's more -- it can be
24 more efficient and it can promote public

1 health and safety.

2 So it -- we're relying heavily on
3 virtual proceedings now, and they will have
4 an important role post-pandemic.

5 ASSEMBLYMAN WALCZYK: Thanks for the
6 time, Your Honor and Chairwoman.

7 CHIEF ADMIN. JUDGE MARKS: Thank you.

8 CHAIRWOMAN WEINSTEIN: Thank you.

9 We now go to Assemblyman Ra for
10 five minutes, ranker on Ways and Means.

11 ASSEMBLYMAN RA: Thank you, Chair.

12 Thank you, Judge Marks.

13 So I just wanted to go back to -- you
14 know, obviously there's been plenty said by
15 my colleagues regarding the recertification
16 of the judges and, you know, backlogs and all
17 of that stuff.

18 But just with regard to those
19 individuals, one of the things that came up
20 when we had a hearing back in the fall was
21 about, you know, the implication of not just
22 not having, you know, the judges to handle
23 the caseload, but the judges' staff, and, you
24 know, having those folks that are there that

1 help process cases, help write opinions, help
2 do all that type of stuff.

3 And I know that, you know, basically
4 by law judges that are in-office are entitled
5 to have their staff to help them with their
6 caseload. So I'm just wondering, what is the
7 status with regard to that in terms of the
8 employee head count within the agency? Are
9 -- is there lacking of staff for judges, you
10 know, through retirements and that? Or are
11 they able to hire people so that they have
12 adequate staffing in each courtroom?

13 CHIEF ADMIN. JUDGE MARKS: The
14 Supreme Court justices have a -- it's in the
15 Judiciary Law, they have a statutory
16 entitlement to two personal appointments, a
17 law clerk or a secretary. And in some
18 instances they don't hire a secretary,
19 they'll hire a junior law clerk, if you will,
20 someone recently out of law school.

21 So the judges who were not
22 certificated, the 46, had staff. We
23 committed to finding positions for that
24 staff. Some of those people decided to

1 separate from service, retire or find a job
2 elsewhere. But those who wanted to remain in
3 the court system we have found jobs for,
4 mostly with new judges coming in,
5 particularly new Supreme Court justices
6 coming in. Although they're entitled to hire
7 the people they want, we got extensive -- a
8 tremendous amount of cooperation from
9 incoming Supreme Court justices to pick up
10 the staff of the judges who were not
11 certificated. So in terms of those
12 employees, they have all been placed.

13 But generally, our staffing levels
14 elsewhere in the court system -- not the
15 personal staff of judges, but court officers,
16 court clerks, court reporters, court
17 interpreters, back-office staff -- we're down
18 employees. You know, I tried to address that
19 in my opening remarks.

20 And, you know, we have a hard hiring
21 freeze. We're forced to do that to meet the
22 bottom line. You know, we haven't gotten
23 significant increases in our budget. Over
24 the last decade they've been, you know,

1 marginal increases. So staffing was down to
2 begin with, and the last year has exacerbated
3 that situation.

4 So, you know, I'm not going to suggest
5 otherwise to you. It's a real challenge for
6 us that we're going to have to -- we're going
7 to have to figure out.

8 ASSEMBLYMAN RA: Okay. Thank you for
9 that.

10 And the other question, just more
11 globally in terms of the budget of the
12 department. You know, there was a comment
13 from the Budget Director, you know, that they
14 didn't direct the agency necessarily what to
15 do with their budget. But obviously there's
16 a, you know, \$300 million figure out there of
17 reducing costs.

18 So is that -- can you clarify that?
19 Was that coming from the administration and
20 the Department of Budget, or is that an
21 internal measure to come up with that number
22 to cut the budget by?

23 CHIEF ADMIN. JUDGE MARKS: No, I'm
24 glad you asked that. It's an important

1 question.

2 We -- in late April when the Governor
3 issued and the Budget Director issued their
4 revised financial plan for the state, how
5 much revenue the state has and so on and so
6 forth, in the narrative of the revised budget
7 plan they urged and assumed that the court
8 system would reduce its spending by
9 10 percent.

10 And then they took a second step, they
11 deducted that amount of money, the 10 percent
12 from our budget, they deducted that from the
13 revised financial plan.

14 So, you know, given that, and given
15 that we always try to act as a responsible
16 partner in state government, we went ahead
17 and proceeded to develop a plan to reduce our
18 spending by 10 percent. And so that's what
19 we did.

20 ASSEMBLYMAN RA: Thank you,
21 Judge Marks. Thank you, Chairs.

22 CHIEF ADMIN. JUDGE MARKS: Thank you.

23 CHAIRWOMAN WEINSTEIN: Thank you.

24 We go to Assemblywoman Byrnes.

1 ASSEMBLYWOMAN BYRNES: Thank you.
2 Thank you, Madam Chair. And thank you,
3 Chief Administrative Judge Marks.

4 My question is based off of what was
5 just indicated, sir, when you spoke with
6 Assemblymember Ra. You indicated that every
7 judge has the right to two personal
8 appointees. My understanding, though, is
9 that in -- that there is also a hiring freeze
10 on law clerks and secretaries to judges. So
11 my -- again, my understanding is that some
12 judges are potentially going without
13 secretaries, without law clerks because what
14 would normally be their personal appointee
15 positions are currently not fillable.

16 So is it accurate to say that judges
17 do have two appointees?

18 CHIEF ADMIN. JUDGE MARKS: Let me be
19 clear about this. The Supreme Court justices
20 have a legal entitlement to two personal
21 appointees. The other judges do not.

22 The practice has been, over the years,
23 that other judges are entitled to hire one
24 and in some cases two staff people. And, you

1 know, we've been able to support that in the
2 budget for years.

3 This year Supreme Court justices,
4 because there's a statutory entitlement, you
5 know, they have been able to fill vacancies
6 and hire their two people -- and have two
7 people work out of their chambers.

8 With the other judges who do not have
9 the statutory entitlement to -- for a
10 personal appointment or personal
11 appointments, we've said that every judge
12 needs the assistance of an attorney, that a
13 judge cannot do his or her job without the
14 assistance of an attorney. But what we've
15 tried to do is where judges have a vacancy,
16 someone has left and they don't have the
17 assistance of an attorney -- not
18 Supreme Court justices, but the other types
19 of judges -- we've tried to get them to hire
20 someone from within the court system, so that
21 it's not someone off the street, increasing
22 our employment level with the cost that that
23 entails.

24 We've tried to work with them, and

1 it's been very successful, and the judges
2 deserve credit for this. They understand the
3 fiscal situation. And I would say
4 overwhelmingly when a non-Supreme Court
5 justice --

6 ASSEMBLYWOMAN BYRNES: Sir, I
7 apologize. Oh, my God, I've never
8 interrupted a judge before, but I only have
9 30 seconds left.

10 I was the court attorney to an acting
11 Supreme Court judge. Are the acting Supreme
12 Court judges who fulfill, in multi-bench
13 rural areas -- they can't rely on somebody
14 else to borrow a court attorney or a law
15 clerk from. You know, are they allowed to
16 have the two personal appointees? Or even as
17 acting Supreme Court judges, are they locked
18 into whatever they're allowed to have in the
19 hiring freeze?

20 Thank you, sir.

21 CHIEF ADMIN. JUDGE MARKS: Again,
22 they're not legally entitled to that, but
23 we've said as a policy matter every judge is
24 entitled at least to the services of an

1 attorney, and we've -- I believe we've done
2 that and we've felt -- there may be a rare
3 exception to this, but we've been able to
4 accommodate every judge in the state to
5 ensure that they have the assistance of an
6 attorney.

7 ASSEMBLYWOMAN BYRNES: Thank you, sir.
8 My apologies for interrupting you.

9 CHIEF ADMIN. JUDGE MARKS: No problem
10 at all. Thank you.

11 CHAIRWOMAN WEINSTEIN: Thank you.

12 Judge Marks, so I just have a very
13 brief -- some very brief -- more comments, I
14 think, than questions.

15 I was very concerned to hear your
16 response to Senator Hoylman about the cuts to
17 civil legal services, the 10 percent cut. As
18 you know, I worked over the years with
19 Judge Lippman to get us to that 100 million
20 mark, which today even if things were
21 perfect, would not be enough funding. And
22 with increased problems due to the pandemic,
23 I would assume we've only seen an increase in
24 need.

1 So at the time you did the
2 10 percent cut, the Executive was withholding
3 20 percent from local assistance programs.
4 Since the Executive's budget has come out,
5 that has been reduced to just 5 percent of
6 the local assistance budgets of -- community
7 budgets. So I was wondering if, in light of
8 the change in the Executive's position to
9 just withhold 5 percent, if you would be --
10 rethink the 10 percent and see what can be
11 done to restore those -- make sure that those
12 programs get fully funded.

13 CHIEF ADMIN. JUDGE MARKS: I can
14 commit to you that we will look carefully at
15 that. It might require extending our hiring
16 freeze longer. That's one of the options.
17 We don't have a lot of options. But I
18 promise you we will look at that very
19 carefully.

20 CHAIRWOMAN WEINSTEIN: And the
21 question, has any -- have any of the stimulus
22 pandemic fundings from Washington included --
23 any of the federal programs included any
24 funds for legal services to assist people in

1 terms of their staving off eviction or
2 mortgage foreclosure?

3 CHIEF ADMIN. JUDGE MARKS: Not that
4 I'm aware of. The funding I'm aware of is
5 for -- are you talking about in the big --
6 you know, what's described as the
7 \$1.9 trillion package or the --

8 CHAIRWOMAN WEINSTEIN: Yes. Well,
9 both the December -- the one passed in
10 December and the proposed -- I mean, I -- I
11 should know the answer to the question. I
12 don't. But why don't we -- why don't we both
13 examine whether there's any potential for
14 legal services funding to assist people
15 impacted by COVID-19.

16 CHIEF ADMIN. JUDGE MARKS: No, we
17 should do that, I agree.

18 CHAIRWOMAN WEINSTEIN: Thank you,
19 Judge.

20 Back to the Senate.

21 CHAIRWOMAN KRUEGER: Thank you.

22 Judge, I also don't have any questions
23 today. I want to thank you for your time
24 with us and re-emphasize my Senate

1 colleagues' agreement with the Assembly. We
2 can't afford to cut legal services at this
3 time. I'm not saying we can afford to cut
4 anything else in our court system.

5 But I think you have explained fairly
6 clearly that for the problems you're seeing
7 you feel like you have your arms around the
8 criminal justice side of the court system.
9 Arraignments have continued, courts have
10 continued, there's been actually a decrease
11 in the number of arrests coming into the
12 courts.

13 But we've also talked about at some
14 point these moratoriums on evictions and
15 foreclosures and debt and utilities are all
16 going to come due. And I think it's going to
17 be an explosion throughout the court system
18 to try to figure out how you deal with a
19 volume you've probably never seen before.

20 So I don't want to ask you how you're
21 going to deal with that volume; I'm going to
22 say to you, you need every tool in your
23 arsenal probably to be increased, certainly
24 not decreased, to try to get through that

1 tsunami when it happens.

2 So again, I will urge you, explore how
3 you have the resources, how you have your
4 specialized courts, have your specialized
5 courtrooms within your specialized courts, if
6 it's New York City, so that you're up and
7 ready for more foreclosures when those start
8 to happen, you're up and ready for the
9 residential evictions which we hope won't
10 happen, the commercial evictions, which we
11 also hope won't happen. But we know it's all
12 there, it's all building up.

13 With that, we want to thank you very
14 much for your time and we want to excuse
15 you -- not that anybody's done with the
16 courts, but we're done with you here today
17 with us. So thank you very much for your
18 time.

19 And I'm going to call up our next
20 testifier, who is Robert Tembeckjian of the
21 New York State Commission on Judicial
22 Conduct.

23 And for people who track these things,
24 this is also under the rubric of the

1 Judiciary Committee, with Senator Hoylman and
2 Assemblyman Lavine having 10 minutes, other
3 relevant chairs and rankers having five
4 minutes.

5 So, Robert, are you with us? I think
6 you're there, but you're muted. Take your
7 mute button -- oh, there we are.

8 ADMINISTRATOR TEMBECKJIAN: Gotcha,
9 okay.

10 CHAIRWOMAN KRUEGER: Great. So good
11 morning, or good afternoon, I'm not sure --
12 oh, still morning.

13 ADMINISTRATOR TEMBECKJIAN: Still
14 morning.

15 CHAIRWOMAN KRUEGER: Still morning.

16 ADMINISTRATOR TEMBECKJIAN: Which is a
17 rarity. But thank you very much.

18 I look forward to seeing many of you
19 in person when we're allowed to do that
20 again, and particularly the new Assembly
21 Judiciary chair, Mr. Lavine. I look forward
22 to working with you as I have in the past
23 with Assemblywoman Weinstein and Assemblyman
24 Dinowitz, your predecessors in that role.

1 As you know, the Commission on
2 Judicial Conduct is the state agency created
3 in the Constitution, independent of the court
4 system, to investigate and, where
5 appropriate, to discipline judges throughout
6 the New York State Unified Court System for
7 misconduct -- ethical misconduct as
8 promulgated in the rules on judicial conduct.

9 Like all of government and society,
10 2020 presented some very unique challenges
11 for us. We are a small agency, and we're
12 able to adapt rather well to the challenges
13 presented to us by the coronavirus pandemic.
14 On a budget of \$6 million a year, we are
15 responsible for overseeing the ethics
16 enforcement on nearly 3500 judges throughout
17 the Unified Court System. And somehow, under
18 the unique circumstances presented to us this
19 year, we managed to shift our operations in
20 early March from in-person to remote and
21 almost entirely virtual.

22 We instituted video platforms so that
23 we have been taking depositions and
24 conducting hearings as well as interviews

1 remotely, by video. We have been
2 communicating through email and through
3 electronic use of faxes and the postal system
4 and, where necessary, private carriers. And
5 our 11 commission members, who as you know
6 are appointed by various appointing
7 authorities -- some by the Governor, some by
8 the Chief Judge, and some by the leaders of
9 the State Legislature -- have been conducting
10 all of our business remotely.

11 And the result was that in 2020, we
12 publicly disciplined 24 judges throughout
13 New York State, which is a greater number
14 than in any year over the past decade. And
15 we were able to do it by essentially going
16 into overdrive, as we adapted to the
17 challenges of switching from in-person to
18 video.

19 And although I vigorously agree with
20 those who have presented the view that
21 in-person proceedings, particularly our due
22 process and deposition proceedings, are
23 invaluable and really irreplaceable, under
24 the unique circumstances presented to us this

1 year we were able to manage.

2 And I suspect that when we do return
3 to whatever the new normal will be, that
4 while we expect to return to in-office,
5 in-person operations to a great extent, we
6 will probably benefit from having pioneered
7 this year the uses of technology for remote
8 proceedings so that, where necessary,
9 witnesses who are in remote parts of the
10 state or even in other states, who are
11 physically challenged, who may be suffering
12 from some infirmity that makes it difficult
13 for them to reach one of our offices, we'll
14 be able to communicate with them as you and I
15 are communicating now by video.

16 With all of that said, this year,
17 rather uniquely, I am not asking for more
18 money than the Governor's Executive Budget is
19 proposing, which is the same dollar amount
20 that we had last year.

21 As you know, we've been challenged for
22 a number of years by the decision in the
23 Executive Budget to keep the commission's
24 appropriation flat. And four times in the

1 last 10 years the Legislature has increased
2 our appropriation, recognizing that the work
3 we do is essential, it is a constitutional
4 responsibility and obligation. And to make
5 up for the fact that our staff has decreased
6 over the last decade from 51 full-time
7 employees to 39 -- while our caseload has
8 increased -- you have come through, time and
9 again, to supplement what the Executive has
10 recommended.

11 Because of the special challenges and
12 strains and stresses on the state's finances
13 this year because of the coronavirus
14 pandemic, we submit a budget to you that asks
15 for the same dollar amount as we had last
16 year. And in discussing it with the
17 Governor's representatives, I'm happy to say
18 that they agreed that that would be
19 appropriate for us -- with a commitment, to
20 the greatest extent possible, for us not to
21 spend all of the money that is appropriated
22 to us.

23 And as some of you know because I've
24 sought your help in between these annual

1 events, we sometimes disagree with the
2 Division of Budget on how our appropriations
3 should be spent or allocated during the year.
4 We have sometimes taken the position that
5 they can implement a cash ceiling on our
6 budget, as they do with executive agencies
7 that report to the Governor.

8 But because we do not report to the
9 Governor, because we are constitutionally
10 independent, our position has always been
11 what the Legislature appropriates is what we
12 spend, responsibly keeping it under the full
13 figure to do our part, particularly in
14 stressful times such as these.

15 And I'm pleased to be able to say this
16 year, at least, that the Executive and the
17 commission are on the same page, and I
18 certainly hope that the Legislature would
19 agree. Not that I would object if you
20 somehow managed to find additional funding to
21 provide for us this year so that we can
22 continue the regeneration of our staff, which
23 you supported and found the funding for in
24 previous years.

1 But given the state of affairs that we
2 all find ourselves in, we are committed to
3 making do with, again, a flat budget and
4 having demonstrated our adaptability in this
5 electronic age to the benefits of IT, we
6 think we can manage to do it.

7 I certainly hope to stem the tide of
8 departing staff who we cannot replace, which
9 typically is the way we save money over the
10 years -- our expenses go up, our
11 responsibilities increase as our caseload
12 increases, and the only real place that we
13 can find any savings is in not replacing or
14 in deferring the replacement of staff that
15 depart. It slows us down, but we do the best
16 we can.

17 That said, I'm happy to respond to any
18 questions that you might have, either on our
19 performance this year, on the funding that
20 we're requesting, or what we project for the
21 coming year.

22 CHAIRWOMAN KRUEGER: Thank you. Thank
23 you very much.

24 I don't see hands, but I'm just going

1 to double-check. Does our chair of Assembly
2 Judiciary or Senate Judiciary have any
3 questions?

4 ASSEMBLYMAN LAVINE: Yes, I do.

5 CHAIRWOMAN KRUEGER: Thank you.

6 CHAIRWOMAN WEINSTEIN: Chuck.

7 Mr. Lavine.

8 ASSEMBLYMAN LAVINE: All right,
9 thanks.

10 Mr. Tembeckjian, good to see you
11 again, and I look forward to working with
12 you. I want you to know that I spent
13 five years as cochair of the New York State
14 Legislative Ethics Commission, and I also had
15 so much fun in the five years that I served
16 as chair of the Assembly Ethics Committee.
17 So I have some special sense of understanding
18 about what you do and how critically
19 important it is.

20 So let me ask you a couple of
21 questions -- not so much dealing with the
22 budgetary issue itself, although I hear what
23 you're saying about your budget -- but a
24 couple more granular questions.

1 So there is a -- you have -- there are
2 11 commission members, correct?

3 ADMINISTRATOR TEMBECKJIAN: Yes,
4 correct.

5 ASSEMBLYMAN LAVINE: Do you need a
6 majority of those commission members to be
7 able to institute an investigation?

8 ADMINISTRATOR TEMBECKJIAN: No. There
9 are certain quorum requirements to impose
10 discipline: We need the participation of
11 eight and the concurrence of six, no matter
12 how many are in the room. To authorize an
13 investigation, we need the concurrence of a
14 majority of those who are present for the
15 meeting and the vote.

16 But I would say that unlike other
17 entities where the staff has the opportunity
18 to screen complaints, although we analyze and
19 summarize all of the complaints that we
20 receive -- and last year that was 1500, down
21 a little bit from the previous years, but
22 with the courts having been closed for much
23 of the year it's obvious why that number was
24 down a little bit.

1 But every commission member sees every
2 complaint that we get, even if it's not
3 against a judge, even if it's a
4 non-jurisdictional against a police officer,
5 a lawyer -- every one of our commission
6 members see every one of the complaints that
7 we get, and they all vote on them. They have
8 the opportunity to hold for full discussion
9 if they wish, but there is an opportunity for
10 each of them to see every complaint, and they
11 all vote on them.

12 So it's fair to say that in my entire
13 tenure, which is over 40 years at this, every
14 investigation has had at least a majority of
15 members voting, whether or not they were all
16 in the room at the time. Six out of the 11
17 have authorized everything we do.

18 ASSEMBLYMAN LAVINE: Very good. And
19 how are investigations initiated? Must they
20 come through complaints, or do you have the
21 inherent authority or innate authority to be
22 able to investigate on your own even about a
23 complaint?

24 ADMINISTRATOR TEMBECKJIAN: The

1 statute under which we operate, Article 2A of
2 the Judiciary Law, provides for both. We can
3 investigate complaints that we receive,
4 written complaints from anyone, or the
5 commission has the authority in statute to
6 initiate an investigation on its own motion.

7 And in fact we do that on any number
8 of occasions during the year, based on
9 information that comes to our attention not
10 through a complainant but through a newspaper
11 article, through interviews or information
12 that we come across while we are conducting
13 ongoing investigations.

14 Sometimes anonymous complaints, where
15 the individual for whatever reason is
16 concerned about revealing himself or herself.
17 If there is sufficiently detailed information
18 in an anonymous complaint, we will take that
19 as an opportunity to initiate the
20 investigation on our own motion.

21 But then again, that must be by a
22 majority of the 11 commission members. I
23 don't have the authority to do that on my
24 own.

1 ASSEMBLYMAN LAVINE: And with respect
2 to the non-jurisdictional complaints -- that
3 would be, for example, complaints against law
4 enforcement officers or complaints against
5 lawyers --

6 ADMINISTRATOR TEMBECKJIAN: Yes.

7 ASSEMBLYMAN LAVINE: -- what does the
8 commission do with those complaints?

9 ADMINISTRATOR TEMBECKJIAN: We have
10 statutory authority to refer them to
11 appropriate entities or authorities, but we
12 don't refer them automatically. We will
13 review each one of them to determine whether
14 or not there appears to be some merit to the
15 complaint, at which point we will give it the
16 imprimatur of the commission and refer it.

17 We do not refer frivolous complaints.
18 As you might imagine, we do get some of those
19 every year. And rather than burden some
20 other entity -- and create a false hope to
21 the complainant that someone else may be
22 acting on their frivolous complaint, we will
23 by majority vote of the commission decide not
24 to do that, but we in writing explain to

1 every complainant the reasons for our action,
2 including to those complaints that we choose
3 not to refer by indicating that it didn't
4 really involve misconduct against a judge and
5 there didn't seem to be a legitimate basis
6 for us to refer it elsewhere, but they
7 certainly could if they wished.

8 ASSEMBLYMAN LAVINE: And you mentioned
9 you now have 39 employees, you're down from
10 51 not too terribly long ago. Is that
11 39 employees total? Does that include
12 lawyers, investigators, plus clerical staff?

13 ADMINISTRATOR TEMBECKJIAN: Yes,
14 that's everything. That's our entire -- our
15 entire staff is 39 full-time employees, and
16 we have two part-time staff who are retirees
17 that we asked to -- if they could manage to
18 give us two days a week to help us through
19 some of the difficulties created by our staff
20 having been reduced, essentially by
21 24 percent over a decade. Which is a pretty
22 big hit.

23 And it's why, in previous years, I've
24 asked the Legislature to supplement the

1 budget request that the Executive has put in
2 for us.

3 As you know, because we're not an
4 executive agency and because there would be a
5 tremendous conflict for the court system to
6 control our budget, our budget is submitted
7 to the Legislature in the Executive Budget.
8 But unlike, you know, the typical agency
9 head, if I disagree with the Executive
10 recommendation, I can come and tell you that,
11 and my reasons for it, without fear of having
12 no job when I get back to the office.

13 (Laughter.)

14 ASSEMBLYMAN LAVINE: Mr. Tembeckjian,
15 it's been a pleasure speaking with you. I'm
16 looking forward to working with you. And
17 thank you. And please thank the members of
18 the commission as well for working so hard to
19 guarantee -- well I should say work toward,
20 would be a better way to say it, the
21 integrity of our judiciary system. Thanks so
22 much.

23 ADMINISTRATOR TEMBECKJIAN: Thank you
24 very much.

1 ASSEMBLYMAN LAVINE: I yield whatever
2 time I have left.

3 CHAIRWOMAN KRUEGER: Thank you.

4 On behalf of myself and the Senate, I
5 also want to thank you for the work of your
6 commission. You know, I'm not an attorney,
7 but I've been here in the Legislature now --
8 this is my 19th year, and it is so obvious to
9 me that democracies cannot stand if people
10 lose faith in their judicial system. You
11 know, you have mistakes that happen up here
12 with the Legislature and with local
13 governments and with individual situations,
14 and most of the time you figure it out
15 without attempting coups on the U.S. Capitol.
16 Most of the time.

17 But if people don't believe that
18 they're going to get, quote, unquote, a fair
19 shake from judges in our court system, then
20 almost anything we try to do here, or pass
21 laws that make sense, you know, cannot work.

22 So you know that I have been a fan of
23 your office and have tried to ensure that we
24 do get you some more funding and get the

1 money released for you. My question, because
2 it's another issue that I don't think we ever
3 get to in this state -- again, like I said,
4 I'm not a lawyer -- I am astounded we have
5 judges who are not lawyers. Is that a higher
6 percentage of complaints that you see, a
7 disproportionate number of complaints that
8 come from courts where the actual judges have
9 no law school training?

10 ADMINISTRATOR TEMBECKJIAN: Certainly
11 the percentage of public disciplines that we
12 have imposed over the years has been higher
13 for the town and village courts than the
14 full-time courts. And within the town and
15 village courts, which are the only ones that
16 can be presided over by a nonlawyer, the vast
17 majority of those disciplines have involved
18 individuals who are not lawyers.

19 They make up about 60 percent of the
20 overall judiciary, but they constitute
21 70 percent of our disciplines overall.
22 That's about 890 public disciplines over the
23 last 40 years. It's not to say that there is
24 misconduct that a nonlawyer judge can commit

1 that a lawyer judge can't commit, but the
2 numbers certainly do bear out your
3 impression, Senator Krueger, that the
4 majority of disciplines involves the
5 part-time town and village courts, the large
6 majority of those comprised of individuals
7 who are not attorneys.

8 CHAIRWOMAN KRUEGER: Well, thank you
9 for confirming what I feared was the
10 storyline.

11 So to be more controversial, because a
12 lot of people in the Legislature don't -- or
13 haven't been thrilled with the idea of a
14 parallel type of commission for district
15 attorneys, although we did pass one, get it
16 into law, then it blew up in our faces with a
17 court case. Do you think that a commission
18 like yours can work for overseeing and
19 ensuring the legitimacy of the decisions made
20 by DAs around the state?

21 Is there a reason we should look at
22 you as a model for them? Because if we're
23 going to do something, apparently we have to
24 go back to square one.

1 ADMINISTRATOR TEMBECKJIAN: Well, I do
2 think that the commission is a model for
3 ethics reform at all levels of state
4 government. And as you and I have discussed
5 individually, the Judicial Conduct Commission
6 is the model for a very interesting and I
7 think meritorious constitutional amendment
8 for redesigning JCOPE and applying our model
9 to the executive and legislative branches.

10 Whether or not individually
11 identifying one category of public official,
12 such as district attorneys, makes sense is --
13 I think it's a legislative issue, and it's as
14 much a political question as it is an ethics
15 question. If the Legislature were to decide
16 that such an entity would be appropriate, as
17 you did previously by legislation, I would
18 recommend that the approach be via
19 constitutional amendment, as you've already
20 considered for the executive and the
21 legislative branches.

22 There is a mechanism within the
23 existing grievance committees which are
24 supervised by the appellate divisions, to

1 discipline attorneys, including district
2 attorneys. But having decided as a public
3 policy matter that it was a good thing, I
4 would recommend us as the constitutional
5 model as opposed to the legislative model.

6 CHAIRWOMAN KRUEGER: Okay. That will
7 take me another 18 years, but thank you for
8 that.

9 (Laughter.)

10 CHAIRWOMAN KRUEGER: I have a series
11 of constitutional amendments that
12 unfortunately don't seem to be going anyplace
13 too fast. But I appreciate that.

14 Assembly, do you have any other
15 questions? Because we have one more Senator
16 who does.

17 CHAIRWOMAN WEINSTEIN: We do not have
18 anyone.

19 CHAIRWOMAN KRUEGER: All right, then
20 I'm going to call on our Judiciary chair,
21 Brad Hoylman, who just rejoined us from
22 another event.

23 SENATOR HOYLMAN: Hi. Nice to see you
24 again.

1 ADMINISTRATOR TEMBECKJIAN: Nice to
2 see you too.

3 SENATOR HOYLMAN: I'm glad we were
4 able to successfully fight for your funding
5 that you requested, and I appreciate how it's
6 been utilized since then.

7 Are there any trend lines that you see
8 in the cases you've been handling that
9 require any legislative action on our part?

10 ADMINISTRATOR TEMBECKJIAN: I don't
11 think so. I'm happy to say that the
12 incidence of inappropriate demeanor appeared
13 to be diminishing, which suggests to me that
14 judges over time have become more sensitive
15 to even the appearance of probity while on
16 the bench.

17 I also think that after 40 years of
18 vigorous enforcement by the commission, there
19 has been a salutary effect on the judiciary
20 overall. We are invited now annually to make
21 presentations to newly appointed and newly
22 elected judges. Various judicial
23 associations invite us to give annual
24 presentations to their events. And I think

1 that overall we're seeing that there is a
2 greater appreciation and sensitivity by the
3 judiciary to its ethical obligations.

4 And I certainly wouldn't want to
5 suggest that because we had 24 public
6 disciplines this year that we are overseeing
7 a judiciary run amok -- quite the contrary.
8 Our experience is that the vast majority of
9 complaints that we receive are not
10 substantiated, that the judiciary is
11 comprised, generally speaking, of individuals
12 who are highly capable, competent, dedicated
13 and increasingly sensitive to their ethical
14 obligations.

15 So I don't think so. There is a bill
16 that Assemblyman Steck has introduced, which
17 he has periodically, about mandating
18 punishment for those judges who are
19 exceedingly tardy in deciding pending
20 matters. But we have demonstrated -- there
21 is a rule, an existing rule, that requires
22 judges to dispose of the business of the
23 courts efficiently as well as fairly, and we
24 have disciplined judges publicly for delays

1 in failing to decide cases on a timely basis.
2 And that's the only legislative issue that
3 I'm aware of at the moment that would
4 directly --

5 SENATOR HOYLMAN: Thank you.

6 ADMINISTRATOR TEMBECKJIAN: -- act
7 upon us.

8 SENATOR HOYLMAN: Thank you.

9 With the additional 300,000 that we
10 were able to secure for the commission, how
11 many additional cases have you been able to
12 resolve due to that funding?

13 ADMINISTRATOR TEMBECKJIAN: Well, our
14 pending cases at year-end actually declined
15 by 23 percent. We went from 231 pending two
16 years ago to 177 now.

17 Part of that is because even with a
18 diminishing staff we had fewer incoming
19 complaints this year, so that we were able to
20 devote our existing resources a little more
21 effectively toward pending matters.

22 But there's no question that the
23 300,000 from two years ago really was a major
24 boost to us. And it permitted, among other

1 things, for us to be positioned to have the
2 physical resources -- the computers, the IT
3 network and so forth -- that enabled us to
4 adapt to an all-remote and electronic model
5 in March once the coronavirus pandemic
6 really hit.

7 SENATOR HOYLMAN: Has it resulted in
8 additional staff? Would you say that it's
9 improved the quality of investigations and
10 hearings?

11 ADMINISTRATOR TEMBECKJIAN: We
12 certainly -- we certainly have been able to
13 conduct more thorough investigations. The
14 overall impact on staff, however, has not
15 been realized. We're still at our lowest
16 staffing point in 15 years. We dropped from
17 51 to 39 full-time employees. And as I
18 mentioned to Chairman Lavine, I was able,
19 fortunately, to persuade two of our retirees
20 to give us two days a week so that we can
21 have the benefit of their experience and
22 participation in our matters.

23 But we are still terribly
24 understaffed. Had -- had our budget

1 maintained the standard 2 percent annual
2 growth over the last 10, 15 years, our budget
3 today would be 6.7 million. But it's 6
4 million, almost even -- 6,029,000.

5 SENATOR HOYLMAN: So I -- just to be
6 clear, the additional money that we secured
7 has gone into equipment and other types of
8 support, not staffing.

9 ADMINISTRATOR TEMBECKJIAN: Yes,
10 mandated -- mandated financial obligations
11 that increased every year. Raises for the
12 existing staff that we -- that we still have,
13 the increased costs of doing business,
14 increased rent and so forth.

15 That 300,000, as you recall, was
16 intended as the first of a two-year bump to
17 get us -- our staffing levels back up as
18 well, but when the coronavirus hit last year
19 we were forced to live with the flat
20 \$6 million recommendation, which we're
21 proposing to do again this year.

22 But the consequences of living on the
23 same dollar amount year after year is
24 essentially regressive financing, because our

1 costs go up and in order to meet those rising
2 costs with the same dollar amount, we have to
3 cut something. And although we did have
4 41 full-time staff at the start of the last
5 fiscal year, the two who departed for other
6 jobs we did not replace because we just -- we
7 just were too tight financially.

8 That would not have been the case if
9 the second year of your two-year program had
10 gone into effect. We'd have more staff now
11 than we do.

12 SENATOR HOYLMAN: And will you be able
13 to hire more staff moving forward, or are you
14 still in a triage mode?

15 ADMINISTRATOR TEMBECKJIAN: No, not
16 this year. Not with another year of flat
17 budgeting.

18 It is my hope that if any one of our
19 39 existing full-time employees leaves, that
20 we'll be able to replace them, but we won't
21 really be able to tell until we see the
22 overall effect of this flat budget for yet
23 another year, as we progress. I'm hoping
24 that we stay at 39. We do not anticipate

1 increasing unless you somehow miraculously
2 find some extra money to give us. And as I
3 said just before you rejoined, although we're
4 asking out of a sense of civic responsibility
5 and duty for the same dollar amount this year
6 as last year, I certainly wouldn't object if
7 you managed to find some more for us.

8 SENATOR HOYLMAN: Thank you.

9 Thank you, Madam Chair.

10 ADMINISTRATOR TEMBECKJIAN: Thank you.

11 CHAIRWOMAN KRUEGER: Thank you.

12 Any other Assemblymembers' light on,
13 Helene?

14 CHAIRWOMAN WEINSTEIN: No, we have no
15 members.

16 CHAIRWOMAN KRUEGER: All right. Then
17 I want to thank you very much for being with
18 us today --

19 ADMINISTRATOR TEMBECKJIAN: Thank you,
20 as always.

21 CHAIRWOMAN KRUEGER: -- I want to
22 dismiss you to continue to work, and I want
23 to call up William Leahy, New York State
24 Office of Indigent Legal Services, and remind

1 legislators that for this guest,
2 Jamaal Bailey and Jeff Dinowitz are the two
3 chairs of committees for the first
4 opportunities to question after testimony.

5 Good afternoon.

6 DIRECTOR LEAHY: Good afternoon,
7 Chair. How are you?

8 CHAIRWOMAN KRUEGER: I am fine, I am
9 fine. How are you doing?

10 DIRECTOR LEAHY: I'm doing well. And
11 thank you for the invitation and the
12 advantageous placement.

13 CHAIRWOMAN KRUEGER: Well, we're just
14 screaming through this hearing -- okay,
15 that's a lie. It is 12:30 and you are number
16 three of I think 31 today.

17 DIRECTOR LEAHY: Well, I want to speak
18 to you, if I may, and your cochair and the
19 chairs of the relevant committees, of course,
20 and the other members -- essentially it's a
21 tale of two constitutional responsibilities.
22 And there's one tremendous success story for
23 which we thank everyone far and wide, and
24 then there's one of seriously

1 unconstitutional stature and crying out for
2 attention.

3 So of course I speak of the public
4 criminal defense reforms that go back to the
5 Kaye Commission and the creation of my office
6 in 2010 and the settlement of the
7 Hurrell-Harring lawsuit and then the
8 enactment of Executive Law 832(4) in 2017 to
9 extend the benefits of that settlement to the
10 entire state. That is going very, very well.
11 And it's going well because it is supported
12 at all levels of government and throughout
13 the legal community. The Governor has lived
14 up to his commitment, including in the
15 Executive Budget that you're reviewing now.
16 We support that request. That's the fourth
17 year of the planned five-year journey
18 accounted for in the state's long-range
19 fiscal plan to put the state for the very
20 first time in a state of constitutional
21 compliance with respect to its Gideon
22 obligation. And of course that's shorthand
23 for its Sixth Amendment responsibility to
24 provide the effective assistance of counsel.

1 That's going well I think because our
2 office is functioning well. We -- even in a
3 year in which we've had to shift from a lot
4 of in-person meetings to a lot of remote
5 meetings, we are continuing to work very
6 effectively with each and every county and
7 New York City. We have the support of a
8 tremendous board, which supports us every
9 step of the way. We've had support from the
10 Governor, the Legislature, the 140 or 150 or
11 so providers of mandated representation all
12 throughout the state, all the counties, the
13 State Bar, NYSAC, the Chief Defenders
14 Association, the State Defenders Association.
15 All of these entities are vital partners, and
16 it's going very well.

17 And I'll cite you quickly to the
18 bullets that we put in on page 3 of our
19 written testimony and the -- we selected four
20 of the many reports we have filed over the
21 years. And Footnotes 2 and 3, with respect
22 to the five counties under the lawsuit
23 settlement, which is still extant -- we still
24 meet every other month with the parties, the

1 Governor's counsel and the plaintiffs'
2 counsel in the Hurrell-Harring lawsuit and in
3 the statewide effort, where we are, as I say,
4 entering Year 4 of the five years to get us
5 to a state of constitutional compliance.

6 There are a few things that we need in
7 order to sustain that progress. We are -- as
8 is everyone -- under the state hiring freeze.
9 We need specifically right now our two data
10 officers that we've been waiting on since
11 last March. We need NYSDA to be funded,
12 because NYSDA provides the training and the
13 computer backup, the data backup and the
14 advice and support for lawyers. And I know
15 that Susan Bryant will be speaking much later
16 to you, and we support her testimony.

17 And we also need, with respect to the
18 Article VII issue about the so-called virtual
19 arraignment bill, we need no backing down
20 from the requirement of in-person
21 representation at arraignment, which is a
22 core component of the Hurrell-Harring
23 settlement and a core component of Executive
24 Law 832(4).

1 Now, that's the good side of the
2 ledger. I want to hold up for you and see if
3 I can -- yeah, it can be seen. The Chief
4 Judge's Commission on Parental Legal
5 Representation Report in 2019 set out a
6 blueprint for parental representation reform
7 in New York. And parental representation is
8 every bit as required under the state law and
9 the State Constitution as criminal defense
10 representation is. It simply has not, to
11 date, accumulated sufficient political and
12 fiscal support.

13 We are doing -- and I cite you to
14 Appendix B at the end of our written
15 testimony -- we're doing a lot. We have
16 already acted on the commission's
17 recommendation to expand the eligibility for
18 counsel standards to Family Court. That was
19 approved by our board in December, we're
20 finalizing the actual document. It will
21 probably be out within a week or so.

22 We are taking to our board at the
23 April meeting, in compliance with the
24 commission's recommendation, caseload

1 standards. Now, those will have to be
2 subject to state funding, of course, because
3 when you reduce caseloads and you provide
4 lawyers with appropriate caseloads, it's a
5 significant fiscal lift. And so those
6 caseload standards, we will ask them not to
7 be self-executing but to be contingent on
8 available state funding.

9 In terms of what you ask for at a time
10 of crisis, I guess I want to say that you
11 can't waste a crisis. Nor can the state wait
12 any longer to fix the unconstitutional state
13 of affairs with respect to parental
14 representation. We have to get started, and
15 we have to get started now.

16 And of course our request, our ask, if
17 you will, is for the \$5 million in aid to
18 localities. We spoke with you all about it
19 last year, and it's certainly a high agency
20 priority. It is our fundamental priority
21 this year.

22 But we also ask you, outside the
23 budget, and as the legislative session goes
24 along, take a very serious look at the

1 parental commission's recommendations. It's
2 not rocket science. Control caseloads,
3 provide appropriate state funding, provide
4 appropriate state guidance and
5 infrastructure. Do exactly what we are doing
6 on the criminal defense side. We know how to
7 do it, we have done it, we are doing it.

8 And so let's get started. That's my
9 plea on parental representation, and let's
10 not wait any longer.

11 So that's my opening statement, and
12 I'm happy and eager, in fact, to have a
13 conversation and answer questions.

14 CHAIRWOMAN KRUEGER: Senator Brad
15 Hoylman, chair of -- oh, you know what,
16 wrong. Excuse me, Senator Hoylman.

17 It's actually Senator Jamaal Bailey,
18 as the chair of Codes.

19 SENATOR BAILEY: Thank you,
20 Madam Chair. And Director Leahy, Bill, good
21 to e-see you today.

22 DIRECTOR LEAHY: Good to see you.

23 SENATOR BAILEY: As you often do with
24 this testimony -- and your testimony

1 generally answers questions that I was going
2 to ask. Right? You always do a good job of
3 that every year.

4 But I guess I just wanted to double
5 down and also share my agreement with you
6 about the Article VII as related to the
7 arraignments and how it would negatively
8 affect the work that you've been trying to do
9 as related to the Hurrell-Harring settlement.
10 And I just wanted to give you an opportunity
11 to expound upon that if you wanted to.

12 DIRECTOR LEAHY: Sure. You have my
13 video, so you can see I'm a man of a certain
14 age today. But way back in the day, you
15 know, I was a public defender in the trenches
16 in and around Boston, and I can tell you
17 there is no more meaningful stage of a
18 criminal proceeding than the arraignment when
19 the public defender, who no client has ever
20 chosen, goes into the dock, talks to a
21 complete stranger, is a complete stranger and
22 goes out to appear before a judge to plead
23 for that client's release.

24 And so, you know, virtual appearances

1 in the cause of court efficiency are a
2 wonderful thing for unnecessary, unessential
3 appearances. They should have no application
4 to the arraignment. The work of a public
5 defender, the work to build the trust of the
6 client, the work to begin the process of
7 having confidential communication really be
8 meaningful communication, it starts there.
9 It can't be done remotely. It has to be done
10 in-person, person to person. That's from
11 personal experience. And I was very
12 gratified, during Judge Marks' testimony, at
13 the number of members, Assemblypeople and
14 Senators, who spoke to that.

15 So -- and it's embedded in the
16 settlement and in the law. So we'd be
17 rolling back -- at a time when we're talking
18 about greater protection for minority
19 defendants and people in minority communities
20 and poor people, to tear away the ability to
21 have a personal connection with your lawyer
22 at arraignment? It's unthinkable. And it --
23 and there's nothing wrong, you know, with
24 extending the 25 counties to the whole state:

1 Just take arraignments out of it. Take
2 arraignments out of it.

3 And I commend to all of you the
4 written testimony and the future oral
5 testimony of Susan Bryant and Laurette Mulry
6 representing NYSDA and the Chief Defenders.
7 They'll be up much later, and they'll be
8 speaking to this. I read their statements,
9 and they're excellent.

10 Also, we have a statement -- I think
11 we've sent it to you already, Senator, but
12 I'll share it with all of the members -- back
13 on December 2nd, our notification about
14 virtual arraignments. Because we've been
15 hearing the drumbeat for a while: Gee,
16 that's so convenient, it's so easy, it works
17 so well for everybody. It doesn't work for
18 due process, it doesn't work for effectuating
19 the right to counsel, it cannot happen with
20 respect to arraignments.

21 SENATOR BAILEY: Again -- thank you
22 for that. And again, I echo those same
23 sentiments.

24 You were speaking about, I guess, the

1 rates for assigned counsel. And I know that
2 we are in a fiscal crisis like we've never
3 seen before as result of this pandemic that
4 we've never seen before. But I just wanted
5 you to touch on the importance of the
6 increase of the rates despite us not having
7 -- you know, where we may not have the fiscal
8 wherewithal to do it right now.

9 DIRECTOR LEAHY: Yeah, you know, it's
10 interesting Judge Marks mentioned 2003-2004.
11 The very same year, 2004, back in
12 Massachusetts, my agency sued the state
13 because counsel rates hadn't been raised in
14 about 20 years. And we won a constitutional
15 decision. I was lead counsel on the case;
16 I've shared that with some of the people
17 here.

18 And so last year we worked with the
19 association that was seeking the increased
20 rates, and we were pairing it -- it is one of
21 the six recommendations of the Commission on
22 Parental Legal Representation. And as Judge
23 Marks said, the Chief Judge has been out
24 front about this. Because sooner or later,

1 lawyers just aren't going to be coming into
2 court at these rates because they're not
3 going to be able to make even a minimal
4 living on it.

5 So absolutely, it's -- there's a
6 reason why it's in there as one of the six
7 recommendations of the Commission on Parental
8 Legal Representation, and it's something that
9 is a component of a constitutional, as
10 opposed to an unconstitutional system of
11 providing mandated representation.

12 SENATOR BAILEY: Certainly. And I
13 guess the final question or the statement I
14 would have about parental representation --
15 and we've spoken about this at length with
16 you as well as my former dean, Angela Burton.

17 I guess the question is like yes, this
18 is the -- obviously especially in times like
19 these when people that can ill afford to
20 not -- who cannot afford to have inadequate
21 representation, however inartful that sounded
22 as I stated it -- we need to make sure that
23 there's some sort of oversight.

24 And I look forward to working with you

1 so that we can have these -- so we can do
2 something like along the lines of what you
3 said. If we have statewide representation
4 defense-wise, we should be having it on a
5 parental level. And if you can, I guess,
6 expound upon that as my final question and
7 statement.

8 DIRECTOR LEAHY: Absolutely. And the
9 issues, you know, are exactly identical. I
10 made reference earlier to how the criminal
11 justice system has its largest impact on poor
12 and minority communities. It is certainly
13 exactly the same reality with respect to the
14 child welfare system.

15 And so it's really, you know, not
16 simply a matter of constitutional law or
17 noncompliance with statutory law, it's just
18 plain socially destructive not to have
19 effective representation in that arena where
20 families are torn apart and decisions are
21 made about, you know, whether the parent and
22 the child stayed together.

23 So -- and so the thing it takes, and
24 what we've learned from the criminal defense

1 reforms, yes, it takes a lot of money, it's
2 true. But it takes more. It takes two more
3 things.

4 It takes an expertise from a state
5 entity, so that you don't have, like, you
6 know, let's say a wealthy county which
7 provides good representation and poorer
8 counties that do not.

9 And the second thing it needs is the
10 spirit of collaboration and cooperation,
11 which I like to think has been a hallmark of
12 our agency, and certainly should be under --
13 whether it would be ILS or whether it would
14 be a new state agency. I know the commission
15 presented both alternatives. That would be a
16 legislative decision and a gubernatorial
17 decision.

18 But we certainly have a very strong
19 interest in parental representation, as I
20 think our actions have shown, and we'd love
21 the opportunity to engage in discussions,
22 both pre-budget and post-budget, with the
23 Legislature about how to get that fixed.

24 SENATOR BAILEY: Yeah, I would

1 certainly agree with you that we need --

2 DIRECTOR LEAHY: And I'm not ignoring
3 the Executive here. I talk to the Executive
4 all the time, and they know how we feel about
5 that as well.

6 SENATOR BAILEY: Sure. And I would
7 certainly echo the sentiments that we need
8 some sort of uniformity in ensuring that
9 all -- everyone, from downstate to upstate
10 and everywhere in between, has adequate
11 representation, especially at a critical age.
12 Especially when we are seeing on the news the
13 younger people are being criminalized, the
14 younger people -- and it's important to
15 ensure that there is representation. And not
16 just representation, there are ways for
17 diversion at that age.

18 So I will yield the rest of my time,
19 Director Leahy. And again, as always, I
20 thank you for your work and for your
21 testimony.

22 DIRECTOR LEAHY: Thank you, Senator.

23 CHAIRWOMAN KRUEGER: Thank you.

24 Assembly.

1 CHAIRWOMAN WEINSTEIN: We go to our
2 Codes chair, Assemblyman Dinowitz.

3 ASSEMBLYMAN DINOWITZ: Good -- not
4 morning, good afternoon. How are you?

5 DIRECTOR LEAHY: Good afternoon,
6 Chair.

7 ASSEMBLYMAN DINOWITZ: So I'm glad the
8 issue of virtual arraignments was raised. I
9 have concerns, a number of my colleagues have
10 concerns as well. And I think it's good that
11 we can do some things virtually, save time,
12 save travel, save money. But we do have a
13 tremendous concern on that issue.

14 And I think as we get more and more
15 used to doing things like we are today, it
16 becomes easier to do other things the same
17 way, virtually, and I'm afraid ultimately
18 that is going to infringe upon the rights of
19 a lot of people. So it's really a big
20 concern, and I think we have to address it.
21 I think we have to look at that in terms of
22 the proposal by the Governor on virtual
23 arraignments.

24 But I wanted to ask you about

1 immigration proceedings. There's a huge need
2 for representation in immigration
3 proceedings, especially when we're dealing
4 with possible deportation. Can you describe
5 how your office has been involved in
6 establishing and improving representation in
7 immigration-related proceedings for persons
8 who are unable to afford counsel? Which I
9 imagine is a very significant percentage of
10 the people involved in such proceedings.

11 DIRECTOR LEAHY: Yes. Of course.

12 For starters, you know, at the moment
13 there is not a mandated statutory or
14 constitutional right to representation in
15 these hearings. I know New York has done a
16 lot to provide representation through grants
17 administered, I think, through the Department
18 of State.

19 But what our role in that is we -- we
20 are very proud that under our office, and
21 with the support of the Legislature, we have
22 got the first -- we are the -- New York is
23 the first state, I believe still the only
24 state that has a statewide network of

1 regional immigration assistance centers. And
2 what those centers do, under grants that we
3 administer, is they ensure that every lawyer
4 representing every client in the state --
5 publicly funded lawyer in the State of
6 New York -- is providing proper advice with
7 respect to the immigration consequences of
8 criminal and Family Court proceedings.

9 We've just entered into our second
10 three-year set of contracts. We've got six
11 offices all around the state. They have a
12 network, they work with one another on
13 listservs.

14 And so while we don't provide or don't
15 fund direct representation, we do fund
16 support that makes sure that lawyers aren't
17 inadvertently making mistakes that disserve
18 their clients' interest with respect to
19 immigration consequences.

20 If I could go back to your first
21 reference to virtual arraignments also,
22 Chair, there's -- because it reminded me that
23 there is a -- there is a measure that really
24 should be undertaken, and that is the

1 existing statute that provides for
2 centralized arraignments. One of the big
3 problems in upstate New York, as we all know,
4 is the distance, the sheer number of courts
5 and the distance, the physical distance
6 between courts.

7 And a number of counties, under the
8 legislation that was put into place about
9 four or five years ago -- that OCA, with the
10 support of the counties, with the support of
11 my office, have been creating these
12 centralized arraignments. And you heard
13 Judge Marks talk about, you know, no one
14 should wait more than 24 hours. Well, the
15 way these courts are operating, no one waits
16 more than 12 hours, because they have a
17 morning session and an evening session. I
18 think there are about 15 to 20 counties now
19 that already have these courts up and
20 running.

21 There would have been more but for the
22 pandemic. A lot of plans got waylaid and
23 delayed.

24 So that's really the way to go in

1 terms of the future of arraignments in the
2 State of New York. They shouldn't be all
3 over 12 or 1300 village courts all over, you
4 know, on every highway and byway. They
5 should be in these centralized arraignment
6 settings, and they should be in person, with
7 in-person representation. That's the
8 ultimate solution.

9 ASSEMBLYMAN DINOWITZ: As a result of
10 the pandemic, I believe there must be a huge
11 backlog everywhere on everything. Could you
12 just give your feeling on how we can sort of
13 dig out from all of that and how long it
14 might take?

15 DIRECTOR LEAHY: Well, we -- yes. We
16 stayed true -- and I have to repeat my credit
17 to the Executive and to the Governor for
18 staying true in this budget. We stayed true
19 to the long-term goal. Because should this
20 funding continue to flow as it has continued
21 to flow, we know that we will be able to
22 assist the providers and the counties in
23 weathering all the storms.

24 And you're right, there is going to be

1 a backflow of -- particularly in the upstate,
2 the town or village courts. A lot of them
3 closed down for a very long time, some of
4 them still. Some of them reopening and then
5 reclosing again. And the discovery. Not
6 much attention has been paid today to the
7 impact of the defense of the discovery. The
8 district attorney has the responsibility to
9 assemble the data; it's voluminous -- videos,
10 you know, videocams and everything. But then
11 the defense gets it and they have to analyze
12 it all. So a tremendous additional burden,
13 both in technology and in attorney and staff
14 time.

15 And as long as we stay true to the
16 reforms that have been already put into
17 statute and have already been funded,
18 consistently, year to year -- including
19 during this pandemic -- we will stay on
20 course and we will be able to continue to
21 make the public defense system in New York
22 something to be proud of instead of something
23 to be embarrassed about, as it was for so
24 long.

1 ASSEMBLYMAN DINOWITZ: Okay, thank you
2 very much. That's all I have.

3 DIRECTOR LEAHY: Thank you.

4 CHAIRWOMAN KRUEGER: Thank you.

5 Any other members have --

6 CHAIRWOMAN WEINSTEIN: No Assembly.

7 CHAIRWOMAN KRUEGER: All right. Then
8 we're going to thank Mr. Leahy for being here
9 with us today, and we are going to move along
10 to Patrick Murphy, New York State Division of
11 Homeland Security and Emergency Services.

12 And the two lead questioners will be
13 Senator Brooks and Assemblymember Zebrowski.

14 Good afternoon.

15 DHSES COMMISSIONER MURPHY: Good
16 afternoon. So jump right in?

17 CHAIRWOMAN KRUEGER: Please. Yes,
18 please.

19 DHSES COMMISSIONER MURPHY: All right.
20 So really brief opening comments here on the
21 front side.

22 But first of all, good afternoon to
23 everyone. Thanks, Chairwoman Krueger,
24 Chairwoman Weinstein, and the distinguished

1 members of the joint committee.

2 I'm Pat Murphy, commissioner of
3 Homeland Security and Emergency Services.
4 I'm proud to share what the agency has been
5 working on and will provide an overview of
6 the Executive Budget as it relates to this
7 work that's been done.

