CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON JUSTICE SYSTEM

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Chairperson

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SERGEANT-AT-ARMS: This is a mic check. Today is May 22nd. We're in the Committee Room. This is being recorded by Keith Polite at City Hall.

CHAIRPERSON LANCMAN: Are we ready to get started? Okay. Good. Thank you.

[gavel]

CHAIRPERSON LANCMAN: Good afternoon everyone. I'm Councilman Rory Landsman, chair of the Committee on the Justice System. Today we are here to examine New York State's newly enacted criminal justice reform legislation and to learn what the city will need to do to prepare for its implementation. For years, stakeholders have emphasized the need to make our criminal justice system fairer. Most justice involved New Yorkers face the reality of a delayed antiquated process that targets indigent and marginalized communities, perpetually stacks the deck against them, pressures them to plead guilty, and penalizes them disproportionately when they do. At the city level, the city Council and this committee have worked to mitigate some of this harmed by, among other efforts, providing meaningful alternatives to detention and incarceration, including supporting the expansion of supervised release, funding

prearraignment diversion programs to remove people from the system as early as possible, improving bail payment processes and eliminating fees, and establishing a citywide charitable bill fund. Now the state legislature is finally passed real and meaningful reforms to our bail, discovery and speedy trial statutes, which takes as many steps closer to the criminal justice system we want to see. Starting January 1st, 2020, these new laws will eliminate money bail for almost every misdemeanor and nonviolent felony, substantially increase the use of desk appearance tickets to prevent people from spending a night in jail only to be released at arraignment, mandate broader and more comprehensive discovery disclosure much earlier in the life of a case to prevent what has been called trial by ambush or defendant pleading guilty before seeing the evidence against them, and preventing prosecutors from declaring themselves ready for trial before certifying their compliance with the discovery mandates. But as with any major shift to an entrenched system, these reforms will live or die based on their on the ground implementation. Well institutional actors be dragged kicking and screaming

towards new requirements or will they be warmly embraced as a profound good for a justice system? This city will have an enormous role in modeling in full and robust implementation. January 1 will be here before we know it and we must be ready. Today, therefore, we will hear from our district attorneys in the special narcotics prosecutor, the Mayor's Office of Criminal Justice, public defenders, service providers and advocates on how they plan to implement these new reforms and what challenges they anticipate. We have been joined by Council member Andy Cohen from the Bronx and, with that, lets us swear the panel in and we can get started. All right. If you raise your right hand. Do you swear or affirm the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

DISTRICT ATTORNEY VANCE: I do.

DISTRICT ATTORNEY MCMAHON: I do.

CHAIRPERSON LANCMAN: Good. Do you want to get started, Mr. Vance, and we'll go down the row. How much time are we putting on the clock? Can we all strive to do five minutes and hit the highlights?

DISTRICT ATTORNEY VANCE: We're going to do our best.

CHAIRPERSON LANCMAN: Thank you.

DISTRICT ATTORNEY VANCE: All right. Good afternoon, Chair. Thank you for inviting us to speak on these important topics and turning to today's topics, I know you full understand, once cannot provide sufficient details in five minutes to address all the issues that you raised, but I would ask that the written testimony that we have submitted be placed in the record and will form the details of our submission.

I and my office supported ending cash bail and expanding discovery. To your point, the new laws that have been implemented make sweeping changes to our justice system, but they do so without a sing dollar allotted to achieving that end. So to your points, let's start with bail reform. I believe that the cash bail system is fundamentally unfair and, because it so often results in wealth-based determination of who was in and who was out, it contributes to the stark racial and socioeconomic disparities in our jails. The legislature did not end cash bail and that was a mistake. Instead, they restricted bail and detention to a patchwork of crimes under the additional restraint that a

defendant's criminal history and current risk to the community cannot be considered by a judge in making this determination. The law also removes, essentially, all white collar crimes from detention, further exacerbating the racial disparity in our jails and allowing criminals with financial means to go right back to their computers and continue decimating the lives of victims. As we look at the defendants who will be released on January 1st, we know they will benefit from a high-quality supervised release program to ensure that they return to court, as well as not reoffend. However, New York's current supervised release supports are designed for individuals who require only reminder through text or other means to return to court. This is the supervised release which our office funded. To bring this program of supervised release up to scale to begin to meet the challenges we're going to need to meet in January, Vera Institute of Justice estimates it will cost 75 million dollars a year to roll out pretrial services and supervised release across the state. I've also seen estimates that I believe are credible and, perhaps, more accurate, that double

that amount. What we have to work with today, however, to meet those needs is zero.

Turning to discovery. Since 2010, our office has continually revised its discovery practices, but to implement the new reforms, in our office and across the state, the state or cities must allocate resources to this endeavor that will allow for significant personnel and technology increased. That's a fact. A typical case in 2020 may encompass thousands of text messages, medical records, including x-rays or other imaging, insurance records, financial records, historical cell site date, search warrants for computers and cell phones, photographs, hours of surveillance videos from private businesses or NYPD units, transcripts of various proceedings, recordings from the NYPD body cameras, and many other sources of evidence. Importantly, the new discovery requirements apply to all cases, including those resolved by pleas, unless the defense waives. Currently, more than 97 percent of cases are resolved by guilty pleas and whether you believe that's a system that is good or not, the reality is that's the system that we have now and, under that system, defendants do not have the benefit of full discovery.

It's not required. Now, our office doesn't have a specific dollar figure yet to identify what the costs of the discovery changes will be, but I can tell you that it will be substantial. We're not talking about trying to find quarters for the copier. We are talking about needing to create, essentially, a full scale hi-tech reproduction unit with staff that includes analysis, analysts, paralegals, and lawyers.

Second, I'd like to, under the discovery, talk briefly about witness safety. We also have to ensure witness safety and the cooperation of witnesses and our case to do our jobs. The new discovery statute mandates that the district attorney provide the name and adequate confirmation-- contact information for all persons who have information relevant to any charge within 15 days of the defendant's first appearance in criminal court. As indicated, currently less than three percent of cases go to trial. So, historically, the identities and statements of victims and witnesses have been protected from disclosure. Now, it's a different reality. We have to hand defendants a roster of who has spoken out against them in just 15 days after their first appearance absent a protective order and

that's a seismic change in our New York State justice system that will, I think, one can predict it will undoubtedly this way in certain witnesses from testifying, many of whom live in neighborhoods that are the least advantaged financially and have the highest crime rates. So this is a big concern that our office has this legislation. We can live with the logistics if there is a solution to funding, but we cannot prosecute guilty, violent offenders without witnesses. Period. To those who say, just get a protective order on sensitive cases, that unproven on the scale that we are now going to enter in January of next year. As early as-- and, historically, we've been able to redact sensitive information, but here is the challenge and why this is not just creating a false straw man. We've had a recent homicide case where defense counsel violated protective orders and protected information over to defendants which turned out to be a grave risk to the safety of witnesses. In one case, the family of a homicide defendant was the world to photograph documents with witness statements and information. That information was photocopied and plastered all over NYCHA complexes where the defendant and

witnesses lived. The witnesses then refused to testify about the murder. The jury was deadlocked. Now, there are many other issues related to discovery in the user issues which we have outlined in our written materials. I think you and the committee for giving us the opportunity to speak about changes that really are substantive, most of all, need to, I believe, be funded.

CHAIRPERSON LANCMAN: That's four minutes and 30 seconds. It can be done. It can be done.

[background comments]

DISTRICT ATTORNEY CLARK: All right. I'm taking his--

[laughter]

DISTRICT ATTORNEY CLARK: I'm taking the 30 that he didn't use.

CHAIRPERSON LANCMAN: Judge Clark.

DISTRICT ATTORNEY CLARK: How are you? Thank you, Chairman Lancman and Council member Cohen from the Bronx, of course. Thank you.

CHAIRPERSON LANCMAN: I apologize--

DISTRICT ATTORNEY CLARK: Thanks for being here.

CHAIRPERSON LANCMAN: I apologize. Let me just mention we have been joined by Council members Alan Maisel and Brad Lander from Brooklyn.

DISTRICT ATTORNEY CLARK: And the other Council members of the committee. Thank you also for being here. And sorry. Thank you for providing me the opportunity to speak here. I returned to you today to reiterate some of my budget requests in light of the new criminal justice reforms that will become law in New York State in January. Even before the legislation was conceived, I had been working in the Bronx since 2016 to bring trials-- to bring cases to trial more quickly, reduce or eliminate bail, and to provide discovery in our misdemeanor cases. I'm proud to have played a role in that and that I hope I provided some insight to the lawmakers. I and my fellow DAs to beseech the legislature to proceed with caution concerning some of the aspects of the reforms that affect public safety. Regarding discovery, we believe that prosecutors should be obligated to disclose materials in their possession as soon as possible if the disclosure of these materials would not put a victim or witness at risk. But prosecutors should not be required to disclose

the addresses or other personal contact information of victims and witnesses without their consent. We believe we should and cash bail, but there must be a meaningful detention option for those who pose a physical safety for to others. We voiced her concerns to the legislature and to the governor. We did not get everything we hoped for in the new law, but it is our job as prosecutors is to enforce the law and we are moving forward to implementing these reforms. The funding requests I made to this committee in March to help update our antiquated computer system for witness security and for resources to handle enormous amounts of body wearing camera footage, has become more vital in the wake of the passage of the new laws. Specifically because, according to the new law, all discovery must be provided within 15 calendar days of arraignment. We in the Bronx need cutting-edge technology, a new case management system, to ensure accountability, improve transparency, and provide efficiency and technology to provide documents and videos and other discovery quickly. The new case management systems that we have researched can provide great sharing capability between my office, law enforcement, the defense bar,

the courts, the city Council, and MOCJ. I recently met with new NYPD Deputy Commissioner for legal matters Earnest Hart and we agreed this is crucial, especially since with the new law, prosecutors are now the custodian of NYPD paperwork and video. A state-of-the-art system will allow us to accurately track cases and individuals. Currently, we have no way to file electronic discovery and our stories and email systems are overwhelmed. I have a capital request in for 2 million dollars for a new case management system and 650,000 for maintenance in the request that I made to you in March. Requiring ADAs to turn over discovery documents early will allow the defendant to learn the identities of witnesses and where they work and live. Disclosing witness information will mean we will seek protective orders and many more cases than we currently do. This will result in more earrings and significantly more man hours redacting documents and videos. It also means we need enhanced security, along with compassion and support for victims and witnesses so they will feel confident when they courageously agreed to testify or cooperate in prosecution. Last year, I implemented a witness security program to help respond to this

changing landscapes and enhanced services for victims and witnesses. Witnesses, victims, and family members who are intimidated and cooperators, in cases, were assisted in relocation to temporary or permanent housing and required other expenses. So I would like to renew our request for funding for 10 detective investigators, 610,000 dollars to provide witness security for those who are under threat. The statute actually prohibits taking of pleas if discovery has not been turned over. We anticipate needing staff in the complaint room to copy and redact whatever discovery is available at the complaint room phase, that is the 61s, photos, vouchers, etc. for an initial turnover. Subsequent to the complaint room phase, we will require personnel to more quickly retrieve and download surveillance footage, make redactants (sic) to body worn camera footage, and other surveillance and redact paper discovery. TPAs will also be in constant contact with local precincts, the lab for narcotics, the ballistics lab, the Office of the Medical Examiner for DNA and etc., and hospitals to secure, copy, redact and turn over key relevant discovery within the Windows set by the statute. I'm

almost done. We are estimating as many as 25 additional TPAs who will serve as discovery expediters. As far as ending cash bail, I suggest the city provide more funding for pretrial services for those defendants who will remain at liberty, but need resources in between arraignment and trial. For example, the supervisor [inaudible 00:17:10] drug treatment, mental health services, housing, public transportation, and notices about court. Also, we have to depend on NYPD officers to find the defendants who are automatically released, but who may not return voluntarily, which will increase the workload for the police. I'm particularly concerned about the alleged drug traffickers who have no ties to the Bronx, especially in light of the opioid epidemic that we have in the Bronx. In conclusion, no matter how willing we are to carry out these reforms, we will not be able to do it without additional resources. After we have come this far to change the system to make it fair for everyone who must be a part of it, we cannot let money stand in the way of correctly, carefully, and efficiently implementing reforms whose effect will be immeasurable and priceless. Thank you.

CHAIRPERSON LANCMAN: Thank you.

DISTRICT ATTORNEY MCMAHON: Good afternoon, Chairman Lancman and Council members Cohen and Lander and Maisel. Thank you very much for this opportunity to testify before you this afternoon. I also always have to give a shout out to the Staten Island Council delegation, minority leader Matteo, Council member Rose and Borelli for their continued advocacy on behalf of the people of Staten Island and New York City. It is not secret that I have serious concerns about the impacts both intended and unintended that the recently passed package of reforms to our state's criminal justice system will have on the people of Staten Island, New York City, and New York State. While I believe that the legislators perhaps who championed these reforms, along with Governor Cuomo, were doing what they believed to be right, it is abundantly clear that Albany's fundamentally flawed legislative and budget process, combined with the poisonous impacts of our hyper-partisan politics and a race to claim to the crown of most progressive social justice reformer has left us with a package of legislation that will make every New Yorker and Staten Islander less safe. To

be sure, it will be the victims of crime. Yes, the victims of crime who we should talk about, I think, more often than we do, the men and women of the law enforcement community, and the innocent people of New York left suffering the consequences of these irresponsible policies. But you know, unlike Albany, I want to thank you for at least inviting us to come and talk about these issues because we were not invited to speak in Albany. A one size package was presented to legislatures and, in the dark of night, it was passed without any input from those who lead the prosecution throughout the state. So, at least hear our voices will be heard. I hope that some of the things we say will be heated. The impacts of bail reform will be felt across the system, but perhaps most acutely in the major narcotics cases. This at a time when every day a Staten Islander overdoses and every third day that overdose is fatal. I wish people would spend more time talking about that. And since nonviolent felonies are excluded from eligibility of a bail request, I defer to my colleague Special Narcotics Prosecutor Bridget Brennan to illuminate that issue a little bit more. With respect to discovery reform, this is where the

most serious lack of compassion for victims of crime was shown by the legislature and the governor. Some of the most troubling provisions include that every witness to a crime and every victim of a crime will now have their name and contact information disclosed to the defense and can also be interviewed by the defense. Additionally, my defense may now move for a court order to access a crime scene or other premises, including a victim or a witness' home. Oh, I know we can move for a protective order, but how quickly will end already overburdened court respond to that additional motion practice? And it is hard to imagine a victim of a crime willing to move forward with the prosecution of a criminal case while at the same time being forced to comply with these dangerous measures. Not only to these provisions threaten the safety of victims and witnesses, significantly more time, resources, and most importantly, funding will be required to ensure their safety throughout the criminal justice process. Something Albany, shocker, newsflash did not commit to our offices or any other office says in the city or in the state. And that leaves it to the city Council and our own ingenuity to determine how to

best comply with our obligations under the new law, a situation that will leave us scrambling and not able to serve the people we represent the best of our ability. And, again, with the respected speedy trial reform, we recognize and share the legislatures goal of and burdening the system and moving cases more expeditiously through the criminal justice system, however, again, they adequate resources were not provided, and the court personnel, the court staff, the security staff, the staff and our office, the staff of legal services and the public defenders. None of that was provided by Albany and they swell only be compounded by the increased reliance on desk appearance tickets, which, again, I have no problem with, but the amount of increased staff necessary will be exponential as those instruments are used to charge people. I have to mention quickly the elder parole bill that is now being mentioned-- being discussed in Albany, as well. I've been quoted to say that it is outrageous and idiotic and I stand by that quote. Again, while we fundamentally disagree with much of what was passed, though I speak for myself, was passed as part of these reforms to our criminal justice system, it appears that this will be

the law of the land. And, Mr. Chairman, when you speak about bringing those kicking and screaming, I think you said, to the table of reform, we are not kicking and screaming about reforms that need to be made in our criminal justice system. In fact, those of us at this table have been leading the charge with diversion programs that we have done on our own, with interventions, with prevention programs. All those things. With the victim advocacy programs. All those things we have done on our own, we are not kicking and screaming, but when a legislative warrior reform process is one-sided like this one has been up until now, the result will be a disaster and calamity for the public and that's what I hope that this Council will consider as you look at the budget requests that we have made that will allow us to implement these reforms. Judge Clark outlined those in her requests. We have the same and hours, as well. And as you go through each one, you will see what it is we need to do this. Not kicking and screaming, but to comply with the law. And it's also very important that it be done now in the budget process in June 2019 because, if it is deferred to a, so-called, November or January action, as we heard

might be possible, we will not have that money to implement these required mandates on January 1, 2020. So I submit the rest of my requests specifically to the personnel needed to implement the bail discovery speedy trial reforms and, again, thank you for at least giving us the opportunity to have our voices heard. Thank you.

