

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

---

JOINT LEGISLATIVE HEARING  
In the Matter of the  
2012-2013 EXECUTIVE BUDGET  
ON PUBLIC PROTECTION

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Hearing Room B  
Legislative Office Building  
Albany, New York

January 30, 2012  
9:33 a.m.

PRESIDING:

Senator John DeFrancisco  
Chair, Senate Finance Committee

Assemblyman Herman D. Farrell, Jr.  
Chair, Assembly Ways & Means Committee

PRESENT:

Senator Liz Krueger  
Senate Finance Committee (RM)

Assemblyman Clifford W. Crouch  
Assembly Ways & Means Committee (RM)

Senator John J. Bonacic  
Chair, Senate Committee on Judiciary

Assemblywoman Helene E. Weinstein  
Chair, Assembly Committee on Judiciary

Senator Stephen Saland M. Saland  
Chair, Senate Committee on Codes

Assemblyman Joseph R. Lentol  
Chair, Assembly Committee on Codes

2012-2013 Executive Budget  
Public Protection  
1-30-12

PRESENT: (Continued)

Senator Michael F. Nozzolio  
Chair, Senate Committee on Crime Victims,  
Crime and Correction

Assemblyman Jeffrion L. Aubry  
Chair, Assembly Committee on Correction

Senator Greg Ball  
Chair, Senate Committee on Veterans,  
Homeland Security and Military Affairs

Senator Gustavo Rivera

Assemblyman Alfred C. Graf

Senator Ruth Hassell-Thompson

Assemblyman Philip M. Boyle

Senator Elizabeth O'C. Little

Senator Martin Golden

Assemblyman Joseph M. Giglio

Senator Patricia A. Ritchie

Assemblyman William Colton

Senator Velmanette Montgomery

Assemblywoman Michelle Schimel

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1 CHAIRMAN DeFRANCISCO: Good morning.  
2 We're going to get started.

3 Pursuant to the State Constitution  
4 and Legislative Law, the fiscal committees of  
5 the State Legislature are authorized to hold  
6 hearings on the Executive Budget proposal.

7 Today's hearing will be limited to  
8 the discussion of the Governor's proposed  
9 budget for the Office of Court  
10 Administration, Division of Homeland Security  
11 and Emergency Services, Division of Criminal  
12 Justice Services, Department of Corrections  
13 and Community Supervision, Division of State  
14 Police, and the Office of Indigent Legal  
15 Services. It's limited to only those.  
16 That's why we have many, many speakers.

17 And we have a clock there. And it's  
18 just like arguing a case before the Appellate  
19 Division, which our first speaker will very  
20 much appreciate. And we try to keep the  
21 questioning within seven minutes per  
22 questioner, so in order to give opportunities  
23 to each of the speakers today.

24 So I'd like to welcome the Honorable

1 A. Gail Prudenti, the chief administrative  
2 judge of the Office of Court Administration.

3 CHIEF ADMIN. JUDGE PRUDENTI: Good  
4 morning.

5 CHAIRMAN DeFRANCISCO: Before you get  
6 started, though, I've got to introduce  
7 somebody here. I've got to introduce the  
8 chairman of the Judiciary Committee, Senator  
9 John Bonacic, and Senator Steve Saland, and  
10 Senator Rivera. Okay, that's the Senators at  
11 this point.

12 CHAIRMAN FARRELL: Good morning.

13 I've been joined by Assemblywoman  
14 Helene Weinstein, Assemblyman Joe Lentol,  
15 Assemblyman Jeff Aubry, and Assemblyman  
16 Cliff Crouch.

17 CHAIRMAN DeFRANCISCO: You're on.

18 CHIEF ADMIN. JUDGE PRUDENTI:  
19 Wonderful. Thank you so much. Good morning,  
20 Chairpersons DeFrancisco, Farrell, Bonacic,  
21 and Weinstein, Senators and Assemblypersons  
22 who are committee members, staff, ladies and  
23 gentlemen.

24 If Chief Judge Jonathan Lippman were

1 making this presentation, he would say "I am  
2 absolutely delighted to be here today." But  
3 for me, I am honored, I am humbled, and I am  
4 somewhat nervous to have the opportunity, my  
5 first as the new chief administrative judge,  
6 to discuss the Judiciary Budget.

7 I tried to contact as many  
8 legislators as possible to better understand  
9 your views. I look forward to continuing  
10 that conversation, to working closely with  
11 you and learning about everything that you're  
12 concerned about. Because your concerns are  
13 really, truly taken to heart by not only  
14 myself but the Chief Judge.

15 I have been a lawyer for over three  
16 decades, having started my career as an  
17 intake clerk at the Suffolk County  
18 Surrogate's Court in 1978. I share with you  
19 my experience as a court clerk, a law clerk  
20 to a judge, a former assistant district  
21 attorney, a private practitioner, and as a  
22 judge.

23 Thank you for your support of the  
24 court system for so many years, including



[1] most recently your historic reform of the  
[2] process for settling judicial salaries.  
[3] I also want to acknowledge Chief  
[4] Judge Jonathan Lippman and my predecessor,  
[5] Judge Ann Pfau, for their outstanding work in  
[6] crafting a budget that carefully reconciles  
[7] the demanding concerns of physical austerity  
[8] and the need for the resources to handle the  
[9] massive caseloads of the court.

[10] This budget is considerably shorter  
[11] than prior submissions of prior years and a  
[12] response, I believe, to the concerns that  
[13] were raised at prior hearings. I hope it is  
[14] more transparent and easier to understand.

[15] As Governor Andrew M. Cuomo observed  
[16] in his State of the State address, New York  
[17] is at a crossroads. My friends, so too is  
[18] the Judiciary. We face a staggering  
[19] workload, yet economic realities mean that we  
[20] have fewer resources to carry that burden.

[21] I am very proud of the way that our  
[22] judges and our nonjudicial staff have  
[23] responded to this challenge. It's not just  
[24] that everyone has to work harder. Rather, as

[1] many good relationships here in Albany.  
[2] The proposed budget reflects our  
[3] commitment to work with the Legislature and  
[4] the Executive branches to address the state's  
[5] fiscal crisis. It bears the fruit of our  
[6] ongoing reassessment of court operations. It  
[7] is the second consecutive negative-growth  
[8] budget with a General Fund request that is  
[9] \$3.9 million less than the current year.  
[10] This has been achieved despite more than  
[11] \$70 million in increased costs, including the  
[12] cost of the judicial salary adjustment and  
[13] the represented nonjudicial salary increases  
[14] as mandated by law.

[15] We are able to present the  
[16] negative-growth budget as a result of a broad  
[17] range of cost-cutting measures and efficiency  
[18] improvements. We have streamlined court  
[19] administration to devote resources to the  
[20] trial courts. We have modified operations to  
[21] sharply reduce overtime costs. We have  
[22] eliminated the high cost of print legal  
[23] reference materials in favor of a flat-rate  
[24] online legal research process. We have

[1] Governor Cuomo has said, now is the time to  
[2] reinvent government. The Chief Judge and  
[3] Judge Pfau made considerable progress, and  
[4] one of my highest priorities as the new chief  
[5] administrative judge will be to reevaluate,  
[6] to adapt, and to transform.

[7] As I have done throughout my career  
[8] as an administrator, I will be taking a good  
[9] hard look at every aspect of court operations  
[10] and how we can become more efficient without  
[11] compromising our ability to fulfill our  
[12] constitutional mission.

[13] To this challenge I bring 20 years of  
[14] experience as trial court judge, an  
[15] administrative judge, and the presiding  
[16] justice of the Appellate Division for the  
[17] Second Judicial Department, perhaps the  
[18] busiest appellate court in the country.

[19] I also bring an open mind, an  
[20] attentive ear, and hope you will get to know  
[21] me as a person of goodwill. I look forward  
[22] to hearing from all of you. I believe that  
[23] all good relationships are built on mutual  
[24] trust and respect. I hope I will develop

[1] largely replaced in-person training with  
[2] web-based remote programs.  
[3] We have closely monitored juror  
[4] utilization to reduce expenditures for jury  
[5] fees and to ensure that our citizens are not  
[6] called upon for jury service when it is not  
[7] likely that they will be used.  
[8] Technology continues to play a key  
[9] role with the expansion of eFiling, the  
[10] initiation of online attorney registration,  
[11] and a variety of innovative projects with  
[12] governmental agencies to improve interagency  
[13] transmission of data.

[14] The most significant measures were  
[15] the hiring freeze and the other steps that  
[16] have sharply reduced the size of the court  
[17] system's workforce. Three years ago we  
[18] adopted a program to encourage targeted  
[19] nonjudicial employees to leave state  
[20] service. In 2010 we implemented a retirement  
[21] incentive program. Unfortunately, as a  
[22] result of the reduction of the 2011-2012  
[23] budget request, we had no choice but to lay  
[24] off 400 nonjudicial employees.

[1] As a result of these actions, the  
[2] court system's nonjudicial workforce has been  
[3] reduced by 1400 employees since 2009. The  
[4] court system now has the same staffing levels  
[5] as it did 10 years ago, despite an increase  
[6] of 16 percent of its caseload.

[7] In response, judges and court staff  
[8] are doing whatever is needed to fill in the  
[9] gaps and maintain the highest level of  
[10] service to the community we serve. Chief  
[11] clerks in some counties have assumed  
[12] supervisory authority for multiple courts,  
[13] while others have taken on the  
[14] responsibilities of lower-level managers  
[15] whose positions remain vacant.  
[16] Administrative employees have been redeployed  
[17] to positions that directly support trial  
[18] court operations.

[19] In consultation with our unions, we  
[20] are using alternative work schedules to limit  
[21] overtime costs while also ensuring the  
[22] necessary staffing coverage. In addition,  
[23] court managers closely monitor court  
[24] calendars so that they can assign and

[11] addressing these issues and to minimizing the  
[12] negative impacts of budget-saving measures.  
[13] As a former administrative judge and the wife  
[14] of a practicing lawyer who constantly reminds  
[15] me, I know firsthand the frustrations  
[16] experienced by litigants, jurors and  
[17] attorneys when they encounter delays, long  
[18] lines, and other inefficiencies at the  
[19] courthouse. We will continue to closely  
[20] monitor the impact and make adjustments  
[21] whenever possible.

[12] As a judge who has served in the  
[13] matrimonial parts, and as a caring person, I  
[14] am particularly concerned about the impact on  
[15] families and children. Family Court and  
[16] matrimonial matters have always been among  
[17] the most difficult cases, and we must be  
[18] vigilant to ensure that our cost-cutting  
[19] measures do not further burden the parties to  
[20] these cases.

[21] We have implemented procedures to  
[22] ensure is that the earlier closing times do  
[23] not delay access to anyone seeking an order  
[24] of protection or other emergency relief.

[1] reassign where they are most needed.

[2] Many of the steps that we have taken  
[3] in response to this budget crisis have worked  
[4] well, but more needs to be done. But  
[5] transforming such a complex organization  
[6] requires a long-term commitment, and the  
[7] reengineering of the courts is truly a work  
[8] in progress.

[9] As in any work in progress, there  
[10] have been setbacks. Despite savings, some  
[11] steps have had negative impact on the public  
[12] we serve. Recent reports, including a study  
[13] by the New York State Bar Association,  
[14] describe these impacts from the perspective  
[15] of the court user.

[16] The cancellation of evening hours for  
[17] Small Claims parts has resulted, obviously,  
[18] in a delay in the hearing and resolution of  
[19] these cases. The 4:30 p.m. closing time  
[20] has affected the conduct of many trials. In  
[21] addition, changes in arraignment part  
[22] schedules in New York City have had some  
[23] impact on arrest-to-arraignment time.

[24] We are committed this year to

[11] Likewise, I have already taken steps  
[12] to address the arrest-to-arraignment issue in  
[13] the City of New York by asking one of our  
[14] most respected jurists, Judge Barry Kamins,  
[15] to do double duty and to take on the  
[16] additional role of citywide administrative  
[17] judge for the New York City Criminal Court to  
[18] focus on this crucial issue.

[19] Going forward, we believe our  
[20] proposed budget will enable us to take  
[21] further steps to mitigate some of the more  
[22] serious negative impacts on our cost-cutting  
[23] efforts. Budgetary constraints are only one  
[24] of the challenges that the Judiciary faces at  
this crossroads. The work of the court  
continues unabated. More than 4 million new  
cases are filed annually. That is a growth  
of 16 percent over the past 10 years, during  
which time only a handful of new judgeships  
were created.

[1] I want to also briefly address some  
[2] aspects of this rapid growth which I know are  
[3] of special interest to you, as they are to  
[4] us. Between 2006 and 2010, the number of

[1] foreclosure cases has doubled. Last year  
[2] there was a sharp decline in new residential  
[3] foreclosure filings. I wish this was because  
[4] the housing market improved. Unfortunately,  
[5] it is due to the robo-signing scandal and the  
[6] affirmation mandate that the courts imposed  
[7] in response. Large numbers of homeowners  
[8] have advised us that they have been served  
[9] with summons and complaints in cases that  
[10] will appear on our courts' dockets as soon as  
[11] banks can comply with the affirmation  
[12] requirement.

[13] Despite the apparently temporary  
[14] decline in new filings, our foreclosure  
[15] workload remains substantial. There are  
[16] approximately 75,000 foreclosure cases  
[17] pending at this moment. On average, they  
[18] require four to eight appearances before the  
[19] settlement conference process is completed.

[20] In 2011, more than 80,000 conferences  
[21] were conducted. Since 2009, the court has  
[22] held over a quarter of a million  
[23] conferences. The conferences are time-  
[24] consuming, but they have also approved to be

[11] facing the Judiciary today is the growing  
[12] number of unrepresented litigants, estimated  
[13] at more than 2.3 million a year. We have  
[14] responded to this challenge by providing a  
[15] range of services to unrepresented litigants,  
[16] including help centers staffed by court  
[17] employees who provide free procedural  
[18] information with instructional packets and  
[19] court forms. We provide online self-help  
[20] tools to assist litigants in navigating our  
[21] system.

[22] In addition, Chief Judge Lippman has  
[23] led the effort to encourage attorneys to  
[24] provide free legal services to low- and  
[25] moderate-income citizens, including the  
[26] creation of a pro bono attorney emeritus  
[27] initiative under which retired lawyers  
[28] provide free legal assistance in civil and  
[29] family matters.

[30] But more needs to be done. And last  
[31] year you addressed this issue by authorizing  
[32] \$12.5 million to begin implementation of the  
[33] recommendation of the Chief Judge's task  
[34] force to expand access to civil legal

[11] somewhat effective. For example, last year  
[12] settlements were reached in more than  
[13] 35 percent of those cases in Rockland County  
[14] in which the settlement process reached  
[15] completion.

[16] But we need to come up with more  
[17] innovative ways to encourage financial  
[18] institutions to renegotiate mortgages for  
[19] individuals who should be able to afford to  
[20] stay in their homes. I am proud to tell you  
[21] that we have plans for some new initiatives  
[22] for this year to deal with just that problem.

[23] Family violence cases are another  
[24] category that is of particular concern.  
[25] There have been almost 32,000 petitions filed  
[26] under the intimate-relationship legislation  
[27] enacted in 2008 which authorized the  
[28] Family Court to issue orders of protection to  
[29] persons involved in nontraditional family  
[30] relationships. Over that period of time, the  
[31] overall number of orders of protection issued  
[32] by the Family Court has increased more than  
[33] 20 percent.

[34] One of the most crucial problems

[11] services. In the first year of this new  
[12] program, 56 grants were awarded to nonprofit  
[13] organizations in every corner of the state,  
[14] providing assistance in foreclosure,  
[15] eviction, and other cases involving basic  
[16] human needs.

[17] The impact has been significant. In  
[18] just the first three months, more than 50,000  
[19] clients were served and more than 8,000 cases  
[20] were diverted from the courts. Especially at  
[21] this time of economic downturn, legal  
[22] representation is critical to ensure fair and  
[23] equal access to justice to the most  
[24] vulnerable New Yorkers. It is about  
[25] providing an equal playing field.

[26] Also, the court system itself  
[27] functions more effectively when both sides  
[28] are represented by experienced advocates.  
[29] Representatives of the real estate industry  
[30] and other businesses have advised us and  
[31] testified that they prefer to litigate  
[32] against an attorney rather than a  
[33] nonrepresented party.

[34] The state also sees a return on money

[1] spent on civil legal services in the form of  
[2] increased federal benefits and decreased  
[3] social services and homelessness.

[4] For these reasons, our proposed  
[5] budget provides \$25 million in funding for  
[6] the civil legal services, the level that was  
[7] originally proposed in our budget submission  
[8] last year.

[9] In this difficult time it is  
[10] important not only to rethink the way the  
[11] Judiciary does business, but also to look for  
[12] some private partners and to think outside  
[13] the box for new revenue streams and sources  
[14] in order to achieve our goals. I will be  
[15] working very closely and am working very  
[16] closely with the Center for Court Innovation,  
[17] to identify potential partners who share our  
[18] goals and to implement new initiatives  
[19] without unnecessarily burdening the taxpayer.

[20] The Chief Judge and I have already  
[21] met with a number of foundations that share  
[22] our mutual concerns, and we will continue to  
[23] meet with many, many more.

[24] As you know, this is an unprecedented

[11] **SENATOR BONACIC:** Good morning,  
[12] Judge Prudenti. Thank you for a very good  
[13] presentation for your first time.

[14] **CHIEF ADMIN. JUDGE PRUDENTI:** Thank  
[15] you, Senator.

[16] **SENATOR BONACIC:** I remember last  
[17] year when Judge Pfau came, I think she had a  
[18] couple of lieutenants at the table with her,  
[19] but you're there by yourself today.

[20] **CHAIRMAN DeFRANCISCO:** That's the  
[21] cost-cutting.

[22] (Laughter.)

[23] **SENATOR BONACIC:** First of all, thank  
[24] you also, you, Judge Lippman and Judge Pfau,  
for coming in with a budget less than last  
year.

[1] As you know, Judge Lippman has put me  
[2] on the task force to try to achieve the goal  
[3] of more funding for civil legal services. I  
[4] can tell you there's a lot of support for  
[5] it. I will work with Assemblywoman Helene  
[6] Weinstein. I can't have a better partner in  
[7] the Assembly when it comes to providing  
[8] solutions for the Judiciary.

[1] time of challenge for the Judiciary. But  
[2] unprecedented does not mean insurmountable.  
[3] As a friend of mine was fond of saying,  
[4] obstacles are simply opportunities disguised  
[5] as headaches. I have experienced many  
[6] headaches over my first two months on the  
[7] job, but I have complete confidence that with  
[8] the continued efforts of the incredibly  
[9] hardworking and dedicated judges and staff of  
[10] the court system, we will utilize every  
[11] opportunity to transform our court system for  
[12] the better.

[13] We look forward to partnering with  
[14] you in this historic endeavor. Thank you for  
[15] inviting me to address you today. Again, I  
[16] look forward over the coming days and months  
[17] to getting to know you and your colleagues  
[18] and your staffs and to working with you to  
[19] better serve the people of our great state.

[20] I would be happy to answer any  
[21] questions that you may have.

[22] **CHAIRMAN DeFRANCISCO:** Thank you.  
[23] Senator John Bonacic, chair of  
[24] Judiciary.

[1] Just a question that I would like to  
[2] ask you. There's been concerns expressed by  
[3] the Bar Association to our office for court  
[4] offices also and the constriction of hours  
[5] for which the court performs because of  
[6] budgetary concerns. Do you have any plans or  
[7] are you hopeful that you can expand the hours  
[8] in the Judiciary so justice can be  
[9] administered efficiently and correctly?

[10] **CHIEF ADMIN. JUDGE PRUDENTI:**  
[11] Senator, your concerns are our concerns. And  
[12] I can tell you, if this budget is approved as  
[13] submitted, we should be able to have some  
[14] additional hours for weekend arraignments  
[15] especially.

[16] Another concern -- and I'm sure you  
[17] share in this concern as well, and what  
[18] really bothers me very much -- is the 4:30  
[19] closing times. We would like to keep the  
[20] courthouses open till 5 o'clock. After  
[21] discussions with the Chief Judge, of course  
[22] this budget isn't going to solve all of our  
[23] problems. But if it is approved as  
[24] submitted, we should be able to address some

[1] of those concerns.  
 [2] And the concerns, you know, it's  
 [3] going to be a matter of priorities. But I  
 [4] know one of priorities for the Chief Judge  
 [5] and one of my priorities is to keep the  
 [6] courthouses open and also to make sure that  
 [7] we have additional hours not only for weekend  
 [8] arraignments for people who come to us at  
 [9] some of the most difficult times in their  
 [10] lives and need our attention immediately.  
 [11] **SENATOR BONACIC:** And the last point  
 [12] I'd like to make, and it's only a suggestion,  
 [13] some of the Senators in the past have  
 [14] expressed concerns about having more  
 [15] itemization from the Judiciary in line  
 [16] items. And I know when you present your  
 [17] budget, you do it in the same form as the  
 [18] Legislature. But every six months we file  
 [19] financial statements with more specificity.  
 [20] And my suggestion is if you could do  
 [21] the same, maybe share that with the  
 [22] Legislature -- and you may want to post it on  
 [23] your website of the Office of Court  
 [24] Administration -- I think that might be

[1] differently, of course, than the court  
 [2] system. But I really think we can work  
 [3] together and we will be able to provide you  
 [4] with the information that you request and the  
 [5] public deserves.  
 [6] **SENATOR BONACIC:** Thank you very  
 [7] much.  
 [8] **CHAIRMAN DeFRANCISCO:** Before we get  
 [9] on to the next questioner, we've been joined  
 [10] by Senator Mike Nozzolio.  
 [11] **CHIEF ADMIN. JUDGE PRUDENTI:**  
 [12] Wonderful. Good morning, Senator.  
 [13] **SENATOR KRUEGER:** And also Senator  
 [14] Ruth Hassell-Thompson.  
 [15] **CHIEF ADMIN. JUDGE PRUDENTI:** Oh,  
 [16] Senator, good morning. Good morning.  
 [17] **CHAIRMAN FARRELL:** Next to question  
 [18] will be Assemblywoman Helene Weinstein, chair  
 [19] of the Judiciary Committee.  
 [20] **CHIEF ADMIN. JUDGE PRUDENTI:** Good  
 [21] morning.  
 [22] **ASSEMBLYWOMAN WEINSTEIN:** Good  
 [23] morning, Judge Prudenti.  
 [24] First, let me just say it's a

[1] helpful with more transparency.  
 [2] But thank you for being here today.  
 [3] **CHIEF ADMIN. JUDGE PRUDENTI:** Thank  
 [4] you, Senator. And I do understand this  
 [5] issue. And I understand that more than a  
 [6] budget issue, it really is one that really  
 [7] does lend itself to expenditure reports. And  
 [8] I'm sensitive to that.  
 [9] We do prepare similar reports at  
 [10] different levels. And I think you make a  
 [11] very, very good suggestion. And I promise  
 [12] you that I will look -- I will work with you  
 [13] and your office and any of the other members  
 [14] from the Senate and the Assembly with the  
 [15] same concerns.  
 [16] I'm also hopeful, you know, that, as  
 [17] you know, the State Comptroller is moving to  
 [18] a new financial system, and we will be  
 [19] somehow able in this new system to create  
 [20] these type of reports. I really think that  
 [21] the new system will enhance transparency and  
 [22] openness.  
 [23] You know, the way that the Senate and  
 [24] the Assembly does business is a little bit

[1] pleasure to have you here as the chief  
 [2] administrative judge. To some extent you've  
 [3] been the secret of those of us in the  
 [4] Brooklyn and the Second Department. So the  
 [5] loss there is certainly the state's gain, and  
 [6] I appreciate your being here today.  
 [7] **CHIEF ADMIN. JUDGE PRUDENTI:** Thank  
 [8] you for the kind words.  
 [9] **ASSEMBLYWOMAN WEINSTEIN:** And in some  
 [10] ways when the Judiciary testifies, it's a  
 [11] much calmer situation than when some of the  
 [12] other individuals have testified before us.  
 [13] The panel, over the years, the  
 [14] Judiciary chairs have recognized the  
 [15] difficulties the court system has. Whether  
 [16] it's been Senator John Bonacic or Senator  
 [17] John DeFrancisco, there has been strong  
 [18] support for the Judiciary.  
 [19] And we appreciate how, with the  
 [20] severe budget cuts of last year, that our  
 [21] courts in New York have remained open, as  
 [22] opposed to what's happened in other states,  
 [23] and that there have been, while there have  
 [24] been cuts that have impacted litigants, that

[1] there still is full access to the courts.

[2] And I just want to follow up with a  
[3] couple of questions.

[4] **CHIEF ADMIN. JUDGE PRUDENTI:** Of  
[5] course.

[6] **ASSEMBLYWOMAN WEINSTEIN:** I  
[7] appreciate your recognizing the concern of  
[8] the 4:30 closing time. And, you know,  
[9] certainly I have heard from litigants,  
[10] particularly Family Court litigants, those  
[11] looking for orders of protection, DV victims,  
[12] some of the concerns that I wonder -- in your  
[13] testimony you say "We must do more," and I  
[14] wonder if you do have some specifics that  
[15] you're looking to implement in this coming  
[16] year.

[17] **CHIEF ADMIN. JUDGE PRUDENTI:** If we  
[18] were lucky enough to get our budget as  
[19] proposed and be approved, I truly believe we  
[20] would take a good hard look at all the  
[21] reports that have come out and of course  
[22] speak to all of you about your concerns. But  
[23] it's my hope that we can keep the courts open  
[24] till 5 o'clock, we can address some of the

[1] wonder if you have plans to increase hours  
[2] there.

[3] **CHIEF ADMIN. JUDGE PRUDENTI:** Yes,  
[4] let me tell everyone a little bit about the  
[5] childcare centers.

[6] As you know, you all know that the  
[7] funding was reduced by 50 percent. And we  
[8] did close seven childcare centers. But where  
[9] we did them is in the non-family settings.  
[10] So the childcare centers that remain open --  
[11] I'll give you an example. We closed the  
[12] Kings Criminal Court childcare center, but we  
[13] left open the Family Court centers, and  
[14] there's 25 of them that exist around the  
[15] state.

[16] And what we've tried to do is work  
[17] really carefully with the local courts and  
[18] the providers that run those centers to  
[19] really decide how to reduce hours, and we  
[20] have, and what impact it has on the  
[21] services. As a result of that, even though  
[22] there was a 50 percent reduction in funding,  
[23] it appears that the reduction in services  
[24] ranges somewhere between 30 to 40 percent.

[1] Small Claims situations so that people do not  
[2] have to take time off from work that they  
[3] cannot afford to do, and that we can maybe  
[4] implement some Small Claims Courts in the  
[5] evenings once again. And again, it would not  
[6] be totally across the board, but we could  
[7] look where the need is the greatest.

[8] We could also hopefully bring back  
[9] some very hardworking judicial hearing  
[10] officers who could help us somewhat,  
[11] especially in the family and the matrimonial  
[12] parts where they're so much needed and the  
[13] cases seem to be backing up.

[14] But it's most important, I believe,  
[15] the Chief Judge and I, that the courts remain  
[16] open as much as possible. So I see that  
[17] keeping the courts open till 5 o'clock as one  
[18] of our top priorities.

[19] **ASSEMBLYWOMAN WEINSTEIN:** And I know  
[20] that there were cuts made to some of the  
[21] childcare centers --

[22] **CHIEF ADMIN. JUDGE PRUDENTI:** Yes,  
[23] let me tell you a little bit about --

[24] **ASSEMBLYWOMAN WEINSTEIN:** -- and I

[1] I can tell you, as a trial court  
[2] judge who sat in both the civil parts as well  
[3] as the matrimonial parts, that especially in  
[4] the matrimonial and Family Courts these  
[5] childcare centers provide a great service.  
[6] You know, especially in matrimonial  
[7] proceedings and Family Court matters, these  
[8] are proceedings not only do you not want the  
[9] child, you know, to be involved in, but these  
[10] are the proceedings, the longer they go on,  
[11] the more difficult they become. So if people  
[12] don't come to court because they have  
[13] childcare needs that they cannot address,  
[14] then these cases seem to linger.

[15] So I think we are doing the best  
[16] under a difficult set of circumstances. But,  
[17] you know, we have to carefully monitor at all  
[18] times the impact that the reduced hours are  
[19] having, where we can reduce hours, where we  
[20] have to add additional hours. Because it's  
[21] not just about taking care of children, it's  
[22] about letting their parents know about  
[23] services that are also available to their  
[24] families and their children, whether it be

[1] healthcare or any other matters.

[2] **ASSEMBLYWOMAN WEINSTEIN:** And I know  
[3] you mentioned about foreclosures and the  
[4] foreclosure filings and how Rockland County  
[5] is now up at a 35 percent rate.

[6] **CHIEF ADMIN. JUDGE PRUDENTI:** Well,  
[7] we have 35 percent in Rockland. I wish I  
[8] could tell you that there was a 35 percent  
[9] rate after the conclusion of conferences  
[10] elsewhere. But to be very straightforward,  
[11] that is not the case everywhere.

[12] **ASSEMBLYWOMAN WEINSTEIN:** Well, I  
[13] know at the joint hearing that we held in  
[14] November, Judge Fischer said that it was up  
[15] to 29 percent, which is much better than in  
[16] prior years. And I wonder if you attribute  
[17] some of that increase in settlements to the  
[18] fact that more litigants are being  
[19] represented.

[20] **CHIEF ADMIN. JUDGE PRUDENTI:** Well,  
[21] you know, I think there is no doubt that more  
[22] litigants are being represented. We have  
[23] been able to save, in the state, over  
[24] 10,000 homes with the settlement conferences

[11] **CHAIRMAN DeFRANCISCO:** Thank you.  
[12] Senator Hassell-Thompson, the ranking  
[13] member of the Judiciary Committee.

[14] **SENATOR HASSELL-THOMPSON:** Thank you,  
[15] Mr. Chairman.

[16] Good morning, Judge Prudenti.

[17] **CHIEF ADMIN. JUDGE PRUDENTI:** Good  
[18] morning.

[19] **SENATOR HASSELL-THOMPSON:** Some of my  
[20] questions that I had prepared have been  
[21] answered, particularly those around the  
[22] impact of the closing at 4:30 of certain  
[23] courts, particularly the Small Claims Court.  
[24] And I continue to raise this only from the  
[25] perspective that I know that since 2009, the  
[26] courts have done an extraordinary job in  
[27] realizing certain aspects.

[28] But I continue to be concerned  
[29] because we also already had a heavy backlog  
[30] in certain kinds of cases. And so reducing  
[31] the court hours, how is that going to have an  
[32] impact on our attempts to bring the dockets  
[33] up-to-date?

[34] **CHIEF ADMIN. JUDGE PRUDENTI:** Well,

[1] that we have had to date. And I believe that  
[2] we would be able to serve the community and  
[3] the individuals who could afford, if their  
[4] mortgages were renegotiated, to stay in their  
[5] homes, if they were represented by counsel.

[6] And we are working on a program and  
[7] taking a good hard look at how to make  
[8] financial institutions more accountable and  
[9] more readily available at these settlement  
[10] conferences, so that they're there, they're  
[11] there with the authority, and that we get  
[12] something done.

[13] So we're looking at a program which  
[14] envisions maybe one part where in a certain  
[15] period of time in one week, you know, we'd  
[16] have one provider, let's say one financial  
[17] institution that week with someone with  
[18] authority to try to resolve those matters and  
[19] attorneys who will represent people who  
[20] really have an area of expertise in  
[21] foreclosure proceedings, either from their  
[22] prior experience or through our training.

[23] **ASSEMBLYWOMAN WEINSTEIN:** Thank you  
[24] very much, Judge.

[1] Senator, we're very hopeful that if this  
[2] budget were approved that we can address  
[3] those concerns somewhat.

[4] You know, we are not going to be able  
[5] to take care of all of the ills of the court  
[6] system and all the negative impacts that the  
[7] court system has experienced in one year.  
[8] But I have to tell you, I think that what the  
[9] Chief Judge and I envision is to take all of  
[10] those areas of main concerns and address them  
[11] somewhat.

[12] So I assure you that in the  
[13] Small Claims area, where people have to come  
[14] to court at night because they can't afford  
[15] to take time off from work, that it is one of  
[16] the four or five areas that is on the top of  
[17] the list.

[18] **SENATOR HASSELL-THOMPSON:** I  
[19] recognize that. But I also recognize, Judge,  
[20] that you've reduced the courts from perhaps  
[21] four nights a week to only one.

[22] **CHIEF ADMIN. JUDGE PRUDENTI:**  
[23] Correct.

[24] **SENATOR HASSELL-THOMPSON:** And so

[1] that even though it is preferable to have  
[2] these courts at night when people can appear,  
[3] reducing it would seem that there would be a  
[4] very heavy docket for that one night a week.  
[5] And that would be the concern, then, that are  
[6] the courts going to stay open until every  
[7] case is heard. Those become the concerns.  
[8] Because this is what I consider the people's  
[9] court, and this is the one place where  
[10] certain kinds of justice must be addressed.

[11] **CHIEF ADMIN. JUDGE PRUDENTI:**

[12] Exactly. Senator, I really understand your  
[13] concern. And I think it's almost a two-part  
[14] question. One part of the question I think I  
[15] can address in saying that I think that what  
[16] we have to look at is possibly having the  
[17] Small Claims Court open more in the daytime  
[18] as well as in the nighttime. Because even if  
[19] we handle some cases and take care of some of  
[20] the problems during the daytime, that it  
[21] would be preferable to only being open one  
[22] evening.

[23] I really think this is an area that  
[24] it's going to take us years to recover from,

[1] Centennial Hall. Centennial Hall has been  
[2] completed, it has been completed under  
[3] budget. It is also not being used as a  
[4] residence for Court of Appeals judges. It is  
[5] being used at the present time to house the  
[6] state court reporter.

[7] We are also looking to put additional  
[8] court staff in that location so that we can  
[9] get out of our rental space and reduce the  
[10] cost of rental space to the court system.  
[11] That is one of the things that I do on a  
[12] daily basis, is take a look at the contracts  
[13] that we've entered into for rental space to  
[14] get us out of that rental space to save that  
[15] money and get us into court facilities.

[16] So I believe, and someone can correct  
[17] me if I'm wrong, but I believe -- and I'll  
[18] look into it for you, and if I am wrong I  
[19] will be touch with you. But I believe the  
[20] only reappropriation is for the Court Officer  
[21] Academy in Brooklyn.

[22] **SENATOR HASSELL-THOMPSON:** Thank you,  
[23] Judge. Thank you, Mr. Chairman.

[24] **CHAIRMAN DeFRANCISCO:** We've been

[1] and I want to be quite candid with you. But  
[2] I promise you this, that we will address the  
[3] concern and we will try to make progress in  
[4] this area this year. And if we don't, I am  
[5] sure that you will remind me.

[6] And I will also be happy to talk to  
[7] you about any new program that we're going to  
[8] put in place.

[9] **SENATOR HASSELL-THOMPSON:** Thank  
[10] you. One other question.

[11] The capital projects, what ongoing  
[12] capital projects that require the request of  
[13] funding in the budget and what projects have  
[14] been reappropriated?

[15] **CHIEF ADMIN. JUDGE PRUDENTI:** Okay.

[16] At the present time we are asking for no new  
[17] capital projects whatever in this budget.

[18] As you may know, that there are some  
[19] reappropriations. And the reappropriations I  
[20] believe are for the Court Officer Academy  
[21] and -- that may be the only reappropriation  
[22] for a capital improvement project.

[23] I would like that to address that,  
[24] and what you may be wondering about is

[1] joined by Senator Greg Ball.

[2] **CHAIRMAN FARRELL:** Next will be  
[3] Assemblyman Joe Lentol, chair of the Codes  
[4] Committee.

[5] **ASSEMBLYMAN CROUCH:** We've also been  
[6] joined by Assemblyman Al Graf.

[7] **ASSEMBLYMAN LENTOL:** Good morning,  
[8] Judge.

[9] **CHIEF ADMIN. JUDGE PRUDENTI:** Good  
[10] morning.

[11] **ASSEMBLYMAN LENTOL:** The first thing  
[12] I have to say is congratulations on your  
[13] appointment -- I haven't had a chance to do  
[14] that personally -- on your appointment as  
[15] chief administrative judge. And we're very  
[16] pleased with your appointment, especially us  
[17] in Brooklyn who know of your excellent work  
[18] at the Appellate Division.

[19] **CHIEF ADMIN. JUDGE PRUDENTI:** Thank  
[20] you.

[21] **ASSEMBLYMAN LENTOL:** I just want to  
[22] focus in on one thing that the Chief Judge I  
[23] know is vitally interested in this year, and  
[24] that is increasing the age of criminal



[1] responsibility in New York for certain  
[2] cases.

[3] And unfortunately, New York has long  
[4] dealt with 16-and-17-year-old defendants more  
[5] harshly than other states. I think that  
[6] we're only one of two states that treat  
[7] 16-year-olds as adult offenders.

[8] Now, having said that, my  
[9] understanding was, even though I didn't go to  
[10] Fordham to hear the Chief Judge speak, I  
[11] understand that he wanted to establish a  
[12] special part in the adult criminal court  
[13] dedicated exclusively to handling cases  
[14] involving 16-and-17-year-olds charged with  
[15] crimes.

[16] Can you provide us an update or a  
[17] status report on that?

[18] **CHIEF ADMIN. JUDGE PRUDENTI:** Sure.  
[19] It would be my pleasure.

[20] As we all know how important this  
[21] initiative is to the Chief Judge, and how  
[22] strongly he feels -- and I join him in that  
[23] concern -- that, you know, 16-and-17-year-  
[24] olds think very differently than older

[1] And that seems to be where they're coming to  
[2] consensus, a special youth court that would  
[3] take the best aspects of both the  
[4] Family Court and the Criminal Court and put  
[5] them together.

[6] And what do I mean by that? At the  
[7] entry level of a case, although it would  
[8] possibly be a special part outside the City  
[9] of New York and in the County Courts, inside  
[10] in the Superior Courts, there still would be  
[11] the use of the type of adjudication and  
[12] adjustment that goes on in the  
[13] Family Courts. So the cases would first be  
[14] adjusted, and hopefully that would take the  
[15] vast amount of cases right out of the system.

[16] And then what would happen, if a case  
[17] had to stay in the system, then the  
[18] Criminal Court guarantees of a speedy trial,  
[19] of possibly bail, would come into effect.  
[20] And at the end of the day, though, the  
[21] adjudication would go back to the Family  
[22] Court model, so that these individuals  
[23] wouldn't be labeled as felons, you know, they  
[24] wouldn't be sent into -- and we hope that's

[1] individuals. You know, they're not as  
[2] sensitive to the consequences of their  
[3] actions, they're much more impulsive, and  
[4] that we really have lagged behind in keeping  
[5] them in the adult criminal system.

[6] So as you know, the juvenile justice  
[7] initiative, as we refer to it, is on the top  
[8] of the Chief Judge's legislative agenda.  
[9] Now, of course he has formed a commission  
[10] that is taking a good hard look at the right  
[11] way to handle these cases. There are  
[12] members, you know, from all walks of life who  
[13] serve on that commission, from the  
[14] District Attorneys Association to the  
[15] advocates, you know, for children. It's a  
[16] broad-based group.

[17] And there are two different models  
[18] that were initially proposed. One model was  
[19] to keep the cases in the Criminal Courts, and  
[20] another model was to put the cases in the  
[21] Family Courts. And what seems to be  
[22] emerging -- and there is no draft legislation  
[23] at this very moment, but what seems to be  
[24] emerging is really a special youth court.

[1] just a small number -- wouldn't be sent into  
[2] a prison population, you know, but would be  
[3] sent to a more appropriate setting. And  
[4] really they would be treated -- their records  
[5] could be sealed and they would be treated as  
[6] individuals, you know, and younger  
[7] persons are treated in the Family Court.

[8] That's what seems to be emerging. I  
[9] can't tell you that's exactly what it's going  
[10] to look like at the end of the day. But we  
[11] are working very diligently and hope to have  
[12] some legislation to you in this legislative  
[13] session.

[14] **ASSEMBLYMAN LENTOL:** Now, in regard  
[15] to the budget, of course I believe that  
[16] shifting the responsibility from  
[17] Criminal Court to the Family Court is going  
[18] to cost money. And I'm wondering if the  
[19] Judiciary has the resources to do that.

[20] **CHIEF ADMIN. JUDGE PRUDENTI:** As far  
[21] as the resources within the Judiciary, I  
[22] believe, you know, as what I refer to the  
[23] chief administrative judge as the resource  
[24] coordinator, I believe that within our system

[11] ourselves that we have the individuals that,  
[12] you know, instead of working in one court  
[13] they might work in another.

[14] Where you may have concern and some  
[15] of your colleagues may have concern is would  
[16] it cost additional funds to the local  
[17] municipalities. And that's what we're  
[18] looking at right now. We're looking at  
[19] studies that seem to indicate if the  
[100] adjustments can be done right up front, that  
[111] it would save the local municipalities  
[122] money. And I think in order to give a  
[133] comfort level to those local municipalities,  
[144] as well as the Senators and the  
[155] Assemblypersons who represent those  
[166] localities, that we have to prove to you and  
[177] to the communities that that is just the  
[188] case.

[199] We understand that no initiative will  
[200] work if it is to burden the local  
[211] municipalities, if there is to be any greater  
[222] burden on the local municipalities. But from  
[233] within the court system, we believe that we  
[244] have the resources, if this budget is enacted

[11] placed in this setting, I really see it as  
[12] addressing situations for 16-and-17-year-old  
[13] nonviolent offenders. And unfortunately, and  
[14] I know you know this, when we're talking  
[15] about gang violence, most times we are not  
[16] talking about nonviolent offenders,  
[17] unfortunately.

[18] **ASSEMBLYMAN LENTOL:** Thank you,  
[19] Judge.

[100] **CHIEF ADMIN. JUDGE PRUDENTI:** Thank  
[111] you.

[122] **CHAIRMAN DeFRANCISCO:** Senator  
[133] Krueger.

[144] **CHIEF ADMIN. JUDGE PRUDENTI:** Good  
[155] morning.

[166] **SENATOR KRUEGER:** Thank you very  
[177] much, Judge. Nice to meet you. I've enjoyed  
[188] our conversations.

[199] So in your testimony you talk about  
[200] the issue with the foreclosures and the  
[211] numbers going on and the demands on the  
[222] court, and then in a different section of  
[233] your testimony you actually cite some  
[244] numbers, I think 2.3 million a year, of

[11] as proposed, to address just really  
[12] coordination of resources.

[13] **ASSEMBLYMAN LENTOL:** And I've saved  
[14] the hardest question for last -- at least for  
[15] me it is. Because although I'm in favor of  
[16] doing this and I'm going to sponsor the bill,  
[17] my question really revolves around gang  
[18] violence that I've talked about in the past.  
[19] But if we do this --

[100] **CHIEF ADMIN. JUDGE PRUDENTI:** It's a  
[111] very good question.

[122] **ASSEMBLYMAN LENTOL:** If we do this,  
[133] do we have the programs to, you know, break  
[144] the cycle of gang violence when we're dealing  
[155] with those types of kids?

[166] **CHIEF ADMIN. JUDGE PRUDENTI:** You  
[177] know, this is an absolutely tremendous  
[188] program and I think one that the  
[199] District Attorneys Association especially,  
[200] and I understand it, has real concern over.

[211] You know, I think this Youth Court is  
[222] seen as a court for nonviolent offenders.  
[233] Although at the present time we're talking  
[244] about exactly what type of cases would be

[11] unrepresented litigants in court.

[12] I guess two questions. One, what  
[13] percentage of those unrepresented litigants  
[14] are in fact facing foreclosures? And two,  
[15] what's the rest of the universe of  
[16] unrepresented --

[17] **CHIEF ADMIN. JUDGE PRUDENTI:** I  
[18] believe, from my perspective -- and I haven't  
[19] really thought about your question, but I  
[100] believe they're probably all facing  
[111] foreclosure, unfortunately.

[122] But I believe that they have come to  
[133] know that because of the robo-signing that was  
[144] done, you know, in the mortgage situation  
[155] that there is a possibility that they have  
[166] defenses and that they are reaching out and  
[177] they are looking for representation,  
[188] Senator.

[199] And I think that's what's most  
[200] important, to give them the representation  
[211] that they need, if there are defenses that  
[222] exist, if there is a possibility that these  
[233] mortgages can be renegotiated, that they are  
[244] on an equal playing field with everyone else.

[1] **SENATOR KRUEGER:** And to follow up,  
[2] you talk about people needing to come to  
[3] court four to eight times to deal with the  
[4] conferencing and other parts of the process  
[5] for foreclosure.

[6] **CHIEF ADMIN. JUDGE PRUDENTI:** Exactly  
[7] right. Exactly right.

[8] **SENATOR KRUEGER:** So my question is,  
[9] can we as a legislature move any kind of  
[10] legislation that would put additional  
[11] requirements on the people bringing these  
[12] foreclosure cases before they could even get  
[13] to court? So if we're going -- at least my  
[14] understanding is people are going back and  
[15] forth because there aren't the right  
[16] documents, the right case hasn't been made,  
[17] and that they're sort of, you know, putting  
[18] delays in, coming to court, using up court  
[19] time, judges' time, without having the full  
[20] information package that's been made  
[21] available to the people facing foreclosure.

[22] Is there legislation -- we passed  
[23] quite a bit of legislation around the  
[24] foreclosure issue, but maybe we need to do

[1] That's what we're putting into our  
[2] thinking when we're thinking about a better  
[3] way of doing business. And that better way  
[4] of doing business may be to set up a special  
[5] part where these financial institutions must  
[6] come with someone who has authority and  
[7] someone who has paperwork.

[8] So I think you've come up with a very  
[9] good idea, and I think you might be able to  
[10] be of some assistance to that community.

[11] **SENATOR KRUEGER:** I think that we  
[12] would all look forward to any programmatic  
[13] recommendations that the court has for  
[14] changes in legislation that may be necessary.

[15] **CHIEF ADMIN. JUDGE PRUDENTI:** Thank  
[16] you. I look forward to ongoing discussions.

[17] And I promise that I will bring  
[18] everyone up-to-date when we finalize our next  
[19] step in what we will be doing in foreclosure  
[20] proceedings to try to move along the process  
[21] and to try to help as many individuals as we  
[22] possibly can.

[23] **SENATOR KRUEGER:** I know in the City  
[24] of New York you've actually set up specific

[1] more and better to ensure that the courts are  
[2] (A) not being piled up and prevented from  
[3] getting things done and (B) making sure that  
[4] cases that aren't factually accurate don't  
[5] get brought into your courtrooms in the first  
[6] place.

[7] **CHIEF ADMIN. JUDGE PRUDENTI:**  
[8] Possibly, Senator. And let me -- maybe I can  
[9] even assist you on your thinking about that.

[10] When we say four to eight  
[11] conferences, the frustration level that we've  
[12] encountered is that many financial  
[13] institutions will send an attorney who  
[14] represents them to the conference but without  
[15] the necessary paperwork on both sides --  
[16] sometimes the financial institution doesn't  
[17] have it, and sometimes the individual whose  
[18] property is being foreclosed on doesn't have  
[19] it.

[20] And the other problem that we're  
[21] facing is that no one is sent who has the  
[22] authority to renegotiate these mortgages  
[23] where appropriate. So I'm sure you would  
[24] like to put that into your thinking as well.

[1] courtrooms to deal with the foreclosure  
[2] process, almost streamlining, you know,  
[3] expert judges. Has that been done in other  
[4] parts of the state, or is that working?

[5] **CHIEF ADMIN. JUDGE PRUDENTI:** Yes,  
[6] actually it has, it has been done throughout  
[7] the state in different municipalities using  
[8] court attorney referees to conference these  
[9] cases so that we can use our judicial  
[10] resources in other places.

[11] And yes, the model seems to be  
[12] working. But what we have to do is we have  
[13] to speed up some outcomes and we have to have  
[14] some accountability on behalf of the  
[15] financial institutions.

[16] **SENATOR KRUEGER:** Jumping to, I  
[17] guess, eviction but non-foreclosure cases,  
[18] tenant cases.

[19] In New York City, where we have a  
[20] Housing Court system, I know that the numbers  
[21] continue to appear to be almost beyond  
[22] comprehension. I think the vast majority of  
[23] tenants in Housing Court are not represented  
[24] by attorneys and the vast majority of

[11] landlords are represented.

[12] And I know this issue, and it's a  
[13] complicated one. But because you've had to  
[14] lay off so many nonjudicial staff, what's the  
[15] impact been on the kinds of technical  
[16] assistance that you were able to provide at  
[17] some level in the housing courts?

[18] **CHIEF ADMIN. JUDGE PRUDENTI:** It's  
[19] been very difficult, to be very  
[20] straightforward with you.

[21] You know, the Chief Judge says that  
[22] when there's a downturn in economic times the  
[23] court system really becomes the emergency  
[24] room. And those of us who have had to go to  
[25] emergency rooms know what that's like. you  
[26] know, the triaging to take care of those most  
[27] difficult cases or the cases that just need  
[28] immediate attention.

[29] I cannot sit before you and tell you  
[30] that there is tremendous impact. But I think  
[31] that's why there is a great need for indigent  
[32] legal services. And it is just with regard  
[33] to the types of matters that you bring up in  
[34] the Housing Court and the Senator brought up

[11] the first time. Not being from the great  
[12] borough of Brooklyn, I haven't had that  
[13] opportunity.

[14] I'd like you to talk a bit about the  
[15] Drug Courts, how they are proceeding, how the  
[16] training of the judges are proceeding, and  
[17] the impact of what you describe as reduction  
[18] in services will have on Drug Courts.

[19] And in the same vein, so you don't  
[20] have to stop again, how is that impacting  
[21] Mental Health Courts?

[22] **CHIEF ADMIN. JUDGE PRUDENTI:** Well, I  
[23] think that the Drug Courts, because they have  
[24] been established and have become such a part  
[25] and parcel of our system -- you know,  
[26] integrated into our system -- that they are  
[27] continuing to operate the same way that our  
[28] Criminal Courts are operating.

[29] I have to tell you that resources  
[30] from -- you know, we have many partners at  
[31] the Drug Court and resource coordinators  
[32] there as well. And I think some of those  
[33] resources have dried up. But the  
[34] Drug Courts, I assure you, are fully

[11] in the Small Claims Court. And I know all of  
[12] us have great interest in the Family Courts.

[13] So we are at a time when, if this  
[14] budget were to be approved as submitted, we  
[15] can start -- and I do mean just start -- to  
[16] address these problems. But indigent legal  
[17] services and representation are imperative  
[18] for those individuals. And quite honestly,  
[19] Senator, we cannot, with the resources that  
[20] we have right now and the personnel that we  
[21] have, totally take care of that problem by  
[22] ourselves.

[23] **SENATOR KRUEGER:** Thank you. Thank  
[24] you, Mr. Chair.

[25] **CHIEF ADMIN. JUDGE PRUDENTI:** You're  
[26] welcome.

[27] **CHAIRMAN FARRELL:** Jeff Aubry.

[28] **ASSEMBLYMAN AUBRY:** Good morning.

[29] **ASSEMBLYMAN CROUCH:** We've been  
[30] joined by Assemblyman Phil Boyle and also  
[31] Assemblyman Joe Giglio.

[32] **ASSEMBLYMAN AUBRY:** Welcome, Judge.  
[33] It is a pleasure to have you testify in front  
[34] of us today, and my pleasure to meet you for

[11] operational. And we are dealing, you know,  
[12] with those problems.

[13] I can't tell you, sitting before you,  
[14] I have any specific numbers that I can give  
[15] you. What I could tell you is that I can get  
[16] back to you if you would like me to give you,  
[17] you know, specifically how many cases have  
[18] been handled in the Drug Court and how they  
[19] have been adjudicated over the last year.

[20] **ASSEMBLYMAN AUBRY:** It would be  
[21] interesting to see maybe over the past two  
[22] years or three years, the year-to-year  
[23] increase or decrease in clients coming  
[24] through that. As well as the number of drug  
[25] cases that are being diverted away from that  
[26] system. Since the reform of the drug laws  
[27] allows judges to divert, we'd like to see  
[28] some statistics relative to that, as well as  
[29] the financial resources that are devoted in  
[30] that case.

[31] **CHIEF ADMIN. JUDGE PRUDENTI:** Very  
[32] well. I promise I'll provide that to you.

[33] **ASSEMBLYMAN AUBRY:** Thank you. And  
[34] now on Mental Health Courts?

[11] **CHIEF ADMIN. JUDGE PRUDENTI:** Mental  
[12] Health Courts continue to operate. Some of  
[13] them are integrated into the courts that we  
[14] already have, okay.

[15] I know that Judge Kluger is in charge  
[16] of all our special courts throughout the  
[17] State of New York. I know that she has been  
[18] traveling the state and that we have in  
[19] operation a number of Mental Health Courts.  
[100] And I believe we recently opened one in  
[111] Nassau County.

[122] I have not heard any specifics with  
[133] regard to adverse impacts with regard to  
[144] Mental Health Courts or opening up of other  
[155] courts where needed, because when we can  
[166] control the resources that we have, what it  
[177] is more is a shift of personnel that we are  
[188] doing business with.

[199] I am worried that in the future, if  
[200] we were to take on any other new initiatives,  
[211] that unless we were to get the budget as  
[222] proposed, it would be almost impossible. It  
[233] would be very, very difficult.

[244] But at the present time we continue

[11] sure that certain communities who have  
[12] difficulty understanding, even if they  
[13] basically might speak the language, they  
[14] still have a difficulty in understanding  
[15] court proceedings.

[16] And very recently I just finished,  
[17] actually, taping the introduction to two  
[18] training programs for court interpreters  
[19] giving them situations where we need them to  
[20] be involved, and foreclosures are one of  
[21] those situations. We're very sensitive to  
[22] the minority communities and also to  
[23] communities where English is -- you know,  
[24] either they have a problem speaking English  
[25] or we have the same problem with the  
[26] hearing-impaired.

[27] So what we're doing is -- and it's  
[28] very hard with this budget. Rest assured  
[29] it's very difficult. Because what we're  
[30] doing is we are using court interpreters in  
[31] different settings. We are taking them from  
[32] one court maybe in the morning and putting  
[33] them in a different court in the afternoon.  
[34] But we have noticed that in the foreclosure

[11] to be devoted to our problem-solving courts.

