

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 2025-2026 EXECUTIVE BUDGET ON  
6 PUBLIC PROTECTION

6 -----

7 Hearing Room B  
8 Legislative Office Building  
Albany, New York

9 February 13, 2025  
10 9:33 a.m.

11 PRESIDING:

12 Senator Liz Krueger  
13 Chair, Senate Finance Committee

14 Assemblyman J. Gary Pretlow  
15 Chair, Assembly Ways and Means Committee

16 PRESENT:

17 Senator Thomas F. O'Mara  
18 Senate Finance Committee (RM)

19 Assemblyman Edward P. Ra  
20 Assembly Ways and Means Committee (RM)

21 Senator Brad Hoylman-Sigal  
22 Chair, Senate Committee on Judiciary

23 Assemblyman Charles D. Lavine  
24 Chair, Assembly Committee on Judiciary

25 Senator Zellnor Myrie  
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 Erik M. Dilan  
Chair, Assembly Committee on Correction

7  
8 Assemblyman John T. McDonald III  
Chair, Assembly Committee on Governmental  
Operations

9  
10 Senator Kristen Gonzalez  
Chair, Senate Committee on Internet and  
Technology

11  
12 Assemblyman Steven Otis  
Chair, Assembly Committee on Science and  
Technology

13  
14 Senator Shelley B. Mayer

15  
16 Assemblyman Alex Bores

17  
18 Assemblywoman Jo Anne Simon

19  
20 Assemblyman Philip A. Palmesano

21  
22 Senator Anthony H. Palumbo

23  
24 Senator Rob Rolison

Assemblywoman Latrice Walker

Senator Daniel G. Stec

Assemblyman Chris Burdick

Assemblywoman Marcela Mitaynes

Senator Dean Murray

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3 PRESENT: (Continued)

- 4 Assemblywoman Catalina Cruz
- 5 Assemblyman Angelo J. Morinello
- 6 Senator Jessica Scarcella-Spanton
- 7 Assemblywoman Anna R. Kelles
- 8 Assemblyman Demond Meeks
- 9 Senator Jabari Brisport
- 10 Assemblywoman MaryJane Shimsky
- 11 Assemblyman Anil Beephan, Jr.
- 12 Assemblywoman Mary Beth Walsh
- 13 Senator Siela A. Bynoe
- 14 Assemblywoman Karines Reyes
- 15 Senator Gustavo Rivera
- 16 Assemblywoman Jodi Giglio
- 17 Senator Roxanne J. Persaud
- 18 Assemblywoman Gabriella A. Romero
- 19 Senator Cordell Cleare

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5	Darcel D. Clark Bronx County District Attorney		
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7	Rensselaer County District Attorney -on behalf of-		
8	District Attorneys Association of the State of New York		
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15	Susan C. Bryant Executive Director		
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7	Sal F. Curran Cochair, Legislative Steering Committee		
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11	Theresa Hobbs Executive Director NYS Dispute Resolution Association (NYSDRA) -and-		
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13	Alyssa Bradley Senior Policy Associate Center for Employment Opportunities -and-		
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1                   CHAIRWOMAN KRUEGER: Good morning,  
2 everyone. Hi, I'm Liz Krueger, chair of the  
3 Senate Finance Committee. I live in this  
4 room. I'm joined by my partner Gary Pretlow,  
5 Assembly -- pardon me?

6                   CHAIRMAN PRETLOW: We live together.

7                   CHAIRWOMAN KRUEGER: He said we live  
8 together. We'll have to explain that at home  
9 later. But we do seem to, lately.

10                  Gary Pretlow, chair of Ways and Means.

11                  Just some rules of the road that we  
12 try to do before we officially start the  
13 hearing each day.

14                  There's clocks. Everyone can see  
15 them, whether you're on the panel or going to  
16 be testifying. And there's green light,  
17 yellow light, red light, to let you know  
18 where you are and how much time you have  
19 left.

20                  We always encourage everyone  
21 testifying, even if you sent us 35 pages of  
22 documents and data, you only have, if you're  
23 a state official, 10 minutes to present. If  
24 you're everyone else in the world, you only

1           have three minutes to present. So you're not  
2           going to read your testimony, you're going to  
3           bullet-point your critical issues. That's my  
4           advice to you.

5                     Legislators, you want to ask lots of  
6           questions. If you have three minutes to ask  
7           questions and you either ask a three-minute  
8           question or decide that you want to make a  
9           speech -- and we're in that business, I  
10          understand that -- and that you take  
11          two minutes and 40 seconds to make you're  
12          speech, you won't get an answer because there  
13          won't be enough time. So we don't let the  
14          person have additional minutes to answer  
15          questions if you've used up all your time  
16          making your statement or asking your  
17          question.

18                    So just everyone be aware what those  
19          clocks are. And Gary and I are both very  
20          strict taskmasters, and we will shut you down  
21          and turn off your microphone. So try to stay  
22          in the context of the rules.

23                    All right. So there's lots of  
24          committee chairs and rankers today because

1           there's lots of issues under the rubric of  
2           public protection. So yes, it is going to be  
3           a long hearing. And chairs are allowed  
4           10 minutes to ask questions of the state  
5           government representatives, and rankers are  
6           given five minutes. Everyone else gets three  
7           minutes.

8                     The only people who ever get a second  
9           round are the chairs, who can ask for a final  
10          three minutes at the very end of the entire  
11          process if it's the relevant committee for  
12          them.

13                    And it is a little confusing, because  
14          we have so many chairs and rankers. But some  
15          chairs only apply to some guests and not all  
16          guests. But that will become more clear as  
17          we go along.

18                    Again, nongovernment witnesses only  
19          get three minutes to testify, and all  
20          legislators only get three minutes, it  
21          doesn't matter whether you're a chair or a  
22          ranker.

23                    Make sure that if you are interested  
24          in asking questions you let, if you're an

1           Assemblymember, Gary Pretlow or  
2           Assemblymember Ra from the Republicans, if  
3           you're a Senator, Liz Krueger or Tom O'Mara,  
4           the ranker on Finance -- you have to let us  
5           know you want to ask questions, because we  
6           don't read your minds. So then you're half  
7           an hour in and you're like, What happened,  
8           you never called on me. Because you didn't  
9           ask us to put you on the list.

10                        So that's also just a rule of the  
11           road.

12                        I think that's where we're going to  
13           start. And I will just read formally the  
14           opening statement. You already know I'm Liz  
15           Krueger, this is Gary Pretlow.

16                        Today is the ninth of 14 hearings  
17           conducted by the joint fiscal committees of  
18           the Legislature regarding the Governor's  
19           proposed budget for state fiscal year  
20           '25-'26. These hearings are conducted  
21           pursuant to the New York State Constitution  
22           and Legislative Law.

23                        Today the Senate Finance Committee and  
24           Assembly Ways and Means Committee will hear

1 testimony concerning the Governor's proposed  
2 budget for the Judiciary, State Commission on  
3 Judicial Conduct, Office of Indigent Legal  
4 Services, New York State Division of  
5 Criminal Justice Services, New York State  
6 Department of Corrections and Community  
7 Supervision, New York State Division of  
8 State Police, New York State Division of  
9 Homeland Security and Emergency Services, and  
10 New York State Office of Information  
11 Technology.

12 Following each testimony there will be  
13 some time for questions from the relevant  
14 members of the Legislature, as I just laid  
15 out to you.

16 We always start, also, by introducing  
17 everyone who is here so far. And people will  
18 have to come and go during the day, so we may  
19 be making further announcements as they come  
20 in.

21 So we have Senator Salazar,  
22 Senator Mayer, Senator Myrie, Senator  
23 Hoylman-Sigal, Senator Scarcella-Spanton,  
24 Senator Brisport.



1                   CHAIRWOMAN KRUEGER: Okay. So our  
2 first presenter today is the Honorable Chief  
3 Administrative Judge Joseph Zayas, of the  
4 Office of Court Administration.

5                   You have 10 minutes. Good morning.

6                   CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
7 Good morning. Good morning, everyone.

8                   Chairpersons and committee members, it  
9 was very gratifying for me to have an  
10 opportunity to meet with so many of you over  
11 the last few days. As you know, my name is  
12 Joseph Zayas. I'm the Chief Administrative  
13 Judge of the New York State Unified Court  
14 System.

15                   It is really a pleasure to be with you  
16 this morning to discuss the judiciary's  
17 budget request for the 2026 state fiscal  
18 year.

19                   When I spoke to my wife today, she  
20 said, "You know, last year when you did this,  
21 the week before you came up here you were  
22 stressed out." And she said, "This time you  
23 seem perfectly calm." So I said, "That's  
24 what happens when you do something the second

1 time."

2           So I do appear before you today on  
3 behalf of my friend, Chief Judge Rowan  
4 Wilson; the Unified Court System's dedicated  
5 leadership team, all of whom are also my good  
6 friends; and the over 17,000 judges and  
7 nonjudicial employees who help run our courts  
8 every day. Collectively, we are committed --  
9 we are committed to ensuring that our  
10 Judiciary has the resources it needs so that  
11 all New Yorkers have access to the fair,  
12 efficient, and thoughtful administration of  
13 justice.

14           Chief Judge Wilson speaks eloquently  
15 about reimagining our courts as vehicles for  
16 solving problems, rather than merely  
17 assigning blame and liability. We should, in  
18 the chief's vision, "think of courts as  
19 problem solvers, not solely as adjudicators  
20 of which party is right." Our leadership  
21 team has wholeheartedly embraced this  
22 approach.

23           Like you, we want New Yorkers to count  
24 on our courts to resolve their disputes

1           expeditiously, impartially, and with  
2           compassion and empathy. But for the  
3           Judiciary to properly serve this most  
4           critical function, and for New Yorkers to  
5           have confidence in the judicial branch, our  
6           courts need to be adequately resourced. We  
7           need enough judges, court attorneys,  
8           court reporters, clerical staff,  
9           court officers, and interpreters so that our  
10          courts are operating at full capacity and  
11          every case promptly receives the attention it  
12          so desperately deserves.

13                    We need modernized, accessible  
14                    facilities with the right tools and  
15                    technologies so that we can, for example,  
16                    pivot seamlessly between in-person and  
17                    virtual court proceedings, and facilitate  
18                    access to justice by making it easier to file  
19                    court papers and obtain court documents.

20                    Last year's budget, which followed  
21                    more than a decade of flat funding, allowed  
22                    us to make meaningful progress in achieving  
23                    these ambitious goals. Among other things,  
24                    it permitted us to add much-needed judges --

1 and thank you to all of you for that -- and  
2 to begin to address a historically low  
3 nonjudicial personnel staffing level.

4 With this year's budget request, we  
5 aim to continue building on this momentum.  
6 Our state operating cash estimate of  
7 \$3 billion reflects a base increase of  
8 \$171.2 million, which is necessary just to  
9 maintain our existing court operations,  
10 including the annualization of new judgeships  
11 which all of you approved last year and over  
12 the past two years, and contractually  
13 mandated raises and benefits for nonjudicial  
14 employees.

15 We're also requesting \$97 million of  
16 additional funding that will, among other  
17 things, expedite justice for litigants,  
18 families and victims by improving  
19 case-processing efficiency and reducing  
20 backlogs in our busiest courts; assist  
21 indigent New Yorkers by significantly  
22 increasing funding for civil legal services  
23 organizations and Attorney for the Child  
24 providers, many of whom I know will be

1           testifying today, who are facing a staffing  
2           crisis because of chronic underfunding;  
3           facilitate expeditious settlements of  
4           disputes by expanding our successful  
5           alternative dispute resolution programs;  
6           divert more criminal defendants into  
7           treatment and substance-use programs by  
8           increasing funding for our problem-solving  
9           courts; and improve the administration of  
10          justice by restoring our nonjudicial  
11          personnel level to 17,000.

12                 New York's court system is, without a  
13          doubt, among the largest and busiest in the  
14          country. Our judges and nonjudicial  
15          personnel address and dispose of millions,  
16          millions of new case filings annually.  
17          Unfortunately, too many judges in too many of  
18          our courts have crushing inventories,  
19          hundreds upon hundreds of cases, that make  
20          the timely disposition of cases extremely  
21          challenging.

22                 As far as criminal cases, since the  
23          pandemic we have seen significantly slower  
24          case-processing times in our felony-level

1 criminal courts, meaning that in some cases  
2 victims are waiting too long for justice and  
3 in others, defendants are waiting too long  
4 for the resolution of serious criminal  
5 allegations. In our view, this is an  
6 unacceptable status quo.

7 The only way to address these backlogs  
8 and ensure that cases are resolved more  
9 efficiently going forward, is to have  
10 adequate judicial and nonjudicial staff. At  
11 the end of 2021, our nonjudicial staffing was  
12 just 14,000 employees, nearly 3,000 personnel  
13 fewer than the Judiciary employed in 2009.  
14 In recent years we've started to rebuild our  
15 depleted work force, and this year's budget  
16 request would finally allow us to return to a  
17 staffing level of 17,000.

18 In my written submission I've outlined  
19 the types of new employees we intend to hire  
20 to accomplish our goals.

21 So new court attorneys will support  
22 our New York City criminal case processing  
23 initiatives which we launched last year, with  
24 the goal of implementing a series of targeted

1 case-management strategies to address the  
2 most significant causes of delay, including  
3 discovery delays, in felony-level criminal  
4 cases. We expect that these measures will  
5 reduce the amount of time that individuals  
6 spend on Rikers Island, decreasing the  
7 population of those jails, a goal which I  
8 know is important to all of you.

9 The adequate staffing of our courts is  
10 a prerequisite for the efficient and fair  
11 administration of justice. But it is not  
12 enough, by itself, to ensure that our courts  
13 are operating smoothly and effectively. The  
14 reality is that our adversarial system does  
15 not work as intended if both parties are not  
16 represented by counsel. Unfortunately, too  
17 often this is the case, with too many  
18 low-income New Yorkers forced to confront  
19 legal issues affecting the most important  
20 parts of their lives without representation.

21 To continue to address this  
22 longstanding problem, our 2026 budget  
23 requests \$150 million for civil legal  
24 services, reflecting a significant increase

1 of \$45.5 million. In addition, we're  
2 requesting 211.2 million to support our  
3 Attorney for the Child Program.

4 Our 2026 budget will also allow us to  
5 sustain and expand innovative court programs  
6 that help address problems that are of deep  
7 concern to so many New Yorkers. We now have  
8 over 350 problem-solving courts in New York,  
9 each dedicated to addressing a particular  
10 kind of issue that often results in  
11 involvement in the criminal justice system,  
12 such as mental health and substance abuse  
13 issues.

14 Diverting New Yorkers suffering from  
15 mental illness off the typical criminal  
16 justice system track, and into treatment, is  
17 one of our court system's highest priorities.  
18 Our goal is to have, throughout the state --  
19 mental health courts throughout the state.

20 We continue to innovate in other ways  
21 as well, modernizing courtrooms and piloting  
22 a new court appearance platform and expanding  
23 e-filing.

24 I would be remiss if I did not mention

1           that we also require the passage of our  
2           program bills.

3                     Let me close by saying that on so many  
4           issues I believe that we are aligned with  
5           you, and I appreciate the collaborative  
6           partnership we have developed.

7                     Thank you very much.

8                     CHAIRWOMAN KRUEGER: Thank you very  
9           much. That was perfect timing, Judge. Very  
10          impressed.

11                    CHIEF ADMINISTRATIVE JUDGE ZAYAS: I'm  
12          looking at the timer this time.

13                    (Laughter.)

14                    CHAIRWOMAN KRUEGER: All right. Our  
15          first questioner will be our chair of  
16          Judiciary, Senator Hoylman-Sigal.

17                    SENATOR HOYLMAN-SIGAL: Thank you,  
18          Madam Chair, and to my colleagues.

19                    Welcome, Judge Zayas. First let me  
20          just say -- well, you timed that perfectly.  
21          Maybe that's -- one year of experience will  
22          help you there. But I just want to thank you  
23          and in particular the Chief Judge for his  
24          historic State of the Judiciary address this

1 week, which I know my colleagues  
2 Senator Salazar and Senator Myrie agree that  
3 the focus on redemption and rehabilitation,  
4 the moving comments that the Chief Judge  
5 made, including both formerly and currently  
6 incarcerated individuals, was absolutely  
7 inspiring. So thank you for that.

8           And I want to also just touch on --  
9 before I get into a question about  
10 problem-solving courts -- and want to  
11 specifically call out Midtown Community  
12 Justice Center in my district, which I know  
13 you and the Chief Judge have visited, and has  
14 resumed its operations to five days a week.  
15 And it really is those problem-solving  
16 courts that can address so many of the  
17 quality-of-life concerns that our  
18 constituents contact our offices about and  
19 that we witness every day on the streets in  
20 our districts. So thank you for your  
21 continued support there.

22           I wanted to first ask about the issue  
23 which is on I think many people's minds,  
24 which is ICE and the -- in 2019 we passed a

1 bill that I sponsored prohibiting ICE from  
2 detaining participants in court proceedings  
3 while at the courthouse or in transit to or  
4 from the courthouse without a warrant or  
5 court order. And as we know, regrettably,  
6 the new federal administration -- immigrants  
7 in New York City are once again under threat  
8 of detention and deportation. We know that  
9 New York State is home to nearly 700,000  
10 undocumented immigrants. They're our  
11 Neighbors, family members, colleagues.

12 In the first week of the Trump  
13 administration, 100 immigrants were detained  
14 and arrested by ICE. And we know that when  
15 victims and witnesses are afraid to come to  
16 court -- which is why we passed this bill --  
17 when domestic violence victims are afraid to  
18 get an order of protection, and when tenants  
19 are afraid to file a complaint against their  
20 landlord, our state is really less safe.

21 So my question to you, Judge Zayas,  
22 is, what is OCA doing to ensure New Yorkers  
23 are safe from unlawful detention in  
24 courthouses? And has ICE attempted to enter

1 a New York State courthouse, to your  
2 knowledge?

3 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

4 Great. That's a great question. Certainly  
5 appreciate that we have the Protect Our Court  
6 Act and that we had the -- we were prescient  
7 enough to see the need for that. I  
8 understand that in some of the meetings that  
9 our folks have had with regional ICE  
10 officials that they are aware of that act as  
11 well and have -- there's bulletins and  
12 advisories that they are required to follow  
13 state acts along those lines.

14 So what we've been doing is we  
15 immediately set up meetings and we have an  
16 administrative order directly on point, we  
17 have directives from our department of public  
18 safety directly on point. We have protocols  
19 that we just recently revised and sent around  
20 to all of the folks in our courts. And we've  
21 set up meetings with the ICE regional  
22 directors in New York City and the suburbs of  
23 New York City, and now we're setting up  
24 additional meetings with the ICE regional

1 directors in -- you know, upstate.

2 And we met about this numerous times  
3 already. And we then spread all of this  
4 information not only to the judges, but all  
5 the meetings with the commands in every  
6 single courthouse throughout the state.

7 And we're prepared to do whatever it  
8 takes to make sure that the Safe Courts Act  
9 is followed.

10 SENATOR HOYLMAN-SIGAL: Are you aware  
11 of any attempts to enter courthouse property  
12 by ICE?

13 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
14 Yes. And we've raised the level of that  
15 where it comes directly to our top leadership  
16 team. If there's anything, we want to know  
17 about it. And we haven't had any indication  
18 that the ICE offices have done anything other  
19 than follow our procedure.

20 So they need a warrant now, so the  
21 protocols we put in place is they cannot  
22 expect to make any arrest without a judicial  
23 warrant. And as soon as these folks come  
24 into our courthouse, they are directed to a

1 designated judge who reviews the purported  
2 warrant or detainer to determine whether it  
3 is a judicial warrant.

4 If it's a judicial warrant, we follow  
5 and -- you still can't make an arrest in a  
6 courtroom under any circumstances. But the  
7 next best thing, when there's a judicial  
8 warrant, that's in our law that they are  
9 allowed to do that, so.

10 SENATOR HOYLMAN-SIGAL: Where do they  
11 effectuate the arrests, then, if it's not in  
12 a courtroom?

13 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
14 Sometimes outside of the courthouse or  
15 sometimes in a hallway of the courthouse.  
16 Which they're allowed to do if there's a  
17 judicial warrant.

18 If it's just a detainer, they're not  
19 allowed to make any arrests in any of our  
20 courthouses. It's a civil arrest, so --  
21 unlike a bench warrant, for example.

22 SENATOR HOYLMAN-SIGAL: And do you  
23 have any statistics you could share with us  
24 in terms of how many of these arrests have

1 occurred on courthouse grounds?

2 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

3 Sure. I'm sure. Not in front of me right  
4 now, but I'm sure and we'll send them to you.

5 SENATOR HOYLMAN-SIGAL: Okay. Is it  
6 several? Is it dozens? Is it --

7 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
8 mean, sometimes I hear things from defense  
9 attorneys that this happened, that happened.  
10 I's not an extraordinary amount of -- it's  
11 not a deluge of folks coming in, but it's  
12 sort of I would say moderate. But it's  
13 happening.

14 SENATOR HOYLMAN-SIGAL: It is  
15 happening.

16 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
17 Yup.

18 SENATOR HOYLMAN-SIGAL: And other than  
19 meeting with the ICE administrators, any  
20 other -- do you have any recommendations for  
21 us to make sure that witnesses are not  
22 fearful of coming forward, particularly those  
23 who are undocumented?

24 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I

1 mean, I think prosecutor offices also have  
2 their -- I mean, they're the ones who are  
3 meeting with the witnesses -- should have  
4 their own protocols in place explaining to  
5 them that this can happen.

6 And the other agencies that deal with  
7 this should be also be meeting with ICE to  
8 help folks understand that to the extent that  
9 ICE wants to come into our courthouses to  
10 make civil arrests, it will deter victims,  
11 witnesses, et cetera, from coming in, and  
12 it's a bad idea.

13 SENATOR HOYLMAN-SIGAL: Well, thank  
14 you. That's good fodder for some questions  
15 later this afternoon.

16 I just wanted to touch on an issue of  
17 separation of powers that seems to have  
18 become pretty perilously flimsy in recent  
19 days. We know that courts have issued orders  
20 to freeze some of the Trump administration's  
21 most radical actions, but there's evidence in  
22 different states that these orders are being  
23 ignored. The vice president himself declared  
24 that "Judges aren't allowed to control the

1 Executive's legitimate power."

2 On Monday Judge John McConnell in  
3 Rhode Island accused the administration of  
4 failing to unfreeze billions of dollars in  
5 federal grants, in clear violation of his  
6 judicial order.

7 We know that the judiciary has been  
8 termed the least dangerous branch of  
9 government because it really -- solely its  
10 power rests on the legitimacy of the public  
11 and respect from other institutions. And  
12 when judicial orders are disregarded by the  
13 Executive, the judiciary truly has little  
14 recourse.

15 I was wondering from your perspective,  
16 Judge Zayas, how strong is the rule of law in  
17 our state? And what can we do to preserve  
18 faith and confidence in the work of our  
19 judges?

20 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
21 think the rule of law is strong. And we  
22 will -- if any federal agent attempts to  
23 disobey our rule of law, we will take -- I  
24 think we have a strong Attorney General,

1 obviously.

2 And I think almost everything that --  
3 every executive order that attempted to do  
4 one thing or another has been by now either  
5 stayed or paused. There was the stretch to  
6 pause discretionary funds that went to the  
7 states. That too was paused.

8 SENATOR HOYLMAN-SIGAL: Thank you very  
9 much.

10 CHAIRWOMAN KRUEGER: Thank you.  
11 Assembly.

12 CHAIRMAN PRETLOW: Thank you.  
13 Assemblymember Lavine for 10 minutes.

14 ASSEMBLYMAN LAVINE: Good morning,  
15 Your Honor. It's good to see you. I also  
16 want to say, as someone who literally, or  
17 close to literally, grew up in our state and  
18 federal courts, how proud I am of the work  
19 that you and our Chief Justice and our other  
20 judges are doing. So many, many thanks for  
21 that, my friend.

22 So last year's budget included a  
23 provision relating to protection of judges  
24 and their families. It was something that

1 I'm very proud myself to have worked on, and  
2 very pleased that the Governor and the  
3 Assembly and the Senate have adopted that as  
4 our law.

5 So Can you tell me, has this provision  
6 provided some peace of mind and benefited our  
7 judges?

8 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

9 Yes. Thank you. First of all, thank you and  
10 your colleagues for passing that legislation.  
11 It was something that the judges across our  
12 state, 1400 judges across our state, really  
13 appreciate. And I think it has been  
14 effective in terms of scrubbing the internet  
15 of judges' addresses, et cetera.

16 We -- in our program bills we're  
17 requesting a few very minor amendments to it  
18 that I'm sure we can reach out to your office  
19 to share with you. We might have done that  
20 already.

21 But it's been very effective. We  
22 actually used the opportunity to contract  
23 with a group called DeleteMe, and so instead  
24 of the judges having to -- and the judges

1 will do this. They reach out to the  
2 appropriate parties, pursuant to the statute.

3 But we invested some money into  
4 contracting with DeleteMe, where these folks  
5 are constantly monitoring judges in social  
6 media and scrubbing that. And they're doing  
7 it every month, and they're sending the  
8 judges their reports. And the judges have to  
9 sign up for this.

10 And we thought it was important -- an  
11 important sort of add-on from our own budget  
12 to get that done for our judges. As you  
13 probably have heard, it's difficult to gauge,  
14 but judicial morale over the last 20 months  
15 has skyrocketed. And we're very happy about  
16 that, because we think the happier our judges  
17 are, the less gripes they have with things  
18 that are going on, the more they can focus on  
19 the work of delivering justice and doing good  
20 work.

21 ASSEMBLYMAN LAVINE: So it's a sad  
22 indictment of the world in which we live when  
23 judges have to be fearful. And in an  
24 atmosphere in which too many electeds,

1           elected officials have taken it upon  
2           themselves to unfairly criticize our judges  
3           and judicial rulings, I'm pleased that this  
4           is not part of our law.

5                     Do we have any sense of how many  
6           judges have pursued these protections?

7                     CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
8           think a high number. I mean, the DeleteMe,  
9           I think I saw a stat that said 80-something  
10          percent of our judges have opted into  
11          DeleteMe. And other judges are also doing  
12          either one of those programs or both. Most  
13          judges are doing both of those programs.

14                    ASSEMBLYMAN LAVINE: Very good.

15                    So now I have a couple of questions  
16          about ADR or alternative dispute resolutions  
17          and court improvement programs. So the  
18          judiciary is requesting \$14.3 million, an  
19          increase of \$3.8 million over last year's  
20          budget, with 3 million earmarked for expanded  
21          ADR services statewide.

22                    Can you describe which specific areas  
23          or regions of the state may or will be  
24          prioritized for expansion of ADR services?

1 And how will needs be assessed in those --

2 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

3 Sure. So we hired a director of ADR at the  
4 Unified Court System. And we have ADR  
5 coordinators in every judicial district and  
6 every part of the state. And so it's  
7 something that we expect to benefit all of  
8 the courts throughout the state.

9 And that was -- so we hired ADR  
10 coordinators in each judicial district, and  
11 that was the reason for the budget. And they  
12 are coordinating with each other. The  
13 director is, you know, helping them to do  
14 that. And it's been a very effective program  
15 that we're trying to promote even more than  
16 it's been spreading.

17 ASSEMBLYMAN LAVINE: And Judge Zayas,  
18 do you expect that ADR expansion is going to  
19 help us to address and alleviate cases? Too  
20 many cases in our courts pending right now.

21 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

22 Yes, absolutely. So there are a host of  
23 things we're trying to do. We're not just  
24 trying to, you know, pursue one avenue that

1 we know will reduce the backlog. It's ADR.  
2 It's the program that we have in New York  
3 City. It's mediation. And we're trying to  
4 use all of these to get that job done.

5 ASSEMBLYMAN LAVINE: And will this  
6 help with respect to Family Court backlogs as  
7 well?

8 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
9 Yes. Yes.

10 ASSEMBLYMAN LAVINE: Thank you. I  
11 have no further questions. I rest my case.

12 (Laughter.)

13 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
14 Thank you, sir.

15 CHAIRWOMAN KRUEGER: Thank you very  
16 much for the legal debate.

17 We've been joined by Senator Bynoe.

18 And our next questioner is  
19 Senator Myrie.

20 SENATOR MYRIE: Thank you,  
21 Madam Chair.

22 Judge, good to see you. I echo the  
23 sentiments of my colleagues on the welcome  
24 and refreshing collaboration with your

1 administration. And thanks to Chief Judge  
2 Wilson again for his State of the Judiciary.  
3 Very, very powerful.

4 I want to focus my questioning around  
5 discovery. And I know we're going to be  
6 talking about this with a number of  
7 stakeholders throughout the day. And we have  
8 had some previous conversations around this  
9 as well. And so I'm hoping to start with, if  
10 you could, as best you can, describe why  
11 there might be a discrepancy in discovery  
12 compliance in the city, in New York City, as  
13 opposed to outside of the city.

14 We see those numbers as OCA has  
15 provided to be starkly different, although  
16 the law applies the same way throughout the  
17 state. So I'm wondering if you have thoughts  
18 on why that discrepancy exists.

19 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
20 That's a really good question. The court  
21 system obviously is over-the-top supportive  
22 of discovery reform that continues to  
23 meaningfully, meaningfully incentivize the  
24 early and full production of discovery by the

1 prosecution, while at the same time  
2 developing a procedure that ensures  
3 compliance -- that the compliance challenges  
4 to whatever discovery they received are  
5 raised within a reasonable amount of time.

6 I really can't tell you why it's been  
7 more difficult in New York City. Some people  
8 have speculated that it's the New York City  
9 Police Department having to deal with the  
10 particular DAs in New York City, and maybe  
11 that there's a different system outside of  
12 New York City. But there's definitely been a  
13 difference in terms of compliance.

14 And there's -- you know, as you know,  
15 there's some issues raised about why cases  
16 are being dismissed for -- on speedy trial  
17 grounds, that there's been this unmistakable  
18 increase in New York City of cases getting  
19 dismissed on speed trial grounds as opposed  
20 to -- so if you compare the 2019 numbers,  
21 pre-COVID, pre-discovery reform, and you  
22 compare them to what happened after that, in  
23 misdemeanor cases and in felony --  
24 non-indicted felony cases, so before the

1 indictment, there has been a precipitous  
2 increase in the number of speedy trial  
3 dismissals.

4 Now, there's no such thing as  
5 dismissing it because of the failure to file  
6 discovery. But the numbers alone raise a  
7 very strong inference that they were at least  
8 in part -- the failure to comply with the  
9 discovery rules were at least in part the  
10 reason for the dismissal.

11 We do not see that trend happening in  
12 indicted felonies. So our more serious cases  
13 are not getting -- it's more negligible in  
14 terms of the difference.

15 I hope I answered your question. I  
16 know you asked me about upstate and  
17 downstate, and I'd like to get back to you on  
18 that because I haven't been so familiar  
19 with -- we haven't heard a lot from  
20 difficulty upstate.

21 But I do think that -- look, the  
22 discovery statute is extraordinarily daunting  
23 because of how many categories of documents  
24 that have to be turned over and the

1 voluminous nature of it. You know, a big  
2 situation happening in upstate or New York  
3 where police officers are showing up with  
4 body cams and now they have to get all of  
5 these body cams and, you know, hundreds and  
6 hundreds of documents for discovery. If  
7 there's an injury, medical records,  
8 thousands, sometimes, pages of medical  
9 records. It's not an easy thing to do.

10 SENATOR MYRIE: Thank you. The answer  
11 was helpful, and you began to answer what my  
12 next question was going to be.

13 You know, we can talk about discovery  
14 in this context and, you know, between  
15 lawyers and judges and prosecutors and the  
16 defense bar. I think sometimes the public  
17 does not have a real understanding of what  
18 this means, what it is. And so I was going  
19 to ask if you could, a little further than  
20 what you just did -- just for the public's  
21 understanding on what the requirement is on  
22 both the prosecutor, the court, and the  
23 defense bar. And why, according to the  
24 report that OCA issued last year about

1           discovery compliance and the time  
2           consumption, why there would be an increase  
3           in compliance time, in time consumption,  
4           because of what we did in 2019.

5                     And, you know, I want to be clear --  
6           and I think you have communicated this as  
7           well -- I and my colleagues instituted this  
8           reform because of injustices in the system,  
9           that there were defendants that were being  
10          bombarded with evidence at the last minute  
11          and not able to make an informed decision  
12          about their own liberty.

13                    That remains true today, that  
14          principle remains true today. And what we  
15          need to get to the bottom of is whether or  
16          not there are things that have to be changed  
17          in order to ensure that that principle is  
18          upheld, but that the wheels of justice  
19          continue to turn smoothly.

20                    CHIEF ADMINISTRATIVE JUDGE ZAYAS:

21          Right. So, I mean, from the -- aside from  
22          our full-throated support of the discovery  
23          reform in 2019-2020, I think there was  
24          universal support in the Unified Court System

1           that that needed to happen. I know that  
2           needed to happen, not only as a judge but as  
3           a practitioner.

4                     And when we talk about delay of these  
5           cases, the old discovery statute was  
6           responsible for causing all sorts of delays  
7           because something wouldn't get turned over,  
8           and then the judge's way of mitigating the  
9           late disclosure, the damage that was being  
10          caused by at the last minute giving it over  
11          to defense counsel, was always: Well, I'm  
12          going to give you another month. On an old  
13          case in Rikers Island already.

14                    So a case that's on for trial,  
15          something that's closed late, the remedy is  
16          always going to be: Fine, I'll give you  
17          another two months to digest this  
18          information, read these 2,000 pages, you  
19          know, hire a DNA expert.

20                    So that's the problem that we were  
21          trying to fix with discovery. And then the  
22          discovery statute itself is, as I said, very  
23          daunting. It requires all sorts of documents  
24          from -- sometimes from a variety of police

1 agencies. One of the differences between  
2 New York City and upstate is New York City,  
3 the five counties, the 8-point-whatever  
4 million residents of the county, have only  
5 one police department to deal with. Whereas  
6 some of the upstate counties are dealing with  
7 multiple police offices. And so -- and so  
8 that is one of the -- that is a serious  
9 problem.

10 And once discovery is turned over to  
11 the defense, the defense now has a  
12 constitutional obligation to review  
13 everything. So if you give a defense  
14 attorney 30 body cams of officers, somebody  
15 in that office -- I mean, you're not giving  
16 discovery just to say I gave it to them. Now  
17 the defense has this incredible  
18 responsibility of looking at it and reading  
19 and looking through all of those. And so  
20 there, that adds again to the delay.

21 And what we think is important is for  
22 the prosecutors to give over this delay as  
23 soon as they can and to present it in a way  
24 that categorizes the discovery that's being,

1           you know, being given to the defense. So  
2           that when the defense opens that website,  
3           that -- that -- I forgot the word of that,  
4           but you know what I'm talking about. When  
5           they go into the link, we want -- it's  
6           important that the discovery that's being  
7           turned over is categorized and not just, you  
8           know, miscellaneous this, miscellaneous that.  
9           Because it will help the defense bar to  
10          speedily work through and look at all of  
11          those documents and then be able to quickly,  
12          we hope -- we think there needs to be a way  
13          for the defense bar to quickly, if they want  
14          to challenge something, to quickly bring it  
15          to the attention of the judge and file a  
16          motion to strike the certificate.

17                    SENATOR MYRIE: Thank you, Judge.

18                    CHAIRMAN PRETLOW: Assemblywoman  
19          Walsh, substituting for -- {inaudible}.

20                    ASSEMBLYWOMAN WALSH: Thank you very  
21          much.

22                    Good morning, Judge Zayas.

23                    CHIEF ADMINISTRATIVE JUDGE ZAYAS:

24          Good morning.

1 ASSEMBLYWOMAN WALSH: I think the last  
2 time we met was up in Lake George -- yes,  
3 last summer.

4 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
5 Good to see you again.

6 ASSEMBLYWOMAN WALSH: I do have a  
7 couple of questions for you.

8 The first has to do with ERPOs,  
9 extreme risk protection orders. So currently  
10 ERPOs are only issued by a New York State  
11 Supreme Court judge, even though county court  
12 judges are generally the judges who review  
13 and issue pistol permits. In 2024, just in  
14 Saratoga County, where I primarily represent,  
15 there are around 171 ERPOs that were issued  
16 just in that county alone.

17 The Network Operations Center, who was  
18 called by law enforcement after hours, is  
19 hiring more staff. State Police and the  
20 Attorney General are also adding staff. What  
21 is OCA doing about the extra duties, the  
22 nighttime calls for judges?

23 CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
24 we are trying to spread out those

1           responsibilities. We often make County Court  
2           judges acting Supreme Court judges so that  
3           they too can handle those. And it's a,  
4           again, daunting process for -- especially  
5           given the 24-hour rule.

6                         But there are also side agreements  
7           with the judge who might be on duty to handle  
8           that, and personal phone calls are given to  
9           the police departments in those places where  
10          the officer, unless it's an absolute  
11          emergency, would wait until, you know,  
12          9 o'clock, 7 o'clock, as opposed to calling  
13          judges at night.

14                        And so I think that what many of the  
15          AJs have been doing upstate is expanding the  
16          number of judges who would be able to be  
17          handle those. I don't -- there's nothing --

18                        ASSEMBLYWOMAN WALSH: To make a  
19          County Court judge, in other words, an acting  
20          Supreme for the purposes of the ERPOs?

21                        CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
22          That's right. Right. And many County Court  
23          judges do that, so -- but it's still done  
24          in -- it's done in civil, I think, upstate.

1           Somehow in lower -- in the city, the  
2           Criminal Term Supreme handles those ERPOs.

3                     But conceitedly, we don't have a lot  
4           of them.

5                     ASSEMBLYWOMAN WALSH: Yeah, that's  
6           right. And that kind of leads me into my  
7           next question.

8                     So I would ask that you consider  
9           supporting an investment in another  
10          County Court judge for Saratoga County. As  
11          you know, Saratoga County has the  
12          fastest-growing population out of 53 upstate  
13          New York counties over the past decade, and  
14          all indications are that we're going to  
15          continue to grow for the foreseeable future.

16                    In the 11 counties comprising the  
17          Fourth JD, Saratoga County has 26 percent of  
18          the entire district's population, but only  
19          one of the 16 County court judges assigned in  
20          the Fourth JD. This includes four  
21          significantly smaller counties in the  
22          district that have at least two County Court  
23          judges assigned. And I understand that some  
24          of these are tri-hat judges and do, you know,

1 everything -- Family Court, Surrogate's  
2 Court, County Court work.

3 Saratoga County is close in population  
4 to Dutchess and Oneida counties, for example,  
5 which both have two. The Saratoga County  
6 administrator has written me for the past  
7 two years asking for this. And I do believe  
8 that the numbers justify it. I've been told  
9 by leadership that OCA would need to support  
10 this to make it happen, which is why I'm  
11 asking you today.

12 CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
13 I think you should ask Judge -- AJ Singh.  
14 He's the administrative judge up there.

15 ASSEMBLYWOMAN WALSH: We have.

16 CHIEF ADMINISTRATIVE JUDGE ZAYAS: --  
17 To handle all of those ERPOs. He's very  
18 agreeable, you know.

19 (Laughter.)

20 CHIEF ADMINISTRATIVE JUDGE ZAYAS: No,  
21 I'm just kidding. But you should -- I'll  
22 have a -- I'll promise you this. I will have  
23 a conversation with the administrative judge  
24 in the Fourth JD about this issue.

1 ASSEMBLYWOMAN WALSH: Thank you.

2 Thank you very much. Appreciate it.

3 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

4 You're welcome.

5 ASSEMBLYWOMAN WALSH: I yield my time.

6 CHAIRWOMAN KRUEGER: Thank you.

7 So just for clarification, the  
8 committees that overlap the Judiciary are  
9 Codes and Judiciary. So the chairs and  
10 rankers are entitled to the extra time from  
11 those committees for the judge.

12 In the Senate, the ranker for both  
13 Codes and Judiciary is Senator Palumbo. So  
14 he's not getting 10 minutes per se, he's  
15 getting two five-minutes that we will put on  
16 the clock as 10 minutes.

17 (Laughter.)

18 SENATOR PALUMBO: I'll be sure and  
19 pause between the two rounds of questioning.  
20 Thank you, Madam Chair.

21 Thank you. And it's good to see you,  
22 Judge Zayas. Good to see you again.

23 And I just want to say -- and I know I  
24 mentioned this the other day when we met --

1           that I just think you're doing a fantastic  
2           job. There's a lot of leeway within the  
3           budget for the Administrative Judge to  
4           allocate funds to where there's areas of  
5           need, and I think the trains are running on  
6           time thanks to you. So you're really doing  
7           great work dealing with even the COVID  
8           backlog and everything that you do. So thank  
9           you.

10                        CHIEF ADMINISTRATIVE JUDGE ZAYAS:

11           Yeah, appreciate it.

12                        SENATOR PALUMBO: My pleasure.

13                        Now, there were a few comments from  
14           some of my colleagues as well about the State  
15           of the Judiciary and comments from the Chief  
16           regarding maybe a refined Second Look Act.  
17           And regarding just the overall motion  
18           practice that would result, I don't know if  
19           you've tried to speculate this. I don't want  
20           to get too far in the weeds. But generally  
21           speaking, if all of those inmates now every  
22           three years would be mandated an opportunity  
23           to file essentially a 440 motion. Although  
24           that vehicle already does exist, this would

1 expand it.

2 Do you have any comments on what you  
3 think the possible -- you know, the effect  
4 that would have with regard to motion  
5 practice in our trial courts?

6 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

7 Yeah, I do think that our motions like that,  
8 that our current judges in the -- who sit in  
9 the Criminal Superior Court would not have a  
10 problem handling them. There's been the  
11 Survivor Act, which was a little similar  
12 motion practice, the 440, and we -- they get  
13 distributed among all of the judges. And I  
14 do not think that we would have any trouble  
15 handling them.

16 There is at least the current version  
17 of the bill, if I'm remembering it right --  
18 and maybe Senator Salazar could correct me --  
19 that there's a 10-year waiting period. So  
20 someone has to serve 10 years before they are  
21 able to make their initial application.

22 And so these are typically things that  
23 are done in chambers. If a hearing is  
24 ordered, then that will take up some

1 additional time. And -- but I do think it's  
2 not going to overwhelm our courts in any way.

3 SENATOR PALUMBO: Very good. And do  
4 you think -- as far as refining it, do you  
5 have any comments in that regard? The  
6 current version that I see presumes  
7 release -- although having been involved in  
8 the practice of law for many years now, those  
9 mitigating factors are obviously part of --  
10 90-some-odd, probably 95 percent or higher  
11 amount of cases are pled because there's an  
12 agreement between the parties, and they weigh  
13 aggravating and mitigating factors.

14 So you're really dealing with very  
15 serious crimes if they're serving more than  
16 10 years in the aggregate.

17 So do you -- would you have any  
18 ability to comment with regard to any ways  
19 that we could tweak the Second Look Act and  
20 maybe even have -- because we already parole  
21 as well, so there are already bites at the  
22 apple regarding release.

23 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
24 Right. Right.

1           SENATOR PALUMBO:  So any comments --  
2           because obviously the Parole Board gets  
3           comments from the victims in a  
4           victim-sensitive case.  This looks like the  
5           victim is completely ignored.  So do you  
6           think that would be something to consider, or  
7           any other comments on how that could be  
8           refined as suggested by Judge Wilson?

9           CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
10          Yeah, I mean, I don't think it needs to be  
11          limited to only people who have been found  
12          guilty at the trial.  I think someone who's  
13          taken a plea and -- to a lot of time might  
14          even be in a better position because he or  
15          she has already taken responsibility on  
16          day one when he or she took the plea.

17          And so with respect to the other part  
18          of the question, I do think that everything  
19          is on the table.  So once someone sets --  
20          once someone begins to serve their prison  
21          time, there's nothing I don't think should be  
22          wrong with that person's full record being --  
23          you know, prison record should be before the  
24          judge who's making these applications.

1           You know, this is not the first time  
2 we've done this. I think when Governor  
3 Pataki was the governor and I think that the  
4 other side of the aisle had the majority,  
5 we -- you adopted the effort to reduce the  
6 Rockefeller -- the effects of the Rockefeller  
7 Drug Laws, and we sent all of those cases  
8 back to the trial courts.

9           So we do have some experience in  
10 having dealt with this, and that -- I mean, I  
11 was obviously really impressed that this was  
12 done by folks from the other side of the  
13 aisle. This is I don't think a conservative  
14 or progressive or liberal issue. This is  
15 something, for example, that was done,  
16 Assemblymember Palumbo, by the federal  
17 government. So we had President Trump  
18 advocating for this, and a Republican  
19 legislature actually enacted a law.

20           Now, I don't think there are -- I  
21 don't know the extent of the similarities  
22 between the Salazar and Walker bill. But  
23 this is being done in our federal courts, and  
24 during a Republican administration.

1           So I hope that this -- I mean, to me  
2           it's a very important piece of legislation,  
3           and I hope that it doesn't get bogged down  
4           in, you know, discussions about, you know,  
5           folks being soft on crime or -- because  
6           there's no better way to see whether or not  
7           someone would recidivate than to see what  
8           their life has been like while they were in  
9           prison.

10           It really tells a judge -- and there's  
11           no way for a judge to actually know that when  
12           the judge is sentencing a defendant, because  
13           you need it to happen first. And obviously  
14           prison is not an easy place to serve time.  
15           And if there are people who, during their  
16           prison term, are doing extraordinary things  
17           and graduating from college -- and we heard  
18           someone, someone said, Senator Myrie talked  
19           about the folks who testified at the State of  
20           the Judiciary, and this person was convicted  
21           of a murder, but he said he never had a  
22           single discipline in his many, many years of  
23           being -- he was sentenced at the age of 17,  
24           you know.

1                   SENATOR PALUMBO:  And that's basically  
2                   the purpose of incarceration, right, is  
3                   rehabilitation.  So I think that we all feel  
4                   that in our hearts, that that's the intended  
5                   act, that you pay your debt to society and  
6                   hopefully you come out a different person.

7                   CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
8                   Yeah.

9                   SENATOR PALUMBO:  I totally get that,  
10                  and I'm sorry to cut you off, but I'm running  
11                  low on time and I just want to talk about  
12                  guardianship reform.

13                  My office -- I actually have a bill  
14                  that would just create presumption of  
15                  visitation, essentially.  We see a lot of  
16                  these Article 81 issues where you have  
17                  people -- and there are some famous people  
18                  who have been dealing with this -- Wendy  
19                  Williams.  And remember the Free Britney  
20                  regarding her conservatorship?

21                  It's almost counterintuitive, because  
22                  these folks and the lawyers make money off of  
23                  the estate of the incapacitated person.  And  
24                  it's a long and convoluted motion practice

1           where the lawyer gets paid to basically  
2           exclude family members, even family members  
3           who have not done anything untoward, like  
4           financial, physical, mental abuse of any  
5           kind, they just want to see their loved one.

6                     Casey Kasem didn't see his kids for  
7           the last two years of his life because his  
8           new wife didn't like them. And that's really  
9           insane. And I know the Attorney General  
10          started an investigation.

11                    Actually, I have a bill -- and you  
12          could maybe even comment on that, if you'd  
13          like, too so I can get the question out as to  
14          any proposals to fix it. This would  
15          simply -- it would allow an order to show  
16          cause hearing within 10 days, presumption of  
17          visitation. Just to visit your loved one at  
18          that time in their life when they're  
19          obviously struggling. Many are at the end of  
20          life.

21                    And I have someone from Long Island  
22          who -- Christine Montanti, she had this with  
23          her mother -- just trying to see her mom, she  
24          spent almost three-quarters of a million

1 dollars, her entire savings, just to see her  
2 mom, and did nothing untoward.

3 So do you have any comments on that,  
4 Your Honor?

5 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
6 Yeah, I mean, those are the types of cases  
7 that pull on our heartstrings. I cannot say  
8 that I am that familiar with that bill, but I  
9 would be happy to have my team reach out to  
10 you and give you our thoughts. I'm just not  
11 that familiar with -- I can't keep up with  
12 all of the bills that are coming out --

13 SENATOR PALUMBO: That's great.  
14 That's okay.

15 CHIEF ADMINISTRATIVE JUDGE ZAYAS: --  
16 as hard as I try.

17 SENATOR PALUMBO: I see Brielle's pen  
18 wiggling, so she's probably writing it down.

19 Great. Thank you, Your Honor. And  
20 thanks again for the work that you do for us  
21 in the state.

22 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
23 Thank you.

24 CHAIRMAN PRETLOW: Thank you.

1           Before I go on, we've been joined by  
2           Assemblywoman Kelles, Assemblyman Meeks,  
3           Assemblywoman Shimsky, Assemblywoman Simon,  
4           and Assemblywoman Walker.

5           And I'm calling on  
6           Assemblyman Dinowitz for 10 minutes.

7           ASSEMBLYMAN DINOWITZ: Good morning,  
8           Judge, and thank you. This new  
9           administration, I think there's been a lot of  
10          refreshing changes and we certainly  
11          appreciate a lot of the work that's been  
12          done.

13          So I wanted to talk about discovery.  
14          The Governor has in her Executive Budget  
15          several proposed changes. I'm not sure why  
16          it's in the budget -- it's not budget stuff,  
17          but it's in the budget. And we read a lot  
18          about the impact of the reforms that were  
19          passed six years ago. I stand by what we did  
20          with respect to discovery. But I'm trying to  
21          really understand what has been happening.

22          And, you know, you talk to the DAs,  
23          you talk to those who represent defendants,  
24          and you get totally different stories. It's

1           like if you watch the story on TV, MSNBC,  
2           Fox, it's diametrically opposed. So you  
3           don't really know all the information. So I  
4           want you to be like CNN and try to get me  
5           information.

6                        So here's my concern. There's no  
7           question there are people whose cases have  
8           been dismissed because of violations of the  
9           new law -- well, it's not so new anymore --  
10          whether they are modern technical violations  
11          or serious violations.

12                       And I'm just trying to figure out how  
13          many cases, both serious felony cases and  
14          even misdemeanor cases, you know, how many  
15          more cases are being dismissed? And maybe  
16          just as importantly, how many of the people  
17          whose cases are being dismissed are then  
18          being arrested for committing another crime,  
19          a crime that they may not have been able to  
20          commit or alleged to have committed, but for  
21          the fact that they were released because  
22          their other case was dismissed?

23                       CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
24          there's a lot in there. Let me try to unpack

1           some of that. There are not a lot of serious  
2           felony indicted cases where cases are  
3           dismissed for the failure to file compliance  
4           with discovery.

5                     Those cases that -- that is prevalent  
6           in the less serious area, the felonies that  
7           the district attorney's office, for one  
8           reason or another, has been unable to indict.  
9           Some people might say they were unable to  
10          indict them because there are weaknesses in  
11          the case, et cetera. And misdemeanors.

12                    The question of whether or not a  
13          document that the prosecutor failed to turn  
14          over timely is a technically inconsequential  
15          document and should warrant dismissal really  
16          comes under the -- what is called the Bay.  
17          You know, the Court of Appeals has weighed in  
18          on this issue and they said that the --  
19          there's two factors that have to be  
20          considered on this question of speedy trial  
21          dismissal.

22                    And that is did the prosecutor  
23          exercise due diligence to find that document,  
24          and did the prosecutor act in good faith. So

1 those -- that's the current law.

2 And so if there is a document out  
3 there that the prosecutor failed to disclose,  
4 the defense would have to show that the  
5 prosecutor did nothing to go after that  
6 document, to find that document, to  
7 investigate to get that document -- and that  
8 the prosecutor did not exercise good faith.

9 So that's -- those are the findings a  
10 judge has to make before they charge the  
11 prosecution with the responsibility for the  
12 delay that was created by that. If it's --  
13 you mentioned the word "inconsequential."  
14 That has not -- except to the extent that it  
15 might inform the prosecutor's due diligence  
16 and good faith, it has not become a factor  
17 that the Court of Appeals set forth in its  
18 decision on this matter.

19 ASSEMBLYMAN DINOWITZ: Okay --

20 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
21 hope I didn't use too many legal -- legalese  
22 in explaining that, but I'm happy to talk  
23 further with you --

24 ASSEMBLYMAN DINOWITZ: Don't worry, I

1 take 12 hours of those exciting mandatory  
2 continuing legal education classes every  
3 year, so I can probably understand some of  
4 it.

5 Okay. I mean, I would love to -- I  
6 like to look at numbers and data. You know,  
7 whether or not we need to make some changes  
8 in discovery, I mean, that remains to be  
9 seen. But I certainly think whatever we do  
10 should not be based on, you know, tabloid  
11 headlines. It should be based on facts and  
12 figures.

13 But I want to switch gears and -- go  
14 on.

15 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

16 Just a follow-up. Look, we are talking to  
17 all sides of this. So we have folks talking  
18 to the Governor's people, I believe we have  
19 folks talking to the DAs' folks and the  
20 defense folks.

21 And we feel like we can be helpful in  
22 coming up with some type of compromise that  
23 might address all of the sometimes differing  
24 opinions. But it may be that findings aren't

1 disagreeing about everything that they think  
2 they're disagreeing about.

3           And so I hope that we would continue  
4 to be part of that process of -- to the  
5 extent that there's a will and a way to  
6 change the new discovery statute, I think  
7 that the folks from my team that are involved  
8 in this I think can be very helpful. And we  
9 want to be. And we have been. And we are  
10 the ones in the courthouses dealing with this  
11 every day, so we will tell you our honest  
12 opinions about -- and be transparent about  
13 what we think should be done.

14           ASSEMBLYMAN DINOWITZ: Okay, thank  
15 you. I'm running low. I just want to switch  
16 gears.

17           So in the Bronx our facilities are  
18 substandard. You know, the courthouse, as we  
19 call it, 851 Grand Concourse, is -- the  
20 building's -- I guess it's about a hundred  
21 years old and there are tremendous needs  
22 there.

23           The Hall of Justice, the Criminal  
24 Court building, is a relatively new building

1 with apparently serious construction defects.  
2 I hoped that's been rectified. The Family  
3 Court building on the Grand Concourse, also a  
4 relatively new building -- I mean, it was  
5 amazing when it was built, but the Bronx has  
6 approximately the same number of Housing  
7 Court cases as Brooklyn, and Brooklyn is  
8 almost twice the population of Bronx. And so  
9 there are tremendous needs. You know,  
10 hearings being held in the hallways there and  
11 just all kinds of really bad things.

12 So my -- I'm not even going to ask a  
13 question, I'm just going to say that I think  
14 that there are significant needs to either  
15 build more or expand or rehabilitate. But  
16 there are tremendous needs in the court  
17 facilities in the Bronx -- and I'm sure in  
18 other places too, but I know the Bronx. And  
19 I hope that both in the short term and the  
20 long term that the Judiciary will start --  
21 can focus on those needs.

22 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
23 Yeah, and I appreciate that. I don't  
24 disagree with anything you've said. The

1 Bronx did get a brand-new, very expensive  
2 Hall of Justice building that has had  
3 problems.

4 One of the things I've been concerned  
5 about is that every county in New York City  
6 has gotten a -- Staten Island is in the  
7 process of building a brand-new Family Court,  
8 Queens got a brand-new Family Court, Brooklyn  
9 got a brand-new Family Court, and Manhattan  
10 has -- you know, not as new, but they got a  
11 new Family Court a while ago.

12 And it's time, I think, for the Bronx  
13 to get a new Family Court. The problem is we  
14 don't control the buildings that -- they're  
15 not our buildings, they are the city's  
16 buildings.

17 So to the extent that, Chair, you and  
18 other Bronxites -- and I know that there are  
19 many that have talked to me about this --  
20 can -- because I think what needs to happen  
21 in the Bronx is there needs to be a new  
22 Family Court. And a Family Court and maybe a  
23 Housing Court. And I understand there's a  
24 new school right behind, a new Catholic

1 school that's going under. And that's a big  
2 space. And I talked to the borough president  
3 about this. I would love to see that happen,  
4 because Bronx deserves that.

5 And you should know, however, and I  
6 know Chair Lavine and Chair Hoylman-Sigal, we  
7 have this Facilities Review Board which  
8 basically is designed to enforce the statute  
9 which requires these municipalities to do  
10 their job and fix their building. And you  
11 can talk to -- well, call me or us off the  
12 record later.

13 ASSEMBLYMAN DINOWITZ: (Nodding.)

14 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

15 Thank you.

16 CHAIRWOMAN KRUEGER: Thank you very  
17 much.

18 Next up is Senator Salazar.

19 SENATOR SALAZAR: Thank you,  
20 Judge Zayas, good to see you.

21 A quick follow-up question on  
22 questions that were asked by  
23 Senator Hoylman-Sigal. If no arrests are  
24 permitted in the courtroom. But let's say

1 ICE were to show up and they have a valid  
2 warrant and it's assessed by an OCA judge to  
3 be a valid warrant, what then happens? Where  
4 is the arrest made?

5 CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
6 the act that this body enacted allows, and  
7 our protocols allow, if there's a  
8 determination made that the warrant is from a  
9 judge to arrest the -- I don't want to call  
10 them a defendant because it's a civil arrest,  
11 they can arrest that person in a portion of  
12 the courthouse. That's the law.

13 But ICE, Homeland Security, has  
14 assured us that they will do nothing --  
15 there's even a bulletin that they have said  
16 in that bulletin, in writing and orally, that  
17 they will do nothing that violates -- they  
18 will make every effort to abide by our  
19 Protect Our Courts Act.

20 SENATOR SALAZAR: Thank you.

21 To pivot to discussing second-look  
22 legislation, which Senator Palumbo brought  
23 up, other states have passed sentencing  
24 reforms in recent years, including

1 second-look legislation. You wrote in the  
2 New York Law Journal, published last month,  
3 in support of the idea of second-look  
4 legislation. Judge Wilson, not only at the  
5 State of the Judiciary earlier this week, but  
6 previously has publicly supported second-look  
7 legislation, as has the New York State  
8 Justice Task Force that Judge Wilson -- under  
9 his leadership.

10 Given this support from within the  
11 Judiciary, what barriers do you see to making  
12 sentencing reform such as the Second Look Act  
13 a reality in New York?

14 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
15 hope that the extraordinary State of the  
16 Judiciary that happened this week, and the  
17 specter of having those young -- not so  
18 young, but young when they were convicted --  
19 testify the way they did alone would persuade  
20 folks who watch it that it's worthy of  
21 passage.

22 In terms of some of the operational  
23 issues that still need to get resolved, there  
24 obviously needs to be some discussion about

1           whether the application goes back to the  
2           judge who originally sentenced the defendant  
3           or a new judge who can take a new fresh look.

4                     There's questions about --

5                     (Time clock sounds.)

6                     SENATOR SALAZAR: Thank you.

7                     CHIEF ADMINISTRATIVE JUDGE ZAYAS:

8           You're welcome.

9                     CHAIRWOMAN KRUEGER: Thank you.

10                    Assembly.

11                    CHAIRMAN PRETLOW: Assemblyman

12           Morinello, five minutes.

13                    ASSEMBLYMAN MORINELLO: Good morning,

14           Your Honor.

15                    CHIEF ADMINISTRATIVE JUDGE ZAYAS:

16           Good morning.

17                    ASSEMBLYMAN MORINELLO: Thank you for

18           the privilege of being before you.

19                    I'd like to do a discussion -- I'm

20           wearing two hats. I'm a retired judge and

21           also a legislator. But I would really like

22           to have a positive discussion, and I'm really

23           excited to see the emphasis on

24           problem-solving courts. I wonder if you

1           might just briefly give us an explanation of  
2           the theory so that we have a better  
3           understanding as a group of what the  
4           problem-solving courts are, please.

5                         CHIEF ADMINISTRATIVE JUDGE ZAYAS:

6           Sure. So I'm sure it may go back before  
7           Judge Kay's time, but Judge Kay was a big  
8           proponent of problem-solving courts because  
9           of this revolving door of justice. We would  
10          have a defendant appear, we would release the  
11          defendant, and then before you knew it the  
12          defendant came back with the same  
13          difficulty -- the substance use issue, mental  
14          health issues. And it was a revolving door  
15          of justice that did not solve problems.

16                        And so that is the origin of that.  
17          And we've expanded it everywhere we could,  
18          because -- I'm sure in the back of everyone's  
19          mind, legislators and judges included -- we  
20          can't send everyone to jail. And it doesn't  
21          make sense to do that.

22                        Because once a defendant completes a  
23          drug treatment program or a veterans'  
24          program, it reduces recidivism. It avoids

1           what some have called -- what is, you know,  
2           overincarceration. And so instead of -- and  
3           some of these cases are not serious crimes  
4           being committed. So the question is, should  
5           they do 30 days in jail or should they do,  
6           you know, nine months of treatment?

7                         And it's certainly much better and  
8           more efficacious and crime-reducing if you  
9           give people treatment so that they change  
10          their lives, begin building families.  
11          There's so many success stories that I know  
12          me and you have seen in our lives as judges.  
13          So that's really the foundation of that.

14                        ASSEMBLYMAN MORINELLO: I think you  
15          and I both were problem-solving-court judges.  
16          And I think it's important that they  
17          understand that judicial discretion is an  
18          important part of problem-solving courts.

19                        There's been discussions on the need  
20          for more mental health focusing, more drug  
21          focusing. But I would like to put on the  
22          record of the importance of the programs that  
23          are administered through the courts on these  
24          programs.

1 I'd also like to put on the record  
2 that they do have to appear in front of a  
3 judge. So you almost have a family figure  
4 overseeing these individuals.

5 Judicial diversion. That is a form of  
6 the problem-solving court, am I not correct,  
7 directed at more serious crimes?

8 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
9 Yeah, diversion is the statute -- if you're  
10 referring to the statute that was enacted  
11 that dealt with drug treatment courts and  
12 efforts to divert defendants out of jail and  
13 into programs. Yes, more -- it was felonies.

14 ASSEMBLYMAN MORINELLO: So right now  
15 the court system focuses on all aspects of  
16 what may be the underlying cause of someone  
17 committing a crime.

18 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
19 That's right.

20 ASSEMBLYMAN MORINELLO: And as is my  
21 understanding, if I'm correct, that the  
22 determination is if there is an underlying  
23 cause, the courts do have programs to assist  
24 them in absolving that, with guidance. Am I

1 correct on that?

2 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

3 Absolutely. Absolutely.

4 ASSEMBLYMAN MORINELLO: I'd also like  
5 to place on the record that there were many  
6 times when some of the programs I oversaw  
7 faced financial difficulties because of the  
8 lack of funding. Is the focus of part of the  
9 funding in this budget so that those programs  
10 can continue with the courts so that we don't  
11 have to interrupt treatment of those that we  
12 can send back to a quality family life?

13 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

14 Yes, that's an excellent question. I know --  
15 I looked at the schedule of speakers today,  
16 and there are many who will be testifying  
17 before you today who run these treatment  
18 programs. And we, the court system, will  
19 only be as good in problem-solving courts by  
20 the adequate funding of all of those  
21 programs. So when they appear before you, I  
22 hope that that would be granted, yes.

23 ASSEMBLYMAN MORINELLO: Thank you,

24 Your Honor.

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

2 You're welcome.

3 CHAIRWOMAN KRUEGER: Thank you.

4 Senator Rolison.

5 SENATOR ROLISON: Thank you,

6 Madam Chair.

7 And good to see you again, Judge.

8 On the Second Look Act -- and the  
9 Chief Judge had talked about it, refining it,  
10 being part of the process, essentially, is  
11 what I am reading from this.

12 Now, this is my third year here. I  
13 don't remember a time -- and correct me if  
14 I'm wrong -- where OCA, the Unified Court  
15 System, the Chief Judge or any judge was  
16 weighing in on legislation that was being  
17 proposed by one of the bodies. Is that an  
18 accurate statement, somewhat, to you, Judge?

19 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
20 think sometimes it might have depended on the  
21 Court of Appeals judge or the Chief  
22 Administrative Judge. I think Jonathan  
23 Lippman, for example, was very vocal about  
24 the things he supported, et cetera.

1           But to the extent that you're  
2           suggesting that our administration is doing  
3           things differently, I think that's absolutely  
4           true. We want -- we've asked legislators to  
5           give us the bills ahead of time so that we  
6           can -- because oftentimes when the bill  
7           passes and now it's going to go to the  
8           Governor, they're asking for our opinion.

9           So we -- it was intentional on our  
10          part to try to find out what legislators are  
11          trying to do and to get a sense, get an  
12          understanding of those bills before they are  
13          sent to us at the last minute and then we're  
14          almost required to either rubber-stamp them  
15          or not take a position. So we've made a  
16          deliberate attempt to treat these matters a  
17          little differently.

18          SENATOR ROLISON: So is there  
19          someone -- and thank you for that  
20          explanation. And so we may see this in the  
21          future. Is there going to be -- like in this  
22          particular piece of legislation, which I  
23          certainly have some questions about for a  
24          later time, is there someone in the

1 Unified Court System that I can speak to  
2 about my concerns about this, especially as  
3 it relates to crime victims?

4 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

5 Yes.

6 SENATOR ROLISON: Because that's  
7 currently written that you're going to have  
8 the possibility that crime victims are going  
9 to be continually having to weigh in on a  
10 crime against them -- could even, if this was  
11 enacted as is, that someone may say, I'm not  
12 going to report that crime because I don't  
13 want to relive it again and again and again.

14 And I think, you know, we spent many  
15 years -- many years in this state really  
16 advocating on behalf of crime victims. And I  
17 think as this is currently written, it would  
18 set that back and could potentially have  
19 people say, You know what, I'm not going to  
20 seek justice.

21 So I would love to have that  
22 conversation, Judge.

23 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

24 Yeah, we're always open to that.

1           I only have a few seconds. I will say  
2           that in my many years doing death penalty  
3           work and other matters, that there also are a  
4           lot of victims who would welcome an  
5           opportunity like this.

6           SENATOR ROLISON: Thank you, Judge.

7           CHAIRMAN PRETLOW: Assemblyman Otis.

8           ASSEMBLYMAN OTIS: Thank you, Judge.  
9           Thank you for your testimony and thoughtful  
10          comments.

11          And I'd also like to thank Chief Judge  
12          Wilson for coming to visit one of the  
13          problem-solving courts in my community, in  
14          New Rochelle, Judge Jared Rice's Opportunity  
15          Youth Part. And I've seen firsthand how  
16          effective that work is in saving the lives  
17          and the futures of emerging adults. And  
18          Judge Wilson spoke about this at his State of  
19          the Judiciary event earlier this week.

20          The question that I have, these courts  
21          need resources. It's not just the judge and  
22          the judicial staff, they need the kinds of  
23          social service providers out there to work  
24          with the participant in the program and turn

1           their lives around.

2                     How can we grow -- and I'll just say  
3           I'm an advocate for increasing funding for  
4           these kinds of programs.  But what model do  
5           you think is the best way in terms of getting  
6           money to the system to help grow these  
7           ancillary services that make these programs  
8           successful?

9                     CHIEF ADMINISTRATIVE JUDGE ZAYAS:

10           Sure.  Sure.  So I said this earlier, I  
11           looked at the number of people testifying  
12           before you today, and I know that even  
13           outside of this hearing that you are probably  
14           getting reached out to by the folks who run  
15           these programs.

16                     And we are only going to be as best as  
17           we can if there are programs that people can  
18           get sent to.  So we don't feel like it's  
19           right for us to be not only the judge and  
20           then be in charge of the program that they're  
21           getting sent to -- that has to be another  
22           independent agency.

23                     So we've been urging the mayor of  
24           New York City and the mayors of all of the

1 other big cities who are responsible for  
2 creating these programs to which we send the  
3 people that we want to help.

4 One of the things that I think is  
5 important to say is when a person  
6 successfully completes a drug treatment  
7 program, mental health treatment program,  
8 veterans treatment program, it reduces crime,  
9 it reduces recidivism. It makes those folks  
10 more responsible and wanting to build  
11 families. And those are the stories we hear.  
12 Those are what the stats would show.

13 And so it's critically important for  
14 us to fund all of the programs that are  
15 receiving the defendants that we want to send  
16 to them. And that's happening in some  
17 places, and it's not happening in some other  
18 places.

19 ASSEMBLYMAN OTIS: I'd also like to  
20 thank your court staff in the Office of Court  
21 Administration that help the judges that want  
22 to do these programs and grow these programs.  
23 We need to get you more money.

24 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

1 Great. Thank you so much.

2 CHAIRWOMAN KRUEGER: Thank you.

3 Senator Shelley Mayer.

4 SENATOR MAYER: Thank you,

5 Madam Chair.

6 Thank you, Judge. Nice to see you.

7 It's clear that the Protect Our Courts  
8 Act applies to town and village courts  
9 outside of the OCA control. But has OCA  
10 either collaborated or communicated with the  
11 town and village courts to make sure they  
12 understand that that law applies to folks  
13 that appear in those courts as well?

14 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
15 believe we have, but I will -- there's been a  
16 lot of discussions about this, and I think  
17 this was brought up and we will get back to  
18 you on it. I don't want to misrepresent that  
19 we do that.

20 But we had all of our folks in  
21 management reach out to all of our judges,  
22 and I'm assuming it included the town and  
23 village judges.

24 SENATOR MAYER: Well, thank you,

1           because for many of us who represent  
2           communities where a large number of our  
3           immigrant communities appear in these town  
4           and village courts, that's an important fact.

5                     You asked for additional money for the  
6           virtual court appearance proceedings, and to  
7           enhance the way you do that. Is that  
8           non-Family Court appearances, or does that  
9           include Family Court appearances?

10                    CHIEF ADMINISTRATIVE JUDGE ZAYAS: Can  
11           you read the first part of that again?

12                    SENATOR MAYER: The virtual court  
13           appearance --

14                    CHIEF ADMINISTRATIVE JUDGE ZAYAS: Oh,  
15           yes, yes.

16                    SENATOR MAYER: -- that you've asked  
17           for additional funds for, is that applicable  
18           to Family Court proceedings as well as  
19           non-Family Court proceedings?

20                    CHIEF ADMINISTRATIVE JUDGE ZAYAS: We  
21           do want to -- yeah. Yeah. I mean, I want to  
22           make sure we're talking about the same thing.

23                    So there's a program bill where we're  
24           trying to amend CPL 182. That applies only

1 to criminal cases because several cases you  
2 can do virtually without a statute.

3 But there are certain cases that we'd  
4 like to do virtual, and there are certain  
5 cases that they're -- we feel like it's  
6 better to have someone come in, at least on  
7 the first appearance. It's a daunting  
8 process for litigants in Family Court, to  
9 keep having to take off of work to come to  
10 court.

11 So -- but it's with the consent of the  
12 parties, when they consent. And particularly  
13 support proceedings --

14 SENATOR MAYER: Support proceedings in  
15 Family Court.

16 CHIEF ADMINISTRATIVE JUDGE ZAYAS: We  
17 want those -- those can be virtual because  
18 it's really mathematical. I mean, obviously  
19 there's some discretion.

20 And, you know, there are times in  
21 which it helps the parties to be able to not  
22 have to take a day off of work, or half a day  
23 off of work, to come into the court for that.

24 SENATOR MAYER: I understand that,

1 Judge, but I'm always sensitive to pro bono,  
2 particularly women litigants in Family Court  
3 who don't have an attorney, who they may  
4 consent without really understanding they  
5 don't have a chance to sort of make their  
6 case in person.

7 So I always have concerns. I  
8 understand the advantage for many people,  
9 virtual appearances in Family Court, but  
10 again, I think many people without an  
11 attorney want the ability to see a judge or a  
12 magistrate in person and may be able to make  
13 their case --

14 CHIEF ADMINISTRATIVE JUDGE ZAYAS: Let  
15 me clarify, but it is with consent only. So  
16 if there is a litigant --

17 (Time clock sounds.)

18 SENATOR MAYER: We'll follow up, thank  
19 you.

20 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
21 Okay.

22 CHAIRWOMAN KRUEGER: Assembly.

23 CHAIRMAN PRETLOW: Assemblyman Ra.

24 ASSEMBLYMAN RA: Thank you.

1                   Good morning. Thank you to you and  
2 your team for meeting with us yesterday to  
3 discuss some of the aspects of the budget.

4                   I wanted to just talk a little bit  
5 about court security. And my colleague had  
6 gotten into some of the initiatives from last  
7 year, and I know we discussed them a bit  
8 yesterday. But --

9                   CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
10 Assemblyman, would you mind just speaking up?

11                   ASSEMBLYMAN RA: Sure.

12                   CHIEF ADMINISTRATIVE JUDGE ZAYAS: My  
13 wife tells me I can never hear her, and I  
14 think maybe she's right.

15                   ASSEMBLYMAN RA: Sorry. Is that  
16 better?

17                   CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
18 Yeah, it's helpful.

19                   ASSEMBLYMAN RA: So I wanted to just  
20 talk a little bit about court security. I  
21 know we discussed yesterday some of the  
22 initiatives from last year's budget, and now  
23 you're implementing that. But in particular,  
24 about some concerns that have been brought to

1 me on local courts.

2 Now I know, obviously, it's a big part  
3 of the OCA's budget to provide court security  
4 or court officers. Is there any funding  
5 that's provided to local courts for safety  
6 for town and village judges?

7 CHIEF ADMINISTRATIVE JUDGE ZAYAS: You  
8 know, I do not think that there is. I think  
9 the town and village justices have to provide  
10 their own security.

11 Sometimes they might use court  
12 officers, experienced court officers, who  
13 would do that in their evening sessions. But  
14 they are required to -- I'm pretty sure  
15 that's the correct answer. If I'm wrong, my  
16 team will correct me and reach out to you.

17 ASSEMBLYMAN RA: Okay. Thank you.

18 And one of the things I've heard,  
19 particularly at that level, because I think  
20 it varies greatly -- you know, as you saw  
21 yesterday, one of our staff members who is a  
22 local judge, you know, was telling us how  
23 things are done in his courthouse and  
24 thankfully there's always police on staff so

1           that, you know, if he's leaving at the end of  
2           the night and somebody he just sentenced or  
3           somebody is out there, that they make sure,  
4           you know, he's getting home safely.

5                        So it has been brought up, the idea of  
6           at the village and local level, that some  
7           judges who are legally licensed to carry  
8           firearms might be interested in doing so. Is  
9           that something OCA would support?

10                      CHIEF ADMINISTRATIVE JUDGE ZAYAS:

11           You're talking about judges who want to --

12                      ASSEMBLYMAN RA: If they are licensed  
13           to carry a firearm, to be able to do so when  
14           they're, you know, on the bench and working.

15                      CHIEF ADMINISTRATIVE JUDGE ZAYAS: You  
16           know, that's -- I think that's -- I think we  
17           allow that. But let me get back to you on  
18           that too.

19                      ASSEMBLYMAN RA: Okay.

20                      CHIEF ADMINISTRATIVE JUDGE ZAYAS:

21           Yeah, but a lot of judges are licensed to  
22           carry. I think we had a policy in place some  
23           time ago where we preferred them not to bring  
24           their firearm in the courthouse. But we'll

1 get back to you on exactly the policy now.

2 ASSEMBLYMAN RA: Okay. And then  
3 lastly, you've had -- I know we've talked a  
4 little bit about the discovery changes in the  
5 proposals. But I think it's worth repeating  
6 something you talked about yesterday for my  
7 colleagues here regarding some of the  
8 initiatives that you have already undertaken  
9 to deal with dismissals, particularly down in  
10 New York City.

11 CHIEF ADMINISTRATIVE JUDGE ZAYAS: Oh,  
12 sure. So what we -- we were concerned about  
13 this. You know, we have old cases in  
14 Rikers Island -- this is New York City  
15 only -- and we had all sorts of strategy to  
16 deal with these old cases where defendants  
17 were in jail. And our AJs in each of these  
18 respective counties were all over that.

19 Then we had this whole big bucket of  
20 cases which are getting bogged down in motion  
21 practice and all sorts of other delays  
22 related to discovery.