CHAIRPERSON LANCMAN: Thank you. And that is the reason why we insisted on having this hearing before we finish the budget process. We are here to try to ensure that the legislation that was passed, the laws that were passed get implemented.

DISTRICT ATTORNEY MCMAHON: But as I said, having sat there, at one point, as you know-- and I always have to mention-- such as showoff, but the administration will push back and say, well, will do this in a November plan, which never gets done in November and it's incumbent and imperative that the Council say no. We have to deal with these issues now. We stood behind these reforms. We have to put our money where their mouth is-- our mouth is because, otherwise, we cannot meet these requirements as much as we are committed to doing so.

CHAIRPERSON LANCMAN: We are on the same page. Mr. Gonzalez?

DISTRICT ATTORNEY GONZALEZ: Good afternoon. Thank you, Chairman Lancman, and the members of the justice system for the opportunity to testify regarding my office is implementation of the new bail, speedy trial, and discovery laws. This will no doubt be a huge undertaking for the city's district attorney use and the court system and we will need significant additional resources if we are going to implement these laws effectively and in the way that meets our collective goal of increasing fairness while keeping the public safe. I'll begin with a new discovery and speedy trial laws. My office has long practiced open file discovery in the vast majority of cases, which, in addition to being fairer to the defendant, can also accelerate dispositions and reduce backlog. I believe this is just and fair and I supported legislative reform measures that mere in this practice. The new discovery law requires us to turnover within 15 days of a defendant's arraignment and names and adequate contact information of anyone, not just witnesses testifying at a trial, who is information that may be

relevant to the case. As you can imagine, for a victim of a crime or a witness, being pulled into the criminal matter is anxiety-provoking at best and, at worst, it could be a nightmare. We need a secure online portal through which the defense may contact witnesses in the manner that does not reveal their personal identifying information. The technology is currently available and could be used by all DAs offices in the city, but resources are needed to create and maintain that system. In addition to victim and witness safety, I'm concerned about the discovery laws timing requirements and how it will impact the day-to-day operations of my office. The new law requires us to turnover to the defense discoverable materials within 15 days after arraignment on all cases. As I noted earlier, the Brooklyn DAs office has practiced early in open file discovery for many years. Our policy is to turn over what we have when we have it and to have a continuing obligation to get it and disclose it as it becomes available. Our ADA's are trained in this practice, but early in our current practice, while it's well before trial, is not within 15 days after criminal court arraignment. Typically, and let me cases, it's

after a judge finds the grand jury presentation to be sufficient and, in non-felony cases, it's after the complaint has been converted to a corroborated charging document. Under the new goal, we will be required to provide discovery in cases that we currently and dismissing or pleading out. This means that we will be required to provide discovery and thousands of more cases than we currently do under existing practices, which will require many more resources and assistant district attorney's if we are going to be able to meet the requirements of the new law. In addition to lingual staff, we are going to need trial prep assistants, paralegals, messengers to track down paperwork and lab results from NYPD, OCME, hospitals, and other third parties. More tech experts to download, process, and review hours of electronic recordings including body worn cameras and more investigators to review documents and other materials. Improving our technology infrastructure capabilities will also play an essential role. Securing tracking and turning over discovery material in the volume contemplated by the new laws will require additional tech capacity, both software and hardware. These additional staffing and technology

needs are absolutely critical for my office's ability to comply with the new discovery and speedy trial laws. Regarding the Bales statute, I supported reform because I believe that, when someone was in jail, pending trial, they should not be there based on how much money they have. Of discovery, one of my top priorities in implementing the new bail law is to ensure the safety of victims and witnesses and the public at large. The legislation does not allow the court to consider physical threats to public safety when setting bail, including, and many of our domestic violence cases, even though they often pose very serious safety concerns to victims. It's imperative that programming and pretrial services be developed and funded to deal with these defendants and these types of cases and the threats they pose to their victims. Another issue that we have to deal with under the new bail statute is that after January 1st we will no longer be able to ask the court to set or order pretrial detention of defendants charged with sophisticated, high dollar financial frauds, even if the defendant is the foreign national or even if they demonstrated a willingness and capacity to flee the jurisdiction. These defendants are not

served by the current supervised release programs, so we won't need to develop and fund programming for them, including electronic monitoring. Electronic monitoring is very expensive as and currently we have no capacity in this regard. We simply don't use it except in the handful of cases. As with all other conditions of release under the statute, the cost of electronic monitoring may not be imposed on defendants, even if they are wealthy. While legislators supporting the new bail law frequently point to electronic monitoring as an available to, it's currently not routinely available and we do not provide any funding to do that. I know my time is up. What I will say is I have all the willingness to fulfill the obligations of these bills. We have needs. But I have to express some frustration because, when the Mayor's budget came out last month, none of the additional resources my office said we needed just to do a job were met including things like renewing our lease for the building and the 1100 person agency. We are without a lease. Our warehouse has not been funded and we did not get the staff we need to move to vertical prosecution. So, I think the members of this city Council. I know you

are allies on, you know, for me and for the people--for my County, but I'm here to tell you that these reforms are at serious jeopardy if resources are not provided. Thank you.

CHAIRPERSON LANCMAN: Thank you. Mr. Ryan?

DISTRICT ATTORNEY RYAN: Good afternoon. First, I'd like to thank the chair and the other members of the committee and the Council on the half of the DAs office and the Brown family for the many kind words of condolences that we have received regarding Judge Brown. Judge Brown was a great district attorney and a great man and we will all miss his wisdom and I believe we will miss him more and more as time goes on. I think the Chair and members of the committee for this opportunity to address you on the half of our offense regarding the implementation of the new bail in discovery legislation that will take effect on January 1st. Taking, just for example, at the beginning, lack of the concerns of my college regarding the logistical issues involved. Looking to stop body worn cameras for one week in April, there were 553 arrests with body camera footage and they average about an average

of video footage for each case. That means every one of those videos has to be gone through and reviewed prior to being turned over to ascertain whether any audio or video portions have to be redacted prior to being given to the defense. Once that determination is made, additional hours will be spent filing motions for protective orders to redact the materials to obscure victim's faces and voices and addresses. Once that motion is to sign it, we have to spend the additional hours actually reviewing and redacting material. The same procedure must be followed for 911 tapes and radio runs, which, in some cases, can also run for hours. The new discovery procedures will especially impact our office as we have in the past, at least, disposed of approximately 70 percent of our felony cases preindictment, prior to the time current statutory and discovery obligations come into play. It will require a massive retooling of our discovery procedures, requiring us to process all these materials on cases which would have, and a normal course of things, have been disposed of prearraignment. By the way, I add after a conference with defense counsel. We have, for many years, turned over early discovery on a misdemeanor criminal

cases. We already have a process available in criminal court where we send defense attorney is a link that is available for attorneys to view and download body worn camera videos. Using a do-it system, they are available for two weeks. A two-week period before-- They have to be opened and downloaded within that two weeks. After complaints from the management at Legal Aid Society that two weeks was not enough time for their attorneys to open their emails, we extended it to month, the maximum time the do-it system allows. Under the new statute, we are given 15 days to obtain, review, and redact materials that Legal Aid can open even in a two-week time period. We work it out, but and is going to require substantial allocation of resources and equipment that we are just beginning to appreciate. The mayor's office has been very helpful in getting this conversation started and we appreciate that. We are still in the process of assessing what our budgetary impact of this legislation will be on our office and I will shorten that in the interest of time. It's going to involve IT related personnel and hardware and storage devices. It's going to advise the need for more paralegals to go through and obtain

the discovery materials. Our current estimate-- and it's just a-- to say it's a ballpark estimate, I would say it's a very big ballpark. We are asking approximately a million and a half dollars as a starting point to start this process. But there are other issues with the new discoveries statute that go beyond the cost in terms of dollars and create additional problems. The first is the contact information that we are required to give defense counsel for witnesses. We realize that protective orders are available, but how do you explain to a court that a witness in the Ravenswood houses who viewed a gang shooting is afraid to have her name revealed to the defense. How do you put that reason for fear and emotion? What about a homicide and a witness in an insular community like the Rockaways? How do we protect them once their identity becomes known even before the grand jury has met? Why would they come forward once they know the defendant will know who they are? They have lost the security of plausible deniability. I have some nice hypotheticals here about burglaries, but before I got to them, I was handed a real case from Queens and I think real is always better than hypothetical. We

had a defendant last week that was charged with six residential burglaries. He is five burglary convictions, including in total convictions he has three violent felony convictions and three nonviolent felony convictions. He is a mandatory persistent violent felony offender and he's got six current residential burglaries. He is in jail right now, but on January 1, unless somebody knows a part of the law that I don't know, unless he is at least convicted and, according to some readings of the law, perhaps sentenced, on January 1 he walks out of Rikers. I do not think that supervised release he is a proper Canada four. And that's what we're going to phase come January 1 with that and the other defendants, as well. How do we tell burglary complaint and spent the defendant may have the right to come into their house with an investigator and take pictures? Do we advise them of that before or after they sign the complaint? Do we provide them with an attorney to contest the defendant's motion or advise them to hire their own? The law requires prosecutors to establish probable cause to obtain a search warrant to search a defendant's house. What is the standard to inspect a complaint in's house? How could it possibly be that

there less is required to get into the defendants home then to get into the victim's home? Okay. I'll move as fast as I can. When we tell witnesses that we have to provide compact-- contact information for them to the defendant's attorney, do we advise them that they have a right to remain silent? If they have a child, do we advise them that a child has a right not to speak to the defendants? How do we tell a random robbery victim attacked and robbed on a train by strangers that is grand jury testimony is no longer secret and that we will be turning it over to the defendant as soon as we type it up? These are all very legitimate issues dealing with the implementation of these laws that are going to affect our variability to prosecute these cases. We are not talking here about police reports or calibration tests. We are talking about substantially disrupting the lives of some of our most honorable citizens. How do we protect the people in high crime areas from the criminals who prey upon them? In almost every case, their identity will be known so quickly. What did these victims do to be treated with such indifference? Don't they have rights, too? While they still have rights, those rights have been

unquestionably diminished. The hardest part of a prosecutor's job is to convince the victims that it is safe to come forward and that it is a sacrifice that they must make for the benefit of their community and that we will protect them. The last possible moment now could be as soon as 15 days after an arrest. It will have serious repercussions on our ability to prosecute crime in Queens County. We will have to deal with these issues because it will be the law. Judge Brown taught us that we have to abide by the law even if we disagree with it and that is what we want to. We choose not to be silent at this critical moment. However well-intentioned this legislation may have been in the eyes of the sponsors, it was not well thought out. We believe that there will be serious long-term consequences to public safety and this may signal the end of the era when crime only goes down. We hope that we are wrong, but we fear that we are right.

CHAIRPERSON LANCMAN: Thank you. Ms. Brennan?

BRIDGET BRENNAN: Thank you very much. I ask that my written testimony be made part of the record, particularly of the budgetary requirements

that we will have to meet these obligations. These new obligations. Because I would like to spend my time talking about the specific change in the law which will have a huge impact on our ability to prosecute high level narcotics traffickers in New York City.

CHAIRPERSON LANCMAN: Well, before you do that-- and we'll stop your clock. Right? It's your five minutes. You can say what you think--

BRIDGET BRENNAN: Thank you.

CHAIRPERSON LANCMAN: we need to hear, but relitigating the decisions that were made in Albany are less valuable, perhaps, in this forum than talking about the things that the Council can do to support your implementation of the law and the ways that you think are appropriate.

BRIDGET BRENNAN: I appreciate that--

CHAIRPERSON LANCMAN: But it's your--

BRIDGET BRENNAN: but I believe--

CHAIRPERSON LANCMAN: five minutes.

BRIDGET BRENNAN: that the Council could assist me in endorsing the chapter amendment which I have attached to my testimony.

CHAIRPERSON LANCMAN: Okay.

BRIDGET BRENNAN: And I have been to speak to representatives of the Council in support of this particular chapter amendment.

CHAIRPERSON LANCMAN: Okay.

BRIDGET BRENNAN: Okay.

CHAIRPERSON LANCMAN: Can we just put the five minutes back and we will go?

BRIDGET BRENNAN: Thank you.

CHAIRPERSON LANCMAN: Thank you.