8 The staff at the Division of Homeland
9 Security and Emergency Services have worked
10 tirelessly over the past year to not only
11 fulfill our day-to-day responsibilities but
12 also assist the state's COVID-19 response and
13 recovery efforts.

14 The Executive Budget provides the
15 resources the division needs to accomplish
16 our mission and enhance public safety,
17 including the addition of COVID-related
18 operations.

19 The total agency appropriation in the
20 Executive Budget is 4.97 billion, which
21 includes a 3.4 billion increase from last
22 year. This increase reflects additional
23 appropriation authority to allow the division
24 to administer federal aid to state agencies,

1 local and county governments and eligible
2 non-profit organizations.

3 This federal aid is available as a
4 result of the Governor's March 2020 request
5 for the first-ever Major Disaster Declaration
6 for a public health emergency, which was
7 promptly granted by the federal government.
8 This declaration allowed for the construction
9 of alternative care facilities, including the
10 Javits Medical Center, and provides
11 reimbursement for many of the state's
12 response operations, including COVID testing
13 and vaccination sites.

14 The division partnered closely with
15 the Division of Budget and continues to work
16 with our federal partners to ensure New York
17 receives reimbursement for all eligible
18 activities.

19 Throughout the Governor's response to
20 the pandemic, the division has helped
21 coordinate efforts to address numerous
22 challenges presented by the public health
23 crisis. The state's Emergency Operation
24 Center has been activated since last February

1 to support the state's response and recovery
2 efforts. The division staff supported the
3 state's COVID testing and mass vaccination
4 sites, serving in leadership, safety, and
5 logistics roles.

6 Additionally, division staff work with
7 our partners in the National Guard and have
8 undertaken the task of procuring and
9 assembling test kits, which in turn have been
10 distributed to state test sites, local
11 governments and school districts. The
12 division also works with the National Guard
13 to oversee the logistics for the receipt,
14 storage and distribution of personal
15 protective equipment and other resources
16 needed to combat the pandemic.

17 Furthermore, division staff assisted
18 other agencies to perform critical response
19 functions, including the New York State
20 Department of Labor's unemployment insurance
21 mission, the Department of Health's call
22 center mission and, most recently, the
23 vaccination hotline. I'm proud of this
24 service and would like to note over 90

1 percent of the division's staff were directly
2 engaged in COVID missions.

3 The division's Office of Fire
4 Prevention and Control was integral to the
5 state's COVID response efforts. Office of
6 Fire Prevention and Control staff have served
7 at field hospitals, state testing and
8 vaccination sites, as well as in the State
9 Liquor Authority's safety missions and the
10 Department of Health's pilot project for the
11 Bills -- opening the Bills game to
12 spectators. The Office of Fire Prevention
13 and Control ensured the state's new efforts
14 were not only efficient, but also safe for
15 all involved.

16 While COVID has been the main focus of
17 the division over this past year, we
18 continued to execute our core missions, as
19 discussed in our more thorough submitted
20 testimony. It is not possible to cover all
21 the great work the division has done during
22 my testimony, but I appreciate the
23 opportunity to appear before you today to
24 further discuss the agency's efforts to

1 maintain daily operations while serving the
2 state's COVID-19 response.

3 I look forward to the continued
4 partnership with you and others, and hope to
5 answer any questions you have. And I do
6 appreciate being with you today.

7 Thank you.

8 CHAIRWOMAN KRUEGER: Thank you very
9 much. And you did it in five minutes, so you
10 get extra points from us today also. Thank
11 you very much, Commissioner.

12 DHSES COMMISSIONER MURPHY: All right,
13 thank you.

14 CHAIRWOMAN KRUEGER: The first
15 questioner I believe will be Senator John
16 Brooks. Are you here, John?

17 THE MODERATOR: I'm asking him to
18 unmute.

19 SENATOR BROOKS: We were having some
20 trouble getting -- the video's not on, but
21 with the --

22 CHAIRWOMAN KRUEGER: Very good.

23 SENATOR BROOKS: Thank you, Chairman,
24 and good afternoon, Commissioner.

1 DHSES COMMISSIONER MURPHY: Hi,
2 Senator.

3 SENATOR BROOKS: Hope it's quiet, not
4 much to do.

5 (Laughter.)

6 SENATOR BROOKS: I'll tell you.

7 I got a couple of questions. Some of
8 the questions from a homeland security issue
9 I'm going to save for our briefing when we do
10 that so that we can get a little more deeper
11 discussion.

12 DHSES COMMISSIONER MURPHY: Sure.

13 SENATOR BROOKS: Obviously this past
14 year -- I mean, every playing field you're
15 on, something was happening. And I think you
16 did a great job. But I'm curious to
17 understand how much assistance did you get or
18 how much interference did you get from the
19 federal government as the pandemic was
20 beginning to take shape?

21 And to my understanding in the past,
22 the management of PPE and other things has
23 always been done more through the federal
24 government. So the fact that suddenly you

1 had to secure all of this equipment -- how
2 much assistance did you get from the federal
3 government, how much direction did you get
4 from the federal government?

5 DHSES COMMISSIONER MURPHY: Right. So
6 I think, to begin with, FEMA and the pieces
7 of the federal government that we've worked
8 with -- Health & Human Services, along with
9 CDC -- have been pretty good partners for us
10 at our level in terms of providing additional
11 guidance where needed, and then also some
12 resourcing that was limited on the front
13 side.

14 I think because New York was kind of
15 at the epicenter on the beginning of the
16 pandemic, we received additional resources
17 that other states may not have. We pressed
18 hard to get resources that became very
19 limited quickly, and then transitioned fairly
20 fast over to procuring what we could because
21 of the intensity of the infections and the
22 rise in infections that we had over time.

23 So we did not have all the resources
24 that we really wanted on the -- in the early

1 days of this, back in February and March,
2 April of last year, but quickly found ways to
3 start to increase those supplies. But by no
4 means were we able to provide our partners at
5 the county level and municipality level the
6 resources that they would have liked to have
7 from the front.

8 But now we're in much better shape
9 today.

10 SENATOR BROOKS: Okay, that is good to
11 hear. And certainly as additional vaccines
12 are -- come into play, that's an assist too.
13 But of course we are seeing the virus move in
14 a number of directions, so there's a lot
15 there.

16 You know, as -- and last year we had a
17 presidential campaign where there was a great
18 deal of concern on what was happening in the
19 internet and cyber-related issues. Can you
20 give us your impression of where we are right
21 now as a state, how secure are we? And did
22 you see any activity on the internet that was
23 directed towards our state?

24 DHSES COMMISSIONER MURPHY: So if --

1 you're asking specifically towards the
2 election, sir? Or ransomware that is being
3 initiated across a larger audience? Was it
4 specifically to the election?

5 SENATOR BROOKS: The election and as
6 we led up to the events in January that the
7 Congress is meeting on now. How aware were
8 you of activity that involved citizens of
9 this state?

10 DHSES COMMISSIONER MURPHY: So to the
11 extent of knowing individuals or others that
12 would have caused harm or damage to our
13 systems or to other infrastructure, not
14 specific to the individuals.

15 To the more overall perspective on
16 where we were with elections and election
17 security, there was a full-out state effort,
18 multiple agencies aligned with the Board of
19 Elections and ITS, our team, our cyber team
20 involved in that as well, monitoring systems.
21 And from our perspective, at no time was the
22 state in jeopardy from having a fair and full
23 election.

24 The activities that followed that

1 later, even, in D.C., the law enforcement
2 agencies that we work with, that we
3 collaborate with, were very swift in action
4 where they had known targets and took action
5 on those.

6 And so I feel fairly comfortable at
7 this point where we are with the knowledge of
8 those who would cause us harm and the action
9 taken.

10 SENATOR BROOKS: Okay, good.

11 I think some of that stuff when we get
12 together, maybe we want to talk a little bit
13 more about what you think might need to be
14 done yet and, you know, where we stand in
15 terms of, you know, what's coming from the
16 homeland as opposed to overseas.

17 With regards to the pandemic, from
18 three rows back, would it be fair to say that
19 the national leadership actually was coming
20 from New York State as this rolled out, under
21 the direction of how this pandemic was being
22 responded to and mitigated in terms of masks
23 and social distancing? We were at the front
24 end, driving that bus, as opposed to getting

1 direction from Washington?

2 DHSES COMMISSIONER MURPHY: I would
3 say yes to your question, sir. And really in
4 terms of -- as I talk to my counterparts
5 around the country, having a position that's
6 uniformly applied across areas where it's
7 needed was a benefit to -- and an envied
8 position by many of those that I work with in
9 other states. Clear guidance, decisions,
10 timely decisions are important in trying to
11 manage the pandemic.

12 And I think to your point, yes, I
13 think the state showed very well, as we look
14 at -- in comparison to others.

15 SENATOR BROOKS: With the change of
16 administration, is the communications you
17 receive now, and the direction, better than
18 it was before?

19 DHSES COMMISSIONER MURPHY: Well, I
20 think -- you know, what I would say is that
21 most of my communications are at the FEMA
22 level, the FEMA administrator at the time and
23 the current acting administrator in Region 2.
24 For -- in my lane, I would say that our

1 communications were good across the board.
2 The ability to respond to our requests I
3 think maybe were a little more restricted at
4 one point, but the communications were open
5 -- the administrator, Pete Gaynor, was -- had
6 no problem calling me and I had no problem
7 calling him in terms of resourcing or
8 discussing the state's needs.

9 SENATOR BROOKS: Okay, good.

10 Just one last question. I know from
11 my background, obviously we develop a lot of
12 plans for different events, from hurricanes
13 to the rest. I'll assume that we had a
14 pandemic plan in place. How dramatically did
15 you have to change that?

16 DHSES COMMISSIONER MURPHY: Well,
17 there was a plan in place. And much of that
18 revolved around county activity and support
19 from communities to be able to execute on the
20 plan.

21 The plan was not necessarily resourced
22 at the local level to the degree that it
23 could have been. We know that given the
24 magnitude of the event that we went through,

1 the federal government wasn't prepared to be
2 able to support us as well, to the degree
3 that we needed that support.

4 So did -- to -- did we have to deviate
5 from the plan? Absolutely. Nobody
6 envisioned, when we wrote that plan, that
7 every corner of the state would be affected
8 to the degree it is. And over a period of
9 time, as it's rolled out, to literally a year
10 ago when we stood up the Operations Center.

11 SENATOR BROOKS: Thank you. I just --
12 I want to congratulate you for what you and
13 your people did. It was almost an impossible
14 situation. And as much as people could have
15 envisioned what a pandemic was going to do,
16 this one was way beyond anybody's practical
17 thinking.

18 So I think you've done a great job. I
19 look forward to meeting with you next month
20 on some of the other issues. But I just want
21 to say thank you very much. And I got done
22 early this time, so I yield my seven seconds
23 back. Thank you.

24 CHAIRWOMAN KRUEGER: Thank you.

1 DHSES COMMISSIONER MURPHY: Thank you,
2 Senator Brooks. Thanks for your partnership
3 all the time.

4 CHAIRWOMAN KRUEGER: Thank you.
5 Assemblymember?

6 CHAIRWOMAN WEINSTEIN: Yes.
7 Assemblyman Zebrowski is debating a bill, so
8 we'll go to Assemblyman Byrne first, three
9 minutes. Thank you.

10 ASSEMBLYMAN BYRNE: Mr. Commissioner,
11 I've just got to --

12 DHSES COMMISSIONER MURPHY: Hello,
13 sir.

14 ASSEMBLYMAN BYRNE: I am dealing with
15 two different laptops, for session and for
16 this budget hearing.

17 So thank you, appreciate your time and
18 your testimony.

19 I really have just one specific
20 question. A couple of years ago, actually,
21 my Senator that represents portions of Putnam
22 and Westchester and I wrote to the Governor's
23 office about the Securing Communities Against
24 Hate Crimes Grant Program. We were

1 advocating that it could be expanded. It was
2 particularly for houses of worship, in light
3 of what we've seen across the country and the
4 globe, but also right here in New York to
5 some extent.

6 And I was encouraged that -- I think
7 it was last year or the year prior, there was
8 an expansion not only with increased funding,
9 but it also added eligibility for nonprofit
10 community centers.

11 And I was just looking for some
12 clarification as to would that include houses
13 of worship. And is that something that the
14 state and the agency are looking to make sure
15 is a part of that program?

16 DHSES COMMISSIONER MURPHY: So the
17 answer is -- the easy answer to your question
18 is so that the aperture has opened up so that
19 there are other applicants that can apply for
20 those grants.

21 With that open aperture, there were
22 literally, in the last round of applications,
23 over double the number that applied. We were
24 over 350 applications that we continue to

1 sort through and look at the needs. And so
2 it's -- we adhere to whatever the legislation
3 is that provides that funding, and we
4 continue to move out on it.

5 So I think your advocacy has expanded
6 that eligible pool, and I think we're in a
7 good place right now.

8 ASSEMBLYMAN BYRNE: Thank you. I
9 bring that up because I know there's been
10 --in the past I've had many conversations
11 with some of the local temples in my
12 district, mainly in Putnam County. And
13 Westchester and New York City are able to
14 access some federal funds and support, but
15 Putnam was ineligible because the proximity
16 to the urban community wasn't close enough.

17 However, some of the information that
18 was missed in the federal program was many of
19 the members of their congregation were from
20 Westchester, they just happened to be located
21 in Putnam.

22 So the state program offered them an
23 alternative mechanism to try to get support
24 and funding for things like cameras when

1 there's been a rise of, you know, antisemitic
2 graffiti or there's accusations. So I wanted
3 to make sure that houses of worship were
4 included and continue to be viewed.

5 So thank you, Mr. Commissioner. I
6 appreciate your time and your testimony this
7 afternoon.

8 DHSES COMMISSIONER MURPHY: Thank you,
9 sir.

10 CHAIRWOMAN WEINSTEIN: Thank you.

11 Back to the Senate.

12 CHAIRWOMAN KRUEGER: Thank you.

13 Our next questioner will be Senator
14 Todd Kaminsky.

15 SENATOR KAMINSKY: Thank you so much.
16 Good afternoon, Commissioner. Thank you,
17 Senator Krueger.

18 DHSES COMMISSIONER MURPHY:
19 (Inaudible.)

20 SENATOR KAMINSKY: Commissioner, with
21 respect to cybersecurity and preventing
22 problems, so far in my district alone I've
23 had a Rockville Centre School District being
24 taken ransom, where payment had to be made

1 for data recovery, and then the City of Long
2 Beach just had a hacking incident where,
3 thank God, there was no ransom, but their
4 systems were taken down for over a week. You
5 couldn't even call into City Hall.

6 And my question is, is New York going
7 to have some overall, over-arching vision as
8 to how to deal with cybersecurity on a local
9 level? Is there some audit being done of our
10 local municipalities or villages or schools?
11 Are there tools to give them resources to
12 help them beef up?

13 You know, normally when the state
14 wants to undertake an initiative, let's say
15 making its electric fleet -- its buses become
16 electric, it will put money up for studies,
17 it will award you incentives if you do well.
18 Is there an over-arching program to help our
19 local institutions, especially those that are
20 in control of large amounts of money,
21 protected from cyber hacking?

22 DHSES COMMISSIONER MURPHY: So
23 currently we have a number of things that
24 we're doing with the area, whether it be in

1 school districts or in communities or even
2 those that touch the state network, to be
3 able to secure our own -- our infrastructure.

4 With those things come a number of
5 opportunities. We do assessments. With the
6 limited staff that we have, we're not able to
7 get to 3,000 different districts, but we are
8 able to work with those that have needs. We
9 do education. In your district, I believe --
10 and through some of your advocacy we've
11 reached out to a number of organizations and
12 provided assistance in the way of best
13 practices, how to go about securing the
14 network using other partners, that type of
15 thing.

16 So that assistance and advice have
17 been the keys to the work that we've done.
18 We have started to move towards and used some
19 federal dollars as well to be able to do some
20 cyber grants as we move forward. In the
21 school districts, we still rely heavily on
22 State Education to manage that piece of it.
23 But when it comes to the local
24 municipalities, even nonprofits that you

1 would work with that, if requested, we would
2 be able to reach out to them and support them
3 as well.

4 SENATOR KAMINSKY: All right, thanks,
5 Commissioner. Let me just get one question
6 in before I go. And I'd love to continue to
7 work with you to beef that up.

8 But on the Securing Communities
9 Against Hate, hoping you could expand it for
10 cyber as well. We had a private religious
11 institution hacked, awful antisemitic stuff
12 on there. They would love to take some of
13 that funding and, instead of putting physical
14 gates or cameras in some cases, be able to
15 put in some cyber solutions as well, but
16 right now that's ineligible.

17 DHSES COMMISSIONER MURPHY: Yeah. And
18 so just a quick answer to your question, sir,
19 would be as -- whatever the legislation is
20 that guides those hate crime grants, we will
21 follow that. And if it designates monies for
22 cyber, then we would be more than happy to
23 work with those institutions to do that.

24 SENATOR KAMINSKY: All right, I will

1 get to working on that.

2 Thank you, Senator Krueger.

3 CHAIRWOMAN KRUEGER: Thank you.

4 Assembly.

5 CHAIRWOMAN WEINSTEIN: Yes, we go to
6 Assemblyman Walczyk, three minutes.

7 ASSEMBLYMAN WALCZYK: Commissioner,
8 thanks so much for taking the time.

9 DHSES COMMISSIONER MURPHY:

10 (Inaudible.)

11 ASSEMBLYMAN WALCZYK: Wonderful to see
12 you once again.

13 DHSES COMMISSIONER MURPHY: Yes, sir.

14 ASSEMBLYMAN WALCZYK: Obviously a lot
15 of the questions in this hearing for you so
16 far today have been fixed on the pandemic,
17 and I feel like our executive branch's nose
18 sometimes is just fixed solely on the
19 COVID-19 pandemic. You said 90 percent of
20 your staff has been fully dedicated to this.

21 That's a little bit of a concern to
22 me. I know that that's a huge focus right
23 now and a public health concern moving
24 forward, but there's other things going on as

1 well. So I'm just going to -- this question
2 is big, very important to me, should be
3 important to everyone globally and also
4 especially to everyone in this -- in these
5 two legislative bodies.

6 Back in 2013 there was a train
7 derailment in Quebec. That resulted in an
8 executive order by this Governor in 2014 that
9 directed your department to prepare for train
10 derailments, work with locals on emergency
11 preparedness, and get ready for what we knew
12 was going to be more oil carried by rail
13 freight coming out of, you know, the upper
14 United States and especially out of Canada.

15 Now that we see the XL Pipeline has
16 been cancelled by the federal government, we
17 anticipate that more oil once again will be
18 pushed onto freight rail, onto ships that go
19 through the St. Lawrence Seaway and other
20 areas, and possibly even -- hearing from some
21 Canadians -- onto trucks.

22 So I was just wondering if you -- does
23 this budget provide for any additional funds
24 for you to be able to deal with that possible

1 future disaster, and can you talk a little
2 bit about what your department is doing and
3 will do to get prepared for that?

4 DHSES COMMISSIONER MURPHY: So I think
5 the first thing is, you know, in our
6 responsibilities as it relates to
7 hazardous -- {Zoom interruption} -- hazardous
8 material handling and response to, we
9 continue to work with our partners with the
10 Office of Fire Prevention and Control and
11 Emergency Management staff to best address
12 the needs of the local governments, the
13 counties where these trains and hazardous
14 material would be shipped through.

15 And so we put in place things like
16 firefighting equipment that would be used in
17 a hazardous material handling situation.
18 We've continued to do training -- not as much
19 in-person right now because of the pandemic,
20 but we'll get back to it -- to address that.

21 But the specifics of our involvement
22 beyond that, other than in consultation with
23 the communities and those that are making
24 decisions is pretty much limited to that at

1 this point.

2 ASSEMBLYMAN WALCZYK: Commissioner,
3 are there adequate resources for your
4 department in this budget to be able to
5 handle an oil spill on the St. Lawrence
6 River, for example?

7 DHSES COMMISSIONER MURPHY: Okay, so
8 the oil spill itself, where we would respond
9 -- we are not responsible for the oil spill
10 piece of that. That would be Environmental
11 Conservation and the other partners that
12 would actually respond to the spill itself.

13 So we will organize agencies to be
14 able to apply to it. That is our mission.
15 But I would defer to those that actually have
16 responsibility.

17 ASSEMBLYMAN WALCZYK: Thanks,
18 Commissioner.

19 DHSES COMMISSIONER MURPHY: Thank you,
20 sir.

21 CHAIRWOMAN WEINSTEIN: Thank you.
22 To the Senate.

23 CHAIRWOMAN KRUEGER: Thank you.
24 Next, Senator Diane Savino.

1 SENATOR SAVINO: Thank you,
2 Senator Krueger.

3 Commissioner, it's good to see you
4 again.

5 DHSES COMMISSIONER MURPHY: Thank you.

6 SENATOR SAVINO: I want to go back to
7 the thread that Senator Kaminsky started, but
8 actually broaden it out a little.

9 You know, as you know, under your
10 portfolio -- in your portfolio is the issue
11 of cybersecurity. And quite honestly, I
12 don't think that you have enough authority
13 across the state. We have seen because so
14 much of cybersecurity issues are dealt with
15 at the local level by local governments,
16 we're seeing breaches everywhere.

17 Just last week the Albany County
18 District Attorney announced that many of the
19 cases that are pending before him may have to
20 be dismissed because of a hack in the Albany
21 County DA's office. That threatens criminal
22 justice investigations.

23 Yesterday the New York Times reported
24 an incredibly dangerous situation in Florida

1 where hackers were able to access a water
2 treatment plant and potentially poison the
3 water down there.

4 So we're seeing all of these things
5 happening in other states, in our counties,
6 in our school districts, in our healthcare
7 centers, and one of the big threads along
8 there is we allow localities -- towns and
9 villages -- to deal with the purchase of
10 software and handle their own cybersecurity
11 purchases on their own.

12 I think, and you and I have had this
13 conversation, this is the opposite way to go,
14 particularly in this time. So I would say
15 that we need to now open up this conversation
16 about right-sizing the way this state
17 addresses issues of cybersecurity and
18 technology purchases and not allow localities
19 to handle this, but to allow it to be driven
20 from the state down, because the risks are
21 far too high.

22 Would you agree with that?

23 DHSES COMMISSIONER MURPHY: So one of
24 the things that we've talked about -- and

1 thanks for continuing the conversation, I
2 know you're passionate about this -- is that
3 to be able to -- in contracts, for example,
4 to be able to dictate in a contract that
5 would be worked either through Office of
6 General Services or some other mechanism that
7 required some level of cybersecurity or the
8 awareness or implementation of those kinds of
9 efforts, would be something that we would
10 advocate for, to be able to do it at a more
11 broad level.

12 I think providing guidance, as we have
13 for other things that is more directive in
14 nature, is okay, but I will leave that up to
15 the legislators --

16 SENATOR SAVINO: Not to interrupt you,
17 but guidance doesn't seem to be working,
18 because I think the problem is the localities
19 are forced to make decisions based upon
20 financial reasons, as opposed to the best
21 practices.

22 And I think it's time for the
23 Legislature to kind of get involved in this
24 and -- because the risks are far too high.

1 Whether it's ransomware attacks on school
2 districts, whether it's, you know, invading
3 the district attorney's office and
4 threatening the people's justice, or
5 potentially poisoning our water supply -- or
6 our election systems -- we can no longer
7 stand by and allow towns and villages to
8 purchase equipment at the lowest responsible
9 bidder because that's what the law requires
10 them to do, potentially creating all sorts of
11 risks to the population.

12 So thank you for the work you're
13 doing, and I look forward to working with you
14 in the future on this.

15 DHSES COMMISSIONER MURPHY: Thanks for
16 your partnership, Senator.

17 SENATOR SAVINO: Thank you.

18 CHAIRWOMAN KRUEGER: Thank you.
19 Assembly.

20 CHAIRWOMAN WEINSTEIN: We go to
21 Assemblyman Reilly.

22 ASSEMBLYMAN REILLY: Thank you,
23 Madam Chair.

24 Good afternoon, Commissioner.

1 DHSES COMMISSIONER MURPHY: Hello,
2 sir.

3 ASSEMBLYMAN REILLY: {Inaudible.}

4 Great to see you again.

5 I have a couple of questions, too
6 time-consuming for me.

7 In the Executive proposal there's a
8 decrease of \$600,000 to the Red Cross for
9 their response preparedness. Do -- is -- do
10 you think that will have a negative impact on
11 being able to get volunteers for our blood
12 supply? Because just recently I know that
13 there was a push, especially in downstate, if
14 you could touch on that.

15 DHSES COMMISSIONER MURPHY: Sure.

16 And so, you know, at our agency we
17 just had the Red Cross in drawing blood here
18 about two weeks ago. And I was able to
19 provide a donation myself.

20 So -- but to get to the point about
21 the money to begin with, the Executive Budget
22 this year is exactly the same as it was last
23 year, and the add-on dollars that you see
24 that look different were the add-on dollars

1 from the Legislature to increase that number.
2 And so the Executive Budget itself, in the
3 going-in position, is exactly what it was a
4 year ago.

5 To your point about will it affect the
6 Red Cross's ability to draw blood, get
7 critical services, Red Cross does a great
8 job. And they are our absolute partners. We
9 keep a liaison in our Operations Center with
10 us routinely because of their partnership.
11 And I think it's the best thing for New York
12 to have a strong Red Cross in our camp.

13 ASSEMBLYMAN REILLY: Okay. The second
14 question I had is in relation to the
15 Interoperable Communications Program. Can
16 you tell me what that money is going to fund?
17 If you can just give us just a brief
18 overview, and maybe just one specific program
19 that you might know of.

20 DHSES COMMISSIONER MURPHY: So it
21 really works with a couple of different
22 areas.

23 First of all, upgrades to radios and
24 communication networks. Our goal is to more

1 regionalize that effort so that we have
2 interoperability across regions of the state.
3 I think we've made great strides in the
4 activity up to this point.

5 But it could be radio upgrades, it
6 could be system upgrades, it can be towers
7 that are needed in certain areas depending on
8 how that county or region has applied for
9 those grants. But those are the big things
10 right now.

11 ASSEMBLYMAN REILLY: Commissioner,
12 I've only got 10 seconds left, but I just
13 wanted to ask, is there any exclusions in
14 regards to applying for the grant, in the
15 population, that would prohibit maybe
16 New York City from obtaining those grant
17 funds?

18 DHSES COMMISSIONER MURPHY: So we
19 focus on -- we focus on those that have the
20 least amount of funding to begin with, or the
21 more challenged funding areas. And that's
22 why we see primarily those grant dollars
23 going up in Central New York or up in
24 St. Lawrence Country, in those areas.

1 But it's not specifically excluding
2 anybody, it's really based on the resources
3 available. Yes, sir.

4 ASSEMBLYMAN REILLY: Thank you. Thank
5 you, Madam Chairs.

6 CHAIRWOMAN KRUEGER: Thank you.

7 Okay, I have a couple of brief
8 questions for you, Commissioner.

9 DHSES COMMISSIONER MURPHY: Yes,
10 ma'am.

11 CHAIRWOMAN KRUEGER: Thank you.

12 So it was asked before, but I'm a
13 little confused. So the Governor put another
14 \$4 billion of federal money into homeland
15 security. That's from the December money
16 from the federal government, is that correct,
17 or is that from earlier money?

18 DHSES COMMISSIONER MURPHY: No, so --
19 so what I was trying to represent, and maybe
20 I just didn't state it very well, was that we
21 now have the appropriations authority so that
22 as we receive the federal dollars for the --
23 for reimbursement for funding to the
24 localities to be able to execute under this

1 pandemic -- so we have that expanded
2 authority to receive and distribute those
3 dollars, is really where we're at with that.

4 CHAIRWOMAN KRUEGER: So when the
5 Governor makes his speeches and talks about
6 \$6 billion from the feds would be the worst,
7 \$15 billion from the feds would be the best,
8 he means then \$4 billion of it will be
9 sitting in your department if he gets it.

10 DHSES COMMISSIONER MURPHY: So I can't
11 -- I don't -- I'm not familiar enough with
12 the request from the Governor. I know the
13 numbers, because I've heard them. But really
14 what we're looking at is are those projects
15 that the municipalities or the jurisdictions
16 will apply for those grant dollars, the
17 federal government will come in and reimburse
18 for those activities. It could be -- you
19 know, if it's vaccines, for example, and it's
20 100 percent reimbursable for those expenses
21 associated with the vaccine, well, that money
22 would be pulled into that account and then
23 redistributed. And that's what that
24 authority is.

1 CHAIRWOMAN KRUEGER: So you do have a
2 master list of what kinds of things this
3 money could be spent on?

4 DHSES COMMISSIONER MURPHY: So
5 whatever the eligible criteria is for those
6 as -- is right. I'm -- if I understand your
7 question right, we think that that number
8 gives us the latitude to work within the
9 disasters that we currently have for New
10 York.

11 CHAIRWOMAN KRUEGER: I think my
12 confusion is we in the Legislature tend to
13 think of Aid to Localities as a category of
14 budget spending that actually isn't related
15 to emergencies. It's how we pay for all
16 kinds of things in our counties and towns and
17 cities. So it's a little confusing to see \$4
18 billion of what we think of as oh, yeah, we
19 do owe our Aid to Localities a lot of money.

20 But that's not what this would be
21 about. This is --

22 DHSES COMMISSIONER MURPHY: No.

23 CHAIRWOMAN KRUEGER: -- new categories
24 that fit into approved federal activities.

1 DHSES COMMISSIONER MURPHY: Correct.
2 So it's -- it's monies that would be
3 associated with the pandemic. Or it could be
4 associated with the Halloween flooding in
5 Herkimer County where we had that disaster
6 that was declared. Or Isaias, where we had
7 the strong winds and we had another federally
8 declared disaster. As part of that, those
9 funding -- that funding stream would come in
10 so that it would be redistributed.

11 CHAIRWOMAN KRUEGER: Okay. All right,
12 I'm going to go further into it, but not with
13 you today. Thank you very much.

14 My second question, I believe the new
15 head of the Defense Department at the
16 Pentagon announced his concern that there
17 were active-duty military personnel and
18 others in law enforcement who participated in
19 the January 6th situation at the federal
20 level.

21 And I am wondering whether we in
22 New York State are doing anything -- he
23 talked about a new system of training,
24 educating and sorting through whether we do

1 have white supremacists or home-grown
2 terrorists in our own systems of security.
3 And I'm wondering whether you are looking at
4 that and thinking through do we need to do
5 something parallel here in New York State.

6 DHSES COMMISSIONER MURPHY: So we
7 continue to look at -- whether they wear a
8 uniform or not -- working with our law
9 enforcement partners and the counterterrorism
10 zones as well as the New York Intel Center,
11 and identifying those that would surface as
12 either a white supremacist or nefarious
13 actors in some way. Again, whether they wear
14 a uniform or not.

15 I'm not able to speak to the -- what
16 General Shields would be working on with the
17 National Guard; at this point I'm two years
18 removed from that. If they've got a program
19 that's coming through the Department of
20 Defense to do screening or other assessments,
21 I'm just not able to speak to that at this
22 point.

23 But from our perspective, from
24 Homeland Security's perspective, law

1 enforcement partners continue to look at
2 those that would cause us harm.

3 CHAIRWOMAN KRUEGER: Thank you.
4 Assembly.

5 CHAIRWOMAN WEINSTEIN: We go to our
6 chair of Gov Ops, Assemblyman Zebrowski.

7 ASSEMBLYMAN ZEBROWSKI: Thanks, Chair
8 Weinstein.

9 And good afternoon, commissioner,
10 great to see you. Thanks for being with us
11 today. And like my colleagues, let me thank
12 you and all the men and women who work under
13 you for all the work and how, you know,
14 during this difficult time you've found ways
15 to help out in a variety of ways, you know,
16 looking at and listening to your testimony
17 today.

18 I know Senator Brooks I think touched
19 on it earlier, but I just sort of wanted to
20 ask -- piggyback on his comments and ask you
21 a little bit directly too. So certainly, as
22 he sort of mentioned, you know, over the past
23 year, January 6th, it certainly seems a lot
24 of New Yorkers think extremism, domestic

1 terrorism is on the rise.

2 And I know that -- and I'm not asking
3 you to sort of comment publicly on things
4 that are sensitive. But what can you say
5 publicly to New Yorkers about these threats,
6 about your analysis of these threats, about
7 the rise of the threats and where we are now,
8 about our ability to proactively prevent
9 possible incidents of violence in the future?

10 And then specifically, because this is
11 a budget hearing, you know, tie it towards
12 our resources, both this year and in future
13 years. Do we have enough resources for you
14 to be proactively doing what needs to be done
15 to protect all the various corners of New
16 York State?

17 DHSES COMMISSIONER MURPHY: What I
18 would say is that those that have direct
19 responsibility for gathering information,
20 those that are authorized to gather
21 information on citizens and continue to do
22 analysis, we routinely partner with those
23 folks. The New York State Police and the
24 Intel Center have collaborated with the other

1 agencies throughout the state to be able to
2 track certain individuals that would
3 otherwise want to cause us harm.

4 And without going into specifics of
5 how that's done or who it is, I think that
6 the citizenry of New York should be fairly
7 comfortable that we have a system in place to
8 be able to take a look at this and to act on
9 those people that would otherwise cause us
10 harm, again.

11 So from that perspective, I think, you
12 know, we are -- we're in a good place. Could
13 we use more resources over time to better
14 identify people and track them or groups of
15 people that would cause us harm or cause
16 citizens harm? Absolutely. I mean, it goes
17 anywhere from something as basic as license
18 plate readers that have yielded some
19 incredible intelligence for us that would
20 help prevent something from happening, to
21 something as simple as the "See Something,
22 Say Something" Program and the tip lines that
23 we have that are relatively inexpensive but,
24 if the population has confidence in us that

1 we will act on those things -- which we do,
2 which our law enforcement partners do --
3 again, I think those in New York should feel
4 comfortable that there's a constant
5 unwavering eye looking for those that would
6 harm us.

7 ASSEMBLYMAN ZEBROWSKI: Thank you,
8 Commissioner. And I know that to be true,
9 and I appreciate, over the years, you and
10 your team's collaboration with the Assembly
11 and with the Senate.

12 And I would just end with saying that
13 as, you know, we're certainly in troubling
14 times and I know we have a joint commitment
15 to protect all the people of New York State.
16 And, you know, I just want to express our
17 commitment, you know, for myself but I think
18 for most if not all of my colleagues, that
19 we'll work together and are willing to work
20 together to sort of identify those resource
21 needs over the course of the year -- not just
22 during these budget hearings like today --
23 but so that we're looking outward several
24 years and proactively to address all the

1 safety concerns of New Yorkers. And really,
2 thank you for all that you've done and your
3 team has done.

4 DHSES COMMISSIONER MURPHY: Thank you,
5 sir.

6 CHAIRWOMAN WEINSTEIN: Thank you.

7 Senate, do you have anybody else? We
8 still have people.

9 CHAIRWOMAN KRUEGER: No, I don't
10 believe we do.

11 THE MODERATOR: Senator Brooks has his
12 hand up.

13 CHAIRWOMAN KRUEGER: Oh. No, but he
14 took it down for me, actually. He just
15 didn't know he took it down.

16 (Laughter.)

17 CHAIRWOMAN WEINSTEIN: Assemblyman
18 Lavine for five minutes.

19 ASSEMBLYMAN LAVINE: Thank you so
20 much. And thank you, Commissioner.

21 Scott Beigel is a New Yorker, and he
22 was a teacher at the Marjorie Stoneman
23 Douglas High School in Parkland, Florida,
24 when he was murdered almost three years ago

1 protecting his students, and he did protect
2 his students.

3 The Senate today is scheduled to vote
4 on the Scott J. Beigel Unfinished Receiver
5 Act, which would make it unlawful for anyone
6 not a licensed gun dealer to possess the
7 component parts to do-it-yourself homemade
8 weapons, which are easily purchasable online.
9 And the FBI has reported that between 2010
10 and 2020 there's been a proliferation of the
11 manufacture, the home manufacture of these
12 weapons. And as of 2020, there had been over
13 2500 arrests, federal arrests for their
14 possession.

15 In recent months some of the militant
16 rightist movements have had their members
17 arrested for committing crimes and possession
18 of these homemade weapons. They don't want
19 the government knowing what kind of weapons
20 they have got. After all, the government is
21 the enemy, unfortunately. But this is the
22 world that we live in.

23 Can you tell me, has the Division of
24 Homeland Security begun to yet focus on the

1 threat posed by the homemade do-it-yourself
2 manufacture of these sophisticated tactical
3 weapons?

4 DHSES COMMISSIONER MURPHY: So there's
5 really two things that the division does that
6 I think fall into the category of taking a
7 look at this type of thing.

8 There's really -- the first one is
9 probably the most direct, and that is with
10 our Red-Teaming, where we would go out to a
11 business establishment that may have
12 component parts, not only for building a
13 weapon but also for potentially bomb-making
14 material. And then we work with the
15 "See Something, Say Something" Program to get
16 additional eyes or sensors, if you will, in
17 the community to be able to do that.

18 So we go out and do a series of
19 educational opportunities in a particular
20 area, in conjunction with the
21 counterterrorism zone, local law enforcement.
22 If that component parts and pieces would be
23 part of a business there, we will go in then
24 later and then sample that organization to

1 see if they're tracking who sells it, if
2 somebody buys those parts and pieces that
3 there's an unknown reason why they would buy
4 them and it would otherwise be used for
5 something else.

6 So through the Red-Teaming, I think we
7 touch it. What we also do is through our
8 infrastructure vulnerability, we take a look
9 at some of that infrastructure that
10 potentially could be at risk.

11 But I would tell you that in more
12 specific terms, it would be our law
13 enforcement partners -- really State Police
14 in this case, or others -- that would be
15 looking into something more in-depth, like a
16 mail order or somebody giving us an
17 indication that they would be -- somebody
18 that they know would be purchasing items that
19 they would have something nefarious in mind
20 with those.

21 So I think not directly touching on
22 what you're asking, sir, but that is our
23 involvement in it.

24 ASSEMBLYMAN LAVINE: Thank you,

1 Commissioner. Thank you for all you and your
2 division does. And thank you for addressing
3 this burgeoning and imminent threat to the
4 safety of our citizens.

5 Take good care. Thank you.

6 DHSES COMMISSIONER MURPHY: Thank you,
7 sir.

8 CHAIRWOMAN WEINSTEIN: Thank you.

9 So now we go to our final Assembly
10 questioner, Assemblymember Lawler.

11 ASSEMBLYMAN LAWLER: Thank you,
12 Chairwoman.

13 Commissioner, thanks for joining us
14 this morning. I apologize for -- I've been
15 going between screens for session and the
16 budget hearing. So if I ask a question that
17 you already answered, if you can indulge me,
18 I'd appreciate it.

19 With respect to the FEMA
20 reimbursements, what expenditures by local
21 governments are considered eligible for this
22 reimbursement? And does this include FEMA
23 funding or CARES Act funding or both?

24 DHSES COMMISSIONER MURPHY: So I think

1 the answer is both, in terms of what is
2 eligible for purchasing.

3 Our agency is not managing the
4 CARES Act dollars. What we will do is work
5 with municipalities as to what those eligible
6 costs are. Some of them are still being
7 defined right now -- in other words,
8 cleaning, for example, or sanitizing, as well
9 as some of the PPE that was purchased over
10 time. Because we had a period of
11 eligibility, then a period of ineligibility,
12 and now we're back to something that looks
13 more like 100 percent reimbursement. So we
14 are currently working with FEMA to best
15 identify what those eligible costs are.

16 But in the end, sanitation, as it
17 relates to infection, personal protective
18 equipment of a variety of types. Some of it
19 may be durable medical supplies in the end
20 that would be reimbursed. And then right
21 now, as of I think it's the 21st of January,
22 a hundred percent on vaccination costs. In
23 other words, resources used by the county or
24 the municipality to administer vaccines,

1 pretty much all of those costs to be able to
2 bring people into a particular site, to be
3 able to provide them the vaccine, to provide
4 them the medical supplies that support the
5 administration of the vaccines, those types
6 of things.

7 Did I get to your question there, sir?

8 It's fairly broad to answer.

9 ASSEMBLYMAN LAWLER: Yup. I
10 appreciate it.

11 Shifting gears completely away from
12 that, my last question is about obviously
13 some of the violence and extremism that we've
14 witnessed in our country both, you know, last
15 summer with some of the riots, and certainly
16 on January 6th down at the Capitol.

17 When you're looking into some of this,
18 are you looking to see if there are
19 organizations or entities that are paying
20 people to go to protest, paying people to be
21 part of this violence in any way and helping
22 kind of organize? Because in some of these
23 cases it certainly seems very organized. And
24 I'm just curious if that's something you've

1 looked into as part of ensuring the public
2 safety here.

3 DHSES COMMISSIONER MURPHY: Okay. So
4 our agency specifically does not look into
5 that.

6 But I can tell you from being part of
7 the community of interest in this case --
8 again, I would refer back to the State
9 Police, our federal partners that sit in the
10 New York Intel Center, they do analysis on
11 the flow of money that comes in support of a
12 number of activities. So that is a component
13 of the activity that goes on.

14 And I can assure you that behind a
15 closed door we could probably talk a little
16 bit more about those activities as they
17 relate to that.

18 ASSEMBLYMAN LAWLER: I appreciate
19 that. And I know my time is up. I would
20 just say the -- I think that's something we
21 need to look at and go after those that are
22 paying people to actually go agitate and
23 organize in that manner.

24 So thank you.

1 DHSES COMMISSIONER MURPHY: Thank you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 CHAIRWOMAN WEINSTEIN: So, Senator
4 Krueger, we are finished on the Assembly
5 side.

6 CHAIRWOMAN KRUEGER: And we are
7 finished on the Senate side.

8 So, Commissioner, I want to thank you
9 very much for being here with us today. And
10 continue with your good work on our behalf,
11 even though we often don't know all the
12 things you are doing with your division.

13 Our next up, the New York State Office
14 of Information Technology Services, Angelo
15 "Tony" Riddick, interim CIO and director.

16 Are you with us?

17 THE MODERATOR: He was.

18 CHAIRWOMAN KRUEGER: Hello. Does
19 anyone on staff know whether --

20 (Overtalk.)

21 THE MODERATOR: Yeah, he was just
22 here. We will --

23 CHAIRWOMAN KRUEGER: Okay. We've lost
24 him; we will find him.

1 And for those of you tracking the day,
2 we've completed four of our eight government
3 representatives, just to give you a flavor
4 for the length of this hearing.

5 SENATOR RIVERA: By the way, it's more
6 than a little ironic that it is the chief
7 information officer that had technical
8 issues. Just sayin'.

9 (Laughter.)

10 INTERIM CIO RIDDICK: You know, that
11 happens all the time.

12 Good afternoon. Can you hear me?

13 CHAIRWOMAN KRUEGER: Yes, we can hear
14 you. Hi, how are you?

15 INTERIM CIO RIDDICK: I'm fine, thank
16 you. I just looked at my team and said, that
17 had to happen right at the nick of time. So
18 my apologies.

19 CHAIRWOMAN KRUEGER: That's okay.
20 Everybody has a little bit of technology
21 problems, it's true, it's true.

22 INTERIM CIO RIDDICK: Especially the
23 chief information officer.

24 Thank you, Chairs Krueger and

1 Weinstein and distinguished members of --

2 CHAIRWOMAN KRUEGER: Wait, wait, wait.

3 One second. Somebody's not on mute. Please
4 put yourself on mute. We don't want to hear
5 your phone conversations. Thank you.

6 Okay, please keep going.

7 INTERIM CIO RIDDICK: Thank you,
8 Chairs Krueger and Weinstein, and
9 distinguished members of the Senate and
10 Assembly, for your leadership, experience and
11 service to New York. My name is Angelo
12 Riddick, and I am grateful to be joining you
13 to discuss the work and mission of the
14 State's Office of Information Technology
15 Services.

16 Before starting as the State CIO in
17 December, I was blessed to have a 30-year
18 military career, much of it specializing in
19 information technology. Most recently I
20 served as the CIO of the United States Virgin
21 Islands.

22 Let me start by first saying thank you
23 to Governor Cuomo for the opportunity.

24 Over much of the last year, the agency

1 I now lead has been at the forefront of the
2 state's COVID response. We helped tens of
3 thousands of state employees in their
4 transition from office to remote work with
5 laptops, phones, video conferencing tools,
6 and secure access to the state's network.
7 This work allowed our client agencies to
8 continue meeting the needs of New Yorkers
9 during the global pandemic.

10 We rapidly built and deployed new
11 applications like the Facility Entry
12 Screening app, which has allowed state
13 employees to begin safely returning to their
14 offices. Eighty state entities now use this
15 tool to protect their most precious
16 resource -- our people.

17 We created the state's COVID-19
18 dashboard and Nourish New York app, expanded
19 remote hearings and virtual waiting rooms,
20 and improved the digital experience for
21 millions of New Yorkers in search of state
22 services.

23 At the Governor's direction, we
24 managed the state's successful Tech SWAT

1 program, a partnership with leading
2 technology companies that allowed us to surge
3 resources and meet unprecedented demand.
4 Tech volunteers donated 25,000 pro bono hours
5 and saved taxpayers \$14 million.

6 The work now being done by ITS is
7 consistent with the Governor's "Build Back
8 Better" directive. When it comes to
9 technology, our challenge is always to build
10 back smarter, more agile, more modern, and
11 more secure for the future.

12 Despite new and unexpected challenges
13 caused by the COVID pandemic, our \$861
14 million Executive Budget allocation is
15 virtually unchanged from last year. However,
16 like most agencies, we are doing more with
17 less. ITS has accelerated modernization
18 efforts, enhanced the digital offerings of
19 many state agencies, and we continue to
20 decommission legacy systems.

21 We are now fully engaged with the
22 vaccine distribution sites around the state,
23 providing 24/7 technical support and
24 assisting with other COVID-19-related

1 IT challenges. Meanwhile, our security team
2 is working around the clock to protect the
3 state's infrastructure from a growing number
4 of cyber threats.

5 In cooperation with partner agencies
6 like DHSES, our security experts are often
7 engaged to support state and local government
8 entities, hospitals and schools as they work
9 to navigate threats to their own
10 environments.

11 The much-publicized SolarWinds hack
12 has impacted many federal agencies. And
13 while our forensic review has indicated no
14 unusual activity within our systems to date,
15 New York, as always, remains on high alert.

16 Due to the challenges and complexities
17 brought on by COVID, we live in a very
18 different world than the one we resided in
19 just a year ago. Under the Governor's
20 leadership, I am proud to say that we have
21 adapted to these challenges and continue to
22 position New York as a leader and innovator.
23 The Executive Budget will enable us to
24 deliver timely and cost-effective solutions

1 for more than 40 Executive agencies and the
2 New Yorkers they serve.

3 Technology has been an ally during the
4 pandemic. It's allowed teachers to continue
5 to educate our children, helped many
6 businesses evolve and remain open, allowed
7 New Yorkers to seek real-time medical advice
8 from highly-skilled doctors and nurses,
9 ensured the integrity of state and federal
10 elections, and kept us connected to our
11 families when we needed them the most.
12 Investing in our technology infrastructure is
13 more important today than it has ever been.

14 I am truly honored to serve the state
15 of New York. As CIO, my goal is to
16 seamlessly integrate the people, processes,
17 products and policy to serve our citizens in
18 a better, smarter and more cost-effective
19 way.

20 I thank you for your time, and I'm
21 happy to answer any questions you may have.

22 CHAIRWOMAN KRUEGER: Thank you very
23 much, Commissioner.

24 I don't see the Senate chair yet, so

1 I'm going to move along to Assembly Chair
2 Zebrowski for the first set of questions.

3 ASSEMBLYMAN ZEBROWSKI: Thank you.

4 And thanks for being with us here
5 today.

6 I've got a couple of questions. And I
7 think the first one is definitely in your
8 purview, and the second one may not be, so
9 perhaps you could point me in the right
10 direction, because I don't know who else I
11 would ask about it.

12 First, so the budget once again
13 includes a proposal to have almost like a
14 design-build system, right, for comprehensive
15 technology service contracts. So maybe you
16 could talk a little bit about, you know, what
17 problems are you trying to solve? What does
18 this give you the ability to do? How do you
19 currently sort of like internally produce,
20 you know, technology products, and how do you
21 currently procure technology products, and
22 how would this improve that process?

23 INTERIM CIO RIDDICK: Of course IT
24 procurement is a touchy subject. And thanks

1 for asking that question. I'm very familiar
2 with the process, I've read on the proposal.
3 And what this proposal will allow us to do is
4 possibly use one vendor from cradle to grave
5 in terms of project management, architecting,
6 and executing the project itself.

7 Under the old infrastructure -- and
8 I've used it in many cases before -- the
9 procurement process forces an entity to look
10 at several vendors throughout the life cycle
11 of the project. Meaning that you may have
12 one architect, you may have one builder, and
13 you may have one quality-control executor.

14 It's complicated when you add too many
15 cooks in the kitchen. What this bill
16 proposes to do is to allow us of course to
17 use the standard procurement processes that
18 we use in the State of New York but in many
19 cases we can procure a vendor to do the job
20 from its architectural phase and concept
21 phase through the build phase and finally
22 through the quality-control phase before
23 deployment.

24 ASSEMBLYMAN ZEBROWSKI: Okay. So it's

1 not necessarily like a cost-saving measure as
2 much as it's -- you know, given the nature of
3 these contracts, this would make them -- this
4 type of procurement process would make it
5 more efficient and more -- I'm searching for
6 the right word; maybe you can give it to me.
7 Is that essentially what you're saying?

8 INTERIM CIO RIDDICK: I think you used
9 the perfect word, sir.

10 Efficiencies are what we want to
11 capitalize on, and this proposal will allow
12 us to be more proficient, especially in
13 big-contract procurement programs.

14 ASSEMBLYMAN ZEBROWSKI: Okay. all
15 right. Thank you for that info.

16 The second thing. So there's a part
17 of the budget that would permit agencies to
18 share voluntarily provided citizen data as
19 long as the sharing is consistent with state
20 and federal law and preexisting privacy
21 practices.

22 So this is the part where I'm not a
23 hundred percent sure if this would be under
24 your purview or not. But assuming it is,

1 could you give me a sense of what you're --
2 what is the state trying to do and how our
3 current laws don't allow it?

4 Because, you know, in our sort of
5 analysis, I'm not sure that we don't think
6 that, you know, you're able to do some sort
7 of interagency sharing if you're looking to
8 give people the ability to, you know, sort
9 of, I don't know, one-stop shop, if you will.
10 But, you know, sign into one state agency and
11 have their information be shareable with
12 other agencies. I can see how that, you
13 know, would be helpful to New Yorkers.

14 Is that what you're trying to get at?

15 INTERIM CIO RIDDICK: I see your
16 perspective and I absolutely agree, that if
17 we have one giant database and we could
18 segment that database to allow information to
19 be shared on a need-to-know and need-to-share
20 basis, we'd be in an optimum environment.

21 However, that's not always possible.
22 Agencies develop requirements. We configure
23 databases and data streaming based on those
24 requirements using the policies and

1 regulations that they are governed by. We
2 don't set those policies. However, we do
3 work with agencies to understand those
4 requirements and secure that data as much as
5 we can.

6 ASSEMBLYMAN ZEBROWSKI: So maybe you
7 could allay the fears of myself and some of
8 my colleagues, okay?

9 So what they would be afraid of if we
10 adopt this in the budget is that, you know,
11 we are contributing to what is a
12 proliferation of the selling of people's
13 individual data, resulting in perhaps a host
14 of, you know, harmful or otherwise invasive
15 things happening in their lives.

16 So will this provision -- will you be
17 selling data? Will this -- when you say it
18 will be voluntarily provided, will it truly
19 be voluntary? Will people know what they're
20 doing or when they're signing up for
21 something on the DMV or on, you know, some
22 other state agency, maybe they're getting a
23 fishing license or something, you know, will
24 they just be checking a box that, you know,

1 they have to check anyway and then therefore
2 their information is going to be shared more
3 now than it was in the past?

4 INTERIM CIO RIDDICK: I can definitely
5 respect your inquiry about the risk of
6 sharing data. I can assure you that ITS will
7 not be in the business of selling data, and
8 data sharing will be based on requirements
9 that are established by organizations that we
10 support.

11 ASSEMBLYMAN ZEBROWSKI: Okay. So you
12 can definitively say it's not to sell the
13 data.

14 INTERIM CIO RIDDICK: Absolutely.

15 ASSEMBLYMAN ZEBROWSKI: Okay. And,
16 you know, I know it says consistent with
17 state and federal law. Well, you know, that
18 doesn't give me a whole lot of assurance
19 because, you know, a whole lot of data's
20 being shared right now and certainly it has
21 to be consistent with state and federal law.

22 So I can take from your comments today
23 that it's not to sell, it's not to sort of
24 like share with outside entities that are not

1 related to state agency function, and that
2 this is merely to allow the state agencies to
3 exist and share data within each other for
4 the benefit of New York citizens in terms of
5 just utilizing state resources?

6 I know I had a lot there, but am I --
7 can you say yes to that? Can you confirm?

8 INTERIM CIO RIDDICK: I can say
9 absolutely yes to that.

10 And again, ITS is not in the business
11 of selling data.

12 ASSEMBLYMAN ZEBROWSKI: Okay. All
13 right. I appreciate your answers today.
14 And, you know, for both these items I would
15 just say, you know, they definitely are
16 complicated. You know, we want to understand
17 it. You know, I want to understand it both
18 as a chair and our staffs want to understand
19 it, and we want to be able to -- a lot of the
20 members of the Assembly, probably some
21 Senators too -- I won't speak for the other
22 house -- you know, have questions about this
23 stuff.

24 So as we go forward, perhaps we could

1 set up a communication channel between now
2 and when we adopt the budget that if we have
3 additional questions, we can ask you. We'd
4 appreciate that.

5 INTERIM CIO RIDDICK: Well, thank you
6 for your questions. I look forward to
7 working with you in the future.

8 ASSEMBLYMAN ZEBROWSKI: Thank you.

9 CHAIRWOMAN KRUEGER: Thank you.

10 CHAIRWOMAN WEINSTEIN: Senate?

11 CHAIRWOMAN KRUEGER: Senator Diane
12 Savino.

13 SENATOR SAVINO: Thank you. Thank
14 you.

15 Nice to meet you, Commissioner
16 Riddick. I saw in your testimony that you
17 said that you were pleased to be able to join
18 the team in December. At the end of this
19 year I'll ask you if you continue to feel
20 that way, having been here for a year
21 (laughing).