[12] **ASSEMBLYMAN AUBRY:** Would you provide  
[13] the same information on Mental Health Courts  
[14] to me?

[15] **CHIEF ADMIN. JUDGE PRUDENTI:**  
[16] Absolutely.

[17] **ASSEMBLYMAN AUBRY:** And then finally,  
[18] in your provision of services for  
[19] foreclosure, I would like to know, what's the  
[20] impact of language issues as well as ethnic  
[21] diversity? It is my understanding that a  
[22] high percentage -- particularly in the City  
[23] of New York -- of those who are undergoing  
[24] foreclosures come from minority communities,  
[25] poor minority communities. Is that something  
[26] that the court is looking at?

[27] **CHIEF ADMIN. JUDGE PRUDENTI:** Yes, it  
[28] is.

[29] **ASSEMBLYMAN AUBRY:** And how are we  
[30] responding to that?

[31] **CHIEF ADMIN. JUDGE PRUDENTI:** Yes, it  
[32] is. I guess the right perspective for me to  
[33] put this in for you is that court  
[34] interpreters really are the key to making

[11] parts there very much are a need for court  
[12] interpreters, and we're trying to address  
[13] those concerns.

[14] The court more and more in all  
[15] proceedings is seeing the need, you know, for  
[16] court interpreters. And we are always  
[17] carefully monitoring that situation to see  
[18] that the minority communities have a good  
[19] understanding.

[20] And once again, it brings up -- I  
[21] think it brings up exactly what Judge Lippman  
[22] is talking about. What we're really about,  
[23] what we truly are really about is justice and  
[24] access to this court system. And the only  
[25] way we can provide that, we believe, is with  
[26] the initiatives that we present in our budget  
[27] to you this year.

[28] **ASSEMBLYMAN AUBRY:** It just begs the  
[29] question, if -- at least my understanding,  
[30] the documents that I have indicate that you  
[31] are requesting \$2.5 billion in support for  
[32] the court system. Is that an accurate  
[33] number?

[34] **CHIEF ADMIN. JUDGE PRUDENTI:** Excuse

[1] me? I'm sorry, I didn't understand your  
 [2] question.  
 [3] **ASSEMBLYMAN AUBRY:** I said it  
 [4] indicates to me that the Judiciary's  
 [5] all-funds budget request includes  
 [6] \$2.5 billion.  
 [7] **CHIEF ADMIN. JUDGE PRUDENTI:** My  
 [8] understanding -- and I could be wrong, and  
 [9] I'll check the number -- is \$2.3 billion.  
 [10] But we're close enough.  
 [11] **ASSEMBLYMAN AUBRY:** Okay. And is  
 [12] that an all-funds increase of \$3.6 million  
 [13] over the last year?  
 [14] **CHIEF ADMIN. JUDGE PRUDENTI:** No.  
 [15] It's my understanding -- and again,  
 [16] we can check these numbers and be sure --  
 [17] it's my understanding that there may have  
 [18] been -- because staffers from I know the  
 [19] Assembly and the Senate have been in touch  
 [20] with staffers from our office, and there may  
 [21] have been a misunderstanding on behalf of  
 [22] staffers from the Legislature. It's my  
 [23] understanding that it is a decrease in all  
 [24] funds of \$3.9 million.

[1] So of course the budget would be much  
 [2] larger. The areas that we would be  
 [3] requesting funding for would be much  
 [4] greater. But we think we can start.  
 [5] And as Judge Lippman likes to say,  
 [6] rounding the edges, taking care of some of  
 [7] the problems, starting to take care of some  
 [8] of the problems, starting to ameliorate some  
 [9] of the concerns that have been raised -- and  
 [10] valid concerns -- about the impact that these  
 [11] budget cuts have had on the Judiciary.  
 [12] **ASSEMBLYMAN AUBRY:** Thank you very  
 [13] much, Judge.  
 [14] **CHIEF ADMIN. JUDGE PRUDENTI:** You're  
 [15] welcome very much. And I will get that  
 [16] information to you, Assemblyman.  
 [17] **ASSEMBLYMAN AUBRY:** I'd appreciate  
 [18] it. Thank you.  
 [19] **CHAIRMAN DeFRANCISCO:** Thank you.  
 [20] The number I have is that there's a  
 [21] decrease in spending of \$3.6 million, or  
 [22] minus 0.1 percent.  
 [23] **CHIEF ADMIN. JUDGE PRUDENTI:** I think  
 [24] that's right, Senator DeFrancisco. I think

[1] **ASSEMBLYMAN AUBRY:** I did see that  
 [2] number in your testimony different from the  
 [3] number we saw on our document.  
 [4] If this was not a difficult budget  
 [5] year, what kind of request would you have  
 [6] made?  
 [7] **CHIEF ADMIN. JUDGE PRUDENTI:** If I  
 [8] could wave my magic wand?  
 [9] **ASSEMBLYMAN AUBRY:** Yes, if you could  
 [10] wave your magic wand.  
 [11] **CHAIRMAN DeFRANCISCO:** You object  
 [12] because it's a hypothetical question.  
 [13] (Laughter.)  
 [14] **ASSEMBLYMAN AUBRY:** I thought you  
 [15] dealt in hypotheticals.  
 [16] **CHIEF ADMIN. JUDGE PRUDENTI:**  
 [17] Honestly, there is just -- really, I feel  
 [18] with the budget that we've proposed, it's a  
 [19] really -- it's a good budget. It takes into  
 [20] account all of the concerns. It takes into  
 [21] account the financial times. But it is going  
 [22] to take us years to get back to the services  
 [23] that we were providing many years ago for  
 [24] people in all different walks of life.

[1] you're correct.  
 [2] **CHAIRMAN DeFRANCISCO:** I just had  
 [3] just a couple of questions.  
 [4] My concern as far as delivering  
 [5] justice is in the trenches in the courtroom.  
 [6] And it's been asked several times about these  
 [7] early release hours, 4:30. You know, when  
 [8] you have a trial, a complex trial, you have  
 [9] expert witnesses that you pay thousands and  
 [10] thousands of dollars and you're about ready  
 [11] to finish the last half of the testimony and  
 [12] you've got to adjourn because of whatever.  
 [13] And it's also for -- at the other end of the  
 [14] income scale, if it's a Family Court matter.  
 [15] And just isn't there a way, for  
 [16] example -- because I would think that most  
 [17] courtrooms, at least the ones I attend, a  
 [18] great majority of the time or a great  
 [19] percentage of the time is no trials going on  
 [20] and court personnel basically sitting around  
 [21] talking to each other. And that's no  
 [22] denigration of them, it's a fact of life that  
 [23] trials are not going all the time. In fact,  
 [24] some judges have trials very infrequently.

[1] Isn't there a way to give a comp time  
[2] for the support staff so that they can spend  
[3] that extra half hour or 45 minutes and then  
[4] take the morning off because there's no trial  
[5] scheduled the next morning?

[6] **CHIEF ADMIN. JUDGE PRUDENTI:** Senator  
[7] DeFrancisco, I think it's a fabulous idea.  
[8] But I also -- I think our problem comes from  
[9] our collective bargaining agreements.

[10] **CHAIRMAN DeFRANCISCO:** Yeah, but I  
[11] know the court clerks, I know all the -- I  
[12] know the stenographers, they all come to me.  
[13] They're all wonderful people. You would  
[14] think that they would understand this issue  
[15] because it's -- it would help them as well.

[16] So I would be more than happy to talk  
[17] to all those wonderful support staff and --

[18] **CHIEF ADMIN. JUDGE PRUDENTI:** I love  
[19] talking to the support staff too. But,  
[20] Senator DeFrancisco, you could even do us a  
[21] bigger favor if you would be willing to talk  
[22] to the union leaders who represent those  
[23] fabulous people who work in our court system.

[24] **CHAIRMAN DeFRANCISCO:** I have and I

[1] it. You know, great interest in setting up  
[2] these medical malpractice panels throughout  
[3] the State of New York. I know that  
[4] Judge Pfau is leading that charge, and she  
[5] has been traveling around the state trying to  
[6] encourage --

[7] **CHAIRMAN DeFRANCISCO:** Were you  
[8] around when there was medical malpractice  
[9] panels before?

[10] **CHIEF ADMIN. JUDGE PRUDENTI:** Yes,  
[11] you know, I -- actually, I wasn't around.

[12] **CHAIRMAN DeFRANCISCO:** I was, so  
[13] you're much younger than I am.

[14] **CHIEF ADMIN. JUDGE PRUDENTI:** Well, I  
[15] have to tell you one of my dear friends,  
[16] Judge Santucci in Queens County, was in  
[17] charge of the Queens County medical  
[18] malpractice panel, and he would tell me many  
[19] stories about how well it worked and how many  
[20] cases were resolved in a much more timely  
[21] fashion.

[22] **CHAIRMAN DeFRANCISCO:** Except it  
[23] worked so well that it was disbanded.

[24] My point is basically this. You

[1] will. And I just hope that -- I'm not being  
[2] facetious here, I think it's the logical  
[3] conclusion when we're in a situation, as  
[4] opposed to possibly laying people off.

[5] Secondly, with respect to -- there's  
[6] a new medical malpractice process which is I  
[7] guess in some ways like the foreclosure  
[8] process, where there's more conferences and  
[9] so forth.

[10] **CHIEF ADMIN. JUDGE PRUDENTI:** In the  
[11] initial stages.

[12] **CHAIRMAN DeFRANCISCO:** And how is  
[13] that working?

[14] **CHIEF ADMIN. JUDGE PRUDENTI:** Well,  
[15] it is in the initial stages.

[16] And really, in order for that to  
[17] work, you really have to have, especially the  
[18] hospitals -- you know, who now employ so many  
[19] of the doctors, as I know you know -- and the  
[20] insurance carriers, the medical malpractice  
[21] carriers for the doctors buy into the  
[22] program.

[23] It's in the very early stages. But I  
[24] have to tell you, there's great interest in

[1] know, we can come up with all the  
[2] conferences -- if somebody doesn't have money  
[3] to pay their bank on their foreclosure or if  
[4] the insurance company doesn't want to pay a  
[5] claim and there's no -- you can have all the  
[6] conferences you want.

[7] To me, the most logical way to get  
[8] rid of a case is to schedule a trial, you  
[9] either settle it or you get it done. And you  
[10] talk about the extra court time that's been  
[11] experienced, the 40,000 conferences you had.  
[12] That's, to me, the way to resolve it. And  
[13] that's why we have to properly fund the  
[14] courts in the trenches, work out arrangements  
[15] rather than cutting back the court time.

[16] And I just think that hopefully  
[17] that's the direction you will consider the  
[18] wise direction and move in that way.

[19] **CHIEF ADMIN. JUDGE PRUDENTI:** Thank  
[20] you. I think it's very practical, it's very  
[21] pragmatic, and I know exactly what you're  
[22] thinking.

[23] I have to tell you, when I first  
[24] started as a trial court judge, a very wise

[11] man I had on judicial orientation told us  
[12] all: "The best way to resolve your cases and  
[13] settle cases is to say to the individuals in  
[14] front of you, 'Call your first witness.'"

[15] **CHAIRMAN DeFRANCISCO:** "Call your  
[16] first witness." I think that's what I said.  
[17] Are you referring to me as a wise man?

[18] (Laughter.)

[19] **CHAIRMAN DeFRANCISCO:** Now, the last  
[20] area is indigent legal services, especially  
[21] assigned counsel. We've talked about this.

[22] **CHIEF ADMIN. JUDGE PRUDENTI:** Yes.

[23] **CHAIRMAN DeFRANCISCO:** And the fact  
[24] that it's my understanding from looking at  
[25] the numbers that the vast majority of the  
[26] assigned-counsel-type money is not  
[27] distributed in a -- I guess a fair way. I'll  
[28] use the word "fair."

[29] Do you see that to be the case as  
[30] well?

[31] **CHIEF ADMIN. JUDGE PRUDENTI:** You  
[32] know what, I took a look at it as well. And  
[33] what I discovered was that within the City of  
[34] New York there are case caps, but that's

[11] individual testifying before you who can tell  
[12] you just how to do that this afternoon at  
[13] 12:30, and that's the head of the Indigent  
[14] Legal Services, Mr. Leahy.

[15] **CHAIRMAN DeFRANCISCO:** I was just  
[16] trying to make it easy for him, that's all.  
[17] (Laughter.)

[18] **CHAIRMAN DeFRANCISCO:** Thank you very  
[19] much.

[20] **CHAIRMAN FARRELL:** Thank you.  
[21] Assemblyman Graf.

[22] **ASSEMBLYMAN GRAF:** Good morning,  
[23] Judge.

[24] **CHIEF ADMIN. JUDGE PRUDENTI:** Good  
[25] morning.

[26] **ASSEMBLYMAN GRAF:** I have a  
[27] question. In Suffolk County there are times  
[28] where it takes two, two and a half years in a  
[29] criminal case just to get a hearing.

[30] **CHIEF ADMIN. JUDGE PRUDENTI:** In a  
[31] criminal matter?

[32] **ASSEMBLYMAN GRAF:** In a criminal  
[33] matter in Suffolk County.

[34] What I'm wondering is, have you ever

[11] pursuant to legislation that was passed I  
[12] believe approximately three years ago. And I  
[13] believe it's about \$6.4 million, if I'm  
[14] correct. And that's for inside the City of  
[15] New York, and that was done by legislation.

[16] I am a firm believer that case caps  
[17] outside of the City of New York are  
[18] appropriate as well, and it's a matter of  
[19] finding the funds to do that. I think that  
[20] possibly -- and you and I have spoken, and I  
[21] think it was a good conversation because I  
[22] think it really caused me to take a good hard  
[23] look and think about the area.

[24] I think that with the Indigent Legal  
[25] Services Board there may be monies available  
[26] to do that outside the city, because we  
[27] can't -- and I understand that we can't  
[28] burden the local authorities anymore.

[29] **CHAIRMAN DeFRANCISCO:** And what  
[30] action would we have to do in order to make  
[31] those funds available?

[32] **CHIEF ADMIN. JUDGE PRUDENTI:** Well, I  
[33] think you're very, very lucky because it's my  
[34] understanding that there will be an

[11] looked at having a hearing part or a trial  
[12] part where you would actually have one judge  
[13] sitting there on trials -- even if you  
[14] rotated them -- for hearings?

[15] **CHIEF ADMIN. JUDGE PRUDENTI:** The  
[16] answer to your question is yes. When I was  
[17] the administrative judge of the county, what  
[18] happened was in the County Court we tried to  
[19] at that time -- that was many years ago. I  
[20] admit to you it was more than 10 years ago --  
[21] we tried to do different -- you know, tried  
[22] having the oldest cases heard in a part, we  
[23] tried having a trial assignment part, we  
[24] tried a lot of different methods of trying to  
[25] dispose of criminal cases in a more timely  
[26] fashion.

[27] Our administrative judge now in  
[28] Suffolk County is a former district attorney  
[29] as well as a former Family Court judge, and I  
[30] know he is trying a number of different  
[31] avenues to address the backlog in the  
[32] Suffolk County Court more timely.

[33] But I will bring to his attention  
[34] your suggestion. And if you would like, I



[1] could have him speak with you or I'd be happy  
[2] to speak with you to see if we could try a  
[3] pilot project that possibly, you know, could  
[4] at least address your concern. I think  
[5] you're right.

[6] **ASSEMBLYMAN GRAF:** Good. And the  
[7] other thing, I think we're the last state  
[8] that doesn't have full disclosure. And  
[9] what's happening, that's creating a logjam in  
[10] the court system. So it takes forever,  
[11] there's a lot of -- I mean, that would push  
[12] the plea bargains forward.

[13] So right now what you have is,  
[14] because you don't have full disclosure, it's  
[15] trial by ambush. And if you were to initiate  
[16] full disclosure, what would happen is the  
[17] cases would move a lot faster. So that's  
[18] just something to look at, because that's  
[19] what I'm seeing in the Criminal Court in  
[20] Suffolk County.

[21] **CHIEF ADMIN. JUDGE PRUDENTI:** Thank  
[22] you. I will talk to Judge Hinrichs. We'll  
[23] get back to you on this.

[24] **ASSEMBLYMAN GRAF:** Thank you.

[1] some of the goals, challenges, and way  
[2] forward for the division in the coming year.

[3] Governor Cuomo has outlined his  
[4] central theme of "reimagining government" as  
[5] a priority for the Executive Department. He  
[6] is leading the state in an effort to create  
[7] greater public value by getting back to the  
[8] basics, eliminating unnecessary waste and  
[9] streamlining our operations so that we can  
[10] better provide quality services for all of  
[11] our customers. This means building upon our  
[12] successes, correcting what doesn't work, and  
[13] continuing the momentum that has been  
[14] achieved so far.

[15] The Division of Homeland Security and  
[16] Emergency Services is in a unique position in  
[17] having converged homeland security,  
[18] counterterrorism, emergency management, fire,  
[19] cybersecurity, and interoperable  
[20] communications. After pulling all these  
[21] disciplines together, we continue the process  
[22] of synthesizing the common threads that run  
[23] through the division and concentrating our  
[24] efforts to enhance our performance of those

[1] **CHAIRMAN DeFRANCISCO:** Thank you.  
[2] **CHAIRMAN FARRELL:** Thank you very  
[3] much.

[4] **CHIEF ADMIN. JUDGE PRUDENTI:** Thank  
[5] you. Thank you for listening to me this  
[6] morning. I really appreciate it. And I look  
[7] forward to working with you.

[8] **CHAIRMAN DeFRANCISCO:** And we do too.  
[9] We've been joined by Senators Golden  
[10] and Little.

[11] The next speaker is Jerome Hauer,  
[12] commissioner of the New York State Division  
[13] of Homeland Security and Emergency Services.

[14] Okay, you're on whenever you're  
[15] ready.

[16] **COMMISSIONER HAUER:** Good morning,  
[17] Mr. Chairman.

[18] Chairman DeFrancisco,  
[19] Chairman Farrell, and members of this joint  
[20] hearing, my name is Jerome Hauer, and I am  
[21] the commissioner of the Division of Homeland  
[22] Security and Emergency Services. It is my  
[23] pleasure to appear before you today to  
[24] discuss the division's 2012-2013 budget and

[1] services.

[2] As commissioner, I am committed to  
[3] ensuring that the division fulfills its core  
[4] mission and, in doing so, each investment  
[5] that we make must measurably serve to benefit  
[6] our first responders, our citizens, and our  
[7] local governments.

[8] Disasters, whether natural or  
[9] manmade, will always begin and end at the  
[10] local level. No one understands this more  
[11] than those directly affected most recently by  
[12] Hurricane Irene and Tropical Storm Lee. More  
[13] than 42,000 of our citizens -- your  
[14] constituents -- sadly faced the loss of loved  
[15] ones, homes, and severe disruption of their  
[16] lives. The current estimate of the fiscal  
[17] impact to the state may exceed \$1.5 billion.

[18] Some of the federal recovery  
[19] assistance has started to flow into the  
[20] state; however, the lasting consequences of  
[21] these storms underscore the significance of  
[22] maintaining razor-sharp readiness and  
[23] response capabilities. An honest assessment  
[24] reveals that, while there were many

[1] successes, lessons can be learned and  
[2] improvements can be made.  
[3] The state serves an active role in  
[4] assisting localities to navigate efforts in  
[5] planning, communications, and recovery.  
[6] New York has made a great deal of progress in  
[7] the last decade since 9/11, but challenges  
[8] remain. Despite all these efforts to date,  
[9] disparities in local readiness across the  
[10] state continue to exist. We plan to enhance  
[11] state and local pre-incident preparedness and  
[12] post-disaster coordination by investing in  
[13] our regional offices and establishing  
[14] regional rapid support teams.  
[15] Another significant step towards  
[16] strengthening statewide readiness includes  
[17] the Intrastate Mutual Aid Program, or IMAP.  
[18] This is one of our initiatives currently  
[19] before the Legislature and is a framework  
[20] developed from the national Emergency  
[21] Management Assistance Compact model. IMAP  
[22] would serve to foster local disaster and  
[23] emergency assistance by removing barriers  
[24] such as the uncertainty as to how resources

[1] state-specific allocations. We will continue  
[2] to urge the Department of Homeland Security  
[3] to invest in funding in New York State, where  
[4] the threat remains the highest.  
[5] By way of state funding, in December  
[6] I announced the first round of \$20 million in  
[7] funding to 16 counties in the state to  
[8] improve first responder communications and  
[9] help localities better respond to emergency  
[10] situations. The only way we will improve  
[11] upon our emergency response system is to  
[12] invest in it and invest wisely.  
[13] This is just the first step. We are  
[14] committed to this endeavor. We anticipate  
[15] initiating the next application process to  
[16] allow competition for \$45 million in  
[17] interoperable communications grants in the  
[18] very near future. I know interoperable  
[19] communications is a top priority for each of  
[20] you and your constituents.  
[21] In closing, the points I touch on  
[22] here give a cursory overview of some of the  
[23] priorities I envision for the division as we  
[24] move forward. Our responsibilities are

[1] will be deployed and how costs will be  
[2] apportioned.  
[3] In building upon this network, at the  
[4] state level we will be looking to better  
[5] understand what assets are available for  
[6] deployment. The old adage "Plan now or pay  
[7] later" is certainly appropriate in emergency  
[8] management and disaster mitigation. Knowing  
[9] what we have and how we can -- without undue  
[10] delay -- coordinate resources and get them  
[11] where they are needed in disaster response  
[12] and recovery operations is an exercise we  
[13] must undertake in times of calm, not in the  
[14] midst of chaos.  
[15] What will be potentially challenging  
[16] this year is that nationally we are facing a  
[17] 44 percent cut in federal homeland security  
[18] funding for 2012. This is in addition to the  
[19] decrease in funding last year. I want to  
[20] emphasize that at this moment we are  
[21] uncertain of the precise impact of these cuts  
[22] to New York. We will know more in the near  
[23] future when the Secretary of the Department  
[24] of Homeland Security makes decisions as to

[1] diverse and wide-ranging. However, the  
[2] bottom line is we are charged with ensuring  
[3] the safety and protection of the people we  
[4] serve, whether it is from storms, flooding,  
[5] or terrorists armed with explosives.  
[6] I am eager to begin the process of  
[7] molding a new conceptual framework for  
[8] homeland security and emergency management in  
[9] New York that is effective, adaptive and  
[10] sustainable in the future.  
[11] Again, thank you for the opportunity  
[12] to testify before you today. I stand ready  
[13] to answer any questions you may have.  
[14] **CHAIRMAN DeFRANCISCO:** Thank you.  
[15] The first questioner is Senator Ball,  
[16] whose committee oversees homeland security.  
[17] **SENATOR BALL:** Sir, how are you?  
[18] **COMMISSIONER HAUER:** Good morning,  
[19] Senator.  
[20] **SENATOR BALL:** It's a pleasure to see  
[21] you again. And I'll keep my questions brief  
[22] because I know that we communicate on a  
[23] regular basis.  
[24] What do you see as far as from -- and

[1] I know that you can't give us specifics. And  
[2] as we know how these federal cuts are going  
[3] to hurt New York State and New York City  
[4] specifically, I ask that you make sure that  
[5] all of our respective committees get that  
[6] information. But what do you see being the  
[7] imminent challenges to those proposed cuts  
[8] from a federal level, and how can we build a  
[9] broader-based coalition to fight for our more  
[10] fair share of federal dollars?

[11] **COMMISSIONER HAUER:** I will be in  
[12] Washington later this week at a meeting of  
[13] the governors' homeland security advisors.  
[14] Secretary Napolitano is scheduled to speak on  
[15] Thursday morning.

[16] I will have a better understanding of  
[17] the cuts then, and I will feed back to you  
[18] after I have that. And once I have a sense,  
[19] I will be able to give you some specifics and  
[20] give you a sense of how we might best  
[21] approach the committees in D.C., both on the  
[22] Senate and House side, to ensure that  
[23] New York State not only gets its fair share  
[24] but gets the money it deserves as the

[1] and how will that be part of the larger  
[2] conversation with the federal government to  
[3] make those problems that we saw on 9/11 that  
[4] still have not been solved a priority even at  
[5] the federal level?

[6] **COMMISSIONER HAUER:** Let me start  
[7] with the last question first.

[8] Our work with the federal government,  
[9] the gentleman that oversees the  
[10] interoperability program that is the liaison  
[11] for the state used to work for me in New York  
[12] City. We have regular meetings to work with  
[13] him to ensure that we are cutting-edge in  
[14] everything we do, that we use every possible  
[15] resource that the federal government has to  
[16] offer, and that we are aware of all grants  
[17] for interoperable communications that are  
[18] available.

[19] As far as communicating within the  
[20] state, one of the mandates that I have put  
[21] into the contracts that we give out with this  
[22] money, the first round of \$20 million, the  
[23] next round of \$45 million and then the  
[24] following round of \$75 million, we are

[1] number-one terrorist target in the nation.

[2] **SENATOR BALL:** And I ask that you  
[3] include us in that to the extent necessary  
[4] where you need support. I know we all, I'm  
[5] sure, are willing to work together to make  
[6] that happen.

[7] **COMMISSIONER HAUER:** Thank you.

[8] **SENATOR BALL:** Specifically on the  
[9] issue of operability and interoperability,  
[10] we've seen this as a recurring issue. And  
[11] the dollars that are spoken about are pretty  
[12] finite and small if you look at the amount  
[13] that would really be needed to fix that  
[14] overarching problem.

[15] So just from two different  
[16] perspectives, how do you see your leadership  
[17] moving forward to bridge some of the gaps  
[18] between the turf battles that have occurred  
[19] previously, where you have certain agencies  
[20] moving forward with technologies and  
[21] innovations and others not?

[22] And then how can we work together on  
[23] a more limited budget to overcome the issues  
[24] with both operability and interoperability,

[1] mandating that the locals have two different  
[2] groups of frequencies on their radios.

[3] One is the state interoperability  
[4] frequencies so all the counties, when they  
[5] provide mutual aid to other counties, are  
[6] able to talk with one another.

[7] The other is to have the federal  
[8] interoperable communications frequencies so  
[9] when we require federal assistance the  
[10] counties are able to talk with federal  
[11] assistance so that there is a seamless  
[12] transition when people move from one county  
[13] to the next or when the feds come in and move  
[14] into the state.

[15] **SENATOR BALL:** Very good. Thank you.

[16] **COMMISSIONER HAUER:** Thank you,  
[17] Senator.

[18] **CHAIRMAN FARRELL:** Thank you.  
[19] Assemblyman Lentol.

[20] **ASSEMBLYMAN LENTOL:** Thank you.  
[21] Commissioner, thank you. I must tell  
[22] you that it was a pleasure having worked with  
[23] you when I believe you worked for the  
[24] Giuliani administration in this capacity,

[1] both as emergency management, if I'm not  
[2] mistaken. And you worked very well with the  
[3] elected officials downstate. So I'm glad  
[4] that you're in this job.

[5] **COMMISSIONER HAUER:** Well, thank you.

[6] **ASSEMBLYMAN LENTOL:** This is really a  
[7] human story that I have to ask you about,  
[8] because I believe it was on a Sunday when  
[9] Tropical Storm Lee hit. And I was called on  
[10] a Sunday morning by Rabbi Nierman, who is the  
[11] rabbi in Williamsburg, who you may or may not  
[12] remember from your days in the Giuliani  
[13] administration. And the problem was that it  
[14] was rainy and windy that day -- and I don't  
[15] know if you were on the job then yet --

[16] **COMMISSIONER HAUER:** I was not.

[17] **ASSEMBLYMAN LENTOL:** But what  
[18] happened that day was an older Hasidic woman  
[19] perished in Fleischmanns, New York. She came  
[20] from Williamsburg, in Brooklyn. But she was  
[21] up there during the -- I guess it was in the  
[22] fall. And her husband had gone to synagogue  
[23] in the morning, and she didn't realize that  
[24] there was an order to evacuate. Or if she

[1] have a number of swift-water rescue systems  
[2] throughout the state. I know New York City  
[3] has excellent capability. I know how busy  
[4] they were during the storm. But we are  
[5] always ready to provide assistance to  
[6] New York City, either with additional  
[7] swift-water rescue teams or with  
[8] helicopters.

[9] One of the things Senator Ball had  
[10] talked with me about is how we would use the  
[11] counties just outside of New York City to  
[12] assist New York City in the event of a  
[13] catastrophic incident. And we are working on  
[14] how to build that capability. New York City  
[15] itself is working on a catastrophic plan.  
[16] I'll be down there in the next week or two to  
[17] get briefed on that.

[18] But Joe Bruno and I have known each  
[19] other since he was fire commissioner, when I  
[20] worked for Ed Koch and he did. And we have  
[21] got a very open line of communication. And  
[22] one of the things we're going to do is ensure  
[23] we have adequate staffing in their EOC so any  
[24] needs that the city has we will be able to

[1] knew, she wanted to stay and wait for her  
[2] husband to come back from synagogue. Of  
[3] course he never showed up because of the  
[4] order to evacuate.

[5] And I got a call, and I called the  
[6] Office of Homeland Security in an effort to  
[7] try and get a helicopter or some means to  
[8] reach her. And they did reach her, but after  
[9] she was dead.

[10] Now, my question is, is there a  
[11] better way that we can reach people in a  
[12] storm where all we have to rely upon is we  
[13] can't reach them by boat and look for  
[14] addresses? Is there a system in place that  
[15] we can have so that when the helicopters  
[16] can't fly because of the wind or the rain,  
[17] that we can get to people before they die?

[18] **COMMISSIONER HAUER:** We have a number  
[19] of swift-water rescue teams throughout the --  
[20] first, let me clarify. Are you talking about  
[21] notification systems or are you talking about  
[22] rescue systems?

[23] **ASSEMBLYMAN LENTOL:** Rescue systems.

[24] **COMMISSIONER HAUER:** Okay. We do

[1] furnish, just like we do with any county  
[2] around the state.

[3] **ASSEMBLYMAN LENTOL:** Thank you.

[4] **COMMISSIONER HAUER:** Thank you.

[5] **CHAIRMAN FARRELL:** Thank you.  
[6] Senator?

[7] **CHAIRMAN DeFRANCISCO:** Senator  
[8] Little.

[9] **SENATOR LITTLE:** Thank you,  
[10] Commissioner.

[11] And, you know, you talk about the  
[12] challenges of 2012. I hope they're not any  
[13] worse than what we had in 2011, because in my  
[14] area we had flooding April, May, the highest  
[15] level of Lake Champlain, Hurricane Irene,  
[16] Hurricane Lee, tropical storms. Unbelievable  
[17] damage. And we weren't the worst part of the  
[18] state, either.

[19] But my one question is that for many  
[20] of these communities it is financially  
[21] totally devastating. And even though we end  
[22] up qualifying for federal aid, it takes so  
[23] long to get it. Is there any way to improve  
[24] the expediting these funds and getting them

[1] to the local communities?

[2] I mean, I have a community, the very  
[3] small town of Jay, who have all kinds of  
[4] damage. And they've had to borrow \$3 million  
[5] just to get past this until their money comes  
[6] in. I have another community with a \$800,000  
[7] yearly budget and \$7 million in damage to the  
[8] roads in this rural community. So we've got  
[9] to get the money to them faster. I don't  
[10] know if there's a way or not.

[11] **COMMISSIONER HAUER:** I certainly  
[12] understand what you're saying. And things  
[13] did go a bit slow. And we have addressed  
[14] that. We have hired 200 people that are  
[15] part-time employees that, as things evolve --  
[16] and hopefully it's in a long time in the  
[17] future. But when we do have an incident  
[18] again, we will be able to put a lot of people  
[19] out there quickly to do damage assessments,  
[20] because that is the first phase in getting  
[21] the money to you.

[22] The second phase is getting those  
[23] damage assessments to FEMA. And we have been  
[24] meeting with FEMA on a regular basis, and

[11] **COMMISSIONER HAUER:** Yes, thank you,  
[12] Senator.

[13] We are working with FEMA. We will be  
[14] getting some hazard mitigation funds. We'll  
[15] be working with DEC. We've already met with  
[16] the Army Corps of Engineers. And we are  
[17] looking at the most problematic areas so we  
[18] can get into those streams and rivers and try  
[19] and get rid of debris to prevent it for the  
[20] future.

[21] Hopefully, because we haven't had a  
[22] very harsh winter and we haven't had a lot of  
[23] snow so far, the flooding won't be as bad.  
[24] But, you know, it only takes one storm with  
two to three inches of rain per hour over a  
long period of time to cause flooding again.

[17] So we are looking at the problematic  
[18] areas and we are looking at how we can do  
[19] some kind of mitigation in those areas. And  
[20] we have people out in 18 counties right now.

[21] **SENATOR LITTLE:** Thank you.

[22] **CHAIRMAN FARRELL:** Thank you.  
[23] Assemblyman Crouch.

[24] **ASSEMBLYMAN CROUCH:** Commissioner,

[11] they are flowing money into the counties and  
[12] into the state. But getting those damage  
[13] assessments done as quickly as possible is  
[14] the key to moving the money. And that's why  
[15] we added an additional hundred people to  
[16] ensure that goes quickly.

[17] **SENATOR LITTLE:** Well, thank you.  
[18] And I don't mean to be criticizing, because  
[19] the response from the state was tremendous.

[20] And the second part of my question  
[21] would just be, as we go forward, the need for  
[22] mitigation. We have rivers that have never  
[23] been cleaned out. In recent years they don't  
[24] allow that, and you have the accumulation of  
branches and leaves and stones that wash down  
in the spring. And the situation is only  
going to get worse and worse if we don't look  
at the depth of these rivers and the ability  
to sustain the snow-melt runoff and all.  
Although this year we have a lack of snow, so  
we may not have that problem.

[22] But thank you very much for the  
[23] response, and I look forward to working with  
[24] you on mitigation.

[11] thanks for being here today, and good to see  
[12] you again. We met with you when you were  
[13] down in Hunter.

[14] The majority of my district suffered  
[15] some very severe flood damage. I represent  
[16] Delaware County, most of it, Fleischmanns,  
[17] Margaretville area, and then of course down  
[18] in Broome County.

[19] First, I'd just like to say it's so  
[20] much appreciated, the coordination between  
[21] the Governor's office and the Legislature,  
[22] your office, for the response to people on  
[23] the ground, the compassion, quite frankly,  
[24] but also establishing some of the grants that  
have been now established and going out to  
some of the municipalities but even  
businesses.

[18] As far as the municipalities, there's  
[19] the Empire State Development Corporation's  
[20] website that has information on it. But  
[21] has there been direct contact to the  
[22] municipalities that will let them know, you  
[23] know, how to apply, what's going on, what's  
[24] available?

[1] **COMMISSIONER HAUER:** We have people  
[2] that are out in the field talking with all  
[3] the municipalities.

[4] Steve Curr, the deputy commissioner  
[5] and director of OEM, has personally been out  
[6] meeting with the municipalities, meeting with  
[7] the emergency management directors to give  
[8] them updates. And he and his staff have been  
[9] out there as well as FEMA have been out there  
[10] ensuring that they understand the  
[11] information.

[12] The municipalities know to contact us  
[13] about the different grant flows. But we've  
[14] also been very aggressive in getting out to  
[15] meet with them.

[16] **ASSEMBLYMAN CROUCH:** Good. Good.

[17] Just one other thing. During the  
[18] last storm, Tropical Storm Lee -- well, even  
[19] during Hurricane Irene there was swiftboats  
[20] rescue that attempted to go into  
[21] Fleischmanns. And again, that's my  
[22] community. I was aware of that at the time.  
[23] That Sunday morning I was in contact with the  
[24] Governor's representative and the local EOC

[1] interoperable capability, the ability to  
[2] communicate with these teams should be  
[3] easier.

[4] The other thing we're trying to  
[5] develop is a mechanism -- and this is one of  
[6] my highest priorities -- so that we can talk  
[7] statewide to teams out in the field. And we  
[8] are looking at ways to do that without adding  
[9] a lot of new infrastructure.

[10] We're meeting with different cell  
[11] carriers, particularly Verizon, which covers  
[12] almost all the state, to look at voice-over  
[13] ID so that we can possibly talk to these  
[14] units in the field and give them real-time  
[15] information on how best to get somewhere, and  
[16] what is open, what's closed, and where  
[17] they're needed.

[18] **ASSEMBLYMAN CROUCH:** That would be  
[19] crucial.

[20] **COMMISSIONER HAUER:** I think the  
[21] Governor's office and the agency did a great  
[22] job. I think this was an unprecedented  
[23] disaster for this state and outside of 9/11,  
[24] it will go down as the second-largest

[1] people out there.

[2] The following week we had Tropical  
[3] Storm Lee and there was some swiftboat rescue  
[4] teams being deployed in certain areas. And I  
[5] know there was a team that was brought down  
[6] from Watertown and subsequently deployed back  
[7] up around to Plattsburgh. A couple of times  
[8] I've heard and talked to one of the people  
[9] that was on that specific crew that they  
[10] spent a tremendous amount of time trying to  
[11] find a way to get there. They didn't seem to  
[12] have real-time information about what roads  
[13] were open, what roads were available.

[14] And while DOT seems to have some  
[15] fairly good information, I would expect that  
[16] there's some kind of coordination between  
[17] DOTs -- other than calling 511 or something  
[18] like that, is there a technology being  
[19] provided that it's real-time in the car, on  
[20] the move, that these swiftboat teams can make  
[21] the maximum use of their time to get to the  
[22] disaster scene as fast as possible?

[23] **COMMISSIONER HAUER:** There's nothing  
[24] real-time in the cars. But with the

[1] disaster in the state's history. And  
[2] considering the number of counties that were  
[3] impacted, the wide area, I think that things  
[4] were handled extremely well.

[5] **ASSEMBLYMAN CROUCH:** They certainly  
[6] were.

[7] **COMMISSIONER HAUER:** Could there be  
[8] improvement? I think in any disaster  
[9] response you could look to improve. But  
[10] that's why we do after-action reports and try  
[11] and understand what we can do better.

[12] **ASSEMBLYMAN CROUCH:** Thank you,  
[13] Commissioner. My comments are entirely meant  
[14] to be constructive, and I certainly --

[15] **COMMISSIONER HAUER:** Understood.

[16] **ASSEMBLYMAN CROUCH:** -- certainly  
[17] appreciate the response of your team and so  
[18] forth. And again, thank you for being here.

[19] **COMMISSIONER HAUER:** I didn't take  
[20] them any other way. Thank you, sir.

[21] **CHAIRMAN DeFRANCISCO:** Thank you.  
[22] And thank you for being so responsive in  
[23] meeting with the people in my district on the  
[24] issues that we talked about.

[1] I just have one question. And that  
[2] is the general share of funds for disasters,  
[3] 75 percent federal, 12.5 state, 12.5 local.  
[4] I know there's a bill in the Senate to  
[5] consider taking over the local share.

[6] Has there been any talk in the  
[7] administration at this point whether that's  
[8] something that the administration might  
[9] consider or might support? In view of the --  
[10] not my district, but other districts'  
[11] devastation that the local districts  
[12] experienced and their inability to pay for  
[13] it.

[14] **COMMISSIONER HAUER:** Well, the  
[15] Governor has been very aware of this, and it  
[16] is something that he's trying to address. As  
[17] you know, \$20 million was set aside to pick  
[18] up part of the local share. And that money  
[19] is in one of the bills, and that will help to  
[20] a degree with the local share.

[21] The other thing we're trying to do  
[22] with locals is ensure that they have  
[23] accounted for all their volunteer services,  
[24] because the local volunteer services and

[1] ability to answer questions. That's  
[2] wonderful.

[3] You're on.

[4] **ACTING COMMISSIONER BYRNE:** Good  
[5] morning, Chairman DeFrancisco, Chairman  
[6] Farrell, and distinguished members of the  
[7] Senate Finance and Assembly Ways and Means  
[8] Committees. I'm Sean Byrne, acting  
[9] commissioner of the DCJS.

[10] Thank you for inviting me to be here  
[11] today. It's truly a pleasure to have an  
[12] opportunity to meet with you.

[13] Governor Cuomo's budget for fiscal  
[14] year 2012-2013 builds upon the successes of  
[15] last year by continuing our fiscal discipline  
[16] and spending restraint while taking our  
[17] reform efforts to the next level. My  
[18] testimony today will focus on how the  
[19] Governor's budget advances three of his  
[20] priorities: reducing violent crime, reducing  
[21] reoffending, and continuing our efforts to  
[22] improve state operations.

[23] First I would like to talk to you  
[24] about how we will meet the Governor's

[1] donations can be used to offset the local  
[2] share. So as we've been out talking with the  
[3] locals, we are emphasizing the need to  
[4] account for all these services so they can  
[5] use that to offset what is their share.

[6] **CHAIRMAN DeFRANCISCO:** Great, thank  
[7] you. Thank you very much. And all of us  
[8] will be looking forward to working with you.  
[9] And thank you again for your service.

[10] **CHAIRMAN FARRELL:** Thank you.

[11] **COMMISSIONER HAUER:** Well, thank  
[12] you. I look forward to working with all of  
[13] you. Thank you.

[14] **CHAIRMAN DeFRANCISCO:** The next  
[15] speaker is Sean Byrne, acting commissioner of  
[16] the New York State Division of Criminal  
[17] Justice Services.

[18] I've noticed, with all the speakers,  
[19] in prior years there were entourages. It was  
[20] like a rock star would come out and there  
[21] would be an entourage in all the seats. And  
[22] you can show that government is truly  
[23] downsizing and slimming its ranks. And we  
[24] have people that are confident in their

[1] commitment to reduce violent crime. No  
[2] initiative has more potential to reduce  
[3] violent crime than the proposal to expand the  
[4] DNA databank.

[5] DNA is an exceptionally powerful law  
[6] enforcement tool that contributes to  
[7] convicting the guilty, exonerates the  
[8] wrongfully convicted, and excludes the  
[9] innocent from suspicion. DNA can also  
[10] breathe new life into cases whose trail of  
[11] evidence went cold decades ago.

[12] Since the inception of the DNA  
[13] databank in 1996, there have been more than  
[14] 10,000 hits against the databank. Just as  
[15] important, countless suspects are routinely  
[16] excluded from suspicion and 27 individuals  
[17] have been exonerated in New York State  
[18] through DNA evidence.

[19] Unfortunately, we are not realizing  
[20] the databank's full potential. No one knows  
[21] how many exonerations go unrealized and how  
[22] many violent crimes go unresolved due to the  
[23] current limitations in our laws.

[24] Governor Cuomo's budget would change

[1] this by expanding the databank to include  
[2] convictions for all felonies under the laws  
[3] of New York as well as convictions for  
[4] misdemeanors defined in the Penal Law.

[5] Continuing with violent crime,  
[6] preliminary data shows that all crime,  
[7] including violent crime, declined in New York  
[8] State in 2011, with the largest recorded drop  
[9] in homicides. When final figures are in, it  
[10] is projected that through 2011 New York State  
[11] will report more than a 10 percent reduction  
[12] in homicide compared to 2010. Homicides will  
[13] be at the lowest number reported since  
[14] statewide crime reporting began 37 years ago.

[15] The success of Operation IMPACT and  
[16] the growing sophistication of regional crime  
[17] analysis centers played a vital part in that  
[18] dramatic reduction. Funding for the 17  
[19] Operation IMPACT sites and the crime analysis  
[20] centers located in Albany, Buffalo,  
[21] Rochester, and Syracuse will be continued at  
[22] the same levels as last year.

[23] One of the most effective ways,  
[24] however, to break the cycle of crime is to

[1] departments, local Alternatives to  
[2] Incarceration programs, and County Reentry  
[3] Task Forces continues at the same levels  
[4] funded in fiscal year 2011-2012.

[5] The Executive Budget also recommends  
[6] an increase in funding of \$530,000 to provide  
[7] payments to counties for costs associated  
[8] with district attorney minimum salary  
[9] increases, which are tied to judicial  
[10] compensation increases scheduled to take  
[11] effect April 1, 2012.

[12] In sum, Governor Cuomo's public  
[13] safety budget builds on the success of last  
[14] year by continuing our fiscal discipline and  
[15] spending restraint while making our  
[16] government operations more efficient and  
[17] effective.

[18] The Governor's budget is designed to  
[19] continue the historic progress we have made  
[20] in reducing crime, recognizing that when we  
[21] invest in initiatives that drive down crime  
[22] there is a ripple-effect return on that  
[23] investment. Fewer crimes mean fewer crime  
[24] victims, which mean fewer hospital bills,

[1] reduce reoffending by helping former  
[2] offenders to successfully integrate into  
[3] their communities. The 2012-2013 Executive  
[4] Budget continues to support programs that  
[5] will improve offender outcomes in several  
[6] ways.

[7] First, the Governor's budget advances  
[8] legislation which would give sentencing  
[9] judges greater discretion when setting the  
[10] length of a probation sentence. This  
[11] legislation would authorize a judge to impose  
[12] a period of probation of either three, four  
[13] or five years for a felony conviction and a  
[14] period of probation of either two or three  
[15] years for a Class A misdemeanor conviction,  
[16] bringing New York State's probation laws in  
[17] line with the national average.

[18] Second, the Governor's budget would  
[19] also extend three critical community programs  
[20] which provide jobs for ex-offenders. Our  
[21] research has consistently shown that  
[22] employment makes the biggest difference in  
[23] reducing the odds of reoffending.

[24] Last, funding for county probation

[1] less strain on the insurance industry, fewer  
[2] people on parole and probation, and fewer  
[3] people in our jails and prisons. It means  
[4] businesses can operate safely and people can  
[5] work and shop in our cities without fear.

[6] Thank you. I'd be glad to answer any  
[7] questions you might have.

[8] **CHAIRMAN DeFRANCISCO:** Thank you.  
[9] Senator Saland.

[10] **SENATOR SALAND:** Thank you,  
[11] Mr. Chairman.

[12] Thank you very much,  
[13] Commissioner Byrne. I just have a couple of  
[14] questions on a couple of subject areas.

[15] One of the things that concerns me,  
[16] you made reference to an additional \$530,000  
[17] for district attorney salaries to compensate  
[18] for the anticipated increase in judicial  
[19] salaries which can take effect as of  
[20] April 1st of this year. Can you tell me how  
[21] you arrived at that?

[22] Because given the fact that we are  
[23] required to provide funding to maintain the  
[24] difference in salary between whatever the DAs



[1] were making when that law was enacted  
[2] sometime back in the 1980s and the County  
[3] Court salary, I'm just puzzled as to how  
[4] \$530,000 is going to cover all those  
[5] salaries.

[6] **ACTING COMMISSIONER BYRNE:** Yes,  
[7] Senator. How the number was arrived at, we  
[8] took last year's base appropriation and then  
[9] calculated the differential between the  
[10] salaries currently in effect and to come into  
[11] effect on April 1st, and provided funding  
[12] roughly equal to 40 percent of that  
[13] differential.

[14] **SENATOR SALAND:** Why 40 percent?

[15] **ACTING COMMISSIONER BYRNE:** That was  
[16] the amount of money that we could provide for  
[17] this initiative in the current environment.  
[18] We weren't -- that's it.

[19] **SENATOR SALAND:** Did not the original  
[20] enabling legislation require the state to  
[21] hold the counties harmless for the  
[22] difference?

[23] **ACTING COMMISSIONER BYRNE:** Would you  
[24] repeat that, please?

[1] the state over a base set as determined by  
[2] the salaries of district attorneys at a  
[3] specific year.

[4] **SENATOR SALAND:** So am I then  
[5] incorrect in my assumption that that means  
[6] we're supposed to be holding the counties  
[7] harmless? Is this a change in the formula  
[8] from previous years?

[9] **ACTING COMMISSIONER BYRNE:** This is a  
[10] change in the formulas from previous years,  
[11] yes, Senator.

[12] **SENATOR SALAND:** So then this could  
[13] safely be called an unfunded mandate imposed  
[14] upon counties vis-a-vis what the law had been  
[15] previously.

[16] **ACTING COMMISSIONER BYRNE:** We funded  
[17] \$537,000 dollars of the salary change,  
[18] Senator, in the budget.

[19] **SENATOR SALAND:** Thank you.

[20] Just one other question, or one other  
[21] area. You made reference to a proposed  
[22] change in probation, the manner by which  
[23] probation would be administered, and you're  
[24] looking at providing alternatives, three,

[1] **SENATOR SALAND:** The question was,  
[2] did not the original enabling legislation  
[3] require the state to hold the counties  
[4] harmless for the difference in salary  
[5] between, again, whatever that base was at the  
[6] time it was enacted and whatever would be the  
[7] pay received or salary received by a  
[8] County Court judge?

[9] **ACTING COMMISSIONER BYRNE:** The  
[10] Executive Law links the compensation for  
[11] district attorneys to the salaries set in the  
[12] Judiciary Law and says that the state shall  
[13] fund the increase over a certain base year  
[14] when the Executive Law provision was entered  
[15] into the statutes.

[16] **SENATOR SALAND:** I'm sorry, if you  
[17] could speak into your -- you said "the  
[18] Executive Law," and I lost you. If you could  
[19] speak into your mic.

[20] **ACTING COMMISSIONER BYRNE:** Sure.

[21] The Executive Law links the salaries  
[22] for district attorneys to funding for judges  
[23] in the Judiciary Law and says that any  
[24] increase in the funding shall be funded by

[1] four and five years for felonies, two and  
[2] three for misdemeanors.

[3] **ACTING COMMISSIONER BYRNE:** Yes.

[4] **SENATOR SALAND:** If my memory serves  
[5] me correctly, that is very similar to a  
[6] proposal that New York City had last year.

[7] The difference between this proposal  
[8] and that proposal was that under the New York  
[9] City proposal, if the probationer violated  
[10] the terms of their probation, they could be  
[11] subject to the original five or  
[12] reincarcerated, obviously -- but the original  
[13] five or the three or, again, reincarcerated.

[14] Is there a reason why in this  
[15] proposal we chose or you chose or the  
[16] Executive chose to omit that additional  
[17] proviso?

[18] **ACTING COMMISSIONER BYRNE:** This  
[19] proposal was not fashioned after the New York  
[20] City bill that you give reference to. This  
[21] proposal -- you undoubtedly know that in  
[22] New York State, Class A misdemeanants get a  
[23] probation term of three years and felons get  
[24] a probation term of five years.

[1] So this proposal was intended to give  
[2] judges in New York State discretion to impose  
[3] a term of three, four, or five years for  
[4] felons and two or three years for Class A  
[5] misdemeanants. Probation terms in New York  
[6] State are already significantly longer than  
[7] the national average, the national average  
[8] being about three years.

[9] If there is a violation, which I  
[10] believe is the thread of what you were  
[11] getting to on the New York City piece -- that  
[12] if there's a violation of probation, the  
[13] sentencing court judge will have full  
[14] discretion as he, or she always has had, to  
[15] violate the terms of that offender's  
[16] probation. That of course can carry with it  
[17] placement in incarceration.

[18] **SENATOR SALAND:** Thank you.

[19] **CHAIRMAN FARRELL:** Thank you.  
[20] Joe Lentol.

[21] **ASSEMBLYMAN LENTOL:** Good morning,  
[22] Commissioner.

[23] By the way, when is the "Acting"  
[24] coming off your name?

[1] process the number of samples.

[2] There will be incremental costs.  
[3] That's why the budget has an appropriation of  
[4] \$700,000 to fund the incremental costs of  
[5] introduction of this bill on October 1st of  
[6] 2012. The money would go to pay for staff at  
[7] DCJS, three persons, to validate the results  
[8] of the DNA testing done at the State Police  
[9] and the other DNA labs in the state. Plus it  
[10] will go for things like additional DNA kits  
[11] and for postage costs. Finally, there is  
[12] some money in it for increased costs by  
[13] members of the Division of State Police.

[14] **ASSEMBLYMAN LENTOL:** Well, I don't  
[15] know if it was the last time in 2006 when we  
[16] did legislative expansion of the DNA  
[17] database, an outside contractor was required  
[18] in order to get it done and to get it done in  
[19] a timely fashion. But this additional  
[20] expansion you believe can be done without  
[21] that?

[22] **ACTING COMMISSIONER BYRNE:** No, sir,  
[23] there will be no need for an outside vendor  
[24] to do any work with the introduction of this

[1] **ACTING COMMISSIONER BYRNE:** The  
[2] Governor has been terrific to me,  
[3] Assemblyman. I'm perfectly content.

[4] **ASSEMBLYMAN LENTOL:** I just wanted to  
[5] make a request that that be done as  
[6] expeditiously as possible.

[7] I guess you led with DNA, and I  
[8] really want to talk about DNA because you may  
[9] or may not know that I have a bill to expand  
[10] the DNA database, a little bit different from  
[11] the bill in the Senate.

[12] And although I would like to talk  
[13] about that, I wanted to ask you, first and  
[14] foremost, will the annual collection and  
[15] processing of an additional 46,000 DNA  
[16] samples require the hiring of additional  
[17] personnel?

[18] **ACTING COMMISSIONER BYRNE:** The State  
[19] Police's DNA designated offender system  
[20] has the capacity to handle 10,000 samples per  
[21] year. It currently handles 3,500 samples.  
[22] It's expected that when this legislation  
[23] passes the number will go to 7,000. So the  
[24] capacity currently exists to handle and

[1] bill. This bill is not retroactive. This  
[2] bill is prospective only.

[3] **ASSEMBLYMAN LENTOL:** Rockefeller Drug  
[4] Law reform. I wanted to ask this question,  
[5] and it may not be fair of me to ask it of  
[6] you. I wanted to ask it of Judge Prudenti.

[7] I have gotten complaints since we've  
[8] enacted Rockefeller Drug Law reform from  
[9] people who tell me that the system is not  
[10] working the way we planned. The crown jewel  
[11] of our legislation, we thought, was to allow  
[12] judges to have discretion in determining  
[13] people, who would otherwise not be eligible  
[14] by the standard of the district attorney in  
[15] the case, for diversion and treatment.

[16] And so my question is, what we have  
[17] heard is that the judges are not allowing  
[18] themselves to be independent. They're  
[19] following the lead of DAs in most cases, and  
[20] only the DAs, and not taking an original  
[21] position of taking a defendant who's before  
[22] them and diverting that defendant because  
[23] it's a good thing to do in the case.

[24] I don't know if you've examined

[1] that. You're not the Chief Judge of the  
[2] State of New York, but you are the acting --  
[3] unfortunately -- commissioner of Division of  
[4] Criminal Justice Services. Is that your  
[5] experience?

[6] **ACTING COMMISSIONER BYRNE:** I'm going  
[7] to have to defer, Assemblyman. I can't speak  
[8] to the judicial impact.