BRIDGET BRENNAN: There's life support for many of the things that were incorporated in this legislation, but as some of the, my colleagues have mentioned, it was an enacted hurriedly with input from not all sectors of the criminal justice system and the result is flawed and needs some fixing. And I think there is one section which could have a quick and easy fix and that's why I have appended to my testimony a chapter amendment which would allow for Bale to be set in all a level narcotics felony cases. Because narcotics are categorized as nonviolent felony offenses, as it stands now, our highest level narcotics traffickers are not going to be allowed to get bail or remand when they come before court. There is only one very seldom used section called

operating a major trafficking offense, 22077, where narcotics offenders are allowed to have bail set. Otherwise, a judge must release them from the courtroom. This package of reform has been publicized as benefiting low-level nonviolent offenders, so New Yorkers, I think, will be shocked and dismayed come January 1st when they wake up and discover that bail reform is not limited to low-level nonviolent offenders. State legislators have mandated the post duress release of defendants charged with top narcotic crimes with no possibility of a judge setting bail. I am sure that that was not intended by the legislators, that it was simply an oversight. Why do I say that? Because they did allow for Bale in the major traffic or charge. And I believe that they intended that major traffickers would face the prospect of Bale or detention. But, and narcotics cases, unless a defendant faces a single seldom charged to friends, we charged it four times last year and seized 1500 pounds of narcotics. Heroin, fentanyl, and cocaine. But, unless the seldom charged offense is charged, the new law requires judges to treat cartel associates the same way as low level street dealers when it comes to

bail. I believe that the legislation was intended to prevent pretrial detention of low-level drug sellers, but not of major importers of heroin and fentanyl in the midst of an opioid crisis. But those intentions were not translated into law and, after January 1, as I said, a judge must release all those defendants. This is true even in cases where many pounds of heroin and fentanyl, worth millions of dollars, were recovered and, meanwhile, drug overdoses are killing thousands of New Yorkers every year, far more than all violent crimes combined. Those who stand to benefit from the new bail statue include members of foreign cartels sent to oversee million-dollar narcotics transactions, operators of large-scale drug packaging mills that churn out tens of thousands of doses of heroin and fentanyl, dealers who deliberately sell laced narcotics despite knowing their customers may overdose and die, and doctors who fueled addiction by illegally exchanging prescriptions for cash. Because New York City is a major hub of narcotics importation and distribution, surrounding states will also feel the impact of this change. Our investigations have resulted in the seizure of nearly 4 tons of narcotics in the past

five years, yet the office charged fewer than two dozen defendants under the major narcotics statute during that time. The majority of defendants in those serious cases were charged as a level felony. The difference between a narcotics possession charge and a major trafficking charge is that, with the major trafficking charge, you have to allege the specific role of the defendant within a narcotics operation. And when we have confidential information or we are working on a wiretap information and discover a large load of narcotics, we must move in and see use those drugs regardless of what we know about the specific role that a defendant is playing with regard to those drugs. And so, at that point in time, we usually are able to charge them only with the possession of those drugs. We had a case not long ago up in Harlem where we seized about 60 pounds of heroin and fentanyl and those defendants, and two of them-- 200,000 dollars was in the room with the defendants when we moved in to make the arrest. They were only charged with the first-degree possession of a narcotic drug. That's because we didn't have information that that point in time to charge them with operating as a major traffic or and we may never

be able to develop that level of information. It's kind of a convoluted statue. That's why it's so seldom used. But, as a result of this, we will see, literally, hundreds of defendants walking out of the courtroom, many of them with foreign connections, many never to return to New York State and I believe it will lead to more drugs moving through our city, which is already recognized as a major narcotics hub. And I believe we can affect a minor change in the law, which is consistent with what the governor had originally proposed. And I'm in the process of talking to legislators and members of the governor's staff to discuss this because I do not believe, from any conversation I've had, that this was ever intended. So I ask that the Council joined me in this and I'm happy to answer more questions than I can possibly answer in this five minutes than I have. But I think it's very important to the city and important to the integrity of the reform which is, obviously, intended not to benefit these kinds of offenders, but low-level truly nonviolent offenders. And we don't need a rigid statutory structure which will-- which is more like the Rockefeller drug laws than anything else in terms of eliminating the

judge's discretion to do what is truly appropriate. So I ask for your support in this effort. Thank you much.

CHAIRPERSON LANCMAN: Thank you. I want to get-- let me mention we have been joined by Council member Ulrich from Queens. I want to get to some specific budgetary questions, but there is certainly been a couple of recurring themes in your testimony. One has to do with what you perceived to be the potential risk to the safety of witnesses. Could each of you who are willing tell us what steps in your view need to be taken to protect witnesses and what funding are you looking to from the city to help you be able to implement those steps and measures.

DISTRICT ATTORNEY VANCE: Mr. Chairman, I don't have that specific number. We are, right now, our office and, I think, in conjunction with the other prosecutors' offices are really sitting down and trying to collectively come up with a real sense of what the costs are going to be for discovery, for the supervised release requirements, as well as witness. But I'm going to say this. It's going to be millions of dollars and--

CHAIRPERSON LANCMAN: But before you say that it's going to be millions of dollars, which I understand, what exactly are you going to do? I heard you or somebody mentioned a secure portal for defense counsel to interview witnesses which, I guess, would be pursuant to some protective order that only allowed them to communicate witness. Like what kind of mechanisms, techniques, practices to you feel need to be adopted in order to comply with the law and keep witnesses safe as you see it and then we can talk about well what that might cost.

DISTRICT ATTORNEY VANCE: I actually can't give you a dollar measure on that, but I--

CHAIRPERSON LANCMAN: Let's put aside the dollar part. Just tell me what things you need to do differently today or more of--

DISTRICT ATTORNEY VANCE: I think we--

CHAIRPERSON LANCMAN: [interposing] or will be have to do on January 1st?

DISTRICT ATTORNEY VANCE: to have more options for witness housing and relocation.

CHAIRPERSON LANCMAN: Okay. So, witness housing and relocation, for example. Okay.

DISTRICT ATTORNEY VANCE: And we-- I would say that is our biggest concern.

CHAIRPERSON LANCMAN: Judge?

DISTRICT ATTORNEY CLARK: For me, I ask for 610,000 dollars for more detective investigators because I have a witness security program now because even before this legislation started, I have witnesses that have been threatened in court, outside of court, on social media. Their personal information out there and maybe, afraid to continue to cooperate. As they don't cooperate, we don't get to prosecute these cases and the city becomes less safe.

CHAIRPERSON LANCMAN: So, what would that six 50,000 dollars buy?

DISTRICT ATTORNEY CLARK: That would hire 10 more detective investigators that would help me be able to deal with the increase of what I anticipate being more intimidation of these witnesses because their information is going to be released within 15 days. We can ask for the protective order, but as a former judge, I can tell you not always guaranteed.

CHAIRPERSON LANCMAN: Okay.

DISTRICT ATTORNEY CLARK: It depends on the judge.

CHAIRPERSON LANCMAN: And would those--

DISTRICT ATTORNEY CLARK: So, therefore, I have to make sure that I can keep my witnesses and victims safe.

CHAIRPERSON LANCMAN: And when you say detectives or this staff, these are personnel that would stay with witnesses and protect them or they would investigate claims--

DISTRICT ATTORNEY CLARK: They--

CHAIRPERSON LANCMAN: of intimidation--

DISTRICT ATTORNEY CLARK: They will not only--

CHAIRPERSON LANCMAN: or threats?

DISTRICT ATTORNEY CLARK: be investigation, but also physically busy with them to and from court, you know, making sure they get to court, housing them somewhere else unless there is funding for us to actually place somewhere else. I've used my own funds even to do that and that-- you know, that is not really available depending on how many cases. I have a huge trial going on right now, the junior trial. Expensive to make sure that

those witnesses are safe, but that just one case that's costing a lot of money. With this new discovery, there's going to be a whole lot more people unless they just choose not to cooperate and then it's just still going to be less safe for the people of the Bronx because these people will be able to continue to commit these crimes.

CHAIRPERSON LANCMAN: Got it. Mr. McMahon.

DISTRICT ATTORNEY MCMAHON: I would second that request in terms of detective investigators. Those are peace officers who work in our offices and really one of their main functions is to identify and then protect and make witnesses available. That's part of what they do now, so they would continue to do that, but at much higher levels. So we have also requested six of those at a cost of 280,000 dollars. If there is a question of witness tampering and it reaches to that level, of course that would be turned over to the NYPD detectives to handle, as well. But we also need the physical infrastructure to meet the mandates of the wall to conduct video interviews with the defendants. So we have a request for secured rooms and the IT capability and people who can run it

so that we can do that videoconferencing that is-- we'll be required under the law and a way for us to meet our mandate. Right now, we cannot do that. We do not have the ability to do that and so we have a request for that, as well, about-- to be provided the number, but we will have capital requests for that, as well. We have to build out that infrastructure.

CHAIRPERSON LANCMAN: Anything?

DISTRICT ATTORNEY GONZALEZ: Yes. So, the one who mentioned the online portal. We had a company commander make a presentation in my office and many of the District Attorney's Office says that are here today went to see that presentation. It sort of works in the sense that the victims information is added into the system and there is a number provided to the defense attorney. The defense attorney can connect with the actual victim and witnesses in the case without having direct identifying information about a person's home address, personal cell phone. That seems to comply with the, you know, with the law says sufficient contact information, but allows the victims to have some semblance of, you know, security and privacy.

We don't have a phone number for that and what that would look like versus New York City versus New York State, but I think that it would be, at the very least, a-- something that we need to have in the city. Two days ago we secured a conviction of two blood gang members who killed two innocent women during the shooting. During the course of the trial, Councilman, routinely there was intimidation happening in the hallways of the courthouse and they came in and took pictures of witnesses on the witness stand. At some point there were about 25 fellow gang members wearing gang clothing in the courtroom fully intimidating witnesses to the extent one witness did not want to testify any further. It was already on the stand and just shut down, so this is a real issue for us and protecting witnesses and guaranteeing that we will protect them in the beginning of the case, through the middle of their case, and at the end of the case and after the cases over is a big part of it. And I think this has to be funded. And we will get numbers to you.

CHAIRPERSON LANCMAN: Thank you.

DISTRICT ATTORNEY RYAN: I mean, the best way to protect the witnesses to protect their

identity. Two days ago in Queens we had a man try and steal a three-- or kidnap a three-year-old baby out of a baby carriage. Was encountered by the mother and other people on the block. He fled across the street into a woman's house and encountered the occupation. Caused injury to her and then was arrested. We offer about the parents of the child and the woman whose house was burglarized in order of protection. When they found out that the defendant would be given their name and their address to stay away from, they both declined in order of protection. The biggest protection for them is the defendant not to know who they are or their names and whatever. We run the risk of losing this under the statute. We went to the presentation at the Kings County DAs office. That is a step, perhaps, in the right direction, this portal. How effective it will be, I don't know, but it is among the things we're going to have to try. We have done full-blown relocations in our office. There are very few witnesses well and to come forward for the privilege of having their identity changed and moved to another location and leaving their lives behind them. It is a safety factor. It is not something that's appealing to most

people. Again, what's appealing to most people is to protect their identity and that's what we are going to struggle to do. I can't put a dollar impact on the. I don't think a dollar impact can be put on that.

BRIDGET BRENNAN: Obviously, we'll have some of the same concerns, not specifically about victims, but about confidential informants who are at great risk of harm. And it's not just the victims of crimes, but and is other witnesses. The statute is written very broadly, referring to information relevant to the crime, so it's very, very broad. It isn't really just limited to what you might offer as evidence in a case. So, we will-- Because it threatens so broadly, too, it will require additional staff in terms of paralegal staff to support the production of that kind of information and, in addition, we are going to have some special needs because so much of the work we do involves videos and undercover officers and confidential informants, anybody like that will have to be redacted from a video. So we are also looking for some specific software and IT materials which are detailed in my testimony. We're looking for software for

collecting, sending, sharing electronic discovery. We'll need to expand our internal storage capability for processing and storing a lot of digital evidence, including videos, and that storage capacity is very expensive, so we're looking for an initial cost of 400,000 dollars with regard to the annual costs in addition to that. We will need improved computer and media redacted software. We have an anticipated cost of five power computers at approximately 100,000 dollars and we are still in the process of pricing the additional software. We will need more scanners and printers. That kind of equipment will be necessary to effectively share the information that we will need to share, so there is a cost to that. And we have to increase our Internet bandwidth for uploading and downloading discovery material with the NYPD, so we are still in the process of pricing that out.

CHAIRPERSON LANCMAN: Your five individual offices, we have the Council, we have the Mayor's Office of Criminal Justice. It's my understanding that between the six of you, you've created some kind of working group to kind of identify what your needs are be able to present them

to the city. Is that correct and, if so, can you tell me what the status of that working group is? Or am I misinformed and there's--

DISTRICT ATTORNEY RYAN: Well, I--

CHAIRPERSON LANCMAN: no such working group?

DISTRICT ATTORNEY RYAN: Well, it-- We've had a number of conferences among all the offices and also some with MOCJ and some with MOCJ and the NYPD. And we've all discussed ideas. I can say that we're at the point where we've all sat down and said, okay, this is a proposal that will work for, you know, all six offices. We are in discussion. I've had a number of discussions with the PD. We had some discussions yesterday that included OCA. We haven't talked about the DAT aspects of this today. There's a lot of moving pieces in the sun we are all trying to figure out how to make it work. It dramatically changes. Something as simple as the DATs-- I can tell you don't want me to get into that, but if I did, I would.

CHAIRPERSON LANCMAN: Oh, I--

[laughter]

CHAIRPERSON LANCMAN: If you're gonna (sic) express your unhappiness with the legislation, that's up to you--

DISTRICT ATTORNEY RYAN: No, I'm--

CHAIRPERSON LANCMAN: but what can--

DISTRICT ATTORNEY RYAN: I'm--

CHAIRPERSON LANCMAN: [interposing] we do to--

DISTRICT ATTORNEY RYAN: I can explain--

CHAIRPERSON LANCMAN: Yeah.

DISTRICT ATTORNEY RYAN: I can explain to you one of the issues involved in DATs. Right now we all have an allotment of how many DAT's we can put on in a certain day. 50 or hundred. If you meet the quota for that day, you move it to the next day. Simple enough. Under the new law, the DAs have to be returnable within two weeks. That changes everything. That means we can't assume we can only put 50 on for a day because we don't know how many are coming in on the next day. So, the court system has to adapt to that. We have to adapt to that and the PD has to adapt to that. These are ongoing

discussions on virtually all aspects of this legislation. We will adapt--

CHAIRPERSON LANCMAN: But are--

DISTRICT ATTORNEY RYAN: to it.

CHAIRPERSON LANCMAN: Are the-- Are they ongoing? Like is MOCJ convening people regularly? Is OC-- Is everyone getting in a room?

DISTRICT ATTORNEY RYAN: There are--

CHAIRPERSON LANCMAN: You know, we--

DISTRICT ATTORNEY RYAN: There are meetings all the time. Their conference calls all the time. I can't keep track of all the conference--

CHAIRPERSON LANCMAN: Okay.

DISTRICT ATTORNEY RYAN: calls I've been on over the last few weeks.

CHAIRPERSON LANCMAN: But--

DISTRICT ATTORNEY MCMAHON: I would suggest you--

CHAIRPERSON LANCMAN: Yeah.

DISTRICT ATTORNEY MCMAHON: Mr. Chairman, that it would be constructive, I think, to have a more formalized structure to this implementation challenge that the city of New York and the state partners at OCA are going to face because it is

somewhat-- it's really sort of issue-based at this point right now, but I think in order for us to sort of buy into that and not go in kicking and screaming, I think there needs to a commitment from the administration and from the state to say, look, we're going to work on this for three months and we're gonna agree to give you the resources that need to be done to get this and then let's have a target-- we should not be targeting an implementation date of January 1st for most of these mandates. We should be targeting an implementation date of October 1st and November 1st to make sure that we can get it right--

CHAIRPERSON LANCMAN: Yeah.

DISTRICT ATTORNEY MCMAHON: because we are going to find holes and things are going to go because we're going to mention DAT we find out we can't-- we can go on and on. So, from your chair, I think it would be very helpful to advocate to the administration and to all many let's have a formalized structure to see how the jurisdiction it's going to have the most challenges in New York City is going to implement these and we were certainly glad to be part of it. Again, right now, sort of ad hoc on different issues.

CHAIRPERSON LANCMAN: Yeah. I will definitely-- we will definitely ask Mark Jay about that. Lord knows they know how to convene a task force.

DISTRICT ATTORNEY CLARK: Right. No. And I was going to suggest that it's similar to the close Rikers implementation.

CHAIRPERSON LANCMAN: I was thinking the same thing.

DISTRICT ATTORNEY CLARK: That's exactly--

CHAIRPERSON LANCMAN: I was thinking the same thing.

DISTRICT ATTORNEY CLARK: what we mean. I think the problem that we are dealing with here is leadership. Who is owning and taking the lead? That's what needs to happen. And once that happens, we can convene everybody in a room, have a full working group, subgroups for different things. DAT's, discovery, whatever. And come back and get it right. But we need leadership. I'd be happy to do it, but it's not my place to do that.

CHAIRPERSON LANCMAN: Yeah.

DISTRICT ATTORNEY CLARK: We have our here is one piece of a very big picture. So, I think it needs to come from the administration.

CHAIRPERSON LANCMAN: Yeah.

DISTRICT ATTORNEY CLARK: MOCJ does a lot of things. This is one thing that I think is really within their purview.