22 As you know, New York State, like a
23 lot of large states, is probably years behind
24 where it should be with respect to its

1 internet technology infrastructure. Ten
2 years ago, as a member of the Senate, I wrote
3 and passed a law that we adopted to allow for
4 the insourcing of information technology and
5 the development of an IT -- what we like to
6 call our own Geek Squad.

7 Ten years later, the state has yet to
8 fully implement that. We've not been able to
9 accomplish that. How do we recruit and
10 retain information technology experts who
11 want to stay in the government workforce?
12 And it probably couldn't have come at a worse
13 time when the pandemic hit and we had to then
14 send almost all of our workforce home to find
15 ways to service the population, whether it
16 was adapting our legacy systems, whether it
17 was the unemployment system, our public
18 assistance systems, and be able to have
19 people work remotely, provide them the
20 equipment, and do all that and then find ways
21 to secure them.

22 So you have your work cut out for you.
23 I know in the Governor's budget he is
24 proposing a couple of issues that -- I'm

1 happy to hear you explained the issue of the
2 comprehensive technology contracts, or kind
3 of the design-build for technology. But I
4 want to ask you a question that I asked your
5 predecessor who testified previously from
6 Homeland Security.

7 One of the big challenges we're seeing
8 across the state are ransomware attacks,
9 whether it be in our district attorney's
10 offices, our school districts, local
11 governments, or even in our own offices. And
12 some of it I believe is because we're
13 allowing local governments, right down to
14 towns and villages, to handle the issue of
15 technology purchases and software purchases.

16 Do you think, though, that this
17 approach of this comprehensive technology
18 contract is something that would help to
19 prevent that type of cybersecurity risks?

20 INTERIM CIO RIDDICK: I think it will
21 definitely create efficiencies. And thanks
22 so much for the question. But what you did
23 is you tapped on my philosophy of using
24 people, processes and policy.

1 As we work with local entities, as we
2 work with organizations, it's important that
3 we provide the guidance that they need. Now,
4 one size fits all doesn't work for
5 cybersecurity. I've always said, since my
6 days in academia, teaching at the National
7 Defense University, that the best we can do
8 in cyber is stay one town ahead of the posse.

9 It's the people's job who work in ITS
10 and all the various agencies to lean forward
11 and make sure that we're paying attention to
12 what's happening out there in the wild. We
13 have to improve our processes as well. We
14 have to make sure that we identify
15 efficiencies. And one of the processes that
16 we have to implement and stay glued to is our
17 ability to do the professional reading, to
18 find out what's happening out there.

19 And with regards to policy, I'm a
20 policy man. I think that we should have
21 inward-facing policies and outward-facing
22 policies for the use of our technologies.

23 These three things implemented in the
24 right strategy will help us to secure our

1 network and keep our data safe and our people
2 secure.

3 However, it takes an effort, it takes
4 teamwork, and I'm going to be behind that a
5 hundred percent. Cybersecurity is something
6 that I'm emphatic about. And again, I
7 emphasize that we can only stay one town
8 ahead of the posse. If we can get two or
9 three, that will be great. But they're
10 always nipping at our heels.

11 SENATOR SAVINO: I certainly look
12 forward to working with you.

13 Have you had a chance to analyze some
14 of these legacy systems that we've had in
15 place, whether it's the old welfare
16 management system or particularly with
17 respect to our public assistance programs?
18 They're horrible.

19 INTERIM CIO RIDDICK: Oh, absolutely.
20 I've definitely looked at WMS, the Welfare
21 Management System, and I've looked at its
22 successor, the Integrated Eligibility System.
23 Eventually in 2024 the goal is to deliver the
24 Integrated Eligibility System, which should

1 clean some of the problems that we've had
2 with WMS.

3 However, at the same time, it's like
4 fixing a tire with the car rolling. We
5 cannot discount that we still have to use WMS
6 until its life cycle is over with. So we're
7 paying attention to that, we're trying to fix
8 the holes, we're trying to fix gaps. We're
9 trying to keep the clients and the customers
10 satisfied there.

11 And yes, I've looked at legacy systems
12 as well. I appreciate that question. I met
13 with the DMV; I know that they're working
14 with an antiquated system. But they're
15 leaning forward as well, and we're looking at
16 solutions that they can move to to make their
17 technology up-to-date, more efficient and
18 more effective. And eventually it will save
19 us money.

20 SENATOR SAVINO: I definitely look
21 forward to it.

22 CHAIRWOMAN KRUEGER: Thank you, Diane.
23 No more, sorry.

24 SENATOR SAVINO: That's okay.

1 CHAIRWOMAN KRUEGER: Thank you.

2 CHAIRWOMAN WEINSTEIN: So we go to
3 Assemblyman Ra, five minutes.

4 ASSEMBLYMAN RA: Thank you, Chair.

5 Good afternoon. Thank you -- thank
6 you for being here. My colleague got into a
7 little bit of what I wanted to, but I just
8 want to circle back to that Part FF in the
9 budget bill that deals with this kind of
10 design-build-type concept for awarding
11 contracts. And you did give, you know, an
12 idea of what you're looking for.

13 I just -- I don't know if you can
14 maybe give like an example of a type of, you
15 know, situation that it would help the
16 department with. I know that, you know,
17 there's -- in the past there's been a major
18 bidding of IT contracts. And I know that the
19 state just put off a contract that was due to
20 be rebid and extended the existing one.

21 So I'm just looking for, would this
22 potentially be in place of that type of
23 contract?

24 INTERIM CIO RIDDICK: Well, I think I

1 heard you say you wanted an example, and I'm
2 very willing to give you an example. And
3 it's a great segue from what I just talked
4 about in legacy systems.

5 If we designed a project to upgrade
6 all of the mainframe systems that we have in
7 an area -- let's just say an area like Empire
8 Plaza. In the procurement process we will
9 look to a vendor that could come in and do an
10 architectural design, provide the resources
11 that we need to replace that system -- say,
12 with a client server-based system or a
13 software solution that's in the Cloud -- and
14 that person could work on the architectural
15 design of the facility itself.

16 Rather than work on a contract that
17 would hire three or four vendors to do
18 multifaceted pieces of that work, this will
19 allow us to do a procurement proposal that
20 would allow a vendor to make a bid to do all
21 of the work themselves. That creates
22 efficiency and reduces conflict, and it
23 speeds up the project from cradle to grave.

24 ASSEMBLYMAN RA: Okay. And could you

1 just -- you know, obviously we've seen in so
2 many ways in the last year that some of our
3 IT infrastructure, you know, needed to be
4 upgraded to handle things. So certainly I
5 understand where you're coming from with
6 regard to that.

7 But I know this is a proposal that has
8 come up in the past and I guess not made it
9 past the finish line.

10 So do you think that, you know, the
11 circumstances have changed in part because of
12 some of the issues we've dealt with that
13 makes this the right time to go with this
14 type of approach?

15 INTERIM CIO RIDDICK: You know, I
16 think what we're going through with the surge
17 in COVID and the resources that we have to
18 use and to tackle, I think it's a great
19 opportunity to identify those efficiencies
20 and perhaps use the next project as an
21 example of the clarity, of the efficiency
22 that that proposal lends itself to.

23 ASSEMBLYMAN RA: Okay. Well, thank
24 you for that.

1 It is a -- it's an interesting budget
2 from a technology standpoint. Certainly, you
3 know, there's these types of proposals.
4 There's things I know that aren't directly
5 related to your department. But, you know,
6 you have the broadband proposal; you know,
7 you have obviously the data accountability
8 and transparency piece.

9 And I just hope that when we get into
10 some of these areas that are just so
11 technical, that we can make sure we're
12 getting the input from our business
13 community, from people in the state, and
14 certainly from experts in these areas to make
15 sure that, you know, we come up with the best
16 system we want. We always want the best. We
17 always want to be the leader in the things
18 we're doing.

19 So I thank you for your answers.

20 INTERIM CIO RIDDICK: Thank you so
21 much.

22 CHAIRWOMAN WEINSTEIN: Thank you.

23 We go back to the Senate now.

24 CHAIRWOMAN KRUEGER: Thank you.

1 still working. I can't necessarily answer
2 all the questions. But feel free to ask me
3 something specific and I'll give you the best
4 shot at it that I can. I'll defer to my team
5 at a later time and get back with you later
6 if I can't satisfy your requirement here.

7 SENATOR THOMAS: Sure. All right,
8 I'll ask you one question because of my time.

9 The Governor's proposal gives primary
10 enforcement to the Department of State. For
11 context here, the Office of the Attorney
12 General has actively prosecuted privacy
13 violations for a decade. The Department of
14 Financial Services, who was given a small
15 enforcement role in the Governor's proposal,
16 has also actively regulated cybersecurity
17 since 2017.

18 What experience does the Department of
19 State have in privacy and cybersecurity to
20 justify their role as primary enforcer?

21 INTERIM CIO RIDDICK: Respectfully,
22 Senator, I think that's a great question but
23 I'm going to have to defer to my colleagues.
24 If I get a satisfactory answer, I'll make

1 sure to circle back with you.

2 SENATOR THOMAS: All right.

3 Chairwoman, I will yield my time.

4 Thank you so much, Commissioner.

5 INTERIM CIO RIDDICK: Thank you.

6 CHAIRWOMAN KRUEGER: Thank you.

7 Assembly?

8 THE MODERATOR: Chair, you're muted.

9 CHAIRWOMAN WEINSTEIN: We do not have
10 any other Assembly members.

11 So back to the Senate.

12 CHAIRWOMAN KRUEGER: Thank you. I
13 didn't realize I was on mute.

14 Okay. Senator Tom O'Mara.

15 SENATOR O'MARA: Thank you,
16 Chairwoman.

17 And thank you for being with us today
18 to testify. Appreciate your time and your
19 commitment, which I'm sure it's been a brutal
20 year from your position in dealing with the
21 crises that we've had, particularly the
22 difficulties in unemployment and how that was
23 handled.

24 Can you outline for us what's the

1 status of the computer upgrades for the
2 Department of Labor? That we really got
3 caught with our pants down this year with
4 regards to handling unemployment claims, and
5 my understanding is that was a -- I don't
6 know how old of a system, but I heard it was
7 DOS-based.

8 So where are we in regard to that
9 agency in particular?

10 INTERIM CIO RIDDICK: Thanks for that
11 question, Senator O'Mara.

12 I don't have a specific answer to
13 that. I can tell you what I've done working
14 with the department up to date. But in terms
15 of a deployment for a new computer system or
16 an upgrade, I don't have that specific
17 answer.

18 However, I will make sure that my team
19 and I work on that and we'll get back to you
20 at a later date.

21 SENATOR O'MARA: Okay. Yeah, please
22 do.

23 And do you have a sense of the various
24 agencies and departments across the state --

1 I mean, where we could find ourselves very
2 embarrassed and incapable because of our
3 outdated systems? And just what kind of
4 outlook you have for the state's overall
5 upgrading of all its various systems.

6 INTERIM CIO RIDDICK: Absolutely. As
7 a part of my orientation -- I think that's a
8 great question.

9 As a part of my orientation, I wanted
10 my CTO, my chief technology officer, and all
11 around him to brief me on where we are with
12 modernization. The modernization efforts
13 that are in place I'm very satisfied with.

14 I want to improve on the process,
15 however, of how we develop an RFP, how we
16 look at bids, how we look at vendors who, you
17 know, make bids for those RFPs. And make
18 sure that we're use proper process and
19 project planning.

20 Recently I went over with my chief
21 portfolio officer the process that we use to
22 take a project from cradle to grave.

23 With regards to looking at those
24 systems, what I want to do is implement a few

1 processes like a control board, to eliminate
2 the dialogue that it takes to understand what
3 requirements are as we move forward with
4 satisfying an upgrade and find efficiencies
5 to move that process through to
6 implementation.

7 So yes, we've looked at the legacy
8 systems. It's going to be a challenge, but
9 it's not something we can't overcome with
10 identifying efficiencies and looking at the
11 latest, greatest leading-edge technology.

12 SENATOR O'MARA: Thank you for that
13 answer. And I'm glad to hear that you're on
14 top of this and reviewing these so we don't
15 have these situations in the future.

16 And I think we need to make a stronger
17 commitment from the state budgetary process
18 to make these upgrades. I think we go too
19 long in between upgrades of various systems,
20 but -- and the technologies change so fast.

21 Can you generally outline for me what
22 the -- what your or your office's, the
23 state's strategy is in regard to the Cloud
24 technology that's out there? Are we

1 utilizing it fully? Are you comfortable with
2 the safety and security of it?

3 INTERIM CIO RIDDICK: You know -- and
4 I think, again, that's a great question,
5 because I've had those challenges before.
6 Should we go to the Cloud or should we use a
7 local-based system to store? Now, understand
8 that the data centers that we have are really
9 virtual clouds for the data that we store.
10 When we need to resort to a vendor to use
11 their Cloud resources -- say, AWS, Amazon Web
12 Services, or Google services -- we'll
13 definitely look for efficiencies and we'll
14 always factor in security as we make a
15 prudent decision to move to those platforms.

16 SENATOR O'MARA: Well, thank you very
17 much. Appreciate your time and your answers,
18 and good luck in making the changes that need
19 to be made. Appreciate it.

20 INTERIM CIO RIDDICK: Thank you very
21 much.

22 CHAIRWOMAN KRUEGER: Helene, do you
23 have Assembly anyone?

24 CHAIRWOMAN WEINSTEIN: We do not.

1 CHAIRWOMAN KRUEGER: Okay. So we
2 actually have one more Senator. But before I
3 go to him -- and that's Brad Hoylman -- I do
4 want to clarify for the record that Diane
5 Savino is the chair of our new Committee on
6 Information and Technology, or some better
7 name than that. And I think you heard from
8 Kevin Thomas, from Consumer Affairs.

9 These are both crucially important
10 committees for going down the road and
11 looking at the endless questions that now
12 confront us because we live in a world where,
13 you know, that bad movie, the machines have
14 taken over, but we're not exactly sure what
15 they're doing and we need to make sure
16 they're doing what we need them to do and not
17 doing all the other things they can do.

18 So I encourage you to continue your
19 work with those of those committee chairs and
20 their equivalent Assembly chairs.

21 With that, Senator Brad Hoylman to
22 close for the Senate.

23 SENATOR HOYLMAN: Thank you.

24 Nice to see you. Thank you for being

1 here, Commissioner.

2 I wanted to ask you a question -- it's
3 been brought to my attention from
4 constituents that New York State agency
5 websites do generally not offer users an easy
6 way to translate the text of the websites
7 into different languages.

8 There is one notable exception, which
9 is the state's COVID-19 vaccine eligibility
10 website, which features a drop-down menu
11 allowing users to translate into Spanish,
12 Chinese, Russian, Haitian Creole, Bengali or
13 Korean. It's a wonderful feature. I
14 actually wish more websites incorporated it.

15 In 2011 the Governor issued an
16 executive order to ensure that state agencies
17 established language access plans. What role
18 does the Office of Information Technology
19 Services play in helping state agencies
20 comply with Governor Cuomo's executive order?
21 It was EO26.

22 INTERIM CIO RIDDICK: Senator, great
23 question. Our role with agencies is to make
24 sure that we clarify requirements, that we

1 work with those requirements and we deploy
2 the systems based on those requirements.

3 I think it takes a double
4 collaborative effort. When our team sits
5 down with an agency -- say, to build a
6 website or to deploy a new piece of equipment
7 or upgrade -- it's important that we
8 understand what those requirements are.

9 I am not necessarily familiar with the
10 language challenge we have here, but I've
11 made a note and I'm going to have my web team
12 take a look at these websites to make sure
13 that we're working with these agencies to
14 meet all of those requirements, be it
15 language, be it Section 8, whatever we're
16 required to do.

17 It's my job to make sure we do it
18 effectively and efficiently, but it's
19 important that we collaborate. So
20 collaboration is a part of that process that
21 I want to improve as a team leader.

22 SENATOR HOYLMAN: Well, thank you, I
23 appreciate that.

24 I recently introduced legislation with

1 Assemblymember Yuh-Line Niou that would
2 require New York State agency websites to
3 incorporate language translation technology
4 within 90 days. Do you think that's
5 feasible?

6 INTERIM CIO RIDDICK: I'll have to
7 look at what that process involved. I think
8 it's feasible. I know there are some tools
9 out there that we can link to to make that
10 more realistic, where we don't have to do the
11 heavy lifting and write all the codes.

12 So I'll get with my staff to find out
13 exactly how we define that requirement from
14 the agencies, take a look at your proposal,
15 and do it efficiently and effectively and to
16 standard.

17 SENATOR HOYLMAN: Thank you very much.
18 Much appreciate it.

19 CHAIRWOMAN KRUEGER: Thank you.

20 And we have been joined by one
21 additional Senator desperate to ask you a
22 question, Gustavo Rivera, chair of the
23 Health Committee.

24 SENATOR RIVERA: Thank you. It will

1 be quick.

2 Hello, sir. These are -- sorry that
3 I'm a little dark, but the sun is right
4 behind me right now.

5 The questions all relate to our
6 corrections system, and specifically I wanted
7 to see if you could give us any sense
8 about -- whether it's medical records,
9 updating medical records software, parole
10 records, obviously you could -- I don't have
11 to tell you how much easier either of these
12 things, whether it's providing medical care
13 or securing medical care and the parole
14 process, how easier it would be if there was
15 a more modernized information system for both
16 of these things. And also any updates that
17 you can give us on potentially expanding
18 broadband for prisons across the state.

19 So anything you can tell us about how
20 these things interact with corrections and
21 information technology.

22 INTERIM CIO RIDDICK: Senator,
23 unfortunately -- and thanks for the
24 question -- I don't have any ideas that I can

1 express right now. I'll have to look into
2 that challenge and get back with you, if
3 you'll allow me, because we're going to have
4 to do an analysis. I'm not familiar with the
5 situation. I'm familiar with all of the
6 requirements -- the HIPAA requirements,
7 medical records and all of those things. But
8 as it relates to the correction system, I've
9 not yet been read in. I will make that a
10 priority.

11 SENATOR RIVERA: And I would really
12 appreciate it that you do. I mean, again,
13 whether it's on the -- I went to one parole
14 board many years ago as an observer, and
15 seeing a stack like literally this high off
16 the desk of just paper, paper, paper for
17 folks who were being seen that day. I mean,
18 that obviously does not speak -- it was years
19 ago, so I'm hoping -- and apparently that is
20 still the case.

21 So whether it's related to parole,
22 whether it's related to the medical systems
23 like -- and whether it's related to broadband
24 at prisons and also looking more specifically

1 into the tablets that are provided for
2 incarcerated people. And considering that
3 they're kind of like a money pit, apparently.
4 It's like a private company that just kind of
5 abuses it, the service that they're
6 providing, I would just appreciate that --
7 you know, I'm glad that you're on the record
8 as not being aware of stuff but wanting to
9 learn more about it, and I would really
10 appreciate if you would get back to us on it.

11 INTERIM CIO RIDDICK: Absolutely.
12 Thank you very much.

13 SENATOR RIVERA: Thank you, sir.
14 Thank you, Madam Chairwoman.

15 CHAIRWOMAN KRUEGER: Thank you. All
16 right. With that, I think we are going to
17 say thank you very much. Welcome for joining
18 us here in New York State in December. And
19 plan on staying a while, because apparently
20 we have a long list of things for you to do.

21 INTERIM CIO RIDDICK: Absolutely.
22 Thank you so much.

23 CHAIRWOMAN KRUEGER: Thank you.

24 INTERIM CIO RIDDICK: Thank you.

1 CHAIRWOMAN KRUEGER: Our next speaker
2 is Michael Green, executive deputy
3 commissioner, New York State Division of
4 Criminal Justice Services.

5 And the chairs are Bailey and
6 Dinowitz, from Codes.

7 Welcome.

8 EX. DEP. COMMISSIONER GREEN: Good
9 afternoon. Thank you for having me.

10 Good afternoon, Chairwoman Krueger,
11 Chair Weinstein, and distinguished members of
12 the Legislature. I am Mike Green, head of
13 the Division of Criminal Justice Services.
14 And again, thank you for inviting me to
15 appear before you today.

16 New York State is the second-safest
17 large state in the nation, ranking just
18 behind Pennsylvania. While final crime
19 numbers for 2020 are not yet complete,
20 preliminary data shows that the total number
21 of crimes reported will be similar to the
22 historic low reported in 2019.

23 The COVID-19 global pandemic has
24 placed extraordinary pressure on all

1 New Yorkers. The communities of color,
2 already facing a disproportionate share of
3 poverty and violence, have borne the brunt of
4 the virus's devastating impact. Although
5 total crime did not increase during this
6 period, our state's largest cities
7 experienced a sharp rise in shooting and gun
8 deaths in 2020, a trend seen in large cities
9 across the country.

10 The 20 police departments
11 participating in our GIVE, or Gun-Involved
12 Violence Elimination initiative, reported a
13 75 percent increase in shootings and an
14 82 percent increase in gun homicides.
15 Similar increases were also seen in New York
16 City.

17 Staff supported through GIVE, the SNUG
18 Street Outreach program, and the
19 Crime Analysis Center network are working
20 tirelessly to address these increases through
21 effective, evidence-based strategies, and
22 have adapted their approach in light of the
23 pandemic. An innovative partnership with the
24 State Office of Victim Services has allowed

1 DCJS to establish a comprehensive social work
2 program within our SNUG sites.

3 Through this \$2.3 million investment
4 of federal funding, licensed social workers
5 and case managers are helping individuals and
6 families address long-term trauma resulting
7 from ongoing exposure to community violence.

8 Last year, the killing of George Floyd
9 by a Minneapolis police officer ignited a
10 renewed focus on social justice and racial
11 inequality around the country. In response,
12 Governor Cuomo issued Executive Order 203,
13 which requires local police agencies to
14 engage community stakeholders in a
15 collaborative process to reform and reinvent
16 how they protect and serve their communities.
17 This process must be open and transparent,
18 and local governments must ratify or adopt
19 such plans by local law or resolution by
20 April 1st.

21 Strengthening police-community
22 relationships and improving the fairness and
23 effectiveness of the criminal justice system
24 are foundations of DCJS's work. In

1 partnership with the Municipal Police
2 Training Council, the agency has developed
3 model policies to address critical issues,
4 such as body-worn cameras and use of force,
5 and recently completed a comprehensive update
6 of the basic training required for municipal
7 police recruits. The 700-hour training now
8 includes procedural justice and implicit
9 bias, and emphasizes decision-making,
10 communication and de-escalation skills.

11 DCJS has also partnered with the
12 Office of Mental Health to revise and expand
13 course components to improve outcomes for
14 individuals with mental illness and enhance
15 collaboration between police officers and
16 crisis intervention services. In addition,
17 the agency worked with national experts to
18 develop Principled Policing training, a
19 comprehensive course focusing on procedural
20 justice and implicit bias that is available
21 to all police personnel.

22 DCJS also publishes comprehensive data
23 on arrests, case outcomes and sentencing by
24 race and ethnicity, so New Yorkers can see

1 how the criminal justice system is operating
2 in their communities.

3 Legislation enacted in 2019 allowed
4 DCJS to seal 3.2 million New York State
5 criminal records for arrests that resulted in
6 low-level convictions and arrests over five
7 years old that had no corresponding
8 dispositions. As a result of this work,
9 nearly 800,000 individuals now have a clean
10 record, with no New York State criminal
11 history barring them from obtaining
12 employment, housing or professional licenses.

13 Governor Cuomo's proposed budget also
14 aims to strengthen the police profession,
15 which further builds upon our work. His
16 comprehensive proposal establishes minimum
17 hiring standards for police, subjects police
18 agencies to the same training standards,
19 enhances the police accreditation process,
20 and strengthens the process for decertifying
21 training certificates for officers who are
22 terminated for engaging in serious
23 misconduct.

24 The proposed Executive Budget also

1 will allow DCJS to continue supporting the
2 criminal justice system across the state and
3 evidence-based programs that have received
4 national attention and distinguish New York
5 as a leader in effective public safety
6 policy.

7 Most recently, the Giffords Law Center
8 to Prevent Gun Violence highlighted our
9 investment of federal funding in SNUG in a
10 report advocating for changes in federal
11 funding to better address community violence.
12 The Pew Charitable Trusts showcased our
13 Criminal Justice Knowledge Bank and Research
14 Consortium, created to promote and expand the
15 use of research and evidence by criminal
16 justice professionals.

17 This budget also includes commonsense
18 legislative changes: Adding a new domestic
19 violence misdemeanor to flag convictions that
20 make individuals ineligible to purchase
21 firearms; closing a federal loophole by
22 prohibiting the purchase or acquisition of a
23 rifle, shotgun, or firearm by any person who
24 is subject of an active arrest warrant for a

1 felony or misdemeanor offense; and requiring
2 law enforcement agencies to share firearm and
3 ballistic evidence through NIBIN and the
4 ATF's eTrace program, two important tools to
5 fight the increase in gun violence.

6 Public safety is our highest priority.
7 This 2021-2022 Executive Budget proposal will
8 allow DCJS to continue its support for
9 programs and initiatives that promote
10 fairness, respect and transparency in the
11 state's criminal justice system, and help
12 keep New Yorkers safe. Your support of our
13 work will allow the state to address gun
14 violence, sustain its historic reductions in
15 crime, and continue to reduce the number of
16 individuals who enter the criminal justice
17 system.

18 Thank you for the opportunity to speak
19 with you today.

20 CHAIRWOMAN WEINSTEIN: You're muted,
21 Senator Krueger.

22 CHAIRWOMAN KRUEGER: You know, if you
23 move around, you can't get your unmute off.
24 I apologize, everyone.

1 And our chairs again for this speaker
2 are Senator Bailey and Assemblymember
3 Dinowitz. So I'm going to give Senator
4 Bailey the first 10 minutes.

5 SENATOR BAILEY: Thank you,
6 Madam Chair.

7 Executive Deputy Commissioner, thank
8 you for your testimony.

9 I'll jump right into it. Obviously
10 you mentioned George Floyd and policing, and
11 it's obviously been something at the
12 forefront of many of our minds, if not all of
13 our minds, in the Legislature and not.

14 And the protest that came about as a
15 result of the murder, and I'll say the murder
16 of George Floyd, resulted in what many of us
17 believe to be significant violations related
18 to use of force and kettling. Does DCJS have
19 any comment about use of force? Because you
20 mentioned it in some of your testimony
21 before.

22 EX. DEP. COMMISSIONER GREEN: Well, I
23 wouldn't comment on any specific cases
24 because DCJS as a statutory agency doesn't

1 have a role, for example, in disciplinary
2 process.

3 I can say generally that DCJS, working
4 with our partners and specifically the
5 Municipal Police Training Council, are very
6 focused on these issues. I mentioned in our
7 testimony that we just finished a
8 comprehensive overhaul of the training that
9 basic recruits go through, the minimum
10 standards. It's now a 700-hour course. You
11 know, I think, frankly -- I'm obviously
12 biased, but I think it's cutting-edge
13 curriculum and incorporates things like
14 explicit bias, procedural justice.

15 When it comes to use of force,
16 throughout the entire training it emphasizes
17 communication, it emphasizes deescalation, it
18 emphasizes things like legitimacy.

19 You know, so throughout the training,
20 throughout our work in the Principled
21 Policing curriculum that I referred to, we've
22 trained over 400 trainers. That's a
23 curriculum developed with national experts to
24 really emphasize legitimacy, procedural

1 justice, implicit bias. Those 400 trainers
2 have now trained over 3,000 police officers.
3 We anticipate that that number will snowball
4 as we get more and more trainers out there.

5 So we share your concerns for these
6 issues, and while we're not involved in the
7 adjudication or discipline of individual
8 incidents, we are working every day with our
9 local partners to really enhance the training
10 and skill sets that are available.

11 SENATOR BAILEY: Understood. So no
12 opinion on controversial procedures such as
13 kettling or the use of irritants when
14 individuals, you know, were protesting?

15 EX. DEP. COMMISSIONER GREEN: Again,
16 no, I'm not in a position to pass on
17 individual incidents.

18 I'll just say that in general we're
19 working very hard to -- you know, I think,
20 given what you've described, our overall view
21 in terms of the role that we would like to
22 see for police in the community and the type
23 of interaction we'd like to see between
24 police and community has a lot of common

1 ground. And we're working very hard through
2 our platform, you know, with regard to
3 training to make sure that that viewpoint is
4 pushed out and emphasized.

5 SENATOR BAILEY: That's fair.

6 So to the point of the Governor's plan
7 to make sure that there's some sort of a --
8 that we have the reform by April 1st, have
9 any agencies submitted their plan yet?

10 EX. DEP. COMMISSIONER GREEN: Yes. I
11 don't have an exact number, but we are
12 receiving plans and they're coming in faster
13 every week.

14 In addition, we've done outreach --
15 and when I say "we," collectively, the
16 administration -- to both municipalities and
17 police agencies across the state. We've
18 offered assistance. You know, I got an email
19 just this morning from a police agency asking
20 for assistance.

21 So, you know, we know that agencies
22 and municipalities are actively engaged in
23 this process. We've received plans. I know
24 other municipalities have posted draft plans

1 for comment on websites. So it's a process
2 that, you know, folks across the state appear
3 to be very engaged in.

4 SENATOR BAILEY: So for those who
5 haven't, and if they have an issue with that,
6 from my understanding that if they don't
7 submit it by April 1st there would be a
8 monitor that will be placed. Would that be
9 accurate?

10 EX. DEP. COMMISSIONER GREEN: So
11 there's two pieces. With the executive
12 order, the executive order itself indicated
13 that if a municipality fails to submit a plan
14 that's been ratified or approved by the
15 governing body by April 1st, there could be
16 budgetary consequences, that funding could be
17 withheld.

18 In addition, in the Governor's Article
19 VII bills submitted with the budget, there is
20 a proposal to allow for the appointment of a
21 monitor for a police department or from a
22 locality that has not submitted a plan. That
23 monitor would be appointed by the Attorney
24 General, in consultation with the Governor,

1 as I understand the proposed legislation.

2 SENATOR BAILEY: Okay. So with the
3 monitor, would you have any information about
4 the role and the duty of that monitor, the
5 extent of the monitoring period?

6 EX. DEP. COMMISSIONER GREEN: Nothing
7 beyond what's in the legislation itself, in
8 that it would be a monitor appointed by the
9 Attorney General, presumably working with the
10 Attorney General {sic}.

11 SENATOR BAILEY: Okay. Because as it
12 is right now, it's rather nebulous. And I
13 was hoping that we could have a little more
14 guidance about the nature of what the monitor
15 would do.

16 But let's say that, you know,
17 everybody puts their plans in, and that's
18 great. Are there plans to ensure that these
19 departments comply with what has been -- with
20 the plans that have been submitted? And if
21 so, what are those plans to ensure
22 compliance?

23 EX. DEP. COMMISSIONER GREEN: So far,
24 according to either the executive order or

1 legislation, there is no role that's dictated
2 for DCJS in terms of compliance.

3 That said, you know, we are very
4 dedicated and are working every day to try
5 and promote the work of fostering and
6 legitimizing police-community relations. As
7 I've said, we've incorporated and are
8 incorporating it into our training. I just
9 recorded a video yesterday that's going out
10 to all law enforcement agencies across the
11 state encouraging them to engage with us on
12 work around legitimacy.

13 You know, so it's something that's
14 built into our fabric. We're pushing this
15 and working with law enforcement on it every
16 day.

17 SENATOR BAILEY: Certainly. And I
18 share your desire to ensure that we continue
19 to do everything we can to bridge the gap
20 between community and police relations.

21 And I think some of my colleagues in
22 the Senate will speak more about uniformity,
23 and I'll allow them to expound upon their own
24 ideas. But I wanted to switch briefly to gun

1 violence. And you mentioned gun violence is
2 a scourge in our communities and it's up at
3 astronomical rates.

4 We have legislation that would qualify
5 gun violence as a public health issue. Has
6 DCJS considered that? And have there been
7 conversations between DCJS and the Department
8 of Health as that's related?

9 EX. DEP. COMMISSIONER GREEN: We have
10 not specifically weighed in on that piece of
11 legislation.

12 But I can tell you that we at DCJS
13 have viewed gun violence as a public health
14 issue, you know, certainly since I've been at
15 DCJS. And I think there's no better
16 reflection of that than the project I
17 mentioned where we've partnered with the
18 Office of Victim Services and used
19 \$2.3 million in funding to provide social
20 workers and case managers, not only to 11 of
21 the SNUG programs across the state so that
22 they are embedded within the SNUG programs
23 and working hand in hand with the outreach
24 workers, but also in four of the major trauma

1 centers across the state -- Erie Medical
2 Center, Upstate Medical Center in Syracuse,
3 Albany Medical Center, and Jacobi.

4 That program also embeds SNUG social
5 workers in the medical centers so that you
6 have a direct connection between folks who go
7 into the medical centers and the SNUG
8 program, you know, in a warm hand-off to make
9 sure that folks aren't lost in the process.

10 So, you know, we truly do view gun
11 violence as a public health problem, and
12 we're looking for and pushing comprehensive
13 and holistic solutions that align with that
14 view.

15 SENATOR BAILEY: Undoubtedly. And the
16 SUV program is just outside of my district.
17 Pastor Jay Gooding and the folks at SUV,
18 Stand Up to Violence, do a phenomenal job, as
19 does the SNUG program in the City of
20 Mount Vernon and throughout the state.

21 So to that point, \$4.9 million for
22 SNUG. I'd like to see SNUG or programs like
23 that replicated upstate, in the Hudson Valley
24 as well. Do you believe that \$4.9 million is

1 adequate for SNUG funding?

2 EX. DEP. COMMISSIONER GREEN: These
3 are tough questions, and I think I've said
4 this for the last several years. Because as
5 you know, the problems that our communities
6 face are huge. And if there were an
7 unlimited pot of money, you know, we could
8 find good use for, you know, all of the
9 resources.

10 But I think if you look
11 historically -- you know, when I started at
12 DCJS the funding for SNUG I believe was
13 somewhere between \$1 million and \$2 million.
14 You know, and with your assistance it's now
15 grown to almost \$5 million. In addition,
16 we've been able to leverage the \$2.3 million
17 in the Office of Victim Services. So in
18 total, our support for the SNUG organizations
19 across the state exceed \$7 million -- I think
20 it's about \$7.2 million.

21 So, you know, while there's always
22 room for more, I think that's a tremendous
23 investment that all of you have made in those
24 programs. The programs have grown. We've

1 been able to increase the number of programs
2 across the state. We're now up to 12 SNUG
3 programs. We've been able to increase the
4 size of the programs. In cities with very
5 high rates of shootings like Buffalo,
6 Syracuse, Rochester, we've been able to
7 basically double the number of staff working
8 in those SNUG programs in addition to the
9 staff we've been able to put in by adding the
10 social work component.

11 So I agree that these are incredibly
12 important programs. You know, and I think
13 that the growth in the programs and the
14 growth in the level of investment, the fact
15 that we now invest \$7.2 million -- and,
16 frankly, the fact that the Giffords Law
17 Center, you know, twice now has held our
18 funding and support of the SNUG programs out
19 as a national example represents the fact
20 that we really are doing good work in this
21 area.

22 SENATOR BAILEY: Thank you,
23 Commissioner. I implore you to continue
24 expanding it.

1 And Madam Chair, if I may, I'll come
2 back for a second round if questions aren't
3 already asked.

4 Thank you for your testimony,
5 Commissioner.

6 EX. DEP. COMMISSIONER GREEN: Thank
7 you, Senator.

8 CHAIRWOMAN KRUEGER: Thank you very
9 much.

10 Assembly?

11 CHAIRWOMAN WEINSTEIN: We go to our
12 Codes chair, Assemblyman Dinowitz.

13 ASSEMBLYMAN DINOWITZ: Thank you.

14 I want to get back to the police
15 monitor, because I've looked at it and to me
16 it's very vague. It says the monitor will be
17 appointed by the AG, in consultation with the
18 Governor, to oversee, in quotes, the
19 operations of the police agency if they fail
20 to comply with Executive Order 203.

21 What exactly does "oversee" mean?

22 EX. DEP. COMMISSIONER GREEN: My
23 understanding is that the focus of the
24 executive order is to get police departments

1 and communities to engage in a collaborative
2 process and develop a plan where departments
3 and communities can build on and enhance the
4 relationships.

5 The monitor would be appointed if
6 jurisdictions do not engage in and complete
7 that process -- or could be appointed if they
8 don't.

9 So it's my understanding that the
10 focus of the monitorship would be around
11 making sure that that process is in place, is
12 moving along and that communities and police
13 departments are working together to really
14 enhance police-community relationships and
15 move police community relations forward.

16 ASSEMBLYMAN DINOWITZ: So it says that
17 the AG must consult with the Governor on the
18 appointment of the monitor. Who exactly is
19 really appointing the monitor? Is it the AG
20 or is it the Governor?

21 EX. DEP. COMMISSIONER GREEN: Again, I
22 can just go by the language of the proposed
23 regulation. As you just indicated, it's the
24 AG that does the appointing and it's done in

1 consultation with the Governor.

2 ASSEMBLYMAN DINOWITZ: Right. All I
3 can go by is the language also, and the
4 language is just not that clear.

5 Would the monitor be expected to
6 report to the Budget Director in terms of
7 possible withholding of funds?

8 EX. DEP. COMMISSIONER GREEN: As I
9 understand it, those two are separate. The
10 withholding of funds is in the executive
11 order, so that's already in place.

12 The monitor is a proposal. You know,
13 so whether or not the monitor ultimately is
14 passed, the funding lever exists, and I
15 anticipate the Division of Budget would be
16 looking at that independent of the monitor.

17 Now, that said, you know, if there's a
18 monitor appointed and the monitor reports on
19 information that's relevant, I would
20 certainly assume that the Division of Budget
21 would consider all relevant information
22 around both the process, the progress the
23 jurisdiction is making on the process, and
24 the police-community relations in the

1 jurisdiction in making their decisions.

2 ASSEMBLYMAN DINOWITZ: Okay. I want
3 to switch gears. I want to talk about police
4 reform proposals.

5 The proposal says it would require law
6 enforcement officers to comply with
7 background check standards that include a
8 criminal history check, a mental health exam,
9 prior employment and review of previous
10 police officer misconduct.

11 What background check standards are
12 law enforcement agents currently required to
13 comply with in relation to hiring new police
14 officers?

15 EX. DEP. COMMISSIONER GREEN: There
16 are no comprehensive uniform state standards
17 in terms of background checks right now.
18 Many departments have robust standards, you
19 know, but there's 550-something police
20 departments, give or take, in the state.

21 To give you a good example, right now
22 a criminal history, a fingerprint-based
23 criminal history background check is not a
24 state legal requirement in the hiring process

1 of police officers.

2 You know, I think most departments do
3 it. Accredited police departments have to do
4 it, because it's built into the standard
5 there. But accreditation is voluntary.

6 So what this proposal would do would
7 be to task the municipal police training
8 council with developing comprehensive
9 standards that agencies have to abide by.
10 And then, you know, by law agencies would
11 have to abide by those minimum standards in
12 hiring. They would include things like, as
13 you indicated, criminal history background
14 check, mental health, physical health, moral
15 fitness. And among other things, require
16 that check to include looking into whether or
17 not that officer has been terminated for
18 cause from other departments in the past.

19 ASSEMBLYMAN DINOWITZ: How is
20 information relating to police officer
21 misconduct currently reported? I mean, is
22 there like a central database so that it
23 could easily be checked if somebody is
24 applying for a job anywhere in the state?

1 EX. DEP. COMMISSIONER GREEN: So
2 currently DCJS keeps a registry of police
3 officers and peace officers. And there is a
4 requirement, some grounded in statute, some
5 grounded in regulation, that departments
6 report to DCJS when a police officer is
7 removed for cause.

8 Unfortunately, that process is not
9 currently as tight as it should be. And for
10 example if a -- and we have real-life
11 examples where this happened: An officer was
12 convicted after a jury trial of assault,
13 unlawful imprisonment, and falsifying his
14 police report in connection with the assault
15 on a citizen while he was working as a police
16 officer.

17 That was reported to us as a straight
18 resignation, and it was reported that the
19 officer had resigned the day before the jury
20 verdict took place.

21 Right now, under current law, DCJS is
22 bound by whatever is reported to us. So even
23 though we knew that that officer had been
24 convicted by a jury in a court of this state

1 of those crimes while working as a police
2 officer, it went on the registry as a
3 straight resignation and not a removal for
4 cause.

5 This proposal would tighten up that
6 process so that in situations like that, you
7 know, where an officer (A) has left the
8 department and (B) it's clear from reliable
9 evidence, like a certificate of conviction,
10 that that removal was for serious misconduct,
11 the officer's training certificate could be
12 invalidated and the officer would be barred
13 from obtaining a new training certificate.

14 That's another, you know, current -- I
15 hate to use "loophole," but for lack of a
16 better word. In cases where it's properly
17 reported to us that an officer has been
18 removed for cause right now, that officer's
19 training certificate -- again, by law and
20 regulation -- is invalidated, but there is
21 nothing to stop the officer from going back
22 through the academy, obtaining a new training
23 certificate, and being rehired by another
24 department.

1 This proposal that the Governor has
2 put forward would bar officers who have been
3 removed for cause and had their training
4 certificate invalidated from obtaining a new
5 one.

6 ASSEMBLYMAN DINOWITZ: The Governor's
7 proposals will create more work, presumably.
8 Is DCJS equipped to handle the potential
9 influx of extra work that the Governor's
10 proposal is talking about here?

11 EX. DEP. COMMISSIONER GREEN: It will
12 create more work. You know, obviously we
13 have plenty of work already.

14 There are provisions in the budget for
15 six -- or for up to six additional positions
16 at DCJS, as needed, to handle the extra
17 workload.

18 And we certainly are ready and
19 prepared, you know, to implement these
20 proposals if passed and enacted into law.

21 ASSEMBLYMAN DINOWITZ: So this might
22 be a little more specific question. Under
23 the proposal, the commissioner would be
24 authorized to consider reliable hearsay

1 evidence of misconduct in making a
2 determination to update the central registry
3 of police and peace officers in relation to
4 an officer who is no longer in service.

5 How is "reliable hearsay evidence"
6 defined in this proposal?

7 EX. DEP. COMMISSIONER GREEN: It's not
8 defined in the proposal.

9 But I can tell you from my
10 interpretation, my experience -- the example
11 I gave you where we learn that a police
12 officer is convicted in a New York State
13 court of assault, unlawful imprisonment,
14 falsifying a report, we get a certificate of
15 conviction from that court affirming that in
16 fact that officer was convicted. You know,
17 to me, that's reliable hearsay.

18 Another piece of this proposal
19 requires the Attorney General -- and under
20 the new Attorney General powers that take
21 effect April 1st of this year that you all
22 enacted last year that give them the power to
23 investigate misconduct by police officers, if
24 the Attorney General -- this proposal

1 requires the Attorney General's Office to
2 report the findings of those investigations
3 to DCJS. If the Attorney General made
4 findings of serious misconduct by a police
5 officer and that police officer was removed,
6 a formal communication from the Attorney
7 General's Office regarding their process and
8 their findings, again, to me, would be
9 something that would fall under the rubric of
10 reliable hearsay.

11 So it's that type of information
12 that's envisioned -- a certificate of
13 conviction from a court, a formal
14 communication from the Attorney General's
15 Office.

16 ASSEMBLYMAN DINOWITZ: Okay, I have 45
17 seconds. I'm going to ask you a very quick
18 question. This may seem out of left field --
19 or right field.

20 Suppose it was determined that a
21 police officer of New York State took part in
22 the coup attempt in D.C. earlier this month.
23 Is there a ramification for that, that could
24 be certain?

1 EX. DEP. COMMISSIONER GREEN: So the
2 initial responsibility for that lies with the
3 individual departments that employ the
4 officers. They have disciplinary processes.
5 Some of them have been negotiated through
6 collective bargaining.

7 These provisions kick in for officers
8 who have been removed for cause. So the
9 first part of that is remove. So if an
10 officer were removed for participating in
11 that event and the removal involved serious
12 misconduct, then yes, this proposal could be
13 implicated.

14 But the first part would lie with the
15 department in terms of the removal.

16 ASSEMBLYMAN DINOWITZ: Okay. Thank
17 you very much.

18 CHAIRWOMAN KRUEGER: Thank you.

19 Back to the Senate, I believe.

20 Senator Savino.

21 SENATOR SAVINO: Thank you,
22 Senator Krueger.

23 Commissioner, I will be brief because
24 I only have three minutes.

1 I notice in your testimony you
2 referenced this new training, that in
3 partnership with the Municipal Police
4 Training Council that you have developed this
5 700-hour training that now includes
6 procedural justice and implicit bias,
7 et cetera.

8 Is this basic training for entry-level
9 officers, or is it mandatory, is it going to
10 be required? Or is it just offered to the
11 localities?

12 Because I've done some research and I
13 introduced a bill yesterday that -- and I
14 found out that, you know, New York State has
15 over 500 police departments. Some have
16 statewide jurisdiction, as you know -- like
17 the New York State Police, the MTA -- and
18 most of them are small villages and town
19 departments.

20 All 62 counties and the City of
21 New York have multiple departments within
22 their boundaries, with possible overlapping
23 jurisdictions. But there's no mandatory
24 statewide minimum training standards. So

1 I've introduced a bill that would actually
2 replace the Municipal Training Council with
3 another structure and develop a statewide
4 mandatory training council to develop these
5 types of trainings.

6 So can you describe to me what you
7 guys have worked on? And would this be a
8 requirement for every department, for every
9 police officer, with continuing training
10 through the course of their career? Because
11 from what I've found is that many cops go for
12 their initial training when they're hired and
13 oftentimes don't have continuing training
14 during the course of their career, whether
15 it's in firearms training or it could even be
16 implicit bias training or conflict
17 resolution.

18 EX. DEP. COMMISSIONER GREEN: So the
19 700-hour curriculum that I referred to by
20 statute applies to municipal police
21 departments. And currently -- you know, for
22 example, the State Police is not a municipal
23 police department, it's a state department.

24 There's also an exception under

1 current law that exempts departments in
2 cities of over a million, so with regard to
3 NYPD. The Governor's proposal would
4 eliminate that language, so NYPD would be
5 covered and almost all of the 550
6 municipal -- well, all of the 550 or more
7 municipal police departments would be
8 covered.

9 That training is the basic training
10 that every new officer who is hired has to
11 undergo. So right now that minimum 700-hour
12 basic training applies to all municipal
13 police departments, with the exception of
14 NYPD. Under the Governor's proposal, it
15 would also apply to NYPD.

16 Departments are free to train above
17 that standard if they want, but they have to
18 at least train to that standard.

19 SENATOR SAVINO: And this would be for
20 new officers?

21 EX. DEP. COMMISSIONER GREEN: That's
22 for new officers.

23 With regard to continuing education
24 for existing officers, the New York State

1 Accreditation Program -- and that's a
2 voluntary accreditation. About 60 percent of
3 the officers in the state outside of New York
4 City work for accredited programs. Any
5 accredited agency, those officers have to
6 have 21 hours per year of continuing
7 education in order for the department to
8 maintain their accreditation.

9 But there is no legislated state
10 standard for continuing education right now,
11 with the exception of a supervisor's course.
12 There's a legal requirement for municipal
13 police departments that anyone being promoted
14 into a supervisory role will take the basic
15 course for supervisors, which is also a
16 curriculum set by the Municipal Police
17 Training Council.

18 SENATOR SAVINO: Thank you. My time's
19 up.

20 CHAIRWOMAN KRUEGER: Thank you.
21 Assembly.

22 CHAIRWOMAN WEINSTEIN: We go to
23 Assemblywoman Walker.

24 ASSEMBLYWOMAN WALKER: Good afternoon,

1 and thank you so much.

2 I have two -- two questions. I do
3 want to associate my comments with my
4 colleagues in the Senate who have spoken
5 before, as well as our chairman.

6 But one of the things that I
7 noticed -- again, to follow up on Senator
8 Bailey's notion with respect to SNUG and Cure
9 Violence programs. So I was combing through
10 to attempt to find where there is an
11 association of the rise in gun violence --
12 and I see that you said there's a 75 percent
13 uptick in shootings and an 85 percent uptick
14 in gun-related homicides.

15 However, the budget request or item
16 for SNUG-related resources stayed at
17 4.9 million, which does not work with the
18 rash of gun violence that we've been working
19 on.

20 So I just wanted your thoughts on the
21 idea of maybe being able to push for more
22 resources as commensurate with the rising
23 crime that we've been experiencing.

24 And also just had a quick question

1 about marijuana arrests, incarceration and
2 people who are presently on parole. Is that
3 information kept with the Division of
4 Criminal Justice Services as it relates to --
5 as designated by race in terms of the impact
6 of marijuana arrests, incarceration and
7 parole?

8 EX. DEP. COMMISSIONER GREEN: So two
9 questions, if I understand, and I'll try and
10 answer both of them. And thank you for the
11 questions. I appreciate them.

12 First, as to funding, you know, I
13 think (A), you know, as I mentioned before,
14 you have to keep the historical context in
15 mind here. And I think we've greatly
16 increased the funding for programs like SNUG
17 over time. You know, with the Office of
18 Victim Services investment we're up to \$7.2
19 million in funding for our SNUG programs.

20 If you look at states across the
21 country, I think that level of funding dwarfs
22 what most other states do. And I think
23 that's why we've been recognized nationally
24 for our investment in these programs.

1 I think that as important as spending
2 money on programs is making sure that we're
3 spending that money smartly. And DCJS has
4 been very focused on using, for example,
5 Byrne JAG funding and other funding to
6 augment the money in the budget for those
7 programs. And so in addition to the money we
8 provide for municipalities, we spend money
9 out of things like Byrne JAG to provide
10 training, to provide technical assistance, to
11 provide support.

12 And we've managed to incorporate into
13 the DCJS budget over the years money for a
14 statewide director for the SNUG program,
15 money for a statewide training director. We
16 have a statewide director for the social work
17 program. We've written our own training
18 programs for both the social work and other
19 side. So the investment is growing.

20 In addition, there's \$5 million that
21 can be used out of the discovery and pretrial
22 funding at least proposed for this
23 coming-year budget to address gun violence.

24 In terms of the marijuana, we have

1 statistics on our website broken down by race
2 and ethnicity. If you want specific
3 information with regard to marijuana by race
4 and ethnicity, we do have that, if you reach
5 out to our office we'd be happy to get it for
6 you.

7 ASSEMBLYWOMAN WALKER: Awesome. So
8 please do send it to me. But also please put
9 it and associate all of that with respect to
10 any conversations regarding the taxation of
11 marijuana here in the state. Because of
12 course my district, and particularly
13 communities of color all across the state
14 have been overly policed and overly affected
15 by marijuana arrests, incarceration and
16 parole.

17 Thank you.

18 CHAIRWOMAN WEINSTEIN: Thank you,
19 Assemblywoman.

20 Back to the Senate.

21 CHAIRWOMAN KRUEGER: Thank you.

22 We've been joined by Senator Cooney,
23 but our next Senator to ask questions is
24 Senator Reichlin-Melnick.

1 SENATOR REICHLIN-MELNICK: Thank you,
2 Madam Chair.

3 So, Commissioner, thanks for joining
4 us today. I wanted to ask you a little bit
5 about the Securing Communities Against Hate
6 Crimes grant program. This is a program
7 since 2017 that has provided funds to improve
8 security at religious organizations,
9 including nonprofit daycare centers,
10 community centers and residential and day
11 camps, and protect them from hate crimes.

12 So the current 2020-2021 budget that
13 we're on now included \$25 million for these
14 grants, but I understand that there has not
15 been a request for proposals put out yet by
16 DCJS. Do you know when DCJS is planning to
17 put out an RFP?

18 EX. DEP. COMMISSIONER GREEN: I
19 believe you're correct in terms of the
20 timeline and the information. We've been
21 working with the Division of Budget and
22 Homeland Security. It's my understanding
23 that Homeland Security is still working on
24 the prior round of funding. You know, and

1 when that's complete and done, we'll be
2 prepared to move forward with the next year's
3 funding.

4 SENATOR REICHLIN-MELNICK: And so with
5 regard to those funds from 2019 and '20, do
6 you know if that was fully expanded? Have
7 those contracts been paid out? Or it sounds
8 like they're still in the works.

9 EX. DEP. COMMISSIONER GREEN: That is
10 Homeland Security. 2021 is the first year it
11 was moved to DCJS. Just -- it's my
12 understanding they're still actively working
13 on that round of funding. But I'd have to
14 defer any other questions to Commissioner
15 Murphy.

16 SENATOR REICHLIN-MELNICK: Okay. I
17 appreciate that. I mean, this is just
18 because we're seeing this sort of rising tide
19 of right-wing extremism in the country, and
20 so there are a lot of places of worship
21 especially that may feel threatened. And I
22 think it is important that we get the money
23 out the door if we've got worthwhile
24 recipients here who need these funds to help

1 keep their -- you know, their congregations
2 safe and help keep schools safe and other
3 places like that from violence.

4 EX. DEP. COMMISSIONER GREEN: You
5 know, I certainly appreciate your concern and
6 can assure you that we have been working on
7 this since the budget passed last year, and
8 are working closely with Homeland Security.
9 You know, so as soon as it's ready, we'll be
10 ready to go.

11 SENATOR REICHLIN-MELNICK: Do you know
12 why the program was shifted from Homeland
13 Security over to DCJS?

14 EX. DEP. COMMISSIONER GREEN: I do
15 not.

16 It's my understanding that the
17 appropriation may have changed slightly, it
18 may have expanded slightly to include
19 additional grantees. So, you know, it's
20 possible there's some thinking that DCJS, you
21 know, had more expertise with regard to those
22 grantees. But I can't say for sure why it
23 shifted.

24 SENATOR REICHLIN-MELNICK: And I

1 guess I also just finally want to note I'm
2 quite concerned because I understand in the
3 current budget proposal from the Governor
4 there is not additional funding provided for
5 this for the next budget year, and that
6 concerns me.

7 I just want to know if you have any
8 idea why -- why are we cutting back on
9 funding, again at a time when there are more
10 threats and the FBI and federal Department of
11 Justice are identifying rising threats to
12 minority and religious communities with
13 extremist actions?