[9] I do want to, though, tell you two or  
[10] three real quick things. One, the use of  
[11] Drug Courts has doubled since the law has  
[12] taken effect, and that's had a very positive  
[13] impact.

[14] In addition, in the three short years  
[15] since the law was passed, there's been a  
[16] 37 percent reduction in the number of drug  
[17] offenders in state prison.

[18] In addition, there's been a  
[19] significant reduction in drug arrests  
[20] statewide since the passage of that  
[21] legislation. I think the decline is nothing  
[22] less than remarkable. From a high of  
[23] 23,500 offenders under custody for drug  
[24] offenses we're now down to 7500. That's a

[1] funds made available not only for programs  
[2] but also for reentry-type programs in  
[3] addition to alternatives to incarceration  
[4] programs.

[5] And it was my fear and the fear of  
[6] many that once that money ran out, that the  
[7] bottom could very well fall out of  
[8] Rockefeller Drug Law reform because it could  
[9] basically fail as a result of not having  
[10] sufficient money to fund those programs. But  
[11] that's not been your experience?

[12] **ACTING COMMISSIONER BYRNE:** The  
[13] budget we provided to you continues funding  
[14] for those employment programs at least  
[15] through December 2012, if not for the entire  
[16] fiscal year.

[17] The ARRA funds do in fact run out in  
[18] February of 2013. So that will be something  
[19] that will be a matter for next year.

[20] **ASSEMBLYMAN LENTOL:** Thank you, sir.

[21] **CHAIRMAN DeFRANCISCO:** Senator  
[22] Hassell-Thompson.

[23] **SENATOR HASSELL-THOMPSON:** Thank you,  
[24] Mr. Chairman.

[1] remarkable change.

[2] **ASSEMBLYMAN LENTOL:** And of course I  
[3] have to ask you to what extent the  
[4] Executive Budget provides continued support  
[5] for drug law reform programs.

[6] **ACTING COMMISSIONER BYRNE:** The  
[7] Executive Budget continues funding for our  
[8] community-based alternatives to incarceration  
[9] at last year's level. That would include, of  
[10] course, probation, but also alternatives to  
[11] incarceration and the reentry projects.

[12] In addition, there are significant  
[13] employment program funds in the budget. Our  
[14] research, and frankly national research has  
[15] established that employment, a job, is one of  
[16] the biggest if not the biggest factor in  
[17] avoiding reoffending. And we've provided  
[18] significant funds in this budget to ensure  
[19] that employment programs for formerly  
[20] incarcerated persons and diverted persons  
[21] across the state will be available.

[22] **ASSEMBLYMAN LENTOL:** Well, we know  
[23] that previously, under the stimulus program  
[24] or the American Recovery Act, that there were

[1] Commissioner Byrne, I have several  
[2] questions, if you will. You talked about how  
[3] many samples have been collected and are  
[4] currently in the database. Now, "currently"  
[5] also speaks to retention. So there are a  
[6] couple of questions that I'm a little  
[7] confused about.

[8] How long do you normally keep these  
[9] samples?

[10] **ACTING COMMISSIONER BYRNE:** A  
[11] convicted offender sample is maintained in  
[12] the databank permanently. If an offender's  
[13] conviction is reversed or overturned, there  
[14] is a process for the removal of that sample  
[15] from the databank.

[16] **SENATOR HASSELL-THOMPSON:** Okay,  
[17] good. Because that was one of my follow-up  
[18] questions. Okay, so you answered that. That  
[19] was my second question.

[20] Is there a process in place for the  
[21] elimination of duplication of samples before  
[22] a sample is introduced into the database?

[23] **ACTING COMMISSIONER BYRNE:** If I'm  
[24] understanding your question correctly, if a

[1] sample comes in and that offender already has  
[2] a sample on file at the databank, the process  
[3] is not repeated. There is not a duplication  
[4] of the testing process.

[5] **SENATOR HASSELL-THOMPSON:** What is a  
[6] familial or partial-match DNA database  
[7] search?

[8] **ACTING COMMISSIONER BYRNE:** They're  
[9] two different things. Partial --

[10] **SENATOR HASSELL-THOMPSON:** I know.  
[11] What are they?

[12] **ACTING COMMISSIONER BYRNE:** -- match  
[13] is one and familial is another.

[14] Partial-match DNA, which is  
[15] authorized in New York State, happens when a  
[16] DNA scientist is testing a sample and,  
[17] instead of coming up with an exact match for  
[18] the 13 loci that we search for, that  
[19] scientist comes up with something less, 12 or  
[20] 11 loci. It's an inadvertent near hit, but  
[21] it's inadvertent. It happens very, very  
[22] rarely.

[23] In the past we required those  
[24] scientists not to disclose to the police

[1] test so that you will capture a larger  
[2] universe of persons instead of the very  
[3] person that you're going for.

[4] We don't do that in New York State.  
[5] **SENATOR HASSELL-THOMPSON:** I won't  
[6] challenge that answer.

[7] Given the cost to the convicted  
[8] individual -- it's \$50 -- how much of the DNA  
[9] fee is collected by the state and then used  
[10] in the General Fund under existing law?

[11] **ACTING COMMISSIONER BYRNE:** Can you  
[12] repeat that, please?

[13] **SENATOR HASSELL-THOMPSON:** Given the  
[14] cost to the convicted individual, it's \$50,  
[15] how much of the DNA fee collected by the  
[16] state is used by the General Fund under  
[17] existing law?

[18] **ACTING COMMISSIONER BYRNE:** I don't  
[19] know the exact dollar amount, Senator.

[20] **SENATOR HASSELL-THOMPSON:** Is there a  
[21] percentage?

[22] **ACTING COMMISSIONER BYRNE:** All of  
[23] it.

[24] **SENATOR HASSELL-THOMPSON:** All of it

[1] that. That was changed, and now they're  
[2] allowed to disclose.

[3] Familial searching, which is --  
[4] **SENATOR HASSELL-THOMPSON:** Go back  
[5] for a second. It was withheld before. Why  
[6] was the decision to withhold changed?

[7] **ACTING COMMISSIONER BYRNE:** There was  
[8] no regulatory avenue for the scientist to  
[9] disclose the results, for basically DCJS and  
[10] State Police to disclose the results of the  
[11] test.

[12] So regulations were enacted on the  
[13] recommendation of the DNA subcommittee. The  
[14] DNA subcommittee is an entity that was  
[15] established by state legislation and makes  
[16] binding recommendations to the Commission on  
[17] Forensic Sciences. And the Commission on  
[18] Forensic Sciences adopts the regulations on  
[19] the strength of the DNA subcommittee's  
[20] recommendations.

[21] Now, to get back to the other half of  
[22] your question, on familial searching.  
[23] Familial searching contemplates consciously  
[24] lowering the level of stringency of a DNA

[1] goes into the General Fund.

[2] **ACTING COMMISSIONER BYRNE:** All of it  
[3] goes to state purposes, Senator. I don't  
[4] know the exact dollar amount, though, of what  
[5] that comes to.

[6] **SENATOR HASSELL-THOMPSON:** Okay. Are  
[7] there any proposed funding streams for  
[8] municipalities in the Executive Budget to  
[9] assist or mitigate the local impact for the  
[10] administrative cost counties will bear to  
[11] staff the collection and retention of the  
[12] estimated high volume of DNA samples?

[13] **ACTING COMMISSIONER BYRNE:** The aid  
[14] to crime laboratories that is in the budget  
[15] was maintained at exactly the same level as  
[16] it was last year. So that the funding to the  
[17] eight DNA laboratories should remain level.

[18] **SENATOR HASSELL-THOMPSON:** Are there  
[19] any statewide quality assurance practices for  
[20] the administration or the collection of DNA  
[21] samples other than the actual testing of  
[22] samples by State Police?

[23] **ACTING COMMISSIONER BYRNE:** Yes,  
[24] Senator. There's an accreditation process

[11] where outside inspectors come in and accredit  
[12] the forensic laboratories in New York State.  
[13] In this particular instance, since we're  
[14] speaking of DNA, that's ASCLD/LABs. And  
[15] ASCLD/LABs is a nationally recognized  
[16] accrediting agency.

[17] New York State was the first state in  
[18] the nation to require accreditation of its  
[19] laboratories and today is only one of five  
[100] states in the nation that require  
[111] accreditation of their laboratories. That  
[122] accreditation process includes  
[133] quality-control processes.

[144] **SENATOR HASSELL-THOMPSON:** How will  
[155] access for the exoneration of wrongfully  
[166] convicted individuals be provided for under  
[177] the Executive proposal?

[188] **ACTING COMMISSIONER BYRNE:**  
[199] Wrongfully convicted individuals go to the  
[200] court system, and the court system is the  
[211] vehicle with which they can have their  
[222] samples tested to determine whether or not  
[233] they were mistakenly identified earlier.  
[244] That should continue.

[11] we're not putting excessive demands on the  
[12] counties that we're really not -- you know,  
[13] particularly when we talk about flat aid, as  
[14] you've just stated.

[15] If you increase the numbers of DNA  
[16] samples, how is that flat aid going to help  
[17] municipalities? That's my question.

[18] **ACTING COMMISSIONER BYRNE:** Now I  
[19] understand your question.

[100] Okay, there's \$700,000 in the budget,  
[111] I believe I mentioned it before, to provide  
[122] the supplies that the localities will need in  
[133] order to do the buccal swab testing. The  
[144] buccal swab testing is little more than a  
[155] Q-tip on the inside of a cheek. It takes  
[166] seconds, literally.

[177] And then the sample is mailed into  
[188] the Division of State Police, where the  
[199] testing is done on all designated offender  
[200] samples at the Division of State Police. And  
[211] then the costs for the increased increment in  
[222] workload for the Division of State Police is  
[233] covered in that \$700,000.

[244] **SENATOR HASSELL-THOMPSON:** This is

[11] **SENATOR HASSELL-THOMPSON:** Does the  
[12] defense have access to -- I guess the  
[13] question really is, does the defense have  
[14] access to the DNA?

[15] **ACTING COMMISSIONER BYRNE:** The  
[16] defense does not have direct access to the  
[17] DNA databank. Access is controlled by the  
[18] court system to the databank system.

[19] **SENATOR HASSELL-THOMPSON:** This  
[100] question is not here by accident, so I'm not  
[111] sure that I -- I'm not sure that that answer  
[122] is as accurate as I'd like to believe it is.

[133] Okay. With the expansion of the DNA  
[144] database and the estimated collection of at  
[155] least 46,000 samples, is there any money  
[166] that's filtered to programs and needs other  
[177] than the aid that you've discussed?

[188] **ACTING COMMISSIONER BYRNE:** Any money  
[199] for programs and needs --

[200] **SENATOR HASSELL-THOMPSON:** In other  
[211] words, you know, my question before was about  
[222] assistance and additional aid to counties.  
[233] Because again, we keep talking about mandated  
[244] relief and so that we want to be sure that

[11] not a prepared question, but I hope it will  
[12] come out correctly. You know, there had been  
[13] such a backlog in fingerprinting for taxi  
[14] drivers and some others who were attempting  
[15] to get licensure. You know, what can we do  
[16] to guarantee that we won't have the same kind  
[17] of backlog with DNA?

[18] **ACTING COMMISSIONER BYRNE:** Senator,  
[19] there is not a backlog on our part with the  
[100] fingerprinting of taxicab drivers. All  
[111] criminal prints are processed in less than  
[122] 15 minutes. And all civil prints, which  
[133] would be taxicab drivers, are processed in  
[144] New York State in less than 24 hours. All of  
[155] them.

[166] **SENATOR HASSELL-THOMPSON:** And yet it  
[177] takes an inordinate amount of time for that  
[188] information somehow to get back to  
[199] localities. That's a fact.

[200] **ACTING COMMISSIONER BYRNE:** I  
[211] can't --

[222] **SENATOR HASSELL-THOMPSON:** But I  
[233] don't want to argue that here.

[244] But I don't want this budget to

[1] hinder the speed with which this process  
[2] occurs. While there's a great preponderance  
[3] of people in this audience that are concerned  
[4] about the convictions, as obviously I am, I'm  
[5] more concerned about the ability to  
[6] exonerate.

[7] So I want to be sure that there is no  
[8] limited access on the part of the defense or  
[9] anyone else involved in a case to have access  
[10] to the same information in the same timely  
[11] fashion. And so if we need to mitigate or  
[12] move legislation that does that, then that's  
[13] my aim and objective.

[14] **ACTING COMMISSIONER BYRNE:**  
[15] Understood.

[16] **SENATOR HASSELL-THOMPSON:** Thank you.  
[17] No more questions.

[18] **CHAIRMAN DeFRANCISCO:** Thank you.  
[19] We've been joined by Senator Ritchie.

[20] **CHAIRMAN FARRELL:** Jeff Aubry.

[21] **ASSEMBLYMAN AUBRY:** Good morning,  
[22] Commissioner.

[23] **ACTING COMMISSIONER BYRNE:** Good  
[24] morning.

[1] to that?

[2] **ACTING COMMISSIONER BYRNE:** That  
[3] money is good through end of February 2013.

[4] **ASSEMBLYMAN AUBRY:** Operation SNUG,  
[5] there's no funding for Operation SNUG in the  
[6] Governor's budget?

[7] **ACTING COMMISSIONER BYRNE:** Five  
[8] programs received funding for continuation of  
[9] SNUG programs.

[10] **ASSEMBLYMAN AUBRY:** At the same level  
[11] as last year. And what are those programs?

[12] **ACTING COMMISSIONER BYRNE:** There's  
[13] one program in Albany, one program in  
[14] Niagara Falls. I believe Brownsville is the  
[15] third one -- I'm sorry, Brooklyn. The  
[16] Mission Society in Manhattan, and Yonkers.  
[17] Not Brownsville, my mistake.

[18] **ASSEMBLYMAN AUBRY:** Are you aware of  
[19] the issues related to stop-and-frisk in the  
[20] City of New York?

[21] **ACTING COMMISSIONER BYRNE:** Yes.

[22] **ASSEMBLYMAN AUBRY:** And has the  
[23] division taken a look at that program in any  
[24] way to evaluate its impact on crime relative

[1] **ASSEMBLYMAN AUBRY:** In your testimony  
[2] you --

[3] **CHAIRMAN DeFRANCISCO:** Excuse me, and  
[4] Senator Montgomery. I had a lapse there.

[5] **ASSEMBLYMAN AUBRY:** You indicated  
[6] that the budget extends three critical  
[7] community programs providing jobs for  
[8] ex-offenders. At what level is that? Is  
[9] that the same level as last year, additional  
[10] funds, or less?

[11] **ACTING COMMISSIONER BYRNE:** It is  
[12] additional ARRA funds for the continuation of  
[13] programs run by the Center for Employment  
[14] Opportunities, the Fortune Society and the  
[15] Osborne Association. These organizations  
[16] provide critical employment opportunities  
[17] upon reentry for ex-offenders.

[18] **ASSEMBLYMAN AUBRY:** And ARRA is the  
[19] federal dollars that are ending?

[20] **ACTING COMMISSIONER BYRNE:**  
[21] The American Recovery and Reinvestment Act,  
[22] right.

[23] **ASSEMBLYMAN AUBRY:** And when will  
[24] that money run out? When will we lose access

[1] to increasing or addressing it?

[2] **ACTING COMMISSIONER BYRNE:** We  
[3] haven't taken a look at that program and its  
[4] impact on crime. Have not.

[5] **ASSEMBLYMAN AUBRY:** And is that  
[6] beyond your capacity to do?

[7] **ACTING COMMISSIONER BYRNE:** I don't  
[8] know -- is it beyond our capacity? It may  
[9] be. It's a huge undertaking. It's also a  
[10] factor of whether or not we can get written  
[11] records of who gets stopped and where and  
[12] when, and I don't think those exist.

[13] **ASSEMBLYMAN AUBRY:** In your  
[14] understanding, is there anything about that  
[15] program that might alarm you that would cause  
[16] you to want to look at its impact relative to  
[17] particularly the racial disparity that seems  
[18] to exist in who gets stopped and who gets  
[19] frisked?

[20] **ACTING COMMISSIONER BYRNE:** I'm going  
[21] to have to say, Assemblyman, that I don't  
[22] know enough to give you a fair answer to that  
[23] question.

[24] **ASSEMBLYMAN AUBRY:** As a driver of --

[1] at least contended by the city as a driver of  
[2] crime reduction, so the city contends,  
[3] wouldn't that be something that you'd want to  
[4] look at to determine whether or not it's true  
[5] or not? If in fact we are in the business of  
[6] trying to drive crime down.

[7] I'm a little bit amazed that one  
[8] wouldn't have -- with what seems to be such  
[9] remarkable success, regardless of how I might  
[10] feel about it, that we in the state would not  
[11] want to look at it relative to whether or not  
[12] it is in fact what it's claimed to be and  
[13] what impacts it has on the populations that  
[14] it's affected by.

[15] So again, is that something that the  
[16] administration has no concern about?

[17] **ACTING COMMISSIONER BYRNE:** I know,  
[18] Assemblyman, that the program has been  
[19] studied by numerous organizations in New York  
[20] City. And I can say that DCJS does not  
[21] currently have a study going on about the  
[22] stop-and-frisk program.

[23] **ASSEMBLYMAN AUBRY:** Thank you.  
[24] **CHAIRMAN DeFRANCISCO:** Senator

[1] who have convictions, formerly incarcerated  
[2] people who have felonies are not allowed to  
[3] be employed.

[4] And I'm just wondering if you have  
[5] looked at that long list where people now are  
[6] not able to be employed and to make some  
[7] comments and recommendations to us as it  
[8] regards removing some of those barriers to  
[9] employment. Because that becomes a huge  
[10] problem for people who are returning to their  
[11] communities and were unable to do certain  
[12] kinds of work.

[13] So I would be very interested in  
[14] hearing from you what you think we should be  
[15] doing to remove those barriers.

[16] **ACTING COMMISSIONER BYRNE:** Well, as  
[17] you know, two years ago a bill got passed by  
[18] both houses of the Legislature that expanded  
[19] employment opportunities for formerly  
[20] incarcerated persons. And that has had a  
[21] very important impact in opening up parts of  
[22] the restaurant and hotel industry, where  
[23] previously those employment opportunities  
[24] were not available.

[1] Montgomery.

[2] **SENATOR MONTGOMERY:** Thank you. Good  
[3] morning.

[4] **ACTING COMMISSIONER BYRNE:** Good  
[5] morning, Senator.

[6] **SENATOR MONTGOMERY:** I'm happy to see  
[7] you and very pleased with certainly the fact  
[8] that you have talked about in your comments,  
[9] in your statement to us, your emphasis on  
[10] reducing reoffending.

[11] And you mentioned a couple of  
[12] organizations that sort of specialize in  
[13] this, and those organizations obviously will  
[14] receive funding, but there are a number of  
[15] others.

[16] Is it possible that we can receive  
[17] from you a list of the organizations that you  
[18] fund that are specifically dealing with  
[19] working to help people with employment? That  
[20] would be helpful.

[21] **ACTING COMMISSIONER BYRNE:** Sure.

[22] **SENATOR MONTGOMERY:** Now, the other  
[23] question that I have for you related to that  
[24] is there are a number of areas where people

[1] There's also, of course, the  
[2] Certificate of Good Conduct and Certificate  
[3] of Relief from Civil Disabilities process  
[4] that enables formerly incarcerated persons to  
[5] have the badges of their prior conviction  
[6] suspended for purposes of employment  
[7] opportunities. It doesn't apply to every  
[8] employment bar, but it does to some.

[9] **SENATOR MONTGOMERY:** All right. And  
[10] can we receive some of that from you so that  
[11] I can share that with people who are looking  
[12] for work?

[13] And lastly, you mentioned the  
[14] importance of having jobs. But I want to  
[15] also remind you of the difficulty in terms of  
[16] housing for people returning to communities  
[17] having been incarcerated for sometimes  
[18] decades.

[19] And we currently -- well, perhaps you  
[20] do have programs that you can point to where  
[21] you're combining the issue of employment and  
[22] housing. And how can we expand that as a  
[23] special issue in relationship to people  
[24] returning to their communities?

[11] **ACTING COMMISSIONER BYRNE:** Housing  
[12] is certainly a challenge, there's no doubt  
[13] about it. The County Reentry Task Force  
[14] network that is in existence is a system  
[15] where we bring together people at the local  
[16] level in order to commingle their direct  
[17] resources that they may have for returning  
[18] vendors. Housing, along with drug treatment,  
[19] mental health services, things of that  
[20] nature.

[21] Housing certainly is a big part of  
[22] it. But I can't say to you that there is an  
[23] ample supply of housing for everyone who has  
[24] the need.

[15] **SENATOR MONTGOMERY:** And I appreciate  
[16] how difficult it is, but I hope that this  
[17] becomes one of those issues that you spend a  
[18] lot more thinking about and time on.

[19] I have a residential program in my  
[20] district and when I visit that program, the  
[21] one question that people ask me is if there's  
[22] anything that I can do to help them find  
[23] housing when they are ready to leave that  
[24] facility, which is a temporary residence.

[11] **ASSEMBLYMAN CROUCH:** Any increase in  
[12] funding from the General Fund to cover up the  
[13] loss of funding if it goes through?

[14] **ACTING COMMISSIONER BYRNE:** No,  
[15] Assemblyman, by and large the Byrne JAG funds  
[16] were cut.

[17] There was a tremendous amount of  
[18] state staff that were on former Byrne JAG  
[19] funds -- 35, to be precise -- and the budget  
[20] does include the money to continue those  
[21] 35 employees with General Fund dollars.

[22] **ASSEMBLYMAN CROUCH:** The DNA databank  
[23] is something that our conference in the  
[24] Assembly has pushed for expansion for quite a  
[15] while, so we're very happy to see that move  
[16] forward. I think it has a lot of positives.  
[17] And so we're anticipating that it will do a  
[18] lot of good things both on the incarceration  
[19] side but also to help exonerate some people  
[20] wrongfully accused.

[21] Thank you.

[22] **ACTING COMMISSIONER BYRNE:** Thank  
[23] you.

[24] **CHAIRMAN FARRELL:** Jeff Aubry.

[11] So it's really crucial, and we've not  
[12] really been able to fulfill that critical  
[13] part of the reentry question.

[14] **ACTING COMMISSIONER BYRNE:**  
[15] Understood.

[16] **SENATOR MONTGOMERY:** Thank you.

[17] **CHAIRMAN FARRELL:** Assemblyman Cliff  
[18] Crouch.

[19] **ASSEMBLYMAN CROUCH:** Thank you for  
[20] being here.

[21] It's my understanding that we may  
[22] lose some federal grants, the Byrne JAG  
[23] grant, and that was \$7.4 million. Is that  
[24] correct, are we anticipating that loss?

[15] **ACTING COMMISSIONER BYRNE:** Byrne JAG  
[16] funding for the current year is reduced year  
[17] to year off of last year. The reduction from  
[18] last year, in total, is 23 percent year to  
[19] year.

[20] A significant portion of that  
[21] reduction is owing to SORNA compliance, and  
[22] we are seeking permission from the Justice  
[23] Department to allow us to use those SORNA  
[24] funds in a SORNA-compliant manner.

[11] **ASSEMBLYMAN AUBRY:** Commissioner,  
[12] just one other follow-up. Does the division  
[13] oversee the Crime Victims Services Board?

[14] **ACTING COMMISSIONER BYRNE:** No, we do  
[15] not.

[16] **ASSEMBLYMAN AUBRY:** You do not.

[17] Okay, thank you.

[18] **ACTING COMMISSIONER BYRNE:** Yes, sir.

[19] **CHAIRMAN DeFRANCISCO:** Thank you very  
[20] much.

[21] **ACTING COMMISSIONER BYRNE:** Thank  
[22] you, Senator.

[23] **CHAIRMAN FARRELL:** Thank you.

[24] **CHAIRMAN DeFRANCISCO:** Next speaker,  
[15] Brian Fischer, commissioner, New York State  
[16] Department of Corrections and Community  
[17] Supervision.

[18] (Discussion off the record.)

[19] **COMMISSIONER FISCHER:** Good morning,  
[20] Chairman DeFrancisco, Chairman Farrell,  
[21] members of the legislative fiscal  
[22] committees. I am Brian Fischer, commissioner  
[23] of the Department of Corrections and  
[24] Community Supervision. I appreciate your



[11] time this morning to discuss Governor Cuomo's  
[12] Executive Budget for 2012-2013.

[13] Since the former Division of Parole  
[14] and the Department of Correctional Services  
[15] merged last year, I will be speaking on  
[16] matters relating to prisons, community  
[17] supervision, and the Board of Parole. I have  
[18] asked Andrea Evans, chairwoman of the Board  
[19] of Parole, to join me in the event that there  
[20] are questions specific to the operations of  
[21] the Parole Board.

[22] The Executive Budget proposal for  
[23] 2012-2013, as it did last year, speaks  
[24] directly to the issues of performance and  
[25] accountability, and the goals of the  
[26] Department of Corrections and Community  
[27] Supervision for the upcoming fiscal year  
[28] reflect those pursuits.

[29] The proposed budget calls for a  
[30] General Fund appropriation of \$2.5 billion  
[31] and a workforce of 29,773 people responsible  
[32] for approximately 95,000 offenders both  
[33] inside our prisons and under community  
[34] supervision.

[11] on the need to evaluate what we put in place  
[12] by moving forward on research-based analysis,  
[13] completing the merger of the two agencies,  
[14] and establishing a risk/needs approach to  
[15] both programming and community supervision  
[16] that is designed to reduce recidivism through  
[17] better predictability considerations.

[18] This past year I have worked closely  
[19] with Chairwoman Evans to make certain that  
[20] the Board of Parole in its entirety has the  
[21] resources necessary to properly execute their  
[22] duties and responsibilities with the measure  
[23] of independence envisioned by the  
[24] Legislature.

[25] In fact, under Chairwoman Evans'  
[26] leadership, the board has adopted a mission  
[27] statement to accurately reflect its role and  
[28] autonomy in the criminal justice community:  
[29] "To ensure public safety by granting parole  
[30] when appropriate under the governing  
[31] standards, revoking community supervision  
[32] when necessary, and discharging offenders  
[33] from their sentence when it is in the best  
[34] interest of safety."

[11] The Executive Budget also includes  
[12] funding to resume correction officer training  
[13] classes in order to replace those leaving  
[14] state service. Given the current level of  
[15] attrition, 17 classes are currently planned  
[16] for. In addition, at least one parole  
[17] officer training class has also been planned  
[18] to address a small projected decrease in  
[19] parole officers.

[20] Furthermore, the Executive Budget  
[21] includes legislation that requires all  
[22] sex offenders undergoing SOMTA review to  
[23] remain in the custody of the Department of  
[24] Corrections and Community Supervision pending  
[25] the outcome of all judicial civil commitment  
[26] proceedings until the maximum expiration date  
[27] of their sentence or until released to parole  
[28] supervision.

[29] Last year, under the Governor's  
[30] leadership, we successfully closed seven  
[31] prisons and merged two state agencies, all  
[32] designed to make state government more  
[33] efficient and fiscally responsible. This  
[34] year, the agency will continue to concentrate

[11] Members of the board and its staff  
[12] will continue to work on special issues with  
[13] Corrections on such subjects as medical  
[14] parole, and will be using a new Parole Board  
[15] Criminal History Report being developed with  
[16] the Division of Criminal Justice for a more  
[17] comprehensive review of an offender's  
[18] criminal and previous parole supervision.  
[19] This will be used in conjunction with the  
[20] risk/needs assessment tool mandated by the  
[21] Legislature.

[22] Lastly, the Board of Parole will be  
[23] finalizing a formal operating manual  
[24] detailing standards to be followed by all  
[25] members and staff and closely monitoring the  
[26] revocation process that is under their  
[27] responsibility.

[28] With the success of our Edgecombe  
[29] Residential Treatment Program, we will open  
[30] up a similar unit of 60 residential treatment  
[31] beds at the Orleans Correctional Facility.  
[32] Parolees from the Buffalo and Erie County  
[33] area, having trouble in the community but  
[34] otherwise deemed appropriate, will be

[1] transferred from local jails to the Orleans  
[2] Correctional Facility within 24 hours to  
[3] participate in a 45-day treatment program.

[4] Not only will we be able to keep  
[5] parolees from coming back to prison for an  
[6] extended time, but we will be removing  
[7] parolees from local jails, thus saving state  
[8] and county taxpayers the cost of local or  
[9] long-term incarceration. This will allow us  
[10] to expand community supervision's use of what  
[11] has become known as "graduated sanctions."

[12] While the Legislature last year made  
[13] the use of a risk/needs instrument a  
[14] requirement of inmates appearing before the  
[15] Parole Board, we will be expanding that  
[16] approach by initiating a comparable  
[17] risk/needs assessment upon reception,  
[18] followed by a data-based treatment initiative  
[19] for in-prison programming, followed by the  
[20] required pre-release risk/needs assessment  
[21] for parole.

[22] In fiscal year 2012-2013 we will also  
[23] begin, on a regular basis, to use a new risk  
[24] instrument on all sex offenders under

[1] most detailed and fully developed information  
[2] we can compile relative to an inmate's mental  
[3] health status and potential risk for  
[4] reoffending.

[5] Fiscal year 2012-2013 will also mark  
[6] the first full year the SHU Exclusion Law  
[7] will be in effect. We will use the year to  
[8] more critically evaluate the five residential  
[9] mental health treatment units, which were  
[10] established primarily to meet the law's basic  
[11] requirements.

[12] Given the cost of these programs, it  
[13] is important that we continue to monitor  
[14] effectiveness. One measure of success,  
[15] similar to that which is used in the  
[16] community by mental health experts, is how  
[17] long after release from any program does the  
[18] inmate relapse, what may trigger the relapse,  
[19] and what type of behavior does he or she  
[20] demonstrate.

[21] Conversely, we need to consider the  
[22] fact that for many inmate-patients, continued  
[23] placement in such programs is the best course  
[24] of treatment for him or her, to say nothing

[1] community supervision, designed to highlight  
[2] potentially negative changes in thinking and  
[3] behavior. Such a tool will enable the parole  
[4] officer to move quickly to respond to changes  
[5] in order to modify the offender's supervision  
[6] needs.

[7] The goal is to better, plan, provide  
[8] and document treatment from day one through  
[9] release and community supervision for every  
[10] offender. We are seeking a better  
[11] understanding of what the treatment needs of  
[12] our inmates are and what programs have the  
[13] greatest likelihood of reducing recidivism  
[14] for those released.

[15] With respect to the review of  
[16] sex offenders under SOMTA, efforts have also  
[17] already begun to ensure that both DOCCS and  
[18] OMH can more openly share information about  
[19] an offender's conviction, presentence report,  
[20] evaluations, prior parole supervision,  
[21] in-prison treatment, Parole Board hearing  
[22] appearances, and any other information each  
[23] agency has. The goal is to ensure that both  
[24] OMH and DOCCS make available to the court the

[1] about the safety to staff and other inmates.

[2] Lastly, in the coming year we will be  
[3] conducting a facility-by-facility review  
[4] relative to staffing needs to reestablish  
[5] what our security and all other staffing  
[6] needs are within the parameters of the  
[7] Executive Budget. Of particular concern is  
[8] to ensure that we have the right programs and  
[9] the right program staff assigned to each  
[10] facility.

[11] Thank you for your time and the  
[12] opportunity to discuss these matters with you  
[13] today. Chairwoman Evans and I will be happy  
[14] to answer any questions.

[15] **CHAIRMAN FARRELL:** Thank you.

[16] **CHAIRMAN DeFRANCISCO:** Thank you.  
[17] Senator Montgomery.

[18] **SENATOR MONTGOMERY:** Yes. Thank you,  
[19] Commissioner. I am sorry about your mishap  
[20] and hope you are healing quickly.

[21] **COMMISSIONER FISCHER:** Thank you.

[22] **SENATOR MONTGOMERY:** I want to just  
[23] raise a couple of issues with you. One is I  
[24] want to compliment you -- what's -- oh.

[1] (Screen raised behind dais.)  
[2] **SENATOR MONTGOMERY:** I want to  
[3] compliment you on the legacy that you have  
[4] left at --  
[5] **CHAIRMAN DeFRANCISCO:** Excuse me.  
[6] Why don't you wait a minute.  
[7] **SENATOR MONTGOMERY:** Yes, because I  
[8] know you're doing this on purpose.  
[9] (Laughter.)  
[10] **CHAIRMAN DeFRANCISCO:** Must be a  
[11] Republican up there, right?  
[12] (Laughter.)  
[13] **SENATOR MONTGOMERY:** That's right.  
[14] I compliment you on the legacy that  
[15] you have left at Sing Sing, because -- the  
[16] reason that I say that is because the kind of  
[17] programming that has gone on there I think  
[18] has made a tremendous difference in the  
[19] successful rehabilitation of people, both on  
[20] the inside and when they return. So I thank  
[21] you for that.  
[22] I want to just raise with you the  
[23] issue of the last time that I was there I met  
[24] with people there, and one of the things that

[1] between the facilities and the people inside  
[2] and their communities on the outside even  
[3] before they are coming back to their  
[4] communities.  
[5] **COMMISSIONER FISCHER:** I think what  
[6] you're speaking to is about what we call  
[7] mentoring programs. Particularly they're  
[8] very effective for faith-based groups.  
[9] And what we've asked those who are  
[10] interested is to basically create a program  
[11] that they can document, create, develop and  
[12] we can have -- through a volunteer service  
[13] program, we can have a number of faith-based  
[14] volunteer groups coming in to mentor  
[15] offenders in prison.  
[16] The key, as you know, is whether or  
[17] not those mentors will be available to them  
[18] when they're released. And it's -- again,  
[19] it's easy to come into a prison and do some  
[20] mentoring and conversation. The real key, as  
[21] you understand, is whether or not those  
[22] mentors will be available in the community  
[23] and what can they do to assist the  
[24] ex-offender.

[1] was very interesting was a proposal that they  
[2] had -- because they had a group of clergy and  
[3] community meeting with people inside, and  
[4] they had a proposal that would strengthen the  
[5] relationship between the outside community,  
[6] through possibly working with the clergy in  
[7] different parts and people on the inside,  
[8] with the aim of helping to keep young people  
[9] in particular out of the system.  
[10] And it made a lot of sense, and it  
[11] was something that they thought we should be  
[12] thinking about doing not only with them there  
[13] but in other facilities as well. Because  
[14] there were places where there was an  
[15] organized group and that there were  
[16] opportunities, they thought, to do something  
[17] like that.  
[18] So the question I have for you is, is  
[19] there a way that we can work with your office  
[20] to figure out a way of perhaps implementing a  
[21] program that would do what the people there  
[22] thought would be helpful? One, it would be  
[23] helpful in connecting people with their  
[24] families, as well as building a bridge

[1] But yes, absolutely, if they want to  
[2] create a little program, we will gladly take  
[3] a look at it and work with them.  
[4] **SENATOR MONTGOMERY:** Thank you. And  
[5] I want to emphasize that what they were  
[6] talking about was not necessarily mentoring  
[7] them, but having them be mentors and to train  
[8] people in communities how to be successful  
[9] mentors to young people as it related to, you  
[10] know, issues that would eventually possibly  
[11] land them in prison.  
[12] **COMMISSIONER FISCHER:** All they have  
[13] to do is submit --  
[14] **SENATOR MONTGOMERY:** It was the  
[15] reverse of what we are accustomed to thinking  
[16] about.  
[17] **COMMISSIONER FISCHER:** Absolutely.  
[18] **SENATOR MONTGOMERY:** So I thank you  
[19] for that.  
[20] The other thing I get from families  
[21] is that the treatment they receive when they  
[22] want to visit people is really, really not  
[23] hospitable -- and that's being very, very  
[24] politically correct. They are treated with

[1] hostility, with disrespect. Often they don't  
[2] know what changes have occurred with rules  
[3] and requirements. They get to a facility  
[4] after having traveled for hours and they're  
[5] find out they're not dressed appropriately.  
[6] There's a lot of frustration that occurs for  
[7] people who are trying to visit their loved  
[8] ones inside.

[9] So we need to work out a system  
[10] whereby people are not going to be treated  
[11] that way. And I'm just wondering if you have  
[12] thought about looking at that particular area  
[13] in terms of how people are treated when they  
[14] visit.

[15] **COMMISSIONER FISCHER:** Unfortunately,  
[16] this is a recurring complaint. Sometimes it  
[17] gets better; sometimes it doesn't.

[18] We have every year what we call a  
[19] commissioner's initiative, and we pick a  
[20] topic. I think the time has come to make  
[21] that topic sensitivity to the families who  
[22] visit the Department of Corrections.

[23] It's complicated, as you can  
[24] imagine. I will tell you the overwhelming

[1] can continue moving in the direction that you  
[2] started when you were the director at the  
[3] Sing Sing facility.

[4] **COMMISSIONER FISCHER:** I'm always  
[5] available to you.

[6] **SENATOR MONTGOMERY:** Thank you.

[7] **CHAIRMAN FARRELL:** Thank you.  
[8] Jeff Aubry.

[9] **ASSEMBLYMAN AUBRY:** Good morning. Or  
[10] good afternoon, whatever we're into. We're  
[11] into the afternoon.

[12] **COMMISSIONER FISCHER:** Good  
[13] afternoon.

[14] **ASSEMBLYMAN AUBRY:** And I am shocked,  
[15] I just saw you Thursday and you were hopping  
[16] around. I know that a roomful of lawyers can  
[17] be dangerous; I didn't think that dangerous.  
[18] (Laughter.)

[19] **ASSEMBLYMAN AUBRY:** In the budget  
[20] proposal it indicates that there was a  
[21] requirement for \$83 million for unfunded  
[22] liabilities. Can you explain what were the  
[23] cost drivers that created that cost?

[24] **COMMISSIONER FISCHER:** These are from

[1] majority of visitors come in without a  
[2] problem, and they have a good visit. There's  
[3] a small portion of those who come in  
[4] unfortunately who come in with drugs and  
[5] weapons and other things. So it really goes  
[6] on both sides.

[7] But I agree with you, we could do  
[8] better. And I think the answer will be a  
[9] little sensitivity training specifically  
[10] designed for visitations.

[11] **SENATOR MONTGOMERY:** I would  
[12] appreciate that.

[13] And again, I want to thank you and I  
[14] hope that, you know, as we move forward you  
[15] can think about different ways people have  
[16] suggested that we perhaps transform some of  
[17] the facilities that are being downsized or  
[18] closed as correctional facilities, to  
[19] transform them to be utilized as, for  
[20] instance, vocational institutions that would  
[21] be a special place for people in corrections  
[22] to go and trained for different areas.

[23] So I'm looking forward to working  
[24] with you on trying to see ways in which we

[1] last year's unfunded situations, where our  
[2] expenses outdistanced our appropriations.  
[3] These are basically cleaning up our last  
[4] year's funding issues, if you would.

[5] **ASSEMBLYMAN AUBRY:** So it was from  
[6] last year, and we are paying for it in this  
[7] year.

[8] **COMMISSIONER FISCHER:** Yes.

[9] **ASSEMBLYMAN AUBRY:** Last year we also  
[10] had an extraordinary number of suicides.  
[11] What has the department done in relation to  
[12] those occurrences? Has there been a change  
[13] in policy, any other programmatic changes  
[14] that may have been implemented relative to  
[15] that?

[16] **COMMISSIONER FISCHER:** Well, actually  
[17] last year was a better year than the year  
[18] before. In 2010, we had 20, you're  
[19] absolutely correct. Last year we had 10.

[20] We've been studying this for as long  
[21] as I can remember, and we keep looking for  
[22] patterns but we are not finding them. The  
[23] concept that merely being placed in special  
[24] housing is a factor. It's not necessarily

[1] the -- it's a single factor but not the  
[2] factor. There are other factors about  
[3] transfers.

[4] What we are doing basically is  
[5] assessing every suicide we have. And we are  
[6] now doing, again, a -- we reissued our  
[7] policies and our training regarding  
[8] suicides. I know 10 is still 10 too many.  
[9] One is too many. The fact is, we are also  
[10] seeing an increase in the number of attempted  
[11] suicides of various nature.

[12] I will tell you that I'm very happy  
[13] and very proud, if you may, of the number of  
[14] cases where our staff actually acts very  
[15] quickly, even when someone just talks about  
[16] it. And we are in fact, I believe,  
[17] decreasing the potential for suicides by  
[18] being a little bit more sensitive.

[19] I think in 2010 the number 20 had an  
[20] impact on all of us, all staff and inmates.  
[21] And I think we kind of learned -- we thought  
[22] we had it well, and we didn't, obviously. We  
[23] looked at the reasons. 2011 was good; I'm  
[24] hoping that 2012 will even reduce it.

[1] **COMMISSIONER FISCHER:** Absolutely.  
[2] In fact the Office of Mental Health, OMH,  
[3] basically reviews every attempted suicide and  
[4] every suicide, and we have a joint committee  
[5] that reviews them looking for factors that  
[6] maybe we could then anticipate.

[7] In 2009 -- I don't know whether it  
[8] was 2009 or 2010 we realized in some cells,  
[9] for example, the cells could have been made  
[10] more secure from a suicide point of view, so  
[11] they were changed.

[12] Each time there's an event both  
[13] agencies sit down, clinical people and  
[14] doctors, and we look at it.

[15] **ASSEMBLYMAN AUBRY:** So you have done  
[16] a review of the 20, now 30 in the past two  
[17] years. Has the State Commission of  
[18] Corrections completed their review of those?  
[19] They are required for every death inside the  
[20] system to review, I'm told. Have they  
[21] completed theirs?

[22] **COMMISSIONER FISCHER:** They review  
[23] every single one. Timeliness is an issue  
[24] that we've been talking to them about in

[1] It's primarily a question of training  
[2] and being aware of the changes in an inmate's  
[3] behavior. And we are very conscious, if you  
[4] would, of certain things like being  
[5] transferred from a medium to a max. Or being  
[6] even transferred from medium to medium.  
[7] People don't like to be rerouted, if you  
[8] would. They're comfortable where they are,  
[9] but then they might be transferred.

[10] There are times within anybody's life  
[11] that the situation requires them to think  
[12] about themselves differently, perhaps, and we  
[13] are sensitive to those things.

[14] So my answer to you, very simply, is  
[15] we've done better than people expect. We are  
[16] very sensitive to it. We are really jumping  
[17] in on all attempted suicides and self-harm  
[18] cases. And we are continuing -- we've just  
[19] reissued a new policy basically, again,  
[20] sensitizing our staff on how to respond to  
[21] suicides.

[22] **ASSEMBLYMAN AUBRY:** Are you  
[23] coordinating with the Office of Mental Health  
[24] in that review and study?

[1] terms of how long they might take. But yes,  
[2] they do. And CQC also has the authority to  
[3] look at any suicide or any other complaint  
[4] from an offender.

[5] So yes, there are in effect three,  
[6] sometimes four agencies reviewing every  
[7] suicide.

[8] **ASSEMBLYMAN AUBRY:** Has the State  
[9] Commission on Corrections or CQC completed  
[10] the review of those and presented reports to  
[11] you?

[12] **COMMISSIONER FISCHER:** Yes, they  
[13] have.

[14] **ASSEMBLYMAN AUBRY:** On all 20?

[15] **COMMISSIONER FISCHER:** All 20,  
[16] absolutely. We're probably a little bit back  
[17] on '11, but within a few months they will all  
[18] be done.

[19] **ASSEMBLYMAN AUBRY:** Thank you.

[20] I'd like to request that you provide  
[21] us with an overview of all the college  
[22] programs that are operating in the system  
[23] currently: How many clients they're serving,  
[24] how many students they have, and their

[1] sources of funding. If you could please  
[2] provide that, that would be helpful.

[3] **COMMISSIONER FISCHER:** I'd rather  
[4] send you a complete report, but overall we  
[5] have about a thousand people in college  
[6] programs now. The under-21 are being  
[7] supported through a federal grant. The  
[8] Legislature has supported some small college  
[9] programs out in the eastern part.

[10] Overwhelmingly, of the thousand,  
[11] about 800 of them are being funded through  
[12] nonprofit or outside sources for funding,  
[13] meaning Bard College and Vassar College and  
[14] Cornell College, in fact, right now.

[15] But if you want, I can give you a  
[16] complete report on it.

[17] **ASSEMBLYMAN AUBRY:** I would  
[18] appreciate that.

[19] I guess the question is, why no more  
[20] closures? We closed, closed, closed, and now  
[21] all of a sudden everybody was anticipating  
[22] another round is coming, and yet we didn't.  
[23] And the population in the facilities  
[24] continues to decrease.

[1] costing us?

[2] **COMMISSIONER FISCHER:** We're  
[3] decommissioning them. We've spent about  
[4] \$3 million right now in terms of shutting  
[5] them down and making them available for sale  
[6] through the Economic Development Corporation.

[7] **ASSEMBLYMAN AUBRY:** When do we expect  
[8] to see that process completed?

[9] **COMMISSIONER FISCHER:** We're hoping  
[10] by early spring, late spring at the latest.  
[11] Those that can be sold or transferred will be  
[12] done. Those that cannot, such as probably  
[13] Oneida and Buffalo Correction, probably will  
[14] simply be held in abeyance for us.

[15] **ASSEMBLYMAN AUBRY:** We anticipated or  
[16] there was an anticipated savings from the  
[17] closures. Have we met those numbers? Our  
[18] budget doesn't seem to reflect it, but --

[19] **COMMISSIONER FISCHER:** Well, we  
[20] actually are saving \$112 million in  
[21] 2012-2013. The savings is really a deferring  
[22] of dollars. We would have spent those  
[23] dollars if we had kept those facilities open.

[24] So yes, the answer is in a kind of

[1] **COMMISSIONER FISCHER:** Population is  
[2] not decreasing at the point as it was maybe  
[3] two years ago. Our current assessment is  
[4] that we will be relatively flat this year in  
[5] 2012-2013.

[6] Actually, population changes by  
[7] seasons. We expect an increase of about 200  
[8] to 300 between now and say April, but then it  
[9] will drop again. It just seems the courts  
[10] get involved -- there's a number of reasons  
[11] for it.

[12] But we have no intention of  
[13] closing -- there's been no recommendation to  
[14] close another prison. We have about  
[15] 1200 vacancies that I can use right now,  
[16] which is a very good number. The  
[17] overwhelming majority are in the medium  
[18] facilities. I think we're in good shape  
[19] right now.

[20] **ASSEMBLYMAN AUBRY:** Of the facilities  
[21] that we closed, how many are still under your  
[22] control?

[23] **COMMISSIONER FISCHER:** All of them.

[24] **ASSEMBLYMAN AUBRY:** And what is that

[1] fiscal way, we are saving that kind of  
[2] money. And we have.

[3] **ASSEMBLYMAN AUBRY:** Senator Nozzolio,  
[4] who is governing a hearing now, asked  
[5] me to -- and I have the same question. My  
[6] understanding is that you are merging  
[7] facility parole officers with correction  
[8] counselors, is that --

[9] **COMMISSIONER FISCHER:** That's  
[10] correct.

[11] **ASSEMBLYMAN AUBRY:** And in that  
[12] merger are the facility parole officers in  
[13] any way losing status, salary?

[14] **COMMISSIONER FISCHER:** No, what --  
[15] this is probably the most sensitive of all  
[16] the merger things that we've done. But this  
[17] is a requirement, a logical requirement. For  
[18] years we've had basically two types of  
[19] employees handling an offender, especially  
[20] when he gets ready to be released. You had  
[21] parole and you had correction counselors.  
[22] There was duplication at work.

[23] Efficiency, being smart about how we  
[24] do things, I'm requiring one title. And

[11] everybody is being converted. Facility  
[12] parole officers and being correction officers  
[13] are being converted to a different title,  
[14] rehabilitation coordinator. Neither group  
[15] loses any money. In fact, in the case of the  
[16] parole staff, they are now part of the  
[17] correction system and their ability to be  
[18] promoted within is enhanced.

[19] The issue that has come up by the  
[10] union, and I understand the concern, is that  
[11] by converting their title from facility  
[12] parole officer to rehabilitation coordinator,  
[13] they lose their peace officer status.  
[14] There's 135 of them, but only a few are  
[15] actually carrying weapons.

[16] For me, the decision is very clear.  
[17] I can only have one kind of employee. We're  
[18] one agency. We cannot have a facility  
[19] anymore with multiple-titled persons under  
[20] different unions, under different contracts,  
[21] under different pay scales. This is the  
[22] right way to do management. This is the way  
[23] to do good government.

[24] And I appreciate their concern. One

[11] So we've really been working  
[12] primarily on the facility side and  
[13] administrative side. We now have one  
[14] research program. We have one labor  
[15] relations group. We have one business office  
[16] now. So from a management point of view,  
[17] we've got great strides. From an operational  
[18] point of view, I think we're moving in that  
[19] direction.

[10] Culturally, I think people are coming  
[11] to terms with it. This is not going to  
[12] happen overnight, but I believe overall  
[13] there's been a very positive attitude taken  
[14] by both sides. I've met with the unions from  
[15] both corrections and from parole. We have  
[16] some good interaction. Their questions are  
[17] legit.

[18] To a large degree, because parole was  
[19] relatively small, corrections being  
[20] relatively large, we've now been able to  
[21] provide resources to the parole side that did  
[22] not exist prior.

[23] **ASSEMBLYMAN AUBRY:** Thank you very  
[24] much.

[11] of the advantages that many of them will have  
[12] is that they can transfer over to field  
[13] parole, which is what we're really  
[14] encouraging them to do, in which case they  
[15] will maintain their peace officer status and  
[16] in fact, if they go from facility to field,  
[17] they actually gain financially, because it's  
[18] a different salary range.

[19] **ASSEMBLYMAN AUBRY:** And this is  
[10] central to the issue of whether or not, as we  
[11] created this new agency, whether or not the  
[12] cultures of the two agencies would be merged,  
[13] how would they be merged, would it become  
[14] something new.

[15] Is it your experience in this year  
[16] that we've made advances in that? Do we have  
[17] some way to go? How would we get there?

[18] **COMMISSIONER FISCHER:** I can speak  
[19] for my side. I think we've done very well.  
[20] But I will tell you, and I made this a point,  
[21] the facility parole officers are becoming  
[22] correction-type counselors. The field parole  
[23] officers are, and I call them, parole  
[24] officers.

[11] **CHAIRMAN FARRELL:** Thank you.

[12] **CHAIRMAN DeFRANCISCO:** Thank you.

[13] I should mention that Senator  
[14] Nozzolio, the chair of Corrections, is in a  
[15] redistricting public hearing. It might take  
[16] a little while. But we'll try to ask the  
[17] questions that he would ask.

[18] Secondly, everybody has been really  
[19] good about our time up here. I would  
[10] appreciate it if we make sure we stay within  
[11] our time limit.

[12] And, Commissioner, if you can make  
[13] your answers a little bit more concise, I'd  
[14] really appreciate it.

[15] **COMMISSIONER FISCHER:** Sure.

[16] **CHAIRMAN DeFRANCISCO:** Okay, the next  
[17] speaker is Senator Hassell-Thompson.

[18] **SENATOR HASSELL-THOMPSON:** Thank you,  
[19] Mr. Chairman.

[20] It's now afternoon; good afternoon.  
[21] Having had knee surgery, I sympathize. But  
[22] that's not going to help you.

[23] (Laughter.)

[24] **COMMISSIONER FISCHER:** I didn't

[1] expect it to.

[2] **SENATOR HASSELL-THOMPSON:** It was  
[3] gratifying to hear you have conversation  
[4] about placement of staff, even in  
[5] redeployment of staff, putting people where  
[6] they're best suited. And I'm just  
[7] paraphrasing I think what I heard you say.  
[8] But I want to get to the issue of reentry.

[9] We've been talking extensively, as we  
[10] talked about prison closures, about how to  
[11] readapt usage of those facilities. And you  
[12] were talking about expanding on the model  
[13] that Edgecombe, for instance. Where would  
[14] that be placed again?

[15] **COMMISSIONER FISCHER:** Orleans  
[16] Correctional Facility.

[17] **SENATOR HASSELL-THOMPSON:** Where is  
[18] Orleans?

[19] **COMMISSIONER FISCHER:** Outside of  
[20] Buffalo.

[21] **SENATOR HASSELL-THOMPSON:** Buffalo,  
[22] okay. It's the only one I probably haven't  
[23] visited.

[24] One of the things I think that you

[1] **COMMISSIONER FISCHER:** Probably the  
[2] one that I am coming to terms with best came  
[3] from Mindy Tarlow from CEO. And we're  
[4] looking at are offenders ready -- we all know  
[5] that a job is important, housing is  
[6] important, family dynamics is important. But  
[7] the question that we're beginning to look at  
[8] is are they actually ready to make that  
[9] transition.

[10] We can provide services. We train,  
[11] we counsel, we do vocational. I think from  
[12] the point of view of the prison, there's two  
[13] elements. One has to be education.  
[14] Regardless of whether they get a job or not,  
[15] if we're letting people out without an  
[16] education, they are not going to succeed.

[17] So education is a primary factor.  
[18] And just like young education, reading  
[19] readiness is an issue. You can't make  
[20] somebody read until they're kind of almost  
[21] ready for it, for various reasons.

[22] I think we're now looking at how do  
[23] we make somebody ready for transition, and  
[24] what are the dynamics behind it. And that

[1] may be aware of is that in the final closure  
[2] of Fulton that there have been several  
[3] proposals that have been submitted for the  
[4] possibilities of reentry, a comprehensive  
[5] reentry program slated for that facility.  
[6] Are you aware of that?

[7] **COMMISSIONER FISCHER:** I am.

[8] **SENATOR HASSELL-THOMPSON:** Okay. One  
[9] of the things that just makes this very  
[10] outstanding, for those of us that represent  
[11] the Bronx particularly, is that we found that  
[12] while in other areas the recidivism rate is  
[13] not as high, the Bronx has an 87 percent  
[14] recidivism rate within the first three years  
[15] of release.

[16] And I think part of what we equate  
[17] that to is a lot of it because the Bronx has  
[18] some of the highest unemployment rates and  
[19] has one of the biggest housing problems with  
[20] this population.

[21] And so when we look at this, we say,  
[22] what are the new reentry assessment  
[23] facilities that are available through you to  
[24] help us with a problem of that size?

[1] will be done through a number of risk/needs  
[2] assessment tools to try to identify factors  
[3] that they need to understand: anger  
[4] management, cognitive thinking.