CHAIRPERSON LANCMAN: Yeah. Councilman Cohen.

COUNCIL MEMBER COHEN: Thank you, Chair Lancman. Good afternoon everybody. You know, just to try to get my head around the scope of the issues around discovery, can you kind of, office by office, give us a hint as to how often you make discovery now versus how often you contemplate making discovery after January 1st?

DISTRICT ATTORNEY GONZALEZ: Councilman, you know, for my office, you know, in-- obviously, inventory is down tremendously over the last several years and the number of new cases that come in, you know, historically, the Brooklyn DAs office had over 100,000 cases a year. We were in the 70,000 mark. But a full 70 percent of those cases in criminal court are never resolved with any kind of conviction

and, in those cases, often there's not full discovery. So, we are talking about a 70 percent increase in what we would have to do in our criminal court. Even with less cases, it's still tens of thousands of cases of discovery that would have to be completed that are not currently completed.

DISTRICT ATTORNEY VANCE: And in Manhattan, we typically dispose of an arraignment somewhere around 60 percent of the cases historically. All those cases will be subject, unless there is a waiver from the defendants, to full disclosure of discovery. I don't say that to make a roadblock, but the concept of full discovery early on is the one that has been put forth by the legislature and has now been passed. There is a concomitant responsibility to fund it so that we don't end up creating a system that fails. Fails for simply be inability to, you know, obtain information reason-- even with every effort be made on the volume of cases that we now have.

DISTRICT ATTORNEY CLARK: And I think each case is different. For the most part, there is, you know, a bucket of cases where certain discovery can be done quicker than others. Those with

complaining witnesses would take more work. Those where police cases where they are not really confidential witnesses and things like that, discovery can be quicker. But it depends on what is required in the case. If it's DNA, it's going to take a little bit longer. If it's a wiretap, it's really going to take longer because those are thousands and thousands of pages of transcripts that have to go through. So, and-- you know, it's a body of work. You know? And the timeline depends on the type of case. But now it doesn't matter. That's the reality of it. But now what it is is 15 days, regardless of the type of case. So the new laws don't take into consideration the variant types of cases and the amount of time than it takes to get certain discovery.

DISTRICT ATTORNEY VANCE: And I think at this point, Council member, I can't-- our office is not yet--

COUNCIL MEMBER COHEN: Just use the mic, please. The mic. Yeah.

DISTRICT ATTORNEY VANCE: We're not able to say this is setup that needs to happen because of this change in the law. You know, this is the 35

more people that we are going to need working just for discovery persons alone. And we are in the process of trying to develop real numbers by having tests in various trial boroughs to determine really what the need-- what is the need based upon actual experience. And so, I don't want the committee to think that we are trying to duck the question, but this is something that takes time to actually provide real numbers that are based upon experience in test cases before we can come back and say this is-- you know, this is a 50 person operation or this is a 100 person operation that we need funding for.

DISTRICT ATTORNEY GONZALEZ: Right. And I just wanted to add something that I know that all of you are aware of, but discovery is actually ultimately not controlled by the district attorneys. Right? It's from our law enforcement partners and everyone else that we deal with. The city hospitals, OCME, and all of that and trying to get medical records from a public hospital within 15 days on a misdemeanor case-- you know, I just stopped-- who is going to pay for that? Who is going to give the hospital the resources to do that? With those cases, we will never be able to announce ready for trial

because we can't certify we completed our discovery unless we can get that material. And same thing with OCME and there's so many other organizations. So when it's-- we're concerned about our ability to collect this information. It's because it's not in our custody. And so we are being asked to provide and copy into all this stuff, but it's not in our-- it's not just the police department. It's so much more than the police department. And even with the police department, you know, I have not heard anything that makes me very encouraged that they are going to reassess their ability to get all that material to the six district attorney's that they service within 15 days on all of their cases.

DISTRICT ATTORNEY MCMAHON: And I just want to jump in real quick, if I could, Councilman Cohen. When I came into office in-- because you asked how we do it now and what do we need to reach the mandate or follow the mandate. When I came into office, I looked at how the other four offices or the five offices did their discovery and we implemented reforms in our office. Early action disclosure, we call it. Everybody has a-- whether it's called open file. Whatever. Because we don't like to take--

give each other credit for the names of the things that we do. But the basic idea is, in felony cases, for sure, within 45 days, everything we have is turned over and, again, we have other obligations, remember, under Brady and Giglio, to turn things over. We don't hold things back, but the idea is that we've opened up our files and we turned everything over that we have to or that we think we should or may not even have to, but there is the reality of what we can do within a certain period of time. Now, I think within 15 days we have to turn over grand jury minutes with an appropriate case when possible. Okay. But who is going to provide the stenographer to transcribe that? That's an incredible cost that I don't have the person-- I mean, I have a stenographer in the grand jury, but I don't have the ability to turn that over in 15 days. That's just one small example. If someone said, yes, you know, on an ongoing role in basis like happens in another areas of litigation, that would make sense. So we all have pretty open discovery postures now despite what is out there in the media, if you will, but you have to convince the ability to meet these

new timelines, otherwise I don't know how we're gonna-- the system will collapse.

COUNCIL MEMBER COHEN: I apologize for asking about the specific provisions of the law, but what happens if you don't comply?

DISTRICT ATTORNEY VANCE: We all know--

DISTRICT ATTORNEY MCMAHON: Yeah.

DISTRICT ATTORNEY VANCE: In looking--

COUNCIL MEMBER COHEN: I mean, I'm asking, I guess, if you're precluded or--

DISTRICT ATTORNEY VANCE: Oh, I think if we don't comply, the judge is empowered to prohibit witnesses, preclude witnesses from testifying and that's--

COUNCIL MEMBER COHEN: It's not automatic, though, it's--

DISTRICT ATTORNEY VANCE: No. It's--

COUNCIL MEMBER COHEN: upon application.

DISTRICT ATTORNEY VANCE: It's not automatic. It would be an application by the defense, but the remedies are sort of the same as intentionally not providing that information which is, obviously, what-- just the opposite of what we're trying to achieve.

DISTRICT ATTORNEY RYAN: If we don't comply, we can't answer ready.

DISTRICT ATTORNEY CLARK: Right. I was--

DISTRICT ATTORNEY RYAN: So, the--

DISTRICT ATTORNEY CLARK: That's what I was going to say. It ties directly into the speedy trial and, as a former judge, you know, I could tell you it is-- that part is still left up to the discretion of the judge, so we are going to have different, you know, findings in different counties or even in the same county. One judge may think, well, this is in compliance and another judge may disagree that's not in compliance. So, there's going to be room for inconsistencies all over the place, but that's the one area where it's left up to the discretion of the judge to determine what impact not complying will have, but since is directly tied to speedy trial, then it might be that we are not ready in the case could be dismissed because of it.

COUNCIL MEMBER COHEN: And--

BRIDGET BRENNAN: We're unable to take a plea if we haven't complied with discovery.

COUNCIL MEMBER COHEN: [inaudible 01:09:45].

BRIDGET BRENNAN: So, we still have ticket the stenographer's grand jury minutes even if a defendant has pled gui-- or wants to plead guilty or whatever.

COUNCIL MEMBER COHEN: Well, someone mentioned a waiver. I--

BRIDGET BRENNAN: That's kind of complicated. Jack, do you want to explain that? The waiver has to be offered by--

[laughter]

BRIDGET BRENNAN: has to be offered by the defendant. The prosecutor can't make anything conditional and so, a defense-- you know, if the defendant says, oh, I just want to waive all discovery and plead guilty, I think it can be done then. But, those are the only-- that's the only circumstance under which it can be done. That's my understanding.

DISTRICT ATTORNEY RYAN: It sounds like the defense can offer us a plea and we can accept as opposed to us offering them a plea. We can't condition a plea offer on them waving discovery, but

if I'm reading it correctly, they can make us an offer and we can accept. I could be wrong.

BRIDGET BRENNAN: It's convoluted.

COUNCIL MEMBER COHEN: Again, I apologize that I'm not clear on the practice. The protective order-- Is the protective order and ex parte application or is that--

DISTRICT ATTORNEY CLARK: Yes. It's ex parte.

COUNCIL MEMBER COHEN: All right.

BRIDGET BRENNAN: But, the defense attorney has to be alerted that there has been an ex parte application.

DISTRICT ATTORNEY CLARK: Right.

BRIDGET BRENNAN: Which, to some defendants, some of the defendants I prosecute, triggers-- I shouldn't use that word. Suggests that there is somebody who's cooperating which can put a witness in jeopardy.

DISTRICT ATTORNEY VANCE: I think it's safe to assume that the courts will be required to deal with thousands more requests for protective orders as these cases unfold which is, of course, self an ongoing reoccurring cost of detective

personnel and everything that along with an order of protection.

COUNCIL MEMBER COHEN: Thank you, Chair.

CHAIRPERSON LANCMAN: My last question of the district attorneys. Some of the legislation that was passed could be implemented earlier than January 1st. I understand that some of the things that were passed which we spent most of our time talking about require procedural changes, new mechanisms in the office, new technologies, but any consideration, for example, to just applying the new bail statute, for example, in circumstances where it would be applicable early?

DISTRICT ATTORNEY VANCE: Well, as I indicated, we are trying to test out how this is going to work in practice with trials within the office. And so I think we are hopeful that we will understand what is really needed and then I think we will move as expeditiously as we can, but I do think January is-- were going to need all the time between now and January to be ready to be operational under these rules in January.

DISTRICT ATTORNEY GONZALEZ: In Brooklyn, Councilman, we are working on seeing how we can do

that. One of the things that, you know, has, I think, delaying us is that, currently, there is no pretrial services. Everything is predicated that the appropriate offenders who need supervision would pretrial services is-- There's still nothing to be done with our domestic violence cases, for example, and trying to figure out a supervised release program for domestic violence offenders. So, even in some of the-- what you would think would be simpler type of cases, misdemeanors, there is still concern about the services being built out. Who is going to build them? You know, is that going to be a responsibility of OCA? And, you know, as I have been told, you know, there is nothing really in the immediate future and people are still scrambling for-- you know, I've been asked to support various different organizations as they are looking for funding to build out programming and services. So, I think we are eager in Brooklyn to start beta testing what this would look like in many areas, but we need some of the supporting programming around us to do that.

DISTRICT ATTORNEY CLARK: And I think that's true with all of us. I would like to do it sooner, too. But we have to test to see what is

really needed. What we can do and what we cannot do. So, were going through the inventory. We're going through the work and seeing where, you know, where the effort needs to be in order to get this done. But, you know, if we can do it sooner, fine. If not, we're going to need until January 1st. but I think it's going to take a concerted effort of all of us and the other stakeholders to really see how we can make this work.

DISTRICT ATTORNEY VANCE: So, if I can just give you some numbers for Manhattan which I hope will be illustrative. Of the 9500 people who had bail set on them for Manhattan cases in 2018, 71 percent, just over 6000 fall into the mandatory release category. So, 6700 of that 9100 would be released and presumably would need the services that come from supervised release and, in supervised release, served 1040 people in Manhattan alone. It serves about 4500 citywide and the Chairman knows about the origin of the program. And what we're going to see, as I said, as we are-- It's estimated at a minimum of a think we're going to have tens of thousands of supervised release cases in the upcoming year. And I can only scratch my head how you-- how

one could pass laws, however well-intentioned, without stepping up to the monetary requirements on a continuous funding stream in order to make it work. I just don't know how that happened.

DISTRICT ATTORNEY MCMAHON: I would just say you give me what I asked for in my budget submission, Mr. Chairman, in June and we will start these programs, including bail reform, before the end of the year.

COUNCIL MEMBER COHEN: Yeah. Actually, I'm a little dubious of that claim. Just knowing how, if you needed money for discovery, to implement this discovery, to speck a system, to decided what you want to do and how you want to do it, it doesn't seem like there's a lot of time even if you get the money in this budget right now for, you know, to acquire the stuff, procurement. I mean, it seems to me that that is an incredibly tight timeline if resources weren't in question and, you know, who knows how that will shape up, but I'm very-- I find, again-- You know, I appreciate, you know, that the will is there, but whether or not, you know-- you know, based on-- there doesn't even be a consensus on what the system will look like, how will we get in

compliance? The idea that we could appropriate the money that you could decide what you-- how you want to spend the money and acquire the equipment and hire the people by January 1st seems to me to be incredibly ambitious.

DISTRICT ATTORNEY MCMAHON: I wish, Councilman, that the state legislature had called you as an expert witness and listen to you. And you're right. The time for implementation, even going in whole hog, if you will, will take time. However, there are some elements that we can commit to and start to. But I think what your question shows is that you understand how complicated this is and how resources are needed to do it. From stenographers to paralegals to detective investigators. To be able to meet these requirements, we need that help. And I think-- I hope you understand that we are all committing to do it as much as we can, but we can't do it with the current systems and personnel that we have in place.

DISTRICT ATTORNEY CLARK: Council member Cohen, all I can say is, from your mouth to God's ears. That's what we need somebody to understand that. Thank you.

DISTRICT ATTORNEY GONZALEZ: And--

DISTRICT ATTORNEY CLARK: Thank you.

DISTRICT ATTORNEY GONZALEZ: And additionally, I think all six officers are at different places in terms of capacity. In a, DA Clark talked about the need for data, a management system, but yet we have needs in hardware to do electronic discovery. And so we are all at different places. It's not a lack of oil of any of us. It's just a different realities on the ground.

CHAIRPERSON LANCMAN: Thank you all very much. Next we will hear from the Mayor's Office of Criminal Justice. All right. Now all we take testimony from the Mayor's Office of Criminal Justice. If you could raise your right hand. Do you swear or affirm the testimony are about to give is the truth, the whole truth, and nothing but the truth?

PANEL: I do.

CHAIRPERSON LANCMAN: Thank you. Please proceed.

SERGEANT-AT ARMS: There we go. There you are.

SUSAN SOMMER: Great. I get to start all over again. Good afternoon, Chair Lancman, members of this committee. I am Susan Sommer, General Counsel to the Mayor's Office of Criminal Justice. On behalf of the office, I thank you for the opportunity to testify today. MOCJ advises the mayor on criminal justice policy and is the mayor's representative to the courts, DAs, defenders, State Criminal Justice Agency, advocates, and others. We design, deploy, and evaluate citywide strategies to increase safety, reduce unnecessary arrests and incarceration, improve fairness, and improve strong neighborhoods that ensure enduring public safety. We appear before you today to discuss the opportunities presented by key criminal justice reforms particularly relating to bail and our offices leadership. Those key criminal justice reforms were enacted as part of the state budget bill which will take effect January 1, 2020. We wish to share with you some of the city's efforts to date to lead and facilitate implementation of these reforms. They are broad in scope and impact. These reforms enact significant changes throughout the pretrial process for persons accused of crimes in New York State.

Under the new law, cash bail and pretrial detention will remain available as options only for the most serious offenses, including sex offenses and most violent felonies. The new law requires expanded use of desk appearance tickets, rather than custodial arrests for most misdemeanors and class E felonies with certain exceptions. Unchanged is the mandate that all decisions regarding pretrial release or detention be based on consideration of an accused likelihood of return to court. The state budget bill will slow and ask important changes to the state's laws on criminal discovery, including new statutory timeline by which prosecutors and defense attorneys must meet their mutual disclosure obligations, as well as speedy trial reforms. The bail reform legislation can be expected to drive the city further on a path well underway. Already, New York City judges release on their own recognizance approximately 70 percent of the individuals who are arraigned. At the same time, New York has enviable appearance rates with about 86 percent of individuals returning for all their court appearances. The recently enacted bail reforms can be expected to expand release, further reducing bail and attention.