23 And so our case processing initiative,  
24 which we just piloted in Brooklyn, and we

1 understand it's doing really well,  
2 required -- basically required an  
3 acceleration of when the discovery, the  
4 important discovery needs to -- all discovery  
5 is important. But there were some particular  
6 pieces of discovery -- body cam, police  
7 reports, and all of those things that needed  
8 to be turned over quickly.

9 So we accelerated the prosecutor's  
10 burden. We expected the defense to review  
11 that discovery quickly and within 35 days, I  
12 think, determine whether they're going to  
13 challenge. We required the parties to confer  
14 with either a judge, a JHO or a law clerk  
15 and, if there is something still missing, to  
16 quickly get the prosecutor's office to  
17 provide that information.

18 And it's early, but it does appear to  
19 be successful.

20 ASSEMBLYMAN RA: Thank you.

21 CHAIRWOMAN KRUEGER: Thank you.

22 Senator Scarcella-Spanton.

23 SENATOR SCARCELLA-SPANTON: Good  
24 morning. Thank you, Judge Zayas.

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS: Hi,  
2 how are you?

3 SENATOR SCARCELLA-SPANTON: Very good.  
4 Thanks for being here with us.

5 I know we've talked a lot about  
6 discovery and I feel like we each kind of  
7 have a role to play in it. What can be done  
8 or what has been done by OCA to expedite  
9 criminal cases and to resolve some of the  
10 discovery issues early to abate dismissals  
11 due to the speedy trial time running out?

12 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
13 Right. So a lot of the things I've explained  
14 is we've put into practice -- we had all of  
15 these stakeholder meetings, we agreed to a  
16 conference order. So as soon as a --  
17 particularly someone who is incarcerated at  
18 Rikers, to have those folks confer with the  
19 judge immediately. And if there are  
20 disagreements, they have to come before the  
21 judge again.

22 And we put into practice these  
23 timelines by which these things needed to be  
24 done. And, you know, sometimes if a -- but

1 we put in safeguards too. It's guardrails  
2 and then these are the dates by which you  
3 have to do these things. But if there's good  
4 cause, because of the voluminous nature of  
5 the discovery, we can extend it.

6 So there was hyper-oversight of the  
7 discovery process. And when you do that, it  
8 avoids these motions that come later which  
9 slow things done and might take months and  
10 months to solve.

11 SENATOR SCARCELLA-SPANTON: Thank you.

12 And my next question is we spoke  
13 earlier about Family Courts as well, and  
14 we're really excited Staten Island's getting  
15 a new Family Court. But I know it's been  
16 quite -- it will be quite a long project.

17 Do you have any updates on this  
18 project? Because right now the Family Court  
19 lawyers, they're working out of trailers.  
20 I've gone to tour some of them just to see;  
21 they're right next door to my office.

22 But we're excited for it, I just  
23 wanted to see if you had an update on that  
24 project.

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
2 just saw an update. I can't tell you I  
3 remember it all. But there is an update. I  
4 mean, I saw renderings of it.

5 We did move a lot of the Family Court  
6 judges into Supreme Court. We are making  
7 sure that my other courthouses are  
8 accommodating Family Court judges as well.  
9 You're right, there are these trailers as  
10 well.

11 And I'll tell you that the courthouse  
12 looks beautiful.

13 SENATOR SCARCELLA-SPANTON: It's  
14 definitely going to look beautiful.

15 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
16 Yeah, it's going to look beautiful.

17 SENATOR SCARCELLA-SPANTON: And I  
18 think in the interests of time, we can talk  
19 about this another time. But I just wanted  
20 to mention that I do know the hardships that  
21 judges go through with guardianship cases,  
22 and I would love to work with you to figure  
23 out how we can better support those cases  
24 moving forward.

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
2 Sure. And I'll take this opportunity to tell  
3 you all that I'm happy to have me and my team  
4 meet with anyone, anyone who wants to talk to  
5 us about anything. It doesn't have to be at  
6 this hearing.

7 SENATOR SCARCELLA-SPANTON: Thank you  
8 very much.

9 CHAIRWOMAN KRUEGER: Thank you.  
10 Assembly.

11 CHAIRMAN PRETLOW: Assemblywoman Cruz.

12 ASSEMBLYWOMAN CRUZ: There we go.  
13 Judge Zayas, always great to see you. Two  
14 quick questions.

15 I'd love to hear updates on the  
16 implementation of Clean Slate and how that's  
17 going and if there are additional resources  
18 that you need from us in order to support  
19 that process to ensure that it's done in a  
20 timely manner.

21 And then going back to some of the  
22 questionings around the interactions with ICE  
23 inside of the courtroom, my understanding  
24 from the way that the law was written and the

1 way that the process actually works is  
2 there's not necessarily a connecting point.  
3 Because if ICE is conducting the activity  
4 that they are allowed to conduct in the  
5 public spaces when there is a judicial  
6 warrant -- because it's happening in public  
7 spaces, there isn't necessarily a connector  
8 to the court system whereby you can track  
9 when it is actually happening.

10 Is there a way for us to perhaps fix  
11 that, help in fixing that? I don't want to  
12 create more paperwork, but I think it's  
13 important for us to know when it is  
14 happening. One of the things that we are  
15 seeing now is lots of confusion, lots of  
16 rumors, lots of -- I mean, I heard stories  
17 of -- there were 20 buses outside a courtroom  
18 outside of Long Island this week. No one can  
19 actually verify this. And that 20 people  
20 were taken -- no one can verify it.

21 It's because there's a missing link or  
22 seems to be a missing link there.

23 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

24 Right. So let me address your -- well, the

1 Clean Slate issue is easier because we're all  
2 over that. I talked to Senator Myrie about  
3 that. We've had meetings with you, and we'll  
4 continue to do that.

5 We feel like we're on track to get  
6 that done. Our research people are going to  
7 get that done.

8 With respect to ICE, the protocol  
9 requires that when anyone from ICE enters our  
10 courthouse, they have to present our officers  
11 with whatever documents they have that they  
12 think might give them the right to do  
13 something in the courthouse. And so that is  
14 tracked. That is sent directly to -- those  
15 paperwork -- that paperwork is tracked. The  
16 chief of -- or the major in that courthouse  
17 is sending that information downtown.

18 Immediately, that case is -- that  
19 paperwork is brought to a judge who is going  
20 to be deciding whether or not this is the  
21 type of warrant that's a proper warrant, a  
22 judicial warrant, or just a detainer. If  
23 it's just a detainer, they are not allowed to  
24 arrest in the courthouse, in the courtroom,

1 or anywhere. Maybe down the street  
2 somewhere, et cetera.

3 And that I think is being chronicled,  
4 and there's a reporting requirement of  
5 requirement that.

6 ASSEMBLYWOMAN CRUZ: So perhaps I  
7 misunderstood what you responded to earlier  
8 on this particular question. So I'm glad to  
9 hear that it is being tracked. And it would  
10 be great, especially with everything that is  
11 happening, to get a timely reporting on that.  
12 Thank you.

13 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
14 Yeah, we can provide the protocols to you as  
15 well.

16 ASSEMBLYWOMAN CRUZ: Thank you.

17 CHAIRMAN PRETLOW: Thank you.  
18 Senate.

19 CHAIRWOMAN KRUEGER: Thank you.  
20 Senator Murray.

21 SENATOR MURRAY: Thank you,  
22 Chairwoman.

23 Thank you for being here, Judge.

24 So in your statement -- and I'm kind

1 of cherry-picking here, but you had said you  
2 want to make sure all New Yorkers have access  
3 to the fair, efficient and thoughtful  
4 administration of justice. You also said you  
5 want New Yorkers to have confidence in the  
6 judicial branch.

7 My good friend Judge Morinello earlier  
8 used the word "discretion."

9 So about a year or so ago, America  
10 saw -- the world saw as a group of men  
11 brutally attacked, assaulted, beat, kicked  
12 police officers in Times Square. The police  
13 did their job. They arrested most of them,  
14 brought them to court. And the next day  
15 America also watched as these defendants  
16 walked out literally flipping the bird in the  
17 camera to all of us, laughing, giggling as no  
18 bail was set and they were released. Come to  
19 find out, several of them fled the state and  
20 were caught later.

21 What do you think that does to the  
22 confidence that the public has in the  
23 judicial system? And does that have any  
24 impact on the morale in the courts?

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

2 That's a really good question that has been  
3 keeping me up at night. Because in New York  
4 we are sometimes sentencing folks to  
5 prison -- and it's devastating to the rule of  
6 law, devastating to judges who are, you know,  
7 sentencing people to jail for maybe even less  
8 serious things. And then to see that happen,  
9 it is not good for judicial morale,  
10 obviously, and it's very, very, very  
11 concerning to us all.

12 SENATOR MURRAY: Do you worry that the  
13 public's confidence in the court system is  
14 eroding when --

15 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

16 Yes.

17 SENATOR MURRAY: -- they see things  
18 like that?

19 CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
20 the National Center for State Courts recently  
21 issued a report which said that the public's  
22 perception of the federal branches of  
23 government -- the federal courts is the worst  
24 that it's ever been, but the public

1 confidence in state courts are going up.

2 It's still -- it's still too low. And  
3 we're doing everything we can to increase the  
4 public's confidence in the courts. Civic  
5 participation -- we're going out to the  
6 community more, we're bringing the community  
7 into the courthouses more to -- and doing all  
8 sorts of things, truly, to make that happen,  
9 to increase public confidence in the --

10 SENATOR MURRAY: But specific to  
11 New York, we're the only ones where you have  
12 no discretion when considering the  
13 dangerousness or the past record when setting  
14 bail. Does that hurt the public's  
15 confidence, in your opinion?

16 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
17 Yeah, I'm not sure -- I'm not sure the --

18 (Time clock sounds.)

19 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
20 Happy to talk to you later, then.

21 SENATOR MURRAY: Sure. Thank you.

22 CHAIRWOMAN KRUEGER: Okay, it's your  
23 turn now.

24 CHAIRMAN PRETLOW: Assemblyman

1 Burdick.

2 ASSEMBLYMAN BURDICK: Thank you,  
3 Chairs.

4 And Your Honor, thank you for your  
5 testimony and your work. And I also want to  
6 thank you for your response to  
7 Assemblywoman Cruz regarding the protocol  
8 where ICE intends to enter a courtroom.

9 I have a question that came out of the  
10 budget hearing on the environment, where we  
11 heard testimony about concern that there was  
12 a general lack of experience, expertise on  
13 complex environmental litigation. And while,  
14 you know, I suppose a separate environmental  
15 court system could be created, I know that  
16 there are specialized environmental parts, at  
17 least in New York City and Suffolk County,  
18 but I'm not aware of anything outside.

19 And I'm wondering if, since you have  
20 the authority, as I understand, to issue an  
21 administrative order to allow, say,  
22 Westchester County -- part of which I  
23 represent -- to give them the authorization  
24 to do so, have you given consideration to the

1 expansion of the system of the specialized  
2 environmental parts? And particularly since  
3 I don't think that it necessitates the  
4 appointment of an additional Supreme Court  
5 judge.

6 CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
7 I am intrigued, because this is the first  
8 time I've heard of this. I didn't -- I never  
9 knew that there was an interest in starting  
10 these parts.

11 They sound interesting to me. I don't  
12 know anything about them. I'll admit when I  
13 lack knowledge about something. As you know,  
14 I try to be transparent. So maybe we can set  
15 up a meeting and you can tell me more about  
16 it. Or your staff can meet with my staff.

17 But I want to be honest with you, I  
18 have not heard about this.

19 ASSEMBLYMAN BURDICK: You also  
20 emphasized the crushing inventory and really  
21 the need for more judges. Part of it I  
22 understand is a space issue. Has OCA  
23 considered recommending to the Executive that  
24 it include help for capital needs, either

1 leasehold improvements or building additions  
2 and so forth?

3 CHIEF ADMINISTRATIVE JUDGE ZAYAS: You  
4 know, by law, it's the county that's required  
5 to do this.

6 ASSEMBLYMAN BURDICK: No, I recognize  
7 that.

8 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
9 Yeah. I mean, we have, for example, in  
10 extenuating circumstances created a lease  
11 space that really the county should have  
12 given to us, but sometimes it takes so much  
13 more time.

14 One of the problems is if you mean --  
15 "mean" is not the right word. But if you go  
16 after the municipality, then you breed a bad  
17 relationship.

18 ASSEMBLYMAN BURDICK: I understand.

19 CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
20 we try to deal with it much more  
21 diplomatically.

22 ASSEMBLYMAN BURDICK: Great, thank  
23 you.

24 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

1 Thank you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 Senator Gonzalez.

4 SENATOR GONZALEZ: Hi, good morning.

5 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

6 Good morning.

7 SENATOR GONZALEZ: It's so good to see  
8 you again, Judge Zayas.

9 I saw that there were some items in  
10 the budget regarding the use of artificial  
11 intelligence in the court system. And I've  
12 so enjoyed working with you and your  
13 colleagues on the AI Working Group that you  
14 put together last year, so I just wanted to  
15 ask if you have received any initial  
16 insights, how you think the technology should  
17 be used and how the courts should approach  
18 creating a framework for AI use.

19 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

20 Yeah. And first of all, thank you. And  
21 several Assemblymembers are on that as well.  
22 And thank you for being willing to do that  
23 with your specialty.

24 We think that the advisory committee

1 is doing an extraordinary job. I hear  
2 everybody's learning a lot with respect to  
3 that.

4 I'm particularly interested in the  
5 subcommittee work, one of which is on  
6 evidence, deep fakes. There's a concern  
7 about how easy it is to manipulate a -- using  
8 AI to manipulate a particular video, for  
9 example. And the subcommittee that's  
10 discussing the admissibility of foundational  
11 requirements, authenticity, et cetera.

12 And then from -- as an administrator  
13 of 17,000 employees and judges, 1400 judges,  
14 I'm -- there's a subcommittee that's going to  
15 help us to come up with recommendations as to  
16 how our own people will be able to use AI in  
17 their work.

18 We did -- we are in the process of  
19 experimenting with all of these interesting  
20 projects. I've used a few to help me to  
21 write a speech. And we're learning. We're  
22 learning. And we appreciate all the work  
23 that you and the cochairs and so many others  
24 have done on that work, and I appreciate you

1 taking time to be a part of that.

2 SENATOR GONZALEZ: Absolutely. And  
3 certainly appreciate your leadership in this  
4 area.

5 I've certainly found being a part of  
6 the working group really enriching, and  
7 certainly want to call out the work and focus  
8 being put towards bias and discrimination,  
9 ensuring that any new technology is not  
10 amplifying existing inequities.

11 And to my -- the second question just  
12 is if the courts need any additional support  
13 from the Legislature for modernization  
14 efforts, new technologies, and more.

15 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
16 might have missed your question there, but  
17 what --

18 SENATOR GONZALEZ: If you need  
19 additional support from the Legislature. How  
20 can we help?

21 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
22 Yeah. So I think once our advisory committee  
23 issues a final report, hopefully that will be  
24 part of it.

1 I think the legislation part is going  
2 to be a big part of the ask eventually.

3 SENATOR GONZALEZ: Perfect. Thank you  
4 so much.

5 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
6 Thank you.

7 CHAIRMAN PRETLOW: Assemblyman Bores.

8 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
9 Yes, Senator Bores -- I mean Assemblymember  
10 Bores -- we support lifting the caps.

11 (Laughter.)

12 ASSEMBLYMAN BORES: Couldn't have said  
13 it better myself.

14 (Laughter.)

15 ASSEMBLYMAN BORES: Could you talk a  
16 little bit about the impact of the backlog,  
17 especially in the State Supreme Court? You  
18 mentioned it in your testimony. Can you say  
19 a little more?

20 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
21 Sure. I mean, let me just clarify. The  
22 backlog in our felony-level courts is really  
23 limited to New York City. And some say it's  
24 a lack of -- we don't have enough judges to

1 handle these cases.

2 And if you've read my budget request,  
3 I'm asking for 10 additional Criminal Court  
4 judges who I expect to sit in Criminal Court,  
5 but then I would be able to elevate those who  
6 are already sitting in Criminal Court to  
7 Supreme Court.

8 And so the effect is that defendants  
9 are staying on Rikers Island longer. I mean,  
10 that's one effect. But I hesitate to say  
11 that because judges are always, always,  
12 always available to try any case that is  
13 presented to us as ready.

14 You will never find a judge say, when  
15 a defense attorney and the prosecutor comes  
16 in and says, We're both ready for trial --  
17 that case is going to trial. It's not  
18 getting adjourned. It's the parties who  
19 say -- and sometimes it's the prosecutor,  
20 sometimes it's the defense -- We cannot try  
21 this, I'm not ready, I didn't get this,  
22 et cetera.

23 And so a judge's responsibility is to  
24 push and push and push --

1 ASSEMBLYMAN BORES: I'm giving you a  
2 softball here to ask for more resources. You  
3 don't need to caveat the --

4 (Overtalk.)

5 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
6 Okay. That's what we're looking for.

7 (Overtalk.)

8 ASSEMBLYMAN BORES: One other  
9 question. Given our need for more judges,  
10 one way that sometimes we lose them is  
11 certificated judges choose to retire because  
12 they're worried that their spouse might lose  
13 benefits or the pension if they were to die  
14 while they're still there, often known as the  
15 "death gamble."

16 As you know, this Legislature passed a  
17 bill last year to correct that for judges.  
18 And you've said this in other venues, but  
19 just to be clear, with this budget and going  
20 forward, would you be able to cover the cost  
21 of fixing the death gamble without additional  
22 appropriations?

23 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
24 Absolutely. Absolutely. And we've asked the

1 Senate Majority Leader as well as the Speaker  
2 to put these death gamble bills in their  
3 one-house bill.

4 ASSEMBLYMAN BORES: Great. And I  
5 think just because the recording didn't  
6 capture it before I started speaking, could  
7 you say what you said right at the start of  
8 my questioning?

9 CHIEF ADMINISTRATIVE JUDGE ZAYAS: Oh,  
10 yes. We absolutely support the lifting of  
11 the caps.

12 ASSEMBLYMAN BORES: Thank you.

13 CHAIRMAN PRETLOW: Thank you.

14 Assemblywoman Shimsky.

15 ASSEMBLYWOMAN SHIMSKY: Thank you very  
16 much, Mr. Chairman.

17 Good morning. First of all, I want to  
18 thank you for working on making the courts  
19 more accessible, bringing down the cost of  
20 litigation with changes like video  
21 conferencing, e-filing and so on.

22 While we're on the subject, in the  
23 9th Judicial District we are 13 judges short.

24 CHIEF ADMINISTRATIVE JUDGE ZAYAS: We

1 are what?

2 ASSEMBLYWOMAN SHIMSKY: Thirteen  
3 judges short, according to the Constitution.

4 And we certainly do have backlogs in  
5 our courts. So anything we could do to get  
6 one or two more this year and --

7 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
8 You're talking about Supreme Court judges?

9 ASSEMBLYWOMAN SHIMSKY: Yes. Yes. So  
10 that's going to be very important to us.

11 One issue I want to have a little bit  
12 more dialogue on concerns continuing  
13 professional education for our judges and for  
14 related staff. You know, we've done a lot of  
15 substantive legal reforms the last few years,  
16 including bail reform. We are trying  
17 different things with procedure and with  
18 rules, you know, as with the filing and  
19 everything.

20 What are we doing to make sure our  
21 continuing legal education for the employees  
22 in our court system, including our judges, is  
23 keeping up and they're getting the kind of  
24 deep understanding they need to be able to

1 rule on cases in these matters?

2 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

3 Right, yeah. So we are doing all sorts of  
4 things. And it's -- in Westchester we have  
5 the Judicial Institute, which I'm sure you're  
6 familiar with. And judges are regularly  
7 trained and go to training in July for a  
8 week.

9 Oftentimes judges are part of  
10 associations, judicial associations; they get  
11 another three or four days of training. Dean  
12 Davidson is doing an extraordinary job and is  
13 regularly -- I'm telling you it seems like  
14 almost every week I get an email from her  
15 offering judges additional training, remote  
16 webinars, et cetera.

17 And so I do really believe that there  
18 is training available quite regularly. And  
19 Dean Davidson is doing an extraordinary job  
20 not only in putting these panels together,  
21 but also in making folks aware of it. I  
22 understand in Nassau County recently  
23 Dean Davidson and a bunch of other educators  
24 went to Nassau County. So they're actually

1 taking their show on the road and coming into  
2 the courthouses to work on things. Things  
3 like -- I think that --

4 ASSEMBLYWOMAN SHIMSKY: Thank you.

5 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
6 Thank you.

7 CHAIRMAN PRETLOW: Assemblywoman  
8 Walker.

9 ASSEMBLYWOMAN WALKER: Thank you,  
10 Your Honor. Your testimony today has been,  
11 you know, quite frankly very inspiring. And  
12 it's an amazing thing to have someone who is  
13 of your caliber and experience at the helm.

14 You did explain to us, with respect to  
15 discovery, the due diligence standard: That  
16 prosecutors have to act in good faith, that  
17 defense attorneys have to produce the  
18 document that they are purporting exists but  
19 has not been turned over in discovery, and  
20 indicated that those are procedural  
21 safeguards with respect to having cases  
22 dismissed on speedy trial.

23 But my question is, is there an  
24 instance where the speedy trial clock can

1 stop?

2 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

3 Yes. So the speedy trial clock stops when  
4 the defense makes a motion to challenge the  
5 prosecutor's certification of compliance with  
6 discovery. And other events -- there are  
7 many events which stop the speedy trial  
8 clock.

9 ASSEMBLYWOMAN WALKER: Is there an  
10 event that would stop the speedy trial clock  
11 if the prosecutor requests more time, or some  
12 other instance, as well as the defense  
13 counsel?

14 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
15 don't think so. I think the prosecutor gets  
16 to stop the speedy trial clock when he or she  
17 files and answers "ready for trial." That's  
18 what stops the speedy trial clock.

19 ASSEMBLYWOMAN WALKER: Okay, no  
20 problem. So there is no instance where, if  
21 they are requesting more time -- or if they  
22 ask the judge that the speedy trial clock can  
23 stop.

24 But you did, I believe, mention that

1           it can be extended, based on the conference  
2           timeline that gets presented whenever it is  
3           the parties are able to meet with the judge.

4                        CHIEF ADMINISTRATIVE JUDGE ZAYAS:

5           Yeah, let me add something else. There is a  
6           provision in the Speedy Trial Statute that  
7           refers to extenuating circumstances. So if  
8           they can persuade a judge that there was  
9           extenuating circumstances which prevented  
10          them from doing something -- it's not  
11          something to choose a lot, because it's  
12          really got to be extenuating circumstances --  
13          that might also stop the speedy trial clock.

14                       ASSEMBLYWOMAN WALKER: Thank you.

15                       And there is another question that I  
16          have with respect to U.S. Bank. In many of  
17          the foreclosure cases, large financial  
18          institutions like U.S. Bank have lack of  
19          capacity and they also lack transparency and  
20          accountability in residential foreclosure  
21          cases.

22                       What steps is the court system taking  
23          to ensure the integrity of these processes  
24          and proceedings?

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
2 Yes. I see -- I have a lot to say about  
3 that, but I see I only have three seconds  
4 left. I know our offices have been talking,  
5 and I'm happy to meet with you and talk  
6 further about it.

7 ASSEMBLYWOMAN WALKER: No problem.  
8 Thank you.

9 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
10 Thank you.

11 CHAIRMAN PRETLOW: Assemblywoman  
12 Simon.

13 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
14 Good morning. I think the last time you  
15 asked me a question, I misinterpreted your  
16 question and gave you an off-the-wall answer.  
17 I will try not to do that again.

18 ASSEMBLYWOMAN SIMON: Well, thank you,  
19 Your Honor, I appreciate that.

20 So I'm not going to ask you the same  
21 question again. But -- and I do want to say  
22 thank you for agreeing to speak with me  
23 offline about that other particular matter I  
24 raised.

1 I did want to say that I'm very  
2 pleased to see the attention that's being  
3 given to the capital improvements and the  
4 accessibility of our courts, which have  
5 really lagged for people with disabilities,  
6 including their participation in court  
7 proceedings. And some of which, of course,  
8 being remote will make a big difference.

9 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

10 Yes.

11 ASSEMBLYWOMAN SIMON: I'm curious,  
12 years ago there used to be a committee that  
13 was mostly people from the court system but a  
14 few of us outsiders on it to advise the court  
15 on ADA matters. Do you still have a  
16 committee like that that you're working with  
17 that include people with disabilities?

18 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

19 Yes. We have an advisory committee which now  
20 has I think three cochairs that make  
21 recommendations to us on what we can do to  
22 increase accessibility and access to justice  
23 for folks with disabilities.

24 It's something that came up in -- when

1 a blind juror, and you might have heard about  
2 this, who shows up for jury duty, and there  
3 were some questions about how we handle that.  
4 And so that caused our team to immediately  
5 reach out to our advisory committee and give  
6 us some input on what we can do.

7 The question is can a blind person sit  
8 on a jury where there are things that they  
9 might be required to see in order to -- you  
10 know, the other question is credibility.  
11 When a witness testifies, if you can't see  
12 the witness, how do you judge credibility?

13 But we've been looking into whether  
14 there's accommodations that could be made,  
15 and that's ongoing. The -- they're still  
16 looking into this.

17 ASSEMBLYWOMAN SIMON: There's an early  
18 DC Circuit Court opinion on that saying yes,  
19 the blind person can serve. But just FYI.  
20 I'll send you that case.

21 I also wanted to just thank you -- I  
22 don't know whether you were personally  
23 involved or not, but the Red Hook Justice  
24 Center, as you know, is really a crown jewel,

1 and Judge Calabrese handled that for so many  
2 years. And the fellow who is there now is  
3 really, really excellent. So he's a fitting,  
4 you know, successor.

5 Thank you.

6 CHAIRMAN PRETLOW: Thank you,  
7 Assemblywoman.

8 Assemblyman Palmesano.

9 ASSEMBLYMAN PALMESANO: Yes, thank  
10 you, sir, for being here.

11 I have one question -- I think this  
12 should be just a yes or no answer -- and then  
13 I have another question I want to follow-up  
14 with.

15 CHIEF ADMINISTRATIVE JUDGE ZAYAS: Can  
16 you get closer to the mic? I'm having --

17 ASSEMBLYMAN PALMESANO: Yes. Yes.

18 I have one question, it should be a  
19 yes-or-no answer, regarding the discovery  
20 laws --

21 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
22 That's what judges usually say, "yes or no."

23 (Laughter.)

24 ASSEMBLYMAN PALMESANO: Yes, I know.

1           But if you have to elaborate, maybe we  
2           can do it offline, but I don't think you  
3           should.

4           Because we've been talking about  
5           discovery, I'm curious -- and I don't want to  
6           get into the nuts and bolts of it. I'm just  
7           curious, does an OCA document have the  
8           statistics pre-discovery and post-discovery  
9           on the number of cases that have been  
10          dismissed? And is discovery compliance cited  
11          for reasons for dismissal?

12          Do you have that data? And if so,  
13          could you share it with us? Yes or no.

14                   CHIEF ADMINISTRATIVE JUDGE ZAYAS:

15          Okay, so you asked a compound question, so I  
16          object --

17                   (Laughter.)

18                   CHIEF ADMINISTRATIVE JUDGE ZAYAS: No,  
19          I'm just kidding. I'm just kidding.

20          No -- yes, we do have that data. The  
21          second part of your question, I'm not sure we  
22          have the data. But we do have the data,  
23          2019, before discovery was enacted, and how  
24          many cases were dismissed. So we're happy to

1 share that with you.

2 ASSEMBLYMAN PALMESANO: Okay, thank  
3 you.

4 My next question is on the bail reform  
5 laws. In the Governor's State of the State  
6 she said the new changes basically give the  
7 judges the ability they need to combat  
8 reoffenders, and that no new changes are  
9 required. However, the new NYPD commissioner  
10 recently published an op-ed for the City of  
11 New York outlining the surge in recidivism  
12 and argued that it really stems from the  
13 failure to adequately address our state bail  
14 reform laws.

15 Do you agreed with the NYPD  
16 commissioner that the surge in recidivism  
17 across the state can be attributed to the  
18 reluctance to bring commonsense changes to  
19 our state bail reform laws, like allowing  
20 judges the discretion to consider the  
21 dangerousness of an individual when setting  
22 bail? Or do you agree with Governor Hochul  
23 that what she's done is enough to keep the  
24 public safe?

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS: You  
2 spoke very quickly there, so I'm not sure I  
3 picked up on everything and I'm not sure I  
4 understand the question. Please forgive me  
5 for that. But I'm happy to --

6 ASSEMBLYMAN PALMESANO: I'll try to  
7 summarize.

8 The Governor said the inactions of the  
9 bail reforms we passed are good enough. The  
10 NYPD commissioner just did an op-ed saying  
11 there's a surge in recidivism, and basically  
12 it cited the bail reform laws as the reason.

13 Do you agree with the NYPD  
14 commissioner that recidivism can be put back  
15 to the bail reform laws, or do you agree in  
16 allowing things like judges have discretion  
17 on the dangerousness of an individual? Or do  
18 you think the Governor is right in saying  
19 enough has been done on bail reform to keep  
20 the public safe?

21 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
22 mean, the way I heard the Governor say that  
23 is not to take discretion away from the  
24 judges.

1                   But there's some folks who think that  
2                   just because a judge has discretion to do  
3                   something, that they must do it. But it only  
4                   gives them the choice to do it or not with  
5                   respect to bail.

6                   ASSEMBLYMAN PALMESANO: Do you agree  
7                   with the NYPD commissioner that --

8                   CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
9                   haven't read that. Really, I haven't read  
10                  that, I haven't heard about it.

11                  ASSEMBLYMAN PALMESANO: I'd like your  
12                  opinion after you read it.

13                  CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
14                  Yeah, I'm happy to read it, yeah. I just  
15                  haven't come across it.

16                  ASSEMBLYMAN PALMESANO: Thank you,  
17                  sir.

18                  CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
19                  I've been preparing for this meeting -- I  
20                  haven't had a chance to read anything.

21                  ASSEMBLYMAN PALMESANO: I understand.  
22                  Thank you.

23                  CHAIRMAN PRETLOW: Assemblyman Meeks.

24                  ASSEMBLYMAN MEEKS: There we go.

1 Thank you for joining us here this morning.

2 I have a couple of questions. One of  
3 them is pertaining to professional  
4 development. What are your thoughts and  
5 views on ongoing professional development for  
6 judges as well as the court system? Judges  
7 from top to bottom across New York State.  
8 Because what we find is laws apply one way in  
9 Monroe County another way in Kings County.

10 Can you speak to that?

11 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

12 Sure. So I am very proud of the work of  
13 Dean Davidson in terms of the webinars -- I  
14 mean, it seems like almost every week the  
15 dean is putting out programs for judges, and  
16 it's -- they're doing this at their desk.

17 But there's also so many programs,  
18 trainings in July for all of the judges. If  
19 you're a new judge, you get almost two weeks  
20 of training, depending on your particular  
21 specialty. You get additional training  
22 locally in the courthouses that you get sent  
23 to.

24 So I am very satisfied with our

1 training program and professional  
2 development.

3 ASSEMBLYMAN MEEKS: You mentioned new  
4 judges. Should that apply for tenured judges  
5 as well?

6 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
7 What type of judges?

8 ASSEMBLYMAN MEEKS: Should that apply  
9 for judges -- longstanding judges?

10 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
11 Yes. Yes. No, everybody is required to do  
12 this training. And it's -- I mean, I just  
13 saw something on medicine, how to deal with  
14 medicine, that was done in Nassau County  
15 recently.

16 But we are constantly making  
17 presentations to judges on different areas of  
18 the law. There is archives that judges can  
19 go to. There is -- I mean, the other thing  
20 is I was an administrative judge in Queens  
21 for a while. And even though it was not my  
22 technical responsibility to train the judges,  
23 we appoint mentor judges to newer judges.

24 And every time the Court of Appeals

1 would issue a decision, I would summarize  
2 that decision personally and then send it to  
3 all of the judges so that they would be --  
4 criminal cases, because I sat in criminal --  
5 so that they would be familiar with the Court  
6 of Appeals cases that just came out.

7 ASSEMBLYMAN MEEKS: Thanks.

8 And as it relates to the special  
9 courts, 350-plus special courts around the  
10 state, are there any that focus on not just  
11 the individuals, like say it's drug court,  
12 but that reaches to the families? Like, for  
13 instance, children often experience adverse  
14 childhood experiences based upon the parent's  
15 lifestyle. Are they far-reaching to touch  
16 the children of these individuals?

17 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

18 Yes. Yes. I mean, there are efforts to do  
19 that. And sometimes if it's a young person,  
20 the parents are in the courtroom. So in a  
21 sense, the judge talking to the parent and  
22 the child -- the parent not directly, but the  
23 child directly.

24 ASSEMBLYMAN MEEKS: Thank you.

1                   CHAIRMAN PRETLOW: Assemblywoman

2 Giglio.

3                   ASSEMBLYWOMAN GIGLIO: So we come from  
4 Riverhead, Suffolk County, New York, and our  
5 court has been out of compliance for many  
6 years. We have 10,250 cases on the docket,  
7 including criminal, traffic, civic, and no  
8 mechanism to make the courts come into  
9 compliance. So attorneys can meet with  
10 incarcerated individuals on their  
11 arraignment, and also for our justices to be  
12 safe and also the connection of funds for  
13 tickets to be -- those people to be safe.

14                   We've -- the Town of Riverhead has  
15 purchased a new building, it will cost them  
16 \$12 million. And the building that the  
17 town board was in remains vacant, waiting for  
18 retrofit for the justices and for the court  
19 to move into that building.

20                   The estimated cost is \$3 million. And  
21 there is no mechanism to try and get that  
22 funding in order to make the courts safe and  
23 also to help the people that are meeting with  
24 their attorneys to prepare for trial or to

1 prepare to go before the judge.

2 What can you do to help them?

3 CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
4 when you say you're out of compliance, you  
5 don't have places for your Supreme Court --

6 ASSEMBLYWOMAN GIGLIO: Our holding  
7 cells are insufficient. Our mechanisms for  
8 the attorneys to meet with people before they  
9 go before the judge -- there's just no --  
10 there's no place for them right now in the  
11 current court. And they need to retrofit  
12 that building in order to make it so that  
13 it's compliant.

14 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
15 This is the Supreme Court and the  
16 County Court in Riverhead? Or is there  
17 another place?

18 ASSEMBLYWOMAN GIGLIO: No, it's the  
19 Town Court. It's the justice court for  
20 criminal, civil and for, you know, tickets.

21 CHIEF ADMINISTRATIVE JUDGE ZAYAS: But  
22 is it serious -- is it felony criminal?

23 ASSEMBLYWOMAN GIGLIO: Yeah, yeah,  
24 it's their arraignments. It's when they're

1 coming before the judges.

2 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

3 It's the Riverhead Court that -- I'm familiar  
4 with Riverhead Court.

5 ASSEMBLYWOMAN GIGLIO: Yeah, there's  
6 several courts in Riverhead, so -- we happen  
7 to be the county seat. But the Town of  
8 Riverhead itself, their court.

9 CHIEF ADMINISTRATIVE JUDGE ZAYAS: Is  
10 it a town and village court?

11 ASSEMBLYWOMAN GIGLIO: It is.

12 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
13 Okay. So that -- I'm asking for a really  
14 particular reason.

15 ASSEMBLYWOMAN GIGLIO: Understood.

16 CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
17 town and villages are required -- we don't  
18 have any authority to do anything in those  
19 courts in terms of facilities.

20 If you were talking to me about the  
21 Riverhead where Supreme Court is and  
22 County Court is, then that's under our  
23 jurisdiction.

24 ASSEMBLYWOMAN GIGLIO: Okay, so I

1 should ask this to somebody down the road in  
2 further testimony today?

3 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

4 Yeah, it's really the town board that does  
5 that. We don't have any control over the  
6 town and village courts --

7 ASSEMBLYWOMAN GIGLIO: And quickly  
8 back to what my colleague on the other side,  
9 the Senate side was saying about  
10 consideration of seriousness and  
11 dangerousness when setting bail. You know,  
12 everywhere else in the country you can  
13 consider how serious or dangerous someone may  
14 be in order to set bail. And why are we not  
15 doing that?

16 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

17 Yes, I think that's a good question for  
18 everybody in this room why we're not doing  
19 that.

20 (Laughter.)

21 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

22 It's really not a judicial question, right?

23 I mean, the --

24 (Time clock sounds.)

1 ASSEMBLYWOMAN GIGLIO: Thank you.

2 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

3 You're welcome.

4 CHAIRMAN PRETLOW: Assemblywoman

5 Kelles.

6 ASSEMBLYWOMAN KELLES: It's still

7 morning, right? Yeah, fifteen minutes.

8 CHIEF ADMINISTRATIVE JUDGE ZAYAS: How

9 are you?

10 ASSEMBLYWOMAN KELLES: So I just

11 wanted to add my two cents about authorizing

12 environmental courts. We desperately need

13 them. We have so many environmental laws and

14 so few law enforcement --

15 CHIEF ADMINISTRATIVE JUDGE ZAYAS:

16 Could you -- I have a hearing problem.

17 ASSEMBLYWOMAN KELLES: I was talking

18 about environmental courts, the

19 authorization, just an extra plug in

20 supporting that. We desperately need them.

21 So four quick questions. Your OCA

22 dashboard shows that dismissal rates in

23 New York City have not increased in

24 Superior Courts where indicted felonies are

1 prosecuted, correct? That's how I read it.

2 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I'm  
3 really having trouble hearing you. But with  
4 respect to --

5 ASSEMBLYWOMAN KELLES: The dashboard,  
6 the OCA dashboard that you have --

7 CHIEF ADMINISTRATIVE JUDGE ZAYAS: You  
8 said something about environmental -- I think  
9 they're a great idea.

10 ASSEMBLYWOMAN KELLES: Fantastic.

11 (Overtalk.)

12 ASSEMBLYWOMAN KELLES: The way I'm  
13 looking at the OCA dashboard, it is not  
14 showing an increase in dismissals in New York  
15 City specifically related to the indicted  
16 felonies.

17 CHIEF ADMINISTRATIVE JUDGE ZAYAS: Not  
18 showing --

19 ASSEMBLYWOMAN KELLES: It is not  
20 showing increases in Superior Courts where  
21 indicted felonies are prosecuted, the  
22 dismissal rates. Is that correct? Did I  
23 read that correctly, the dismissal rates in  
24 New York City in the courts?

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I'm  
2 so sorry, I really --

3 ASSEMBLYWOMAN KELLES: I'm just going  
4 to say yes, they are flat.

5 (Laughter.)

6 ASSEMBLYWOMAN KELLES: Okay? You  
7 aren't showing increased dismissal rates in  
8 the indicted felonies in the New York City  
9 dashboard.

10 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
11 Indicted felonies are not getting dismissed.

12 ASSEMBLYWOMAN KELLES: Correct.

13 CHIEF ADMINISTRATIVE JUDGE ZAYAS: In  
14 New York City.

15 ASSEMBLYWOMAN KELLES: Correct.

16 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
17 That's true.

18 ASSEMBLYWOMAN KELLES: Correct.

19 CHIEF ADMINISTRATIVE JUDGE ZAYAS: It  
20 is the felony complaints and the misdemeanors  
21 that are getting dismissed on speedy trial at  
22 like way higher rates than they used to be.

23 ASSEMBLYWOMAN KELLES: Do you have --  
24 can you share with us why you think that is?

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS: Oh.  
2 Yeah. I mean, I have some thoughts.

3 ASSEMBLYWOMAN KELLES: I'd love to  
4 hear them.

5 (Laughter.)

6 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
7 When -- the fact that something is getting  
8 indicted, right, tells me that prosecutors  
9 see that as a really serious case that they  
10 want to prosecute robustly.

11 And so they then are focusing on --  
12 and I know there's prosecutors here who can  
13 feel free to, you know, correct me. But they  
14 are -- they are complying with their  
15 discovery because that is their really  
16 important case. And so there's no way  
17 they're going to let that important case that  
18 gets indicted --

19 ASSEMBLYWOMAN KELLES: Let me ask you,  
20 do you think that there are cases in which  
21 the misdemeanors that are coming forward,  
22 it's because there isn't enough information  
23 or evidence to proceed with those, but there  
24 are potentially more that are coming in?

1 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
2 mean, there are misdemeanor cases as well  
3 that don't get dismissed for speedy trial and  
4 it might be that the prosecutors, again, are  
5 focusing, hyperfocused on the misdemeanor --  
6 the recidivist misdemeanor and they feel like  
7 they have to do something with that. And so  
8 those cases go forward.

9 ASSEMBLYWOMAN KELLES: So I'll get the  
10 other three questions maybe offline.

11 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
12 Yeah, and I'm happy to meet with you.

13 ASSEMBLYWOMAN KELLES: Sure. Thank  
14 you.

15 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
16 Sure. You're welcome.

17 CHAIRWOMAN KRUEGER: Thank you.

18 We're now on to the chair of  
19 Judiciary's three minutes of follow-up, Brad  
20 Hoylman-Sigal.

21 SENATOR HOYLMAN-SIGAL: Thank you,  
22 Madam Chair.

23 Wanted to ask you, Judge, about the  
24 January 6th pardons. And there was a

1 question earlier about judicial security. We  
2 know that some of the defendants who were  
3 pardoned had been on social media taunting  
4 prosecutors and judges after that decision by  
5 the Trump administration. Are we seeing that  
6 in New York? Can you assess any impact of  
7 those pardons?

8 CHIEF ADMINISTRATIVE JUDGE ZAYAS: I  
9 haven't heard anything about that. I mean,  
10 does it affect judges, is that what you're  
11 asking?

12 SENATOR HOYLMAN-SIGAL: Yeah.

13 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
14 Yeah. I mean, if I'm an elected  
15 Supreme Court judge, it's very disturbing for  
16 me to see the extent to which we put young  
17 men and young women in jail in New York for  
18 things way less serious than what happened on  
19 January 6th.

20 And I'm not saying I would do this,  
21 but there's a temptation, I think, on judges,  
22 like particularly judges of color, wondering  
23 like, Wait, here we are putting people in  
24 jail for less serious things than these

1 people got pardoned for.

2 And I'm not saying judges will do it,  
3 but that transparency -- you know, you know  
4 me, I speak my mind. It's something that  
5 I've heard judges say. Like here we are  
6 putting people in jail for less serious  
7 things, and they're the ones that get  
8 pardoned.

9 So, I mean, it's -- I'm not saying  
10 it's going to work its way into how we  
11 dispense justice, hopefully. But it's  
12 certainly something that is very annoying to  
13 us.

14 SENATOR HOYLMAN-SIGAL: Something more  
15 on the ground, judges -- Housing Court, last  
16 year, in conjunction with you, we added five  
17 new judgeships. But that doesn't seem  
18 enough, as I think you would agree. We've  
19 heard from legal service providers that  
20 tenants can wait months to get on the  
21 calendar. And that means additional months  
22 living in potentially dangerous living  
23 conditions. And it means that landlords  
24 don't have a decision either.

1           What, could you tell us, is OCA doing  
2           to, one, address ongoing staffing shortages  
3           in Housing Court and, two, ensure that  
4           tenants can seek timely justice in these  
5           proceedings?

6           CHIEF ADMINISTRATIVE JUDGE ZAYAS: So  
7           we recognize that it's been difficult. We  
8           approved tons of court attorney positions to  
9           help facilitate resolutions of these cases.  
10          They are hard to hire. People aren't  
11          applying for them. So we're thinking of  
12          other ways to get them in.

13          CHAIRWOMAN KRUEGER: Thank you.  
14          Assembly.

15          CHAIRMAN PRETLOW: Thank you.  
16          And we have the chair of Judiciary,  
17          Assemblymember Lavine, for his three-minute  
18          follow-up.

19          ASSEMBLYMAN LAVINE: Thank you,  
20          Chair Pretlow.

21          I have a compunction to try to correct  
22          the record, and it's thanks to working for so  
23          long with judges like you. But I do want the  
24          record to reflect that this Legislature

1 passed, and Governor Hochul signed into law,  
2 Section 539.20(1)(b)(xx) of the Criminal  
3 Procedure Law providing that bail may be set  
4 on any felony or Class A misdemeanor  
5 involving harm to a person or property. And  
6 harm includes theft or damage to property.

7 So now I have a question for you. Do  
8 you imagine, do you think judges in general  
9 believe or imagine that the pardoning of the  
10 January 6th people who were convicted of  
11 storming the United States Capitol adversely  
12 affects public morale?

13 Oh, let me withdraw the question. And  
14 thanks.

15 (Laughter.)

16 CHAIRWOMAN KRUEGER: I think we have  
17 now run out of legislators who are entitled  
18 to more time, so we are going to thank you  
19 very much for being with us today. Please  
20 extend our thank you to the entire judicial  
21 system for the important work you do.

22 I think this moment in history reminds  
23 all of us how crucial it is that we have a  
24 Judiciary who actually understands their

1 obligation to uphold our laws and our  
2 Constitution. I think there will be more  
3 demands on you than ever.

4 So go and do good, and do good work.  
5 Thank you very much.

6 CHIEF ADMINISTRATIVE JUDGE ZAYAS:  
7 Thanks. Thank you so much. It was an honor  
8 to appear before you. Thank you much.

9 CHAIRWOMAN KRUEGER: Thank you.

10 And no one surround the judge as he's  
11 leaving. If you need to, talk to him outside  
12 the room, so that we can call up our next  
13 panel, which is the New York State Commission  
14 on Judicial Conduct and the New York State  
15 Office of Indigent Legal Services.

16 (Pause.)

17 CHAIRWOMAN KRUEGER: And with a few  
18 minutes to spare, I can still say good  
19 morning. And I'm going to ask both Patricia  
20 and Robert to just first introduce yourselves  
21 so the video team knows which name to put  
22 with which face when you testify.

23 ADMINISTRATOR TEMBECKJIAN: Happy to.  
24 I'm Robert Tembeckjian. I'm the

1 administrator and counsel to the New York  
2 State Commission on Judicial Conduct. And  
3 it's nice to see you all.

4 CHAIRWOMAN KRUEGER: Thank you.

5 DIRECTOR WARTH: And I'm Patricia  
6 Warth. I'm the director of the New York  
7 State Office of Indigent Legal Services.

8 CHAIRWOMAN KRUEGER: Thank you.

9 Shall we start with you, Robert?

10 ADMINISTRATOR TEMBECKJIAN: If you  
11 don't mind, I think Patricia would --

12 CHAIRWOMAN KRUEGER: Oh, she would  
13 prefer? Whichever.

14 ADMINISTRATOR TEMBECKJIAN: -- care to  
15 go first, if that's -- if you don't mind.

16 CHAIRWOMAN KRUEGER: Okay. Patricia  
17 first.

18 DIRECTOR WARTH: Good afternoon, I  
19 think. I want to thank you for this  
20 opportunity to talk to you about ILS's budget  
21 request. But I also want to thank you for  
22 your ongoing support of ILS as we work to  
23 improve the quality of public defense in  
24 New York, which includes both the

1 representation of people in criminal cases  
2 and also the representation of parents in  
3 Family Court matters.

4 I'm going to start with a story that  
5 Andy Correia, the Wayne County Public  
6 Defender, shared with the ILS Board this past  
7 December. And it's a story that describes  
8 how state funding has effectively transformed  
9 or is transforming what was a broken criminal  
10 defense system.

11 So last year a 46-year-old woman who I  
12 will call Michele called the Wayne County  
13 Public Defender's Office, and she explained  
14 that when she was 17 years old, in 1995, she  
15 was arrested for and charged with the  
16 misdemeanor offense of endangering the  
17 welfare of a child. She showed up at her  
18 first court appearance, her arraignment, as  
19 instructed. She of course couldn't afford an  
20 attorney, and there was no public defender  
21 there to represent her, so she was on her  
22 own.

23 She pleaded guilty to the misdemeanor  
24 offense, and the judge sentenced her to a

1 fine. She had no idea when she pleaded  
2 guilty that this conviction, this sole  
3 arrest, would mark her record permanently.  
4 And it did. In the next 29 years Michele  
5 lost several job opportunities because of  
6 this misdemeanor conviction as well as a  
7 small business loan.

8 So she had called the Wayne County  
9 Public Defenders Office to see if there was  
10 anything that could be done. Mr. Correia  
11 managed to find the court record, which  
12 corroborated what Michele told him. But as  
13 he reviewed the record and listened to her  
14 story, he realized that a grave mistake had  
15 been made.

16 Because she was only 17 years old at  
17 the time of the arrest, and because it was  
18 her sole arrest, the law actually mandated  
19 that Michele be adjudicated a youthful  
20 offender, which would have vacated the  
21 conviction and sealed the records. But  
22 again, because she was without an attorney at  
23 her first court appearance, nobody knew this.  
24 Nobody reminded the judge of this. Nobody

1           made sure that the judge actually applied the  
2           law.

3                     Mr. Correia was able to work with the  
4           district attorney and the judge, and  
5           everybody agreed to vacate the conviction  
6           against Michele and to dismiss the charges.  
7           But nobody could give her back the 29 years  
8           of opportunities that she had lost.

9                     Now, Mr. Correia finished this story  
10          by emphasizing emphatically that what  
11          happened to Michele in 1995 would not happen  
12          today in criminal cases, and that's because  
13          of the state commitment to fully funding the  
14          Hurrell-Harring settlement initiative  
15          statewide.

16                    It used to be the norm that people  
17          were arraigned without defense counsel. Now  
18          the norm is representation at arraignment.  
19          Since 2017, over 420 new attorney positions  
20          have been hired by public defender offices,  
21          and over 600 specialized professionals,  
22          providing the caseload relief that is  
23          foundational to quality representation. And  
24          Mr. Correia said now he has attorneys who

1 have access to the resources that they need  
2 to provide quality representation in their  
3 criminal cases.

4 And all of this is because of the  
5 Hurrell-Harring settlement. And it's a story  
6 of how the settlement and the state's  
7 commitment to fully funding it has really  
8 been effective in transforming public  
9 criminal defense.

10 So it's with that as context that I  
11 want to focus on ILS's two budget priorities.  
12 And the first is the dire need to address the  
13 crisis in Family Court representation. And  
14 the second is the imperative of maintaining  
15 the integrity of the Indigent Legal Services  
16 Fund.

17 So I'm going to start with the first  
18 imperative by saying simply that what  
19 happened to Michele in 1995 in her criminal  
20 case is happening today to low-income parents  
21 in their Family Court cases. Why? It's  
22 because the Hurrell-Harring settlement  
23 applied only to public criminal defense. It  
24 didn't include Family Court representation.

1 And family defense has been left behind.

2 So while the state is devoting almost  
3 \$274 million per year -- thanks to your  
4 support -- to improved-quality public  
5 criminal defense, there's been no comparable  
6 investment to improving the quality of  
7 representation provided to parents in  
8 Family Court matters. And the data that ILS  
9 collects from family defense providers across  
10 the state reveals just how far behind  
11 Family Court defense is.

12 Family Court attorneys, their weighted  
13 caseloads are 85 percent higher than their  
14 Criminal Court counterparts. And they have  
15 access to less than two-fifths of the  
16 resources and time to represent their clients  
17 than their Criminal Court counterparts.

18 So what this means in practice is that  
19 when parents have their first Family Court  
20 appearance, low-income parents, they are  
21 often most likely not represented by counsel.  
22 Like Michele, they're alone.

23 And when eventually they are assigned  
24 an attorney, the attorney that they are

1 assigned often is working under overwhelming  
2 caseloads with limited access to the  
3 resources needed to provide quality  
4 representation.

5 Children are needlessly taken from  
6 their parents because of this poor-quality  
7 representation. And because we know that  
8 Family Court has a disparate impact on  
9 communities of color, what this really  
10 translates to is Black and brown families  
11 being torn apart.

12 There's a solution to this, and we  
13 know there's a solution to it because we're  
14 implementing it right now in public criminal  
15 defense. We need to extend and implement the  
16 Hurrell-Harring settlement initiatives in  
17 Family Court representation just as we have  
18 done in Criminal Court representation. And  
19 the foundational initiative is caseload  
20 relief.

21 So ILS did some research over the last  
22 couple of years, obtained data from family  
23 defense providers from across the state, and  
24 we've determined that it would cost

1           \$150 million, conservatively, in state  
2           funding to provide caseload relief to  
3           Family Court defense just as we have done to  
4           criminal defense.

5                     And we suggest that this \$150 million,  
6           that it be phased in over three years. So  
7           that's why, in our budget request this year,  
8           we're requesting \$50 million for improved  
9           quality Family Court representation.

10                    Now, I know I don't have to persuade  
11           you of the importance of this funding. It's  
12           because of your support that last year's  
13           final enacted budget included 19.5 million  
14           for improved-quality Family Court  
15           representation. And we are glad to see that  
16           the Executive Budget proposal continues this  
17           19.5 million for the State Budget.

18                    But it's still not enough. It's far  
19           short of the 150 million that is needed to  
20           provide caseload relief across the state to  
21           every family defense provider. And it leaves  
22           many defense providers in your districts  
23           behind. And, of course, families continue to  
24           suffer.

1           So what I'm asking of you today is  
2           that in the next several weeks, as you're  
3           working with the Executive on the final  
4           enacted budget, that you make it a priority  
5           to include in the final enacted budget the  
6           \$50 million in ILS's Aid to Localities budget  
7           for improved quality Family Court  
8           representation, with the goal of achieving  
9           \$150 million by fiscal year '27-'28.

10           Now, importantly, this funding needn't  
11           come from the General Fund. You can do this  
12           without jeopardizing balancing the  
13           General Fund. In fact, the funding can and  
14           should come from the Indigent Legal Services  
15           Fund, which is a special fund that's  
16           dedicated solely to improving the quality of  
17           public defense.

18           But this is a segue to my second  
19           imperative, which is maintaining the  
20           integrity of the Indigent Legal Services  
21           Fund.

22           In the Public Protection and  
23           General Government Article 7 bill in the  
24           Executive proposal, there's a proposal to

1 transfer \$234 million from the Indigent Legal  
2 Services Fund to the General Fund. Now,  
3 114 million of that is to partially reimburse  
4 counties in New York City for the  
5 expenditures that they incur for the 2003  
6 enacted increase to assigned counsel rates.  
7 And so from our perspective, that's related,  
8 directly related to the purpose of the fund.

9 But the rest of the 120 million has no  
10 public defense discernible relationship. And  
11 so we're asking you, as you negotiate again  
12 the final budget, the final enacted budget,  
13 that you reduce this sweep from \$234 million  
14 to \$114 million.

15 And I will talk to you a little bit  
16 about the fund and what that means if I have  
17 an opportunity to answer questions, but I see  
18 my time is running out.

19 And thank you, and I look forward to  
20 answering any questions that you have.

21 CHAIRWOMAN KRUEGER: Thank you.

22 Good morning -- good afternoon,  
23 Robert.

24 ADMINISTRATOR TEMBECKJIAN: Thank you.

1           Again, my name is Robert Tembeckjian.  
2           I'm the administrator and counsel to the  
3           Commission on Judicial Conduct.

4           And as I have communicated to the  
5           leadership of the various committees  
6           represented here today, I'm in the  
7           unaccustomed position here of not asking you  
8           for additional money this year. Because I'm  
9           happy to say that the Governor and the  
10          Division of Budget -- led by someone very  
11          well known to you all, Blake Washington --  
12          and I agree on what the appropriate budget  
13          for the commission ought to be in the coming  
14          year, which is \$9.33 million.

15          And I think the reason that we are in  
16          agreement is because there is a recognition  
17          by the Executive, as there has always been by  
18          the Legislature, of the unique constitutional  
19          role that the commission plays in really  
20          advancing the twin pillars of public respect  
21          for the courts.

22          And the first is a recognition that  
23          the judiciary has to be independent. Judges  
24          have to have the ability to call the cases as

1           they see them, without outside pressure,  
2           without political pressure, and without any  
3           other untoward influences.

4                     At the same time, for public  
5           confidence in the court system to sustain and  
6           to grow, judges do have to be accountable for  
7           when they transgress and violate the ethical  
8           rules that bind them all.

9                     It is an important aspect of what the  
10          commission does in enhancing both the  
11          independence of the judiciary and the  
12          accountability of the judiciary to deal with  
13          the extraordinary number of complaints that  
14          we receive every year.

15                    New York State has approximately 3300  
16          judges, and last year we received  
17          3,250-some-odd complaints against them.  
18          Every one of them has to be analyzed,  
19          interpreted, researched, and ultimately  
20          decided, which is an enormous amount of work.  
21          Even though, as you might imagine, that the  
22          majority of those complaints don't really  
23          allege that a judge violated the ethics  
24          rules -- they are essentially disagreements

1 with the outcome of cases.

2 What that means, those nearly  
3 3300 complaints against 3300 judges, is that  
4 the commission absorbs a lot of the anger  
5 that those who have proceedings in the courts  
6 might otherwise direct to the judiciary. We  
7 sort of deflect from the judiciary the  
8 animosity, the anger, the upset that  
9 litigants feel when they lose a case and  
10 consider that they have no other recourse but  
11 to make a complaint against the judge.

12 We are not an appellate court. We  
13 don't pass judgment on the merits of a  
14 ruling. And we explain to those 3300  
15 complainants why it is that their complaints  
16 really weren't alleging misconduct or other  
17 inappropriate activity by the judge.

18 At the same time, last year we  
19 publicly disciplined 2400 judges throughout  
20 the state, 16 of them either removed from  
21 office for egregious misconduct or agreed  
22 publicly to resign with a commitment never to  
23 return to the bench. Which is an extremely  
24 important function that we perform.

1           However, there are some judges who can  
2 evade disciplinary responsibility for serious  
3 misconduct by resigning and not agreeing  
4 publicly never to return to the bench. And  
5 the commission, because of the current state  
6 of the Judiciary Law, has a very, very  
7 limited time to complete its proceedings and  
8 impose discipline, and the only discipline we  
9 can impose after a judge resigns is removal  
10 from office. And that's because under the  
11 Constitution, removal disqualifies a judge  
12 from ever returning to the bench.

13           But if a judge resigns early and has  
14 not done something that was removable but  
15 perhaps should result in censure or public  
16 admonition, we have no authority to act. And  
17 we are time-constrained. And this was  
18 brought to significant public exposure just  
19 in the last week, when we announced the  
20 resignation of a judge, with a commitment  
21 never to return, from a City Court in  
22 Western New York who resigned 10 years ago  
23 when his misconduct had been revealed. That  
24 judge, who was an attorney, was ultimately

1           suspended from the practice of law for two  
2           years, but because we didn't have time enough  
3           to complete a removal proceeding which would  
4           have disqualified him from ever coming back,  
5           and because he did not stipulate publicly  
6           with us to never coming back, he was in a  
7           position to be reappointed to the bench,  
8           which he was.

9                     And then we renewed our proceeding and  
10           after some motion practice in which the judge  
11           attempted with effectively a laches argument  
12           to say that we had no authority to remove him  
13           from his conduct that had occurred in a prior  
14           iteration of his judgeship. When he lost  
15           that challenge, he entered into a stipulation  
16           to leave and never to return.

17                     Legislation that was introduced last  
18           year by Senator Hoylman-Sigal and by  
19           Assemblyman Lavine, which passed the Senate,  
20           addressed that issue, and it would have  
21           removed that artificial cap on our ability to  
22           continue to discipline a judge who resigns in  
23           an attempt to evade responsibility, knowing  
24           that the clock is ticking very fast on us.

1           And I hope that the Legislature will  
2           renew its interest in looking at that  
3           legislation and that we might have, you know,  
4           a full exposition of it and perhaps even have  
5           it passed in both houses this year and sent  
6           to the Governor.

7           In any case, we appreciate beyond  
8           measure the degree to which the Legislature  
9           and particularly the leaders of Finance and  
10          Ways and Means and the two Judiciary  
11          committees over the years have been forceful  
12          advocates for the commission having the  
13          resources to do the job that it needs. Those  
14          3300 complaints this year set a record,  
15          breaking last year's record of about 2900.

16          The more our work becomes known, the  
17          more sophisticated the public becomes in  
18          researching and determining how they can  
19          follow up on their legitimate grievances, the  
20          more work we are going to have to do.

21          And the fact that we dismiss the vast  
22          majority of the complaints that come in to us  
23          serves a public service in that it separates  
24          the illegitimate criticism of a judge to the

1           legitimate criticism of a judge. And I think  
2           it reinforces to the public that there is an  
3           accountability process, one that, as some of  
4           you know, I've written and advocated the  
5           federal judiciary ought to adopt.

6                     There is no federal equivalent to the  
7           Commission on Judicial Conduct. And I think  
8           if there were, it would go a long way toward  
9           bolstering public confidence in the integrity  
10          and the impartiality of the federal courts,  
11          and it might have the beneficial effect of  
12          countering what I consider to be the rather  
13          reckless, broad-stroke criticisms of the  
14          judiciary where disagreement with a judge's  
15          decision leads to calls for mass impeachments  
16          and replacements of judges, as if the courts  
17          and the judiciary were not an independent and  
18          a very important branch of government.

19                    They need to be protected by the  
20          Executive and the Legislature because they  
21          don't have the power of the purse and they  
22          don't have an enforcement mechanism. They  
23          have only, as the Federalist Papers told us  
24          way back at the adoption of our Constitution,

1 the integrity of their pronouncements.

2 We believe that we bolster public  
3 confidence in the integrity of the judiciary  
4 by holding accountable those who transgress  
5 and giving the so-called clean bill of health  
6 to those against whom complaints are made but  
7 that are not meritorious.

8 And I think in explaining our reasons  
9 to those who complain, we do important work  
10 in bolstering the independence of the  
11 critical third branch.

12 So thank you for your support, and  
13 whatever questions you may have I'd be happy  
14 to answer.

15 CHAIRWOMAN KRUEGER: Thank you.

16 I would like to start with Senator  
17 Hoylman-Sigal or Senator Myrie? Senator  
18 Hoylman-Sigal.

19 SENATOR HOYLMAN-SIGAL: Ms. Warth,  
20 thank you again for being here.

21 You spoke about the negative impacts  
22 in your testimony about a woman named Michele  
23 who experienced going to criminal proceedings  
24 without an attorney -- loss of job

1 opportunities, denied a loan, you said.

2 What negative impacts might parents  
3 experience if they don't have an attorney at  
4 a Family Court proceeding?

5 DIRECTOR WARTH: Loss of their  
6 children. Which is, you know, from a child's  
7 perspective and from many of our clients'  
8 perspective, even more serious than the loss  
9 of representation and sometimes even the loss  
10 of liberty that can attach to a criminal  
11 case.

12 And so, you know, when people are not  
13 represented at their first court appearance,  
14 they get confused, they sometimes say things  
15 that, you know, they think will help them but  
16 doesn't. They sometimes agree to things that  
17 they think will help them that doesn't.

18 I mean, I think anybody here, if a  
19 loved one was facing a court appearance,  
20 whether it be criminal or family, you would  
21 do everything you could to ensure that that  
22 loved one had access to a lawyer at that  
23 first court appearance. And we need to make  
24 sure that low-income parents also have access

1 to lawyers.

2 SENATOR HOYLMAN-SIGAL: Thank you.

3 Now, I understand that ILS is seeking,  
4 as you say, \$30 million in additional funding  
5 for Family Court representation, which we  
6 hope to support this year.

7 And the Executive Budget proposes,  
8 though, sweeping \$120 million from the  
9 Indigent Legal Services Fund. But doesn't  
10 that suggest that there's enough money in the  
11 ILS Fund to support that \$30 million request?

12 DIRECTOR WARTH: Exactly. You know,  
13 the ILS Fund right now, because of  
14 legislation -- thanks to you -- that was  
15 enacted in 2017 to increase the fund's  
16 revenue, that legislation is working. So the  
17 fund is quite robust right now.

18 And it's robust enough to fully  
19 support the Hurrell-Harring settlement  
20 implementation across the state. It's fully  
21 supporting partial reimbursement to counties  
22 in New York City for the increased assigned  
23 counsel rate. And you're right, the sweep  
24 says it can do more.

1           But from our perspective, the more  
2           really needs to be the imperative to improve  
3           the quality of representation provided to  
4           parents in Family Court representation. The  
5           more shouldn't be using the ILS Fund as a  
6           piggy bank to balance the general budget.

7           SENATOR HOYLMAN-SIGAL: Yup. I agree.  
8           This Hurrell-Harring-style lawsuit is going  
9           to force us -- it's going to force our hand.  
10          I'm surprised it hasn't already.

11          Do you agree?

12          DIRECTOR WARTH: Yeah. I mean, the --  
13          what teed up the Hurrell-Harring settlement  
14          or the Hurrell-Harring lawsuit -- you know, a  
15          commission and several reports over the years  
16          bespeaking the poor-quality representation or  
17          public criminal defense, and sort of not  
18          enough action from the state on that -- I  
19          mean, that exists today in Family Court  
20          representation.

21          We have several commissions, several  
22          reports that have repeatedly said the same  
23          thing: We're not fulfilling our  
24          constitutional and statutory obligation to

1 low-income parents in New York. And it's  
2 ripe for a lawsuit.

3 SENATOR HOYLMAN-SIGAL: Just to pivot  
4 to Mr. Tembeckjian, thank you again for being  
5 here. And we've been really proud, I think  
6 as a body and as a conference, to support  
7 your efforts in the past.

8 I wanted to ask you about the case of  
9 former judge Erin Gall. Judge Gall was  
10 accused in 2022 of threatening in a profane  
11 manner to shoot Black students at a high  
12 school graduation party. They submitted  
13 their resignation in December of 2024, ending  
14 the case but also ensuring that they -- that  
15 she could not be barred from returning to the  
16 bench.

17 And you laid it out there in support  
18 of our legislation that passed the Senate.

19 But do you believe that the case was  
20 investigated and resolved in a timely manner?

21 ADMINISTRATOR TEMBECKJIAN: It was  
22 certainly thoroughly investigated, including  
23 finding some witnesses that we only knew by  
24 first name. There was a significant amount,

1           about 80 minutes, of police body cam video  
2           that was critical in presenting the case and  
3           proving the case.

4                        What happened in the case of  
5           Judge Gall is that after the commission  
6           satisfied all of the due process requirements  
7           of statute and rules and issued a removal  
8           decision, was that she exercised her  
9           statutory right to have the Court of Appeals  
10          review the case. She filed a record, she  
11          filed a brief. We filed our own brief in  
12          response. She then filed a reply.

13                      The court scheduled the matter for  
14          argument in December, but then postponed it  
15          when the judge resigned and ultimately was  
16          able to prolong the process whereby she was  
17          drawing a state salary, Supreme Court justice  
18          salary, while pursuing her statutory right to  
19          an appeal that she then gave up at the last  
20          minute. That added about nine months to the  
21          process that might otherwise have been  
22          abbreviated.

23                      The commission in that instance had  
24          the time it needed to complete its proceeding

1           because she didn't resign until after we had  
2           issued a removal order. Which meant that  
3           when the Court of Appeals pro forma closed  
4           the case and issued a removal order, it  
5           constitutionally bars her from coming back to  
6           office.

7                         That's a different circumstance from  
8           one in which she may have resigned before  
9           asking the Court of Appeals to take  
10          jurisdiction, in which case we would have had  
11          no ability to force her into a permanent  
12          departure.

13                        But she can never come back to the  
14          bench under New York law, and I think that is  
15          absolutely the right result.

16                        SENATOR HOYLMAN-SIGAL: Thank you for  
17          that.

18                        And then I wanted to follow up on the  
19          funding that we've successfully worked  
20          together to achieve.

21                        ADMINISTRATOR TEMBECKJIAN: Over the  
22          many years, yes.

23                        SENATOR HOYLMAN-SIGAL: Over the many  
24          years, and in last year's budget in

1 particular.

2 What has that meant for you hiring  
3 investigators and your work in general?

4 ADMINISTRATOR TEMBECKJIAN: It has  
5 meant that last year we were able to hire  
6 three additional staff, a lawyer and  
7 investigators. We intend to hire three more  
8 this year. We're already in the process with  
9 the funding that you provided last year, and  
10 that will carry over with the Executive  
11 recommendation this year.

12 Over the course of about 10 years, the  
13 Legislature was responsible for putting  
14 \$3 million more into our budget than the  
15 Executive had recommended. And I'm happy to  
16 see that with the Governor this year and the  
17 Budget Director, that they seemed to have  
18 recognized this trend and pattern and rather  
19 than recommend less than we've deemed was  
20 appropriate or required, we were able to  
21 agree on the number this year. And -- which  
22 is why, as I said, at the outset, I'm in the  
23 unusual position of not asking you to  
24 supplement this year. You can actually spend

1 your time worrying about other entities,  
2 including Ms. Warth's.

3 SENATOR HOYLMAN-SIGAL: Yeah. And I  
4 think we should thank Governor Hochul and her  
5 Budget Director --

6 ADMINISTRATOR TEMBECKJIAN:  
7 Absolutely. Without question.

8 SENATOR HOYLMAN-SIGAL: -- for  
9 correcting, you know, decades of  
10 underfunding.

11 ADMINISTRATOR TEMBECKJIAN: Changing  
12 this trend, which you have reversed  
13 repeatedly, and now I'm happy to see that the  
14 Executive has as well recognized.

15 SENATOR HOYLMAN-SIGAL: And it goes  
16 without saying that what you do is integral  
17 to the legitimacy of our judicial system. So  
18 thank you for your work.

19 ADMINISTRATOR TEMBECKJIAN: Thank you  
20 for recognizing it, Senator.

21 SENATOR HOYLMAN-SIGAL: And thank you,  
22 Madam Chair.

23 CHAIRWOMAN KRUEGER: Thank you.  
24 Assembly.

1                   CHAIRMAN PRETLOW: Assembly Chair  
2 Lavine.

3                   ASSEMBLYMAN LAVINE: Thank you. I  
4 want to thank you both for the good work you  
5 do for the people of the State of -- of our  
6 State of New York.

7                   Mr. Tembeckjian, have you ever had a  
8 challenge to the enforcement of a judge's  
9 agreement never to return to the bench?

10                  ADMINISTRATOR TEMBECKJIAN: It has  
11 happened twice that judges who left office  
12 with a commitment not to return then came  
13 back. They broke the agreement, and we  
14 resumed our proceedings against them.

15                  Had we been able to remove them in the  
16 first instance, they would have been  
17 ineligible to return, under the Constitution.  
18 But because they resigned and broke the  
19 commitment, we -- actually, three times in  
20 our history that has happened.

21                  Not a lot, given that we have publicly  
22 disciplined about 970 judges over the  
23 48 years of the commission's existence. And  
24 about 180 of those have been removals, and

1           about 140 have been resignations. So it's  
2           not a large number.

3                     But there are many who left office for  
4           conduct that was less than removable that we  
5           had absolutely no authority to pursue once  
6           they left. And you would be in no position  
7           to know that if they ran for reelection or if  
8           a local official wanted to reappoint them to  
9           a position. We would not be able to say  
10          "This judge left under a cloud, may have been  
11          censured, it's something that you ought to  
12          consider" -- because we have no authority to  
13          do that under the current law.

14                    ASSEMBLYMAN LAVINE: Thank you.

15                    And Ms. Warth, let me ask you this.  
16          Fifty million will help provide services in  
17          the Family Court. But given that  
18          Family Court is one of the most difficult --  
19          in fact, it probably is the most difficult of  
20          all the courts for everyone, including  
21          judges, litigants and lawyers -- how do you  
22          imagine you're going to be able to assemble a  
23          group of attorneys who are going to be ready,  
24          willing and able and knowledgeable, also,

1 about practicing in our Family Courts?

2 DIRECTOR WARTH: That's a very good  
3 question. The plan that we would -- we would  
4 work with each county and New York City on a  
5 plan that's specific to that particular  
6 county and city needs. And specific to the  
7 particular needs of the public defense  
8 providers.

9 Recruiting attorneys is a challenge.  
10 Many of the family defense providers are  
11 learning lessons from their Criminal Court  
12 counterparts on strategies for recruitment,  
13 which includes a vibrant internship program  
14 as well as a vibrant training program, a  
15 student internship program and a law scholar  
16 program.

17 And then we'd also allow and encourage  
18 the providers to use the funding not only for  
19 attorneys but for other professionals --  
20 parent advocates, social workers, case  
21 managers, investigators. All of those  
22 services right now parent attorneys don't  
23 have access to. So if they're doing the  
24 work, they're doing it on their own.

1                   And so if they can hire those  
2 resources, those professionals, that in  
3 itself is also caseload relief.

4                   But, you know, I will be honest with  
5 you and I will say our 150 million is a  
6 conservative request.

7                   ASSEMBLYMAN LAVINE: I don't know the  
8 answer to this question. But how much money  
9 is in that ILS Fund?

10                  DIRECTOR WARTH: Right now? As of  
11 December 31, 2024, there's about \$957 million  
12 in the ILS Fund.

13                  Now, because our contracts to disburse  
14 funding for the Hurrell-Harring settlement  
15 initiative statewide are cost-reimbursement  
16 contracts, that means that sometimes it takes  
17 time for the money to come out of the fund.  
18 Right? So there's often a significant gap in  
19 time between when the county implements the  
20 program, hires the staff, and spends the  
21 money and then applies -- you know, submits a  
22 claim to ILS to be reimbursed for it.

23                  So, you know, I think that  
24 \$957 million could be a little misleading.

1 We are trying to figure out how much of that  
2 is actually needed for -- to reimburse the  
3 counties and New York City for what they've  
4 already implemented.

5 ASSEMBLYMAN LAVINE: Thank you.

6 And Mr. Tembeckjian, you described the  
7 case involving a judge whose name is Erin  
8 Gall. And I ask you this. Do you think it  
9 enhances public confidence in American law  
10 when someone who's the subject of one of your  
11 proceedings and then resigns is hired by a  
12 county?

13 ADMINISTRATOR TEMBECKJIAN: Well, I  
14 think --

15 ASSEMBLYMAN LAVINE: Which shall go  
16 nameless.

17 ADMINISTRATOR TEMBECKJIAN: Don't you  
18 want to withdraw that question too, as you  
19 did to your last one to Judge Zayas?

20 (Laughter.)

21 ASSEMBLYMAN LAVINE: Even better,  
22 Mr. Tembeckjian, let me do what the bad  
23 lawyers do. Strike that.

24 (Laughter.)

1 CHAIRMAN PRETLOW: Senate?

2 CHAIRWOMAN KRUEGER: Thank you.

3 Shelley Mayer.

4 SENATOR MAYER: Thank you,

5 Madam Chair.

6 I have a question for you, Ms. Warth.

7 On the -- your analysis of the extent  
8 of representation in Family Court is based on  
9 this weighted caseload model, which may have  
10 lots of value for you in terms of the  
11 funding. But from a litigant point of view,  
12 what percentage of Family -- do you know what  
13 percentage of Family Court litigants are not  
14 represented by counsel?

15 Do you track it that way, as opposed  
16 to the caseload demand on people who are  
17 participating in this program?

18 DIRECTOR WARTH: Yeah, I wish we could  
19 track that. And I would love to find a way  
20 to do it. But the best way to think about it  
21 is when Michele called the Wayne County  
22 Public Defender Office, they didn't have a  
23 file on her, right, because they never  
24 represented her.

1           So it's sort of trying to figure out  
2           how to know what you don't know. And, you  
3           know, I would love to try to figure it out,  
4           but we don't have a good estimate of how many  
5           people should be having counsel at their  
6           first Family Court appearance and don't.  
7           Although we do know that in many types of  
8           proceedings, that's -- that's the norm.

9           Nor do we know how many times people  
10          are wrongfully being denied assignment of  
11          counsel, which I think happens in  
12          Family Court just because of the overwhelming  
13          caseloads that attorneys currently have.

14          SENATOR MAYER: Well, can I just ask  
15          respectfully why you don't -- why OCA or you  
16          don't know how many individuals, for example,  
17          in serious Family Court proceedings --  
18          involving children, particularly -- there's  
19          not an actual measurement of the number of  
20          individuals who walk in and leave without  
21          counsel?