[5] What we need to do, and we're  
[6] beginning to do it more and more, is to  
[7] involve the offender into understanding his  
[8] condition or her condition. What we've  
[9] learned from dealing with the mentally ill is  
[10] that one of the primary functions of  
[11] counseling is to get the mentally ill person  
[12] to understand his illness. Once they  
[13] understand the illness, they understand the  
[14] need for treatment, for medication.

[15] That's an area that we have to begin  
[16] to proceed on all offenders, understanding  
[17] what brought you here, what's your issues.  
[18] And by identifying the needs and providing  
[19] the services to meet those needs, we will  
[20] increase the readiness by which someone can  
[21] make that transition relatively easy, given  
[22] all the other factors.

[23] Let me add I know -- I know it's  
[24] long. Let me just add, under the direction



[1] of Deputy Secretary Glazer, we've been  
[2] meeting with nonprofits in the city, all the  
[3] nonprofits. And some of the issues that were  
[4] raised earlier about how we can deal with the  
[5] employment issues and housing issues -- I  
[6] think under this administration we're  
[7] beginning to bring together people who were  
[8] not brought together earlier, or before, and  
[9] we're identifying the problem and then we're  
[10] identifying, in cases of state efforts, what  
[11] laws, what rules do we have that are  
[12] prohibiting somebody from making that  
[13] transition.

[14] A real quick anecdote, we train  
[15] people in air-conditioning upstate, and we  
[16] get them a state certificate. When they go  
[17] to New York City, New York City has its own  
[18] certificate program and they don't honor the  
[19] state. That's something we have now  
[20] recognized, and that's where we have to move  
[21] both from state and city to join together and  
[22] say we can't have this anymore.

[23] **SENATOR HASSELL-THOMPSON:** Most of  
[24] this retraining, reorientation --

[1] facilities left?

[2] **COMMISSIONER FISCHER:** You're asking  
[3] for legislative initiatives. And right now  
[4] the rules against work release are very  
[5] restrictive. I'd like to have a dialogue  
[6] with you and others, if you would, to talk  
[7] about reentry work release factors.

[8] But historically, we get down to the  
[9] very basics, violent offenders versus  
[10] nonviolent offenders. And I think we have to  
[11] come to terms with maybe better identifying  
[12] what we consider a violent offender -- first  
[13] time, second time, predicate. So those are  
[14] the kinds of issues.

[15] I don't have anything right now, but  
[16] I believe it's certainly worth a  
[17] conversation.

[18] **SENATOR HASSELL-THOMPSON:** Just very  
[19] quickly. Chairwoman Evans, good afternoon.

[20] **CHAIRWOMAN EVANS:** Hi, how are you.

[21] **SENATOR HASSELL-THOMPSON:** What's the  
[22] current caseload of members of the  
[23] Parole Board?

[24] **CHAIRWOMAN EVANS:** If you're

[1] redirection, if you will -- how soon does  
[2] that begin in prison? Because this is  
[3] obviously not something that's going to  
[4] happen as they're going through the door.

[5] **COMMISSIONER FISCHER:** We're  
[6] beginning to move on it immediately. That's  
[7] why we're going to do a new kind of  
[8] needs/risk assessment on the front end.  
[9] We're going to quantify as best we can what  
[10] their issues are.

[11] The majority of our offenders are  
[12] leaving prison in about 44 months, so time is  
[13] an element. The majority of our offenders  
[14] come in and leave within three, four years.  
[15] So we do have to start earlier. And we now  
[16] are looking at a quantitatively constructed,  
[17] if you would, tool what will identify better  
[18] for us what their needs are.

[19] **SENATOR HASSELL-THOMPSON:** What  
[20] legislation would DOCCS propose to have  
[21] flexibility to determine which offenders have  
[22] earned early release from community  
[23] supervision or a transfer to a work release  
[24] facility? And are there any work release

[1] asking -- and if I hear you correctly, they  
[2] don't have caseloads. But if you're asking  
[3] about how many cases they hear or interview  
[4] on a panel, that would be about 20, on  
[5] average. Per commissioner.

[6] **SENATOR HASSELL-THOMPSON:** What's the  
[7] caseload overall?

[8] **CHAIRWOMAN EVANS:** Again, if you're  
[9] asking how many -- when you say "caseload,"  
[10] commissioners don't have caseloads.

[11] **SENATOR HASSELL-THOMPSON:** Okay. I  
[12] guess the phrasing of the question is  
[13] incorrect.

[14] One of the things we were concerned  
[15] about was, if we reduced the number of  
[16] members of the board -- with attrition, with  
[17] illness, with vacations, with a variety of  
[18] things -- how many actually panel members  
[19] would be available at any one given time to  
[20] review. Has any of that realized itself?

[21] **CHAIRWOMAN EVANS:** We are comfortable  
[22] right now with the 13. And part of the  
[23] reason for that is because total board  
[24] workload -- and I think that gets to the

[1] question that you're asking -- is down by  
[2] 8 percent. And year to date we are down in  
[3] the total number of interviews that are  
[4] conducted. And that in part is because of  
[5] deterrent sentencing and things like  
[6] Rockefeller laws that create lower interviews  
[7] for the commissioners.

[8] So we're comfortable with the number  
[9] that we have. It's manageable.

[10] **SENATOR HASSELL-THOMPSON:** I'm sorry?

[11] **CHAIRMAN DeFRANCISCO:** Senator, I  
[12] know this clock is far away, but you are able  
[13] to see it okay?

[14] **SENATOR HASSELL-THOMPSON:** Yeah, but  
[15] I don't know what it means.

[16] **CHAIRMAN DeFRANCISCO:** It basically  
[17] means everyone is trying to be considerate to  
[18] all the other people that want to ask  
[19] questions. And would you please -- you've  
[20] been over the time limit for some time.

[21] **SENATOR HASSELL-THOMPSON:** Oh. Well,  
[22] see, that wasn't part of the ground rules  
[23] that you told me. But okay, thank you.  
[24] Thank you.

[1] I think we did pretty good.

[2] **ASSEMBLYMAN CROUCH:** Good. Glad to  
[3] hear that.

[4] In the budget last year there was the  
[5] Economic Transformation and Facility  
[6] Redevelopment Program. Has there been any  
[7] communities that have been able to take  
[8] advantage of that program at this point in  
[9] time?

[10] **COMMISSIONER FISCHER:** We're working  
[11] on a number of situations. The Economic  
[12] Development Corporation is taking the lead,  
[13] and the Governor has put aside \$50 million  
[14] for redevelopment of those sites.

[15] And we are now meeting with a number  
[16] of them. We have some very interesting  
[17] people interested in Orange and Camp  
[18] Georgetown. Fulton obviously is another  
[19] big-ticket situation.

[20] So yes, the answer is where we can,  
[21] we've actually -- with OGS involvement, we  
[22] are now what we call marketing these sites.  
[23] And I do believe hopefully by the end of the  
[24] spring, early summer, those that are really

[1] **CHAIRMAN DeFRANCISCO:** Thank you very  
[2] much.

[3] **CHAIRMAN FARRELL:** Assemblyman  
[4] Crouch.

[5] **ASSEMBLYMAN CROUCH:** Good afternoon,  
[6] Commissioner.

[7] With the closing of the facilities  
[8] last year, you estimated about 1100 staff was  
[9] decreased. Do you have a breakdown of the  
[10] staff that was transferred or lost due to  
[11] attrition or actually laid off as a result?

[12] **COMMISSIONER FISCHER:** Actually,  
[13] about 1700 staff people were impacted, of  
[14] which all but 33 correction officers and  
[15] 98 civilians were placed in correctional  
[16] facilities or some other state agency. So it  
[17] really was no loss. The 1100 that we're were  
[18] down really is in positions we did not have  
[19] to fill, based on from before.

[20] So the answer to your question is we  
[21] did very, very well. The Governor's  
[22] commitment was to find jobs as much as we can  
[23] for every single employee. And out of 1700,  
[24] we're talking a hundred people were impacted,

[1] interested can move forward. I choose not to  
[2] give you details because a lot of it has to  
[3] do with RFPs and RFIs and all of that.

[4] Also there is big interest in the  
[5] Staten Island site.

[6] **ASSEMBLYMAN CROUCH:** The Pharsalia  
[7] facility that was closed two years ago, is  
[8] that still in the mix of potential  
[9] redevelopment or marketing?

[10] **COMMISSIONER FISCHER:** We've added  
[11] them to our list, but they're very small.  
[12] We're talking about Lyon Mountain,  
[13] Camp Gabriels. We've tried to auction off  
[14] Camp Gabriels two or three times; we just  
[15] don't seem to get any interest.

[16] **ASSEMBLYMAN CROUCH:** Your  
[17] administrative levels, the number of people,  
[18] where are you with administrative staff now?  
[19] I understand you cut 10 percent last year.

[20] **COMMISSIONER FISCHER:** We've cut  
[21] central office, we've cut -- I don't want to  
[22] say "cut." We've kept vacancies.

[23] One of the -- and I'm not trying to  
[24] defend it. I know everybody believes we have

[1] too many people in many places. But the  
[2] reality is, this is a rather large agency  
[3] spread out over 60 facilities now. Many of  
[4] the requirements that we have are mandated  
[5] for us -- the SOMTA law, SHU bill law, work  
[6] release rules, all of that.

[7] We have managed to keep our work  
[8] release force, even in central office, at a  
[9] constant basis. Actually, if you think about  
[10] it, we absorbed parole and we have not  
[11] increased our overall numbers in central  
[12] office. And we are in fact looking at other  
[13] options at each facility.

[14] If you need, I can get you a  
[15] breakdown of actual numbers.

[16] **ASSEMBLYMAN CROUCH:** I would  
[17] appreciate that.

[18] I know there was a concern that we  
[19] kept hearing in the last three or four years  
[20] that the administrative levels had grown  
[21] from, say, three to four years before that.  
[22] So we'd have to ratchet back maybe six or  
[23] seven years and compare that compared to  
[24] maybe two years ago, three years ago, and

[1] **ASSEMBLYMAN CROUCH:** Has the  
[2] corrections officers' training programs that  
[3] are being enacted, is that to take care of  
[4] some of the overtime?

[5] **COMMISSIONER FISCHER:** It should.  
[6] Right now we are in fact reaching the point  
[7] where we're losing offices more than we can  
[8] replace. We held back on the training  
[9] classes for fiscal reasons and the fact that,  
[10] as I said, out of the 1700, most of them were  
[11] correction officers. So we did not want to  
[12] obviously fill positions that they would have  
[13] filled. So we had held off basically until  
[14] we closed the prisons.

[15] But now it's a position where Budget  
[16] has agreed and we probably will start next  
[17] month or so with classes. Seventeen classes,  
[18] about 50 persons coming out of each class,  
[19] we're talking about several hundred new  
[20] employees.

[21] **ASSEMBLYMAN CROUCH:** What's the time  
[22] frame for a class to be completed and have a  
[23] person in a position?

[24] **COMMISSIONER FISCHER:** About eight

[1] then today.

[2] My concern was if we had gone through  
[3] a period of growth and now we're leveled off  
[4] and we're decreasing administrative levels on  
[5] the main campus here in Albany, you know,  
[6] where do you see that going?

[7] **COMMISSIONER FISCHER:** I think what  
[8] we've got now is in place and we'll see -- I  
[9] don't see any increase. And again, I -- the  
[10] increases that came to central office were  
[11] the result of requirements that we needed to  
[12] put in place for legislatively mandated  
[13] programs -- very expensive, very complicated  
[14] programs. But that was really two years  
[15] ago.

[16] We've been pretty much constant. We  
[17] have no growth in the central office, no new  
[18] positions being assigned. So I would argue  
[19] that we're managing rather well.

[20] **ASSEMBLYMAN CROUCH:** It was in the  
[21] news, I believe, that DOCCS has had a  
[22] considerable amount of overtime cost in 2011,  
[23] is that correct?

[24] **COMMISSIONER FISCHER:** Yes.

[1] weeks.

[2] **ASSEMBLYMAN CROUCH:** Eight weeks.

[3] Will there be additional correction  
[4] officers? I mean, will your staff grow from  
[5] there, maybe from where it is now? Or will  
[6] you be increasing your total numbers over  
[7] this next year?

[8] **COMMISSIONER FISCHER:** No, I will  
[9] not.

[10] **ASSEMBLYMAN CROUCH:** So they  
[11] basically will be filling positions that are  
[12] now vacant, causing more overtime?

[13] **COMMISSIONER FISCHER:** That's  
[14] correct.

[15] **ASSEMBLYMAN CROUCH:** Okay. Thanks,  
[16] Commissioner.

[17] **CHAIRMAN FARRELL:** Thank you.  
[18] We've been joined by Assemblyman Bill  
[19] Colton.  
[20] Senator?

[21] **CHAIRMAN DeFRANCISCO:** Senator  
[22] Ritchie.

[23] **SENATOR RITCHIE:** Commissioner, you  
[24] touched on the importance of removing

[1] parolees from local jails. As you know,  
[2] Governor Paterson and the Legislature made  
[3] significant changes to state reimbursements  
[4] for state-readies and parole-ready inmates  
[5] housed at local facilities.

[6] In counties across the state,  
[7] especially in the three counties that I  
[8] represent, this continues to pose a problem  
[9] for overcrowding. And I believe that  
[10] represents an unfunded mandate on the  
[11] counties that I represent.

[12] Can you tell me right now how many  
[13] state- and parole-ready inmates are housed  
[14] locally?

[15] **COMMISSIONER FISCHER:** I can provide  
[16] that to you very easily. But you have to  
[17] understand that the current law requires that  
[18] a parolee who violates, especially on the new  
[19] arrests, or even on a technical, remains in  
[20] the county of where that event occurs in  
[21] order to have a hearing, a disciplinary  
[22] revocation hearing.

[23] One of the issues -- I remember this  
[24] goes back five years now -- we talked about

[11] is no current plan to address that, other  
[12] than my idea of these Edgecombe-type,  
[13] Orleans-type situations.

[14] What we're looking to do really is to  
[15] cut down the number of technical violators.  
[16] If a person gets arrested, he gets arrested.  
[17] So can we deal with the technical violators.  
[18] And that's what we're going to do with the  
[19] Orleans. A person going into Erie County or  
[20] Buffalo County, we'll take them out in  
[21] 24 hours.

[22] If it's successful, and I believe it  
[23] will be, we are talking about could we do it  
[24] in the North Country, could we do it in the  
Syracuse area, can we do it elsewhere. And  
the answer is I think we can. It will help  
us with the technical violators. It will not  
help us necessarily with the new-arrest  
violate.

[20] **SENATOR RITCHIE:** Do you know what  
[21] the cost is to the local communities right  
[22] now for them providing the housing for the  
[23] inmates?

[24] **COMMISSIONER FISCHER:** I've seen

[11] how we can change that, but there were some  
[12] objections to changing that process for  
[13] defense attorneys and for witnesses.

[14] So the answer is right now the only  
[15] people who stay in county jail are those who  
[16] are a parole violator, technical, and someone  
[17] who gets arrested on a local charge.

[18] I will tell you that within 10 days  
[19] of that particular offender becoming a  
[20] state-ready -- usually less than 10 days,  
[21] mostly less than 10 days -- we transfer  
[22] them.

[23] The issue you have and the county  
[24] jails claim is that they're overcrowded  
because of parole violators. My statistics  
don't necessarily support that in terms of  
total numbers.

[18] I admit it is a function of the  
[19] county jail to pay for what they would  
[20] consider a state inmate. The fact is, they  
[21] come from the county, you send them to me,  
[22] and I guess I'm sending them back to you for  
[23] a little while.

[24] There is no easy answer. And there

[11] numbers from anywhere from \$85 to \$120 per  
[12] day, depending on the county.

[13] **SENATOR RITCHIE:** And just to follow  
[14] up on the question on the title merger for  
[15] the offender rehabilitation coordinator, is  
[16] there a way to grandfather the 135 officers  
[17] in to allow them to keep their peace officer  
[18] status in the meantime?

[19] **COMMISSIONER FISCHER:** The simple  
[20] answer is no. My decision is to change that  
[21] title and bring them all under one title, one  
[22] set of rules. So my position is no, I don't  
[23] want to grant them peace officer status.

[24] **SENATOR RITCHIE:** And could you just  
elaborate on why you wouldn't be willing to  
do that?

[17] **COMMISSIONER FISCHER:** Because I  
[18] don't want two types of employees working  
[19] with the same offender in one institution.  
[20] We've had that before.

[21] If you see some reports that I've  
[22] seen where parole refers to a DOCCS record  
[23] and DOCCS refers to a parole record, it just  
[24] tells me that it's time now to have a single

[1] employee who can really manage the case  
[2] management. And I don't believe, based on my  
[3] own experience, that they need to be peace  
[4] officers. Correction counselors aren't peace  
[5] officers.

[6] I understand their feelings, but this  
[7] is a management decision.

[8] **SENATOR RITCHIE:** And just to be  
[9] clear, what would be the problem with  
[10] allowing the 135 to carry that through and  
[11] then, on a go-forward basis, not allowing  
[12] them the peace officer status?

[13] **COMMISSIONER FISCHER:** It perpetuates  
[14] the duality of the system. And one of the  
[15] reasons why we merged was to create a single  
[16] system, not a bifurcated system. So I'm  
[17] opposed to that.

[18] **SENATOR RITCHIE:** One last question.

[19] As you're aware, St. Lawrence County  
[20] is home to the Intensive Sex Offender  
[21] Treatment Facility. And I noticed in the  
[22] budget where it talks about OMH facilities.  
[23] Can you tell me the status of that facility?  
[24] Are there any plans to do anything with that

[1] Can you envision a retired criminal  
[2] judge, county judge, bringing the judge to  
[3] the prison, setting up a court in the  
[4] prison? Not to take away original  
[5] jurisdiction from the JP that shipped them  
[6] there; if there's a jury trial, he goes back  
[7] to the court of original jurisdiction.

[8] But there are many perfunctory  
[9] motions that are made that they have to bring  
[10] that particular defendant back to the court  
[11] of original jurisdiction.

[12] You know the jail system, you know  
[13] your jails. Can you envision a jail and a  
[14] judge, a courtroom set up in the jail where  
[15] we could eliminate some of these  
[16] transportation costs, be coordinated with the  
[17] Office of Court Administration? Has that  
[18] ever been discussed in an effort to save  
[19] these escalating transportation costs?

[20] **COMMISSIONER FISCHER:** I think your  
[21] point is very valid.

[22] The answer really is going to be in  
[23] the videoconferencing concept. For example,  
[24] almost every Parole Board hearing now is done

[1] facility?

[2] **COMMISSIONER FISCHER:** Which one?  
[3] I'm sorry, which --

[4] **SENATOR RITCHIE:** The SVP unit that's  
[5] in Ogdensburg.

[6] **COMMISSIONER FISCHER:** That's under  
[7] the control of the Office of Mental Health.  
[8] I don't know what their plans are. I know  
[9] they're pretty crowded. But whether or not  
[10] they're expanding it or whatever, you'd have  
[11] to ask them. I'm not familiar with that.

[12] **SENATOR RITCHIE:** Okay. Thank you,  
[13] Commissioner.

[14] **CHAIRMAN DeFRANCISCO:** Senator  
[15] Bonacic.

[16] **SENATOR BONACIC:** Commissioner  
[17] Fischer, I'm trying to think outside of the  
[18] box here, and I'd like to ask you a question  
[19] if you think something like this could work.

[20] I'm reading of all my counties that  
[21] are incurring escalating transportation costs  
[22] by their deputies in taking people from the  
[23] jail to the judges, the JPs. And as you go  
[24] upstate, the traveling is greater.

[1] through videoconference. We have Court of  
[2] Appeals judges that goes into our facilities  
[3] and does things. We have a court for ICE, to  
[4] do immigration.

[5] Historically, just so you know, we've  
[6] been very amenable to creating a video-  
[7] conference courtroom. Historically, though,  
[8] many people do not want to go that route.

[9] But speaking outside the box, you're  
[10] absolutely correct. The real answer will be  
[11] will the JP and whatever judge is involved,  
[12] will they be comfortable doing this kind of  
[13] work through a videoconference. And our  
[14] experience is once they get used to it, it  
[15] works very well.

[16] **SENATOR BONACIC:** Okay, thank you.

[17] I have a question for Mrs. Evans. A  
[18] defendant appears before a judge and the  
[19] judge says, "I'm not going to incarcerate  
[20] you, I'm going to refer you to a treatment  
[21] facility. You don't have that degree of a  
[22] propensity for violence, I'm going to give  
[23] you a chance at rehabilitation. I'm not  
[24] going to put you in jail." And he sets

[1] conditions of parole.

[2] Is that a trigger mechanism for you  
[3] at that point, that that particular referral  
[4] to a treatment facility is on your radar  
[5] screen for parole once a judge issues  
[6] conditions of parole?

[7] **CHAIRWOMAN EVANS:** We always consider  
[8] what the sentencing judge recommends, yes.

[9] **SENATOR BONACIC:** Okay. I just want  
[10] to share with you an experience.

[11] In Ellenville there was a referral,  
[12] Mr. Giga, to a treatment facility as an  
[13] alternate to incarceration. He subsequently  
[14] left the facility, killed one worker and  
[15] stabbed a nurse with fatal injury.

[16] Now, it's my understanding that when  
[17] that particular individual was referred to  
[18] the treatment facility, there were conditions  
[19] of parole. But it was not considered a  
[20] violation when he walked away from the  
[21] facility, and therefore parole was never  
[22] notified.

[23] Do you think in your position that if  
[24] a judge refers you to a treatment facility,

[1] rules for when a judge refers, fully familiar  
[2] with the rap sheet, propensity for violence,  
[3] psychiatric reports -- that all should be  
[4] sent to that treatment facility. And he  
[5] makes conditions of parole at that point when  
[6] he refers them. And I'm --

[7] **CHAIRWOMAN EVANS:** I beg to differ  
[8] with you, Senator, in this regard: that he  
[9] can't set the conditions of parole.  
[10] Conditions of parole are set and established  
[11] by the board.

[12] **SENATOR BONACIC:** No, but the judge  
[13] says, "These are your conditions of parole.  
[14] You go to this treatment center, you get  
[15] treated, and you stay there and you don't  
[16] walk away."

[17] And what I'm saying, is there a  
[18] coordinated effort with probation and all  
[19] these treatment facilities throughout the  
[20] state when a judge sends someone over there?  
[21] Are they on your radar screen? That's my  
[22] question.

[23] **CHAIRWOMAN EVANS:** They're on our  
[24] radar screen. We work very closely with

[1] that is a privilege and not a right? If you  
[2] walk away from a that facility, that it's a  
[3] violation of parole? Because right now it is  
[4] not. Is that something you think we should  
[5] address?

[6] **CHAIRWOMAN EVANS:** With all due  
[7] respect, Senator, every situation is  
[8] different. I would look at the particulars  
[9] in that case. And I'd be glad to discuss  
[10] that with you after looking in the  
[11] particulars.

[12] **SENATOR BONACIC:** Well, I want to  
[13] come back to the same example. If I have a  
[14] drug addiction problem or an alcohol problem,  
[15] I can knock on that door of that treatment  
[16] facility and I can voluntarily admit myself,  
[17] and they will take me. As opposed to a judge  
[18] making a decision, "I'm not going to put you  
[19] in incarceration, but I am going to let you  
[20] go there to try to rehabilitate yourself."

[21] And I'm suggesting to you that that's  
[22] two different categories of the visitor, the  
[23] defendant, the consumer, call him what you  
[24] will, and there should be different sets of

[1] OASAS, and Community Supervision works very  
[2] closely with the programs at large that offer  
[3] those kinds of services. So -- and the Board  
[4] of Parole is familiar with most if not all of  
[5] the community programs that provide services.

[6] **SENATOR BONACIC:** I don't mean to  
[7] put you on the spot, but once that judge  
[8] sends that person to treatment, whether it's  
[9] alcohol or drug addiction, and that  
[10] particular person walks away from that  
[11] facility without permission. Should that be  
[12] violation of parole? Do you think it should  
[13] be a violation of parole?

[14] **CHAIRWOMAN EVANS:** Depending on the  
[15] conditions, yes.

[16] **SENATOR BONACIC:** Again?

[17] **CHAIRWOMAN EVANS:** Depending on the  
[18] conditions, yes.

[19] **SENATOR BONACIC:** Okay. Thank you.

[20] **CHAIRMAN DeFRANCISCO:** Thank you.

[21] For the next meeting, could we get  
[22] another time clock down at the end of the  
[23] table?

[24] (Laughter.)

[1] **CHAIRMAN DeFRANCISCO:** The last and  
[2] very brief speaker -- because we have to take  
[3] a 15-minute break because we have a Finance  
[4] Committee meeting in 120 as soon as this  
[5] brief question and a more concise answer is  
[6] given. It's going to be in Room 120, right  
[7] on this floor. We have one bill. It will  
[8] take 15 minutes.

[9] So now for Senator Saland and his  
[10] very brief question and the commissioner's  
[11] very concise answer.

[12] **SENATOR SALAND:** Thank you. Thank  
[13] you for the courtesy.

[14] Commissioner, you made reference to  
[15] the fact that yours is not a bifurcated  
[16] system with regard to corrections and  
[17] parole. You also, both in your oral  
[18] testimony and your written testimony,  
[19] acknowledged the importance of the  
[20] independence of parole as determined by the  
[21] Legislature during the course of the adoption  
[22] of the last budget.

[23] The question I have for you comes  
[24] back to something that Assemblyman Aubry had

[1] leave, they will be replaced with the  
[2] new-titled person.

[3] **SENATOR SALAND:** Okay. So that  
[4] effectively is true in any agency. As one  
[5] someone who has seniority and has attained a  
[6] higher salary and greater benefits leaves,  
[7] they're replaced by somebody who starts at a  
[8] lower level.

[9] So really, practically speaking,  
[10] other than what is a generally acceptable  
[11] rule, there really is no savings. You're  
[12] attaining what you term an efficiency, but  
[13] it's one without a savings.

[14] And I'll just leave you with this,  
[15] call it a rhetorical question. You don't  
[16] even have to respond to it.

[17] If there's no savings and if this is  
[18] an efficiency and if these are currently  
[19] parole officers, does that not in fact  
[20] somehow or other fly in the face of the idea  
[21] that parole was to be this at least  
[22] quasi-autonomous or independent entity within  
[23] the ranks of the department that you chair?

[24] **COMMISSIONER FISCHER:** Well,

[1] raised -- I believe someone else had alluded  
[2] to it a bit earlier -- and that is the fact  
[3] that you are redefining titles with regard to  
[4] correctional counselors and facility parole  
[5] officers. And yet I don't see a savings  
[6] being taken.

[7] Is there a savings being taken?

[8] **COMMISSIONER FISCHER:** The savings  
[9] will come when we begin for replace people.  
[10] I believe right now in some cases we've got  
[11] two people doing what one person can do,  
[12] particularly as we move towards basically the  
[13] quantitative risk/needs assessment tools that  
[14] we're now using.

[15] Right now parole does a COMPAS, we  
[16] can teach a counselor to do a COMPAS. This  
[17] is one of the things where we do a review  
[18] facility by facility.

[19] **SENATOR SALAND:** Only because the  
[20] chairman has asked me to be brief -- I don't  
[21] mean to be rude -- but when you say you will,  
[22] as you replace people, are you talking about  
[23] replacing senior people with new people?

[24] **COMMISSIONER FISCHER:** As people

[1] the autonomy --

[2] **CHAIRMAN DeFRANCISCO:** That was a  
[3] rhetorical question.

[4] (Laughter.)

[5] **SENATOR SALAND:** I'm sorry?

[6] **COMMISSIONER FISCHER:** Autonomy  
[7] belongs to the board and not to community  
[8] supervision or facility operations.

[9] **CHAIRMAN FARRELL:** Commissioner, just  
[10] one question.

[11] You mentioned Edgecombe and this  
[12] success. What's your numbers there right  
[13] now? And do you count the folks that are  
[14] out-house -- that's the wrong term -- who are  
[15] out, as opposed to the ones that check in  
[16] every night? What's your numbers?

[17] **COMMISSIONER FISCHER:** We've sent --  
[18] it's a 100-bed facility, and we turn it over  
[19] every 45 days. We've sent a thousand people  
[20] through the Edgecombe site.

[21] It's an inpatient residential  
[22] treatment, as opposed to a work release  
[23] setting.

[24] **CHAIRMAN FARRELL:** And they're not

[1] doing any work release there anymore?  
[2] **COMMISSIONER FISCHER:** No, they are  
[3] not.  
[4] **CHAIRMAN FARRELL:** In other words,  
[5] they go in and they stay in?  
[6] **COMMISSIONER FISCHER:** Correct.  
[7] **CHAIRMAN FARRELL:** Okay. That's why  
[8] I haven't been getting complaints. You know,  
[9] they hang out in front and you get complaints  
[10] from the community.  
[11] Thank you very much.  
[12] **COMMISSIONER FISCHER:** Thank you.  
[13] **CHAIRMAN DeFRANCISCO:** Thank you.  
[14] Fifteen minutes for one bill in the  
[15] Finance Committee, Room 120.  
[16] (Whereupon, a brief recess was taken  
[17] from 1:07 to 1:34 p.m.)  
[18] **CHAIRMAN DeFRANCISCO:** We're back.  
[19] Our next speaker is Superintendent  
[20] Joseph D'Amico, New York State Division of  
[21] State Police. And here he comes.  
[22] (Discussion off the record.)  
[23] **SUPERINTENDENT D'AMICO:** As directed,  
[24] I promise to be brief.

[1] empowered to cooperative with any other  
[2] department of the state or with local  
[3] authorities."  
[4] The State Police was established as a  
[5] full-service law enforcement agency to  
[6] provide police services to many areas of the  
[7] state without police protection. As the  
[8] State Police approaches its centennial  
[9] anniversary, the importance of its original  
[10] charter is as significant now as it was back  
[11] then.  
[12] My first and foremost priority  
[13] continues to be the safety of the public and  
[14] of our troopers who protect them. The  
[15] Division of State Police is constantly  
[16] working cooperatively with other state and  
[17] local agencies on many efforts and projects  
[18] to further increase public safety.  
[19] Furthermore, we are establishing  
[20] interoperable communications networks  
[21] statewide through participation with various  
[22] regional consortiums and through the sharing  
[23] of resources, including public/private  
[24] partnerships.

[1] Good afternoon. Thank you, Chairman  
[2] DeFrancisco, Chairman Farrell and  
[3] distinguished members of the committees for  
[4] the opportunity to discuss with you  
[5] Governor Cuomo's budget for the Division of  
[6] State Police. I am Joseph D'Amico,  
[7] superintendent of State Police.  
[8] I would like to take this opportunity  
[9] to thank the Governor for the opportunity to  
[10] serve as the superintendent and to thank the  
[11] Legislature for its past support of the  
[12] New York State Police. Because of your past  
[13] support, the New York State Police is  
[14] recognized as one of the premier law  
[15] enforcement agencies in the United States.  
[16] On April 11, 1917, Governor Whitman  
[17] sign the Wells-Mills Bill into law,  
[18] establishing the State Police. The basic  
[19] role of the State Police as established in  
[20] the original law is essentially unchanged to  
[21] this day: "It shall be the duty of the State  
[22] Police to prevent and detect crime and  
[23] apprehend criminals. They shall also be  
[24] subject to the call of the Governor and

[1] The New York State Police Forensic  
[2] Laboratory System provides services to a  
[3] majority of the counties within New York  
[4] State. For instance, approximately  
[5] 60 percent of the toxicology laboratory work  
[6] we perform in the investigation and  
[7] prosecution of critical activity and in  
[8] furtherance of highway safety is done for  
[9] other agencies other than the State Police.  
[10] The State Police Laboratory also  
[11] serves as the sole data entry point for the  
[12] state for the FBI Combined DNA Index System,  
[13] known as CoBIS. The success of DNA in the  
[14] identification and exoneration of suspects in  
[15] criminal investigations is well-documented.  
[16] The Governor's proposed law to collect DNA  
[17] samples for all crimes is a critical step to  
[18] further this success and ensure that we  
[19] provide the citizens of the state the best  
[20] public safety. DNA helps prevent crime,  
[21] exonerate the innocent, and convict the  
[22] guilty.  
[23] As you are aware, it's the  
[24] responsibility of the State Police to ensure



[1] highway safety, to prevent crime and enforce  
[2] the law, and to provide high-quality support  
[3] to law enforcement agencies across the  
[4] state. Our mission priorities include  
[5] reducing the deaths, injury and property  
[6] damage caused by motor vehicle accidents  
[7] through vehicle and traffic enforcement and  
[8] education, reducing violent crime statewide,  
[9] providing support to local law enforcement  
[10] agencies, and coordinating cooperative  
[11] crime-fighting efforts with all of our  
[12] federal, state, and local counterparts.

[13] The State Police is unique as the  
[14] only law enforcement agency in New York State  
[15] with the ability to deploy large numbers of  
[16] professionally trained, sworn police officers  
[17] anywhere in the state on short notice in  
[18] response to an emergency or a natural  
[19] disaster. The State Police is also available  
[20] for large-scale deployments to meet a  
[21] particular immediate need for law enforcement  
[22] services in any community.

[23] To main our core public safety  
[24] responsibilities while at the same time

[1] year, consolidation projects of IT services  
[2] with other state agencies have been  
[3] strategized and are being implemented. In  
[4] addition, we will work to further reduce  
[5] spending in all areas of non-personal  
[6] services.

[7] As you are aware, 85 percent of the  
[8] appropriations made for State Police  
[9] operations are in support of personnel  
[10] service obligations, of which approximately  
[11] 90 percent supports the salaries and overtime  
[12] expenses of our sworn members.

[13] The vast majority of the nonpersonal  
[14] service appropriations made in support of  
[15] State Police operations are best  
[16] characterized as nondiscretionary  
[17] expenditures. Expenditures for vehicles,  
[18] equipment, facilities and communications are  
[19] all essential to providing the tools  
[20] necessary for the men and women of the State  
[21] Police to fulfill their law enforcement  
[22] missions.

[23] New Yorkers can rightfully share a  
[24] tremendous sense of pride for the many

[1] ensuring that resources are at levels  
[2] necessary to maintain essential services, we  
[3] continually assess and evaluate our  
[4] deployment to maximize provision of police  
[5] services. For example, over the last year we  
[6] prioritized staffing of troopers on patrol  
[7] over less essential administrative and  
[8] supervisory positions.

[9] The Governor's budget recognizes that  
[10] in order to maintain necessary levels of  
[11] quality service, there must be academy  
[12] training classes this year to produce the  
[13] next generation of troopers. With these  
[14] training classes, the State Police mission  
[15] will be preserved. But we cannot supplant  
[16] local resources should local governments  
[17] reduce or eliminate law enforcement services  
[18] in their community.

[19] We will continue to look for  
[20] additional efficiencies through our  
[21] partnerships with other law enforcement  
[22] agencies throughout the state, and through  
[23] consolidation of government services where  
[24] practical and possible. Throughout the past

[1] accomplishments of the men and women of the  
[2] State Police and their daily efforts to keep  
[3] New York State safe. It is the integrity,  
[4] knowledge, dedication, and quality of our men  
[5] and women that distinguishes the New York  
[6] State Police. I'm honored and privileged to  
[7] be a part of this premier police agency and  
[8] its great traditions.

[9] I thank you for your support of the  
[10] State Police and for this opportunity to  
[11] address you today.

[12] **CHAIRMAN DeFRANCISCO:** Thank you.  
[13] The Governor, in his proposed budget,  
[14] proposes the repeal of the Combined Ballistic  
[15] Identification System. I assume you think  
[16] that's a good idea?

[17] **SUPERINTENDENT D'AMICO:** Yes, I do.  
[18] I mean, since the program began approximately  
[19] ten years ago, in 2001, we've put in 275,000  
[20] weapons into the system. And since that time  
[21] we've only had two hits on the system back in  
[22] 2004. Neither of them produced a criminal  
[23] prosecution.

[24] It's a tremendous amount of personnel

[1] resources that we have committed to it, and  
[2] it costs us approximately a quarter-million  
[3] dollars a year in licensing fees for no  
[4] results.

[5] **CHAIRMAN DeFRANCISCO:** I agree  
[6] entirely. We've been saying this for a few  
[7] years now.

[8] But there will be savings resulting  
[9] from this; correct? And is the concept to be  
[10] able to use those savings for local  
[11] governments to integrate more effectively in  
[12] NIBIN, the National Integrated Ballistics  
[13] Information Network?

[14] **SUPERINTENDENT D'AMICO:** Yes. We  
[15] figure with the money saved from the system  
[16] and reallocating the personnel that presently  
[17] work on CoBIS, we'll be able to put it into  
[18] NIBIN, which is the system you talk about,  
[19] and allow better comparison with the local  
[20] NIBIN networks, in essence to get more hits  
[21] on crime guns.

[22] **CHAIRMAN DeFRANCISCO:** Will those  
[23] savings be in some way shared with the local  
[24] governments?

[1] bullets recovered at a crime scene.

[2] Now, I have a case on Long Island --  
[3] I'm from Long Island -- and one of the things  
[4] that's the most troubling when I work with  
[5] law enforcement, and I do a lot of  
[6] interfacing with law enforcement, the number  
[7] of hits, if you will, on law enforcement is  
[8] at an all-time high. Would you agree? I  
[9] understand from the Memorial Fund that it's  
[10] about, I would say, upwards of 20 percent  
[11] that are law enforcement people are being  
[12] shot and killed by the high number of  
[13] high-capacity and weapons that are out on the  
[14] street.

[15] That being said, just recently, about  
[16] a year ago, in Elmont, we had a law  
[17] enforcement agent shot in front of his home.  
[18] Twenty-five shell cartridges were all -- that  
[19] was the only evidence that law enforcement  
[20] had, from the Nassau County Police  
[21] Department.

[22] That being said, how can NIBIN, if  
[23] this was done with a first-time gun and  
[24] there's no gun recovery, what progressive

[1] **SUPERINTENDENT D'AMICO:** I don't  
[2] think that there will be a monetary savings  
[3] at the local level as much as there will be  
[4] an efficiency and we'll be much more  
[5] effective in the way we compare the evidence.

[6] **CHAIRMAN DeFRANCISCO:** Thank you.

[7] **CHAIRMAN FARRELL:** We've been joined  
[8] by Assemblywoman Schimel.

[9] Questions? Michelle.

[10] **ASSEMBLYWOMAN SCHIMEL:** Hi, how do  
[11] you do? And thank you for your  
[12] presentation.

[13] I have a question, and it's regarding  
[14] the CoBIS, particularly ballistic imaging.  
[15] And I'm very familiar with the CoBIS system.  
[16] I've had opportunity to witness bird's eye --  
[17] you know, up close -- a couple of times how  
[18] it works and understand that there are some  
[19] concerns about it. And I'm not at all -- you  
[20] know, if it's decided that it should be put  
[21] to pasture, so be it.

[22] But at the same token, one of the  
[23] concerns I have about NIBIN is it's only  
[24] limited to a comparison of cartridges and

[1] measures can we give law enforcement to help  
[2] when there's only shell cartridges? And  
[3] oftentimes that's the only thing available --  
[4] there's no witness, there's nothing else for  
[5] law enforcement to go on but shell  
[6] cartridges. And now we're going to dispense  
[7] with CoBIS.

[8] Do you have any views on that in  
[9] terms of what can we do to help?

[10] **SUPERINTENDENT D'AMICO:** I just  
[11] think, based on the percentages of success  
[12] that we've had with CoBIS, you know, it's  
[13] just not a good investment of our resources  
[14] or our personnel. I think reallocating that  
[15] equipment for use in doing NIBIN comparisons,  
[16] because it's similar equipment, we have a  
[17] much better hit ratio on crime guns that are  
[18] entered into NIBIN.

[19] The way the system is now, you  
[20] compare regionally. Hopefully, once we have  
[21] expanded capability, we'll be able to expand  
[22] our ability to search against other areas,  
[23] such as Long Island, upstate New York,  
[24] New York City, to connect all of these

[1] points. Because --

[2] **ASSEMBLYWOMAN SCHIMEL:** Well, yes.

[3] But at the same token, NIBIN only focuses on  
[4] guns that -- correct -- only were previously  
[5] used in a crime. So a first-time user of a  
[6] gun is completely out of the system; right?

[7] **SUPERINTENDENT D'AMICO:** Well, I  
[8] mean, the other problem with CoBIS is it's --  
[9] the only guns that are entered in there are  
[10] New York State weapons, New York State guns  
[11] that are sold. And a good percentage of our  
[12] guns that are used in crime in New York State  
[13] come from outside New York State, so it --

[14] **ASSEMBLYWOMAN SCHIMEL:** Would you  
[15] agree, though, statistically with what I have  
[16] read that upstate New York, once you cross  
[17] the Mason-Dixon line, so to speak, above  
[18] Albany, my understanding is that the great  
[19] majority of guns that are used in crimes  
[20] above Albany in fact start in New York.  
[21] Sixty-five percent is what I've read on  
[22] numerous occasions.

[23] **SUPERINTENDENT D'AMICO:** It varies  
[24] from city to city. On the guns that are

[1] microstamping? To me, that's like a Blu-ray  
[2] technology. Why -- why -- what's that?

[3] **SUPERINTENDENT D'AMICO:** I can't  
[4] speak on the resistance to microstamping.  
[5] You know, I'm personally in favor of any  
[6] technique that helps us solve crime. The  
[7] objection, you know -- I can't speak on that,  
[8] I'm sorry.

[9] **ASSEMBLYWOMAN SCHIMEL:** Okay. Thank  
[10] you very much.

[11] **CHAIRMAN DeFRANCISCO:** Senator  
[12] Krueger.

[13] **SENATOR KRUEGER:** Thank you. Good  
[14] afternoon.

[15] What's the average age of state  
[16] troopers? And has that age been going up, as  
[17] we're seeing with other state employees?

[18] **SUPERINTENDENT D'AMICO:** Yes. I  
[19] mean, the average age of state troopers would  
[20] be in the fifties, I would say. Low fifties,  
[21] maybe. I don't have it in front of me. I  
[22] know that a good percentage of our membership  
[23] is eligible to retire at this time. For us,  
[24] the maximum age for a State Trooper is 60.

[1] traceable in upstate New York, a good  
[2] percentage of the upstate guns come from  
[3] within New York State, that's correct.

[4] **ASSEMBLYWOMAN SCHIMEL:** Correct. So  
[5] wouldn't that help? Wouldn't some type of  
[6] tool help with that? So maybe it's because  
[7] the gun laws in New York State are so good?

[8] **SUPERINTENDENT D'AMICO:** I mean,  
[9] these guns enter into the stream for criminal  
[10] use in a number of ways, through theft,  
[11] through illegal purchases.

[12] We just haven't seen results with the  
[13] system. So, you know, for us to continue on  
[14] on that off-shot that someday we're going to  
[15] see a result in CoBIS, it's just not a good  
[16] use of resources that are challenged already.

[17] **ASSEMBLYWOMAN SCHIMEL:** One more  
[18] question, if I may. And thank you for your  
[19] time in answering.

[20] But, you know, I always looked at  
[21] CoBIS as kind of like an 8-track system. You  
[22] know, it had its place at the time. But much  
[23] like iPods, they evolve. Why is there so  
[24] much, do you think, resistance to

[1] So I don't have exactly what our average age  
[2] is, but I know that at least 50 percent are  
[3] eligible to retire.

[4] **SENATOR KRUEGER:** And so with the  
[5] budget expectations of trying to bring, I  
[6] guess, two more classes in, I think --

[7] **SUPERINTENDENT D'AMICO:** For this  
[8] year we're looking at two classes, one in  
[9] April, of 130, and another in October, of 90.

[10] **SENATOR KRUEGER:** And so do you think  
[11] on your current projected bringing in of new  
[12] classes that there will be enough new  
[13] troopers to take the place of the troopers  
[14] who will hit the relatively -- compared to  
[15] many other state workforces, the relatively  
[16] young retirement age?

[17] **SUPERINTENDENT D'AMICO:** Yeah, we've  
[18] been seeing an attrition rate of  
[19] approximately 130 a year. This year we're  
[20] probably going to experience an attrition  
[21] rate close to 180, due to a number of  
[22] factors.

[23] The 130 that we put in in April,  
[24] followed by 90, and assuming classes from

[11] that time on which match our attrition rate,  
[12] would maintain us at a number where we're  
[13] just about currently at, a little lower than  
[14] we're currently at. And it will allow us to  
[15] continue to provide the basic services that  
[16] we think are important for the State Police.

[17] **SENATOR KRUEGER:** Thank you.

[18] **CHAIRMAN FARRELL:** Questions?

[19] **CHAIRMAN DeFRANCISCO:** Thank you.

[20] Wasn't it worth the wait?

[21] (Laughter.)

[22] **SUPERINTENDENT D'AMICO:** You were  
[23] brief as well, right?

[24] (Laughter.)

[25] **CHAIRMAN DeFRANCISCO:** Thank you.

[26] Bill Leahy, Office of Indigent Legal  
[27] Services.

[28] **MR. LEAHY:** Thank you, both chairmen  
[29] and members. It's a pleasure to appear  
[30] before you. I just missed the opportunity  
[31] last year because I only came on board as  
[32] director of the new Office of Indigent Legal  
[33] Services in late February, after the budget  
[34] hearing had taken place.

[11] Association representatives and so forth.

[12] And the very first thing we did at  
[13] our first meeting in March was authorize the  
[14] distribution of \$4.4 million to the counties  
[15] and the City of New York. And the point of  
[16] that was to get started as quickly as we  
[17] could on improving the quality of  
[18] representation, which is our mandate, and  
[19] also to give the counties outside of New York  
[20] City and the city itself the assurance that  
[21] the funding levels from the state funding  
[22] that they had received just prior to the  
[23] enactment of this statute in June 2010 would  
[24] not be put at risk as long as they were  
[25] cooperating with our efforts to improve the  
[26] quality. Which all of them have been doing.

[27] So that is the first thing that  
[28] happened. And then, in September, our board  
[29] approved a recommendation which we made to  
[30] spend the current-year appropriation of  
[31] \$77 million: \$70.2 million of it was to get  
[32] the counties and the city back to where they  
[33] were in 2010, and another \$8.1 million of it,  
[34] which is forthcoming, is designed to further

[11] The office, as I think all of you  
[12] know, was created in response to the  
[13] Kaye Commission in 2006, being the latest of  
[14] many exposes or studies of the provision of  
[15] the right to counsel throughout New York  
[16] State, and particularly upstate -- by which I  
[17] mean every place outside of New York City --  
[18] and finding it to be wanting, and also the  
[19] subsequent filing of a class-action lawsuit  
[20] in the Hurrell-Harring case, which is pending  
[21] in the courts right now.

[22] And what I'd like to do today is tell  
[23] you a little bit about what we have done in  
[24] our first little bit less than a year of  
[25] operations and what our priorities are. And  
[26] one of those, of course, the Senate chairman  
[27] has already tipped in his previous question,  
[28] so I will certainly want to get to that.

[29] But what we have done, it was only  
[30] about two weeks after I came on board as  
[31] director that we had our first board meeting  
[32] down in New York. And our board of course  
[33] has two very eloquent county representatives  
[34] on it, as well as the Chief Judge and Bar

[11] the improvements.

[12] The improvements that we put out this  
[13] year, we're very proud of them. They involve  
[14] adding public defenders to reduce caseload,  
[15] they involve replacing training funding that  
[16] had once been in place but had disappeared  
[17] over time, they involve trying to facilitate  
[18] alternatives to incarceration, they upgrades  
[19] to computer systems, they involve support for  
[20] assigned counsel programs.

[21] Two big initiatives that the board  
[22] also approved with the remaining  
[23] \$6.8 million, over and above the \$70 million,  
[24] was to make a start on addressing two big  
[25] problems in New York State.

[26] One being the absence of counsel at  
[27] first appearance, which we learned is not  
[28] just a function in the town and village  
[29] courts, but even in the city courts in many  
[30] of upstate, counsel is not routinely provided  
[31] at first arraignment. This on the face of it  
[32] appears to violate both the constitutional  
[33] right to counsel and the statutory right to  
[34] counsel when one is facing incarceration.

[1] And secondly, regional resource  
[2] centers that will comply throughout the state  
[3] with the United States Supreme Court decision  
[4] in Padilla v. Kentucky, which says that  
[5] assigned counsel need to provide accurate  
[6] information to their criminal defense clients  
[7] as to the immigration consequences of a  
[8] criminal conviction.

[9] So those things are all underway.  
[10] And also at that September meeting the board  
[11] approved another recommendation, and that was  
[12] for an additional \$6 million in dedicated  
[13] funding from the Indigent Legal Services Fund  
[14] to address the problem of excessive upstate  
[15] caseloads. That was part of our  
[16] recommendation. It has not thus far -- it's  
[17] not in the Executive Budget. The Executive  
[18] Budget, as we say in the sheet you have  
[19] before you, is level-funded.

[20] But I come to you today with that  
[21] principal request, is for the authorization  
[22] to expand an additional \$6 million from the  
[23] Indigent Legal Services Fund -- the fund is  
[24] ample to support that additional

[11] training and support services for every  
[12] assigned counsel and public defender provider  
[13] in the State of New York at the Public  
[14] Defense Backup Center at the New York State  
[15] Defenders Association.

[16] There will be subsequent testimony on  
[17] that, but I want to have it in your minds as  
[18] something that is essential to improving the  
[19] quality of representation in this state.

[10] That's as quick a summary as I'm able  
[11] to do, and I'm happy to answer any questions.

[12] **CHAIRMAN DeFRANCISCO:** Thank you.  
[13] Senator Montgomery.

[14] **SENATOR MONTGOMERY:** Thank you,  
[15] Mr. Chair.

[16] I just want to ask you about some  
[17] clarification on the allocation that you  
[18] mentioned, the \$8.1 million in funds to  
[19] New York City for --

[20] **MR. LEAHY:** The \$8.1 million, part of  
[21] that is available to New York City. It's a  
[22] formula. It goes out to every county. It  
[23] will put every county and the City of  
[24] New York at the level of state assistance

[1] authorization -- for the purpose of doing for  
[2] the upstate counties what is very laudably  
[3] being done for criminal defense providers in  
[4] New York City since 2009, as Judge Prudenti  
[5] testified to this morning.

[6] The second point I'd like to make is  
[7] that originally this agency was envisioned as  
[8] a \$3 million, 20-person agency. In last  
[9] year's budget negotiations it was halved in  
[10] both respects. We could use a little bit of  
[11] progress. We request it at the \$3 million  
[12] level this year.

[13] I seek your support not necessarily  
[14] for the entirety of that amount, but for some  
[15] progress in that direction. I think we've  
[16] earned it by our performance this year, and I  
[17] think we are working very effectively with  
[18] all the counties and the city providers and  
[19] we'd like to see that progress continue.

[20] And the final point I make in my --  
[21] and it's not in my budget, but it is  
[22] essential to the improvement and maintenance  
[23] of the quality of representation in New York  
[24] State, and that concerns the essential

[1] they received in March 2010.

[2] **SENATOR MONTGOMERY:** Okay. Could I  
[3] receive from you some record of how those  
[4] funds were distributed in New York City?  
[5] Because I want to know if we have equitable  
[6] funding based on the population of the five  
[7] counties in the City of New York.

[8] **MR. LEAHY:** Yes. The formula that we  
[9] follow is the formula from 2010, which was a  
[10] percentage of the expenditures from the city  
[11] and from each county. So the formula I think  
[12] is an accurate formula.

[13] The way the money was spent in  
[14] New York City -- is that a further question?

[15] **SENATOR MONTGOMERY:** Yes. How it was  
[16] distributed as well.

[17] **MR. LEAHY:** New York City put in a  
[18] proposal that was very forward-looking. It  
[19] was its own citywide proposal to provide the  
[20] same immigration consequences information  
[21] through all the city providers -- not just  
[22] the public defenders, but also the assigned  
[23] private counsel -- to those clients, so that  
[24] citywide compliance with the Padilla decision

[1] that I mentioned earlier.

[2] And the great thing about it is  
[3] whereas sometimes you'd look at something  
[4] that happens in the city and you say, "Well,  
[5] that's just in the city," the city  
[6] providers -- specifically the Legal Aid  
[7] Society, Steve Banks and Seymour James --  
[8] they have stated to me that their training  
[9] that they're already going to be doing for  
[10] the city, when we roll out statewide with our  
[11] regional resource centers, that training will  
[12] be available free of charge upstate as well.

[13] So this is the beginning of what I  
[14] hope is going to be an era of really solid  
[15] city/upstate cooperation and collaboration.

[16] **SENATOR MONTGOMERY:** Okay.

[17] Well, my question is more  
[18] specifically I want to know about  
[19] Kings County and the equitable distribution  
[20] of resources to Kings County. We're the  
[21] largest borough in the city, yet I never  
[22] sense that we have an equitable distribution  
[23] of resources to take care of the needs.

[24] And one more I want to just ask

[1] a fabulous program in Brooklyn, Brooklyn  
[2] Family Defense Project, as you know. And  
[3] I've been down there and I've visited, I've  
[4] talked with Lauren Shapiro, and I know about  
[5] that program.

[6] But in general throughout the state,  
[7] family representation -- and our  
[8] responsibility is limited to parent  
[9] representation in Family Court. We're not  
[10] the Law Guardian Program. But several of the  
[11] proposals we funded this year have been  
[12] proposals from counties that say we need  
[13] additional attorneys to provide better  
[14] representation in the Family Court, because  
[15] Family Court, more than criminal court, is  
[16] where the growth is in the cases these days.

[17] So I think we're being certainly  
[18] responsive to that. We're in the process  
[19] right now of hiring a Family Court lead  
[20] attorney to head the effort to improve  
[21] Family Court representation statewide. We've  
[22] got some candidates that we'll be  
[23] interviewing shortly. So we're very hopeful  
[24] and we're very determined to be responsive to

[1] regarding the -- I'm very happy to hear the  
[2] improvements that you're doing in terms of  
[3] preparation and building more capacity of the  
[4] legal counsels in this area.

[5] One of the very serious areas is in  
[6] Family Court. And I just want, I would like  
[7] to know to what extent you are targeting  
[8] resources to legal assistance in  
[9] Family Court, because that's where a large  
[10] number of young people appear without  
[11] counsel, with representation, and very often  
[12] it is so sparse and the attorneys are so  
[13] overwhelmed that they suggest to young people  
[14] that they should plead guilty when they  
[15] really should not plead guilty. And this  
[16] starts them on a path to becoming more and  
[17] more, you know, involved in the system.