14 EX. DEP. COMMISSIONER GREEN: Well, I
15 can't directly address the question.

16 I do know that this funding has been
17 made available for many years. I think this
18 might be the fifth -- last year's money may
19 have been the fifth year, if I'm not
20 mistaken. So there have been significant
21 amounts of funds made available, but I can't
22 directly answer.

23 SENATOR REICHLIN-MELNICK: All right.
24 Thank you very much for your time.

1 EX. DEP. COMMISSIONER GREEN: Thank
2 you.

3 CHAIRWOMAN KRUEGER: Thank you.
4 Assembly.

5 CHAIRWOMAN WEINSTEIN: We go to
6 Assemblyman Reilly.

7 ASSEMBLYMAN REILLY: Thank you,
8 Madam Chair.

9 Good afternoon, Deputy Commissioner.
10 Thank you so much for your testimony.

11 I actually wanted to raise a couple of
12 questions. I'm just going to read them off
13 to you, and hopefully you can comment on
14 them.

15 The first has to be about Raise the
16 Age. I was wondering if there's any data
17 that DCJS has in regards to Raise the Age and
18 the impact of cases that have gone to Family
19 Court.

20 And I didn't get a chance to mention
21 this under the -- with the Court
22 Administration earlier, but I was hoping that
23 maybe you can nudge this a little too. It's
24 in regards to that question. We were waiting

1 for Staten Island to get upgrades to our
2 Family Court building, and I think this would
3 be -- there was supposed to be some funding
4 that's been in place since 2017, and it
5 hasn't been allocated yet and it hasn't moved
6 forward. So I'm hoping that you can nudge a
7 little on that.

8 And the second part that I wanted to
9 ask about was about the legalization of --
10 the potential legalization of marijuana.

11 With my prior experience in the NYPD,
12 one of the concerns -- two of the concerns
13 that I really have is the driving while
14 impaired, and I know that there's no real
15 testing right now. So I'm hoping that we can
16 incorporate a DRE-type program. And I know
17 that it's very expensive to train those
18 officers.

19 Just to put it into perspective for my
20 colleagues and anyone that's listening, New
21 York City has 35,000 police officers,
22 approximately, and there's only 16 DREs, drug
23 recognition experts, covering the whole city.
24 But that's for anyone that's actually under

1 have to address and have -- and be mindful
2 of.

3 The other thing is under-21 driving
4 with marijuana, hopefully that we can
5 coordinate with the Department of Motor
6 Vehicles to ensure that anyone under 21 that
7 operates a vehicle while under the influence
8 will have an administrative hearing and
9 potentially lose their license for a
10 suspension, like they do with alcohol.

11 So thank you so much for listening.
12 And if you can get back to me with those
13 answers, because I think my time is up.

14 EX. DEP. COMMISSIONER GREEN: I will
15 do that. And we do share a common
16 background; I spent 22 years prosecuting
17 homicide cases.

18 ASSEMBLYMAN REILLY: Thank you, sir.

19 CHAIRWOMAN WEINSTEIN: Back to the
20 Senate. Do you have anyone else?

21 CHAIRWOMAN KRUEGER: We do. Thank
22 you, Assemblymember.

23 We have Tom O'Mara, the ranker on
24 Finance.

1 THE MODERATOR: I'm not sure if he's
2 with us right now.

3 CHAIRWOMAN KRUEGER: Oh. Okay. Then
4 I'm going to jump to me.

5 I only have a couple of questions for
6 you.

7 So obviously you know that down in New
8 York City, where I'm from and many of us are
9 from, there's been quite a bit of
10 disagreement about different policies of NYPD
11 and reform of police and even getting our
12 arms around what you do when something bad
13 happens. So apparently there's a new
14 proposal about implementing new policies with
15 the Civilian Complaint Review Board. And I'm
16 curious whether you've had a chance to review
17 that and what your opinion is.

18 EX. DEP. COMMISSIONER GREEN: It's my
19 understanding, if I'm understanding your
20 question right, those are local proposals
21 dealing with City Council. You know, and
22 while I have reviewed them, you know, it's
23 not something I can weigh in on.

24 CHAIRWOMAN KRUEGER: Okay. But you

1 would agree this is a continuing hot topic
2 for everyone who's running for mayor or City
3 Council or DA in the city.

4 EX. DEP. COMMISSIONER GREEN: I think
5 not only is it a hot topic, but there's
6 research that's been established for over 30
7 years now, the main body of it coming from
8 Tracey Meares and Tom Tyler out of Yale, that
9 if you don't have legitimacy and you don't
10 have trust between police departments and law
11 enforcement and, frankly, the criminal
12 justice system and the communities that they
13 serve, you're not going to make significant
14 headway with regard to crime.

15 So, you know, it's just -- it's
16 just -- it's a crucial issue. If we want to
17 have safe communities, it's something we need
18 to focus on.

19 CHAIRWOMAN KRUEGER: I agree with you.
20 Thank you.

21 So for about 18 years now, I've been
22 voting against every peace officer bill that
23 comes before me in the Senate, mostly because
24 I can't figure out what the heck everyone

1 thinks the training and the qualifications
2 for these people would be. I just know that
3 the end of the sentence is always: If you
4 figure out how to get them to be a peace
5 officer, then they'll have a gun.

6 So in your new envisionment of
7 700 hours of training instructing a police
8 officer anywhere in the State of New York,
9 where would peace officers fit in this world?
10 Or do they?

11 EX. DEP. COMMISSIONER GREEN: There
12 are separate minimum training standards for
13 peace officers. And I don't know the exact
14 hours, but it is not 700. You know, it's
15 many hundreds of hours less than that.

16 And it's my recollection that there
17 are two separate training standards for peace
18 officers, one for peace officers and then a
19 second one for peace officers who wish to
20 carry firearms, and that training program has
21 minimum standards above and beyond the peace
22 officer program. But that's a separate
23 program that's not as rigorous as the
24 700-hour curriculum for police officers.

1 CHAIRWOMAN KRUEGER: And do you have
2 concerns about people with less training
3 somehow having what's perceived as police
4 authority and the ability to carry a gun? I
5 know with some of the bills over the years
6 it's been the right to chase, in a car,
7 suspects; the right to search and seize
8 without warrants, et cetera, et cetera.

9 I mean, isn't it sort of -- doesn't it
10 surprise you that we would have all these
11 different standards for all these different
12 people all over the state?

13 EX. DEP. COMMISSIONER GREEN: I think
14 your question, you know, really focuses on
15 the issue, and that is that people need to be
16 aware of when you give someone peace officer
17 powers, it means one thing, and there's a
18 certain minimum level of training that goes
19 along with that. And when you give someone
20 police officer powers, it means something
21 different. And there is additional
22 responsibilities and powers that go with it,
23 and there's additional training.

24 And to your point, yes, I think we

1 need to be very thoughtful about who we're
2 giving peace officer powers to and who we're
3 giving police officer powers to, because
4 those powers, you know, are significant,
5 they're different, there's different levels
6 of training. And, you know, I think you're
7 right to focus on that.

8 CHAIRWOMAN KRUEGER: Thank you.
9 Assembly.

10 (No response.)

11 CHAIRWOMAN KRUEGER: Maybe not. Let's
12 see, where did Helene go?

13 THE MODERATOR: I do believe we have
14 Assemblymember Ra up next on her list.

15 CHAIRWOMAN KRUEGER: Thank you so
16 much.

17 (Overtalk.)

18 ASSEMBLYMAN RA: Thank you for being
19 here today. I just had a few questions going
20 back to -- you mentioned in your opening
21 remarks something that I think we're familiar
22 with. Many of the large cities in the state
23 have had, you know, really remarkable
24 increases in murders, in gun crimes, in

1 shootings. You know, and it's alarming.

2 And I'm just wondering if you have,
3 you know, any thoughts as to what may be
4 causing that, given that, you know, we
5 have -- overall, you mentioned crime being
6 down, we had months of last year where people
7 were largely, you know, in their homes
8 because of the pandemic. Yet we see these --
9 you know, these data points, and they are
10 very alarming.

11 EX. DEP. COMMISSIONER GREEN: So I
12 don't know that I can opine directly on
13 what's causing it, but I think I can share
14 some relevant data points, I hope.

15 First of all, I think it's very
16 important to keep this in context. While
17 shootings and gun-related homicides are up
18 and homicides are up, the last three years
19 have been historic lows. We topped out at
20 about 2600 homicides a year in New York State
21 in the early '90s; the last three years we
22 had less than 600 a year, we had about 550 a
23 year.

24 So when we say they're up, they're up

1 against our all-time historic low. I think
2 we're going to come in somewhere between 800
3 and 840 homicides for the year when we
4 collect the chart, which is a terrible
5 increase from our historic low last year, but
6 still substantially below, you know, what we
7 were experiencing in the early '90s, you
8 know, when I was a line prosecutor
9 prosecuting homicide cases.

10 So I just think it's important, first
11 of all, to keep the historical perspective.

12 You know, secondly, when we look at
13 what's happening, overall crime in 2020,
14 reported indexed crime is about flat. The
15 one place we're seeing -- well, places we're
16 seeing increases is violent -- crime is about
17 flat, but firearm-related crime is up,
18 shootings are up, and firearm-related
19 homicides are up.

20 So when you look at, you know, what's
21 driving that, one important thing I think is
22 to look across the country. It's not just
23 New York State that's experiencing this. We
24 see similar numbers in major cities across

1 the country.

2 And then secondly, you know, when you
3 look at, again, what's driving it, is it --
4 you know, people ask is it the reforms we
5 passed, is it, you know, something else.
6 We're not seeing it -- you know, bail reform,
7 for example, really focused on misdemeanors
8 and nonviolent felonies. It made the biggest
9 change there. We're not seeing any movement
10 in that regard. We're just seeing it in the
11 firearm-related crime.

12 And so I think looking at things like
13 COVID and the impact of COVID, looking at
14 George Floyd and the issues around racial
15 equality, to me, you know, that correlation
16 at this point seems to be stronger. But I
17 think we're going to need more time, frankly,
18 to look at that over time and really draw any
19 solid conclusions.

20 ASSEMBLYMAN RA: Yeah, and I -- I
21 mean, I think -- you know, I'm sure you
22 recall last year at this hearing there was a
23 lot of talk about bail reform and things like
24 that, and we were fairly early in the year

1 and there were some statistics out there that
2 were showing an uptick, and kind of it was
3 like, okay, well, let's wait and see when we
4 have full data. Obviously the world has
5 changed in tremendous ways since then with
6 the pandemic and a lot of other things that
7 have gone on.

8 So thank you for that answer. It is
9 alarming, those numbers in and of themselves.
10 And then when you add to it some of the
11 proposals in this budget that are reducing
12 crime prevention and reduction programs. And
13 certainly this potential for municipalities
14 to lose money for policing, you know, is a
15 concern, given these alarming increases.

16 The one other thing I wanted to ask
17 you about -- I don't know if you could shed
18 any light on this within the department, but
19 one of the things we talked about a lot in
20 the regard of the criminal justice reforms
21 was discovery last year. And if you know
22 anything about how -- you know, there was
23 this funding that was put in, and what is
24 going on with that and whether the funding is

1 going out the door or was subject to any of
2 the withholdings that went on to try to
3 balance the budget due to the revenue
4 shortfalls.

5 EX. DEP. COMMISSIONER GREEN: Sure.

6 So just to clarify, DCJS local assistance
7 funding has not been cut. In fact, DCJS
8 local assistance funding has been increased,
9 and the increase is due to that discovery
10 fund that you've referred to. But our other
11 programs have remained flat, you know, in the
12 face of cuts elsewhere.

13 In terms of the discovery funding,
14 1.75 million of that was awarded to the
15 New York Prosecutors Training Institute to
16 support their DEMS system, which all the
17 prosecutor's offices across the state can use
18 for discovery. And award notices went out to
19 the 57 counties outside of New York City just
20 recently, giving them their award allocation
21 to support both discovery reform and pretrial
22 services.

23 ASSEMBLYMAN RA: Thank you.

24 CHAIRWOMAN KRUEGER: Thank you.

1 Senator Brad Hoylman.

2 SENATOR HOYLMAN: Thank you,

3 Madam Chair.

4 Nice to see you, Commissioner.

5 In 2020 we passed the Police STAT Act,
6 the Police Statistics and Transparency Act,
7 which among other things is going to require
8 law enforcement, every law enforcement
9 department in New York State to promptly
10 report any arrest-related deaths to DCJS,
11 disaggregated by county, and including
12 demographic information about the race,
13 ethnicity, age and gender of the individuals
14 who die in arrest-related deaths.

15 Prior to the passage of this, DCJS,
16 according to your website, identified the
17 majority of the arrest-related deaths in
18 New York through reviews of news articles.

19 The law enforcement reporting
20 requirements took effect in December. Have
21 you seen compliance with the law so far?

22 EX. DEP. COMMISSIONER GREEN: We have
23 seen compliance. This reporting is kind of
24 going parallel with the use of force

1 reporting that has kicked in as a result of
2 the new legislation. And we are getting data
3 and reports from law enforcement agencies
4 with regard to both of those.

5 SENATOR HOYLMAN: Thank you.

6 And under the law, DCJS is going to be
7 required to annually report that data to the
8 Legislature and to make the data available to
9 the public on your website, updated monthly.
10 Is DCJS prepared from a technology standpoint
11 to make that data available on your website?
12 And if so, when can we expect it to be
13 available?

14 EX. DEP. COMMISSIONER GREEN: Yes.
15 We're actually working right now on trying
16 to -- I guess for lack of a better term --
17 clean the data. We're working with
18 departments to make sure it's reliable, make
19 sure, for example, incidents weren't
20 double-reported.

21 But we do anticipate that by March
22 that data will be up on the website.

23 SENATOR HOYLMAN: Thank you so much.

24 That's good news.

1 EX. DEP. COMMISSIONER GREEN: Thank
2 you. It's good to see you.

3 CHAIRWOMAN KRUEGER: Great. Thank
4 you. We -- yes, Helene.

5 CHAIRWOMAN WEINSTEIN: Yes, we go to
6 Assemblyman Tannousis.

7 ASSEMBLYMAN TANNOUSIS: Hi,
8 Commissioner. Thank you so much for joining
9 us.

10 The one question I wanted to ask you
11 is can you -- will you be able to tell us how
12 many individuals in New York State are
13 incarcerated because of marijuana-related
14 offenses?

15 EX. DEP. COMMISSIONER GREEN: I cannot
16 give you that figure off the top of my head.
17 You know, there's both inmates in the State
18 Department of Corrections, there's
19 incarceration in local jail facilities. So,
20 you know, I couldn't give you a figure.

21 ASSEMBLYMAN TANNOUSIS: Would you be
22 able to look into that for us as regards to
23 the state, obviously, state detentional
24 facilities?

1 EX. DEP. COMMISSIONER GREEN: As to
2 the state facilities -- and I don't want to
3 put him on the spot, but I would suggest that
4 Commissioner Annucci from DOCCS might be in a
5 better position to give you information on
6 who's in DOCCS right now. But we can
7 certainly work with Commissioner Annucci to
8 get any information that would answer that
9 question to you.

10 ASSEMBLYMAN TANNOUSIS: Thank you.
11 Thank you very much obviously. I appreciate
12 that, because obviously we're -- this is an
13 issue -- recreational marijuana is an issue
14 that's coming up, and obviously we want to
15 have those facts and figures so we can make
16 that determination adequately.

17 So thank you very much for your time.

18 EX. DEP. COMMISSIONER GREEN: Thank
19 you.

20 CHAIRWOMAN WEINSTEIN: So next we have
21 Assemblyman Palmesano.

22 ASSEMBLYMAN PALMESANO: Yes, thank
23 you, Commissioner. I have a few questions
24 for you.

1 First, we've had a lot of talk about
2 bail reform and the concerns that many of us
3 have raised on that issue. Do you keep
4 statistics -- in regards to that, do you keep
5 statistics on the number of individuals who
6 commit crimes who have been released without
7 having to post bail or have some type of
8 pretrial supervision assigned to them?

9 EX. DEP. COMMISSIONER GREEN: So the
10 data that we are keeping in connection with
11 OCA is what was required in the statute. The
12 statute set out requirements for what OCA and
13 DCJS need to collect. And as Judge Marks
14 testified to earlier, by statute OCA's first
15 report on that data is due in July of this
16 year. DCJS's first report is due in January
17 of next year, and we've been working hand in
18 hand with OCA and fully anticipate that both
19 entities will meet those deadlines. In fact,
20 I think -- you know, what I anticipate you'll
21 find is that we'll be posting the same data
22 on both the OCA and DCJS websites that
23 satisfy all of the requirements in that
24 statute.

1 ASSEMBLYMAN PALMESANO: All right.

2 I think one of the other issues, along
3 with that, is will that also hopefully
4 include individuals who are released on
5 pretrial supervision on their own
6 recognizance, that status as far as people
7 who didn't show up for their trial hearings?
8 Will that possibly be part of those numbers?

9 EX. DEP. COMMISSIONER GREEN: Yeah, I
10 would have to go back and look at the statute
11 and see exactly what the reporting
12 requirements are.

13 But I can assure you that everything
14 that the Legislature put in that statute in
15 terms of reporting requirements, we will have
16 and will have posted publicly.

17 ASSEMBLYMAN PALMESANO: All right,
18 thank you. I have a couple of other
19 questions.

20 Relative to the New York State Police
21 Reinvention and Collaboration, we obviously
22 understand that departments who fail to
23 comply with this order risk losing state
24 funding, as well as there's a proposed

1 directive which requires monitors to be
2 installed to oversee the operations of these
3 departments at their own expense.

4 Do we know, to date, how many
5 departments fall under this order and how
6 many departments have not complied with this
7 order as of yet?

8 EX. DEP. COMMISSIONER GREEN: I
9 believe it's somewhere in the neighborhood of
10 550 departments that fall under the order.
11 That's a rough number, but close.

12 We've been in communication and I've
13 yet to have any department tell me "We're not
14 going to make it." You know, we're working
15 with departments. As I indicated, just this
16 morning I got a question, you know. So our
17 goal is to help all departments, and we hope
18 there's no department that doesn't have a
19 plan in with their municipality by April 1st.

20 ASSEMBLYMAN PALMESANO: Thank you.

21 And as far as withholding of the
22 funding, could this also apply to federal
23 grants that flow through the state?

24 And I guess the other -- well, on top

1 of that, with the violent crime that we're
2 seeing that's happening right now in our
3 communities, is it a really good idea for us
4 to be withholding any funding or threatening
5 to withhold any funding that could help
6 protect our local communities?

7 EX. DEP. COMMISSIONER GREEN: So in
8 terms of the details of what funding, I would
9 have to defer to the Division of Budget,
10 since they're the entity that's named in the
11 order, you know, in terms of the funding end
12 of this.

13 As I said, our goal is to make sure
14 that we work with departments and that no
15 department falls into that category.

16 You know, in terms of our major urban
17 centers where we're seeing the increase in
18 shootings, you know, my understanding from
19 our communications with them is that all of
20 those municipalities are working hard on this
21 and are on track to be done, you know, by the
22 April 1st date.

23 ASSEMBLYMAN PALMESANO: Okay. Thank
24 you.

1 CHAIRWOMAN KRUEGER: Okay, Assembly
2 continuing.

3 CHAIRWOMAN WEINSTEIN: Assemblywoman
4 Kelles. Thank you.

5 ASSEMBLYWOMAN KELLES: It's amazing
6 the technology is still -- I can't seem to
7 put the video on. I'm being asked, but --

8 CHAIRWOMAN KRUEGER: There you go.

9 ASSEMBLYWOMAN KELLES: Lovely.
10 Wonderful.

11 Thank you so much for this
12 presentation and the long explanation of all
13 of these.

14 I'm new, so I apologize if this
15 question is very basic, but I was going
16 through and looking at the local assistance
17 reductions and eliminations, and I'm pretty
18 sure that the Prisoner Legal Services and the
19 New York State Defender programs are in that.
20 I know you worked closely with those.

21 I'm just wondering how those programs
22 are going, if we have any data of the impact
23 of those programs. Any information would be
24 great to hear.

1 EX. DEP. COMMISSIONER GREEN: I don't
2 have data offhand on how those programs are
3 working. They are both programs that have
4 received funding through DCJS.

5 I'm sorry, you said the Defenders
6 Association and Prisoner Legal Services?

7 ASSEMBLYWOMAN KELLES: Yup.

8 EX. DEP. COMMISSIONER GREEN: So the
9 Defenders Association, in the Governor's
10 proposed budget there's a \$1,030,000
11 allocation. The Prisoner Legal Services,
12 there's a \$2.2 million allocation.

13 It's my understanding that both of
14 those sums are the same as in the Governor's
15 budget from last year, that they haven't been
16 increased or increased in terms of the
17 Governor's budget proposal.

18 And again, while I don't have data,
19 you know, we have -- we've been working with
20 both of those entities for the nine years
21 that I've been at DCJS now. You know, and a
22 very good working relationship with them in
23 terms of the funding end of things.

24 ASSEMBLYWOMAN KELLES: That's

1 wonderful. Can you describe maybe some of
2 the other programs -- this was an elimination
3 of \$16 million in the General Fund that
4 provided grants to localities and nonprofits,
5 so I was curious what other programs might be
6 in that category.

7 EX. DEP. COMMISSIONER GREEN: Again,
8 as to the Governor's proposed budget, my
9 understanding is that there are no items that
10 the Governor proposed last year that were
11 enacted as part of his proposal that were
12 cut.

13 You know, all of our funding -- for
14 example, the aid to probation, we give about
15 \$25 million in funding to alternative to
16 incarceration programs, about \$44 million in
17 funding to probation departments, about
18 \$14 million in funding to gun violence
19 elimination efforts. As we indicated, a
20 total of about \$7 million to SNUG.

21 All of those local assistance that
22 were part of the Governor's proposed budget
23 or the Executive Budget last year, it's my
24 understanding that those are all fully funded

1 in the Governor's proposal this year.

2 ASSEMBLYWOMAN KELLES: And two really
3 quick questions.

4 I heard a conversation about SNUG
5 earlier. I'd love to hear about plans of
6 expanding extensively upstate.

7 And the other is, has there been any
8 state support or discussion about promoting
9 Law Enforcement Assisted Diversion programs,
10 or LEAD programs?

11 EX. DEP. COMMISSIONER GREEN: So with
12 regard to SNUG, we currently support SNUG
13 programs in Buffalo, Rochester, Syracuse,
14 Albany, Troy, Poughkeepsie, Yonkers,
15 Mount Vernon, one in Hempstead, one in
16 Suffolk, and one in Newburgh. So we are very
17 heavily involved in upstate New York with
18 SNUG programs.

19 In terms of LEAD, we did work with
20 Albany in their attempts at running a LEAD
21 program. We did pay for a research component
22 to that program for several years so we could
23 get feedback from a data perspective.

24 You know, it's not something -- at

1 least in the way it's operated here in
2 New York so far, I haven't seen data showing
3 that it's had the type of impact that I think
4 you or I would have wanted it to have. You
5 know, so we have not invested heavily in LEAD
6 to this point.

7 ASSEMBLYWOMAN KELLES: Thank you.

8 EX. DEP. COMMISSIONER GREEN: We --
9 that being said, you know, I certainly agree
10 with the idea of trying to find ways to keep
11 people who don't belong in the criminal
12 justice system out of the system and connect
13 them to support systems, you know, that could
14 be far more helpful.

15 ASSEMBLYWOMAN KELLES: Thank you so
16 much.

17 CHAIRWOMAN KRUEGER: Thank you.

18 Assembly continuing?

19 CHAIRWOMAN WEINSTEIN: Yes.

20 We go to Assemblymember Rajkumar.

21 ASSEMBLYWOMAN RAJKUMAR: Thank you,
22 Chair Weinstein, Judiciary Chairman Lavine.

23 And thank you, Deputy Commissioner
24 Green, for your testimony this afternoon.

1 I want to use my three minutes to
2 engage you on issues of underrepresented
3 immigrant communities and their interaction
4 with the justice system, specifically around
5 hate crimes.

6 My first question is on hate crimes
7 against a particular subset, South Asian-
8 American immigrants. South Asian immigrants
9 here in my district in South Queens -- and
10 around the state and the country -- have been
11 targeted for hate crimes. These include hate
12 crimes against Sikh Americans, who wear the
13 traditional turban, and Bengali Americans.

14 Do you anticipate any items in the
15 budget that will combat hate crimes against
16 this specific underrepresented immigrant
17 group?

18 I see the Governor's 2021 budget
19 includes \$2 million in support of the
20 Hate Crimes Task Force, first established in
21 2018. And in fact before I was an
22 Assemblywoman, I worked as director of
23 immigration affairs for the state and I
24 remember when that task force was created.

1 Do you foresee or is it possible to
2 explore possibilities for that task force to
3 engage South Asian communities? And you
4 mentioned the Governor's Executive Order 203
5 requiring the local police to engage
6 community leaders in a process to reform the
7 police and how they serve their communities.

8 So what are your thoughts on how to
9 engage immigrant communities in that process,
10 and where might the opportunities lie for
11 collaboration?

12 EX. DEP. COMMISSIONER GREEN: So
13 first, thank you for the question.

14 I think there is data to support your
15 concern. While generally speaking in 2020 we
16 did not see an increase -- in fact, overall
17 we saw, you know, slight decreases in hate
18 crimes. In New York City -- you know, and
19 the data is preliminary at this point, but we
20 did see a rise in hate crimes specifically
21 targeted against Asian populations.
22 Upstate -- and again, very preliminary
23 data -- we saw a rise in hate crimes targeted
24 against Blacks. So I think there is a basis,

1 clearly, for your concern.

2 In terms of the Governor's budget, the
3 Governor's budget continues to provide the
4 funding to DCJS that we need to work with the
5 Municipal Police Training Council and our
6 local partners on training around these
7 issues.

8 As part of the revamp of the basic
9 course that I talked about, we worked with
10 the Anti-Defamation League, we worked with
11 others to really beef up the hate crimes
12 training section so that every new recruit
13 will have an up-to-date and thorough hate
14 crimes training component.

15 And that component that's in there can
16 also be used by individual departments as an
17 in-service training on hate crime, if they
18 want it.

19 So we continue to be engaged with our
20 partners in terms of training around hate
21 crime and trying to support entities.

22 And then the last piece of your
23 question, certainly it's envisioned when --
24 under the Governor's executive order when

1 departments and municipalities are asked to
2 engage with communities, that immigrant
3 communities would be included in that
4 engagement.

5 ASSEMBLYWOMAN RAJKUMAR: Thank you.

6 CHAIRWOMAN KRUEGER: Thank you.

7 Next to Senator Jeremy Cooney.

8 SENATOR COONEY: Thank you,

9 Madam Chair.

10 And hello, Commissioner, it's good to
11 see you.

12 EX. DEP. COMMISSIONER GREEN: Good to
13 see you again.

14 SENATOR COONEY: Long time no see.

15 As someone who's from Rochester and of
16 course served as our district attorney,
17 you're well familiar with some of the
18 challenges and issues we face in Rochester
19 with policing, specifically in Black and
20 brown communities, many of which I represent
21 in the 56th Senate District.

22 My question to you is going to be
23 framed in the lens of our new Senate
24 Committee on Cities 2, which is focused on

1 upstate New York cities, specifically the
2 Big 5. And when it comes to diversity in law
3 enforcement, both in policing and in the
4 district attorney's office, it's something I
5 know that is not unique to Rochester,
6 certainly, in struggling with -- but I do
7 wonder if you have some experience, based on
8 your time not only in Rochester but in the
9 State of New York, talking with other states
10 across the country, on how they have been
11 successful with diversifying our law
12 enforcement divisions.

13 Because I believe truly that if we
14 want to have a more just system that works
15 equally for everyone, I believe that law
16 enforcement should reflect the communities in
17 which they serve.

18 And I would appreciate your thoughts
19 and any examples or specific opportunities
20 that we could do some more research on.

21 Thank you.

22 EX. DEP. COMMISSIONER GREEN: I
23 certainly agree -- you know, thank you for
24 the question. You know, we definitely want

1 police departments -- as we do all of our
2 other institutions -- to reflect the
3 communities that they serve. And frankly I
4 think they would be better -- you know, any
5 institution is better at doing their job and
6 better able to serve the community if they
7 are.

8 We are working, continue to work with
9 groups like the IACP and others to make sure
10 that we are up on, you know, what others
11 around the country are doing.

12 As you know, this is a very
13 challenging topic and not one that there's an
14 easy solution to. You know, you mentioned
15 the Rochester Police Department. You know
16 they have been under a court order out of
17 federal court for years around this issue,
18 and yet it still remains a very difficult
19 issue.

20 You know, the Governor's proposal,
21 among other things, does look to standardize
22 hiring practices and require the Municipal
23 Police Training Council to do work and put
24 guidelines around standardized training

1 practices. And if that's passed, we
2 certainly envision that one part of that work
3 would be to make sure that whose hiring
4 practices take into account the desire to
5 have diverse police departments and are
6 reflective of that goal.

7 You know, so I think in the terms of
8 the Governor's budget proposal and current
9 work, those would be the highlights I'd point
10 out.

11 SENATOR COONEY: Commissioner, I
12 appreciate that. And I do have a bill that
13 I've entered into the Senate which would
14 specifically work with the Big 5 cities and
15 address a long-time question about police
16 residency and, you know, begin to have those
17 conversations.

18 Because I do believe that making sure
19 that dollars are staying in the communities
20 and that people feel invested in those who
21 they are protecting really does matter.

22 So we'll take a look at what you have
23 in the budget, and I appreciate your time
24 today, Commissioner.

1 EX. DEP. COMMISSIONER GREEN: Thank
2 you.

3 CHAIRWOMAN KRUEGER: Thank you.

4 CHAIRWOMAN WEINSTEIN: Thank you.

5 So we go to Assemblyman Braunstein,
6 and after that will be Assemblywoman Byrnes.

7 CHAIRWOMAN KRUEGER: Are you there,
8 Ed? Put your mute off.

9 ASSEMBLYMAN BRAUNSTEIN: Okay, thank
10 you. Sorry about that.

11 Forgive me if someone asked you this
12 question earlier, Commissioner; we've been
13 going back and forth with different things
14 today.

15 My question is about Executive Order
16 203, the Police Reform and Reinvention
17 Collaborative plan with the localities. I
18 guess I have two questions. My first
19 question is, it requires localities to submit
20 and -- to put together a plan and then
21 certify it and then submit it to your agency.

22 Once the plan is submitted, is there
23 any kind of evaluation after that to see that
24 it's acceptable? Or has the locality met its

1 obligation just simply by submitting a
2 certified plan?

3 EX. DEP. COMMISSIONER GREEN: I'll
4 have to go back and look at the executive
5 order again. But my recollection is it
6 required the submission to the Division of
7 Budget.

8 You know, certainly that said, you
9 know, we intend to review all the plans.
10 But, you know, at least as of now my
11 understanding is if the plan has properly
12 been ratified by the local municipality or
13 governing body, you know, that that satisfies
14 the requirements.

15 ASSEMBLYMAN BRAUNSTEIN: Because it
16 doesn't really speak to it in the executive
17 order. And my question is if a locality --
18 let's say the City of New York submits a
19 plan, you know, it's certified, it's put
20 together. Is there an opportunity later for
21 the Division of Budget to withhold funding
22 based on, you know, some kind of subjective
23 evaluation of the plan that they don't agree
24 with?

1 EX. DEP. COMMISSIONER GREEN: And
2 that's something you'd have to direct to the
3 Division of Budget. I can't speak to that,
4 I'm sorry.

5 ASSEMBLYMAN BRAUNSTEIN: And do we
6 know what kind of funding could be withheld
7 from a locality if they don't meet the
8 requirements?

9 EX. DEP. COMMISSIONER GREEN: Again,
10 that's something the Division of Budget would
11 have to speak on.

12 ASSEMBLYMAN BRAUNSTEIN: Okay. Have
13 you had conversations with the City of
14 New York about their plan and how they're
15 moving?

16 EX. DEP. COMMISSIONER GREEN: I
17 personally have not had conversation with the
18 City of New York. But I know -- you know,
19 it's a collective process between DCJS, the
20 deputy secretary's office, the Budget
21 Division and others. You know, and
22 collectively we've spoken with every
23 jurisdiction.

24 ASSEMBLYMAN BRAUNSTEIN: Okay. All

1 right. Thank you.

2 CHAIRWOMAN KRUEGER: (Muted.)

3 ASSEMBLYWOMAN BYRNES: Thank you.

4 Assemblywoman Marge Byrnes.

5 Mike Green, how are you, sir?

6 EX. DEP. COMMISSIONER GREEN: Fine,

7 how are you? Long time no see.

8 ASSEMBLYWOMAN BYRNES: I was going to

9 say the same thing.

10 I have one question for you. It may
11 spring to a couple others, but we only have
12 2 minutes and 45 seconds, so -- but look, we
13 all hope and expect that our police
14 departments are going to be submitting plans
15 that meet all of the new procedures by the
16 deadline that's been established.

17 My question is if a police department
18 submits and operates under a plan that they
19 think in good faith satisfies the objectives
20 of the state and what they believe satisfies
21 the requirements, but yet later on down the
22 line the state for any reason believes that
23 their plan is inadequate, are they still
24 going to be penalized? As long as they're

1 operating in good faith and doing their best.

2 EX. DEP. COMMISSIONER GREEN:

3 Ultimately it's the Budget Director who's
4 going to make those determinations, and I
5 can't speak for the Budget Director.

6 But what I can say is the intent here
7 was to simply try and make sure that police
8 departments, municipalities and communities
9 engage with each other in an effort to move
10 relationships between police departments and
11 communities forward.

12 And certainly I would hope to the
13 extent that municipalities and police
14 departments have done that in good faith, you
15 know, I wouldn't expect that there would be
16 any consequences for that.

17 ASSEMBLYWOMAN BYRNES: I trust there's
18 some expectation that because our communities
19 can be so different -- from a village I live
20 in that only has 2200 people and basically
21 two full-time officers, to a larger
22 municipality -- that they deal with such
23 different types of complaints and people that
24 live within the communities that I would hope

1 those types of factors are taken into
2 consideration as plans are evaluated.

3 EX. DEP. COMMISSIONER GREEN: And I
4 believe that that's the reason why the
5 executive order was crafted as it is, to have
6 the approval process being done by the local
7 governing body.

8 So that in the village you talked
9 about, there's a village board made up of
10 folks who are representative of your village,
11 and they can pass on whether or not that plan
12 is appropriate for the village -- which may
13 be very different than the City of Rochester,
14 who has a city council who can pass on
15 Rochester's plan.

16 So, you know, my understanding is that
17 the executive order was crafted that way, to
18 take into account the exact things that you
19 raised there.

20 ASSEMBLYWOMAN BYRNES: All right. And
21 then, again, my only fear -- which I hope
22 doesn't become borne out -- is that somebody
23 will play armchair quarterback and decide
24 that plans that are approved ultimately

1 aren't satisfactory. And I'd hate to see for
2 any reverberations on the back end when they
3 are operating in good faith.

4 EX. DEP. COMMISSIONER GREEN: No,
5 thank you. I understand and appreciate the
6 concern.

7 ASSEMBLYWOMAN BYRNES: Thank you, sir.
8 Take care.

9 CHAIRWOMAN KRUEGER: Thank you.
10 Back to the Senate to close -- yes?

11 CHAIRWOMAN WEINSTEIN: We have no
12 more.

13 CHAIRWOMAN KRUEGER: You have no more.
14 That's what I thought, thank you.

15 Okay, to close for the Senate the
16 chair of our Codes Committee, second round,
17 five minutes, Jamaal Bailey.

18 SENATOR BAILEY: Thank you. Thank
19 you, Madam Chair.

20 And Commissioner Green, again, this
21 won't be long at all. This is just related
22 to the Article VII proposal about the
23 creation of the crime of -- the new domestic
24 violence crime created in this new

1 Article VII.

2 I just wanted to know DCJS's opinion
3 on this, and will it help to -- I guess I --
4 I guess I'll -- let me take a couple of steps
5 back, right?

6 During this pandemic we've obviously
7 seen an increase in stats related to domestic
8 violence. I just wanted to know will this
9 Article VII, in your opinion, in the opinion
10 of DCJS, help to stem the tide of some of
11 these domestic violence-related offenses.

12 EX. DEP. COMMISSIONER GREEN: So if
13 the proposal you're talking about is the one
14 to create new crime, a misdemeanor crime of
15 domestic violence --

16 SENATOR BAILEY: Correct.

17 EX. DEP. COMMISSIONER GREEN: The
18 intent is that certain convictions for crimes
19 of domestic violence are supposed to result
20 in a disqualifier for someone purchasing a
21 gun.

22 Currently, though, in order for that
23 process to take effect, in addition to
24 someone being charged with a crime, the

1 district attorney has to file a certificate
2 alleging that it's a crime of domestic
3 violence. In addition to adjudicating the
4 criminal case, the court has to hold a
5 separate hearing to determine whether or not
6 it's a crime of domestic violence. And then
7 if in fact a finding is made, not only does
8 the conviction have to be transmitted to
9 DCJS, but the results of that separate
10 hearing have to come to DCJS.

11 And if for any reason any of those
12 things don't happen -- the DA doesn't file
13 the certificate, the court doesn't do the
14 hearing, the result doesn't get transmitted
15 to DCJS -- someone with a qualifying domestic
16 violence conviction can still go out and
17 purchase a gun.

18 This is an attempt to close that
19 loophole. It will not criminalize any new
20 conduct. So anything that's criminalized
21 under this proposal would already be a
22 criminal offense. It will simply eliminate
23 the need for filing that separate
24 certificate, having a separate hearing, and

1 yes, there have been conversations.

2 I think there have also been
3 conversations around some of the broader
4 proposals like expanding the scope of the
5 Office for the Prevention of Domestic
6 Violence to include gender-based violence.
7 There have been conversations around
8 streamlining the application process for
9 resources for not-for-profits, you know, that
10 go to different state agencies, so there
11 would be a more common platform for that
12 application.

13 So in general, yes, I think both the
14 Office for the Prevention of Domestic
15 Violence and the administration generally
16 have been very engaged with the domestic
17 violence advocacy community here around these
18 proposals.

19 SENATOR BAILEY: And my final, final
20 question -- you know, sometimes -- I'm sorry,
21 I'm an attorney too.

22 (Laughter.)

23 SENATOR BAILEY: So as related to
24 sealing -- you spoke about the sealing of

1 convictions. There are some bills being
2 proposed -- we'd like to greatly expand our
3 sealing statutes and actually give us actual
4 expungement in New York State. Does DCJS
5 have an opinion on either the legislation or
6 the concept of expansion of sealing?

7 EX. DEP. COMMISSIONER GREEN: So for
8 the sealing that we've done, as I indicated,
9 we sealed about 3.2 million records that was
10 marijuana -- low-level marijuana convictions,
11 low-level historical offenses like disorderly
12 conduct, and things open for more than five
13 years. That left 800,000 people with clean
14 records.

15 You know, those types of things we
16 support. Currently we're working on the
17 legislation that was just passed and signed
18 into law which will seal convictions for
19 loitering for purposes of prostitution. So
20 we're engaged right now in making sure we
21 carry that out.

22 And so those types of sealing or
23 expungement that you referred to we certainly
24 support, you know, and are working very hard

1 to make sure we carry out everything that's
2 enacted.

3 SENATOR BAILEY: Excellent, thank you.
4 You know, New Yorkers deserve to have a clean
5 slate to be able to move forward.

6 And I thank you for your time and for
7 your attention to these questions. Thank
8 you, Commissioner.

9 CHAIRWOMAN KRUEGER: Thank you very
10 much.

11 EX. DEP. COMMISSIONER GREEN: You too.

12 CHAIRWOMAN KRUEGER: I think at this
13 point we are done with you for today. Thank
14 you for spending your couple of hours with us
15 helping us to understand your agency and
16 budget.

17 EX. DEP. COMMISSIONER GREEN: Well,
18 thank you. It's always a pleasure to see
19 everyone, and appreciate all of your support.

20 CHAIRWOMAN KRUEGER: Thank you.

21 And our next commissioner -- excuse
22 me, acting commissioner -- Anthony Annucci,
23 New York State Department of Corrections and
24 Community Supervision.

1 commissioner, right?

2 ACTING COMMISSIONER ANNUCCI: That is
3 correct.

4 CHAIRWOMAN KRUEGER: Welcome.

5 ACTING COMMISSIONER ANNUCCI: Thank
6 you.

7 CHAIRWOMAN KRUEGER: Ten minutes on
8 the clock.

9 ACTING COMMISSIONER ANNUCCI: Thank
10 you, Senator.

11 Good afternoon, Chairwoman Krueger,
12 Chairwoman Weinstein, and other distinguished
13 chairs and members of the Legislature. I am
14 Anthony J. Annucci, acting commissioner for
15 the Department of Corrections and Community
16 Supervision. It is my honor to discuss some
17 of the highlights of Governor Cuomo's
18 Executive Budget plan.

19 Since the Governor took office, the
20 incarcerated population, now under 33,200,
21 has decreased by more than 22,000, marking
22 the lowest total since 1984, and representing
23 a 54 percent decline since its all-time high
24 in 1999 of 72,773. More significantly, the

1 total population reduction since January 1,
2 2020, exceeds 11,000. Even with these
3 drastic reductions in incarceration, New York
4 proudly remains one of the safest large
5 states in the country.

6 With this significant reduction in
7 population since 2011, the state has safely
8 eliminated excess capacity through the
9 closing of 18 correctional facilities without
10 laying off workers, while achieving
11 \$292 million of savings for taxpayers. This
12 year's closure process is underway with the
13 transfer of staff to vacant positions at
14 other facilities or offices, while the
15 incarcerated population is transitioned into
16 vacant beds elsewhere.

17 Based on the continued decline of the
18 incarcerated population, we anticipate
19 additional facility closures in the upcoming
20 two fiscal years.

21 Over the past year, COVID-19 has
22 plagued our nation and state. The department
23 was not spared from the effects of COVID-19.
24 Accordingly, last March I convened a

1 multidisciplinary COVID-19 Task Force to
2 guide our comprehensive response.

3 During this pandemic there have been
4 many heroes along the way. Our essential
5 workers, including corrections and community
6 supervision staff, came to work every day and
7 consistently carried out their professional
8 duties in an exemplary manner, oftentimes
9 going above and beyond their traditional
10 responsibilities. I am very proud of the
11 dedication and sacrifice staff have displayed
12 throughout the duration of the COVID-19
13 public health emergency and thank them for
14 their continued great work.

15 Incarcerated individuals also helped
16 to support and protect fellow New Yorkers
17 with the production of nearly 11 million
18 bottles of hand sanitizer of various sizes,
19 over 89,000 protective gowns, and almost
20 2 million face masks.

21 As the Governor has pointed out, our
22 path forward is to continue testing and
23 vaccinations. We have begun the process of
24 vaccinating our staff and the incarcerated

1 individuals in the system who are 65 and
2 older, consistent with statewide guidance for
3 that age group.

4 Under the direction of Governor Cuomo,
5 the department has also leveraged existing
6 laws that allowed for the early release of
7 3,555 nonviolent, non-sex offenders, which
8 included 791 low-level parole violators from
9 local custody. The department decommissioned
10 over 3,000 top bunks, greatly reducing
11 density within dorm settings, and followed
12 CDC and DOH guidance to help reduce the
13 spread of COVID-19. We also modified
14 policies and procedures in community
15 supervision that have drastically reduced the
16 issuance of technical warrants.

17 Despite the pandemic, there were many
18 accomplishments in 2020. Last year, the
19 Governor successfully advanced legislation to
20 remove all individuals under the age of 18
21 from DOCCS, and to send adolescent offenders
22 to the Office of Children and Family
23 Services. This transition was successfully
24 completed.

1 In 2019, the Governor, along with the
2 leaders of both houses, jointly agreed to
3 further overhaul segregated confinement
4 through administrative action. DOCCS issued
5 and adopted regulations after a thorough
6 review of the public comments. Leveraging
7 the \$69 million capital funding allocation,
8 the necessary infrastructure upgrades to
9 develop residential rehabilitation units are
10 underway, with several becoming operational
11 later this fiscal year.

12 The regulations further restrict the
13 number of infractions that can result in a
14 disciplinary confinement sanction, among
15 other things. When fully implemented, these
16 reforms will restrict the use of segregation
17 for vulnerable populations and cap the amount
18 of time someone can spend in segregation.

19 Through the ongoing reforms, I am
20 confident we will successfully provide
21 incarcerated individuals with the services
22 and treatment they need, while continuing to
23 keep staff, the population and visitors safe.

24 Lastly, the Board of Parole, in

1 consultation with the department, adopted
2 regulations that improved the standard
3 conditions of supervision, and modified the
4 parole revocation process, advancing both
5 alternatives to incarceration options and
6 shorter periods for reincarceration when
7 necessary.

8 In conclusion, while we will continue
9 to tackle the many challenges posed by
10 COVID-19, we will simultaneously explore
11 additional means to further leverage
12 technology for the delivery of programs and
13 the advancement of safety, both inside our
14 facilities and within our communities. We
15 cannot ignore the overall safety of our staff
16 and the security of our facilities and
17 offices. They remain a top priority for the
18 department. Our professional, well-trained
19 and dedicated workforce, who perform their
20 responsibilities in a highly commendable
21 manner, often under dangerous and difficult
22 circumstances, will continue to be our best
23 resource as we meet our mission.

24 The Governor's budget positions the

1 department for success, while continuing to
2 address the dramatic decline in the
3 population, to the benefit of the entire
4 agency, as well as the taxpayer.

5 Thank you, and I will be happy to
6 answer any questions.

7 (Pause.)

8 CHAIRWOMAN KRUEGER: Our first
9 questioner will be Senator Julia Salazar, the
10 new chair of Crime, Crime Victims and
11 Corrections.

12 SENATOR SALAZAR: Thank you, Chair.

13 And thank you very much, Commissioner,
14 for joining us today and taking the time to
15 testify.

16 I wanted to begin by asking you about
17 racial disparities in parole denials and in
18 solitary confinement. There was a New York
19 Times investigation in 2016 that documented
20 pretty astounding racial bias in New York's
21 prisons, particularly bias in the use of
22 solitary confinement and in parole denials
23 that had prompted the Governor at the time to
24 announce an investigation.

1 Recently in December, the Times Union
2 issued a report showing that these same
3 racial disparities in parole denials and
4 solitary confinement had actually increased
5 since the 2016 report. Now we're in 2021,
6 it's been more than four years since the
7 Governor initially announced that there would
8 be an investigation.

9 Would you be able to inform us why
10 findings haven't been issued from such an
11 investigation and any other action that's
12 been taken since then specifically to address
13 the Parole Board's racially disparate release
14 rates?

15 ACTING COMMISSIONER ANNUCCI: Senator,
16 first of all, thank you for that question.

17 Let me begin by saying I have been
18 around since 1984, 36 years plus. And in my
19 entire tenure with the state, as with this
20 agency, this is the most diverse Parole Board
21 that we have. And I know the chairwoman very
22 well. She's a person of integrity and
23 character. I know at least 11 members are
24 considered to be minority. I know she is

1 very active in initiatives with me. She is
2 the cochair of my Commissioner's Diversity
3 Management Advisory Council, which is
4 dedicated to increasing diversity throughout
5 the ranks of our agency. I know that she is
6 very engaged, and I know that if you're going
7 to do any type of study, you have to be able
8 to compare apples to apples and oranges to
9 oranges.

10 In order for you to ascertain whether
11 or not there's any potential racial
12 difference in decision-making, you have to
13 have the full array of information before
14 you. For example, you have to know whether
15 or not someone has been incarcerated five or
16 six times versus someone who's incarcerated
17 for the first time on a burglary in the third
18 degree conviction. That is not ascertainable
19 from the information that may be available on
20 a website.

21 One of the smartest laws we never
22 passed in this state is "three strikes and
23 you're in," so people can get repeatedly
24 convicted as second felony offenders.

1 You also need to have access to a
2 whole host of information that the Parole
3 Board looks at which is not available on any
4 public website. For example, what did the
5 district attorney say, what did the defense
6 attorney say, what did the sentencing judge
7 say in response to solicitation records.
8 What is the record while incarcerated? What
9 is the disciplinary record? What did the
10 crime victim submit?

11 So all of these factors are taken into
12 consideration and considered. And therefore,
13 you would really have to have a very, very
14 carefully constructed research project that
15 had access to a lot of different records in
16 order to ascertain whether there is any
17 potential racial impact.

18 And I will point out that one reason
19 why our population is going down is that the
20 Parole Board has significantly increased the
21 rate at which people are released. This is
22 well before COVID. In calendar years 2019
23 and 2018 combined, right -- which was
24 pre-COVID -- our population declined by

1 basically 6,000. So we've had that going on.

2 Then with respect to what we're doing
3 in the disciplinary system, I have initiated
4 a number of different training initiatives
5 throughout our agency. Staff are mandated to
6 take implicit bias, racial stereotyping and
7 many other things.

8 I also have commissioned my research
9 units to generate two different types of
10 comprehensive reports, one of which looks at
11 the assignments at each facility and the
12 racial breakdown at each facility. And that
13 comes in to my deputy commissioner for
14 program services, and where we need to be
15 better at assigning particular jobs, the jobs
16 at each facility have to be balanced
17 according to the racial population at each
18 facility.

19 I also get a quarterly report from my
20 research unit on overall statistical
21 indicators of various types at a 5,000-foot
22 level. And where corrective action is
23 required, we do -- instruct the appropriate
24 deputy commissioner to follow up. So we are

1 very much married to the concept of diversity
2 and inclusion and fairness for everybody.

3 SENATOR SALAZAR: Thank you,
4 Commissioner.

5 I want to preface this by saying that
6 I may need to cut you off, and I apologize.
7 I mean no offense. If I cut you off, it is
8 only because my time is limited.

9 I want to talk a little bit about
10 solitary confinement. In November, just a
11 few months ago, the Partnership for the
12 Public Good released a report demonstrating
13 that if the HALT Solitary Confinement Act
14 were implemented, it would actually yield
15 New York State a net savings of \$132 million
16 each year. I mention this because we
17 previously heard from the current
18 administration that contrary to this, the
19 Executive claims there would be a fiscal cost
20 to implementing these same changes that are
21 outlined in the -- changes to the use of
22 solitary confinement and the length of time.

23 My question is, in your capacity do
24 you have an assessment of the HALT bill or on

1 its proposed limits to the use of solitary
2 confinement and whether it would in fact have
3 a fiscal impact or cost or savings to the
4 state?

5 ACTING COMMISSIONER ANNUCCI: Senator,
6 normally -- I can't comment on pending
7 legislation, but there are several things
8 that I can point out.

9 First, I have firsthand experience of
10 what it's like to be confined in a special
11 housing unit cell in a maximum security
12 prison. I did it almost as an undercover
13 operation back in December. We selected a
14 facility; the superintendent was simply told
15 be prepared for two high-level, high-profile
16 individuals. Myself and my executive deputy
17 commissioner, we went in dressed in inmate
18 uniforms, and we stayed there for 24 hours.
19 So I got to see firsthand all the different
20 actions, interactions that are there with all
21 the different staff, from being screened by
22 the nurse, from the counselor that comes by,
23 having the tablet, listening through
24 headphones in the exercise pen, the whole

1 nine yards. And I can go into a lot further
2 detail.

3 But the big thing is that we would
4 have to spend a lot of money to transfer
5 people after 15 days to RRUs, which are being
6 constructed as we speak. That movement can
7 be very costly and very disruptive. It's
8 disruptive to an incarcerated individual to
9 suddenly have to leave the facility. If you
10 are somebody that commits an infraction
11 that's somewhat serious but not so serious
12 that the hearing officer wants to impose a
13 30-day SHU sentence, you would have to be
14 moved after 16 days.

15 But leaving him at that facility, when
16 he comes out he could resume where he was,
17 including being back in a college program, if
18 that is where he was.

19 So there's a lot of costs that are
20 involved with any type of proposal that is
21 there. And I'd love the opportunity to
22 really lay out in detail all of the reforms
23 that we've done, all the existing alternative
24 units that we spent a lot of money on, and

1 where we will be with the RRUs, including
2 tablets where you can speak to your family
3 for up to six hours a day from a segregated
4 confinement cell. That is a privilege that
5 you don't get in general confinement.

6 SENATOR SALAZAR: Thank you.

7 I want to ask more about COVID-19 in
8 DOCCS. Given that jails and prisons are
9 congregate settings -- and I appreciate that
10 you mentioned in your testimony that density
11 has been reduced, but I think we can probably
12 agree that DOCCS facilities are congregate
13 settings -- when can we expect all of the
14 people, not just based on their age, but all
15 people who are currently incarcerated to
16 become eligible for receiving the COVID-19
17 vaccine? And when they are granted
18 eligibility, is there a plan by DOCCS or DOH
19 for rolling out vaccinations?

20 ACTING COMMISSIONER ANNUCCI: Well,
21 Senator, we have been in partnership with DOH
22 since the very start of this pandemic, and
23 they have guided every step that we have
24 taken, including how we would roll out

1 vaccinations. And it's a lot of work to do
2 that. We have 27 teams of people that were
3 assembled, ready to go to the facilities. We
4 have OSI staff that are ready to transport
5 the vaccine. We had to survey all of the
6 staff to see who would be interested. We had
7 to deal with the medical people in 1-a, the
8 correctional staff, including community
9 supervision staff, in 1-b. We had to find
10 where the elderly are, 65 and older. And
11 then we had to transport the vaccines.

12 And in order for us to get as many
13 people to accept the vaccine who are
14 incarcerated, instead of giving them
15 information for them to just read, I had a
16 member of my executive team and a health
17 services person directly interview them and
18 try and convince them to accept the vaccine.
19 And so far, close to 80 percent have accepted
20 the vaccine.

21 We will have injected 4,000 vaccines
22 this week. We will continue with that. We
23 are next tackling the vulnerable population
24 of a little over 3,000 medical problems that

1 we will get to. I can't give you a date when
2 everybody will be vaccinated. I can tell you
3 that as a matter of public health -- public
4 protection and public health go hand in hand,
5 so it's in everybody's interest to get there
6 as soon as possible. I think the news that
7 Johnson & Johnson has now been approved for
8 vaccinations is a big, big step that will
9 help all New Yorkers.

10 CHAIRWOMAN KRUEGER: Thank you,
11 Commissioner. And Chair, I have to cut you
12 off. Chair, you're entitled to five minutes
13 for a second round of cleanup at the end.