22          DIRECTOR WARTH: Yeah. I mean, we  
23          could circle back and talk to OCA about that.  
24          I know that they've been trying to make sure

1           that they're collecting data on whether  
2           people have counsel or not, and I don't know  
3           how well that's going.

4                     SENATOR MAYER:   Okay.   Just the last  
5           thing is with respect to -- I appreciate the  
6           focus on Family Court.   Do you have an  
7           analysis by county of the fund distribution  
8           and how each county is doing?   Not  
9           considering your proposal for future  
10          county-specific plans.   Do you have that?

11                    DIRECTOR WARTH:   When we did our  
12          analysis of the funding needed for caseload  
13          relief, we did do that county by county.   We  
14          would want to get a little bit of updated  
15          information from counties, because this was  
16          two years ago.   But yeah, we do have a good  
17          estimate.

18                    SENATOR MAYER:   Okay, thank you.  
19          Maybe you can share that.

20                    DIRECTOR WARTH:   (Nodding.)

21                    CHAIRWOMAN KRUEGER:   Thank you.  
22          Assembly.

23                    CHAIRMAN PRETLOW:   Assemblywoman  
24          Walsh.

1           ASSEMBLYWOMAN WALSH: Hello, there.  
2           Good afternoon. I really appreciated your  
3           comments regarding improving representation  
4           in Family Court, since that's where most of  
5           my practice has been in recent years.

6           I wanted to ask you specifically about  
7           what I understand to be a disparity in  
8           representation. When there's an enforcement  
9           action, when that's brought in Family Court,  
10          the court may assign a public defender to  
11          both parties, if they financially qualify, if  
12          the enforcement action relates to an order of  
13          protection or custody, but not support.  
14          That's my understanding.

15          When there's a support enforcement  
16          order, only the respondent or the alleged  
17          debtor can get a public defender, not the  
18          petitioner or the person that is owed the  
19          support, allegedly owed the support.

20          That makes absolutely no sense to me,  
21          and I just was wondering if you could give me  
22          your thoughts on that.

23          DIRECTOR WARTH: Yeah. You know, I  
24          think there's been -- Judge Zayas talked

1 about this in his testimony, that we have the  
2 right to counsel under County Law Article  
3 18-B. So that's the right to counsel in  
4 criminal cases and certain Family Court  
5 cases.

6 But you're right, it's not all  
7 Family Court cases. But the reality is, and  
8 Judge Zayas said this, that's not enough.  
9 you know, nobody has that expertise -- like  
10 if I had a Family Court proceeding I probably  
11 would retain counsel. And, you know, people  
12 need that expertise, that assistance in  
13 navigating the court system.

14 And so we would support efforts to  
15 better fund the legal services that do  
16 provide counsel when it isn't mandated under  
17 County Law Article 18-B. So we agree with  
18 Judge Zayas on that, the importance of  
19 funding that.

20 ASSEMBLYWOMAN WALSH: I appreciate  
21 that. Because what I've heard from the  
22 Family Court judges that I've spoken with is  
23 it's particularly confusing because you can  
24 have multiple petitions coming in from the

1 same family, some entitling you to public  
2 defender representation, or 18-B, and some  
3 not.

4 So it's -- and then how do you parse  
5 that out as a judge to figure out when you  
6 can and for what parts. I mean, if you're in  
7 the middle of a hearing that's a hybrid, you  
8 know, how do you separate that out? It's  
9 just it's very -- it makes -- like I said, it  
10 makes no sense to me at all.

11 And in an enforcement action involving  
12 child support, if ever there is, you know, a  
13 power disparity or the need for appropriate  
14 counsel, it seems like certainly as far as  
15 the other proceedings as well with custody  
16 and with orders of protection, but also with  
17 support. So I appreciate your comments very  
18 much.

19 Thank you. That's all I've got.

20 DIRECTOR WARTH: I'll also briefly  
21 add, you know, everything you're saying is  
22 true. But if we're not even doing the  
23 baseline, which we're not right now, we're  
24 not even providing adequate representation

1           where it's statutorily and constitutionally  
2           required.

3                       So while I agree with everything  
4           you're saying, I hope we also focus on at  
5           least achieving quality representation where  
6           the law requires that we have it.

7                       ASSEMBLYWOMAN WALSH: Well, I do think  
8           it was -- it's -- speaking as an attorney for  
9           the child in part of my practice, I mean, I  
10          would say that at least increasing that  
11          amount per hour did help. It's still very  
12          hard, you know, when the matrimonial bar can  
13          command \$350 or \$400 an hour for a  
14          matrimonial case where they're doing -- in my  
15          neck of the woods. I think that, you know,  
16          150 an hour for an AFC who has to go through  
17          all that additional paperwork -- it's still  
18          hard to fill the panel, but at least it's  
19          doing -- it did some good, I think, by  
20          doubling it, so.

21                      DIRECTOR WARTH: Yeah, we're hearing  
22          from providers that it has led to a marginal  
23          uptick in the number of attorneys on the  
24          panel.

1           They are concerned, of course, that  
2           there's nothing in the statute that allows  
3           for a periodic increase. And so that does  
4           cause some people to hesitate to join a panel  
5           if they know that their pay's going to be  
6           flat for a long time. And the last time it  
7           was flat for almost 20 years.

8           ASSEMBLYWOMAN WALSH: That's right.  
9           That's right. We'll, we're tying a lot of  
10          other things to inflation, so maybe that  
11          ought to be too. Thank you.

12          CHAIRWOMAN KRUEGER: Thank you.

13          Other Senators that I don't see on my  
14          list? Then there's me.

15          Hi. So Robert, I think that this  
16          Legislature knows how important it is to  
17          assure that we have a judiciary that knows  
18          their jobs and does their jobs well. So just  
19          I think on behalf of everyone, what you do in  
20          this commission as an independent commission  
21          is so important.

22          ADMINISTRATOR TEMBECKJIAN: Thank you.

23          CHAIRWOMAN KRUEGER: Even people who  
24          don't understand that you're out there.

1           So I was trying to do a little pitch.  
2           We hope that every judge in every courtroom  
3           is handling their jobs superbly. But if  
4           you're in a courtroom and you think  
5           something's amiss, you can file a complaint  
6           with the commission. This is like a  
7           commercial for you. I'm not even asking you  
8           a question.

9           ADMINISTRATOR TEMBECKJIAN: Thank you.

10          CHAIRWOMAN KRUEGER: And sometimes  
11          lawyers get very nervous about filing a  
12          commission complaint even if they do also  
13          feel something went wrong, because they need  
14          to continue to, you know, work in that  
15          courtroom.

16          So again, Part 2 of my commercial,  
17          people can file the complaints themselves.  
18          They don't need their lawyer to file. Is  
19          that correct?

20          ADMINISTRATOR TEMBECKJIAN: That's  
21          absolutely correct.

22          And the commission also has the  
23          authority in law to commence investigations  
24          on its own motion, based on information that

1 comes to it from sometimes anonymous sources,  
2 sometimes from information that we come  
3 across in -- in investigating one complaint,  
4 we might come across indications of  
5 misconduct on another matter, and we have the  
6 authority to initiate those inquiries on our  
7 own.

8 So individuals can, even anonymously,  
9 if they provide credible information to us to  
10 give us a basis to go forward, we can take  
11 those complaints and move with them.

12 CHAIRWOMAN KRUEGER: And because,  
13 again, our institutions only work if the  
14 people believe they have confidence in them,  
15 there was an article this morning that there  
16 was some kind of model setup for district  
17 attorneys to review themselves on cases that  
18 I guess people say didn't go correctly, but  
19 the results of that model, at least I guess  
20 for the counties outside of New York City, is  
21 they never reverse themselves.

22 So do we need some kind of equivalent  
23 commission to what you have for district  
24 attorneys?

1 ADMINISTRATOR TEMBECKJIAN: Well,  
2 there actually is one, the Commission on  
3 Prosecutorial Conduct, which is just starting  
4 up now. And they have modeled their rules  
5 based on ours because when the Legislature  
6 created it, they modeled the statute, with  
7 some obvious and significant differences,  
8 based on the Judicial Conduct Commission  
9 model.

10 CHAIRWOMAN KRUEGER: I wasn't sure I  
11 remembered that right.

12 ADMINISTRATOR TEMBECKJIAN: But there  
13 is an entity that is now established and  
14 getting underway. And I think there is a --  
15 if I'm not mistaken, a \$3 million  
16 appropriation in the Executive Budget for  
17 that commission to get started.

18 CHAIRWOMAN KRUEGER: Okay. So we need  
19 to all be watching that.

20 ADMINISTRATOR TEMBECKJIAN: Right.

21 CHAIRWOMAN KRUEGER: Thank you very  
22 much.

23 ADMINISTRATOR TEMBECKJIAN: But I  
24 agree with you, self-regulation almost never

1 works. And one of the reasons why the  
2 Judicial Conduct Commission was created in  
3 the first place, first as a temporary  
4 commission by the Legislature in 1974, is  
5 because judicial discipline had been the sole  
6 and exclusive province of the judiciary. And  
7 in the 25 years before our commission was  
8 created, there had only been five complaints  
9 investigated against judges. And we know,  
10 just as a statistical certainty, that there  
11 was more misconduct than that being  
12 committed.

13 CHAIRWOMAN KRUEGER: Thank you very  
14 much. That's all the time I need.

15 Assembly?

16 CHAIRMAN PRETLOW: Assemblyman  
17 Palmesano.

18 ASSEMBLYMAN PALMESANO: Thank you.

19 My question is for Ms. Warth.

20 Just one question. I'm curious, I  
21 believe the Governor has proposed to maintain  
22 \$92 million for the Assigned Counsel Program.  
23 I understand that covers --

24 CHAIRWOMAN KRUEGER: Can you speak up

1 a little so we can hear you?

2 ASSEMBLYMAN PALMESANO: Yes,  
3 absolutely I can do that, happy to do that.

4 CHAIRWOMAN KRUEGER: Thank you.

5 ASSEMBLYMAN PALMESANO: Sorry about  
6 that.

7 The Governor has proposed to maintain  
8 \$92 million for the Assigned Counsel Program,  
9 is my understanding. I understand that  
10 covers 50 percent of the county costs. From  
11 your perspective, and what you understand, is  
12 that enough to meet the need the counties  
13 have, especially in our upstate rural areas?

14 DIRECTOR WARTH: So it covers  
15 50 percent of the increase, so not 50 percent  
16 of the full cost of the assigned counsel  
17 rates.

18 And we have been monitoring what --  
19 you know, we set up a streamless {sic}  
20 process for counties in New York City to  
21 claim on that, and they have been claiming on  
22 that.

23 So far the 92 million has been more  
24 than enough to fully claim out or to fully

1 pay out those reimbursements. It's a little  
2 tricky because the vouchers that we're paying  
3 out on right now, some of them are cases that  
4 existed prior to the rate increase. So  
5 they're -- you know, they're mixed-cost, they  
6 don't include the full increase.

7 We anticipate that probably in a year  
8 or two, based on the information we're  
9 collecting, we'll be able to tell you exactly  
10 how much it would cost to fully cover both  
11 the partial reimbursement for the rate  
12 increase, but also the full reimbursement.  
13 Because we've always believed that the state  
14 should fully fund the full rate increase, not  
15 just 50 percent of it.

16 And based on what we're seeing so far,  
17 my best guess is that there will be enough  
18 from the Indigent Legal Services Fund -- if  
19 it isn't used to balance the General Fund --  
20 to reimburse counties for the full rate  
21 increase.

22 ASSEMBLYMAN PALMESANO: Just a quick  
23 follow-up on that, based on what you just  
24 said.

1           Do you know what the outstanding  
2           difference in how much our counties are  
3           paying and how much is the state? You know,  
4           how much the counties are responsible to pay  
5           now for the program, the outstanding amount?

6           DIRECTOR WARTH: Yeah, it's different  
7           depending on misdemeanors and felonies. And  
8           I can send you that number as a follow-up. I  
9           don't have it off the top of my head right  
10          now, and it would require me to do quick math  
11          and I'm really bad at math.

12          ASSEMBLYMAN PALMESANO: All right,  
13          thank you. Thank you very much.

14          CHAIRMAN PRETLOW: Assemblyman  
15          Burdick.

16          ASSEMBLYMAN BURDICK: Thank you both,  
17          and thank you for your testimony.

18          And this is actually a question for  
19          Patricia Warth.

20          I thank you for the work that you do.  
21          Not an easy task. And so do I understand  
22          correctly that maintaining the level of  
23          funding that's in the Executive Budget  
24          suffices? I mean, it sounds to me as though

1 we need hundreds of millions of dollars more.  
2 I'm wondering if you could elaborate on that.

3 DIRECTOR WARTH: So our Aid to  
4 Localities budget covers basically four basic  
5 programs. The settlement program, what the  
6 Executive proposed in their budget is what we  
7 requested. So maintaining that is fine --

8 ASSEMBLYMAN BURDICK: The other  
9 question that I have pertains to the  
10 transfer --

11 DIRECTOR WARTH: Can I just finish,  
12 though? But what the Governor has proposed  
13 for the Family Court is not sufficient. So  
14 that's where we're requesting -- the  
15 Governor's proposed 19.5 million, or the  
16 Executive proposed 19.5 million. We're  
17 requesting 50 million.

18 ASSEMBLYMAN BURDICK: Okay.

19 Other question. You referred to a  
20 transfer of funds out of the Indigent Legal  
21 Fund into the General Fund. I'll be honest  
22 with you that I have concerns about that,  
23 because it might not end up where we'd like  
24 it to go. And I'm wondering if you have any

1 thoughts about that.

2 DIRECTOR WARTH: We oppose it. We  
3 believe --

4 ASSEMBLYMAN BURDICK: Oh, you do  
5 oppose it.

6 DIRECTOR WARTH: The Indigent -- yeah.

7 ASSEMBLYMAN BURDICK: That's all I  
8 needed to know.

9 Great, thank you. That's all I have.

10 CHAIRMAN PRETLOW: Assemblywoman  
11 Simon.

12 ASSEMBLYWOMAN SIMON: Thank you.

13 Ms. Warth, I wanted to follow up on  
14 that line of questioning, actually.

15 One question is, has the Governor  
16 swept funds from Indigent Legal Services in  
17 the past to the general budget?

18 DIRECTOR WARTH: Yes, until --  
19 there's -- there's a history of a small  
20 amount of sweeping. And then when the  
21 settlement was -- you know, when the  
22 Hurrell-Harring litigation was settled and  
23 there was a bigger state commitment to  
24 improved-quality representation, that stopped

1 for several years.

2 This current-year budget, the budget  
3 that was enacted last year, there was  
4 authorization to transfer 234 million from  
5 the Indigent Legal Services Fund to the  
6 General Fund. And again, 114 million is  
7 related to assigned counsel rates.

8 ASSEMBLYWOMAN SIMON: Right.

9 DIRECTOR WARTH: That transfer hasn't  
10 happened yet. And typically it doesn't  
11 happen until March. So we'll know more in  
12 March whether the Executive takes full  
13 advantage of that transfer authority.

14 ASSEMBLYWOMAN SIMON: I understand  
15 that the Governor -- she also swept money --  
16 we kept something like 50 million in, but she  
17 swept another 50 million or something out of  
18 IOLA.

19 And so my question is -- and that was  
20 last year. But has agreed, apparently, this  
21 year not to do that.

22 DIRECTOR WARTH: That's correct.

23 ASSEMBLYWOMAN SIMON: And whether it's  
24 now coming out of your hide. Do you have --

1 I'm --

2 DIRECTOR WARTH: I didn't hear the end  
3 of that, whether --

4 ASSEMBLYWOMAN SIMON: Whether it's  
5 coming out of your hide, the sweeping.  
6 Because she's agreed not to do that with IOLA  
7 funds.

8 DIRECTOR WARTH: Yeah. I think, you  
9 know, there was litigation over the transfer  
10 of the IOLA fund, and that fund is slightly  
11 different from our fund in that it's a  
12 fiduciary fund.

13 I still think, though, that, you know,  
14 the state has a constitutional duty for  
15 quality public defense. And there's a fund  
16 in order for the state to exercise, to  
17 implement that duty, and it's deeply  
18 concerning if funding is taken from that fund  
19 when it's not related to the work of public  
20 defense.

21 ASSEMBLYWOMAN SIMON: Thank you.

22 CHAIRMAN PRETLOW: Assemblywoman  
23 Giglio.

24 Assemblywoman Kelles.

1 Assemblywoman Walker.

2 ASSEMBLYWOMAN WALKER: (Mic problem;  
3 inaudible.) I feel like it's like special  
4 recognition, you know. They don't accept a  
5 Black woman's thumbprint like, you know --  
6 (gesturing).

7 (Laughter.)

8 ASSEMBLYWOMAN WALKER: Okay. Thank  
9 you so much for your testimony.

10 I was just wondering, typically in a  
11 Criminal Court proceeding, after the  
12 defendant makes his -- takes a plea and the  
13 plea allocution is conducted, the judge  
14 usually has a statement that is made with  
15 respect to immigration status. Can you tell  
16 me what that is and what effect that may have  
17 on the present state of immigration affairs  
18 in our country.

19 DIRECTOR WARTH: Yeah. I mean, the  
20 idea of the judge's statement is to ensure  
21 that every person understands that if they  
22 were not born in the United States, there may  
23 be immigration consequences to their  
24 conviction.

1           And that they -- there's a  
2           Supreme Court case on this that requires  
3           attorneys to advise their clients as to the  
4           immigration consequences of their involvement  
5           in a criminal case and a conviction.

6           We -- in New York, we've used some of  
7           the Indigent Legal Services funds to disburse  
8           funding, competitive funds, to establish a  
9           network of six Regional Immigration  
10          Assistance Centers across the state so that  
11          attorneys have a place to go where they can  
12          get expertise on the intersection of criminal  
13          and immigration law to do their duty to  
14          advise clients as to the immigration  
15          consequences of their involvement in the  
16          criminal legal system. And we're also  
17          finding consequences as to involvement in the  
18          Family Court systems as well.

19          So our Regional Immigration Assistance  
20          Centers provide that service to attorneys to  
21          make sure that their clients know. And then  
22          they go a step further and often help the  
23          attorneys fashion a disposition that can  
24          ameliorate or at least diminish these

1 immigration consequences.

2 ASSEMBLYWOMAN WALKER: Thank you.

3 And so is the practice that many of  
4 the judges take in terms of advising people,  
5 you know, about their potential criminal  
6 effect, or affect, is that a statewide  
7 practice or -- I mean, I know I see it in  
8 New York City, but I'm not sure how it  
9 happens across the state.

10 DIRECTOR WARTH: My understanding is  
11 that it is a statewide practice. And I think  
12 it's important that judges do that. But I  
13 think it's more important that the person's  
14 attorney is doing that. And that even  
15 before --

16 (Time clock sounds.)

17 DIRECTOR WARTH: I'll follow up with  
18 you after.

19 ASSEMBLYWOMAN WALKER: Thank you.

20 CHAIRMAN PRETLOW: Assemblyman  
21 Morinello.

22 ASSEMBLYMAN MORINELLO: This is  
23 directed to Ms. Warth. And it's a little  
24 more on clarification dealing with

1 Family Court, and I'm going to focus.

2 What specific type of cases can you  
3 assign counsel in Family Court?

4 DIRECTOR WARTH: So there's the  
5 Family Court Act that requires assignment of  
6 counsel in any case involving neglect,  
7 allegations of neglect, abuse, or termination  
8 of parental rights. Custody. There's also  
9 some other matters -- I don't have the full  
10 list in front of me, and I can follow up with  
11 you on it.

12 But the main ones are what we call the  
13 child welfare matters where parents are at  
14 risk of losing their child. And then custody  
15 accounts for a big percentage of our defense  
16 providers' caseload in Family Court cases.

17 ASSEMBLYMAN MORINELLO: Do you oversee  
18 the attorney for the children?

19 DIRECTOR WARTH: No, that is actually  
20 housed in the Unified Court System.

21 ASSEMBLYMAN MORINELLO: Okay. When it  
22 comes to your Family Court attorneys, or  
23 attorneys assigned to Family Court, what  
24 specific training requirements are there?

1 Because it is a specialty.

2 DIRECTOR WARTH: Yes. I mean, there's  
3 what is currently required and what should be  
4 required.

5 (Laughter.)

6 ASSEMBLYMAN MORINELLO: Okay.

7 DIRECTOR WARTH: And part of the  
8 reason why we're asking for more funding for  
9 improved-quality representation is because  
10 there's a significant gap right now between  
11 the training attorneys are getting and the  
12 training that they should be getting.

13 But it really depends on the  
14 particular office for which they work or the  
15 particular assigned counsel program.

16 But I would say that I think that's an  
17 important question because I think far too  
18 many attorneys don't have access to the  
19 training that they need and that they're  
20 actually yearning for, because of the lack of  
21 funding.

22 ASSEMBLYMAN MORINELLO: The reason I  
23 asked the question is I get many inquiries  
24 and complaints about their attorneys just not

1 speaking up, not showing up. And so what  
2 type of -- other than Mr. Tembeckjian's  
3 division, okay, and I'll call it a  
4 division -- that I never had to use in  
5 14 years as a participant -- what type of a  
6 follow-up or checks and balances do you have?  
7 Because that seems to be one of the biggest  
8 issues.

9 DIRECTOR WARTH: Yeah. I mean, I  
10 think that the first step is making sure that  
11 attorneys have the resources that they need.

12 And, you know, Gerry Spence, he's a  
13 famous criminal defense lawyer, once famously  
14 said no attorney can provide competent  
15 representation with overwhelming caseloads.

16 And so we have to first address that  
17 problem. But in addressing that problem, we  
18 work with each county and provider on a plan.  
19 And so we do follow up with them on  
20 implementation of the plan to ensure that the  
21 funding is being spent as intended, for  
22 improved-quality representation. And as  
23 Mr. Correia's story shows, it's working in  
24 Criminal Court. We need to replicate it in

1 Family Court.

2 ASSEMBLYMAN MORINELLO: We know  
3 that we mentioned abuse, neglect, et cetera.  
4 And earlier today, I'm not sure whether you  
5 were here, but we spoke about problem-solving  
6 courts.

7 DIRECTOR WARTH: Right.

8 ASSEMBLYMAN MORINELLO: Do you see any  
9 merit to maybe try and massage  
10 problem-solving courts into some of the  
11 Family Court situations? Because I would  
12 believe that a lot of these have to do with  
13 underlying drug, alcohol, or other -- or  
14 mental health issues that are creating this.

15 So I'm just curious. And if you  
16 haven't thought about it, at some point maybe  
17 we can discuss that need.

18 DIRECTOR WARTH: Yeah. I think that  
19 is worth discussing.

20 The way it currently works is that the  
21 county investigating agency is supposed to  
22 work with the parent on that problem-solving  
23 stuff. But the problem is is that  
24 investigating agency is also prosecuting the

1 parent. Right? And so there's a lack of  
2 trust and investment in those programs.

3 I should also say that often the  
4 underlying program isn't drugs, isn't  
5 mental health -- it's poverty. And far too  
6 many of our parents are hauled into court  
7 because of judgments made about them, because  
8 they're doing the best they can with not  
9 enough money. And so sometimes I think we  
10 really have to reevaluate what do we consider  
11 neglect, what do we consider abuse. And  
12 poverty shouldn't be it.

13 ASSEMBLYMAN MORINELLO: I think that  
14 an adequate number of attorneys, with  
15 adequate training, could intercede on that --

16 DIRECTOR WARTH: Exactly.

17 ASSEMBLYMAN MORINELLO: -- and assist  
18 in moving through that. So --

19 DIRECTOR WARTH: Exactly.

20 ASSEMBLYMAN MORINELLO: Thank you. My  
21 time's just about up. But I do appreciate  
22 the answers. Thank you.

23 DIRECTOR WARTH: Thank you.

24 CHAIRMAN PRETLOW: Assemblywoman

1 Giglio.

2 ASSEMBLYWOMAN GIGLIO: Thank you,  
3 Chair.

4 And thank you for being here today.

5 So I'm being told from judges in  
6 Suffolk County that Legal Service Society is  
7 taking everyone without properly screening  
8 them. And therefore a lot of the judges have  
9 to reassign the cases to 18-B, which is  
10 taking away from criminal representation.

11 So what are you doing? Because they  
12 have to -- there is a conflict of interest  
13 between the attorney from the Legal Aid  
14 Society to represent -- because they  
15 represented a witness or a complainant in the  
16 past, and so those cases automatically get  
17 kicked to 18-B, which is taking away services  
18 from criminal cases.

19 So what can you say about the  
20 screening process to make sure that people  
21 are eligible, number one, and to also make  
22 sure in Suffolk County, which is a big  
23 county, that the attorneys that are assigned  
24 to Legal Aid Society are not as conflicted.

1 Is there a tracking system? Are you checking  
2 to see how many cases are getting kicked to  
3 18-B?

4 DIRECTOR WARTH: Right. I mean, so we  
5 don't micromanage the providers, but I hear  
6 what you're saying.

7 We did, pursuant to the  
8 Hurrell-Harring settlement, we were required  
9 to establish and promulgate guidelines for  
10 determining financial eligibility for  
11 assignment of counsel. And so -- and we  
12 updated our guidelines a few years ago to  
13 apply, you know, both to criminal cases and  
14 to Family Court representation, under  
15 County Law 18-B.

16 And the Office of Court Administration  
17 actually issued rules from the Chief Judge  
18 that fully incorporate our guidelines into  
19 Family Court proceedings.

20 And so, you know, to our  
21 understanding -- and we do ask our providers  
22 about compliance with the guidelines and  
23 ensuring we've trained providers, we've  
24 trained judges on the guidelines. And so we

1 are trying to follow up to ensure that these  
2 guidelines are followed in determining  
3 financial eligibility for assignment of  
4 counsel under County Law 18-B.

5 ASSEMBLYWOMAN GIGLIO: So do you have  
6 statistics on the number of attorneys that  
7 are representing people on behalf of Legal  
8 Aid Society that are actually conflicted, how  
9 many conflicts there are, and why these cases  
10 are getting pushed off to 18-B?

11 DIRECTOR WARTH: Right. I mean, it's  
12 up to every attorney to, you know, before  
13 accepting a case to determine if there's a  
14 conflict. And ethically, attorneys can't  
15 take cases if there's a conflict.

16 ASSEMBLYWOMAN GIGLIO: So you don't  
17 have a record as to how many cases are  
18 getting --

19 DIRECTOR WARTH: Yeah, we haven't  
20 asked that information at this point on, you  
21 know, how many are getting -- yeah. I mean,  
22 I don't think we're collecting that  
23 information at this point.

24 ASSEMBLYWOMAN GIGLIO: Okay. Because

1 that might save you some money.

2 But thank you.

3 CHAIRMAN PRETLOW: Assemblywoman

4 Kelles.

5 ASSEMBLYWOMAN KELLES: One quick  
6 question. When we did discovery reforms, we  
7 gave extra funding to DAs to be able to  
8 handle the increased amount of -- the smaller  
9 amount of time, increased amount of data.  
10 How much money was given to --

11 DIRECTOR WARTH: So the money for  
12 defense discovery reform actually does not  
13 flow through ILS, but it's flowing through  
14 the Division of Criminal Justice Services.  
15 And so I think it matched the prosecution.

16 So 40 million for discovery reform,  
17 and then an additional 40 million for -- you  
18 know, for improved quality generally.

19 I would urge you -- the legal aid  
20 society submitted written testimony --

21 ASSEMBLYWOMAN KELLES: I have it.

22 DIRECTOR WARTH: They did a wonderful  
23 job describing what they're doing with that  
24 funding.

1 ASSEMBLYWOMAN KELLES: Will do. Will  
2 do. And my apologies.

3 You mentioned earlier that there was a  
4 sweep that you wanted to decrease to a  
5 certain amount but you haven't had a chance  
6 to explain what the decrease -- at the end of  
7 your testimony. Do you recall what I was  
8 asking -- what you were saying?

9 DIRECTOR WARTH: So part of the  
10 Public -- the proposed Public Protection and  
11 General Government Article 7 bill would be  
12 to -- a proposal to give authority to the  
13 state to transfer \$234 million from the  
14 Indigent Legal Services Fund, which right now  
15 is fully supporting the Hurrell-Harring  
16 settlement, the partial reimbursement to the  
17 counties for the ACP rates, and also we want  
18 it to support improved quality Family Court  
19 representation.

20 But to sweep 234 million of that into  
21 the General Fund -- now, 114 million of that  
22 we say is legitimate. It is to offset the  
23 costs of the state reimbursing -- partially  
24 reimbursing counties --

1 ASSEMBLYWOMAN KELLES: But the rest  
2 would decrease the quality of the services.

3 DIRECTOR WARTH: Yeah. I mean --

4 ASSEMBLYWOMAN KELLES: I got you.

5 DIRECTOR WARTH: -- the fund needs to  
6 be used for --

7 ASSEMBLYWOMAN KELLES: Of course. Of  
8 course. And that funds -- that's what's  
9 necessary to do the job. Thank you so much.

10 A question in my last minute. I'm --  
11 if you have cases where a judge -- for cases  
12 that are consistently bail eligible --  
13 continually dismisses them and releases on  
14 recognizance without consideration of bail,  
15 is that at some point considered an ethics  
16 issue?

17 ADMINISTRATOR TEMBECKJIAN: Well, the  
18 rules on judicial conduct require, among  
19 other things, that a judge be faithful to the  
20 law, be competent in the law. And we have  
21 had some disciplinary cases in our history in  
22 which judges who were demonstrating a lack of  
23 competence in the law or a willful failure to  
24 abide by the law, can be publicly

1           disciplined.

2                   ASSEMBLYWOMAN KELLES:  Okay.  I just  
3           wanted to make sure.  Because I am hearing of  
4           cases over and over and over and over again  
5           being dismissed that 100 percent are  
6           bail-eligible and being used, of course, then  
7           in the public rhetoric as -- as evidence that  
8           bail reform did not work.  And it's  
9           frustrating.  Yeah, thank you.

10                   CHAIRWOMAN KRUEGER:  All right, I  
11           believe that we have all completed the  
12           questions we're allowed to ask.  So I want to  
13           thank you both very much for your testimony  
14           today and for your work on behalf of the  
15           people of New York State.  And I will let you  
16           be free, so to speak.

17                   DIRECTOR WARTH:  Thank you.

18                   ADMINISTRATOR TEMBECKJIAN:  Thank you.

19                   CHAIRWOMAN KRUEGER:  It's a bad pun,  
20           given what you people do for a living.  
21           Sorry.

22                   So our next panel we have the New York  
23           State Division of Criminal Justice Services,  
24           the New York State Department of Corrections

1 and Community Supervision, the New York State  
2 Division of State Police.

3 But we have a replacement for  
4 Rossana Rosado, the commissioner of  
5 Criminal Justice Services. Apparently she is  
6 ill, so she's being replaced by her executive  
7 deputy commissioner, Joseph Popcun.

8 Good afternoon, gentlemen. We're  
9 going to ask you each just first to introduce  
10 yourselves so that the video folks know whose  
11 name to put under what picture. And then  
12 we'll start with the testimony.

13 Please.

14 DCJS EX. DEP. CMR. POPCUN: Joseph  
15 Popcun, executive deputy commissioner of  
16 DCJS.

17 DOCCS COMMISSIONER MARTUSCELLO:  
18 Daniel Martuscello, commissioner, Department  
19 of Corrections and Community Supervision.

20 STATE POLICE SUPT. JAMES: Steven G.  
21 James, superintendent, New York State Police.

22 CHAIRWOMAN KRUEGER: Thank you. So  
23 why don't we just go straight down that line  
24 and start with Joseph, the executive deputy

1 commissioner.

2 DCJS EX. DEP. CMR. POPCUN: Thank you  
3 very much.

4 Good afternoon, Chairs Krueger and  
5 Pretlow, legislative fiscal committee  
6 members, and other distinguished members of  
7 the Legislature. I am Joe Popcun, executive  
8 deputy commissioner of DCJS. Thank you for  
9 the opportunity to discuss Governor Kathy  
10 Hochul's fiscal year '25-'26 budget for DCJS.

11 Commissioner Rossana Rosado regrets  
12 not being able to be here today with you, but  
13 sends her sincere appreciation for your  
14 continued support and partnership.

15 Today marks the commissioner's and my  
16 fourth budget testimony for this exceptional  
17 agency. From crime prevention to community  
18 reentry, DCJS helps our law enforcement and  
19 community partners keep New Yorkers safe and  
20 ensure a justice system that works for all.

21 While we've used the term  
22 multifunction support agency in the past,  
23 what we really mean is that we convene,  
24 facilitate and support all stakeholders with

1           our resources, expertise and information. It  
2           is our privilege and power to help those who  
3           directly help others.

4                     With the support of Governor Hochul  
5           and the State Legislature, we have navigated  
6           a series of crises -- the pandemic, social  
7           unrest, economic anxiety, violent extremism,  
8           and a surge in shootings. Together we answer  
9           the call to serve New Yorkers by leveraging  
10          our largest ever \$850 million budget and  
11          growing workforce to deliver proven  
12          strategies that uproot crime and tend to its  
13          ripple effects.

14                    Last year alone we delivered record  
15          funding through nearly 3900 grants; helped  
16          reduce gun violence through GIVE, our Gun  
17          Involved Violence Elimination initiative;  
18          answered 130,000 requests for assistance from  
19          hundreds of law enforcement agencies through  
20          our 11 Crime Analysis Centers; strengthened  
21          10 communities through Project RISE -- we  
22          love acronyms -- Respond, Invest, Sustain and  
23          Empower; launched a new \$35 million program,  
24          STRIVE, Statewide Targeted Reductions in

1 Intimate Partner Violence; and equipped  
2 378 local law enforcement agencies with  
3 \$127 million in new technology to better  
4 prevent and solve crime.

5 We also strengthened our partnership  
6 between the state's office of Gun Violence  
7 Prevention and our nationally recognized SNUG  
8 outreach program. This partnership now  
9 leverages the best of both public health and  
10 public safety. In 14 communities, SNUG teams  
11 work to interrupt the cycle of violence by  
12 engaging young people and connecting them  
13 with the support they need.

14 Looking back on the last three years,  
15 the DCJS story is one of humanity and a  
16 holistic focus on the work of justice and  
17 safety. It has taken grit, grace and a great  
18 deal of resources, but it is working.

19 We have seen the justice system  
20 recover from the pandemic disruptions, crime  
21 drop, and gun violence plummet to record  
22 lows. Reported crime, for the first nine  
23 months of 2024, declined 8 percent outside of  
24 New York City, with decreases in both violent

1 and property crime, compared to the prior  
2 year.

3 In New York City, overall reported  
4 crime remained flat through September of last  
5 year compared to 2023.

6 In our GIVE jurisdictions, which as  
7 you know, is 90 percent of the violent crime  
8 by firearm outside of New York City, we saw  
9 the fewest shootings on record last year, a  
10 53 percent decrease from the peak in 2021.  
11 In New York City, there were 903 shootings  
12 last year, a 42 percent decrease from the  
13 2021 peak.

14 By cutting gun violence nearly in half  
15 throughout the entire state, there were  
16 1,333 fewer people shot, and 251 fewer lives  
17 lost in 2024 compared to where we were just  
18 three years ago. This is remarkable  
19 progress.

20 As proud as I am that DCJS continues  
21 its wide-ranging and far-reaching efforts to  
22 build safe and strong communities, we still  
23 have more work to do. The Governor's budget  
24 again places public safety at the forefront,

1           featuring initiatives and investments in DCJS  
2           to protect and serve all New Yorkers.

3                     This budget expands support for law  
4           enforcement analysis and intelligence  
5           sharing, secures additional funding for law  
6           enforcement technology and equipment,  
7           increases the resources available for  
8           evidence-based policing strategies, doubles  
9           funding for rape crisis and sexual assault  
10          programs, reforms discovery, supports safe  
11          and vibrant communities in the Bronx and  
12          beyond, and increases the police presence on  
13          the New York City subways.

14                    As I think about this year's budget,  
15          and particularly this moment in time, two  
16          questions come to mind. How do we work  
17          together to create a more lasting peace,  
18          build community and promote opportunity, and  
19          how do we make sure that people both feel  
20          safe and are safe where they live, work and  
21          learn?

22                    At DCJS our answer is simple in words  
23          but supreme in action: We must rededicate  
24          ourselves to justice and heed the call to act

1 in service and betterment of others. As we  
2 renew our commitment to justice, we must  
3 embrace our shared humanity, doing what is  
4 right, tending to those in need, healing  
5 those in pain, and making communities whole.

6 The Governor's proposed budget  
7 balances safety with fairness and enforcement  
8 with prevention. With your support, it will  
9 allow DCJS to continue to answer the call,  
10 ensuring safer neighborhoods, stronger  
11 partnerships, and a fair and equal justice  
12 system. This budget empowers us to provide  
13 essential resources, training and assistance  
14 that local partners rely upon every day.

15 I want to express my sincerest  
16 appreciation to Governor Hochul and  
17 Commissioner Rosado for their unwavering  
18 leadership on public safety. I want to  
19 extend my gratitude to the thousands of  
20 on-the-ground partners who are doing the work  
21 and truly changing lives.

22 I also want to recognize the  
23 exceptional DCJS team for their dedication  
24 and innovation. Their commitment has

1 strengthened our mission and created a top  
2 workplace that values every team member.

3 Finally, our work is only possible  
4 because of the ongoing support we receive  
5 from the State Legislature and from members  
6 who represent every corner of this great  
7 state.

8 Thank you for your service and your  
9 time today. I look forward to answering your  
10 questions.

11 CHAIRWOMAN KRUEGER: Thank you.

12 DOCCS commissioner.

13 DOCCS COMMISSIONER MARTUSCELLO: Good  
14 afternoon, Chair Krueger, Chair Pretlow, and  
15 other distinguished members of the  
16 Legislature. I am Daniel Martuscello,  
17 commissioner for the Department of  
18 Corrections and Community Supervision. It is  
19 my honor to discuss the Governor's Executive  
20 Budget plan as it relates to DOCCS.

21 Let me begin by expressing my deepest  
22 sympathies to the family of Robert Brooks,  
23 who was tragically and senselessly murdered  
24 at Marcy Correctional Facility. I've watched

1 the videos of the assault, each time feeling  
2 the same emotions that I imagine all  
3 New Yorkers feel -- anger, disgust, and  
4 disappointment. The actions of those staff  
5 members were repugnant and do not represent  
6 our values as an agency. Individuals go to  
7 prison as punishment, not for punishment, and  
8 I will not normalize violence within our  
9 system.

10           Upon learning of these horrendous  
11 actions, I immediately ordered an  
12 investigation and made criminal referrals to  
13 external investigatory agencies. Thanks to  
14 our investigators, we were able to obtain and  
15 preserve the video of this event that will be  
16 crucial evidence in the disciplinary and  
17 criminal proceedings. I am committed to  
18 ensuring that justice is served for the  
19 Brooks family and that we achieve meaningful  
20 reform.

21           I am thankful to Governor Hochul for  
22 her swift and aggressive response to this  
23 incident. The Governor announced several  
24 actions that we are in the process of

1 implementing, including termination of all  
2 involved staff members, appointment of a new  
3 superintendent, funding for fixed cameras and  
4 body-worn cameras, expansion of our Office of  
5 Special Investigations to proactively  
6 identify trends and mitigate risks, and  
7 heightened monitoring from external  
8 stakeholders to improve culture and  
9 accountability within the system.

10 At my direction, we've expanded our  
11 body-worn camera policy, requiring activation  
12 any time security staff are interacting with  
13 the population. I've increased management  
14 rotations outside of normal business hours,  
15 expanded the presence of our investigators  
16 within facilities, and introduced a  
17 whistleblower policy to ensure staff feel  
18 safe to report misconduct without fear of  
19 retaliation.

20 We are conducting an independent  
21 review of Marcy and other facilities,  
22 introducing new and innovative use of force  
23 trainings, and evaluating our culture across  
24 the agency. I am committed to

1 transformational reform to ensure that our  
2 facilities are operated safely, humanely, and  
3 effectively.

4 The fiscal year 2026 Executive Budget  
5 provides DOCCS with the resources it needs to  
6 carry out its mission, including new  
7 appropriations to meet our goals. These  
8 include:

- 9 • \$400 million to install fixed camera  
10 systems in every correctional facility;
- 11 • \$18.4 million to procure and deploy  
12 body-worn cameras; and
- 13 • \$7.2 million to expand and  
14 restructure OSI, including a new Public  
15 Integrity Division and Medical Review Team  
16 focused on staff misconduct and use of force.

17 I am a firm believer in the value of  
18 cameras in a correctional setting. Cameras  
19 are highly effective at enhancing  
20 accountability and professionalism and are  
21 valuable assets when conducting  
22 investigations. The resources advanced by  
23 the Governor in her budget plan will greatly  
24 improve our ability to identify wrongdoing,

1 protect both staff and the incarcerated, and  
2 improve prison culture.

3 At the same time, we must take action  
4 to enhance safety and security within our  
5 institutions. The security incident that  
6 occurred at Collins Correctional Facility  
7 yesterday demonstrates the challenges faced  
8 by the department. I was on-site monitoring  
9 our response and thankfully, due to the  
10 impressive work of our staff, we were able to  
11 deescalate the situation, restore order to  
12 the facility, and achieve a peaceful  
13 resolution.

14 The department staffing situation is  
15 impacting these and other safety concerns as  
16 we remain critically understaffed. We  
17 implemented several new recruitment programs  
18 with success, including a regional  
19 recruitment initiative that offers direct  
20 placement to facilities in certain counties.  
21 But more is needed to lower the number of  
22 vacancies.

23 The Governor advanced legislation that  
24 will remove the residency requirement for

1 security staff. This will enable us to  
2 recruit from neighboring states, which is  
3 common practice across the country.

4 This legislation will help improve our  
5 staffing levels so that our employees can do  
6 their jobs safely and have the work/life  
7 balance that they deserve.

8 The Executive Budget also includes  
9 funding and legislation to advance the  
10 Governor's Jails to Jobs initiative. This  
11 includes \$2 million for DOCCS to establish  
12 job training programs in green energy. The  
13 department looks forward to training the  
14 population in this expanding field and  
15 contributing to the economy of the future.

16 The Governor also advanced legislation  
17 to grant DOCCS discretionary authority to add  
18 progress eligible for merit time and limited  
19 credit time allowance, which are currently  
20 set in law. The legislation will enable the  
21 department to add eligible programs as they  
22 come online and provide more individuals with  
23 incentives to engage in rehabilitative  
24 programs.

1           Last year the department announced its  
2           commitment to join the Reentry 2030 campaign,  
3           a national initiative to improve reentry  
4           outcomes for justice-involved populations.  
5           DOCCS established several goals to accomplish  
6           by the year 2030 relating to programming,  
7           employment, housing, healthcare, personal  
8           documents, and Medicaid enrollment.

9           Early indicators are showing success  
10          with these initiatives. The recidivism rate  
11          among 2020 releasees was just under  
12          19 percent, which is the lowest return rate  
13          since DOCCS began tracking this information.

14          DOCCS Community Supervision continues  
15          to promote public safety and reentry  
16          services. The department expanded its  
17          Supervision Against Violent Engagement -- or  
18          SAVE -- initiative to provide heightened  
19          supervision of domestic violence offenders  
20          and referrals to treatment for releasees  
21          diagnosed with a mental illness.

22          DOCCS is also supporting the  
23          Governor's subway safety plan with enhanced  
24          monitoring of recidivists committing crimes

1 in transit hubs. The department will  
2 continue to utilize a multipronged strategy  
3 to support reentry to the workforce and  
4 enhance public safety.

5 There is no question that this is a  
6 challenging time for our agency, following  
7 the death of Robert Brooks. It is critical  
8 that we meet this moment with a commitment to  
9 transparency, accountability and integrity,  
10 so that we may achieve structural change. We  
11 must operate a humane system that treats  
12 those under our care with dignity and respect  
13 and prioritizes safety, security and  
14 opportunity. Anything less would be a  
15 disservice to the Brooks family, all those  
16 who interact with our system, and the people  
17 of the State of New York.

18 Thank you for having me here today. I  
19 would be happy to answer any questions you  
20 may have.

21 CHAIRWOMAN KRUEGER: Thank you very  
22 much.

23 And New York State Police.

24 STATE POLICE SUPT. JAMES: Chairs

1 Krueger and Pretlow and members of the joint  
2 committee, thank you for this opportunity to  
3 speak about the work performed by the members  
4 of the New York State Police and the various  
5 proposals put forward in the  
6 Executive Budget. I am Superintendent  
7 Steven G. James, and I've proudly served as a  
8 member of the State Police for more than  
9 34 years.

10 I'm honored to serve as  
11 superintendent, and I am fully committed to  
12 ensuring that our members have the resources  
13 that they need to carry out their mission to  
14 serve and protect all New Yorkers.

15 I thank Governor Hochul and the  
16 Legislature for the continued support of the  
17 New York State Police, for without your  
18 backing the State Police would not be capable  
19 of performing at the high level that  
20 New Yorkers have come to expect.

21 The expectations placed upon our  
22 organization continue to expand as new  
23 challenges arise. However, our members  
24 continue to go above and beyond to meet the

1 needs of the people we serve. While more is  
2 demanded of our Troopers than at any other  
3 time in our history, we continue in carrying  
4 out the vital undertakings of protecting all  
5 people in our great state.

6 Governor Hochul's top priority is  
7 public safety, and she continues to provide  
8 the necessary funding and resources required  
9 for us to carry out our expanded mission.  
10 The fiscal year '25-'26 Executive Budget  
11 continues to support the New York State  
12 Police and our funding needs with regard to  
13 personnel, equipment and technology. With  
14 the funding in the Governor's proposed  
15 budget, we can continue to boost our efforts  
16 to protect all New Yorkers.

17 One area of concern continues to be  
18 terrorism and increased hostilities between  
19 multiple foreign nations and terrorist  
20 organizations. Over the last two years,  
21 Governor Hochul has provided funding to  
22 increase staffing at the New York State  
23 Intelligence Center, improving our ability to  
24 work proactively in gathering and analyzing

1 intelligence, investigating threats, and  
2 sharing information with our local and  
3 federal enforcement partners.

4 In this budget the Governor has  
5 proposed \$1.7 million to expand the cyber  
6 analysis unit, which will provide further  
7 enhancements to those capabilities.

8 In addition, we are looking to  
9 strengthen our presence at the northern  
10 border. The Governor has proposed \$8 million  
11 to enhance our criminal enforcement efforts  
12 throughout the North Country. This money  
13 will fund the purchase of technology and  
14 equipment to support intelligence gathering,  
15 criminal investigations, interdictions, and  
16 enforcement of New York State laws.

17 Our focus at the border remains  
18 counterterrorism, transnational organized  
19 crime, and human trafficking.

20 Another top priority is addressing the  
21 spike in retail thefts. Last year we  
22 received funding to establish the Organized  
23 Retail Theft Task Force. Our work to stand  
24 up the unit started last March, and our

1 members embraced the challenge, making an  
2 immediate impact on the problem. We forged  
3 partnerships with national retailers, we went  
4 into local communities, gather intelligence  
5 from local shop owners, and worked alongside  
6 local and federal law enforcement partners.

7 In 2024, task force members arrested  
8 688 people on 1100 charges and recovered  
9 nearly \$200,000 in stolen goods.

10 However, our work is not done. While  
11 we have made progress, we still have many  
12 ongoing investigations involving retail  
13 theft, and the Governor has included funding  
14 in this budget to maintain the momentum.

15 We continue our work to reduce gun  
16 violence and the proliferation of illegal  
17 guns. I want to thank Governor Hochul and  
18 all of you again for providing the necessary  
19 resources to get guns out of the hands of  
20 criminals, address interstate gun  
21 trafficking, and reduce violent crime in our  
22 communities.

23 Through our Interstate Gun Task Force,  
24 the work of our Community Stabilization Unit,

1 the Violent Gang and Narcotics Enforcement  
2 Unit, and investigators and Troopers on  
3 patrol, we continue to have success. In 2024  
4 we seized 1,706 illegal guns, an increase of  
5 more than 160 percent compared to 2018. With  
6 your help, we can continue this critically  
7 important work.

8 Agency staffing remains to be an area  
9 of constant executive-level discussion within  
10 the State Police, and ensuring that our  
11 organization is at an adequate staffing level  
12 is another top-level priority.

13 The funding provided for additional  
14 Academy classes at the Cazenovia location has  
15 helped us get closer to our rate of  
16 attrition, and we appreciate that support.  
17 Last week 176 new Troopers graduated, which  
18 was the last class from Cazenovia.

19 Recruitment remains an area of concern  
20 to all law enforcement agencies, and we are  
21 no exception. We have an exam sign-up that's  
22 been underway since last August, and it runs  
23 through July of this year. We continue to  
24 examine ways to identify and reach qualified

1 candidates. The Governor has proposed  
2 eliminating the maximum age to become a  
3 Trooper, which is currently 35 years of age.  
4 We believe this will give us access to a new  
5 pool of qualified candidates, particularly  
6 those who are retiring from the military  
7 service or leaving other law enforcement  
8 agencies.

9 She has also proposed raising the  
10 mandatory retirement age to 63. We think it  
11 is critically important to retain the most  
12 experienced and knowledgeable members of our  
13 organization, who are difficult to replace.

14 I want to briefly touch upon a few  
15 other important projects. Our body-worn  
16 cameras have proven their value as we  
17 investigate complaints by the public against  
18 our members. The number of substantiated  
19 complaints is a fraction of the total number  
20 of interactions we have had with the public,  
21 which underlines the continued  
22 professionalism of our members.

23 We continue to prioritize the  
24 replacement of high-mileage and aging patrol

1 vehicles for the safety of our members and to  
2 ensure we can respond to emergencies. The  
3 proposed budget includes funding to help us  
4 continue with our plan, which includes  
5 transitioning the entire patrol fleet to the  
6 larger SUV vehicles.

7 I'll close by again recognizing the  
8 support that Governor Hochul and the  
9 Legislature has provided to our members. We  
10 certainly could not provide the high quality  
11 of services that we do without that support.  
12 And the Executive Budget continues to provide  
13 our members with the increased equipment,  
14 training and other valuable resources to  
15 carry out their duties.

16 The men and women of the New York  
17 State Police serve each day with integrity,  
18 pride and dedication, and we'll continue this  
19 tradition of excellence with your support.  
20 Thank you for your continued investment in  
21 the State Police and for the opportunity to  
22 address you today.

23 And I welcome questions that you may  
24 have.

1                   CHAIRWOMAN KRUEGER: Thank you very  
2 much.

3                   And our first questioner will be  
4 Chair Julia Salazar.

5                   SENATOR SALAZAR: Thank you, Chair.

6                   Good now afternoon to all of you, and  
7 thank you for your testimony.

8                   I will start, naturally, with  
9 Commissioner Martuscello.

10                  First of all, Commissioner, I know  
11 that you've made it very clear at every  
12 opportunity that the beating of Mr. Robert  
13 Brooks to death by DOCCS employees deeply  
14 disturbs you and you've taken it very  
15 seriously.

16                  I also want to acknowledge that the  
17 father of Mr. Brooks, Robert Ricks, is here  
18 with us at the hearing today.

19                  I could speak of numerous documented  
20 incidents in which DOCCS' process for  
21 addressing serious use of force complaints  
22 has failed victims of abuse by officers or  
23 staff. But to stay focused on the Brooks  
24 case, two correction officers and a sergeant

1           who were directly involved in the killing of  
2           Mr. Brooks were previously named in federal  
3           lawsuits for brutal attacks on incarcerated  
4           individuals that left at least two men  
5           permanently disabled by their injuries.

6                     Those incidents both respectively  
7           occurred in 2020, and those officers faced no  
8           consequences or discipline from DOCCS. Over  
9           four years later, those officers ruthlessly  
10          beat Mr. Brooks, causing his death.

11                    From DOCCS OSI's role in investigating  
12          use-of-force complaints to the disciplinary  
13          process that culminates in an arbitrator  
14          making final disciplinary determinations,  
15          this process has really failed, I believe.

16                    Commissioner, in most cases you don't  
17          even have the power to fire abusive officers.  
18          What needs to be done to overhaul DOCCS'  
19          disciplinary processes? Do you think that  
20          the killing of Robert Brooks could have been  
21          prevented in the disciplinary process had  
22          actually been effective?

23                    COMMISSIONER MARTUSCELLO: Senator,  
24          thank you for your question.

1           You know, as you indicated, I'm  
2           totally repulsed with what occurred at the  
3           Marcy Correctional Facility and the murder of  
4           Robert Brooks. And again, my sympathies go  
5           out to his family.

6           In terms of overall, you know, the  
7           Governor has taken a very aggressive stance  
8           in giving me funding in deployment of fixed  
9           cameras and body cameras. And again, I think  
10          cameras keep everybody accountable and tell  
11          the truth, and it's critical evidence in this  
12          investigation that will be used to criminally  
13          as well as administratively hold these  
14          individuals accountable.

15          Had I had that years ago, that may  
16          have prevented previous disciplines or  
17          prevented previous excessive-force cases and  
18          helped us in previous disciplines. So this  
19          is a critical step forward in the full  
20          deployment of body-worn cameras. And again,  
21          with the aggressive policy that they're  
22          activated and powered on at all times while  
23          on duty.

24          In terms of it the disciplinary

1 process, you know, what I'm focused on is  
2 making sure we keep people accountable. As  
3 you indicated, we have a collective  
4 bargaining agreement process where staff are  
5 afforded due process. That was negotiated  
6 into the contract, and I am bound by the  
7 decision of an independent arbiter looking at  
8 the facts, rather than me as a 27-year  
9 professional.

10 So anything that allows me to continue  
11 to hold staff accountable and run a safe  
12 system are things that we should be looking  
13 at.

14 SENATOR SALAZAR: Thank you,  
15 Commissioner.

16 I wanted to ask -- because you  
17 mentioned the expansion of fixed cameras in  
18 facilities and body-worn cameras. The  
19 Executive Budget allocates \$400 million for  
20 this purpose. And I applaud that. However,  
21 my office frequently hears about blind  
22 spots -- sometimes referred to as beat-up  
23 rooms, even, by incarcerated individuals in  
24 prisons -- that are used by staff to evade

1           accountability being, you know, captured on  
2           surveillance.

3                       What is DOCCS's plan and timeline for  
4           the installation of the stationary cameras  
5           that are funded in the budget? How long do  
6           you anticipate it would take for all  
7           facilities to have universal stationary  
8           cameras and body-worn cameras?

9                       COMMISSIONER MARTUSCELLO: Yeah, thank  
10          you for the question.

11                      Certainly as we operate prisons, some  
12          of which are over 200 years old, it's very  
13          difficult with fixed cameras to cover every  
14          single area of an institution. Right now we  
15          are at 11 facilities that are fully  
16          implemented. We have another 13 that are  
17          currently in progress.

18                      And since the Governor took office,  
19          she's already invested 413 million in the  
20          fixed cameras, and that's before the new  
21          appropriation that she's recommending of  
22          400 million, which will allow us to finish  
23          the remaining 17 facilities.

24                      We're aggressively working with the

1 Office of General Services in expediting  
2 contracts. We expedited the contract for  
3 Marcy, and I have declared an emergency to do  
4 the medical area, not only at Marcy but at  
5 other institutions.

6 But to get to those areas where we may  
7 have blind spots, body-worn cameras will be  
8 critical, where every correction officer and  
9 supervisor has a body-worn camera that must  
10 be powered on, must be activated any time  
11 that they're interacting, and overlaid with  
12 the performance metrics where we're doing  
13 quality assurance of that. Right? So that  
14 can give us full coverage. If we have a  
15 fixed-camera system that for some reason  
16 didn't cover an area or it was an unexpected  
17 area, the body-worn cameras will help us do  
18 that.

19 SENATOR SALAZAR: Thank you. Yeah,  
20 and it's encouraging to hear about this  
21 change in the policy.

22 COMMISSIONER MARTUSCELLO: In terms of  
23 the deployment of body-worn cameras, all  
24 facilities right now have body-worn cameras,

1 with the exception of Edgecombe, which is now  
2 for undomiciled parolees.

3 SENATOR SALAZAR: Right.

4 DOCCS COMMISSIONER MARTUSCELLO:  
5 Twenty-one facilities are fully deployed,  
6 meaning all security staff have them on their  
7 person. The remainder have them on  
8 supervisors only.

9 We are working with ITS and the  
10 private sector to install switches that are  
11 necessary for the upload of the type of  
12 volume that comes across body-worn cameras in  
13 the video.

14 So we are aggressively working towards  
15 that. I anticipate by the end of June we  
16 will be fully completed at every facility and  
17 fully deployed.

18 SENATOR SALAZAR: Thank you.

19 I want to ask about the prison  
20 closures that were authorized -- expedited  
21 closures, rather, that were authorized in  
22 last year's budget. Obviously Great Meadow  
23 Correctional Facility and Sullivan were  
24 closed.

1           I was curious if you have a cost  
2 savings update, since that was, you know,  
3 supposed to be at least in part an outcome of  
4 the closures. And how does DOCCS plan to  
5 repurpose those facilities, Great Meadow and  
6 Sullivan?

7           COMMISSIONER MARTUSCELLO: Yeah, thank  
8 you, Senator. Definitely a topic of  
9 discussion in terms of repurposing.

10           The overall savings was approximately  
11 \$82 million. We were able to successfully  
12 deploy staff to other institutions because we  
13 have plenty of vacancies. We did issue the  
14 report to the Legislature as required under  
15 that Article VII legislation. We had  
16 50 staff that wound up resigning instead of  
17 partaking in reassigning to other facilities.

18           As you know, the Governor had launched  
19 a Prison Redevelopment Commission, which  
20 issued its first report. And the ESD is the  
21 chair of that committee. I know in this  
22 Executive Budget proposal the Governor has  
23 proposed \$100 million for the purpose of  
24 re-utilizing or reimagining closed prisons.

1           So we'll work closely with OGS as well as ESD  
2           in terms of what potential reuses there could  
3           be moving forward.

4                     SENATOR SALAZAR: Thank you.

5                     I want to ask a very different  
6           question now about HALT implementation. I've  
7           heard from incarcerated individuals, I've  
8           also seen firsthand from my visits to  
9           correctional facilities that congregate  
10          out-of-cell time in compliance with HALT  
11          often refers to being locked alone in a small  
12          recreation pen.

13                    Why does DOCCS count that time as  
14          out-of-cell time that complies with HALT's  
15          minimum requirements of seven hours of daily  
16          out-of-cell time in RRUs, RHUs and other  
17          alternative settings?

18                    DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
19          thank you for the question.

20                    And you and I have talked about HALT  
21          to a large degree since my becoming  
22          commissioner, and I'm fully committed to the  
23          implementation of HALT and making sure that  
24          we are following it to the letter of the law.

1           In terms of the congregate recreation,  
2 individuals aren't typically out there alone.  
3 They're typically out there with others. And  
4 we are -- we do have multiple projects  
5 ongoing right now to put additional  
6 recreational areas at facilities. As you  
7 know, HALT was one year to implement and it  
8 became effective. And some of the  
9 infrastructure upgrades take a little longer  
10 than that. So we are in compliance with the  
11 law, but we do have other projects that are  
12 ongoing to even exceed those expectations.

13           SENATOR SALAZAR: Thank you.

14           And just to return quickly to  
15 basically the impact of prison closures, the  
16 closures -- and I'll use this language even  
17 if you might not. But it was in part about  
18 rightsizing, if I can use that language,  
19 right? But that if there was a staffing  
20 shortage, closures would allow for the  
21 workforce to be redistributed to fill some of  
22 those vacancies across facilities.

23           Does the 380 new full-time employees  
24 in the Executive Budget take into account the

1 closures and, additionally, the many  
2 vacancies in current full-time employee  
3 positions?

4 DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
5 some of the increases in this budget are to  
6 re-fund what was proposed last year that were  
7 never materialized in the closures. We  
8 closed two prisons -- again, one large  
9 prison, one medium-sized prison -- which got  
10 us close to the fiscal, but it didn't hit the  
11 FTE count.

12 So there was a redistribution back  
13 into the budget for the FTE count. Plus with  
14 the expansion of OSI, there's 81 FTEs  
15 associated with the redesign of OSI.

16 SENATOR SALAZAR: So you think that  
17 those FTEs additional in the Executive Budget  
18 are justified.

19 DOCCS COMMISSIONER MARTUSCELLO: I do.

20 SENATOR SALAZAR: Okay, thank you.  
21 That's my time.

22 CHAIRMAN PRETLOW: Assemblyman  
23 Dinowitz.

24 ASSEMBLYMAN DINOWITZ: Okay, I did

1           have a few questions for -- of course now I  
2           can't find my notes, so you'll just have to  
3           give me a second.

4                     CHAIRMAN PRETLOW: We can come back to  
5           you.

6                     ASSEMBLYMAN DINOWITZ: Yeah, do that.  
7           I'm just --

8                     CHAIRMAN PRETLOW: Assemblyman Dilan.

9                     ASSEMBLYMAN DILAN: Thank you,  
10          Mr. Chair. And congratulations to you on  
11          your new role.

12                    Commissioner, I am -- we've had the  
13          chance to talk since the death of -- and  
14          murder of Mr. Brooks and before the release  
15          of the video. And I see in your testimony  
16          you talk about transforming and making your  
17          department more transparent. I share that  
18          view, and I look forward to working with you  
19          in that. And I'd say that it would be the  
20          focus of my time as the chair of this  
21          committee so long as I have it.

22                    I want to talk about some of the  
23          things you mentioned in your testimony  
24          regarding whistleblower protections. Could



1 state inspector general's office as well as  
2 the Attorney General's office that staff can  
3 go to outside of the agency. So I wanted to  
4 provide them with clear lines where they can  
5 make sure that they're reporting misconduct  
6 and that they'll be protected for blowing the  
7 whistle in terms of those notifications.

8 I think Public Officers Law and  
9 there's laws on the books that already  
10 protect staff from retaliation and those  
11 types of activities that are protected in  
12 blowing the whistle and identifying  
13 misconduct. But certainly any staff that are  
14 coming forward, we want to make sure that we  
15 protect them to the extent that -- the  
16 fullest extent of the law.

17 ASSEMBLYMAN DILAN: So if we could do  
18 this quickly, how -- your whistleblower  
19 protections clearly mention staff. How do  
20 they also handle complaints of abuse by  
21 incarcerated individuals? How will they be  
22 protected under your whistleblower policy?

23 COMMISSIONER MARTUSCELLO: Yes,  
24 similarly when incarcerated individuals file

1 complaints with the Office of Special  
2 Investigations, they can do so in a multitude  
3 of fashions. But we have a #44, which is a  
4 speed dial on the incarcerated phone system,  
5 which goes right to the intake unit within  
6 OSI.

7 We're doing technology upgrades right  
8 now, so instead of having access phones on  
9 the walls, whether in the yard or in the  
10 dayroom, every tablet inside of our  
11 institutions has a phone application that  
12 they can use in the confines of their cell or  
13 their cubes and have more privacy in doing  
14 so.

15 When those are reporting and we're  
16 investigating, if there's follow-up where  
17 staff are retaliating against them for filing  
18 a complaint, we investigate that as well and  
19 take appropriate disciplinary action as  
20 necessary.

21 ASSEMBLYMAN DILAN: So just moving on  
22 to OSI requests, it's for 81, I believe, new  
23 FTEs and a budget increase. Can you tell us  
24 what will be different, as opposed to what

1           you already have? I understand this is OSI  
2           within the purview of DOCCS and not the  
3           Attorney General's office that you're seeking  
4           funding for today.

5                         What will be different and what will  
6           make it more transparent to the Legislature  
7           and to the people of the State of New York?

8                         COMMISSIONER MARTUSCELLO: Yeah, thank  
9           you for the question.

10                        So in terms of the restructuring of  
11           OSI, we will build out the analytics unit to  
12           make sure that we're able to identify trends  
13           and mitigate risk, identify where we have --  
14           either at a facility level, at a statewide  
15           level, at an individual level, we can better  
16           identify trends and get ahead of them rather  
17           than be reactionary to that.

18                        In addition, building out a quality  
19           assurance unit where we're going to hire  
20           investigative attorneys that can assist in  
21           complex matters, and making sure they're  
22           doing review of those cases to ensure that we  
23           are following every piece of evidentiary  
24           material and asking questions that are

1 appropriate to get to the truth.

2 Also, when we have these excessive use  
3 of force cases, we do have a nurse on staff  
4 that does a review, and we use an outside  
5 provider to do a medical review to determine  
6 if the injuries sustained are more likely to  
7 align with what the incarcerated said or with  
8 the staff. So we're going to bolster that  
9 medical unit to make sure that we have a  
10 good-quality review and a relationship with  
11 that outside entity.

12 Lastly, we're going to redesign the  
13 internal affairs and sex crimes unit to make  
14 it a public integrity unit and hire people  
15 from outside of the agency as the focus to  
16 make sure we're bringing in fresh  
17 perspectives when looking at these cases and  
18 come with a unique perspective.

19 ASSEMBLYMAN DILAN: Okay. And the  
20 transparency part. Real quickly, do you have  
21 anything to add?

22 COMMISSIONER MARTUSCELLO: Yeah, the  
23 transparency, we work very closely with the  
24 AG's office, with the State Police, as well

1 as the Office of the Inspector General.

2 I'm also looking to move to digital  
3 dashboards so I put information about our  
4 system on a dashboard available to the public  
5 in realtime. We've gone through the RFI  
6 process, we're looking to refine it and move  
7 it forward this year so we can put that out  
8 to the public so people can see exactly  
9 what's going on in the system: What do  
10 assaults look like, what do use of forces  
11 look like, what does excessive --

12 ASSEMBLYMAN DILAN: If you don't mind,  
13 because I'm going to run out of time.

14 So you mentioned in your testimony  
15 about cameras in the infirmaries, in the  
16 medical units. It seems -- like I was under  
17 the impression that you might have been  
18 prohibited by HIPAA in doing this. It seems  
19 like, by your testimony, you may not be.

20 Can you explain how you're allowed to  
21 do this? Are you restrained by HIPAA in this  
22 regard?

23 COMMISSIONER MARTUSCELLO: Sure. I'm  
24 certainly not a lawyer. I'm sure we have a

1 lot of you up there. So if I say something  
2 contrary, I'm sure you'll let me know.

3 But we've had it reviewed by our legal  
4 team. And we have a business necessity to  
5 protect individuals, right, as well as  
6 provide the medical care to those  
7 individuals. So those -- the camera footage  
8 that is supplied will not be shared outside,  
9 and it's restricted who has access to that  
10 and that they only have a business necessity  
11 to do so.

12 If somebody were to have been --  
13 further disclose medical information for a  
14 different purpose, obviously that would be a  
15 violation. But the sheer recording of that  
16 information is not a violation of HIPAA.

17 ASSEMBLYMAN DILAN: So you can secure  
18 those. Because the number-one complaint I  
19 get from incarcerated individuals by letter  
20 in terms of abuse do happen in infirmaries,  
21 so I'm glad to hear that you can secure those  
22 areas. I look forward to you doing so.

23 The fixed cameras which  
24 Senator Salazar touched on, we see the budget

1 number. But who would have, again, access to  
2 the footage? Would it be yourself, the  
3 Attorney General and State Police? Who has  
4 access to the footage?

5 COMMISSIONER MARTUSCELLO: Absolutely.  
6 When we have an investigation, we turn over  
7 all evidentiary material, as was evidenced in  
8 the murder of Robert Brooks. Right? Our  
9 investigators found the body-worn camera  
10 footage. We turned it over to the  
11 Attorney General and the State Police  
12 immediately to further their investigation.  
13 So absolutely.

14 ASSEMBLYMAN DILAN: Okay. And what  
15 processes would you have if your procedures  
16 for the body-worn cameras are not implemented  
17 properly? How will you enforce that?

18 COMMISSIONER MARTUSCELLO: So  
19 currently we would follow the collective  
20 bargaining process and the due process the  
21 employees are afforded under the various  
22 collective bargaining. It would be  
23 progressive discipline based on what exactly  
24 is the infraction.

1                   ASSEMBLYMAN DILAN: Okay. So on the  
2 FTEs that you spoke on earlier, as it related  
3 to the closure under expedited authority that  
4 you were granted for prisons in the current  
5 year's budget, if I understand your testimony  
6 correctly, those FTEs were reduced last year  
7 but put back this year. Will there be any  
8 new hiring of correction officers? Or what  
9 are those lines specifically that are outside  
10 of the 81 special investigations team? What  
11 are those lines going to be used for, and are  
12 they a reimbursement from last year.

13                   COMMISSIONER MARTUSCELLO: Yeah, you  
14 understood it correctly. So last year when  
15 they put an estimated number of FTEs that  
16 would be taken down along with a dollar  
17 figure, so with the closures it didn't hit  
18 the FTE numbers. So they were refunded in  
19 the budget this year under the  
20 appropriations. And they cross over a  
21 variety of areas, both security and programs,  
22 health, the various program areas in the  
23 institutions.

24                   But we are certainly at a critical

1 staffing juncture, so we are aggressively  
2 recruiting.

3 ASSEMBLYMAN DILAN: Thank you,  
4 Mr. Chair. I may have more on a second  
5 round. But I see I'm going to run out of  
6 time shortly.

7 CHAIRWOMAN KRUEGER: Thank you.  
8 Our other chair, Senator Myrie.

9 SENATOR MYRIE: Thank you,  
10 Madam Chair.

11 I'm going to direct the balance of my  
12 questions in this first round to DCJS. And  
13 then we'll use the second round to direct my  
14 questions at DOCCS.

15 But before that, I just want to  
16 publicly recognize Mr. Ricks. You are  
17 displaying courage and bravery that no parent  
18 should ever have to display. And so we are  
19 grateful for your attendance today and for  
20 what you continue to do for the legacy of  
21 your son.

22 So for DCJS, I had a mass shooting in  
23 my district last year at the West Indian Day  
24 Carnival Parade. I, along with my

1 colleagues, made some requests both to the  
2 city and the state government to marshal  
3 resources to help the community in the wake  
4 of this mass shooting. We have introduced  
5 legislation in the past that is now law that  
6 would redefine what a mass shooting is and  
7 what steps should be taken after it.

8 The Governor has proposed in her  
9 Executive Budget \$2 million for services and  
10 expenses related to responding to mass  
11 violence events under the auspices of OVS and  
12 DOB. And I'm wondering if you could  
13 elaborate more on what that is exactly.

14 Just for sign posting purposes so we  
15 can be efficient on the time, I also want to  
16 talk about discovery implementation and NYPD  
17 money and some other gun safety things.

18 Thank you.

19 DCJS EX. DEP. CMR. POPCUN: Good to  
20 see you, Senator Myrie.

21 So on the -- as you noted, OVS has the  
22 appropriation for the \$2 million for mass  
23 casualty. I would say that after you and  
24 several of your colleagues had reached out to

1 the Governor's office there was a \$5 million  
2 investment made by DCJS to DYCD to support  
3 the CMS network programs. And so we've been  
4 working to shore up and support the community  
5 violence interruption programs throughout the  
6 city. It's work that we haven't talked a lot  
7 about, but it certainly goes to your  
8 question.

9 On the OVS funding, again, I would  
10 defer you to Director Bea Hanson. But my  
11 understanding is that there's been a mass  
12 casualty workgroup with OVS and Division of  
13 Homeland Security and Emergency Services, and  
14 they're looking at how do you respond to mass  
15 casualty events in a culturally competent,  
16 trauma-informed way. What does the response  
17 look like in terms of the team that's  
18 deployed.

19 A lot of that work came out of the  
20 Buffalo shooting response. So I think we're  
21 trying to, one, avoid and prevent these  
22 tragedies at all costs. That's the money in  
23 our budget. And then when they do happen,  
24 how do we as a state leverage our

1 partnerships with local agencies but really  
2 deploy boots on the ground to make sure that  
3 victims and survivors are served.

4 SENATOR MYRIE: And in that vein, the  
5 Office of Gun Violence Prevention was created  
6 by executive order a couple of years ago. It  
7 has, I think until very recently, been housed  
8 in the Department of Health.

9 And I think we are at a critical  
10 juncture in this state and in this nation.  
11 The Trump administration issued an executive  
12 order eliminating the federal Office of  
13 Gun Violence Prevention and an additional  
14 executive order meant to protect the  
15 Second Amendment.

16 For what that may entail and implicate  
17 for this state, I am curious what DCJS's  
18 position is on bolstering the Office of  
19 Gun Violence Prevention, ensuring that we  
20 have cross-agency conversation. As you know,  
21 we have a bill on this to expand the office,  
22 to move it to DCJS where it could be a  
23 beneficiary of the resources that have been  
24 proposed. So I'm wondering if you could talk

1 to us about that.

2 DCJS EX. DEP. CMR. POPCUN: While I  
3 can't comment on pending legislation, I would  
4 say that we share all of the goals that you  
5 have articulated. Calliana Thomas, the  
6 director of the Office of Gun Violence  
7 Prevention, brings an enormous wealth of  
8 resources and relationships in the city, and  
9 we have started to increase our investments  
10 in New York City. Right now \$192 million  
11 from our budget goes to New York City. And  
12 so bringing together the relationship with  
13 the resources is going to make sure that we  
14 have a statewide picture of community  
15 violence interruption.

16 And so as I noted in my testimony,  
17 we've strengthened our partnership. And I  
18 think the next, you know, kind of iteration  
19 of that is what are the other agencies that  
20 need to be at the table. And I think with  
21 the convening power of the office and the  
22 support of the State Legislature, we're going  
23 to get there.

24 SENATOR MYRIE: Yeah, so I would just

1           urge for you and the Governor's office to  
2           consider when we talk about gun violence  
3           prevention, for a long time that has meant  
4           solely investing in law enforcement. And we  
5           certainly need investment in that area to  
6           help prevent and to solve crime.

7                         What we have heard from our  
8           communities is that to help prevent it from  
9           happening in the first place, that we could  
10          have investments in other areas. And that I  
11          think requires a multiagency approach, one  
12          that I think the Office of Gun Violence  
13          Prevention could be a gathering source for --  
14          to help coordinate some of these responses.

15                        Now, on discovery implementation,  
16          there have been allocations in previous  
17          budgets. This Legislature has fought to  
18          include resources for the implementation of  
19          discovery. But it has remained unclear to  
20          me, at least, how that has been doled out,  
21          who is taking advantage of it, where we can  
22          see those numbers in realtime.

23                        So my two questions are, is there a  
24          county breakdown on where those resources

1           have gone for discovery implementation? And  
2           additionally, have the funds been completely  
3           awarded yet? Are there outstanding funds  
4           that have not been awarded? And if so, why?

5                     DCJS EX. DEP. CMR. POPCUN: So just as  
6           a comment on your last one, the commissioner  
7           has been very intentional over the last three  
8           years that every dollar we give to law  
9           enforcement we also give a dollar to a  
10          community-based organization. So if you look  
11          at the balance of our budget, we are truly  
12          trying to invest in both responding to crime  
13          and preventing it in the first instance.

14                    To your questions about discovery, our  
15          budget continues \$120 million in discovery  
16          support to ensure compliance of defenders,  
17          prosecutors, police, IT departments,  
18          everybody.

19                    The status of that funding is that,  
20          you know, again, channeling my inner  
21          commissioner, the dollars are out the door.  
22          We have been pushing the money out through  
23          block grants in many instances to our city  
24          partners, including defense and prosecution.

1           And outside of the city, what we did a  
2           few years ago was we have county plans where  
3           we've said, okay, here is how much is going  
4           to go to the prosecution, here's how much is  
5           going to go to law enforcement, to ensure  
6           that we were building this kind of muscle for  
7           information sharing.

8           The real pivot over the last two and a  
9           half years has been our work with the  
10          Defenders Association and the New York  
11          Prosecutors Training Institute, to create  
12          centralized case management systems that  
13          allow the seamless transfer of information,  
14          you know, between prosecution and defense  
15          organizations and with the courts.

16          And I think that's really where we've  
17          seen, you know, a beneficial kind of removing  
18          the patchwork and instead going to a unified  
19          system of information sharing.