It can also be expected to increase use of alternatives that, as evidence and intercity zone experience have shown, are highly effective at ensuring an accused's continued appearance in court. These options include court appearance reminders supporting the community by not-for-profit agency providing supervised release and reasonable restrictions on travel. These reforms thus, against a backdrop of increasing safety and decreasing use of jail in our city, a project of the concerted effort of many individuals, organizations, and criminal justice partners throughout New York, including the Council. Today, more New Yorkers can learn, earn, and play more safely in their communities than they could five years ago. When this administration began developing and deploying some of its signature criminal justice initiatives, including those related to reducing the number of people held in pretrial detention. In this span, our city has achieved the lowest incarceration rate of all large cities in the US, while remaining the safest. When Mayor Bill DeBlasio's administration began in January 2014, over 11,000 people were in the city's jails every day. Today, that number is in the range of 7500, more than

a 30 percent decline in the fewest number of incarcerated people since 1980. At the same time, serious crimes have fallen by 14 percent. By democratizing the development and deployment of our criminal justice initiatives, the city has maintained a careful balance between safety and fairness. The recent statewide criminal justice reforms have prevented us with an opportunity to press forward, yet further on these important fronts, building off the backbone of initiatives already well underway in New York. MOCJ is working hard with our criminal justice partners to ensure the city is ready on January 1, 2020 when the new measures take effect. The cities work towards implementation of these new changes and involves enhancing existing initiatives aimed at reducing unnecessary pretrial detention, as well as coordination of the efforts of multiple justice partners, including the courts, the police department, District Attorney's Office in's, criminal defense providers, service providers, and advocates. Central to our efforts to respond to the new laws provisioned for nonmonetary conditions for release is adapting and building off of supervised release, and nationally recognized model for community-based

supervision of pretrial defendants, spearheaded by our office and initially funded by the Manhattan district attorney. Since its inception, the program has served over 12,000 people and, in 2018 alone, prevented over 4500 people from being admitted to jail. New York courts will soon have at their disposal another important tool. An updated CJA release recommendation system to help judges assess who can be both released on their own recognizance and counted upon to return for their pretrial court appearances. This is an updated state-of-the-art databased analytical technique to improve accuracy while avoiding the calcification of historical criminal justice and equity. Court of Appeals Chief Judge Janet DeFuri (sp?), in her 2019 stated-- judiciary address stated that one of the key purposes of this tool is to address disparate impacts on racial groups at this critical pretrial state and noted that the new system will enable our judges to make fair, accurate and responsible determinations to avoid unnecessary pretrial detention. The combination of these reforms can be expected to dramatically reduce our general population. Indeed, we have updated already our borough-based jail plan

to reflect and anticipated reduction in the jail sentences from 5000 down to a population of 4000. In addition to building a smaller system, we are also announced that we can complete construction of these four borough-based jails by 2026, ahead of schedule. In recent weeks, we have convened many, many meetings and discussions among our criminal justice partners to coordinate preparations for implementation of the new bail, discovery, and other reforms with extensive engagement, planning, and collaboration to come. We are also using our existing coordination bodies, including the justice implementation task force and supervised release steering committee has additional forums in which to exchange ideas, share concerns, identify needs, and develop resources. We stand at a moment of tremendous opportunity and we readily accept our shared responsibility and our leadership and our responsibility to head the charge with our partners as we work to get it right. We think the Council for its attention to these issues and we also think the New York State Legislature and Governor Cuomo for enacting these important criminal justice reforms.

CHAIRPERSON LANCMAN: Thank you. So, you were here, I believe, while the district attorneys were testifying and they seem to indicate-- not pointing any fingers-- that there does not seem to be an organized effort to have all the stakeholders and those responsible for implementing these new rules sitting around the proverbial table and working it all out and figuring out which agency needs to do what and in which way how much money does the city need to kick in and how much money do we need to go hat in hand to this day for, if that's even realistic. How has MOCJ been working with the Office of Court Administrations, the DAs, the Department of Correction, the public defenders, the NYPD, the district attorney's to make sure that the laws that were passed up in Albany actually happen? Or has MOCJ not assumed that role?

SUSAN SOMMER: MOCJ is very actively taking leadership over the many complex parts of implementation of these new reforms. We have convened meetings that are occurring on virtually every day of the week with our different partners. OCA, district attorneys, public defenders, office representatives, advocates, police department. We

have convened meetings that are across section and meetings with individual groups. I think we are very actively engaged in hearing from our partners what they perceived to be their needs and trying to come up with solutions. And we have also been meeting as well with experts and others to try to plan so that we are as ready as we can possibly be January 1. I'll add that we also have been building also have a lot of work that is already been done by our office and in partnership with all these partners. So we start from a position where we already have, for example, models supervised release programs and are evaluating ways that we can build off of all these initiatives.

CHAIRPERSON LANCMAN: Well, I mean, you were here. By mischaracterizing the district attorneys testimony when they seem to indicate that there was no central driving force or organization behind getting all these reforms implemented in getting the DAs and presumably other agencies the resources that they need? I mean, that's what I heard from them. What would be the breakdown, then, in the communication or this effort that the district

attorneys don't see that level of organization and focus on the part of the administration?

SUSAN SOMMER: Well, I know that we have been engaged extensively with them in, however-- you know, whatever characterization one might offer, they also have reported that there been multiple meanings that they are in the midst of making determinations as to what their needs are. We are eagerly awaiting all the information that we are actively trying to, with our partners, gather and process. We are committed to our coordination and leadership on this issue. We can call it by whatever name we call it. We use our justice implementation task force, our supervised release working group, our regularly convened meetings and with six weeks then, we can now pick up the pace as we get more information in. We are definitely committed to leading the charge and being ready on January 1.

CHAIRPERSON LANCMAN: Okay. Because, you know, the budget passed-- the state budget passed April 1 in all these reforms, if I'm not mistaken, where shoved into the budget. So, it's been, you know, six weeks. Eight weeks. Whatever it's been. Does MOCJ yet have a blueprint for what all of the

stakeholders in New York City have to do in order to be ready on January 1st? Here's what the DAs need to do and here's what the police need to do and here's what the Department of Corrections needs to do and whatever other agencies are involved. Is there any written roadmap that people are working off of?

SUSAN SOMMER: We are actively working on gathering and being responsive as the first-- one of the first steps. What are partners are identifying as their needs while we point out, as well, directions to go in. But we are right now and a very intensive engagement phase learning more about needs and assessing the array of supports that already we have in the city and can build off of.

CHAIRPERSON LANCMAN: So, let me ask when we shift from assessment to plan of action and I'm going to tie that into what was going to be my next question news I did not see anything in the mayor's executive budget that was towards implementing or ensuring that these new reforms are getting implemented. So, when do we move from assessment to, okay, here's whatever agency needs to do and, if there wasn't anything in the executive budget-- and happy to be corrected if I'm wrong-- when are we

going to be told, okay, here's what all of this was going to cost.

SUSAN SOMMER: Again, we are very actively involved in assessing what the costs might be in working with our partners. We just heard from the district attorneys today that they, themselves, are determining what they think costs could be and we are working on evaluating what needs will be. This is not the only opportunity to make determinations about what might be needed in terms of budget.

CHAIRPERSON LANCMAN: Well, when do you expect to know or to determine? Right? This thing-- the lock accent on January 1st and we in the city don't have the ability-- for what it's worth I don't have the inclination, regardless-- but don't have the ability to delay any of these reforms. So, is there, within MOCJ, which is viewed by everyone-- I think the Council, the district attorneys, the pilot of this ship, is there a day work, okay, here's where we are going to determine what everyone has to do and were done with the assessing. Here's the plan.

SUSAN SOMMER: Right. So we are, again, working very hard with Manny, many partners in a complex process involving what is a historic

criminal justice reform, unseen, I think, in the professional lives in years of professional practice for many, many people who are involved in the system. We need to have a specific date, but we are very aware that there is a specific date that Albany has set for the city and that is January 1 and we are committed to being ready on that day.

CHAIRPERSON LANCMAN: Okay. Let me ask you about another specific date which I think is June 30th which is when I think our budget in the city has to get done. Is MOCJ going to come to the Council before that June 30th date and say we have looked at what the NYPD needs to do and what the DAs need to do in the department of corrections needs to do and everybody else needs to do and here is what it will cost. X millions. Hundreds of millions. Billions of dollars. Are we going to have that? Do you anticipate having that in this budget?

SUSAN SOMMER: I could not make a commitment or set a timetable. What I can tell you is that we are, as you can hear today, working on what is a very complicated multifactor process that involves they estimate some predictions of many partners and we are gathering all that information

very actively. And we to understand the great importance of what this means for the city. What this means for our partners. And the looming January 1 deadline.

CHAIRPERSON LANCMAN: Are you working with OCA? Are they part of this conversation such as it is?

SUSAN SOMMER: I'm sorry. I don't--

CHAIRPERSON LANCMAN: Are you working with OCA? The Office of Court Administration? You're engaged with them on this?

SUSAN SOMMER: Absolutely. I think, you know, not a day or two goes by without a meeting and consultation with them. We are very actively engaged with them on this process.

CHAIRPERSON LANCMAN: You know, we asked them to come here sparingly, so I'm going to ask if you know whether or not OCA is going to be adding any DAT parts? You heard the district attorneys. I think one of the DAs mentioned a concern on the cap of number of DAT is that a court will hear on a given day which now seems like it's not realistic. Do you know if they are-- what OCA's going to do to expand its capacity there?

SUSAN SOMMER: I can't speak for OCA, but I know that they are working hard, as well, to evaluate what will be needed going forward and they are engaged in discussion with the array of partners that we have been telling you are part of the consultation process today.

CHAIRPERSON LANCMAN: Well, talk about supervised release because it's at the center of a lot of what hopes to be achieved. Currently, virtually all the people who are going into the existing supervised release program will not be participating in supervised release, correct? That those folks who are currently eligible for supervised release-- what do you anticipate will the bail reforms be on the current population who are going to supervised release programs?

SUSAN SOMMER: Well, the new Bell reform law does not necessarily disqualified from supportive services or nonmonetary conditions. The kinds of individuals who are currently in supervised release, of course, that will be a determination squarely on the shoulders of the courts. The new bail reform law makes judges responsible for making determinations regarding release on recognizance or

nonmonetary conditions or, for those eligible, something like bail or detention.

CHAIRPERSON LANCMAN: Uh-hm. Do you think that we need to expand the eligibility of supervised release? As you know, right now, it's somewhat restrictive as to what level of offense a person is charged with that will make them eligible. I know there's a bail-- there's a pilot, rather, in Brooklyn. Can you talk about the thinking of making supervised release now available for people who have committed or alleged-- excuse me, alleged to have committed more serious offenses for whom cash bail is still, in my view, unfortunately, possibility?

SUSAN SOMMER: So, New York City strong the places anywhere in the state, potentially anywhere in the nation, with a very strong supervised release program already. As you know, it is largely for those who are not people who have those kinds of felony convictions, although we are piloting program and are pleased that we have that underway. We very much recognize that a bail reform law means that a number of people that judges in the past may have been setting bail on and who may also have been detained, will no longer be eligible for either and

the-- clearly the new law is driving towards nonmonetary conditions or more and, in the what could be a very large and expanded back at four nonmonetary conditions, we are working very hard on evaluating what would be appropriate and, again, fortunately, we have a nationally recognized supervised release program, so we already have a lot of lessons learned that we will be building off of.

CHAIRPERSON LANCMAN: Similar show in supervised release, the district attorneys, several of them expressed concern that people who now will be released on their own recognizance or some kind of supervision who previously were going to be detained because they couldn't make pale, that there be pretrial services and other programs available to that population. What is MOCJ's thoughts on that and what needs to be built out or build up in order to provide those services to people, which, the district attorneys themselves thought were necessary to keep them safe and us safe while people are out waiting resolution of their case?

SUSAN SOMMER: So we are hearing extensively from the man consulting with our own experts and others. We understand that pretrial

services can be a very effective tool and we are exploring options and responses.

CHAIRPERSON LANCMAN: Have you any thoughts on any of the different kinds of programs that may be readily built up or expanded?

SUSAN SOMMER: Again, we are fortunate to have such a sort of strong backbone already in the city with a number of really excellent providers and with programs already underway. So we, fortunately, have a lot of expertise to draw on. We are actively looking into what will be-- make most sense under the new reforms.

CHAIRPERSON LANCMAN: Just to go back to MOCJ's role in leading the effort to get all of this done, is there a person at MOCJ who is the person who is the one responsible for shepherding all of these different stakeholders towards figuring out exactly what needs to get done or making sure it gets done? I hate to use the term Czar, but is there a state criminal justice reform implementations Czar? Who is overseeing this MOCJ?

SUSAN SOMMER: Well, this is so important and such a large undertaking that the work, you know, is-- starts at the top with, of course,

our Director Glazer and a few of us are the active leaders of the charge. But the work calls upon so many elements of the office that I can say that we have enlisted a whole number of us who are very actively working on this.

CHAIRPERSON LANCMAN: All right. Let's talk about electronic monitoring. How do you foresee-- what to you first see the role of electronic monitoring to be in the new regime now that that's very much on the table?

SUSAN SOMMER: So, the new bail law, of course, specifically provides reference to electronic monitoring as a potential option under certain circumstances for judges and we are looking at whether, you know, will judges be interested in that? There are a number of challenges, particularly in the city of New York City's density and our sort of special geography and ecosystem. For example, just even what happens if you are in the subway or in a high-rise? So, understanding that there may be a number of shortcomings. We are meeting with, you know, experts and others to determine its efficacy and usefulness and what won't be-- what may be available and how to make it fit into a larger

picture. We, of course, have for years been committed to reducing of not only our general population, but lightning the touch of the criminal justice system on individuals. So we are exploring what can keep the city both safe, but also promote fairness, as well.

CHAIRPERSON LANCMAN: Uh-hm. I know that MOCJ has always-- well, always. At least my time here, you know, has, I think, express sensitivity to concerns about over monitoring people and setting people up for failure and then greater problems in the criminal justice system. I assume that you are looking at electronic monitoring with that same mindset? Right? There's a tremendous amount of concern, as you know, that electronic monitoring will become the default, the go to for judges who institutionally are concerned about being the judge and ending up on the front page of the New York Post because they let out somebody who then did something terrible. So just reiterate what I understand to be MOCJ's philosophy when it comes to these kind of things.

SUSAN SOMMER: Thank you, Chairman. We certainly appreciate your words on the subject and

have been listening very hard to many others and understands the concerns around electronic monitoring. We also understand, you know, there are those who-- including those who represent and support individuals who have been involved in the criminal justice system whom my under certain circumstances feel that it's actually, perhaps, the most viable option. So we are in a phase right now trying to assess the alternatives and be very-- we are mindful of the principles that you articulated. Absolutely.

CHAIRPERSON LANCMAN: And just a couple more questions for me. There is a new emphasis in the law requiring the court to consider an individual's ability to pay and those circumstances where bail, cash bail, can still be set. As I'm sure you know, the Council funded a program run by Vera in the Bronx and Queens which tries to inform the court of what a person can legitimately pay. Seems to be successful from what we are hearing, but have you considered, is MOCJ considering looking hard at whether or not that program should be expanded on the pilot and just a couple of days a week in Brooklyn

and Bronx and Queens to go citywide and perform the vital service?