[18] So that's a very, very, very serious  
[19] issue. And I would like to know and to hear  
[20] how we're really targeting resources to that  
[21] part of the court system.

[22] **MR. LEAHY:** I really appreciate your  
[23] point about Family Court, because while there  
[24] are pockets of some great programs -- there's

[1] your concern.

[2] **SENATOR MONTGOMERY:** All right. I  
[3] thank you for that, and I look forward to the  
[4] information that I requested. Thank you.

[5] **CHAIRMAN FARRELL:** Thank you.  
[6] Assemblywoman Helene Weinstein.

[7] **ASSEMBLYWOMAN WEINSTEIN:** Thank you.

[8] You mentioned your budget before.  
[9] The \$3 million estimation for the cost of the  
[10] full year of running the office was the DOB  
[11] estimation when we first set up the office;  
[12] correct?

[13] **MR. LEAHY:** That's right. That was  
[14] the original proposal, and it was recommended  
[15] last year by the Executive.

[16] **ASSEMBLYWOMAN WEINSTEIN:** And if you  
[17] did have additional staff, what would some of  
[18] that staff be able to accomplish and how  
[19] would it assist counties in the provision of  
[20] services?

[21] **MR. LEAHY:** Primarily we'd have more,  
[22] if you will, boots on the ground, people to  
[23] actually go out and -- you know, we will be  
[24] collecting a lot of data.

[1] Right now, with our 10 people, we  
[2] only have the opportunity to hire one  
[3] attorney in charge of criminal defense trial  
[4] improvement, one for Appellate Court  
[5] representation, and one for Family Court  
[6] representation.

[7] So each of those attorneys could  
[8] have, you know, two or three people below him  
[9] or her who could separate out the state  
[10] somewhat geographically, perhaps, and we'd  
[11] just be able to make more progress more  
[12] quickly.

[13] I will frankly say it is not as high  
[14] a priority as our request for the \$6 million  
[15] for upstate caseload relief, because we are  
[16] now five-plus years past the Kaye Commission  
[17] report, which made it crystal clear. We are  
[18] starting to gather data. I've heard a lot of  
[19] anecdotal information, a lot of stories about  
[20] 600, 800, 1000, even 1200 cases per year per  
[21] attorney. No attorney can provide a decent  
[22] level of representation with those kinds of  
[23] caseloads. So we have to get started on  
[24] that.

[12] **MR. LEAHY:** I'm sorry, I couldn't  
[13] quite get the rest.

[14] **ASSEMBLYWOMAN WEINSTEIN:** Is there  
[15] anything holding up the distribution of the  
[16] grants that were awarded last year to the  
[17] various counties?

[18] **MR. LEAHY:** Well, the grants that  
[19] were awarded last year are pretty much --  
[20] almost all of them are signed agreements with  
[21] the counties now, and it's out.

[22] We do have some issues about  
[23] different points between the board and the  
[24] Office of State Comptroller as to the board's  
[25] ability to get that money out expeditiously  
[26] to the counties. We are still working on  
[27] that with the Office of Comptroller, we're in  
[28] communications with them, and we're hoping  
[29] for a favorable result which better serves  
[30] the counties and which preserves, obviously,  
[31] the fiscal integrity, which is important as  
[32] well.

[33] **ASSEMBLYWOMAN WEINSTEIN:** Thank you.

[34] **CHAIRMAN DeFRANCISCO:** Senator  
[35] Krueger.

[1] And even with the size staff I have  
[2] now and will have once we fill these  
[3] positions, it won't be adequate, but we will  
[4] move forward.

[5] **ASSEMBLYWOMAN WEINSTEIN:** Just as an  
[6] aside, since I was one of the three  
[7] representatives on behalf of the Assembly,  
[8] the Senate, and I guess it was DCJS at the  
[9] time when we set up the Indigent Legal  
[10] Services Fund, it had always been our  
[11] intention that when the fund increased in  
[12] revenues, that the counties would benefit  
[13] from that increased revenue, not that it was  
[14] the source of revenue to fund other programs.

[15] So knowing how the program has worked  
[16] in New York City, I applaud you for coming  
[17] forward with a proposal to replicate the same  
[18] type of program in the upstate counties.

[19] I just had one question. I know that  
[20] there was grants that were awarded as part of  
[21] the discretionary portion of your budget.  
[22] Have those grants gone out? If not, is there  
[23] anything holding up the distribution of those  
[24] grants to counties?

[1] **SENATOR KRUEGER:** Good afternoon.  
[2] Thank you.

[3] **MR. LEAHY:** Good afternoon, Senator.

[4] **SENATOR KRUEGER:** I think this is  
[5] following up to some degree on the  
[6] Assemblywoman's question.

[7] So we set up the Indigent Legal  
[8] Services Fund, ILSF, in 2003, with a specific  
[9] intended purpose. And yet we're sweeping  
[10] money each year, or the last several years,  
[11] rather than allow the money to be used as  
[12] needed, it sounds like mostly in upstate  
[13] New York. What's the revenue source for this  
[14] Indigent Legal Services Fund?

[15] **MR. LEAHY:** It's a four-part source,  
[16] or maybe five, depending upon how you count  
[17] it. And let me see if I can get them -- two  
[18] principals ones are surcharges on motor  
[19] vehicle violations and I think the Part B of  
[20] this is when you go to get your license back  
[21] you pay a fee, after it's been suspended.  
[22] That's one big part of it.

[23] Another one is criminal history  
[24] searches, a surcharge on criminal history

[11] searches. Another one is attorney  
[12] registration fees. And I'm forgetting the  
[13] fourth one right now.

[14] And the fund, we've been tracking it,  
[15] we've been following it. The Comptroller has  
[16] been doing so as well. We believe and we  
[17] agree with the Comptroller that the fund will  
[18] be ample for this purpose.

[19] But as I say in my memo,  
[20] \$42.5 million has been swept since  
[21] March 2009. And that's really unfortunate,  
[22] because this fund wasn't created to augment  
[23] the General Fund, it was created to address a  
[24] constitutional crisis in the State of  
New York.

[1] **SENATOR KRUEGER:** I was a fairly new  
[2] legislator in 2003; I got here late in 2002.  
[3] Was there anything in the statute that  
[4] specifically put parameters on when you can  
[5] sweep, when you cannot? Or has this all just  
[6] happened anyway?

[7] **MR. LEAHY:** Well, that's the separate  
[8] sweep statute that has been utilized.  
[9] I should say that we've been verbally

[11] **SENATOR KRUEGER:** But your  
[12] understanding of the budget language is that  
[13] even though there would be an additional  
[14] \$6 million left in the fund, you wouldn't be  
[15] able to spend that unless the Legislature  
[16] acted to change that language?

[17] **MR. LEAHY:** I'm sorry, I missed your  
[18] question.

[19] **SENATOR KRUEGER:** I'm sorry. So  
[20] there's the \$77 million plus the 4-point-  
[21] something million I think I heard you say,  
[22] and then but you're talking about hoping for  
[23] another \$6 million --

[24] **MR. LEAHY:** For the future  
[1] appropriation, 2012-13, we're seeking an  
[2] \$83 million authorization, that's right.

[3] **SENATOR KRUEGER:** You and I both  
[4] think that you can't spend the higher amount  
[5] of money unless we change the appropriation  
[6] language for you.

[7] **MR. LEAHY:** Well, we'd like to see  
[8] explicit authorization for upstate caseload  
[9] relief. It's past time that it be done. It  
[10] would be great to get started on it now. And

[1] informed the sweeps are not going to happen  
[2] in the future with respect to this fund, but  
[3] the law's, you know, still on the books.

[4] **SENATOR KRUEGER:** And so while you've  
[5] been told, you don't think that it's going to  
[6] be swept again, because of the appropriation  
[7] language in the Governor's budget you're  
[8] actually prevented from using the full  
[9] amount that's in there?

[10] **MR. LEAHY:** The authorization we  
[11] had -- I mean, \$4.4 million and some more was  
[12] left in the fund. So that there is funding,  
[13] and that has been reappropriated, so there is  
[14] no threat to the \$4.4 million that is being  
[15] spent now by the counties.

[16] There is no threat that because the  
[17] \$77 million current-year appropriation has  
[18] also been reappropriated, that those funds  
[19] will be there. And thankfully there is also  
[20] an ample amount in the fund to fund the  
[21] additional \$6 million increase and whatever  
[22] portion of the additional \$1.5 million we  
[23] seek for staff that the Legislature may  
[24] choose to approve.

[1] we're working with the counties to see that  
[2] it gets done if approved.

[3] **SENATOR KRUEGER:** Is there any county  
[4] match required for any of this? There's no  
[5] county match required to spend another  
[6] \$6 million in the counties?

[7] **MR. LEAHY:** No.

[8] **SENATOR KRUEGER:** No. Thank you very  
[9] much.

[10] **MR. LEAHY:** Thank you.

[11] **CHAIRMAN DeFRANCISCO:** Assemblyman  
[12] Lentol.

[13] **ASSEMBLYMAN LENTOL:** Thank you,  
[14] Senator.

[15] Thank you, Mr. Leahy, for doing more  
[16] with less, like you did last year and you're  
[17] being asked to do it again.

[18] And it is unfortunate, however,  
[19] especially when we consider the  
[20] constitutional requirement of due process,  
[21] equal justice for all, equal representation  
[22] of everybody, and the number of cases that  
[23] may get thrown out because there are people  
[24] out there who won't get represented



[11] properly -- and then the expense to the state  
[12] will be even more enormous than it would be  
[13] if we were to have funded the defenders'  
[14] services as well the Office of Indigent  
[15] Defense.

[16] I know that and you know that; we  
[17] just have to get that message out there.  
[18] Because unfortunately this office was  
[19] established because of that, but people don't  
[20] realize that that's the reason for its being.

[21] May I just ask you for clarification,  
[22] because I've heard some testimony here and  
[23] now today -- but the Office of Indigent Legal  
[24] Defense does not represent anybody in  
[25] Brooklyn, in Family Court or in the  
[26] Criminal Court. Is that correct?

[27] **MR. LEAHY:** I didn't take -- I didn't  
[28] hear that message.

[29] **ASSEMBLYMAN LENTOL:** Okay. But I  
[30] mean they don't have lawyers in the  
[31] Criminal Court --

[32] **MR. LEAHY:** We don't provide the --  
[33] we don't directly provide the lawyers, that's  
[34] right.

[11] each county, there's only two things we ask  
[12] for, and we've had great cooperation. One is  
[13] that the county give thought to how the state  
[14] funds can improve the quality of  
[15] representation, not just kind of filter in  
[16] to, you know, pay unpaid bills or, worst  
[17] case, get siphoned off into some other  
[18] function.

[19] And, secondly, that in thinking about  
[20] that, they do meaningful consultation with  
[21] their local county-based indigent defense  
[22] providers and Family Court providers.

[23] And that doesn't sound like much, but  
[24] when we had our first meeting with the  
[25] chief defenders of the State of New York,  
[26] Chief Defender Steve Pittari -- he's since  
[27] retired after 40-some years as chief defender  
[28] in Westchester County, he said: "This is the  
[29] first year my county came to me. I'm always  
[30] beating on their door saying I need this, I  
[31] need that. They came to me and they said,  
[32] 'There's this state funding, it's dedicated to  
[33] the improvement of indigent defense, and we'd  
[34] like to sit down with you and think about how

[11] **ASSEMBLYMAN LENTOL:** You don't  
[12] provide lawyers in the Family Court or in the  
[13] Criminal Court.

[14] And could you just explain for the  
[15] panel what the office does again, so that  
[16] it's clear?

[17] **MR. LEAHY:** Yes. Thank you for that  
[18] opportunity.

[19] What we do is we work with all the  
[20] chief defenders -- and when I say defenders,  
[21] that means Family Law providers, that means  
[22] assigned counsel administrators, that means  
[23] conflict defender offices. And as you know,  
[24] they're all county-based in New York, and we  
[25] work cooperatively with them. And we do the  
[26] same thing with each and every county and the  
[27] City of New York.

[28] In the City of New York, of course,  
[29] it's the Office of Criminal Justice, the  
[30] Mayor's Office of Criminal Justice. In the  
[31] counties it could be just the chairman of the  
[32] legislature or the budget director for the  
[33] county or the county manager.

[34] And when we ask for proposals from

[11] that can do so."

[12] And what it did was it led to both an  
[13] increase in Family Court lawyers and an  
[14] increase in Criminal Court lawyers, to reduce  
[15] caseloads that had been excessive -- and they  
[16] still are excessive, but are less so than  
[17] they were before. So this is the effort, is  
[18] to cooperate and to fuel quality improvements  
[19] through a cooperative approach.

[20] **ASSEMBLYMAN LENTOL:** And your job  
[21] also is to assess the state of indigent legal  
[22] defense throughout the state in order to meet  
[23] the constitutional mandate that I spoke  
[24] about.

[25] **MR. LEAHY:** That's right.

[26] **ASSEMBLYMAN LENTOL:** And you've been  
[27] on the job for a year now, and maybe you can  
[28] tell us, what is the state of indigent legal  
[29] services provided around that state?

[30] **MR. LEAHY:** Well, you know, the state  
[31] is -- it would be foolish, I think, for  
[32] anyone to make the case that the state is  
[33] radically different than it was at the time  
[34] of the Kaye Commission in 2006, because not

[1] much was done until the creation of this  
[2] office and this board to respond to that cry  
[3] for help, if you will.

[4] I think we can say now that there is  
[5] a beginning. We are just starting to collect  
[6] data. I've just had a director of research  
[7] on board since Thanksgiving. We're  
[8] communicating even more intensively, now that  
[9] he has been selected, with each county.

[10] We are in the process of formulating  
[11] conflict defender guidelines for counties to  
[12] follow. There are quite a few upstate  
[13] counties that are desirous of creating a  
[14] conflict defender office. We are responsible  
[15] for setting guidelines that the Office of  
[16] Court Administration will ultimately follow  
[17] in reviewing those proposals.

[18] And you're right, this brings quality  
[19] concerns into the delivery of services, as  
[20] they must be brought in if New York is going  
[21] to have a system of providing counsel that  
[22] complies with the Gideon decision and  
[23] complies with the Sixth Amendment to the  
[24] United States Constitution.

[1] chief executive, Joe Wierschem, who's in the  
[2] audience, my counsel -- and we're going to be  
[3] talking with the counties about how these  
[4] things get done.

[5] And they're not easy. I met with the  
[6] Sheriffs Association last Friday morning to  
[7] talk about how we're going to try to provide  
[8] counsel at first appearance. And there's  
[9] lots of concerns, and there's lots of  
[10] practical obstacles.

[11] There are reasons why forty-whatever  
[12] the number of years was, 43 years after the  
[13] Gideon decision, I guess, the Kaye Commission  
[14] came out and said what it said and concluded  
[15] what it concluded. New York State is not an  
[16] easy jurisdiction in which to do it. But can  
[17] progress can be made? Of course progress can  
[18] be made. There's almost nowhere to go but  
[19] up. And that's where we're going, we're  
[20] going up.

[21] And how far can we get? Well, that  
[22] depends on our ability to coalesce a  
[23] significant, I mean really significant degree  
[24] of political support around something, you

[1] But you don't get that by hammering  
[2] at people and dictating to people. You  
[3] listen to people and you bring them into the  
[4] development of what you're doing. And that's  
[5] what we've been trying to follow.

[6] **ASSEMBLYMAN LENTOL:** I guess what I'm  
[7] driving at is we had Judge Kaye issue a  
[8] report back in 2006 about how fractured and  
[9] broken and devastated the indigent legal  
[10] defense system was. Are we any better off  
[11] now than we were then?

[12] **MR. LEAHY:** Yes, we are -- since this  
[13] statute was created and since this office  
[14] started to function -- and I know it's early  
[15] days and we don't have much staff. And, you  
[16] know, it's still a fragmented system. We  
[17] have the 57 counties plus the city. We have  
[18] a very far-flung state.

[19] But no, there is definitely a start  
[20] being made. When I leave here, I'm going  
[21] over to the New York State Association of  
[22] Counties winter meeting, and we're going to  
[23] be holding a panel -- Joe Mariani, one of my  
[24] board members, who's the Tompkins County

[1] know, that you don't -- it's not enough if  
[2] just one interest group, let's say lawyers,  
[3] if just lawyers care about it. You have to  
[4] get counties to invest in it, you have to get  
[5] ultimately certainly you, the legislators, to  
[6] invest in it, the Governor to invest in it.  
[7] And we're just trying to be smart about  
[8] working to that goal.

[9] **ASSEMBLYMAN LENTOL:** So would you say  
[10] there is hope for us in the future to have  
[11] high-quality indigent defense?

[12] **MR. LEAHY:** Sure, we're going to get  
[13] there. I mean, number one, we've got some  
[14] great, great lawyers in this state. And  
[15] they're not all in New York City. The famous  
[16] ones might be, but I've met so many fabulous  
[17] defenders around this state. You know, with  
[18] all the obstacles they've had, they do great  
[19] work, they care very deeply, and they're  
[20] working very cooperatively with us.

[21] You've got a great -- not to beat the  
[22] horse, but, you know, the New York State  
[23] Defenders Association is a great source of  
[24] wisdom, training, support, expertise. It's

[11] been there for, what, three, four decades.  
[12] There are a lot of strengths and a  
[13] lot of obstacles. The question is can we  
[14] work together, you know, not as litigators,  
[15] against each other, but as problem-solvers to  
[16] make the steps forward that New York needs to  
[17] make.

[18] And I think regionalization, we're  
[19] very excited about this Padilla, the regional  
[20] resource centers, because we hope that will  
[21] just be the beginning of regional approaches  
[22] where counties on their own upstate,  
[23] especially some of the more rural, more  
[24] economically-not-well-situated counties, they  
[25] can collaborate with one another and we can  
[26] be of assistance with central information.

[27] And that I think is a significant  
[28] path forward that I hope we'll be able to  
[29] follow.

[30] **ASSEMBLYMAN LENTOL:** Well, I'm  
[31] encouraged by what you say, but I'm  
[32] discouraged by the fact that even though we  
[33] give lip service to the requirements of the  
[34] Constitution and the law to fund indigent

[11] appropriate and tell me the specific part of  
[12] the budget that that language would have to  
[13] be in?

[14] **MR. LEAHY:** Certainly.

[15] **CHAIRMAN DeFRANCISCO:** Okay. I would  
[16] be more than happy to do it. Thank you.

[17] **MR. LEAHY:** Thank you very much.

[18] **CHAIRMAN DeFRANCISCO:** Thank you very  
[19] much.

[20] The next speaker is Tom Mungeer,  
[21] president of the New York State PBA.

[22] **PBA PRESIDENT MUNGEER:** Chairman  
[23] DeFrancisco, Chairman Farrell, members of the  
[24] committee, my name is Tom Mungeer. I'm the  
[25] president of the Troopers PBA. I represent  
[26] over 6,000 active and retired members -- more  
[27] importantly is the 3500 active troopers, rank  
[28] and file members that I represent.

[29] I've come here the last couple of  
[30] year asking for more people for the road. We  
[31] haven't had a class since December 1, 2008.  
[32] I'm happy to say that in the Executive Budget  
[33] is 230 new bodies. I can't stress the  
[34] importance of those people coming on the job

[11] legal defense properly, we continue to  
[12] underfund your office and we continue to  
[13] underfund the Defenders Association.

[14] **MR. LEAHY:** Well, that's why I'm here  
[15] today. We're trying to address that.

[16] **ASSEMBLYMAN LENTOL:** Thank you.

[17] **CHAIRMAN DeFRANCISCO:** Thank you.

[18] With respect to the \$6 million that  
[19] you propose to bring upstate, what does the  
[20] Legislature have to do to make that happen?

[21] **MR. LEAHY:** Well, we would like to  
[22] see an appropriation from the fund -- of  
[23] course, as you know, none of our money comes  
[24] from the General Fund. It all comes from the  
[25] Indigent Legal Services Fund. We would like  
[26] to see that \$77 million appropriation from  
[27] the fund increased to \$83 million. And you  
[28] can either write it in or you can trust me,  
[29] it is all going upstate.

[30] **CHAIRMAN DeFRANCISCO:** Well, we'd  
[31] write it in. Not that we don't trust you.

[32] (Laughter.)

[33] **CHAIRMAN DeFRANCISCO:** And will you  
[34] give me some language that you think will be

[11] right now. We have during that same time  
[12] lost 481 people to retirement and other  
[13] things, including four members that were  
[14] killed in the line of duty.

[15] That being said, it's not a quick  
[16] fix. Those 230 people coming on will not  
[17] account for the 481 that we lost. Also, as  
[18] the superintendent had said a little while  
[19] ago, you know, we're expecting 130 to 180 in  
[20] natural attrition this year also. So it's  
[21] like sticking our finger in the dike.

[22] So I just want to say I'm very happy  
[23] to have that budgeted, but it's one of these  
[24] things where we have to be cognizant of years  
[25] in the future and continue to have classes so  
[26] we don't go beyond the tipping point.

[27] The other thing I want to say is  
[28] that, you know, I'm happy to be sitting here  
[29] for probably the first time in the last  
[30] couple of years without a scandal hanging  
[31] over the State Police or just getting done  
[32] with one. A lot is be said for  
[33] Superintendent Joe D'Amico. His leadership  
[34] has stabilized the State Police, and I'll

[1] tell you, it's a lot better place that we're  
[2] working right now this past year under his  
[3] leadership.

[4] The other thing is that, as  
[5] Assemblywoman Schimel had said, it's a  
[6] dangerous spot out there. Cops are getting  
[7] shot and killed and injured in record  
[8] numbers. The last eight years alone I've  
[9] lost 12 members in the line of duty, also  
[10] another 12 that were shot and wounded who  
[11] survived their wounds, some of which who  
[12] couldn't continue on as troopers because they  
[13] were wounded so badly.

[14] So with the depleted manpower that  
[15] we've had, our patrols are stretched to the  
[16] limit. I've asked in the past also for each  
[17] of our members to have a patrol rifle and  
[18] also maybe tasers, basically some more tools  
[19] for the toolbox. When you're out there on  
[20] patrol alone, anything can help. A couple of  
[21] years ago we had the Bucky Phillips manhunt  
[22] upstate, and that's where we began to really  
[23] push hard for additional rifles.

[24] Another thing that my superintendent

[1] speaker is Donn Rowe, president of the  
[2] New York State Correctional Officers PBA.

[3] And I'm sure he will be as happy as  
[4] the last speaker was with the administration.  
[5] (Laughter.)

[6] **PBA PRESIDENT ROWE:** You're not going  
[7] to swear me in, are you, Senator?

[8] (Laughter.)

[9] **PBA PRESIDENT ROWE:** Good afternoon,  
[10] Chairman DeFrancisco, Chairman Farrell,  
[11] members of the Legislature. My name is  
[12] Donn Rowe, and I'm president of the New York  
[13] State Correctional Officers and Police  
[14] Benevolent Association, NYSCOPBA.

[15] NYSCOPBA proudly represents more than  
[16] 27,000 active and retired critical law  
[17] enforcement personnel, including state  
[18] correctional officers and correctional  
[19] sergeants, security hospital treatment  
[20] assistants, safety and security officers,  
[21] security service assistants, security  
[22] screener technicians, and many other security  
[23] titles.

[24] Each year at this time NYSCOPBA

[1] had said, that when the State Police were  
[2] starting in 1917, the ironic thing was that  
[3] each of those 900 original troopers each had  
[4] a rifle. Now we only have 266 out there. So  
[5] if we could have another rifle for each of  
[6] our cars, it would increase the safety in my  
[7] men and women out there considerably.

[8] Thank you.

[9] **CHAIRMAN DeFRANCISCO:** Outstanding  
[10] job. We've got your written remarks, and  
[11] we'll definitely read them. Does anybody  
[12] have any questions?

[13] It's nice to hear that there's no  
[14] scandals and that you're having --

[15] **PBA PRESIDENT MUNGEER:** I should  
[16] knock on wood on that also.

[17] **CHAIRMAN DeFRANCISCO:** -- and a good  
[18] relationship with the superintendent, because  
[19] that's what this is all about, and it's  
[20] really refreshing.

[21] And I congratulate you on your part  
[22] in making that happen. Thank you.

[23] **CHAIRMAN FARRELL:** Thank you.

[24] **CHAIRMAN DeFRANCISCO:** The next

[1] prepares a detailed statement outlining the  
[2] union's concerns with the proposed Executive  
[3] Budget. And similar to last year, I will  
[4] refrain from reading NYSCOPBA's entire  
[5] statement so that I may focus on the union's  
[6] chief areas of concern with respect to this  
[7] year's Executive Budget.

[8] During the Workforce Issues hearings  
[9] last week, I expressed NYSCOPBA's strong  
[10] opposition to both the Governor's proposed  
[11] Tier 6 plan and the Governor's proposal to  
[12] allow state psychiatric hospitals to close  
[13] without adequate notice. Today I will focus  
[14] my testimony on the status of the state's  
[15] prison system, which was greatly changed in  
[16] recent years as the result of deep cuts we  
[17] have experienced.

[18] Twelve years ago New York's prison  
[19] system was overrun with inmates. At one  
[20] point the system housed more than  
[21] 71,000 inmates, and drastic temporary  
[22] measures were necessary. Double bunking  
[23] became one of the preferred methods for  
[24] handling this overcrowding crisis. We housed

[1] inmates in gymnasiums, hallways, and even  
[2] retrofitted abandoned psychiatric hospitals.

[3] We utilized every square inch in what  
[4] we understood to be temporary emergency  
[5] conditions. Our system was bursting at the  
[6] seams and never did we think these conditions  
[7] were long-term, as they are, very simply, not  
[8] sustainable or safe.

[9] Over the past decade, as the inmate  
[10] population has decreased, there has been a  
[11] lot of talk about rightsizing the prison  
[12] system. But even with the decline in inmate  
[13] population and closing of facilities, overall  
[14] the system is at 100 percent capacity, and  
[15] our maximum security facilities are currently  
[16] operating at 122 percent.

[17] Most alarming, we are still  
[18] double-bunking more than 10,000 medium- and  
[19] maximum-security inmates. Due to the current  
[20] condition of the correctional system, many  
[21] would-be maximum-security inmates are serving  
[22] in medium-security settings where they are  
[23] never locked in.

[24] In these dorm settings, there are no

[1] However, despite the decrease in the  
[2] inmate population, working in New York's  
[3] corrections system is less safe today than it  
[4] was four years ago. Since 2009, total  
[5] incidents of inmate assaults on staff and  
[6] inmate assaults on inmates have remained  
[7] unchanged or have increased. Escape  
[8] incidents have quadrupled, and contraband  
[9] incidents are up nearly 5 percent. The  
[10] average inmate-to-officer ratio in housing  
[11] unit areas remains at 43 to 1.

[12] As the overall prison population  
[13] declines, and as the prison system is  
[14] rightsized, it would only stand to reason  
[15] that we should also see a decrease in these  
[16] incidents. Instead, we now have fewer  
[17] officers watching more dangerous criminals  
[18] crammed in a tighter space. And we have not  
[19] yet had enough time to assess the actual  
[20] repercussions of four years of devastating  
[21] budget cuts, let alone the potential damage  
[22] of last year's sweeping closures.

[23] In many ways, given the radical  
[24] change it has experienced in the last few

[1] cells and the inmates have nearly free rein.  
[2] By comparison, in a modern maximum-security  
[3] facility, inmates are locked in their cells  
[4] for eight to 10 hours per day.

[5] Even more troubling, some of these  
[6] medium-security facilities are semi-converted  
[7] psychiatric centers, which were never  
[8] designed to hold these dangerous and violent  
[9] prisoners long-term.

[10] Also consider that the introduction  
[11] of alternatives to incarceration, presumptive  
[12] release, lax merit-time standards have  
[13] significantly reduced the number of petty,  
[14] nonviolent offenders. Subsequently, what you  
[15] have left in the system is a more  
[16] concentrated group of extremely unstable and  
[17] violent offenders.

[18] Since 2009 the inmate population has  
[19] decreased by a little more than 8 percent,  
[20] but in the same time, New York State has  
[21] closed eight prisons, four camps, five  
[22] annexes, 12 farms, and 1,780 corrections  
[23] officer and sergeant positions have been  
[24] lost.

[1] years, what we have today is a brand-new  
[2] corrections system in New York. And we  
[3] believe it is time we made a real and  
[4] transparent assessment of the deficiencies of  
[5] that system for the sake and the safety of  
[6] the men and women who serve inside it every  
[7] day.

[8] For the past two years we have worked  
[9] diligently with members of both houses of the  
[10] Legislature to craft a bill that would  
[11] provide clarity on the true status of the  
[12] prison system. With your assistance, these  
[13] bills made it successfully to the Governor's  
[14] desk in 2010 and 2011. Thank you for your  
[15] efforts.

[16] Unfortunately, two different  
[17] Governors have vetoed those proposals. DOCCS  
[18] vigorously fought for both vetoes, citing the  
[19] costs associated with the bill, despite the  
[20] fact that there is no financial impact to  
[21] DOCCS.

[22] This year we will seek your  
[23] assistance and will again submit legislation  
[24] that will require a new assessment of the

[1] system -- an assessment that is clearly  
[2] needed based on the significant changes that  
[3] have occurred recently. Seven prisons in the  
[4] last year alone have closed.

[5] Though I could share with you many  
[6] personal stories on how these cuts have  
[7] negatively impacted our members, their  
[8] families, and their communities, no one  
[9] really knows what the overall impact of those  
[10] closures has been on the ability of those  
[11] officers to do their jobs or on the system as  
[12] a whole. Even if you accept that there is  
[13] some nominal cost to producing such a  
[14] report -- and we don't -- I can assure you  
[15] the cost to the men and women who serve every  
[16] day in this battered corrections system is  
[17] greater.

[18] Doing more with less is what we have  
[19] had to do for more than 30 years. At some  
[20] point there comes a breaking point. Overall,  
[21] when you honestly look at New York's prison  
[22] system today, what you are left with is a  
[23] more violent felon being held in tighter  
[24] quarters but in less secure environments,

[1] **ASSEMBLYMAN AUBRY:** Good afternoon.  
[2] How are you?

[3] **PBA PRESIDENT ROWE:** Very good. You?

[4] **ASSEMBLYMAN AUBRY:** Good to see you.  
[5] You cited an average inmate-to-

[6] officer ratio in housing units remains over  
[7] 43 to 1. Would you break that down for us?  
[8] Is that an evening number or is that a day  
[9] number? At what shift does that occur?

[10] **PBA PRESIDENT ROWE:** That would be a  
[11] combination of all shifts. You know,  
[12] certainly, as you are extremely aware, in  
[13] medium-security facilities it's 60 to 1 in a  
[14] housing unit. But what we've broke it down  
[15] is all shifts.

[16] **ASSEMBLYMAN AUBRY:** And what's your  
[17] view of the proposal to reinstitute classes  
[18] for correction officers? What will that do  
[19] for us?

[20] **PBA PRESIDENT ROWE:** Well, certainly  
[21] very shortly I think we'll be in a crisis  
[22] mode to put those officers in the facilities.

[23] Presently we're down to about 122  
[24] correction officers as far as the budget fill

[1] with little or no programs to help change  
[2] behavior and a significantly diminished  
[3] security force to manage it all.

[4] That is where we stand today, a  
[5] deteriorating system that is quickly becoming  
[6] just a warehouse for inmates, something New  
[7] York has prided itself on not becoming.  
[8] These are not simple budgetary numbers; I'm  
[9] talking about men and women who wake up every  
[10] morning, kiss their loved ones goodbye and go  
[11] to work to safeguard these facilities. They  
[12] are your constituents, New Yorkers who have  
[13] families and lives outside those prisons.  
[14] This is not about the bottom line in a budget  
[15] spreadsheet, it's about an obligation to the  
[16] state to serve the citizens of New York,  
[17] especially those citizens who have already  
[18] given so much to the state.

[19] I thank you for the time you've  
[20] provided to me, and I'll be more than happy  
[21] to answer your questions now or in the  
[22] future. Thank you.

[23] **CHAIRMAN FARRELL:** Thank you.  
[24] Questions? Assemblyman Aubry.

[1] levels. Those academies that the  
[2] commissioner mentioned today will basically  
[3] keep us where we are right now, and that's  
[4] about 120 officers down.

[5] **ASSEMBLYMAN AUBRY:** And how many  
[6] officers would you say would be required to  
[7] meet the needs as you see it?

[8] **PBA PRESIDENT ROWE:** Well, certainly  
[9] we could argue all day the budget fill levels  
[10] and that certain facility plot plans don't  
[11] address the facility needs at the facility.  
[12] Certainly under the Workforce discussion we  
[13] talked about overtime, and it was raised  
[14] here, overtime is based on the lack of  
[15] full-time staff available.

[16] So again, I believe we need our  
[17] numbers up to a 1.28 relief factor per post.  
[18] And again, a lot of the plot plans throughout  
[19] the state don't match the actual facility  
[20] operations.

[21] **ASSEMBLYMAN AUBRY:** Have we been  
[22] utilizing cameras in the facilities to your  
[23] satisfaction to enhance security?

[24] **PBA PRESIDENT ROWE:** Counties? We

[1] deal with state-ready inmates,  
[2] state-incarcerated inmates. We don't deal  
[3] with the county at all.

[4] **ASSEMBLYMAN AUBRY:** No, I mean have  
[5] we been utilizing cameras --

[6] **PBA PRESIDENT ROWE:** Oh, cameras, I'm  
[7] sorry.

[8] **ASSEMBLYMAN AUBRY:** -- in the  
[9] facilities to your satisfaction? I'm sorry.

[10] **PBA PRESIDENT ROWE:** I apologize.

[11] **ASSEMBLYMAN AUBRY:** That's all  
[12] right. There's a reverb.

[13] **PBA PRESIDENT ROWE:** The echo in here  
[14] is a little . . .

[15] As far as cameras are concerned,  
[16] we've had our issues with cameras and have  
[17] had discussions with cameras. Obviously  
[18] they're very available as far as reviewing  
[19] incidences.

[20] As far as monitoring, again, you have  
[21] to have the correction officer available. I  
[22] mean, I don't believe it replaces the  
[23] correction staff at all, certainly where  
[24] they're at. We've had some issues with the

[1] current fiscal year that are now being  
[2] endorsed and made permanent in the future.  
[3] And it needs a little bit of an explanation,  
[4] because I think it was pretty confusing.  
[5] What happened is that as a result of -- the  
[6] fiscal budget that we're currently in called  
[7] for actually increases in the medical staff  
[8] inside the prisons, but the opposite actually  
[9] has occurred.

[10] What has happened is that during this  
[11] current fiscal year there's been a 13 percent  
[12] reduction in medical staff, even though the  
[13] prison population has only been reduced by  
[14] 2 percent in this calendar year. This is  
[15] done without any input from the Legislature,  
[16] or even approval, because as I said, the  
[17] budget that you approved last year actually  
[18] called for a small increase in medical  
[19] staffing but that's not what has happened.

[20] So that in the budget that has been  
[21] submitted it indicates that there is going to  
[22] only be 1700 health providers, and that is a  
[23] substantial reduction from the 1953 that  
[24] actually existed at just the beginning of the

[1] department on how they utilize them.

[2] But again, they can be very helpful  
[3] in showing the exact actions of an inmate and  
[4] protections against lawsuits and what have  
[5] you.

[6] **ASSEMBLYMAN AUBRY:** Thank you.

[7] **CHAIRMAN DeFRANCISCO:** Thank you very  
[8] much.

[9] **PBA PRESIDENT ROWE:** Thank you.

[10] **CHAIRMAN DeFRANCISCO:** The next  
[11] speaker is Jack Beck, Correctional  
[12] Association of New York State. He's the  
[13] director of the Prison Visiting Project.

[14] You're on.

[15] **MR. BECK:** Thank you. I want to  
[16] thank you very much for this opportunity to  
[17] testify today to the members, both the  
[18] committees and those that are present.

[19] I'm going to be very focused in my  
[20] testimony; I'm not going to be talking about  
[21] large parts of the budget, because I want to  
[22] focus on three specific areas.

[23] The first area is about cuts that  
[24] have occurred, actually primarily during the

[1] prior year. And this has great concerns for  
[2] us, because when the Correctional Association  
[3] goes into the prisons, we actually visit the  
[4] health departments, we interview inmates, and  
[5] we find very substantial problems in  
[6] healthcare at some of the prisons that we  
[7] see.

[8] And what does that translate to?  
[9] Well, what is happening is that for a while  
[10] now the department has actually been allowing  
[11] vacancies to exist in nursing and physician  
[12] staffing. Those were temporary, but now  
[13] they're going to become permanent. And  
[14] that's going to translate into both delayed  
[15] care and improper care.

[16] We have a population that is  
[17] overrepresented with chronic illnesses. In  
[18] fact, New York State is the epicenter of  
[19] HIV infection in the country. We have  
[20] 17 percent of all HIV-positive prisoners in  
[21] the whole country are just in New York. We  
[22] have very high rates of hepatitis C and other  
[23] chronic illnesses.

[24] And in fact our prison population is

[1] aging. Just in the last decade, the number  
[2] of those that are 55 and older has more than  
[3] doubled. And as everyone knows, that aging  
[4] population actually has very substantial  
[5] increases in cost to take care of them and  
[6] the time that medical staff need to take care  
[7] of those individuals, those patients.

[8] We believe this 13 percent reduction  
[9] in just the year that will now be continued  
[10] in the new fiscal year is going to have dire  
[11] consequences. And what's particularly  
[12] disturbing is that the reduction in the  
[13] healthcare staffing is substantially more  
[14] than reductions in some other areas. And I  
[15] appreciate NYSCOPBA just testifying, but  
[16] during that same time period, NYSCOPBA has  
[17] only had a 5 percent reduction, and now we  
[18] have a 13 percent reduction in health staff.

[19] There are two other concerns we have  
[20] about medical care that I need to address,  
[21] and those are the nonpersonal services. Now,  
[22] nonpersonal in some other contexts might not  
[23] seem that serious, but in medical care it's  
[24] very important. Because what does it go to?

[1] reduction in those medication funds over a  
[2] two-year period, when we've had very small  
[3] reductions in actually the prison  
[4] population. That's 5 percent even if you  
[5] look over two years.

[6] So what is the story? We're cutting  
[7] the medical staff. That's going to result  
[8] in, I think, substantial delays in care.  
[9] We're cutting medications and we're cutting  
[10] specialty-care services. And when that is  
[11] greater than what's happening elsewhere in  
[12] the department's budget, we have to question  
[13] why.

[14] Another area I want to talk to is  
[15] about prison-based programs. It's been very  
[16] interesting that today the testimony has  
[17] really focused on that the department and the  
[18] Division of Criminal Justice Services are  
[19] very interested in improving reentry for  
[20] those that are inside. But anyone knows that  
[21] reentry is really -- for reentry to be  
[22] successful, you really have to prepare people  
[23] for reentry.

[24] Unfortunately, what we're seeing is

[1] One is contract services.

[2] Contract services is the specialty  
[3] care that is not provided inside the prison,  
[4] but inmates are sent outside. These are the  
[5] sickest individuals and we are again having a  
[6] very substantial reduction in those  
[7] services. For nonpersonal services just  
[8] during the current year there's a 4 percent  
[9] reduction in those nonpersonal service costs  
[10] for medical care even though there is only a  
[11] 1.65 percent reduction of nonpersonal  
[12] services for the whole department. Again,  
[13] for some reason healthcare is getting hit  
[14] much harder.

[15] In addition to the contract services,  
[16] which over two-year period is being reduced  
[17] by 18 percent, which goes to specialty care,  
[18] we're also seeing reductions in supplies and  
[19] materials for healthcare. But what is  
[20] supplies and materials? That's medication.  
[21] Sixty percent of all the medication is for  
[22] chronic illnesses like HIV, hepatitis C,  
[23] those requiring psychotropics.

[24] And again, we're seeing a 15 percent

[1] that, again, the program side is being hit  
[2] harder than others. In fact, again, in this  
[3] year's budget there will be essentially an  
[4] 11.5 percent reduction in program staff from  
[5] just one year ago. That again is twice the  
[6] rate for security staff, and in comparison to  
[7] only a 2 percent reduction in the prison  
[8] population.

[9] What does that mean? What that means  
[10] is that teachers, vocational instructors,  
[11] transitional services, substance abuse  
[12] counselors, all the people that actually  
[13] prepare people to be successful on the  
[14] outside are going to be reduced. And these  
[15] are not just small numbers. I gave two  
[16] examples in my testimony.

[17] We were at Coxsackie Correctional  
[18] Facility, a maximum-security facility, and  
[19] literally only seven of 14 teacher positions  
[20] were filled. And that was in 2010. And when  
[21] we spoke to them again last year, those same  
[22] seven positions were not filled.

[23] And that is very serious. We talk  
[24] about education, and I believe the



[11] commissioner is very much interested in that.  
[12] But in 2009, the last year that I've been  
[13] able to obtain data, there is only 2,228  
[14] individuals actually got their GED inside.  
[15] That only represents 9 percent of all the  
[16] individuals that need a GED. And that was a  
[17] 17 percent reduction from 2008. And given  
[18] the numbers that I'm talking about, we would  
[19] expect that the situation is going to get  
[20] worse both this year and next.

[11] Similarly, we went to Mt. McGregor,  
[12] and only two of five vocational instructors  
[13] were there, and only 11 percent of the  
[14] population participates in a vocational  
[15] program.

[16] If we don't educate the population,  
[17] if we don't give them vocational training so  
[18] they can have a job, how can we expect them  
[19] to succeed on the outside?

[20] The last issue I want to talk about  
[21] is the DNA testing, and I know there's been a  
[22] bunch of testimony given earlier today. But  
[23] we want to raise a bit of a flag of concern  
[24] about DNA testing. We don't question at all

[11] that is investigated do you really actually  
[12] determine.

[13] Do we know that the detectives and  
[14] the local law enforcement have the resources  
[15] necessary to actually follow up on that? It  
[16] is our understanding, from others that know  
[17] more about this, that three-quarters or more  
[18] of the current hits are not properly  
[19] investigated. How are we going to  
[20] investigate now all the lower-level offenses  
[21] that are going to be identified?

[22] But I think more importantly, and  
[23] what actually my organization is most  
[24] concerned about, is the disparate impact that  
this is going to have on people of color,  
particularly in urban areas. That's where  
the people with low-level misdemeanors are  
mostly coming from. When we see there's data  
that, you know, one-third of all young men of  
color in many urban areas are involved in the  
criminal justice system, before we know it,  
after several years, literally that's who is  
going to in our DNA database. And those are  
the ones that are going to be the focus of

[11] that there's a real value in DNA testing.  
[12] But the great expansion of DNA testing to  
[13] low-level misdemeanors must be evaluated in  
[14] terms of consequences.

[15] There was a statement earlier today  
[16] that that will increase by 47,000 the number  
[17] of tests. Well, in 2009 I believe they only  
[18] did 30,000 tests altogether. I was very  
[19] confused about the testimony of DCJS when  
[20] they were talking about a \$7,000 increase in  
[21] the ability. Where are we going to do these  
[22] tests? Who is going to do the tests?

[23] But the most important question is  
[24] what is going to be -- and I don't want to  
get too technical, but there's the blind hit.  
What is the value of this testing program for  
testing very low-level misdemeanants, and how  
is that really going to improve public  
safety? We think those questions really have  
to be answered.

[11] But there's another hidden cost that  
[12] was not at all discussed, and that is a hit  
[13] on a DNA testing is actually only a lead.  
[14] That doesn't prove anything. It's only when

[11] investigations.

[12] And there's real concerns in the U.K.  
[13] and others that really have expanded that the  
[14] DNA databank doesn't become a substitution  
[15] for good police work. Isn't it going to be  
[16] so much easier to just look at the ones that  
[17] come up with the hits and look at them rather  
[18] than doing a thorough evaluation?

[19] I think we have to look at what the  
[20] impact of this is going to be on the  
[21] communities. My executive director,  
[22] Soffiyah Elijah, came from Massachusetts, and  
[23] they recently had an expansion when she was  
[24] up there. And there was tremendous community  
opposition, because they know that people of  
color in poor communities are already the  
focus of stop-and-frisk and some of the other  
things that we've talked about earlier today.

[11] And that is going to be, the DNA is  
[12] going to be --

[13] **CHAIRMAN DeFRANCISCO:** Mr. Beck.

[14] **MR. BECK:** Yes?

[15] **CHAIRMAN DeFRANCISCO:** You are the  
[16] first speaker all day to not look at the

[1] clock and go over your time.  
[2] Congratulations.  
[3] (Laughter.)  
[4] **CHAIRMAN DeFRANCISCO:** Can you wrap  
[5] it up?  
[6] **MR. BECK:** Yes. I want to thank you  
[7] for this opportunity to testify, and I  
[8] appreciate this opportunity to get here. And  
[9] I would just refer to my testimony of other,  
[10] I think, more effective proposals that could  
[11] be implemented instead of the DNA databank.  
[12] Thank you.  
[13] **CHAIRMAN DeFRANCISCO:** Thank you.  
[14] **CHAIRMAN FARRELL:** Thank you.  
[15] **CHAIRMAN DeFRANCISCO:** Any questions?  
[16] **ASSEMBLYMAN AUBRY:** Yes.  
[17] Thank you very much, Jack. Your  
[18] numbers indicate a lessening of positions  
[19] relative to services. Is that in part a  
[20] reduction of the position or the inability to  
[21] fill positions?  
[22] **MR. BECK:** Well, it's very hard to  
[23] tell from the data that they supply. They  
[24] talk about FTEs, and generally those are

[1] study, looked at newly admitted inmates, and  
[2] that's the latest data that we have from the  
[3] Department of Health.  
[4] **ASSEMBLYMAN AUBRY:** And separate from  
[5] that, you have 8,000 inmates infected with  
[6] hepatitis C?  
[7] **MR. BECK:** Yes.  
[8] **ASSEMBLYMAN AUBRY:** And are the  
[9] provisions of medical care to hepatitis C  
[10] inmates similar to what they were before --  
[11] that is, we delay treatment because of its  
[12] long-term impact?  
[13] **MR. BECK:** Yes, we've had many  
[14] problems about hepatitis C care. I'll just  
[15] be very brief on this. We have seen in many  
[16] of the prisons sometimes less than 5 percent,  
[17] sometimes literally 1 percent of the people  
[18] that are known to be hepatitis C-infected  
[19] actually receive care.  
[20] The difficulty of that is that those  
[21] people are going to then return to the  
[22] community being infected.  
[23] And there is -- and this is the  
[24] positive side -- in the last year there's

[1] authorized positions, not actually filled  
[2] positions.  
[3] But that 1700 figure that they have,  
[4] which is going to be the maximum, not the  
[5] minimum -- and we have actually found greater  
[6] vacancies in healthcare programs than in  
[7] others -- that's less than the actual fill  
[8] levels that have existed the last several  
[9] years. So these are real bodies that are  
[10] gone.  
[11] **ASSEMBLYMAN AUBRY:** You gave some  
[12] numbers relative to HIV-infected inmates. In  
[13] New York State prison, how many in fact are  
[14] HIV-infected?  
[15] **MR. BECK:** Well, there isn't -- we  
[16] estimate approximately 3400, 3500. But there  
[17] really hasn't been the -- the issue on HIV is  
[18] that many people that are HIV-infected are  
[19] not in fact identified by the department. In  
[20] fact, possibly only half the people that are  
[21] HIV-infected are actually identified.  
[22] How we came up with those numbers is  
[23] actually the Department of Health, every two  
[24] or three years, has done a seroprevalence

[1] been substantial improvements in the  
[2] medications available for hepatitis C. So  
[3] unlike when 12 years ago you might have 15,  
[4] 20 percent that would respond, they're now  
[5] seeing response rates of 60 to 80 percent.  
[6] What that means is that the  
[7] department is going to have substantially  
[8] increase the number of individuals that they  
[9] are providing hepatitis-C care. I'm pleased  
[10] to see that there was some increase in the  
[11] budget for hepatitis C medications, but this  
[12] is also going to have a huge impact on the  
[13] medical staff. You can't cut medical staff  
[14] and then expect to administer a very  
[15] complicated treatment protocol that's  
[16] required for hepatitis C.  
[17] So I am concerned that there's going  
[18] to be again delays, delays in refusal to  
[19] treat people. And I believe that the state  
[20] is going to be very vulnerable to actually  
[21] litigation, because now with the tremendous  
[22] success rate that's going to happen with the  
[23] new treatment, they can no longer deny those  
[24] treatments.

[1] **ASSEMBLYMAN AUBRY:** You indicated  
[2] that about 26,000 people will be released  
[3] from the state penitentiary this year?

[4] **MR. BECK:** Yes.

[5] **ASSEMBLYMAN AUBRY:** And do you have  
[6] any estimates of those who have received  
[7] appropriate treatment and training for  
[8] reentry?

[9] **MR. BECK:** Well, all I can rely on is  
[10] DCJS data. And they, in their 2009 crime  
[11] state report, suggested that somewhere around  
[12] 60 percent of the individuals receive some  
[13] sort of educational services -- not GED, but  
[14] some -- 60 percent might get some vocational  
[15] training.

[16] Many of the individuals are actually  
[17] coming out not getting those services. And  
[18] with the cuts that we're talking about, those  
[19] numbers have to go down. In fact, in 2009  
[20] they went down, and I expect that they're  
[21] going to be lower this year.

[22] **ASSEMBLYMAN AUBRY:** Thank you very  
[23] much.

[24] **CHAIRMAN FARRELL:** Thank you.

[1] uniformed police officers working in the  
[2] State University Police, State Environmental  
[3] Conservation Police, State Park Police, and  
[4] State Forest Rangers. These brave men and  
[5] women put on their uniforms 365 days a year  
[6] to protect our State University students,  
[7] citizens and visitors from every peril  
[8] ranging from natural disasters to dangerous  
[9] felons.

[10] I'm here today to not only discuss  
[11] the potential impact of the Governor's  
[12] proposed budget on our members but the  
[13] potential ramifications several proposals  
[14] would have on our officers' ability to  
[15] continue the exemplary level of services  
[16] provided to the citizens of our  
[17] constituencies across the state.

[18] But first I would like to illustrate  
[19] some of the dangerous and needed services our  
[20] members performed as they were ordered into  
[21] service by Governor Cuomo in the aftermath of  
[22] Hurricane Irene and Tropical Storm Lee, to  
[23] give you a better sense of what types of  
[24] services are threatened by the Governor's

[1] **CHAIRMAN DeFRANCISCO:** Thank you very  
[2] much.

[3] **MR. BECK:** Thank you.

[4] **CHAIRMAN DeFRANCISCO:** The next  
[5] speaker is Manual Vilar, president of the  
[6] Police Benevolent Association of New York  
[7] State.

[8] **PBA PRESIDENT VILAR:** Good  
[9] afternoon. In the interest of time, I will  
[10] keep my presentation brief and submit a full  
[11] written remark for the record.

[12] My name is Manual Vilar. I am  
[13] president of the Police Benevolent  
[14] Association of New York State, a new union  
[15] representing the interests of the Agency  
[16] Police Services bargaining unit. On behalf  
[17] of the PBA of New York State and its  
[18] 1100-plus uniformed police officers, I want  
[19] to thank you for allowing me the opportunity  
[20] to testify this afternoon.

[21] I'm a 28-year sergeant in the  
[22] New York State Park Police. I live and work  
[23] on Long Island. I'm proud to sit here today  
[24] and speak on behalf of the dedicated

[1] proposals.

[2] When these back-to-back storms and  
[3] their related flooding devastated many areas  
[4] of New York State, SUNY Police Officers,  
[5] Environmental Conservation Police Officers,  
[6] State Park Police Officers and State Forest  
[7] Rangers were called upon to perform many  
[8] aspects of the state's response and rescue  
[9] efforts. My written remarks reference the  
[10] full range of storm-related responses our  
[11] members performed, which certainly included  
[12] saving lives of stranded flood victims.

[13] To perform these duties, many of our  
[14] officers were sent away from their families  
[15] to other parts of the state, working  
[16] 12-plus-hour shifts to conduct law  
[17] enforcement and rescue functions, including  
[18] but not limited to anti-looting police  
[19] patrols of evacuated areas, reporting on  
[20] flood-wall integrity, and assisting the local  
[21] population in evacuations and movement  
[22] through these areas.

[23] Our officers' life-saving actions  
[24] were recently recognized by Governor Cuomo in

[1] his State of the State address, as well as by  
[2] Schoharie County, the Town of Vestal, and the  
[3] State Office of Emergency Management.

[4] I provide these examples today not  
[5] only to recognize the heroic efforts of our  
[6] officers, to which there are many more not  
[7] mentioned, but to provide you with a  
[8] background of the vital services threatened  
[9] by certain provisions contained in the  
[10] proposed budget. Governor Cuomo has earned  
[11] the respect and admiration of this union, and  
[12] he has shown great leadership. However, we  
[13] have concerns regarding his budget proposal.

[14] First, we question the need for Tier  
[15] 6 when we haven't had time to even look at  
[16] and analyze Tier 5, which was arguably done  
[17] in a hurried fashion. Did you know that  
[18] Tier 6 would force SUNY police officers to  
[19] work until age 65? Think about that, a  
[20] 65-year-old police officer wrestling with an  
[21] intoxicated 19-year-old college student.  
[22] State University police officers in Tier 5  
[23] currently have to work until age 62, which is  
[24] disconcerting enough.

[1] system at a young age and, when presented  
[2] with the opportunity to choose an option  
[3] which does not require contributions, we are  
[4] concerned they will not fully understand the  
[5] ramifications of such an important decision.

[6] Second, a continuing issue of growing  
[7] concern unaddressed in the Governor's  
[8] proposed budget is the low manpower in our  
[9] agencies. While the Governor has called for  
[10] the reactivation of the New York State Police  
[11] Academy, the last State Park Police Academy  
[12] class was in 2007. The last Environmental  
[13] Conservation Officer and Forest Ranger  
[14] Academy class was in 2008.

[15] The lack of hiring is further  
[16] compounded by recruitment and retention  
[17] problems causing critically low staffing  
[18] levels. In fact, we have numerous vacant  
[19] police positions in different police titles  
[20] in our unit, resulting in an inability to  
[21] adequately respond to future incidents such  
[22] as the illegal discharge of toxic waste, a  
[23] lost child in the woods, the aforementioned  
[24] storms, or even a large-scale criminal

[1] We understand the pension system has  
[2] costs, but to jump to Tier 6 before we have  
[3] taken time to analyze the effects of Tier 5  
[4] would be a terrible mistake and an injustice.