20          SENATOR MYRIE: Thank you. And on the  
21          plan to increase police presence in the MTA  
22          subway system, the Governor announced that  
23          the state was going to invest \$77 million in  
24          that. Do we know what the total cost will be

1 both to the city and the state for that plan?

2 DCJS EX. DEP. CMR. POPCUN: So the  
3 77 million is half of the cost. So New York  
4 City is picking up the other 77. DCJS's  
5 budget has the 77 that's the state share.  
6 And our plan is to provide that to the NYPD  
7 to, as announced by the Governor, really look  
8 at police presence on the subways and the  
9 platforms in the overnight hours.

10 SENATOR MYRIE: And are there any  
11 contingency plans for if that number is  
12 higher than the total and thus increasing our  
13 state allocation?

14 DCJS EX. DEP. CMR. POPCUN: Not to my  
15 knowledge. The \$77 million is the state's  
16 commitment proposed by the Governor's budget.

17 SENATOR MYRIE: Okay, thank you.

18 I do have some time left, so I'm going  
19 to shift to DOCCS for a second, and also  
20 reserve my opportunity to come back if we run  
21 out of time.

22 I think my colleagues, certainly under  
23 the leadership of Chair Salazar, have been  
24 quite expressive in what our sentiment is on

1           what happened to Mr. Brooks. I think the  
2           public, seeing that the officers have not yet  
3           faced consequences for killing someone in  
4           their care, is disturbing. And what we have  
5           seen in other contexts, certainly in  
6           conversations around other criminal justice  
7           reforms, is outrage that individuals who were  
8           accused of a crime, or who may have been  
9           convicted of a crime, of being let out.

10                    But in this case, in a very high  
11           profile, very public way, someone was  
12           murdered, and the consequences seem to be  
13           evasive.

14                    And so I'm hoping you can communicate,  
15           Commissioner, to New Yorkers who feel that  
16           there is not the same measure of  
17           accountability and outrage for this type of  
18           killing, and what you would say to  
19           New Yorkers who think that the system is not  
20           fair.

21                    COMMISSIONER MARTUSCELLO: Yes,  
22           Senator, thank you for the question.

23                    I certainly share your outrage, as  
24           well as I know the Governor does. She's

1 issued many statements on that and encouraged  
2 both the Attorney General, when she  
3 advocates, and once recused, the district  
4 attorney, to move very swiftly to bring  
5 charges against those accused of the murder  
6 of Robert Brooks.

7 So I know that the district attorney  
8 is working very vigorously to do that, to  
9 make sure that they have an air-tight case  
10 going forward. I can't speak to the district  
11 attorney in terms of when the charging will  
12 occur, but I do know that we've made it  
13 expressly clear that we want criminal charges  
14 filed against all involved.

15 SENATOR MYRIE: Thank you.

16 CHAIRMAN PRETLOW: Assemblyman  
17 Dinowitz.

18 ASSEMBLYMAN DINOWITZ: I found my  
19 papers.

20 This is for DCJS. So I also want to  
21 talk about the \$77 million that the state is  
22 providing for the cops on the subways.

23 So are they going to receive any kind  
24 of specialized training in deescalation

1 techniques or other like nonviolent  
2 strategies, ways to address situations that  
3 perhaps we don't always do but should do?  
4 And if so, what? How?

5 DCJS EX. DEP. CMR. POPCUN: I would  
6 defer your question to NYPD.

7 But I would say this. DCJS, through  
8 our Municipal Police Training Council, sets  
9 the basic course for police officers, which  
10 requires use-of-force training, deescalation  
11 training. We also offer those as in-service  
12 trainings to police officers.

13 So you know, we're there to provide  
14 technical assistance. I can't speak to how  
15 the specialized appointment of NYPD is going  
16 to work vis-a-vis their training  
17 requirements.

18 ASSEMBLYMAN DINOWITZ: Will there be a  
19 system in place to evaluate how effective  
20 this is? And we're talking about, what,  
21 \$154 million being spent. That's still a lot  
22 of money. So are we going to be able to  
23 determine whether it's working?

24 DCJS EX. DEP. CMR. POPCUN:

1           Absolutely. I mean, I think the Governor has  
2           been laser-like focused on this, and she's  
3           announced at a number of kind of press  
4           conferences how she's tracking the metrics of  
5           success on subway crime. And she's reported  
6           that subway crimes are decreasing.

7                        So I anticipate that that kind of  
8           measure of what's happening in our mass  
9           transit systems is going to continue. And  
10          then we'll obviously have a before period of  
11          time to look at what was happening and then  
12          after the investment, to be able to measure  
13          its efficacy.

14                       ASSEMBLYMAN DINOWITZ: Right. I mean,  
15          we keep reading about some of these  
16          high-profile cases on the one hand, but then  
17          the mayor says crime is down. So I don't  
18          know how we reconcile -- on the subways. I'm  
19          not sure how you reconcile all that. So I  
20          don't know what to believe, because we just  
21          get conflicting information all the time.

22                        But one thing occurs to me. I mean,  
23          I'll admit I don't normally take the subway  
24          at 3 o'clock in the morning. But if you have

1           one cop or two cops, even, on a 10-car  
2           subway, I mean, I assume that the officers  
3           will be going up and down, back and forth.  
4           But I mean even if you have two officers on  
5           the train, they're not going to be in  
6           10 places at the same time.

7                     So I'm just wondering how effective  
8           that's going to be.

9                     DCJS EX. DEP. CMR. POPCUN: I think  
10          one of the things that I would say is the  
11          Governor last March announced a surge of  
12          State Troopers and others into the mass  
13          transit areas. And again, I think one is  
14          providing public perception and confidence  
15          that law enforcement is there and able to  
16          respond if any incidents occur. And then  
17          secondly, you know, there is a deterrent  
18          effect.

19                    So I think here the same kind of  
20          strategies are in play between the mayor and  
21          the Governor to say, okay, staffing really,  
22          you know, should be dedicated to times where  
23          people might feel the most afraid or where  
24          they've seen incidents.

1           And to your larger question, which I  
2 think is very similar to the one you asked  
3 Judge Zayas is, you know, you have a trend in  
4 one direction and yet you have outliers,  
5 horrific incidents that happen in another.  
6 And the two things can be true. And it's  
7 really difficult to kind of disentangle that  
8 risk perception, how people feel from what  
9 otherwise might be their relative safety over  
10 time.

11           So I'm happy to have the conversation  
12 with you anytime and look at all the DCJS  
13 data. And it's something that we're trying  
14 to disentangle as well.

15           ASSEMBLYMAN DINOWITZ: I love looking  
16 at data.

17           DCJS EX. DEP. CMR. POPCUN: I have all  
18 the data, so.

19           ASSEMBLYMAN DINOWITZ: I'd rather look  
20 at data than look at, you know, crazy  
21 headlines in one of our tabloids.

22           DCJS EX. DEP. CMR. POPCUN: No  
23 comment.

24           ASSEMBLYMAN DINOWITZ: So in another

1 area, one of the things that's really plagued  
2 us everywhere -- I know it certainly has in  
3 my area and in the Bronx, Manhattan,  
4 everywhere -- has been organized retail  
5 theft.

6 So the Governor has continued funding  
7 for \$10 million for DAs to prosecute property  
8 crimes and \$5 million to build capacity for  
9 local law enforcement to combat retail theft.

10 The money -- there was money in last  
11 year's budget. Do we have any data or  
12 anything to indicate if it's been helpful in  
13 any way?

14 DCJS EX. DEP. CMR. POPCUN: So last  
15 year is the first time we've seen larcenies,  
16 which is our closest kind of report to this,  
17 drop since the pandemic. So we've seen  
18 larcenies start to go in the right direction.

19 Off the top of my head, it's down  
20 3 percent through the first three quarters of  
21 last year. That's 1 percent in New York City  
22 and about 4 or 5 percent outside of the city.

23 In terms of the investment, what that  
24 money really allowed us to do, in addition to

1 Superintendent James talking about his  
2 organized retail theft work, we have a  
3 statewide picture, through our Crime Analysis  
4 Centers, on what's happening with organized  
5 retail theft.

6 And so in one instance we saw there  
7 was a criminal enterprise that was using our  
8 borders, taking rental cars from Canada,  
9 driving through the Thruway cities, including  
10 my city of Syracuse, and stopping at high-end  
11 stores, really kind of professionally kind of  
12 raiding them, and then going on to the next  
13 city.

14 The Crime Analysis Centers, along with  
15 the State Police, were able to kind of start  
16 to stitch together, okay, this is happening,  
17 this is the cycle, this is the pattern. And  
18 it gave the investigators and law enforcement  
19 enough information to say, okay, we now know  
20 with what kind of frequency this is going to  
21 happen, and get in front of it.

22 And so that's the kind of value of  
23 providing the resources to the Crime Analysis  
24 Centers as well as to our law enforcement

1 partners who enforce and prosecute the laws.

2 ASSEMBLYMAN DINOWITZ: I guess this is  
3 true everywhere. Like a block from my office  
4 there's a Walgreens, and across the street  
5 from Walgreens people have, you know, little  
6 bridge tables or whatever, tables set up  
7 selling stuff which very well could have come  
8 from Walgreens, you know, 10 minutes earlier.

9 And it just seems to go -- and maybe  
10 I'm making an assumption there, but it just  
11 seems to go on and on, and so if the -- if  
12 the crime rate is down for that area,  
13 hopefully some of the stuff we're doing has  
14 an impact. I mean, I happen to personally  
15 believe that there is a direct and very close  
16 correlation between the waning of the  
17 pandemic and a diminishing crime rate.

18 But I guess next year you'll be able  
19 to provide more data.

20 DCJS EX. DEP. CMR. POPCUN: Yes. And  
21 I would just say, you know, there is external  
22 research, as a "pracademic" myself, around  
23 the effect of inflation and cost of living  
24 and particularly the rise in property crimes.

1                   And so this isn't a New York  
2                   phenomenon, this is kind of a nationwide one.  
3                   And I think your observations are rooted in  
4                   reality, which is a data point itself.

5                   ASSEMBLYMAN DINOWITZ: Okay, thank  
6                   you. I'm done.

7                   CHAIRWOMAN KRUEGER: Senator Palumbo.

8                   SENATOR PALUMBO: Thank you,  
9                   Madam Chair.

10                  And I guess just to follow up on that  
11                  question that was just asked by Assemblyman  
12                  Dinowitz of DCJS, if I may. And good  
13                  afternoon, gentlemen.

14                  So when you compare those property  
15                  crime numbers, have you been able to compare  
16                  them to, say, 2019 or 2018?

17                  DCJS EX. DEP. CMR. POPCUN: Yes. So  
18                  we have compared them, and I think we're  
19                  roughly back to where we were in 2017, 2018.  
20                  I can provide more kind of a breakdown to  
21                  your office.

22                  SENATOR PALUMBO: Okay. And are they  
23                  being recorded -- I know there was some  
24                  testimony in recent years where there were

1 different ways of recording them through  
2 DCJS, that if someone gets seven appearance  
3 tickets, appears for one arraignment, that  
4 was considered one arrest. Is that still  
5 done?

6 DCJS EX. DEP. CMR. POPCUN: So the  
7 crime reporting systems, as we testified to  
8 in February of 2023, are still the systems in  
9 terms of NIBRS, the National Incident-Based  
10 Reporting System, and our summary of crime  
11 reporting.

12 And then in terms of -- the other type  
13 of feed that we get is arrests, which are  
14 fingerprintable arrests, and those come to  
15 DCJS as well.

16 SENATOR PALUMBO: Okay, so then it  
17 still counts as one. Is that just for  
18 certain types of crime, or is that for -- if  
19 someone commits several robberies, for  
20 example, or is it for violent crime?

21 DCJS EX. DEP. CMR. POPCUN: So if it's  
22 all in one crime category, then there would  
23 be just one fingerprint, one arrest that  
24 comes to us. But I'd have to know the exact

1 fact pattern to be able to answer 100 percent  
2 certain.

3 SENATOR PALUMBO: Okay, fair enough.

4 And Judge Zayas was here earlier and  
5 was talking about speedy trial dismissals due  
6 to discovery violations. Is there any way --  
7 do they parse that out through DCJS? If they  
8 have a dismissal, is there a specific grounds  
9 listed, or is it just like, you know, 170.40,  
10 you know, sub whatever -- you know, just  
11 like interests of justice dismissal?

12 DCJS EX. DEP. CMR. POPCUN: Yeah.  
13 We're looking at the same data that's on the  
14 OCA dashboard. And as you asked that  
15 question, I control-F'd and print screen it.  
16 And so, you know, I have the OCA dashboard.  
17 There isn't a breakdown of kind of dismissal  
18 type, what was the reason behind that.

19 SENATOR PALUMBO: Okay, very good.

20 Thank you.

21 Commissioner Martuscello, a few  
22 questions. Regarding drugs in our prisons, I  
23 mean, we're still seeing -- obviously it's of  
24 great concern to you as well, as it is to all

1 of us, that we have a lot of illegal drugs  
2 that are affecting staff, they're getting  
3 ill, being hospitalized as a result of  
4 fentanyl interactions.

5 So can you tell us what you're  
6 contemplating, intemplating {ph} or what  
7 you've been -- what's the word I'm looking  
8 for. Any implementation, any way that you're  
9 addressing that? If you could just generally  
10 comment on that, please.

11 DOCCS COMMISSIONER MARTUSCELLO: In  
12 2024 we had 706 seizures of drugs, contraband  
13 drugs in the system.

14 We've taken a couple of steps in terms  
15 of combating drugs entering the system.  
16 First, we've hired K-9 dogs, drug-sniffing  
17 dogs. We have 27 K-9s associated with the  
18 system that rotate from facility to facility.

19 We've also implemented a vendor  
20 package program, which has cut down on  
21 contraband entering the system through  
22 packages. And two years ago the Governor  
23 advanced and this body approved us to have  
24 body scanners. We purchased 88 body scanners

1 at a cost of \$11 million, which are currently  
2 operational at all of our facilities.

3 I also implemented whereby in regular  
4 mail we're now photocopying regular mail that  
5 comes in, and giving the photocopy to the  
6 incarcerated individual.

7 As a result of the recent incident at  
8 Upstate, where I believe one of the areas  
9 that drugs are still coming in is on the  
10 legal mail -- right? And legal mail has  
11 certain requirements for handling how quickly  
12 it gets to them, because of court  
13 proceedings, making sure we're not reviewing  
14 it, opening it in their presence -- we are  
15 now calling every law firm to confirm that  
16 you sent the mail to your client, and who  
17 that client is, prior to delivery.

18 And we've had instances where it  
19 wasn't the case, we've returned to sender and  
20 someone has found drugs when they've opened  
21 it up when we returned to sender.

22 So that's a stop-gap measure. We're  
23 also looking at some technology, have a few  
24 vendors set up to come in and showcase some

1 things they may be able to help us with as it  
2 pertains to legal mail.

3 As part of the broader national  
4 association, legal mail is something that is  
5 being focused on.

6 SENATOR PALUMBO: Okay, very good.

7 And regarding that -- I only have  
8 about 30 seconds left -- those body scanners,  
9 do visitors have an option to do that, or can  
10 you require them to go through a scanner if  
11 they want to come in and visit?

12 DOCCS COMMISSIONER MARTUSCELLO:  
13 Everyone, under law, has an option to opt  
14 out, whether it's staff, visitors or  
15 incarcerated people.

16 SENATOR PALUMBO: So they don't have  
17 to -- so they can just say "I'm not doing it"  
18 and you don't get to scan them?

19 DOCCS COMMISSIONER MARTUSCELLO:  
20 That's correct. Then we would follow other  
21 frisk procedures. We have our K-9s  
22 available. So we have some follow-ups to --

23 SENATOR PALUMBO: Does that make sense  
24 to you? You can comment sometime. I don't

1 know if you want to --

2 DOCCS COMMISSIONER MARTUSCELLO: I  
3 follow the law as written.

4 SENATOR PALUMBO: I gotcha. Thank  
5 you.

6 CHAIRMAN PRETLOW: Assemblymember  
7 Morinello.

8 ASSEMBLYMAN MORINELLO: This is for  
9 DCJS.

10 For the fourth straight year the  
11 Governor has included 50 million in capital  
12 funding for innovative crime-reduction  
13 strategies for gun violence. Could you  
14 explain some of the strategies and  
15 initiatives that have been supported by the  
16 \$50 million capital investment to help  
17 communities combat gun violence?

18 DCJS EX. DEP. CMR. POPCUN: Thank you  
19 very much for the question.

20 So the \$50 million in capital was used  
21 in large part to fund the law enforcement  
22 technology and equipment grants that we  
23 talked about in our testimony.

24 So the kind of history on it is we did

1 a, you know, request for information from law  
2 enforcement saying how much do you think you  
3 need for technology and equipment, whether  
4 it's surveillance cameras or body-worn or  
5 patrol equipment. We thought there'd be  
6 about \$20 million. We got \$50 million worth  
7 of requests.

8 And then we did the actual request for  
9 applications and we got \$127 million of  
10 requests from over 300 agencies. And so we  
11 had several years of funding that we were  
12 able to dedicate to meet the need of all of  
13 our law enforcement partners.

14 And one of the reasons why this  
15 funding is so effective is that we also tied  
16 it to the surveillance cameras or other data  
17 that's collected goes back to the Crime  
18 Analysis Centers to -- you know, to have  
19 better enforcement and to have better  
20 prosecutions. So I think it's been a real  
21 game-changer and it's been the backbone of  
22 local law enforcement efforts over the last  
23 few years.

24 ASSEMBLYMAN MORINELLO: So if I

1 understand, you mentioned the Crime Centers.  
2 That is gathering the information and then  
3 utilizing that to assist law enforcement  
4 throughout the state to identify possibly  
5 target areas and processes and procedures  
6 which I would understand you can't reveal at  
7 this point.

8 DCJS EX. DEP. CMR. POPCUN: Yes.  
9 Yeah. It's a copilot model. So there used  
10 to be this big kind of tension in the field  
11 about, you know, crime analysis should be  
12 done only by sworn personnel. I think a lot  
13 of times, though, departments realized that  
14 they were spending a lot of time, effort and  
15 energy training a detective, you know, to do  
16 this and then they'd be working on social  
17 media analysis that a civilian could do.

18 And so I think, you know, both the  
19 State Police and DCJS have made a conscious  
20 investment in advancing the profession of  
21 crime analysts to the point where it's now a  
22 copilot. So you've got your detective or  
23 investigator, but you also have a civilian  
24 crime analyst who's running those reports,

1 doing that pattern analysis, and giving you  
2 the investigative leads that make your job  
3 better.

4 What we really want is to make sure  
5 that law enforcement is out with the  
6 community, building the relationships,  
7 pursuing the enforcement actions that we all  
8 want to see -- and not spending time having  
9 to go back and look up somebody's Twitter  
10 account. Sorry, X account.

11 ASSEMBLYMAN MORINELLO: Thank you.

12 I'm going to switch over to the  
13 northern border protection. You've been  
14 sitting there very quietly, so I thought  
15 maybe we wouldn't make you feel like we  
16 didn't want you here.

17 STATE POLICE SUPT. JAMES: No worries.

18 ASSEMBLYMAN MORINELLO: My district is  
19 Long Lake, Ontario, and the Niagara River,  
20 and we have seen a tremendous uptick. And  
21 one of the issues that we've been having is  
22 we have a number of individuals along the  
23 river who, in the winter, do not live  
24 there -- they go to Florida, they go to other

1 areas.

2 And what we're finding is some of the  
3 coyotes know who's not there and they're  
4 utilizing their backyards to bring some of  
5 the individuals across the river.

6 And one of the difficulties has been  
7 Border Patrol will see automobiles that they  
8 know don't belong there, but they cannot  
9 access who they belong to or who they are.

10 Has there been any discussions on at  
11 least allowing Border Patrol, who has to  
12 patrol that area, to interact with your State  
13 Troopers in allowing them to get some of this  
14 information on those vehicles that may be  
15 abandoned or in driveways where they know no  
16 one is there?

17 STATE POLICE SUPT. JAMES: Thank you  
18 for the question.

19 Yeah, and as I understand it, that  
20 information, more or less proprietary, is  
21 with DMV. And that process really rests with  
22 DMV, whether you're talking Green Light laws  
23 or, you know, the like.

24 I understand the concern. I

1 understand what would appear to be the gap  
2 there. But in addition to plate information,  
3 there's various other aspects.

4 Part of what the Governor has  
5 provided -- obviously 3 million last year,  
6 8 million now for the border -- that's for  
7 our intel to work collectively with  
8 Border Patrol.

9 If there's instances where we can  
10 bridge that gap, we will work with them, even  
11 if it's touching base with our DMV partners  
12 to find that out as well. But it's worthy of  
13 a discussion with DMV.

14 ASSEMBLYMAN MORINELLO: Is there any  
15 prohibition against Border Patrol calling a  
16 Trooper in?

17 STATE POLICE SUPT. JAMES: No. Short  
18 answer.

19 CHAIRWOMAN KRUEGER: Thank you.

20 Senator Rolison.

21 SENATOR ROLISON: Thank you,  
22 Madam Chair.

23 And thank you for being here today.

24 Commissioner Martuscello, I want to

1           thank you for your communications with our  
2           office as it relates to the two facilities  
3           that I have in the 39th District, which is  
4           Green Haven and Fishkill Correctional.

5                     Green Haven, when I first came in in  
6           '23, was dealing with staffing issues that  
7           seem to have gotten a little bit better with  
8           the addition of some classes that were  
9           designated for the district. In Dutchess  
10          County, now Fishkill Correctional is having  
11          the same situations.

12                    I've visited both these facilities a  
13          half-dozen times, and certainly the staffing  
14          issue in the Department of Corrections is the  
15          number-one issue in the State of New York, of  
16          any agency that we have.

17                    I did see yesterday, in reading about  
18          the Collins incident, that there was a  
19          directive or a memo from you relating to  
20          staffing reductions at 30 percent reduction,  
21          or getting down to 70 percent, even though --  
22          I don't know if we're there at 70 now. We're  
23          probably not, I don't know. But I believe  
24          we're over 2,000 uniformed officers short,

1 thousands of civilian staff. I mean, those  
2 numbers are absolutely staggering.

3 But do you envision, moving forward --  
4 because everything has to do with staffing.  
5 You know, the care, the safety of our  
6 officers, the staff, incarcerated  
7 individuals, opening recreation yards,  
8 industry and all the things that we hear  
9 continually that may not be able to be done,  
10 which goes to the overall safety and the  
11 running of the facility because there's not  
12 enough people and they're working 24-hour  
13 shifts -- and I could go on. And you know  
14 all this.

15 But do you envision with this review,  
16 this analysis of staffing that does not  
17 exist, to be able to create a smaller,  
18 better-compensated workforce?

19 DOCCS COMMISSIONER MARTUSCELLO: Yes,  
20 Senator, thank you for the question.

21 You know, I was at Collins yesterday,  
22 as I mentioned, and I actually addressed this  
23 with a bunch of staff. You know, what I'm  
24 doing is listening to my staff.

1           You know, we are down 2200 correction  
2 officers, but yet we're still manning, we're  
3 still putting staff on posts as we did 20,  
4 30 years ago. We need to take a look at  
5 efficiencies to see where we have overlaps  
6 and we can more efficiently do our jobs while  
7 still living our progressive values and  
8 getting people home to their families instead  
9 of working in our institutions.

10           Let me give you an example. I allow  
11 for a vocational instructor and an  
12 electrician to do live work with incarcerated  
13 people and Class A tools with no correction  
14 officers inside the confines of the facility.  
15 But the minute I allow an incarcerated  
16 individual on a lawnmower, I need a  
17 correction officer to supervise him. Doesn't  
18 make sense to me. Just because we always did  
19 it that way, not a good reason to continue.

20           So I want to use the expertise of the  
21 staff in the institutions to take a real look  
22 and redesign how we have job assignments, how  
23 we have post orders, to see if we can make it  
24 more efficient to drive safety in the

1 institutions as well as get them home to  
2 their families. They are overworked, they're  
3 tired, and they need our support.

4 We've all talked about it for a number  
5 of years here, and we're making progress, but  
6 they're still tired. And this is a necessary  
7 step.

8 I'm not trying to eliminate current  
9 staff. I'm trying to alleviate the burdens  
10 on them and their families.

11 SENATOR ROLISON: Because ultimately,  
12 and you're talking about adding, you know,  
13 380 FTEs for special investigations or  
14 whatever you're going to use them for, but  
15 yet there's over 2,000 vacancies as it is.

16 And so, you know, adding more staff --  
17 maybe it's for specific types of units --  
18 also, too, do a lot of the special  
19 investigation members come from the current  
20 ranks as well?

21 DOCCS COMMISSIONER MARTUSCELLO: So  
22 that had been our past model. We've moved  
23 away from that. It's now a combination where  
24 we bring up -- bring in people from other law

1 enforcement backgrounds, whether it's the DEA  
2 or local police departments, district  
3 attorneys. So we have a variety of  
4 backgrounds to take a more keen look at our  
5 investigations.

6 So not necessarily. Our focus for OSI  
7 is to really hire people outside of the  
8 organization, to bring them in from a fresh  
9 perspective.

10 But I'm committed with regional  
11 recruitment and with the Governor's proposal  
12 to expand and allow me to hire people out of  
13 state. I think that it's going to help us to  
14 bolster our ranks.

15 When we did the regional hiring in  
16 Chemung and we announced it, people right  
17 across the border, we had over 600 calls to  
18 Elmira Correctional Facility, and we couldn't  
19 hire them because you have to be a New York  
20 State resident.

21 SENATOR ROLISON: Right. I mean, I  
22 think -- and I'll end with this. And again,  
23 thank you for all the things that you have  
24 been doing to try to rectify these issues,

1           which are very challenging, the most complex  
2           in the state.

3                     But I would just say without the  
4           people within the facilities, we can't do the  
5           things that we want to do for the system  
6           which benefits everybody. And I hope that  
7           everyone at the state level is looking at it.  
8           That's the critical issue.

9                     CHAIRWOMAN KRUEGER: Thank you.

10                    DOCCS COMMISSIONER MARTUSCELLO:  
11           Senator, thank you for your service.

12                    CHAIRMAN PRETLOW: Assemblyman  
13           Palmesano.

14                    ASSEMBLYMAN PALMESANO: Yes,  
15           Commissioner Martuscello, of course my  
16           five minutes -- this is my five minutes -- is  
17           for you. Thank you.

18                    We talked, and I hope we can -- you  
19           know, five minutes is enough to go over  
20           everything. I hope we could talk offline  
21           sometime.

22                    DOCCS COMMISSIONER MARTUSCELLO:  
23           Absolutely.

24                    ASSEMBLYMAN PALMESANO: And when we've

1 spoken in the past, we've both agreed that  
2 violence inside our correctional facilities  
3 is absolutely unacceptable. And certainly  
4 what happened to Mr. Brooks was absolutely  
5 horrific, totally unacceptable, and those  
6 individuals must be held accountable.

7 But getting back to the violence  
8 inside our correctional facilities, as you  
9 know, it has skyrocketed in the past three  
10 years. It points right to HALT. If you look  
11 at the numbers, people say we need more time  
12 to evaluate HALT. It's been three years, and  
13 the numbers just on assaults -- inmate on  
14 staff assaults have increased 76 percent over  
15 that time, from 1100 to just over 2,000. And  
16 more staggering, inmate on inmate assaults  
17 have increased from 1100 to 2,983, for an  
18 increase of 169 percent.

19 So HALT should be repealed or  
20 seriously reformed. And I hope you're  
21 delivering that message to Governor Hochul in  
22 your conversations. But I want to go on from  
23 there.

24 It is quite frankly -- you know we

1           have a staffing crisis in our correctional  
2           facilities. We've had prison closures,  
3           inmate population is up. Violence is at  
4           record levels, which we just talked about.  
5           mandatory overtime, sometimes triple  
6           overtime. It makes me wonder, who would want  
7           to do this job in the current working  
8           conditions? And they're not. They're not  
9           saying yes.

10                         And then I read a memo that was sent  
11           out this week that you talked about a little  
12           bit, maybe, that would eliminate open jobs  
13           and impose -- not because they're not needed  
14           or important but because you can't fill them.  
15           On paper, that might solve the staffing  
16           crisis on paper, but it's not going to solve  
17           the problem.

18                         And what I don't understand, when we  
19           have staffing crises, you look at the  
20           healthcare, they're giving recruitment  
21           bonuses, retention bonuses. The starting pay  
22           for a CO is 56,000. That's woefully  
23           inadequate. We need to significantly  
24           invest -- you know, money talks, BS walks.

1 We need to significantly invest in our  
2 corrections officers, their pay and their  
3 benefits. And their retirement, after they  
4 get to their 25 years, if they continue on.  
5 They do not get that bump in retirement like  
6 others do. That needs to be corrected.

7 Why are we not and why are you not  
8 talking -- and maybe you are. And I think  
9 you get it. I'm wondering about  
10 Governor Hochul. Why are we not providing  
11 significant recruitment bonuses and retention  
12 bonuses for our COs? And why would the  
13 Governor veto the death gamble bill again,  
14 which would have provided security for our  
15 corrections officers so they don't run a risk  
16 through retirement for their loved one, and  
17 that would help keep them. And why -- and  
18 she said that has to be in the budget, but  
19 she didn't put it in her budget.

20 What's being done? We've lost -- last  
21 year we had 500 new recruits, but we lost 600  
22 people. What are we doing? This isn't  
23 working. We need to pay more, we need better  
24 benefits, and that's what's going to help

1 solve this problem.

2 DOCCS COMMISSIONER MARTUSCELLO: Yes,  
3 so thank you for the question and your  
4 support of our workforce.

5 You said a lot in there, so I'm not  
6 going to be able to unpack it all. However,  
7 I would say this. The Governor has been very  
8 supportive of our workforce in terms of we  
9 increased the starting salary of the  
10 correction officer position by over \$6700 --

11 ASSEMBLYMAN PALMESANO: But it's still  
12 \$56,000, which is woefully inadequate.

13 DOCCS COMMISSIONER MARTUSCELLO:  
14 Fifty-six five. And then we --

15 ASSEMBLYMAN PALMESANO: Woefully  
16 inadequate.

17 DOCCS COMMISSIONER MARTUSCELLO: Then  
18 we entered into a collective bargaining  
19 agreement, which the membership ratified,  
20 with raises across the board as well as soft  
21 money, upwards of \$11,000.

22 So really, starting the Academy with a  
23 high school diploma at \$66,000 in the  
24 Academy, and then goes up after one year.

1           And then, again, decentralizing to  
2           targeted recruitment in terms of hiring  
3           people and allowing them to go right back to  
4           their communities. We've seen an uptick --  
5           as Senator Rolison said, it's helped us at  
6           Green Haven doing those regional  
7           recruitments. And I think it's going to help  
8           us in Chemung and Central New York and these  
9           other counties that we're targeting, where we  
10          have correction officers not on reassignment  
11          lists.

12           Two years ago we tried to lower the  
13          age. Unfortunately, that didn't pass. But  
14          this year we're going to allow me to hire  
15          out-of-state residents. And I really think  
16          that that's going to help us bolster that.

17           I really need a partnership. I've  
18          written to every member of the Legislature,  
19          every SUNY president, every CUNY president,  
20          and the union, and I've really asked: Let's  
21          lean in and let's partner together. We need  
22          to get away from the negativity. And I say  
23          it all the time. If every staff person just  
24          brought one person to the table -- one

1 person -- I wouldn't have a staffing problem.

2 It's that simple. One person. Right?

3 And if we can do that, we can make  
4 sure people have the quality of life and a  
5 work/life balance that they so deserve.  
6 Because they're critical in the public safety  
7 continuum in New York State.

8 ASSEMBLYMAN PALMESANO: And I  
9 appreciate what you said, but I do think we  
10 need to bump that pay higher. We need more  
11 recruitment bonuses and retention bonuses to  
12 keep them. And we need the death gamble  
13 fixed. I hope you're talking to the Governor  
14 about that.

15 How many FTEs are in the Governor's  
16 budget proposal for this year, for new  
17 correction officers? Is there any --

18 DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
19 so we have a total FTE count of over 25,000.  
20 The FTE count for correction officers is just  
21 under 15,000 with an incarcerated population  
22 at 33,600.

23 ASSEMBLYMAN PALMESANO: So like in the  
24 budget for a new class, because last year

1           there was 500 new but we lost 600.

2                   DOCCS COMMISSIONER MARTUSCELLO: Oh,  
3           yeah, I will tell you this. For new classes,  
4           I have the support to fill up to my FTE  
5           level. It's about -- if you bring them to  
6           me, I'll process them and hire them.

7                   ASSEMBLYMAN PALMESANO: Thank you.

8                   CHAIRWOMAN KRUEGER: Thank you. I  
9           have to cut this off. Thank you.

10                   Next is Senator Brisport.

11                   SENATOR BRISPORT: Thank you,  
12           Madam Chair.

13                   Commissioner Martuscello, in your  
14           written testimony it says that after the  
15           death of Mr. Brooks you ordered an  
16           investigation. But I want to point out that  
17           following an October 2022 facility visit to  
18           Marcy correctional facility by CANY, they  
19           published a report on rampant abuse by staff,  
20           including physical assaults and observations  
21           of a retaliatory environment across the  
22           general population units, the SHU and the  
23           RMHU. It also reported significant numbers  
24           of instances of racialized abuse and

1 discrimination, including derogatory language  
2 and unequal treatment.

3 You had seen that report from CANY,  
4 hadn't you?

5 COMMISSIONER MARTUSCELLO: Yes. Thank  
6 you for the question. I did see that report.

7 And following that report, we not only  
8 responded but I directed our OSI to have a  
9 call with CANY to discuss the allegations  
10 specifically so they can launch  
11 investigations. They were able to launch  
12 three investigations associated at Marcy.  
13 One wound up being associated to Mid-State.  
14 But a lot of the information was more  
15 anecdotal where it couldn't identify an  
16 individual.

17 But we did do that follow-up.

18 And now, moving forward, I have a good  
19 relationship with CANY, I meet with them on a  
20 quarterly basis. I think there's a lot of  
21 value in what they bring to the table in  
22 order to provide me with information that  
23 people may not be saying to us, may not be  
24 saying to OSI.

1           And then on top of that, after every  
2           visit, before they even issue the report,  
3           we're setting up monthly calls with my Office  
4           of Special Investigations. Because I want  
5           that information realtime, when it's fresh,  
6           when the people know who they're talking  
7           about, while they're still in the  
8           institutions, so we can immediately  
9           investigate and hold people accountable.

10           SENATOR BRISPORT: And, commissioner,  
11           in your testimony you also mentioned a few  
12           things and policies and changes you've made  
13           since the death of Mr. Brooks. I'm curious,  
14           why weren't any of those changes implemented  
15           after the previous CANY report on widespread  
16           abuse? And if you had implemented any of the  
17           reforms you mentioned earlier, do you think  
18           any of those might have saved Mr. Brooks'  
19           life?

20           DOCCS COMMISSIONER MARTUSCELLO: So in  
21           terms of implementation prior to, Marcy, we  
22           deployed body cameras at Marcy just in March  
23           of 2024. Right? In advance of the tragic  
24           murder of Mr. Brooks, right? So that

1 directly correlates to capturing and holding  
2 people accountable.

3           Unfortunately, it didn't prevent his  
4 death, which is totally, absolutely  
5 unfortunate and tragic. Right?

6           But we have been moving forward with  
7 technology and to safeguard the system,  
8 advance investigations to try to hold people  
9 accountable and make sure we're rooting out  
10 violence within the system.

11           You know, I will not normalize  
12 violence in the system, no matter who's the  
13 perpetrator of it, right? There's no place  
14 for it. People come to prison and my job is  
15 to give them the tools to succeed and go back  
16 to their family. Unfortunately for  
17 Mr. Brooks, that's not going to happen, and  
18 for that I'm absolutely sorry.

19           SENATOR BRISPORT: Those are all my  
20 questions.

21           CHAIRWOMAN KRUEGER: Thank you.  
22 Assembly.

23           CHAIRMAN PRETLOW: Assemblyman  
24 McDonald.

1                   ASSEMBLYMAN McDONALD: Thank you,  
2                   Mr. Chair. And thanks to all three of you  
3                   for your testimony today.

4                   I'm going to start off with the  
5                   superintendent, for the most part. There's  
6                   \$8 million that the Executive has proposed  
7                   for additional State Police and  
8                   counterterrorism investigators along the  
9                   northern border. Is that focused more  
10                  recently on personnel, or also are there  
11                  tools or certain type of devices? What do  
12                  you plan to do with that money?

13                  STATE POLICE SUPT. JAMES: Six million  
14                  dollars of that is personal service, of which  
15                  the remainder is between technology.  
16                  resources, software, training, all to bolster  
17                  the mission of protecting the northern  
18                  border.

19                  In some respects I would say we're  
20                  certainly always welcome for more. Obviously  
21                  our initiative up there is not going away  
22                  with counterterrorism. So it is a start,  
23                  incrementally. The idea would be to expand  
24                  that request even further.

1                   ASSEMBLYMAN McDONALD: Just as an FYI,  
2 I haven't heard anybody in the last two weeks  
3 ask for less. They're always asking for  
4 more. Which -- you're doing your job, right?

5                   STATE POLICE SUPT. JAMES: Yes.

6                   ASSEMBLYMAN McDONALD: Member Dinowitz  
7 got into this a little bit in regards to  
8 organized retail theft. One of the concerns  
9 last year was in regards to interactions in  
10 working with local law enforcement. Has that  
11 gone along -- how has that gone along? Has  
12 it gone well?

13                   STATE POLICE SUPT. JAMES: It's going  
14 along quite well. As a matter of fact, I  
15 touched base with Craig Apple a short time  
16 ago to ensure that he was getting the  
17 resources that he needed. He's working  
18 collectively, obviously with Troop G for --  
19 on the ORT.

20                   Also Oneida County, Sheriff Maciol,  
21 the PD, we work collectively with Oneida  
22 County and also the Onondaga County Sheriff.  
23 I made a commitment when I met with the  
24 Sheriffs Association that we would spread the

1 resources, work with them collectively.  
2 We've even done MOUs with regard to  
3 repurposing the equipment so it's not all  
4 held with the State Police, whether it's  
5 LPRs, body-worn cameras. And trust me, they  
6 weren't shy in putting in the request as  
7 well.

8 But we can do certainly much more  
9 collectively with the local law enforcement.

10 ASSEMBLYMAN McDONALD: Great, thank  
11 you. And actually, it's interesting, I was  
12 with Sheriff Apple last night, and I've  
13 actually been communicating with the  
14 Sheriffs Association. So Dan, this  
15 question's moving towards your direction.

16 It deals with medication-assisted  
17 treatment. You and I have had conversations  
18 in the past about making sure that those  
19 individuals who are looking for treatment  
20 have access to it. The sheriffs have  
21 expressed to me their concern. It's kind of  
22 a catch-22. They have more individuals  
23 looking for treatment, but they need more  
24 money to provide that treatment.

1           Has our budget been supportive to make  
2           sure that individuals looking for MAT in the  
3           prisons are actually having access to it?

4           DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
5           thank you for the question, Assemblyman.

6           Certainly as we implemented the law,  
7           we've had an increase in patients on  
8           medication-assisted treatment. Last year we  
9           treated over 7,000 individuals in MAT. And  
10          we did fall short in the budget. So this  
11          year the Governor has provided an additional  
12          \$43 million in my budget to support the  
13          growth of MAT. So in the proposed budget by  
14          the Governor, we will be fully funded for  
15          medication-assisted treatment.

16          ASSEMBLYMAN McDONALD: That's great to  
17          hear. And once again I appreciate you  
18          reaching out to me to talk about it from a  
19          pharmacist's perspective as well.

20          DOCCS COMMISSIONER MARTUSCELLO: Thank  
21          you.

22          ASSEMBLYMAN McDONALD: The only other  
23          thing I'll say -- this is really for the  
24          group as a whole, and then I'll yield back my

1           time -- is that in the proposal the Governor  
2           has proposed to basically eliminate the age  
3           cap for hiring new law enforcement officers  
4           and various other positions. And I want to  
5           commend her for that. That is the subject of  
6           a bill that I carry in the Assembly.

7                     Once having the responsibility 14,  
8           15 years ago, I hired dozens and dozens of  
9           police officers and it was drilled into me  
10          early that once you're making that decision,  
11          you need to be very thoughtful that you're  
12          giving somebody a gun for 20 years. And it's  
13          a serious responsibility.

14                    What's been concerning is that over  
15          the past several years, not many people are  
16          seeking to take the civil service exams. And  
17          we've waived every fee known to mankind.

18                    I talked to Sheriff Apple, I talked to  
19          Chief Geraci in Colonie, and where they used  
20          to have several hundred, five, 600 people,  
21          maybe 150 are showing up for an exam now. So  
22          I think the notion to raise that age and to  
23          actually allow people who have got a little  
24          more lived experience take on that role I

1 think is something that we all should be  
2 considering during this budget cycle.

3 So thank you for your testimony.

4 CHAIRMAN PRETLOW: Senator Murray.

5 SENATOR MURRAY: Thank you.

6 And thank you all for being here. I  
7 appreciate what you do and also for all the  
8 folks that serve under you, I very much  
9 appreciate what they do.

10 Let me start with Superintendent  
11 James, because I've spoken to our local  
12 corrections officers and heard from them in  
13 regards to hiring and recruiting and being  
14 short-staffed. And Tier 6 certainly isn't  
15 helping. We need to do something about that  
16 as far as helping you hire and recruit.

17 But I also want to talk about burnout  
18 and I want to know, are you facing the same  
19 thing? Because locally our corrections  
20 officers are saying they're going to work and  
21 they don't know if they're coming home after  
22 eight hours, 16, 24 -- they don't even know.  
23 And it's leading to burnout, which is  
24 exacerbating the manpower shortage.

1           Are you facing the same struggles  
2           there with that?

3           STATE POLICE SUPT. JAMES: I will tell  
4           you, after having gone through, you know,  
5           three-plus decades, I can relate. So the  
6           short answer is there is an experience that  
7           officers do endure. Law enforcement  
8           policing is a tough process.

9           But what we have implemented, and we  
10          continue to ensure that gets done, is mental  
11          health training for our, you know,  
12          membership. We're going to reinvigorate that  
13          collectively with the unions as well, with  
14          their ideas how we can do it better. Before  
15          I retired back in -- then it was 2018, I  
16          initiated a statewide mental health program.

17          We'll do that, but we're also going to  
18          include local and other state agencies.  
19          We've done that once before. Certainly  
20          whether it's for OVS or other entities that  
21          deal with people who are experiencing it.

22          So the short answer is we'll continue,  
23          we'll continue that initiative.

24          SENATOR MURRAY: Okay, great.



1 while I hear the statistics by the  
2 Assemblymember, if you look back over time,  
3 even going back 10 years prior to any changes  
4 to restricted housing and discipline, they  
5 were still on the uprise. Right? They were  
6 still going up.

7 SENATOR MURRAY: We'll talk later.

8 CHAIRMAN PRETLOW: Assemblyman  
9 Beephan.

10 ASSEMBLYMAN BEEPHAN: Thank you very  
11 much.

12 So I guess I'll start with  
13 Commissioner Martuscello. Thank you for  
14 being here today.

15 I think you spoke about body cameras  
16 earlier. In your SOPs and in the memos that  
17 you've put out, did you ever specify when  
18 those cameras are to be turned off, like  
19 private reasons, like bathroom time, all that  
20 stuff?

21 DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
22 thank you for the question. This was  
23 actually a subject of much discussion with my  
24 unions and my workforce.

1           In my December 18th memorandum, I gave  
2           strict instructions that the body cameras  
3           should be on the minute you receive it,  
4           powered on and activated whenever you're  
5           interacting with an incarcerated individual.

6           As we know from the investigation  
7           around the murder of Mr. Brooks, that there's  
8           a recall feature that even when it's not on,  
9           it's capturing video. So just two days ago I  
10          published a statewide directive, standalone.  
11          It replaced the one that was hand-held and  
12          body-worn cameras. And in there, through  
13          negotiations with the union, now when an  
14          employee goes to the restroom, they can power  
15          off that camera, right? As part of  
16          overlaying of performance metrics, we're able  
17          to see how many times that camera's powered  
18          off. Right? And so that way we have metrics  
19          behind it.

20          And if Dan Martuscello turns it off  
21          20 times in the day, maybe that's one day  
22          you're not feeling well. If that's every day  
23          and you turn it off five times -- and that's  
24          the average, right -- we're able to take

1           corrective action and have a discussion on  
2           why are you continually turning off your  
3           camera.

4                     ASSEMBLYMAN BEEPHAN:   Right.

5           Understood.

6                     DOCCS COMMISSIONER MARTUSCELLO:   So we  
7           did address that, sir.

8                     ASSEMBLYMAN BEEPHAN:   Thank you.

9                     On the topic of cameras, not to  
10          divulge too much public information, but  
11          perimeter cameras, I know there's times when  
12          they're not always recording, especially in  
13          situations where drugs are being thrown over  
14          fences.

15                    Has there been any discussions about  
16          changing how those cameras are set up or  
17          activated so it's recording 24/7?

18                    DOCCS COMMISSIONER MARTUSCELLO:   Yeah,  
19          so I'm not going to get into the specifics of  
20          the camera, but they're recording. I mean,  
21          whether you're actually catching, you know,  
22          the football or the handball going over,  
23          right, that's a different story.

24                    But the cameras are recording.

1 ASSEMBLYMAN BEEPHAN: Understood.

2 Earlier this year there was a  
3 situation at Fishkill regarding  
4 Social Security numbers being disclosed for  
5 correction officers and administrative staff.  
6 What's the status of that situation right  
7 now? And has there been any situations where  
8 someone's identity has been compromised?

9 DOCCS COMMISSIONER MARTUSCELLO: So we  
10 did have a situation where an incarcerated  
11 individual had submitted a FOIL request for  
12 the names and titles of everyone working at  
13 the facility. So every person, from the  
14 superintendent on down.

15 Unfortunately, when that list was  
16 produced, it did contain Social Security  
17 numbers and the FOIL officer did not redact  
18 the Social Security numbers. Immediately  
19 upon her recognizing her error, she made  
20 notice to the superintendent and we were able  
21 to retrieve the copy and nothing got outside  
22 of the institution.

23 We provided notice, under our policies  
24 and procedures, to every employee impacted,

1 and we pointed them to the appropriate  
2 credit-monitoring just as if when our  
3 healthcare information is breached.

4 ASSEMBLYMAN BEEPHAN: Do you believe  
5 that any copies are still in existence  
6 amongst the incarcerated individuals?

7 DOCCS COMMISSIONER MARTUSCELLO: I do  
8 not believe so.

9 ASSEMBLYMAN BEEPHAN: Okay. I know  
10 you addressed legal mail being brought into  
11 the facilities and photocopied. So that  
12 cannot be done at this time, as you believe,  
13 for legal purposes. Do you have a timeline  
14 on when that can be done?

15 DOCCS COMMISSIONER MARTUSCELLO: So we  
16 are studying what we can do further on legal  
17 mail. We've put in an immediate fix in terms  
18 of verifying that you actually sent something  
19 to your client.

20 We are looking at about a couple of  
21 different technologies that we could overlay  
22 in the system. But the photocopying of the  
23 legal mail itself, it has to be opened in the  
24 presence of the incarcerated individual. And

1           then what do you do with the original copies  
2           of legal mail, right?  Immediately destroy  
3           it.

4                        So we're looking at some other  
5           alternatives, but I think that we've put an  
6           initial stopgap measure in for right now.

7                        ASSEMBLYMAN BEEPHAN:  Thank you.

8                        Moving over to the superintendent,  
9           just a quick question, very micro level.

10                       Regarding the UAS positions, do you  
11           anticipate ever having the lead for that  
12           position becoming a tech sergeant or a  
13           sergeant in the future?

14                       STATE POLICE SUPT. JAMES:  The short  
15           answer, we'll contemplate it.  Certainly we  
16           want to have subordinate-level techs trained  
17           other than the staff sergeant.  And we're  
18           hoping to expand that resource.  UAS is  
19           statewide.  Obviously I don't have to mention  
20           to you the concern of New Jersey and New York  
21           City with the UASes.

22                        So the short answer is we are looking  
23           to expand that.  And we'll need to expand it  
24           with personnel.

1 ASSEMBLYMAN BEEPHAN: Perfect. Thank  
2 you very much, all of you, for your time.

3 CHAIRWOMAN KRUEGER: Thank you.

4 Senator Gustavo Rivera.

5 SENATOR RIVERA: Thank you,  
6 Madam Chair.

7 A couple of quick things, since I  
8 only have three minutes. Certainly I share  
9 all the concerns that have been expressed  
10 about Mr. Brooks, and we will be keeping a  
11 very close eye to make sure that not only are  
12 the people held accountable who committed  
13 this crime, but also that the changes that  
14 are made are actual, meaningful changes that  
15 will actually make sure that this does not  
16 happen again.

17 So I'm just going to ask the questions  
18 upfront, and then I'll give you the rest of  
19 the time for the answer. There's three  
20 things. First is on MAT, second is on  
21 Medicaid eligibility, and third is on ICE.

22 On MAT, so Medicaid-assisted  
23 treatment, we see that rates of injectable  
24 buprenorphine increased by 221 percent within

1           one year, from July 2023 to July 2024. And  
2           there are reports that incarcerated people  
3           are pressured to use injectable buprenorphine  
4           as a medication for the treatment of  
5           substance use disorder. So I wanted you to  
6           comment on whether we provide a choice, but  
7           it seems like the numbers speak to them being  
8           pressured to make that one choice. That's  
9           number one.

10                     Number two, on Medicaid eligibility.  
11           It can currently take up to 45 days  
12           post-release to process a Medicaid  
13           application for someone who's leaving a  
14           correctional facility. So would you be  
15           supportive of formerly incarcerated people  
16           having active insurance on day one after  
17           their release?

18                     And number three, on ICE, obviously  
19           we're talking about Immigration and Customs  
20           Enforcement. We are seeing what's happening  
21           around the country. I want to make sure that  
22           on the record you can provide assurances that  
23           New York jails will not be used to hold  
24           undocumented immigrants unless they're

1 primarily being held on a pending local  
2 criminal charge, which would be the only time  
3 that sort of thing is allowable.

4 So take the rest of the time to answer  
5 those, if you could, please.

6 DOCCS COMMISSIONER MARTUSCELLO:

7 Sorry. On MAT, as I mentioned, we serve over  
8 7,000 people. We offer all forms of  
9 medication-assisted treatment, and now we've  
10 included the monthly injection.

11 So yeah, it's a discussion between the  
12 physician and the patient as to what suits  
13 them. Obviously if they're returning to a  
14 county where there's no methadone clinics,  
15 that's not something the doctor's going to  
16 push them towards. But that's part of that  
17 discussion. If we do see people that are  
18 diverting, rather than take them off, we give  
19 them other options like the injections.

20 But it is totally a discussion between  
21 the clinician and the patient.

22 SENATOR RIVERA: On Medicaid?

23 DOCCS COMMISSIONER MARTUSCELLO: On  
24 Medicaid, I'm proud that last year, of the

1 releasees, 88 percent returned to the  
2 community, enrolled in Medicaid. I was at  
3 the federal level advocating last year to try  
4 to change what's a qualifying event. Because  
5 leaving incarceration --

6 SENATOR RIVERA: On ICE? I only have  
7 15 seconds.

8 DOCCS COMMISSIONER MARTUSCELLO: Okay.  
9 And ICE, yeah, we're not using any of our  
10 facilities to hold any immigrant --  
11 immigration status individuals, other than if  
12 they've been convicted of a felony in  
13 New York. And then if they have -- if ICE  
14 have a detainer, they're serving the New York  
15 sentence.

16 SENATOR RIVERA: Thank you.

17 DOCCS COMMISSIONER MARTUSCELLO: That  
18 was speed round.

19 CHAIRMAN PRETLOW: Assemblyman Ra.

20 ASSEMBLYMAN RA: Thank you, Chair.

21 Regarding retail theft, the State  
22 Police testimony said we've had 688 people  
23 arrested on 1100 charges. Do you have any  
24 data as to were those predominantly, you

1 know, bigger box stores that we've seen a  
2 lot, or are a lot of them smaller stores? Do  
3 you have any data regarding the breakdown of  
4 that?

5 STATE POLICE SUPT. JAMES: Yes. Thank  
6 you for your question.

7 And the latter is true, it is -- we  
8 call it organized retail theft for a reason,  
9 because we've found that it is the bigger box  
10 stores. We work with the national retailers,  
11 we've worked with their inventory  
12 specialists. When we have a search warrant  
13 of a seizure, we invite them in. They're  
14 able to track, through technology -- bar  
15 coding -- the origin and the history of this  
16 merchandise. So we're able to track that  
17 down.

18 But notice how I didn't mention  
19 smash-and-grabs. We have pretty much -- I'm  
20 not going to say it's gone away, but the  
21 bigger genesis is the organized retail theft.

22 In Queens County we had a spin-off  
23 case, a result of a road trooper being  
24 observant. It culminated into a seize of

1 property in a vehicle, and \$2 million in  
2 recovered stolen property. And in excess of  
3 \$200,000 in currency.

4 So there are other cases that are  
5 still in the pipeline in that regard, but  
6 we're finding that they're mainly the larger,  
7 more organized type of crimes.

8 ASSEMBLYMAN RA: And any sense in  
9 terms of recidivism with regard to those  
10 arrests, of those that were arrested?

11 STATE POLICE SUPT. JAMES: In Oneida  
12 County there were several. And that dealt  
13 with an individual who formerly worked for  
14 the big box store who had friends or  
15 alliances. And it did result in multiple  
16 arrests with that individual.

17 But as far as statewide, what we're  
18 finding is it hasn't been a recidivism issue  
19 with the individuals that we've been  
20 arresting.

21 ASSEMBLYMAN RA: Thank you.

22 And I think this is maybe more for  
23 DCJS, but just in terms of what strategies,  
24 if you could detail that, are working with

1           engaging the local communities as we're  
2           dealing with the retail theft and obviously  
3           the funding that was put forth last year.

4                     DCJS EX. DEP. CMR. POPCUN: Yeah. I  
5           think, you know, one is stepping up kind of  
6           the enforcement side of it. The other one,  
7           the Governor had proposed the retail security  
8           tax credit.

9                     And then to kind of go back to and  
10          build off of the superintendent's remarks, I  
11          think we've seen remarkable progress, through  
12          our Crime Analysis Centers, in engaging big  
13          box retailers and also smaller mom-and-pop  
14          shops, to be able to kind of report.

15                    So what we're working on this year is  
16          really setting up a community of practice  
17          among retailers, where they can share  
18          information or that law enforcement can  
19          distribute information to make sure that  
20          there's consistent messaging.

21                    So in my example before around kind of  
22          a Thruway-organized kind of criminal element,  
23          in that instance, if we had a -- kind of set  
24          up a community of practice, we'd be able to

1 do push notifications to retailers to be on  
2 the lookout for this kind of a pattern of  
3 behavior.

4 So I think we're making significant  
5 inroads with our partnership with the  
6 State Police and with local law enforcement.  
7 And I think, you know, the retailers are part  
8 of the solution here too.

9 ASSEMBLYMAN RA: And with regard to  
10 the subway crime initiative and the  
11 \$77 million for New York City, any sense of  
12 how we plan to measure the success of this?

13 And if it is successful, what happens  
14 after the six months? Is there a plan to  
15 continue that if it's successfully, you know,  
16 prevents a lot of the things that we've been  
17 seeing?

18 DCJS EX. DEP. CMR. POPCUN: As I said  
19 before, I think, you know, we're always  
20 measuring data, and the Governor has been  
21 focused on this.

22 So we do anticipate that there will be  
23 kind of a report out on what's happening with  
24 subway crime on the platforms in metro areas,

1           what's happening with arrest activity, what's  
2           happening with certain indicators.

3                     Then in terms of an evaluation, you  
4           know, afterward we'll be able to look at  
5           whether the surge had the intended effect.  
6           If it did, then I think the conversations  
7           would be between New York City and the  
8           New York State Division of Budget on how that  
9           could become, you know, more permanent. But  
10          that's outside the scope of the DCJS budget.

11                    ASSEMBLYMAN RA: Thank you.

12                    CHAIRWOMAN KRUEGER: Senator Stec.

13                    SENATOR STEC: Thank you, Chair.

14                    Commissioner, I've got seven  
15          correctional facilities in my legislative  
16          district. I used to have 10 when I first  
17          become Senator. That's the most of any  
18          legislator.

19                    I only have three minutes, so I'm  
20          going to share my questions and concerns and  
21          I'll ask you to answer what you can and then  
22          please follow up in writing later with what  
23          you can't.

24                    It's been a rough three months for

1 your department. You had the inmate death in  
2 December at Marcy, unexpected series of  
3 exposures and ER visits at Upstate  
4 Correctional in my district and other places,  
5 which is a contraband issue. You had a memo  
6 dated this past Monday, February 10th --  
7 incorrectly, 2024. I think that's a typo --  
8 directing a 30 percent reduction in staffing  
9 at all facilities across the board. And just  
10 yesterday you lost control of two dorms at  
11 Collins in Western New York, also reportedly  
12 contraband driven.

13 My questions are, first, I asked for  
14 data on ambulance or emergency run visits in  
15 light of what happened in Malone, and I was  
16 told by your department that it doesn't  
17 exist. I'd asked why and, going forward, can  
18 we start collecting that data.

19 You said that you purchased 88 body  
20 scanners in the 2023 budget for a cost of  
21 \$11 million. Are all of them installed and  
22 operational? And obviously the question I  
23 have is why are they optional? It's not  
24 optional if you want to get on a plane at the

1 TSA to say, No, I don't want to be scanned.

2 Why aren't we using a true secure  
3 vendor program, as other states do? The  
4 third-party sellers through Amazon and  
5 Walmart, a lot of them are just fronts,  
6 they're easy to counterfeit. It's a joke. I  
7 would not call what we have a secure vendor  
8 program.

9 Was the substance involved in Upstate  
10 on January 20th found? Was it identified?  
11 And does DOCCS believe, as some have said,  
12 that the two dozen people that went to the  
13 emergency room that night are all suffering  
14 some -- from some -- experiencing a mass  
15 delusion?

16 How the hell does DOCCS lose control  
17 of a prison yesterday?

18 And then my final question is was it  
19 coincidental that on Monday, this past  
20 Monday, just three days after NYSCOPBA voted  
21 "no confidence" on your leadership, that you  
22 made this announcement for a 30 percent  
23 reduction in staffing? Are we going to  
24 reduce visitation by 30 percent? Are we

1 going to reduce programming by 30 percent or  
2 inmate movement by 30 percent? Why don't we  
3 just eliminate 30 percent of the penal code  
4 or cut 30 percent off of everyone's sentences  
5 if that's our approach?

6 DOCCS COMMISSIONER MARTUSCELLO: Yes,  
7 Senator, thank you for your rapid-fire  
8 questions. I don't know that we'll get to  
9 them all, but let's start with Collins.

10 I think we have some inaccurate  
11 information being reported in the media. On  
12 the early morning hours yesterday, a sergeant  
13 encountered multiple individuals in one cube.  
14 When he engaged them, the individual ran from  
15 the sergeant. They followed him to a  
16 bathroom. A use of force ensued, and they  
17 wound up finding two contraband cellphones.

18 Other incarcerated people on the dorm  
19 became agitated because they didn't  
20 understand why the force was being used, why  
21 they were chasing the individual. And the  
22 staff on scene, including that sergeant, did  
23 a great job in deescalating that situation  
24 and resolved it, and everyone went back to

1 their cubes.

2 Later that morning there was a  
3 potential threat that staff identified, and  
4 as a result they left the dorms. We actually  
5 didn't lose the dorms, they walked off of the  
6 dorms because of perceived threat. There was  
7 no --

8 SENATOR STEC: Has that happened  
9 before? When was the last time that we had a  
10 situation where there was no adult  
11 supervision in the dorms?

12 DOCCS COMMISSIONER MARTUSCELLO: Well,  
13 the staff remained outside of the dorm  
14 itself --

15 SENATOR STEC: They barricaded  
16 themselves in.

17 DOCCS COMMISSIONER MARTUSCELLO: They  
18 did not barricade themselves in. That is not  
19 true. I was on-site at that facility  
20 yesterday, the incarcerated remained  
21 communicative with the people on the other  
22 side of the door that we locked. Right? And  
23 we were in constant communication with those  
24 individuals.

1                   So a lot of false narratives around  
2                   that.

3                   SENATOR STEC: Thank you for  
4                   clarifying that. Thank you.

5                   CHAIRWOMAN KRUEGER: Thank you.  
6                   Assembly.

7                   CHAIRMAN PRETLOW: Assemblyman  
8                   Burdick.

9                   ASSEMBLYMAN BURDICK: Thank you.

10                  And Commissioner Martuscello, thank  
11                  you for your testimony and also for your part  
12                  on the heat mitigation plan bill, which the  
13                  Governor signed in December. Your  
14                  willingness to make it work is really  
15                  appreciated.

16                  I have two questions. I'll give them  
17                  both at the same time.

18                  Further to Senator Salazar's question  
19                  regarding Marcy, I appreciate the  
20                  investigation that you described. But to  
21                  what extent will it examine systemic issues  
22                  in the culture in the state's correctional  
23                  facilities?

24                  My second question is I know that you

1 support the work of rehabilitation through  
2 the arts and other programs that accelerate  
3 rehabilitation and lead to reentry sooner  
4 than otherwise, and with much lower  
5 recidivism rates than the average. And of  
6 course there are vital vocational programs.

7 I'd appreciate you letting us know  
8 your vision and plans for expanding these  
9 programs to facilities that don't have them  
10 or have fewer than others.

11 DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
12 thank you for your questions.

13 As part of the Marcy incident and the  
14 review, we've taken a number of steps at the  
15 Governor's direction. We've hired an  
16 independent firm to come in and do a pattern  
17 and practice assessment as well as a cultural  
18 assessment, and that's already underway. The  
19 firm has met with me, every member of my exec  
20 team, they're looking at our policies, our  
21 procedures, our training curriculum, they've  
22 been to Marcy Correctional Facility for two  
23 days, and they're going to other institutions  
24 to exactly examine the culture.

1           We've also launched a partnership with  
2 Chicago Beyond, which is dealing with  
3 holistic safety, where we bring all parties  
4 together -- administrators, advocates,  
5 incarcerated people, unions and staff -- to  
6 work on safety and the culture --

7           ASSEMBLYMAN BURDICK: I'm sorry to  
8 interrupt, but it would be at every one of  
9 the correctional facilities?

10          DOCCS COMMISSIONER MARTUSCELLO:  
11 Again, so they're doing a sampling and  
12 they're going to --

13          ASSEMBLYMAN BURDICK: Oh, I see.  
14 Okay.

15          DOCCS COMMISSIONER MARTUSCELLO: The  
16 law firm's going to do a public report, which  
17 then we can adopt the practices and make sure  
18 that we're handling any systemic issues.

19          Chicago Beyond's at two facilities,  
20 but the intent would be to spread everywhere.

21          And then, lastly, we're working with  
22 Amend --

23          ASSEMBLYMAN BURDICK: Actually, the  
24 second question, if you could.

1 DOCCS COMMISSIONER MARTUSCELLO: Okay,  
2 the second one. Rehabilitation Through the  
3 Arts. I am wholly supportive of  
4 Rehabilitation Through the Arts. They  
5 actually just recently named a new executive  
6 director who was formerly incarcerated,  
7 graduated through our college programs doing  
8 wonderful work.

9 But we definitely want to expand that.  
10 I've had conversations. We are in contract  
11 negotiations, so --

12 ASSEMBLYMAN BURDICK: And there's  
13 other programs like it you're also trying to  
14 expand as well to other facilities?

15 DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
16 we've expanded Puppies Behind Bars, and  
17 working with Exodus on Project Build and  
18 we're actually working on a trauma-informed  
19 care, but for incarcerated and staff, through  
20 Exodus that we're looking at.

21 So yeah, those are all things that I'm  
22 very supportive of.

23 ASSEMBLYMAN BURDICK: Well, thank you  
24 for your vision on that. Greatly needed.

1 Thanks so much.

2 DOCCS COMMISSIONER MARTUSCELLO: Thank  
3 you.

4 CHAIRWOMAN KRUEGER: Senator  
5 Hoylman-Sigal.

6 SENATOR HOYLMAN-SIGAL: Thank you,  
7 Madam Chair.

8 I wanted to ask the DCJS  
9 representative -- thank you, sir, for being  
10 here -- about the Securing Communities  
11 Against Hate Crime grants that are awarded.  
12 This year the Governor included \$35 million  
13 in her Executive Budget. That's the same  
14 amount that was requested last year. I just  
15 want to point out that, you know, hate crimes  
16 have -- this is not news to you, I'm sure.  
17 Hate crimes have been increasing. They  
18 increased 59.3 percent between 2023 and 2019.  
19 And from 2024, through the previous year,  
20 there's been 137 percent year-over-year  
21 increase in reported antisemitic incidents.

22 I was wondering why the Governor  
23 decided to ask for the same amount. Does the  
24 Governor's office believe that the

1           \$35 million is sufficient to meet the needs  
2           of securing communities against hate crimes?

3                     And secondly, how many applications  
4           has DCJS had to deny for lack of funding? I  
5           have one here that I'm looking at that  
6           Senator Salazar and I sent out on behalf of a  
7           historic synagogue that was trying to protect  
8           a Jewish cemetery in Brooklyn that dates back  
9           close to 200 years. But they're very fearful  
10          of attacks on that property.

11                    DCJS EX. DEP. CMR. POPCUN: Thank you  
12          very much -- and it's good to see you  
13          again -- for the questions.

14                    So the Governor's \$35 million, last  
15          year was actually an increase because there  
16          was a \$10 million carveout for reproductive  
17          health centers, which was moved from DCJS to  
18          DOH. So the \$35 million last year and the  
19          \$35 million that's proposed this year is in a  
20          record level for the administration.

21                    SENATOR HOYLMAN-SIGAL: So it's in  
22          effect a \$10 million increase, is that what  
23          you're saying?

24                    DCJS EX. DEP. CMR. POPCUN: Yeah, I'm

1 saying last year what it looked like on paper  
2 was that it was actually a \$10 million  
3 increase, to kind of be proportional to what  
4 was being seen to --

5 SENATOR HOYLMAN-SIGAL: Okay, that's  
6 good news and I appreciate the clarification.

7 In my time remaining, could you -- are  
8 you able to share with my colleagues DCJS's  
9 rejections of applications for the Securing  
10 Communities Against Hate Crime grants?

11 DCJS EX. DEP. CMR. POPCUN: So we  
12 don't make a list public because it creates a  
13 security vulnerability because all --

14 SENATOR HOYLMAN-SIGAL: I'm talking  
15 about members of the Legislature.

16 DCJS EX. DEP. CMR. POPCUN: If there's  
17 a specific organization, we can certainly  
18 drill down on that, the reasons for the  
19 application.

20 I will say in December we awarded  
21 \$64 million to 336 organizations. It was the  
22 largest grant. And that was the largest, you  
23 know, single grant that we had done ever. We  
24 also --

1           SENATOR HOYLMAN-SIGAL: Let me just  
2 make a final pitch in my few seconds  
3 remaining, which is I think you should look  
4 at not just non-for-profits but for-profit  
5 entities, namely LGBTQ-owned bars and  
6 restaurants, which have been targeted for  
7 several years.

8           CHAIRWOMAN KRUEGER: Sorry, I have to  
9 cut you off. Thank you.

10           Assembly.

11           CHAIRMAN PRETLOW: Assemblywoman  
12 Walsh.

13           ASSEMBLYWOMAN WALSH: Thank you very  
14 much. And I'd like to follow up on some  
15 questioning that Senator Palumbo started a  
16 little bit earlier about crime reporting.

17           So it seems that just about every week  
18 the Governor is issuing a press release  
19 citing preliminary DCJS crime statistics to  
20 try to justify her claim that crime is lower  
21 than last year or even that it's been in  
22 decades.

23           According to the DCJS website, the  
24 majority of law enforcement agencies use the

1 Uniform Crime Reporting program, or UCR, to  
2 send crime data to DCJS, who in turn then  
3 forwards it to the FBI.

4 UCR only requires the most serious  
5 offense in each crime incident to be counted.  
6 So for example, if a robbery, rape and a  
7 homicide occurred in the same incident, only  
8 the homicide is counted. With the exception  
9 of homicide, all other crimes in New York  
10 State are undercounted.

11 So two-part question. Do you agree  
12 with the Bureau of Justice National Crime  
13 Victimization Survey that most crimes go  
14 unreported, with only about 45 percent of  
15 violent crimes and 30 percent of property  
16 crimes being reported to the police?

17 And second, how can we then believe  
18 the Governor's claims that crime is down when  
19 she uses preliminary crime data that only  
20 counts the most serious crime per incident in  
21 addition to the reality that most crimes go  
22 unreported?

23 DCJS EX. DEP. CMR. POPCUN: So the  
24 National Crime Victimization Survey shows

1 remarkable stability in the sense that  
2 roughly half of crimes are reported, to your  
3 question, but that has been stable for a  
4 number of years. And again, we need to do  
5 more in terms of law enforcement in terms of  
6 building that trust so that people report the  
7 crimes that are committed upon them.

8 But to answer your second question,  
9 the transition to NIBRS, the National  
10 Incident-Based Reporting System, is well  
11 underway. We have 195 agencies that are  
12 using that, and that now covers 80 percent of  
13 all reported crime in the State of New York.  
14 And that is a much more sophisticated type of  
15 analysis that breaks apart the different  
16 types of crimes that might be, you know,  
17 commingled, to use one expression, when  
18 reported.

19 And so I have great confidence in our  
20 crime reporting program. I think it leads  
21 the country. And the Governor is always  
22 trying to ask what are the indicators, you  
23 know, how are we doing, how are we measuring  
24 whether it's subway crime of others.

1           So we use a gun violence reported from  
2           our gun involved violence elimination  
3           programs to kind of look at shooting data.  
4           We look at the same shooting data for our  
5           SNUG zones. And that gives us a good kind of  
6           sense of where violent crime, particularly  
7           involving firearms, is trending. And then we  
8           use the UCR and NIBRS programs to be able to  
9           look at and accurately compile timely,  
10          accurate information on crime, and then  
11          report it.

12           And we're reporting it on our website,  
13          too. So as you mentioned, we have developed  
14          a bunch of new dashboards. They're lagged,  
15          typically, by two quarters, because the 550  
16          law enforcement agencies have three months to  
17          send them in. Then we make sure that there's  
18          no errors or omission, and then they're  
19          posted to our website thereafter.

20           And so -- love crime reporting. I do  
21          think it's essential to us measuring public  
22          safety in the State of New York.

23           CHAIRWOMAN KRUEGER: Thank you.

24           Our next Senator is Senator Cordell

1           Cleare.

2                       SENATOR CLEARE: Good afternoon,  
3           Commissioner.

4                       I think anyone who saw the murder of  
5           Robert Brooks is traumatized, and you have to  
6           forgive me, because it is affecting me, it  
7           still affects me to see that kind of hate and  
8           that kind of violence executed by people who  
9           are there to uphold the law and those who are  
10          there to maintain the health of individuals.

11                      I want to ask you, there's money being  
12          asked for more cameras, body-cams. But in  
13          this case, cameras were worn. What is the  
14          penalty, if any, for someone turning their  
15          camera off?

16                      COMMISSIONER MARTUSCELLO: So as I  
17          mentioned, right now we have to go through  
18          the collective bargaining agreement in terms  
19          of penalties for progressive discipline. So  
20          when we have policies and procedures, when we  
21          find that employees violate those things, we  
22          then evaluate those and issue notices of  
23          discipline.

24                      It does go through the arbitration

1 process, where an independent arbiter  
2 recommend -- not recommends, they make the  
3 final determination on what --

4 SENATOR CLEARE: Has anyone been  
5 penalized for not wearing their cameras? Has  
6 that happened yet?

7 COMMISSIONER MARTUSCELLO: Yes, it  
8 has.

9 SENATOR CLEARE: Okay, I'd like to see  
10 what has happened to those individuals, and  
11 what is the penalty for not doing that,  
12 because the price has been over the years the  
13 lives of so many people. This is not the  
14 first time. Samuel Harrell, so many other  
15 individuals have reportedly been beaten to  
16 death, punched, kicked, batoned to death by  
17 corrections officers. And it continues to  
18 happen.

19 This is not a new case, this is the  
20 one that everybody's eyes saw. But we know  
21 that this has happened over time. So is  
22 there going to be a lookback into these cases  
23 so that these families can get justice? John  
24 McMillan, Terry Cooper, Carl Taylor. Black

1 man after Black man killed by corrections.

2 COMMISSIONER MARTUSCELLO: Yeah, I'm  
3 familiar with some if not all of those cases.

4 And each time that there's a death in  
5 custody, it's investigated independently by  
6 the Attorney General's office, the State  
7 Police, as well as the SCOC. And then  
8 obviously a medical ruling by the medical  
9 examiner.

10 So through those investigations we  
11 take appropriate action. And certainly in  
12 this case we've revealed that there was a  
13 murder of Mr. Brooks, and those people will  
14 be held fully accountable.

15 SENATOR CLEARE: Is there any thought  
16 in making sure that there is some kind of  
17 racial bias penalty against people? Some of  
18 these cases, racial slurs were being  
19 mentioned throughout the entire beating. And  
20 people have done it, as you heard, CANY  
21 reported that those slurs are used. This is  
22 an indication that there is racial bias. And  
23 these people should not be in charge of the  
24 population.

1           COMMISSIONER MARTUSCELLO: Yes, so we  
2           have a zero-tolerance policy with racial  
3           bias, right, or against LGBTQ. So if we find  
4           anybody that's partaking in that, we issue  
5           discipline. And we actually refer it to the  
6           anti-discrimination investigation division --

7           SENATOR CLEARE: I'd like to see your  
8           report on that, if you have that.

9           CHAIRWOMAN KRUEGER: Thank you.  
10          Assembly.

11          CHAIRMAN PRETLOW: Assemblyman Otis.

12          ASSEMBLYMAN OTIS: Thank you.

13          A question for Superintendent James.

14          In your testimony you mentioned the  
15          expanded cybersecurity work at the State  
16          Police. Curious -- very important work, with  
17          the threat increasing. For the State Police,  
18          what kinds of cases end up coming your way?  
19          Are they from institutions, individuals? How  
20          is that working?

21          STATE POLICE SUPT. JAMES: We work in  
22          conjunction. It's a task force as well, J --  
23          joint terrorism task force. So it could be  
24          local. You know, it could be from a county.

1 We don't restrict it per se.

2 Fortunately, with the benefit of  
3 working with the task force, it's a force  
4 multiplier. If there's cases such as a  
5 threat -- there's various panelists here who  
6 have endured that -- we do a threat  
7 assessment, right, of that information coming  
8 in.

9 So we don't limit in that regard. We  
10 work with the FBI on this quite closely. And  
11 therein why we ask for more resources, so we  
12 can expand our footprint in doing this type  
13 of work.

14 ASSEMBLYMAN OTIS: So are more  
15 typically at the State Police going to get  
16 that kind of event as opposed to an  
17 individual cyber theft with an individual  
18 type situation? Or do you get those also?

19 STATE POLICE SUPT. JAMES: We do get  
20 the independent ones as well. If there is an  
21 email sent, a threat to a dignitary,  
22 obviously we conduct the criminal  
23 investigation, we work with the vendors of  
24 the IP addresses, right. We get that, we get

1 the subpoenas, we work cases.

2 There are cases that are emanating  
3 from out of state. The -- En Con,  
4 unfortunately, when they dealt with the  
5 squirrel matter, we worked with them. It  
6 lasted for weeks. And it really ramped up.  
7 It got to be pretty serious because then the  
8 commissioner at that time was enduring, you  
9 know, various threats. So we did take on  
10 that case to assist.

11 ASSEMBLYMAN OTIS: That's great.

12 Sir, look forward to working with you  
13 post-today and talk more about cybersecurity  
14 and the State Police involvement and help.