SUSAN SOMMER: We are looking at the Vera model and what are now like the early results. We've been looking at ways to help judges have the tools that are most effective for them and that they need and also consistent with defendant's interest and defenders and prosecutors, as well. So we are definitely exploring possibilities.

CHAIRPERSON LANCMAN: And can you just give us an update on the risk assessment tool that CJA was working to update? We had understood that that it was going to be significantly changed. There was some conversations, some great things. Then we heard that it was not going to be significantly changed. Where are we on the CJA new risk assessment tool?

SUSAN SOMMER: So, they updated CJA release assessment tool is going to bring significant changes from the 2003 version that is currently in use. CJA, with the team of experts MOCJ supports after the new bail reform passed, looked at the data and the tool and met with some of our partners and it remains every bit as much, if not more, important now

and we asked on the process-- we've been piloting it in a sort of qualitative approach and we expect that it will be rolled out in time to help pay part of the implementation of the new bail reform laws. And, actually, we think it's going to be potentially an incredibly useful tool that much more so even than before.

CHAIRPERSON LANCMAN: So, one more and then I will go to my colleagues. The new DAT procedures, do you know when the patrol guide is going to be updated to inform officers of those processes? We have had more than a couple of circumstances where the police department has testified at a hearing that they are going to do X, Y, and Z and months later the patrol guide hasn't been updated. We view this. This is a hard and fast January 1st deadline. There is clearly a Council request. So I hope that the patrol guide is going to be updated on December 31st and then they're going to start training people. So, can you tell us what that rollout looks like for the NYPD?

SUSAN SOMMER: What I can tell you is that NYPD is extremely mindful of the responsibility and changes that come with the new law. Actively

working on this. We have meetings regularly including as recently as yesterday with other partners and they are actively working on what will be needed to implement the new law and be ready.

CHAIRPERSON LANCMAN: Council member Cohen. Let me just mention we have been joined by Council member Debbie Rose from Staten Island.

COUNCIL MEMBER ROSE: Thank you.

COUNCIL MEMBER COHEN: Thank you, Chair. I suspect the chair may have asked this while I was out, but I did read your testimony and I'm curious if you-- I thought the testimony of the DAs was not overly optimistic in terms of being able to be ready on January 1st in terms of discovery. I don't know what your assessment is and even their-- what they need did not seem to be crystal-clear in terms of being in a position to comply. I don't know if you have an assessment of that and if you have an assessment of needs, but if you can share.

SUSAN SOMMER: Well, I love repeating myself, so all good with me. But I think as I testified earlier, we have been actively working with the District Attorney's Offices I may have been actively assessing their needs. We understand that

January 1 was a deadline that the state has given to New York City, as well as every other county and municipality. It's an aggressive deadline, but we are working very hard to help be ready to meet that. So, you know, we understand that there is tremendous urgency here and are working with the district attorney's and I know they are working hard, as well, to get ready.

COUNCIL MEMBER COHEN: But just with issues around procurement, hiring people, and do you-- you can set some point we could maybe check in again and find out where we are at, but it seems to me to be-- I mean, maybe there could be some incremental progress on January 1, but I can't see how they can go suddenly from not making discovery on 70 percent of the cases to making discovery on 70 percent of the cases. It's just the infrastructure doesn't seem to be there.

SUSAN SOMMER: So, the circumstances for the District Attorney's Offices do vary some among the offices, but we are very--

COUNCIL MEMBER COHEN: [interposing] But even district attorney Gonzales who, I guess, is leading the charge, and did not seem to be-- reading

into his testimony, he didn't seem particularly optimistic that he would be in a place on January 1st.

SUSAN SOMMER: We have been given-- the new criminal justice reforms, including the discovery reform, pose great opportunities and also great challenges and we are very mindful that the clock is running. So we are working really hard and so are they. We know in order to, you know, get everything in order for January 1.

COUNCIL MEMBER COHEN: Is there like a peace dividend? I gave in for electronic monitoring, I have-- I don't know what it cost to have somebody be electronically monitored, but I have to imagine it substantially less than keeping someone on Rikers. Do you have the ability or does your agency have the ability to sort of allocate-- one is that in this reduction of the population at Rikers, which is something that everybody should be very proud of and it's substantial, I don't know if there is like a peace dividend if there is been-- if correction is so much money they don't know what to do with it, that we can allocated to this, but is that something-- is

there a peace dividend here? Is the money to be moved around?

SUSAN SOMMER: Well, you know, the-- we are evaluating what all the costs and benefits are and whether electronic monitoring serves the function that one might want or think and what the costs are in the benefits of that are, as well. So, as well as what it means in the short term. You know, I don't think we can expect to see, you know, all the peace dividends, perhaps, that may lie further down the road. That will take some time to realize.

COUNCIL MEMBER COHEN: But have we-- doing-- As the population has declined and declined dramatically at Rikers, has operating Rikers become less expensive for--

SUSAN SOMMER: You know, we don't have-- I didn't come today with actual like numbers or data, but as a general matter, you know, there's still hard costs and infrastructure costs that are necessarily as sensitive. It's not like a one-to-one trade at all. At all.

COUNCIL MEMBER COHEN: Thank you, Chair. Thank you for your testimony.

SUSAN SOMMER: Thank you.

CHAIRPERSON LANCMAN: Council member rose? Anything? No? Good. Just one second. All right. I am going to talk to the leadership of the Council about the possibility of putting Annabelle and getting it passed lickety-split that create some kind of task force or governing organizing body that is charged with owning the shepherding of all the various stakeholders who need to get things done to get this loss active and real on January 1st to make that happen. And MOCJ would be the natural, the expected organization. I appreciate your testimony and I'm glad that we had this conversation. I want to leave you with my impression that, to continue the metaphor, that the ship is really being piloted the way it should be and that's not just me saying that. That was the district attorneys saying, as well. Or at least implying it strongly enough I'm getting the sense. So please take that back to the powers that be and I really do look forward to working with you and everyone at MOCJ to make sure that this law is fully implemented by January 1st. And if you get us some numbers, some budget numbers, we'd be more than happy to, to the extent that we can, advocate for getting the funding that is necessary, that's truly

necessary, done in this budget. If we end up waiting until November, I am very concerned that-- and we haven't heard from our friends in the public defender's offices yet. I'm very concerned that they organizations that have tremendous amount of work to do to make this new law work, they're just not going to have the time to do it.

SUSAN SOMMER: Thank you. If I might respectfully say I believe the work really is underway. We can call it by whatever name. A rose over whatever we wish to call it, but MOCJ is, in fact, at this stage, has been convening what, in effect, is a-- in effect is a taskforce and working within the structure of some we already so. So, you know, making it more formal today or for us, as we've been contemplating, making it more formal shortly doesn't really change our fundamental commitment to take on this shared responsibility and to lead. So I--

CHAIRPERSON LANCMAN: So--

SUSAN SOMMER: appreciate that.

CHAIRPERSON LANCMAN: I do. And I don't question your commitment. I don't question anything. I'm just saying we've had big ideas. The city has

struggled with implementing significant criminal justice policy changes. I don't think that anyone thought that the rollout of moving the juveniles off of Rikers was as smooth as it could be. I think the administration had not planned for who was going to be staffing Horizon and I was kind of small and very easily defined compared to this thing. So, let's just try to do everything we can organizationally take it from here to there, which I know that you want to do. That's all. All right.

SUSAN SOMMER: Thank you. And we look forward to this ongoing work and we appreciate the Council's partnership. Thank you.

CHAIRPERSON LANCMAN: Likewise. Thank you very much.

SUSAN SOMMER: Thanks.

CHAIRPERSON LANCMAN: Okay. Now we will hear from various public defender organizations. I understand there are representatives from Brooklyn Defender Services, New York County Defender Services, the Bronx Defenders, Legal Aid, and Brooklyn Defender Services. So, come on down, please. There you go. Ready? All right. Let's raise our right hand and get sworn in. Do you swear or affirm to the

testimony you're about to give is the truth, the whole truth, nothing but the truth? Thank you. Let's set the clock at five minutes each with no requirement that use the full five minutes and we will begin.

YUNG-MI LEE: Good afternoon. My name is Yung-Mi Lee and I'm a supervising attorney at Brooklyn Defender Services. I want to thank you for allowing us to testify today. In my written testimony, I go into detail about the pretrial justice reforms enacted earlier this year, but today I want to focus my oral testimony on electronic monitoring or what many are calling electronic shackling. But first I just want to pause to speak about how historic all of these reforms are in New York. Many more of our clients will never have to step foot in jail again and it will be a vast departure from today's reality. And they will finally be statutorily entitled to all of the evidence in their cases, except in the rarest of circumstances and not have to do with protective orders. Given the devastating impact that every 24-- maybe even 24 hours in jail can have on a person, particularly a young person or a person with a health

condition, this changes-- sorry. This change exemplifies the major improvements to justice in New York and may likely save lives. While money bail was not eliminated entirely, the goal and intent of maximizing the decarceration and our ROR is clearly evident. In cases where money bail is an option, judges must first consider ROR and then release with the least restrictive necessary conditions as the alternative. The first is pretrial services and the second is electronic monitoring. Implementation of electronic monitoring not only raises concerns about net widening, which is also true for pretrial services and, if we are talking about limited resources and funding, we have to be very concerned about net widening. But electronic monitoring also raises concerns that it can look like a jail sentence in the form of house arrest and that can-- and that it can also be used to unlawfully engage in surveillance, which is, obviously, an invasion of privacy. We must keep in mind that electronic monitoring should not look like a postconviction sentence. All people must be afforded the presumption of innocence. Information on an electronic monitoring of the pretrial context is

limited as other jurisdictions are beginning to use it, as well, in the pretrial services context. New Jersey's spell reform also allows for electronic monitoring, but its impact has not been fully analyzed. Electronic monitoring can take on two forms. The first is GPS tracking and the second is radiofrequency. Both forms can result in unnecessary technical violations based on faulty equipment and battery issues and, therefore, result in reincarceration or, just plainly, incarceration. Both forms also require wearing an ankle monitor that is obtrusive and noticeable. The visibility of these devices clearly have collateral implications, especially in the employment context. No one wants to go to work wearing, obviously, very noticeable ankle shackle and can bring shame and embarrassment. And this is true for those people who have had electronic monitoring imposed on them. The legislature restricted the use of electronic monitoring to only certain cases and prohibited any fees to people compelled to use it. Still, the risk of net widening and other harms or remain serious. EM raises privacy concerns that have nothing to do with ensuring an individual's return to court and I

asked to the city Council to seriously consider how electronic monitoring must be used in terms of budgeting for the use of electronic monitoring. First, if GPS tracking is used, it creates the potential for not just unlawful surveillance, but also unlawful data-gathering. There are two private companies. For example, Ententi-- I don't know if I'm pronouncing it correctly, and Satellite Tracking, which have been known to have contracts that specify the data will be kept for several years, long past the termination of the criminal case. It's clear that if electronic monitoring is going to be implemented, private companies will have to be used as they are the manufacturer's and they also know how to maintain the equipment. I urge the city Council that if GPS tracking is used for electronic monitoring, that the city passes legislation to ensure absolute transparency and to ensure that data is not gathered where it can be kept indefinitely, including by any private corporations. Any records that are obtained should be destroyed after the termination of a criminal proceeding. Radio frequency electronic monitoring is also known as curfew monitoring and, with the radiofrequency

monitoring, even though an ankle bracelet or ankle shackle has to be worn, it's simply a device that's placed at the home and, as soon as the person returns home and they are within 50 to 150 feet, and alert is set off to the monitoring agency which allows the agency to know that the agency is remaining and still within the jurisdiction which is what the legislative intent was. In short, electronic monitoring should only be used to ensure an individual's return to court and that he or she remains within the jurisdiction. Radiofrequency is sufficient to monitor the individual's compliance. Using radiofrequency also has less potential for unlawful surveillance and data-gathering. And it should clearly be used only in those cases where money bail or jail is the alternative, which is always the better option than Rikers. That's all I have to say about electronic monitoring. Thank you. Sorry.

ELI NORTHRUP: Thank you. Chairman Lancman, my name is Eli Northrup. I am associate special counsel to the criminal defense practice at the Bronx Defenders and I think you for the opportunity to testify here today about this important matter. I testimony today focuses on the

implementation of the new bail statute. As we sit here today, far too many of our clients are held at Rikers Island or the Vernon C. Bain center, otherwise known as the boat, isolated from their families and support networks. Unable to go to school, to work, provide for their families, make medical appointments. The overwhelming majority of people are there because they were arrested and cannot afford bail. People who are presumed innocent, placed under enormous pressure to plead guilty, simply to extricate themselves from these awful conditions. And I heard the testimony earlier of the DAs mentioning all the costs of these new reforms and I think we would be remiss if we didn't mention the human and financial costs to our clients, their families, their communities that they have endured which led to the necessity of these reforms. With the passage of this bail reform in Albany, we have an opportunity to radically rethink how pretrial detention and pretrial release operate. The new statute reflects greater fidelity to the presumption of innocence and makes clear that liberty must be the norm. The tension should be used sparingly, if at all and we must seize this moment to make these goals

a reality and to reorient the city's resources and culture towards dramatic decarceration. We recommend that the city take the following steps:

Eliminate charge based eligibility restrictions for pretrial services, and, Chairman Lancman, you mentioned this in your question earlier, as of this past Sunday, 42 percent of the Rikers Island population consisted of people charged with violent felony offenses. That's 3229 people awaiting trial, the majority of whom are incarcerated simply because they can't pay bail. As it currently stands, the city's supervised release program would not accept any of these individuals or anyone charged with any of the crimes that are eligible for money bail under the new statute. This means that if no changes are made to the supervised release program, the only people enrolled in it are people who are not eligible to be held in jail. Thus, supervised release would cease to act as an alternative to incarceration, which was the purpose for which it was created and, instead, will only serve to widen the net of individuals under state supervision. This contravenes the primary goal of the new bail statute, which is to incarceration. Thus, as a first step,

the city must eliminate charge based disqualification for pretrial services programs. The city must also target pretrial service resources towards people charged with violent felony offenses. The emphasis should be on determining ways to release these individuals under nonmonetary conditions. New York City has a chance to reimagine the pretrial services regime. The city should reject pretrial services that focus on supervision and compliance with onerous conditions such as electronic monitoring and drug testing and instead moved towards a supportive release model with an emphasis on ensuring individuals who are facing criminal charges have the support they need to return to court. The best way to do this is to provide tangible supports, such as cell phones, access to transportation. These actions have demonstrated positive effects on return to court. It's critical that pretrial services not simply book, new mechanism of surveillance and control. And, in most cases, the least restrictive conditions that will reasonably ensure a person's return to court are no conditions at all.

Moving on, the new bail statute requires judges to take an individual's financial

circumstances and ability to pay into account when making bail determinations. To effectively obtain accurate information about this, defense attorneys should serve as gatekeepers between their clients in the independent organization that conducts the interview. There is a model for this process already in place. The Vera Institute created a bail calculator questionnaire which piloted over the last year and we are recommending that this practice continue and specifically about the calculations be made at the defense attorney's request.