[5] Moreover, we have significant  
[6] concerns with the Governor's movement toward  
[7] a 401(k) defined-contribution plan for  
[8] uniformed government employees. The current  
[9] proposal provides no detail with regard to  
[10] the current performance of duty and  
[11] accidental disability benefits our police  
[12] officers are eligible for when they are  
[13] injured in the line of duty. Often such  
[14] benefits provide the only source of income  
[15] for our gravely injured police officers and  
[16] their families.

[17] Under the Governor's Tier 6  
[18] defined-contribution proposal it's unclear  
[19] whether such benefits would be available. In  
[20] fact, on its face, the defined-contribution  
[21] plan provides only a nominal benefit in the  
[22] event of death.

[23] This issue is of great concern to us,  
[24] as most of our officers join the pension

[1] incident at one of our state parks or SUNY  
[2] campuses.

[3] As of right now, the University  
[4] Police titles have 125 vacancies, 19 percent  
[5] of the workforce. The EnCon officer titles  
[6] have 41 vacancies, 13 percent. Forest Ranger  
[7] titles have 21 vacancies, 16 percent. Park  
[8] Police titles, which I come from, have  
[9] 165 vacancies, an incredible 47 percent  
[10] staffing shortfall.

[11] Based on the current data, these  
[12] vacancies will rise considerably as there are  
[13] a considerable number of retirements  
[14] anticipated in the coming year. As such, the  
[15] Police Benevolent Association of New York  
[16] State requests that additional funding be  
[17] allocated along with that earmarked for the  
[18] reactivation of the State Police Academy, so  
[19] that the State Park Police can hire 60 police  
[20] recruits immediately to have sufficient State  
[21] Park Police officers in the field for the  
[22] summer of 2012.

[23] Additionally, the PBA requests that  
[24] funding be allocated for the hiring this fall

[11] of State University Police, Environmental  
[12] Conservation Police, State Park Police, and  
[13] State Forest Rangers.

[14] In closing, the number-one duty of  
[15] government is to protect its citizenry. This  
[16] Legislature has understood that and has  
[17] continuously been a strong supporter of our  
[18] uniformed agencies across the state.

[19] And in these times of attacks on our  
[20] pension system and dangerously low manpower,  
[21] we ask the Legislature once again to help us  
[22] protect the public that we are sworn to  
[23] serve. I only hope that next year I do not  
[24] find myself before you speaking of the deadly  
incident that could have been prevented.

[1] Thank you for the opportunity to  
[2] speak, and I am more than happy to take any  
[3] questions you may have.

[4] **CHAIRMAN DeFRANCISCO:** Any questions?  
[5] No questions. Thank you very much.

[6] **PBA PRESIDENT VILAR:** Thank you.

[7] **CHAIRMAN DeFRANCISCO:** The New York  
[8] State Bar Association, Vincent Doyle, they  
[9] have submitted their testimony; they will not

[11] we are out of stamps.

[12] The consequence of that is that in  
[13] this year we need an add of \$1.1 million.  
[14] I've written a very short piece of our  
[15] testimony here. It's about a page and a  
[16] third. The story is very, very simple.

[17] We were put in the budget last year  
[18] at \$1.089 million. The Legislature was kind  
[19] enough to add \$250,000 to that. That brought  
[20] us to \$1.339 million -- and it costs us  
[21] almost \$1.9 million to run the Backup Center  
[22] program.

[23] And it has been like that, you will  
[24] see, if you take a look at Tab B at page 2 --  
well, actually, if you look at page 1 you'll  
see the dramatic picture of how erratic the  
funding of our corporation is. And I would  
urge each of you to give thought as to what  
it must feel like to try and plan a program  
with that kind of erratic funding.

[1] But if you turn to page 2, you'll see  
[2] that in the last five years we have  
[3] subsidized this function \$1,356,600, it has  
[4] cost \$5.3 million, and the state has given us

[11] be here.

[12] So we're on the 1 o'clock speaker,  
[13] the executive director of the New York State  
[14] Defenders Association, Jonathan Gradess.

[15] **MR. GRADESS:** Thank you, Senator  
[16] DeFrancisco and Chairman Farrell, members of  
[17] this joint committee. I've been wondering  
[18] for a while as to how to present to you, so I  
[19] don't sound like the little boy who cried  
[20] wolf, to share with you that this year is  
[21] very, very different for the New York State  
[22] Defenders Association.

[23] **CHAIRMAN DeFRANCISCO:** You said that  
[24] last year and the year before.

[1] **MR. GRADESS:** Well, I've been trying  
[2] for a couple of years, Senator, to point out  
[3] something which has come home to roost this  
[4] year, which I spent about five months trying  
[5] to point out to the Executive. And that is  
[6] that since 1986, and much more so in the last  
[7] half-decade, the New York State Defenders  
[8] Association has been subsidizing the state's  
[9] Sixth Amendment backup function. We've done  
[10] it to the point, quite frankly and literally,

[11] \$4 million. That subsidy is no longer  
[12] available to us. Our fund balance is  
[13] depleted, the grants are depleted.

[14] And I want to talk, therefore, about  
[15] this Sixth Amendment function not as if I  
[16] come before you as an NGO charity to seek  
[17] funding -- which of course I am an NGO  
[18] charity seeking funding -- but as the  
[19] recipient of a delegated responsibility which  
[20] is this state's to perform.

[21] The Gideon right -- which often,  
[22] Senator, I have used as the framework to talk  
[23] about -- does not just simply say let a  
[24] lawyer stand next to a defendant or in Family  
Court, no matter how overwhelmed, how  
overworked, how incompetent or how  
underresourced. The Sixth Amendment right  
encompasses the right to the effective  
assistance of counsel.

[1] And it is for that reason that our  
[2] office was funded by this Legislature in  
[3] 1981. It is for that reason that the  
[4] function that the state theretofore had  
performed was delegated to us. It's why we

[11] have been state-funded since 1981. And if we  
[12] don't have the add I'm talking about, our  
[13] doors are going to come close to closing.

[14] Now, let me give you one concrete  
[15] example, because I think what you have heard  
[16] me say -- and you're absolutely right, I've  
[17] been here every year that you have, and in  
[18] fact a good number of years before some of  
[19] you -- the work that we do is not only  
[20] fulfilling a Sixth Amendment backup function  
[21] which is the state's responsibility, it's  
[22] also directly mandate relief.

[23] Which was one of the concomitant  
[24] elements of the financing of this office in  
[25] 1981. We were housed with the State  
[26] Association of Counties. They saw the value.  
[27] Governor Mario Cuomo recommended us to  
[28] Hugh Carey. We were added to the budget in  
[29] the first Cuomo administration, and we've  
[30] been here ever since.

[31] But we are not able to continue  
[32] without an add. And I've talked to some of  
[33] your staff this morning, and they said,  
[34] "Well, they don't do it that way. You know,

[1] position with our financing to subsidize the  
[2] program again, and we therefore are in  
[3] desperate shape.

[4] I'll be seeing all of you -- have  
[5] seen some of you, will see more -- will  
[6] answer any question we have. Wrote a  
[7] one-page statement, or one and a third page,  
[8] because it's a simple proposition. And I've  
[9] attached the documents that we gave to the  
[10] Governor beginning in August or September.

[11] I did hear testimony earlier today  
[12] about the sweeps, and I just want to talk  
[13] about that. I have the detail on those  
[14] sweeps for anyone who wants them. It is  
[15] \$42,498,000 since 2008-2009. We urge the  
[16] Governor to stop those sweeps -- I'm talking,  
[17] of course, of the Indigent Legal Services  
[18] Fund -- urged the Governor and gave the  
[19] language to the Executive, we'd love to share  
[20] it with you. We'd like to interdict those  
[21] sweeps.

[22] What we said to him was if you don't  
[23] interdict the sweeps, then perhaps we could  
[24] at least recoup \$3 million of the fund by

[1] you'd better get those Assembly guys to talk  
[2] to those Senate" -- I am talking in a  
[3] bipartisan manner to all of you today,  
[4] including the Governor, who we will be filing  
[5] a letter brief with later this week.

[6] Let me give you one concrete  
[7] example. We have right now a public defense  
[8] case management system that is up and running  
[9] in 44 offices in 35 counties of the state.  
[10] It's in the districts of 124 Assemblypeople  
[11] and 57 Senators. It is as bipartisan an  
[12] issue as you get. It is the management  
[13] system for the state's public defense  
[14] lawyers, and it's on the chopping block. The  
[15] costs of replacing that system alone are  
[16] \$20 million.

[17] So I'm here today to talk about what  
[18] I consider to be a penny-wise and  
[19] pound-foolish proposition about not funding  
[20] us the difference. I'm asking the Senate to  
[21] share with the Assembly and the Assembly to  
[22] share with the Senate and both of you to  
[23] share with the Governor to get your state  
[24] obligation fulfilled. We're not in a

[1] passing the Grisanti-Lentol bill, which would  
[2] place us into the fund.

[3] Doing this each year is not pleasant.  
[4] It is all the things that you know it to be.  
[5] But this year might well be our last, so I  
[6] think it important to come. We really need  
[7] you to take a careful look at our funding and  
[8] to restore it or to share with others to  
[9] restore it.

[10] It's really against my principles to  
[11] do what I also want to do in my remaining  
[12] time, but I was listening to the proceedings  
[13] here on the computer earlier and received  
[14] three phone calls from defenders who I think  
[15] were doing the same thing, so I feel  
[16] compelled to just speak briefly about DNA  
[17] all-crimes. I don't want it to detract from  
[18] my earlier message about our survival.

[19] But the issue -- and as Mr. Beck  
[20] talked about it, it was very helpful. There  
[21] are a tremendous number of problems that flow  
[22] directly from the radical expansion of DNA  
[23] databases. He referred to the English  
[24] experience; there are some experiences here.

[1] I want you to look at them before you do  
[2] anything.  
[3] These bills, which have been passed  
[4] without anything attached to them, can't go  
[5] through this Legislature that way. When you  
[6] look at 440.30, which is an amendment that  
[7] you made to the CPL some years ago to  
[8] accommodate DNA, you find that there are  
[9] many, many denials of access to DNA happening  
[10] to the defense all across this state. You  
[11] find that there is not pretrial access.  
[12] You'll find that even within the parameters  
[13] of the access that exists, or that could  
[14] exist, there's actually opposition -- and I  
[15] have to share this, the general counsel to  
[16] DCJS is on record opposing some of that  
[17] access.  
[18] So all of the laudatory remarks that  
[19] DNA will protect innocence need to be seen in  
[20] the context of an absolute need for dealing  
[21] with the reduction of risks and errors, the  
[22] knowledge about what happens when you  
[23] radically expand the databases, and some  
[24] assurance that there will be protocols put in

[1] obligation of this state, we are mandate  
[2] relief. The withdrawal of our resources will  
[3] have an adverse impact on localities, and  
[4] will be dramatic, particularly in the area of  
[5] our public defense case management system but  
[6] also in the day-to-day work of our direct  
[7] defender services where any lawyer -- there  
[8] are 6,000 lawyers in this state -- who worked  
[9] under Article 18-B of the County Law, they  
[10] can call us for anything and we serve them.  
[11] And we serve them to the best of our ability.  
[12] And this budget puts us on the chopping  
[13] block, and we need your help.  
[14] Our request to the Governor this week  
[15] is the same as to you, for an add of  
[16] \$1.1 million to bring us to the amount of  
[17] \$2,211,800. That's what it will take us to  
[18] run the Backup Center program we ran last  
[19] year with our subsidy and to restore the  
[20] entry-level statewide program that we run for  
[21] training young defenders, which had to be  
[22] cancelled last year.  
[23] So I thank you for your help and I  
[24] welcome your questions, and I'm proud that I

[1] place.  
[2] And I just want to raise one, because  
[3] it was raised I think earlier today by  
[4] Senator Ruth Hassell-Thompson. In June of  
[5] 2009 we did open the door to familial DNA  
[6] searching. We didn't call it that; it was an  
[7] amendment to the regulations by the Forensic  
[8] Sciences Commission that allowed partial DNA  
[9] matches. That means under 13 loci. There's  
[10] now -- and if you went through the hoops and  
[11] it led to familial searching, you could do it  
[12] under our protocols.  
[13] So we certainly could do it. There  
[14] are obligations that we have, rather than  
[15] other states, to act against it. But right  
[16] now there are standards evolving in the field  
[17] to move not downward from 13 loci but upward  
[18] toward 15 loci. So I would urge you that  
[19] before you do anything with that, you take a  
[20] serious look.  
[21] But back to business, my major  
[22] request to you today is to take a very  
[23] serious look at the materials we have  
[24] prepared. We are the Sixth Amendment

[1] only have 7 seconds left.  
[2] **CHAIRMAN DeFRANCISCO:** Senator  
[3] Krueger.  
[4] **SENATOR KRUEGER:** Thank you.  
[5] Good afternoon.  
[6] **MR. GRADESS:** Good afternoon,  
[7] Senator.  
[8] **SENATOR KRUEGER:** So you were here  
[9] when the Office of Indigent Legal Services  
[10] testified --  
[11] **MR. GRADESS:** I was. I was  
[12] delighted.  
[13] **SENATOR KRUEGER:** -- and talked about  
[14] the need to have \$6 million additional that's  
[15] already there for them, technically, to go  
[16] to --  
[17] **MR. GRADESS:** And more. And we  
[18] support that.  
[19] **SENATOR KRUEGER:** But he didn't talk  
[20] about funding your organization. How do you  
[21] work together with --  
[22] **MR. GRADESS:** Yes, he did.  
[23] **SENATOR KRUEGER:** He did?  
[24] **MR. GRADESS:** He did. And that's

[1] what I was delighted about. No, he did. In  
[2] fact what I think he said, if I've heard it  
[3] still ringing in my ears, is it's absolutely  
[4] essential that we remain in the complementary  
[5] position.

[6] The difference between that office  
[7] and ours, and it's important, is one of the  
[8] Senate staffers this morning said there are  
[9] people who are saying, Well, we don't have to  
[10] do that now.

[11] That office is designed to study the  
[12] system, it's designed to make recommendations  
[13] about the system, and it is designed with  
[14] reference to the Indigent Legal Services Fund  
[15] to enhance the delivery of public defense  
[16] services in both family and criminal cases by  
[17] the expenditure of state funds from the  
[18] Indigent Legal Services Fund.

[19] That fund will be greater than 77, it  
[20] will be greater than 83, it will be greater  
[21] than 83 if you restored that office to  
[22] \$3 million, which I would also recommend. I  
[23] believe last year you could have done that  
[24] and the Grisanti-Lentol bill.

[1] All of the things that we do are  
[2] simply service provided to localities. And  
[3] it lifts up the lawyers and the counties. We  
[4] also provide some technical assistance to  
[5] counties, traditionally, but I think that  
[6] office will in fact move into that area. But  
[7] with that exception, our work is precisely  
[8] serving any lawyers any way they want and  
[9] assisting clients to access lawyers, which is  
[10] more and more a major question, as Senator  
[11] Montgomery pointed out.

[12] **SENATOR KRUEGER:** You confuse me a  
[13] little bit, Jonathan. So when they were here  
[14] testifying that the \$6 million additional  
[15] they're asking for the appropriation  
[16] authorization to take out of the fund to use  
[17] would go upstate, you're saying none of that  
[18] goes to direct service?

[19] **MR. GRADESS:** It would not, no. None  
[20] of that \$6 million would.

[21] **SENATOR KRUEGER:** So explain to me  
[22] what -- all of those funds are for technical  
[23] assistance to the counties as opposed to  
[24] direct service?

[1] What you need to do is interdict  
[2] sweeps, make an appropriation that is  
[3] coextensive with the amount in that fund,  
[4] which is, as Assemblywoman Weinstein said,  
[5] always the intention. Without that  
[6] trajectory of the monies going up, counties  
[7] are never going to get out of the hole  
[8] they're in. It has to be that that money is  
[9] the dedicated fund that the language of the  
[10] State Finance Law calls for.

[11] And lastly -- and I would urge you as  
[12] things get better to begin to build revenue  
[13] into that fund so that counties have this  
[14] mandate removed. But we are different from  
[15] them in this respect: Every day we provide  
[16] direct services. They do not do training,  
[17] they do not do direct assistance, they do not  
[18] have a case management system in the field.  
[19] They are not required to hand out immigration  
[20] advice. We give that out a thousand times a  
[21] year. Thanks to the Supreme Court decision  
[22] in Padilla, it is now required, and others  
[23] are going to work on it. But we have been  
[24] doing that for years.

[1] **MR. GRADESS:** No, that money, that  
[2] \$6 million initiative would parallel an  
[3] initiative that was in my own mind inadequate  
[4] in 2009 -- delightful in 2009, but it was  
[5] exclusive to New York City -- to reduce the  
[6] caseload burden on public defense lawyers in  
[7] New York. At that time upstate was excluded.

[8] **SENATOR KRUEGER:** Right. So this  
[9] money would be used for upstate to help with  
[10] caseloads. So that is direct service.

[11] **MR. GRADESS:** That would provide the  
[12] ability in local offices to hire lawyers.

[13] **SENATOR KRUEGER:** Right. Okay. So  
[14] yes, it is direct service to clients.

[15] **MR. GRADESS:** It's direct service in  
[16] that sense. But those lawyers would then not  
[17] be in a position to call for assistance from  
[18] that office; they would call us. And they  
[19] would be trained by us.

[20] **SENATOR KRUEGER:** That's direct  
[21] service to the lawyers who do the cases in  
[22] the counties. And your organization is  
[23] specifically technical assistance to lawyers  
[24] out in the field, you don't do



[11] representation; is that right?  
[12] **MR. GRADESS:** It's technical  
[13] assistance, it's research, it's consultation.  
[14] We have a website, for example, that's  
[15] accessed 30,000 times a month. A lawyer who  
[16] needs an investigator will contact us, not  
[17] them -- who needs an expert, who needs to  
[18] moot a case before the court of appeals, that  
[19] sort of thing.

[110] **SENATOR KRUEGER:** Got it.  
[111] Is there anything in the statute that  
[112] created the fund for indigent legal services  
[113] that prevents money from that fund to be used  
[114] to pay for some of the costs of your program?

[115] **MR. GRADESS:** I don't think so. I  
[116] think the statutory scheme, the way it was  
[117] written, calls for funding those things that  
[118] service counties to improve the quality of  
[119] representation and that assist the state in  
[120] improving the quality of representation.

[121] I think the problem that has come is  
[122] that all of us want to drive money towards  
[123] localities, and we've been reticent -- I  
[124] mean, I know this sounds ridiculous to be

[11] to say that. There are private lawyers --  
[12] there are cases that we are entitled to  
[13] handle if they are unique, if they would  
[14] advance the interests of public defense  
[15] attorneys. For example --

[16] **CHAIRMAN DeFRANCISCO:** Let me --  
[17] let's stay on at least my train of thought.  
[18] Private lawyer gets a case, he's got to do a  
[19] brief. He can't call your operation and say,  
[110] Look, I need some information about this  
[111] particular legal issue, can you provide me  
[112] some briefs?

[113] **MR. GRADESS:** Not unless it were an  
[114] exceptional circumstance.

[115] **CHAIRMAN DeFRANCISCO:** Such as a  
[116] murder case or something?

[117] **MR. GRADESS:** No, such as something  
[118] that if there were burning issues such as,  
[119] you know, a DNA claim regarding 440.30 and we  
[120] thought that our work in that case would  
[121] advance the cause of the rights of indigent  
[122] lawyers, we could do that. And have done  
[123] that.

[124] **CHAIRMAN DeFRANCISCO:** Okay. Now, a

[11] here pleading and also to say I've been  
[12] urging it go to counties, but it nevertheless  
[13] is the truth.

[14] We want that money to drive quality  
[15] at the local level. And one of the ways to  
[16] do that is to get the fund coextensively with  
[17] the appropriation. And I think at that point  
[18] it would be very reasonable to talk about  
[19] funding us. Frankly I think it's reasonable  
[110] at any point, if that's the only way this  
[111] year, because we need it.

[112] **SENATOR KRUEGER:** Thank you.  
[113] Thank you, Senator.

[114] **CHAIRMAN DeFRANCISCO:** Anyone else?

[115] **CHAIRMAN FARRELL:** Thank you.

[116] **MR. GRADESS:** Thank you very much.

[117] **CHAIRMAN DeFRANCISCO:** Excuse me.

[118] Just a couple of questions.

[119] **MR. GRADESS:** Sure.

[120] **CHAIRMAN DeFRANCISCO:** Is it fair to  
[121] say that you do not provide any of these  
[122] backup services to private paid attorneys?  
[123] Correct?

[124] **MR. GRADESS:** It is not entirely fair

[11] lot of defense lawyers who actually get paid  
[12] for doing the defense work are in small  
[13] firms -- three, four, five, six people. For  
[14] their normal case, they can't call your  
[15] operation, they have to do their own legal  
[16] research, keep their own briefs for future  
[17] use, contact other law firms that may have  
[18] had the issue, and in that sense are in a  
[19] less desirable position than the indigent  
[110] defense lawyers that can call you to have  
[111] them do the backup work, is that fair to say?

[112] **MR. GRADESS:** I think that it is.

[113] **CHAIRMAN DeFRANCISCO:** Okay. Well,  
[114] have you ever thought of the possibility of  
[115] hiring out your services?

[116] In other words, if you've got this  
[117] bank of materials that could be provided on  
[118] very complex issues and briefs, have you ever  
[119] given thought of asking private attorneys who  
[120] provide your services to pay for the --

[121] **MR. GRADESS:** Well, actually we --

[122] **CHAIRMAN DeFRANCISCO:** -- in order to  
[123] provide the funds that you otherwise need?

[124] **MR. GRADESS:** We actually have

[1] thought of it. When we first went down the  
[2] rabbit hole in 1986 when we were asked by the  
[3] Division of the Budget --

[4] **CHAIRMAN DeFRANCISCO:** Okay. If  
[5] you've thought of it, why have you not done  
[6] it yet?

[7] **MR. GRADESS:** Because it had an  
[8] infrastructure associated with marketing that  
[9] cost more than the value we anticipated.

[10] **CHAIRMAN DeFRANCISCO:** Okay. So it  
[11] would cost more to, for example, send emails  
[12] to all the defense lawyers in the state and  
[13] say, Look, these are our services, these are  
[14] our rates, make sure that you consider us?

[15] **MR. GRADESS:** Well, it will give you  
[16] some sense of how long ago this was, that it  
[17] assuredly was before email was a device. So  
[18] we haven't revisited the question if that's  
[19] part of your --

[20] **CHAIRMAN DeFRANCISCO:** Well, I would  
[21] strongly suggest that. Because it would be a  
[22] service I think private attorneys would  
[23] probably like and you'd be in a position to  
[24] bring in some money so that you're not here

[1] saying no -- but the idea that we should find  
[2] a way to take state funds, stretch them by  
[3] charging private lawyers to pay for a  
[4] function that is your obligation to pay for  
[5] does not strike me as something my board  
[6] would like or approve, nor that I think is  
[7] fair or equitable.

[8] **CHAIRMAN DeFRANCISCO:** You're not  
[9] stretching state funds to private services,  
[10] you're acquiring state funds to be able to  
[11] exist.

[12] **MR. GRADESS:** Well, I'm having a hard  
[13] time doing that. But I'd be happy to look at  
[14] this with you and talk with you further about  
[15] it.

[16] **CHAIRMAN DeFRANCISCO:** Well, I would  
[17] hope that you'd consider it. Because this  
[18] chart that you're showing here indicates that  
[19] there's some who apparently believe that your  
[20] services are not essential to adhering to our  
[21] Sixth Amendment obligations of the State of  
[22] New York, especially when private attorneys  
[23] are doing their own research, doing their own  
[24] briefs, relying on other attorneys to provide

[1] each year not being able to survive. It  
[2] seems like that would be a very logical -- at  
[3] least something to consider.

[4] **MR. GRADESS:** I would be happy to  
[5] consider it. I'd be a little uncomfortable  
[6] taking state-funded lawyers and charging  
[7] private lawyers fees. There's something a  
[8] little unsavory about it at first blush. But  
[9] perhaps this is something we could talk about  
[10] as I --

[11] **CHAIRMAN DeFRANCISCO:** Is it more  
[12] unsavory than to have insufficient funding so  
[13] that it will result in the closure of your  
[14] operation?

[15] **MR. GRADESS:** No. But -- again, and  
[16] I want to underscore this as thoroughly as I  
[17] can -- this office is in a very real way your  
[18] office. This obligation is not mine, it is  
[19] the state's. We perform it for you, but you  
[20] must fund it.

[21] We're not in a position to give  
[22] charity to the State of New York to perform  
[23] its constitutional duty. And we're not  
[24] interested necessarily, although I'm not

[1] information if they need some more  
[2] information about briefs.

[3] So I would strongly suggest that you  
[4] consider it before -- you know, while we do  
[5] have email. Thank you.

[6] Anything else?

[7] **CHAIRMAN FARRELL:** No.

[8] **CHAIRMAN DeFRANCISCO:** Thank you.

[9] **MR. GRADESS:** Thank you, Senator.

[10] **CHAIRMAN DeFRANCISCO:** Next speaker,  
[11] William Fitzpatrick, District Attorneys  
[12] Association of the State of New York, from  
[13] the great County of Onondaga.

[14] **DISTRICT ATTORNEY FITZPATRICK:** And,  
[15] I'd point out to Assemblyman Lentol and  
[16] Assemblywoman Weinstein, originally from the  
[17] great County of Kings.

[18] **ASSEMBLYMAN LENTOL:** Thank you.

[19] **DISTRICT ATTORNEY FITZPATRICK:** Good  
[20] afternoon to everybody, and thank you for the  
[21] opportunity to speak in support of Governor  
[22] Cuomo's proposal to expand and create an  
[23] all-crimes DNA bill, and to speak on behalf  
[24] of my 62 elected colleagues throughout the

[1] State of New York.

[2] I want to talk about case histories  
[3] that I think graphically illustrate the  
[4] efficacy of DNA technology both as a tool to  
[5] convict the guilty and to exonerate the  
[6] innocent. And in anticipation of arguments  
[7] against this legislation, I hasten to point  
[8] out, number one, we do not have familial  
[9] searching in the State of New York, although  
[10] I hope we do at some point in the future.  
[11] I'd be happy to address that at some later  
[12] point.

[13] But I want to point out that every  
[14] single time DNA establishment or expansion  
[15] has come before the New York State  
[16] Legislature, dangerous felons have been  
[17] caught, and not one single dire prophecy  
[18] about privacy abuse has occurred. No privacy  
[19] rights have been violated in over 16 years of  
[20] DNA storage and collection in New York. No  
[21] so-called contaminated sample or switched  
[22] sample has led to a wrongful conviction.  
[23] Rather, New York has simply become a safer  
[24] and better place to live.

[1] Professor Alec Jeffreys of Leicester  
[2] University, who was developing the then-novel  
[3] concept of DNA profiling. Dr. Jeffreys  
[4] examined the biological material, and his  
[5] results indicated that not only did the  
[6] teenage defendant not kill Lynda Mann, he did  
[7] not kill Dawn Ashworth either. Rather, the  
[8] same man killed both young women and was  
[9] still at large.

[10] In an incredible effort to screen the  
[11] DNA of all 5,000 men in the vicinity of the  
[12] murders, police eventually focused on Colin  
[13] Pitchfork, a local baker, who became a  
[14] suspect because he asked a friend to provide  
[15] a DNA sample falsely for him. Pitchfork's  
[16] DNA eventually identified him as the killer  
[17] of both girls. What could have been more  
[18] prophetic to demonstrate the power of DNA?  
[19] In the first ever DNA-assisted prosecution of  
[20] a defendant who committed two brutal murders,  
[21] a young man who gave a false confession was  
[22] exonerated, an attempt to contaminate DNA  
[23] evidence was thwarted, and a vicious killer  
[24] was caught and convicted.

[1] Historically, the peace and quiet of  
[2] the sleepy hamlet in Narborough, in central  
[3] England, was shattered in 1983 with the rape  
[4] and murder of a 15-year-old schoolgirl by the  
[5] name of Lynda Mann. The peace was shattered  
[6] again in 1986 when another 15-year-old  
[7] schoolgirl, Dawn Ashworth, was found  
[8] strangled and raped. Semen samples from both  
[9] victims, using the best forensic analysis  
[10] available at the time, pointed out that the  
[11] murderer had blood type A, as does 10 percent  
[12] of the male population.

[13] Police focused their investigation on  
[14] a local teenager who, after interrogation,  
[15] confessed to the murder of Dawn Ashworth. He  
[16] was not only blood type A, but he also  
[17] provided details of the crime that had not  
[18] been released to the general public, at least  
[19] according to the police. To the  
[20] consternation of investigators, he would not  
[21] admit killing Lynda Mann, despite the fact  
[22] that police were convinced they had been  
[23] dealing with one assailant.

[24] Constables then reached out to

[1] Closer to home, in the early morning  
[2] hours of April 8, 2000, Jane Doe, a  
[3] 19-year-old female in the city of East  
[4] Syracuse, New York, was doing laundry alone  
[5] at the Colonial Laundromat. Upon exiting the  
[6] bathroom, she realized that somebody had  
[7] turned off the lights to the laundromat.  
[8] Frightened, she hurriedly walked out of the  
[9] building to her car, when she was suddenly  
[10] grabbed from behind and savagely beaten and  
[11] raped and left for dead by an unknown  
[12] assailant. Having never seen the face of her  
[13] attacker, she could offer no viable  
[14] description to police.

[15] Despite the best efforts of local law  
[16] enforcement, the case went unsolved. And  
[17] finally prosecutors in my office, in an  
[18] effort to avoid the then-existing statute of  
[19] limitations, returned a John Doe indictment  
[20] identifying the perpetrator by his unique  
[21] genetic code found at 13 different locations  
[22] out of the 3 billion possibilities of the  
[23] human genome.

[24] Analysis of the 13 loci could not

[1] tell us a single thing about the perpetrator  
[2] -- not his race, not his hair color, not his  
[3] future health difficulties. In short, not  
[4] one single physical characteristic of the  
[5] rapist could be determined from forensic  
[6] analysis of this evidence at any New York  
[7] State crime laboratory.

[8] That genetic fingerprint was  
[9] periodically run through the state national  
[10] DNA databanks without a hit. The level of  
[11] frustration that my prosecutors felt, ladies  
[12] and gentlemen, I am unable to articulate.  
[13] Imagine having to tell a woman that we as  
[14] prosecutors have unique identifying  
[15] characteristics about the person that did  
[16] this to you that are far more probative than  
[17] an eyewitness or a picture or even his name,  
[18] but we just can't apprehend him.

[19] And that frustration level was soon  
[20] to rise dramatically. On the evening of  
[21] July 1, 2007, a 65-year-old mother and  
[22] grandmother in the town of Salina was out  
[23] walking in her neighborhood. The next  
[24] morning, police discovered the battered

[1] almost 30 to date in New York alone. Scant  
[2] attention is paid to the hundreds if not  
[3] thousands of post-arrest exonerations that  
[4] prosecutors engineer every year and the role  
[5] that DNA can play in that dynamic.

[6] I have an expression in my office  
[7] that I remind each of my 48 assistant DA's of  
[8] quite often, and it's "Beware of Jack Fisher  
[9] syndrome."

[10] On June 27, 1975, on what was to be  
[11] the last day of her life, Marion Fisher and  
[12] her husband Jack were at a Nedrow restaurant  
[13] while her two children were at home being  
[14] babysat. Marion was a Jamesville physical  
[15] education teacher. In front of numerous  
[16] witnesses at the restaurant, they got into a  
[17] very heated argument. Marion decided that  
[18] she was going to walk home alone, while Jack  
[19] decided he was going to stay at the bar. She  
[20] never made it home.

[21] The following morning police  
[22] discovered Marion's body in a wooded area off  
[23] of Lafayette Road. An autopsy determined she  
[24] had been raped and strangled with a stocking

[1] remains of Carol Nelson and were able to  
[2] recover DNA left at the scene by her killer.  
[3] When Carol's murderer's DNA profile was  
[4] developed, police discovered that it matched  
[5] a defendant, Glen Shoop, who was awaiting  
[6] sentencing for an assault on his wife. And  
[7] it was also a match to the Colonial  
[8] Laundromat rapist from seven years earlier.

[9] What is so tragic is that on April  
[10] 18, 2004, Shoop had been arrested and  
[11] subsequently convicted for an attempted  
[12] assault. New York law at that time did not  
[13] allow for the taking of a DNA sample. Nor  
[14] did it require a DNA sample be taken for his  
[15] 2001 conviction for petit larceny. The  
[16] simple act of taking a DNA swab from Shoop,  
[17] either in '05 or '01, would have saved the  
[18] life of Carol Nelson. She'd be alive today  
[19] enjoying her life and the company of her  
[20] grandchildren. That is not theory, that is  
[21] not hyperbole, that is a fact.

[22] DNA has another equally important  
[23] aspect as well. The media has understandably  
[24] focused on post-conviction DNA exonerations,

[1] and discarded like garbage. Police suspicion  
[2] focused on the husband, Jack Fisher. He had  
[3] no alibi. He claimed that he had come home,  
[4] gone to sleep on the couch, didn't see  
[5] anybody, didn't talk to anybody.

[6] He made contradictory statements;  
[7] some of them were almost incriminating. He  
[8] flunked, badly, a lie detector test, and in  
[9] police parlance he refused to continue to  
[10] cooperate. And Marion Fisher's murder went  
[11] unsolved for over 30 years. In fact, when  
[12] the case came up at our local cold-case  
[13] review task force, the cops immediately said,  
[14] "Don't bother, we know the husband did it, we  
[15] just can't prove it."

[16] Nevertheless, there was a cloth found  
[17] near Marion's body that we decided to test.

[18] A full 13-loci profile was developed from  
[19] that cloth from Marion's killer. I remember  
[20] the analyst calling me and telling me about  
[21] it, and I immediately said, "Do we have Jack  
[22] Fisher's DNA profile on file?" She said,  
[23] "It's not necessary, because the sample has  
[24] been run through Codis."

[1] And a match came back to Carlton  
[2] Gary, a man who was on death row in Georgia  
[3] who was known as the Stocking Strangler and  
[4] who was a suspect in the murder of over two  
[5] dozen women. Carlton Gary, who just happened  
[6] to be passing through Syracuse, who just  
[7] happened to run into Marion Fisher, and who  
[8] just happened to rape her and strangle her.

[9] I called Jack Fisher to tell him  
[10] about the results of the test, to tell him  
[11] about the road that we had taken to get  
[12] there. We chatted for about a half an hour.  
[13] It was a very emotional conversation. He  
[14] told me he had two children -- remember those  
[15] two children that were being babysat. The  
[16] son had stuck by him, but the daughter  
[17] disavowed anything to do with him for  
[18] 30 years because she thought that he killed  
[19] her mother.

[20] He called me a few weeks after that  
[21] and he wanted to thank me and he wanted to  
[22] thank the police in the State of New York and  
[23] he wanted to tell me that for the first time  
[24] in his life he was going to see his

[1] place to live.

[2] I'd be very happy to answer any  
[3] questions that you have.

[4] **CHAIRMAN FARRELL:** Thank you very  
[5] much.

[6] Questions? Assemblyman Lentol.

[7] **ASSEMBLYMAN LENTOL:** Yeah, I just  
[8] have one question, if I can, for my Brooklyn  
[9] colleague.

[10] I want to give you another scenario.  
[11] The examples you gave us are really powerful,  
[12] and I listened to all of them intently. And  
[13] what troubles me is not what you've said  
[14] about the power of DNA, but when it's misused  
[15] by a district attorney to not be helpful in  
[16] exonerating someone who claims his innocence.

[17] Let's take the scenario, for example,  
[18] where somebody was convicted on eyewitness  
[19] testimony of a rape, maybe a murder. Now,  
[20] this is actually a case, but I won't cite  
[21] what it is. He confesses, the defendant  
[22] confesses to the murder, but nevertheless he  
[23] believes that he confessed because the police  
[24] coerced the confession, and later on he

[1] grandchildren and he was going to reconnect  
[2] with his daughter. That is the power of  
[3] DNA.

[4] The vast majority of us who enter  
[5] public service often make great personal and  
[6] financial sacrifices, but we are bound by the  
[7] common desire to make this a safer place.  
[8] This is a statute that will absolutely save  
[9] lives, improve public safety, and provide  
[10] justice by clearing cases.

[11] If those opposed to it say it  
[12] violates the Fourth or Fourteenth Amendment  
[13] of the Constitution, ask them to provide one  
[14] case that says it does. If they say it will  
[15] compromise privacy rights, ask for the name  
[16] of that one individual whose privacy rights  
[17] were violated or the one person who was  
[18] arrested or even investigated for misuse of  
[19] the DNA databank.

[20] Make the all-crimes DNA collection  
[21] bill a reality. And when your constituents  
[22] ask you this fall what you've done for the  
[23] people of the State of New York, you can very  
[24] proudly tell them you've made it a safer

[1] claims his innocence.

[2] Now, this all happened, as did many  
[3] of your examples, before DNA testing was  
[4] available. And he makes a request of the  
[5] district attorney's office to have the sample  
[6] that they took -- because they got a blood  
[7] type, that's all they got at the time, there  
[8] was no DNA, but there was enough collection  
[9] of evidence to perform a DNA test. But the  
[10] district attorney at the time refuses, and  
[11] the convicted person takes his case to court  
[12] and the judge will not allow a DNA test  
[13] without the consent of the district  
[14] attorney. So he therefore languishes in jail  
[15] for 14 years while the actual guilty guy is  
[16] still out there committing rapes and murders.

[17] And then say we'll go five years  
[18] forward, ten years forward, and a more  
[19] agreeable district attorney says, yeah, let's  
[20] test the DNA. And it turns out that they get  
[21] a cold hit of somebody who's in jail, and it  
[22] wasn't the guy that's been in jail now for  
[23] 24 years.

[24] Do you believe that there's something

[1] wrong with that?  
[2] **DISTRICT ATTORNEY FITZPATRICK:** I  
[3] believe that's disgraceful, Joe.  
[4] And your hypothetical isn't  
[5] hypothetical, it actually happened in  
[6] Rochester, as you probably know. It just  
[7] happened in Texas, there was a fellow by the  
[8] name of Morton who was convicted of murdering  
[9] his wife. Three days after the murder,  
[10] somebody used her credit cards, which had  
[11] been stolen from the scene of the murder. No  
[12] prosecutor in Texas decided to share that  
[13] information with the defense. Those two  
[14] prosecutors are now judges in the state of  
[15] Texas.  
[16] The DA at the time who fought tooth  
[17] and nail against DNA testing, John Bradley,  
[18] who happens to be a friend of mine, has  
[19] indicated that he has now seen the light,  
[20] because the DNA came back to another  
[21] individual who will soon be tried for that  
[22] murder.  
[23] I can tell you, in my county, your  
[24] hypothetical would not occur. If someone

[1] tell you why? And it sounds like you're  
[2] talking prior to conviction.  
[3] **ASSEMBLYMAN LENTOL:** Yes.  
[4] **DISTRICT ATTORNEY FITZPATRICK:** Yeah.  
[5] Here's why, Joe. I can't tell you  
[6] the number of times that I'll pretrial a case  
[7] with -- not me personally, but one of my  
[8] assistants will with a defense attorney --  
[9] you have to remember that it's an adversarial  
[10] system. And it doesn't mean that -- if you  
[11] created the most perfect crime laboratory in  
[12] the country with Barry Scheck and Peter  
[13] Neufeld, my friends of the Forensic Science  
[14] Commission thought was a perfect laboratory,  
[15] if that evidence comes in and points to the  
[16] guilt of their client, they're going to  
[17] cross-examine the analyst, they're going to  
[18] try to make them look like bumblers and fools  
[19] and incompetent and so forth and so on.  
[20] I can't tell you how many times  
[21] people will come into my office and pretry a  
[22] case and say, "Rape? Me? My client doesn't  
[23] even know this woman, he's never had any  
[24] dealings with her, he's never even seen her

[1] comes to me with a reasonable request to test  
[2] evidence in a case, regardless of how strong  
[3] I might feel the evidence was against the  
[4] perpetrator at the time, I can assure you the  
[5] \$30 DNA test will be done. It's far  
[6] preferable to the millions of dollars that  
[7] they're going to have to spend in  
[8] Monroe County to compensate the individual  
[9] that we're talking about.  
[10] **ASSEMBLYMAN LENTOL:** Well, let me  
[11] tell you what I believe. And I have a bill,  
[12] as you know, that is an all-crimes DNA bill.  
[13] But it also includes certain provisions of  
[14] law that would disable the possibility of  
[15] what I've suggested from happening by giving  
[16] equal access to the DNA to someone who claims  
[17] that he's innocent.  
[18] In other words, if we have DNA  
[19] evidence, why can't we let the DNA speak for  
[20] itself and make the determination as to  
[21] whether the person is guilty or innocent,  
[22] rather than leave it to the whim or the  
[23] discretion of a district attorney?  
[24] **DISTRICT ATTORNEY FITZPATRICK:** Can I

[1] before." A month later the DNA comes back.  
[2] Okay, maybe you can explain how your semen is  
[3] in the body of this woman that you've never  
[4] met before. "You know what, you're right, it  
[5] was consensual." And she's just a no-good --  
[6] whatever you want to fill in the blank.  
[7] So on paper it sounds great. Let's  
[8] have this -- you know, we'll both go there  
[9] and we'll beat our breasts and we'll go, you  
[10] know, walking into the sunshine together.  
[11] But this is an adversarial system. My burden  
[12] is beyond a reasonable doubt. And the State  
[13] Court of Appeals has put the burden on me to  
[14] protect and preserve and ensure the integrity  
[15] of that evidence.  
[16] I can't do that if every time I turn  
[17] around I've got a defense lawyer that wants  
[18] to go over to the lab and say, you know, "We  
[19] want to go over and test this too, and you  
[20] didn't test it. No, we want to test the  
[21] 500 beer cans that you found," and so forth  
[22] and so on.  
[23] Post-conviction DNA testing when  
[24] there's a reasonable showing of potential of

[11] innocence, I'm all in favor of that.  
[12] **CHAIRMAN DeFRANCISCO:** Anyone else?  
[13] Thank you, Mr. Fitzpatrick.  
[14] **DISTRICT ATTORNEY FITZPATRICK:** John,  
[15] thank you. Good to see you.

[16] **CHAIRMAN DeFRANCISCO:** Always a  
[17] pleasure.

[18] Next speaker, the Legal Aid Society  
[19] and Association of Legal Aid Attorneys, it's  
[20] a duet: Steven Banks and George Albro.

[21] **MR. BANKS:** Good afternoon. You have  
[22] our written testimony. I can assure you that  
[23] we are not going to read from it. You have  
[24] testimony from both the Legal Aid Society and  
the Association of Legal Aid Attorneys. And  
let me just highlight a few aspects of our  
testimony.

[18] First of all, I want to thank all of  
[19] you for your support for our work over the  
[20] years. Every year in the five boroughs of  
[21] the city we're now handling 300,000 cases on  
[22] behalf of low-income New Yorkers in the  
[23] civil, criminal and juvenile rights area. We  
[24] couldn't do it without the legislative

[11] halfway there, halfway through the four-year  
[12] phase-in, in 2011 the annual average weighted  
[13] caseload was 533. Still in excess of the 400  
[14] standard, but as you can see, almost cut in  
[15] half halfway through. This is a result of  
[16] legislation and a state law for which you  
[17] all, we greatly appreciate your leadership in  
[18] making this happen.

[19] We come before you today to support  
[20] the Judiciary's budget which continues our  
[21] ability to implement this groundbreaking law  
[22] with respect to reducing caseloads to ensure  
[23] that New Yorkers accused of crimes in New  
[24] York City, often wrongfully, are represented  
by lawyers with proper caseloads.

[16] We also support the Judiciary Budget  
[17] because it continues the compliance with the  
[18] case cap law for attorneys for children.

[19] And last but not least, we support  
[20] the Judiciary's budget because of its support  
[21] for civil legal services. As you know, I've  
[22] testified before on this issue. We can only  
[23] help one out of every nine New Yorkers that  
[24] are coming to us for help in the midst of

[11] support.  
[12] As I look at the panel, I see people  
[13] who are the parents, if you will, of the case  
[14] cap law, with the law guardians and now  
[15] attorneys for children that set a caseload  
[16] for our attorneys for children of  
[17] 150 children at a time, making a dramatic  
[18] impact on our ability to provide high-quality  
[19] services from a world in which our clients  
[20] used to be represented by lawyers that had an  
[21] average of 250 children at a time, many of  
[22] which had more than 400.

[13] I want to commend you also for the  
[14] 2009 law that is having a dramatic impact on  
[15] our provisional criminal defense services in  
[16] all five boroughs. At the time of the law,  
[17] our annual average weighted caseload per  
[18] lawyer -- average weighted caseload per  
[19] lawyer -- was 682 cases. The standard that's  
[20] been set in the law that's based upon  
[21] national standards and the First Department  
[22] standards that we couldn't comply with is  
[23] 400.

[24] I am happy to report to you that

[11] this economic downturn. So the Judiciary's  
[12] support for civil legal services is critical.

[13] Let me just highlight a few  
[14] statistics in our testimony. Since the  
[15] beginning of the economic downturn we have  
[16] seen a 29 percent increase in requests for  
[17] low-wage-employment- and unemployment-related  
[18] assistance. I testified to that last year.  
[19] In the period of time from then to now, we've  
[20] seen a further 54 percent increase in that  
[21] kind of request for help.

[12] I testified last year and on prior  
[13] occasions that since the economic downturn we  
[14] had seen a 21 percent increase in requests  
[15] for help with housing problems. Just in the  
[16] last year it's gone up another 18 percent.

[17] I testified as to a 16 percent  
[18] increase in requests for help with domestic  
[19] violence. Just in the last year it's  
[20] increased another 12 percent. I testified  
[21] last year about a 40 percent increase in  
[22] requests for help with healthcare problems.  
[23] In the last year, an 11 percent increase with  
[24] respect to that.

[11] So your support for the Judiciary  
[12] Budget is enabling us to try to meet that  
[13] increasing need for legal assistance in all  
[14] five boroughs of the city and for our  
[15] colleagues and programs all across the state.

[16] I also want to express our  
[17] appreciation for the fact that for the first  
[18] time in a number of years there's no cut in  
[19] Aid to Defense funding. This is a critical  
[20] component of our ability to provide  
[21] constitutionally mandated representation in  
[22] New York City.

[23] Although there has been a reduction  
[24] in crime overall, in 2002 our felony caseload  
[25] was 23,000; this past year our felony  
[26] caseload was 25,000. So irrespective of what  
[27] is going on in the system overall, we at the  
[28] Legal Aid Society continue to have high  
[29] caseloads in the felony area, and this Aid to  
[30] Defense funding enables us to provide  
[31] constitutionally mandated representation,  
[32] just as Aid to Prosecution does.

[33] We also greatly appreciate the  
[34] legislative funding that you've provided to

[11] this is a proposal in the budget, and we urge  
[12] you to support it.

[13] With respect to DNA testing, I know  
[14] that there was a lot of discussion with the  
[15] last witness and I don't want to review all  
[16] of that. But I just want to say historically  
[17] we are the Legal Aid Society, we have opposed  
[18] these types of proposals.

[19] We want to highlight in the  
[20] consideration of this proposal, however, that  
[21] DNA evidence is present in the minority of  
[22] cases. The majority of cases do not involve  
[23] DNA evidence. And therefore it is high time  
[24] that New York brought its discovery  
[25] procedures in criminal defense cases into the  
[26] modern era, as many states across the country  
[27] have done.

[28] It is a shame that in New York we  
[29] still have trial by ambush, where material is  
[30] withheld not even from bad motives, but just  
[31] because of the way the law reads, that the  
[32] prosecutor doesn't know whether or not you  
[33] actually need it, so you might not get it.  
[34] That's in the best case. Or you might get it

[11] us from time to time, and support for our  
[12] Byrne-funded MICA program. It's another  
[13] year, and we need the support of the  
[14] Legislature to continue the Byrne-funded MICA  
[15] program, which is showing great results in  
[16] preventing recidivism. And we also urge you  
[17] to continue to provide the legislative  
[18] funding that you have.

[19] Last but not least, two substantive  
[20] issues. One, as part of the Executive Budget  
[21] there's a proposal to return New York City  
[22] children from upstate detention facilities to  
[23] New York City. Along with the Department of  
[24] Justice, we have litigation pending  
[25] concerning excessive use of force in those  
[26] facilities and the denial of mental health  
[27] services.

[28] We think by bringing children back  
[29] into New York City where they can be in  
[30] facilities operated by not-for-profits under  
[31] the watchful eyes of their families and our  
[32] lawyers, that this is a great preventative  
[33] measure to prevent the kinds of problems that  
[34] happened in the past. And we appreciate that

[11] on the eve of trial where there's not any  
[12] time to really investigate.

[13] Those kinds of procedures are leading  
[14] to wrongful convictions throughout the state.  
[15] And so it's critically important that in  
[16] considering this proposal we consider the  
[17] broad need for discovery reform to address  
[18] wrongful convictions.

[19] For example, as Assemblymember Lentol  
[20] highlighted, there's also the issue of  
[21] wrongful convictions resulting from forced  
[22] and false confessions. Recording of  
[23] interrogations could address that.

[24] There are a number of fairness  
[25] concerns with respect to DNA; for example,  
[26] the pre- and post-trial availability of the  
[27] evidence to avoid, again, wrongful  
[28] convictions, viewing that as part of  
[29] discovery form.

[30] There's also the need for discovery  
[31] in 4.40 motions, for the ability to bring a  
[32] 4.40 motion even when you pled guilty,  
[33] perhaps as a result of a false confession.  
[34] There's a critical need to look at this whole



[1] area in terms of fairness, in addition to  
[2] preserving the evidence. What are the  
[3] procedures going to be for preservation?

[4] We stand ready to work with you and  
[5] with the Governor to come up with real reform  
[6] that avoids the scourge of wrongful  
[7] convictions. We know that this Legislature  
[8] is concerned with it, we know the Governor is  
[9] concerned with it, and we're available to  
[10] work with you.

[11] Again, we appreciate your support.  
[12] And I want to leave a little bit of time for  
[13] my colleague from the UAW and the Association  
[14] of Legal Aid Attorneys.

[15] **CHAIRMAN DeFRANCISCO:** You gave him  
[16] 2½ minutes. Is that fair?

[17] **MR. ALBRO:** I'll try my best.

[18] **CHAIRMAN DeFRANCISCO:** Is that fair  
[19] and balanced?

[20] **MR. ALBRO:** Yes, I'll try my best.

[21] Thank you again for inviting us. I'm  
[22] George Albro. I'm the secretary/treasurer of  
[23] the Association of Legal Aid Attorneys.  
[24] We're a United Auto Worker local. We

[1] initiative that has affected my members  
[2] really well, and that was when the bipartisan  
[3] group in the Senate and Assembly agreed to a  
[4] loan-forgiveness repayment plan that impacts  
[5] the district attorneys as well as my members  
[6] who do criminal work and legal service  
[7] providers.

[8] That is a huge incentive for  
[9] attracting people and for keeping people at  
[10] our respective offices. And I urge you --  
[11] it's in the Executive Budget this year. We  
[12] urge you to continue that program. It is  
[13] working as intended.

[14] And we very much appreciate it.  
[15] Thank you.

[16] **CHAIRMAN DeFRANCISCO:** Thank you.  
[17] Senator Krueger.

[18] **SENATOR KRUEGER:** Thank you, Steve  
[19] and George. And I appreciate your sitting  
[20] all day. You know I think you do amazing  
[21] work.

[22] The chief administrative judge was  
[23] the first testifier today; I don't know if  
[24] you had gotten up from New York City yet or

[1] represent the 850 staff attorneys at the  
[2] Legal Aid Society. We do criminal, civil and  
[3] juvenile rights practice.

[4] I want to add my voice and our  
[5] members' voices to what my colleague just  
[6] testified to supporting the Judiciary Budget,  
[7] which has been an enormous, enormous help to  
[8] our clients both in the civil area and in the  
[9] area where our clients are accused of crimes,  
[10] often wrongfully.

[11] I also want to stress that our  
[12] members have given up a lot. We haven't had  
[13] a COLA since 2008. We contribute more and  
[14] more to our healthcare every year. We do not  
[15] have a defined-benefit pension like many  
[16] public employees do.

[17] However, our members do it because  
[18] they believe in what they do. And they do a  
[19] very good job. And we cannot take any more  
[20] cuts without there being serious  
[21] considerations of how that would affect our  
[22] members in terms of layoffs.

[23] However, I would like to say that  
[24] there's one very positive legislative

[1] not when she testified.

[2] **MR. BANKS:** Yes, we were.

[3] **SENATOR KRUEGER:** She was talking  
[4] about 2 million unrepresented clients in the  
[5] court system. Now, you're New York City  
[6] Legal Aid, legal services. Most people  
[7] aren't getting your help no matter what, it  
[8] sounds like, statistically.

[9] **MR. BANKS:** Well, I think the number  
[10] of 2.3 million unrepresented New Yorkers all  
[11] across the state speaks the dimension of the  
[12] problem, which is again why I believe the  
[13] Judiciary has set on this course over the  
[14] last -- this is now the second year of  
[15] beginning to try to address that gap.

[16] Because at the Chief Judge's hearings  
[17] all across the state in all four judicial  
[18] districts, there was extensive testimony from  
[19] business leaders, from private and public  
[20] landlords, from local elected officials that  
[21] the impact of unrepresented litigants on  
[22] represented litigants has a substantial cost  
[23] in terms of cases that maybe never should  
[24] have been in the courts to begin with or

[1] cases that should have been resolved much  
[2] quicker without delays and adjournments and  
[3] so on and so forth.

[4] And beyond that, there's obviously an  
[5] impact on the courts of having unrepresented  
[6] litigants, and that affects the ability of  
[7] the judge's role to be a neutral in  
[8] situations when you're confronted with a  
[9] steady stream of unrepresented litigants.

[10] So the reality is all across the  
[11] state there are this substantial number of  
[12] unrepresented litigants. And the work that  
[13] we do -- and in New York City, despite  
[14] reductions, despite limited staffing, we're  
[15] handling on the civil side, we're working on  
[16] 43,000 individual cases a year benefiting  
[17] 100,000 New Yorkers. But you can see the  
[18] need is that much greater.