15 Thank you very much.

16 STATE POLICE SUPT. JAMES: Likewise.

17 Thank you.

18 CHAIRWOMAN KRUEGER: Senator Gonzalez.

19 SENATOR GONZALEZ: Thank you,

20 Chairwoman.

21 And thank you all for being here today  
22 and for your testimony. My questions are  
23 directed to the DOCCS commissioner. Again,  
24 thank you for being here.

1           The death of Robert Brooks was  
2           horrific. And it shook so, so many of us to  
3           our core. As you heard from Senator Cleare,  
4           it is something that my constituents and many  
5           of us who are here as elected representatives  
6           are going to live with the rest of our lives.

7           As you've heard from the family of  
8           Robert Brooks, justice looks like policy  
9           change. And it looks like making sure that  
10          this does not happen again. And so my  
11          question is very simple. In ensuring that  
12          this doesn't happen again, are you collecting  
13          data points across your correctional  
14          facilities on staff complaints and  
15          identifying trends, or particular facilities  
16          that are seeing a rise in the number of  
17          complaints?

18          DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
19          so we collect data from a number of data  
20          points. And with the Governor's investment  
21          in the Office of Special Investigations, it  
22          will allow me to get ahead of that trend to  
23          make sure that we're mitigating risk and  
24          identify it at the lowest level all the way

1 to systemically throughout the organization.

2 I also think the independent review by  
3 this law firm on pattern and practice and  
4 recommendations in moving forward is going to  
5 be critical to our cultural shift and making  
6 sure that we're ridding the system of anybody  
7 that thinks that this is even remotely,  
8 remotely acceptable behavior. As well as  
9 making sure that we're supporting the people  
10 that want to do the right thing each and  
11 every day.

12 SENATOR GONZALEZ: Absolutely. I  
13 think transparency and knowing the types of  
14 complaints, knowing when they're happening  
15 and then a year-to-year analysis would be  
16 helpful in reassuring our constituents that  
17 this is being addressed and we are seeing a  
18 decrease.

19 So just very briefly, have we seen an  
20 increase in recent years or a decrease?

21 DOCCS COMMISSIONER MARTUSCELLO: So we  
22 have had an increase in overall cases to the  
23 Office of Special Investigations. Last year  
24 they had over 14,000 cases that they had

1 taken on through OSI.

2 As we get more avenues for people to  
3 make complaints and they feel more  
4 comfortable in doing so, we see continued  
5 increases. Which again, with the expansion  
6 of OSI, making sure that we're handling every  
7 one centrally.

8 I've also implemented a few other  
9 things where I'm embedding OSI at every  
10 facility so that they're there in the  
11 institutions. And they're also, every two  
12 months, meeting with every incarcerated  
13 liaison committee with no facility  
14 representation in the room. Right? So that  
15 way the incarcerated at that institution can  
16 speak directly to OSI with no fear of  
17 retaliation or fear of what they're saying or  
18 who's listening.

19 SENATOR GONZALEZ: Certainly  
20 appreciate your responsiveness and answers.  
21 Would you be willing to share some of those  
22 reports with the Legislature?

23 DOCCS COMMISSIONER MARTUSCELLO: Sure.

24 SENATOR GONZALEZ: Great. Thank you

1 so much.

2 DOCCS COMMISSIONER MARTUSCELLO: Thank  
3 you.

4 CHAIRWOMAN KRUEGER: Assembly.

5 CHAIRMAN PRETLOW: Assemblywoman  
6 Giglio.

7 ASSEMBLYWOMAN GIGLIO: Thank you,  
8 Chairman. And thank you all for being here.

9 So my question has to deal with  
10 Medicaid prior to release also, and  
11 qualifying people for Medicaid when they've  
12 been incarcerated for many years and they may  
13 not have a home address or a driver's license  
14 or something that they need in order to get  
15 Medicaid, especially if they're incarcerated  
16 and they have mental health or co-occurring  
17 disorders, substance abuse, and getting them  
18 the reentry and the medication that they need  
19 to become a productive member of society.

20 So I know in Suffolk County that's a  
21 big challenge, and releasing people and not  
22 knowing where they're going to go to get  
23 their medications. And -- so we'll start  
24 with that.

1           And then also if you could just touch  
2           base on the people that are incarcerated that  
3           maybe should be in hospitals because they  
4           have mental health or co-occurring disorders  
5           that you can't necessarily treat in the jail  
6           system -- but the Governor's proposal for  
7           involuntary committing to hospitals and how  
8           that would affect the availability of beds  
9           for incarcerated individuals.

10           COMMISSIONER MARTUSCELLO: Yeah, so  
11           thank you for your questions.

12           In terms of Medicaid, right, the  
13           instant a person comes into our custody we  
14           work on procuring their documents. Two years  
15           ago in the Governor's budget, which became  
16           the enacted budget, we changed the section of  
17           law. Originally it allowed me as -- when  
18           somebody's incarcerated, to receive their  
19           birth certificate free of charge. But it  
20           allowed cooperation on behalf of the  
21           individual.

22           And sometimes people are like, I have  
23           that at home, we don't need to get it. So it  
24           allowed now for the sentencing commitment to

1 be used for us to ascertain their birth  
2 certificate.

3 That was proof enough to the federal  
4 government for a Social Security card, where  
5 prior to, they would only allow me to get it  
6 90 days prior to release. Once we showed our  
7 commitment to documents, they allowed me to  
8 back that up in my MOU to 180 days.

9 I also have a partnership with DMV  
10 where I have DMV stations in every one of our  
11 facilities. When we have the documents, we  
12 have a point system and we transmit it to DMV  
13 and we're issuing non-driver IDs. We issued  
14 over 1800 last year.

15 So 88 percent of the population we  
16 released returned to the community with  
17 Medicaid when they went back.

18 Also, in terms of medication, we  
19 release incarcerated people with a supply of  
20 medication. So we bridge that continuity gap  
21 to make sure that they're maintained on their  
22 medication and that they have services.  
23 Where they need other services, like  
24 methadone, we have a discharge planning unit

1 in terms of handing off to the community.

2 When it comes to mental health, a  
3 third of my population is on the mental  
4 health caseload, a little over 9800, with  
5 1800 having serious mental health illnesses,  
6 SMIs.

7 Embedded in our institutions, pursuant  
8 to state law, the Office of Mental Health  
9 provides services. We have specialized beds  
10 inside of our facilities that they utilize.

11 So the proposal that the Governor has  
12 advanced with OMH will have no effect on my  
13 population. If there is a need, they can  
14 transfer to Central New York Psych Center.

15 ASSEMBLYWOMAN GIGLIO: Thank you.

16 DOCCS COMMISSIONER MARTUSCELLO: Thank  
17 you, ma'am.

18 CHAIRWOMAN KRUEGER: Thank you.

19 Senator Bynoe.

20 SENATOR BYNOE: Thank you,  
21 Madam Chair.

22 My question is for the commissioner of  
23 Corrections. Are you -- I know you're  
24 engaging with consultants. And so my

1 question is whether they are looking at an  
2 early intervention system that would identify  
3 officers that might be susceptible to  
4 misconduct or negative outcomes.

5 And if you have the system, please  
6 explain to me what indicators you're using to  
7 identify those officers.

8 COMMISSIONER MARTUSCELLO: Yeah, so  
9 two things.

10 The independent review is doing a  
11 holistic review independently. So they're  
12 looking at everything. There is nothing that  
13 is off-limits to this review. They're really  
14 doing a systemic review from a pattern and  
15 practice, as well as looking at how we're  
16 tracking things, how we're identifying  
17 trends. So that will be a very transparent  
18 report once they're complete.

19 Secondly, as I mentioned in my  
20 previous testimony, with our Office of  
21 Special Investigations there's funding in  
22 this budget, \$7.2 million, to expand OSI,  
23 which is also expanding the analytic aspects  
24 of OSI to identify trends right down to the

1           employee, where they have numerous  
2           misconducts, so we can intervene early.

3                     We do this now, but it's more  
4           reactionary. I want to be ahead of that and  
5           have indicators early so we can avoid  
6           misconduct and intervene in the first  
7           instance, whether it's new training or  
8           discipline, whatever that may be.

9                     And lastly, I really want to utilize  
10          my research staff to really then put together  
11          all the dots for us, right? I have a lot of  
12          data available, and I do a lot of analysis on  
13          the population and meeting their needs. I  
14          want to make sure that that unit also has all  
15          of the data to put together a very  
16          comprehensive picture.

17                    SENATOR BYNOE:    Thank you.

18                    So there's a model already out there  
19          specific for policing regarding early  
20          intervention systems, and it's highly  
21          renowned throughout the nation. So please,  
22          I'd ask that you research that and consider  
23          employing that.

24                    With the little time I have left, I'd

1           like you to answer some questions regarding  
2           educational programs in the jail that would  
3           reduce recidivism and optimize outcomes for  
4           those that are being reacclimated into the  
5           community.

6                     DOCCS COMMISSIONER MARTUSCELLO:  Yeah,  
7           I'm a very strong supporter of education  
8           within the correctional system.  It's really  
9           the great equalizer.

10                    We have a great partnership with  
11           30 different providers providing college  
12           programs in 38 of our prisons, and soon to be  
13           all 41 prisons.  Separating out Edgecombe,  
14           because that's for releasees.

15                    We have a great partnership with  
16           Bard College, Hudson Link, SUNY.  We offer  
17           associate's degrees, bachelor's degrees.  We  
18           have master's degree programs.

19                    For those that aren't interested in  
20           college or don't have that level of  
21           education, we have one of the highest rates  
22           of GED passing.

23                    We have 27 different vocational  
24           programs, including barbering and

1           cosmetology, which are licensing. Twelve  
2           apprenticeship programs. We can talk more.

3                     SENATOR BYNOE: Thank you. We will.

4                     CHAIRMAN PRETLOW: Assemblywoman  
5           Walker.

6                     ASSEMBLYWOMAN WALKER: Thank you,  
7           Mr. Commissioner.

8                     So I was also wondering with respect  
9           to the number of potential and previous  
10          beatings that have taken place within the  
11          correctional facilities, is there a  
12          whistleblower policy for another officer who  
13          may know of someone who just has a propensity  
14          towards this type of treatment towards people  
15          who are incarcerated?

16                    And what is that policy? And can you  
17          make it available for review?

18                    COMMISSIONER MARTUSCELLO: Yeah, I  
19          recently just issued a whistleblower policy  
20          to all staff throughout the agency. And  
21          we're going to be converting that to a  
22          permanent department directive. And I'd be  
23          glad to share it with your office.

24                    But again, it's widespread. We made

1           sure every single staff person got a copy of  
2           the policy. And there's requirements in our  
3           employee's manual, a duty to intervene and a  
4           duty to report misconduct. So that's already  
5           embedded in our policies.

6                     ASSEMBLYWOMAN WALKER: Thank you.

7                     So if there is retaliation of a  
8           whistleblower, is there a policy that's in  
9           place to deal with any retaliation by fellow  
10          colleagues?

11                    COMMISSIONER MARTUSCELLO: Again,  
12          that's covered in the whistleblower policy  
13          but also in the laws of the State of New York  
14          in terms of protecting whistleblowers.

15                    So there's a variety of avenues that  
16          someone can go to if they are retaliated  
17          against -- including us, which we would then  
18          investigate and take appropriate conduct,  
19          including referrals to other agencies if  
20          necessary.

21                    ASSEMBLYWOMAN WALKER: Awesome.

22                    I want to ask about the interstate  
23          compact. You know I love that. For folks  
24          who want to be closer to their family

1 members, how is that policy determined? Are  
2 there any exceptions? Is there ever an  
3 opportunity for New York State to take a look  
4 at its interstate compact with other states  
5 and prisons?

6 COMMISSIONER MARTUSCELLO: So the way  
7 the interstate compact works -- and I know my  
8 office has had some discussions with yours on  
9 this -- is that the current entity or the  
10 current state has to initiate the request.  
11 Right? So that's a first and primary  
12 objective. And then the receiving state has  
13 to be willing to accept.

14 I haven't taken anybody on an  
15 interstate compact I think in the history  
16 that I'm aware of. I think that we've had  
17 one individual from another state that has  
18 come through the interstate compact.

19 I'm focused on the people that are  
20 sentenced in New York that are serving a  
21 sentence in New York, not people that have  
22 committed crimes in other states, the benefit  
23 to us as that state, and then the amount of  
24 people that that can potentially open us up

1 to getting a request for. And then how do  
2 you pick and choose who you're allowing and  
3 who you're not?

4 ASSEMBLYWOMAN WALKER: Okay, thank  
5 you.

6 So I know you mentioned the DMV  
7 stations and IDs. And the thing that I love  
8 about DMV is the connection to voting and  
9 registering to vote. So one of the things  
10 that we're considering is voting -- having  
11 polling locations within many of the jails  
12 around the State of New York.

13 Can we talk at a point later about  
14 implementation of that policy?

15 COMMISSIONER MARTUSCELLO: Of course  
16 we can. I don't oversee jails. We can still  
17 talk.

18 ASSEMBLYWOMAN WALKER: Yes, thank you.

19 CHAIRWOMAN KRUEGER: Thank you.

20 I think I'm the last Senator for the  
21 first round. So thank you, gentlemen, for  
22 being here so long.

23 So, let's see, starting with the  
24 State Police. So now we're giving birth to

1 babies on the subways so maybe we won't need  
2 you as much anymore, so -- thought I would  
3 just share some good news about the MTA.

4 Second, for Corrections. So at an  
5 earlier hearing -- I've been at them all, so  
6 they're all in my brain -- there was a  
7 discussion about the fact that the City of  
8 New York says it needs 500 more forensic beds  
9 because they have so many people in the jails  
10 that have been determined not to be able to  
11 come to trial because of their mental status.

12 And I'm curious if you have an  
13 estimate of how many you think are statewide  
14 in the state and I guess local jails.  
15 Because that seemed like a very large number  
16 that I don't think we're going to solve right  
17 away, and I'm just curious whether you're  
18 seeing this also.

19 COMMISSIONER MARTUSCELLO: Yeah,  
20 unfortunately I'm not familiar with those  
21 numbers.

22 I only interact with the jails in New  
23 York City once somebody is sentenced and they  
24 become state-ready and we take them into

1 custody, or in a very specific provision of  
2 Correction Law where it's a substitute jail  
3 order where they can't safely house the  
4 individual and I can.

5 But otherwise, I wouldn't have that.  
6 State Commission of Corrections may have  
7 access to that data.

8 CHAIRWOMAN KRUEGER: Okay. I would  
9 appreciate your following up, because I think  
10 it's the State Department of Mental Health  
11 who's supposed to be responsible for the  
12 forensic centers, but -- and they talked  
13 about trying to create 127 -- no, they  
14 started -- they -- excuse me. They talked  
15 about increasing staffing for the existing  
16 facilities, but not growing the beds or the  
17 facilities.

18 And I think a lot of the discussion  
19 today about worst-case stories in our jails,  
20 state or local, are the fact that they are  
21 ending up simply the places where we house  
22 mentally ill people. And it's a really bad  
23 model for housing mentally ill people.

24 Going to you, Deputy Commissioner. So



1           we do, damned if we don't. If we believe  
2           that Raise the Age was an important model and  
3           was going to result in fewer young people  
4           ending up having to be picked up by our  
5           police for crimes and perhaps ultimately  
6           ending up in the DOCCS system, we want to  
7           make sure we are delivering on our  
8           investment.

9                     Has this issue come to you?

10                    DCJS EX. DEP. CMR. POPCUN: Yes.

11                    (Laughter.)

12                    CHAIRWOMAN KRUEGER: And what are we  
13           going to do about it?

14                    DCJS EX. DEP. CMR. POPCUN: Raise the  
15           Age is near and dear to my heart, having  
16           worked on it in the Governor's office and  
17           worked on implementation. And, you know, as  
18           you articulated, it's set up to avoid people  
19           getting automatically sent to the adult  
20           criminal justice system.

21                    With regard to funding, the way that  
22           the -- that provision of law was set up was  
23           to really reassure the counties -- at the  
24           time the counties were very reluctant about

1 supporting Raise the Age, given the potential  
2 burden on their systems. And so Raise the  
3 Age covers the marginal costs associated with  
4 implementing Raise the Age.

5 And the structure for the \$250 million  
6 is that every county has the ability to  
7 submit a plan. That plan is then reviewed by  
8 OCFS, DCJS, and to a lesser extent the  
9 State Commission on Corrections, to make sure  
10 it's proportional to the youth that are  
11 within their juvenile justice system. And  
12 then we provide the funding to them. That  
13 has continued and has been relatively  
14 seamless.

15 But the difficulty becomes what we  
16 talked about before, how do you move beyond  
17 the county to support cities, community-based  
18 organizations that are really trying to drive  
19 change on the ground?

20 And I think that's where DCJS has seen  
21 dramatic success through Project Rise or the  
22 SNUG programs, where we've gone into the  
23 communities, set the table and said, Here's  
24 \$2 million, and the only requirement is that

1 the community has to decide where it goes and  
2 you have to pass through a minimum of  
3 25 percent to mom-and-pops who have never  
4 gotten state dollars.

5 We really recognize that  
6 community-based organizations are the  
7 fourth branch of government. They're the  
8 ones who are going to be providing these  
9 services to youth and families that keep them  
10 away from these systems.

11 So I think we have kind of perfected  
12 our model and are supporting more investments  
13 there this year. The Governor included  
14 \$10 million for a neighborhood action safety  
15 plan in the Bronx and kind of beyond. And so  
16 this is going to be our first pilot of  
17 bringing those principles from RISE and SNUG  
18 and other community investments to New York  
19 City, where they are sorely needed.

20 CHAIRWOMAN KRUEGER: So I'm not going  
21 to disagree with you about the other  
22 investments you're making, although those  
23 numbers are still quite small compared to  
24 what I believe were the statutory numbers to

1 go towards Raise the Age.

2 So are you suggesting that we don't  
3 really need Raise the Age and that's not a  
4 good use of money?

5 DCJS EX. DEP. CMR. POPCUN: No, I  
6 would not suggest that at all.

7 I would say that New York City, again,  
8 does not seem to meet the statutory  
9 definition that you've articulated. I could  
10 say that's -- that is true.

11 And I think that youth, no matter  
12 where they are, deserve the services that are  
13 offered by the Raise the Age funding.

14 CHAIRWOMAN KRUEGER: And you would  
15 agree that the majority of youth in the  
16 Raise the Age programs are in fact in  
17 New York City?

18 DCJS EX. DEP. CMR. POPCUN: I don't  
19 know. I'd have to look at the -- I don't --  
20 I would say that we see an increase in  
21 intakes, juvenile intakes and adjustments and  
22 others, and it's proportionally -- yeah, I'd  
23 say it's probably 60 percent New York City.

24 But I'd have to get those numbers to

1 your office.

2 CHAIRWOMAN KRUEGER: Okay. And again,  
3 in my research I learned that the city could  
4 request a waiver from that 2 percent property  
5 tax cap in order to draw down these funds  
6 that they believe, and I believe, they've  
7 been owed for many years.

8 Would your agency support the waiver  
9 request if it came in? Because they admitted  
10 they hadn't put in the waiver request.

11 DCJS EX. DEP. CMR. POPCUN: I believe  
12 that provision of law does not give me that  
13 power, nor the commissioner. It gives the  
14 director of the Division of Budget that  
15 power.

16 CHAIRWOMAN KRUEGER: So only the  
17 director of Budget. Because I asked the same  
18 question of the commissioner of OCFS.

19 DCJS EX. DEP. CMR. POPCUN: That is my  
20 understanding.

21 CHAIRWOMAN KRUEGER: Okay, so we need  
22 to deal with that. But we can't blame you.

23 DCJS EX. DEP. CMR. POPCUN: I would  
24 hope not.

1 (Laughter.)

2 CHAIRWOMAN KRUEGER: I'm going to give  
3 up the rest of my minutes. Thank you all  
4 very much.

5 Assembly.

6 CHAIRMAN PRETLOW: Assemblyman Bores.

7 ASSEMBLYMAN BORES: Thank you for  
8 being here.

9 I think I have two quick yes-or-no  
10 questions for DCJS, and then questions for  
11 the superintendent of State Police.

12 To the executive deputy commissioner,  
13 you know the importance of data-run crime,  
14 obviously. New York is actually one of the  
15 worst states in terms of reporting hate crime  
16 data to the national database, NIBRS. We're  
17 the ninth-worst in terms of coverage by  
18 population, third worst in coverage by  
19 precincts. Only 31 percent of our precincts  
20 report hate crime data.

21 Bit of a tautological question, but  
22 would having more precincts report this data  
23 give us a better view on where hate crimes  
24 are happening in New York State?

1 DCJS EX. DEP. CMR. POPCUN: So thank  
2 you very much for the question.

3 And I came prepared: 195 agencies  
4 moved over, and that's 80 percent of crime  
5 for NIBRS. And how NIBRS works is that it  
6 actually sits in the records management  
7 system. And so it removes the guesswork from  
8 these crime reports.

9 So if an officer starts to, you know,  
10 make an arrest or investigate a crime, any of  
11 the elements that would touch the hate crimes  
12 statute automatically trigger that hate crime  
13 report.

14 So we actually see that in the past  
15 12 months, 63 percent of NIBRS reporting  
16 agencies did not have a reported hate crime,  
17 but that's compared to 79 percent of the  
18 summary crime reporting statistics. So it  
19 does seem to be that NIBRS is helping us  
20 report more hate crime activity.

21 ASSEMBLYMAN BORES: Wonderful.

22 DCJS EX. DEP. CMR. POPCUN: On the  
23 summary reporting one -- and I know your time  
24 is short -- we do follow up. So if an

1 organization is delinquent, we follow up and  
2 say: Hey, you have to say "nothing to  
3 report."

4 ASSEMBLYMAN BORES: Okay.

5 Superintendent, your testimony  
6 mentions Governor Hochul's increased funding  
7 for the New York State Intelligence Center  
8 and the threat of terrorism. That's great.  
9 I'm glad we're doing that.

10 But this budget scares my constituents  
11 because it also includes 45 million for the  
12 Joint Task Force Empire Shield, as per DMNA,  
13 which is a 72 percent increase for a force  
14 that is just meant to fight terrorism in  
15 New York City.

16 Has there been a 72 percent increase  
17 in the threat of terrorism to New York City  
18 or things outside the bounds of what the  
19 State Police can handle?

20 STATE POLICE SUPT. JAMES: No, they're  
21 not outside the bounds of what we can handle.

22 But with regard to terrorism, it's not  
23 a limited scope. There's transnational  
24 terrorism. There's the broader and bigger

1 picture that it's always prudent to plan for.  
2 You don't wait until you get into the depths  
3 of it and then ask --

4 ASSEMBLYMAN BORES: Absolutely. How  
5 should my constituents react to that  
6 72 percent increase? What should we be  
7 taking from that?

8 STATE POLICE SUPT. JAMES: Good  
9 question.

10 I would say obviously it's an  
11 investment into the prudent state that -- the  
12 steps that the state, federal and local are  
13 taking collectively so that we can mitigate,  
14 as best we can, any threats to the homeland  
15 and beyond.

16 ASSEMBLYMAN BORES: That's a sort of  
17 one-time increase on special services, on  
18 surging salaries. Do you expect that to  
19 continue going forward?

20 STATE POLICE SUPT. JAMES: If I could  
21 predict what crime would be, it would be  
22 easier.

23 But I would say I don't foresee the  
24 threats going away with -- as it faced --

1           whether it's domestic or transnational. So  
2           funding will probably -- a request will  
3           probably follow.

4                     ASSEMBLYMAN BORES: Thank you.

5                     STATE POLICE SUPT. JAMES: Okay?

6           You're welcome.

7                     CHAIRMAN PRETLOW: Assemblyman Meeks.

8                     ASSEMBLYMAN MEEKS: Thank you. This  
9           question is for Commissioner Martuscello.

10                    You mentioned earlier your  
11           whistleblower policy that you're willing to  
12           share with us. These individuals aren't  
13           considered mandatory reporters, mandated  
14           reporters?

15                    DOCCS COMMISSIONER MARTUSCELLO: Under  
16           our policies, they are -- have to mandatorily  
17           report misconduct, and duty to intervene.

18                    ASSEMBLYMAN MEEKS: So therefore you  
19           don't necessarily need the whistleblower  
20           policy.

21                    DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
22           the whistleblower policy is about making sure  
23           people understand the avenues to report, that  
24           they could do it anonymous, without fear of

1           retaliation, right?

2                     The more we publicize the ways in  
3           which to report and that that's our  
4           expectation, and we educate our employees, I  
5           think that the better we're going to be, and  
6           the more people we'll get to come forward  
7           with allegations of misconduct and/or  
8           witnessing misconduct.

9                     ASSEMBLYMAN MEEKS: Thank you.

10                    So the state settled a lawsuit with  
11           Carl Taylor's family for \$5 million after  
12           officers reportedly beat, jumped on him,  
13           choked him to death.

14                    If the state settled for 5 million,  
15           the state must have recognized that officers  
16           have been responsible for killing  
17           Carl Taylor.

18                    With that being said, where are those  
19           officers now?

20                    DOCCS COMMISSIONER MARTUSCELLO:  
21           Assemblymember, I can follow up with you  
22           offline.

23                    I know -- I am familiar with that  
24           case. In terms of where the specific

1 officers are and what the terms were around  
2 the Attorney General and the determination to  
3 settle that case, I can definitely get you  
4 more information.

5 ASSEMBLYMAN MEEKS: Thank you.

6 And this question is for  
7 Commissioner Rosado.

8 According to a crime gun trace report  
9 in Rochester, New York, from 2012 to 2022,  
10 43 percent of crime guns traced back to  
11 in-state dealers. Of the top 30 crime gun  
12 dealers, trace guns by dealer location from  
13 2012 to 2022, 66 percent were in-state, of  
14 which 53 percent were in Monroe County.

15 Is DCJS pushing for any level of  
16 accountability for, quote, unquote, legal gun  
17 dealers in which their guns are ending up in  
18 the streets involved in crimes throughout our  
19 communities?

20 DCJS EX. DEP. CMR. POPCUN: Yes. And  
21 while I'm not Commissioner Rosado, I --

22 ASSEMBLYMAN MEEKS: I'm sorry.

23 DCJS EX. DEP. CMR. POPCUN: No, it's  
24 okay.

1           I -- that information from ATF  
2           actually comes from an investment that we  
3           make in the NIBN, the National Integrated  
4           Ballistics Network. So we've deployed these  
5           machines throughout the state, and it allows  
6           for the quick correlation to say, okay, is  
7           this a crime gun, was it connected to a crime  
8           gun? So that's kind of where the data comes  
9           from.

10           To your point around what we're doing  
11           to engage our federally licensed firearm  
12           dealers, both the State Police and DCJS have  
13           an obligation to provide information to the  
14           dealers, ensuring that there is safe storage,  
15           ensuring that they use locks, ensuring that  
16           they're reporting any missing firearms.

17           So we take it very seriously that --  
18           the statistics you've mentioned about  
19           Monroe County and how those guns are ending  
20           up in crimes.

21           ASSEMBLYMAN MEEKS: So if you're doing  
22           that research, could you consider not  
23           redacting the information as to who's doing  
24           this?

1 DCJS EX. DEP. CMR. POPCUN: Yes. And  
2 I think there actually is some -- we can  
3 follow up.

4 ASSEMBLYMAN MEEKS: Appreciate it.

5 CHAIRMAN PRETLOW: Assemblymember  
6 Mitaynes.

7 ASSEMBLYWOMAN MITAYNES: Hi.

8 This is for Commissioner Martuscello.  
9 The city published a report in 2020 that  
10 stated many deaths in New York State prisons  
11 are preventable, and cited examples of  
12 grossly substandard medical treatment that  
13 led to preventable deaths of incarcerated  
14 people.

15 Moreover, the average age of death by  
16 so-called natural causes in New York State  
17 prisons is, shamefully, only about 57 -- a  
18 life expectancy that if a New York prison was  
19 a county, would place them among the 10 worst  
20 in the world.

21 What has DOCCS done to address the  
22 substandard medical treatment that  
23 contributes to this shocking statistic since  
24 you took over, and what do you plan to do in

1 the near future?

2 DOCCS COMMISSIONER MARTUSCELLO: Yeah,  
3 so thank you for the question.

4 I don't know that I generally support  
5 that report in terms of our care.

6 But we have, you know, obviously a --  
7 almost \$400 million goes to our health  
8 budget, and we offer health services within  
9 our institutions that match the quality of  
10 care in the community. Obviously we can't  
11 provide all that level of care, so we have a  
12 network of hospitals that we work with, some  
13 of which we have secure wards that we're able  
14 to leverage in addition to our own  
15 institutions.

16 Within the institutions, we have five  
17 regional medical units, and in those units we  
18 attract specialists to provide additional  
19 services for individuals that are under our  
20 care. And certainly if they need care beyond  
21 that, then we work with a variety of  
22 providers.

23 You know, the one thing that I think  
24 that regardless of -- when we look at

1 healthcare in a prison system, whether in  
2 New York or elsewhere, that we fail to take  
3 the step backwards and take a look at the  
4 healthcare prior to becoming incarcerated.  
5 Which typically, you know, they've had  
6 healthcare issues or come from healthcare  
7 deserts, and they come with chronic  
8 conditions before they even get to us, and  
9 that we are treating them along the way.

10 But healthcare is something that's  
11 critically important to me in making sure  
12 that we're providing that level of care,  
13 doing pain management, medication-assisted  
14 treatment, and really serving the needs of  
15 our population.

16 ASSEMBLYWOMAN MITAYNES: Thank you.

17 Many older people die soon after they  
18 are released from prison. Does the  
19 department track deaths of people on parole?

20 DOCCS COMMISSIONER MARTUSCELLO: So we  
21 know if you're on parole and if you pass  
22 away. But you have no obligation to notify  
23 us or for the family to notify us what the  
24 cause of death is. Right?

1           So if you're on supervision, we'll  
2 know that you had passed away because I  
3 should have been checking in on you, right,  
4 so I would at least know that.

5           But to the extent -- unlike when they  
6 are inside and the medical examiner and the  
7 coroner does an autopsy and provides a cause  
8 of death that's provided to the department by  
9 a matter of law. So it's not the same for  
10 people in the community.

11           ASSEMBLYWOMAN MITAYNES: Thank you.

12           I yield the rest of my time.

13           DOCCS COMMISSIONER MARTUSCELLO: Thank  
14 you, ma'am.

15           CHAIRMAN PRETLOW: Assemblywoman  
16 Reyes.

17           ASSEMBLYWOMAN REYES: Good afternoon.

18           DOCCS COMMISSIONER MARTUSCELLO: Good  
19 afternoon.

20           ASSEMBLYWOMAN REYES: We have and will  
21 talk a lot about Robert Brooks today. You  
22 mentioned earlier that there has been  
23 progressive discipline of the staff involved.

24           And I have a deep respect for workers

1           and protections and upholding collective  
2           bargaining agreements. However, progressive  
3           discipline cannot and should not apply when  
4           staff murders somebody.

5                        So I'm just wondering whether, within  
6           your collective bargaining agreements or  
7           within DOCCS' protocols, is there any  
8           guidance or standards of practice that speak  
9           to the use of excessive force?

10                      DOCCS COMMISSIONER MARTUSCELLO: So,  
11           again, the discipline is spelled out in the  
12           collective bargaining agreement, and each  
13           unit has a varying process.

14                      But for the security staff, which I  
15           assume you're talking about, the individuals  
16           that were mostly in that video, the process  
17           is the same. Right? We issue -- we issue  
18           charges, the union can grieve those charges,  
19           we meet and confer, and then a demand for  
20           arbitration.

21                      ASSEMBLYWOMAN REYES: Are those  
22           charges within the labor -- within labor  
23           practices? Or these are criminal charges?

24                      DOCCS COMMISSIONER MARTUSCELLO: No,

1 the criminal charges we would refer to an  
2 outside entity which is following the  
3 criminal charges.

4 This is strictly administrative. We  
5 do referrals for criminal prosecution, both  
6 at the local, state and federal level.

7 But I'm --

8 ASSEMBLYWOMAN REYES: Understood.

9 I just think that this is not an  
10 administrative overstep. This is the  
11 murdering of a human being.

12 So I think what has been troubling  
13 some of us, and I think part of the line of  
14 questioning that you've received here, is the  
15 fact that folks want to see something more.  
16 In no other profession would somebody get  
17 away with taking somebody's life without any  
18 repercussions.

19 DOCCS COMMISSIONER MARTUSCELLO: Yeah.  
20 Again, I don't have oversight of the  
21 criminal, but I totally agree with you, as  
22 does the Governor. These people need to be  
23 held criminally responsible for their crimes.

24 And I know the DA is working very

1 feverishly after taking the case away from --  
2 or taking the case over from the  
3 Attorney General.

4 In terms of administratively, we're  
5 also seeking termination. I wish I had the  
6 ability to unilaterally terminate, because I  
7 saw enough on that video --

8 ASSEMBLYWOMAN REYES: And again, in  
9 any other profession, somebody would have  
10 lost their jobs by now.

11 And in my last couple of seconds, I  
12 have a question for you, DCJS.

13 So in 2021 we passed a Hate Crimes  
14 Analysis and Review Act, which requires DCJS  
15 to compile hate crimes data for perpetrators  
16 and victims. Any update on that data? Have  
17 you guys produced a report?

18 DCJS EX. DEP. CMR. POPCUN: So we're  
19 actually finalizing the regs.

20 We spent a lot of time working with a  
21 lot of the advocacy organizations and also  
22 OVS and others, to make sure that wouldn't be  
23 traumatizing to victims of hate crimes in  
24 terms of collecting their information, making

1           sure we were getting the right demographic  
2           information, and making sure that law  
3           enforcement was able to start reporting that.

4                     So we look forward to kind of having  
5           that out in the field and getting the first  
6           slice of data to be able to show you.

7                     ASSEMBLYWOMAN REYES: Appreciate it.  
8           Thank you.

9                     CHAIRMAN PRETLOW: Assemblywoman  
10          Kelles.

11                    ASSEMBLYWOMAN KELLES: Hi. First  
12          question, about the DCJS data.

13                    The dismissal data, it is with -- it's  
14          the arrest charge, and following the arrest  
15          charge through to a disposition. So it  
16          doesn't distinguish dismissals, for example,  
17          if they're dismissed within the first  
18          24 hours because the DA doesn't feel that  
19          there's enough information; a dismissal  
20          because the grand jury doesn't feel that  
21          there's enough information and it doesn't  
22          align -- it doesn't include any dismissals  
23          during the period where the clock has  
24          stopped.

1           It doesn't make any distinction  
2           between all of those reasons for dismissal,  
3           right?

4           DCJS EX. DEP. CMR. POPCUN: Correct.  
5           We're getting that feed from the Office of  
6           Court Administration. And as they noted, you  
7           know, we're getting broad categories but not  
8           the specific reason for --

9           ASSEMBLYWOMAN KELLES: Right. I asked  
10          that specifically because if there are other  
11          reasons -- for example, we are talking about  
12          discovery, people are using your data, and  
13          the increase over time from 28 to 41 percent  
14          of dismissals.

15          But if you had a significant increase,  
16          for example, in the number of dismissals that  
17          happen in the first 24 hours, that would  
18          suggest that there's a difference in behavior  
19          of the arresting officer, potentially.

20          Or if you see a significant increase  
21          in the number of dismissals where that  
22          happens, you know, with the grand jury first  
23          review, then it would suggest that there is a  
24          change in behavior of the DAs in what charges

1           they're giving them, and you can't  
2           distinguish.

3                        So the only type of data that would  
4           actually distinguish this would be data that  
5           would track dismissals of speedy trial felony  
6           indictments and dismissals of those, correct?

7                        DCJS EX. DEP. CMR. POPCUN: I don't  
8           know that that's the only source. I mean, I  
9           think --

10                      ASSEMBLYWOMAN KELLES: But that would  
11           consistently -- any kind of dismissal from  
12           that case would most likely be because of  
13           discovery.

14                      DCJS EX. DEP. CMR. POPCUN: I think  
15           one could infer that. But I don't know  
16           that's always fair, yeah.

17                      ASSEMBLYWOMAN KELLES: I'm just  
18           concerned because your data's the data that's  
19           being used, and yet you can't distinguish.  
20           And there's many behaviors that may have  
21           changed because of discovery.

22                      So just, I think, maybe we can talk  
23           about that further, but --

24                      DCJS EX. DEP. CMR. POPCUN: Yes.

1                   ASSEMBLYWOMAN KELLES: And then a  
2 question -- one of the things that I'm  
3 seeing, I think people are really, really  
4 angry because if anybody else had committed a  
5 murder and it was on film and it was shown to  
6 the rest of the world, they would be in  
7 prison without parole.

8                   We are seeing a situation where not  
9 only are they not fired, they're out. And we  
10 ask, you know, do we feel safe? I mean, they  
11 committed murder. And so I just want to note  
12 I hear everything that you're saying, but I  
13 think that it's important to note that we're  
14 also hearing that two of them had, you know,  
15 confirmed records of serious abuse.

16                   Do you have a commitment to not only  
17 changing the policy -- and I'm going to step  
18 back for a second. My first question is  
19 about the cameras.

20                   Cameras are only about accountability,  
21 they're not about prevention. So my first  
22 question is -- and we'll talk about this  
23 afterwards -- what plans do you have for  
24 prevention?

1           The next question -- we'll have to  
2 talk about this afterwards -- is what are you  
3 going to do for those previous cases that  
4 also murdered people, in a lookback?

5           (Inaudible; off the record.)

6           ASSEMBLYWOMAN KELLES: We'll follow  
7 up.

8           CHAIRMAN PRETLOW: Assemblywoman  
9 Romero.

10          ASSEMBLYWOMAN ROMERO: Thank you.

11          And thank you all. This has been such  
12 an intense and long afternoon for all of you.

13          I just wanted to clarify on my  
14 colleague's question super-quickly, because  
15 it bears clarification. And this is for the  
16 DCJS deputy commissioner.

17          The dismissals and the public data  
18 that you have on dismissals, in that public  
19 information, does that information clarify if  
20 the dismissal is based off of discovery  
21 violations?

22          DCJS EX. DEP. CMR. POPCUN: Not that  
23 I've seen from the courts.

24          ASSEMBLYWOMAN ROMERO: And so just to

1 be -- the dismissal is not based off of the  
2 30.30 violation or if the dismissal is based  
3 off of prosecutorial misconduct. There's no  
4 distinction.

5 DCJS EX. DEP. CMR. POPCUN: No, and I  
6 think Judge Zayas said the same thing, which  
7 is their data doesn't --

8 ASSEMBLYWOMAN ROMERO: I'm sorry --

9 DCJS EX. DEP. CMR. POPCUN: Sorry.  
10 Judge Zayas said the same thing; their data  
11 doesn't distinguish what they post online,  
12 what the dismissal code is, or reason.

13 ASSEMBLYWOMAN ROMERO: So it's merely  
14 just a number.

15 DCJS EX. DEP. CMR. POPCUN: Correct.

16 ASSEMBLYWOMAN ROMERO: Okay, thank  
17 you.

18 CHAIRMAN PRETLOW: Okay, I really  
19 don't have a question -- but I do have a  
20 question. The question will come at the end  
21 of this. Quite honestly, I don't expect an  
22 honest answer, but I'll accept "I'll get back  
23 to you for that answer."

24 Late in December I was watching

1 television, like many of us in this room  
2 were. We saw a horrific sight on television.  
3 It was the brutal treatment of Mr. Robert  
4 Brooks. My wife, when she looked at it, she  
5 screamed and started to cry. I felt a knot  
6 in my stomach.

7 Yet when we're looking at this, the  
8 individuals that were standing around had the  
9 same appearance that I would have if I was  
10 waiting for the bus and a car drove by. It  
11 wouldn't affect me at all. And this didn't  
12 affect them.

13 So in my seeing this non-effect on  
14 these individuals, it tells me this is not an  
15 uncommon occurrence. This tells me this is  
16 an extremely common occurrence. It must have  
17 happened more than three, four, five times.  
18 Because the people were just standing around,  
19 like I said -- that any of us, if we're  
20 standing on the corner waiting for the bus  
21 and a car drove by, we would be affected like  
22 that -- no affect whatsoever.

23 So Commissioner, my question to you,  
24 which I don't expect an honest answer to, is

1           how often does this happen? And do you  
2           believe that cameras being on full-time will  
3           have some effect on these negative outcomes?

4                        COMMISSIONER MARTUSCELLO: Yeah,  
5           Assemblymember, thank you for the question.

6                        And I 100 percent share your outrage.  
7           And when I saw that video, I had the same  
8           thought, the exact same thought, that these  
9           people -- not even one person in the room  
10          winced. Right? They didn't -- nothing.  
11          There was no affect change whatsoever.

12                       So, you know, that tells me that  
13          they've engaged in some excessive force long  
14          before the brutal murder of Mr. Brooks.

15                       What I can say to you is in terms of  
16          the ongoing -- we have ongoing  
17          investigations, and we've referred outside  
18          prosecution for every death. So the death  
19          investigations are done independently. So I  
20          have some fidelity in the death  
21          investigations.

22                       But seeing that video makes me have to  
23          question everything. Right? I need to  
24          question everything. Right? And I don't

1 want to paint every employee with the same  
2 brush, no more than I want to paint every  
3 incarcerated with the same brush, because we  
4 have employees doing great things and we have  
5 incarcerated people doing great things and  
6 become successful.

7 But after seeing that and seeing how  
8 they reacted to that going on and the lack of  
9 emotion, the lack of intervening, it makes me  
10 have to question everything.

11 And really that's the Governor's  
12 sentiment as well. Right? We know we have  
13 good people, but we have to get to the root  
14 of how do people like that, A, become  
15 employed with us, and B, how do we get rid of  
16 them? And how do we make sure that we're  
17 creating a culture where we focus on  
18 humanity, dignity and respect?

19 Regardless of whatever color of  
20 uniform or clothing, piece of clothing you  
21 wear into work or inside of that  
22 institution -- officers wear blue,  
23 incarcerated wear green -- I don't care what  
24 color of clothing you are. We have one basic

1           thing: We're all human beings. Right?

2                     And that's why we're doing an  
3           independent review and making sure we're  
4           looking at our pattern and our practice, that  
5           we're looking at what's going on in our  
6           institution and our cultures. And what's our  
7           training to get to the preventative part that  
8           Assemblymember Kelles was talking about.

9                     That's why we're looking at our  
10          training from the very first day you walk  
11          into the institution to the training I give  
12          you every year on an annual basis. Right?  
13          We do implicit bias training. We do  
14          deescalation training. But are we telling  
15          people the right things? Are we fostering  
16          that culture from day one?

17                    I recently inserted a formerly  
18          incarcerated individual into my academy  
19          class, where he talks to the academy class.  
20          Because this individual talks about how  
21          correction officers and other incarcerated  
22          people changed his life, got him into school,  
23          got him graduated from high school, got him  
24          through college, right? And now he's an

1 executive director of a non-for-profit right  
2 now.

3 So hearing those stories and letting  
4 people hear the effects on people that you  
5 can have in these positions and in these  
6 institutions, that's the change that we need.  
7 And I'm committed to that.

8 CHAIRMAN PRETLOW: This event happened  
9 in the beginning of December, and we didn't  
10 find out until the end of December, which  
11 means there may have been an attempt to cover  
12 it up and somehow it slipped out. I don't  
13 know how it got out. The volume wasn't on  
14 the camera, but the cameras were rolling.  
15 And I thank God that at least this all came  
16 to light.

17 COMMISSIONER MARTUSCELLO: I can tell  
18 you this. I can rest assured that there was  
19 no attempt to cover up. We vigorously  
20 investigated this and identified that  
21 body-worn-camera footage. We weren't aware  
22 of the ability for recall on the cameras.  
23 But through our investigative staff we  
24 identified that and immediately turned it

1 over to the State Police and the Attorney  
2 General's office.

3 But because there was a criminal  
4 investigation, we couldn't move until which  
5 time we had approval to move and go forward.  
6 And then once we did, I issued very  
7 transparent statements both to the public as  
8 well as to my incarcerated population on  
9 multiple times, my superintendents, and to my  
10 staff.

11 There is absolutely no coverup. And I  
12 will not cover it up. Nobody is bigger than  
13 the whole, and we've got to treat people with  
14 dignity, respect and humanity. And I will  
15 never cover up crimes or misconduct conducted  
16 by staff, nor will I cover it up if they're  
17 perpetrated by incarcerated people, visitors,  
18 or anyone else.

19 CHAIRMAN PRETLOW: Well, thank you for  
20 that -- for that answer.

21 I know a colleague of mine spent the  
22 night at Marcy subsequent to this, and he  
23 came back with a lot of stories of abuse that  
24 he had gotten personally from some of the

1           incarcerated individuals.

2                   I'm pretty sure I can tell you that  
3           this whole situation is not being taken  
4           lightly by the Legislature, and there will be  
5           actions done. I mean, the Governor's budget  
6           calls for the closing of a few prisons. I  
7           don't know if Marcy is on that list. Maybe  
8           it should be on that list, if that's the  
9           culture of that particular institution. I'm  
10          really not sure of that.

11                   Do you have any insight on which  
12          facilities are being looked at to close?

13                   DOCCS COMMISSIONER MARTUSCELLO: Sir,  
14          there's no closures contemplated in the  
15          proposed budget.

16                   There were closures last year. There  
17          was an Article VII that passed in the enacted  
18          budget which would have given us the approval  
19          to close -- the Governor the approval to  
20          close up to five prisons. We closed two  
21          prisons. We had to give 90 days' notice.

22                   So our ability -- and the law sunsets  
23          on March 31st of this year. So the 90-day  
24          window is done, so that Article VII can no

1 longer be enacted on. And there's no  
2 closures in this proposed budget.

3 CHAIRMAN PRETLOW: Okay, thank you.

4 Assemblywoman Cruz, I hear you're  
5 back.

6 ASSEMBLYWOMAN CRUZ: Apologies for  
7 earlier, Mr. Chairman. And thank you for  
8 calling on me again.

9 I want to follow up on the question  
10 that you just answered.

11 So if the Article VII has now in  
12 effect expired, and there are only two out of  
13 the five prisons that were closed that were  
14 authorized under that original Article VII,  
15 are there plans to put another Article VII  
16 into place? Are there conversations for this  
17 budget? I don't recall seeing anything in  
18 the budget proposal.

19 And then the second question is both  
20 for DOCCS and DCJS. Love to know if there's  
21 been any movement on the implementation of  
22 Clean Slate, and what if any resources you  
23 need from us to support the process and to  
24 ensure that both agencies are ready to go to

1 meet the timeline.

2 Thank you.

3 COMMISSIONER MARTUSCELLO: Yeah, thank  
4 you for your question. I'll start and then  
5 hand it off to EDC Popcun.

6 In terms of the budget last year that  
7 was enacted, it gave us the approval to close  
8 up to five. So it didn't specify it was  
9 going to be five; it was going to be  
10 somewhere within that number.

11 There is no Article VII language in  
12 the proposed budget. So at this time there  
13 are no closures that are being projected or  
14 requested in this budget cycle.

15 In terms of Clean Slate, I will tell  
16 you that we have worked very cooperatively  
17 with DCJS and the Office of Court  
18 Administration. We've already -- we've  
19 worked out data agreements with both entities  
20 to make sure they're getting access to our  
21 data so that they can fulfill their  
22 obligation under the law.

23 And we've also already enacted the  
24 aspects that pertain to the incarcerated

1 lookup, so that's done. That was effective  
2 in -- I believe in October of 2024, and  
3 that's been fully implemented on our side.

4 DCJS EX. DEP. CMR. POPCUN: At DCJS  
5 we've been, you know, as I talked about in my  
6 testimony, really the convener and  
7 facilitator.

8 So while we maintain the criminal  
9 histories, you know, our database stands  
10 ready to seal and suppress records as they're  
11 notified by OCA. There's been a bunch of  
12 sealing provisions over the last few years,  
13 and so, you know, I can say that we're ready  
14 for -- to seal and suppress records as set  
15 forth in the law.

16 I do think, you know, OCA is working  
17 diligently to make sure they know how to  
18 identify the records, and that's where, to  
19 Commissioner Martuscello's point, the data  
20 sharing is really, really integral to  
21 identify the right records to seal on those  
22 criminal histories.

23 We think that there's going to be  
24 5 million records that are affected upon the

1 full implementation of Clean Slate.

2 ASSEMBLYWOMAN CRUZ: And during the  
3 negotiation process it became very clear that  
4 some of the local prison systems -- local  
5 jails that are not necessarily connected to  
6 the state in the same way that, say, Marcy  
7 is, because they're smaller ones -- don't  
8 have the capacity to share the records in the  
9 same way.

10 Have we been able to speak to the  
11 localities or even in places where you have  
12 to go to serve your time on a weekend? And  
13 so those were some of the ones that were --  
14 it was very clear that there were issues.

15 DCJS EX. DEP. CMR. POPCUN: Yeah,  
16 absolutely. So we worked -- the answer is  
17 yes, we're working on it.

18 ASSEMBLYWOMAN CRUZ: Thank you.

19 CHAIRWOMAN KRUEGER: Thank you.

20 We have two chairs who each get three  
21 minutes. First we'll call Julia Salazar,  
22 then I think we have another Assembly chair,  
23 and then we'll go back for the final. So  
24 you're almost done, gentlemen.

1 Julia Salazar.

2 SENATOR SALAZAR: Thank you, Chair.

3 Hello again. I wanted to follow up on  
4 a question that was asked about the alleged  
5 fentanyl exposure, the incident at  
6 Upstate Correctional Facility in which  
7 Upstate was locked down for about a week, if  
8 I'm not mistaken, give or take. Close  
9 enough?

10 So regardless, was anything found  
11 during the investigation of the incident in  
12 Upstate that explained any of the symptoms  
13 that corrections staff experienced and  
14 reported?

15 COMMISSIONER MARTUSCELLO: Yeah, thank  
16 you for the follow-up question.

17 So what I can tell you is that there  
18 was a toxicology report done on the  
19 incarcerated individual that found no  
20 substances in his system. There was some  
21 admittance and opining by toxicology experts  
22 that he could have potentially could have  
23 ingested K-2.

24 We did find substances that we are

1 testing through an independent lab, but the  
2 results have not come back in yet, so yet to  
3 be determined. You know, the investigation  
4 continues to determine if we found anything.

5 The one key thing I want to add,  
6 though, is I recently convened all of the  
7 unions as well as every superintendent and  
8 unions in every facility, and I brought  
9 together a panel of experts -- toxicology  
10 experts, doctors in the field of dealing with  
11 alcohol and substance abuse, OASAS -- and we  
12 talked about the myths and the realities of  
13 exposures, how you get exposures, if it could  
14 be skin exposures, if you'd have to ingest  
15 it.

16 And we've agreed that we're going to  
17 work on an informational sheet for staff, not  
18 necessarily that it's directed. But to the  
19 extent that there's misnomers out there, we  
20 want to make sure that staff are educated on,  
21 A, not to expose themselves, in the event  
22 that they do see the drug, but then also  
23 knowing what signs and symptoms really are.

24 Because really, you know, we want to

1 make sure that we don't only treat a  
2 potential exposure when there could be other  
3 health-related issues going on, right?

4 That's a common thing just in medicine in  
5 general. But so --

6 SENATOR SALAZAR: I'm sorry to cut you  
7 off.

8 DOCCS COMMISSIONER MARTUSCELLO: --  
9 yet to be determined.

10 SENATOR SALAZAR: Thank you. I  
11 appreciate the response.

12 A separate question clarifying the  
13 potential to close Marcy Correctional  
14 Facility or any other correctional  
15 facility -- but, you know, with an eye on  
16 Marcy.

17 Just to clarify, the Governor could  
18 still direct Marcy to be closed, it just  
19 of course would not be on the timeline that  
20 was allowed -- given in last year's budget;  
21 basically, the timeline in statute of  
22 12 months' notice.

23 COMMISSIONER MARTUSCELLO: I'll answer  
24 your question in the long way for your

1 32 seconds.

2 But look, the point of Marcy, Marcy  
3 offers a lot of good features, including the  
4 largest mental health -- regional mental  
5 health unit in the state. I think leaning  
6 into this independent assessment and  
7 identifying what the root cause is here,  
8 while still criminally prosecuting those  
9 individuals.

10 But to get to the heart of your  
11 question, yes, 79A of the Correction Law  
12 allows for a one-year notification for the  
13 closure of any prison in the State of  
14 New York.

15 SENATOR SALAZAR: Great. Thank you.

16 CHAIRMAN PRETLOW: Assemblyman Dilan  
17 for his follow-up.

18 ASSEMBLYMAN DILAN: Thank you,  
19 Mr. Chairman.

20 And Commissioner Martuscello, just  
21 some follow-up questions on the cameras.

22 On a day-to-day basis, are you able to  
23 monitor the footage of the cameras centrally  
24 at DOCCS headquarters, or are they monitored

1 at the facilities themselves?

2 COMMISSIONER MARTUSCELLO: So two  
3 things. We have instituted, through the new  
4 performance matrix, that the system itself,  
5 for fully deployed, identify camera footage  
6 on a randomization so executive staff at the  
7 facilities can review videos as well as also  
8 review the videos that are incident-specific.

9 From central office they are uploaded  
10 into the cloud, so we do have access in our  
11 OSI without going to the institution, can  
12 access any video uploaded to the cloud.

13 ASSEMBLYMAN DILAN: On a daily basis  
14 or on a --

15 DOCCS COMMISSIONER MARTUSCELLO: Yeah.

16 ASSEMBLYMAN DILAN: Okay. Thank you.

17 Then the last question was on the  
18 breakdown of the 400 million for cameras in  
19 this year's proposal, and then 400 million  
20 that was done previously.

21 How much of that is on actual cameras,  
22 and how much of that is on the installation?

23 COMMISSIONER MARTUSCELLO: I can get  
24 you the breakdown.

1           I mean, these are complex projects.  
2           On average, a facility, depending on size,  
3           runs between \$20 million and \$30 million.  
4           Right? Because you have to wire it and run  
5           the conduit and then there's actually the  
6           camera apparatus and then the paying of the  
7           labor. So I could pull one of the contracts  
8           and share it with you.

9           ASSEMBLYMAN DILAN: Okay. Yeah, if  
10          you could get back at a future date, that  
11          would be good.

12          And I just will close by saying, you  
13          know, the immediate arrest and prosecution of  
14          those involved is paramount for the community  
15          at large, and it's something that the caucus,  
16          you know, wants to see. We know that's out  
17          of your purview, but it's something that  
18          needs to happen immediately.

19          Thank you.

20          COMMISSIONER MARTUSCELLO: I agree.

21          CHAIRWOMAN KRUEGER: Okay, we have a  
22          revisit of Senator Tom O'Mara, our ranker,  
23          who didn't have a chance to ask yet.

24          SENATOR O'MARA: Thank you.

1                   Thank you all for being here today for  
2                   your testimony. It's been a very long day  
3                   for all of us.

4                   But just as quickly as I can, for the  
5                   State Police superintendent.

6                   Last year legislation was passed to  
7                   allow for the FOILING of Troopers' personnel  
8                   files. Where does that stand right now?  
9                   Have any of those records been FOILED? Have  
10                  they been released? And what is your policy  
11                  as far as letting members of your staff,  
12                  Troopers, whoever, that have been FOILED, do  
13                  they get notified that they've been FOILED?

14                  STATE POLICE SUPT. JAMES: Thank you  
15                  for your question, Senator.

16                  One of the first things I did when I  
17                  came back to the State Police, I focused on  
18                  transparency. I'm pleased to say as of  
19                  January 27th of this year, we have gone live  
20                  with regard to putting online all FOIL  
21                  requests, with the appropriate redactions.  
22                  And also information with regard to  
23                  disciplinary records when there were  
24                  personnel complaints.

1           So that information on the standard  
2           State Police website, troopers.ny.gov, or any  
3           FOIL request, that's how it can be accessed.  
4           That doesn't preclude the members themselves  
5           from accessing that. There is a policy and  
6           protocol, based on prior disciplinary  
7           history, that the members would ideally have  
8           access to review their personnel jackets.  
9           That's always been the case. Of which the  
10          personnel complaint history would be in  
11          there.

12           SENATOR O'MARA: What's available  
13          online, the FOIL request or also the response  
14          to that FOIL request?

15           STATE POLICE SUPT. JAMES: The FOIL  
16          request -- and that goes for any publicly  
17          requested document, with redactions of  
18          others, are on there. That's a link.

19           We've started the data as far as, as I  
20          said, January 27th. And information that has  
21          been requested previously, we're populating  
22          that website to access that information. If  
23          that answers your question.

24           SENATOR O'MARA: There's no

1 affirmative notification to an individual  
2 Trooper, say, that their personnel file's  
3 been FOILED?

4 STATE POLICE SUPT. JAMES: Not per se  
5 in that regard. That information, we'd  
6 notify the respective district attorney's  
7 offices, all the invested matters. We  
8 contacted the unions, we put that information  
9 out there prior to the release in that  
10 regard.

11 SENATOR O'MARA: You contacted the  
12 union, is that what you said?

13 STATE POLICE SUPT. JAMES: The unions.  
14 We spoke with the union presidents, the  
15 internal -- NYSPIA and the PBA.

16 SENATOR O'MARA: About the general  
17 policy, or about each request?

18 STATE POLICE SUPT. JAMES: To inform  
19 them that this policy was effective and that  
20 it would go live, that members could then be  
21 aware that that information would be  
22 accessible.

23 And this is on the heels of NYCLU,  
24 right, the case that, fortunately or

1           unfortunately, that the state didn't endure,  
2           which required that 20 years of documents be  
3           provided. As I understand, it's currently on  
4           appeal through the AG's office.

5                        But the step that I took wasn't  
6           something that was a requirement. I took it  
7           upon myself to put that information out there  
8           that was FOILable -- with proper redactions,  
9           to be available.

10                      SENATOR O'MARA: I just got  
11           notice that -- my information is that there  
12           was a requirement that this policy be  
13           provided to the union. Is that what you're  
14           saying, you have done that?

15                      STATE POLICE SUPT. JAMES: Yes, we  
16           have.

17                      Contact with -- our general counsel as  
18           well handles all the appropriate contact  
19           internally, if that's what you were asking,  
20           as far as with notification to our personnel.

21                      SENATOR O'MARA: Thank you.

22                      STATE POLICE SUPT. JAMES: You're  
23           welcome.

24                      CHAIRWOMAN KRUEGER: Thank you.

1                   And our last questioner, second round,  
2           Chair Myrie.

3                   SENATOR MYRIE: Thank you,  
4           Madam Chair.

5                   I just want to revisit the various  
6           plans by the Executive for our subway system  
7           in the city: The Trainist Recidivist  
8           Awareness Initiative. I'm curious about just  
9           more details on what this will entail.

10                   I'm someone that takes the subway  
11           every day, how most New Yorkers get around.  
12           We all have an interest in keeping everyone  
13           safe with some combination of law enforcement  
14           smartly deployed, medical professionals,  
15           et cetera.

16                   But I'm wondering what we envision  
17           parole officers to be doing, what level of  
18           cooperation with the PD, what support parole  
19           officers have now -- who, as you know, are  
20           already suffering through some understaffing  
21           and some other stresses. So I'm just curious  
22           what the vision is for this.

23                   COMMISSIONER MARTUSCELLO: Yeah, thank  
24           you for your question. This is an important

1 initiative that we're actually launching this  
2 evening. So we are utilizing our GPS  
3 technology where we have recidivists that  
4 have engaged in this conduct in the transit  
5 system, where we place them on a GPS.

6 We will be deploying teams of three,  
7 two parol officers and a senior parole  
8 officer, mostly up on the entrance on the  
9 street level. And the thought is to really  
10 have positive interactions.

11 Just like parole officers are doing  
12 home visits and employment visits and  
13 promoting prosocial behavior of parolee  
14 population and really supporting them, that's  
15 really what this is all about, is to have the  
16 interaction, be visible to the parolee  
17 population that you're there. So if they  
18 were thinking about engaging in this conduct  
19 in the subway system, or engaging in crimes,  
20 that we can avoid further victimization and  
21 keep them on the path to successfully coming  
22 off of community supervision.

23 Unfortunately, recently we've had two  
24 cases that were crimes committed by parolees

1 in the subway system where they were  
2 subsequently charged, and we violated them.  
3 But we want to get ahead of that.

4 You know what, I take the notion that  
5 our parole officers play an important public  
6 safety function, but part of that is really  
7 being a coach, not the referee. Right? We  
8 want to make sure we're coaching people,  
9 we're pointing them in the right direction,  
10 getting them to the services that they  
11 need -- even to the extent that last year  
12 when Less Is More was enacted, we invested in  
13 employment parole officers. We put every one  
14 of our parole officers --

15 SENATOR MYRIE: I'm sorry,  
16 Commissioner, just -- my time is low.

17 So just for clarity, we envision  
18 having parole officers prevent parolees from  
19 entering the system?

20 COMMISSIONER MARTUSCELLO: No, not  
21 entering. Just interacting with them when  
22 they're on the -- when they're coming into  
23 the system, have discussions with them, how  
24 you doing. You know, just like we do now to

1 promote prosocial behavior.

2 If an incident occurs, then we have  
3 staff available to authorize a warrant and do  
4 custodies just like we normally would. But  
5 that's not the type of interaction that we're  
6 seeking. That may occur if they're  
7 committing a crime. Right? And we also have  
8 been talking to the Transit Police as well.

9 SENATOR MYRIE: Thank you.

10 COMMISSIONER MARTUSCELLO: Thank you,  
11 sir.

12 CHAIRWOMAN KRUEGER: Thank you.

13 Gentlemen, thank you very much for  
14 your attendance. We might have more  
15 questions, but we don't have any more time to  
16 ask them of you today. Thank you, and  
17 continue with your work.

18 And we are going to call up the next  
19 panel. And if people need to try to grab  
20 these gentlemen, do it out in the hall, in  
21 the respect that they've been sitting for  
22 many hours and might need other things to do.

23 Our next panel is C: New York State  
24 Division of Homeland Security and Emergency

1 Services, and the New York State Office of  
2 Information Technology Services.

3 (Pause; off the record.)

4 CHAIRMAN PRETLOW: Could we have  
5 everyone's attention, please.

6 CHAIRWOMAN KRUEGER: I'm sorry, I'm  
7 not miked. I was saying this is Panel C. It  
8 will be our last government invited panel.  
9 So we're going to ask both representatives to  
10 introduce themselves for the people in the  
11 video room to know who's who, and then we'll  
12 start.

13 OITS CIO RAI: I'm the chief  
14 information officer for the State of New York  
15 and the director of ITS.

16 CHAIRMAN PRETLOW: Speak closer to the  
17 mic, please.

18 CHAIRWOMAN KRUEGER: Get closer to the  
19 mic. Try again.

20 OITS CIO RAI: Is it okay?

21 CHAIRWOMAN KRUEGER: Just say your  
22 name again, please.

23 OITS CIO RAI: Dru Rai, director of  
24 ITS and CIO for the state.

1 CHAIRWOMAN KRUEGER: Thank you.

2 DHSES DEP. EX. CMMR. O'LEARY: I'm  
3 Terry O'Leary. I'm the executive deputy  
4 commissioner for the Division of Homeland  
5 Security and Emergency Services.

6 CHAIRWOMAN KRUEGER: Great. okay, so  
7 Dru, do you want to start with us? So it's  
8 10 minutes on the clock. Thank you.

9 OITS CIO RAI: Thank you,  
10 Chairs Krueger and Pretlow, Chairs Gonzalez  
11 and Otis, and distinguished members of the  
12 Legislature. It is my honor to work  
13 alongside you in service to our fellow  
14 New Yorkers.

15 As you will see, ITS is an agency on  
16 the rise. With the state's digital needs  
17 growing by --

18 CHAIRWOMAN KRUEGER: Sir, we're just  
19 going to ask you to pull the mic up a bit  
20 closer. People are not having -- they're not  
21 hearing you well enough. Thank you.

22 OITS CIO RAI: Thank you, Chair. I'll  
23 start again.

24 Thank you, Chairs Krueger and Pretlow,

1           Chairs Gonzalez and Otis, and distinguished  
2           members of the Legislature. It is an honor  
3           to work alongside with you in service of our  
4           fellow New Yorkers.

5                     As you will see, ITS is an agency on  
6           the rise. With the state's digital needs  
7           growing by the minute, ITS is doing more this  
8           year than we have at any time since this  
9           agency was created.

10                    Whether it's enhancing cybersecurity,  
11           helping to carry out the Governor's customer  
12           experience agenda, responsibly guiding the  
13           state's next phase of AI, or pushing forward  
14           major modernization projects at our key  
15           agencies, ITS is leaning into many of the  
16           state's most pressing challenges.

17                    I'm pleased to say that this budget  
18           provides ITS with the resources to continue  
19           to get the job done for our partner agencies  
20           and all New Yorkers.

21                    To carry out these important  
22           objectives, we have transitioned to a new  
23           dedicated agency service model, which brings  
24           our skilled technology workers closer to the

1 agencies they serve. By doing so, we have  
2 strengthened existing partnerships with the  
3 subject matter experts at these agencies,  
4 becoming more proactive and strategic, and  
5 leveraged our new deputy commissioners of  
6 technology and their teams to fuel the  
7 state's ongoing digital transformation.

8 At the same time, we maintain shared  
9 services for cost-effectiveness and  
10 compliance.

11 We have also significantly improved  
12 performance, starting with the rapid  
13 ITS-directed response to the July worldwide  
14 IT outage. This disruption could have been  
15 devastating and had lasting consequences for  
16 our client agencies and the people of  
17 New York. Instead, we worked to bring all  
18 critical systems back online within 24 hours  
19 and swiftly remediated tens of thousands of  
20 blue screens to help our state employees get  
21 right back to work.

22 Further, we now have a comprehensive  
23 plan to deal with future emergencies or  
24 events, and one that has proven to be

1           successful.

2                   I'm proud to say we are completing  
3           projects on time and under budget. We are  
4           making significant progress with the  
5           transition from WMS to the new Integrated  
6           Eligibility System by breaking this massive  
7           project into smaller, more flexible and more  
8           manageable pieces, and ultimately moving our  
9           state ever closer to the "no wrong door"  
10          public benefits system New Yorkers deserve.

11                   In fact, I am pleased to announce that  
12          the Child Support Release 1 Go Live, the  
13          first of many coming releases, will be  
14          launched at the end of this month.

15                   Working in partnership with the  
16          state's Chief Customer Experience Officer,  
17          ITS is providing its expertise and resources  
18          to deliver the customer experience gains as  
19          envisioned by Governor Hochul. This includes  
20          overhauled agency websites, streamlined  
21          workflows, optimized digital services for  
22          mobile devices, a renewed focus on the  
23          customer journey, and improved access for  
24          all.

1           One year ago, at the Governor's  
2           direction, we wrote and issued the first  
3           statewide policy on the Acceptable Use of AI.  
4           It now serves as a roadmap for agencies to  
5           adopt AI safely and responsibly.

6           In the coming weeks, ITS will issue  
7           specific guidance to agencies that will help  
8           identify and catalogue AI capabilities in  
9           use, and create a public inventory shared  
10          with all New Yorkers.

11          ITS will regularly refine and improve  
12          these guidance documents to meet evolving-use  
13          cases and continuously modernize the  
14          technology solutions we deliver. And thanks  
15          to your partnership with Governor Hochul,  
16          this concept is now enshrined in law,  
17          ensuring transparency in the state's use of  
18          AI to support New Yorkers.

19          Our aim is simple -- to show the  
20          nation what is possible when you optimize the  
21          benefits of AI while mitigating risk, provide  
22          strong human oversight, create efficiencies  
23          in government service delivery, and enhance  
24          the workplace experience for our most

1 important asset, our employees.

2 At the Governor's direction, ITS will  
3 provide AI training, education and upskilling  
4 for our state workforce, along with other  
5 resources, so they have the tools and skills  
6 necessary to make an even greater impact for  
7 New York.

8 In 2022, we built the Joint Security  
9 Operations Center to forever change the way  
10 we manage cybersecurity in New York. And  
11 it's making a difference. The Governor's  
12 comprehensive statewide strategy is better  
13 protecting our state and local entities from  
14 cyberthreats, and we continue to grow our  
15 capabilities every day, providing actionable  
16 intelligence and alerts to our partners and  
17 adding new statewide customers. In fact, ITS  
18 now protects more than 95,000 computers in  
19 local communities across the state.

20 The Executive Budget provides new  
21 resources to grow the JSOC to meet this  
22 surging demand. With all the work ahead of  
23 us, I am grateful that the Executive Budget  
24 recommends an increase of \$174 million,

1 including 295 new full-time equivalents for  
2 ITS. If we are going to set the state up for  
3 future success, we must grow the ITS  
4 workforce to meet this moment.

5 While the challenges before us are  
6 great, so too are the many opportunities --  
7 opportunities to leave our state better,  
8 stronger, safer, more modern and more  
9 affordable through the strategic use of  
10 technology and the many contributions of our  
11 hardworking state employees.

12 Our agency has repeatedly shown that  
13 when we use a state employee to deliver a new  
14 technology solution, we do it better, faster,  
15 and save taxpayers more of their hard-earned  
16 dollars. Therefore, I ask you to follow  
17 Governor Hochul's lead and help us rightsize  
18 ITS for the future.

19 These 295 new ITS employees will  
20 collectively deliver even more for New York,  
21 including work on the landmark tax  
22 modernization, ensuring state web  
23 applications conform to the global benchmark  
24 for accessibility, and creation of an even

1 more robust cybersecurity posture for  
2 New York.

3 Thank you for your time and  
4 partnership, and I look forward to answering  
5 any questions you may have.

6 DHSES DEP. EX. CMMR. O'LEARY: Thank  
7 you, Chair Pretlow and the Legislature for  
8 this time and opportunity to present.

9 I will not read verbatim the  
10 testimony. I'm just going to touch on a  
11 couple of highlights.

12 So at the Division of Homeland  
13 Security and Emergency Services, we have an  
14 amazingly broad mission. And our main  
15 mission is to ensure a resilient New York  
16 that is prepared for any disaster that may  
17 come our way. We spend a lot of time working  
18 with our state partners to marshal and  
19 prepare resources, to plan for what may come  
20 our way, whether it be a natural disaster, a  
21 manmade disaster or, as we're increasingly  
22 seeing, cybersecurity events -- which is why  
23 it makes sense that I'm sitting here with the  
24 state's chief information officer.

1           This year's Executive Budget proposes  
2           approximately 165 million in state operating  
3           funds for the division, 28 million in capital  
4           funding, and 8.9 billion in Aid to  
5           Localities, the overwhelming majority of  
6           which would be FEMA funding being passed  
7           through to local and state applicants.

8           Changes in this year's Executive  
9           Budget include \$25 million in capital funding  
10          for a second round of the Volunteer Fire  
11          Infrastructure and Response Equipment grant,  
12          or V-FIRE grants; \$1.4 million to expand our  
13          Office of Counterterrorism; and \$1 million to  
14          develop and distribute a new media literacy  
15          guide for teachers, parents and students,  
16          building off of a partnership that we had  
17          with the State Department of Education and  
18          the release of a media literacy toolkit that  
19          was released last year.

20          These resources will build upon the  
21          division's prior efforts and ensure that  
22          New York is in fact prepared for and can  
23          respond to any future disaster or emergency.

24          Last year alone, the state's Emergency

1           Operations Center was activated on over 17  
2           occasions, 10 of which were for natural  
3           disasters. We had lake effect snow events  
4           and severe winter weather. We had an extreme  
5           heat event throughout the state in June, the  
6           flooding in July and August caused by  
7           Hurricane Beryl, Tropical Storm Debby and the  
8           intense rainfall in Suffolk County that also  
9           impacted Oswego and portions of upstate.

10                   We also set a record last year for  
11           32 tornadoes in the state. And in fact on  
12           one day the NWS -- National Weather  
13           Service -- issued over 40 tornado warnings  
14           throughout the state that the conditions  
15           existed, and they warned New Yorkers that a  
16           tornado may occur, an invaluable service that  
17           the NWS provides New Yorkers in putting out  
18           that information and creating awareness.

19                   After what was an extremely volatile  
20           summer, what followed was a fall with almost  
21           no rain. The drought conditions that lasted  
22           throughout the fall and throughout the state  
23           in fact led to wildfires. These wildfires  
24           occurred largely in the Mohawk Valley and the

1           Catskills, but we saw them elsewhere. In  
2           New York we have a State Wildfire Service.  
3           It is run by our Forest Rangers under the  
4           Department of Environmental Conservation, and  
5           they responded to over 122 wildfires last  
6           year. They do fantastic work, not only in  
7           response but in prevention as well, enforcing  
8           every year the Burn Ban as well during the  
9           traditional wildfire season.

10                    But one wildfire in particular, the  
11           Jennings Creek Wildfire, that took place in  
12           Orange County, was particularly problematic  
13           for us, because it's what's referred to as a  
14           wildland-urban interface fire. It is where  
15           the fire leaves the forest and starts  
16           encroaching on development. And as a result,  
17           you need more than just wildland  
18           firefighters.

19                    Thanks to our state fire office, the  
20           Office of Fire Prevention and Control, they  
21           were able to marshal resources from over  
22           427 fire departments throughout the state,  
23           the overwhelming majority of which were  
24           volunteer fire departments. When the fire

1           really started to pick up, it was on a  
2           weekend, and we were working very closely  
3           with County Executive Neuhaus in  
4           Orange County, Pete Cirigliano, his emergency  
5           manager, and Vini Tankasali, their county  
6           fire coordinator.

7                     And we had lots of resources from  
8           within Orange County and neighboring  
9           counties. We were afraid of what was going  
10          to happen when it turned to the week and the  
11          volunteer firefighters had to go back to  
12          their day jobs. Yet they showed up and they  
13          protected all of the houses in Greenwood  
14          Lake, as well as the Jehovah's Witnesses  
15          Headquarters over in Tuxedo, and not a single  
16          structure was lost. Truly heroic work, a  
17          combination between our wildland firefighting  
18          force as well as our volunteer firefighters  
19          who protected all of those structures.

20                    The fire risk isn't only limited to  
21          wildfires, though. We saw over 21,000  
22          structure fires throughout the state last  
23          year that resulted in over 130 deaths. And  
24          unfortunately today there was the passing of

1 a firefighter in Binghamton, responding to a  
2 fire as well.

3 The threat that fire poses to this  
4 state is never-ending. It changes throughout  
5 the state. Lithium-ion battery fires are  
6 obviously a grave concern in New York City,  
7 and the FDNY is at the forefront of fighting  
8 that battle. We see that also in some other  
9 areas of the state with battery energy  
10 storage systems. But what we do see is that  
11 the threat that fire poses to our state  
12 persists.

13 To that end, and one of the central  
14 missions of the division, is training. We  
15 trained over 80,000 first responders last  
16 year. Over 50,000 of them were firefighters,  
17 and over 4500 of them graduated from courses  
18 at the State Fire Academy in Montour Falls.

19 Some of that firefighting training was  
20 around lithium-ion batteries. We trained  
21 over 340 people on wildland firefighting, and  
22 with your support we're going to continue to  
23 do that.

24 The Governor's ask to continue the

1 V-FIRE grant is also very important, because  
2 it will help stabilize the volunteer  
3 firefighting force throughout the state.  
4 Last year we were able to award 88 grants  
5 worth \$25 million, which went towards either  
6 sustaining or improving the physical  
7 structures as well as the response equipment.  
8 And we look forward to being able to award  
9 \$25 million if the Governor's proposal is  
10 carried.

11 One of the other things that I'll  
12 offer: We mentioned in the testimony about  
13 the State Preparedness Training Center, which  
14 is in Oriskany in Oneida County. It is a  
15 premier facility. We do all-hazards training  
16 there. The State Police use it as well as  
17 local first responders. And it is free of  
18 charge to every first responder in the state.