14 With that, I'm turning it over to the
15 chair of Corrections for the Assembly,
16 Assemblymember Weprin.

17 ASSEMBLYMAN WEPRIN: Thank you,
18 Chair Krueger, thank you, Chair Weinstein,
19 for your leadership and patience during all
20 these long hearings.

21 I just want to follow up just on what
22 Senator Salazar brought up, because I just
23 want to let you know, Commissioner, that
24 Commissioner Zucker, the State Health

1 Commissioner, told the Democratic Conference,
2 I think it could have been a month ago, that
3 the intention was to inoculate with the
4 vaccines everybody in the congregate setting,
5 because it really applies to -- correctional
6 officers, correctional employees, as well as
7 incarcerated individuals are all part of that
8 congregate setting. And he did say that the
9 intention was to inoculate everyone, not just
10 those over 65.

11 So I just wanted to point that out and
12 I hope you'll get to that. Because just like
13 nursing homes, there has been a huge spread
14 to the whole system, as you know better than
15 most.

16 A couple of questions. A couple of
17 things you already touched on, so I will try
18 not to be repetitive. But I know you're
19 planning on closing Gowanda, Clinton and
20 Watertown; you announced that in December.
21 What steps are being taken, if any, to
22 minimize the impact on the local economies,
23 and what's happening to the staff and inmates
24 currently at these facilities?

1 ACTING COMMISSIONER ANNUCCI: Well,
2 one step at a time. The first thing is to
3 actually close the facilities. And they'll
4 close by March 31st.

5 My number-one immediate priority is to
6 make sure that every one of the staff members
7 at those three facilities have opportunities
8 for employment elsewhere within our system.
9 So I've dispatched our human resource staff,
10 director of personnel, to meet personally
11 with all of the staff that are affected at
12 the different facilities, as well as the
13 unions, and to carefully explain to them what
14 their rights and options are.

15 So we're going to be moving a number of
16 them in about two weeks, and then we'll continue
17 after that. We're also gradually moving the
18 incarcerated population out of there as well.
19 That is a process that is much less complicated
20 because we have thousands and thousands of
21 vacancies throughout our entire system.

22 Ultimately, when the facilities are
23 closed, we will maintain them at least in a
24 fashion that they can be reused when and if

1 another purpose comes about. So we work with
2 ESD, and if at some point one of them can be sold
3 or used for a different purpose, we'll allow
4 people to be brought on-site, we'll maintain them
5 so that the infrastructure is preserved, and
6 perhaps one of them may be sold or there may be
7 an alternate purpose.

8 So we are always mindful of trying to do
9 our best to leave the community with other
10 options.

11 ASSEMBLYMAN WEPRIN: I appreciate
12 that, Commissioner. And I appreciate the
13 working relationship we've had for the last
14 five years.

15 I'd love to hear about your undercover
16 experience offline; I don't want to
17 monopolize the time of this particular
18 hearing. But I'll discuss that with you at a
19 later date.

20 Something that came up in our
21 Democratic conference as we were going over
22 the budget the other day was the \$5 million
23 for the Correctional Services Commissary
24 addition. Can you give us a little more

1 detail on that? Because that came up in --

2 ACTING COMMISSIONER ANNUCCI: Yeah,
3 basically that's a dry appropriation that's
4 funded by the population themselves. And
5 because each facility has its own independent
6 commissary account, and because with things
7 like loss of visitation more money is coming
8 in from family members for them to be able to
9 spend on things through the JPay account,
10 et cetera, we needed to raise the
11 appropriation so that we wouldn't have
12 anybody that wouldn't be able to spend.

13 So that was something we increased I
14 think a couple of years ago, and now we're
15 raising it another 5 million.

16 ASSEMBLYMAN WEPRIN: Okay. I have a
17 number of issues to cover, so I'm going to
18 try to go through them quickly.

19 As you know, I've been a huge
20 supporter -- and I think you have as well --
21 for higher education in facilities. And
22 obviously we're a little bit more limited
23 during this COVID-19, but hopefully that will
24 change.

1 As you probably know, I have a
2 proposal for educational release, and I
3 think that's something that you might
4 support. Has there been any discussion about
5 adding college programs and possibly having
6 the educational release? And with the recent
7 bill in Washington which basically, you know,
8 provided additional TAP coverage for
9 incarcerated individuals, I think that makes
10 it even easier or, you know, more likely that
11 we can expand some of these prison programs.

12 Can you just elaborate on that and how
13 the TAP could help that?

14 ACTING COMMISSIONER ANNUCCI: Okay.
15 Very quickly, Assemblyman, yes, thank you. I
16 really appreciate your support for higher
17 education. I strongly believe in education
18 for a lot of different reasons, primarily
19 because it's transformative. We have totally
20 different people once they get through
21 education.

22 We presently have about 21 different
23 outside colleges delivering services at
24 30 different facilities. And we always would

1 love to expand and include more. There's
2 about 15,000 individuals in our system that
3 have high school diplomas already, so they
4 could move on to higher education if
5 possible.

6 I was very pleased to see the
7 Pell Grant restored at the federal level. I
8 can tell you that the documentary that was
9 made in our facilities, "College in Prison,"
10 the Ken Burns documentary, four hours, that
11 helped significantly. It showcased to the
12 whole country the power of higher education
13 behind bars in our system, and I think it was
14 a big factor in why Congress restored
15 Pell Grant funding.

16 As for your pending legislation,
17 Assemblyman, I can't really comment on that.
18 But obviously anything that furthers the
19 linkages -- and if that's educational release
20 that allows people to continue their
21 education with colleges in the communities
22 where they live, that's fine. We support
23 anything that builds on secondary education
24 in our institutions.

1 ASSEMBLYMAN WEPRIN: Thank you.

2 And just following up on the
3 Parole Board and the diversity of the
4 Parole Board, when I first came on as chair
5 about five years ago, there were I think only
6 somewhere between 10 and 12 parole
7 commissioners. And we've obviously expanded
8 that. We expanded, allowing it to go up to
9 19 parole -- I agree with you that the
10 diversity has expanded, and I know you and I
11 have been part of that process.

12 My question for you is, how many
13 vacancies do we have now? And I know we can
14 go up to 19, and we really should try to fill
15 all of those spots. How many vacancies are
16 there now? And I know the board is much more
17 diverse. And I actually had recommended one
18 of my Corrections staffers, Tana Agostini,
19 and she was one of those, and I think the
20 state was the beneficiary, you know, of her
21 service.

22 And if you could just kind of just
23 elaborate on how many vacancies we have right
24 now.

1 ACTING COMMISSIONER ANNUCCI: Sure.

2 We have 16 members of the board right now.

3 And one thing I'll just remind you
4 about -- one is the population obviously has
5 dramatically declined. When you go down
6 11,000 in a little more than a year, that's a
7 significant decline.

8 The second thing is a significant
9 proportion of individuals incarcerated are
10 serving determinate sentences, which means
11 they don't get released by action of the
12 Parole Board, they don't get interviewed
13 before Parole, they're released at their date
14 by operation of law. And so anybody with a
15 drug offense or serving time for a VFO or a
16 sex offense is serving a determinate
17 sentence. They will not appear before a
18 Parole Board for potential release.

19 ASSEMBLYMAN WEPRIN: Okay, thank you.
20 My time is running out. I have a bunch of
21 questions, and I will reserve the right to
22 come back for the second time as chair.

23 But you talked about the reduction in
24 overall prison population, significantly,

1 over the last few years. I just want to ask
2 about double bunking. Is there still double
3 bunking, meaning two to a cell, two residents
4 to a cell currently in use? And if so, why,
5 since the prison population has been
6 significantly reduced.

7 ACTING COMMISSIONER ANNUCCI: Well,
8 first, for those double cells that had been
9 in operation when we were very overcrowded
10 and we had to convert a number of single
11 cells in 16 of our maximum-security
12 facilities -- they've all been taken down,
13 with very few exceptions. There's a very
14 limited number in Auburn; I doubt if they're
15 filled right now. And there's a very limited
16 number, I think, in Downstate. And I think
17 the others -- that would be it. So those
18 have been taken down.

19 But then you have the double cells
20 that were constructed as double cells at
21 places like Five Points and Upstate
22 Correctional Facility, in our S blocks. Now,
23 to the extent that there are instances where
24 some of them will be two in a cell, yes, that

1 still exists. But it has been significantly
2 decreased with the significant reduction in
3 the population.

4 ASSEMBLYMAN WEPRIN: Thank you. I'm
5 running out of time, so I'll come back. And
6 let me just ask one more question --

7 CHAIRWOMAN KRUEGER: Quickly. You're
8 not going to have any time to get an answer.

9 ASSEMBLYMAN WEPRIN: Okay. Well, you
10 know what, it's been a pleasure working with
11 you these last five years.

12 I'll come back for the five minutes
13 for some of my other questions. How's that,
14 Chair?

15 CHAIRWOMAN KRUEGER: That's perfect.

16 ASSEMBLYMAN WEPRIN: Thank you.

17 CHAIRWOMAN KRUEGER: Thank you.

18 And our next questioner is
19 Jamaal Bailey for five minutes, chair of the
20 Codes Committee.

21 SENATOR BAILEY: Thank you,
22 Madam Chair.

23 Acting Commissioner, good to see you.

24 Chair Salazar mentioned a lot of the

1 conversation that I wanted to do, and she
2 touched on it, and I think she'll touch on
3 more of it in her second round, as related to
4 the response as related to COVID.

5 But I wanted to double down on what
6 Assemblymember Weprin was talking about as
7 related to education for individuals who are
8 currently incarcerated. You mentioned the
9 documentary related to the Bard Prison
10 Initiative and the restoration of the
11 Pell Grant at the federal level, which is
12 great news.

13 I was wondering, are there steps that
14 we can take, in your opinion, that we can do
15 to further put pressure on getting TAP back
16 for individuals who are incarcerated?

17 ACTING COMMISSIONER ANNUCCI: That's a
18 difficult question, Senator.

19 Obviously we're in an enormous
20 situation with the budget. I mean, we all
21 have heard the reports; we know what it's
22 done. I think the Budget Director is very
23 hard-pressed to find additional funds for
24 anything without cutting something else.

1 I think for the most part, if you want
2 to show support, at least, we'd love to have
3 you at our college graduations. Come and
4 help give support to the population. It's
5 really an uplifting event when we have
6 graduations and men and women are dressed up
7 in caps and gowns and the family members are
8 in the audience. And we've gotten some named
9 speakers, people like Whoopi Goldberg and
10 Bill Whittaker from "60 Minutes" and Cardinal
11 Dolan.

12 So come to a college graduation and
13 really see what the end result is from
14 College Behind Bars. It's very uplifting.

15 SENATOR BAILEY: Certainly. If we're
16 really talking about actual rehabilitation,
17 this is a huge step in that direction towards
18 incarcerated individuals being able to resume
19 normalcy once they are no longer
20 incarcerated.

21 But I guess the next question I would
22 have is related to individuals who are
23 working while incarcerated. Generally,
24 what's the average hourly rate in number of

1 hours that an incarcerated individual would
2 work each week?

3 ACTING COMMISSIONER ANNUCCI: It
4 depends, Senator. It depends upon a
5 particular grade. The highest-graded worker
6 can make probably a little more than a dollar
7 a day if he's in a high-earning correctional
8 industry job. But it all depends upon the
9 particular job.

10 And I'm very sensitive to the wages
11 issue. I think it's an important
12 conversation to have. And it's one of the
13 things that in order to try and at least help
14 offset the low wages, we keep the population
15 harmless as best we can with things like
16 having very, very low rates for telephone
17 calls, for secure messages on our tablets.
18 We make sure the vendor keeps us among the
19 lowest in the country. We'll never charge
20 sales tax for anything. We did supply the
21 tablets free of charge to them. We're never
22 going to ask for a copay for medical care.

23 So while we're dealing with this
24 period when we may be restricted, because of

1 budget constraints, from raising wages, I'm
2 very sensitive to it and am trying to at
3 least have other things to take their place.

4 SENATOR BAILEY: Okay. And generally
5 speaking, how much does DOCCS spend paying
6 people that work in prisons, generally
7 overall?

8 ACTING COMMISSIONER ANNUCCI: By an
9 hourly wage?

10 SENATOR BAILEY: No, in total. Like
11 what is DOCCS's outlay like for paying
12 individuals who are incarcerated that work in
13 prisons?

14 ACTING COMMISSIONER ANNUCCI: (Aside.)
15 Do we know?

16 Yeah, we'll get back to you, Senator.
17 I just don't have that off the top of my
18 head.

19 SENATOR BAILEY: Sure. No problem.
20 As my time is running low, I want to talk
21 about medication-assisted treatment. I'm the
22 sponsor of a bill to expand that. And as you
23 know, I think it's critical, especially with
24 us being in an opioid crisis, still within

1 the throes of an opioid crisis. How many
2 facilities again in the state provide MAT
3 currently?

4 ACTING COMMISSIONER ANNUCCI: Oh, it's
5 about seven or eight at this point. We were
6 really building our capacity until obviously
7 COVID really put a damper on everything. We
8 have methadone and buprenorphine at a number
9 of facilities -- off the top of my head, it's
10 Bedford, it's Downstate, I think Elmira,
11 Marcy.

12 We have Vivitrol at a number of
13 facilities. And we also have naloxone, which
14 obviously is important for overcoming
15 overdoses. And it's part of transitional
16 services, and any individual being released
17 who will willingly accept the kit, we'll give
18 it to them and hopefully they can potentially
19 save a life in the community.

20 SENATOR BAILEY: Sure. So I guess my
21 final question is related to segregated
22 confinement. And I know Senator Salazar
23 spoke incredibly well on that earlier, and I
24 would echo those sentiments that we should do

1 anything we can to reduce that.

2 But as it is right now, what are the
3 total number of infractions that are issued
4 for people violating rules each year? And
5 then what's the result of being placed in the
6 SHU after those violation results?

7 ACTING COMMISSIONER ANNUCCI: Okay.

8 So basically like the Penal Law, our
9 disciplinary system has three tiers --
10 Tier 1, Tier 2, Tier 3. And I can give you
11 the total number of -- {Zoom glitch} -- for
12 each one. You can't go to SHU for a Tier 2,
13 and a Tier 1 is almost like a violation --
14 you get punished, but you don't get any kind
15 of record that could come back and haunt you.

16 Tier 3 is the one where you can get a
17 recommended loss of good time, keeplock
18 confinement or segregated confinement.

19 But we have significantly modified the
20 offenses that could result in a Tier 3
21 outcome. So we've moved a number down to
22 Tier 2. And in fact, a snapshot on
23 January 1st of this year, compared to a year
24 ago, there's something like 400-and-some-odd

1 less people in SHU. So we are clearly moving
2 away from that direction.

3 There's a number of things that we had
4 agreed to with the NYCLU settlement
5 agreement, including the requirement that we
6 tier at the lowest level, that the review
7 lieutenant reviews that and makes sure it's
8 the least tier for the particular act of
9 misbehavior that's involved. Many other
10 things that we do that have really
11 ameliorated who goes to SHU or -- and how
12 long they stay there. And keeplock as well.

13 SENATOR BAILEY: Well, I see that my
14 time is up, and thank you, Chair, for the
15 opportunity.

16 And thank you, Acting Commissioner.

17 CHAIRWOMAN KRUEGER: Sorry. I was on
18 mute. If you would, Commissioner, get me and
19 Helene the information you were just
20 describing, the charts showing the Tiers 1,
21 2, 3, what the categories are that actually
22 fall into a 3, and the numbers of people now
23 going to the SHUs under these new rules. I
24 think everyone will be very interested in

1 seeing the data. Okay?

2 ACTING COMMISSIONER ANNUCCI: Sure.

3 CHAIRWOMAN KRUEGER: Thank you.

4 And next we have Assemblymember
5 Palmesano, who is serving as the ranker for
6 today and gets five minutes.

7 ASSEMBLYMAN PALMESANO: Thank you,
8 Commissioner, for being here.

9 I want to kind of get at talking about
10 the prison closures a little bit. That's
11 something of great concern to myself and a
12 number of my colleagues.

13 Certainly I've seen -- you know, the
14 Governor has taken a lot of credit, proud of
15 the number of prisons he's closed in his
16 tenure. I believe with the three recently
17 announced, that would be 20 facilities. But
18 what he seems to fail to do is to take
19 responsibility for the dangerous powder-keg
20 environment these closures and some of his
21 other policies have created in these
22 correctional facilities, like restricting the
23 use of special housing units -- and I call
24 them special housing units, not solitary

1 confinement.

2 Even by DOCCS' own website,
3 inmate-on-staff assaults are up over
4 38 percent over the past five years.
5 Inmate-on-inmate assaults are over a thousand
6 per year over the past five years -- I think
7 it's a 31 percent increase since 2015. So
8 we're really jamming more and more inmates
9 into fewer facilities, especially in this age
10 of COVID.

11 The other area I want to just talk
12 about really is this whole fast-tracking of
13 these prison closures, 90 days. I really
14 believe, as a number of my colleagues do,
15 this is really a lack of respect to these
16 families and communities who have been
17 totally disrupted by these closures, and it's
18 really adding insult to injury. No time for
19 planning or preparation. And so this is like
20 seven prisons that will be closed within a
21 90-day period over these past two budgets.
22 It's difficult enough. It's not enough time
23 for a family to plan for moving, to relocate
24 for schools and homes. It's just not

1 may. It's the toughest decision to do, to
2 close --

3 ASSEMBLYMAN PALMESANO: I understand.

4 ACTING COMMISSIONER ANNUCCI: I do not
5 underestimate the impact on the staff or the
6 surrounding communities. But --

7 ASSEMBLYMAN PALMESANO: I know you
8 understand that, but I just -- it's still a
9 concern. Because I guess even in this age of
10 COVID, what practical matter does it mean to
11 jam more and more inmates into fewer
12 facilities and lesser space?

13 I do want to talk about the issue of
14 violence. I mean, how high is the violence
15 in our facilities? We already talked about
16 38 percent. And the contraband numbers, you
17 know, the drug numbers, drugs getting into
18 our facilities, over 4,000 incidents in each
19 of the past five years, before the
20 administration in DOCCS is going to implement
21 meaningful reforms instead of taking away
22 resources like the ability to use special
23 housing units.

24 I mean, where is the Secure Vendor

1 Program? Several years ago that was a
2 program you had in place -- that started out
3 and you canceled it abruptly -- to help
4 screen these drugs getting into our
5 facilities. I have not been made aware of
6 any new facility or program that you're
7 utilizing to deal with the screening of these
8 programs. Where does that stand? What about
9 the use of K-9 units at every facility?
10 Where does that stand?

11 ACTING COMMISSIONER ANNUCCI: Well,
12 you asked a lot of things. Let me try and
13 answer them one by one.

14 First, 75 percent of the assaults
15 happen in maximum-security facilities. We
16 haven't touched maximum-security facilities.
17 The facilities that are closing are medium.

18 Second, we have thousands and
19 thousands of vacant beds throughout. You
20 can't possibly say that we're jamming people
21 when we're closing facilities.

22 Third, the Secure Vendor Package
23 Program is something that's very important
24 that I want to get back to. I had to stop it

1 when we got hit with COVID. We learned from
2 the first misstep, and I'll take full
3 responsibility for that. We've met with the
4 advocates, we've met with the unions, they've
5 given us positive feedback. We've gotten
6 feedback from the superintendents.

7 I do want to get back to that. The
8 presence of drugs is a significant concern.
9 It's a health risk both for the population
10 and for staff. I think ultimately getting to
11 that will put us on the right track and help
12 reduce drugs.

13 But in the meanwhile, our staff are
14 fantastic, in our package rooms, in
15 discovering contraband that's secreted within
16 cans of vegetables and fruits and things of
17 that nature.

18 So I can't agree that closure somehow
19 is linked to violence at all. There's no
20 connection whatsoever to that. Because we
21 are at a level that we haven't seen since
22 1984.

23 ASSEMBLYMAN PALMESANO: One last quick
24 question. Who is supervising --

1 CHAIRWOMAN KRUEGER: No, sorry, you
2 can't throw up a question and an answer in
3 two seconds.

4 ASSEMBLYMAN PALMESANO: Thank you.

5 CHAIRWOMAN KRUEGER: It was a good
6 stab, though. I like that.

7 (Laughter.)

8 ASSEMBLYMAN PALMESANO: Thank you.

9 CHAIRWOMAN KRUEGER: Sorry, my job is
10 to be mean here today.

11 ASSEMBLYMAN PALMESANO: Fine.

12 CHAIRWOMAN KRUEGER: Senator Borrello
13 next.

14 SENATOR BORRELLO: Yes, thank you,
15 Madam Chair.

16 Thank you, Commissioner.

17 I represent the 57th Senate District,
18 and Gowanda is in my district. I have --
19 just wanted to bring up a couple of concerns.

20 First of all, thank you for being
21 here.

22 But there have been four requests put
23 in by the Gowanda Area Redevelopment
24 Corporation, and they've gotten a bit of the

1 runaround. And I understand sometimes the
2 request is made to the wrong agency, but
3 DOCCS did receive a request -- you know,
4 you're claiming \$89 million in savings for
5 closing these three facilities, so the
6 request was made to see those savings and
7 exactly where those savings are. And somehow
8 they were notified that in order to produce
9 that, it's going to take now until April 2nd.
10 This is a request that went in in January.

11 So my question to you is if you made
12 the determination to close these facilities
13 based on savings, then how could that data
14 be -- take three months to procure and
15 deliver to this FOIL request when that should
16 have been what you used to make the
17 determination? Shouldn't you just be able to
18 pretty much instantly turn that over? Why
19 would it take so long to show what savings
20 would be made?

21 ACTING COMMISSIONER ANNUCCI: Senator,
22 I'll have to look into exactly what the
23 response to that FOIL request -- you said it
24 was a FOIL request submitted by --

1 (Overtalk.)

2 SENATOR BORRELLO: I'm sorry, it's the
3 Gowanda Area Redevelopment Corporation. And
4 it's been in to you since January 25th -- I'm
5 sorry, the first response was from
6 January 25th, and they're saying April 2nd.

7 ACTING COMMISSIONER ANNUCCI: Okay.
8 Okay. I will look into that.

9 But basically the closure is all
10 personnel that ultimately are relocating to
11 other vacant positions throughout the system.
12 So that, for example, the closures going
13 forward are projected to reduce our overall
14 budget fill level by 800 positions.

15 And so when you factor into that all
16 the costs -- the fuel costs of maintaining a
17 correctional facility, the sewage treatment,
18 all those other costs -- they're complicated,
19 but you come up with a number that basically
20 says this is how we get to 89.

21 I don't know why they've said until
22 April, but I'll follow up on that.

23 SENATOR BORRELLO: Yeah, because it
24 was literally, you know, two days after the

1 prison is going to close, which is my
2 concern.

3 But let me also add that there's other
4 factors there too. You may not be aware, and
5 I don't expect you to be aware of this, but
6 the Collins' facility heat system is supplied
7 from the Gowanda facility. I don't know if
8 you're aware of that or not. So when you
9 start talking about savings based on labor,
10 that's one thing. But you're going to have
11 to maintain that facility in some manner.
12 And also there was a brand-new infirmary, I'm
13 told, at Gowanda, that there's going to be
14 upgrades needed to Collins.

15 So, you know, I'm a businessperson
16 and, you know, you can't just look at one
17 side of the equation. The other side is
18 what's it going to take to maintain that
19 facility or quote, unquote, mothball it and
20 still have it there so that it can be used to
21 supply heat to the Collins facility.

22 So I'm just curious what that final
23 number really looks like.

24 ACTING COMMISSIONER ANNUCCI: We'll

1 get back to you on that, Senator. We are
2 relocating an infirmary at the Collins, but I
3 think it may be backwards about where the
4 heat is coming from as well. So I'll get a
5 final answer for you on that.

6 SENATOR BORRELLO: Thank you.

7 CHAIRWOMAN KRUEGER: Thank you.

8 Next up, Assemblymember Mark Walczyk,
9 three minutes.

10 ASSEMBLYMAN WALCZYK: Thank you,
11 Chairwoman. Appreciate it.

12 Acting Commissioner, you said you were
13 very proud of the corrections officers that
14 work for you and how they've acted during the
15 pandemic. I appreciate that sentiment. I
16 certainly am.

17 How did you come to announce prison
18 closures for those COs and for their families
19 four days before Christmas?

20 ACTING COMMISSIONER ANNUCCI: If
21 you're asking why that particular timing,
22 Assemblyman, it was not an easy decision to
23 make. We were balancing a number of things.
24 Had COVID never happened, we probably would

1 have announced June 1st, July 1st the latest.
2 COVID happened; that complicated everything.

3 And we're balancing, obviously, the
4 decrease in the population, which is
5 happening at a very rapid pace, something --

6 ASSEMBLYMAN WALCZYK: I'm sorry, I
7 only get three minutes, so I hate to cut you
8 off there. But Chairmen Weprin brought this
9 up in his question. He was talking about
10 Watertown Correctional and the correctional
11 facilities that you're shutting down here,
12 which the Governor has the prerogative to do
13 through you.

14 You said in planning here, the first
15 thing you have to do is close the facility.
16 I would disagree. I think your job, whether
17 acting commissioner or commissioner, would be
18 to create a reasonable plan for prison
19 closure and communicate that plan. Your next
20 would be to take care of the employees that
21 are under your department. And then the
22 following would be to take care of the
23 inmates and make sure that everybody is
24 safely done there.

1 Leaders plan. So the next phase is
2 not close the facility and then figure out
3 what happens next.

4 But I wanted to talk to you about
5 safety and staffing of facilities, since you
6 brought that up as well. You said safety of
7 staff and facilities is of paramount
8 importance. Is urinalysis a key component of
9 that?

10 ACTING COMMISSIONER ANNUCCI: Yes, we
11 look at everything. We look at how things
12 are working at the facility, we look at the
13 infrastructure, we look at the capital, we
14 look at the proximity to other facilities
15 where we can move staff. Most of all, we
16 look at the actual infrastructure of the
17 facility itself and what the costs are --

18 ASSEMBLYMAN WALCZYK: You may recall,
19 Commissioner, back in September, on
20 September 1st, a number of us legislators
21 penned a letter to you asking that you
22 reinstate the urinalysis program because of
23 the danger that drugs in our facilities pose
24 to both COs and inmates.

1 You took two months to respond, and in
2 your response on October 28th of last year
3 you said you were working as expeditiously as
4 possible -- those were your words in that
5 letter. Your staff then in last December
6 said that the urinalysis program would start
7 in January, which would be last month.

8 Do you have a urinalysis program that
9 is running in all of your facilities now?

10 ACTING COMMISSIONER ANNUCCI: We have
11 an urinalysis program that's an interim
12 measure with a vendor that can -- if there's
13 reasonable suspicion to believe that someone
14 has taken drugs, we will have that test done
15 for this interim period.

16 We have selected two new vendors, one
17 an outside lab, one a supplier of the tests.
18 We have sent out distribution of the kits to
19 every facility. We are ready to implement.
20 It will probably be done -- I'm almost sure
21 it will be done before the end of this month.

22 So understand that when you're dealing
23 with things like COVID and vaccinations and
24 relocating staff, to stick to a schedule is

1 not the easiest thing.

2 ASSEMBLYMAN WALCZYK: Obviously I
3 would love more time, Commissioner, but mine
4 has expired. You'll be hearing from me soon.

5 CHAIRWOMAN KRUEGER: Thank you very
6 much.

7 The next questioner is Latrice Walker.

8 Are you still with us, Latrice?

9 Perhaps not.

10 Oh, there she is. Hello.

11 ASSEMBLYWOMAN WALKER: All right. So
12 thank you. Thank you so much for your
13 testimony this afternoon.

14 I have of course -- I want to
15 associate my comments with my colleagues who
16 spoke to you about solitary confinement.
17 Particularly I was told, when I first got
18 elected, that 25,000 people were going to be
19 returning home to my district between 2015
20 and 2020. And so I'm pretty much about at
21 Year 5 now, and the level of support that is
22 needed for so many individuals who have gone
23 through such volatile incarceration
24 conditions is -- it definitely feeds the

1 supportive housing community within my
2 neighborhood, and a lot of folks are really
3 left without a lot of supportive services.

4 And so I really think that the
5 detrimental effect that this type of housing
6 unit has had on our communities has been
7 troublesome. So I would like for you to take
8 a look at that.

9 Of course I also associate myself with
10 comments with respect to elder parole and
11 releasing people who have paid their debt to
12 society and are behind bars.

13 But I had an opportunity to visit the
14 Queensboro facility recently, and I think
15 that that type of facility is really
16 necessary for most people who are
17 transitioning out of the upstate criminal
18 justice system. But I've noticed that a lot
19 of facilities were closing down, including
20 Arthur Kill and a few other facilities in
21 New York City. But I know -- I think
22 Edgecombe is still there.

23 What do you think about maybe allowing
24 some reentry services to be utilized for --

1 in order to help people to facilitate their
2 reentry back into our communities?

3 I also want to just say that this --
4 the pay situation with respect to the
5 tablets, I think I'd like to discuss that
6 with you. Because during COVID, as you know,
7 that was some of the only solace that many
8 people who are incarcerated sort of had as
9 they went through that whole process. And
10 having it be based on, you know, people
11 sending them money or a pay schedule seems to
12 have been problematic. So I want to talk to
13 you about that.

14 But -- and as well as, of course, that
15 by vaccination, as we've seen happen in the
16 federal court system.

17 But I did want to hear -- and also
18 about your thoughts on voting rights of
19 people who are presently on parole and what
20 the process and procedure is with respect to
21 providing voter registration cards,
22 et cetera, and registering those people to
23 vote as they're walking out of your doors.
24 In a nutshell.

1 ACTING COMMISSIONER ANNUCCI: You have
2 a lot there --

3 ASSEMBLYWOMAN WALKER: Well, we can
4 follow up later on in the 20 seconds that you
5 have left.

6 ACTING COMMISSIONER ANNUCCI:
7 (Laughing.) Okay, a lot there.

8 First of all, the whole reason or a
9 big reason why the Governor merged our former
10 agency and the Division of Parole is he
11 wanted a seamless transition, he wanted
12 people to have a smooth hand-off when going
13 from an institution to the community. And he
14 felt putting us all under one agency has
15 really helped further that, because we -- all
16 staff, we can prepare better, we have
17 transitional services, we can identify
18 housing, we give people Social Security
19 cards, birth certificates, they get free
20 access to their rap sheet to prepare for job
21 interviews, et cetera.

22 The fundamental purpose of the
23 Penal Law changed to include reintegration as
24 a fundamental purpose. The Governor created

1 the Reentry Council to focus on those issues
2 and to remove obstacles. We have staff that
3 are called reentry managers that are devoted
4 to hooking up free services. We have reentry
5 councils at a number of different counties,
6 and I'm sure in your county as well, where we
7 work with the local officials to hook up
8 individuals with services.

9 The Governor has issued pardons to
10 thousands and thousands -- I can get you the
11 total number of individuals -- to make them
12 immediately eligible to vote. So before they
13 even walk out the door, I give to them
14 information -- well, at least those that are
15 maxing out -- on the importance of voting and
16 how to register to vote. If they get the
17 pardon when they report to the parole office,
18 they're given that information, they're
19 explained how to register to vote.

20 You already passed a statute back in
21 2009, I think it's 75 of the Correction Law
22 that says if someone is maxing out, that's
23 when they're immediately eligible to vote.
24 So we give them that information on

1 registering, the importance of voting. And
2 then if they're on parole and they're about
3 to get discharged, we give it to them. But
4 before that even happens, with the Governor
5 giving pardons to so many, they're eligible
6 to vote, they're informed of that, and they
7 have written materials to explain that to
8 them.

9 ASSEMBLYWOMAN WALKER: Thank you.

10 I'll follow back up with you on some of my
11 other questions, but I did want to highlight
12 reentry housing is so very important. And I
13 could totally use your help on facilitating
14 that.

15 ACTING COMMISSIONER ANNUCCI: Sure.

16 CHAIRWOMAN KRUEGER: Thank you.

17 We've been joined by Senator Pete
18 Harckham, and it's his time to ask questions.

19 SENATOR HARCKHAM: Thank you very
20 much, Madam Chair.

21 Commissioner, thank you for your
22 testimony.

23 I want to align my comments with those
24 of Senator Bailey. I chair the Committee on

1 Alcoholism and Substance Abuse and cochair
2 the Senate Task Force on Opioids. And we
3 know from families, from treatment advocates,
4 from recovery advocates that there are scores
5 and scores and scores of our inmates who are
6 not getting the treatment they need.

7 I know you've made some strides, but
8 inmates coming out of incarceration without
9 medication-assisted treatment are among the
10 highest risk for overdose death because they
11 still have the cravings, and when they come
12 out and they use, their body no longer has
13 the tolerance, and we end up losing a lot of
14 them. It's also one of the number-one
15 reasons for recidivism.

16 So, you know, I implore you to work
17 with us. I know you've done some things.
18 But whether it's Senator Bailey's bill or we
19 do it, you know, in-house through the
20 process, we really need to do more because we
21 know there are scores and scores of people
22 who are incarcerated who are not getting the
23 treatment that they so desperately need.

24 ACTING COMMISSIONER ANNUCCI: I

1 totally agree with you in terms of the
2 importance of MAT. We've expanded that. We
3 have a wonderful partnership with OASAS. We
4 have an application in to try and become the
5 first corrections-based certified OTP. That
6 is something that I think could really expand
7 treatment.

8 Right now we have an initiative where
9 somebody who's already on MAT, namely
10 methadone and buprenorphine, and their
11 sentence is two years or less, they can come
12 into our system and be maintained on that and
13 then continue it in the community.

14 But COVID obviously put a huge damper
15 on everything. So I look forward to, when
16 COVID's in the rear-view mirror and we can
17 build upon the good work that we've already
18 done and expand upon it, including MAT.

19 SENATOR HARCKHAM: All right. I look
20 forward to offline working closely with you
21 on this, because I think it's an important
22 step that we need to take.

23 CHAIRWOMAN KRUEGER: Thank you very
24 much, Senator.

1 Next from the Assembly, Linda
2 Rosenthal.

3 ASSEMBLYWOMAN ROSENTHAL: Hi. Hi,
4 Commissioner. Good to see you.

5 Last year we went over the MAT in
6 prisons, when I was chair of the Committee on
7 Alcoholism and Drug Abuse -- now I'm
8 Social Services chair -- and I asked you
9 questions about the availability of MAT in
10 prisons and jails. And the bill that
11 Senator Harckham referenced of
12 Senator Bailey, I have the Assembly version.

13 Last time I think you said there were
14 maybe six prisons statewide that had a MAT
15 program. How many do you have right now?

16 ACTING COMMISSIONER ANNUCCI: It's
17 more than that. And at one time it also
18 included PDPs for the Vivitrol.

19 And I can't -- I can't think of them
20 all. I don't want to give you
21 misinformation, Assemblywoman, so let me
22 count. But it's at least eight, from my
23 recollection.

24 ASSEMBLYWOMAN ROSENTHAL: But how many

1 prisons are there?

2 ACTING COMMISSIONER ANNUCCI: Right
3 now there are 52, but two are closing, plus
4 the Clinton Annex.

5 ASSEMBLYWOMAN ROSENTHAL: Okay. So
6 that's really quite a -- you know, not a
7 great ratio when we have the tools to make
8 sure that people can recover from addiction
9 when they're ready to.

10 And I see that the Governor cut the
11 funding for jail-based MAT by a tremendous
12 amount, by 50 percent, saying that, you know,
13 people have been let out of jails and prisons
14 so there's not such a need.

15 What's your view on that?

16 ACTING COMMISSIONER ANNUCCI: Well,
17 the reality is that the population is
18 significantly reduced at the jail level and
19 at the state level.

20 When you look at our population and
21 you measure basically a one-year decline in
22 five figures, that's astounding. It took
23 from 1981 to 1999 to increase by 50,000. In
24 three years, we've decreased by 17,000.

1 So that has ramifications for a lot of
2 different things, including what your
3 ultimate needs will be for all kinds of
4 things, like mentally ill inmates and --

5 ASSEMBLYWOMAN ROSENTHAL: I
6 understand. I understand. But we've really
7 not made much progress since last year, and
8 that's shameful, because people will die --
9 people who leave will die because of the
10 overdose effect when you're -- you understand
11 all that.

12 And I think that the state really
13 needs to prioritize that because we have
14 solutions, we have treatments, we have a
15 toolkit, and we're just not using it.

16 I'd like to ask you about women's
17 health in prisons. Women who are
18 incarcerated have complained about a lack of
19 access to healthcare services, prenatal care,
20 trauma-informed care, and many other aspects.

21 Are the staff in your facilities
22 provided any particular training on the
23 health needs for women, particularly those
24 who are pregnant?

1 And before you answer, I'd like to say
2 I echo my colleagues' views on the vaccines,
3 elder parole and all of that. Thank you.

4 ACTING COMMISSIONER ANNUCCI: So
5 obviously for the women we have many
6 different programs, many relationships with
7 outside volunteers that come in, and
8 specially trained healthcare staff to meet
9 all of their needs.

10 I was very adamant that I don't want
11 in any way, shape, manner or form, for any of
12 our female population to feel neglected. So
13 if you go to Bedford Hills or you go to
14 Taconic, you can see the nursery, you can see
15 the children's center, you can see the RMU,
16 the regional medical unit that we have to
17 care for prenatal and post-birth and many
18 other things that we do for them.

19 I'd like you to just come and see for
20 yourself what we do. But it is very, very
21 important --

22 CHAIRWOMAN KRUEGER: Thank you --

23 ASSEMBLYWOMAN ROSENTHAL: I
24 certainly -- certainly would. One last --

1 one last --

2 CHAIRWOMAN KRUEGER: No, no, no,
3 you're way past zero. Sorry.

4 ASSEMBLYWOMAN ROSENTHAL: I see zero.

5 CHAIRWOMAN KRUEGER: Look at the
6 clock. Look at the clock. Sorry.

7 ASSEMBLYWOMAN ROSENTHAL: I see zero.

8 CHAIRWOMAN KRUEGER: Nope, I know
9 you're past zero.

10 ASSEMBLYWOMAN ROSENTHAL: Thank you.

11 CHAIRWOMAN KRUEGER: Assemblymember
12 Byrnes.

13 ASSEMBLYWOMAN BYRNES: Thank you very
14 much, Chair.

15 And I also want to thank the acting
16 commissioner for being here and being so
17 gracious with answering a lot of questions,
18 and there's more to come.

19 I want to go in a little different
20 route. I want to talk a little bit about the
21 pause on -- and the moratorium on having
22 state-ready prisoners sent from our local
23 county jails to state facilities.

24 The reason I want to talk about this,

1 Commissioner, is because it has a big impact
2 on our counties, both financially -- in
3 Steuben County, it's about 2500 a day. And
4 so we have a significant cost factor and
5 also, at least in one case, we have an
6 inmate that's ready, that is parole-eligible
7 but he can't be reviewed until he gets to
8 state prison. They can't review him while
9 he's sitting in the jail, and he could
10 potentially be home now.

11 Right now, just in Steuben County,
12 there's 147 total inmates. Twenty-five --
13 17 percent -- are state-ready. In
14 Broome County, 414 total inmates, 76 are
15 state-ready. That's 20 percent of their
16 total capacity.

17 So my question, sir, is when you look
18 at the impact of the cost of the moratorium
19 on the counties, compounded by the fact that
20 we could actually have inmates that could be
21 released if they could just get transferred
22 to prison to be processed out -- and also,
23 sir, you've been talking at length about all
24 the vacancies in the state prison system,

1 which don't exist in our county jails -- when
2 we take all of these factors into
3 consideration, sir, with the deepest respect,
4 would you agree with me that this moratorium
5 should be immediately lifted and at the very
6 least the moratorium should be immediately
7 lifted on a regional basis in areas like ours
8 that do not have COVID concerns with
9 transfers to state prison?

10 ACTING COMMISSIONER ANNUCCI:

11 Assemblywoman, I take your concerns very
12 seriously. We did not take this step lightly
13 to stop intake. We're reviewing it every day
14 with a view toward trying to reinstate it as
15 soon as possible.

16 The challenge with accepting
17 state-readies means that we have to start
18 movement throughout the entire system. You
19 can't just accept people into reception
20 centers and leave them there. You have to --
21 it's like an assembly line; you go from
22 reception centers to general confinement
23 facilities, and that starts the movement
24 among all 52 facilities.

1 So for the period that we had these
2 spikes, which happen predictably, right after
3 Thanksgiving and Christmas and New Year's and
4 those holidays, we needed to stabilize the
5 system. We are seeing good results now. The
6 numbers are coming down. So we're going to
7 meet very shortly to discuss this. But I'm
8 sensitive --

9 ASSEMBLYWOMAN BYRNES: Will the
10 moratorium not be extended? Can you promise
11 it will not be extended anymore?

12 ACTING COMMISSIONER ANNUCCI: I can
13 promise that we're going to give it very,
14 very careful consideration, Assemblywoman.

15 CHAIRWOMAN KRUEGER: Thank you.

16 ACTING COMMISSIONER ANNUCCI: It's a
17 difficult issue.

18 The one thing I can tell you is
19 everybody gets reimbursed, either actual cost
20 or \$100, for every state-ready that's not
21 accepted within ten days of declaration of
22 state-ready. There's additional funding
23 that's in our budget to try and make the
24 counties whole for that.

1 CHAIRWOMAN KRUEGER: Thank you both.

2 Next, Assemblymember Burdick.

3 ASSEMBLYMAN BURDICK: Thank you to the
4 chairs and also to Deputy -- to Acting
5 Commissioner Annucci.

6 And I want to thank you for your good
7 work and the partnership that you have with
8 the Town of Bedford in my district and work
9 that you're doing on the early release
10 program and so forth.

11 I do want to align myself with my
12 colleagues who would like to see an expansion
13 of early release and to get on a path to
14 terminating solitary confinement.

15 That takes me to a question that
16 Chair Weprin had raised about the impact on
17 local economies of closures. And actually in
18 Bedford there's, as you know, a shared
19 service between the Town of Bedford and the
20 department in which the department is a
21 customer of the water and sewer district.
22 And the closure of either of those facilities
23 would have a devastating impact.

24 The question is whether there's any

1 plan for closure and whether there might be
2 some carve-out of the 90 days with respect to
3 that which -- that could be the only one in
4 the state that has that kind of arrangement.

5 And another question I have, really
6 unrelated, is that I'd like to get
7 direction -- and we could do this offline --
8 on who I could work with in terms of plans
9 for solar and electric vehicle charging
10 installations.

11 So if you could address those, that
12 would be terrific.

13 ACTING COMMISSIONER ANNUCCI: So,
14 Assemblyman, it's good to see you. We
15 welcome you to your new position. We have a
16 long working relationship with Bedford and
17 the local officials, and you were one of
18 them, and we value that relationship very
19 much.

20 It's a slippery slope for you to ask
21 me whether or not any of our 52 facilities --
22 soon to be 50 facilities -- can be off the
23 table for closure. Because if I answer your
24 question, then somebody else is going to ask

1 a similar question about their facility, and
2 it's just something I can't do.

3 But I can tell you that we only have
4 one maximum-security facility for women in
5 the state, and that's where most of the
6 programs are. So if there are ever a set of
7 circumstances where we would even consider
8 that, there would be a lot that we would have
9 to factor into.

10 The other issue is there's a lot of
11 issues, a lot of initiatives that we're doing
12 for the environment and clean energy. We
13 have a whole arrangement with NYPA to put in
14 electrical panels on our vacant property.
15 And the idea that you suggest may be
16 worthwhile; it depends upon the logistics.
17 But one of our engineers in our facilities
18 planning would be the person that you could
19 have a liaison with to even discuss the
20 logistics of whether that could be doable or
21 not at various facilities.

22 ASSEMBLYMAN BURDICK: Is that
23 Keith Rupert that I'd be working with?

24 ACTING COMMISSIONER ANNUCCI: He's one

1 of them. But he works under a deputy
2 commissioner, so it would be both.

3 ASSEMBLYMAN BURDICK: Thank you so
4 much. And again, thank you for the very
5 positive collaboration and partnership.

6 ACTING COMMISSIONER ANNUCCI: Sure.

7 CHAIRWOMAN KRUEGER: Thank you very
8 much.

9 Our next questioner is Assemblymember
10 Harvey Epstein.

11 ASSEMBLYMAN EPSTEIN: Thank you,
12 Commissioner. Appreciate your time.

13 I know a lot of -- some of my comments
14 my colleagues already mentioned to you, about
15 solitary confinement and how the HALT bill
16 will save money. I hope you will consider,
17 you know, that savings, because that's a
18 really critical thing. It helps people to
19 get out of prison and will save us money.

20 The vaccinations for inmates, we do --
21 we were given a commitment that it would
22 happen at the same time as other folks in the
23 prison system, and I hope that still goes
24 forward.

1 I was at Green Haven just earlier this
2 week, and I'll say that there were -- you
3 know, there were floods in the -- by where
4 the cells were, leaks, there were safety
5 issues. You mentioned school programs, Bard
6 has a program there. But with 1600 inmates,
7 only 30 are enrolled in the Bard program.

8 You know, I -- dozens and dozens of
9 inmates wanted to join the school program,
10 but they have no access to it. There's a
11 technical school program, you know, that's
12 about 200 students. But the college program,
13 which is advancement, where people can get a
14 college degree and the recidivism rates are
15 so low, we didn't see that.

16 So I'm wondering, you know, just in
17 Green Haven alone, you know, that -- the
18 facilities need some work. We would want
19 more money to our prison system on capital,
20 to redo our solitary units and move forward.
21 I saw you were redoing a solitary cell there,
22 but not in a new way to avoid solitary
23 confinement.

24 Can we get your committee to look at

1 solitary cells and redo them in a way that's
2 more humane and not in violation of the U.N.
3 rules around solitary confinement?

4 ACTING COMMISSIONER ANNUCCI: Well, I
5 can't make specific commitments about how we
6 spend capital.

7 What I can tell you is I experienced
8 it myself. All of the things that we're
9 doing is moving in the direction of making
10 the conditions more humane as we build our
11 RRUs.

12 The existing programs that are
13 alternatives to SHU at Mid-State and at
14 Lakeview and the step-down to the community
15 at Wende all are designed to provide
16 out-of-cell structured treatment and
17 programming. So the earphones that you can
18 listen to the radio on, the tablet that you
19 can make phone calls on, while we're moving
20 to ultimately get the RRUs are ways that we
21 are ameliorating.

22 One thing everybody should keep in
23 mind: The very purpose of this is
24 separation. If we lose the ability to

1 separate those --

2 ASSEMBLYMAN EPSTEIN: Commissioner, I
3 only have a few seconds left, so I've got
4 to -- if I can just follow up on that issue.
5 You know, we've talked a lot to the inmates
6 who have limited access on the JPay system.
7 I'm wondering if we can get access to them,
8 maybe they could be -- we could get a tablet
9 and they could be just emailing our offices
10 so we could follow up. Would that be
11 something you'd be open to?

12 ACTING COMMISSIONER ANNUCCI: I'm
13 sorry, you want access to what?

14 ASSEMBLYMAN EPSTEIN: The tablets,
15 JPay, so inmates could email our offices
16 directly and communicate with us without
17 having additional costs associated with that.

18 ACTING COMMISSIONER ANNUCCI: I
19 believe there's a way that they could send
20 you an email, but they'd still have to pay
21 for the stamp. But I'll double-check on it.

22 ASSEMBLYMAN EPSTEIN: Yeah, if there's
23 a way to make it more accessible for us.

24 And I know -- and on a second point,

1 the early release time, and the costs
2 associated with inmates. And I know I've run
3 out of time --

4 CHAIRWOMAN KRUEGER: You have run out
5 of time, Harvey. You can -- everyone can
6 submit their questions to Helene and I and
7 we'll write the commissioner or -- we're
8 asking him if he'll send us back -- or you
9 can write him separately or follow up with
10 him separately.

11 But we've got to keep going. I'm an
12 equal-opportunity mean -- whatever.

13 Moderator.

14 Okay. Next is Carmen De La Rosa.

15 ASSEMBLYWOMAN DE LA ROSA:
16 Commissioner, thank you for being here and
17 for coming before us.

18 I want to also echo the sentiments of
19 many of my colleagues here. I'm the main
20 sponsor of the Elder Parole Law here in the
21 Assembly. And we know, because you said even
22 in your last budget hearing, that at 55
23 people who are in prison are considered
24 seniors because of the conditions they live

1 under.

2 My question is more towards the
3 medical necessities, that these people who
4 are either terminal or have very high
5 critical needs, medical needs, what is the
6 cost associated with providing some of the
7 services that they require across the system?

8 ACTING COMMISSIONER ANNUCCI: I can't
9 give you the specific dollar figure, but you
10 are correct, the older you get in prison, the
11 more costly level of medical care you are
12 required to receive. And we do have
13 arrangements with outside hospitals; if
14 somebody needs hospitalization, they go on a
15 secure ward until they're better. They may
16 recover in one of our regional medical units.

17 But clearly people -- the older they
18 get, if they have hypertension, high blood
19 pressure, some of them may have cancer --
20 whatever, it is we have to provide the
21 treatment and we will do that.

22 The medical parole issue is another
23 important one. And it is something that I
24 try and prioritize whenever I get an

1 application. But read the statute in terms
2 of who's eligible and who's not -- there's a
3 hurdle that has to be overcome. It can't
4 just be for somebody that's terminal; they
5 have to be so infirm that they can't
6 potentially pose a danger to society. Which
7 is a high hurdle.

8 So I know people want a lot more
9 medical paroles, but there is the law that we
10 have to abide by in that area.

11 ASSEMBLYWOMAN DE LA ROSA: Certainly.

12 And I did visit Fishkill Correctional
13 Facility two weeks ago, and I saw their
14 infirmary, state-of-the-art machines to deal
15 with dialysis and infirm people.

16 But I also did walk through the wing
17 where the developmentally disabled people
18 were, as well as people who were on their
19 deathbed. These people do not pose a threat
20 at all. They can't even walk. So I just
21 want to bring that to your attention.

22 But I also wanted to ask you about the
23 cost of something like dialysis machines, for
24 example, for the department. What does

1 something like that cost you all a year?

2 ACTING COMMISSIONER ANNUCCI: It's not
3 cheap. Dialysis is expensive, and we have
4 them at several facilities. But it is not
5 cheap by any means.

6 One thing I will caution is that some
7 of these individuals that are infirm, like in
8 the unit for the cognitively impaired, it's
9 not easy, when it does come for them to be
10 released, to find a nursing home that would
11 accept them. That is a very difficult chore
12 for us.

13 ASSEMBLYWOMAN DE LA ROSA: That was
14 actually my follow-up question.

15 Can you explain the biggest hurdle to
16 finding housing for these people right now?

17 ACTING COMMISSIONER ANNUCCI: If some
18 of them are sex offenders, it's very, very
19 difficult to find nursing homes that would
20 accept them. And some of them, if they have
21 no place, if they have no family, then your
22 only option is a homeless shelter.

23 One of the things I prioritize is the
24 use -- the work of social workers to

1 reconnect people with their families. In
2 Adirondack, where we have some elderly people
3 right now, we have social workers that are
4 reconnecting them with family that they've
5 been disconnected with for many, many years.

6 When you reconnect with family, you
7 potentially have a home to go to when it's
8 time for your release. So that's a priority
9 that we're pushing.

10 ASSEMBLYWOMAN DE LA ROSA: Thank you.
11 I'll come back for a second round later.
12 Thank you.

13 CHAIRWOMAN KRUEGER: And you won't,
14 unfortunately; we're only allowing chairs to
15 have a second round. But you can follow up
16 with the commissioner in a variety of ways.

17 ASSEMBLYWOMAN DE LA ROSA: I will.
18 Thank you.

19 CHAIRWOMAN KRUEGER: Thank you very
20 much.

21 Next is Assemblymember Ra.

22 ASSEMBLYMAN RA: Thank you.

23 Good afternoon. I just wanted to
24 first start with -- my colleague

1 Mr. Palmesano had a question at the end that
2 he tried to sneak in, but he was foiled by
3 the chair --

4 (Laughter.)

5 ASSEMBLYMAN RA: -- so I wanted to ask
6 it for him. It was regarding the youth that
7 were transferred from DOCCS facilities to
8 OCFS secure facilities last year pursuant to
9 last year's budget. And who is supervising
10 those youth?

11 ACTING COMMISSIONER ANNUCCI: OCFS,
12 that agency.

13 ASSEMBLYMAN RA: Okay. And so they're
14 supervised by their staff within the --

15 ACTING COMMISSIONER ANNUCCI: Right.
16 Right.

17 ASSEMBLYMAN RA: Okay. Thank you.

18 The other questions we just had were
19 regarding staffing at your facilities. I
20 mean, obviously I know of many entities
21 throughout the state, especially in, you
22 know, your type of facilities, that had to
23 deal with staff quarantines due to exposures
24 and all that type of stuff.

1 How have you found that during this
2 almost year now with COVID -- do you have
3 enough correction officers to cover when
4 there were absences due to COVID or
5 quarantines?

6 ACTING COMMISSIONER ANNUCCI: It was a
7 big challenge at times. It depended upon the
8 specific facility when we had high numbers.

9 I've been having regular phone calls
10 with my superintendents, and we do monitor
11 carefully. We have a plan to go to 12-hour
12 schedules if we reach a point where there's
13 too many staff that are quarantined. I mean,
14 obviously the things that we've stopped --
15 visitation stopped, medical that's not an
16 emergency, deathbed funeral -- deathbed
17 visits, et cetera -- has allowed staff to be
18 present to do other responsibilities.

19 But it has been a big challenge. And
20 again, I'm just so grateful for the staff
21 helping pull us through this very challenging
22 time.

23 ASSEMBLYMAN RA: Okay. And are there
24 any plans at this point to run academy

1 classes in the very near future?

2 ACTING COMMISSIONER ANNUCCI: We do
3 foresee that we will have a need for a couple
4 of classes down the road in the upcoming
5 fiscal year. And we do foresee parole
6 classes as well, a couple. We don't have
7 them yet scheduled, but there clearly is a
8 need given the rate of attrition, which is
9 about 54 or 58 a pay period, of correctional
10 staff.

11 ASSEMBLYMAN RA: Okay. And one other
12 thing I wanted to ask about. So years
13 past -- and it's been a few years now, but
14 DOCCS used to issue an annual report on
15 recidivism. And I believe it would take a
16 few years of rolling data. And my
17 understanding is there hasn't been one
18 released, I think, since 2012.