[19] I think it's a tribute to the  
[20] Chief Judge that the task force that he  
[21] appointed -- and I must disclose I'm a member  
[22] of it; UAW is also represented on it -- is  
[23] looking at funding but also looking at ways  
[24] to simplify the process, and ways in which

[1] what evidence there is against them. Anyone  
[2] who in 1995 watched the O.J. Simpson case  
[3] unfold would have thought that this is the  
[4] law of the land because of the sanctions that  
[5] were imposed by the judge at that time for  
[6] failure to disclose evidence before the  
[7] trial, and letting each side have the  
[8] opportunity to investigate and look at the  
[9] evidence.

[10] So I think that 99 percent of the  
[11] population of New York State would think it  
[12] was unbelievable that open trial discovery --  
[13] and maybe we'd better explain it better to  
[14] the public, that we don't have that law in  
[15] New York State.

[16] **MR. BANKS:** Well, I think it's our  
[17] hope that the focus on wrongful convictions  
[18] that the DNA bill and proposal is creating  
[19] would broaden the focus on wrongful  
[20] convictions, as I said, to the areas in which  
[21] there aren't DNA evidence, which are the  
[22] majority of the cases.

[23] And I think if you look at trying to  
[24] explain to your relatives over the

[1] you can develop innovative approaches to  
[2] reduce the demands on the courts and reduce  
[3] the impact on represented parties.

[4] So it's a multiyear plan from the  
[5] Chief Judge in the same way that the case  
[6] caps were a multiyear plan. And again, we  
[7] support the efforts to continue to provide  
[8] targeted funding in this year's budget and  
[9] the other initiatives to try to address the  
[10] needs of unrepresented New Yorkers.

[11] **SENATOR KRUEGER:** Thank you.

[12] **CHAIRMAN FARRELL:** Joe Lentol.

[13] **ASSEMBLYMAN LENTOL:** Thank you very  
[14] much, Steve, George, for your testimony. I  
[15] just wanted to thank you particularly, Steve,  
[16] for supporting all my bills.

[17] (Laughter.)

[18] **ASSEMBLYMAN LENTOL:** When you talked  
[19] about open-trial discovery, of course you  
[20] know that I have a bill on that as well.

[21] And I believe that we have done a  
[22] terrible job in letting the public know that  
[23] the law in New York State does not allow for  
[24] both sides to have equal opportunity to see

[1] Thanksgiving table if, God forbid, one of  
[2] them should be accused of a crime and there  
[3] was a surveillance tape of the events, your  
[4] relative, a non-lawyer, would probably think,  
[5] boy, I bet you could, as my lawyer, request  
[6] that tape. And if you had to explain that  
[7] no, that tape is only going to come in when  
[8] the trial is beginning, that it's a rude  
[9] awakening to what the system is really all  
[10] about.

[11] And it doesn't require nefarious  
[12] conduct on the part of prosecutors to get  
[13] into this situation, it's the rules. And the  
[14] way that it's set up, the prosecutor has to  
[15] divine what the defense's case is going to  
[16] be, for example.

[17] And I think we have to have a broader  
[18] view on ensuring that you get early  
[19] information so cases can be resolved early  
[20] and fairly. If you resolve cases early, it  
[21] reduces court congestion and allows the court  
[22] to focus on cases that are going to require  
[23] greater resources. And it is a protection  
[24] against the system creating a wrongful

[1] conviction by simply rolling forward with  
[2] lack of time, lack of investigation, and in  
[3] the end somebody is stuck being convicted  
[4] where it should not have occurred.

[5] And what's a shame is in so many  
[6] states across the country that modernize  
[7] their criminal procedure laws with respect to  
[8] discovery, and New York lags behind. We  
[9] should be a leader in this area, and we're  
[10] not.

[11] **ASSEMBLYMAN LENTOL:** So I guess just  
[12] to follow up on that to say that it's up to  
[13] the district attorney, again, to determine  
[14] whether or not he's going to let the defense  
[15] know what the evidence is against them.  
[16] Isn't that the law in New York State?

[17] **MR. BANKS:** Right. Right. There are  
[18] certainly court cases which limit the  
[19] discretion of the district attorney, but it's  
[20] extremely broad discretion that remains even  
[21] after those court decisions. And that's part  
[22] of what the problem is.

[23] **ASSEMBLYMAN LENTOL:** And it's also up  
[24] to the district attorney to determine whether

[1] **CHAIRMAN FARRELL:** Thank you.

[2] **MR. BANKS:** Thank you very much.

[3] **CHAIRMAN DeFRANCISCO:** The next  
[4] speaker is Alan Harris, the executive  
[5] director of the Legal Aid Society of  
[6] Rochester.

[7] **MR. HARRIS:** Good afternoon. Thank  
[8] you for allowing me to testify today.

[9] On the first page there's a mistake  
[10] on the testimony. It's not a mistake, but we  
[11] said we were going to give you a map of all  
[12] of our offices, and we couldn't find a map.  
[13] We'll find it, we'll send it to you and we'll  
[14] send 40 copies of the map.

[15] But let me tell you who we are. I'm  
[16] here not as the director of the Legal Aid  
[17] Society but as a representative of the Legal  
[18] Services Funding Alliance, which comprises  
[19] 15 civil legal services organizations across  
[20] New York State, including Long Island. We  
[21] don't have any members in New York City.

[22] So we're all of upstate and I like to  
[23] say we go all the way from the Erie line and  
[24] Chautauqua County all the way out to Montauk

[1] or not a person who has been wrongfully  
[2] convicted can have access to their DNA.

[3] **MR. BANKS:** That's correct. And  
[4] that's why, from a perspective of fairness,  
[5] providing for a motion before a judge for the  
[6] judge to decide rather than for the  
[7] prosecutor to decide would be tremendous  
[8] advancement in terms of protecting against  
[9] wrongful convictions.

[10] **ASSEMBLYMAN LENTOL:** So the people  
[11] don't know this. And up until 2009, when  
[12] Assemblyman Aubry and Assemblywoman Weinstein  
[13] and I cosponsored the Rockefeller reform  
[14] bill, it was the law of the state, was it  
[15] not, that a person who was charged with a  
[16] drug crime could not get a diversion into a  
[17] treatment program without the consent of the  
[18] district attorney. Is that true as well?

[19] **MR. BANKS:** That's correct. That's  
[20] correct.

[21] **ASSEMBLYMAN LENTOL:** Thank you.

[22] **CHAIRMAN FARRELL:** Further?

[23] **CHAIRMAN DeFRANCISCO:** Thank you very  
[24] much.

[1] Point, all the way up to Plattsburgh, and  
[2] throughout the whole Hudson Valley, and all  
[3] of the cities across the Thruway, from  
[4] Buffalo, Rochester, Syracuse, Utica and  
[5] Albany.

[6] The alliance is here to support the  
[7] Executive Budget and the Chief Judge's budget  
[8] in particular, and we hope that the  
[9] Legislature will adopt the budget as is. It  
[10] includes the \$25 million for civil legal  
[11] services that was already mentioned in  
[12] previous testimony.

[13] Let me tell you a little bit about  
[14] what we do and why we think that civil legal  
[15] services are important to be supported and  
[16] why the Chief Judge has decided to make this  
[17] a top priority.

[18] We estimate that in 2010 the  
[19] 15 members of our alliance generated  
[20] \$191 million in economic impact in upstate  
[21] New York and on Long Island. And how did we  
[22] do that? We represented over 58,000  
[23] individual people in the essential needs of  
[24] life -- shelter, food, safety and health. In

[1] particular, the kinds of cases that were most  
[2] prevalent are family law cases, housing  
[3] cases, and governmental benefits cases.

[4] The IOLA Fund, which also supports  
[5] all 15 of our members, has determined with  
[6] the Chief Judge and his task force that for  
[7] every dollar spent on civil legal services  
[8] here in New York State, we generate back \$5  
[9] to the state, a \$4 net gain.

[10] For example, in the homeless  
[11] prevention area, we estimate that among our  
[12] 15 member organizations we represented over  
[13] 5,000 people in landlord-tenant proceedings  
[14] and saved approximately \$44 million in  
[15] shelter costs to the counties. We have  
[16] people in every single county outside of  
[17] New York City. That's a \$44 million savings  
[18] to our local counties.

[19] On the issue of federal benefits, in  
[20] 2010 we determined that we brought in over  
[21] \$59 million in retroactive and current  
[22] benefits for New Yorkers. Now, every one of  
[23] those dollars probably replaced public  
[24] assistance dollars that were coming out of

[1] they're not required. So it's really a  
[2] choice that's being made. But the choice has  
[3] an economic benefit along with having a  
[4] social benefit, which is to protect the  
[5] rights of women who are being abused, people  
[6] who have a right to federal benefits that  
[7] they're not getting them, people who are  
[8] being evicted from their homes.

[9] We also would like to specifically --  
[10] it's not in here, but I'd like to  
[11] specifically request that you support the  
[12] domestic violence funding that both the  
[13] Senate and the Assembly have done, in  
[14] addition to the other request, which is to  
[15] support the Chief Judge's budget. The  
[16] domestic violence funding money, which is a  
[17] small amount, does do quite a bit of good; as  
[18] I mentioned before, we estimate about  
[19] \$32 million in savings from representation on  
[20] domestic violence cases.

[21] So that's it, pretty straightforward,  
[22] and I'd be more than happy to answer any  
[23] questions.

[24] **CHAIRMAN FARRELL:** No questions.

[1] the State of New York. These were federal  
[2] dollars.

[3] We estimated, using IOLA Fund data,  
[4] that \$15 million in SSI and SSD funds that  
[5] were obtained on our members' behalf had an  
[6] economic stimulus impact of \$87 million. And  
[7] that was done through some methodology  
[8] through the Chief Judge's task force,  
[9] bringing some economists in who took a look  
[10] at what the work that we did was, and when  
[11] that money came in, this \$15 million came in,  
[12] what it did to stimulate the economy. And  
[13] that's all across New York State.

[14] And then finally, the final category  
[15] was domestic violence cases. Using some of  
[16] the same types of methodology, there was a  
[17] determination that outside of New York City,  
[18] by representation of victims of domestic  
[19] violence, we saved the state and/or the  
[20] counties \$32 million.

[21] So what you can see is that there's a  
[22] significant advantage to supporting civil  
[23] legal services. Unlike criminal defense,  
[24] civil legal services are not mandated,

[1] **MR. HARRIS:** No questions? Thank you  
[2] very much.

[3] **CHAIRMAN DeFRANCISCO:** Thank you very  
[4] much.

[5] The next speaker is Milton Williams,  
[6] Jr., the chair of The Fund for Modern Courts.

[7] **MR. WILLIAMS:** Good afternoon.

[8] **CHAIRMAN FARRELL:** Good afternoon.  
[9] How you doing?

[10] **MR. WILLIAMS:** Pretty good.

[11] **CHAIRMAN FARRELL:** Tell your father  
[12] you saw me.

[13] **MR. WILLIAMS:** I sure will.

[14] Anyway, thank you very much. On  
[15] behalf of Modern Courts, I want to thank the  
[16] committees for providing our organization  
[17] with an opportunity to present here today.

[18] As you may know, as some of you may  
[19] know, The Fund for Modern Courts is an  
[20] independent, nonpartisan, statewide court  
[21] reform organization committed to improving  
[22] the court system for all New Yorkers.

[23] The Fund for Modern Courts supports  
[24] the budget submitted by the Judiciary. Last

[11] year's budget generated cuts in the courts  
[12] across the state. The effects of the cuts  
[13] have been well-documented by our colleagues  
[14] in the New York State Bar Association, the  
[15] New York County Lawyers Association and  
[16] others.

[17] In addition, Modern Courts' court  
[18] monitoring programs in Family Courts in  
[19] various parts of the state, our task force on  
[20] Family Court, and the involvement of our  
[21] members in the Chief Judge's task to expand  
[22] legal services in New York demonstrates to us  
[23] that from every part of New York, the  
[24] resources needed to afford full and fair  
justice to all people, and especially the  
most vulnerable, are not at their most  
robust.

[18] We ask this Legislature to accept the  
[19] Judiciary Budget as proposed so the courts in  
[20] New York have the ability to provide full and  
[21] fair and timely adjudication of proceedings  
[22] within the constraints of these difficult  
[23] economic times.

[24] I would just point out, by way of

[11] Modern Courts is confident that this  
[12] Legislature would not do what has been done  
[13] in other states because of New York's  
[14] long-standing commitment to a sound  
[15] judiciary. And by way of example, Modern  
[16] Courts would like to applaud this Legislature  
[17] for its historical support of a strong  
[18] judiciary and its decision to pass  
[19] legislation which would give the judges in  
[20] this state a raise. So we applaud that  
[21] effort, and we really appreciate it.

[22] One other area that Modern Courts is  
[23] focused on is Modern Courts supports the  
[24] inclusion of funding for civil legal services  
in the Judiciary Budget. The report by the  
task force on civil legal services provides a  
thoroughly researched and documented basis  
for providing civil legal services funding  
for the poor.

[20] Again, serving justice should be at  
[21] the forefront of our perspective, and the  
[22] question we must all ask is how do we provide  
[23] the best justice for people who are facing a  
[24] loss of the essentials of life while also

[11] example, probably the court that has suffered  
[12] the most are the Family Courts. Even with  
[13] the best efforts of judges and nonjudicial  
[14] personnel and the dedication of advocates  
[15] tirelessly representing litigants in the  
[16] Family Court, the limited resources cause  
[17] extraordinary delays, preventing proper and  
[18] timely resolution of issues facing the people  
[19] who need justice to protect them from harm.  
[20] That issue cannot be ignored.

[21] The problems include huge dockets;  
[22] lack of sufficient Family Court judgeships  
[23] commensurate with the dockets; unmanageable  
[24] court calendars; frequent adjournments,  
causing disruption in court proceedings and  
the effectiveness of judges' orders; the lack  
of legal representation for many individuals,  
which causes ineffective advocacy; and the  
paucity, in many courts throughout the state,  
of information about how the system works or  
the provision of support for the parties when  
they first enter the courtroom, resulting in  
more work for overburdened judges and court  
personnel.

[11] providing fiscally sound policy for this  
[12] state.

[13] The poorest citizens, who at times of  
[14] economic stress have the greatest needs, must  
[15] rely on continued access to critical  
[16] services. For Modern Courts this is a matter  
[17] of simple justice. We ask that you support  
[18] the funding for civil legal services and the  
[19] providers who service every county in the  
[20] state and can provide families, children and  
[21] individuals with the legal representation  
[22] needed.

[23] Thanks for your leadership efforts.  
[24] The state's budget is in a more secure place  
than it was last year. We know you will  
continue to do a great job in very hard and  
trying times. Modern Courts requests that  
with your leadership the judiciary in  
New York will remain sound, because the  
alternative has consequences that reach way  
beyond the halls of our courtrooms.

[21] And if Modern Courts can be of any  
[22] assistance to any of you with any of our  
[23] programs or in dealing with the issues you  
[24]

[1] deal with, we'd be happy to do so.  
[2] I'm happy to entertain questions, if  
[3] there are any.

[4] **CHAIRMAN FARRELL:** Thank you very  
[5] much.

[6] Questions? Any questions? We have  
[7] no questions.

[8] **MR. WILLIAMS:** Thank you.

[9] **CHAIRMAN FARRELL:** Legal Action  
[10] Center, Tracie Gardner, director of New York  
[11] State policy.

[12] **MS. GARDNER:** Good evening -- I'm  
[13] sorry, good afternoon.

[14] (Laughter.)

[15] **CHAIRMAN FARRELL:** No, don't do that  
[16] to us. Stick with afternoon, I feel better  
[17] that way.

[18] **MS. GARDNER:** My name is Tracie  
[19] Gardner, and I'm the director of --

[20] **CHAIRMAN FARRELL:** Or did you know we  
[21] were going to hold you this late?

[22] **MS. GARDNER:** Stop, stop. You're  
[23] cutting into our time.

[24] I'm the director of New York State

[1] Maintain funding for alternative to  
[2] incarceration and reentry programs during the  
[3] fourth quarter of fiscal year 2013 when the  
[4] federal stimulus ARRA money ends.

[5] Establish and institutionalize new  
[6] state funding streams for ATI and reentry  
[7] programs to replace the ARRA money for the  
[8] long term.

[9] Add \$5 million to encourage  
[10] innovation and expand services for emerging  
[11] and underserved client and community needs.

[12] Support the Governor's proposal to  
[13] reform the juvenile justice system by closing  
[14] state facilities and providing placements and  
[15] services to youth in New York City.

[16] And, finally, support the Governor's  
[17] proposal to enroll in Medicaid all eligible  
[18] individuals incarcerated in New York State  
[19] facilities.

[20] I know that from earlier testimony,  
[21] particularly from DCJS, thanks to you and  
[22] thanks to the Executive, you have brought the  
[23] ATI and reentry programs back from the brink  
[24] through the use of the stimulus ARRA dollars.

[1] policy for the Legal Action Center, and I do  
[2] appreciate the opportunity to address you  
[3] today. I did provide you with remarks, and  
[4] I'm not going to read all of them, although I  
[5] know you all enjoy my speaking voice.

[6] You know Legal Action Center, and you  
[7] know that we work very closely with the  
[8] Coalition of Alternative to Incarceration and  
[9] Reentry Programs. These programs divert  
[10] appropriate individuals who have been  
[11] arrested or convicted to community  
[12] supervision and sanctions, and they protect  
[13] the public, save the state money by reducing  
[14] prison costs, preventing recidivism, and  
[15] stabilizing these individuals.

[16] We are presenting our budget  
[17] recommendations, as we do every year. And we  
[18] applaud the Governor and we applaud you, the  
[19] Legislature, for continuing funding for ATI  
[20] and reentry programs last year, as well as  
[21] closing excess prison capacity.

[22] We urge the Legislature to take the  
[23] following steps to continue these critically  
[24] important initiatives:

[1] As Acting Commissioner Sean Byrne  
[2] said, we are looking at the ending of that  
[3] funding and it actually ends, the funds run  
[4] out December 31, 2012. So we appreciate the  
[5] support, but we are asking the Legislature to  
[6] ensure that we continue to receive funding in  
[7] the fourth quarter, which is going to be  
[8] January through March, 2013. Possibly a  
[9] small procedural issue for you, but  
[10] definitely a critical issue for us that we  
[11] are able to make it through that gap.

[12] Which leads us directly to the issue  
[13] that for so long we have had a haphazard  
[14] system of funding. Thanks to the  
[15] Legislature, thanks to the Assembly  
[16] especially for supporting ATI and reentry,  
[17] but there has been no permanent or stable  
[18] funding stream for quite some time.

[19] And there's been widespread  
[20] recognition of our role in the criminal  
[21] justice system, our role with respect to the  
[22] lowered census in the prisons, with respect  
[23] to implementation of Rockefeller Drug Law  
[24] reform. And to have to start our system of

[1] ATI and reentry programs from scratch would  
[2] be a waste of state dollars.

[3] So again, the Executive Budget only  
[4] includes ARRA funds for most ATI and reentry  
[5] programs, including those employment programs  
[6] that were spoken about earlier. Those are  
[7] members of the ATI and Reentry Coalition.  
[8] The state has no mechanism to replace the  
[9] millions of dollars in funding that ARRA has  
[10] provided for the last two years.

[11] The \$5 million is to encourage  
[12] innovation and expand services for emerging  
[13] and underserved client and community needs.  
[14] We spend a great deal of time coming up and  
[15] doing wonderful things like this, but this  
[16] keeps us from being able to address emerging  
[17] needs.

[18] Commissioner Byrne spoke last year  
[19] and spoke again this year about how criminal  
[20] justice patterns have changed. Upstate is  
[21] severely underserved by programs like ours.  
[22] Young people, people who fall outside of the  
[23] Rockefeller diversion capacity, all of these  
[24] are emerging needs that we need the capacity

[1] budget calls for enrolling all eligible  
[2] individuals incarcerated in DOCCS facilities  
[3] into the state's Medicaid program, as well as  
[4] keeping the enrollment open for those  
[5] individuals who enter prison already enrolled  
[6] in Medicaid. This proposal will allow New  
[7] York State to save several million dollars by  
[8] splitting the cost of any medical services  
[9] incarcerated individuals receive outside of  
[10] prison with the federal government. It would  
[11] also ensure that all eligible individuals  
[12] leave prison enrolled in the state Medicaid  
[13] program, enabling people in need of  
[14] healthcare, substance use disorder and/or  
[15] mental health treatment and other healthcare,  
[16] to receive it as soon as they're released, so  
[17] there's no gap. And the federal government  
[18] would be sharing the cost.

[19] Okay, I lied. Finally -- finally --  
[20] on DNA, because we would be remiss to not  
[21] weigh in, we are reviewing the proposal and  
[22] we have concerns, including whether DNA  
[23] information in the database will be readily  
[24] available to exonerate those who are wrongly

[1] to address.

[2] Finally -- or almost finally -- we  
[3] obviously support the juvenile justice  
[4] proposal that will allow judges in New York  
[5] City to send low-risk youth through the  
[6] juvenile justice system to facilities located  
[7] within New York City and administered by the  
[8] city. The system is hugely costly, riddled  
[9] with problems, and keeping New York City  
[10] youth in New York City will allow the state  
[11] to eliminate 324 beds and close a number of  
[12] expensive and inefficient facilities.

[13] We're hopeful that this plan will be  
[14] released with ample time for public review  
[15] and include well-established safety standards  
[16] and durable community engagement and  
[17] independent oversight. It's also crucial  
[18] that legislators, the media, and the public  
[19] ensure that our youth justice focus does not  
[20] end with the budget cycle. So we call on the  
[21] Legislature to support the Governor's  
[22] reforms.

[23] Finally, and this is a particular  
[24] area of concern for us, Governor Cuomo's

[1] accused or convicted. But we continue to  
[2] study it, and we look forward to the  
[3] discussions that will be happening.

[4] And I have 3 minutes and 36 seconds  
[5] left.

[6] **CHAIRMAN FARRELL:** Thank you very  
[7] much.

[8] **MS. GARDNER:** Thank you. Any  
[9] questions?

[10] **CHAIRMAN DeFRANCISCO:** No questions.

[11] Oh, no. No, no, Senator Krueger has  
[12] a question.

[13] **SENATOR KRUEGER:** Hi. Thank you.  
[14] Thank you for going so quickly through the  
[15] testimony.

[16] So the very last proposal is to allow  
[17] DOCCS to have all of its prisoners enrolled  
[18] in Medicaid, is that my understanding?

[19] **MS. GARDNER:** Yes. Yes.

[20] **SENATOR KRUEGER:** Now, were we always  
[21] allowed to do this under federal law and just  
[22] didn't?

[23] **MS. GARDNER:** We were always allowed  
[24] to under federal law and just didn't.

[1] Although the Medicaid would pay for inpatient  
[2] expenditures of those who are under DOCCS  
[3] custody. So it can't be used for outpatient,  
[4] it has to be for hospitalizations.

[5] **SENATOR KRUEGER:** So when you're a  
[6] patient in the DOCCS system and you're so ill  
[7] as to require hospitalization outside of the  
[8] prison, then we can --

[9] **MS. GARDNER:** Exactly. If you're on  
[10] Medicaid, the state can bill Medicaid, bill  
[11] for federal share of that care.

[12] **SENATOR KRUEGER:** And because -- my  
[13] background is wanting to make sure people are  
[14] enrolled in Medicaid before they're released,  
[15] often to the streets of different communities  
[16] with healthcare problems, chronic illnesses,  
[17] mental health problems, and then they can't  
[18] get access to continuing their treatment or  
[19] their medication because they don't have  
[20] insurance.

[21] So I was familiar with being able to  
[22] early -- do the applications early from  
[23] within prison so that when they leave prison,  
[24] they are community Medicaid-eligible.

[1] (Discussion off the record.)

[2] **MS. MURTAGH:** John was feeling under  
[3] the weather. And he sends his greetings and  
[4] apologizes for not being here today.

[5] Thank you, Senator DeFrancisco,  
[6] Chairman Farrell, and members of this  
[7] committee for the opportunity to testify  
[8] before you today. As you know -- I've been  
[9] here a number of times -- PLS is a statewide  
[10] agency. We were founded in 1976 as a result  
[11] of the Attica uprising.

[12] And I'm thrilled to say that for the  
[13] first time in over two decades, PLS was  
[14] actually included in the Executive Budget. I  
[15] commend Governor Cuomo and his staff for  
[16] their commitment to the administration of  
[17] justice for all indigent New Yorkers,  
[18] including incarcerated individuals.

[19] The problem is, the amount that we  
[20] were included for in the budget is 50 percent  
[21] less than what we received last year, and  
[22] last year we received about 50 percent from  
[23] what we received the year before.

[24] So I'm here before you today to ask

[1] **MS. GARDNER:** And that is going on as  
[2] well. But it's always been the case that the  
[3] Medicaid could be suspended versus terminated  
[4] to facilitate that very issue that you're  
[5] talking about, so that you could restore it  
[6] before release.

[7] And, you know, some have said it's  
[8] been a mechanism issue, but it certainly does  
[9] save the state money and make a lot of public  
[10] health sense to ensure that people are  
[11] already on as they leave.

[12] **SENATOR KRUEGER:** Is there anyone  
[13] opposing this proposal, as far as you know?

[14] **MS. GARDNER:** As far as I know, no.  
[15] This is a good idea.

[16] **SENATOR KRUEGER:** Thank you very  
[17] much.

[18] **MS. GARDNER:** Thank you.

[19] **CHAIRMAN FARRELL:** Thank you.

[20] **CHAIRMAN DeFRANCISCO:** Thank you.

[21] The next speaker is Karen Murtagh,  
[22] executive director of Prisoners' Legal  
[23] Services of New York. No John Dunne? Okay.  
[24] So John Dunne is done.

[1] for an add of \$1.5 million in additional  
[2] monies simply to allow PLS to continue  
[3] providing the services that we are currently  
[4] providing.

[5] I will rely on my written testimony.  
[6] I know everyone is very tired. I'm going to  
[7] just highlight a few points.

[8] First of all, we're the only game in  
[9] town. PLS is the only statewide legal  
[10] services office that provides direct legal  
[11] services to prisoners. There is no one else.  
[12] We receive over 10,000 requests for  
[13] assistance every year and hundreds and  
[14] hundreds of referrals -- from judges, from  
[15] outside agencies, and from members of the  
[16] Legislature, where your constituents write to  
[17] you about someone, a loved one that's  
[18] incarcerated, and those cases are referred to  
[19] us and we handle them.

[20] Just so everyone knows, the work that  
[21] we do is the most basic, fundamental  
[22] constitutional work that can be done for  
[23] indigent New Yorkers. For the most part, we  
[24] focus on four areas: Preventing wrongful,



[1] prolonged solitary confinement, preventing  
[2] the use of excessive force, making sure that  
[3] individuals are released from jail when they  
[4] should be, and making sure that people  
[5] receive adequate medical and mental  
[6] healthcare.

[7] And just to summarize under those  
[8] categories, since 2009 our advocacy on  
[9] disciplinary cases resulted in over 80 years  
[10] of solitary confinement time being expunged  
[11] from prisoners' records. That means they're  
[12] not in solitary confinement, they're  
[13] programming, they're being prepared for  
[14] reentry. It's a huge public safety issue.

[15] In the past two years we've received  
[16] over 6,000 requests about jail time and  
[17] sentence computation errors. And I'd just  
[18] like you to listen to this figure. In the  
[19] past two years, our advocacy has resulted in  
[20] over 246 years of jail time and sentencing  
[21] that has been returned to people because of  
[22] the errors.

[23] Our work on cruel and inhuman  
[24] treatment in the prison, sometimes called

[11] So why should you fund PLS, if that  
[12] wasn't enough? Four reasons.

[13] Attica. We were created to prevent  
[14] another Attica, and we've done so. Our  
[15] presence is the prisons, the trust that  
[16] prisoners have for Prisoners' Legal Services,  
[17] our ability to encourage prisoners to air  
[18] their grievances through the grievance  
[19] mechanism, through writing, through advocacy  
[20] in litigation, has helped prevent another  
[21] Attica. The cost of another Attica would be  
[22] astronomical.

[23] Real, hard savings, the correction of  
[24] jail time and sentencing errors. For every  
year of jail time or sentencing, it saves the  
state about \$55,000, because that's what it  
costs, the total in-cost, to incarcerate a  
prisoner. So I went back and looked, 2009 to  
today, what we saved in years and what our  
funding was. And our funding has been  
directly proportional to what we have saved  
the state in terms of getting good time and  
jail time and sentencing credit returned.

[24] There's a chart at the end of my

[1] excessive force, has resulted in great  
[2] strides. We have cameras in almost all  
[3] prisons, we have great "use of force" reports  
[4] that are filled out now. But we still  
[5] receive a significant amount of complaints  
[6] about guard brutality, 914 since 2010. And  
[7] even though the prison population has  
[8] decreased approximately 7.4 percent since  
[9] 2008, the excessive "use of force" reports  
[10] have remained steady.

[11] And with respect to adequate medical  
[12] and mental healthcare, we've made great  
[13] strides there too -- some through advocacy,  
[14] some through massive litigation. We now no  
[15] longer place seriously mentally ill people in  
[16] solitary confinement, or at least we hope we  
[17] don't. But since 2010 PLS has received over  
[18] a thousand complaints about medical and  
[19] mental health issues. Suicides are on the  
[20] rise, soaring to their highest in 28 years.  
[21] And as Jack Beck testified earlier, the cuts  
[22] that are being proposed by DOCCS in the  
[23] medical services are only going to make these  
[24] issues worst.

[1] testimony, Appendix 3 -- and it's a very  
[2] colorful chart, I'm very proud of it. I've  
[3] never done these charts before. But if you  
[4] look at it, you'll see that in 2009, when our  
[5] operating budget was about \$4 million, we  
[6] saved the state \$7 million in returned  
[7] sentencing time. In 2010, our budget was  
[8] \$2.8 million; we saved the state \$5 million.  
[9] And in 2011, our budget was \$1.9 million and  
[10] we saved the state approximately \$4 million.

[11] And this doesn't even take into  
[12] account what we're saving by preventing false  
[13] imprisonment lawsuits that would be filed if  
[14] we hadn't been able to get the time back for  
[15] our clients.

[16] And just as a little note, right  
[17] before I came in I received an email about a  
[18] case of solitary confinement where someone  
[19] was illegally held in solitary confinement in  
[20] New Mexico for only two years. We have cases  
[21] where it's much longer than that in New York  
[22] State. Two years, a federal jury just  
[23] returned a verdict for \$22 million. That  
[24] would fund PLS for six years. Five, maybe,

[1] if you were generous.  
 [2] We also discourage frivolous  
 [3] lawsuits. We do receive thousands of letters  
 [4] a year by prisoners who don't have a claim.  
 [5] And our attorneys take the time to write back  
 [6] and explain why it is not a meritorious  
 [7] lawsuit, why it might be frivolous, please  
 [8] don't bring this. I can't give you the  
 [9] statistics on how many cases aren't brought,  
 [10] but we have hundreds of letters from  
 [11] prisoners that say, Thank you for explaining  
 [12] the law, now I know -- it's too bad, but now  
 [13] I know it's not worth suing. That saves the  
 [14] courts, the AG's office, and DOCCS thousands,  
 [15] probably millions of dollars a year.  
 [16] Finally, let me conclude by just  
 [17] saying that when our funding was cut last  
 [18] year by 50 percent, I was forced to lay off  
 [19] half my staff. It's been cut again by  
 [20] another 50 percent. I'll have to lay off  
 [21] half my staff again. We're already down to  
 [22] 11 attorneys. We have two attorneys in our  
 [23] Buffalo office, two attorneys in our  
 [24] Plattsburgh office. We can't do this.

[1] **SENATOR KRUEGER:** And it's my  
 [2] understanding also that, like the state's  
 [3] workforce, the prisoner population is an  
 [4] aging population in our prisons.  
 [5] **MS. MURTAGH:** Yes.  
 [6] **SENATOR KRUEGER:** And so in fact is a  
 [7] significant number of the quote, unquote days  
 [8] or years you've helped save the state in  
 [9] costs by assisting prisoners to go through  
 [10] some process where they can be paroled or let  
 [11] out of prison because of their age and  
 [12] physical health situation?  
 [13] **MS. MURTAGH:** Well, there is a  
 [14] medical parole bill. That has not been as  
 [15] successful as we would hope because of the  
 [16] burden to have to have two medical doctors  
 [17] attest that the person is unlikely to commit  
 [18] another crime. It's difficult to get people  
 [19] to sign an affidavit to that.  
 [20] I think that burden should be  
 [21] lessened. I have a client that he's 83 years  
 [22] old, he's dying in prison, his son wants to  
 [23] take him home, but he doesn't qualify for  
 [24] medical parole. The chance that this man is

[1] I implore you to add \$1.5 million to  
 [2] our budget this year so we can continue  
 [3] providing the vital, critical, necessary  
 [4] legal services that we've provided for  
 [5] 35 years. Thank you.  
 [6] **CHAIRMAN DeFRANCISCO:** Senator  
 [7] Krueger.  
 [8] **SENATOR KRUEGER:** Hi. Thank you for  
 [9] your testimony.  
 [10] Were you here earlier when the  
 [11] Correctional Association was testifying about  
 [12] the reductions in healthcare services for  
 [13] prisoners?  
 [14] **MS. MURTAGH:** Yes.  
 [15] **SENATOR KRUEGER:** And has that  
 [16] translated into more legal claims or  
 [17] challenges by prisoners reaching out to you?  
 [18] **MS. MURTAGH:** The medical complaints  
 [19] are off the charts. Has it translated into  
 [20] an increase? I can't tell at this point.  
 [21] But delays in medical care, failure to follow  
 [22] consult recommendations -- I mean, any cut in  
 [23] medical for DOCCS at this point would be big  
 [24] mistake.

[1] ever going to commit another crime is --  
 [2] **SENATOR KRUEGER:** That would require  
 [3] statutory change to change the definitions  
 [4] that can be used to allow medical parole?  
 [5] **MS. MURTAGH:** Yes. We would have to  
 [6] make medical parole more lenient, which we  
 [7] should do.  
 [8] **SENATOR KRUEGER:** And are there other  
 [9] states that have gone down that road  
 [10] successfully? Have other states gone down  
 [11] that road in improving their statutes and  
 [12] allowing a more liberal definition of medical  
 [13] parole?  
 [14] **MS. MURTAGH:** I believe so. I can  
 [15] say that I think New York is, like California  
 [16] and Texas, is facing this crisis with elderly  
 [17] prisoners, so they're all looking at it. But  
 [18] I do believe Massachusetts has a better bill  
 [19] than we do.  
 [20] **SENATOR KRUEGER:** And only because  
 [21] it's following up on discussions with other  
 [22] people who testified, so the previous  
 [23] testifier from the Legal Action Center,  
 [24] Tracie Gardner, was talking about a proposal

[1] by the Governor to allow Medicaid for  
[2] prisoners.  
[3] Is there actually a parallel where  
[4] you can sign prisoners up for Medicare, since  
[5] so many of our prison population actually may  
[6] be eligible for Medicare services as well?  
[7] **MS. MURTAGH:** I'm not an expert on  
[8] that, but I would think yes. And it would  
[9] make sense if we could do that.  
[10] **SENATOR KRUEGER:** Thank you very  
[11] much.  
[12] **CHAIRMAN FARRELL:** No questions this  
[13] side.  
[14] **CHAIRMAN DeFRANCISCO:** Thank you.  
[15] **MS. MURTAGH:** Thank you.  
[16] **CHAIRMAN DeFRANCISCO:** Bruce  
[17] Meirowitz, New York State Lifeguard  
[18] Corporation.  
[19] Oh, it's not "Corporation"?  
[20] **MR. MEIROWITZ:** Actually, I'm  
[21] president of the New York State Lifeguard  
[22] Corps. I'm a New York State employee. I  
[23] think someone made a typo.  
[24] **CHAIRMAN DeFRANCISCO:** So you're part

[1] today. My testimony will address the effects  
[2] that recent budget cuts to our state parks  
[3] have had on public safety, staffing and  
[4] waterfront accessibility.  
[5] My members protect New York's  
[6] beaches, bays, lakes, rivers and pools from  
[7] Montauk Point to Niagara Falls, from Staten  
[8] Island to the Thousand Islands. Our job as  
[9] first responders is to protect and preserve  
[10] human life. Last year the New York State  
[11] Lifeguard Corps participated in thousands of  
[12] rescues, hundreds of aided cases, and  
[13] protected hundreds of thousands of  
[14] New Yorkers.  
[15] If you've got any questions about  
[16] what lifeguards do or who we are or what are  
[17] our responsibilities, I spoke with  
[18] Assemblyman Weisenberg today; he said you can  
[19] feel free to give him a call and he'll fill  
[20] you right in.  
[21] (Laughter.)  
[22] **MR. MEIROWITZ:** All right? I saw  
[23] Harvey before I came over here.  
[24] In recent years we've seen the

[1] of the 99 percent, then. That's good.  
[2] **MR. MEIROWITZ:** I have a brief  
[3] testimony, and let's get into it. Thank you  
[4] for your time.  
[5] Senator DeFrancisco, Assemblyman  
[6] Farrell, honorable members of the Senate  
[7] Finance and Assembly Ways and Means  
[8] Committees, and distinguished staff, I'm  
[9] Bruce Meirowitz, president of the New York  
[10] State Lifeguard Corps. The New York State  
[11] Lifeguard Corps is affiliated with the United  
[12] University Professions -- UUP -- NYSUT, and  
[13] the American Federation of Teachers.  
[14] My testimony today represents the  
[15] concerns of nearly 1,087 lifeguards working  
[16] for New York State Parks, Recreation and  
[17] Historic Preservation and the Department of  
[18] Environmental Conservation. We also  
[19] represent year-round part-time lifeguards  
[20] employed by the Department of Health and the  
[21] Office for People with Developmental  
[22] Disabilities, formerly OMRDD.  
[23] Thank you for convening this public  
[24] hearing and for the opportunity to testify

[1] closing of portions of parks, deterioration  
[2] of pools, and the loss of waterfront. On  
[3] Long Island, the East Bath House Pool, the  
[4] Hechsher Pool, and the West End Beaches have  
[5] all closed. These facilities were closed due  
[6] to a lack of state funding. The facilities  
[7] at those parks that have remained open are  
[8] decaying and are in a general state of  
[9] disrepair.  
[10] At the same time, the utilization of  
[11] our state parks and facilities by the public  
[12] has increased tremendously. Due to the  
[13] economy, many New Yorkers are no longer able  
[14] to afford to take a vacation. Instead,  
[15] they're taking "staycations." That is to  
[16] say, people are staying closer to home, and  
[17] many are utilizing our state's parks for  
[18] their recreation.  
[19] The Governor has proposed to increase  
[20] funding for capital improvements and critical  
[21] maintenance for our state parks. We urge you  
[22] to support this proposal and to include this  
[23] funding in the final enacted state budget.  
[24] Without this funding, our state facilities

[1] will continue to deteriorate and become  
[2] unsafe for public use. Capital improvements  
[3] and maintenance of our state parks must be a  
[4] priority. The general poor condition of many  
[5] of our state facilities, coupled with the  
[6] loss of waterfront and higher public  
[7] utilization has made my members' jobs of  
[8] protecting the public increasingly more  
[9] difficult.

[10] This leads me to another issue of  
[11] great concern for my members.  
[12] Notwithstanding the fact that my members'  
[13] jobs have become more difficult, New York  
[14] State has failed to reach a fair collective  
[15] bargaining agreement with the New York State  
[16] Lifeguard Corps. In fact, we have been  
[17] without a contract for 10 years. This puts  
[18] our base pay below that of many neighboring  
[19] municipalities and even retail businesses.  
[20] Some kids can make more money working as a  
[21] waiter than they can make saving somebody's  
[22] life.

[23] The Parks Department's ability to  
[24] attract qualified lifeguards has been

[1] quality of our New York State parks. The  
[2] safety of our citizens hangs in the balance.

[3] I want to thank you for this  
[4] opportunity to speak on behalf of the fine  
[5] men and women of the New York State Lifeguard  
[6] Corps, and I'm also going to thank my  
[7] granddaughter Angela that has sat through an  
[8] entire day of government to see what's taking  
[9] place. So thank you very much. Any  
[10] questions would be welcome.

[11] **CHAIRMAN FARRELL:** Thank you very  
[12] much.

[13] **SENATOR KRUEGER:** Thank you.

[14] **CHAIRMAN DeFRANCISCO:** Thank you.  
[15] Angela, it's not all this boring.

[16] There's other good parts that are exciting  
[17] and enjoyable.

[18] (Laughter.)

[19] **MR. MEIROWITZ:** Thank you very much.  
[20] Have a good day.

[21] **CHAIRMAN DeFRANCISCO:** The next  
[22] speaker is Anne Erickson, the president and  
[23] CEO of Empire Justice Center.

[24] **MS. ERICKSON:** Thank you very much.

[1] compromised by the failure of the state to  
[2] negotiate a fair contract. I urge you to  
[3] support my members in the pursuit of reaching  
[4] a fair contract with the state this year.  
[5] It's long overdue.

[6] We only ask for fairness, equity and  
[7] respect, the same that is shown to any other  
[8] agencies that have first responders and are  
[9] responsible for human life. My lifeguards,  
[10] as well as myself, have put their lives at  
[11] risk on a daily basis, charging into an angry  
[12] ocean to save someone else. It is our job,  
[13] and we take pride in it.

[14] In conclusion, I've been an ocean  
[15] rescue lifeguard and a New York State  
[16] employee for 43 years. I have many years of  
[17] experience and expertise in water safety.  
[18] The Lifeguard Corps is more than a union or  
[19] an association. It's a group that shares a  
[20] common bond to protect the public, just as  
[21] you share a common bond in representing the  
[22] public. Again, I urge you to please support  
[23] the Executive Budget recommendation to  
[24] increase capital funding to improve the

[1] Good afternoon, and thank you for the  
[2] opportunity to join you today in testifying  
[3] on the 2012-13 Executive Budget. I want to  
[4] thank members of the panel -- Senator  
[5] DeFrancisco, Assemblyman Farrell, other  
[6] members of the panel for your patience and  
[7] stamina throughout the day today.

[8] My name is Anne Erickson, and I am  
[9] president and CEO of the Empire Justice  
[10] Center. And the Empire Justice Center is a  
[11] statewide organization working primarily to  
[12] enforce and defend and protect the rights of  
[13] low-income and disenfranchised New Yorkers.  
[14] Our mission, quite simply, is to make the law  
[15] work for those who need it most.

[16] And we do this in a number of ways.  
[17] We provide training, support and technical  
[18] assistance. We basically are the civil  
[19] backup center for legal service programs  
[20] outside of New York City. We provide  
[21] continuing legal education training, we run a  
[22] very vibrant website, we put resources at the  
[23] fingertips of the front-line advocates so  
[24] that they can be the best advocates possible

[1] for their clients.

[2] We provide direct legal  
[3] representation, and depending on where in the  
[4] state we are. In our Rochester office, we're  
[5] one of the core providers, we provide a range  
[6] of direct civil legal services. In the  
[7] Albany area we provide very specific legal  
[8] assistance to immigrant victims of domestic  
[9] violence and to some of the more complex  
[10] foreclosure cases. On Long Island and in our  
[11] White Plains office we're representing  
[12] immigrants, basically supplementing and  
[13] complementing the direct providers that are  
[14] in those areas.

[15] We also engage in legislative and  
[16] administrative advocacy. As I think you are  
[17] well aware, we present a legislative agenda  
[18] every year to advance the needs of our  
[19] clients so that they have a voice within the  
[20] policy-making process.

[21] Right now we do those three areas of  
[22] activity across about 30 substantive areas of  
[23] law, all those areas that will impact poverty  
[24] issues.

[1] I would submit that investing in civil legal  
[2] services is probably one of the best  
[3] investments that the state can make.

[4] I am a member of the Chief Judge's  
[5] task force to expand access to civil legal  
[6] services. And one of the things the task  
[7] force did this past fall was to engage two  
[8] pro bono consulting firms to help us take a  
[9] look at where we were having impact and  
[10] whether or not our instinct that these were  
[11] cost-effective and cost-efficient benefits  
[12] were in fact right on.

[13] The findings were incredible in  
[14] looking at two areas, homelessness prevention  
[15] and legal assistance provided in cases of  
[16] domestic violence. In the area of  
[17] homelessness prevention, legal services saves  
[18] an estimated \$116 million a year in emergency  
[19] benefits and other related costs. And by  
[20] providing legal assistance in the areas of  
[21] domestic violence, we are saving an estimated  
[22] \$85 million a year -- clearly, an extremely  
[23] cost-effective investment.

[24] The other area that people have

[1] As you've heard today, the need  
[2] continues unabated for civil legal services  
[3] across the state. As you heard, there are  
[4] 2.3 million people who show up in civil court  
[5] every year without representation, and they  
[6] are there on very critical life-altering  
[7] issues, whether it's facing eviction or  
[8] foreclosure, the loss of literally the roof  
[9] over their heads, the loss or the need for  
[10] public benefits so that they can keep life  
[11] and limb together. Whether it's health  
[12] issues, consumer issues, these are critical  
[13] needs that folks are going into a very  
[14] complicated court system without the benefit  
[15] of counsel.

[16] You have my written testimony. I  
[17] look at some of the data that we've collected  
[18] from around the state, and it is staggering  
[19] how much need is still out there.

[20] I also wanted to touch on the  
[21] cost/benefit of providing legal assistance.  
[22] We know in New York State that you have to  
[23] make some pretty tough budgetary decisions,  
[24] and you've got to do some prioritizing. And

[1] touched on today is the work that legal  
[2] services does to ensure federal transfer  
[3] funds. Basically if we can represent people  
[4] who have been denied or terminated from  
[5] federal benefits, who have been denied or  
[6] terminated from veterans benefits, who have  
[7] not gotten access to federally funded food  
[8] stamps, we are economic engine in the State  
[9] of New York. We drive federal dollars into  
[10] low-income communities.

[11] And because most of these are  
[12] means-tested programs based on someone's  
[13] income, they are being driven into the  
[14] lowest-income neighborhoods in the state.  
[15] And they are being spent, those federal  
[16] dollars are being spent in the local grocery  
[17] stores, to pay rent, to buy clothes, to drive  
[18] the local economy.

[19] I pulled some of the numbers from --  
[20] and again, these are statewide. But  
[21] \$168 million in federal SSI benefits and  
[22] federal disability benefits, \$117 million in  
[23] Medicaid benefits that are coming into the  
[24] State of New York that would not otherwise

[1] have been available but for the provision of  
[2] civil legal services, \$25 million in tax  
[3] credits and tax refunds -- again, funds that  
[4] are coming into those communities and being  
[5] spent immediately in those local economies --  
[6] and \$37 million in other benefits.

[7] We also took a look at the changing  
[8] of our client demographic. As you can  
[9] imagine, with the economy the way it is, not  
[10] only has poverty increased and we're seeing  
[11] the desperation of the clients that are  
[12] coming to our front door that are really at  
[13] the economic fringe, but we are seeing more  
[14] and more previously moderate-income,  
[15] low-income households, families that have  
[16] lost a paycheck and are now at risk of  
[17] foreclosure, families that are seeking public  
[18] assistance for the first time ever,  
[19] individuals who are looking at unemployment  
[20] benefits for the first time ever. The need  
[21] continues unabated.

[22] So really why I'm here today is to  
[23] say thank you, thank you, thank you, for all  
[24] of the help that the Legislature has provided

[1] are so encouraged that you continue to be  
[2] stalwart supporters of access to justice and  
[3] ensuring that we have the resources we need  
[4] to do the job that needs to be done.

[5] But I would urge, in addition to  
[6] supporting the Chief Judge's budget, that you  
[7] again support legislative restoration once  
[8] again eliminated from the Executive Budget,  
[9] and we would urge you to restore the funding  
[10] through the legal services assistance fund  
[11] that you've made available over the years.

[12] And really, you know, that's it. We  
[13] stand ready to do whatever we can to help  
[14] make this happen. The needs out there are  
[15] dire and unrelenting, and we need you to  
[16] continue being there to make sure that access  
[17] to justice becomes as much a reality in  
[18] New York State as we can make it in these  
[19] tough times.

[20] So thank you very much, and I'm happy  
[21] to answer any questions.

[22] **CHAIRMAN FARRELL:** Any questions?

[23] **CHAIRMAN DeFRANCISCO:** Thank you very  
[24] much.

[1] to civil legal services over the years. It  
[2] has been -- it has really just held things  
[3] together in times of most incredible need.

[4] But I also was struck, when I was  
[5] looking at some of the numbers for this  
[6] year's testimony -- and as we all know,  
[7] Chief Judge Jonathan Lippman has been an  
[8] incredible ally. He hit the ground running,  
[9] he proposed funding in last year's budget for  
[10] the first time in the Judiciary Budget.

[11] As you guys know because you  
[12] supported it and you fought for it, we got  
[13] \$12.5 million in new funding for civil legal  
[14] services statewide. We had lost  
[15] \$12.6 million. Between the loss of the  
[16] legislative funding, the loss of IOLA  
[17] funding, and even though the Chief Judge and  
[18] you joined forces to make up some of that  
[19] IOLA funding, we lost \$18.5 million;  
[20] \$15 million was restored. So we're barely  
[21] standing in place.

[22] We are so encouraged again this year  
[23] to see the Chief Judge step up and to hear  
[24] the support expressed throughout the day. We

[1] **MS. ERICKSON:** Thank you.

[2] **CHAIRMAN DeFRANCISCO:** Stephanie  
[3] Gendell, associate executive director for  
[4] policy and public affairs of the Citizens  
[5] Committee for Children. Stephanie gave up?  
[6] Okay. Albany SNUG, Barbara Smith.  
[7] Barbara, is this your whole family

[8] or --

[9] (Laughter.)

[10] **COMMON COUNCIL MEMBER SMITH:** Yes.  
[11] This is definitely my family.

[12] **CHAIRMAN DeFRANCISCO:** Okay, you're  
[13] up.

[14] **COMMON COUNCIL MEMBER SMITH:**  
[15] Chairman DeFrancisco, Chairman Farrell, and  
[16] distinguished members of the Legislature, we  
[17] appreciate this opportunity once again to  
[18] speak to you on behalf of Albany SNUG.

[19] I am joined today by Bishop Howard J.  
[20] Hubbard, Roman Catholic Diocese of Albany;  
[21] Chief Stephen Krokoff, Albany Police  
[22] Department; Assistant Chief Brendan Cox,  
[23] Albany Police Department, Honorable Dominick  
[24] Calsolaro, member of the Albany Common

[1] Council; Reverend Edward B. Smart  
[2] unfortunately had to depart, but he is the  
[3] pastor of "First" Israel AME Church in  
[4] Albany; Harris Oberlander, who is the CEO of  
[5] Trinity Alliance of the Capital Region; Jamel  
[6] Muhammad, who is the director of Albany SNUG;  
[7] and Vivian Kornegay, who is the mother of a  
[8] shooting victim and Albany SNUG volunteer.

[9] Since October 2010, SNUG, which is  
[10] "guns" spelled backwards, has successfully  
[11] engaged in critical life-saving prevention  
[12] work to curtail gun violence in the City of  
[13] Albany. Utilizing a public health approach  
[14] based upon the nationally acclaimed Chicago  
[15] CeaseFire model, Albany SNUG has had  
[16] significant impact upon improving public  
[17] safety during its year of operation.

[18] The five core components of SNUG are  
[19] street-level outreach, public education,  
[20] community mobilization, faith leader  
[21] involvement, and law enforcement.

[22] An additional unique component of  
[23] Albany SNUG is hospital-based intervention at  
[24] Albany Medical Center. SNUG staff members

[11] announced that the state would make available  
[12] a grant of \$150,000 from the fiscal year  
[13] 2011-2012 state budget to the Trinity  
[14] Alliance of the Capital Region for Albany  
[15] SNUG. The initial state appropriation for  
[16] the first year of operation of Albany SNUG  
[17] was \$500,000, which included an evaluation  
[18] component. Understanding the critical value  
[19] of SNUG to safety and quality of life in the  
[20] City of Albany, the Albany Common Council, of  
[21] which I am a member, appropriated \$150,000 in  
[22] the 2012 city budget to ensure SNUG's  
[23] continued operation in 2012. It is expected  
[24] that the program will once again begin  
operation in February 2012.

[16] SNUG is extremely cost-effective.  
[17] SNUG saves lives. We urge the Legislature to  
[18] include \$500,000 for Albany SNUG in the  
[19] fiscal year 2012-2013 New York State budget  
[20] to fully fund, sustain and expand this  
[21] effective program.

[22] I would now like to turn this over to  
[23] Bishop Hubbard.

[24] **BISHOP HUBBARD:** Thank you very much,

[1] have interacted with shooting victims and  
[2] their families in the emergency room,  
[3] intervened among family and associates to  
[4] reduce retaliation, and offered additional  
[5] resources to those who expressed an interest.  
[6] Albany Medical Center Emergency Room staff  
[7] value SNUG's intervention in the aftermath of  
[8] violent incidents as key members of their  
[9] professional team.

[10] SNUG has made a difference where it  
[11] counts -- on the streets of Albany. During  
[12] the 12 months of SNUG's operation, there was  
[13] only one instance of a retaliatory shooting.  
[14] Statistics from the Albany Police Department  
[15] indicate that during the first three quarters  
[16] of 2011, shooting incidents diminished  
[17] compared to the same nine-month period in  
[18] 2010. After SNUG closed in October 2011,  
[19] shooting incidents markedly increased. At  
[20] year's end there were more shootings in 2011  
[21] than in 2010, with the preponderance of them  
[22] occurring in the last three months of the  
[23] year when SNUG was not in operation.

[24] Fortunately, in November it was

[11] Barbara.

[12] Senator DeFrancisco, Assemblyman  
[13] Farrell, other distinguished members of the  
[14] legislature, I am Howard Hubbard, the bishop  
[15] of the Roman Catholic Diocese of Albany. I  
[16] have lived in the City of Albany for the past  
[17] 48 years, and I have lived or worked in the  
[18] inner city for 35 of those years.

[19] When I first came to Albany in 1964,  
[20] it's hard to believe, but gang violence was  
[21] not a problem. It has escalated tremendously  
[22] over the years, and SNUG is the first program  
[23] that I've seen that has a proven track record  
[24] of addressing the vicious cycle of violence  
among gangs. It puts savvy outreach workers  
on the street, it has developed relationships  
with the faith-based community, with Albany  
Medical Center, with neighborhood  
associations, and with the State University  
at Albany.