19 I would invite all of you to come and  
20 visit. I know Utica in the winter is not the  
21 friendliest place -- it's a very friendly  
22 place. It's not the warmest place to visit,  
23 let me be clear. It is a fantastic facility  
24 where we're partnered with our partners in

1 Oneida County. And we would welcome you to  
2 come and visit anytime you would like to. It  
3 is a premier facility that New York State  
4 should be proud of, and your continued  
5 commitment has made it what it is.

6 Finally I'll talk about cyberthreats  
7 and attacks. As CIO Rai stated, it is a  
8 continuing and growing threat that we are  
9 facing.

10 Thanks to your support, the state's  
11 Cyber Incident Response Team, which sits  
12 within the Division of Homeland Security,  
13 responded to over 71 events, helping local  
14 and county governments respond to  
15 cyberattacks. We did over 10,000 trainings  
16 of government officials and also conducted  
17 anti-phishing trainings as well, to lessen  
18 the threat that cyberattacks face us with.

19 And finally I'd like to talk a little  
20 bit about the work that our Office of  
21 Disaster Recovery Programs does. This is the  
22 state agency that in fact passes through the  
23 FEMA dollars that come into this state after  
24 a disaster. They are currently managing

1 18 open disasters and have done fantastic  
2 work in passing through billions of dollars  
3 to applicants of all different sophistication  
4 throughout these disasters, including COVID.

5 In the past year alone, they put  
6 together documents to obtain four separate  
7 disaster declarations from the president, and  
8 also obtained a fire mitigation assistance  
9 grant, the first ever in New York State  
10 history, following the Jennings Creek fire.

11 Finally, I'd like to thank the over  
12 200 first responders and emergency managers  
13 throughout the state who left the state under  
14 the emergency management assistance compact,  
15 and helped our fellow states following  
16 Hurricanes Helene and Milton. And even this  
17 year, last month, we had DEC wildland  
18 firefighters called to California to assist  
19 with the Paradise and Eaton wildfires.

20 Without these heroes -- who don't ask  
21 for credit, yet they always show up and  
22 always do the job -- we would not be  
23 successful and New York would not be as safe  
24 a state as it is.

1 I appreciate very much your  
2 opportunity to present, and your patience. I  
3 will note that my testimony said good  
4 morning, and we're almost to good evening.  
5 So thank you very much for staying with us  
6 and allowing me to present on the division's  
7 budget.

8 CHAIRWOMAN KRUEGER: Thank you very  
9 much.

10 First up to question is  
11 Senator Gonzalez.

12 SENATOR GONZALEZ: Thank you so much,  
13 Chairwoman.

14 Hi, Director Rai. Thank you for being  
15 here today. It's so good to see you again.  
16 We have a lot to get through, so I'm just  
17 going to jump in and start with the elephant  
18 in the room.

19 In September of last year, Politico  
20 published an article on ITS employees titled  
21 "How One State Worker Raked in 300K from the  
22 Kickball Field." According to Politico,  
23 possibly four or more ITS employees increased  
24 their base salaries by four to five times

1 through ITS's COVID overtime policy.

2 They also reported that 30 employees  
3 were collectively paid about 3 million in  
4 overtime in 2021. And between 2020 and 2022,  
5 ITS overtime policy grew to more than six  
6 times its pre-pandemic levels.

7 So my question is very simple. I  
8 know, of course, this happened in part before  
9 your appointment. But curious if you have  
10 updated your policy since.

11 OITS CIO RAI: Senator, we are aware  
12 of that report. And not that I want to give  
13 you an excuse, this definitely happened  
14 before me. I would say that the chaos of the  
15 pandemic and the lack of IT head counts.

16 So since, I would say, my 16 months  
17 here, we have hired 800 ITS people. That  
18 really helps reduce the overtime, number one.

19 We have definitely enacted policies  
20 and procedures, whether -- like who goes on  
21 overtime. It is a red flag if the overtime  
22 goes beyond 20 percent, for example, for  
23 employees. And I'm happy to report that now  
24 our overtime is less than 1 percent --

1           actually, a fraction of a percent if you  
2           count the last 12 months.

3                         So we definitely have taken a lot of  
4           steps. And we don't anticipate this problem  
5           going forward.

6                         SENATOR GONZALEZ: That's certainly  
7           great to hear. Of course, when it's a public  
8           story, it's important for the Legislature to  
9           have an update.

10                        However, I am not sure it was due to  
11           lack of head count. I mean, some of the  
12           employees reported 6,453 hours in a year,  
13           which would mean they worked 365 days in a  
14           year for 18 hours a day. So I think there  
15           certainly was a need for the update, and it's  
16           great to hear that you did that.

17                        Are these employees still with ITS?

18                        OITS CIO RAI: To the best of my  
19           knowledge, we are still looking into these  
20           people, and some of them are under  
21           investigation. That's all I can say at this  
22           point.

23                        SENATOR GONZALEZ: Well, certainly  
24           appreciate the update, and want to know that

1 we are moving forward as we increase head  
2 count with trainings and policies in place.

3 I'm going to pivot to this year's  
4 budget request. The proposed 2025 All Funds  
5 appropriation for ITS is 1.23 billion,  
6 representing a \$174 million increase, which  
7 is \$10 million more than the aggregate  
8 increase ITS has received for the last four  
9 years.

10 The Executive's budget proposal  
11 indicates the funding is mostly to maintain  
12 existing ITS operations. Can you tell us a  
13 little bit more about how you plan to use  
14 this money?

15 OITS CIO RAI: Yeah, I think there are  
16 major, five major components where we expect  
17 this money to go. Which is thanks to you and  
18 the Governor for your support.

19 The first is the cyber, and the cyber  
20 includes both remediating our past  
21 infrastructure -- as you probably know, we  
22 still have systems older than myself and we  
23 have to get rid of those at end of life. We  
24 have applications. We have hardware. So

1           that's one set of work on the cyber  
2           remediation.

3                     The second set of work, which we'll  
4           continue to work with our partner agencies,  
5           including DHSES and New York State Police on  
6           the JSOC. As you know, we are now  
7           collaborating with more than 100 localities,  
8           and we continue to expand the services over  
9           there.

10                    The second major work is modernization  
11           of systems. And two big ones are Tax and  
12           WMS.

13                    The third major component for this is  
14           we have to update a lot of web applications,  
15           including what may look like a website but  
16           there's a tremendous amount of database  
17           involved, whether it's accessibility  
18           compliance or MENA {ph} compliance.

19                    The fourth one is our move to cloud.  
20           And we continue to march -- most of the  
21           greenfield we are trying to do in cloud  
22           unless we don't have options. And the last  
23           one, but not least, is enhancing our customer  
24           experience and AI training and sandbox for

1 employees.

2 SENATOR GONZALEZ: Great. Thank you  
3 so much. I think again, considering we're  
4 looking at increasing the budget more than  
5 all of the last four years combined, it's  
6 really great to hear the initiatives you have  
7 planned.

8 I do want to speak to the investment  
9 in cybersecurity. We repeatedly hear  
10 concerns from agencies and localities and  
11 municipalities regarding outdated equipment  
12 and software. It's part of that list. But  
13 can you give us a sense of how much of this  
14 budget will be used to progress our state's  
15 modernization efforts?

16 OITS CIO RAI: Yeah, I don't have an  
17 exact amount because it's a trailing figure  
18 versus planned figure. But a substantial  
19 amount of this budget is going to JSOC, which  
20 really we work with our partner agencies to  
21 serve. And then the other part is just  
22 protecting the State of New York, our own old  
23 systems and remediating.

24 There are approximately 50 programs we

1 are running in six different streams to fix  
2 our -- from network segmentation to access  
3 management, which includes MFA, to training  
4 and awareness, to vulnerability management.

5 And on the JSOC, our three major  
6 end-point protections, attack surface  
7 management and just providing incidence  
8 response to all of these localities.

9 SENATOR GONZALEZ: Great. I've gotten  
10 aligned on all of these things. We've had  
11 bills on multifactor authentication and  
12 certainly, you know, upgrading our  
13 infrastructure.

14 But in terms of modernization, how  
15 much progress do you think we'll make in the  
16 next year?

17 OITS CIO RAI: Well, I wish I could --  
18 I mean, I could forecast almost everything.  
19 As I said, this is a massive and complicated  
20 infrastructure. We operate more than 6500  
21 systems supporting 57 executive and a few  
22 non-executive agencies.

23 The budget which is provided, and the  
24 guidance from you and the Governor's office,

1 is to modernize. Our starting point will be  
2 to, you know, take a look at all the systems.  
3 All systems are not created equal when you  
4 view the risk profiling.

5 Based on the risk profile, you first  
6 mitigate the highest risk and so on.

7 SENATOR GONZALEZ: Thank you. I'm  
8 going to, just for the sake of time -- you  
9 know, I would just say on that note we want  
10 to make sure we're accelerating the process  
11 and we don't just want to hire FTEs for  
12 cybersecurity, but outdated infrastructure is  
13 one of our biggest vulnerabilities. Which is  
14 why we certainly feel the urgency that we're  
15 hearing from the agencies as well.

16 I'm going to pivot to AI. You issued  
17 the acceptable use of artificial intelligence  
18 technologies policy over a year ago, on  
19 January 8, 2024. This policy and the  
20 original version of the LOADinG Act, my bill  
21 from last session, would have required human  
22 oversight on high-risk systems. Are there  
23 any ITS systems that require human oversight  
24 per this policy?

1           OITS CIO RAI: Well, as I said, AI is  
2 actually not a tool, it's more of a  
3 capability. Almost every software vendor is  
4 embedding AI into it. So we should see this  
5 as a capability. Our policy is very clear --

6           SENATOR GONZALEZ: I'm sorry, I'm not  
7 asking how we view it, I'm asking if we're in  
8 accordance with our current ITS policy. And  
9 actually there are systems that exist that  
10 have human oversight, per the policy.

11          OITS CIO RAI: Yes. We have provided  
12 the policy to all acting -- you know,  
13 whichever executive agency uses AI  
14 capability. We at this point have no  
15 evidence of nobody following the policy, if  
16 that's the question.

17          But there are more -- as you know, the  
18 AI continues to evolve. I expect the policy  
19 also will continue to evolve.

20          SENATOR GONZALEZ: Absolutely. And  
21 it's not just, you know, if we are complying,  
22 it's actually knowing how far we've made it  
23 through this policy.

24          So in addition to the human oversight

1 requirement, there is a requirement for risk  
2 assessments through this policy. Has ITS  
3 performed any risk assessments on AI systems  
4 since the policy has been in place?

5 OITS CIO RAI: Correct. I mean, if we  
6 buy a software or a tool and it has an AI  
7 capability, we make sure that the application  
8 and implementation of that tool is within the  
9 bounds of the policy.

10 SENATOR GONZALEZ: Great. It's good  
11 to hear that we're making sure we're aligned  
12 and there's clear oversight.

13 And then finally, according to the  
14 policy, an inventory needed to be completed  
15 by July 6, 2024. I think according to your  
16 testimony, in the next few weeks you'll be  
17 issuing a guidance to do that inventory. I'm  
18 just wondering if there's been any challenges  
19 that would account for the pushback of that  
20 deadline, and if there's any way the  
21 Legislature can support to make sure we're  
22 getting that inventory so we're, you know,  
23 informing our transformation plans.

24 OITS CIO RAI: Senator, this is going

1 to be a moving target. The AI tools continue  
2 to evolve, and we will provide the direction,  
3 we'll get the inventory, and then the tools  
4 will move one more step. And this process  
5 probably is going to continue for a very long  
6 time, in my judgment.

7 SENATOR GONZALEZ: Certainly heard on  
8 the moving target. But we want to make sure  
9 that we're using a data-driven approach,  
10 based on our inventory, based on how the  
11 money that is being allocated to ITS is being  
12 used, that we're of course using public  
13 dollars to the best of our abilities, but  
14 certainly ensuring that we are aggressively  
15 pursuing these goals because New Yorkers  
16 deserve modernization and of course  
17 cybersecurity. Thank you.

18 CHAIRWOMAN KRUEGER: Thank you.  
19 Assembly.

20 CHAIRMAN PRETLOW: Assemblyman Otis.

21 ASSEMBLYMAN OTIS: Thank you.

22 Thank you, Deputy Commissioner. Thank  
23 you, Director. Good to see you both.

24 I'm going to go to cybersecurity for

1 both of you, but first I'm going to start  
2 with fire, Deputy Commissioner O'Leary. So  
3 what is the experience in New York and  
4 looking around the country and just sensing  
5 what's happening with climate, do we have the  
6 equipment we need for future fires, whether  
7 they be in upstate New York or we even had  
8 some fire incidents in parks in New York City  
9 a few months ago.

10 Do we need to be thinking about  
11 expanding our portfolio of vehicles, planes,  
12 other kinds of equipment to deal with those  
13 kinds of threats?

14 DHSES DEP. EX. CMMR. O'LEARY: Thank  
15 you for the question, sir.

16 We absolutely have to be thinking  
17 about that. And we have been. And there are  
18 a couple of things that we at the division  
19 and our partners at DEC and the Forest  
20 Rangers in particular have been thinking  
21 about.

22 We've expanded the training. At a  
23 certain point, more equipment doesn't help  
24 with a wildland firefight, right? It's



1            firefighting compact with Canada. They have  
2            great capabilities. They helped out in  
3            Los Angeles. But this would also bring in  
4            some nontraditional assets that we may need  
5            along the northern border or out west where  
6            they're not as quickly accessible.

7            ASSEMBLYMAN OTIS: That's great. And  
8            so you're on it in terms of looking for what  
9            we need in the future, and that's what I  
10          think I was looking for there. So that's  
11          great.

12          We're going to move to cyber because I  
13          have limited time. So I appreciate that.

14          So in the New York State cybersecurity  
15          blueprint from August of 2023, the  
16          aspirational goal was to expand the offerings  
17          that state agencies provide to counties,  
18          cities, school districts. And since that  
19          time the state has done a good job of  
20          expanding the footprint of help. And this  
21          budget certainly is giving both of your  
22          agencies more resources to do that.

23          What do you see in terms of expanded  
24          outreach in the next year with the additional

1 resources? And why don't we start with  
2 Director Rai first and then back to  
3 Commissioner O'Leary.

4 OITS CIO RAI: Thank you, sir. Yes,  
5 on the JSOC side, three major programs which  
6 we're expanding EDR, or continue to, which is  
7 to protect the end point. Right now our  
8 numbers are close to 100,000 equipment for  
9 all counties, cities, villages and  
10 localities.

11 Our second major is an incident  
12 response, and we are providing -- they can  
13 report incidents, they can coordinate and  
14 they can respond to those cyber events.

15 And the last one is attack surface  
16 management, which really means that  
17 everything they have internet-facing  
18 application, whether it's a "pay your bill"  
19 or any other place where we can look for  
20 malware, ransomware or any other  
21 vulnerability so we can alert them and fix it  
22 before it's too late.

23 As you know, we ingest approximately  
24 250,000 transactions a minute, so the volume

1 of such a thing is very large. But thanks to  
2 our partner agencies like DHSES and New York  
3 State Police, we work with them helping those  
4 localities.

5 DHSES EX. DEP. CMMR. O'LEARY: So from  
6 the division point of view, first, the  
7 partnership between ITS, the CISO at ITS as  
8 well as the State Police has been fantastic.

9 To build off of what the CIO said, the  
10 second round of this end-point protection is  
11 going to touch over 110 new municipalities.  
12 We reached out and we've partnered and gotten  
13 over I believe it's 54 or 55 counties into  
14 the JSOC. That was over 85,000 end-points.  
15 We're going to add another 100,000. That's  
16 the goal. And it's going to go down an  
17 additional layer of government, which is  
18 really going to help protect those that have  
19 less resources.

20 One of the benefits that we get out of  
21 that, though, and that the CERT sees in their  
22 responses, is we will see what the indicators  
23 of compromise were, we will see what happened  
24 that led to that cyberattack, that ransomware

1 attack. And we take that back and, working  
2 with the NYSIC which the State Police and  
3 their Cyber Analysis Unit runs, we will see,  
4 one, if there's criminal activity, but also  
5 we'll protect any investigation that the  
6 State Police and their partners are doing,  
7 but we'll share those best practices, those  
8 IOCs, and put out bulletins to everybody  
9 saying, Hey, you should look at your logs,  
10 see if this is showing up.

11 And so that ends up being preventative  
12 for everybody else. It's something that, you  
13 know, a very acute response will then become  
14 a best practice for everybody else across the  
15 state.

16 We've been able to do this because of  
17 the great partnership with the CISO, with the  
18 CIO's team as a whole. And also because of  
19 who we have at the CERT. The head of the  
20 CERT, she's fantastic. She has these  
21 relationships, people trust her, and it has  
22 made people willing to come in and partner  
23 with us at the JSOC.

24 ASSEMBLYMAN OTIS: Very good. So two

1 of the things the Governor has in the budget  
2 are expanded training by the state to state  
3 agency folks and to local government folks  
4 dealing in technology in terms of  
5 cybersecurity training.

6 Are both of your agencies working on  
7 that together? Who's really going to be  
8 providing that training module for the other  
9 agencies? I assume more of this is ITS, but  
10 tell me how it's going to work.

11 DHSES DEP. EX. CMMR. O'LEARY: So what  
12 the division does now is we offer -- we will  
13 do individual training and we will do  
14 phishing assessments. And we actually did  
15 one at the division, where we sent out a very  
16 realistic but things that an average person  
17 could pull off of a website, and created a  
18 phishing email. And then after the phishing  
19 email, we do a follow-up and we do education  
20 afterwards as well.

21 I'll defer to ITS as to what they're  
22 doing with the state workforce writ large.  
23 What we offer is, upon request, we will work  
24 with these agencies to do individual training

1 and testing.

2 ASSEMBLYMAN OTIS: That's great.

3 OITS CIO RAI: Our training is much  
4 more comprehensive, to protect the state and  
5 all executive agencies. And that's one of  
6 the six streams we work on, cybersecurity  
7 training and awareness. That includes  
8 network and other systems.

9 ASSEMBLYMAN OTIS: Very good. Now let  
10 me jump to AI, which was mentioned by my  
11 counterpart in the Senate briefly.

12 So we have -- the Governor has signed  
13 legislation that we worked on and did some  
14 chapter amendments having to do with AI at  
15 state agencies related to employment.  
16 There's going to be the inventory, there's  
17 going to be guidance from ITS.

18 Have you mapped out a plan of how  
19 you're going to implement that? But even  
20 without our legislation, my assumption is  
21 that a lot of this is going on already just  
22 from your own internal practices.

23 OITS CIO RAI: Correct. After  
24 publishing a policy now, we are working on

1 details with each client agency to inventory  
2 all the AI capabilities we have today and  
3 make sure that those capabilities are within  
4 the bounds of our policy.

5 Number two, on the Governor's behest,  
6 we are working on AI training for all state  
7 workers which we serve, all the executive  
8 agencies. And I expect that training to be  
9 out very quickly in the next few weeks.

10 We'll also be creating a sandbox so  
11 that that training is hands-on, not just  
12 words. People should be able to kind of  
13 train the AI model, look at how good or bad  
14 the model is, understand the risks and the  
15 benefits and so on and so forth.

16 So that sandbox will also be coming up  
17 soon, in the next weeks.

18 ASSEMBLYMAN OTIS: I only have  
19 45 seconds left for another question.

20 Another thing the Governor has in the  
21 budget is the required reporting of incidents  
22 by the locals. So I guess my question for  
23 either of you is, in a sense, how many  
24 incidents do you think have gone on

1           previously that you never hear about? Do you  
2           have a sense of that, or do you think you're  
3           hearing about everything anyway?

4                     DHSES EX. DEP. CMMR. O'LEARY: We are  
5           not hearing about everything anyway, and  
6           that's why that proposal is there. That  
7           would require any time a public entity using  
8           taxpayer -- that is publicly funded is either  
9           subject to ransomware or a significant  
10          cyberincident. We also think this will  
11          improve overall cybersecurity and allow us to  
12          create those bulletins I had talked about.

13                    ASSEMBLYMAN OTIS: Thank you very  
14          much. I may be back for more later. So  
15          thank you.

16                    CHAIRWOMAN KRUEGER: Thank you.  
17          We have Senator Stec, ranker, five.

18                    SENATOR STEC: Thank you. Thank you  
19          very much.

20                    I've got just a few questions here  
21          today. First, for our CIO, regarding the  
22          database for -- the State Police license and  
23          record database that was used for ammunition  
24          background checks. I was wondering if your

1 agencies was involved in the creation of that  
2 database.

3 OITS CIO RAI: I really don't know how  
4 to answer the question. But I can get back  
5 to you. It was probably created way before I  
6 came. But we can get you that information.

7 SENATOR STEC: Okay. All right.

8 Along those lines, assuming that you  
9 were -- the background check, since it's been  
10 put in place, it's been plagued with a lot of  
11 issues that leads to a lot of delays in our  
12 retail establishments that sell ammunition to  
13 the public. And I would be curious to know  
14 what efforts the agency might be undergoing  
15 to ensure the functionality of the system.

16 And as a follow-up, I'm curious to  
17 know what will be the cost of that system,  
18 and what is the maintenance cost for -- the  
19 ongoing maintenance cost for, again, the  
20 ammunition background check.

21 With that said, I'll shift gears real  
22 quickly, since we can't really talk about  
23 that.

24 What is your department's assessment

1 of the current cyber threat landscape? And  
2 how has it evolved in the last year?

3 OITS CIO RAI: It just continues to  
4 get worse and worse, because cybersecurity or  
5 cyberthreats is evolving. And from nation  
6 state to -- it has become a business, just  
7 like retail theft. It has also gotten more  
8 complex because of the advent of AI. So it's  
9 very difficult to figure out what threats are  
10 real and what not.

11 So when you look at the cyberthreats  
12 evolution, it just continues to get more and  
13 more complicated. And I think that's why our  
14 approach going forward, when it comes to  
15 cybersecurity, is a no-trust architecture.

16 Traditionally when we think about  
17 security, we think about protecting  
18 perimeters, and we think that if a perimeter  
19 is protected, then there is no problem. But  
20 most of the threat comes from inside now. So  
21 now we have to think about building all-new  
22 systems going forward which are no-trust.  
23 Especially, we have a multicloud environment,  
24 which makes it even more difficult.

1           So we expect the cyber, unfortunately,  
2           to get worse when it comes to threats, and we  
3           just need to be a step ahead, just protecting  
4           ourselves.

5           SENATOR STEC: Okay. And then to the  
6           extent that you can here publicly, can you  
7           provide any background or details on the  
8           department's incident response and recovery  
9           capabilities in the event of a cyberattack?

10          OITS CIO RAI: For all executive  
11          agencies, all incident response for  
12          cyberthreats, we work with the agency. And  
13          all of those things are reported, documented,  
14          responded, root cause analyzed, and we try to  
15          fix them so that we can avoid it.

16          At this point in time we don't have  
17          any major cybersecurity incidents which we  
18          would categorize as Level 1, within the  
19          57 executive level agencies we serve.

20          SENATOR STEC: Okay. That's all I  
21          had. Thank you very much.

22          CHAIRWOMAN KRUEGER: Thank you.  
23          Assembly.

24          CHAIRMAN PRETLOW: Assemblyman

1 Palmesano.

2 ASSEMBLYMAN PALMESANO: Hi. My  
3 question is for Mr. O'Leary.

4 First I wanted to say thank you to you  
5 and your team. We had a devastating fire in  
6 the Town of Ovid in Seneca County, and I know  
7 your team was in constant communication with  
8 the locals on what they can do. I know you  
9 did stuff on accessibility to food and  
10 housing, and I just want to say thank you to  
11 you for that first.

12 I did want to talk about -- you  
13 mentioned EV fires and lithium-ion batteries.  
14 That's something I talk a lot about on the  
15 floor relative to certain issues, and the  
16 fire issue is very concerning to me. You  
17 mentioned something about 80,000 firemen have  
18 been trained and 50,000 -- or 80,000 first  
19 responders, 50,000 firefighters. You said  
20 some of them have been trained to deal with  
21 lithium-ion battery fires.

22 I'm concerned about this because, you  
23 know, there's this mandate for -- the  
24 electric school bus mandate, which quite

1           frankly should be delayed and stalled till we  
2           figure out some of this technology.

3                     But what are you seeing -- I mean, is  
4           there funding -- other than training, is  
5           there funding that the state is going to be  
6           providing to our local fire departments to  
7           help prepare for these types of fires?  
8           Because obviously, from conversations I've  
9           had, that they're not familiar with how to  
10          deal with this, or in some of the things they  
11          say "Just let 'em burn." You know, just --  
12          don't do anything, don't go -- just let 'em  
13          burn.

14                    So what is the state doing to deal  
15          with these lithium-ion battery fires,  
16          especially with the battery storage fires  
17          we've seen? There were three of them in  
18          2023. So this is something I think we're  
19          going to continue to see, so we want to make  
20          sure our first responders are properly  
21          prepared and there's proper funding for these  
22          local fire departments. Especially volunteer  
23          fire departments.

24                    What is the plan for that?

1           DHSES DEP. EX. CMMR. O'LEARY: Sure.  
2           So a few things. Training is a big part of  
3           it. And I don't have the exact number, but I  
4           believe it's about 2,000 firefighters have  
5           been trained just on the new lithium-ion  
6           battery course that we've put out.

7           We obviously work with the FDNY, who  
8           has a lot of lessons learned. And to your  
9           point, a lithium-ion battery fire is a  
10          different type of fire. Right? It will  
11          restart. You think it's out, and then it  
12          starts again. What do you do? In terms of  
13          letting it burn, you'll think it's out and it  
14          reignites.

15          With the larger battery energy storage  
16          systems as well, there are concerns about  
17          whether there's off-gassing and what may be  
18          in the air.

19          What we've done in terms of actual  
20          response is we've tried to supplement the  
21          local fire departments, whether they are  
22          career or volunteer fire department. With  
23          air monitoring, we've partnered with DEC.  
24          NYSERDA has also been actively involved in

1 helping to understand the issues that  
2 lithium-ion battery fires present.

3 We -- so we do the training. We also  
4 help supplement the response with our hazmat  
5 function, and creating awareness. That's  
6 been our main focus. And we think that's  
7 probably the best tool, right? We're never  
8 going to be the first responders, but if we  
9 can arm the local first responders, whether  
10 they're volunteer or career service, with  
11 this knowledge, we're really pushing that  
12 aspect of it.

13 ASSEMBLYMAN PALMESANO: Okay. And  
14 then just real quick, I mean, I know you said  
15 the training's very important. I appreciate  
16 that. Do you see any other funding coming  
17 from your agency directly to the fire  
18 departments to help prepare them outside the  
19 training, like whether it's equipment and  
20 other things? Or is it just more of a  
21 training focus?

22 DHSES DEP. EX. CMMR. O'LEARY: Well,  
23 there's the 25 million in the budget for  
24 V-FIRE, so obviously we're excited to

1 continue that.

2 ASSEMBLYMAN PALMESANO: Thank you for  
3 your time.

4 CHAIRWOMAN KRUEGER: Thank you.

5 We next have Senator Murray.

6 SENATOR MURRAY: Thank you,  
7 Madam Chair.

8 And I'm going to continue on that  
9 line, Commissioner O'Leary, with the  
10 lithium-ion batteries.

11 First, let me clear up. Is the task  
12 force, the lithium-ion battery task force,  
13 the same as the Interagency Fire Safety  
14 Working Group? Is that the same thing?

15 DHSES EX. DEP. CMMR. O'LEARY: I don't  
16 know.

17 SENATOR MURRAY: Okay. We heard --  
18 well, let me expand.

19 DHSES EX. DEP. CMMR. O'LEARY: I  
20 wouldn't say -- I think it depends who the  
21 members are. I know there are multiple  
22 task forces with multiple names.

23 SENATOR MURRAY: Right. The Governor  
24 mentioned she was going to put this together

1           because she recognized the dangers and the  
2           fires and the problems. You mentioned almost  
3           400 of these fires.

4           So first off, we are not really aware  
5           of any meeting or when they met, how they  
6           met, where are the meetings. I checked your  
7           website; there's nothing on there about this.  
8           And we have a lot of people -- in my district  
9           back in Suffolk County, there are quite a few  
10          proposed -- big battery storage facilities  
11          that are being proposed, and every  
12          firefighter, volunteer firefighter I've  
13          talked to has said "We're not ready for  
14          this." They are petrified.

15          I know you said there's some training.  
16          Of the stipends that are there, is any of it  
17          specifically designated for how to handle  
18          these fires?

19          DHSES EX. DEP. CMMR. O'LEARY: So the  
20          task force that the Governor called and put  
21          together is what I was talking to  
22          Assemblymember Palmesano about, where we have  
23          worked with DEC, we have worked with NYSERDA,  
24          we're talked to the fire service, largely

1 through the Office of Fire Prevention and  
2 Control, as well as with industry. Right?  
3 NYSERDA, they're the scientists in the  
4 room -- they know the scientists in the room,  
5 to understand what threats are posed.

6 We have worked with the local fire  
7 departments, whether they're career or  
8 volunteer, when they have raised concerns.  
9 We have talked about this at the career chief  
10 meetings. We have worked with FASNY to raise  
11 awareness among the volunteer leadership.  
12 I've personally spoken to Rudy Sunderman  
13 about this issue, amongst others. So it is  
14 raising awareness.

15 Unfortunately, we had a pretty large  
16 battery energy storage fire up in Chaumont  
17 last year. There were lessons learned from  
18 that in terms of monitoring -- where you  
19 stay, you know, how close can you get, is it  
20 a fire you want to approach or let burn.  
21 Those are the things that we were putting  
22 together.

23 And we've actively been pushing that  
24 out. That's incorporated into the training

1           that we're making available, which is free of  
2           charge to any firefighter.

3                     SENATOR MURRAY: Commissioner, we're  
4           short, so my concern is this. The  
5           firefighters -- we have a lot of these  
6           facilities moving forward. The firefighters  
7           are saying: We're not ready, we're just not.  
8           They've done training where they ended up  
9           having to let it burn. They did one with an  
10          electric vehicle. It burned for three days.  
11          It reignited twice.

12                    Thinking of a huge battery storage  
13          facility near homes, near schools, near  
14          neighborhoods, we're not ready. I mean, how  
15          much more training will there be? Can we put  
16          the brakes on this? Can the Governor put the  
17          brakes on this?

18                    DHSES EX. DEP. CMMR. O'LEARY: On the  
19          training? I hope not.

20                    SENATOR MURRAY: No, not the training.  
21          The facilities.

22                    DHSES DEP. EX. CMMR. O'LEARY: So  
23          that's why we work with NYSERDA as well.  
24          We're there to make sure that the fire

1 service is appropriately trained.

2 CHAIRWOMAN KRUEGER: Sorry, I have to  
3 cut you off and go on.

4 CHAIRMAN PRETLOW: Thank you.

5 Assemblyman Ra.

6 ASSEMBLYMAN RA: Thank you, Chair.

7 Good afternoon. I just wanted to talk  
8 a little bit more about the increases in the  
9 ITS budget. And my understanding is about  
10 80 million has been provided for state data  
11 centers and the growth of Empire AI.

12 Can you go over some of the goals of  
13 the new data centers and what the office  
14 hopes to accomplish with these additional  
15 resources?

16 OITS CIO RAI: Yeah. Our data center  
17 equipment needs to be refreshed, from  
18 circuits to cables to servers. That houses  
19 multiple applications today, and those  
20 end-of-life equipment needs to be updated.

21 And that's what that capital or  
22 capital investment is going to go to.

23 ASSEMBLYMAN RA: Okay. And as this  
24 program now -- obviously, we made, you know,

1 a significant investment last year and again  
2 this year. Do you know at this point what --  
3 some of the applications that we're going to  
4 be seeing from the Empire AI program?

5 OITS CIO RAI: Sir, Empire AI has  
6 nothing to do with this program. I just want  
7 to clarify. This is a ITS infrastructure  
8 investment, which we support 6,000-plus  
9 systems for executive agencies. This  
10 investment is for ITS only. This has nothing  
11 to do with Empire State.

12 ASSEMBLYMAN RA: The proposal in the  
13 Governor's budget to mandate cybersecurity  
14 training for all state and local municipal  
15 employees talks about employees who work with  
16 technology as part of their official duties.  
17 Can you detail, you know, what we're  
18 considering an official duty in terms of who  
19 is going to be required to have this  
20 training?

21 OITS CIO RAI: So right now we are in  
22 a very initial phase of understanding the  
23 requirements for our agencies and their  
24 employees. But almost all the work is going

1 to be serving to -- I mean, the services to  
2 New Yorkers.

3 At this point we are working on  
4 building a system so that basic education --  
5 so people understand what are the  
6 possibilities. And then when we make those  
7 plans, we plan to roll out all employees.

8 And then that will be followed by  
9 creating a sandbox. The sandbox will create  
10 a private instance where each agency will  
11 house its own data, have its own model. And  
12 then after those testing and training is  
13 done, then we will come to a stage where we  
14 will probably take the use cases in each  
15 agency and then see those use cases, what is  
16 the output of those models to see how good  
17 those models are, and then those  
18 implementations.

19 This is going to be a journey for a  
20 while for us to educate, train, sandbox,  
21 create model, perfect model. And then  
22 hopefully this whole exercise brings  
23 efficiency in our agencies to serve  
24 New Yorkers better and faster.

1 ASSEMBLYMAN RA: Okay. And these  
2 training programs, is there a plan, kind of  
3 curriculum of what they're going to be  
4 trained on? Is that something that's being  
5 done internally or that's going to be  
6 contracted with some other entity? How does  
7 that part work?

8 OITS CIO RAI: We're working with a  
9 couple of partners at this point in time to  
10 put the training, what I will call education  
11 as soon as possible. We just got started on  
12 this plan as we speak. So I'm hoping that in  
13 the next few weeks we will have the initial  
14 catalog of training, curriculum, out there  
15 for our employees to learn.

16 ASSEMBLYMAN RA: Thank you.

17 CHAIRWOMAN KRUEGER: Thank you.

18 I might be the last Senator. So  
19 Mr. Rai, a lot of discussion about  
20 cybersecurity, a lot of money added to the  
21 budget. So from previous hearings there was  
22 quite a bit of discussion among my colleagues  
23 that we continue to have an enormous problem  
24 of people stealing SNAP money from thousands

1 of people. I think it's millions of dollars  
2 we've lost now, and we aren't going to be  
3 replacing it anymore. So we have to move to  
4 chip cards, which is a very common technology  
5 on all kinds of things. All my credit  
6 cards are chip cards.

7 And yet I kept getting answers and my  
8 colleagues kept getting answers from the  
9 Office of Temporary and Disability Assistance  
10 that wasn't really clear whether they weren't  
11 handling the contracts, maybe it was you,  
12 whether there were problems with this,  
13 whether there was a money problem.

14 But I understand the federal  
15 government will pick up half the cost, but  
16 who knows in next year's federal government.  
17 So it feels like we really need to move  
18 quickly, and we need to protect these  
19 people's benefits from not being stolen  
20 because there's no mechanism for replacement.

21 And so could you help me understand  
22 how your office can help us speed this along?

23 OITS CIO RAI: Senator, great  
24 question. I am not aware of the detail of

1           that. I have heard of that program. I will  
2           actually go back and take a look.

3                     We can -- as you can imagine payments  
4           and chips is just the tip of the iceberg.  
5           There is a whole eligibility, rules,  
6           regulations written in the software. So we  
7           need to make sure that the chip -- you know,  
8           the credit card is attached to those rules  
9           and regulations. But I really need to kind  
10          of get into the detail.

11                    We definitely can help, I know that.  
12          I just personally don't have enough  
13          information on this program at this point.

14                    CHAIRWOMAN KRUEGER: So I urge us to  
15          try to speed this up. Other states have  
16          already done it, so the federal regs are not  
17          only allowing it but actually they give us  
18          half the money, so -- and who knows, again,  
19          with this administration, when that storyline  
20          changes. So I just feel like if other  
21          states, even smaller states, have pulled this  
22          off already -- and apparently the criminals  
23          involved with stealing the money have been  
24          targeting us in New York State.

1           So it's just my urge that we try to  
2           get something done as quickly as possible.  
3           And I do think of it as cybersecurity, maybe  
4           not the same kind of visual as some other  
5           people's concerns.

6           Thank you. I'm not going to use the  
7           rest of my time.

8           Assembly.

9           CHAIRMAN PRETLOW: Assemblyman Bores.

10          ASSEMBLYMAN BORES: Thank you both for  
11          being here.

12          First, to the CIO, last year we passed  
13          a bill, the Governor signed my bill and  
14          Senator Gonzalez's bill to require agencies  
15          to make plans around cloud computing and to  
16          consult with your office as they do that.

17          How is that -- have agencies reached  
18          out to you yet? Is that outreach starting?

19          OITS CIO RAI: Yes. Yes, sir. I  
20          think every new greenfield program which  
21          comes to us, we -- our first step is to --  
22          how can we do that faster. I mean, that's  
23          what the cloud actually does, is to move  
24          things faster.

1                   And I can report that in the last  
2                   12 months the acceleration towards cloud has  
3                   gotten faster and probably will continue that  
4                   way, because we see things moving faster.  
5                   The application development is faster, the  
6                   go live is faster, and so on and so forth.

7                   ASSEMBLYMAN BORES: If I may, I want  
8                   to ask another question, which is DEC in the  
9                   budget request this year is asking for  
10                  30 million to continue their integration with  
11                  SFS. That comes after 18 million initially  
12                  and 10 million last year. It's almost more  
13                  than the entire SFS budget.

14                 Is this going to be their last  
15                 request? Are there things we need to learn  
16                 from this going forward?

17                 OITS CIO RAI: I have to get back to  
18                 you on that specific program. I was not  
19                 aware of the past.

20                 As I can tell you, that if I had  
21                 things my way done, we'd be moving to cloud  
22                 much faster. As you can imagine, there are  
23                 dependencies, there are application  
24                 dependencies, then organizational process

1 dependency, which -- but wherever we could,  
2 working with that agency.

3 And most of our agencies have been  
4 very supportive of that, especially if it  
5 requires a business transformation.

6 ASSEMBLYMAN BORES: Thank you. If you  
7 don't mind, I'd like to ask DHSES one  
8 question. Thank you.

9 I think you were here for the last  
10 session, you heard my last question about the  
11 72 percent increase in DMNA for New York City  
12 for terrorism. Again, you've mentioned more  
13 funding for terrorism. I just -- you know,  
14 what should we be taking away from that  
15 increase?

16 DHSES EX. DEP. CMMR. O'LEARY: So the  
17 increase within the division is actually for  
18 a foreign malign influence --

19 ASSEMBLYMAN BORES: No, no, I know  
20 that. I'm asking about the DMNA increase,  
21 that 72 percent for the joint task force.

22 DHSES EX. DEP. CMMR. O'LEARY: Sure.  
23 So I can speak to what the division pays for.  
24 The division is the pass-through. We fund

1 approximately 13 million of what DMNA has.

2 ASSEMBLYMAN BORES: Understood. I  
3 guess the question is, is DMNA testifying  
4 before us?

5 DHSES DEP. EX. CMMR. O'LEARY: I think  
6 that would be a question for the chair.

7 ASSEMBLYMAN BORES: Do you know the  
8 last time they've testified?

9 DHSES DEP. EX. CMMR. O'LEARY: I  
10 don't.

11 ASSEMBLYMAN BORES: If someone came to  
12 you and asked for a 72 percent increase in  
13 their budget, or \$45 million, would you want  
14 three minutes to ask them questions?

15 (No response.)

16 ASSEMBLYMAN BORES: Thank you.

17 DHSES DEP. EX. CMMR. O'LEARY: You're  
18 welcome.

19 CHAIRMAN PRETLOW: Okay, I have just a  
20 couple of quick questions before we go to our  
21 three-minute follow-ups.

22 Mr. Rai, you handle information  
23 technology for the entire state, correct?  
24 Now, several months ago there were a number

1 of cities in the southern part of New York  
2 that were held hostage to ransomware. And  
3 just three weeks ago the City of Mount Vernon  
4 was robbed of \$400,000 through some computer  
5 scam that no one's ever shared with me. But  
6 it did happen, and the city is out that  
7 money.

8 Is there any thought of having a  
9 secure entity for all communities in New York  
10 to gravitate under? Something like the  
11 Department of Defense, it's supposed to be  
12 impregnable except by a few nerds.

13 But -- because what's happening now is  
14 that each community is left on its own. Some  
15 don't have the money to afford a good  
16 security system. And if the state's spending  
17 tens of millions of dollars right now, if we  
18 could have one massive security system for  
19 all the communities in the state, I think it  
20 would be helpful.

21 I don't believe that's in this year's  
22 budget, but is that a possibility?

23 OITS CIO RAI: It would be a  
24 speculation on my part, but I would say that

1           our JSOC, which includes the attack surface  
2           management, which actually looks for malware  
3           and ransomware, is a good sort of a first  
4           step where we ingest all the data. We see a  
5           problem in one part of the state or nation,  
6           we alert everybody.

7                     We can definitely extend those, which  
8           is the plan. But the thing is a little more  
9           complicated because if somebody does a  
10          phishing email and you click on that email,  
11          it doesn't matter how much security you do,  
12          you're going to get a malware. So this  
13          requires a ton of education awareness.

14                    So I think the JSOC program, which  
15          will solve a ton of problems -- I'm not sure  
16          if it's going to take care of everything, but  
17          if this program continues to expand, which is  
18          what we're working on, it will definitely  
19          reduce the instances of such proportion.

20                    CHAIRMAN PRETLOW: So you just have to  
21          be leery of that and make sure that you're  
22          not doing -- okay, speaking of leery,  
23          Mr. O'Leary.

24                    (Laughter.)

1           CHAIRMAN PRETLOW:  These batteries  
2           that we're always talking about, how do they  
3           actually cause the fires?  They don't just  
4           sit there and just catch fire -- or do they?

5           DHSES EX. DEP. CMMR. O'LEARY:  They  
6           can ignite without an external source, yes.

7           CHAIRMAN PRETLOW:  So it's not during  
8           charging, if they're just sitting on your  
9           kitchen table, like it could just ignite and  
10          start a fire in the kitchen?

11          DHSES EX. DEP. CMMR. O'LEARY:  That is  
12          my understanding.  I'm not an expert in the  
13          area of what causes this.  But yes, they will  
14          ignite without an external source.

15          CHAIRMAN PRETLOW:  And is this done --  
16          I'm really confused now.  If the battery is  
17          totally discharged, it will still catch fire?

18          DHSES EX. DEP. CMMR. O'LEARY:  While  
19          it's not charging, yes.  That's my  
20          understanding, it can catch fire.

21          CHAIRMAN PRETLOW:  Even discharged.  
22          So how should a consumer --

23          DHSES DEP. EX. CMMR. O'LEARY:  If it's  
24          -- I'm sorry, do you mean if it's charging

1 or --

2 CHAIRMAN PRETLOW: No, it was  
3 discharged. You have a dead battery. The  
4 battery's dead, what do I do with it?

5 DHSES EX. DEP. CMMR. O'LEARY: I don't  
6 know. I call OFPC and I ask them, What do I  
7 do with it?

8 No. So you do need to dispose of it  
9 appropriately. And we have guidance on how  
10 to do that. But the problem is these  
11 batteries will catch fire if they're not in  
12 use. Also if they're being charged. That's  
13 what you've seen in New York City, with these  
14 charging stations for secondhand batteries,  
15 right? The non-UL-approved batteries.

16 CHAIRMAN PRETLOW: Yeah, I have heard  
17 about them, you know, catching fire when  
18 charging. And a friend of mine's house  
19 burned down, literally burned down, because  
20 he was charging his phone with one of the  
21 dollar-store chargers. So that can cause it.

22 But my question is if you're  
23 discarding a battery, no one really knows how  
24 to properly -- you know, to get rid of it.

1 And just last week, a garbage truck in my  
2 district in Yonkers caught fire and burned to  
3 the hubs because someone threw a battery  
4 away.

5 So no one knows what to do with these  
6 batteries. Most people don't know how to  
7 recognize the batteries. And they're causing  
8 a lot of fires. And fires generally tend to  
9 cause deaths. And I think that's what we  
10 don't want to happen in this state.

11 So do you have any guidance that I  
12 could give people, or do we need more money  
13 in the budget for education on how to  
14 recognize these batteries and, once you do  
15 recognize that you possess one of the  
16 batteries, how to get rid of it?

17 DHSES EX. DEP. CMMR. O'LEARY: So what  
18 I'll say is what we're doing at the  
19 division -- I can speak to what the division  
20 is doing -- based upon an addition to last  
21 year's budget, we created the Community Risk  
22 Reduction Unit, which they are targeting  
23 separate communities with their specific  
24 community risk as to fire.

1           As I was talking about in New York  
2           City and other urban areas, it's the  
3           micromobility devices and the second --  
4           off-market batteries that cause these fires.

5           So we're creating outreach materials  
6           as the unit is being stood up that will reach  
7           out to not only the fire departments but the  
8           communities as well, to say here's your risk,  
9           here's what you need to do. So that work has  
10          started within OFPC.

11          In terms of the science of it, I would  
12          defer to NYSERDA. That's why the Governor  
13          brought them in and has them tasked with  
14          working with OFPC and the division on the  
15          fire side, as well as DEC on the  
16          environmental side as well.

17          CHAIRMAN PRETLOW: Okay. I think  
18          we're a long way from solving this issue.

19          Assemblyman Otis for his three-minute  
20          follow-up. Thank you.

21          ASSEMBLYMAN OTIS: Thank you,  
22          gentlemen.

23          So one issue related to cybertheft is  
24          the difficulty of enforcement. If you're big

1           enough, the FBI gets involved. In some parts  
2           of the state, some district attorney's  
3           offices have built up some expertise in this.

4                     But from your different vantage  
5           points -- which are not really enforcement, I  
6           understand that. But from your vantage  
7           point, where do you think we as a state or in  
8           this country can do a better job of providing  
9           a deterrent for people to do cybertheft?  
10          Because much of it basically goes  
11          uninvestigated and unprosecuted.

12                    DHSES EX. DEP. CMMR. O'LEARY: So in  
13          terms of the criminal side of cyber theft,  
14          that's where the New York State Police and  
15          the Cyber Analysis Unit would be the lead for  
16          the state.

17                    As you mentioned, they obviously  
18          partner with the FBI and other federal  
19          partners, as well as local law enforcement.

20                    What we are focused on in the division  
21          is creating deterrence by having a stronger  
22          state network -- partnering with ITS, but  
23          also doing training for individuals as well  
24          as local governments and county governments,

1 making sure that they take those basic steps.

2 The overwhelming majority of  
3 cyberincidents is because someone didn't  
4 change their password. Someone's lazy, they  
5 clicked on a phishing link. They didn't  
6 engage in basic cyber hygiene. So we think,  
7 through prevention, that's the best way to  
8 combat this.

9 I would defer to the State Police,  
10 though, on any questions about criminal  
11 activity.

12 ASSEMBLYMAN OTIS: Sure, thank you.

13 And so the deterrence, in terms of  
14 prevention, is a piece. But as the -- again,  
15 the August '23 report came out, we're  
16 suffering billions of dollars in loss in this  
17 state. So Director?

18 OITS CIO RAI: It's -- 90-plus percent  
19 of cyberattacks are caused by somebody left  
20 the door open. Training, training, training,  
21 training is the key. Cyber should become  
22 part of the culture. Just like we don't  
23 trust strangers on the road, you can't trust  
24 anything you see online.

1           We have to create a culture of  
2 no-trust on cyber, train and aware people.  
3 That will dramatically reduce the cyber  
4 crimes from happening.

5           And then you come to, whether it's an  
6 individual or the business, they just need to  
7 start deploying some protection, basic stuff  
8 from end-point protection to network  
9 protection and so on and so on and so forth.  
10 Those are the things which will really help  
11 proactively.

12           ASSEMBLYMAN OTIS: Thank you very  
13 much. And thank you both for the fact that  
14 we have your expertise in state government.

15           CHAIRWOMAN KRUEGER: And then  
16 Senator Gonzalez for her last three minutes,  
17 as our closer.

18           SENATOR GONZALEZ: Thank you.

19           Well, hello, Executive Deputy  
20 Commissioner O'Leary. Thank you so much for  
21 your testimony. And I've certainly  
22 appreciated the conversation around  
23 cybersecurity today.

24           As you know very well, the state and

1           its subdivisions are regular cybersecurity  
2           threats. There are also many common low-cost  
3           high-impact efforts we can take to harden our  
4           state's cybersecurity posture. Are there  
5           other cost-effective techniques that entities  
6           that you are responsible for could be using  
7           to harden their cyber defense?

8                     And then again, I brought up our  
9           multifactor authentication bill earlier. We  
10          certainly also have the Secure Data Act,  
11          which would require the use of segmented  
12          backups with data verification that are  
13          stored in immutable copies.

14                    Are there other things like that that  
15          we can pursue as a state?

16                    DHSES EX. DEP. CMMR. O'LEARY: So what  
17          we do at the division beyond the partnership  
18          we have with ITS -- and I really can't  
19          underscore what the CIO stated. The JSOC is  
20          truly -- it's cutting-edge in what we're  
21          doing in terms of who it's providing services  
22          to.

23                    With the end-point protection and  
24          attack surface awareness, it's covering over

1 13 million -- a government that's serving  
2 over 13 million New Yorkers. And we're  
3 looking to expand that. That is truly  
4 fantastic in terms of protecting government.

5 What we do in other parts of the  
6 agency as well -- obviously we are not  
7 responsible for the state system. We work  
8 closely with the CIO on that. But we create  
9 intelligence awareness bulletins that go out  
10 to local law enforcement, county law  
11 enforcement, as well as owners of critical  
12 infrastructure. We belong to the MS-ISAC.  
13 We work closely with the Center for Internet  
14 Security to make sure that owners of critical  
15 infrastructure are also prepared. Right?

16 SENATOR GONZALEZ: Yeah, it's  
17 certainly helpful, as you all are experts, to  
18 get guidance from you on what the state can  
19 be doing.

20 My second question is on domestic  
21 terrorism. I know that we've seen an  
22 increase in threats, and I would love to hear  
23 an assessment of the current landscape in  
24 New York State, if you've seen an increase in

1 the number of threats.

2 DHSES EX. DEP. CMMR. O'LEARY: So what  
3 I'll say is there's no known current active  
4 threat facing New York.

5 However -- and this has been over the  
6 last two presidential administrations --  
7 federal law enforcement has been very clear  
8 that the most lethal threat, or terrorist  
9 threat facing the country is domestic  
10 terrorism, often fueled by either white  
11 supremacy or antisemitism.

12 We see that, we address that in many  
13 different ways with outreach and partnership,  
14 facilitating the federal Nonprofit Security  
15 Grant Program, as well as other  
16 counterterrorism dollars that we pass out.

17 I will also say, in my last 15  
18 seconds, that the threat assessment  
19 management team that Governor Hochul called  
20 for and we stood up following the Buffalo  
21 massacre, we went from one county having a  
22 threat assessment management team to now  
23 47 counties.

24 And following the events at Cornell

1 and the New School, we've expanded that to  
2 partnering with universities and colleges as  
3 well.

4 SENATOR GONZALEZ: Okay, thank you.

5 CHAIRWOMAN KRUEGER: Thank you.

6 Thank you, gentlemen. Appreciate your  
7 time with us today.

8 Now, before the next panel comes down,  
9 I'm calling an audible. And so we are  
10 trading Panel D and Panel E. I'm calling  
11 Panel E first, which is Robert Ricks, the  
12 father of Robert Brooks that we have spent so  
13 much time discussing, the Legal Aid Society  
14 of New York, and the Innocence Project.

15 And again, we are no longer in the  
16 government invited panels, so everyone will  
17 only have three minutes to speak and all the  
18 legislators only get three minutes to ask  
19 questions.

20 We're still in afternoon, so good  
21 afternoon, everyone.

22 MR. RICKS: Good afternoon.

23 CHAIRWOMAN KRUEGER: And just starting  
24 from my right, just say your name first.

1 We'll just go down the row so that the tech  
2 people, who hopefully heard me say Panel E,  
3 not Panel D, are the people we have in front  
4 of us.

5 Please.

6 MS. WALLWIN: Amanda Wallwin,  
7 Innocence Project.

8 CHAIRWOMAN KRUEGER: Thank you.

9 MS. FONTIER: Alice Fontier, Legal Aid  
10 Society.

11 MR. RICKS: Robert Lee Ricks, the  
12 father of Robert Lee Brooks.

13 CHAIRWOMAN KRUEGER: Thank you.

14 Why don't we start with you,  
15 Mr. Ricks, if that's okay.

16 MR. RICKS: Pardon me?

17 CHAIRWOMAN KRUEGER: Are you ready?

18 MR. RICKS: As ready as I'm gonna be,  
19 I guess.

20 CHAIRWOMAN KRUEGER: Okay.

21 MR. RICKS: So good afternoon, Senator  
22 Krueger, Assemblymember Pretlow, and all the  
23 distinguished Senators and Assemblymembers  
24 present.

1           I too am America. I'm the darker  
2 brother. I need to say that because I think  
3 you all forget that sometimes. I think you  
4 all forget the investments that Black and  
5 brown people have made, the sacrifices, the  
6 blood, the sweat, the tears, the over  
7 400 years of free labor.

8           The preamble of the Constitution  
9 begins "We the People of the United States."  
10 We the people too. Pauper, president,  
11 priest, prisoner or poser, we the people too.

12           I am Robert Lee Ricks, and I'm the  
13 father of the late Robert Lee Brooks -- and  
14 it sounds crazy to me to even say that. He  
15 was murdered in December of 2024 at the Marcy  
16 Correctional Facility by New York Department  
17 of Corrections staff. Not an inmate, staff.

18           I'm appalled by the lack of  
19 accountability for the correction officers  
20 involved and the absolute failure of our  
21 state government to address the decades-old  
22 problems of violence against prisoners and  
23 the New York correctional facilities.

24           I'm not going to waste time providing

1           you with data and facts and figures about the  
2           number of reported assaults and the millions  
3           paid to settle cases brought by prisoners.  
4           Former Attorney General Eric Schneiderman  
5           advised me that you all have all that  
6           information available to you.

7                     But the emotional toll that this  
8           situation has taken on me, my family, my  
9           community, has been devastating. And no  
10          financial compensation can replace the loss  
11          of my son.

12                    But you have the power -- you have the  
13          power to demand accountability and enact the  
14          major reform needed to end the epidemic of  
15          systemic taxpayer-funded violence. I truly  
16          believe that my son died so others may live.  
17          I truly believe that my son sacrificed his  
18          life so other sons and daughters and mothers  
19          and uncles and aunts may live.

20                    CHAIRWOMAN KRUEGER: (Mic off;  
21          inaudible.)

22                    MS. FONTIER: Thank you. And thank  
23          you for the opportunity to address you today.

24                    Thank you for being here, sir.

1           I have submitted testimony, written  
2 testimony which addresses a number of  
3 specific requests. I'm going to use my  
4 limited time here today to talk only about  
5 discovery.

6           For the first time, in 2020  
7 New Yorkers accused of crimes were able to  
8 access the evidence against them and make  
9 informed decisions in their cases. This  
10 landmark discovery law finally provided the  
11 accused with the basic building blocks for  
12 fairness in our system.

13           The laws themselves are a success.  
14 People are no longer forced to take pleas  
15 without understanding the case against them.

16           The Governor and DAs have argued that  
17 court efficiency, dismissals and public  
18 safety have been impacted by this access to  
19 evidence. But these claims do not hold up  
20 under scrutiny.

21           Chief Administrative Judge Zayas just  
22 this morning explained the cause of court  
23 delay in his testimony. We thank him for  
24 stating unequivocally that he and OCA

1 supported the 2020 discovery laws, and I can  
2 assure you that no one -- no one -- wants an  
3 efficient and fair court process more than  
4 the people that we represent. Those people,  
5 people like Mr. Brooks who face accusations  
6 and then the consequences of being inside of  
7 the system, do not want court delay. The  
8 defense is not gaming the system. We are not  
9 causing delay, and Judge Zayas addressed that  
10 this morning.

11 The next panel will address the  
12 dismissal rates on cases, but I want to  
13 repeat indicted felonies are not getting  
14 dismissed because of discovery or speedy  
15 trial. In New York City, if the prosecutors  
16 had access to the NYPD database and records,  
17 the dismissal rates on misdemeanors would  
18 also go down.

19 Senator Myrie's bill -- thank you for  
20 introducing it, sir -- S613, addresses this  
21 problem of access to police records in  
22 New York City and will correct that issue.  
23 It should be passed.

24 As to public safety, let me put it

1           very simply. There is no connection between  
2           access to evidence and recidivism. It does  
3           not exist. If somebody says that to you,  
4           make them prove it.

5                     There is no question that the 2020  
6           discovery laws have changed the way that we  
7           practice. And let me be perfectly clear:  
8           That is a very good thing. We are required  
9           to review evidence and explain it to our  
10          clients. We have to do it efficiently and  
11          timely. This Legislature put money into the  
12          budget in the last two years. The Legal Aid  
13          Society was the very first of the defense  
14          organizations to be able to access that  
15          money, and through it we invested in  
16          technology, the NICE justice system, as well  
17          as in litigation assistance and staffing.

18                    CHAIRWOMAN KRUEGER: Thank you.

19                    Next.

20                    MS. WALLWIN: Hi. My name is  
21          Amanda Wallwin. I'm a state policy advocate  
22          with the Innocence Project.

23                    The Innocence Project is a national  
24          organization founded in New York that

1 represents wrongfully convicted clients  
2 across the country. We also work to enact  
3 state-level policy reforms that prevent and  
4 reveal wrongful convictions.

5 The Innocence Project was a leading  
6 voice in the fight for discovery reform in  
7 2019, and I'm here today to tell you about  
8 how well this reform has worked to prevent  
9 the withholding of exculpatory evidence  
10 leading to wrongful convictions.

11 I'll start with a few very notable  
12 statistics. From 2015 to 2019, 62 percent of  
13 all New York exonerations included withheld  
14 exculpatory evidence. If you look only at  
15 convictions in that time period that were  
16 overturned within five years, that percentage  
17 rises to 67 percent.

18 From 2020, when discovery reform was  
19 enacted, until now, five years later, there  
20 have been zero exonerations that have  
21 included withheld exculpatory evidence. I'm  
22 going to say that again. From 2020, when  
23 discovery reform was enacted, until now, five  
24 years later, there have been zero convictions

1           that were later overturned due to withheld  
2           exculpatory evidence. Discovery reform  
3           worked.

4                       We've all heard the devastating story  
5           of Kalief Browder, so I won't repeat that  
6           one, but I want to share the story of someone  
7           else who was harmed by poor discovery  
8           practices: Renay Lynch.

9                       Renay Lynch was sentenced to 25 years  
10          to life in prison after she was found guilty  
11          of being an accomplice to the robbery and  
12          murder of Louise Cicelsky in Amherst, just  
13          outside of Buffalo. In 2020, Renay's  
14          post-conviction counsel, including innocence  
15          project attorneys, discovered that police had  
16          hidden fingerprint evidence from the crime  
17          scene. When the 13 hidden prints were  
18          examined, nine of them matched a tenant of  
19          Ms. Cicelsky's who had a prior manslaughter  
20          conviction. None of the prints matched Renay  
21          Lynch.

22                      Renay served 24 years in prison for  
23          this crime. She was released on parole in  
24          2022 and finally exonerated just last year.

1           Renay has two children and six  
2           grandchildren. During Renay's incarceration,  
3           her daughter moved from Atlanta to Buffalo,  
4           where Renay was in prison, so that Renay  
5           could see all of her grandkids as often as  
6           possible. Renay and her family will never  
7           reclaim those 24 years.

8           The Legislature knows the damage of  
9           wrongful convictions. That's why you passed  
10          discovery reform in 2019 and why you've  
11          allocated hundreds of millions of dollars to  
12          make it work. You knew that it was long past  
13          time for New York to join the national  
14          mainstream and modernize our evidence-sharing  
15          statute. Nationwide, prosecutors -- in large  
16          jurisdictions with high caseloads, and in  
17          small remote jurisdictions with few  
18          resources -- are able to handle this basic  
19          constitutional requirement, and you knew that  
20          New York shouldn't be the exception.

21          And you now know that the law you  
22          passed has had its intended effect. It has  
23          reduced wrongful convictions. The Innocence  
24          Project urges you not to act to intentionally

1           omit Part B, the Governor's misguided  
2           discovery repeal, from your one-house  
3           budgets.

4                     Thank you.

5                     CHAIRWOMAN KRUEGER: Thank you.

6                     Our first questioner will be -- excuse  
7           me -- well, it doesn't matter that she's the  
8           chair for this purpose, but she is very  
9           importantly the chair, Julia Salazar.

10                    SENATOR SALAZAR: Thank you, Chair.

11                    Thank you all for your testimony. I  
12           will focus my questions to Mr. Ricks, and  
13           particularly in a moment want to give you  
14           more time to finish your testimony.

15                    But I wanted to first ask -- and of  
16           course express again how deeply sorry I am  
17           for the loss of your son. His death is a  
18           dark stain on our collective conscience, and  
19           I deeply appreciate you being here, sharing  
20           him with us.

21                    Could you actually briefly just talk  
22           about changes that you believe need to be  
23           made in our correctional facilities? And  
24           where do we begin?

1           MR. RICKS: I don't think there --  
2           it's a lot that needs to change. For the  
3           last couple of months I have received a lot  
4           of phone calls, a lot of text messages, a lot  
5           of Facebook messages just saying the amount  
6           of things that -- there are a lot of  
7           atrocities that take place in the prisons. I  
8           mean, mothers who can't see their sons  
9           because their son's been beat up so bad that  
10          they don't want to let them see him. Broken  
11          bones, prisoners just disappearing, not able  
12          to even contact -- the parents can't even  
13          contact them.

14                 So I think that just -- there's just  
15          so much. And prior to my son being murdered  
16          and me seeing it on TV, nobody could have  
17          told me that these things were transpiring in  
18          our jails and in our prisons. So I think  
19          that a lot of things, a lot of things need to  
20          change.

21                 I support your bills in the Prison  
22          Safety is Public Safety package. I support  
23          the Senate Bill 844, which would toll the  
24          statute of limitations for prisoners, giving

1           them three years after release to file  
2           lawsuits against an abusive prison staff. I  
3           support the creation of an independent  
4           special prosecutor to prosecute crimes  
5           committed by correctional staff against  
6           prisoners.

7                     It is crystal clear that the current  
8           system of accountability is broken. The  
9           Attorney General defends DOCCS and DOCCS  
10          employees, so she has a conflict of interest.  
11          And I do not trust the district attorneys who  
12          represent the counties where prisoners are  
13          located and correction staffs are their  
14          constituents. I don't trust them to do  
15          justice in these challenging cases.

16                    I believe that there is a lot that  
17          needs to be done as far as the prison system  
18          is concerned. Prior to now, prior to seeing  
19          my son in a body bag, I wouldn't have  
20          believed it. I wouldn't have believed it.

21                    SENATOR SALAZAR: Thank you.

22                    CHAIRMAN PRETLOW: Assemblyman Dilan.

23                    ASSEMBLYMAN DILAN: Mr. Ricks, you  
24          said something yesterday to the caucus that

1 will stay with me and that's to do the next  
2 right thing. And I believe this is for us  
3 the beginning of that process.

4 So I guess in your words, could you  
5 continue to talk about further reforms that  
6 you wish to see from our state and from our  
7 department of corrections?

8 MR. RICKS: Well, I had the  
9 opportunity to sit and talk with a bunch of  
10 Senators and a bunch of Assemblymen that have  
11 a desire to push those forward. And I think  
12 that there are good -- I think that they all  
13 should be considered, they all should be  
14 heard. Because we're not just talking about  
15 one or two situations here.

16 We're talking about just so many  
17 different things that are just -- that are  
18 just -- all the way to the fact that the way  
19 the system is set up currently -- like I used  
20 to send my son a hundred dollars a month  
21 because I just didn't want him to be there  
22 needing anything or wanting anything. For me  
23 to send him that money, it cost me money to  
24 send him that money. And then I have to put

1 money on my phone in order to talk to my son.

2 I mean, just things like that is just  
3 like for a community where finances is always  
4 a problem, and our community is where most of  
5 the young men and young women end up in these  
6 situations. So basically you're taking money  
7 from a community that struggles with trying  
8 to generate or have money to do the bare  
9 necessities. So just things like that.

10 But, you know, the bigger picture is  
11 that I want the men and women in our  
12 community to come back to our community  
13 better than they was when they -- before they  
14 became incarcerated. Better than they were  
15 when they went into the penal system.

16 I thought that that was what the  
17 prison system was supposed to be about,  
18 making men and women better men and women.  
19 Not -- for lack of a better term, trying to  
20 help them get back on track. Yes, they did a  
21 crime. They're being punished for their  
22 crime. But don't come out in worse positions  
23 than you was when you went in.

24 And then, you know, you got felony

1 stamped across your forehead, so it's hard to  
2 get a job. So it's just -- the whole system  
3 just seems like it's a setup to fail. It's  
4 just a setup for the recidivism rate.

5 ASSEMBLYMAN DILAN: Thank you. And  
6 for our sake, I hope that the immediate  
7 arrest and prosecution of those responsible  
8 happens as soon as possible. It's been over  
9 60 days, and no one has yet been held to  
10 account.

11 Thank you.

12 CHAIRWOMAN KRUEGER: Thank you.

13 The next Senator is Senator Persaud.

14 SENATOR PERSAUD: Thank you.

15 Thank you all for being here.

16 Mr. Ricks, I appreciate your  
17 testimony. You know, when you said that you  
18 think that your son lost his life so that no  
19 other son or daughter should, what  
20 specific -- you know, you hear the talk about  
21 that facility should close.

22 But closing the facility, in my  
23 opinion, is not going to change what  
24 happened. It's about changing the culture.

1           Because the people who were committing the  
2           crimes on your son were comfortable in doing  
3           so. They were comfortable. And I don't  
4           think it's only the corrections officers that  
5           we should be looking at, we should be looking  
6           at the medical team that was there also and  
7           asking them the questions.

8                        So what's your opinion on that, about  
9           the requests for closure only?

10                      MR. RICKS: I agree. I don't -- I  
11           don't see how people that are that -- what I  
12           see as evil -- when I see that video, I see  
13           14 evil people beating somebody to death.

14                      And so for me, it's like how do they  
15           even find their way into a position where  
16           they're responsible for other people's lives?  
17           That is like -- I can't wrap my head around  
18           that. Um ... (pause).

19                      SENATOR PERSAUD: Take your time.

20                      MR. RICKS: It's hard. It's really,  
21           really, really difficult. (Pause.)

22                      I think that the way that our society  
23           is currently set up -- I know in the Bible it  
24           says money is the root of all evil, and I'm

1           really, really starting to believe that. But  
2           the way our society is made up, if it doesn't  
3           affect the finances, then it's probably not  
4           going to affect the person or the community.

5                     For me, closing Marcy says that, okay,  
6           if these types of things are happening in  
7           your prison, one of your main sources of  
8           income in your community, then it's highly  
9           likely that your prison will be closed. So  
10          that's what closing Marcy does for the  
11          system: It sends a warning.

12                    I also thought like, okay, if you  
13          close Marcy, then the guards are just going  
14          to go and do the same thing in other prisons.  
15          But I think that it's -- you know, it's  
16          twofold. One, I mean, when you hit a person  
17          in their pockets, it makes them consider how  
18          they're conducting themselves.

19                    I think that there should be a much  
20          better way of screening people that are  
21          responsible for the lives of other people.

22                    When my son was incarcerated, I  
23          honestly believed that he was going in and he  
24          was going to come out better. And he was in

1           that process. He was less than a year of  
2           coming home on good time. He had gotten his  
3           GED. He had gotten his sign language  
4           certificate. He was taking horticulture  
5           classes. He was talking about all these  
6           things that he wanted to do.

7                     I've been working with young people  
8           for the last 32 years of my life, and he  
9           wanted to come home and do some of the things  
10          that I did. So he was getting ready to come  
11          home. He was getting ready to be a member of  
12          the Second Chance Club, you know. And he was  
13          denied that chance. He was denied that  
14          chance.

15                    And the thing is that those are some  
16          of the most productive and influential people  
17          in reference to our young people in our  
18          community, because they've been there,  
19          they've done that. You know, they've got  
20          their felony conviction and the child support  
21          and all these different things that's  
22          prevent -- that they can say: I've been  
23          here, I did this. You haven't gone through  
24          anything that I haven't gone through. You

1           haven't seen anything that I haven't seen.  
2           You haven't did anything that I haven't did.  
3           But if you go down that road, you're going to  
4           get your butt towed out of the frame. Jails  
5           institutions are death. Listen to me, young  
6           man: Jails institutions are death. That's  
7           where you're going if you're going down that  
8           road.

9                     SENATOR PERSAUD: Thank you.

10                    CHAIRWOMAN KRUEGER: Thank you,  
11           Mr. Ricks.

12                    MR. RICKS: And it's hard to teach  
13           what you don't know, and you can't lead where  
14           you don't go.

15                    SENATOR PERSAUD: Thank you.

16                    MR. RICKS: They've been there, they  
17           did it.

18                    CHAIRWOMAN KRUEGER: Thank you,  
19           Mr. Ricks. I have to move it to the  
20           Assembly.

21                    CHAIRMAN PRETLOW: Assemblyman Ra.

22                    ASSEMBLYMAN RA: Thank you.

23                    Mr. Ricks, I don't have any questions  
24           for you, but I do want to express my

1           condolences and thank you for being here and  
2           showing the strength to come and speak with  
3           the legislators.

4                     I do have a question for the  
5           Innocence Project. Admittedly, I may have  
6           some homework to do here, but, you know,  
7           whenever we're dealing with any policy issue,  
8           right, there's 50 states and they all have  
9           different laws and some are similar, some are  
10          not. And, you know, the comparisons between  
11          them are interesting when we're trying to  
12          look at what our policies are.

13                    So I guess my simple question would  
14          be, how does our current law compare with  
15          Texas and -- I assume the answer is yes -- if  
16          you had to choose between Texas's discovery  
17          and speedy trial laws versus New York's as it  
18          would look with this reform passed, which  
19          would you choose?

20                    MS. WALLWIN: I don't want to speak  
21          for the sponsors of the original discovery  
22          reform bill, but I do know that the  
23          Michael Morton Act, which had passed in  
24          I believe 2013, was certainly a driver of the

1 thinking at the time and had a lot to do with  
2 the shaping of New York's discovery law.

3 So I would say off the top of my head  
4 that they're quite similar. But I can  
5 certainly get you more information about how  
6 they exactly pair up. Texas is a good model.

7 ASSEMBLYMAN RA: Okay. Thank you.

8 CHAIRWOMAN KRUEGER: Zellnor Myrie.

9 SENATOR MYRIE: Thank you.

10 And Mr. Ricks, again, thank you for  
11 your courage and bravery. You should not  
12 have to be here, but we are grateful that you  
13 are, so thank you.

14 I want to talk about discovery for the  
15 brief time that I have. You know, part of  
16 the difficulty in being a legislator is we  
17 are not in the courts with you every day.  
18 Most of us do not practice, whether in a DA's  
19 office or in the defense bar in the criminal  
20 context. And so we have to make policy  
21 decisions based on what we hear from all of  
22 the stakeholders, and based on the data  
23 that's available.

24 And many of us sitting up here

1 supported discovery reform, believe in what  
2 it was meant to do and still do. And we  
3 also -- I'll speak for myself -- think that  
4 there are things we can do to improve it. As  
5 you mentioned, we have a bill to that effect.

6 So I'm hoping that we can try, as best  
7 as we can, to operate from the same set of  
8 facts, and I have two questions on that. I  
9 don't know if we're going to have enough time  
10 to get to both.

11 But the differences in dismissals, we  
12 have, I think as you mentioned, from  
13 Judge Zayas earlier this morning, the felony  
14 indictments have been largely undisturbed in  
15 the percentage difference. But under the  
16 misdemeanors and our -- the, you know,  
17 misdemeanor cases, that number has grown.

18 And I think some of that is  
19 attributable to not having access, quick  
20 enough access to police databases. But there  
21 are other forms of evidence, other things  
22 that need to be turned over.

23 And I'm wondering what you think that  
24 higher percentage of dismissals can be

1 attributed to. Because I don't think it's  
2 just the access to police databases, but  
3 maybe you feel differently.

4 MS. FONTIER: So in New York City, the  
5 data is clear that misdemeanor dismissals are  
6 significantly higher post the discovery laws  
7 going into effect. That is primarily due to  
8 police not turning over the evidence.

9 I can't speak for individual  
10 prosecutors, but across the board what we  
11 experience as defense is a complete lack of  
12 discovery. In basic misdemeanor cases, which  
13 are almost entirely police cases, the  
14 information is simply not produced at all. I  
15 believe the prosecutors are asking for it,  
16 and I believe they are not getting it timely.

17 So I do think that your bill will  
18 resolve the vast majority of those issues.

19 I also note that when prosecutors in  
20 any case, misdemeanor or felony, are seeking  
21 information that is outside of the general  
22 NYPD custody, and there is a longer wait  
23 time, all they do is go to the court and say  
24 that we've asked for it, it has not been

1 produced yet, we need a good-cause extension,  
2 and that is granted.

3 So that is not the cause of  
4 dismissals.

5 SENATOR MYRIE: Thank you.

6 CHAIRMAN PRETLOW: Assemblywoman  
7 Walker.

8 ASSEMBLYWOMAN WALKER: Thank you.

9 As much as I'd love to continue in our  
10 dialogue around discovery, I am compelled,  
11 based on my own loss of my cousin behind bars  
12 in Rikers Island -- my aunt never received  
13 the opportunity to hear from the commissioner  
14 of DOCCS when my cousin Ivory died.

15 What were you feeling, what was going  
16 through your mind when you heard the  
17 commissioner's testimony?

18 MR. RICKS: What I feel just across  
19 the board, that you can't be that close in  
20 proximity of all the atrocities that happen  
21 in prison and not know that they're  
22 happening. So I just felt like it was  
23 bait-and-switch. It was "I'm saying what I'm  
24 supposed to say to maintain my position."

1           You can't -- you can't be that  
2 embedded into a system, a system with this  
3 level of atrocities, and not know that  
4 they're taking place. Impossible. Virtually  
5 impossible.

6           ASSEMBLYWOMAN WALKER: So I'll go then  
7 to Legal Aid. There are, as we know, certain  
8 breeding grounds for coercing, if you will,  
9 guilty pleas. And of course bail, beloved  
10 bail, and discovery are two vehicles that get  
11 utilized by a number of prosecutors in order  
12 to force people into a guilty plea.

13           Can you talk to me a little bit about  
14 how and why these particular practices are  
15 abused by certain prosecutors?

16           MS. FONTIER: Yes, and it also --  
17 thank you for the question.

18           Also I think, Senator Myrie, I didn't  
19 discuss the dismissals on unindicted  
20 felonies, which have come up regularly.

21           What we experience is that the police  
22 and then the prosecutors at the initial  
23 arraignment are over-charging cases. So  
24 cases come in as bail-eligible felonies so

1           that they can seek bail. But ultimately  
2           those cases do not get indicted. They often  
3           ultimately either get reduced to  
4           misdemeanors, have some other alternate  
5           disposition, or get dismissed altogether.

6                     But there is a pattern, at least in  
7           our experience, of over-charging people to  
8           provide bail-eligible offenses at that first  
9           instance so that folks can be held.

10                    And the other piece of that on the  
11           discovery component is the current law does  
12           not allow for abuse because there is a  
13           remedy. If things are not turned over, the  
14           case will be dismissed. The Governor's  
15           proposed repeal of that ultimately will allow  
16           for discretion. It gives the power entirely  
17           back to the prosecutor to decide what is  
18           relevant and when to turn it over.

19                    CHAIRWOMAN KRUEGER: I'm sorry --

20                    (Overtalk.)

21                    MS. FONTIER: Because as long as it's  
22           not sitting in their actual possession, they  
23           don't have to turn it over.