19 Are there any plans on releasing
20 updated stats with regard to recidivism?

21 ACTING COMMISSIONER ANNUCCI: The
22 three-year study I think is what you're
23 referring to. Let me check with our research
24 unit when the next one is going to come out,

1 and we'll get back to you.

2 I can tell you that they have been
3 working tirelessly to keep accurate
4 statistical numbers on daily rates at every
5 one of our facilities -- how many tests are
6 performed, how many positive, how many
7 recovered, et cetera. So they have been
8 doing extraordinary work so we can have
9 real-time data and put it on our website.

10 ASSEMBLYMAN RA: Okay. Thank you.
11 We're definitely, you know, interested in
12 those reports. I think -- I think they're
13 important for the Legislature to look at when
14 we're making, you know, decisions in all
15 different types of things.

16 So thank you, Acting Commissioner.

17 ACTING COMMISSIONER ANNUCCI: Sure.

18 CHAIRWOMAN KRUEGER: Thank you.

19 Assemblymember Tannousis. I apologize if I
20 pronounced that wrong.

21 ASSEMBLYMAN TANNOUSIS: Hi,
22 Commissioner, how are you? Thank you for
23 being here today.

24 I asked this question of the prior

1 speaker, and he mentioned that you may be
2 able to help us better. Would you be able to
3 tell us how many inmates in the state system
4 are there because of a marijuana-related
5 offense?

6 ACTING COMMISSIONER ANNUCCI: Yeah, we
7 ran this analysis on December 12th of last
8 year -- someone else had asked the
9 question -- and there was a total of 21 whose
10 most serious crime of commitment was a
11 marijuana offense.

12 ASSEMBLYMAN TANNOUSIS: Out of how
13 many inmates in the entire New York State?

14 ACTING COMMISSIONER ANNUCCI: Today we
15 have 33,100 something, I think.

16 ASSEMBLYMAN TANNOUSIS: So it's
17 21 individuals from 33,000 New York State
18 inmates are there for a marijuana-related
19 offense.

20 ACTING COMMISSIONER ANNUCCI: The top
21 offense is a marijuana offense, yes.

22 ASSEMBLYMAN TANNOUSIS: Thank you very
23 much. And thank you for your service.

24 ACTING COMMISSIONER ANNUCCI: Thank

1 you, Assemblyman.

2 CHAIRWOMAN KRUEGER: You're ceding
3 back your time?

4 ASSEMBLYMAN TANNOUSIS: Yes, thank
5 you.

6 CHAIRWOMAN KRUEGER: Thank you.

7 And Assemblymember Anna Kelles.

8 ASSEMBLYWOMAN KELLES: Hi, thank you.

9 I have a few questions. One -- I'm
10 just going to jump right into them for the
11 lack of time. So it was so good to meet you.

12 First question, to clarify something
13 that was brought up earlier with respect to
14 solitary. So recognizing that people in
15 prison are already being moved anyway because
16 they're being moved into solitary, I'm trying
17 to understand the opposition with the
18 financial justification. If they're already
19 being moved into these facilities and out of
20 them into the solitary, and you are already
21 building the rehabilitation units, I'm trying
22 to understand where the expense is that you
23 were talking about.

24 ACTING COMMISSIONER ANNUCCI: The

1 expense is primarily in additional staffing
2 that are going to have to transport them on
3 Day 16 -- if that's the day that we have to
4 move them, under the bill -- to a distant
5 RRU.

6 Whereas there will be shorter
7 sentences, like 30 days, and they can stay
8 where they are. Plus you have to pack up all
9 their property and transport it with them to
10 another distant RRU. If they can stay where
11 they are, the property can remain there. It
12 will still be packed up, but not have to be
13 moved to a distant facility.

14 ASSEMBLYWOMAN KELLES: I'm sorry, just
15 to understand --

16 ACTING COMMISSIONER ANNUCCI: Most of
17 that expense --

18 ASSEMBLYWOMAN KELLES: You have to
19 transfer them anyway, correct, when you bring
20 them out of solitary. I'm just trying to
21 understand. I mean, you would transfer them
22 anyway when they're coming out of solitary,
23 so the timing of having --

24 ACTING COMMISSIONER ANNUCCI: We're

1 not transferring them to another facility.
2 They could -- their cell could even be
3 remaining there for them to be back into that
4 same cell.

5 ASSEMBLYWOMAN KELLES: And another
6 question -- thank you. How many people leave
7 the prison system, do you know or keep track
8 of, and go into the homeless shelter system?

9 ACTING COMMISSIONER ANNUCCI: It's not
10 a low number. I can get it for you. But it
11 is not a low number. And --

12 ASSEMBLYWOMAN KELLES: Yeah, that
13 would be really wonderful to get that. I'm
14 curious, is there any program in place to
15 coordinate with DSS potentially to work with
16 people before they leave the system, to get
17 them into services?

18 ACTING COMMISSIONER ANNUCCI: Yes.

19 Well, first of all, let me back up.
20 We work four months prior to a release date
21 with the individual, trying to get them into
22 approvable housing.

23 If they come up to the release date
24 and we can't find them, we coordinate with

1 the local DSS, we give them notification so
2 that they're aware on this day, this
3 individual is coming out and he will require
4 some type of services.

5 We also have, you know, contracts with
6 housing -- limited, but we do have the
7 ability for housing.

8 We also have relationships with two
9 entities, CEO and PLS as well. They've
10 secured funding, stipends to give to
11 individuals who are released into certain
12 areas, like the Bronx or Manhattan or other
13 parts of the state so that they can help pay
14 for some type of housing when they get there.

15 So there's a lot of different things
16 that are out there. But even before COVID,
17 it was a big challenge. It's only that much
18 more difficult now.

19 ASSEMBLYWOMAN KELLES: Yeah, that data
20 would be great. Thank you so much.

21 CHAIRWOMAN KRUEGER: Thank you.

22 Okay, we're going to our final two
23 chairs for their second five-minute rounds.
24 First, Chair Julia Salazar.

1 SENATOR SALAZAR: Thank you, Chair.

2 Commissioner, if I may follow up on
3 Senator Bailey's question regarding Tier 3
4 violations, could you briefly define what is
5 no longer defined to be a Tier 3 violation?

6 ACTING COMMISSIONER ANNUCCI: We just
7 published the regulations on that. There's a
8 number of them that are no longer Tier 3. I
9 don't have them off the top of my head, but I
10 certainly can pull that information together
11 and get it to you.

12 SENATOR SALAZAR: Excellent. Thank
13 you.

14 And I wanted to ask, when DOCCS
15 reports or records the number of people who
16 are currently held in special housing units
17 in state facilities, does that include people
18 who are kept in keeplock in their own cells,
19 meaning, you know, people who are confined
20 for 17 hours or more for disciplinary
21 purposes? And if it doesn't, could you tell
22 me how many people are currently kept in
23 keeplock or for the disciplinary purposes in
24 their general population cells?

1 ACTING COMMISSIONER ANNUCCI: Yeah, if
2 you're in keeplock in your own cell, you're
3 not in SHU. We do keep track of that
4 population. We do have separate amenities
5 for them and, as you mentioned, five hours
6 time out of cell to still go to programming,
7 et cetera.

8 It is possible that you could be
9 serving a keeplock sentence in an SHU cell,
10 in which case other things kick in and you
11 will earn an earlier release. You get more
12 credit if you're serving keeplock in an
13 SHU cell.

14 So I will get you, if you want, the
15 total-number breakdown as of a particular
16 date.

17 SENATOR SALAZAR: Thank you.

18 And I wanted to go back to COVID-19
19 regulations.

20 Actually, how many people who are
21 incarcerated have applied for medical parole
22 since the pandemic struck last March,
23 approximately?

24 ACTING COMMISSIONER ANNUCCI: It's a

1 high number. I don't remember it off the top
2 of my head, but it is a high number that have
3 applied.

4 But remember, a lot of people applied
5 because they felt, I am at risk because I
6 have asthma or I'm a smoker or whatever it
7 is. And that's not a ground under the
8 statute the way it's written, 259R and S in
9 the Executive Law, of the standard you have
10 to meet. You actually have to have a
11 condition that's either terminal or so
12 debilitating that you can't reasonably pose a
13 risk to the public.

14 And we've had a bad experience, even
15 someone in a wheelchair who ended up in a
16 nursing home was able to sexually molest
17 another patient in that nursing home, even
18 though when they were with us, it took them
19 half an hour to go 30 feet in their
20 wheelchair.

21 SENATOR SALAZAR: So I guess the
22 question is, more broadly, how many people
23 have been released from prisons in New York
24 specifically for COVID-19-related reasons,

1 including medical parole?

2 It sounds like you don't have the
3 number exactly. Actually, you know what,
4 I'll just ask you: What was the rationale
5 for the COVID-19-related release eligibility
6 that DOCCS had set up being limited to people
7 who were within 90 days of their release
8 date, limited to those who were convicted of
9 nonviolent crimes? What was the rationale
10 for that eligibility?

11 ACTING COMMISSIONER ANNUCCI: It was a
12 balancing of public health and public safety.

13 These were individuals that were
14 scheduled to be released within 90 days, so
15 we created the legal means for that to happen
16 by transferring their legal status to a
17 residential treatment facility. And then on
18 that basis, they physically were allowed to
19 go home, if they had one, they had approved
20 housing. We didn't want to just release them
21 into the homeless shelter.

22 So they were non-sex -- nonviolent
23 individuals and less risk to the public. But
24 achieving less density while they were still

1 in the correctional system.

2 SENATOR SALAZAR: And for the
3 COVID-19-related release mechanism that DOCCS
4 had initially set up last April, I understand
5 it was limited to people aged 55 and older,
6 in addition to the previously mentioned
7 criteria.

8 What was the rationale for that age
9 criteria initially? Is 55 the age at which
10 DOCCS defines people as aging or elders in
11 prison?

12 ACTING COMMISSIONER ANNUCCI: It's
13 something, you know, that researchers have
14 basically said it's -- it's a good measure.

15 The 65 and older in a community
16 translates to 55 and older in prison for two
17 reasons. One, a lot of the cohort that are
18 incarcerated have neglected their health
19 concerns. Many of them are smokers, many of
20 them drinkers, maybe they use drugs,
21 whatever. When they come to us, they're
22 already, you know, at a disadvantage.

23 Prison is stressful, that can also
24 exacerbate things. So 55 and older is a

1 decent benchmark to look at and consider
2 people to be, you know, a senior cohort, so
3 to speak.

4 SENATOR SALAZAR: Thank you,
5 Commissioner. That's my time.

6 CHAIRWOMAN KRUEGER: Thank you.

7 So since I'm only north of 55, I'm not
8 sure how I'm feeling about this discussion,
9 but we'll leave that alone for now.

10 I am going to allow Assemblymember
11 Aubry, who snuck in with his hand very late
12 in the game, to jump in for three minutes
13 before I go to Assemblymember Weprin to
14 close.

15 Hello, Assemblymember Aubry. You're
16 not -- you're muted. I feel you're driving
17 and you have no voice. There you go.

18 ASSEMBLYMAN AUBRY: I have a voice
19 now.

20 CHAIRWOMAN KRUEGER: Okay.

21 ASSEMBLYMAN AUBRY: Good.

22 Commissioner, good to see you. I
23 think you've got to be the longest acting
24 commissioner that I've ever heard of in the

1 state system. And I know there's no Tony
2 Award, there won't be an Emmy, but it's good
3 to see you. Glad that you're still around.

4 I have two questions. One, what is
5 the current budget for the prison industry
6 component of the corrections system?

7 ACTING COMMISSIONER ANNUCCI: You
8 know, I have that number, but I just haven't
9 memorized it. It's a separate appropriation
10 in our budget. But I can get you that
11 number, Assemblyman.

12 ASSEMBLYMAN AUBRY: Okay. That would
13 be helpful.

14 And the second, the rules that were
15 agreed to, or the agreement made by the
16 leaders two years ago with the Governor in
17 regard to the maintenance of SHU took a very
18 long time to get approved. Is there any
19 reason why it took so long?

20 ACTING COMMISSIONER ANNUCCI: The
21 rules were studied for quite some time. And,
22 you know, we had to get public comments from
23 people. There was just a lot of different
24 complications to consider them.

1 But they've been adopted. They
2 definitely changed things in dramatic ways.
3 And we'd love to be able to explain to staff
4 everything that has been done to get us to
5 where we are today, everything that will be
6 done to get us to where we are, you know, as
7 the RRUs come on board and all the different
8 amenities that you can get as conditions of
9 confinement.

10 ASSEMBLYMAN AUBRY: The -- those rules
11 also now have been adopted for localities.
12 Is there any assistance that is going to be
13 provided through the Executive Budget for
14 those localities to implement the same rules?

15 ACTING COMMISSIONER ANNUCCI: I -- I
16 can't speak to the localities, Assemblyman.
17 I'm unaware of, you know, whatever
18 arrangements have been made and what role an
19 entity like the State Commission of
20 Correction might play vis-a-vis them. I
21 don't have any firsthand knowledge of that.

22 ASSEMBLYMAN AUBRY: Okay. Thank you
23 very much. Sorry to hold you up.

24 Thank you, Senator, for --

1 ACTING COMMISSIONER ANNUCCI: This is
2 my Academy Award, by the way (holding up
3 Oscar statuette).

4 (Laughter.)

5 ASSEMBLYMAN AUBRY: I could never
6 trust you to keep straight, you know?

7 Take care, my man.

8 ACTING COMMISSIONER ANNUCCI: Good
9 seeing you, Assemblyman.

10 ASSEMBLYMAN AUBRY: Good to see you
11 too.

12 CHAIRWOMAN KRUEGER: Thank you,
13 Assemblymember.

14 And now to close, chair of the
15 committee, Assemblymember Weprin.

16 ASSEMBLYMAN WEPRIN: Thank you,
17 Senator Krueger.

18 And thank you, Commissioner, for being
19 patient through these many hours of
20 testimony.

21 I understand -- I have a bill that
22 just passed out of committee, it seems like a
23 long time ago but it was actually this
24 morning. And it would basically give you

1 more authority to release inmates to home
2 confinement, similar to the federal system.

3 And I know you've pointed out that
4 medical parole, you know, is not necessarily
5 the end-all and it's not solving some of the
6 problems. So the question I have for you is,
7 is that something you would support? And
8 we're hoping to -- you know, to have that in
9 place.

10 ACTING COMMISSIONER ANNUCCI:

11 Assemblyman, I love the working relationship
12 you and I have, and the mutual respect, but
13 as you know, I can't comment on pending
14 legislation, so I will not be able to give
15 you any feedback on that.

16 ASSEMBLYMAN WEPRIN: Okay. I'm going
17 to just ask a couple of questions about aging
18 in prison, because I know that's been coming
19 up and I know there's strong support for some
20 form of an elder parole bill, which has been
21 around for a long time.

22 How many people 55 years or older are
23 currently in DOCCS custody? And I know
24 you're obviously focusing on 65 for the

1 vaccine. But can you give us some kind of a
2 figure on how many we now have over 55?

3 ACTING COMMISSIONER ANNUCCI: I might
4 be able to. I have someone in my office
5 trying to look that up very quickly.

6 I know it was slightly more than a
7 thousand who are 65 and older.

8 ASSEMBLYMAN WEPRIN: So 55 is much
9 higher, obviously.

10 ACTING COMMISSIONER ANNUCCI: Yeah,
11 no, it is much higher.

12 ASSEMBLYMAN WEPRIN: What would be the
13 average cost of incarcerating an older
14 person, and how does that compare to a
15 younger person? Because I know there are a
16 lot of medical issues associated. And as you
17 pointed out at a prior hearing a number of
18 years ago, that people age much quicker in
19 prison and 55 is really -- in the outside
20 world is equivalent to someone much older.

21 ACTING COMMISSIONER ANNUCCI: The
22 answer to your earlier question, it's about
23 5,000 individuals that are 55 and older in
24 our system.

1 And I believe someone else previously
2 asked the difference in the cost. It's --
3 there is a higher cost for individuals that
4 are older, their medical needs are
5 exacerbated. But I can't give you a dollar
6 figure. It would be something very hard to
7 quantify, really, when you look at the
8 different units that we have and the dialysis
9 and the regional medical units and the unit
10 for the cognitively impaired.

11 I will tell you, though, that we are
12 trying to institute good programming for them
13 to make them feel at ease and make them still
14 feel important. We may, you know, start a
15 feline program at Adirondack and a college
16 program. You're never too old to go to
17 college. So, you know, we do try and keep
18 them feeling useful and important and having
19 value.

20 ASSEMBLYMAN WEPRIN: Okay. Thank you,
21 Commissioner.

22 I know the issue of tracking deaths in
23 prison -- you know, and illness as well --
24 has been a current issue. Let me ask you a

1 question. If an inmate serving a DOCCS
2 sentence dies in a hospital or ambulance, how
3 is that death classified?

4 ACTING COMMISSIONER ANNUCCI: It's
5 counted as a DOCCS death. It will require an
6 autopsy to be performed by the coroner.
7 Every DOCCS death, a facility death is by a
8 coroner. In fact, the Correction Law
9 specifies that when we send people to outside
10 hospitals, they are legally still in our care
11 and custody. We just enforce appropriate
12 security measures.

13 So every single individual, if they're
14 in the ambulance on their way, they're in an
15 outside hospital, whatever they are, they're
16 counted as a death of a correctional
17 facility, an autopsy is required, we
18 reimburse the locality for the cost of the
19 autopsy.

20 ASSEMBLYMAN WEPRIN: Good. I'm happy
21 to hear that, because that has been an issue,
22 as you know, with nursing homes. And
23 certainly, you know, we would consider that a
24 death as well from a correctional facility.

1 I've got 30 seconds. Let me just ask,
2 of -- let me see what I didn't cover. How
3 often are inmates tested for COVID? Or is it
4 only symptom-related and requests?

5 ACTING COMMISSIONER ANNUCCI: No, we
6 basically tested the entire system. We
7 started with those that were displaying
8 symptoms. We expanded that for asymptomatic,
9 then we expanded it to those in quarantine.
10 Then we did certain cohorts like the seniors.
11 And then we finally did the entire system.

12 And right now we continue to test
13 anybody that's displaying symptoms or in
14 quarantine, including asymptomatic. And now
15 we also superimposed on top of that a
16 randomized selection, depending upon the size
17 of the population at a particular facility.
18 We go to different housing units, and various
19 people are selected randomly so that we can
20 get real feedback as to the presence of COVID
21 in our system.

22 ASSEMBLYMAN WEPRIN: Okay. Thank you,
23 Commissioner.

24 Thank you, Madam Chair. I think my

1 time has expired.

2 CHAIRWOMAN KRUEGER: Yes, it has.

3 And Commissioner, not really, but your
4 time has expired with us. So thank you very
5 much for being here with us, and I guess for
6 being the longest living acting commissioner
7 in New York State.

8 ACTING COMMISSIONER ANNUCCI: Thank
9 you very much. It was my pleasure.

10 CHAIRWOMAN KRUEGER: Thank you.

11 All right, and now we're going to call
12 up our eighth government representative for
13 today's hearing, and that is -- and I see
14 that he's here patiently waiting --
15 Acting Superintendent Kevin Bruen, New York
16 State Division of State Police.

17 Hello, Acting Commissioner -- Acting
18 Superintendent, excuse me.

19 ACTING SUPERINTENDENT BRUEN: Yes,
20 thank you very much.

21 CHAIRWOMAN KRUEGER: Thank you.

22 ACTING SUPERINTENDENT BRUEN: Thank
23 you, Chairs Krueger and Weinstein and
24 distinguished members of the joint committee,

1 for the opportunity to discuss
2 Governor Cuomo's Executive Budget for the
3 Division of State Police.

4 I am Kevin Bruen, acting
5 superintendent. I've served the agency in
6 various capacities for 17 years and as acting
7 superintendent since November 2020. I am
8 truly honored to lead the dedicated sworn and
9 civilian members of this great agency.

10 I would like to thank the Legislature
11 for recognizing our critical mission -- to
12 protect and serve all New Yorkers. Your
13 support has enabled the State Police to earn
14 its reputation as one of the top law
15 enforcement agencies in the nation.

16 For more than 100 years, the
17 State Police has consistently provided a high
18 level of professional public service. We
19 learn and adapt to the needs of a constantly
20 changing society, and we strive for
21 continuous improvement in every aspect of our
22 work.

23 Our mission priorities include
24 improving highway safety; providing

1 professional police services and
2 investigative support; detecting and
3 preventing terrorism; and preparing for and
4 responding to emergencies and disasters.

5 2020 brought several challenges to
6 New York, none more so than the COVID-19
7 pandemic. I am proud that our Troopers have
8 worked continuously for the state as we have
9 played and continue to play a significant
10 role in the state's response, including the
11 transportation of thousands of test samples
12 from across the state to the Wadsworth
13 Laboratory in Albany; assisting in
14 establishing, operating and securing state
15 COVID testing sites and vaccination sites;
16 and supporting other state and local agencies
17 in enforcement operations to help stem the
18 spread of the virus.

19 As you know, the State Police is
20 unique in that we are the only full-service
21 New York law enforcement agency with
22 statewide jurisdiction. In response to
23 emergencies or natural disasters, the
24 State Police has the ability to deploy large

1 numbers of professionally trained police
2 officers throughout the state and beyond on
3 short notice. For instance, last summer,
4 following the death of George Floyd in
5 Minneapolis, our Troopers were deployed
6 throughout New York, at the request of
7 numerous local and city police agencies, to
8 assist with efforts to ensure public safety.

9 Over the past year, the Governor and
10 the Legislature have enacted several police
11 reforms, including a new body-worn camera
12 program directed at the State Police. Since
13 its passage in June, we have worked
14 diligently to implement this program.

15 The Governor and the State Police
16 recognize the dynamic nature of terrorism and
17 extremism of all types around the world and
18 domestically. Our role in the state's
19 counterterrorism efforts help provide a wide
20 range of initiatives and capabilities,
21 enabling New York to remain one of the safest
22 states in the country.

23 New York City remains a top terrorist
24 target, and our expanded presence in the

1 city -- primarily at mass transit hubs and
2 bridge and tunnel crossings -- has enhanced
3 the collective efforts of the state and our
4 partner agencies to detect, deter and respond
5 to terrorism.

6 Disaster preparedness is a top
7 priority of the Governor, and we continue to
8 partner with the Division of Homeland
9 Security and Emergency Services to improve
10 response readiness. This partnership has
11 enabled the State Police to better coordinate
12 with state agencies and provide local support
13 to communities following significant events.

14 Illegal drug use, in particular the
15 availability of heroin, opioids and synthetic
16 drugs such as fentanyl, along with the toll
17 they inflict, remains a critical public
18 safety issue. Building on the resources and
19 training provided over the past few years,
20 the State Police will continue to
21 aggressively investigate drug-related
22 offenses, particularly criminal trafficking,
23 as well as assist local police agencies with
24 their investigations whenever requested.

1 Our highest priority continues to be
2 the safety of the public and our Troopers who
3 protect them. With your support, the
4 Executive Budget continues to provide our
5 Troopers with the necessary equipment,
6 training and other valuable resources to
7 achieve the best levels of safety as they
8 carry out their duties.

9 Again, I am exceedingly honored to
10 represent the nearly 6,000 dedicated men and
11 women of the Division of State Police that
12 serve and protect the people of this great
13 state. They do so selflessly, with
14 tremendous pride, and at times with great
15 personal sacrifice.

16 I thank you for your support on behalf
17 of the State Police, and I welcome any
18 questions.

19 CHAIRWOMAN KRUEGER: Thank you very
20 much.

21 Our first questioner will be
22 Senator Jamaal Bailey, chair of Codes,
23 five minutes.

24 SENATOR BAILEY: Thank you,

1 Madam Chair.

2 Thank you, Acting Superintendent, for
3 your leadership and for your testimony. I
4 guess I just want to get into the
5 conversation about the body cameras.

6 So what is the exact amount of body
7 cameras that will be provided in this
8 contract?

9 ACTING SUPERINTENDENT BRUEN: I'll
10 have to get you the exact number.

11 The number is going to be sufficient
12 to cover the Troopers on patrol who will need
13 to have them, as well as backups should they
14 go down, and they need to be recharged and
15 the data needs to be uploaded. So we have to
16 have a certain number to cover that.

17 SENATOR BAILEY: Okay. And I guess
18 that was my next question.

19 So on patrol, is it -- so they would
20 be given to individuals who are actively on
21 patrol at that time? And would they be
22 switched out from member to member? Would
23 they be permanently assigned, or how would
24 the body cameras be assigned?

1 ACTING SUPERINTENDENT BRUEN: The body
2 cameras are assigned to the members,
3 partially because they need to be recharged.

4 The shift lasts 12 hours. The data
5 they collect needs to be uploaded. The
6 upload speeds -- as you can imagine, the
7 connectivity is better in some places than it
8 is at others.

9 So there will be enough body cameras
10 so that an individual going out on patrol
11 will have one.

12 SENATOR BAILEY: Okay. Undoubtedly
13 highlighting the need for more broadband
14 around the state, especially in the upstate
15 regions.

16 So the access to that body camera
17 footage, would that be limited to that --
18 again, that individual officer, or would that
19 be available to other folks, such as
20 superiors or other officers?

21 ACTING SUPERINTENDENT BRUEN: Well,
22 it's going to be available to other officers,
23 other Troopers, investigators. It may be
24 available for other purposes as well.

1 There will be audits to make someone
2 that the Troopers are engaging the cameras
3 when they should be. It will -- the data can
4 be uploaded and associated -- in association
5 with a criminal case and provided to the
6 district attorney and ultimately the defense.

7 It will be stored and it could be used
8 and FOILED should someone want that body
9 camera footage for an auto accident or
10 something that they deem necessary.

11 SENATOR BAILEY: Okay. And if an
12 officer is found not to have properly engaged
13 the body camera, are there going to be
14 disciplinary procedures? If so, what would
15 they be?

16 ACTING SUPERINTENDENT BRUEN: Well,
17 you can't specify exactly what the result of
18 a particular disciplinary procedure would be.

19 But I have to tell you, the State
20 Police, we have a rule for everything, or it
21 feels like it sometimes. And if you are
22 given a piece of equipment and we have rules
23 that say you need to engage it under specific
24 circumstances and you don't do it, you will

1 get supervisory attention and it can
2 escalate, depending on what happens.

3 SENATOR BAILEY: Okay. I mean, that's
4 the -- well, I guess I want to ask one more
5 policy-related question that I asked
6 Commissioner Greene from DCJS. And you may
7 have a similar answer, but I figure I'll ask
8 it of the State Police superintendent.

9 Any position on the use of kettling or
10 certain irritants during protests? Is there
11 a position that the State Police has on that?

12 ACTING SUPERINTENDENT BRUEN: The
13 position that we have is that the interaction
14 with mass demonstrations and protests are
15 delicate, and they need to be handled with
16 planning, they need to be handled with
17 training, they need to be handled with
18 express supervision.

19 I wasn't familiar with the term
20 "kettling" until I heard you use it. And,
21 you know, I'm now aware of it. We don't use
22 that practice in specific because as I
23 understand it, that practice would force
24 people into an area where they can't get out

1 of, and we simply don't do that.

2 But the fact of the matter is that
3 those -- what starts out as a peaceful
4 protest can turn difficult, and we have to
5 have the rules of engagement and the
6 operational plan that we have set out before
7 we engage with the public. So before
8 anything happens, we need to lay those things
9 out.

10 We do have a highly trained, specific
11 unit that will often do this sort of work,
12 and we have a very explicit, you know, manual
13 that governs their action, that lays out --
14 this is people's First Amendment rights.
15 People's First Amendment rights need to be
16 respected and ensured that they can carry on
17 peaceful protests.

18 SENATOR BAILEY: Well, let me thank
19 you for your testimony, and let me also say
20 thank you to the women and men who serve our
21 state. We appreciate the sacrifice that they
22 make for our state.

23 And on a personal level, I appreciate
24 you opening up the gym to us on Tuesday

1 nights during better times on Washington
2 Avenue so that some members and I, we can
3 play basketball. So I just --

4 ACTING SUPERINTENDENT BRUEN: Any
5 time, Senator. Just don't ask me to play.

6 (Laughter.)

7 SENATOR BAILEY: Listen, when we're
8 back, you have the keys, literally and
9 figuratively, so --

10 ACTING SUPERINTENDENT BRUEN: I'll
11 open the door, but I'm not playing.

12 (Laughter.)

13 SENATOR BAILEY: I appreciate you.
14 Thank you very much.

15 CHAIRWOMAN KRUEGER: Now we jump to
16 what really Jamaal Bailey cares about, so
17 thank you --

18 SENATOR BAILEY: Basketball and
19 policy, you know.

20 CHAIRWOMAN KRUEGER: I know, I know,
21 it's a good mix.

22 Assemblymember Dinowitz.

23 ASSEMBLYMAN DINOWITZ: Thank you.

24 So when New York passed the SAFE Act,

1 it unfortunately ended its own attempt at
2 creating a database to connect and submit all
3 ballistic evidence of weapons sold in
4 New York.

5 Do you know, when will the state
6 create its ammunition database to track sales
7 to residents who may be assembling deadly
8 stores of ammunition, as mandated by the
9 SAFE Act? Because it's kind of been a long
10 time already.

11 ACTING SUPERINTENDENT BRUEN: I think
12 you're referring to the NIBIN system, which
13 was shut down, which was -- collected
14 expended brass when a gun was sold, and the
15 creation of the -- and that was true, that
16 was shut down. I don't believe anyone uses
17 it anymore.

18 And you're talking about the recurring
19 issue of the ammunition database --

20 ASSEMBLYMAN DINOWITZ: Yes.

21 ACTING SUPERINTENDENT BRUEN: -- to
22 check whether someone is lawfully able to
23 purchase ammunition.

24 That continues to be an IT issue, and

1 it continues to be not in a current position
2 to be deployed effectively.

3 ASSEMBLYMAN DINOWITZ: Okay. I would
4 just urge that we try to address that issue.

5 Two years ago the Legislature enacted
6 a law that allows law enforcement to remove
7 firearms from people charged with domestic
8 violence offenses, and it also allows courts
9 to revoke or suspend their firearms licenses.

10 This information is then reported to
11 the State Police and DCJS, presumably for
12 inclusion in the statewide license and record
13 database established by the SAFE Act.

14 Now, from what I understand, this
15 license and record database, like the
16 ammunition database, is still not operational
17 seven years later. Is that true? I
18 understand it's true, but I just want to
19 double-check that. Is that the case?

20 ACTING SUPERINTENDENT BRUEN: No, I
21 understand that is an ongoing effort as far
22 as that part of it is going.

23 ASSEMBLYMAN DINOWITZ: Ongoing to
24 establish it or that it's already working?

1 ACTING SUPERINTENDENT BRUEN: No, it's
2 an ongoing effort to make it operational.

3 ASSEMBLYMAN DINOWITZ: Right. It's --
4 okay. I mean, it's been a couple of years
5 already --

6 (Overtalk.)

7 ASSEMBLYMAN DINOWITZ: I'm sorry, go
8 on.

9 ACTING SUPERINTENDENT BRUEN: The
10 challenges are significant due to the nature
11 of the way and the length of time that we've
12 had the pistol permit database and pistol
13 permit records. They are on many different
14 platforms, and that data has to be cleaned
15 up.

16 In addition, we have the ongoing
17 reregistration and registration of the
18 assault weapons and the pistol permits.

19 But I understand your concern.

20 ASSEMBLYMAN DINOWITZ: Do you have a
21 timetable at this point, or is it pretty much
22 open-ended?

23 ACTING SUPERINTENDENT BRUEN: I don't
24 have a timetable, but I can get one.

1 ASSEMBLYMAN DINOWITZ: I'd appreciate
2 it.

3 And what about the ammunition
4 database? Do we -- I mean, that's a pretty
5 long delay. Do we have a timetable for that?

6 ACTING SUPERINTENDENT BRUEN: I don't,
7 but I can follow up with IT. It's largely an
8 IT program at this point. It's, you know, a
9 heavy lift to work that out.

10 ASSEMBLYMAN DINOWITZ: Okay. Thank
11 you very much.

12 CHAIRWOMAN KRUEGER: Okay, thank you.

13 Senator O'Mara has popped into the
14 scene. Hello, ranker on Finance.

15 SENATOR O'MARA: Hello, Chairwoman.
16 I've been here all along, just been quiet.

17 CHAIRWOMAN KRUEGER: I know, but we
18 haven't heard from you all day, so I was a
19 little worried about you.

20 SENATOR O'MARA: Superintendent, thank
21 you for being here today and thank you for
22 your long and really great role and career in
23 law enforcement with the New York State
24 Police.

1 ACTING SUPERINTENDENT BRUEN: Yes,
2 sir.

3 SENATOR O'MARA: Can you kind of
4 describe for us, with the prospect of the
5 legalization of recreational marijuana,
6 what -- first of all, how is enforcement
7 going to be handled with that, since we don't
8 have a Breathalyzer-type test for that? And
9 what additional resources is the State Police
10 going to need in regards to impaired driving
11 while intoxicated under the influence of
12 marijuana?

13 ACTING SUPERINTENDENT BRUEN: So we
14 enforce driving while impaired right now. We
15 do successfully, and it largely is not going
16 to change. It will change in one significant
17 way with the Governor's program bill, and
18 that is it will allow us to take saliva like
19 a breath test.

20 There is a test at the lab that is
21 ready to go, and I have spoken with my
22 toxicology people and they feel that they can
23 handle the test and the increase, if there is
24 some increased number of tests.

1 But the approach to intoxicated
2 driving is going to remain the same. We
3 teach at the academy right now every person
4 graduating as a Trooper from the New York
5 State Police Academy is what's known as an
6 ARIDE. An ARIDE is not a DRE, but it's an
7 enhanced detection training program. It's a
8 two-day course in the detection of
9 drug-influenced driving.

10 Also, within the year we're going to
11 have every Trooper trained as an ARIDE. So
12 we're going to have that in our back pocket
13 as well.

14 But the core policing mission will
15 remain the same: Observations of erratic
16 driving, pulling someone over, gathering
17 evidence by paying attention, engaging the
18 driver in conversation and observing the
19 driver's behavior, gathering the evidence of
20 impairment, getting the saliva sample and
21 having it sent down to the lab to determine
22 whether --

23 SENATOR O'MARA: On the saliva
24 sample -- I'm not familiar with that -- is

1 that going to indicate like a blood alcohol
2 level, the THC blood level?

3 ACTING SUPERINTENDENT BRUEN: That's a
4 good question, and I asked it myself
5 recently. And the answer is no, it's not.
6 What it's going to do is detect the presence
7 of THC. The challenges with THC in
8 determining, based on a particular level
9 impairment, remain. That's an ongoing
10 scientific kind of discussion.

11 That's why the Trooper's observation
12 of impairment is critical: Do you have
13 marijuana in your system, and did it impair
14 your driving?

15 SENATOR O'MARA: I think that's going
16 to be problematic, since THC stays in your
17 blood system far longer than alcohol does.
18 So I would think that would be unfair
19 evidence in many cases, perhaps, for somebody
20 that is not under the influence but may have
21 smoked marijuana 10 days before.

22 ACTING SUPERINTENDENT BRUEN: Well,
23 you've hit upon the exact issue. And that is
24 why I said it's two pieces. One, do you have

1 marijuana in your system? And were you -- is
2 there evidence of impairment, sufficient
3 evidence of impairment, beyond a reasonable
4 doubt or probable cause, depending on the
5 place you're at. That's the standard we have
6 now. And that's the standard we've had for
7 years.

8 Is there evidence you've taken
9 marijuana, and can the police -- the Trooper,
10 county sheriff, or a city police officer --
11 by evidence or testimony or other things
12 indicate that your driving was impaired?

13 SENATOR O'MARA: What will the policy
14 of the New York State Police be regarding
15 marijuana use of State Troopers?

16 ACTING SUPERINTENDENT BRUEN: They
17 will not be able to use recreational
18 marijuana.

19 SENATOR O'MARA: Okay. Thank you.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Next up is Assemblymember Chuck
22 Lavine.

23 ASSEMBLYMAN LAVINE: Thank you.

24 And thank you, Acting Superintendent.

1 Two things I'd like to discuss. First
2 of all, following the brutal assault on the
3 United States Capitol on January 6th, when I
4 learned that the State Police were going to
5 be watching our State Capitol, that gave me
6 great comfort. So thank you, and please
7 thank the members of the State Police for
8 that.

9 Secondly, Scott Beigel was a
10 New Yorker. I don't know whether his name is
11 offhand familiar to you, but being a
12 New Yorker didn't --

13 ACTING SUPERINTENDENT BRUEN: Sure.
14 Marjory Stoneman, I think.

15 ASSEMBLYMAN LAVINE: Yes. Yes.

16 But being a New Yorker didn't make him
17 a hero, but protecting his students at
18 Marjory Stoneman Douglas High School nearly
19 three years ago in Parkland, Florida, and
20 saving them, during which he was murdered --
21 he was a hero.

22 So the State Senate today passed the
23 Scott J. Beigel Unfinished Receiver Act,
24 making it illegal in the State of New York

1 for nonlicensed gunsmiths to possess the
2 component parts that are used to make
3 do-it-yourself ghost guns, and making it
4 illegal to sell those.

5 Now, we have seen people arrested in
6 New York State -- on Long Island, in
7 Port Washington, in Orange County, in
8 Syracuse. And in 2020, in Syracuse, the
9 police confiscated 25 ghost guns. And the
10 list goes on and on and on. And the FBI
11 instructs us that between 2010 and 2020,
12 there were more than 2500 arrests for ghost
13 guns.

14 So a question I have for you -- and
15 let me just set it up this way. The District
16 of Columbia and other states are considering
17 making the possession and sale of the
18 component parts of these do-it-yourself
19 sophisticated tactical weapons illegal.

20 The question I have for you is, is
21 this a cause for concern? Is the ready and
22 easy ability to build these weapons from
23 purchases online, in the open source market,
24 is that a cause for concern for those of us

1 in the State of New York?

2 ACTING SUPERINTENDENT BRUEN: Without
3 commenting on potential legislation,
4 nonserialized guns, untraceable guns, are a
5 concern.

6 If you had asked me that question five
7 years ago, even two or three years ago, I
8 would have said they're not prevalent in
9 New York. One, two, three, four, five cases
10 a year. And I would have said they largely
11 appear in Western -- meaning Western United
12 States, in gang-related kind of contexts.

13 But that is not true in 2020. We've
14 seen a substantial jump, upstate and in
15 New York City, of the use and recovery of
16 ghost guns.

17 ASSEMBLYMAN LAVINE: Thank you,
18 Acting Commissioner. And please give our
19 warmest regards and gratitude to the men and
20 women of our State Police. Thank you.

21 ACTING SUPERINTENDENT BRUEN: Thank
22 you.

23 CHAIRWOMAN KRUEGER: Thank you very
24 much.

1 We have Assemblymember -- well,
2 actually, since he's a ranker, let's do
3 Assemblymember Lawler for five minutes,
4 ranker on Government Ops.

5 ASSEMBLYMAN LAWLER: Thank you.

6 Appreciate your time today.

7 Just following up on the cannabis
8 legalization, currently there's only one
9 state that puts a cap on the potency of
10 marijuana and the THC levels, and that's the
11 state of Vermont.

12 Do you believe that as we debate the
13 issues surrounding this that we should have a
14 cap on the potency of marijuana if it is in
15 fact legalized?

16 ACTING SUPERINTENDENT BRUEN: Yeah,
17 I -- thank you for the question, but I'm not
18 going to comment on pending legislation. We
19 leave it to you guys. And if it's signed
20 into law, we'll enforce it.

21 ASSEMBLYMAN LAWLER: Okay. Following
22 up on my colleague's questions related to
23 trying to determine someone's THC level, you
24 know, obviously an oral swab, if that is in

1 fact the case that we're going to go down
2 that road, how long does that take to get a
3 result on that?

4 ACTING SUPERINTENDENT BRUEN: Well,
5 there's two things -- well, three. First, we
6 don't have a test that will determine the
7 level or concentration of the THC in the
8 bloodstream. It's that two-part test I said:
9 Presence and then we have to independently
10 verify it, right?

11 The other thing is that there's two
12 oral swabs. One's a roadside test, like a
13 prescreen device in an alcohol case, you
14 know, where the Trooper could have a small
15 handheld thing. That's been experimented
16 with.

17 And the test I'm referring to is a
18 forensically valid test. It would be a test
19 that would be gathered at the -- either
20 roadside or at the station and then
21 transported to the lab, and the test would be
22 run there.

23 ASSEMBLYMAN LAWLER: Okay. And do you
24 know, generally speaking, how long it takes

1 to get a result on that test?

2 ACTING SUPERINTENDENT BRUEN: I don't.

3 I suspect that it depends on the volume in a
4 particular time frame. And that may effect
5 how the Trooper proceeded at that point, in
6 terms of whether somebody was arrested and
7 charged or done something else with.

8 But clearly, if the Trooper has taken
9 a sample like that, the person was exhibiting
10 substantial impairment, otherwise they
11 wouldn't have been asked for a sample. So
12 there would be actions that had to be taken
13 roadside to ensure safety, among other
14 things.

15 ASSEMBLYMAN LAWLER: Okay. So
16 generally speaking, they -- at that moment
17 they would treat it as they would a DWI?

18 ACTING SUPERINTENDENT BRUEN: They
19 would treat it as a DWAI. The test that I'm
20 talking about is forensically valid, meaning
21 it's like a blood test. So it's at that
22 level of precision.

23 Now, again, it's not measuring level,
24 but it's measuring presence. So it would be

1 something that could -- they would have to
2 have sufficient probable cause to charge DWAI
3 drugs.

4 ASSEMBLYMAN LAWLER: Okay. Totally
5 switching gears, the last legislative session
6 this body repealed 50-a of the Civil Rights
7 Law. You're familiar with that?

8 ACTING SUPERINTENDENT BRUEN: Yes.

9 ASSEMBLYMAN LAWLER: Okay. This is
10 more of a comment than a question, because
11 I'm sure you're probably not going to want to
12 opine on this.

13 But the -- are you aware that under
14 the rules of the New York State Assembly,
15 Rule 8, that the members of the State
16 Assembly exempt themselves specifically from
17 being subject to FOIL?

18 ACTING SUPERINTENDENT BRUEN: I have
19 not made a particular study of the rules of
20 the Assembly, no.

21 ASSEMBLYMAN LAWLER: Okay. Just so --
22 I'm putting this out there for you to be
23 aware. You know, obviously there's a clear
24 hypocrisy between what this body has chosen

1 to do with respect to the officers who serve
2 under your command and their personnel files
3 and making them subject to FOIL while
4 expressly exempting themselves.

5 So I just wanted you to be aware of
6 that. And happy to send you Rule 8 of the
7 rules of the New York State Assembly so you
8 can see that at some point.

9 ACTING SUPERINTENDENT BRUEN: Thank
10 you.

11 ASSEMBLYMAN LAWLER: Okay, I have no
12 further questions. Thank you, sir.

13 ACTING SUPERINTENDENT BRUEN: Thank
14 you.

15 CHAIRWOMAN KRUEGER: Thank you.

16 I'm sorry, I'm going to ask you a
17 question just in follow-up on the marijuana.

18 So it's my understanding that New York
19 State Police can pull you over for appearing
20 to be driving dangerously right now, they can
21 give you field sobriety tests, they can take
22 away your right to drive your car, and they
23 can do follow-up with chemical tests that may
24 or may not be available, depending on what

1 you have in your system. Because obviously
2 you could have alcohol in your system, you
3 could have marijuana, you could have -- I
4 guess I'll say hundreds if not thousands of
5 prescription drugs.

6 So that's correct, that your police
7 have the authority to do that now?

8 ACTING SUPERINTENDENT BRUEN: Yes.

9 I would only say that we don't have
10 the authority to take away anyone's right to
11 drive. But temporarily we would have the
12 right to take you -- stop you from driving
13 while we conduct an investigation.

14 (Zoom interruption.)

15 CHAIRWOMAN KRUEGER: Thank you, yes.
16 I wanted to be clear about that.

17 Okay, I think they went back on mute.
18 Thank you.

19 Next we have Assemblymember Tannousis.

20 ASSEMBLYMAN TANNOUSIS: Thank you.

21 Thank you very much. Thank you,
22 Superintendent, for being here.

23 I just wanted to follow up in regards
24 to Senator O'Mara's questions regarding the

1 possibility of passing the recreational
2 marijuana.

3 I found myself as a prosecutor a few
4 years back prosecuting these cases that I
5 found that cases that were solely based on
6 the testimony of police officers were
7 substantially weaker compared to those cases
8 that, for example, driving while intoxicated,
9 where an individual -- a portable breath test
10 was conducted, then they would be taken to an
11 IDTU room where they blow on an Intoxilyzer.
12 And we had a whole scientific machine that we
13 were able to bring forth in court to show
14 that the person was driving while
15 intoxicated.

16 Are you somewhat concerned that if
17 recreational marijuana is passed this year,
18 that the cases that are brought forth by
19 arrests by your Troopers will not be quite as
20 strong as those cases of prosecuting driving
21 while intoxicated? Because in that case
22 there is an actual scientific machine, the
23 defense attorney could attack the machine, he
24 could talk about procedure -- where in this

1 situation, a State Trooper is testifying
2 about his observations, a State Trooper
3 without any type of test is basically going
4 to be testifying on assumptions.

5 So are you concerned about that?

6 ACTING SUPERINTENDENT BRUEN: Well,
7 you're lucky --

8 ASSEMBLYMAN TANNOUSIS: And -- I'm
9 sorry to interrupt you -- just as a follow-up
10 question, when will that machine be
11 available, the machine that you were telling
12 us about?

13 ACTING SUPERINTENDENT BRUEN: So it's
14 available now. We have it.

15 ASSEMBLYMAN TANNOUSIS: Ah, okay.
16 Thank you. If you could answer the first
17 part --

18 ACTING SUPERINTENDENT BRUEN: And
19 you're lucky you're not here at the academy
20 calling it a machine, because they would make
21 you run laps. It's an instrument.

22 ASSEMBLYMAN TANNOUSIS: God knows I
23 could use the laps, by the way.

24 (Laughter.)

1 ASSEMBLYMAN TANNOUSIS: Are you
2 concerned at all, Superintendent, about that?

3 ACTING SUPERINTENDENT BRUEN: You
4 know, the -- I -- the -- one of the things
5 that's going to address it -- first of all, I
6 expect New York State Troopers, and it's been
7 my experience that they do this, to conduct
8 careful investigations and to testify clearly
9 and accurately to the point where a jury
10 would trust what it is they're saying and
11 the -- let the chips fall where they may.

12 But it is an artifact of body cameras
13 that I don't know as anyone's thought about
14 it clearly, but an activation of a body
15 camera -- if someone is behaving in such a
16 way that mirrors what the Trooper saw and is
17 describing and her body camera footage plays
18 that back, a juror and juries presumably will
19 have an even higher degree of reliability
20 about their testimony.

21 ASSEMBLYMAN TANNOUSIS: But it's not
22 as strong as an Intoxilyzer, though, correct?

23 ACTING SUPERINTENDENT BRUEN: You
24 know, I don't -- I disagree with that. You

1 know, I think the Intoxilyzer and the
2 instruments that we have are fantastic.

3 I think that the testimony, properly
4 done, the evidence gathered, observations
5 from the vehicle, observations from the car,
6 things that are recovered from the car, other
7 witnesses, can build very strong cases.

8 And quite frankly, this is the
9 environment we're at now with DWAI cases.
10 And, you know, I haven't seen any significant
11 issues. I know what you're saying, that
12 we're not going to end up with a particular
13 threshold. But we have the -- if the
14 legislation is passed, we have the
15 instrument, we'll have the methods to collect
16 it, and we'll have the forensically valid
17 results.

18 ASSEMBLYMAN TANNOUSIS: Thank you for
19 your time.

20 ACTING SUPERINTENDENT BRUEN: Thank
21 you, sir.

22 CHAIRWOMAN KRUEGER: Thank you.

23 Assemblymember Latrice Walker.

24 Are you there, Latrice? I don't think

1 so.

2 ASSEMBLYWOMAN WALKER: I'm here, but
3 of course there's -- we have conference going
4 on as well as a number of other things, so I
5 apologize for toggling back and forth.

6 But thank you very much for your
7 testimony today, Mr. Superintendent. I have
8 a really quick question.

9 So there was a budget request for
10 body-worn cameras for the State Police.
11 However, the request didn't match I believe
12 what had been previously stated was the need
13 for the State Police in order to get that
14 done.

15 And so how much is the request this
16 year? And what is the difference between
17 what you indicated in the past was required
18 and what is being proposed in this year's
19 Executive Budget?

20 ACTING SUPERINTENDENT BRUEN: Well,
21 I'm not exactly familiar with the prior
22 request. I know we have made requests and
23 wanted to pilot body cameras particularly in
24 some of the more extreme environments, in the

1 mountains and other things.

2 But based on the passage of the law in
3 June, which had very specific activation
4 requirements, we ended up having to get --
5 essentially, only one product met that need.
6 So that might account for what you're seeing.

7 It's my understanding that the cost is
8 roughly about \$8 million a year.

9 ASSEMBLYWOMAN WALKER: Okay. All
10 right, no problem.

11 So what we did see was a request in
12 the past for about \$15 million, but it looks
13 like there's about \$7 million in this year's
14 budget.

15 ACTING SUPERINTENDENT BRUEN: Yeah,
16 and these are recurring costs, yeah.

17 Again, because the law was passed with
18 very specific requirements, there was really
19 only one product on the market that would
20 meet the needs. And that then dictated kind
21 of everything else from there.

22 That comes with -- you know, it meets
23 our needs and it meets the requirements of
24 the statute in terms of activation, signal

1 activation.

2 ASSEMBLYWOMAN WALKER: Okay. All
3 right. Well, just wanted to -- so you're
4 saying it's only going to cost you \$8 million
5 in order to fully implement state body-worn
6 cameras for this year -- and my face is
7 moving on the Jeopardy --

8 ACTING SUPERINTENDENT BRUEN: That's
9 all right.

10 ASSEMBLYWOMAN WALKER: -- the
11 Hollywood Squares board.

12 ACTING SUPERINTENDENT BRUEN: Yup,
13 that's my understanding of the costs of
14 cameras. There are additional costs for
15 personnel and other things, but that is the
16 cost of cameras.

17 ASSEMBLYWOMAN WALKER: So there is an
18 additional cost. But is that being taken
19 into account for -- with respect to the
20 budget request that you've put in?

21 ACTING SUPERINTENDENT BRUEN: Yes.

22 ASSEMBLYWOMAN WALKER: Okay. All
23 right, awesome. Thank you.

24 ACTING SUPERINTENDENT BRUEN: Thank

1 you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 I see we've been joined by the chair
4 of Government Ops, Ken Zebrowski. And it's
5 been a busy day for everyone.

6 Please give him 10 minutes on the
7 clock, thank you.

8 ASSEMBLYMAN ZEBROWSKI: Thanks,
9 Chair Krueger, and I won't need the
10 10 minutes.

11 Let me just say, Superintendent, thank
12 you and please thank your officers for all
13 the work that they have been doing during
14 these difficult times. I know they're out on
15 the roads, they're in our communities.
16 When -- you know, when this pandemic started,
17 by no means did their jobs stop. They had to
18 figure things out at times where we had
19 absolutely no idea how this was being
20 transmitted, where it was being transmitted.
21 They had to do their jobs.

22 So, you know, will you please express
23 our gratitude for all their hard work and
24 what they do in protecting us every day.

1 ACTING SUPERINTENDENT BRUEN: I will.

2 ASSEMBLYMAN ZEBROWSKI: I just wanted
3 to reiterate a little bit on the body cam
4 question. And my understanding is that it's
5 a multiyear request. Certainly I believe
6 we're funding one year, this year, of
7 \$8 million. But I believe it was a five-year
8 request or estimate of about 8 million a year
9 for five years, which is a significant amount
10 of money.

11 So my understanding is that that would
12 cover the total cost for not just, I think,
13 the 3,000 or so cameras now but, you know,
14 all the logistical and other hardware,
15 software things that go through it for the
16 next period. Is that your understanding?

17 ACTING SUPERINTENDENT BRUEN: Yeah,
18 that is my understanding. That is my -- all
19 the products associated with the camera and
20 support with the camera.

21 ASSEMBLYMAN ZEBROWSKI: Okay. All
22 right. We appreciate that.

23 And, you know, certainly I'd love to
24 keep in touch with you for both, you know,

1 the rollout of this program as to how you
2 think it's going, you know, is there
3 sufficient funding, does it provide your
4 officers with the proper support, you know,
5 so that they can do their job and, you know,
6 further on, obviously, with a host of other
7 issues. Just wanted to say that, you know,
8 we're there for you for continued
9 collaboration going forward. So thank you.

10 ACTING SUPERINTENDENT BRUEN: Thank
11 you.

12 CHAIRWOMAN KRUEGER: Okay, thank you.
13 And Assemblymember Mike Reilly.

14 ASSEMBLYMAN REILLY: Thank you,
15 Madam Chair.

16 Thank you, Superintendent, for your
17 testimony.

18 A couple of things I wanted to ask
19 about was I know you mentioned the ARIDE
20 training. New York City Police Department is
21 doing an offshoot of the DRE program, which
22 is like a four-hour class. Do you think
23 there's a possibility of the ARIDE training
24 being administered to local police

1 departments throughout the state to help with
2 the legalization of marijuana if it moves
3 forward? Because I know the DRE program is
4 expensive. And, you know, many times it
5 takes the patrol officers away from their
6 duties for some time because of the extent of
7 the training.

8 Could you tell me how much that
9 training is, the DRE program, and if it's
10 feasible for ARIDE?

11 ACTING SUPERINTENDENT BRUEN: Well,
12 the ARIDE program -- in order to be qualified
13 for the DRE program, you have to be an ARIDE.
14 And as I said before in testimony, that every
15 new New York State Trooper is qualified as an
16 ARIDE as they come through the academy. And
17 by the end of the year we'll have the entire
18 road Trooper force trained as ARIDEs.

19 DREs are akin to, as you know, you
20 know, a test. It's a very extensive
21 training, medically based and all the rest of
22 it. There is only so much bandwidth that --
23 there's only so much bandwidth at the
24 training academies that will do this. At one

1 point there were only two. I think there's
2 plans that they'll add two more online. But
3 there's only so many slots. I think New York
4 City has about -- between 12 and 16.