[21] I think that the program enables the  
[22] outreach workers to get to know those who are  
[23] involved in gangs, to deter those who are  
[24] potential gang members from participating in

[11] gangs, and then to show them another path, a  
[12] path that relies on education, job training,  
[13] healthcare, and other human services.

[14] I know that these are very difficult  
[15] economic times and that the program has been  
[16] cut substantially. And I would like to urge,  
[17] on behalf of the faith-based community, a  
[18] restoration to the full \$500,000 it was  
[19] allocated by the legislature last year.

[10] And now I would turn the program over  
[11] to another very important component, perhaps  
[12] the most important component in SNUG, namely  
[13] the cooperation that we have with the Albany  
[14] Police. And I would introduce Chief Krokoff.

[15] **APD CHIEF KROKOFF:** Good afternoon.  
[16] Thank you for having us here this afternoon.  
[17] And why I was asked to come is to speak a  
[18] little bit about the law enforcement  
[19] perspective as it pertains to SNUG.

[20] Law enforcement does a good job of  
[21] affecting the supply of handguns. We  
[22] continue to work more and more with our  
[23] partners at the state and federal levels to  
[24] stem the tide of illegal handguns that flow

[11] has an effect on some of that violent  
[12] subculture, shows some of these young men  
[13] that there is another way to solve their  
[14] problems and there are ways out of the  
[15] situation that they're in.

[16] And I believe that this program is  
[17] extremely valuable in reducing violence. It  
[18] has been extremely valuable. I look forward  
[19] to being part of it regardless of the outcome  
[20] and when we look forward and we start looking  
[21] at some of our strategic objectives and our  
[22] measurable outcomes to see what effect it has  
[23] on the City of Albany. And I look forward to  
[24] being a big part of that.

[15] I thank you very much. I know it's  
[16] been a long day for each of you. Thank you  
[17] for listening.

[18] **CHAIRMAN DeFRANCISCO:** Thank you.  
[19] **COMMON COUNCIL MEMBER SMITH:** Are  
[20] there any questions?

[21] **CHAIRMAN DeFRANCISCO:** Senator  
[22] Krueger.

[23] **SENATOR KRUEGER:** Hi. Thank you.  
[24] Thank you all for coming in to testify.

[11] into the city, and we continue to double  
[12] those efforts.

[13] Where we are lacking in law  
[14] enforcement is our effect on demand, the  
[15] demand for these handguns. And in any  
[16] business situation, you know if you can't  
[17] affect demand and you only affect supply,  
[18] prices go up and the business continues on.

[19] What SNUG does is it really affects  
[20] demand. It changes and affects the  
[21] subculture of some of these young men that  
[22] are involved in some of the more violent acts  
[23] in the city. These are by and large young  
[24] men who live really without much hope. They  
[15] believe that their destiny is either prison  
[16] or death, so a lot of our deterrence  
[17] strategies that we try to put into place  
[18] don't necessarily have that same effect that  
[19] it used to have.

[20] What SNUG does is it gets some of the  
[21] people that have been involved in the street  
[22] for a little bit of credibility with those  
[23] that need to hear it the most, and try to  
[24] change some of their violent behaviors. It

[11] Can you tell me how much Albany's  
[12] budget for SNUG was in the year ending?

[13] **COMMON COUNCIL MEMBER SMITH:** Are you  
[14] talking about the first appropriation?

[15] **SENATOR KRUEGER:** Yes.

[16] **COMMON COUNCIL MEMBER SMITH:** The  
[17] first appropriation in the 2009-2010 budget  
[18] was for \$500,000. That was when there was  
[19] funding for, at that point, eight sites  
[20] across New York State, which actually became  
[21] 10 sites because two of the sites actually  
[22] split the money between two other entities.

[13] But as I said, that was in a  
[14] \$4 million appropriation; Albany received  
[15] \$500,000.

[16] **SENATOR KRUEGER:** And then the  
[17] following year?

[18] **COMMON COUNCIL MEMBER SMITH:** There  
[19] was nothing. There's never been anything  
[20] following the 2009-2010.

[21] **SENATOR KRUEGER:** It was just the one  
[22] year, one-time appropriation?

[23] **COMMON COUNCIL MEMBER SMITH:** That's  
[24] right.



[11] **SENATOR KRUEGER:** And you've been  
[12] keeping it running with City Council money?

[13] **COMMON COUNCIL MEMBER SMITH:** Well,  
[14] no, actually what happened is that the  
[15] contract was not initiated or completed, I  
[16] should say, the contract was not completed  
[17] until 2010 for SNUG. So SNUG operation in  
[18] Albany began in basically October of 2010.  
[19] So we had enough to last through one year.

[100] City funds never were a part of SNUG  
[111] until the point late last year when we  
[122] appropriated money in our city budget for  
[133] SNUG.

[144] **SENATOR KRUEGER:** Thank you.

[155] **COMMON COUNCIL MEMBER SMITH:** Thank  
[166] you.

[177] **CHAIRMAN FARRELL:** Assemblyman Aubry.

[188] **ASSEMBLYMAN AUBRY:** We had a  
[199] conversation -- knowing that you were coming,  
[200] I asked Commissioner Sean Byrne whether or  
[211] not there was SNUG money in this upcoming  
[222] proposed budget, to which he replied yes.

[233] And that Albany and he named about four or  
[244] five SNUG programs that were to be covered.

[11] **ASSEMBLYMAN AUBRY:** And you indicated  
[12] that SNUG had an evaluation component that  
[13] was part of the \$500,000?

[14] **COMMON COUNCIL MEMBER SMITH:** In  
[15] Albany we have worked with the School of  
[16] Social Welfare at the University at Albany to  
[17] do professional-level academic evaluation of  
[18] SNUG.

[19] That contract, the original contract  
[20] is still active. It ends on March 31st, and  
[21] that will be the point at which information  
[22] coming from that evaluation will be fully  
[23] available.

[24] **BISHOP HUBBARD:** I would just like to  
[25] say that I think that research component  
[26] makes this program particularly unique, and I  
[27] think it provides a kind of model that can be  
[28] used in other communities throughout the  
[29] state. And if we don't get the restoration  
[30] of funds, that research component will be  
[31] lost.

[32] **ASSEMBLYMAN AUBRY:** But that research  
[33] is not yet released and won't be released  
[34] until the day before the new budget is

[1] Are you aware of that availability of  
[2] funds in this budget?

[3] **COMMON COUNCIL MEMBER SMITH:** I have  
[4] not been made aware of that. And those who  
[5] have scrutinized the budget have not  
[6] identified that. So we'd love to hear more  
[7] details about that.

[8] The \$150,000 that was appropriated as  
[9] a grant was Byrne money, and it went to five  
[10] sites around New York State.

[11] **ASSEMBLYMAN AUBRY:** Is that \$150,000  
[12] each?

[13] **COMMON COUNCIL MEMBER SMITH:** That  
[14] was \$150,000 for most. And one of the sites,  
[15] I believe, got \$100,000 because it was one of  
[16] the kind of like half-sites that had  
[17] originally only gotten \$250,000.

[18] But that was really for continuation  
[19] during the interim between the last budget  
[20] year and this one. So it was not for funding  
[21] going forward in 2012-2013. It was to reopen  
[22] SNUG sites around New York State that had run  
[23] out of their funding during the period from  
[24] the end of the year until March 31st.

[1] enacted.

[2] **COMMON COUNCIL MEMBER SMITH:** I think  
[3] that instead of saying something that's not  
[4] completely accurate, I would suggest that you  
[5] be in direct contact with the School of  
[6] Social Welfare at the University to see what  
[7] the status is of their research. I myself  
[8] personally have not read the research, so I  
[9] can't share it with you.

[10] **ASSEMBLYMAN AUBRY:** They have not  
[11] shared preliminary findings with you?

[12] **COMMON COUNCIL MEMBER SMITH:** There  
[13] is no need for them to have done that. I  
[14] myself now am a SNUG volunteer, so.

[15] And it's not that they're reluctant  
[16] to, it's that the process of looking at what  
[17] they have found is still being analyzed.  
[18] It's not that they're reluctant to, it's  
[19] like, you know, you don't send in something  
[20] that's only half-finished.

[21] **ASSEMBLYMAN AUBRY:** Okay. Well, and  
[22] I'm sure you will encourage them to rapidly  
[23] release it, because the decisions to make  
[24] funding are being made now. To receive a

[1] glowing report the day the budget is supposed  
[2] to pass --

[3] **COMMON COUNCIL MEMBER SMITH:** I  
[4] understand.

[5] **ASSEMBLYMAN AUBRY:** If the purpose of  
[6] studying is supposed to enlighten us as to  
[7] the effectiveness of it -- which I'm sure  
[8] what you say is true -- but we want that as  
[9] early as possible so that those who might be  
[10] reluctant could be convinced.

[11] **COMMON COUNCIL MEMBER SMITH:** I  
[12] understand.

[13] **ASSEMBLYMAN AUBRY:** So I would urge  
[14] that. And we will also inquire on our staff  
[15] level to who is supposed to get that report,  
[16] who is supposed to receive that, and how it  
[17] is to be reacted to. But thank you very  
[18] much.

[19] **COMMON COUNCIL MEMBER SMITH:** And I  
[20] truly understand the point that you're  
[21] making, and I think it's a great point. And  
[22] we certainly will comply and try to address  
[23] what you've asked.

[24] **ASSEMBLYMAN AUBRY:** Thank you.

[1] because we wanted to have SNUG have  
[2] continuity during this period. We did not  
[3] foresee us matching state funding going  
[4] forward.

[5] **CHAIRMAN DeFRANCISCO:** All right, so  
[6] you're unable to do that.

[7] **COMMON COUNCIL MEMBER CALSOLARO:**  
[8] Well, we did put \$150,000 in in 2012.

[9] **CHAIRMAN DeFRANCISCO:** Okay. And  
[10] lastly, do you know if any other cities  
[11] receive funding from their local governments  
[12] for SNUG?

[13] **COMMON COUNCIL MEMBER SMITH:** Not to  
[14] my knowledge. Yes, that's the level of  
[15] support there is for SNUG in Albany that our  
[16] local legislative body made that commitment.

[17] **CHAIRMAN DeFRANCISCO:** Great.  
[18] Because it's my understanding too that  
[19] \$150,00 to a few cities, I can't name all of  
[20] them, is Byrne money that the Governor is  
[21] directing towards SNUG, and one of them is  
[22] Albany. So as far as whether that can be  
[23] increased, we're having some problems too  
[24] here budgetwise, so we'll see what happens.

[1] **CHAIRMAN DeFRANCISCO:** Thank you.  
[2] Did you say there was councilor, a member of  
[3] the City Council from the City of  
[4] Albany here?

[5] **COMMON COUNCIL MEMBER CALSOLARO:**  
[6] Well, Barbara's a member and I'm also a  
[7] member.

[8] **CHAIRMAN DeFRANCISCO:** Oh, you are,  
[9] I'm sorry. I'm sorry.

[10] If the state can get you some money,  
[11] will Albany match it?

[12] **COMMON COUNCIL MEMBER SMITH:** Say  
[13] that again?

[14] **CHAIRMAN DeFRANCISCO:** If you get  
[15] money from the state, will the City of Albany  
[16] match the funds for SNUG?

[17] **COMMON COUNCIL MEMBER SMITH:** When we  
[18] did the budget -- our budget is completed in  
[19] the fall. When we did the budget, we did it  
[20] with the understanding that our \$150,000  
[21] appropriation was one time only.

[22] As most cities around the country, we  
[23] face very, very tight economic times and  
[24] difficult circumstances. So we put it in

[1] Thank you very much.

[2] **COMMON COUNCIL MEMBER SMITH:** Thank  
[3] you so much, Senator. Thank you.

[4] **CHAIRMAN DeFRANCISCO:** Next, Terry  
[5] O'Neill, director of The Constantine  
[6] Institute.

[7] **MR. O'NEILL:** Good afternoon,  
[8] Chairman Farrell, Chairman DeFrancisco,  
[9] honorable members. Thank you very much for  
[10] this opportunity to come and say a few  
[11] words. And they will be few, because I  
[12] appreciate that you've been here all day  
[13] every day, and I really compliment you on  
[14] your dedication.

[15] The Constantine Institute was  
[16] organized to promote the highest  
[17] constitutional, legal and ethical  
[18] professional standards in law enforcement, to  
[19] encourage innovation in public safety  
[20] strategy, tactics, training and education,  
[21] and to foster a seamless continuum of  
[22] cooperation, support, and mutual respect  
[23] among public safety agencies and  
[24] organizations.

[1] The institute has been inspired by  
[2] the extraordinary career achievements of Tom  
[3] Constantine, who served as superintendent of  
[4] the New York State Police from 1987 to 2004  
[5] and in that capacity, and later as head of  
[6] the Drug Enforcement Administration,  
[7] Constantine led investigations that brought  
[8] down Colombia's Cali cartel, the largest and  
[9] most powerful criminal organization in  
[10] history.

[11] Then, in 2000, the British government  
[12] appointed him oversight commissioner for the  
[13] reform of the police service of Northern  
[14] Ireland, a key component of the concerted  
[15] effort to end more than three decades of  
[16] terrorist violence in that province. And  
[17] over the past 10 years you very rarely hear  
[18] any bad news coming out of Northern Ireland,  
[19] which is a first after three decades of that.

[20] For these signature career  
[21] achievements, Constantine has brought great  
[22] renown on the New York State Police. And we  
[23] are emulating his 1987 inauguration of the  
[24] Lieutenant Colonel Henry F. Williams Homicide

[1] steering committee that created the SNUG  
[2] proposal that ended up being funded by the  
[3] money made available by the Senate two years  
[4] ago.

[5] Now, the concept of community  
[6] policing, which is what this partnership is  
[7] all about, is something that's been around  
[8] for some 30 years now. And I am sorry to say  
[9] that in all the years I've been involved in  
[10] public safety policy, the State of New York  
[11] has never given it much encouragement.

[12] And 20 years ago, when the New York  
[13] City Police Department debuted its vaunted  
[14] COMPSTAT program, we started a movement in  
[15] this country that has affected almost every  
[16] police agency anywhere, that polices on the  
[17] basis of statistics and technology.

[18] Now, these are very important  
[19] management and accountability tools, and I  
[20] have absolutely no problem with all the  
[21] technology and science that we are bringing  
[22] to bear on criminal justice problems today.

[23] But unfortunately -- and some of you  
[24] know this from reading the New York City

[1] Investigation Seminar by planning for future  
[2] international conferences on transnational  
[3] organized crime and global terrorism. Our  
[4] plan is to have this program well underway in  
[5] time for the 2017 centennial of the  
[6] State Police, which Superintendent D'Amico  
[7] mentioned this morning.

[8] Now, just now you saw an example of  
[9] what one of our fundamental objectives is as  
[10] an organization. That is the partnership  
[11] that you saw on display here, the Albany SNUG  
[12] program, where you saw our chief of police  
[13] and his top deputy sitting here with the  
[14] faith community, with people from the City  
[15] Council, and with people in the communities  
[16] that are most affected by the gun violence  
[17] that SNUG is intended to deter.

[18] This is not a program that was  
[19] invented in Albany or Washington by  
[20] bureaucrats and then brought down and sold  
[21] locally. This is a program that our  
[22] community came together and designed using  
[23] resources that we have in our community. And  
[24] I know a lot about this because I was on the

[1] newspapers -- two scholars, Dr. Eli  
[2] Silverman, professor emeritus at John Jay,  
[3] and Dr. John Eterno of Molloy College, a  
[4] former New York City captain, have just this  
[5] past week published their research findings  
[6] in a book called The Crime Numbers Game:  
[7] Management by Manipulation. And what they  
[8] have been documenting is the fact that now  
[9] 20 years of relentless pressure on police  
[10] commanders to produce ever-declining rates of  
[11] crime -- you know, statistics have gone down  
[12] every year for 20, and maybe more -- has  
[13] caused things to happen out in the police  
[14] bureaucracy where commanders are desperate to  
[15] deliver those declining numbers.

[16] And they're discouraging people from  
[17] filing complaints of crime, they are  
[18] downgrading felonies into misdemeanors, and  
[19] we're even down to violations, and so it  
[20] looks as though there's less crime.

[21] There may be, but the thing is what  
[22] we're finding is that there's a lot of -- you  
[23] know, this emphasis on numbers has done a lot  
[24] to despoil our whole movement toward

[1] community policing and building that sense of  
[2] partnership that is so important to healthy  
[3] communities.

[4] This past year I've been serving on a  
[5] commission created by the Buffalo Common  
[6] Council to look at the reorganization and  
[7] implementation of neighborhood policing in  
[8] the City of Buffalo. About a quarter-million  
[9] people, a police department of about 800.  
[10] And, as Governor Cuomo has made plain with  
[11] his generous offer to send a billion dollars  
[12] to Buffalo recently, a city with lots of  
[13] problems and lots of crime.

[14] So what prompted this, and it's a  
[15] very vivid example of what's been going on,  
[16] is a year ago this August, one night in  
[17] downtown Buffalo at a very popular nightclub,  
[18] the crowd got a little bit out of hand and so  
[19] the management threw everybody out in the  
[20] street around 2 o'clock in the morning. And  
[21] right on that spot, somebody started  
[22] shooting. Within a few seconds there were  
[23] four dead people, who were all part of this  
[24] party, and four other people who'd been shot.

[1] fullest potential and we'll have that  
[2] partnership, and people will trust their  
[3] police. And that's what this is all about.

[4] So you saw, you know, local people  
[5] here today speaking up for the SNUG program,  
[6] which I think is a wonderful program, and I  
[7] hope that you find a way to bring it back to  
[8] all those cities that need it. Thank you.

[9] **CHAIRMAN FARRELL:** Thank you.

[10] **SENATOR KRUEGER:** Thank you.

[11] **CHAIRMAN DeFRANCISCO:** No questions,  
[12] so our next-to-last speaker is Colin Weaver,  
[13] deputy director of New Yorkers Against Gun  
[14] Violence.

[15] **MR. WEAVER:** Hi there. My name is  
[16] Colin Weaver. I'm the deputy director of  
[17] New Yorkers Against Gun Violence, the only  
[18] statewide group working to reduce gun  
[19] violence through advocacy and education.

[20] Gun violence is usually only  
[21] discussed in the aftermath of high-profile  
[22] mass shootings, like the horrific massacres  
[23] at Tucson last year where six were killed, 13  
[24] were injured; Virginia Tech, where 32 were

[1] In the next two weeks, none of more  
[2] than 100 witnesses would cooperate with the  
[3] Buffalo Police Department -- who had seen the  
[4] person who did the shooting. They got no  
[5] cooperation whatsoever. And when I saw that,  
[6] I said, you know, in this city there are  
[7] people who live in neighborhoods where they  
[8] have to put up with all of this crime and  
[9] gangs and everything, and they don't want to  
[10] talk to the police who are supposed to be  
[11] there to protect them.

[12] So the Common Council decided to have  
[13] this commission and take a good hard look at  
[14] this. And I thought given the excellent  
[15] movement toward community policing that we  
[16] have here in the state's capital, we can get  
[17] something ignited out in Buffalo, our second  
[18] largest city, with one of the largest police  
[19] agencies in the state, then we would have a  
[20] movement on our hands so that all of the  
[21] gains that we're making with technology, with  
[22] fingerprint identification, with DNA, with  
[23] the computer mapping that we use to predict  
[24] crime, all of these things will realize their

[1] killed, 25 were injured; and right here in  
[2] New York, in Binghamton, where 13 were killed  
[3] and three were injured.

[4] But the truth is that thousands of  
[5] New York families continue to suffer long  
[6] after the media have moved past the latest  
[7] shooting. Gun violence is an issue that  
[8] communities around New York must deal with  
[9] every single day, as mothers are shot picking  
[10] up children from school, grandmothers are  
[11] gunned down in their own kitchens,  
[12] two-year-olds are shot in their car seats,  
[13] and prom queens are killed on Mother's Day.

[14] Despite being well-intentioned, the  
[15] Governor's Executive Budget does not go far  
[16] enough to help remedy this tragedy that  
[17] continues to plague New York. The Governor's  
[18] budget calls for the elimination of the  
[19] combined ballistics imaging system known as  
[20] CoBIS. Started 10 years ago, the goal of  
[21] CoBIS was to create a database to connect  
[22] ballistics evidence from a crime scene to the  
[23] first purchaser of the firearm. This is done  
[24] through the matching and forensic examination

[1] of unintentional markings left on ballistics  
[2] evidence by the firearm.

[3] The CoBIS program simply has not met  
[4] expectations, and its operation should be  
[5] stopped. But the goal of connecting shell  
[6] casings from crime scenes to the first  
[7] purchaser of a weapon, and thus solving more  
[8] gun crimes, should not be abandoned by the  
[9] Governor.

[10] We commend the Governor for taking a  
[11] portion of the savings from CoBIS and  
[12] reinvesting in the National Integrated  
[13] Ballistics Information Network, known as  
[14] NIBIN. NIBIN was established by the ATF to  
[15] help establish a link or a hit between two  
[16] crime scene investigations.

[17] In other words, the value of NIBIN  
[18] technology starts after a gun or a shell  
[19] casing has been used in at least one crime.  
[20] In many cases these hits are only matches to  
[21] cartridges found at other crime scenes,  
[22] letting investigators know that the firearm  
[23] has been used in another crime without  
[24] actually identifying the weapon or the first

[1] purchaser and begin the investigation  
[2] process. The sooner you find the first  
[3] valuable piece of evidence, the better your  
[4] changes of solving the crime.

[5] Microstamping is not a panacea. But  
[6] since 40 percent of homicides remain unsolved  
[7] nationally, it is a tool that law enforcement  
[8] needs to increase their success.

[9] In a peer-reviewed study conducted by  
[10] the inventor of microstamping -- who, we  
[11] would like to add, is a lifelong member of  
[12] the National Rifle Association and an avid  
[13] gun owner and hunter -- microstamp markings  
[14] were successfully transferred to the shell  
[15] casing and identified 95 percent of the time.

[16] These success rates are far greater  
[17] than the ballistics identification rate of  
[18] NIBIN, which in New York is roughly 2 percent  
[19] and nationally is just 1.5 percent, much  
[20] lower than even the lowest estimate of  
[21] microstamping hits.

[22] Almost all crime guns are originally  
[23] purchased legally. In 2009, the ATF reported  
[24] 60 percent of guns used in crimes in upstate

[1] purchaser.

[2] With the elimination of CoBIS and the  
[3] limitations of NIBIN, a hole has been created  
[4] in identifying shell casings left at crime  
[5] scenes. The Governor's budget does not fully  
[6] address this issue. The Governor and the  
[7] State Legislature can help law enforcement  
[8] solve more gun crimes and get violent,  
[9] gun-toting criminals off the streets faster,  
[10] by passing and implementing microstamping  
[11] here in New York.

[12] Microstamping is supported by more  
[13] than 100 mayors and 80 police departments and  
[14] law enforcement organizations from across New  
[15] York. These experienced law enforcement  
[16] professionals have repeatedly asked for this  
[17] technology because they know it will provide  
[18] an additional tool to solve gun crimes and  
[19] get violent criminals off the streets.

[20] Microstamping imprints a unique  
[21] alphanumeric code on a shell casing each time  
[22] a semi-automatic handgun is fired. A  
[23] microstamp shell casing at a crime scene will  
[24] help police identify the gun's first

[1] New York were first sold here in New York.  
[2] Microstamping would prove invaluable to these  
[3] investigations, since it applies to new guns  
[4] sold in New York.

[5] Microstamping is cost-effective as  
[6] well. No new massive, government-controlled  
[7] database is needed to implement  
[8] microstamping. Law enforcement will submit  
[9] the microstamped serial number to the ATF for  
[10] a tracing request, as they have for decades.

[11] The legislation now under  
[12] consideration states that microstamping  
[13] cannot be implemented unless it can be  
[14] produced for less than \$12 per firearm. We  
[15] already have multiple estimates saying that  
[16] it will cost anywhere from \$1 to \$6 per  
[17] firearm. That is a minor expense for gun  
[18] purchasers, who routinely pay hundreds of  
[19] dollars for a new semi-automatic handgun, and  
[20] a small price to pay for the safety of  
[21] communities and families around New York.

[22] Denying law enforcement every tool  
[23] now available to help solve gun crimes will  
[24] make New York less safe and allow violent

[1] criminals to continue to terrorize  
[2] communities already flooded by guns. Since  
[3] 1970, in New York City alone, more than 8,000  
[4] firearm homicides have gone unsolved. As a  
[5] result of these stymied investigations, more  
[6] than 8,000 murderers with guns have not been  
[7] brought to justice for their crimes. Many  
[8] remain free and continue to use guns against  
[9] innocent New Yorkers. And this number will  
[10] continue to rise unless we do something about  
[11] it.

[12] Unsolved gun crimes are a problem  
[13] across New York State. Crime has dropped in  
[14] Syracuse, but certain categories, like shots  
[15] fired, remain dangerously high. From 2006 to  
[16] 2010, Syracuse police responded to over 1300  
[17] incidents of shots fired. Eighty-eight  
[18] percent remain unsolved. Additionally,  
[19] 85 percent of unsolved Syracuse homicides are  
[20] gun homicides. Similar and equally startling  
[21] statistics can be found in villages, towns  
[22] and cities across New York.

[23] Every time a gun is used in the  
[24] commission of a crime, shell casings are left

[1] The criminal justice system, funded  
[2] with taxpayer dollars, spends enormous money  
[3] and resources to investigate and prosecute  
[4] every shooting, every incident of shots  
[5] fired, and every gun homicide. These costs  
[6] are compounded when crimes go unsolved, as  
[7] investigations must continue for months and  
[8] even years, while criminals remain free with  
[9] their guns to commit even more violent  
[10] crimes.

[11] Data from the CDC paints the most  
[12] accurate picture of the costs to society of  
[13] gun violence. In 2005 alone, the most recent  
[14] year for which data is available, the 515  
[15] firearm homicides in New York accounted for  
[16] more than \$770 million in combined medical  
[17] costs and lifetime work-loss costs in this  
[18] state. These are real costs with real impact  
[19] on our state's budget and include lost tax  
[20] revenue from future earnings, medical costs  
[21] borne by government-financed programs, and  
[22] lost productivity to the marketplace, to name  
[23] just a few societal costs. This data,  
[24] however, does not even include the costs of

[1] at crime scenes around the state. Without  
[2] microstamping, these crimes are hard to  
[3] investigate and solve. In the meantime,  
[4] taxpayers are forced to foot the bill for  
[5] injuries and medical costs to victims and to  
[6] police officers. Families are forced to  
[7] endure a criminal justice system that does  
[8] not find and bring criminals to justice as  
[9] often as they could.

[10] In the last two years alone, more  
[11] than 5,000 people have been shot in New York.  
[12] Shooting victims require immediate medical  
[13] attention, and the majority of victims either  
[14] don't have health insurance or are on public  
[15] health programs paid for by the government.  
[16] According to the WHO, 56 to 80 percent of the  
[17] medical costs of acute gun-injury care were  
[18] either paid for directly by public financing  
[19] or not paid at all.

[20] When expensive medical bills go  
[21] unpaid, it results in higher healthcare costs  
[22] and increased health insurance premiums. In  
[23] any case, the vast majority of medical costs  
[24] of gun violence are paid for by society.

[1] the more than 2,500 people shot in New York  
[2] in that same year.

[3] Preventing gun violence is a lot less  
[4] expensive than reacting to it. Let me give  
[5] you one example. In the summer of 2010, a  
[6] federal law enforcement officer named Maurice  
[7] Gordon from Nassau County, New York, was shot  
[8] and killed in Queens while shielding a family  
[9] member as bullets exploded from a  
[10] semi-automatic firearm in the hands of a  
[11] criminal and rained down upon them. Police  
[12] found 25 shell casings at the crime scene but  
[13] have not arrested anyone for this horrific  
[14] murder.

[15] The day after the shooting, Maurice  
[16] Gordon's father said: "He is the best son  
[17] that would come on the earth. I will miss  
[18] him until I die. This death will carry me to  
[19] my grave." Less than a week later, his  
[20] father died of a heart attack the day before  
[21] Maurice's funeral.

[22] Maurice Gordon left behind a wife and  
[23] two young children. That one shooting  
[24] claimed two lives and devastated an entire

[1] family.

[2] Despite the tragedy and heartache  
[3] thrust upon her innocent family, Maurice  
[4] Gordon's sister continues to fight for  
[5] justice and works closely with the NYPD to  
[6] find her brother's killer. Despite their  
[7] best efforts, the case remains unsolved and a  
[8] murderer continues to roam the streets. The  
[9] physical, emotional, and financial costs of  
[10] this one shooting ripple across New York.

[11] We can all agree that we need to keep  
[12] violent criminals behind bars. But if they  
[13] are never apprehended, then they remain on  
[14] the streets with their guns. Law enforcement  
[15] should not be forced to use 20th-century  
[16] technology while gun-toting criminals with  
[17] high-tech, powerful semi-automatic weapons  
[18] remain free to wreak havoc on communities and  
[19] families across the state.

[20] Microstamping is a cost-effective  
[21] crime-fighting tool that New York needs.  
[22] We're asking the Governor to emphatically  
[23] endorse the technology and ensure that the  
[24] legislation is passed this year to close the

[1] from all people convicted of all crimes.

[2] And you have the testimony, and I am  
[3] well aware that I stand between you and  
[4] adjournment. So I thought maybe I would just  
[5] dispense with reading it and step back and  
[6] offer some perspective about the DNA  
[7] experiment, if you will, that we have been  
[8] conducting actually in the last 15 years in  
[9] New York.

[10] Interestingly, if you step back from  
[11] the history of DNA, New York has in fact been  
[12] conducting an incremental experiment with the  
[13] collection of DNA. Going back some 15 years  
[14] now, when the state first started collecting  
[15] DNA samples, the state started collecting  
[16] samples from very violent criminals, homicide  
[17] perpetrators, and from those convicted of  
[18] sexual offenses. And understandably so. And  
[19] then every year, for two or three times,  
[20] there was an expansion, expanding to a  
[21] greater number of violent felonies.

[22] And I think the thinking was that we  
[23] should take DNA samples from those that  
[24] commit violent crimes because they are likely

[1] gap created by defunding CoBIS.

[2] Thank you for your time; I realize I  
[3] went over. And I'm available for any  
[4] questions.

[5] **CHAIRMAN FARRELL:** Questions?

[6] Thank you very much.

[7] **CHAIRMAN DeFRANCISCO:** Thank you very  
[8] much.

[9] The last speaker is Richard Aborn,  
[10] Citizens Crime Commission. He is commended  
[11] for his patience.

[12] (Discussion off the record.)

[13] **MR. ABORN:** And I certainly admire  
[14] your stamina. It's really impressive.

[15] So I'm actually here to invite you to  
[16] consider another technology. Microstamping  
[17] is certainly one of the cutting-edge  
[18] technologies out there in the fight against  
[19] guns, and I applaud everything Colin said.  
[20] It is a very good bill, it's a very good  
[21] piece of technology.

[22] But I'd like to ask you to turn your  
[23] attention in these last few minutes to DNA,  
[24] the Governor's bill to collect DNA samples

[1] to commit additional violent crimes, and the  
[2] DNA would help us stop that, or at least  
[3] apprehend them quickly. And that thinking  
[4] was really quite correct.

[5] The really big expansion, though, and  
[6] I think really the breakthrough in thinking,  
[7] occurred in 2006, when the Legislature  
[8] decided to expand the collection of DNA to  
[9] include all felonies but also began to  
[10] collect samples of those convicted of some  
[11] misdemeanors. And the reason the Legislature  
[12] did that -- and I was involved in that  
[13] discussion -- was that the Legislature began  
[14] to understand that those violent criminals  
[15] who commit violent acts don't start out their  
[16] criminal careers as violent criminals. They  
[17] very often start out by committing nonviolent  
[18] misdemeanor-level offenses.

[19] And therefore there was a decision  
[20] made to expand the collection of DNA to  
[21] include some misdemeanors. And that proved  
[22] to be a very, very smart move. Because in  
[23] the five and a half years since the  
[24] Legislature did that, just on the collection

[1] of samples from petit larceny, a relatively  
[2] minor crime, we've seen a large number of  
[3] criminals apprehended for some very violent  
[4] crimes.

[5] In those five and a half years,  
[6] collections based on petit larceny  
[7] convictions solved 965 crimes, including  
[8] 51 murders, 222 sexual assaults,  
[9] 117 robberies, and 407 burglaries. That's  
[10] just off the petit larceny.

[11] And then, if you look at criminal  
[12] trespass, arguably even less of a crime, we  
[13] have another 334 crimes that were solved,  
[14] including 30 homicides, 110 sexual assaults,  
[15] 121 burglaries, 30 robberies, and 18 grand  
[16] larcenies, among others.

[17] Interestingly, on average, offenders  
[18] who have been linked through the DNA databank  
[19] to crimes have had three prior nonqualifying  
[20] offenses -- in other words, three convictions  
[21] for which we do not currently take DNA  
[22] samples.

[23] So we have had a tremendous  
[24] experiment now going into the area of taking

[1] And equally important, it has led to  
[2] the exoneration of some 27 individuals in  
[3] just the State of New York. New York has a  
[4] very high rate of exonerations, over  
[5] 10 percent of the national exonerations. And  
[6] DNA has been directly involved in a number of  
[7] those exonerations, and that is incredibly  
[8] important.

[9] And equally important, although you  
[10] cannot get a piece of data for this, there  
[11] are countless cases where a DNA sample is run  
[12] and used very quickly to exclude a suspect,  
[13] sparing that suspect the tragedy, if you  
[14] will, of having to go through an entire  
[15] crime. Equally powerful.

[16] So where do we go from here? We  
[17] still don't collect DNA samples from over  
[18] 52 percent of the convictions in this state,  
[19] and I think that's a mistake. I think we  
[20] have a very powerful tool, and we should use  
[21] it to its maximum. There are a number of  
[22] other crimes that are not now DNA-eligible,  
[23] and let me give you some examples.

[24] Three examples are unauthorized use

[1] DNA from nonviolent misdemeanor convictions.  
[2] While we considered that expansion, we were  
[3] warned -- and quite properly, and very well  
[4] intentioned -- that the effort to take  
[5] greater numbers of DNA samples would  
[6] absolutely overwhelm the State Police Lab,  
[7] they would not be able to keep up, and we ran  
[8] a very high risk of those DNA samples being  
[9] misused to falsely accuse people of crimes.

[10] We have heard that warning every  
[11] single time we've gone to expand the number  
[12] of crimes. And I understand why. Those are  
[13] very well intentioned, very well thought out  
[14] warnings. I think the good news is those  
[15] warnings have not come to pass. They have  
[16] simply not occurred in this state.

[17] The experiment with DNA has been  
[18] incredibly valuable, and I think everybody  
[19] would see that now it is one of the most  
[20] powerful tools that law enforcement has out  
[21] there. Since its inception in this state,  
[22] prosecutors have used DNA to convict over  
[23] 2700 criminals. That's a very powerful tool  
[24] by any measure.

[1] of a vehicle, possession of stolen property,  
[2] and theft of services. And look at what the  
[3] data tells us about those areas.

[4] Twenty-seven percent of the  
[5] individuals convicted of unauthorized use of  
[6] a vehicle -- car theft -- are subsequently  
[7] arrested for a violent felony offense within  
[8] five years. Twenty-seven percent are  
[9] arrested for a violent felony within five  
[10] years.

[11] For theft of services, 21 percent of  
[12] the people convicted of theft of services are  
[13] subsequently arrested for a violent felony  
[14] offense within five years. And ditto for  
[15] misdemeanor drug possession cases; almost  
[16] 16 percent are arrested for a violent felony  
[17] offense within five years of those  
[18] convictions.

[19] So I think if you look at the  
[20] experiment we've been conducting, you will  
[21] learn a number of things. The tool has been  
[22] very powerful, and, most importantly, the  
[23] warnings that accompanied the expansions --  
[24] again, very well intentioned, and I



[1] understand them -- have simply not come to  
[2] pass. Because there has not been, to my  
[3] knowledge, a single instance where New York  
[4] State has misused a DNA sample.

[5] We have a highly trained lab, it is a  
[6] lab that goes through accreditation, one of  
[7] only five labs in the country that do so, and  
[8] it is constantly monitored, and the  
[9] collection of the DNA sample is kept separate  
[10] from the identity, the name of that person.  
[11] So there are multiple levels of protection  
[12] built in to making sure that these samples  
[13] are not misused, and the results speak  
[14] loudly.

[15] So like in any great experiment, you  
[16] have results. And I think the results in  
[17] this case, in this experiment, are really  
[18] quite clear, and I think they are really  
[19] quite compelling. And you see those results  
[20] most poignantly in the data that I've  
[21] discussed, but you also see it in the faces  
[22] of victims when they're told that their  
[23] assailant has been captured and that sense of  
[24] fear and foreboding that they had is now

[1] Association.

[2] **MR. ABORN:** Yes. Yes.

[3] **SENATOR KRUEGER:** Actually some of us  
[4] stepped out of this room for a little while  
[5] to go to a Finance Committee meeting because  
[6] Stephen Saland's bill on this issue came  
[7] before us. And there were some also memos of  
[8] opposition you might not have seen today from  
[9] the Innocence Project and the New York Civil  
[10] Liberties Union.

[11] So trying to summarize very quickly  
[12] the issues that many of them were raising,  
[13] one was the concern that without correct  
[14] oversight and ensuring that things don't go  
[15] wrong, things can go wrong with a massive  
[16] expansion of a DNA database. And even a  
[17] number of articles cited where crime labs do  
[18] seem to have gotten some things wrong  
[19] involved with DNA.

[20] So I'm just curious because you come  
[21] with a very progressive background towards  
[22] law enforcement, because some of us in  
[23] Manhattan know you quite well. And yet  
[24] you're not uncomfortable with any of these

[1] gone.

[2] And you also see it in the faces of  
[3] those who are exonerated, because finally  
[4] they've been excused from the terrible  
[5] injustice that is far too often visited on  
[6] people.

[7] So I think for all of those reasons,  
[8] it is now time for the state to finish the  
[9] job. Let's do the last expansion, which is  
[10] to take DNA samples from all those convicted  
[11] of crimes. That is the Governor's proposal,  
[12] I think it is a wise one, we certainly fully  
[13] support it, and I urge you to support it.

[14] Happy to take any questions.

[15] **CHAIRMAN DeFRANCISCO:** Senator  
[16] Krueger.

[17] **SENATOR KRUEGER:** Thank you, Richard.  
[18] It's nice to see you.

[19] **MR. ABORN:** Likewise.

[20] **SENATOR KRUEGER:** So because you were  
[21] all day, you heard some people who I think we  
[22] both mutually respect very much raise  
[23] concerns about going forward, with the Legal  
[24] Aid Society, the New York Correctional

[1] issues that were brought up by other people  
[2] who testified here today.

[3] **MR. ABORN:** I'm not, because we have  
[4] the results. I understand those concerns.  
[5] And to be perfectly open about this, when I  
[6] was first starting to think about DNA, I  
[7] shared some of that. I understand the  
[8] tensions between the government collecting  
[9] DNA samples and our sense of privacy. I  
[10] understand sort of the moving line that  
[11] technology is causing in Fourth amendment  
[12] analysis -- the case just last week on GPS  
[13] placement is a big, what will become a  
[14] seminal case, very important case.

[15] But I think it's very important to  
[16] weigh the benefits of the technology against  
[17] these concerns. And I think the Legislature,  
[18] as I said in my testimony, has either  
[19] purposely or not done that. By slowly  
[20] expanding the collection of DNA, they have  
[21] allowed the state time to prove that it could  
[22] in fact handle these samples without in any  
[23] way misusing them.

[24] Now, I don't know which cases they

[11] are talking about when they say there has  
[12] been misuse of DNA. It may have been samples  
[13] improperly tested, and that would come out in  
[14] cross-examination. But I don't know of a  
[15] single instance in this state in now over 15  
[16] years where DNA has been manipulated in a way  
[17] to falsely convict somebody. And that's got  
[18] to be our major concern.

[19] Nor do I know of a single case where  
[110] DNA, either the sample or the profile that  
[111] results from that sample -- you know, the  
[112] numeric -- is in any way leaked into the  
[113] commercial sector, to insurance companies,  
[114] which was a big concern.

[115] And I should say, parenthetically,  
[116] even if it was, the sample that's taken in  
[117] the cheek swab is what's called junk DNA.  
[118] Meaning that the only information that you  
[119] can derive from that sample is the identity  
[120] of a person on that profile. You can't  
[121] identify a propensity towards disease or  
[122] anything else. And that's important to  
[123] remember.

[124] And third, it's a pretty serious

[11] a concern about that, that it's not a -- are  
[12] we not setting up an even playing field for  
[13] both sides to have the opportunity to use  
[14] this data which you're confident is  
[15] legitimate data.

[16] **MR. ABORN:** So let me split the  
[17] question to preconviction and postconviction.

[18] **SENATOR KRUEGER:** Okay.

[19] **MR. ABORN:** If I were a DA and a  
[120] person came to me and said -- a defendant  
[111] came to me and said "Please test the DNA  
[112] sample you have, it will show that I didn't  
[113] do it," I think one should be encouraged to  
[114] do that. Because if the sample comes back  
[115] and it shows that you're guilty, that's going  
[116] to be very powerful evidence against the  
[117] person asking for it.

[118] And I heard the explanation, yes,  
[119] well, it was consensual. I understand you  
[120] can spin out lots of scenarios. So in the --  
[121] and to flip that around, if the DA were to  
[122] run a DNA sample and it were to show that the  
[123] person charged was not linked, that would  
[124] have to be turned over as Brady material.

[11] felony to misuse a DNA sample. And I don't  
[12] believe there's been even a single  
[13] prosecution of that.

[14] So when you have these concerns that  
[15] they're expressing -- and they are my friends  
[16] and they are my colleagues and I respect them  
[17] to the core. But I have to deal in the world  
[18] of data. We live in a world of data. And  
[19] the data here is really overwhelming that  
[110] those concerns have not come to pass. And in  
[111] my view, we should proceed with this.

[112] And I don't think it's a  
[113] nonprogressive position. I think it's  
[114] progressive because it in fact helps law  
[115] enforcement.

[116] **SENATOR KRUEGER:** And do you think  
[117] the Governor's proposal as laid out, I guess,  
[118] in his budget proposal assures the rights to  
[119] people charged to get access to DNA?

[120] We had the DAs Association here today  
[121] sort of make an argument against their having  
[122] to give up that information prior to someone  
[123] being convicted just because the defense  
[124] attorney asks for it. And I definitely have

[11] So I think the prior-access question  
[12] is already taken care of. And certainly if  
[13] it's not, I would be absolutely happy to hear  
[14] what the real concerns are.

[15] On post-conviction, I've been very  
[116] outspoken in saying I believe there should be  
[117] equal access. And there certainly are  
[118] details that need to be worked out there, and  
[119] it's always where the problems lie. But of  
[110] course we need to make sure that the defense  
[111] bar or defendants, more importantly, have  
[112] access in appropriate circumstances.

[113] This is the beauty of this tool. It  
[114] is an objective, neutral tool. It simply  
[115] says you did it or you didn't do it. And  
[116] both sides need to have access to that.

[117] **SENATOR KRUEGER:** Thank you very  
[118] much.

[119] **CHAIRMAN FARRELL:** Joe Lentol.  
[120] **ASSEMBLYMAN LENTOL:** Thank you,  
[121] Richard. We've had a conversation about  
[122] this, so I won't bore you again with --

[123] **MR. ABORN:** You never bore me.

[124] **ASSEMBLYMAN LENTOL:** I guess the

[11] first thing I have to say --

[12] **CHAIRMAN DeFRANCISCO:** You might bore  
[13] us, though, Joe.

[14] (Laughter.)

[15] **ASSEMBLYMAN LENTOL:** I'm trying not  
[16] to.

[17] I guess the first thing I have to say  
[18] is that, you know, having a DNA databank with  
[19] all of the DNA samples in it doesn't  
[20] guarantee a conviction. You know, that DNA  
[21] will be available to convict the guilty. Nor  
[22] does it guarantee that it will be available  
[23] to exonerate the innocent. And we need more  
[24] teeth in a statute to do that.

[15] Just as we need more statute, as  
[16] Senator Krueger suggested, to not only get  
[17] Brady material but also to get other evidence  
[18] that is not exculpatory allowable for a  
[19] defendant to see before trial.

[20] So what we're talking about, in my  
[21] opinion, is equal access to DNA. Right now  
[22] the prosecutor has complete access to the DNA  
[23] database whenever he or she wants it.  
[24] Someone who's convicted of a crime who wants

[11] hope and run the table and say, well, I'll  
[12] ask for the DNA sample and maybe it won't  
[13] come back saying I did it. And if it does  
[14] come back saying I did it, well, I'll plead  
[15] guilty. You know, maybe it's a last-ditch  
[16] effort. I don't know.

[17] That's why I say there needs to be  
[18] some methodology built into the statute to  
[19] allow some review of these requests.

[20] Post-conviction, ditto. I think  
[21] there needs to be access by defendants so  
[22] that if they can make a well -- I guess the  
[23] statute calls for a reasonable probability.  
[24] If they can make a well-articulated argument  
[15] to a court as to why they should have access,  
[16] I don't know why they shouldn't. And I don't  
[17] think there would be a lot of disagreement  
[18] about that.

[19] Maybe there is. And I don't speak  
[20] for the prosecution bar --

[21] **ASSEMBLYMAN LENTOL:** We have people  
[22] who have languished in jail because a DA has  
[23] seen fit not to allow the DNA evidence to be  
[24] run through the database. I can cite the

[11] to access that database has to go through  
[12] hoops in order to get it and has to get the  
[13] consent of the DA in most if not every  
[14] instance in order to get the DNA tested. And  
[15] then, further, that has to be approved by a  
[16] judge.

[17] So I believe that DNA is a powerful  
[18] tool. We should expand the database. But we  
[19] should make it available to everybody. And  
[20] if it's equally good for the people to be  
[21] convicted, it's equally good to exonerate and  
[22] the DNA should speak for itself.

[13] **MR. ABORN:** In fact, you and I have  
[14] discussed this, and I don't think we  
[15] disagree. I think there's obviously details  
[16] to be worked out. But it is a tool that  
[17] tells us a lot of information, and we need to  
[18] use it to its maximum.

[19] And if a defendant pretrial is  
[20] insisting on access to it, we should figure  
[21] out a way to make sure that happens. Because  
[22] the mere fact of making that application  
[23] tells you something.

[24] Now I guess one as a defendant could

[11] cases for you if I could remember the names  
[12] off the top of my head, but I don't. But  
[13] there are several cases.

[14] **MR. ABORN:** Well, I've investigated  
[15] some of the cases. And actually, to further  
[16] enhance your argument, in the --

[17] **ASSEMBLYMAN LENTOL:** Jeffrey Deskovic  
[18] is one that we know of.

[19] **MR. ABORN:** Jeffrey Deskovic is a  
[20] classic example and an outspoken advocate in  
[21] this arena.

[22] I believe it was you, Joe, that had  
[23] asked Legal Aid attorneys about false  
[24] confessions, what do you do if somebody  
[15] confesses -- or maybe you asked the  
[16] prosecutor, what do you do if somebody  
[17] confesses and then he later insists on a DNA  
[18] sample being taken? Why would somebody who  
[19] confesses ask that a DNA sample be run?

[20] Well, there's a tension in that. And  
[21] one of the things that we have learned is  
[22] that in the 27 exonerations that have taken  
[23] place in New York State, some number of  
[24] those, and some substantial number of those,

[1] I think 10 --  
[2] **ASSEMBLYMAN LENTOL:** Almost half.  
[3] **MR. ABORN:** Okay, it's a half, have  
[4] been cases where there have been  
[5] confessions. False confessions, but  
[6] confessions.

[7] So in the same way that we need to  
[8] accept that violent criminals commit  
[9] nonviolent acts before they become violent  
[10] criminals, we need to accept that at times  
[11] people who confess to crimes -- Jeffrey  
[12] Deskovic is one -- falsely confessed, for a  
[13] whole variety of reasons. And there are  
[14] things we can do with that.

[15] The thing I worry about, and I've  
[16] been straightforward with you about this, is  
[17] that I do worry about some of the DNA  
[18] conversation getting bogged down in things  
[19] unrelated to the DNA. On the equal access, I  
[20] think there should be that conversation.

[21] There's a whole big conversation to  
[22] have, and I know the Chief Judge is working  
[23] on this, on ways to minimize wrongful  
[24] convictions. But I think on the issue of

[11] with Brady and with Handgun Control Inc., I  
[12] have to tell you, when you think of a budget,  
[13] it speaks to the vision for the state and  
[14] what we hope to

[15] Do. And the big buzzword is economic  
[16] development and economic drivers. And I can  
[17] think of no detriment to economic development  
[18] than crime, particularly violent crime. And  
[19] it's very important, the work that we're  
[10] talking about is not just about prisons and  
[11] corrections and law enforcement, but tools to  
[12] keep us safe.

[13] Because again, I repeat -- and I've  
[14] had the opportunity to sit through a lot of  
[15] the testimony today. But when we think about  
[16] economic development, there can be no  
[17] economic development in a world of crime and  
[18] poverty. So it's very important and  
[19] compelling that you're here.

[20] That being said, you talk about DNA  
[21] as -- and I may be paraphrasing you -- as an  
[22] experiment. When does it stop being an  
[23] experiment?

[24] Now, my question, the way I want to

[1] DNA, it is such a powerful tool, as long as  
[2] we can resolve this equal access question, I  
[3] would love to see the Legislature go forward  
[4] with it.

[5] **ASSEMBLYMAN LENTOL:** And just as a  
[6] comment and not as a rhetorical question, I  
[7] believe that there's some credence to be  
[8] given to the argument that since DNA is such  
[9] a powerful tool, that even though you're  
[10] suggesting that it has not been misused, that  
[11] it could be misused. And if it is, it is so  
[12] powerful that it could lead almost invariably  
[13] to a conviction. And that's why some of my  
[14] colleagues object to it.

[15] **MR. ABORN:** Understood.

[16] **CHAIRMAN FARRELL:** Assemblywoman  
[17] Schimel.

[18] **ASSEMBLYWOMAN SCHIMEL:** Thank you,  
[19] Richard.

[20] And I find it particularly ironic and  
[21] compelling that you are the final speaker to  
[22] this budget hearing. Because especially with  
[23] your background, your long-standing  
[24] background fighting crime and your work done

[1] frame this, is it's a scientific, powerful  
[2] tool. Can you give us a little historical  
[3] perspective on that in terms of how long DNA  
[4] has been out there? I know Peter Neufeld.  
[5] He's a personal friend of mine. It wasn't  
[6] always accepted as a powerful tool, was it?  
[7] Was it considered always a tool that could be  
[8] used, or was it something that evolved over  
[9] time that wasn't accepted in law  
[10] enforcement? Was there pushback?

[11] **MR. ABORN:** So it's a little bit like  
[12] fingerprints. Fingerprints at first weren't  
[13] accepted. Imagine if I sat here and told you  
[14] that we don't take fingerprints from  
[15] 52 percent of all those convicted of crimes.  
[16] You'd say "Come on, that's silly."

[17] The state started using it in 1999.  
[18] It was more expensive to take then, but  
[19] highly accurate. The state -- I think with  
[20] prudence -- as I said, started taking it for  
[21] a very limited number of crimes, in the  
[22] belief that violent criminals committed  
[23] violent offenses two or three times, and also  
[24] because of the concerns that Joe Lentol has

[1] talked about, and that Liz had talked about,  
[2] which is how far would we go, and if we went  
[3] too far, would it be abused.

[4] So when I talk about the experiment,  
[5] that's what I'm talking of. By proceeding  
[6] incrementally, we allowed time to see if the  
[7] state could handle the number of samples and,  
[8] more importantly, could they handle keeping  
[9] it in a proper way or would it be abused.

[10] There were two more expansions in the  
[11] early 21st century, and then in 2006 there  
[12] was the really big breakthrough when we  
[13] started taking samples from those convicted  
[14] of some misdemeanors.

[15] And I call that the big breakthrough  
[16] because it was at that point the thought  
[17] began to really seep in -- and there are  
[18] studies going back to the '80s that talk  
[19] about this -- but the thought really began to  
[20] seep into our thinking that violent criminals  
[21] committed nonviolent offenses in the early  
[22] parts of their careers.

[23] I'm sorry, but the data is  
[24] overwhelming. You see fare beaters,

[1] crimes.

[2] **ASSEMBLYWOMAN SCHIMEL:** Thank you.

[3] **CHAIRMAN DeFRANCISCO:** All set?

[4] Thank you. I'm glad you used the  
[5] fingerprint example, because I think I used  
[6] that example way back when when we first  
[7] started the DNA business. And the analogy is  
[8] perfect about how that started slowly and  
[9] ultimately got to the point where people  
[10] believed in it.

[11] So I also want to thank you and  
[12] commend you on your testimony, both  
[13] thoughtful, articulate and to the point.

[14] **MR. ABORN:** Thank you very much.

[15] **CHAIRMAN DeFRANCISCO:** Thank you.

[16] That closes this hearing, and tomorrow  
[17] morning we will resume at 9:30 a.m. with  
[18] another hearing on something. On economic  
[19] development.

[20] (Laughter.)

[21] (Whereupon, the budget hearing  
[22] concluded at 5:44 p.m.)

[23]

[24]

[1] shoplifters, a theft of service committed,  
[2] trespass -- all these are the early crimes  
[3] when you look at rap sheets.

[4] And I think as the state broke  
[5] through that and began to collect greater  
[6] numbers of samples, the state as part of this  
[7] experiment began to understand that it in  
[8] fact could handle those samples to process  
[9] them, and it also could protect them. The  
[10] costs started coming down. It remained  
[11] junky, meaning you can't get other  
[12] identifiers from it. And there were no  
[13] abuses.

[14] There were no abuses -- nothing  
[15] leaked to insurance companies, nothing  
[16] manipulated in the way that Joe is concerned  
[17] about. And if that were to happen, there are  
[18] incredibly strong penalties in this state if  
[19] someone were to do that.

[20] So that's the experiment that I talk  
[21] about. And experiments have results. And  
[22] the results here I think have been really  
[23] quite clear. And that's why I'm urging you  
[24] to go the final step and collect it for all