Finally, the city should direct resources to provide for people before they even reach the court system. Under the new law, most individuals charged with misdemeanors and nonviolent felonies must be issued an appearance ticket from the NYPD rather than being arrested and put through the system. Arraignment will be scheduled within 20 days of the issuance of the ticket. In the interim, many of these individuals will seek legal counsel from defender offices. This change will necessitate increased funding to enable the city's public defenders to effectively represent and advise large numbers of potential clients seeking legal assistance

prior to agreements with the hope of resolving these cases expeditiously. Effective intervention at this early stage of the case can help save someone from losing their job effectively navigate and immigration consequences, for the removal of children, prevent eviction, and avoid having criminal charges filed altogether. Moreover, the quicker a person is connected to counsel, the less likely they are to miss their court date and the quicker the case can be resolved, preserving resources down the line. Defenders play a critical role in this process. I'm almost done. With change comes opportunity and the time is come to radically transform our way system of pretrial release and drastically reduce the number of people who are held at Rikers Island awaiting trial. The Council should continue to lead the way on criminal justice reform and take the aforementioned steps to ensure that the promise of the criminal justice system reform legislation is actually realized in its implementation. Thank you.

MARIE NDIAYE: Thank you. My name is Marie Ndiaye and I'm the supervising attorney at the Decarceration Project at the Legal Aid Society which steals fundamentally with bail litigation and policy,

but today I'm here to talk about discovery and I think I have the very easy job of agreeing with the district attorneys who testified earlier today in saying that the new discovery bill that was passed in Albany does represent a seismic change in how our criminal legal system will operate. We will require state-of-the-art electronics systems in order to implement discovery reform and not all of these changes will cost money and funding that will need to be provided from this counsel. So I want to say thank you for giving us time to come here and testify about these issues.

So we also believe that the most important part of successfully transitioning into an open file discovery law will be the adoption of new and improved electronic information sharing technologies that will facilitate the transition of materials from the police to the DAs and then, finally, to defense counsel. We are asking the Council-- the city Council to assist the DAs, the police department, and defender offices in procuring digitized systems to collect discovery and to share discovery. And, as previously mentioned, discovery kind of happens in two parts here. The police share

information with the DAs. In turn, the DAs share their information with us, the defense counsel, and vice versa. Key step toward successful implementation will be, one, training police officers on the need for timely disclosure of all materials to the DAs. Practitioners in other states that have open file discovery have warned that officers who are unfamiliar with discovery rules or what they perceived to be material or nonmaterial often inadvertently break the law by not providing DAs with the discovery material that they are supposed to. So, we do believe that step one is training police officer is to actually hand over all of the information that they have at their disposal and the easiest way to do this is, you know, step two, which is to get the technology that would make it easy for the police to transmit information to the DA, in turn, for the DA to transmit that information to the defense counsel. In other states, this looks like, you know, an online portal, which was mentioned earlier. There is one being used in Dallas, Texas. Another in Colorado where there are case indexes, there's documents that can be placed in their, the police can access it to input information. DAs can

access it and then defense attorneys who are allowed were also allowed to access that same system and everyone can go into this portal to get evidence that is needed in a case. District Attorneys' Offices, the police, court administration, this Council, I would believe, should all be surveying which systems are being used across the country and to find one that would be best to be used in New York City. Finally, the part of that is going to be funding all of the stakeholders to be able to procure this system, to be able to maintain it, to have people who are going to be able to use it. For defenders, as you know, from our prior budget testimony, we have really high attrition rates, so for us that also includes having defense attorneys who will actually be working in our offices to be able to access the discovery, which is why we think that pay parity along with funding these new technological advances are all going to be essential to the implementation of all of these new pretrial reforms. And speaking of funding, another issue is that we are not going to save money by accident here. Currently, New York City is spending 1 billion dollars on DOC. They are getting more staff, more money. We are spending the

same amount of money to incarcerate individuals even though the population of people being incarcerated is decreasing. So we have higher costs, declining population, higher violence in these jails and what we need to be doing is divesting and moving money away from the jail industrial complex and moving that money towards reinvestment in communities that are being affected by mass incarceration and to the technology and funding needed by the public defender's office is to effectuate these changes. So, thank you.

SERGIO DE LA PAVA: Good afternoon. My name is Sergio De La Pava. I'm the legal director of New York County Defender Services. Thank you not just for having this hearing, which I think is critically important, but also forgiving our office the opportunity to give its perspective. You have our written testimony which addresses all three of the major reforms and areas to go into effect in January, but I'm going to mainly focus my remarks on the speedy trial reforms. Now, in my opinion, the speedy trial reforms recognize and implicitly assert that the most dignified and constitutionally firm ending to a criminal case is a jury trial.

Certainly, our office strongly believes that one of the most powerful weapons we deploy in addressing the iniquities of the criminal justice system is the capacity to take a case to trial and then conduct the trial at the highest level. But if this right to a trial is such a powerful weapon, one must ask oneself why it is so rarely deployed in this city. The stats are familiar to everyone on how few cases are actually-- on how few criminal trials are actually conducted. And I'll give the answer to what is the cause for the, but also in may be surprising, Sir, that there is something that the city Council can do to alleviate this problem. There is a thing called-- the word familiar in the system-- called the trial penalty or the child tax. It basically means that a great deal of pressure is going to be exerted on your client, if you are a public defender, by the judiciary, but the prosecutors, by everyone involved in the system to take a plea to plead guilty rather than to exercise their right to trial. Their most prized constitutional right in our system. And the way that the pressure is going to be exerted is our clients are going to be informed, in so many words, that if they exercise their right to a trial and the

trial doesn't go their way, they are going to receive a very enhanced sentence. One of the many reasons why this is illegitimate, despite the fact that, particularly, that it's interfering with a prized constitutional right, is that in the vast majority of cases, what would constitute a proper sentence if the defendant committed the conduct that they are accused of is readily apparent before the trial is conducted. This is clearly a punishment for exercising up constitutional right. Now, where these reforms come in and where the Council can maybe play a role is that defenders of the penalty will likely say something like this system does not have the capacity to try every case or to try even a higher percentage of cases and that's why the defendants are rewarded for pleading guilty and saving us the resources. Now, the problem with that-- and there may be some truth to that because I've been practicing for more than 20 years here in Manhattan, and it's not uncommon for both parties to declare that they are ready to proceed to trial only to be told that there is no court room with which to conduct the trial and that they need to come back four weeks later. Five weeks later. In criminal court maybe even two months

later. And this is not a problem unique to Manhattan. My understanding is that it's even worse than the other boroughs. So, I think, to echo what many of my colleagues have said, the reforms on paper are thrilling and great and they feel like a long-sought victory, but if they are not properly funded, if steps aren't taken by the system to ensure that the trials that are being promised-- because I think the reforms, many feel, will lead to more trials and that's a good thing for the system. If we don't have the capacity to conduct these trials in a fair way, if we don't have the capacity to inform our clients that this prized right that they have is not just a paper right, but a true right, then I think the reforms failed. And I have heard, and listening to all the testimony today, I've heard more than one district attorney refer to there's a decrease in inventory. Inventory. As if they were talking about perishable goods or an inanimate object. What they're referring to his human beings, mostly indigent and people of color in vulnerable communities who are charged with the loss of liberty or facing the loss of liberty. It's not inventory. It's our Constitution. It's the right to a fair

trial. It's the bedrock principles of our society. We must, between now and January, sure that when these reforms go into play, that when they go into effect, that the defense bar, indigent defenders of this have the ability to make powerful use of these reforms and part of that is ensuring that an increase in trial-- increase in trials can be dealt with by the system. Thank you.

CHAIRPERSON LANCMAN: First, let me thank you all for coordinating your testimony so that each of you took the segment. That was very impressive and very much appreciated. Have your offices been consulted by MOCJ or OMB about what additional funding you might need to be able to meet your obligations under these new laws?

SERGIO DE LA PAVA: Speaking for my office, we have not.

CHAIRPERSON LANCMAN: No?

MARIE NDIAYE: I can't say that we have about funding.

YUNG-MI LEE: With respect to funding, no. With implementation, we have had probably at least two meetings.

CHAIRPERSON LANCMAN: All right. And last-- on just funding.

ELI NORTHRUP: Yes. It's my understanding that there has been discussions specifically about funding prearraignment representation, but there hasn't been any really firm or any sort of commitment that that funding is forthcoming--

CHAIRPERSON LANCMAN: Okay.

ELI NORTHRUP: from MOCJ.

CHAIRPERSON LANCMAN: For the other offices, any conversations on implementation and just what kind of topics for you-- was discussed with you?

YUNG-MI LEE: Well, for one, the expansion of pretrial services. In New York City, it's called supervised release, obviously. Supervised release, as you know, is very limited. It's very charge based, so some misdemeanors are not eligible just because of the type of case. All violent felonies are not eligible, so we would like to, obviously, this is we are in agreement with the Bronx Defenders that supervised release or pretrial services should not be charge based at all if we are looking towards

maximum decarceration. In terms of other areas, not-- not really.

MARI NDIAYE: I--

YUNG-MI LEE: I do want to address the DAs were very concerned that they needed additional funding with respect to discovery compliance because there is going to be a much greater need to seek protective orders. And I just wanted to address that. We in Brooklyn have had an open file discovery practice with the DAs office for a long, long time and they do turnover witness names. Yes, there are instances where they do need to seek a protective order, but it is nowhere near as great of the number that the DAs or testifying about earlier today. So it would just ask that if there is funding provided to the DAs office, that it not be used as a way to circumvent the discovery laws. We are in agreement that there has to be additional funding so that there can be perhaps an electronic portal to provide for the more efficient flow of information between NYPD, the prosecutors, in the defense, all defense counsel, not just the public defenders.

MARIE NDIAYE: I would like to bring up to the Council's attention also that right now the

city's main program or only program is supervised release and what we detail in the written submission is that we would like to move away from a system that only has one option which is the surveillance of people just tracking them to make sure that they are still around because that is not replacement for support to actually get people to come back to court. So, what we are ultimately seeking is for supervised release to actually shrink and to become an alternative to detention for people who would be eligible for money bail and that the city or CJA actually develop a true pretrial services agency that is client centered and that is not based on surveillance and that actually supports people in coming back to court. Whether that is transportation assistance, helping people find childcare, you know, benefits. All of the things that we know people need in order to successfully make their court dates.

CHAIRPERSON LANCMAN: Have you had consultations with your respective District Attorney's Offices on how to cooperate and coordinate? Has that happened?

MARIE NDIAYE: I'm going to be above my pay grade.

SERGIO DE LA PAVA: I know that we asked the DA's office, for example, to the extent possible, to institute some of these bail reforms early, as you mentioned earlier during the hearing. And I think-- I found it interesting that DA Vance said that there was about 6000 people who this year are eligible for bail, but next year will be ineligible for bail. And these were misdemeanors. You know, there's no rules says he can't stop asking for bail in those cases today.

CHAIRPERSON LANCMAN: Hm.

SERGIO DE LA PAVA: And basically remove the burden on those 6000 people. And that's exactly what we asked him to do in a letter about a week ago. We've got, you know, obviously he has not changed up his policy. He has not said that he agrees with us that that's what he should do between today and January 1st.

CHAIRPERSON LANCMAN: So let's ask about January 1st. January 1st comes and there will be people sitting in Rikers who, under the law at that moment would otherwise not be-- the cash bail could not be permitted. I don't recall that the statute deals with people in those circumstances.

SERGIO DE LA PAVA: Well, my understanding-- Yung-Mi probably knows better than me, but that on that date, those people need to be released if they are in--

CHAIRPERSON LANCMAN: That's in the state law?

SERGIO DE LA PAVA: That's in the statute. Is that correct?

MARIE NDIAYE: There won't be a mechanism to hold them. Once the law changes, there won't be anything in there that says that anyone who was in before, for example, is subject to the old law. Once the new law is in effect, everyone has to be subject to it. So there will be no mechanism of detaining people at that point who would have been subject to detention under the old law.

CHAIRPERSON LANCMAN: Well, they will be detained. They will be in Rikers. Somebody--

MARIE NDIAYE: No. Legal mechanism. No lawful mechanism, I should say.

CHAIRPERSON LANCMAN: All right. So somebody at DOC has got to know, okay, I guess 11:59 December 31st, you all walk out the door.

YUNG-MI LEE: Exactly. It's not-- the law of retroactivity doesn't apply. It's just statutorily it's a clear mandate. Certain crimes, those people how to be released. They are not eligible for money bail and so they would have to be statutorily released.

CHAIRPERSON LANCMAN: But let me ask you. They are still eligible, potentially, for supervised release. Has there been any conversations? I wonder-- I should've asked the DAs. I wonder if the DAs are planning to do a canvasing of all the individuals who will be ineligible to be detained on cash bail on January 1 and whether or not they are planning, I don't know, to initiate hearings in advance saying Mr. Lancman is going to be released on January 1st because he can't be held for cash bail for what he is charged with, but judge we would like him to be in the supervised release program as opposed to being released on his own recognizance.

ELI NORTHRUP: I think the issue that is twofold. Number one, right now there is no program that most of those people would be eligible for. So that's the first issue. The second issue, really, which I think is the most important issue is

that that's not the population we should be focusing on. We should be focusing on the people who are still eligible to be held on money bail and providing alternatives to release for them. Because the legislature is made that determination that those people who are eligible for money bail should be released while may be some sort of supportive services should be available to them, the real population that we urge the city to focus on providing pretrial release alternatives for is the people that will still be eligible to be held because if we leave those people out, there's going to be no alternative and, really, the law does require the least restrictive alternative, even for people who are eligible for money bail. So, we urge the city and the Council to focus on developing alternatives to release for those violent offenses that are still eligible for money bail.

YUNG-MI LEE: I just also want to just to follow up on what Eli was saying. We are prepared to litigate in the form of writs to get people out as soon as possible and we are currently doing that. So, in terms of the public defenders, we are prepared. OCA, however, should be prepared to handle

all the writs that will be coming, forthcoming. Everyone with cash bail or even those who are on remand status, they will all require that third mandatory form alternative form of Bale which is unsecured bond, as well as-- or partially secured bond. So the implementation, obviously, requires OCA. The agencies that have contracts with the mayor's office to provide the pretrial services as well as the DAs office says to make things move smoothly and efficiently because there are plenty of cases where the DAs could be consenting to release. Straight release without any conditions.

MARIE NDIAYE: And that third form of Bale can be set now on every case where somebody is in Rikers on bail now and there's nothing stopping us from doing that.

CHAIRPERSON LANCMAN: All right. Thank you very much.

MARIE NDIAYE: Thank you.

[background comments]

CHAIRPERSON LANCMAN: So, next we're going to hear from the bail funds. There's a representative from the Liberty Fund, a representative from the Brooklyn Community Bail Fund,

and the Bronx Freedom Fund and I understand also there is a representative from the Lippman Commission. And why don't they come up and then the next panel will be mostly the advocacy organizations that are here with us today. Good late afternoon to everyone. Raise your right hand. Do you swear or affirm the testimony you are about to give is the truth, the whole truth, and nothing but the truth? Okay. Thank you. We'll start from my left to the right. Just introduce yourself. We've got five minutes on the clock and we would like to get out of here soon.

DAVID LONG: I want to thank Chairman Lancman and also Council members and staff--

CHAIRPERSON LANCMAN: [interposing] Sorry. Just move that closer and-- good. Thank you.