5 ASSEMBLYMAN REILLY: Yeah, 16.

6 ACTING SUPERINTENDENT BRUEN: And I
7 have about 110. My goal is -- and it will
8 take time -- is to make that number, that
9 fixed number of DREs closer to 200.

10 But we have, you know, resources and
11 ways of dealing with the issue up-front. And
12 I'm certain that other departments will be --
13 and other agencies will be looking at ARIDE
14 training.

15 ASSEMBLYMAN REILLY: Thank you,
16 Superintendent.

17 So I also wanted to touch on fentanyl
18 analogs. I know that we have some
19 legislation that's in to allow the Department
20 of Health commissioner to add any necessary
21 analogs. Do you think that would help with
22 investigations?

23 ACTING SUPERINTENDENT BRUEN: You
24 know, I don't comment on pending legislation,

1 but fentanyl is extremely serious and
2 extremely dangerous.

3 ASSEMBLYMAN REILLY: And I wanted to
4 touch on one last thing about the -- I know
5 my colleague earlier mentioned ghost guns.

6 When that legislation came up, I
7 raised one issue, that unfortunately the
8 possession of a ghost gun right now would be
9 an E felony. And, you know -- as you know,
10 if you have a firearm with an untraceable
11 serial number, it's a D felony.

12 Do you think that it would help with
13 investigations if it was a D felony for a
14 ghost gun? Because as we know, as an
15 E felony, with bail reform it currently is
16 eligible for a desk appearance ticket.

17 ACTING SUPERINTENDENT BRUEN: Well, I
18 hate to repeat myself and say I'm not going
19 to comment on pending legislation, but I'm
20 going to do that.

21 I am going to say the ghost gun
22 situation has me concerned.

23 ASSEMBLYMAN REILLY: Thank you,
24 Mr. Superintendent. I appreciate it.

1 Thank you, Madam Chair.

2 CHAIRWOMAN KRUEGER: Thank you, Mike.

3 I think our last Assemblymember, or
4 the last hand I see up, is Chris Burdick.

5 ASSEMBLYMAN BURDICK: Thank you, I
6 appreciate it.

7 And thank you for the testimony. And
8 I also echo the words of Ken Zebrowski to
9 thank you and your officers for the heroic
10 work that you've done during the pandemic.
11 We greatly appreciate it.

12 There's been a great deal of
13 discussion in this line of questioning
14 regarding enforcement issues in the event of
15 the possible legalization of recreational
16 marijuana. I echo the concern on training
17 for local police departments and do hope that
18 there can be coordination in that regard. I
19 think that would be very helpful.

20 I had a question regarding if you
21 happen to know whether any of the funds that
22 would be raised from this, in taxes and fees,
23 would be going to any kind of drug
24 prevention, drug abuse prevention programs?

1 It may not be your wheelhouse, and I can
2 check elsewhere.

3 ACTING SUPERINTENDENT BRUEN: It is
4 not my wheelhouse.

5 ASSEMBLYMAN BURDICK: Okay. A
6 different question is the question regarding
7 enforcement.

8 Have you folks looked at what's going
9 on in other states with respect to whether or
10 not the measures that they use, the
11 instrumentation that you described, have been
12 effective in getting dangerous drivers off
13 the road? Do you feel confident that you're
14 going to be able to do that effectively?.

15 ACTING SUPERINTENDENT BRUEN: We've
16 looked at data from other states on a wide
17 range of issues about legalization. I have
18 contacted and had conversations with my
19 opposite numbers in other states.

20 And I keep going back to the fact that
21 we do this already, we do this job already.
22 We make arrests for impaired operation based
23 on the use and THC intoxication. We do it.
24 And I feel like I have every confidence in my

1 Troopers that they'll be able to do this.

2 ASSEMBLYMAN BURDICK: That's very
3 helpful to know, and reassuring.

4 Thank you very much.

5 CHAIRWOMAN KRUEGER: Thank you.

6 So it is my wheelhouse, since I am the
7 lead sponsor of the MRTA bill in the Senate
8 that Crystal Peoples-Stokes carries in the
9 Assembly.

10 And so the answer is that in our bill
11 we hope that up to 25 percent of the revenues
12 from legalized adult recreational use of
13 marijuana would go towards drug treatment for
14 serious, dangerous drug addictions and
15 education to discourage people, particularly
16 young people, from using drugs. Chris, so
17 that's the answer to that.

18 I also want to thank the acting
19 superintendent. I am very confident his
20 State Troopers are perfectly capable of
21 handling impaired driver stops, because as he
22 just said, they do it every day.

23 You know, there's a lot of things
24 people can have opinions about with

1 marijuana, but the one we really need to
2 agree on, it's already here. It may not be
3 legal, but it's already here and being used
4 more than pretty much any other drug in the
5 State of New York, so many of these questions
6 aren't really new questions.

7 I do have one final question for you,
8 Superintendent. So in the last year, the
9 pandemic has changed almost everything in our
10 lives. What are the State Police doing in my
11 city nowadays? What do you have them doing?

12 ACTING SUPERINTENDENT BRUEN: In
13 New York City?

14 CHAIRWOMAN KRUEGER: Yes, sir, I'm
15 from New York City.

16 ACTING SUPERINTENDENT BRUEN: We
17 provide a number of roles and do a number of
18 missions in New York City -- our presence,
19 obviously, at the transportation hubs, the
20 train stations, the bridges and tunnels. We
21 are also at the airports.

22 We have investigators that follow --
23 that are on the Hate Crimes Task Force in the
24 city. We have investigators assigned to the

1 Joint Terrorism Task Force and investigators
2 that work closely with the Drug Enforcement
3 Agency on very large narcotics cases, just to
4 name a few of the missions.

5 CHAIRWOMAN KRUEGER: And so you still
6 believe that the number of State Troopers
7 assigned to New York City is a justified use
8 of your budget costs?

9 ACTING SUPERINTENDENT BRUEN:
10 Absolutely. It gives us flexibility to do
11 things, act in certain missions that are
12 specific, and flexibility to act. I feel it
13 is justified.

14 I have to tell you also it has been a
15 particular benefit with recruiting minority
16 members. The folks in the city are able to
17 see the Troopers doing their work in the
18 great uniform, looking great, and they can
19 picture themselves doing the job. And it's
20 been a true benefit to us.

21 CHAIRWOMAN KRUEGER: That's very good
22 news.

23 On behalf of us all, thank you for
24 your work, thank you for your members' work.

1 And we are going to excuse you for the day.

2 ACTING SUPERINTENDENT BRUEN: Thank
3 you.

4 CHAIRWOMAN KRUEGER: Thank you.

5 And because it is now 6:10 and we
6 started at 9:30 this morning, I am allowing
7 myself a three-minute nature visit. And
8 everybody should just either also explore
9 nature for three minutes, or whatever you
10 like. Just don't go anywhere, because it's a
11 very fast three minutes. Thank you.

12 (A brief recess was taken from 6:11 to
13 6:14 p.m.)

14 CHAIRWOMAN KRUEGER: We are now
15 starting the part of the hearing where people
16 who have asked to testify will be called up
17 in panels. You'll have three minutes, each
18 person on the panel. Then people who want to
19 ask you questions, whether they are chairs or
20 not, only get three minutes in total to ask
21 the panel questions and get answers.

22 So I like to describe this part as
23 speed dating. But it's also important to
24 know that when you hear a question from a

1 legislator, you know you want to follow up
2 with them afterwards because you know you
3 have more information for them than you can
4 possibly give them in this ridiculously short
5 period of time.

6 For people who did not get to sign up
7 to testify because they asked too late and
8 there were no more slots left -- and I
9 apologize, we had to turn a lot of people
10 down -- you can still submit your testimony,
11 it will still go to all of us, it will still
12 be up for the public to view.

13 And I always advise the testifiers, if
14 you think you're going to read your
15 testimony, that will be a mistake. You only
16 have three minutes. You want to highlight
17 the most important part of your testimony as
18 far as what you're prioritizing in
19 relationship to the state budget this year.

20 The one thing I can say with
21 confidence is we are all readers. All the
22 legislators actually can read, and so we have
23 full testimony in front of us or on our desks
24 or in our computers or all of the above.

1 So having said that as the rules of
2 the road for the rest of this hearing, I'll
3 now introduce our first three panelists. And
4 they will do it perfectly, and then everybody
5 will know what I was talking about.

6 So we have Kristin Brown, from the
7 Empire Justice Center; we have Laura Abel,
8 from the Lawyers Alliance for New York; and
9 we have the New York Legal Services
10 Coalition, Molly Clifford.

11 Hello, good evening. Kristin, you get
12 to go first.

13 MS. BROWN: Thank you. Thank you so
14 much.

15 Good evening, my name is Kristin
16 Brown. I'm the president and CEO of Empire
17 Justice Center. We're a statewide legal
18 services and advocacy organization for
19 low-income New Yorkers outside of New York
20 City.

21 For my time today I'm going to
22 highlight two trends and focus on the
23 importance of your continued support for
24 allocation of the Legal Services Assistance

1 Fund.

2 We can all agree that COVID has really
3 revealed deep structural inequities in our
4 society and made existing problems more acute
5 and complex for people in low-income
6 communities. In the area of legal services,
7 we find problems such as unemployment,
8 eviction, lack of benefits, intimate partner
9 violence, and removal proceedings that may
10 have been navigated separately through
11 different attorneys and organizations, are
12 now melded by the pandemic into a single
13 landscape, often with an attorney as the main
14 person who's triaging services and providing
15 advice in a number of different areas. And
16 this is a shift that we have had to navigate
17 to meet the needs of our clients.

18 A second noticeable trend is the
19 digital divide. Reliance on technology has
20 created very deep disparities between people
21 who have tech skills and resources and those
22 who don't. For example, during nursing home
23 fair hearings and foreclosure proceedings,
24 our clients often lack computers, technical

1 skills and reliable internet access to take
2 advantage of virtual hearings.

3 For Empire Justice attorneys, the
4 pandemic has made it harder to collect
5 evidentiary proof, maintain attorney-client
6 privilege in the virtual setting, and have
7 sidebar negotiations.

8 A Chief Judge's permanent commission
9 is studying how to -- examining the digital
10 divide, and this is something we urge the
11 Legislature to look at.

12 These trends are just part of the
13 urgent need to fund civil legal services to
14 help low-income communities cope with the
15 pandemic and navigate structural
16 complexities. For Empire Justice, the JCLS
17 and Legal Services Assistance Fund money
18 allows us to provide representation to
19 immigrants, individuals who are unemployed,
20 and families with special-needs students,
21 among others, and to provide training and
22 technical assistance for students as well as
23 frequently answer questions for folks. We've
24 had over 9,000 people access our Unemployment

1 Frequently Asked Questions.

2 To support this work, we urge you to
3 support the Legal Services Assistance Fund,
4 including domestic violence legal services at
5 last year's levels.

6 I also want to highlight that in spite
7 of your much-appreciated support last year,
8 none of the LSAF or domestic violence funding
9 for the current year, which goes to provide
10 services all across the state, has been paid
11 to providers. Nothing.

12 We understand this is a very
13 challenging time for most people, and there's
14 a budget deficit. But the LSAF funds have
15 their own revenue source, they don't come out
16 of the General Fund, and they do play a
17 crucial role in providing -- pursuing life's
18 basic necessities for low-income New Yorkers.

19 So we look forward to working with you
20 all to make sure that this crucial funding is
21 available for both this year's LSAF and the
22 one to come.

23 Thank you for your time.

24 CHAIRWOMAN KRUEGER: Thank you.

1 Next, Laura Abel.

2 MS. ABEL: Thank you. Thank you for
3 this time. And I will be brief.

4 I'm Laura Abel. I'm senior policy
5 counsel with Lawyers Alliance for New York.
6 We are a nonprofit law office that provides
7 business and transactional legal assistance
8 to the nonprofits that serve low-income
9 communities in New York City.

10 Last year, in the last days of budget
11 negotiations as the pandemic was closing
12 everything down, an unfunded administrative
13 burden on thousands of charities was inserted
14 into the Public Protection and Good
15 Government Article VII bill. The apparent
16 goal of that provision was to track the flow
17 of resources from 501(c)(3) public charities
18 to 501(c)(4) social welfare organizations
19 that engage in a lot of lobbying or in
20 certain types of issue advocacy.

21 But perhaps unintentionally, the bill
22 swept way, way too broadly. As a result,
23 thousands of charities that have nothing to
24 do with social welfare organizations have a

1 new, completely unnecessary bureaucratic
2 hurdle this year. They have to take the
3 annual financial reports that they already
4 file with the Charities Bureau and file them
5 again with the Department of State. They
6 have to pay a second filing fee and deal with
7 the Department of State's different and
8 earlier filing deadline. But perhaps most
9 importantly, they have to worry about a
10 potential threat to the privacy of their
11 major donors.

12 The Charities Bureau has decades of
13 experience and careful procedures in place to
14 protect the privacy of people who contribute
15 to these purely nonpolitical charitable
16 organizations. The Department of State
17 doesn't.

18 This year's one-house bills should fix
19 last year's overstepping, they should eliminate
20 the dual filing requirement, they should
21 implement measures to protect privacy. In my
22 written testimony I've pointed you to an
23 Assembly bill that has language that could fit
24 very easily in the one-house bills.

1 Thank you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 And Molly.

4 MS. CLIFFORD: Thank you.

5 I'm Molly Clifford, and I'm the
6 interim executive director of the New York
7 Legal Services Coalition. We're a nonprofit
8 consisting of 49 civil legal services
9 providers. Collectively we serve every
10 New York State county and provide
11 high-quality legal services to hundreds of
12 thousands of low-income families in New York
13 every year.

14 Civil legal services address a
15 fundamental gap in access to justice: The
16 gap between low- and moderate-income
17 households in need of legal aid and the
18 number who can be helped by our providers.
19 For decades that gap remained at a troubling
20 80 percent. Thanks to ongoing support from
21 the Legislature, state agencies and the
22 Judiciary, CLS providers in New York have
23 narrowed that chasm to approximately
24 60 percent.

1 While this is a positive trend, there
2 are certainly significant needs that remain,
3 made worse by the pandemic, particularly
4 among low-income New Yorkers and communities
5 of color.

6 At the coronavirus peak, our network
7 effectively pivoted their workforces to meet
8 heightened demand to ensure New York's
9 families hit disproportionately hard by the
10 pandemic have a sense of stability during
11 this time of crisis. Amidst these staffing
12 demands, staff continues to work within our
13 many practice areas, including domestic
14 violence, eviction, foreclosure and
15 immigration matters.

16 Some matters, especially economic and
17 housing stability, are being exacerbated by
18 the pandemic and will affect families
19 throughout 2021 and beyond. We're
20 particularly concerned about the eviction and
21 foreclosure moratoria, which upon expiration
22 will bring a tidal wave of evictions and
23 result in sharp increases in homelessness in
24 the communities we serve.

1 We stand ready to meet these new and
2 shifting demands, and appreciate the joint
3 efforts of the Legislature and OCA to support
4 legal services funding. We respectfully ask
5 for continued state support in two key areas:
6 Restore and increase funding for civil legal
7 services through the Legal Services
8 Assistance Fund, and restore 10 percent for
9 civil legal services programs in the
10 Judiciary Budget, including \$85 million to
11 help bridge the gap and continuing the
12 15 million supplemental appropriation for the
13 IOLA to fund its grantees.

14 The JCLS program is by far the largest
15 source of support for our members. On
16 average, our members' budgets consist of over
17 50 percent in state funding, and JCLS
18 comprises nearly half of that amount. It is
19 especially important because it gives our
20 providers the flexibility to allocate funds
21 to the most substantive needs in their own
22 communities.

23 The JCLS program has been reduced by
24 10 percent, and we caution that the resulting

1 cuts will be borne by our most underserved
2 and marginalized communities. We appreciate
3 that local assistance reductions are being
4 reduced to 5 percent under the Governor's
5 budget. Should sufficient federal funding be
6 realized, we urge that these amounts and
7 Judiciary funding be restored in full.

8 Thank you very much.

9 CHAIRWOMAN KRUEGER: Thank you very
10 much.

11 Any questions? I don't see any hands
12 up.

13 We're going to move quickly, so if you
14 don't put your hand up -- nope? All right.
15 Thank you very much, ladies. Appreciate your
16 being with us tonight. Thank you.

17 Next panel: New York State Health
18 Foundation; Veterans Advocacy Project; Center
19 for Court Innovation; Fund for Modern Courts;
20 and the New York State Coalition Against
21 Domestic Violence. Sometimes I was
22 stretching a little when combining into
23 panels, but I did my best to be thematic.

24 David Sandman, from New York State

1 Health Foundation. Nope, you're on mute.
2 See if you can get your mute off. There we
3 go. All right --

4 DR. SANDMAN: Thank you, Madam Chair,
5 for the Zoom advice. Thanks for the
6 opportunity to testify before this hearing.

7 I'm Dr. David Sandman, the president
8 and CEO of the New York State Health
9 Foundation, and I am here today to speak on
10 behalf of creating universal access to
11 veterans treatment courts, or VTCs, for every
12 veteran in New York who needs one. And a
13 simple transfer policy that is proposed in
14 the Executive Budget would make universal
15 access a reality.

16 VTCs provide an alternative to
17 incarceration for veterans who encounter the
18 criminal justice system and who have a mental
19 health and/or substance use issue. They
20 provide treatment and services instead of
21 jail. And I've provided details in my
22 written testimony about the history and
23 benefits of VTCs and why a transfer policy is
24 needed.

1 I'll use my brief time today to tell
2 you about a veteran whose name is Nick. He
3 comes from Western New York. Nick is a
4 Marine sergeant who joined the military after
5 the 9/11 attacks. He did two difficult
6 combat tours in Afghanistan, and when he came
7 home he felt isolated, had a hard time
8 readjusting. He was drinking heavily, became
9 addicted to drugs. He ended up homeless,
10 living in his car in a Walmart parking lot.
11 And when he was found, he was arrested for
12 narcotics possession.

13 Nick was not a danger to anyone
14 besides himself. He didn't need jail, he
15 needed treatment. And Nick's mom had heard
16 about the Monroe County Veterans Treatment
17 Court.

18 As Nick puts it, the judge was the
19 first authority figure he'd ever encountered
20 since leaving the military who showed him
21 respect. She thanked him for his service,
22 she helped him to get out of jail, got him
23 into treatment, and Nick says that it saved
24 his life.

1 He graduated from the VTC, and today
2 Nick is thriving, has a family, completed his
3 education, and himself works in government
4 service now.

5 The evidence is clear: VTCs work.
6 Research shows that they are associated with
7 lower rates of recidivism, they have positive
8 impacts on alcohol and drug use, mental
9 health, housing stability, employment and
10 interpersonal relationships.

11 There's lots of vets like Nick out
12 there. Not all their stories are successful
13 because, depending on where you live, you
14 might not have access to a VTC. Only about
15 half of the state's counties have one. And
16 the transfer policy proposal proposed in the
17 budget will fix this. It will allow a case
18 to be moved from a county without a VTC to a
19 neighboring county with one.

20 It's simple, effective, it means the
21 vets won't languish in a justice system
22 that's not equipped to deal with their
23 challenges. It's a point of pride -- the
24 first VTC in the nation was started about a

1 decade ago, in Buffalo, New York. As their
2 birthplace, it's only right that we should
3 have the largest and best system in the
4 nation. And a transfer policy will allow
5 New York to become the national beacon and
6 remain the beacon for Veterans Treatment
7 Courts.

8 Thank you.

9 CHAIRWOMAN KRUEGER: Thank you very
10 much, Doctor.

11 Next, Veterans Advocacy Project, Coco
12 Culhane.

13 MS. CULHANE: Hi. Thank you.

14 I'm executive director of Veteran
15 Advocacy Project. And David's a tough act to
16 follow. I want to echo everything he has
17 said. And I was thrilled today to hear how
18 much support there is for Veteran Treatment
19 Courts.

20 And, you know, if there's a theme to
21 my testimony here, it would be to leave no
22 one behind. You know, one person is not more
23 worthy of redemption or recovery because of
24 the county they live in. So a transfer

1 policy is an easy way to increase access to
2 justice.

3 My organization specializes in working
4 with veterans with less-than-honorable
5 discharges. And I just wanted to also say
6 that the support services for these courts --
7 the peer mentors, all of the different
8 components that come together -- are so
9 important because there's a very high ratio
10 of veterans with less-than-honorable
11 discharges in Veterans Treatment Court, and
12 they can't access the VA.

13 So we're talking about a population
14 that is extremely vulnerable. Often they
15 have been discharged less than honorably due
16 to symptoms of posttraumatic stress or
17 traumatic brain injury, such as
18 self-medication, getting into fights, things
19 like that. And when they get out, they're
20 seen as having a criminal record and they --
21 you know, having a less-than-honorable
22 discharge is the second-highest predictor of
23 homelessness. If you've been discharged for
24 misconduct you are almost three times as

1 likely to die by suicide than other veterans,
2 which is already at way too high of a rate.

3 So we're talking about a really
4 vulnerable population that's essentially been
5 failed by the military justice system and is
6 now entering the civilian one. And Veteran
7 Treatment Courts are so important and so
8 vital.

9 My organization works with several.
10 We're so lucky in New York City to have I
11 think six or seven courts now. The thing is,
12 we can -- it's easy to forget -- we have so
13 many resources in the city it's easy to
14 forget that veterans around the state really
15 don't have those options.

16 And in particular, you know, even in
17 New York City, these veterans can't work with
18 the VJOs, the veterans justice outreach
19 social workers who are such a vital piece of
20 connecting these veterans to treatment.

21 So again, just -- that's why these
22 support services, all of the different
23 players that come together to make Veteran
24 Treatment Courts what they are, are so

1 important. And I hope that the Legislature
2 will support those programs that are working
3 with all the veterans, because everybody does
4 deserve that second chance.

5 Thanks.

6 CHAIRWOMAN KRUEGER: Thank you very
7 much.

8 Next, the Center for Court Innovation.

9 MR. CORREIA: Good evening. My name
10 is Shane Correia, and I work at the Center
11 for Court Innovation.

12 Based on the amount of time, I'll dive
13 right into the areas that our upstate and
14 downstate programs and research seem
15 well-suited to contribute to public discourse
16 on.

17 In the first topic, reducing
18 unnecessary incarceration, last week we
19 released a fact sheet on the impact of bail
20 reform in New York State, exploring popular
21 opinions, what the data says, and what we
22 know from operating pretrial diversion
23 programs. We hope that this will be useful
24 in exploring the issue through facts.

1 For example, in response to attempts
2 to tie gun violence to bail reform, we
3 provide an analysis that shows that of the
4 528 shootings through June 20th in New York,
5 only one was released due to bail reform.

6 The second topic is the shrinking
7 footprint of police. During the summer calls
8 for police reform, we released a document
9 spanning six areas of practice we operate
10 programs in that can help shrink the
11 footprint of police.

12 As an example, we suggest supporting
13 families when they appear in other parts of
14 the justice system. In our Strong Starts
15 program that supports children under three in
16 child neglect cases with a clinical
17 coordinator, we have data that shows that
18 50 percent of those parents were previously
19 the subject child of a prior neglect
20 proceeding with their own caregiver.

21 The goal of me sharing this example of
22 shrinking the footprint of police is because
23 it seems slightly off-center for police
24 responses, and yet a criminal arrest can

1 trigger a child neglect proceeding and have
2 intergenerational impacts if not sufficiently
3 addressed. Meaningfully helping them at this
4 point of their needs can have a profound
5 long-term impact.

6 The third topic is housing as a
7 justice issue. Many New Yorkers are
8 anticipating a crush of Housing Court cases
9 when current protections end. It's important
10 to understand the spectrum of effective
11 models for protecting tenants.

12 Models such as housing resource
13 centers can help residents stay in their
14 homes for issues like avoiding default
15 judgements for non-appearance or lapsed
16 annual certification for public housing.
17 These are both issues that require legal
18 information, not necessarily legal
19 representation to keep New Yorkers housed.

20 Finally, on the topic of anti-gun
21 violence, we want to add research to the
22 calls for increased access to gun violence
23 prevention programs. Over the summer we
24 released a report entitled "Gotta Make Your

1 Own Heaven," where we utilized participatory
2 research with credible individuals within the
3 communities we serve to examine why youth are
4 carrying guns.

5 One finding is that a lack of safety
6 from other youth and police are motivating
7 gun possession.

8 We hope that the state can continue to
9 support programs like ours that are asked to
10 create a sense of safety in environments that
11 are more expansive than the funded catchment
12 areas that we operate in.

13 Thank you for giving me the
14 opportunity to sprint through this overview
15 of how we believe our research and
16 programming can help to continue the sense of
17 public safety and trust in New York.

18 CHAIRWOMAN KRUEGER: Thank you very
19 much.

20 Our next is Fund for Modern Courts.

21 MR. SILVERMAN: Good evening, and
22 thank you. My name is Bill Silverman. I am
23 the chair of the Fund for Modern Courts. I'm
24 also a partner at Proskauer, where I have the

1 privilege of running their pro bono program.

2 Modern Courts is an independent,
3 nonpartisan, statewide court reform
4 organization. And I'd like to emphasize two
5 main points tonight.

6 First, the 10 percent spending cuts
7 that have been imposed on the court system
8 have in fact affected access to justice. We
9 are seeing significant cuts in staffing based
10 on the hiring freeze. We're seeing cuts to
11 legal services organizations at a time when
12 the need is getting much worse, much greater.
13 And we're seeing, obviously, the separation
14 of the 46 senior judges.

15 Those cuts could not have come at a
16 worse time, at a time when COVID-19 is
17 affecting the most vulnerable among us.
18 Those cuts are occurring at a time when the
19 court system is already underresourced. As
20 we all know, in 2011 the court endured a
21 multi-million-dollar -- \$170 million in cuts.

22 Given the growing backlog of cases,
23 the central role that the courts play in
24 access to justice, we believe that the budget

1 should be approved, and we'd also like to see
2 the 10 percent cuts restored at some point.

3 I want to briefly address the issue of
4 backlogs, because I think it raises a
5 question of fairness and equity during COVID.
6 We're not seeing massive backlogs in the
7 Supreme Court, where people are generally
8 represented and where proceedings are
9 virtual. We're seeing backlogs in the
10 Family Court. We're seeing backlogs in the
11 Housing Court. These are courts that serve
12 poor people.

13 The backlogs are affecting people of
14 limited means. They're affecting people of
15 color. And they're affecting them
16 disproportionately during a time of crisis,
17 and that's unacceptable.

18 So this leads me to the second point
19 that I want to make today, which is that we
20 need to restructure the court system. Having
21 11 separate and distinct trial courts in the
22 best of times is completely inefficient.
23 Having them now, during a time of crisis,
24 makes it very difficult for the court system

1 to consolidate resources. It makes it
2 difficult for them to reassign judges. It
3 makes it difficult for them to get resources
4 to the courts that are serving people of
5 limited means.

6 Pre-COVID I think we were making
7 progress, and I urge the Legislature to take
8 up court simplification at the earliest
9 possible time.

10 I want to thank you for this
11 opportunity. I also want to thank the
12 elected officials, the people who also are
13 testifying, and all the staff for your public
14 service. Thank you.

15 CHAIRWOMAN KRUEGER: Thank you very
16 much.

17 And then the New York State Coalition
18 Against Domestic Violence, John {sic}
19 Gerhardt.

20 MS. GERHARDT: Thank you for the
21 opportunity to speak today. I'm Joan
22 Gerhardt, the director of public policy --

23 CHAIRWOMAN KRUEGER: (Inaudible.)

24 MS. GERHARDT: That's okay.

1 CHAIRWOMAN KRUEGER: I called you John
2 by mistake, I apologize.

3 MS. GERHARDT: That's okay (laughing).

4 I'm Joan Gerhardt, the director of
5 public policy and advocacy at the New York
6 State Coalition Against Domestic Violence.
7 NYSCADV was established nearly 45 years ago,
8 and we represent about 100 programs serving
9 thousands of domestic violence survivors and
10 their children across the state.

11 Rather than review our specific budget
12 priorities, which are described in detail in
13 our written testimony, I'd like to use my
14 time today to give you a sense for domestic
15 violence in New York State and the challenges
16 presented to domestic violence survivors and
17 service providers, both before the pandemic
18 and now.

19 New York consistently has the highest
20 demand for domestic violence services in the
21 country, despite some states being more
22 populated. And as has been widely reported,
23 this demand has significantly increased
24 during the pandemic. Thousands of adults and

1 children are in need of domestic violence
2 services in New York each day. More
3 troubling, thousands of requests can't be met
4 because of declining or stagnant funding.

5 Since last March, in order to meet the
6 rising demand and do it safely, domestic
7 violence programs have spent thousands of
8 dollars on unbudgeted items like PPE,
9 cleaning supplies, noncommunal food service,
10 and new technologies.

11 New York's domestic violence advocates
12 have acted heroically, staffing shelters at
13 their own personal risk, learning to provide
14 services to survivors in new ways that still
15 enhance safety -- even providing crisis and
16 trauma counseling to survivors from their own
17 homes.

18 And yet at the same time, domestic
19 violence programs are getting less funding.
20 That's because New York's antiquated per diem
21 reimbursement system only reimburses programs
22 when survivors are in shelter. During the
23 pandemic, many survivors haven't chosen to
24 enter shelter. Plus many shelter beds can't

1 be used due to social distancing and
2 quarantine requirements.

3 Add on to that the 20 percent
4 reduction in county contracts with local
5 providers, and you have a perfect storm.
6 It's not an exaggeration to say that
7 New York's domestic violence programs are
8 barely getting by. They're using financial
9 reserves, opening lines of credit, reducing
10 staff, just to keep the doors open and the
11 lights on.

12 Domestic violence programs reported to
13 us in November that their shelter occupancy
14 decreased as much as 30, 40, even 55 percent.
15 That means that the revenues New York
16 provides to programs decreased in kind. We
17 estimate these losses to the statewide system
18 to total approximately \$1 million a month.
19 That's 10 million since the pandemic began.
20 Obviously this isn't sustainable for long.

21 We urge the Legislature to make
22 emergency funding available to those domestic
23 violence programs that can demonstrate
24 documented losses. The state must ensure

1 domestic violence services remain available
2 and accessible to all who need them.

3 Thank you.

4 CHAIRWOMAN KRUEGER: Thank you. I
5 really shouldn't eat my food at the same
6 time. Sorry.

7 Are there questions for anyone on the
8 panel?

9 I have one for the domestic violence.
10 So the state's rules in your contracts are
11 the bed has to be filled in order for you to
12 be reimbursed. So how would you -- what
13 would you suggest we change so that the state
14 was paying you but paying you for empty beds?
15 That's a challenge for us.

16 MS. GERHARDT: Well, it shouldn't be.
17 You know, programs have operating costs, just
18 like any other not-for-profit.

19 And we're bifurcating the services
20 right now that these programs are providing.
21 Residential services get reimbursed through
22 this per diem, and all the other
23 nonresidential services that programs provide
24 are -- you know, with contracts with the

1 county DSSs.

2 We'd like to see these services
3 merged -- New York State is the only state
4 that does it this way -- and that we provide
5 funding to programs for the services in
6 totality that they provide. So removing it
7 from a per diem entirely.

8 CHAIRWOMAN KRUEGER: Thank you.

9 I see Senator John Liu with his hand
10 up. I did see Senator John -- yes, there you
11 are.

12 SENATOR LIU: Thank you, Madam Chair.
13 I know they don't want me to show my -- oh,
14 there we go. All right, thank you very much.

15 I want to thank this panel for their
16 testimony. I just have a quick question for
17 Mr. Silverman.

18 You spoke of supporting the
19 reorganization of our state's judiciary. And
20 are you in support of the proposals that the
21 Chief Justice has already made? Is that the
22 specific proposal and reorganization that you
23 support?

24 MR. SILVERMAN: Yes, Senator, that's

1 exactly the proposal that we support.

2 SENATOR LIU: Okay. That's very
3 helpful. Thank you very much.

4 Thank you, Madam Chair.

5 CHAIRWOMAN KRUEGER: Thank you.

6 And the chair of our Judiciary
7 Committee in the Assembly, Chuck Lavine.

8 ASSEMBLYMAN LAVINE: Thank you,
9 Madam Chair.

10 This will be the best political speech
11 of all time. Sincere thanks to each of you
12 for what you do. Thank you very much.

13 CHAIRWOMAN KRUEGER: Thank you.

14 Indeed, thank you all very much for
15 what you do.

16 All right, our next panel, we have the
17 PBA of New York State, Manuel Vilar; the
18 New York State Police Investigators
19 Association, Timothy Dymond; the
20 Police Conference of New York, Richard Wells;
21 the New York State Association of PBAs,
22 Michael O'Meara; and the New York State
23 Troopers PBA, Thomas Mungeer.

24 And I will ask Manuel Vilar to start

1 us off. Do we have you?

2 VICE PRESIDENT VILAR: There we go, I
3 think we're unmuted.

4 Hello, Chairwomen Krueger and
5 Weinstein and other members of the
6 Public Protection Committee. Thank you for
7 your continued support and interest in the
8 men and women of the Police Benevolent
9 Association of New York State. My name is
10 Manuel Vilar. I'm the founding president and
11 current vice president. I'm also a
12 37-year-veteran sergeant of the New York
13 State Park Police.

14 I'm here today to advocate for the
15 merger of the Park Police into the New York
16 State Police, Senate Bill 4647. There will
17 be a same-as in the Assembly on deck soon.
18 The Park Police is a division of OPRHP and is
19 currently under command and control of the
20 Division of State Police.

21 New York state parks, by their very
22 nature, are geographically challenging,
23 beautiful, and yet dangerous places. To
24 perform these duties, New York State Park

1 Police officers receive the same training as
2 State Troopers, plus specialized training to
3 be prepared to assist patrons when crimes,
4 accidents and other life-threatening
5 incidents occur.

6 State Park Police, with their
7 specialized training in snowmobiling,
8 high-angle rope and swiftwater rescue, to
9 name a few, are a critical part of New York
10 State's response to natural disasters,
11 weather emergencies and other catastrophic
12 events, including the current civil unrest in
13 multiple cities throughout New York State.

14 During the current COVID-19 crisis,
15 State Park Police have been at the forefront
16 of protecting testing and vaccine sites, some
17 located at various state parks, as well as
18 non-state-park locations. Several State Park
19 Police officers, including myself, have all
20 contracted COVID-19.

21 The lack of State Park Police levels
22 is quickly reaching crisis proportion. In
23 the past 15 months we've seen a 15 percent
24 reduction in staff. In fact, since 2000,

1 State Park Police have graduated over 500
2 officers, only to have 53 percent -- 255
3 officers -- leave for other police
4 departments with better pay, 20-year pension,
5 and disability protections. The cost to
6 New York State to train all those police
7 officers over 16 Park Police academies, has
8 been roughly \$80 million.

9 The second issue adversely impacting
10 our members -- and not only the Park Police,
11 but all four police forces in the PBA -- is
12 the slow-walking by the Governor's office of
13 the 2015-2018 binding arbitration award.
14 This has left PBA members stuck at salary
15 levels from 2014. Our members have not had a
16 raise since 2014, despite having a binding
17 arbitration award in place.

18 Because of State Parks' inability to
19 operate and maintain a viable, functioning
20 State Park Police force, for the safety of
21 the public and our members we are requesting
22 that the State Legislature pass the New York
23 State Trooper-Park Police Merger Bill that we
24 have submitted and include the Governor's

1 program bill enacting the terms of the
2 2015-2018 binding arbitration award. We
3 believe this would go a long way to making
4 state parks much safer as well as spending
5 tax dollars wisely.

6 Again, I'd like to thank you for this
7 opportunity to speak to you, and I'm happy to
8 answer any questions anyone may have.

9 CHAIRWOMAN KRUEGER: Thank you very
10 much. Just a smidge past the three minutes.

11 Timothy Dymond, New York State Police
12 Investigators Association.

13 PRESIDENT DYMOND: Yes, ma'am. Good
14 afternoon, Senate and Assembly members. My
15 name is Tim Dymond, and I am a senior
16 investigator with the New York State Police.

17 And I am the elected president of
18 NYSPIA, the New York State Police
19 Investigators Association. I represent
20 approximately 1100 investigators and senior
21 investigators across the State of New York,
22 and we cover all the heavies. We handle the
23 felonies, the murders, the rapes, the
24 robberies, the human trafficking, the gang

1 violence. That's the stuff that my
2 membership does.

3 NYSPIA's members are hand-selected
4 from the most highly trained uniformed
5 Troopers and represent some of the best that
6 our agency has to offer. My membership,
7 along with every police agency in the
8 country, is dealing with historic policy
9 change, a job expectation that seemingly
10 changes by the day. Our members have
11 displayed a strength, a resilience and a
12 compassion that I'm incredibly proud of
13 through what has been one of the most
14 difficult times law enforcement officers have
15 dealt with nationwide.

16 We as an agency have proven to be
17 highly adaptable to the rush of current law
18 enforcement reforms, and we continue to take
19 a leadership role in the law enforcement
20 community, maintaining the highest quality
21 services to the citizens of New York.

22 Our highest priority this year is the
23 same as most years: It's the replacement of
24 retired members. Our members are leaving at

1 a breakneck pace. We have approximately lost
2 20 percent of our senior investigators
3 statewide. Those investigators supervise all
4 these investigative units around the state,
5 and losing them has caused our investigator
6 ranks to now be depleted.

7 We are now at what I would say is a
8 critical point where we need a class of
9 Troopers. We can't have investigators if we
10 don't hire Troopers.

11 Second, the automobile fleet. I'm
12 happy to report that our fleet has improved,
13 and a lot of that is a testament to the work
14 the Legislature has done on the fleet. It is
15 more diverse, it is younger. The diversity
16 of our vehicles in the field helps our
17 undercover units to remain concealed, which,
18 as someone that was a senior investigator in
19 the violent gang unit, is very important to
20 me.

21 I have an issue in here for a UC gun
22 program. We're looking for support from the
23 Legislature to provide our undercover
24 members -- and there's about 300 of them

1 scattered throughout New York State, in all
2 cities, towns and villages -- we would like
3 to get them a weapon that is easily concealed
4 so they can remain safe in the field. If
5 they are made to be police, it puts them at
6 risk, and we want to keep them safe.

7 The proposed legalization of adult-use
8 cannabis and online gambling will generate
9 revenue. It will also generate some
10 black-market crime that we are going to have
11 to act on.

12 That's a sprint through. Thank you
13 for listening to these important issues.

14 Law enforcement reform is a leading
15 discussion topic right now in the country.
16 As reforms are implemented, there's no
17 question New York State Police will be looked
18 upon to lead the charge professionally and
19 respectfully. If the police, Legislature and
20 members of these communities can bridge the
21 gap and be the glue, we can cause positive
22 change while keeping our communities safe.

23 Thank you.

24 CHAIRWOMAN KRUEGER: Thank you.

1 That's certainly what we all want.

2 Richard Wells, Police Conference of
3 New York.

4 PRESIDENT WELLS: Good evening,
5 everyone. Richard Wells, president of the
6 Police Conference of New York, which is a
7 coalition of over 200 local PBAs throughout
8 the State of New York.

9 My comments this evening will be kind
10 of an expansion on Commissioner Green's
11 testimony earlier as regards training of
12 police officers. We're asking that the
13 Legislature consider establishing a statewide
14 training curriculum for police officers,
15 especially as regards to in-service training.

16 Currently there are certain standards
17 that are in existence by the Bureau of
18 Municipal Police and the Municipal Police
19 Training Council, minimum standards that must
20 be met, but that's as far as it goes.

21 In-service training is conducted
22 sporadically throughout this state and very
23 infrequently. Some jurisdictions don't do it
24 at all. There are police officers that,

1 after they leave the academy, go through
2 their entire career never receiving any
3 further training. This is not good,
4 especially in light of the current
5 circumstances we find the police profession
6 in.

7 Academy lengths differ throughout the
8 state. In-service training is not done
9 frequently enough. Due to changes enacted by
10 the Legislature on use of force, retraining
11 is necessary. Police officers encounter
12 violent people every day. It is obvious that
13 physical force, use of pepper spray, other
14 chemical weapons or Tasers are now considered
15 suspect and frowned upon.

16 Police officers are confused and
17 bewildered on how to do their jobs. Cops are
18 expected to keep the peace, enforce the law
19 and make arrests without using any
20 substantial force, deal with violent,
21 emotionally disturbed persons, control riots.
22 This necessitates innovative and increased
23 training.

24 Increasing the length of the academy

1 should be considered. In-service training
2 must be frequent and substantial so police
3 officers are current on all law changes.

4 In the past, cost has always been
5 cited as a reason not to do in-service
6 training. The Legislature should give
7 consideration to sufficient resources --
8 applying sufficient resources to local police
9 departments so that they can send all of
10 their officers to training on a regular
11 basis. Consideration should also be given to
12 imposing sanctions on municipalities that
13 fail to provide such training.

14 The cop on the street is held
15 responsible for every action that he or she
16 takes while they're working. They, however,
17 do not and cannot schedule their own
18 training. Police unions have no say in
19 police training. Police chiefs have budget
20 and personnel constraints.

21 Adequate and meaningful training will
22 be difficult to implement. It will be
23 expensive and time-consuming. But if the
24 goal is to have police officers adapt to the

1 changing standards in the use of force and
2 laws of arrest, then it is incumbent upon the
3 Legislature to provide the funding and means
4 to accomplish it. It cannot be an unfunded
5 mandate. If it is, it will never happen.

6 The bill submitted yesterday by
7 Senator Savino might be a good place to start
8 this process.

9 Thank you.

10 CHAIRWOMAN KRUEGER: Thank you very
11 much.

12 Michael O'Meara, New York State
13 Association of PBAs.

14 PRESIDENT O'MEARA: Good evening.

15 CHAIRWOMAN KRUEGER: Good evening.

16 PRESIDENT O'MEARA: Thank you for
17 letting me address you.

18 I wanted to start to talk about
19 training as well. I'm Michael O'Meara. I am
20 the president of the New York State
21 Association of PBAs. It's an umbrella group
22 that represents about 45,000 police officers
23 in New York State. It's the largest umbrella
24 group of police officers in the state.

1 Senator Savino did submit Senate Bill
2 4706, I believe it was yesterday. And I
3 believe that's a great place to start,
4 because we have not had many conversations
5 with legislators about police reform.

6 4706 proves that police reform does
7 not have to equate to police punishment.
8 Police reform can be a hand-in-hand process
9 that we can help accomplish in this state,
10 and we embrace that.

11 To expand a little bit on what Richie
12 said and what the commissioner of DCJS said
13 earlier, think about this. We've expanded
14 our program to give new police officers
15 700 hours of training. That's the basic
16 minimum course. It sounds like a lot, right?
17 But if a young man of 21 enters the
18 police academy -- or a young woman -- on
19 January 1st, by the end of April they're a
20 police officer walking around with a gun,
21 with a mace and with a Taser.

22 And after they leave that police
23 academy, they don't go back for any training
24 whatsoever. There's no training. We don't

1 go for training. You can go -- I'm in my
2 31st year. I've never put my hands on
3 anybody in a training aspect except when I'm
4 in the police academy. When you explain that
5 to people, they're horrified. They would
6 think that in a profession where we are
7 engaging the public at such a high level,
8 that we would have to be trained.

9 Senator Bailey has a great bill in.
10 And after our history over the last year or
11 two, you'd think that's funny that I'm saying
12 that. It's a great bill, mandates that
13 police departments have to train police
14 officers in firing their weapon at least once
15 a year. Can you imagine that we have to
16 legislate that? Because there is -- there is
17 no policy, there's no procedure. So once we
18 leave the police academy, we're out there.
19 We're out there with the public. We don't go
20 back. We don't get retrained.

21 We don't hire people -- police in
22 police unions, you know, we don't hire
23 people, we don't train people, we don't
24 deploy people, we don't equip people, we

1 don't investigate people. We just represent
2 police officers because we have a duty of
3 fair representation. And somehow that makes
4 us evil in some aspects.

5 But all I'm telling -- and thank you
6 for letting me speak -- is that we need to
7 have some budgetary money for in-service
8 training for police officers that's mandated,
9 mandated. That police officers should be
10 trained at a high level, not just four months
11 when they're in their 20s and then just go
12 out and do the job.

13 So I appreciate Senator Savino's bill,
14 and I appreciate you letting me speak. Thank
15 you. And have a good night; I hope it ends
16 quickly for you.

17 CHAIRWOMAN KRUEGER: Thank you.

18 And the last panelist, Thomas Mungeer,
19 New York State Troopers PBA.

20 PRESIDENT MUNGEER: Thank you.

21 Madam Chair, members of the committee, I
22 appreciate this opportunity.

23 This is actually my 12th time
24 addressing this committee in my time as

1 president of the Troopers PBA. I represent
2 6,000 active and retired Troopers, the
3 uniformed Troopers that you see on the side
4 of the road.

5 This is almost like the movie
6 Groundhog Day. When I first started doing
7 this job back in 2009, in 2010 I addressed
8 this committee that we hadn't had an academy
9 class. And we went three and a half years
10 without an academy class, and our levels of
11 manpower got dangerously low. And we had to
12 start cutting services for the public.

13 Well, we -- our last class, the last
14 Trooper we hired was in 2019. Last year we
15 did not have a class. And this year there is
16 no money budgeted for a class. So I'm
17 offering a cautionary tale that I'd hate to
18 see us go down that road where we were a
19 little over a decade ago, with our manpower
20 levels dwindling to dangerous levels.

21 And again, this is not the time to cut
22 police services in our statewide capacity. I
23 know that my superintendent had testified
24 earlier today the different duties that we

1 have, and more duties are going to be heaped
2 upon us with the legalization of marijuana
3 and so forth.

4 Right now I could use 300 Troopers. I
5 need a class of at least 250 to get them up
6 and going. And it takes 18 months to train a
7 Trooper and get them onto the roads so they
8 can ride by themselves. So we have to
9 actually do this somewhat quickly. And
10 again, I'd hate to be in this situation this
11 time next year testifying before you when my
12 manpower levels have dwindled even further.

13 I'll echo my counterparts with the
14 training. In the New York State Police we do
15 have in-service. We have a vigorous
16 in-service training program. And I believe
17 it is good to use that as a model to bring
18 all other police officers in the state up to
19 that level with yearly training, and to also
20 enact the different policies, the different
21 law changes, the different training
22 techniques that are out there. All police
23 officers should have a yearly refresher in
24 order to do this.

1 understand better just how difficult the
2 police reform process will be in New York
3 State.

4 When the Governor last year tasked
5 each and every locality and each department
6 with coming up with ways to make our police
7 better and to reform their practices, one of
8 the things that became glaringly evident is
9 that we did not have a standard across the
10 state. As Tommy Mungeer spoke, the State
11 Police have the highest standards and they
12 train regularly, but it became very clear
13 very quickly that that was a rare instance
14 across the state, including the largest
15 police department in the state, which is the
16 NYPD. So my legislation that we introduced
17 yesterday answers that.

18 And we also heard earlier tonight the
19 commissioner of DCJS talk about how they've
20 proposed a new training curriculum of
21 700 extra hours, but it's not mandated, it's
22 not required. And as we heard from Richie
23 Wells, if we don't mandate it and require it
24 and we don't provide funding, it will not

1 happen.

2 We all have an interest in better
3 police and better police practices. Every
4 one of us wants that. And I think if we
5 follow the bill that I introduced -- and we
6 can even improve upon it, working together --
7 we'll wind up with exactly what we want.

8 Everyone wants better police.

9 So I want to thank everyone for
10 helping me draft the bill. And I want to
11 thank you guys for the work that you're doing
12 keeping us safe, and keep yourselves safe.

13 Thank you.

14 CHAIRWOMAN KRUEGER: Thank you.

15 And we have been rejoined by Helene
16 Weinstein, who didn't --

17 CHAIRWOMAN WEINSTEIN: Thank you. So
18 we have --

19 CHAIRWOMAN KRUEGER: -- she had
20 another big assignment for the Assembly.

21 CHAIRWOMAN WEINSTEIN: So we have a
22 number of Assemblymembers with questions or
23 comments. So we go first to Assemblyman
24 Lavine, then Lawler, then Ra, then Palmesano,

1 in that order.

2 ASSEMBLYMAN LAVINE: Thank you,
3 Chair Weinstein.

4 And I want to thank each of you, and
5 please thank your membership for protecting
6 us all.

7 I have a quick question, a follow-up
8 question for President Dymond. So we want
9 more compact firearms for undercover
10 officers. Do you have a sense of how many of
11 these firearms are going to be needed, what
12 kind, and how much would that cost?

13 PRESIDENT DYMOND: Yes, sir, and I
14 appreciate the question and the interest in
15 that topic.

16 So we're looking for a subcompact
17 weapon for approximately 300 members. We're
18 looking at an estimated cost of around
19 \$150,000. Which, you know, it is a -- it's a
20 big number, but if it keeps our undercover
21 members safe and concealed, I think it's a
22 very worthy way to spend those funds.

23 ASSEMBLYMAN LAVINE: Do you have a
24 particular make or model in mind?

1 PRESIDENT DYMOND: We are taking a
2 look at a bunch of different makes and
3 models. The biggest concern for me is that
4 it's something that is subcompact, easily
5 concealed in the waistband or pocket, and the
6 most important thing is it doesn't look like
7 the same weapon that our uniformed
8 State Troopers wear and our suit-and-tie
9 investigators wear.

10 ASSEMBLYMAN LAVINE: Thank you very
11 much. Thank you all.

12 CHAIRWOMAN WEINSTEIN: Senate, I
13 believe you have a Senator?

14 CHAIRWOMAN KRUEGER: Senator John Liu,
15 thank you.

16 SENATOR LIU: Hello?

17 (Zoom interruption.)

18 CHAIRWOMAN KRUEGER: Somebody's going
19 to have to put their mute on --

20 SENATOR LIU: I don't know if you can
21 hear me, Madam Chair, but -- Madam Chair?

22 CHAIRWOMAN KRUEGER: Yes.

23 SENATOR LIU: Oh, okay. Thank you
24 very much.

1 I appreciate this panel's input. I do
2 appreciate the comments about the police
3 reform that has taken place, not only in
4 New York but across the country, and attempts
5 at more police reform. I think the comments
6 have been constructive. I think Senator
7 Savino already spoke with many of us rather
8 eloquently, and I understand that you all
9 pretty much universally support her bill, so
10 that's helpful. And I also appreciate the
11 support mentioned for Senator Bailey.

12 I do want to say something, though.
13 One of the comments was that, you know, we
14 need to train our police -- which is
15 definitely true -- train them and not always
16 look to punish.

17 I would only add that it's -- that I
18 don't think there's a universal intent to
19 punish officers, but asking for
20 accountability is not synonymous with
21 punishing. So, you know, I would ask that
22 you are tremendous leaders in law enforcement
23 here in New York State, and you have a voice
24 far beyond as well. So accountability is not

1 the same as punishment.

2 And with that, I really do want to
3 thank these gentlemen and their members for
4 the work that they do. The work is vital.
5 At the same time, in government we need to
6 fine-tune what responsibilities in government
7 should be carried out by which agencies.

8 Thank you, Madam Chair.

9 If any of the gentlemen would like to
10 respond, I'm all ears. But that's all I have
11 to say, Madam Chair.

12 CHAIRWOMAN KRUEGER: Thank you,
13 Senator Liu.

14 If any of them would like to respond,
15 they have -- oh, nope, they lost their one
16 minute on the clock. They could have had one
17 minute.

18 SENATOR LIU: My office is always open
19 to you.

20 CHAIRWOMAN KRUEGER: Okay. Thank you.
21 Assembly.

22 CHAIRWOMAN WEINSTEIN: Thank you.

23 We go to Assemblyman Lawler, please.

24 ASSEMBLYMAN LAWLER: Thank you, Madam

1 Chairwoman.

2 And thank you to everybody. I'm
3 actually proud to represent one of our
4 esteemed panelists here in the State
5 Assembly.

6 I think one of the things that's
7 critically important as we move forward with
8 any potential reforms is obviously that law
9 enforcement is included in the discussion. I
10 think what is evidently clear over the last
11 few years is that law enforcement really
12 hasn't been part of the discussion on some of
13 these criminal justice reforms that came down
14 the pike.

15 One thing I just want to point out to
16 all of you, which you may or may not be aware
17 of, is that last year obviously the
18 Legislature repealed 50-a of the Civil Rights
19 Law, which impacted obviously the personnel
20 files for many of your members. One thing
21 you should be aware of is that under the
22 rules of the New York State Assembly, Rule 8,
23 this body exempts itself from being subject
24 to FOIL.

1 So just so you're aware of kind of the
2 hypocrisy of some of the bills that get
3 passed. So when we talk about accountability
4 and not punishment, that actually does seem
5 like punishment and not really accountability
6 when we're not holding ourselves to the same
7 standards that we hold your members to.

8 With respect to marijuana
9 legalization, I have a quick question for
10 you. There's only one state -- of the states
11 that have in fact legalized marijuana,
12 there's only one state that has capped the
13 potency of marijuana. Do any of you have an
14 opinion on whether or not you think we -- if
15 we do end up legalizing recreational use of
16 marijuana, that we should cap the potency of
17 it?

18 PRESIDENT MUNGEER: Well, I'll just
19 say that you should -- you know, whatever
20 laws that this esteemed body passes, we're
21 tasked to enforce. So if you do decide to
22 cap it, we'll act accordingly in our
23 enforcement acts out on the road.

24 ASSEMBLYMAN LAWLER: Okay.

1 With respect to in-service training, I
2 agree it's critically important. I know
3 where I live down in Rockland County, we have
4 great in-service training for all of our
5 officers who work in our various police
6 departments within our municipalities.

7 So I absolutely agree with your
8 comments that, you know, in-service training
9 is critical, and providing the funding for
10 that, especially as we make some of these
11 criminal justice reforms, to make sure that
12 all of your members have the necessary and
13 adequate training that they need to do their
14 jobs, you know, responsibly and so that, you
15 know, they can enforce the law and uphold
16 standards.

17 The academy class, I think that's a
18 critically important point. I know last year
19 the Rockland County police exam was canceled.
20 So I certainly agree with your assessment for
21 the State Police and all of our police
22 departments that we need to in fact get these
23 police exams and classes on the books and get
24 the funding for it, because I think one thing

1 we've seen is a lot of people have retired as
2 a result of some of these reforms, so we
3 definitely desperately need to fill some of
4 these positions. So I appreciate your
5 comments on that.