24                    CHAIRWOMAN KRUEGER: Thank you.

1                   CHAIRMAN PRETLOW: Assemblywoman  
2 Kelles.

3                   ASSEMBLYWOMAN KELLES: If you wanted  
4 to finish what you were saying.

5                   MS. FONTIER: So the -- there is a few  
6 big issues in the Governor's proposal. And  
7 the one is that it significantly narrows the  
8 amount of information that has to be turned  
9 over to whatever the individual prosecutor  
10 decides is relevant to the charge.

11                   That has two major problems. One is  
12 that the prosecutor doesn't necessarily know  
13 what the theory of defense is or what would  
14 be relevant to a defense; they only know what  
15 is relevant in their own mind to their  
16 charging of the case.

17                   The second is that that almost  
18 entirely cuts out the requirement to turn  
19 over police misconduct records. And I do  
20 just want to say that like the officers who  
21 murdered your son, they had significant  
22 histories of discipline and misconduct.  
23 Police officers are in the street, working  
24 and being promoted, with significant

1 histories of abuse and misconduct. And  
2 unless we are able to receive that  
3 information and cross-examine them, they will  
4 continue to do that.

5 ASSEMBLYWOMAN KELLES: Thank you.

6 Mr. Brooks, I -- I just wanted to say  
7 thank you also for coming. To do this work  
8 right after your son was murdered takes  
9 tremendous, tremendous self-soul awareness  
10 and commitment and love for humanity, and I  
11 wanted to thank you for that.

12 It shows that you still have faith and  
13 hope in us, and I hope we don't disappoint  
14 that.

15 MR. RICKS: As do I.

16 ASSEMBLYWOMAN KELLES: Yeah. One of  
17 the things I was thinking as you were talking  
18 that hurt me when I was watching is the  
19 participation of the medical practitioners as  
20 well.

21 A bill I had last year that would  
22 require electrification -- that we put all of  
23 our medical records in prisons onto digital,  
24 but it's shared, was vetoed. I am committed

1 to keep moving that. But I wanted to hear  
2 from you from that side, from the health  
3 side, what you would like to see.

4 MR. RICKS: I don't -- I really don't  
5 think that you can separate it. It's all  
6 just like one -- one system. It's all one  
7 system.

8 There's like -- for me, there's like  
9 three parts of this. There's the prevention  
10 work, and that's the work that I do. And  
11 then there's the -- what happens with  
12 prisoners after they're released. And then  
13 there's the what happens with prisoners when  
14 they're in prison.

15 I know that I do everything within my  
16 power to try to prevent young people from  
17 going down the path that my son went down,  
18 everything within my power with what I'm  
19 allotted. I know that the people that are  
20 invested in trying to lay a foundation and  
21 assist prisoners in reentry do everything  
22 within their power to try to assure the fact  
23 that they don't return.

24 CHAIRMAN PRETLOW: Thank you,

1 Mr. Ricks.

2 ASSEMBLYWOMAN KELLES: Thank you.

3 MR. RICKS: You all have that third  
4 power. That third power belongs to you all.

5 ASSEMBLYWOMAN KELLES: Thank you.

6 CHAIRMAN PRETLOW: Mr. Bores.

7 ASSEMBLYMAN BORES: Ms. Wallwin, good  
8 to see you. I hope I'm doing the 73rd  
9 District proud.

10 Mr. Ricks, I'm so sorry for your  
11 tragedy. And thank you for being here and  
12 for advocating for others. It's deeply  
13 appreciated.

14 My questions are for Legal Aid.

15 First of all, you mentioned in your  
16 testimony we desperately need to shorten  
17 delays, and there's many, many, many things  
18 we have to do for that. But I want to thank  
19 you and Legal Aid for your support on lifting  
20 the cap on Supreme Court justices. It's one  
21 of the many ways to reduce delays.

22 My question to you, your testimony is  
23 I think the only one I've seen that argues  
24 against the criminalization of AI-generated

1 CSAM, and I just wanted to kind of understand  
2 the bounds of that position. It sounds, from  
3 reading your testimony, like you would still  
4 think that distributing an image of a real  
5 person that has been manipulated is something  
6 that should be penalized. Is that correct?

7 MS. FONTIER: I will say that this is  
8 not my exact expertise and issue. It is a  
9 Legal Aid position. But I believe that is  
10 correct.

11 ASSEMBLYMAN BORES: Okay. That seemed  
12 to be what I was picking up.

13 MS. FONTIER: Yes.

14 ASSEMBLYMAN BORES: And if you want to  
15 follow up with this, I'd be interested as  
16 well. But should companies be allowed to  
17 sell software that is trained to do this or  
18 that is -- or they're promoting or --

19 MS. FONTIER: The position is  
20 ultimately that if something is not real, it  
21 shouldn't be criminalized. I mean, that's  
22 the simplest way to put it.

23 So when you say "this," I'm not  
24 entirely sure what you are --

1           ASSEMBLYMAN BORES: I guess my concern  
2           is I don't want there to be a market where AI  
3           companies are incentivized to be good at  
4           producing AI-generated CSAM because of what  
5           it takes to train a model to be good at that.

6           And so I understand the position of it  
7           that it's totally fake and if it's not  
8           distributed it's one thing. I'm just trying  
9           to figure out sort of from your perspective  
10          the bounds of that position. And if that's  
11          something you want to follow up with, that's  
12          great.

13          MS. FONTIER: We can follow up on it.

14          But in general, you know, we are  
15          concerned about the criminalization of  
16          individuals and the overcriminalization of  
17          individuals. And so if somebody is, you  
18          know, viewing, sharing things that are not  
19          actually real and therefore there is no true  
20          victim, we do not believe that that should be  
21          criminalized.

22          ASSEMBLYMAN BORES: I'm not sure I  
23          agree, but I would love to hear more about  
24          that. Yeah, yeah. Thank you.

1 MS. FONTIER: I'm not here taking a  
2 position at the moment on any  
3 incentivization.

4 ASSEMBLYMAN BORES: Thank you.

5 CHAIRMAN PRETLOW: Assemblywoman  
6 Romero.

7 (No response.)

8 CHAIRMAN PRETLOW: Assemblyman Lavine.

9 ASSEMBLYWOMAN ROMERO: I'm here. Just  
10 getting a microphone, sorry.

11 (Off the record.)

12 ASSEMBLYWOMAN ROMERO: Thank you.

13 I first just want to start with giving  
14 your time back, Mr. Ricks, if you -- you kind  
15 of looked like you were in the middle of your  
16 thought last time you were speaking, and I  
17 wanted to just give you the time back to  
18 continue that thought. You were speaking  
19 about -- you were speaking about children and  
20 the distinction between the work of people in  
21 prison versus before they get to prison and  
22 after prison, and I wanted to give you the  
23 time back to finish that thought.

24 MR. RICKS: Thank you.

1           What I was saying is that there's  
2           three parts. It's like my son -- my son  
3           didn't -- he didn't begin at Marcy, you know.  
4           So there was things that transpired, there's  
5           things that happened prior to him ending up  
6           in prison.

7           And so those are the things that I  
8           work against in my work.

9           And then the reentry programs are the  
10          other part of it. And basically those are  
11          the only things that we have any really  
12          control over. You know, the work that we put  
13          in after our young men and women get out of  
14          prison, and the work that we put in to  
15          prevent them from going to prison.

16          The other part is your part, you know.  
17          We do everything within our power with what's  
18          allotted to us to make sure that our work is  
19          done, done thoroughly, and we are making a  
20          difference. It's not like -- it's not like  
21          you sitting here don't know that the system  
22          is broke. Y'all know it's broke. Y'all know  
23          that people are getting beat to death in  
24          jail. Y'all know that.

1                   So it's like what you going to do? I  
2                   do my job every day, from 2 o'clock in the  
3                   evening to midnight. Every day I work with  
4                   kids from the age of 5 to 17, trying to make  
5                   a difference, trying to keep them out of  
6                   prison. I do my job. And so my expectation  
7                   is that you all do your job.

8                   You know. You know. You know it's  
9                   not right. You know it's not right. I know  
10                  it's not right now. I didn't know it before,  
11                  before my son came home in a body bag and I  
12                  had to bury him and I couldn't have an  
13                  open coffin because of how they had beat him.  
14                  I knew then. But prior to that, nobody could  
15                  have told me.

16                  But y'all know. Y'all know this is  
17                  happening. So do the next right thing. I  
18                  would say "do your job," but that's a little  
19                  harsh. Do the next right thing. Fix it.

20                  Thank you.

21                  ASSEMBLYWOMAN ROMERO: I can't and I  
22                  won't speak for my colleagues, but I can  
23                  speak for myself. And I will say that I have  
24                  every intention to do everything in my power

1 to try and fix it, whether it's signing on to  
2 a bill or speaking out against the insane and  
3 horrendous murder that was done to your son.

4 And thank you for being here and for  
5 speaking out.

6 MR. RICKS: Thank you. Thank you.

7 ASSEMBLYMAN LAVINE: To Mr. Ricks,  
8 doing our job is not too harsh, not too harsh  
9 a set of words.

10 I know I speak for everyone here in  
11 saying you have -- you and your family have  
12 our deepest condolences.

13 And let us work together to make a  
14 more beloved communities where everyone is  
15 safe. And thanks, thank you for that.

16 Ms. Fontier, am I pronouncing your  
17 name correctly?

18 MS. FONTIER: It's fahn-tee-yay, but  
19 it's close enough, sir.

20 ASSEMBLYMAN LAVINE: No, no, but  
21 actually what is it?

22 MS. FONTIER: It's Fontier.

23 ASSEMBLYMAN LAVINE: Okay. I  
24 apologize. All right. As someone whose name

1 is constantly mispronounced.

2 But I did want to share this with you.  
3 I am a former Legal Aid attorney in the City  
4 of New York. And I know that when we change  
5 laws, it causes confusion. It caused  
6 confusion when we modernized bail, which is  
7 part of a national movement, and there was  
8 confusion as well with respect to the  
9 discovery statute.

10 So I'm going to share something with  
11 you, as an old Legal Aid attorney. The law  
12 now is discovery is supposed to be whatever  
13 is related to the case. So a proposal is  
14 being made to change the word "related" to  
15 "relevant to." So as someone who has studied  
16 the law, I just want to say I'm not sure I  
17 understand the difference. And I have a fear  
18 that the judges will be confused as well,  
19 along with everybody else in the courthouse.

20 So what do you think, are my fears  
21 founded or unfounded.

22 MS. FONTIER: I think your fears are  
23 founded. And -- but they are very different,  
24 sir.

1                   And it -- I didn't have time to get to  
2                   what I actually intended to testify to, which  
3                   is that we have had an enormous shift in our  
4                   practice. We've had to invest -- thank you,  
5                   and we're asking for the reappropriation of  
6                   the funds to discovery and aid to defense,  
7                   because we've had to invest in technology and  
8                   we've also had to invest in staffing and  
9                   training.

10                   The training unit has revamped their  
11                   entire training for not just law grads but  
12                   for every attorney at Legal Aid, and trains  
13                   extensively on the meaning of every word in  
14                   the discovery statute. We hired litigation  
15                   assistants and trained them extensively on  
16                   discovery, what it is, how to recognize it,  
17                   what you're supposed to have, how to organize  
18                   it, how to work with the technology.

19                   But that change in the statute is  
20                   actually enormous, because it's not one word,  
21                   it's an entire phrase. It's not just related  
22                   to the case or relevant to the charges. And  
23                   that takes away what is related to every  
24                   person that's in the case. One of the

1 biggest issues is going to be police  
2 misconduct work records. They are not  
3 necessarily relevant to the specific charge  
4 that is before the court, but they're very  
5 related to the case.

6 ASSEMBLYMAN LAVINE: Thank you.

7 MS. FONTIER: Yes.

8 CHAIRMAN PRETLOW: Assemblyman  
9 Morinello.

10 ASSEMBLYMAN MORINELLO: Mr. Ricks, it  
11 was something you said that caused me to dig  
12 down to an experience I had in Cleveland,  
13 Ohio. I have a very -- my law school  
14 roommate is part of the Innocence Project in  
15 Cleveland, but he has a good friend that has  
16 what is called Edwin's Leadership and  
17 Restaurant Institute.

18 And I ask -- I want to put this on the  
19 record, because what you said is when they  
20 are formerly incarcerated. We have been  
21 coming up and attempting to come up with  
22 things so that when they are let out, what  
23 will they do? We talked about teaching them  
24 while they're incarcerated. Edwin's was

1 started by a former incarcerated individual.  
2 And he started this institute. He has  
3 dormitories, you have to be a former  
4 incarcerated to be there, and he teaches you  
5 food service.

6 There are two restaurants in  
7 Cleveland. One of them's a five-star French  
8 restaurant that's part of this project. And  
9 part of the dormitory concept is giving them  
10 a place to come to if they want to be able to  
11 get into this type of profession, whether  
12 you're the server, whether you're the  
13 bartender. He started a meat processing  
14 facility for former incarcerated.

15 And the point I'm trying to make here  
16 is this. When you said that, it triggered it  
17 again. Because I've been there and I've  
18 eaten there and I've met Edwin. And I think  
19 it's something that -- it's a little  
20 different than what we've been doing. We're  
21 trying to figure out ways when they come out  
22 and throw money at different agencies. But I  
23 believe that if we had something of this  
24 concept where they had a place to go in, if

1           they wanted to go into this. And the concept  
2           is while they're living in the dormitory,  
3           they're learning, they start working, then  
4           they can move into actual housing. But they  
5           have a purpose.

6                     And I spoke to all of the workers  
7           there when I went to my friend's birthday  
8           party. They were just overjoyed with the  
9           opportunity. And they don't ever have the  
10          thought of being left out and nowhere to go  
11          because Edwin's gives them that family  
12          atmosphere.

13                    And so I would just ask that maybe you  
14          look into that concept. And it's just -- you  
15          Google Edwin's, and it's amazing what you  
16          will find. That's it.

17                    And there's no words I can say to help  
18          ease your pain, except I'm very sorry.

19                    MR. RICKS: Just that. Just that.

20                    CHAIRWOMAN KRUEGER: So I don't  
21          actually have any questions. I want to thank  
22          you all -- one, both ladies for your work on  
23          behalf of so many people in this state, day  
24          in, day out, and your organizations' work.

1           And Mr. Ricks, I just can't say I  
2           think how much all of us appreciate your  
3           willingness to come forward. You visited  
4           both of our legislative houses yesterday.  
5           You sat here most of the day listening to  
6           other people talk. And then you came forward  
7           to tell your story and your perspective on  
8           it, and I just want to emphasize how really  
9           important it is that you were willing to do  
10          this.

11           It's not just on behalf of yourself  
12          and your family, you're doing this on behalf  
13          of people who you will never meet, I will  
14          never meet, but hopefully we will in tandem  
15          be able to make the fixes in our system that  
16          will matter to so many other families in the  
17          future.

18           So with that, I want to excuse you  
19          all. I want to thank Panel D for letting us  
20          trade. I hope people won't surround you too  
21          much as you get up to leave, because we do  
22          want to continue with the hearing and invite  
23          Panel D -- the Vera Institute of Justice, the  
24          New York Immigration Coalition, and Make the

1 Road New York -- to all come down and take  
2 their seats.

3 (Pause.)

4 CHAIRWOMAN KRUEGER: So now I can  
5 officially say good evening to everyone. And  
6 this is Panel D, but next will be Panel F,  
7 just for keeping track.

8 And if you'd each just introduce  
9 yourself first so that the people with the  
10 cameras know who's who, please.

11 MS. WANG: Rosie Wang, program manager  
12 with the Vera Institute of Justice.

13 CHAIRWOMAN KRUEGER: Thank you.

14 MS. WAGNAC: Bonswa tout moun. Tania  
15 Wagnac, senior manager of state and local  
16 policy at New York Immigration Coalition.

17 MS. CORTES: Good afternoon. Luba  
18 Cortes, civil rights and immigration lead  
19 organizer at Make the Road New York.

20 CHAIRWOMAN KRUEGER: I'm sorry, when  
21 they see you upstairs, they can turn the mics  
22 up a little bit. And we're going to ask  
23 everyone to pull them closer to you.

24 Thank you. Okay. So let's start

1 here, please.

2 MS. WANG: Good evening. Thank you  
3 for the opportunity to testify today. My  
4 name is Rosie Wang, and I'm the program  
5 manager at the Vera Institute of Justice.  
6 Today I'll be testifying on the critical need  
7 to invest in immigration legal services and  
8 also evidence-based public safety solutions.

9 For immigration legal services, we  
10 urge the Senate and Assembly to invest  
11 \$165 million in protecting the rights of  
12 immigrant New Yorkers. In her Executive  
13 Budget Governor Hochul invested \$44.2 million  
14 for the Office of New Americans, but this is  
15 not enough. At a time when federal attacks  
16 are threatening immigrant New Yorkers,  
17 New York must step up and lead by investing  
18 more robustly in immigration legal services.

19 Of the 165 million, we propose  
20 100 million for the Office of New Americans  
21 to expand deportation defense programs, to  
22 fund capacity building for legal services  
23 providers, and to increase current contracts  
24 by 20 percent for staff recruitment and

1 retention.

2 We propose a \$65 million investment  
3 for the Department of Education, to build a  
4 pipeline of new immigration legal experts,  
5 ensuring that New York has a long-term,  
6 sustainable legal defense workforce at a time  
7 of heightened need.

8 We also need lasting protections. We  
9 strongly urge the passage of the Access to  
10 Representation Act, or ARA, and the BUILD  
11 Act. The ARA, sponsored by Assemblymember  
12 Cruz and Senator Hoylman-Sigal, would  
13 establish a right to representation for  
14 people in New York immigration courts. The  
15 BUILD Act, sponsored by Assemblymember Cruz  
16 and Senator Liu, would fund essential  
17 infrastructure to create, maintain and expand  
18 legal services programs.

19 Paired with the \$165 million  
20 investment in immigrant legal services, these  
21 policies ensure that families remain  
22 together, communities stay whole, and  
23 New York's economy remains strong.

24 Separately, regarding the Governor's

1 public safety proposals, we recognize and  
2 commend the small but meaningful investments  
3 in community-based mental health and public  
4 safety initiatives. However, we are deeply  
5 concerned that New York continues to overfund  
6 punitive reactionary approaches that fail to  
7 enhance public safety.

8           Instead, New York should prioritize  
9 evidence-based solutions that improve public  
10 safety by addressing the root causes of crime  
11 and mental health crises. I urge you to  
12 review the written testimony submitted by my  
13 Vera colleagues detailing concerns with  
14 discovery and with involuntary  
15 hospitalization, and urge the passage of  
16 three bills: Assemblymember Kelles' and  
17 Senator Salazar's pretrial services bill, the  
18 Earned Time Act, and the Second Look Act.

19           Thank you.

20           CHAIRWOMAN KRUEGER: Thank you.

21           Next?

22           MS. WAGNAC: Bonswa tout moun. My  
23 name is Tania Wagnac. I am the senior  
24 manager of state and local policy at the

1 New York Immigration Coalition. NYIC is an  
2 umbrella policy and advocacy organization for  
3 more than 200 groups serving immigrants and  
4 refugees across New York State.

5 We are also one of the organizational  
6 leads for the Campaign for Access,  
7 Representation and Equity for Immigrant  
8 Families, known as CARE-IF, a coalition of  
9 community-based organizations that have been  
10 consistently advocating for the vital need  
11 for funding for legal services for immigrant  
12 individuals.

13 First, thank you, Chair Pretlow and  
14 Chair Krueger, for convening this important  
15 hearing.

16 For years advocates like myself, like  
17 my colleagues here, have tirelessly called  
18 for robust, sustained funding to ensure  
19 New York has the necessary mechanisms and  
20 infrastructure to protect all residents,  
21 regardless of immigration status.

22 The need for legal service funding is  
23 not new. We have long warned that without  
24 sufficient investment, immigrant New Yorkers,

1 both undocumented and legal residents, will  
2 be left vulnerable to arrests, detention and  
3 deportation. And today, this reality is upon  
4 us, exacerbated by the recent rescission of  
5 the "sensitive locations" policies that  
6 previously provided some protection from  
7 immigration enforcement actions.

8           And the rollback of these policies  
9 have fueled increased enforcement action, led  
10 to misinformation from the city through the  
11 circulation of guidance memos, and has been  
12 sowing fear within our communities. And so  
13 the Legislature must act decisively to  
14 counteract these harmful developments by  
15 ensuring universal access to competent legal  
16 representation.

17           The fact being, investing in  
18 compassionate immigration policies is not  
19 just a moral imperative, but also a strategic  
20 move for collective safety and economic  
21 prosperity.

22           And as my colleague uplifted here, we  
23 are here calling for an investment of  
24 \$165 million not only to fund legal services

1 through the Office of New Americans, but to  
2 provide much-needed funding for competency  
3 building for our legal service providers so  
4 that they may have the resources they need to  
5 continue this work -- and also providing  
6 much-needed support to attorneys who are  
7 working in pro bono immigration cases.

8 We also urge the Legislature to pass  
9 the Access to Representation Act -- again, to  
10 pass the Access to Representation Act,  
11 Assembly Bill 270 and Senate Bill 141, as  
12 well as the Bolstering Unrepresented  
13 Immigrant Legal Defense -- or known as  
14 BUILD -- Act.

15 The ARA would create a statutory right  
16 to counsel for immigrants who are facing  
17 deportation in New York, and would create a  
18 stable and sustainable funding stream for  
19 providers to meet the urgent need. It would  
20 guarantee that no one is left behind to  
21 defend themselves against a trained  
22 government lawyer alone because they cannot  
23 afford representation.

24 Thank you.

1 MS. CORTES: Hello again. My name is  
2 Luba Cortes. I oversee Make the Road's  
3 immigration portfolio. I'm here today to  
4 speak in support of the New York for All Act.

5 Immigrant New Yorkers need real  
6 protections. And currently, under this  
7 administration, the hyper-enforcement is  
8 causing serious fear in our communities.  
9 We're seeing that immigrants are afraid to go  
10 to work, families are afraid to take their  
11 little ones to school, farmworkers don't want  
12 to go to work because they're afraid that ICE  
13 will be waiting there for them.

14 It is time for the Legislature to step  
15 up and protect New Yorkers, to ensure that  
16 the mass deportation agenda of this  
17 administration is not successful. We all  
18 deserve to live in safety, but safety means  
19 being able to go to work, school, church and  
20 the hospital without being ripped away from  
21 your family.

22 It's also important to note that  
23 New York is a cultural hub, and our economy  
24 is shaped by immigrants, with \$68 billion in

1 tax revenue and \$153 billion in spending  
2 power. And it's harrowing and unnerving to  
3 think that state resources are going to be  
4 used to aid and abet ICE to then fulfill and  
5 uplift a deportation agenda. And so  
6 New Yorkers need real protections.

7 We understand that due process is  
8 necessary, but we're seeing that the arrests  
9 that are happening by ICE also include people  
10 that have no criminal records. And so this  
11 is called collateral arrests by ICE. And  
12 therefore it is extremely concerning, because  
13 people have the right to receive due process,  
14 but individuals that perhaps are just taking  
15 their kids to school are now being picked up  
16 by ICE.

17 We also continue to hear reports  
18 across the state of ICE activity outside of  
19 schools, ICE activity outside of health  
20 clinics, with no real clarification. We're  
21 seeing the DEA and FBI also aiding and  
22 abetting ICE. And that creates a lot of  
23 confusion with New Yorkers.

24 We can't let this administration

1 scapegoat immigrants. As we know, immigrants  
2 make up 30 percent of the workforce. And  
3 60 percent of immigrants also do caretaking  
4 jobs, which includes home health aides,  
5 taking care of elders. And so when they're  
6 afraid to go to work, what happens to our  
7 most vulnerable communities?

8           We need the Legislature to stand with  
9 immigrants. We keep hearing communities say:  
10 Could I be next?

11           As Make the Road, just in the last  
12 weeks we have trained over 600 partners and  
13 allies and hundreds of community members have  
14 come to our offices. We have gone to schools  
15 to try to teach them how to affirm their  
16 rights, but they're still -- they are still  
17 afraid. They're afraid to leave the  
18 status quo, and they need to trust government  
19 agencies when they're seeking emergency  
20 medical services, when they want to, again,  
21 go to school, go to work. If they're not  
22 able to do that, they're not able to thrive,  
23 and that is deeply concerning.

24           And we also want to name, right, that

1 people without a status don't have a status  
2 because they want to, they want to adjust  
3 their status. Right? They just don't have  
4 the opportunity due to the backlogs on work  
5 permits.

6 CHAIRWOMAN KRUEGER: Thank you.

7 Questions? Senator Myrie.

8 SENATOR MYRIE: Thank you, and thank  
9 you for your patience, for waiting all day.

10 As you were waiting, the New York City  
11 mayor announced that he is going to welcome  
12 ICE back onto Rikers Island. So I'm just  
13 wondering if you can speak to any  
14 implications for public safety or due process  
15 in that change of policy.

16 For anybody.

17 MS. WAGNAC: So yes, we were actually  
18 tracking that news while we were sitting  
19 there. This is extremely concerning, because  
20 not only would this -- because at the moment  
21 there's like developments still happening, so  
22 there's still more clarification needed, of  
23 course.

24 But like the concern for us is now you

1           have an ICE office located in a DOC, right,  
2           facility, who have been known, has been  
3           proven to have been violating the existing  
4           detainer law. Because there was a hearing  
5           that revealed all the violations where  
6           DOC agents were in communication, like  
7           texting with ICE agents, like sharing the  
8           location and specific release date for  
9           inmates.

10                   And so there's this concern that this  
11           will not just pertain to individuals who have  
12           committed serious crimes, but also could  
13           bring in any inmate, right, who does not have  
14           an immigration status or is undocumented,  
15           could be lumped into it.

16                   But this is clearly a move by the  
17           administration, by the Adams administration  
18           to align with Trump in essentially a sellout  
19           of immigrant New Yorkers, essentially.

20                   MS. CORTES: Yes, I mean this  
21           executive order is a response of his meetings  
22           with the Border Czar. And so we know that  
23           the city, despite its own detainer laws --  
24           which we were hoping to complement with

1 New York for All -- you know, they could be  
2 potentially rescinded. We don't know what is  
3 going to happen, so we need the state to step  
4 in and protect New Yorkers if our mayor is  
5 going to use immigrants as bargaining chips  
6 for political pardons.

7 MS. WANG: And part of that  
8 protection, of course, is, you know, not just  
9 cutting off the pipeline from the criminal  
10 system to the immigration system, which  
11 compounds the harm of racial bias in the  
12 criminal legal system, but also making sure  
13 that there is due process as well in the  
14 immigration system, that there's not double  
15 punishment, that people have representation  
16 in immigration court like they would if they  
17 were accused of a crime.

18 SENATOR MYRIE: Thank you.

19 CHAIRWOMAN KRUEGER: Thank you.

20 CHAIRMAN PRETLOW: Assemblyman Ra.

21 ASSEMBLYMAN RA: I don't really have a  
22 question, I did want to just, A, thank you  
23 for your patience and your accommodation with  
24 the earlier panel.

1                   And I wanted to say to Ms. Wagnac,  
2                   it's a proud day for me to have you before us  
3                   testifying in front of a budget hearing.

4                   So --

5                   MS. WAGNAC:   It's good to see you  
6                   again, so good to see you again, and so good  
7                   to see many of you.

8                   ASSEMBLYMAN RA:   It's a first for me.  
9                   She was my intern 10 -- well, 12 years ago,  
10                  and she's -- 12 years ago, so --

11                  (Laughter.)

12                  ASSEMBLYMAN RA:   Good to have you in  
13                  front of us.   And again, that's a first for  
14                  me.   So proud to see you here.

15                  MS. WAGNAC:   Thank you, Assemblyman.

16                  CHAIRWOMAN KRUEGER:   You did a pretty  
17                  good job with him.

18                  MS. WAGNAC:   Yeah, I made sure he  
19                  showed up to his committee meetings, right  
20                  behind him -- no, but thank you.

21                  CHAIRWOMAN KRUEGER:   I don't think we  
22                  have any other Senators.

23                  Assembly?

24                  CHAIRMAN PRETLOW:   Assemblywoman Cruz.

1 ASSEMBLYWOMAN CRUZ: All right, this  
2 thing's been giving me trouble all day.

3 Thank you. Thank you, ladies, great  
4 to see you.

5 I have a feeling that what --  
6 Senator Myrie asked you about the litigation,  
7 and it is my hope that the conversation will  
8 be very different, but we'll leave that up to  
9 the courts, where I think it will be upheld,  
10 because it's the law and it's constitutional.

11 I wanted to ask about what you're  
12 seeing in the community and in the district.  
13 We know that there is a high need for  
14 services. I'd love to hear a little bit  
15 about the services that are actually being  
16 provided at the local level now, and where  
17 you're seeing an increase and if you have an  
18 estimate or percentage of the increase that  
19 you're seeing, especially over the last  
20 month.

21 And what services are you not able to  
22 provide because of lack of funding?

23 Thank you.

24 MS. WAGNAC: I can -- I'll start off,

1 and then my colleagues.

2 So thank you so much, Assemblywoman.

3 ASSEMBLYWOMAN CRUZ: Can you pull the  
4 mic --

5 MS. WAGNAC: Of course, of course.

6 And so with the recent changes, right,  
7 we've seen an increased need for more  
8 Know Your Rights workshops, right?  
9 Immediately the moment these rescissions were  
10 taking place, legal service providers were  
11 getting phone calls from not just immigrant  
12 adults, but children, wondering what is the  
13 meaning of guardianship, right: How do I  
14 gain guardianship of my sibling? Or how do I  
15 get power of attorney? Or what's going to  
16 happen if my family, you know, they get  
17 detained, like what happens to them?

18 So there's been an increased need for  
19 doing more training on how to engage with  
20 ICE, but also what to do. You know, like  
21 what information to have, what documents to  
22 have prepared, and what the resources, right,  
23 is needed.

24 So we also have been meeting with the

1 city administration to make sure that there's  
2 guidance, clearer guidelines that is put out,  
3 and that there's a point of contact for  
4 families, you know, in the event that an  
5 individual is detained.

6 And we've also been calling for the  
7 need for a rapid response fund, right, to  
8 make sure that families, right, where there  
9 is -- the breadwinner is no longer there, is  
10 able to have financial assistance support.  
11 Right? To be able to continue to pay for  
12 rent, to buy food.

13 But there's a lot more that we've been  
14 calling for, so I'll make space for my  
15 colleagues at that point.

16 MS. WANG: I'll let my colleagues who  
17 are member-based organizations speak in more  
18 detail about this, but I just also wanted to  
19 make the point that ICE has made it difficult  
20 to track what the need is and how many people  
21 are being detained and how many people are  
22 being arrested.

23 Because there has always been an issue  
24 with data transparency in ICE, but that is

1 worse than ever. There used to be a system  
2 run by Syracuse Law School that tracked  
3 Executive Office of Immigration Review,  
4 immigration court data, through which you  
5 could see how many new removal cases were  
6 being opened -- oh, sorry.

7 (Time clock sounds.)

8 CHAIRMAN PRETLOW: Assemblywoman  
9 Kelles.

10 ASSEMBLYWOMAN KELLES: Thank you.

11 Can you please finish that answer? I  
12 want to give you time.

13 MS. WANG: Oh, thank you,  
14 Assemblymember Kelles.

15 ASSEMBLYWOMAN KELLES: Absolutely.

16 MS. WANG: And that system has gone  
17 dark.

18 There's very -- I think it's difficult  
19 to really have the full picture of what is  
20 going on. Vera has a dashboard created by  
21 our researchers to track representation  
22 rates, but I think this really does also  
23 emphasize the need for lawyers who are able  
24 to help people and be eyes within the system

1 to give us an idea of what is going on in  
2 place of this, you know, opaqueness where  
3 people are just disappearing.

4 ASSEMBLYWOMAN KELLES: And there's a  
5 lot of documentation and information out  
6 there now that there's a lot of discrepancies  
7 in the funding between upstate and downstate,  
8 and upstate having a particular lack of  
9 funding.

10 Can you talk about how that's  
11 impacting upstate? For any of you, please.

12 MS. WANG: I would love to talk about  
13 our solutions for that.

14 ASSEMBLYWOMAN KELLES: I would love to  
15 hear them.

16 MS. WANG: But some of our (indicating  
17 other panelists) --

18 MS. WAGNAC: I'm not sure of the --  
19 sorry, can you hear me?

20 ASSEMBLYWOMAN KELLES: Yeah.

21 MS. WAGNAC: So are you saying like  
22 the implication of not being funding  
23 allocated to upstate?

24 ASSEMBLYWOMAN KELLES: Just the lack

1 of funding and infrastructure and support on  
2 ICE activity upstate, how it's impacting  
3 communities.

4 MS. WAGNAC: Yes, so to answer that,  
5 we've also had -- some of our providers who  
6 are located upstate, they've had like desks  
7 that have not been replaced, they've been  
8 seeing an increased call for more clinics,  
9 like legal clinics, folks asking questions.

10 And so we're seeing like the need for  
11 like a capacity building to make sure that  
12 they have spaces, offices. And so this is  
13 why we've been pushing for the funding for  
14 the 165 million to include a lot of those  
15 providers. Because it's not only for  
16 New York City, it would also be for the  
17 upstate areas as well.

18 MS. WANG: And that's also why we're  
19 pushing for the BUILD Act, which funds  
20 immigration legal infrastructure and  
21 capacity-building specifically to expand  
22 immigration legal representation, to scale up  
23 both to the increased need and to reach  
24 places that are currently legal deserts.

1           ASSEMBLYWOMAN KELLES: And one last  
2 question. Are you hearing and can you tell  
3 us a little bit about what you're hearing  
4 about how this activity is affecting farmers  
5 and the farming community?

6           MS. CORTES: Yes, so we're hearing,  
7 right, that folks are really troubled by the  
8 raids, particularly because it's unclear  
9 whether it's ICE, whether it's the FBI,  
10 whether the DEA that is participating in  
11 those raids.

12           And so we know when farmworkers are  
13 not going to the farms, right, that means  
14 they're not working. That also affects their  
15 produce, and it affects the labor and it  
16 affects the economy. And so that is what we  
17 have been hearing.

18           And then also we note that their loved  
19 ones also feel unsafe on top of just their  
20 family members going to work, so families  
21 want to relocate, and that will have an  
22 impact, right, if they're leaving the towns  
23 where they're providing a lot of that  
24 workforce.

1                   And so we're part of the New York for  
2 All Coalition, and they do a lot of work  
3 upstate, and they're trying to provide a lot  
4 of Know Your Rights education to ensure they  
5 know their rights and are able to go to work.

6                   ASSEMBLYWOMAN KELLES: Thank you.

7                   CHAIRMAN PRETLOW: Assemblywoman  
8 Mitaynes.

9                   ASSEMBLYWOMAN MITAYNES: Hi.

10                  Can you talk a little bit about --  
11 just based on the experience, what happens or  
12 what are the rippling effects into the  
13 community when someone is detained and  
14 someone's taken, to the immediate family and  
15 then just like the extension of what that  
16 actually causes?

17                  MS. CORTES: So we do a lot of rapid  
18 response work. So what usually happens with  
19 community members is that they try to locate  
20 their loved ones, and so there's a lot of  
21 education on how to actually find their loved  
22 ones.

23                  Oftentimes the information is not  
24 updated, and so they come and they're afraid

1           because they think their loved one has been  
2           kidnapped, because oftentimes they don't even  
3           know that it was ICE.

4                         And so if that impacts the  
5           breadwinner, if that was the person that was  
6           detained, then they don't have access to  
7           economic support. That could mean they could  
8           become unhoused. And so it's really  
9           connecting them with emergency services so  
10          they can continue to live their lives if the  
11          breadwinner is detained.

12                        Oftentimes if there's medical issues,  
13          figuring out how to get them access to  
14          services because the loved one is detained.  
15          And we see people that have been detained and  
16          also they have severe medical issues, and so  
17          the loved ones are trying to figure out how  
18          to get them access to the medicine that they  
19          need.

20                        We've seen the people in detention,  
21          often their medical conditions are  
22          exacerbated because they don't get quality  
23          access to medical care or the medicine that  
24          is needed.

1           And so that has deep impacts on the  
2           community, because once a person is taken,  
3           community members see that, they don't want  
4           to go to school, they don't want to go to  
5           work.

6           Jackson Heights, which is a very  
7           vibrant community in Queens, there was  
8           ICE activity by the 7 Train on Junction  
9           Boulevard, and then Junction Boulevard was  
10          empty. Right?

11          And so it shows that people don't want  
12          to be on the streets, they feel unprotected.  
13          And so we need clear protections to ensure  
14          that people can seek the support that they  
15          need.

16          MS. WAGNAC: And in addition to that,  
17          too, there's a lack of information that's  
18          given to the family, right? Because often  
19          people will be like in a detention center for  
20          weeks, and then the family does not know that  
21          they've been there.

22          And also if the person is not an  
23          English -- if English is not their first  
24          language, they're less likely to receive any

1 updates about their case, why they're even  
2 there, or even information about their own  
3 rights. So it's more like purposely placing  
4 them in a hole and keeping them in the dark.

5 MS. CORTES: And it's also the  
6 prolonged detention. People can be in  
7 detention for years while they're trying to  
8 figure out court. Which is why it's so  
9 important to have access to quality  
10 representation.

11 We're also seeing a lot of fraud in  
12 communities because people want to seek an  
13 immigration attorney to support their loved  
14 ones to get them out, but they end up being  
15 embezzled thousands of dollars and their  
16 loved ones are not released and they don't  
17 get any clear information. So it's just an  
18 aspect that harms the entire family.

19 ASSEMBLYWOMAN MITAYNES: And I don't  
20 know if you have data of this, but just like,  
21 again, based on, you know, being frontline,  
22 what would you say or how would you codify  
23 folks that out of fear have just kind of like  
24 left on their own?

1 (Time clock sounds.)

2 CHAIRWOMAN KRUEGER: Assembly, no  
3 more?

4 CHAIRMAN PRETLOW: That's it.

5 CHAIRWOMAN KRUEGER: Then we all want  
6 to thank you very much for coming and  
7 participating tonight. And we know that the  
8 day got longer and it's going to keep still  
9 getting longer, so safe travels. Thank you  
10 very much.

11 PANELISTS: Thank you. Thank you so  
12 much. And congrats, Chair Pretlow.

13 CHAIRWOMAN KRUEGER: I'm now going to  
14 call up Panel F: The New York State  
15 Defenders Association, the Chief Defender  
16 Association of New York, the District  
17 Attorneys Association of the State of New  
18 York, and the New York Association of  
19 Criminal Defense Lawyers.

20 (Pause; off the record.)

21 CHAIRWOMAN KRUEGER: And as they sit  
22 down, this is not actually an audible, this  
23 was that Michael McMahon, Richmond County  
24 district attorney, who was going to be

1           testifying for the DAs Association, could not  
2           be here with us, and so we have replaced him,  
3           so to speak, with Bronx DA Darcel Clark and  
4           also Rensselaer County DA Donnelly, who is  
5           the incoming president of the District  
6           Attorneys Association.

7                         So they will each get three minutes,  
8           okay, six minutes for them.

9                         And would you then, everyone introduce  
10          yourself first so that the people in the  
11          video booth know which name to put with what  
12          picture. Please, would you start just by  
13          introducing yourself.

14                        BRONX COUNTY DA CLARK: My name is  
15          Darcel Clark. I'm the elected district  
16          attorney of Bronx County.

17                        CHAIRWOMAN KRUEGER: Thank you.

18                        RENSSELAER COUNTY DA DONNELLY: Mary  
19          Pat Donnelly, Rensselaer County district  
20          attorney.

21                        MR. STADELMAIER: I'm Kevin  
22          Stadelmaier. I'm the president-elect of the  
23          New York State Association of Criminal  
24          Defense Lawyers and the first deputy defender

1 of the Erie County Assigned Counsel Program.

2 MR. MCGHAN: I'm James McGhan. I'm  
3 the president of the Chief Defender  
4 Association of New York.

5 MS. BRYANT: Susan Bryant,  
6 executive director of the New York State  
7 Defenders Association.

8 CHAIRWOMAN KRUEGER: Great. Well,  
9 welcome, everyone. And why don't we start  
10 with the two district attorneys. Whichever  
11 order you want to do it.

12 RENSSELAER COUNTY DA DONNELLY: Okay.  
13 Mary Pat Donnelly, Rensselaer County  
14 District Attorney. Thank you for taking the  
15 time to listen to our perspective as it  
16 pertains to the Governor's budget, and  
17 specifically the very important issue of  
18 discovery.

19 Five years ago when the changes came  
20 down, you let us sit here and explain about  
21 our concerns about how we're going to be able  
22 to do our job. And to a certain extent, some  
23 of our fears have come true. However, we are  
24 extremely grateful for the funding that has

1           come down, as we've tried to build  
2           infrastructure within our varying offices  
3           around the state to try to help us get to the  
4           endgame.

5                     And I want to start out by saying not  
6           a single elected DA that I have had the  
7           opportunity to speak with is opposed to the  
8           goal, which is a fair sharing of information  
9           so that defense attorneys and defendants can  
10          make intelligent and fair decisions about how  
11          to proceed.

12                    The problem becomes the difference in  
13          each and every county and the relations that  
14          we have with varied law enforcement -- and  
15          I'm speaking for upstate -- and trying to get  
16          that message across. It becomes a very  
17          difficult process when we have such different  
18          resources in each and every spot.

19                    To keep it simple, I can't -- I can't  
20          know what I don't know, and I can't ask for  
21          something that I don't know exists. So no  
22          matter how many times I speak to varied  
23          police officers who are dealing with a case,  
24          varied agencies who may be involved in a

1 particular case, there's always somebody  
2 along the chain who, in the privacy of their  
3 own mind, says, well, I don't think she means  
4 everything. Not this.

5           And sometimes -- and this is what I'm  
6 talking about -- sometimes that thing that  
7 they failed to turn over is not important.  
8 I'm talking about the time when somebody does  
9 something wrong. Because if somebody does  
10 something wrong, these sanctions are  
11 appropriate.

12           I'm talking about a time when -- we  
13 had an example from an upstate DA, a burglary  
14 was called in to a home where the burglary  
15 suspect went to the wrong house. Police  
16 responded to the first house, the people  
17 said, "We don't know what happened, he ran  
18 outside," and while they were there, they  
19 found him breaking into the house next door,  
20 where he meant to go in the first place.

21           So that proceeded as a violent felony  
22 trial, and when they got to the end and it  
23 was the eve of trial, they found out that  
24 there had been a police report filled out for

1 the first house, which was completely  
2 encompassed in the second police report for  
3 the second house, and that case was  
4 dismissed.

5 So these are the types of situations  
6 that are concerning. When you deal with  
7 upstate, you have a lot of town and village  
8 courts where our judges are not attorneys,  
9 and there becomes an opportunity that we  
10 can't really litigate a lot of these issues.

11 Because that's what we do in county  
12 court. When there's a question as to whether  
13 something is relevant -- or I should say  
14 related to the case, we're able to litigate  
15 that in county court upstate. But when we're  
16 out in our local courts, where the  
17 misdemeanors matter, where there are cases  
18 that have real victims, we're not given the  
19 opportunity to do that.

20 Our judges are not understanding what  
21 they need to do, and the remedy is -- you  
22 didn't turn something over? We're going to  
23 go ahead and dismiss the case.

24 Thank you.

1 CHAIRWOMAN KRUEGER: Thank you.

2 DA Clark.

3 BRONX COUNTY DA CLARK: Okay. I  
4 wasn't sure if I was going to get the  
5 opportunity to speak, but -- you know, give a  
6 lawyer a microphone and I'm going to do what  
7 I have to do.

8 (Laughter.)

9 BRONX COUNTY DA CLARK: But thank you  
10 so much for giving me this opportunity, to  
11 all of you.

12 I guess I want to say I as well as my  
13 colleagues were in favor of the discovery  
14 reform. As a former justice of the  
15 Supreme Court and a judge on the  
16 Appellate Division First Department, I know  
17 how important it was, discovery. I was a  
18 prosecutor myself, an ADA, and I know what  
19 blindfold was. And as a judge, I saw it  
20 happen as I presided over cases.

21 You fixed that. You fixed that five  
22 years ago, and I championed the  
23 transformation that you intended. But -- and  
24 the things that you intended for this law to

1 do is working. Defenders and my colleagues  
2 here understand they have more information  
3 than they have ever had before in the last  
4 five years now. I think they would have to  
5 admit that.

6 I heard somebody else talk about  
7 there's less wrongful convictions now because  
8 of this. That's how -- that's what you  
9 intended to do.

10 I'm here talking about minor revisions  
11 to help for the things that were the  
12 unintended consequences -- the dismissals  
13 that we're seeing on technicalities, our  
14 misdemeanors as well as our felonies. And  
15 both are equally important because it means  
16 that people are not being held accountable.  
17 And we need to make sure that they do.

18 Discovery should not be about  
19 competitive advantage, it should be about  
20 compliance. I want to give you every single  
21 thing that I have so you can be ready for  
22 trial. That's important. And I'm going  
23 through it, and it's making my lawyers better  
24 as well. It's making the system better.

1           That's what we wanted.

2                     But to hold up, to see lying in wait,  
3           knowing there's something that's missing --  
4           tell me. If you tell me, I'm going to get  
5           it, because my obligation never stops.  
6           That's what we're talking about. These  
7           revisions are going to help that.

8                     It's all about whether or not what was  
9           ever missing or failed to be turned over,  
10          whether or not it prejudices the case against  
11          the defendant. Was it that impactful that it  
12          should lead to a dismissal? There's so many  
13          sanctions that can happen if there's a  
14          failure.

15                    And I'll be the first to admit we  
16          don't always get it right. So I understand  
17          that. But when it's something that's  
18          technical, victims are suffering, communities  
19          are suffering. And defendants are waiting in  
20          jail longer than ever before. And they're  
21          not getting treatment or anything that we  
22          could do for them had the case continued to  
23          go forward.

24                    So we're asking you to adopt the

1 Governor's revisions. It's not a rollback.  
2 If it were a rollback, we would be asking for  
3 it to disassociated with speedy trial  
4 altogether. Prosecutors are not asking for  
5 that. We're asking just for a level playing  
6 field to make sure that we keep the cases  
7 that we have.

8 CHAIRWOMAN KRUEGER: Thank you.  
9 Next?

10 MR. STADELMAIER: Thank you,  
11 Senator Krueger, Assemblymember Pretlow.

12 You're hearing that these are tweaks  
13 and you're hearing that these are simply  
14 commonsense, you know, additions to the  
15 discovery law. And I don't want you to be  
16 distracted, because those are absolutely  
17 myths. And we're asking you to omit Part B.  
18 These rollbacks are a full repeal of the  
19 discovery law from 2020.

20 If you're talking about common sense,  
21 common sense is a place in a state where we  
22 have 90 percent of our dispositions or  
23 upwards of 90 percent of our dispositions  
24 being pleas, that you get all of the evidence

1 before you have to decide to take a plea.  
2 Common sense is an objective versus  
3 subjective standard of evidence where you  
4 don't allow law enforcement and the district  
5 attorneys to act as gatekeepers of that  
6 evidence.

7 Common sense is a system of  
8 accountability that requires transparency and  
9 sanctions failures to be diligent. And  
10 common sense is a system where we don't  
11 reward law enforcement and district attorneys  
12 for their intransigence. And fortunately,  
13 current 245 does all of those things.

14 And again, this is not a tweak. Okay?  
15 We are changing the standards of how evidence  
16 is distributed. We're going to a related  
17 to -- or a "relevant" rather than a "related  
18 to," again, allowing district attorneys and  
19 law enforcement to be the gatekeepers of  
20 evidence. We're allowing them to change the  
21 standard from constructive to actual  
22 possession, which will eviscerate 30.30.  
23 They'll be able to simply declare "ready" and  
24 turn over their COCs with just the things in

1           their possession, which again are very  
2           limited.

3                     It's going to eliminate the incentive  
4           for district attorneys to cooperate with law  
5           enforcement. It's going to result in  
6           increased incarceration times, it's going to  
7           result in increased wrongful convictions.  
8           And in no way are these commonsense reforms.  
9           And in no way will they create efficiency.  
10          And in fact they're going to create increased  
11          litigation and increased delays.

12                    And as you heard Judge Zayas say this  
13          morning, when you change the standard and  
14          require that you must show prejudice to get  
15          any sanction whatsoever, whether that's a  
16          30.30 dismissal or a 245.80 sanction, you're  
17          just never going to be able to show it,  
18          because the -- the remedy for prejudice is  
19          simply delay. It's simply an adjournment:  
20          Okay, take some time, you know, go look for  
21          your stuff, and then come back.

22                    I want to be clear. As Judge Zayas  
23          also said earlier today, dismissals are not  
24          up. The OCA data is clear. You take a look

1 at 2019 versus 2024, in Monroe County, in  
2 Rochester, 6 percent less dismissals in 2024  
3 than 2019. In Suffolk, 1.4 percent. In  
4 Nassau, 5 percent. Where I'm from, in  
5 Erie County, 1 percent difference, 1 percent  
6 less dismissals. And we have 38 law  
7 enforcement agencies that our district  
8 attorney's office deals with.

9 So if you want data, that's data.

10 You want a solution to this problem,  
11 it is the Myrie bill. You give district  
12 attorneys access to the police, you give them  
13 access to get those records, it makes their  
14 job incredibly easier.

15 They've gotten \$80 million over the  
16 last three years to implement discovery  
17 reform. They're getting another \$40 million  
18 this year. They have the resources, they  
19 have the means, they can comply, and it  
20 matters everywhere else but New York City.  
21 Upstate is compliant.

22 Thank you.

23 CHAIRWOMAN KRUEGER: Thank you.

24 Next?

1           MR. MCGHAN: So first, we submitted  
2 written testimony that addresses things at  
3 more length. I'm going to shift gears a  
4 little bit away from discovery to the more  
5 important issues that we have.

6           Family Court funding first. CDANY is  
7 requesting that you adopt the indigent legal  
8 services request of \$50 million a year,  
9 resulting in 150 million in the next three  
10 years. This investment in the Family Court  
11 system by the state would address mounting  
12 inadequacies that threaten the welfare of  
13 children and families --

14           CHAIRWOMAN KRUEGER: Would you pull  
15 the mic a little closer? Thank you.

16           MR. MCGHAN: The harsh reality is this  
17 will disproportionately affect low-income  
18 families. Despite decades of research,  
19 hearings and reports about inadequacies of  
20 the parental representation system in  
21 New York State, New York has not made a  
22 meaningful investment.

23           In June 2021, ILS released caseload  
24 standards for parent attorneys in New York

1 Family Court. Without additional funding,  
2 these caseload standards will remain  
3 unattainable.

4 Even with additional funding for  
5 Family Court and continued funding for  
6 criminal defense, without COLA increases this  
7 funding becomes less effective. Grants and  
8 distributions that once covered an entire  
9 position now may only cover a portion of a  
10 staff salary.

11 Hurrell-Harring, ILS grants and  
12 distributions allow offices to add staff,  
13 including social workers and other  
14 interdisciplinary partners access resources  
15 like experts and technology and additional  
16 attorney staff to assure counsel at first  
17 appearance, so things that were addressed in  
18 Ms. Warth's testimony do not happen like they  
19 did.

20 Increased supervision and training.  
21 Over the last 15 years this funding has  
22 continued, but what is lacking is additional  
23 funding for the realities of COLA and salary  
24 increases that have caused erosion to the

1           ideals and operations of these improvements.

2                       Also, we have to address the issue of  
3           recruitment and retention. CDANY supports  
4           the DALF expansion to increase that and to  
5           fill this goals.

6                       Finally, I will go back to discovery.  
7           I think Judge Zayas said it in his testimony:  
8           People v. Bay lays out the standards to  
9           declare a certificate illusory. Yet again  
10          we're here to erode an essential enforcement  
11          mechanism, and the data does not support it.

12                      I think Alice and Kevin addressed a  
13          lot of the discovery concerns. Alice in  
14          particular addressed public safety. I  
15          wouldn't know -- I believe the Governor  
16          recently addressed public safety in New York.  
17          There was a claim and she touted the U.S.  
18          News & World Report from August of 2024 that  
19          New York State has nine out of the 25 safest  
20          counties in the country.

21                      Ultimately, but most importantly, this  
22          discovery law allows the people our offices  
23          represent to make informed decisions about  
24          their lives. They get to see all the

1 evidence, analyze the strengths and  
2 weaknesses of the case before choosing the  
3 accepted plea, or go to trial. We need to be  
4 able to decide what's related to the case,  
5 not a district attorney, not law enforcement.

6 CHAIRWOMAN KRUEGER: Thank you.

7 And our last presenter.

8 MS. BRYANT: Good evening. Thank you,  
9 Chairs Krueger and Pretlow and other members  
10 of the Legislature that are here on the panel  
11 tonight.

12 I'm going to be addressing things that  
13 belong in the budget and things that don't  
14 belong in the budget.

15 Starting with the New York State  
16 Defenders Association, my organization, we  
17 provide vital support to public defenders  
18 around New York State to satisfy the state's  
19 constitutional obligation to provide counsel.  
20 We couldn't do that without your support.  
21 It's on top of the limited support that the  
22 Governor provides on a yearly basis. So  
23 we're asking to restore our funding, which is  
24 adding \$2.1 million to the Governor's

1 appropriation.

2 There's details as to all of the  
3 things that we're doing with this funding,  
4 and we try to do more each year for criminal  
5 and Family Court defense.

6 We're asking this year as well for  
7 \$420,000 for two key leadership positions for  
8 our office, a director of training and a  
9 director of our public defense case  
10 management system, which Executive Deputy  
11 Commissioner Popcun actually referenced  
12 earlier today. It's key to discovery  
13 implementation.

14 Our Veterans Defense Program, which  
15 submitted written testimony to the Human  
16 Services Budget Committee, we're asking for a  
17 restoration of \$720,000. That's split  
18 between the Assembly and the Senate. It's a  
19 very successful program 10 years running. It  
20 directs veterans into treatment and support  
21 needed to reintegrate while addressing the  
22 challenges that veterans face due to military  
23 service.

24 There's two key items to highlight in

1 the ILS budget. The \$50 million for  
2 Family Court needs to happen this year. And  
3 please, reject the sweep. Don't give the  
4 Executive the authority to take millions away  
5 from public defense improvements for  
6 unspecified purposes.

7 Finally, discovery. Part B must be  
8 intentionally omitted from the one-house  
9 budgets and rejected outright during  
10 negotiations. The characterization of this  
11 proposal is intended to downplay what it  
12 actually means. The law is reasonable.  
13 Exercising diligence within speedy trial time  
14 isn't too much to ask. The Court of Appeals  
15 has said you have to make reasonable efforts  
16 to comply. That's not about handing over one  
17 piece of paper or not.

18 We expect prosecutors to review police  
19 evidence, but the new law would mean that  
20 they don't even have to ask for that evidence  
21 because it's not in their possession  
22 actually.

23 Prosecutors in parts of New York that  
24 accepted that the law was changed, that acted

1 to comply and used the funds that you've  
2 appropriated to do so, have had success. The  
3 law is working. Don't reward employee and  
4 prosecutors who choose to ignore the law's  
5 mandate.

6 Thank you.

7 CHAIRWOMAN KRUEGER: Thank you.

8 First up is Senator Myrie.

9 SENATOR MYRIE: Thank you. And thank  
10 you for your patience in waiting today.

11 I'm going to ask two questions, one  
12 directed to Bronx DA Clark and the other  
13 question directed to the three defense  
14 witnesses. We have a little bit of time, so  
15 I'm hoping we can get to both of these.

16 DA Clark, we've heard that the bulk of  
17 the dismissals are due to police failing to  
18 turn over information, and I'm wondering if  
19 you can speak to whether that is the  
20 experience that you have in your office or  
21 whether there are other dismissals,  
22 particularly in the misdemeanor universe,  
23 that are attributable to something else.

24 And then to the defenders, I'm

1           wondering if you can speak to whether there's  
2           any sanction beyond a dismissal that you  
3           think would provide a strong enough incentive  
4           for prosecutors to, as I think has been  
5           alleged, to not try to skirt the law.

6                     BRONX COUNTY DA CLARK: Thank you for  
7           the question.

8                     I think a large part of the dismissals  
9           we've seen have been because of some type of  
10          police paperwork perhaps not being turned  
11          over. Something that's duplicitous {sic}  
12          they may have the information already, a  
13          number of police officers respond, we get 10  
14          out of 12 of them, but none of them really  
15          acted on it is one thing.

16                    But the misconception about this is  
17          that discovery is only police paperwork.  
18          Discovery is a whole lot more. It's DNA,  
19          it's hospital records, it's surveillance  
20          cameras from private stores. It's all kinds  
21          of things that are part of the case and the  
22          charges and the evidence that we have to use.

23                    So to say that it's just police is not  
24          everything. And we lose cases because some

1 other things are not turned over, in addition  
2 to some of the police paperwork.

3 MR. STADELMAIER: Senator, in terms of  
4 sanctions, what we're dealing with is  
5 something incredibly important. We're  
6 dealing with people's lives. Okay? We're  
7 dealing with people who might end up in  
8 prison. We might be dealing with people who  
9 have long-term issues that they're going to  
10 be facing if they're convicted.

11 So there must be, you know, a very  
12 strong standard, a strong incentive for  
13 prosecutors to turn things over. People v.  
14 Bay makes clear, where the prosecution  
15 exercises diligence, where they exercise the  
16 due diligence, there will be no dismissal.  
17 They don't require a perfect prosecutor. The  
18 dismissals that we're seeing upstate, the  
19 dismissals we're seeing of indicted felonies  
20 in New York result from prosecutors basically  
21 turning over nothing or holding on to things  
22 for years without turning them over.

23 And whether that's their fault because  
24 they haven't embraced culture, because the

1 police aren't turning it over, that's really  
2 of no effect. Okay? The dismissals we're  
3 seeing are because they basically have done  
4 nothing in terms of turning things over.

5 So is there a strong enough sanction  
6 or a sanction other than 30.30 which is  
7 appropriate? In those circumstances, no. In  
8 other circumstances where they're diligent  
9 and just haven't turned something over minor,  
10 then there are 245.80 sanctions available to  
11 the judge.

12 SENATOR MYRIE: Thank you.

13 CHAIRWOMAN KRUEGER: Thank you.

14 Assembly.

15 CHAIRMAN PRETLOW: Assemblyman

16 Dinowitz.

17 ASSEMBLYMAN DINOWITZ: Thank you.

18 Well, before I start, DA Clark, would  
19 you agree with that statement he just said,  
20 yes or no, that it's like -- the dismissals  
21 are because DAs are turning over nothing?

22 BRONX COUNTY DA CLARK: No, I don't  
23 agree with that.

24 We work hard each and every day to

1           make sure that we do the right thing. It's  
2           important to us to know what the evidence is.

3                     You transformed this practice so that  
4           now I have to tell my lawyers, you know what,  
5           you think this is going to be hard? Yes, it  
6           is. But it's going to make you a better  
7           lawyer because you're going to know about  
8           your case ahead of time. And what you turn  
9           over to defense, you're going to know about  
10          it -- we don't have to wait in the middle of  
11          the case to discover things.

12                    That's how it used to be. You changed  
13          that. And we are doing everything that we  
14          can to turn it over. Am I saying every  
15          single prosecutor does that? There are  
16          outliers, just like there are outliers with  
17          defense attorneys where we turn over  
18          everything and they never open the evidence.  
19          Okay? Or they wait until the speedy trial  
20          clock runs and then they make a motion to  
21          say, Oh, there's something wrong with this  
22          certificate of compliance. And then the  
23          judge says, Well, the clock has run out, it's  
24          over.

1           If it was something that doesn't go  
2 directly to their innocence, if it doesn't  
3 prejudice them in any way, if it was  
4 something incidental and we didn't turn it  
5 over because the clock ran, it's out of our  
6 hands.

7           So I would disagree with what he says.  
8 We work so hard. Like we are public  
9 servants. You think I'm doing -- we want to  
10 see our cases dismissed? Why would we do  
11 this work if we wanted to see our cases  
12 dismissed?

13           We want to make sure that people are  
14 held accountable and that communities are  
15 safe, and discovery is part of that. And  
16 we're doing our job to make sure that this  
17 happens. We just want to level the plaintiff  
18 playing field to make sure that what is  
19 turned over is absolutely what's supposed to  
20 be turned over. And we're doing that.

21           If we get it wrong, the ultimate  
22 sanction is dismissal. But there should be  
23 other sanctions besides dismissal, and you  
24 shouldn't be able to sit and wait out the

1 clock and then let us know. If I got it or  
2 if I'm missing it, tell me and let me get it  
3 to you.

4 ASSEMBLYMAN DINOWITZ: Okay. Well,  
5 thank you for that yes-or-no answer.

6 (Laughter.)

7 ASSEMBLYMAN DINOWITZ: But I  
8 appreciate it.

9 I only have very little time, so I  
10 just wanted to say that I was and still am a  
11 very strong proponent of what we did in 2019,  
12 and we took a lot of crap for it in our  
13 districts, particularly discovery reform.

14 But I'm not an ideologue, I'm not  
15 some, you know, like way over law and order  
16 person. Nor am I a defund-the-police person.  
17 I want to do what's best for our district,  
18 and I think we all want to do what's best for  
19 our district. If we have to tweak the law,  
20 maybe we do, and it would certainly be -- we  
21 certainly welcome suggestions on that. I  
22 don't know that the Governor's proposals as  
23 such make -- I don't know that all of her  
24 proposals make a lot of sense. Maybe some

1 do.

2 But I think that we have to be  
3 prepared to do whatever it takes to make our  
4 communities safe.

5 CHAIRWOMAN KRUEGER: Thank you.

6 Senator Palumbo.

7 SENATOR PALUMBO: Thank you,

8 Madam Chair.

9 I'll go quickly. I'll kind of bounce  
10 from team to team.

11 So I practice some on both sides of  
12 the aisle. I was a Suffolk ADA for several  
13 years, and then was on the other side  
14 until -- and there were some comments about  
15 common sense and justice and those sorts of  
16 things.

17 And I think we can all agree, though,  
18 a couple of years ago DA Braggs' office was  
19 in here and the New York County DA was  
20 really -- had a very big problem because they  
21 dismissed almost half of their DWIs. In a  
22 county that has probably the most complex  
23 public transportation system in the world,  
24 people are driving drunk and they're getting

1           their cases dismissed.

2                       So I understand that, you know, that  
3           the 30.30 clock that you seem very resistant  
4           to that on that side of the table, that you  
5           want that to continue to be the sanction.  
6           But obviously the sanction, when your 30.30's  
7           dead, is dismissal. What about something  
8           incremental like maybe it will tick for -- in  
9           custody cases? Out of custody defendants,  
10          no. And you can have different incremental  
11          levels of sanction where the punishment would  
12          fit the crime, like we have in most of our  
13          jurisprudence, that yes, if it's a field  
14          report that is completely encompassed in the  
15          actual paperwork that was turned over, maybe  
16          an adverse inference, maybe something. Not  
17          dismissal.

18                      But if there's something intentionally  
19          withheld, like in those comments that you  
20          made, that clearly, clearly is something that  
21          should be heavily sanctioned if not  
22          dismissed. We get it. And if it's Brady,  
23          then the bomb goes off -- too bad, you  
24          screwed up.

1                   So I guess for maybe the defenders  
2                   side, because I didn't shut up and that was a  
3                   minute and a half so far, do you think that  
4                   any alternative sanction would be  
5                   appropriate, something like I just suggested?  
6                   And if not, please tell me why.

7                   MR. STADELMAIER: So, Senator, I did  
8                   want to point out that 30.30 has been the law  
9                   of the land for decades, and it was largely  
10                  written by district attorneys. So they've  
11                  known for a very long time that there was  
12                  always the chance that their cases were going  
13                  to be dismissed if they weren't diligent.

14                 The new 245 statute simply codifies  
15                 that and makes it a little stronger and  
16                 really requires them to be diligent in  
17                 turning materials over.

18                 I can't speak to the statistics you  
19                 gave about --

20                 SENATOR PALUMBO: But 30.30 was legal  
21                 sufficiency, not paperwork. Not a memo book  
22                 right?

23                 MR. STADELMAIER: Well, not  
24                 necessarily. Not necessarily.

1           And your statistics on the DWIs, I  
2           can't speak to that.

3           But what we're talking about here is  
4           prosecutors' offices, because either they  
5           can't get the material from the police or  
6           because they're holding on to it for whatever  
7           other reasons there might be, aren't being  
8           diligent in turning things over. And if  
9           cases are being dismissed, that's why they're  
10          being dismissed.

11          So again, if they're being diligent  
12          pursuant to People v. Bay, if they are  
13          looking at the materials in their possession,  
14          if they are turning over things on schedule,  
15          if they are liaising with law enforcement  
16          and getting the materials from them, there's  
17          absolutely no reason why they can't comply.  
18          And again, look at upstate. The dismissal  
19          rates upstate do not match New York City. So  
20          this is an NYPD, NYCBA problem. This is not  
21          an upstate issue. And if they get their act  
22          together, everything will be fine.

23          MS. BRYANT: I just want to jump in  
24          and say ask the prosecutors for proof of

1 their claims that cases are being dismissed  
2 for one piece of paper not being turned over.

3 CHAIRWOMAN KRUEGER: Thank you.

4 Assembly.

5 CHAIRMAN PRETLOW: Assemblyman

6 Morinello.

7 ASSEMBLYMAN MORINELLO: Thank you.

8 I have a general question for anyone  
9 to answer. We're sitting here in a budget  
10 hearing on public protection. Why are we  
11 discussing discovery? Shouldn't that be a  
12 separate discussion and not get mixed in so  
13 that the dollars oversee the purpose of what  
14 we're trying to get at?

15 Anybody could answer that.

16 MS. BRYANT: Yes.

17 MR. McGHAN: Yes.

18 MS. BRYANT: It should not be part of  
19 the discussion, and that's why we're asking  
20 you to intentionally omit Part B from the  
21 Public Protection and General Government  
22 Article VII bill.

23 ASSEMBLYMAN MORINELLO: And so if I  
24 understand what you're saying is, we should

1 be debating this in and of itself and  
2 analyzing it in and of itself, and not  
3 confusing it.

4 And many times what happens here is  
5 the things that they're not sure will happen,  
6 they throw into the budget because the  
7 budget's going to get passed in some form or  
8 fashion.

9 I've got one -- just a couple other  
10 questions if you'll just give me one second,  
11 please. And we're still going to talk a  
12 little bit about discovery. But  
13 non-prejudicial discovery violations, okay,  
14 are those sufficient for dismissal?

15 RENSSELAER COUNTY DA DONNELLY: We  
16 don't think so.

17 And I would just like to say if any of  
18 my ADAs are intentionally withholding and not  
19 doing their job to turn over relevant  
20 paperwork, they're not only going to get  
21 fired if their case gets dismissed, they're  
22 going to be subject to sanctions, the  
23 Prosecutorial Commission on Misconduct, and  
24 they also have their law license to worry

1 about.

2 So there's nobody that I'm supervising  
3 that's willfully holding back this paperwork.

4 ASSEMBLYMAN MORINELLO: I would find  
5 that very distasteful if I knew that there  
6 was a prosecutor or someone in the office  
7 purposely withholding evidence.

8 Now, are there other -- any states  
9 that have discovery laws that either side  
10 would prefer or that we might want to look at  
11 before we jump into this discussion right  
12 now?

13 BRONX COUNTY DA CLARK: I would like  
14 to say this, that the laws that you change --  
15 discovery now -- they're the best in this  
16 country. I know that other -- they've looked  
17 at other states, but they are not as  
18 well-written as the ones we have. Even with  
19 the reforms or the tweaks or the revisions  
20 that we're asking for -- even with those  
21 revisions, the New York law will still be  
22 stronger than in other states.

23 You know why? Because now you have  
24 codified, as my colleague said, codified

1 speedy trial to discovery where it wasn't  
2 before. So now -- now it's clear that speedy  
3 trials -- and if we wanted to really roll it  
4 back, one of the first things we would have  
5 put down in our revisions is decouple it from  
6 speedy trial.

7 We're not asking for that. It should  
8 be related to speedy trial. We're just  
9 saying that the sanctions should be  
10 measurable.

11 ASSEMBLYMAN MORINELLO: Real quick.  
12 Take it out of here.

13 CHAIRWOMAN KRUEGER: Thank you.

14 CHAIRMAN PRETLOW: Thank you.

15 Assemblyman Ra.

16 ASSEMBLYMAN RA: Thank you.

17 For DAs Clark and Donnelly, I wanted  
18 to actually talk about the proposed changes  
19 to the drugged driving laws. As I'm sure you  
20 know, I know our two DAs on Long Island have  
21 been strong proponents of this. I know that  
22 both in Suffolk and our DA Donnelly in  
23 Nassau, have talked about the difficulties in  
24 prosecuting these types of cases.

1           So if you can just talk a little bit  
2           about the tools that this change would give  
3           to DAs when prosecuting drugged driving.

4           RENSSELAER COUNTY DA DONNELLY: Sure.  
5           We've already used the word "common sense" a  
6           bit, but this really is a commonsense change.  
7           I can't prosecute someone for driving under  
8           the influence of drugs if I can't name the  
9           particular drug that they're under the  
10          influence of and if that particular drug is  
11          not on a list in the Public Health Law.

12          Now, you all probably know this, but  
13          many of the illegal drugs that people are  
14          using currently are coming in from other  
15          countries. And all it takes is a tweak to a  
16          synthetic drug and it's no longer what we  
17          think it is.

18          So finally fentanyl has made it on the  
19          list. All you have to do is change a  
20          molecule and it's no longer on the list. And  
21          I have personally had to sit with families  
22          and they cannot understand. And I can still  
23          hear the son saying "But she had 12 times the  
24          limit of fentanyl." People like to say the

1 legal limit. There's no authorized amount of  
2 fentanyl.

3 But in any event, she had a gigantic  
4 amount of fentanyl in her system, and I was  
5 unable to prosecute her at that time. And it  
6 was so frustrating to the family.

7 And we don't have to name what kind of  
8 alcohol is in someone's system. It really  
9 doesn't make sense.

10 And I think people need to understand  
11 this is not changing search and seizure.  
12 This is not changing what an officer needs to  
13 approach a vehicle or to ask someone for  
14 blood or to invade their privacy in any way.  
15 This is not changing the way we do business,  
16 it's simply giving us the ability to  
17 prosecute someone, especially under a  
18 circumstance related to probably taking  
19 someone's life.

20 ASSEMBLYMAN RA: Anything to add to  
21 that, DA Clark?

22 BRONX COUNTY DA CLARK: What she said.

23 (Laughter.)

24 BRONX COUNTY DA CLARK: No, I agree.

1           Look, I held a press conference in my county  
2           at the very spot where someone was hit by a  
3           drugged driver. And, you know, it's very  
4           difficult to do that and to have those  
5           conversations with these families.

6                     Look, it is bad enough that the laws  
7           that we have for people who are driving while  
8           drunk or under the influence of drugs don't  
9           meet the standard as if somebody kills  
10          somebody, murder with a gun. That's hard  
11          enough to explain. But to be able to explain  
12          to them that we can't prosecute it at  
13          all because we don't know the exact, you  
14          know, composition of the drug, is very  
15          difficult.

16                    I would ask that those -- there are  
17          states where you don't -- they don't have the  
18          kind of list that we have and that I don't  
19          hear that they are saying that there's any  
20          abuses by law enforcement to use that as an  
21          excuse to stop people and pull them over and  
22          arrest them. We're talking about very tragic  
23          situations here.

24                    ASSEMBLYMAN RA: Thank you.

1 CHAIRWOMAN KRUEGER: Thank you.

2 I don't think there's Senators -- no?

3 Let's go back to the Assembly.

4 CHAIRMAN PRETLOW: Assemblywoman

5 Walker.

6 ASSEMBLYWOMAN WALKER: Thank you,

7 Mr. Chairman.

8 Thank you, Madam DA Clark. We heard

9 this morning that there were no indicated

10 felonies based on technicalities in

11 discovery. Can you tell me one from your

12 county where that actually happened?

13 BRONX COUNTY DA CLARK: I can't

14 remember the particular charge, but the -- it

15 was a case where -- this is how bad this one

16 was. It went to trial and part of the

17 discovery was that a particular document or

18 something wasn't turned over at the time and

19 we were continuing to look for it. The

20 defense attorney wanted to proceed with trial

21 and to -- and said that they would table it

22 until they wanted to bring it up again.

23 They continued to go forward with the

24 case. The case went to trial, the person got

1 convicted, and then the defense attorney  
2 filed the motion saying that a particular  
3 part of discovery wasn't turned over, and the  
4 judge overturned the verdict.

5 Now, that's something that could have  
6 been dealt with before we went to trial.

7 ASSEMBLYWOMAN WALKER: Okay, so  
8 that's -- I would love to look further into  
9 that. It's not necessarily the 30.30  
10 conversations that we've been hearing about.

11 But we also heard that there are  
12 conferences that set forth timelines, that,  
13 you know, folk can ask for more time, that  
14 the standard is due diligence and good faith.

15 So if a case was turned over, can you  
16 talk to me perhaps what happened with the due  
17 diligence and good faith maybe argument that  
18 apparently this judge didn't feel that that  
19 particular prosecutor adhered to?

20 BRONX COUNTY DA CLARK: You know, I  
21 can't -- you know, I can't. I mean, being a  
22 former judge, I know how I would have handled  
23 it. I would have never let it go forward  
24 until we resolved the issue. But that is

1           what happened in that particular case.

2                     Look, due diligence and good faith is  
3           all that we have, because we are trying so  
4           hard to make sure that we turn over  
5           everything. And like I said, when we have  
6           it, we turn it over. Our obligation always  
7           continues. So when we even feel an initial  
8           COC, there's supplemental ones. Because as  
9           we continue to look to make sure that no  
10          stone is unturned, as we find more things, we  
11          turn them over.

12                    If it gets to a situation where  
13          something has finally never been turned over  
14          or been turned over too late, it is up to the  
15          judge then to hear the arguments of the  
16          parties, the people saying we did all we can,  
17          good faith, we did what we had to do. But it  
18          doesn't prejudice the defendant's case.

19                    If it's something that wasn't so  
20          monumental to their innocence or, you know,  
21          it just wasn't one of those flagrant  
22          situations where we held it just because we  
23          could, I don't think that dismissals should  
24          be the --

1 ASSEMBLYWOMAN WALKER: In my last  
2 sentence, the judge also said that there were  
3 no inconsequential dismissals either. And so  
4 I'd love to have a conversation about that  
5 further.

6 CHAIRMAN PRETLOW: You can continue  
7 that conversation --

8 BRONX COUNTY DA CLARK: I would love  
9 to follow up. I will make myself available  
10 as well.

11 CHAIRMAN PRETLOW: -- in five minutes.

12 ASSEMBLYWOMAN WALKER: Thank you.

13 CHAIRMAN PRETLOW: Assemblyman  
14 Palmesano.

15 ASSEMBLYMAN PALMESANO: Yes, my  
16 question is for DAs Donnelly and Clark.

17 I know we're talking a lot about  
18 discovery and the language change from  
19 "relating" to "relevant." I was curious, are  
20 there really any other aspects to the  
21 discovery changes that are not included in  
22 the proposed changes, that you would like to  
23 see that you think would help reduce the  
24 court case buildup and the potential future

1 case dismissals?

2 RENSSELAER COUNTY DA DONNELLY: Are  
3 you asking if there's something more than  
4 what's in the Governor's proposal that we  
5 would prefer?

6 ASSEMBLYMAN PALMESANO: Yes.

7 RENSSELAER COUNTY DA DONNELLY: Quite  
8 frankly, I'm going to say what's in the  
9 Governor's proposal is -- is good for us, and  
10 we want to live underneath -- we want to live  
11 underneath this law.

12 So I'm not looking for anything more  
13 to be changed. One of the best parts of this  
14 proposal is it precludes a defense attorney  
15 at the last minute, at the eve of trial, from  
16 making a motion to deem my certificate of  
17 compliance illusory. At that point, that is  
18 something that they've known for a long time,  
19 and that absolutely is a tactic.

20 And again, there are certainly ethical  
21 defense attorneys, but there are some that  
22 will use that. And I've had examples of a  
23 defense attorney who wants a particular plea  
24 on a somewhat minor case in a local court,

1 and when they don't get what they want, and  
2 then we show up at trial, well, suddenly they  
3 think there might be a problem with the COC.  
4 And guess what the non-attorney judge, who  
5 was nervous to do a trial in the first place,  
6 does?

7 And next thing you know, someone who  
8 was charged with DWI no longer is facing a  
9 conviction.

10 So those are the real-life things that  
11 are happening upstate. And it is absolutely  
12 an upstate problem. And please keep in mind  
13 those town and village numbers are not within  
14 the dismissals that you heard about earlier.

15 ASSEMBLYMAN PALMESANO: DA Clark,  
16 anything you want to add?

17 BRONX COUNTY DA CLARK: No, I agree.  
18 I support the Governor's proposal because I  
19 think it's -- they keep talking about common  
20 sense. It is common sense. We're not asking  
21 for a lot, we're just asking for the playing  
22 field to be level so that cases are not being  
23 dismissed on technicalities. If they're  
24 saying it's not a technicality, then so be

1           it, let the judge decide what the sanction  
2           should be.

3                     But if it's a technicality, then  
4           dismissal should not be the ultimate goal.  
5           There should be -- you know, there should be  
6           a spectrum. And that's what the discovery  
7           laws already do.

8                     What we're asking is that defense  
9           attorneys -- we do all we can, good faith,  
10          and they can argue that we're not and that's  
11          what the process is for, for them to  
12          challenge our COCs. But let's do that within  
13          the time frame that we have. Again, it  
14          should not be about competitive advantage, it  
15          should be about compliance. Because we want  
16          to comply.

17                    MS. BRYANT: And the law was changed  
18          not that long ago to already require the  
19          defense raise the issue of failure to comply  
20          within the speedy trial time.

21                    MR. STADELMAIER: Thank you. That is  
22          no longer a tactic. This is a tired  
23          argument. The law was changed in 2022. We  
24          have to object as soon as practicable. As

1           soon as we know we don't have something, we  
2           need to object.  If we don't object, we lose  
3           the ability to make a 30.30, we lose the  
4           ability to make a 245.80.  That is absolutely  
5           not happening any longer.

6                     BRONX COUNTY DA CLARK:  That is not  
7           true.  That's not what's happening.  That's  
8           not what's happening.

9                     MR. STADELMAIER:  That is what's  
10          happening.

11                    BRONX COUNTY DA CLARK:  That's not  
12          what's happening.

13                    CHAIRWOMAN KRUEGER:  (Mic off;  
14          inaudible.)

15                    (Laughter.)

16                    CHAIRWOMAN KRUEGER:  So thank you for  
17          coming and testifying.

18                    And I will say, although I didn't ask  
19          the question, I think data would be  
20          incredibly valuable for doing this evaluation  
21          as a legislator.  So whoever has additional  
22          data to back up their sides, I think we all  
23          want it as soon as possible.

24                    MR. STADELMAIER:  Yes, ma'am.

1                   BRONX COUNTY DA CLARK: We'll make  
2                   sure to get that.

3                   CHAIRWOMAN KRUEGER: Thank you very  
4                   much. I'm going to excuse you.

5                   And I'm going to call up Panel G. And  
6                   we have -- the Firefighters Association  
7                   canceled, so we should have the Police  
8                   Benevolent Association of New York City, the  
9                   New York State Police Investigators  
10                  Association, and the New York State  
11                  Correctional Officers & Police Benevolent  
12                  Association.

13                  Okay, let's everybody get back in  
14                  their seats.

15                  Good evening, gentlemen. And I'm  
16                  going to ask you first just to introduce  
17                  yourselves so that they know which face and  
18                  name to put on the screen together.

19                  MR. HENDRY: I'm Patrick Hendry,  
20                  president of the Police Benevolent  
21                  Association of the City of New York.

22                  CHAIRWOMAN KRUEGER: Thank you.

23                  MR. DYMOND: (Mic off) -- executive  
24                  director of the -- (mic out) Police

1           Investigators Benevolent Association.

2                   CHAIRWOMAN KRUEGER: Yes, and the  
3 green light needs to be on.

4                   MR. DYMOND: Tim Dymond, executive  
5 director of the New York State Police  
6 Investigators Association.

7                   CHAIRWOMAN KRUEGER: Okay.

8                   MR. SUMMERS: Chris Summers, president  
9 of NYSCOPBA.

10                   CHAIRWOMAN KRUEGER: Thank you.

11                   And if we just go right down the line,  
12 three minutes each. Thank you. Please.

13                   MR. HENDRY: Good evening, Senators  
14 and Assemblymembers. I am Patrick Hendry,  
15 president of the Police Benevolent  
16 Association of the City of New York,  
17 representing 21,000 rank and file members of  
18 the NYPD.

19                   Our members protect every resident,  
20 every neighborhood of the city. And there is  
21 one public safety concern we hear again and  
22 again. New Yorkers want more police  
23 presence. They're not seeing enough police  
24 officers on patrol, on the streets, in the

1 subway system. When they call for help, the  
2 response takes too long. And no matter what  
3 the crime statistics might say, they do not  
4 see the kind of police presence that makes  
5 them feel safe on their own block or in their  
6 own subway station.

7 This is not just perception, it is  
8 reality. New York City is in the middle of a  
9 historic policing staffing crisis. The NYPD  
10 is nearly 7,000 police officers short of its  
11 peak staffing. An average of 246 members  
12 quit or retired from the NYPD each month over  
13 the last year. And that record-level  
14 attrition has outpaced hiring.

15 Ultimately, the NYPD's public safety  
16 mission has suffered. NYPD response times to  
17 noncritical crimes in progress have increased  
18 by almost 10 minutes over the past four  
19 years, while the NYPD has struggled to fill  
20 its recent academy classes.

21 It is important to note that the  
22 department cannot simply recruit its way out  
23 of the staffing crisis. It must also keep  
24 the talented police officers it already has.

1 A major factor hindering both recruitment and  
2 retention is the inequitable benefits  
3 available to NYPD members hired since 2009  
4 under Pension Tier 3, which lacks many key  
5 benefits available to virtually every other  
6 police officer in New York State.

7 Police departments across the state  
8 are taking advantage of this disparity by  
9 specifically referencing their superior  
10 retirement benefits in recruiting ads  
11 targeting NYPD members. That has made it  
12 incredibly difficult for the NYPD to retain  
13 police officers who are in the prime of their  
14 careers.

15 This is an area where the Legislature  
16 can make an immediate positive difference.  
17 Senate Bill 2710 and Assembly Bill 3968,  
18 sponsored by Senator Scarcella-Spanton and  
19 Assemblymember Pheffer Amato would restore  
20 the 20-year service retirement for NYPD  
21 members hired since 2009, putting them on a  
22 more equal footing with their peers across  
23 the state.

24 Correcting this inequity is not only a

1 matter of fairness, but an important step  
2 toward allowing the NYPD to deliver the  
3 service and safety that New Yorkers demand  
4 and deserve. We look forward to working with  
5 these committees and the entire Legislature  
6 on solutions to this crisis.

7 Thank you, and I'm happy to answer  
8 questions you may have.

9 CHAIRMAN PRETLOW: Thank you.

10 MR. DYMOND: Good afternoon, everyone.  
11 Tim Dymond, retired senior investigator with  
12 the New York State Police, current executive  
13 director for the New York State Police  
14 Investigators Association.

15 My union represents 1200 active  
16 investigators and senior investigators across  
17 New York. Our members are assigned to the  
18 bureau of criminal investigations and handle  
19 the most serious crimes across the state,  
20 crimes including murders, rape, robbery,  
21 child abuse, kidnapping, human trafficking.  
22 And recent cases that you would be familiar  
23 with would be the Gilgo Beach serial killer  
24 as well as the Robert Brooks murder

1 investigation. That is our people. Those  
2 are the ones that are tasked with this work.

3 Each of our members begin their career  
4 as a New York State Police uniformed Trooper.  
5 The hiring process to become a New York  
6 Trooper is grueling and competitive, which is  
7 one of the reasons the New York State Police  
8 are one of the premier law enforcement  
9 agencies in this great country.

10 The NYSPIA membership is comprised of  
11 hand-selected, experienced Troopers that  
12 represent the very best of our agency. Their  
13 performance must stand out amongst their  
14 peers, and they must demonstrate the  
15 intelligence, maturity and integrity to  
16 investigate the most complex crimes that were  
17 mentioned above.

18 To echo what Superintendent James  
19 stated earlier today, our highest priority  
20 continues to be recruitment of new Troopers  
21 and replacement of our retiring members  
22 within our ranks. Like many law enforcement  
23 agencies across the country, we are  
24 struggling with recruitment and retention.

1 We continue to lose our most experienced  
2 members to retirement at an alarming rate.

3 The BCI membership sits right now at  
4 about 1200 members. We should be a little  
5 over 1300. However, we are running out of  
6 people to choose from. Troopers no longer  
7 want these jobs.

8 In the past, the New York State  
9 Trooper exam would be given every four to  
10 five years. The tests would routinely get  
11 25,000 or more applicants, and admission to  
12 the New York State Police was extremely  
13 competitive. Those days are over, folks.

14 We have a rolling test and we cannot  
15 fill our classes. You may not hear this from  
16 everyone else, but I will shoot you straight.  
17 We do not have people that want to be police  
18 officers in the State of New York. When the  
19 New York State Police can't hire, you have a  
20 problem. Other agencies are struggling.

21 And what happens when we can't hire?  
22 If good people don't take these jobs, bad  
23 people will. I'm going to say it again. If  
24 good people don't take them, bad people will.

1           These jobs will be filled. We are in a  
2           dangerous time, and I've said it every year  
3           I've been here, and it's just not sinking in.

4                        NYSPIA is also a strong supporter of  
5           the discovery changes that are proposed in  
6           the Governor's budget. Discovery reform has  
7           caused more damage to the criminal justice  
8           system, in my opinion, than bail reform.  
9           There is a reason people don't want these  
10          investigator jobs. They are buried under  
11          piles of paperwork. They're buried under  
12          cases so they can't work the next case.  
13          Cases go unsolved. Victims don't get  
14          justice.

15                       Thank you all for allowing me the  
16          opportunity to bring these issues to your  
17          attention on behalf of my members. And your  
18          assistance with the budget concerns I  
19          mentioned today will help us maintain a high  
20          level of professionalism.

21                       Thank you.

22                       CHAIRMAN PRETLOW: Thank you.

23                       MR. SUMMERS: Good evening.

24                       I'm going to open up with the

1 Marcy incident that I sent out a press  
2 release right after that, before the video  
3 was started. And you can tell that we don't  
4 condone those actions. But I'm here today, I  
5 have 17,000 men and women that go to work,  
6 act professional, do their job every day.  
7 And I'm here to fight for them.

8           Every year I come here and I tell you  
9 that there's staffing shortages, you have  
10 violence rising through the roof, we have  
11 contraband going through. Nobody wants to  
12 listen. Every year we bring these up to you.  
13 I'm looking to actually have a real  
14 conversation, sit down and have some changes.  
15 We need to get this done.

16           But I'm getting sick and tired of  
17 hearing that we don't ever give any  
18 solutions. We always give solutions. Nobody  
19 likes our answers. And if they do, they  
20 water down the problems. Like the Secure  
21 Vendor Program, they watered that down. The  
22 body scanners, they watered it down. What's  
23 the point of having them? They're not being  
24 used the proper way.

1           The way -- the solution from the  
2           department and the state is mandatory  
3           overtime, work four or five days, 16-hour  
4           shifts straight in a row -- and then you know  
5           what? We're going to sprinkle in 24-hour  
6           shifts. How is that fair to anybody? They  
7           cannot work 24-hour shifts and expect to keep  
8           doing the job.

9           The department is running the  
10          facilities like they are fully staffed.  
11          We're not fully staffed. Recruitment.  
12          Recruitment -- we were our biggest  
13          recruiters. Nobody is telling anybody to  
14          take this job anymore. Why would you?  
15          There's no work/life balance anymore. You're  
16          working all the time, violence is through the  
17          roof. Nobody wants this job.

18          The last thing I want to say is you  
19          need to stop painting all the employees with  
20          the same brush. These men and women come to  
21          work every single day. No matter what it  
22          is -- snowstorm, if it's raining, if they're  
23          sick -- they're going to work, and they act  
24          professional and they do their job on a daily

1 basis.

2 Thank you.

3 CHAIRMAN PRETLOW: Thank you.

4 Senator Myrie.

5 SENATOR MYRIE: Thank you, Chairman.

6 And thank you for your patience and  
7 for being here. And I'm going to direct most  
8 of the questions to Patrick but open it up to  
9 folks to speak to.

10 Thank you, Patrick. As we've had this  
11 conversation before, we have a different  
12 relationship than your predecessor, and I  
13 appreciate a willingness to engage in a  
14 different and I think more civil manner.

15 MR. HENDRY: Thank you, Senator.

16 SENATOR MYRIE: My question is very  
17 broad. But I'm hoping in addition to the  
18 bill that you mentioned you can give us some  
19 more insight into the mental health, quality  
20 of life, and overtime for PD, how those  
21 things work together, how they are related,  
22 and what more we could be doing to help  
23 particularly with the first two pieces for PD  
24 officers.

1           MR. HENDRY: So as far as overtime  
2           and -- say these, sorry --

3           SENATOR MYRIE: Mental health, quality  
4           of life, and overtime.

5           MR. HENDRY: For our members.

6           SENATOR MYRIE: Yup.

7           MR. HENDRY: So over the last few  
8           years it's been incredibly different because  
9           of the staffing crisis. And anybody that has  
10          commands in New York City, precincts that  
11          they go into, they see how many police  
12          officers are there compared to the past  
13          years. In most of the big commands where you  
14          had, you know, 200 police officers, they're  
15          down to 120 police officers.

16          So what that has led to is police  
17          officers doing crazy amounts of overtime, not  
18          being home with their families. Their  
19          quality of life has suffered. And what's  
20          happened for the people of the city is where  
21          they used to see eight, 10 sector cars out on  
22          patrol, they're seeing two or three patrol  
23          cars out on the scene. They used to see foot  
24          posts everywhere. There isn't that foot post

1           there.

2                   And what's happened is police officers  
3           just have been burnt out. They didn't want  
4           to do it anymore, they just quit the job. Or  
5           they're going to other places throughout the  
6           state -- MTA, Port Authority, State Troopers,  
7           Nassau, Suffolk, Yonkers -- you name it,  
8           throughout the state. Or throughout the  
9           country. Or they're just leaving the  
10          profession altogether.

11                   But police officers' mental health is  
12          incredibly important. Being able to have  
13          time off, having time with their family is  
14          incredibly important. And unfortunately over  
15          the last couple of years, because of the  
16          staffing crisis, they haven't been able to do  
17          that.

18                   And we need to fix this. We have  
19          inferior benefits to every other police  
20          agency throughout the state. That is a fact.  
21          We have inferior benefits, and it's not fair.  
22          It's not fair to our members and we need to  
23          fix this. And we're hoping that in this  
24          session it gets fixed.

1                   SENATOR MYRIE: Thank you.

2                   CHAIRMAN PRETLOW: Assemblyman  
3                   Dinowitz.

4                   ASSEMBLYMAN DINOWITZ: Thank you.

5                   My question or remarks are directed to  
6                   Patrick Henry -- Hendry.

7                   It was only a few years ago that some  
8                   of the elected officials in the city were,  
9                   you know, "defund the police, abolish the  
10                  police" and stuff like that. And my response  
11                  always was, well, if you don't want cops in  
12                  your district, I got the 50, the 47 and the  
13                  52 precincts -- we'll take them.

14                  And that is how most people feel. But  
15                  right now I think people in my community, and  
16                  I'm sure that's true throughout the city,  
17                  don't believe we have enough police officers.  
18                  And I can tell you that I don't see a lot of  
19                  police cars. And the police station, one of  
20                  the -- the 50 is just right up the block from  
21                  my office, there's just not enough --  
22                  certainly there's nobody on foot at all. And  
23                  whether crime is going up or down, and it's  
24                  hard to know because some day the chart, you

1 know, says murder's going down but, you know,  
2 something else is going up. So it's really  
3 hard to know.

4 But I can tell you what people  
5 believe. People believe crime is up. And  
6 not seeing enough cops, you know, in their  
7 cars or on the beat makes people feel unsafe.  
8 And I think that is a very high priority that  
9 we do something about that.

10 So I'm glad, you know, that you made  
11 the remarks that you did. I mean, just -- I  
12 guess it was just a few weeks ago where did I  
13 read that they said that the number of cops  
14 we have citywide is like the lowest level  
15 it's been in -- probably in a couple of  
16 decades.

17 MR. HENDRY: Since 1990, we're at our  
18 lowest level, 7,000 police officers less than  
19 we were at that same level. And obviously we  
20 know how many more people are in this city  
21 and how much more responsibilities police  
22 officers have to do than -- you know, with  
23 cameras and 24-hour police officer, all the  
24 reports that we have to do.

1           It's made it incredibly tough. And  
2 then, you know, now with the subways, they  
3 took all the police officers from commands to  
4 transit commands to fill those night patrols.  
5 So all the police officers that were in the  
6 commands for that staffing, no longer there.

7           So this cannot be sustained for the  
8 long run. There has to be solutions. There  
9 are a lot of reasons why police officers are  
10 leaving. But this is unfair. It's unfair to  
11 our members. And if someone's going to take  
12 the job, which job are you going to take?  
13 Are you going to take the job with inferior  
14 benefits, or are you going to take the job  
15 with better benefits, you know, to start  
16 with?

17           ASSEMBLYMAN DINOWITZ: Right.

18           MR. HENDRY: And that's what we have  
19 to look at.

20           ASSEMBLYMAN DINOWITZ: Well, I think  
21 we got to figure out a way. And I can tell  
22 you, on a typical day, a summer day in the  
23 Bronx, half the police force is at  
24 Yankee Stadium or they're being pulled away

1 from all different directions, so we don't --  
2 we don't see enough locally. So I think it  
3 is a top priority that we figure out a way to  
4 keep the police that we have.

5 And I know a lot of cops leave after a  
6 few years -- you know, there are better job  
7 opportunities elsewhere, so I think that's  
8 really a high priority.

9 Thank you.

10 MR. HENDRY: Thank you.

11 CHAIRWOMAN KRUEGER: Thank you.

12 Senator Palumbo.

13 SENATOR PALUMBO: Thank you,

14 Madam Chair.

15 Good to see you all. Thanks for  
16 coming and waiting. And I'm a cop's kid. I  
17 think people have such a rigid view -- and I  
18 was a prosecutor myself, you may have heard  
19 me saying it before, worked with many police,  
20 obviously, for many years. But there is such  
21 a rigid view of law enforcement, they forget  
22 that they're moms and dads and brothers and  
23 sisters and that it's a very difficult job  
24 without all these additional obstacles.

1           You folks were here for the exchange,  
2           I believe, on the discovery reform, and I  
3           think we all know the positions that we take.  
4           And Investigator Dymond, you and I spoke the  
5           other day and I'm wondering if you could  
6           provide -- you indicated in your remarks that  
7           you're supportive of those changes -- maybe  
8           some real-life examples that your members are  
9           dealing with to support reasons why we should  
10          have those changes.

11           Because I think that seems to have a  
12          little bit more weight when you see these  
13          real examples -- and the problems it's  
14          causing, which clearly is not, quote, justice  
15          for anyone, particularly the victims.

16           MR. DYMOND: Thank you for the  
17          question, Senator.

18           Certainly I'm going to echo the  
19          Bronx DA who spoke earlier that it is not  
20          just the paperwork from the police officer  
21          that is discovery. That is a big  
22          misconception.

23           Everything is on film now. All of our  
24          Troopers are wearing body cameras. We are

1 talking hours and hours of camera footage,  
2 sometimes from 30 different cameras. We're  
3 talking about phone calls on recorded lines  
4 from the station to the scene. We're talking  
5 about text messages from work phones amongst  
6 50 different police officers.

7 This stuff is so -- it's so big and  
8 there's so much of it that -- I truly believe  
9 that most police officers don't want to hold  
10 that back, they want to give it to you. But  
11 when that pile is so high and you didn't get  
12 the camera footage from the Taco Bell that  
13 caught the corner of the shooting, and that's  
14 what gets a case tossed, that's unacceptable.

15 And you, you as a legislative body,  
16 you decide where the sweet spot is. You  
17 decide what is right and wrong. And what I'm  
18 telling you is that we have created a  
19 situation where we can't find investigators.  
20 Multiple troops in New York State in the  
21 State Police have no one that wants to be an  
22 investigator. Zero on the list, multiple  
23 troops.

24 That should scare everyone in this

1 room. Because those are the people that are  
2 going to go out and they're going to find  
3 that kidnapping victim. Those are the people  
4 that you're going to call when you've been  
5 victimized or there's a burglar that took  
6 stuff from your home. They're not going to  
7 be there anymore.

8 SENATOR PALUMBO: And I don't know if  
9 Tim or everybody wants to just comment: Any  
10 additional changes that you think would be  
11 helpful that I think -- not lessening the  
12 sanction from dismissal, of course, just I  
13 think makes the most sense. But any other  
14 comments that you have in that regard on what  
15 might help?

16 MR. HENDRY: Me?

17 SENATOR PALUMBO: Anyone here. Yeah,  
18 sure.

19 MR. HENDRY: I don't have all the  
20 information on the bills, you know, because I  
21 wasn't provided that. You know, I only read  
22 what I've seen in the newspapers.

23 Police officers are overwhelmed as it  
24 is. You know, to be able to get information

1 or reports is incredibly difficult.

2 SENATOR PALUMBO: Great. Okay, thank  
3 you.

4 CHAIRMAN PRETLOW: Assemblyman  
5 Morinello.

6 ASSEMBLYMAN MORINELLO: Thank you. I  
7 have a question that might apply to all three  
8 of your divisions. Are there civil service  
9 exams necessary to fill the positions?

10 MR. HENDRY: That's the way it is in  
11 New York City. You have to take a civil  
12 service test.

13 ASSEMBLYMAN MORINELLO: You have to  
14 take it. Now, are those limited to when they  
15 are offered?

16 MR. HENDRY: They're offered more  
17 often in the city than they were in the past.  
18 So, you know, it's on a computer, so it's out  
19 there a lot. Unfortunately, you know, to get  
20 police officers right now, they're going back  
21 seven years of tests. You know, that's  
22 unheard of, to go back seven years. It's  
23 unheard of.

24 So people aren't taking the test.

1 ASSEMBLYMAN MORINELLO: What about  
2 corrections?

3 MR. SUMMERS: No, we have open  
4 recruitment now. And we still can't get  
5 people to take the job.

6 ASSEMBLYMAN MORINELLO: Because I'm  
7 hearing from my own sheriffs and police  
8 chiefs that the limitation on the  
9 availability of the civil service exams, at  
10 least outside of New York City, is hindering  
11 some individuals from recruiting.

12 For the correction officers, there is  
13 money in the budget for hiring and recruiting  
14 correction officers. But will it be  
15 sufficient? And how many do you anticipate  
16 that would cover, should you be able to get  
17 the manpower?

18 MR. SUMMERS: We need 2200 bodies to  
19 come in to help -- to stop the mandates that  
20 they're doing right now. Like I said,  
21 they're working 16-hour days, four days in a  
22 row, five days in a row, and then doing  
23 24-hour shifts. They can't do it anymore.  
24 They're past that breaking point. Something

1 needs to give on that.

2 And we can't even get retention. We  
3 have had our death-gamble bill to this body  
4 for 20 years, and it keeps either getting  
5 shut down or vetoed.

6 We need help. And every time we come  
7 here, we get the same result: Nothing.

8 ASSEMBLYMAN MORINELLO: And as far as  
9 the investigators, what is the biggest  
10 hindrance for the investigators?

11 MR. DYMOND: Hindrance in recruitment?

12 ASSEMBLYMAN MORINELLO: Yes.

13 MR. DYMOND: So we have a very young  
14 job right now in the State Police. As  
15 everyone here knows, we've hired a ton of  
16 Troopers over the last couple of years to try  
17 to catch the ranks up. So they have to get a  
18 certain experience level before they can go  
19 to the bureau, before they're ready to handle  
20 these heavier cases.

21 The problem we're seeing is that  
22 they're getting to that five-year mark,  
23 right -- so you're a Trooper, you come up to  
24 five years, you can decide the bureau route,

1 right, and become an investigator, or you can  
2 decide the sergeant route. The bureau route  
3 is buried now with discovery work and court  
4 testimony, so we're seeing more and more  
5 people that are taking that sergeant's route.

6 So we're trying to figure out ways  
7 internally to get some more at that five-year  
8 mark that are qualified, good candidates, to  
9 take the bureau route so we can continue our  
10 strength in ranks.

11 ASSEMBLYMAN MORINELLO: So I think  
12 from listening to all of you, recruitment and  
13 new officers would assist in the whole  
14 process.

15 MR. HENDRY: And retention of our  
16 older ones.

17 MR. SUMMERS: And retention also.

18 CHAIRWOMAN KRUEGER: Thank you.

19 Next we have Senator Rolison.

20 SENATOR ROLISON: Thank you,  
21 Madam Chair. It's good to see all three of  
22 you this evening, and thanks for waiting.

23 For PBA President Hendry, the Governor  
24 has in her budget \$77 million to be

1           coupled -- I believe \$77 million, as I heard  
2           from DCJS earlier, of New York money for the  
3           subway surge. And as we have said here even,  
4           you know, talking about like, well, all those  
5           officers are coming from someplace. And if  
6           they're down below, they're not up top. And  
7           you could be essentially pushing the problem  
8           around.

9           MR. HENDRY: Correct.

10          SENATOR ROLISON: People who are prone  
11          to do things based on a lot of behavioral  
12          issues -- of course we know that's also very  
13          concerning and difficult -- that maybe  
14          they're not going to be in the subway,  
15          they're going to be up on street level.

16          And eventually that money runs out.  
17          And if you're 7,000 officers short, how long  
18          does the State of New York or the City of  
19          New York have to put those types of monies  
20          into overtime when potentially they could be  
21          put into salary and benefits to have more  
22          officers stay, have more officers hired?

23          I'll tell you in my last year of the  
24          City of Poughkeepsie, I think we hired five

1 NYPD officers. They're some of the  
2 best-trained, equipped officers that we've  
3 been able to lateral in, because that wasn't  
4 necessarily the case until they were able to  
5 do that. And of course that's not the ideal  
6 situation for the city, so I hear you.

7 And to NYSCOPBA President Summers,  
8 today we had conversations with the  
9 commissioner and talked about the staffing  
10 analysis that is not at a hundred percent,  
11 talking about 70 percent. Clearly you are  
12 not in a position probably -- and I don't  
13 know this, you know, factually -- have you  
14 even reached 70 percent when you're over  
15 2,000 officers down and over a thousand  
16 members of your civilian staff down.

17 So just -- I said this to the  
18 commissioner, and I'll say the same thing to  
19 you -- and it's sort of a question -- is that  
20 do you believe that if you had a smaller,  
21 more agile group of corrections officers who  
22 were paid better, got additional training as  
23 necessary and you're able to staff posts that  
24 were, you know, analyzed as being the

1 critical posts within the facilities, could  
2 that potentially work?

3 MR. SUMMERS: It could work. But you  
4 have to protect what we have now and to go  
5 from 70 percent, that's unsafe. We're asking  
6 for them to run the facilities safe and  
7 secure now to make it run the way it should.  
8 We're not fully staffed, it's not running it  
9 that way. To cut jobs and beds is not the  
10 answer to do that. Absolutely not.

11 SENATOR ROLISON: Okay. Understood.

12 MR. SUMMERS: But we do need new  
13 training, yes.

14 SENATOR ROLISON: Good. And then to  
15 Tim Dymond, I'm with ya.

16 CHAIRMAN PRETLOW: Assemblyman Lavine.

17 ASSEMBLYMAN LAVINE: I'm taking the  
18 fifth. But I hear what you're all saying.  
19 And thanks for what you do.

20 PANELISTS: Thank you.

21 CHAIRWOMAN KRUEGER: Well, that was  
22 nice and brief. Thank you.

23 (Laughter.)

24 CHAIRWOMAN KRUEGER: Sorry, I

1 apologize.

2 Senator Stec. Oh, no? Oh, excuse me.

3 Senator Murray.

4 SENATOR O'MARA: (Inaudible.)

5 CHAIRWOMAN KRUEGER: It's his fault.

6 But it's Senator Murray.

7 SENATOR MURRAY: Thank you,

8 Chairwoman.

9 And thank you all for being here.

10 So let's see, let's run down the list.

11 Salary and benefits, whether it's

12 Tier 6 or Tier 3 or retirement benefits.

13 Forced mandatory overtime, which then

14 leads to burnout, which then leads to some

15 retiring early and leaving early, which now

16 makes the problem grow even more.

17 Then we come to some of the policies,

18 whether it's bail reform, discovery, 50A, the

19 HALT Act, et cetera, et cetera, et cetera.

20 And then some of the other things. As

21 a result of the policies -- and I mentioned

22 earlier today the incident in Times Square

23 where the officers were attacked and beaten

24 and they catch -- you do your job, you catch

1 the people that did it, the perpetrators.  
2 And then, what, 24 hours later, if that,  
3 they're walking out the court, flipping us  
4 the bird, laughing, giggling and running off.

5 And for my friend Assemblyman Lavine,  
6 I will even throw in January 6th, the people  
7 that were attacking the police officers, and  
8 they get pardoned.

9 That's got to -- add all of this up, I  
10 would see the biggest problem's morale at  
11 this point. And like has been mentioned  
12 before, who would want to be a law  
13 enforcement officer in this day? It used to  
14 be prestigious, it used to be so respected.  
15 And it should be. It feels like we're losing  
16 that.

17 And I think a lot of it falls on us  
18 when we make policies like that that are  
19 hurting it.

20 But if you had to pick anything here  
21 out of that list, what would be the thing you  
22 would -- if you had a magic wand and you  
23 could wave it and correct it, what would it  
24 be that would help you to either recruit or

1 retain?

2 MR. HENDRY: Well, I said before as  
3 far as, you know, equalizing our members to  
4 everyone else in the state would be a step  
5 forward.

6 But also, you know, we had over  
7 4700 members assaulted with injuries last  
8 year, and we've been going from courtroom to  
9 courthouse across the city demanding change,  
10 you know, holding the judges accountable. We  
11 feel that the judges in certain cases are not  
12 doing their jobs and we've been going, again,  
13 demanding change.

14 So we have had issues because, you  
15 know, every day a police officer's getting  
16 assaulted. But our main issue is to be equal  
17 to everyone else in the state.

18 MR. SUMMERS: I would have to say the  
19 HALT law. It has to change.

20 I've had members from the Legislature  
21 walk correctional facilities, and the  
22 incarcerated are telling them that it's not  
23 working, it needs to change, there needs to  
24 be revisions done. It's not safe for

1           anybody.  Everybody -- they need to look at  
2           that and have a serious talk and at least  
3           revise it.

4                     SENATOR MURRAY:  Mr. Dymond?

5                     MR. DYMOND:  Salary and benefits are  
6           great, but I think a lot of it's societal  
7           change, right?  We need to start getting in  
8           our communities and start speaking positively  
9           of police officers and corrections officers.  
10          We've got to start talking about how it's a  
11          good career and a good profession and you can  
12          make a difference.

13                    That, to me, is a big change.

14                    SENATOR MURRAY:  Thank you, everybody.  
15          Thank you for what you do.

16                    CHAIRMAN PRETLOW:  Assemblyman Dilan.

17                    ASSEMBLYMAN DILAN:  Thank you,  
18          Mr. Chair.

19                    My questions are for Mr. Summers.

20                    I just want to start by saying I'm  
21          glad you led that in the days after the  
22          murder of Mr. Brooks that your organization  
23          condemned that action.

24                    You had a chance to hear the

1 commissioner today, to hear his father today.  
2 Do you have any immediate reaction to what  
3 you heard and how you intend to speak to your  
4 workforce about what you heard today?

5 MR. SUMMERS: Do I have the reaction  
6 of what I've heard today?

7 ASSEMBLYMAN DILAN: From the  
8 commissioner and from Mr. Robert Ricks, who's  
9 Robert Brooks' father.

10 MR. SUMMERS: As I stated before about  
11 the Marcy incident and Brooks, I'm very sorry  
12 for what happened.

13 But I'm here to fight for the  
14 17,000 other men and women, and everything  
15 that I put in my press release is there.

16 ASSEMBLYMAN DILAN: And that's  
17 understandable, that's your job. But I think  
18 if -- and we've had many discussions on  
19 staffing since I've become chair, including  
20 in this room in December before that tragic  
21 event. We talked about programming and how  
22 the lack of staff at DOCCS potentially  
23 affects programming, which could lead to  
24 folks getting out sooner based on the reforms

1           they've made and merit time.

2                       So to put that into a question, the  
3 budget has, in Article VII language, language  
4 that would allow people from other states to  
5 potentially join the ranks of corrections  
6 officers. Do you have a position on that?

7           MR. SUMMERS: I think that would be a  
8 great start to get people to come in and  
9 start to take this job. It's not -- it's not  
10 the fix.

11           ASSEMBLYMAN DILAN: Okay. So that  
12 means you believe we've done everything as a  
13 state to exhaust all recruitment  
14 possibilities, that within the State of  
15 New York we cannot find anyone to take these  
16 jobs?

17           MR. SUMMERS: We cannot get anybody to  
18 take this job. Last year when I sat in front  
19 of this body to tell you about closing  
20 facilities, we closed two: Great Meadow,  
21 Sullivan. Since then, staffing has got even  
22 worse. It didn't help at all.

23                       So we need to make better benefits.  
24 Why can't we do that to get people to take

1           this job? We have put in a salary grade  
2           application for an upgrade. The last time  
3           we've been -- we got an upgrade was 1972.  
4           And I'm not sure if you're aware of that.  
5           But we asked for three grades, from the 14th  
6           to the 17th.

7                     ASSEMBLYMAN DILAN: I wasn't around in  
8           1972.

9                     MR. SUMMERS: The death-gamble bill,  
10          geo pay, we've asked for all that to try to  
11          get people that live in this state to take  
12          this job and to retain people, and we get  
13          nowhere. It's just empty promises.

14                    ASSEMBLYMAN DILAN: I think folks have  
15          tried, but we're not exactly recruiters here.  
16          But I guess we'll continue the discussion at  
17          another time. Thank you.

18                    CHAIRWOMAN KRUEGER: Any other  
19          Senators? Other Assemblymembers?

20                    CHAIRMAN PRETLOW: There's always  
21          other Assemblymembers.

22                    Assemblymember Palmesano.

23                    ASSEMBLYMAN PALMESANO: Yes, good  
24          evening, gentlemen.

1           First I just want to say to all three  
2 of you, thank you for what you and your  
3 members do for all of us across the state,  
4 working dangerous jobs to keep us safe. So  
5 thank you.

6           My question -- my time is with  
7 Mr. Summers, if I may. As you said, you come  
8 up here every year, I'm sitting at this dais  
9 every year, your predecessors who came up  
10 here -- same concerns, same problems, same  
11 ask, and it seems like things are just  
12 getting worse and worse.

13           You can go down the list: The rise in  
14 violence, which I will say specifically has  
15 to do with HALT, which restricts the ability  
16 to segregate our most violent inmates from  
17 the rest of the general population. And the  
18 numbers speak for themselves.

19           Since HALT, inmate-on-inmate assaults  
20 are up 169 percent, inmate-on-staff assaults  
21 are up 76 percent, and contraband seizures  
22 are up 32 percent. So we know the violence  
23 is up.

24           The staffing crisis that you have, the

1 mandatory overtime, sometimes three times,  
2 for a triple shift. The quality of life --  
3 vacation days, personal days getting taken  
4 away so they have to work.

5 The woefully inadequate pay, which I  
6 said to the commissioner, \$56,000 to bring  
7 someone into a dangerous job. Where are the  
8 recruitment bonuses? Where are the retention  
9 bonuses? Where's the death gamble to protect  
10 the pension, an earned pension for your  
11 members to protect their spouses and their  
12 families so they can have that benefit?

13 And then I read a memo this week to go  
14 on top of it, I think it came out -- a  
15 staffing memo that the way I read it is  
16 designed to reduce 30 percent of the slots by  
17 eliminating open jobs and posts. Not because  
18 they're not needed or important, but because  
19 they can't be filled.

20 That doesn't fix the problem. That  
21 doesn't make us more safe. That's not going  
22 to deal with the staffing crisis. It's just  
23 going to hide it.

24 So I just want to ask you, what can

1           you say -- with the time, what would you --  
2           what can we do for you to help you in this  
3           process that we're not giving you?

4                     MR. SUMMERS: To go -- to answer your  
5           one question about the staffing memo, all  
6           that is is compiling and it's going to make  
7           it unsafe for everyone. It's not doable.  
8           already the violence is through the roof and  
9           it's going to -- you can't cut staff and cut  
10          the jobs, it's not feasible to do so.

11                    We need staff. We need this body to  
12          actually look at raising the starting point.  
13          We need revisions to HALT. We want -- all  
14          we're asking for is we want to go to work and  
15          be safe. That's it. We don't go to work,  
16          we're not safe. It's -- the working  
17          conditions are -- they suck. Excuse my  
18          language, but they do. And nobody wants to  
19          go to work anymore.

20                    We had a member that I had to get a  
21          note from because he's working four, five  
22          doubles in a row, with a suicide note,  
23          because he couldn't take this job and said it  
24          sucked. That's where we are right now. And

1           it can't be -- they can't do it anymore.

2           We -- something has to change.

3                     ASSEMBLYMAN PALMESANO: Thank you.

4                     CHAIRWOMAN KRUEGER: More?

5                     CHAIRMAN PRETLOW: Of course there's  
6           more.

7                     CHAIRWOMAN KRUEGER: Of course there's  
8           more.

9                     CHAIRMAN PRETLOW: Assemblyman Ra.

10                    ASSEMBLYMAN RA: Thank you.

11                    Could all three of you maybe give me a  
12           sense of what does a training academy class  
13           look like now in terms of numbers, as well as  
14           the number of applications versus what it  
15           did -- or what it looked like in the past in  
16           terms of numbers?

17                    MR. HENDRY: I guess I'll start. So  
18           when I came on in 1993, there were about  
19           50,000 applicants for the test. I'd say  
20           right now is a couple of thousand for the  
21           test. That's a huge difference.

22                    Now, they were able to put in an  
23           academy class this cycle, close to a  
24           thousand. But my class was close to 3,000.

1           So those are the big, big differences -- as I  
2           already said, the numbers were down 7,000.  
3           So when you're only putting in classes before  
4           that of like 600 but we're losing 800 before  
5           that class even goes on, we're outpacing  
6           hiring.

7                     MR. DYMOND:  So ours used to be 20,000  
8           to 25,000 would take the test; for five  
9           years, that test would exist.  To get into  
10          that test, it was like you had to be there.  
11          You didn't want to miss it.

12                    We have now gone almost to a  
13          completely rolling testing procedure like  
14          NYPD and like Corrections, and we're about to  
15          put in a class of 270.  But we are scraping  
16          for that 270.  And no one wants to talk about  
17          lowering standards.  Folks, we're there.  
18          We're kicking the ages up on everything,  
19          we've gotten rid of our tattoo policies, we  
20          got rid of as much as we can -- and we're  
21          still just scraping by.

22                    MR. SUMMERS:  When I started 20 years  
23          ago, my class had 150 people in it and we  
24          graduated 123.  Going through the academy

1 now, we're lucky to get 75 to start and  
2 they're graduating 40. Nobody wants to stay.

3 ASSEMBLYMAN RA: So would it be  
4 similar to the --

5 MR. SUMMERS: I'm having the same  
6 problems that everybody else is.

7 ASSEMBLYMAN RA: -- in terms of  
8 attrition basically outpacing what's coming  
9 in?

10 MR. SUMMERS: It's outpacing, I'm  
11 having guys resign with 10, 15 years on the  
12 job. Twenty-three years on the job they're  
13 resigning because they don't want to do this  
14 job anymore. As soon as they hit 25, they're  
15 leaving. They're not even staying anymore.

16 We used to be able to retain officers.  
17 We can't do that anymore. And when they  
18 stopped hiring in 2020 and they didn't hire  
19 for two years, that hurt us. And the numbers  
20 don't lie. So 2027, 2028, 2029 and 2030 are  
21 going to be high years that everybody can  
22 retire. The state needs to do something to  
23 get more bodies in because they're going to  
24 be even worse off then than they are now.



1           because you have to compile all this  
2           information for discovery?

3                     MR. DYMOND:  I certainly think  
4           additional staffing would help, right?  
5           There's an additional workload that was  
6           created by the additional discovery.  Whether  
7           it's civilian or sworn, that's well above my  
8           pay grade.  But additional staffing would  
9           help.  And I think that would keep some of  
10          these cases from slipping through the cracks.

11                    It is not a well-kept secret that if  
12          you hire a defense attorney in the State of  
13          New York, you are beating almost any case.

14                    ASSEMBLYWOMAN GIGLIO:  Okay.  And then  
15          for New York City Police.  So we have -- I  
16          have heard from many people in Nassau and  
17          Suffolk County, and even, you know, areas  
18          upstate that are saying that they're going to  
19          the New York City Police Department because  
20          then, once they're there, they can transfer  
21          to another department.

22                    How many transfers are you seeing?

23                    MR. HENDRY:  So right now anybody that  
24          comes on to the NYPD is taking it as a

1 stepping stone. They're not taking it as  
2 their dream job no more. And it's very sad.

3 When I came on, when police officers  
4 came in they would take it as their dream  
5 job. And they're not -- no longer doing  
6 that.

7 Last year, quits alone I believe were  
8 at 843, and that's with -- it's close to a  
9 thousand just leaving to go to other  
10 departments throughout the state, throughout  
11 the country, or just leaving the profession.

12 ASSEMBLYWOMAN GIGLIO: Yeah, thank  
13 you.

14 And for Corrections. So, you know,  
15 the solitary confinement laws -- and also  
16 sexual harassment of women correction  
17 officers, has anything gotten better with  
18 that?

19 MR. SUMMERS: I'm sorry, what was the  
20 question?

21 ASSEMBLYWOMAN GIGLIO: The solitary  
22 confinement and the limited time you can put  
23 somebody in solitary confinement, even though  
24 they may be a threat to the general

1 population or to corrections officers --  
2 that, number one.

3 And number two, the sexual harassment  
4 from incarcerated individuals to women  
5 correction officers.

6 MR. SUMMERS: Yeah, you need to revise  
7 the laws. There's no more repercussions,  
8 there's nothing to stop them from doing any  
9 of that.

10 And the harassment. You go to Walmart  
11 and you want your daughter to be sexually  
12 harassed at Walmart? No, you wouldn't. Now  
13 you have a mother, daughter, your sister  
14 going into work and have to deal with that on  
15 a daily basis? It's unacceptable.

16 ASSEMBLYWOMAN GIGLIO: Thank you.

17 CHAIRWOMAN KRUEGER: Okay. I think we  
18 are completed with the people who wanted to  
19 ask you questions tonight. Thank you very  
20 much for staying with us this late, and thank  
21 you all for your work.

22 PANELISTS: Thank you so much. Thank  
23 you all.

24 Thank you for hanging in.

1 Thank you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 And now I'm going to call up Panel H.  
4 We need a number of chairs, although maybe a  
5 few people have left. We'll see.

6 We have the New York State Dispute  
7 Resolution Association, the Center for  
8 Justice Innovation, the New York State  
9 Coalition Against Domestic Violence, the  
10 Empire Justice Center, and New York Legal  
11 Services.

12 Oh, and we have everybody with us, and  
13 we have the right number of chairs. And we  
14 decided to go from all men to all women.

15 All right, if you would start -- let's  
16 start with Kristin. Introduce yourself just  
17 so that they know in the video room whose  
18 face goes with whose name when you testify.

19 MS. BROWN: Kristin Brown, Empire  
20 Justice Center.

21 MS. CURRAN: Sal Curran, with the  
22 New York Legal Services Coalition.

23 MS. GERHARDT: Joan Gerhardt, New York  
24 State Coalition Against Domestic Violence.

1 MS. HOBBS: Theresa Hobbs, New York  
2 State Dispute Resolution Association.

3 MS. NOLASCO: Hailey Nolasco, Center  
4 for Justice Innovation.

5 CHAIRWOMAN KRUEGER: Great. Why don't  
6 we start with Kristin, and we'll just go down  
7 the line. Thank you.

8 MS. BROWN: Good evening. My name's  
9 Kristin Brown. I'm president and CEO of  
10 Empire Justice Center. We're a  
11 statewide nonprofit law firm with seven  
12 offices across the state focused on systems  
13 change. Our clients include disabled  
14 students, immigrants facing eviction, elderly  
15 people facing tax foreclosure and the loss of  
16 generational wealth.

17 I'm also the president of the New York  
18 Legal Services Coalition and serve on the  
19 New York State Unified Court System's  
20 Permanent Commission on Access to Justice.

21 To summarize the details of my written  
22 testimony -- all of which focus on closing  
23 New York's justice gap, which is the  
24 difference between New Yorkers' need and

1 services available -- I'll touch on three key  
2 issues.

3 One, my colleague Sal Curran will  
4 testify in more detail regarding the  
5 recruitment and retention crisis in civil  
6 legal services. I'll just note that for our  
7 systems change work, Empire Justice Center  
8 relies on experienced attorneys to provide  
9 training to others in the field, litigate  
10 civil rights, and provide you all with  
11 information to policy change.

12 Sadly, we've come to serve as a  
13 training ground for government agencies to  
14 recruit from because government's able to pay  
15 more and provide a pension. In a three-month  
16 period, we lost three experienced attorneys  
17 from our Rochester office to New York State.  
18 For a small org like ours, this hit us hard  
19 and it cut one of our key practice areas down  
20 to a single paralegal.

21 That brings me to the second issue.  
22 Working with colleagues in the New York Legal  
23 Services Coalition to educate on this issue,  
24 over the past two years I'm pleased to note

1 critical investments from our two main  
2 funders this year that will also be essential  
3 to allowing providers to pivot and retain  
4 services that may be impacted by federal  
5 funding cuts.

6 I ask you to support both of these in  
7 your one-house budgets. One, the Office of  
8 Court Administration's proposed budget  
9 includes a significant increase for judiciary  
10 civil legal services. As you heard earlier  
11 today, please support \$150 million for JCLS.

12 Two, the Interest on Lawyer's Account  
13 has recently awarded five-year grants  
14 totaling \$600 million which provide stability  
15 and support for salary and infrastructure  
16 investments. We're also pleased that they  
17 recently signed an agreement with the  
18 Governor recognizing IOLA as a fiduciary fund  
19 where funds are directed by the Board of  
20 Trustees alone.

21 We ask that you support the full  
22 \$80 million approved by the trustees for this  
23 year, which is 2.5 million less than they  
24 requested -- than the Executive Budget

1 allocates.

2 We also ask that you restore the  
3 traditional Legal Services Assistance Fund  
4 dollars.

5 Finally, I ask that you consider  
6 much-needed reforms to not-for-profit  
7 contracting for New York State. As providers  
8 face cuts in federal funding, it's really  
9 critical that New York promptly pays us for  
10 the services we provide. It's common to wait  
11 well over a year for payment on a contract  
12 for services rendered, staff paid, rent,  
13 other overhead costs. Our organization is  
14 regularly owed millions of dollars with no  
15 interest paid and no clear idea when we can  
16 be paid.

17 Thank you so much.

18 CHAIRWOMAN KRUEGER: Thank you.

19 Next.

20 MS. CURRAN: Thank you for the  
21 opportunity to testify. My name is Sal  
22 Curran, and I'm the executive director of the  
23 Volunteer Lawyers Project of Central New York  
24 in Syracuse, and I'm the cochair of the

1 Policy and Advocacy Committee of the New York  
2 Legal Services Coalition.

3 Collectively, the New York Legal  
4 Services Coalition members represent  
5 low-income New Yorkers in every single county  
6 of the state in family law, domestic  
7 violence, immigration, housing, foreclosure,  
8 public benefits, debt, elder law, LGBT law,  
9 and more.

10 We have a recruitment and retention  
11 crisis. I know you've been hearing that from  
12 many people tonight. This crisis is driven  
13 not only by an attorney shortage but by a  
14 substantial wage gap between attorneys in  
15 civil legal service and their government  
16 counterparts doing substantially similar  
17 work.

18 On average, civil legal services  
19 attorneys receive 25 percent less than their  
20 counterparts at the Attorney General's office  
21 at the beginning of their career, and those  
22 inequities only grow throughout their  
23 careers. By the time that they've been  
24 practicing 21 years, if we're so lucky that

1           they stay with us, experienced civil legal  
2           aid attorneys are paid as much as 38 percent  
3           less than their counterparts at the AG's  
4           office, based on a survey that we conducted.

5                     The combination of higher salaries and  
6           a government pension is very difficult to  
7           compete with, particularly for mid-career  
8           attorneys that we need to act as supervisors.  
9           As a result, lawyers are leaving legal  
10          services agencies for government jobs at an  
11          alarming rate. When attorneys leave, it may  
12          take six months or more to fill a position  
13          due to the low pay we're able to offer.

14                    Across the state, it's estimated that  
15          attorney vacancies like this in 2024 resulted  
16          in 50,000 fewer clients served. These  
17          include people who are evicted, immigrants  
18          who are deported, grandparents who struggle  
19          to get custody of their grandchildren after  
20          their own children died -- all because they  
21          didn't have access to an attorney.

22                    To address this recruitment and  
23          retention, we urge the following. As my  
24          colleague mentioned, support the 150 million

1 for judiciary civil legal services in the  
2 proposed OCA budget.

3 Add the 2.5 million back to the  
4 80 million total asked for by IOLA and  
5 support the budget language designating IOLA  
6 as a fiduciary fund.

7 Restore traditional legislative adds  
8 for civil legal services, including  
9 designated funding for domestic violence  
10 legal services, immigration, eviction, and  
11 the Legal Services Assistance Fund.

12 And support efforts to expand right to  
13 counsel in immigration, housing, and for  
14 veterans.

15 Thank you for your time, and I look  
16 forward to answering your questions.

17 CHAIRWOMAN KRUEGER: Thank you.

18 Next.

19 MS. GERHARDT: Hello, thank you. I'm  
20 Joan Gerhardt, director of public policy and  
21 advocacy at the New York State Coalition  
22 Against Domestic Violence. We represent  
23 approximately a hundred domestic violence  
24 service providers around the state.

1           New York State is failing to address  
2           the needs of domestic violence survivors and  
3           their families. There are three main reasons  
4           for this.

5           First, the way New York State  
6           contracts with DV providers is broken. Five  
7           state agencies administer our funding.  
8           That's tremendous bureaucracy and  
9           administrative costs both for DV programs and  
10          the state.

11          Second, the state takes months to  
12          finalize our contracts and then fails to  
13          reimburse us on time, creating significant  
14          cash-flow issues even for the most  
15          financially robust programs.

16          Third, New York State has failed to  
17          provide DV advocates with living wages -- no  
18          COLAs, no bonuses, and this year the Governor  
19          excluded us from her target inflationary  
20          increase. As a result, there are hundreds of  
21          vacancies across the sector.

22          For years domestic violence programs  
23          have been relying on lines of credit and  
24          loans just to keep their doors open. They've

1           been reducing programming, focusing only on  
2           the provision of core emergency services.  
3           And that impacts our ability to provide  
4           lifesaving services for domestic violence  
5           survivors. We see it in the data. On any  
6           given day in New York, more than a thousand  
7           adults and children who ask for services  
8           can't get them.

9                        This situation has been brewing for  
10           years, but now domestic violence programs are  
11           in an existential crisis. That's because  
12           New York relies almost exclusively on federal  
13           funding to support domestic violence  
14           services. The funding might be administered  
15           by state agencies, but it's not state  
16           dollars -- it's primarily federal funding.

17                       Two weeks ago the federal OMB  
18           suspended grant, loan and financial  
19           assistance activities. Domestic violence  
20           programs were some of the first agencies to  
21           be impacted. We were immediately shut out of  
22           our federal reimbursement systems.  
23           Thankfully the order was rescinded 48 hours  
24           later. But we are by no means out of the

1 woods. The situation remains extremely  
2 tenuous as the federal government continues  
3 its assessment of the availability and use of  
4 federal funding.

5 There's no way DV programs will be  
6 able to continue services if their federal  
7 funding is cut or if the use of their federal  
8 funding is restricted. Unless New York State  
9 acts now, DV programs will close their doors.

10 We urge the Legislature to ensure the  
11 long-term sustainability of New York's  
12 nonprofit DV service providers. We propose a  
13 \$200 million program to fix New York's broken  
14 system, to move away from our overreliance on  
15 federal funding, to streamline our  
16 contracting and reduce redundancy, and to  
17 ensure DV programs can continue their  
18 lifesaving supports for all DV victims, in  
19 compliance with state law, even if federal  
20 funding is no longer available or if it can't  
21 be used to support certain survivors.

22 Thank you.

23 CHAIRWOMAN KRUEGER: Thank you.

24 Next.

1 MS. HOBBS: Hi, good evening,  
2 Chair Krueger, Chair Pretlow, and esteemed  
3 members of the joint committee. Thank you  
4 for the opportunity to testify today.

5 My name is Theresa Hobbs, executive  
6 director of the New York State Dispute  
7 Resolution Association, known as NYSDRA. We  
8 manage statewide contract programs, and we  
9 are the professional association of the  
10 statewide network of Community Dispute  
11 Resolution Centers, called CDCRs.

12 For over 40 years the centers have  
13 served all 62 counties of New York State,  
14 helping thousands of residents resolve  
15 disputes efficiently and equitably through  
16 alternative dispute resolution practices such  
17 as mediation, arbitration, and restorative  
18 practices -- all without the cost, time and  
19 burden of court proceedings.

20 Last year the centers managed over  
21 20,000 cases and served over 53,000  
22 individuals. These services help  
23 individuals, families, students, businesses,  
24 landlords and tenants, and entire communities

1 find solutions that prevent escalation into  
2 harm and legal conflicts.

3 As you heard from Judge Zayas earlier  
4 today, ADR is a highly effective way of  
5 resolving issues, and the courts are making a  
6 historic pivot to leverage ADR across the  
7 entire system, with CDRCs as a key partner.

8 The CDRCs provide your constituents  
9 with access to justice that is timely, free  
10 or low cost, culturally responsive,  
11 confidential, and the resulting agreements  
12 are legally enforceable. Nearly 80 percent  
13 of mediations conclude with a written  
14 agreement, usually within a few weeks of  
15 initial contact with individuals, and the  
16 CDRCs have a satisfaction rate of  
17 approximately 90 percent.

18 Mediation also saves the state and  
19 court system money and resources. From start  
20 to finish, the average mediation costs just  
21 \$336, which is far less than court costs.

22 As Judge Zayas also pointed out in his  
23 testimony, his court-based programs will only  
24 be as good as the funding that organizations

1           like NYSDRA receive, since we and our member  
2           centers are an integral part of the ADR  
3           landscape that will support the courts by  
4           alleviating backlogs, preventing filings, and  
5           keeping communities safe and  
6           conflict-resilient.

7                     The Judiciary's budget request  
8           includes a \$3 million increase for the CDRC  
9           network to retain skilled staff and sustain  
10          these services. While this \$3 million  
11          increase in OCA funding will help to support  
12          core operations, the OCA grant is  
13          two-pronged: 20 percent of the grant is  
14          match-free, 80 percent requires that the  
15          centers secure a dollar-for-dollar match.  
16          And that is why NYSDRA is requesting  
17          3 million in funding to support the centers  
18          under our Community Justice and Resolution  
19          Initiative, which I have outlined in the  
20          written testimony I submitted to this  
21          committee.

22                    This funding is critical. When I sat  
23          here last year we had 20 centers in the  
24          network, and today we have 19. I ask that

1           you fully support the Judiciary's budget,  
2           including the \$3 million increase.

3                     Thank you so much.

4                     MS. NOLASCO: Thank you,  
5           Chair Krueger, Chair Pretlow, and members of  
6           the committees for the opportunity to testify  
7           today. My name is Hailey Nolasco, and I  
8           serve as the senior director of the Center  
9           for Justice Innovation -- the senior director  
10          of government relations at the Center for  
11          Justice Innovation.

12                    At the center we are dedicated to  
13          reducing community violence while moving away  
14          from an overreliance on incarceration. For  
15          far too long we've been told that we must  
16          choose between justice and safety, that these  
17          two goals are somehow mutually exclusive.  
18          The truth is, to achieve true justice we must  
19          build safety. And for communities to feel  
20          safe, they must feel the presence of justice.

21                    The way that we achieve this is  
22          through the diverse array of programming that  
23          our Community Justice Centers provide. These  
24          centers provide both court-based services

1           like those in Midtown, Harlem and Red Hook,  
2           and community-based resources like those in  
3           Brownsville and Staten Island.

4                     They tackle the root causes of justice  
5           involvement, offering legal support,  
6           employment, housing, education and treatment  
7           services. By working directly with local  
8           communities, they improve quality of life by  
9           building public trust in the justice system  
10          and reducing crime and incarceration.

11                    Our work is critical to neighborhood  
12          safety. And for this reason, we're asking  
13          for your support to sustain and amplify our  
14          Community Justice Center footprint. For our  
15          Midtown Community Justice center in  
16          particular, we ask for support to expand our  
17          Community First initiative that takes a  
18          client-centered, trauma-informed approach to  
19          addressing the needs of unhoused New Yorkers  
20          and to support the creation of an  
21          Amsterdam Houses and Amsterdam Addition  
22          Neighborhood Safety Initiative in response to  
23          ongoing community needs and concerns around  
24          violence.

1           In the South Bronx, we request support  
2           to develop a fully operational, streamlined  
3           Bronx Community Justice Center to offer  
4           alternatives to incarceration, youth  
5           development programs, and community-led  
6           justice safety initiatives. This area is  
7           highly impacted by the criminal justice  
8           system and community violence, with  
9           disproportionately higher rates of  
10          incarceration, violent crime, and  
11          disinvestment.

12           In 2023, the violent crime rate was 17  
13          per 1,000 residents, more than triple the  
14          citywide rate. In 2024, 38 percent of the  
15          city's shooting incidents and 31 percent of  
16          total homicides occurred in the Bronx. We  
17          plan to address these community needs through  
18          our fully operational Justice Center, with  
19          your support.

20           In Staten Island, we ask for  
21          operational and capital support to expand  
22          services and renovate a historic courthouse  
23          to establish a permanent home for our  
24          existing Staten Island Justice Center.

1           Lastly, we ask, for New Rochelle, to  
2           continue the investments to sustain our vital  
3           work. Since its inception, we are proud to  
4           say that 122 young people have completed the  
5           Opportunity Youth Part program, the vast  
6           majority of them graduating without a  
7           criminal record.

8           Community Justice Centers are the  
9           heart of our mission. They are proven,  
10          powerful examples of how government  
11          investments and resident input can positively  
12          impact vulnerable communities across New York  
13          State. Further investment will allow us to  
14          sustain and scale these transformative  
15          initiatives and extend their impact.

16          Thank you for your time and  
17          consideration. Our amounts are outlined in  
18          our written testimony. Thank you.

19                 CHAIRWOMAN KRUEGER: Thank you.

20                 Senate?

21                 (No response.)

22                 CHAIRWOMAN KRUEGER: Assembly?

23                 CHAIRMAN PRETLOW: Assemblyman

24                 Morinello.

1 ASSEMBLYMAN MORINELLO: Thank you.

2 I have some direct -- a couple of  
3 questions on the domestic violence.

4 We've talked about the programs. But  
5 is one of the focuses protection and safety  
6 of the victims?

7 MS. GERHARDT: Absolutely.

8 ASSEMBLYMAN MORINELLO: And could you  
9 agree that one of the most dangerous times in  
10 a victim's life is when either the victim, a  
11 neighbor or a family member calls in the  
12 authorities because of an incident that is  
13 occurring?

14 MS. GERHARDT: Definitely.

15 ASSEMBLYMAN MORINELLO: Do you feel  
16 that the bail changes have adequately  
17 addressed -- and I'm not talking about the  
18 entire change of bail, I'm talking about just  
19 specifically for domestic violence victims,  
20 okay.

21 Do you feel that there's adequate  
22 protection for those victims during that  
23 short window when the abuser is finally  
24 grabbed, the police come, and there's a

1 cooling-off period? Do you feel there's  
2 sufficient latitude to hold that person to  
3 protect the victim?

4 MS. GERHARDT: I think initially, with  
5 the 2019 bail changes, no. With some of the  
6 tweaks that have been implemented since then,  
7 it's better.

8 But I can't sit here right now and  
9 tell you that I have the data from the entire  
10 state to say in all cases domestic violence  
11 abusers are handled in such a way to enhance  
12 safety for the survivor and for their family.  
13 I just don't have that kind of data.

14 ASSEMBLYMAN MORINELLO: Well, you  
15 know, everyone talks about statistics. But  
16 you've been doing domestic violence for a  
17 number of years. I sat on the bench for  
18 10 years as the domestic violence judge. And  
19 I don't think we need statistics, I think we  
20 just need reality.

21 I believe it was last year some poor  
22 woman was taking her children to school, the  
23 husband drove up, violated an order of  
24 protection, put the shotgun through the

1 window and blew her head off in front of the  
2 kids. Okay?

3 Because of the fact they could not  
4 hold this individual because of the bail  
5 laws. And this was after the initial  
6 tweaking.

7 So I will again ask, and maybe anybody  
8 can answer this question. Do you feel that  
9 just that narrow portion of the bail laws  
10 need to be revisited and maybe discussed?

11 MS. GERHARDT: There's still  
12 discretion for law enforcement on that scene.  
13 What they choose to do with the individual,  
14 the perpetrator who they believe allegedly  
15 committed a crime.

16 So I can't make a decision for an  
17 entire statewide policy --

18 ASSEMBLYMAN MORINELLO: I'm talking  
19 about the judiciary, not the police. Because  
20 the judge's hands are tied.

21 All I'm saying is do you think we  
22 should look at it.

23 MS. GERHARDT: I think we should  
24 always be looking at all of our laws. So

1 absolutely.

2 ASSEMBLYMAN MORINELLO: Okay. Well,  
3 I'm talking -- listen.

4 (Time clock sounds.)

5 CHAIRWOMAN KRUEGER: Assemblyman  
6 Bores.

7 ASSEMBLYMAN MORINELLO: -- the same  
8 answer you gave me when I called you.

9 ASSEMBLYMAN BORES: Thank you all for  
10 being here and for waiting through all the  
11 panels. Appreciate it.

12 I just have a question for  
13 Ms. Nolasco. Good to see you again.

14 MS. NOLASCO: Good to see you.

15 ASSEMBLYMAN BORES: Your testimony  
16 talks a lot about the Community First program  
17 and partnership with navigators and the  
18 wraparound services. Could you just say a  
19 little bit more about how it differs from  
20 perhaps the city's outreach and the benefits  
21 you've gotten from that?

22 MS. NOLASCO: So what we would say  
23 distinguishes our program is that we  
24 understand that it takes over a hundred times

1           that you engage with an unhoused individual  
2           that they may want to come inside.

3                     But we also understand that there's  
4           more that has to happen within those hundred  
5           or more times that you're engaging with  
6           someone.

7                     So what we do is that we're not  
8           going -- we're not speaking to them saying,  
9           Okay, you need to come inside right now.  
10          We're talking to them to really try to build  
11          that trust. So we're building the trust with  
12          them. We're saying, Do you need food? Do  
13          you need -- do you have your entitlements?  
14          If you do, do you need support in navigating  
15          that? Because we do know that that's  
16          available. But do you need additional  
17          services in having a more hand-held approach  
18          in navigating that.

19                    Do you have socks? Do you need a  
20          place to go? You know, who's your family?  
21          So we pretty much really just check on them  
22          daily just to see who are you, how are you  
23          doing, we're here for you. And through  
24          building that trust, then we can support the

1 existing programs through DSS/DHS with the  
2 existing shelter network that exists, and  
3 really helping them to navigate it, because  
4 we understand that it could be a very scary  
5 process.

6 So that's how we really distinguish  
7 it, that we're more of the -- we're going to  
8 really take our time to really support you  
9 through this and know that we're really here  
10 for you, and we know your name, and we know  
11 everything that you need.

12 ASSEMBLYMAN BORES: It's a great  
13 program. And as we think about especially  
14 other changes in the budget aimed at, you  
15 know, street safety and how to get people off  
16 the streets, I think there's a lot that we  
17 could learn from that.

18 Thank you.

19 MS. NOLASCO: Thank you. Appreciate  
20 it.

21 CHAIRWOMAN KRUEGER: Are you done?

22 ASSEMBLYMAN BORES: Yes.

23 CHAIRWOMAN KRUEGER: Okay, thank you.

24 Assembly?

1                   CHAIRMAN PRETLOW: Yes, we're done.

2                   CHAIRWOMAN KRUEGER: And the Assembly  
3 is done, and the Senate is done.

4                   Thank you all for your work, and thank  
5 you for staying with us so late. Appreciate  
6 it very much. Thank you.

7                   All right. And our last panel is the  
8 Correctional Association of New York, the  
9 Center for Community Alternatives, and the  
10 Center for Employment Opportunities.

11                   I understand the Correctional  
12 Association is not here, so they don't get to  
13 testify.

14                   Yes, we have written testimony from  
15 everyone. Thank you, Assemblymember Dilan.  
16 Even people who did not sign up to testify at  
17 all, when they submit testimony, it goes on  
18 both of our websites, Assembly and Senate,  
19 and everyone, including all 19.5 million  
20 New Yorkers, can read them.

21                   And with that, welcome to our last  
22 panel for this everything. And just  
23 introduce yourselves for the video first.

24                   MS. BRADLEY: Alyssa Bradley, Center

1 for Employment Opportunities.

2 MR. GANT: And I'm Thomas Gant,  
3 G-A-N-T, for the Center for Community  
4 Alternatives.

5 CHAIRWOMAN KRUEGER: Thank you. Why  
6 don't we start with you.

7 MS. BRADLEY: Good afternoon, Chair --  
8 good evening, Chair Krueger, Chair Pretlow,  
9 and members of the Senate and Assembly.

10 My name is Alyssa Bradley, and I'm a  
11 policy manager with the Center for Employment  
12 Opportunities. I appreciate the opportunity  
13 to speak to you today about CEO and our work  
14 across New York and the need for increased  
15 resources for New Yorkers returning home from  
16 prison.

17 CEO has nearly 40 years of experience  
18 in workforce development programming. Our  
19 mission is to provide immediate, effective  
20 and comprehensive employment services to  
21 individuals recently returning home from  
22 incarceration. As the largest provider of  
23 reentry employment services in New York, we  
24 serve individuals on parole and probation

1 supervision in Albany, Buffalo, Rochester and  
2 New York City, with an intentional focus on  
3 individuals facing the most significant  
4 barriers, while also returning \$3.30 for  
5 every dollar of public investment into CEO's  
6 program.

7 After our participants complete our  
8 orientation class, CEO hires and provides  
9 them with immediate employment, for which  
10 they're paid daily, through our transitional  
11 work crews, and offers advanced training  
12 opportunities in key industry sectors.

13 CEO operates more than 35 work crews  
14 across New York state that provide  
15 public-sector agencies with a variety of  
16 general labor services. Access to immediate  
17 work through a transitional job helps our  
18 participants gain stability and motivation to  
19 attain long-term, quality full-time jobs  
20 outside of CEO.

21 We appreciate Governor Hochul's  
22 attention to reentry services in the  
23 Executive Budget and for continuing to  
24 allocate funding to assist people returning

1 home as they navigate reentry. However, we  
2 must do more. CEO urges the Legislature to  
3 consider our recommendations to ensure the  
4 investment brings additional capacity to  
5 serve formerly incarcerated people, implement  
6 new strategies to target this population to  
7 increase public safety, and ensure the  
8 process is equitable.

9 CEO maintains a commitment to meeting  
10 participants' complex needs through  
11 wraparound and supportive services. We want  
12 to see targeted investments in entry-based  
13 reentry services for community organizations  
14 that provide the on the ground resources that  
15 are crucial for New Yorkers returning home.

16 Additionally, an essential part of  
17 CEO's broader strategy is ensuring  
18 individuals have access to immediate  
19 financial resources upon release. For many  
20 of the individuals we serve, the transition  
21 from incarceration is marked by food  
22 insecurity, unstable housing, and  
23 justice-related debts -- obstacles that  
24 hinder reentry success.

1           The Reentry Assistance Program, led by  
2           Assemblymember Gibbs, is a critical piece of  
3           legislation that would address this gap by  
4           increasing the financial assistance provided  
5           to returning citizens at their most  
6           vulnerable time, and aligns with Governor  
7           Hochul's commitment to facilitating  
8           employment for individuals on parole and  
9           reducing recidivism across the state.

10           I want to close with direct testimony  
11           from one of our former clients and Advocacy  
12           Leadership Committee members, Maria Nieves:  
13           "People often think reentry is simple -- go  
14           home, get a job, move forward. But it's not  
15           that easy. Returning home after  
16           incarceration is filled with barriers, from  
17           securing basic necessities to overcoming the  
18           stigma that follows us. Immediate financial  
19           assistance --

20           CHAIRWOMAN KRUEGER: {Mic off;  
21           inaudible.}

22           MR. GANT: Good evening. It's an  
23           honor to be here.

24           I'm a community organizer for the

1 Center for Community Alternatives, and I'm  
2 also formerly incarcerated. I'm here to  
3 share that now is the time for New York to  
4 move toward the remedy for sentence reform.  
5 Now is the time to move forward to giving  
6 incarcerated citizens hope. Now is the  
7 moment, more importantly, to give families  
8 across New York State hope. And I'm here to  
9 express strong support for and including the  
10 Second Look Act, S158, the Earned Time Act,  
11 S352, and the End Predatory Court Fees, S318,  
12 into the budget.

13 We also stand in opposition to the  
14 Governor's proposal to undo critical and  
15 damaging changes {sic} to the discovery  
16 reform. The Second Look Act allows judges to  
17 reconsider excessive sentences, offering  
18 incarcerated individuals the chance to  
19 demonstrate rehabilitation and reintegration  
20 readiness.

21 New York incarcerates over 30,000  
22 people, 75 percent of which are Black and  
23 brown, with many aging and now suffering  
24 chronic health issues. This act aligns with

1 growing national momentum for second-look  
2 legislation supported by judges, labor  
3 unions, law enforcement, and 68 percent of  
4 New Yorkers. It gives our justice system  
5 flexibility and humanity, moving us away from  
6 perpetual punishment and toward more of a  
7 rehabilitative process.

8           The Earned Time Act strengthens  
9 opportunities for individuals to reduce their  
10 sentences by incentivizing good behavior and  
11 rehabilitative efforts. Research shows  
12 earned time reduces recidivism, makes prisons  
13 safer and lowers correctional costs. Yet  
14 New York lags behind states like Alabama and  
15 Oklahoma in earned-time opportunities.

16           This legislation garners 74 percent  
17 support from New Yorkers and promotes  
18 reintegration by investing in rehabilitation  
19 over warehousing.

20           The End Predatory Court Fees bill,  
21 S318, would eliminate mandatory court  
22 surcharges, probation fees, and incarceration  
23 for unpaid fines and fees that also function  
24 as a regressive tax on our most vulnerable

1 citizens.

2 Black and brown New Yorkers are  
3 disproportionately burdened by these  
4 surcharges, which can lead to missed rent,  
5 healthcare and basic necessities. New York's  
6 reliance on fines for revenue mirrors  
7 discriminatory practices, eroding trust and  
8 worsening racial inequities.

9 By ending these unjust practices, we  
10 can stop criminalizing poverty and redirect  
11 resources to real community needs.

12 Finally, I urge the rejection of the  
13 Governor's proposal to undo discovery reform.  
14 This proposal would reintroduce discretion  
15 for prosecutors and police to withhold  
16 evidence from the defense, undermining  
17 transparency and increasing the likelihood of  
18 wrongful convictions and prolonged pretrial  
19 detention.

20 Our current discovery laws were  
21 designed to ensure fairness and efficiency,  
22 critical for preventing unjust outcomes like  
23 those experienced by Kalief Browder. Instead  
24 of dismantling these reforms, we should

1 expand direct access to police databases, as  
2 proposed in legislation by Assemblymember  
3 Lasher and Senator Myrie.

4 Thank you.

5 CHAIRWOMAN KRUEGER: Thank you.

6 First to question, Roxanne Persaud.

7 SENATOR PERSAUD: The mic doesn't want  
8 to come on now.

9 I just wanted to thank CEO for the  
10 work that they're doing in my district. You  
11 know, it's one of my housing developments,  
12 and the commitment of the team there it's,  
13 you know, second to none.

14 So I just want to make sure you know  
15 that I'm appreciative of the work they're  
16 doing, and that's why I'm supporting your  
17 request that we've put in, and we will  
18 continue to work with you. Because as I said  
19 to your CEO, I'd love to have you bring  
20 additional folks into other developments  
21 within my district.

22 So I look forward to continuing  
23 working with you, and thank you again.

24 CHAIRMAN PRETLOW: (Inaudible.)

1           I will say that, Mr. Gant, I do  
2           support those pieces of legislation that  
3           you're referring to. We in the -- at least  
4           in the Assembly are trying our best to  
5           correct a lot of the ills that are in our  
6           criminal justice system so it doesn't just  
7           pertain to just us.

8           And it's something that -- it's a work  
9           in progress. I know it should be going a lot  
10          quicker than it is. But, you know, we  
11          started with bail reform and then that got  
12          beaten up and changed and we're just moving  
13          down the line trying to make things right.

14          MR. GANT: Appreciate that, sir.

15          CHAIRWOMAN KRUEGER: For the record, I  
16          think the Assembly has a partner in the  
17          Senate on these goals.

18          CHAIRMAN PRETLOW: Yes.

19          CHAIRWOMAN KRUEGER: But also  
20          Senator Myrie is I think our closing Senator.

21          SENATOR MYRIE: Thank you.

22          Tom, it's good to see you.

23          MR. GANT: Good to see you, Senator.

24          SENATOR MYRIE: Thank you for the work

1           that you continue to do, and it's been a  
2           pleasure being in the fight with you.

3                     And Alyssa, thank you for your  
4           patience -- both of you for waiting until the  
5           end of the day to testify.

6                     I just want to ask a brief question of  
7           CEO. Do you find that your applicants have  
8           lower recidivism rates? And if so, do you  
9           think that has any policy implications?

10                    MS. BRADLEY: Yeah. So we've had a  
11           couple of, you know, evidence-based reports  
12           come out that show that, you know, our  
13           program reduces recidivism by up to  
14           22 percent.

15                    We also, you know, track our  
16           participants for up to a year post-placement,  
17           help them out. You know, if they lose their  
18           job, they're able to immediately pop back on  
19           our worksites and get that daily pay again.

20                    If they've, you know, gotten  
21           certifications, gotten their driver's license  
22           reinstated, gotten a car, we're also able to  
23           provide them with, you know, upskilling and  
24           more, you know, career-oriented pathways if

1           they come in in that year after that we place  
2           them.

3                     And, you know, that's shown that up  
4           to, you know, 52 percent of folks are able to  
5           maintain that job for up to a year too.

6                     SENATOR MYRIE: Thank you.

7                     CHAIRWOMAN KRUEGER: With that, we  
8           want to thank you so much for staying with us  
9           all day to participate tonight.

10                    And this is the official close of the  
11           Public Protection hearing.

12                    For people who are just depending on  
13           watching us every day, next week we won't be  
14           here. But the week after, we will, so tune  
15           in again.

16                    Thank you very much.

17                    (Whereupon, at 8:29 p.m., the budget  
18           hearing concluded.)

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