6 CHAIRWOMAN KRUEGER: Thank you.

7 The last Assembly -- no, I see two
8 Assemblymembers more.

9 CHAIRWOMAN WEINSTEIN: Yes. So we go
10 to Assemblyman Ra and then Assemblyman
11 Palmesano.

12 ASSEMBLYMAN RA: Thank you, Chairs.

13 Panelists, thank you all. Thank you
14 to all of your members for their service
15 during -- you know, the last year has
16 obviously been, between COVID and a lot of
17 the unrest and things we saw last year -- you
18 know, and they kept being out there each and
19 every day to keep the public safe. So thank
20 you to each and every one of your members.

21 I was just wondering if -- you know,
22 in particular maybe for Mr. O'Meara and --
23 regarding this proposal in the budget that
24 deals with the Governor's executive order

1 that requires, you know, changes at the local
2 level with the potential of funding being
3 withheld and the potential of a monitor being
4 put in to oversee a local department.

5 How have -- you know, from the
6 departments that are members of your
7 organization, I'm sure there are some that
8 probably have already put in plans and others
9 that are going through that process. I'm
10 just wondering if you have any perspective on
11 how that is going.

12 PRESIDENT O'MEARA: Yeah, we've had a
13 lot of perspective on it from our member
14 associations. A lot of the police unions
15 actually were not even represented on a lot
16 of those panels, so ...

17 But my take on that is that it's going
18 to be these numerous, numerous reports from
19 all over every corner of New York State that
20 are all going to be different. But last year
21 we passed a bill that the Attorney General of
22 New York State is the single person that
23 looks into police misconduct.

24 So you have 40 to 50, I believe,

1 police academies in New York State.
2 Everybody learns something different. We
3 keep on changing laws. And like we said,
4 we're not trained up to the laws, we're just
5 told about the laws. And now we're going to
6 have these commissions from all over the
7 state coming up with ideas and plans on how
8 the profession of policing is going to
9 change. And, you know, that's okay. I mean,
10 we have to -- we have to, you know, learn to
11 adapt and move on. But we don't get
12 training.

13 You know, they did the compression
14 bill in New York City and the plan is to show
15 a video on how police officers who learned to
16 take people down and, you know, go on their
17 back or sit on them -- they learn this in the
18 academy -- we're going to show them a
19 videotape now to teach them to not do it.

20 So, you know, if that's the case --
21 you know, I watched a lot of karate movies
22 when I was a kid. I should be a black belt,
23 but I'm not.

24 You know, you've got to -- you have to

1 go through training. You have to go through
2 training. You can't just -- you know, you
3 can't be handed a piece of paper or shown a
4 video. You know, this is -- as you all know,
5 this is serious business. And we all know
6 that too. You know, we represent police.

7 So we have to treat it seriously, we
8 have to allocate the funds, and we have to
9 train our police officers to match what these
10 commissions are going to come up with.

11 ASSEMBLYMAN RA: Thank you.

12 CHAIRWOMAN WEINSTEIN: Assemblyman
13 Palmesano.

14 ASSEMBLYMAN PALMESANO: Yes --

15 CHAIRWOMAN WEINSTEIN: Phil, you're
16 muted?

17 CHAIRWOMAN KRUEGER: Muted.

18 ASSEMBLYMAN PALMESANO: Oh. Sorry
19 about that.

20 Good evening, gentlemen. I don't have
21 any questions for you tonight, just a few
22 comments, if I may.

23 First I just wanted to say -- take
24 this opportunity to say thank you to you and

1 your members for your selfless dedication,
2 commitment, service and sacrifice to protect
3 us and keep us safe.

4 You know, each and every day you and
5 your members leave your house and say goodbye
6 to your spouse and/or kids, not knowing
7 whether you're going to return home safely.
8 Although unfortunately some of the policies
9 coming out of Albany the past couple of years
10 certainly doesn't reflect this appreciation,
11 I just want you to know, on behalf of myself,
12 my family, my community and certainly a
13 number of my colleagues in the Legislature,
14 how very truly grateful we all are to you for
15 all that you do, have done, and will continue
16 to do for all of us.

17 So on that note, I just want to say
18 thank you, God bless you, and please be safe.

19 Thank you.

20 CHAIRWOMAN WEINSTEIN: Thank you.

21 We go to Assemblyman Chris Burdick.

22 ASSEMBLYMAN BURDICK: Thank you,

23 Madam Chair.

24 And I want to thank you all for your

1 testimony. And I also want to echo the
2 thanks that have been expressed for your
3 service to the state and to keeping us safe.

4 There has been a good deal of concern
5 and discussion regarding the potential
6 legalization of recreational marijuana. And
7 this afternoon there was a very enlightening
8 discussion with Acting Superintendent
9 Kevin Bruen of the New York State Division of
10 State Police, and there was a fair deal of
11 discussion regarding how will we be coping
12 with driving under the influence of
13 marijuana.

14 And I think that for some, that's
15 regarded as something new, something untried.
16 But one of the things that became clear, that
17 the comment that was "This is nothing new.
18 We're already enforcing. It doesn't have to
19 be legalized in order for us to enforce
20 this." They're already looking for those who
21 are driving under the influence, testing for
22 THC and so forth.

23 And I'm wondering if you could comment
24 on that. I don't know which panelist would

1 feel best in addressing it, but I'd like to
2 get your take on it and your feeling about
3 the preparedness to go forward should
4 recreational marijuana be legalized.

5 PRESIDENT MUNGEER: I'll take that,
6 Tom Mungeer from the Troopers.

7 I am a drug recognition expert, and --
8 but that beside, we do that, police officers,
9 every day they go out there. The charge is
10 DWAII, drugs. And it's based on a police
11 officer's observations on how somebody
12 drives. You know, whether somebody's under
13 the influence of alcohol or some other
14 substance, your initial stop is based on the
15 observation of how somebody operates that
16 vehicle. And then our investigation then
17 continues through there.

18 So just because marijuana is going to
19 be legalized, it doesn't change the way we
20 investigate and do business. We're out there
21 anyway.

22 Will more people be under the
23 influence? I guess that remains to be seen.
24 I do believe we need more funding for drug

1 recognition experts throughout the state.

2 And I think it also comes back -- and
3 this segues back to the training, that police
4 officers should --

5 ASSEMBLYMAN BURDICK: I just have a
6 couple of seconds left. So you feel fairly
7 confident that you'll be prepared for this
8 should this occur?

9 PRESIDENT MUNGEER: Absolutely.

10 ASSEMBLYMAN BURDICK: Thank you so
11 much. I appreciate it.

12 CHAIRWOMAN WEINSTEIN: Thank you to
13 the panel for all of the work your members
14 do. I've worked with many of you over the
15 years.

16 And I'll go back to the Senate; I
17 believe we have no more members who want to
18 speak.

19 (Pause.)

20 CHAIRWOMAN KRUEGER: I was on mute, I
21 apologize.

22 I just want to let everyone know that
23 we are very open to working with all of you
24 on additional changes we can and should be

1 making in New York, and I really appreciated
2 your honesty about the fact that this has
3 been tough times for you, and this has been
4 tough times for a lot of communities as we
5 evaluate the need to learn to talk to each
6 other and to get things right.

7 And it sounds like you all think we
8 need improved training. I come from New York
9 City, just for the record; they're not doing
10 anything once you graduate the first time.
11 Our NYPD training academy, I describe it as a
12 combination of a trip to Star Wars and
13 Harvard at the same time. So they're not
14 letting anybody go back and continue their
15 training once they've graduated. That's
16 extremely disturbing. Because I think we
17 could probably provide the facilities for the
18 entire state at that campus.

19 So again, thank you very much for your
20 work and for your being with us tonight.

21 And our next panel, for those who are
22 keeping track, Panel D: The District
23 Attorneys Association of the State of
24 New York, Anthony Jordan, from Washington

1 County; representing the Defenders
2 Association, Susan Bryant; the Chief
3 Defenders Association, Laurette Mulry; a
4 group called Students Demand Action,
5 Audrey Sample, student leader; and the
6 New York State Dispute Resolution
7 Association, Regina Ritcey.

8 I'll start with the District Attorneys
9 Association, if you're here.

10 WASHINGTON COUNTY DA JORDAN: I am.

11 Chairwomen Weinstein and Krueger,
12 thank you for letting us speak with you this
13 evening on behalf of the DAs Association. On
14 behalf of our president, Sandra Doorley, she
15 sends her regrets, but she was not able to
16 get out of a prior commitment.

17 When we've been looking at this year's
18 Executive Budget, but certainly in following
19 the discussions in the Legislature, there are
20 some areas in the criminal justice system
21 that certainly continue to remain in very
22 sharp focus. A few of the areas that I think
23 matter certainly to our organization, but I
24 suspect to many on this current panel,

1 include pre-arrest and judicial diversion.
2 These provide great opportunities, both for
3 the accused -- but my experience is they do a
4 great amount of good toward reducing
5 recidivism.

6 Certainly as we look at the
7 legislation to add greater access to mental
8 health and Veterans Court, that is a great
9 and important initiative.

10 I think what we find, though, as we
11 look at these, the implementation of these
12 initiatives, there's a significant resource
13 gap in the state. And I think as we look at
14 bringing about these programs, I would ask
15 that you consider those issues so that the
16 accused can have access to these diversion
17 programs and then DA's offices can certainly
18 make them available.

19 Certainly discovery and the changes
20 that came about as part of the 2019-2020
21 budget brought about a change to the criminal
22 justice system unlike any, I suspect, in the
23 last generation. Our offices spent months
24 working together, collaboratively, to -- I

1 won't use the full three minutes.

2 CHAIRWOMAN KRUEGER: Yeah, I'm not
3 sure what happened with the clock. It was
4 our fault, so just --

5 WASHINGTON COUNTY DA JORDAN: No, no.

6 But, you know, we spent a great deal
7 of time trying to come up with how to comply
8 with the spirit of the law. And certainly
9 none of this would have been possible without
10 that collaborative effort amongst the offices
11 and the contribution of NYPTI, which is the
12 New York Prosecutor Training Institute.

13 Their programs, their case management
14 system, but most importantly the digital
15 evidence management system that they helped
16 develop has made our ability to turn over
17 voluminous, you know, amounts of discovery in
18 a very rapid period of time possible. So we
19 would ask that you certainly continue to look
20 to fund their efforts.

21 But also, much of the burden of
22 discovery fell squarely on the backs of the
23 localities on very tight budgets. And there
24 was not a commensurate amount of support for

1 the localities. And we would just ask, so
2 that we can all continue to comply with not
3 just the letter of the law, but truly the
4 spirit of the law, what is it for and what is
5 the goal, to look to provide that type of
6 funding.

7 I know there's been a lot of talk
8 about body-worn cameras for the State Police.
9 And what a significant step forward in
10 continued transparency and accountability.
11 But body-worn cameras are great, but they are
12 very expensive -- not only the expenses that
13 we heard Acting Commissioner Bruen mention
14 for State Police to purchase, but the cost to
15 the localities to review, to store and to
16 deliver the body-worn cameras. In much of
17 the state, public defender's offices are also
18 part of county government, and so there's
19 going to be duplicative storage of all of
20 that data.

21 So we would just ask not only do you
22 look for funding toward the State Police
23 side, but also for our localities again in
24 that area.

1 And I'll wrap up sort of quickly here.
2 A lot of talk about decriminalizing
3 marijuana, a lot of focus on driving. But
4 there are other public safety and public
5 health issues that, as you explore this, we
6 would just encourage the continued discussion
7 with all of the experts, as I know you will,
8 but also include our offices, because we are
9 on the front line of trying to move these
10 cases through the system.

11 And then lastly, you know, DAASNY,
12 we're here, we're ready, we want to work with
13 you to try to bring about these important
14 initiatives. And certainly would look to
15 help explore the resource gaps that we see
16 that exist throughout the state.

17 So thank you very much.

18 CHAIRWOMAN KRUEGER: Thank you.

19 Next is New York State Defenders
20 Association.

21 MS. BRYANT: Hi, good evening, Chairs
22 Krueger and Weinstein and the rest of the
23 members that have stayed on. I appreciate
24 your time and the opportunity to testify.

1 In fact, this is earlier testifying
2 than ever before, so I greatly appreciate
3 that.

4 My name is Susan Bryant. I'm the
5 executive director of the New York State
6 Defenders Association. And I'm proud to talk
7 to you today about the work of the Defenders
8 Association and to ask for your ongoing
9 support.

10 So NYSDA is a nonprofit organization
11 that provides a wide range of services to
12 public defenders around the state who
13 represent individuals in criminal and family
14 court proceedings. So we are really the
15 counterpart to NYPTI, which my previous
16 panelist spoke about. And we've been funded
17 by New York State since the early '80s to do
18 this work as the public defense backup
19 center.

20 And for five years we've also run a
21 Veterans Defense Program, which you heard
22 about yesterday, many of you, from our deputy
23 director, Roy Diehl.

24 So the key issue I wanted to bring up

1 with you is your support and funding for the
2 state defenders association's ongoing work,
3 as well as in the current state fiscal year.
4 So we are asking the Legislature, both the
5 Senate and the Assembly, to add an additional
6 \$1,059,000 to NYSDA's budget in the upcoming
7 state fiscal year because the Executive in
8 the proposed budget, as has happened in the
9 past many years, has proposed half of the
10 money that we need in order to maintain our
11 base operations.

12 So we are also asking for -- to make
13 sure that we receive a reappropriation for
14 the million-fifty-nine-thousand legislative
15 add from last year, which has not been put to
16 contract and we have not been able to seek
17 reimbursement for. I know we're in the same
18 situation as many others, and appreciate your
19 support with regard to that.

20 As you heard from Bill Leahy earlier
21 today, the director of the Indigent Legal
22 Services Office, NYSDA's work is critical to
23 public defense and improving the quality of
24 representation. In the past year we've taken

1 responsibility to educate and train defenders
2 on the existing laws as well as many new laws
3 which we are grateful to the Legislature for
4 passing, including bail, discovery, speedy
5 trial reform, Domestic Violence Survivors'
6 Justice Act, the Driver's License Suspension
7 Reform Act, Raise the Age. All of those
8 things we provide training on.

9 We also run a case management system
10 that's similar to NYPTI's, which is in
11 91 sites in 53 counties, and we're expanding
12 that to help with the discovery process.

13 And also, for Family Court, we support
14 the ILS request for 5 million additional
15 dollars, because families, particularly Black
16 and brown families, are disproportionately
17 involved in our family regulatory system and
18 they really need quality representation, and
19 the state really needs to step up in that
20 regard.

21 We also support the Indigent Parolee
22 Program appropriation of \$600,000 and a
23 reappropriation of that funding.

24 Thank you so much for your time, and I

1 look forward to speaking further on these
2 issues.

3 CHAIRWOMAN KRUEGER: Thank you.

4 Next is Laurette Mulry, Chief
5 Defenders Association of New York.

6 MS. MULRY: Thank you and good
7 evening. As you said, my name is Laurette
8 Mulry. I'm the president of the chief
9 defenders association of New York, which is
10 an association of public defenders and chiefs
11 of Legal Aid Societies and assigned counsel
12 plans across New York State. Collectively we
13 oversee programs that provide the mandated
14 service of indigent criminal and family
15 defense in over 300,000 cases annually.

16 I would like to thank Senator Krueger
17 and Assemblymember Weinstein and this
18 venerable Legislature for the opportunity to
19 present on the limited topic of the Public
20 Protection Article VII bill Part J, which
21 allows for the expansion of electronic court
22 appearances.

23 On behalf of the public defense
24 community, I would like to state

1 unequivocally our unified opposition to
2 virtual appearances at critical stages of
3 court proceedings, most notably at first
4 court appearance or the arraignment stage.

5 When New York paused back in March due
6 to the COVID crisis, our court system never
7 faltered and continued operations in a
8 virtual format. And we understood this and
9 were grateful for it, because it protected
10 public health and safety and continues to do
11 so to this day.

12 However, once the exigency of this
13 pandemic subsides, in-person arraignments
14 must be restored to our hallowed court system
15 to assure due process, to allow public access
16 to the courts, and to prevent further racial
17 and digital divide within our justice system.
18 Virtual arraignments deprive the accused of
19 effective assistance of counsel, which of
20 course is predicated upon building trust with
21 our clients, which is very difficult to do on
22 a computer screen.

23 Furthermore, due process would require
24 that a person being held before a court to

1 answer charges should actually have the right
2 to be present in court, right, for a judge to
3 look them in the eye to be able to assess
4 their credibility, demeanor and humanity.
5 Indeed, New York State has already made a
6 commitment to, and I quote, ensuring that
7 each criminal defendant is represented by
8 counsel in person at his or her arraignment.
9 This is language that comes directly from the
10 Hurrell-Harring settlement agreement to which
11 New York State and five counties are parties.

12 This commitment was further extended
13 to the entire state by virtue of the
14 Executive Law in 2017. Therefore, in
15 New York, client and counsel are legally
16 mandated to appear in person at the
17 arraignment stage.

18 Virtual arraignments produce harsher
19 results for the accused. Studies have shown
20 that bail outcomes of virtual arraignments
21 were over 50 percent higher than when done in
22 person. This may be attributable to the
23 inherent dehumanization of defendants
24 appearing in a virtual setting.

1 Virtual arraignments further broaden
2 the justice gap for those who are poor who
3 lack resources like computers or smartphones
4 or wifi. This digital divide threatens
5 access to justice and may disproportionately
6 affect communities of color, further
7 perpetuating a racial divide in our court
8 system as well.

9 Virtual arraignments are less
10 efficient. The ability to speak to clients
11 is limited, the processing of paperwork is
12 hampered, and definitely technology issues
13 abound. Each case takes much longer, and
14 arraignment calendars often go well into the
15 early morning hours in many places.

16 Furthermore, public access to the
17 court is denied. Family members and friends
18 who ordinarily could vouch for our
19 clients and assure a contact, supervision or
20 place to live in the community are not
21 present.

22 Virtual arraignments have come at a
23 huge cost for our clients in terms of their
24 constitutional rights. The true majesty of

1 our court system, which preserves these
2 rights and should do so equally for all, must
3 return to in-person arraignments in
4 post-pandemic New York, and we respectfully
5 ask for your assistance in this matter going
6 forward.

7 Thank you for the opportunity to
8 speak. Sorry I went over.

9 CHAIRWOMAN KRUEGER: Thank you.

10 Everybody's doing very well at this
11 time frame. It's okay.

12 Next we have Audrey Sample, Students
13 Demand Action.

14 MS. SAMPLE: Hello. Thank you for
15 having me today.

16 My name is Audrey Sample, and I am the
17 founder and group lead for Students Demand
18 Action Rochester. I joined the movement to
19 end gun violence as a teenager, shortly after
20 my beloved, medically fragile sister passed
21 away at home, surrounded by family.

22 In the aftermath of her death from the
23 flu, well-meaning friends told me, "There is
24 no worse way to lose a child." These remarks

1 always struck me as inaccurate, because I
2 know there are families who lose children
3 without a peaceful goodbye.

4 Grief connects you with everyone who
5 has ever lost someone. I know the hollowness
6 of waking up each morning knowing the person
7 you love most in this world is dead -- and
8 yet I cannot imagine how much more
9 complicated my relationship with grief would
10 be if my sister's death could have been
11 prevented by greater access to community
12 resources or sensible legislation.

13 I urge you to include S1049, the
14 Community Violence Intervention and
15 Prevention Act, in the budget. I have a
16 responsibility to help prevent other young
17 people from knowing this hollowness, and you,
18 as a legislature, do too.

19 Despite some of the strongest gun laws
20 in the country -- which have had a
21 significant impact -- New York still
22 struggles with gun violence. In New York, on
23 average, 370 people die by firearm homicide
24 and 1,522 people are wounded by gun assault

1 or shooting by police.

2 We need investment in community-led
3 safety initiatives. If we want to end gun
4 violence, we need access to resources that
5 are not dependent on a survivor's level of
6 comfort with police. Currently, victims who
7 report to the police receive services at
8 higher rates. From 2000 to 2009, 14 percent
9 of victims who reported to the police
10 received services, while only 4 percent of
11 victims who did not report received services.

12 Violence intervention programs
13 successfully reduce violence by implementing
14 alternative public safety measures that are
15 locally driven, informed by data, and often
16 don't require police involvement.

17 The Federal Victims of Crime Act
18 funding has been underutilized in supporting
19 gun violence survivors. S1049 allows
20 New York to address its gun violence epidemic
21 via trauma and community-informed programs.

22 We must act now to prevent gun
23 violence. We owe this to survivors; we owe
24 this to New Yorkers.

1 Thank you, and please let me know if
2 you have any questions.

3 CHAIRWOMAN KRUEGER: Thank you very
4 much. I'm sorry for your family's loss.

5 Regina Ritcey, New York State Dispute
6 Resolution Association.

7 MS. RITCEY: Thank you.

8 Good evening, Madam Chair and
9 honorable members of the committee. Thank
10 you for the opportunity to be with you here
11 this evening.

12 My name is Regina Ritcey. I'm the
13 executive director of the New York State
14 Dispute Resolution Association, and I'm here
15 this evening on behalf of NYSDRA, the New
16 York State Dispute Resolution Association,
17 and the statewide network of Community
18 Dispute Resolution Centers, or CDRCs. CDRCs
19 help people address and resolve conflict in
20 their lives, improving lives and
21 strengthening communities.

22 The CDRCs are actually a network of
23 20 independent nonprofit organizations which
24 provide remediation and related dispute

1 resolution services. The 20 independent CDRC
2 centers serve every one of New York State's
3 62 counties.

4 Funded in part by OCA, the Office of
5 Court Administration, independent funding,
6 contracts and grants, CDRCs match OCA funding
7 nearly dollar for dollar through grants,
8 contracts and other fee-based services.

9 The New York State Dispute Resolution
10 Association is the membership association of
11 the CDRCs and their mediators. We support
12 the work that they do. The centers actually
13 are staffed by a dedicated group of staff
14 members. The work itself, the mediation
15 work, is primarily, though, done by pro bono
16 volunteers, community members who are
17 professionally trained to provide mediation
18 and other services. Nearly all of the work
19 that they do is provided at no charge to the
20 participants.

21 Conflict in our lives is not new, but
22 as New Yorkers struggle to adjust to the
23 disruptions of COVID, conflict has been
24 exacerbated and housing conflicts, family

1 conflicts, conflicts with neighbors and any
2 part of our society have really just been
3 exacerbated. And the need for conflict
4 resolution has just grown.

5 The CDRCs offer an
6 effective alternative to the courts and are
7 actually an important part of the Chief
8 Judge's Excellence Initiative. The CDRCs
9 work in concert with the courts to handle
10 cases that are referred out and also receive
11 self-referrals and referrals from other
12 organizations. They handle housing, family
13 matters, and many other situations where
14 conflict is disruptive and impacts people's
15 lives.

16 The CDRCs have been hard-hit by cuts
17 in 2011, and the funding since that time was
18 never fully restored. I'm here today to ask
19 you to support the funding for the centers.
20 I stand with the civil legal services in
21 asking to have the 10 percent recent cuts
22 restored, and also to help prevent any
23 further cuts.

24 We're also asking for the preservation

1 of the \$10 million in the DCJS Aid to
2 Localities budget.

3 By funding the effective dispute
4 resolution services of the CDRCs, you can
5 have a positive impact on the lives of
6 New Yorkers. Thank you.

7 CHAIRWOMAN KRUEGER: Thank you.

8 Do I see any hands up? I do. I see
9 Jeremy Cooney from the Senate's hand up.

10 Hello, Jeremy.

11 SENATOR COONEY: Hello, Madam Chair.
12 It's good to see you. It's getting darker
13 outside, but we're all still here, and I'm
14 glad we are.

15 I want to direct my question to
16 Ms. Sample from Students Demand Action.
17 Audrey, it's great to see you here, and thank
18 you for hanging around with us tonight. I'm
19 so grateful for the work that you do in
20 Greater Rochester specifically around
21 communities of color. I've seen you out
22 doing that work over the past several years.

23 You know as much as I do that
24 Rochester still struggles with gun violence.

1 We had a quadruple shooting last week in my
2 district on Lyell Avenue. This continues to
3 be an issue for us, and we're very concerned
4 about it. But I want to direct my question
5 really about the healing that you noted
6 before, specifically for survivors of gun
7 violence.

8 Where are we missing the mark as a
9 state? Where could we do better, whether
10 it's a program that is happening in other
11 parts of the country that Students Demand
12 knows -- but where could we be offering more
13 resources to survivors of gun violence who
14 are dealing with the trauma that we're seeing
15 right in our hometown of Rochester?

16 Thank you.

17 MS. SAMPLE: Thank you,
18 Senator Cooney.

19 Well, as I noted before, I feel really
20 passionately that in New York as a whole, but
21 in our cities specifically, where so many
22 Black and brown people do not feel safe with
23 the police -- and, you know, white people as
24 well -- that we need resources that don't

1 rely on them contacting law enforcement if
2 that's something that they don't feel
3 comfortable with.

4 And so one of the most popular
5 violence intervention program models is
6 called Street Outreach, which provides both
7 immediate crisis response services and
8 long-term stabilization support to
9 individuals and communities affected by gun
10 violence. A 2017 evaluation of a Street
11 Outreach model known as Cure Violence
12 implemented in the South Bronx found that its
13 street outreach efforts were associated with
14 a 37 percent decline in gun violence injuries
15 and a 63 percent decline in shooting
16 victimizations, while a similar neighborhood
17 without such a program did not experience the
18 same rates of reduction.

19 So I think that, you know, we really
20 need innovative solutions and we need
21 creativity and people with, you know,
22 compassionate hearts and, again, creative
23 minds to come to the table on this. And I'm
24 happy that you have continued -- that you

1 fought with us from the beginning and then
2 continue to fight with us, and I really hope
3 that the Legislature can include this in the
4 budget.

5 SENATOR COONEY: I thank you. And
6 with compassion and creativity, we can
7 accomplish a lot. And I know that Students
8 Demand Action will do just that.

9 So thank you for all the work that
10 you're doing.

11 Thank you. I yield my time.

12 CHAIRWOMAN KRUEGER: Thank you.
13 Assembly.

14 CHAIRWOMAN WEINSTEIN: We go to
15 Assemblyman Ra.

16 ASSEMBLYMAN RA: Thank you, Chair.

17 Good to see you, Mr. Jordan. I just
18 had a quick question for you.

19 So I had asked DCJS earlier today
20 about the \$40 million that was appropriated
21 last year for the Discovery Compensation
22 Fund, and he did tell me that I guess some --
23 there was some amount, I guess 1.75 million
24 that had been spent on this DEMS system. I

1 was just wondering if you are aware of any
2 funding going out the door, you know,
3 directly to local DA's departments.

4 WASHINGTON COUNTY DA JORDAN: So late
5 yesterday afternoon we actually received an
6 email from DCJS. And what they've done is
7 they've structured the award by -- I think
8 they used some formula of arraignments and
9 maybe county size. But it's not exclusively
10 for discovery, and it's not exclusively for
11 DA offices.

12 So what they've done is it looks like
13 they've bundled together pretrial services
14 so -- to address release under supervision or
15 release with conditions, to fund that, also
16 providing funding for the sheriff's
17 department, local PDs, and then the
18 DA offices.

19 My understanding, although it's very
20 early, but in terms of trying to understand
21 how it's going to get rolled out, it looks
22 like in counties with county executives the
23 notice may have gone to the county executive.
24 So that is -- you know, it could create

1 "where is the money going to go, how is it
2 going to be used."

3 So certainly some is better than none,
4 as we often tell our kids. But I think it's
5 a -- if it's a one-shot, it might -- it helps
6 address some of the costs that our county has
7 incurred. But certainly the amount that we
8 were seeing that we expect if we're able to
9 complete all of the grant application process
10 would be about what probably is necessary
11 each year going forward.

12 So hopefully it's not a one-time deal.
13 And it wasn't just for discovery. And it
14 goes far beyond just DA offices. So it will
15 be interesting to see how all that works out.

16 ASSEMBLYMAN RA: Thank you.

17 WASHINGTON COUNTY DA JORDAN: Good to
18 see you as well, Assemblyman.

19 ASSEMBLYMAN RA: Thank you.

20 CHAIRWOMAN WEINSTEIN: Thank you.

21 Back to the Senate.

22 CHAIRWOMAN KRUEGER: Actually, we
23 thought we had a Senator, but we lost them.
24 So I'll give it right back to the Assembly.

1 CHAIRWOMAN WEINSTEIN: Okay. Then we
2 have Assemblyman Lawler, I believe is the
3 last member we have.

4 ASSEMBLYMAN LAWLER: Thank you,
5 Chairwoman.

6 Tony, it's good to see you. I'm sure
7 you --

8 WASHINGTON COUNTY DA JORDAN: --
9 {inaudible} on this side.

10 ASSEMBLYMAN LAWLER: That's right.
11 I'm sure you miss these budget hearings.

12 So I just wanted to ask quickly -- I
13 know in your comments you had mentioned
14 really about the cost for some of these
15 criminal justice reforms that came down on
16 the district attorneys', you know, offices.

17 So I just want to give you another
18 moment to expand on some of the unfunded
19 mandates as part of these criminal justice
20 reforms and the need for funding in the state
21 budget. So that's one.

22 And then, second, I just wanted to get
23 your comment with respect to the legalization
24 of recreational use of marijuana. Of all the

1 states that have so far legalized marijuana,
2 there's only one state that has capped the
3 potency of marijuana, and that's the State of
4 Vermont.

5 So I was just curious if you had a
6 comment with respect to whether or not, as
7 New York State looks to pass the legalization
8 of marijuana, whether or not you think there
9 should be a cap on the potency of marijuana.

10 WASHINGTON COUNTY DA JORDAN: Sure. I
11 think with funding, I think there -- it's a
12 noble effort and it was an important change
13 in terms of really rearranging completely how
14 discovery happens in criminal cases.

15 But to make sure it actually works and
16 works well, I think the state should look at
17 funding for all affected agencies. So a lot
18 of the funding has focused on the defense
19 side, which is important, but I guess they
20 should also focus on our ability to turn that
21 discovery around and get it reviewed. And
22 it's only -- body-worn cameras is going to
23 have a significant impact on those costs.
24 With --

1 ASSEMBLYMAN LAWLER: Especially on the
2 IT side of it.

3 WASHINGTON COUNTY DA JORDAN: Well, in
4 body time. You have to review the
5 body-camera footage because you have to make
6 sure there's nothing on there that shouldn't
7 be made public. You know, you could have
8 kids in compromising situations, Social
9 Security numbers. You know, it's not even
10 related to the case.

11 So there -- and you can't substitute
12 reviewing body camera footage with a
13 computer. And as I speak, if I were the
14 Public Defenders Association, they're saying
15 the same thing, right, because their people
16 have to review this footage now. So it goes
17 both ways.

18 With marijuana, I would really
19 encourage -- we had a great presentation from
20 folks from Colorado, and they talked about
21 many of their experiences. And I think those
22 can be very instructive. Potency certainly
23 would be a concern as -- just as a person.
24 But it's also the deliverables, how is it

1 going to be deliverable. Is it edibles, is
2 it candies? It's things that we've often
3 struggled with in the cigarette world, right,
4 with not making it attractive to kids.

5 So I think those would be some of the
6 same public health and safety concerns we
7 would have.

8 ASSEMBLYMAN LAWLER: And on those
9 edibles, the potency is about 98 percent. So
10 that's -- that's why I asked specifically
11 about capping the potency.

12 Thank you.

13 CHAIRWOMAN KRUEGER: Anyone else?

14 CHAIRWOMAN WEINSTEIN: No, we have no
15 one else, Senator.

16 CHAIRWOMAN KRUEGER: All right.

17 I just have to say that Assemblymember
18 Lawler and I have to sit down separately and
19 discuss my marijuana bill, because I think
20 he's getting a bunch of the issues slightly
21 off. But we're not going to do that at
22 tonight's panel. But let's make a date to
23 talk about this. Thank you.

24 ASSEMBLYMAN LAWLER: Happily, Liz.

1 Happily.

2 CHAIRWOMAN KRUEGER: Thank you.

3 All right, the next panel, the Osborne
4 Association, Elizabeth Gaynes; the Vera
5 Institute of Justice, Shayna Kessler; the
6 Katal Center for Equity, Health and Justice,
7 Yonah Zeitz; and Moms Demand Action for Gun
8 Sense in America, Barry Graubart.

9 And everybody here? Let's start with
10 the Osborne Association.

11 MS. GAYNES: Hi. Thanks for having
12 me. I'm Liz Gaynes, from Osborne. We are a
13 90-year-old nonprofit that works in
14 30 prisons, Rikers Island jails, New York
15 City, Newburgh and Buffalo.

16 And I want to be in that conversation
17 about cannabis that you guys are going to
18 have. And hold on to your idea and don't
19 compromise. It's not just about where the
20 money goes, it's also making sure that it's
21 not Big Pharma and Big Cannabis that takes
22 over but that our communities get the
23 licenses to produce, process and sell.

24 But that's really not why I came.

1 It's been a brutal year. The
2 nonprofit sector has really stepped up. And
3 I know that it's easy to thank police for
4 their service and sacrifice, but I'd like to
5 also thank the front-line people in public
6 safety who have been doing this work. It's
7 mostly -- it's not been done with state
8 money. The CEO raised money for a private
9 stimulus package for people coming home. We
10 raise thousands of dollars from private
11 donations to give people coming home
12 smartphones and reentry kits so that they
13 could come home in this time of COVID.

14 We've even had to raise private money
15 to do our work with policing. We're working
16 with the Buffalo Police Department and NYPD
17 on training specifically around policies and
18 protocols of what happens when you arrest a
19 parent in front of a child.

20 With all the talk about police
21 training, it's a great idea, but the issue is
22 police-community relations. And the training
23 needs to include, as Buffalo and NYPD have
24 included us, members of the community to be

1 part of that training.

2 Obviously the Rochester Police need
3 some work responding to children and people
4 with mental illness. But it's broader than
5 that. And so your investment in police
6 training, including the community, will
7 contribute to raise equity as well.

8 Look, the DOCCS population has gone
9 down dramatically, but one group that's
10 persistently and sadly stuck because of the
11 persistent and perpetual punishment of people
12 sentenced for violent offenses decades ago.
13 Parole reforms are on your agenda, and I hope
14 we get them this year. Elder parole, fair
15 and timely parole bills are critical to
16 offering opportunity for long-term
17 incarcerated individuals. They have a
18 recidivism rate that's about zero. They
19 often committed their crimes as adolescents.
20 Yet they're excluded from the early release
21 DOCCS executive order. They're excluded from
22 work release. They're excluded from
23 educational release, although they are highly
24 represented in the prison college group. And

1 the community would benefit from them. I
2 hire as many as I can.

3 I hope you'll pass legislation for
4 parole reforms, prison reforms, sentencing
5 reforms and other campaigns. We're part of
6 parole justice, justice roadmap, and HALT.

7 We also have some budget requests we
8 don't have time for -- Senator Kennedy has
9 funded our work in Buffalo, and our elder
10 parole reentry program for Adirondack and the
11 8,000 older adults who are incarcerated.

12 I'm out of time, but not out of
13 energy.

14 CHAIRWOMAN KRUEGER: All right. Thank
15 you.

16 Our next testifier, Vera Institute of
17 Justice.

18 MS. KESSLER: Thank you very much.
19 Good evening. Thank you so much for your
20 time.

21 My name is Shayna Kessler. I'm a
22 senior planner with the Vera Institute of
23 Justice. I'm pleased to testify today in
24 support of an increased commitment to the

1 Liberty Defense Project, or LDP, which funds
2 the New York Immigrant Family Unity Project,
3 or NYIFUP.

4 Governor Cuomo included \$10 million in
5 his fiscal year '22 Executive Budget for LDP,
6 and today I'm asking you to support this
7 critically important work with an additional
8 \$5.3 million investment, for a total of \$15.3
9 million in FY '22. This would support a
10 \$6.5 million allocation to NYIFUP.

11 The Vera Institute leads national
12 efforts to advance universal representation
13 so that everyone at risk of deportation can
14 have access to a lawyer. In spite of
15 extremely high stakes, immigrants are not
16 guaranteed a lawyer if they can't afford to
17 hire one. With New York's investment,
18 though, NYIFUP became the country's first and
19 only statewide universal representation
20 system for detained immigrants, providing a
21 beacon of hope for those torn from their
22 homes by immigration enforcement.

23 This investment in NYIFUP brings
24 critical benefits to our state, especially

1 during the pandemic. One in three New York
2 children has an immigrant parent, and more
3 than one-quarter of the state's workforce is
4 foreign-born. During the pandemic,
5 immigrants are responsible for work that
6 sustains our economy and safeguards public
7 health.

8 With immigrants three and a half times
9 more likely to obtain release from detention
10 with a lawyer, and 10 times more likely to
11 prove their right to remain in the United
12 States, NYIFUP has reunited families,
13 promoted economic stability, and maintained
14 confidence that New York stands with
15 immigrants in this difficult time.

16 While the Biden administration is
17 making promising changes reversing the brutal
18 anti-immigrant harm of the past four years,
19 paving the way forward will only be possible
20 with legal advocacy. NYIFUP presents a
21 powerful example to Washington of an
22 immigration policy that centers human
23 dignity.

24 It is also critical to addressing

1 systemic racial injustice by interrupting the
2 arrest to deportation pipeline that leads to
3 racial profiling and the criminalization of
4 communities of color. More than 40
5 jurisdictions have followed New York's lead
6 by funding deportation defense. They
7 recognize that investing in representation
8 for immigrants safeguards health and
9 stability during this challenging time.

10 There's also overwhelming public
11 support for the work. A poll found that
12 93 percent of New Yorkers support
13 government-funded lawyers for people in
14 immigration court. The \$10 million for LDP
15 and in the Governor's budget is a welcome
16 start, but to keep the program strong we urge
17 the Senate and Assembly to fund LDP at
18 \$15.3 million, which would enable a
19 \$6.5 million allocation to NYIFUP.

20 Thank you very much for your time.

21 CHAIRWOMAN KRUEGER: Thank you very
22 much.

23 Katal Center for Equity, Health and
24 Justice.

1 MR. ZEITZ: Yes, good evening. And
2 thank you, Senator Krueger and
3 Assemblymember Weinstein for inviting our
4 testimony this evening.

5 My name is Yonah Zeitz, and I'm the
6 policy coordinator at the Katal Center for
7 Equity, Health and Justice. And we're a
8 community-based organization that focuses on
9 ending mass incarceration and building
10 community power.

11 And for tonight's testimony I will be
12 talking about the parole system and in
13 particular the problem of reincarcerating
14 people for technical violations of parole.

15 This issue is unjust, and it
16 exacerbates racial inequity within our
17 justice system, and it provides no
18 commensurate gains to public safety. And in
19 particular for this hearing, it comes at an
20 immense fiscal cost.

21 And so the Katal Center, along with
22 the Less Is More Campaign, has been working
23 to pass the Less Is More Act, which would
24 address this issue and should be included in

1 this year's budget.

2 And so what exactly is a technical
3 parole violation? It's anything from missing
4 an appointment with a parole officer to
5 failing an alcohol or drug test. And so
6 these are not new criminal offenses, but yet
7 New York reincarcerates more people for these
8 type of noncriminal technical violations of
9 parole than any other state in the nation.
10 This is a failure in terms of our public
11 policy.

12 And so right now there are currently
13 5,000 New Yorkers that are incarcerated in
14 jails and prisons for these type of
15 noncriminal technical parole violations. And
16 so that means about 4,000 people in state
17 prisons are incarcerated for these
18 violations, and that makes up about
19 12 percent of the entire prison population
20 and about one-third of all new admissions to
21 state prisons. And so this is one of the
22 main driving forces of mass incarceration in
23 the state.

24 And the racial disparities are quite

1 stark. Black and Latino people are
2 incarcerated at much higher rates for these
3 technical violations than white people.

4 And along with, you know, the human
5 and racial aspect of this bill, it also comes
6 at an immense fiscal cost. New York is -- we
7 spend over \$600 million annually at the jail
8 and prison level, incarcerating people for
9 noncriminal technical violations of parole.

10 And so at the state level the
11 nonpartisan Council on State Governments
12 issued a report stating that New York State
13 spends about \$369 million annually
14 incarcerating people at the state prison
15 level for technical violations of parole.

16 And then at the county level, the
17 counties are responsible for the full costs
18 of incarcerating people in the jails as
19 they're awaiting alleged violations. And so
20 in New York City alone, that was about
21 \$300 million a year.

22 And so the Less Is More Act would fix
23 this issue. And so the bill is currently in
24 the New York Legislature and it's being

1 sponsored by Senator Brian Benjamin, and it
2 actually just moved out of the Senate Crimes,
3 Crime Victims and Corrections Committee. So
4 thank you, Senator Salazar, for helping make
5 that happen. And so we're hoping that this
6 bill can be included in the budget.

7 And also it's worth noting that we
8 have broad support for this bill. So there
9 are over 230 groups, faith leaders and other
10 organizations, that support this bill, along
11 with some broad support from public safety
12 officials. So we have over seven DAs signed
13 on in support of this bill. We have county
14 sheriffs. We also have some former probation
15 and parole officers that support this bill.

16 And so let's get -- we want to get
17 this done in this budget year. And so thank
18 you for the time, and I'd be happy to answer
19 any questions.

20 CHAIRWOMAN KRUEGER: Thank you.

21 And our last speaker for this panel,
22 Barry Graubart from Moms Demand Action for
23 Gun Sense in America.

24 MR. GRAUBART: Hi, my name is Barry

1 Graubart, and I'm the deputy chapter leader
2 for the New York Chapter for Moms Demand
3 Action for Gun Sense in America.

4 In that role, I work with numerous
5 survivors of gun violence from across the
6 state on a daily basis. So thank you,
7 Chairs Krueger and Weinstein, for inviting us
8 to testify on this critical issue.

9 And I'm urging you today to include
10 Bill S1049, Senator Myrie's Community
11 Violence Intervention Program Act, in the
12 budget. We know that in New York, gun
13 homicides disproportionately impact Black and
14 brown families living in neighborhoods shaped
15 by long-term underinvestment. Adequate
16 funding is critical to providing these key
17 services to victims of gun violence.

18 A few things that we do know about
19 access to these victims services. So on
20 average, fewer than one in ten victims of
21 serious violent crimes receive assistance
22 from a victims services agency. Victims of
23 serious intimate partner violence are three
24 times more likely than other victims of

1 serious crimes to receive those services.
2 And in our Black and brown communities, we
3 know that crime victims are less likely to
4 report their crimes to the police, and as a
5 result we know that a large percentage of
6 victims of serious crimes in these
7 neighborhoods are just not receiving the
8 services they require.

9 Instead, a patchwork of small
10 community-based organizations try to fill the
11 gaps where they can, but clearly it's not
12 enough.

13 What's the cost to this failure?
14 Well, you know, the data shows us that using
15 VOCA funds to resource community-based
16 services to gun violence victims allows us to
17 interrupt these cycles of violence. And
18 funding community-based organizations is the
19 best way to increase access to these
20 services.

21 Community-based organizations are
22 small, they're often founded by a gun
23 violence survivor, and they're staffed by
24 volunteers. These organizations are amazing,

1 but they operate on shoestring budgets and
2 they really could increase their service
3 provision and their impact through increased
4 funding.

5 So in conclusion, I just want to say
6 VOCA victim assistance grants, they're a
7 plentiful and largely untapped funding source
8 for gun violence victims services like
9 hospital-based violence intervention, street
10 outreach programs, trauma recovery centers,
11 and more. States, cities and community-based
12 organizations have a unique opportunity to
13 drive VOCA victim assistance funding to these
14 and other gun violence victims services.
15 New York has struggled to utilize these funds
16 due to unnecessary constraints which make it
17 harder for these small organizations to
18 participate.

19 The CVIP bill, S1049, is really an
20 important step toward removing those
21 constraints and delivering on the vision for
22 gun violence prevention that I think we all
23 strive for.

24 In my last 20 seconds, I want to just

1 actually our last panel for this evening,
2 Journey's End Refugee Services, Sarah
3 Bertozzi; UnLocal, Terry Lawson; and
4 Center for Judicial Accountability,
5 Elena Sassower.

6 Starting with Sarah. Are you here,
7 Sarah? Does any staff see whether she
8 checked in?

9 THE MODERATOR: Oh, she's here.

10 MS. BERTOZZI: Can you hear me?

11 CHAIRWOMAN KRUEGER: Oh, there you
12 are. Now we can hear you. Hi there.

13 MS. BERTOZZI: Sorry about that. Hi,
14 thank you. Good evening.

15 My name is Sarah Bertozzi, and I'm the
16 managing attorney of the Immigration Legal
17 Services Program at Journey's End Refugee
18 Services. And my testimony also supports
19 funding for immigration legal services in the
20 New York State budget.

21 Our legal department maintains offices
22 in Buffalo, Rochester and Binghamton, where
23 we provide immigration legal services, access
24 to which is one of the most critical needs of

1 immigrants in New York State.

2 Immigrants of all statuses require
3 legal assistance on their immigration
4 matters, including refugees, asylees, asylum
5 seekers, DACA recipients, green card holders,
6 and even naturalized U.S. citizens. And
7 their ability to access and navigate our
8 federal immigration system is also dependent
9 on immigration attorneys that represent them
10 before USCIS, which is U.S. Citizenship and
11 Immigration Services, and immigration court.

12 Specifically, immigration attorneys
13 fight civil detention and deportation for
14 asylum seekers seeking safety in the U.S.
15 They apply for green cards and naturalization
16 to secure and advance immigration status.
17 They obtain work authorization to seek lawful
18 and meaningful employment. And they petition
19 to reunite families that have been separated
20 by violence, conflict and war.

21 These needs are great and are critical
22 to a safe, healthy, productive and meaningful
23 adjustment to life in the U.S. However, due
24 to a lack of resources, particularly in

1 underserved areas like upstate New York,
2 there are not enough immigration legal
3 service providers to adequately meet these
4 needs.

5 And immigration cases are primarily
6 successful with the representation of an
7 attorney who can assist in the navigation of
8 this turbulent field of law. Seventy-eight
9 percent of immigrants with lawyers win their
10 cases, versus 15 percent who do not have
11 legal help. And consequences of denied cases
12 are severe. They can include prolonged
13 family separation, even deportation to
14 dangerous countries.

15 In response to these significant
16 challenges, New York State has made a
17 substantial investment in immigration legal
18 services, in 2012 with the creation of the
19 Office for New Americans, or ONA, and in 2018
20 with the launch of the Liberty Defense
21 Project, or LDP. ONA and LDP provide funding
22 for nonprofit immigration legal service
23 providers to meet these needs, and our legal
24 department could not operate without this

1 funding.

2 However, each of our offices maintains
3 a waitlist. In Western New York we're the
4 only refugee resettlement agency that has
5 attorneys working on these cases. And in the
6 Southern Tier and Finger Lakes regions,
7 access to representation on immigration legal
8 cases is a rare opportunity.

9 So consequently we are advocating for
10 the maintenance and expansion of ONA and LDP
11 funding in the New York State budget. We are
12 specifically asking for increased funding for
13 LDP to 15.3 million from its current
14 10 million, and an increased budget for ONA
15 to 9.1 million from its current 6.4 million,
16 maintenance of which will allow us to keep
17 our commitment to clients with open cases.
18 And expanded funding allow us to help even
19 more immigrant New Yorkers.

20 Thank you for your time.

21 CHAIRWOMAN KRUEGER: Thank you.

22 Our next testifier, Terry Lawson, from
23 UnLocal.

24 MS. LAWSON: Thank you for this

1 opportunity to testify at today's hearing.
2 My name is Terry Lawson, and I am the new
3 executive director of UnLocal, a
4 community-centered nonprofit that provides
5 direct community education, outreach, and
6 legal representation to New York City's
7 undocumented immigrant communities.

8 I would like to begin by discussing
9 the work of UnLocal in the context of a
10 recent case of ours that has been in the
11 news.

12 Javier Castillo Maradiaga is a
13 27-year-old Bronx resident who came here with
14 his family when he was 7 years old. He was
15 referred to UnLocal because we are one of
16 founding partners of the Rapid Response Legal
17 Collaborative, which is funded in part by
18 ONA. In December 2019, Javier was unlawfully
19 transferred from NYC Department of
20 Corrections custody to ICE, in violation of
21 New York City's Detainer Laws.

22 Though Javier's criminal charges were
23 subsequently dismissed and sealed, he remains
24 in ICE detention and has been nearly deported

1 three times since President Biden's
2 inauguration.

3 To stop Javier's deportation, in the
4 span of just two weeks UnLocal has filed two
5 requests for a stay of removal, one with ICE
6 and one with the Board of Immigration
7 Appeals, a motion to reopen his removal
8 proceedings, a habeas petition, a motion for
9 a preliminary injunction, and a memorandum of
10 law with the Southern District of New York.
11 We have held four press conferences, an
12 online community gathering, and have gathered
13 over 6000 signatures in a public petition.
14 We have also engaged with legislators and
15 elected officials at every level.

16 Before coming to UnLocal, Javier's
17 family spent over \$20,000 in private legal
18 fees to fight their immigration cases.
19 Javier's mother has told me about how her
20 family was taken advantage of by unscrupulous
21 providers and how hard it was for them to
22 find free, high-quality legal representation.

23 Their case came to our attention via
24 the Rapid Response Legal Collaborative just

1 days before Javier was transferred to
2 Louisiana.

3 If the events of the past two weeks
4 have taught us anything, they have taught us
5 that while the Trump administration is no
6 longer in power, this work is far from over.
7 Deportation flights are still taking off, and
8 UnLocal and immigration advocates across this
9 city are working tirelessly alongside
10 immigrant New Yorkers to ensure that they
11 remain here with their families.

12 Javier is DACA-eligible, his siblings
13 have DACA, his parents have TPS, and we
14 continue to work harder than we have before
15 to provide immigrant New Yorkers like Javier
16 and his family with free, high-quality legal
17 services.

18 We appreciate the Legislature and
19 OCA's support of civil legal services. And
20 as Javier's case demonstrates, the need for
21 this funding continues, particularly as
22 immigrant communities battle the effects of
23 COVID.

24 Thank you so much for this hearing and

1 for outlasting your federal counterparts by
2 several hours today. So thank you so much.

3 CHAIRWOMAN KRUEGER: Thank you very
4 much.

5 And our last testifier for this
6 evening, Elena Sassoir -- Sassoher, excuse
7 me. Sassower. I know how to say it, I'm
8 just a little tired, excuse me.

9 Unmute yourself, we can't hear you.
10 There you go.

11 MS. SASSOWER: My name is Elena
12 Sassower, and I am director and cofounder of
13 the nonpartisan, nonprofit citizens
14 organization Center for Judicial
15 Accountability. Our website is
16 www.judgewatch.org. And from its prominent
17 center panel entitled "Comparing New York's
18 Legislature Before and After its Fraudulent
19 Pay Raise," you can find the evidentiary
20 substantiation of this testimony.

21 As you know -- because I've stated it
22 repeatedly -- our foremost public protection
23 is the New York State Constitution, which by
24 Article VII lays out the manner in which the

1 State Budget is to be fashioned and enacted.
2 This year, as in past years, the budget is
3 off the constitutional rails, and I long ago
4 and repeatedly furnished you with proof and,
5 in the absence of your response, sued you in
6 two citizen taxpayer actions, the second
7 encompassing the first, laying out the
8 unconstitutionality of the Judiciary Budget,
9 the Legislative Budget and the whole of the
10 Executive Budget, and of the force-of-law
11 commission scheme by which you gave pay
12 raises to judges and, as a consequence, to
13 district attorneys via commission reports
14 that are false instruments.

15 You have had no legitimate defense to
16 either lawsuit, and so your attorney, the
17 New York State Attorney General, himself a
18 defendant, corrupted the judicial process
19 with litigation fraud and was rewarded with
20 fraudulent decisions. This also enabled you
21 to utilize the same force-of-law scheme to
22 procure your committee-based pay raises for
23 yourselves, and for the Attorney General, the
24 Comptroller, the Governor and the Lieutenant

1 Governor, also by a report that is a false
2 instrument.

3 The foregoing is the subject of
4 62 fully documented grand jury public
5 corruption complaints against you that I've
6 filed with New York's 62 district attorneys,
7 including Washington County DA Jordan, who
8 has just testified at this hearing.

9 In the event you are not knowledgeable
10 of those 62 complaints, the most important
11 being the complaint filed with Albany County
12 DA Soares, all 62 are accessible from CJA's
13 webpage for my testimony and this Public
14 Protection Budget Hearing. That is where you
15 will also find other relevant complaints such
16 as against the first witness at this hearing,
17 Chief Administrative Judge Marks, and
18 New York's Court of Appeals judges who
19 certified and approved the Judiciary's
20 slush-fund budget filed with the Commission
21 on Judicial Conduct, whose administrator,
22 Robert Tembeckjian, was your second witness.

23 I am available to meet with the
24 Legislature to discuss the foregoing,

1 including the specifics relating to the
2 fiscal year 2022 budget, and to testify under
3 oath. Thank you.

4 CHAIRWOMAN KRUEGER: Thank you.

5 Any questions? I don't see hands
6 raised.

7 CHAIRWOMAN WEINSTEIN: No questions
8 from the Assembly.

9 CHAIRWOMAN KRUEGER: Okay, and no
10 questions from the Senate.

11 So I want to officially call this
12 hearing over.

13 I want to thank you all for
14 participating throughout the day and evening.
15 We learned a lot, and we absorbed a lot. And
16 again, anyone who's still listening and who
17 thought, Why am I not there testifying, the
18 answer is you can still submit testimony and
19 it will go up online and we can review it in
20 the context of all of our work on the budget.

21 So I want to thank my colleague Helene
22 Weinstein and all my colleagues for making it
23 through with us today.

24 And tomorrow morning at 9:30, we start

1 the Local Government Budget Hearing, am I
2 right, Helene?

3 CHAIRWOMAN WEINSTEIN: Yes, correct,
4 9:30 we start.

5 CHAIRWOMAN KRUEGER: There you go. So
6 tune in tomorrow: Same people, different
7 topics.

8 Thank you so much. Get home safe.

9 (Whereupon, at 8:11 p.m., the budget
10 hearing concluded.)

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