DAVID LONG: I want to thank Chairman Lancman and all the city Council members and staff that allowed me to testify today. My name is Dave Long and I am executive director of the Liberty Fund. Liberty Fund is the New York City Council sponsored charitable bail fund that operates in all five boroughs of New York City. Our bail associates are

in arraignment court [inaudible 02:37:13] every night from 6 p.m. until court closes at 1 a.m. or later. This unique setup allows us to post bail immediately after it has been set and results in our clients. These directly from court and never entering the Department of Corrections into the admissions process. They'd have gone into Rikers that night, and, in all likelihood, several more night, they're leaving court to go home to resume their lives. The Liberty Fund began operations in August 2017 and all of my testimony today I've submitted a summary on a report with data on our first year of operations. Highlights of our successes included the fact that we have posted bail for over 830 men and women, all of whom could not afford their misdemeanor bail. We have achieved an 87 percent court appearance rate and, in an extremely conservative estimate, invented approximately 40,000 days of pretrial detention and costs. Additionally, we have made close to 300 social service referrals for our clients in need areas such as housing, education, legal services, and substance abuse. Clearly the liberty fund has been up important stabilizing factor in our clients lives, intervened during a tumultuous period that occurs

post arrest and continues during the dependency of their court cases. For the bail system as it currently operates, charitable bail funds serve a vital purpose in the efforts to keep individuals arrested for misdemeanors who have not been found guilty of the charges, and the community and out of our correctional system. The Liberty Fund has been a vital and important player in the efforts to alleviate some of the issues of our broken bail system. At this hearing today about the future of bail and what this landscape will look like, January 1st, 2020. As everyone in this is aware on April 1, New York State passed sweeping criminal justice reform legislation that drastically limits money bail and pretrial detention for most misdemeanors and nonviolent felony offenders, along with requiring prosecutors to disclose their evidence to the defense earlier in case proceedings and the promotion of speedy trial rights. In this changing landscape, the liberty fund can be a beacon organization that provides a stabilizing effect on the wind down of Bale while simultaneously evolving into a valuable and much-needed response to the increasing number of individuals who will no longer be getting bail and

instead released on their own recognizance or ROR'd. the Liberty Fund will be able to use's experience and expected presence in the court setting to be a proactive and productive response to this monumental reform effort by providing voluntary enhanced case management and core reminders to a vulnerable population. The Liberty Fund is uniquely positioned to allow the New York City Council to me in an innovative leader in New York City's shifting criminal and social justice settings. The bail reform measures taking place in 2020 does not eliminate the serious need for case management assistance for pretrial population. In fact, and actually increases it. Below is the outline on liberty fund will be identical an important part of the fiscal year with the responsive programming in the pretrial service area. As misdemeanor bail is drastically reduced in January 2020, the Liberty Fund program will shift to the ROR case management program to provide comprehensive case management services for individuals who are released on cognizance. The social workers and case managers from the Liberty Fund will work with individuals securing and navigating needed community-based services while

providing case notification and monitoring. The target population well continue to be individuals charged with misdemeanor crimes as it was with our bail program, but now the focus will be on the ROR population, which comprise nearly 80,000 people in 2018 alone. We anticipate this number to increase after January. The pretrial time. Is a critical for our target population and often determines where the person ceases further criminal justice involvement or recidivates back into the system. Responsive interventions during this pretrial. Our critical in keeping these individuals from re-arresting. By bringing the knowledge and experience of being a successful charitable bail fund, the Liberty Fund will incorporate our expertise developed from working with the pretrial population into an impactful voluntary social service that can benefit both the bail and ROR population to make their court dates, navigate their lives more efficiently, and prevent future involvement with the criminal justice system.

In conclusion, I have personally been involved in the criminal justice system for over 30 years as a police officer, probation attorney, and project director of several alternative to detention

and incarceration programs. In my humble opinion, this reformative moment in time is providing a unique and dual opportunity to transform our bail practices while also providing a chance to establish critical voluntary programs and integral part of transforming our criminal justice system into a more humane and fairer one that administers authentic justice for those arrested in the community as a whole. Thank you for your time today.

ELENA WEISSMANN: I'll wait for it to ding. Great. Good afternoon, member. Kind of say use some time and just kind of, any of the sentiments that have been shared. I'm Elena Weissmann. I'm the director of the Bronx Freedom Fund. We are community bail fun. I think you know already how we work. So, yes, just echo where we stand poised to kind of continue the fight to end money bail totally, I do want to quickly and in my time are two things that I think the Council can take a lead role in as we prepare for implementation. The first is a topic that we have discussed with this committee a lot which is Department of Corrections compliance. We urge the counselor take the necessary steps to ensure that the department will comply with the release

provisions of the new law. Over the last two years, we monitor DOC's compliance with existing city Council laws and we have documented widespread noncompliance. And even after multiple oversight hearings, media reports, and meetings with the department itself, we are still seeing our clients held in over the legal limit. So, the question is if it DOC still hasn't complied with the modification of their existing release standards, how can we expect them to voluntarily comply with an entirely new provision? So we just ask the Council to work with DOC to codify plans for timely release and immediate release, especially now that people can get out there alternative means like unsecured bonds and nonmonetary conditions. And we also urge the council to identify accountability mechanisms to ensure compliance with the existing local laws on the Department of Corrections and the upcoming ones, too. And on the note of the nonmonetary conditions, we would also urge the Council to look to the model of the bail funds when considering one a nonmonetary condition looks like. We are very troubled, like others have said, with the potential replacement of cash fail with another oppressive system with

mandatory structures like electronic monitoring, mandatory drug testing, etc. 95 percent of our clients return for all of their court dates without money on the line man with no mandatory restrictions. Instead of requiring our client to submit to drug test or where an ankle shackle, we send affective or reminders and we offer voluntary support to our clients. The intervention is very simple. Remind our clients about court through whatever means they prefer. If a client does express a need for an additional support structure and returning to court order and otherwise obtaining stability, we offer voluntary referrals. This could be as simple as providing a Metro card. And what we've seen is that people returned to court not because they are compelled to, but because they want to and if they have the means to. So, we ask again the Council to continue its commitment to limiting the harm and the net widening and the collateral consequences of the criminal legal system and work towards a long-term solution. So, thank you again for the opportunity to testify. There is more in the written testimony, but I will succeed my time.

ZOE ADEL: Good afternoon and thank you, Chairman, for the invitation to testify today. My name is Zoe Adel and I am Dan Toussaint policy associate at the Brooklyn community Bail Fund, a community bail fund that has paid bail for over 4200 New Yorkers who would otherwise be jailed pretrial because they can't afford to purchase their freedom. I've included all my points and my written testimony that I submitted, so I will just use my remaining time to focus on two points. Under the new statute, police officers must issue appearance tickets for many people accused of misdemeanors and nonviolent felonies. Unfortunately, the legislation includes a number of carve outs that could result in people being denied the protections of the law and unnecessarily detained for up to a day, sometimes faced of police officers subjective determination as to whom these exceptions apply. For example, police are not required to issue an appearance ticket is they believe the accused person would benefit medical or mental health care. So we urge city Council to provide careful oversight and mandate that a NYPD keep track and make public all instances when an officer does not issue an appearance ticket,

including which exceptions are used. The legislation also mandates that any instrument used in release decisions or conditions of release should be empirically validated and free from discrimination or bias. We know first-hand tools created to assess risk of flight or dangerousness in and of themselves do not guarantee, but few are presumptively innocent people will be jailed. 80 percent of our clients are considered intermediate or high risk of nonreturn by the CJA, the agency that conducts risk assessments, yet 95 percent of our clients make all their required court dates with no personal financial incentive or conditions. So acknowledging the pitfalls of risk assessment instruments and that real reform means addressing the underlying structural inequalities that disproportionately impact communities of color, city Council should work to ensure that agencies charged with the risk assessment tools creation and use comply with state law to mitigate harm and racial discrimination and have a transparent community center process for evaluating and reevaluating the assessment tool. And I'll just add that, while the new law will protect pretrial liberty for those accused of most misdemeanors and nonviolent felonies,

we must recognize that it only maintains the prisms in evanescence for some people and still leaves many behind. So we will continue to push for the full and complete elimination of money bail, robust due process protections, and the ends to pretrial incarcerations for all New Yorkers. Until then, we urge city Council to do everything in its power to ensure that the bill reform legislation is implemented so it vastly reduces the number of New Yorkers and their families who are subjected to the trauma of pretrial detention supervision. Thank you.

ZACHARY KATZNELSON: Good afternoon. My name is Zachary Katznelson. I'm the policy director of the Lippman commission and thank you for holding the hearing. Think it was all for giving everyone five minutes matter where they're coming from. I really appreciate that. It's unusual in these hearings and I'm grateful for that on behalf of everybody who has had the chance to speak. Frankly, if I could--

CHAIRPERSON LANCMAN: [interposing] You know, we don't always make that happen, so I don't want you to think too good of me. Right.

ZACKARY KATZNELSON: [laughter] I think the fact that you have had this hearing is fantastic and I think having-- if it's possible to have additional hearings before January 1st and then hopefully afterwards, as well, for the Council to continue that, the type of oversight, I think, would be critical because it really forces everyone in the system to reckon with what's happening and what they've got going. And do realize that they should communicate better because I'm sure that is not happening to the extent it should be. You know, as we think about it from the Lippman Commission about how can we continue to safely drive down levels of incarceration and bring us closer to closing Rikers, bring us closer to a smaller borough-based jail system and have that as small as possible and think about ways we can expand supervised release and other pretrial alternatives, the reality is, of course, those don't exist to the extent they should now. We believe that the city should explore expanding supervised release eligibility to other charged crimes, no question. The critical to this, as well, is that hopefully when those are expanded, people need the judges-- everybody in the system, the DAs,

need to feel comfortable with the programs. They need to know they even exist. I think there is an information gap now where people don't know that their programs are available or don't know what services they provide. And so we would propose that there would be a centralized clearinghouse in each borough courthouse to provide that information to understand and to brief the charges, temporary sent DAs and the PD's and everybody who is involved on what the options are so we can really start to drive down the levels of incarceration and the people who continue to be bail eligible. We think that-- I just want to touch on the. They are [inaudible 02:50:15] for people who are homeless and issues of-- and some of it is in my written testimony, but also the first. The Vera assessment, the bail assessment pilot going on now, we really do think that should be looked at very carefully that can be expanded because it's a critical component to see then, as was mentioned just a few months ago, they need to be ready to accept partially unsecured bonds and they need to have infrastructure in place to do that and that something that hopefully in the Council can talk to them about. I would just also say in terms of

people that are homeless, there needs to be some system in place-- and this is about coordination across agencies-- the homeless services, for instance, needs to be engaged and involved. How do we get notice to them to make sure they make court appearances? How do we ensure the DAT process and other processes that are in place are actually going to work and it's going to take a lot more than just the people that were in this room. And that goes for the NYPD, as well, as you have alluded to in other folks here have alluded to. For the office of the chief medical examiner, for instance, they all need to have processes in place and technology in place to make sure that they are turning over discovery as swiftly as possible and so I'll just leave it there to reiterate. Thank you again and please hold hearings as you can. I know it's a huge undertaking. It's not simply you're sitting here for hours. We're grateful, but it really does make a different in this, so thank you.

CHAIRPERSON LANCMAN: Thank you. So let me ask a provocative question to the bail funds. All right. Under the law, you are limited to serving people who are charged with a misdemeanor and bail is

set at 2000 or less. Under the law that's coming, people charged with misdemeanors, except in a couple of very narrow circumstances, will not have cash bail set. So doesn't the law put you out of business?

ELENA WEISSMANN: It would if the charitable bail law doesn't expand, which it's being voted to do and the--

CHAIRPERSON LANCMAN: And is that--

ELENA WEISMANN: So the Senate has to--

CHAIRPERSON LANCMAN: So one way that you're not out of business is if the charitable bail law is expanded or amended to include people who are charged with the kinds of felonies that cash bail can still be set on, right?

ZOE ADEL: I would just add that it all can be--

CHAIRPERSON LANCMAN: You've got to have the mic. You've got to have the mic.

ZOE ADEL: It also comes down to all the exceptions that are in the law. So, paying attention to whether or not those are used, I would also actually--

CHAIRPERSON LANCMAN: Well, so let's take each of those in turn.

ZOE ADEL: Uh-hm.

CHAIRPERSON LANCMAN: I'm not following what's going on and on the right. Perhaps you are. Is an expansion of the bail funds something that is on the table being actively considered or Albany has done criminal justice reform for the session and moving on to other things? Do you know?

ELENA WEISSMANN: The Senate passed it already to expand to 10,000 dollars and now the assembly is poised to pass it, too.

CHAIRPERSON LANCMAN: Well, it's not just the amount, right, but it's the eligib--

ELENA WEISSMANN: And felonies. Yeah.

CHAIRPERSON LANCMAN: Interesting. Okay.

ELENA WEISSMANN: It would be great if this law eliminated cash bail altogether and then we would be very excited. I think I speak for both of us in all of this may be that we would love to go out of business, but there is a question of ongoing need even with the ability to pay mechanism, as we see kind of how that shakes out and whether it's being followed and implemented to the fullest extent. Can people actually afford their bail? Are they still going to go to jail for not having money?

CHAIRPERSON LANCMAN: So, and then the second part of that is, right, there are exceptions for certain kinds of misdemeanors. Contempt. What percentage of your current clients would still be eligible or would still be, yeah, eligible for cash bail even if Albany does not amend and expand the states charitable bail law? Just of each of your organizations could give me a rough estimate. Have you thought about that?

ELENA WEISSMANN: Yeah. I think ours is like 20 to 25 percent of people, but it depends on the borough. It depends on the month. It depends on the judge.

CHAIRPERSON LANCMAN: Uh-hm.

ELENA WEISSMANN: I kind of have like historic last couple use data.

CHAIRPERSON LANCMAN: And you? Do you have--

ZOE ADEL: don’t have specific numbers, but I would assume it’s probably somewhere around--

DAVID LONG: Yeah. Our numbers are pretty close, too. We have looked at the last two years that we have been running the Bail Fund and it would be somewhere between about 15 to 20 percent is what

we've looked at. But as my testimony stated, I think that the liberty funds can be a valuable organization going forward to really kind of fill the void. Listening to all the testimony today and the potential chaos that's on the horizon come January 1st, the Liberty Fund has already the experience to show that they can be part of the services for the ROI our population. So, we are going as an organization.

CHAIRPERSON LANCMAN: And the Lippman Commission-- When then the Lippman Commission report originally came out and people asked, well, how can you reduce the population at Rikers Island the dramatic numbers that you are talking about, I used to say supervised release, supervised release, supervised release. To you know, within the supervised release community, how-- and your interactions with MOCJ. How seriously are people looking at expanding the eligibility to allow for the people who are now going to be the only ones who potentially have cash bail set? I'll tell you we had a hearing where a Judge Lippman came and testified that the criminal justice-- Director of the Mayor's Office of Criminal Justice came and testified and we

were trying to push MOCJ to expand eligibility to be on just the kind of low level low hanging fruit that exist now and all we were able to get was this a very modest pilot project in Brooklyn. So are you feeling and seeing that the tide is turning in that supervised release is going to be expanded to meet what will be the real need come January?

ZACHARY KATZNELSON: I'm hopeful. We have not gotten any commitment from MOCJ, for instance, for an expansion. I think that they-- the results of the pilot will hopefully push them and demonstrate that it's possible to do and I think that there will be more attention. I think that this is a-- because fewer people will be in jail to begin with, there will be more attention paid on the folks who remain. So, that will give us an opportunity to focus even more on people who are accused of violent crimes. I think that that's an issue that we have to Lippman Commission really feel needs to pay much more attention to generally in terms of charging decisions by the DAs and in terms of the ways that people are approaching violent crime allegations in general. And so, I think that that is something that we hope

to focus on more and hope that will be able to continue discuss-- talk about with MOCJ.

CHAIRPERSON LANCMAN: All right. Well, thank you all very much.

ZACHARY KATZNELSON: Thank you.

CHAIRPERSON LANCMAN: Okay. Next we have a representative from the LGBT Center, a representative from Just Leadership USA Close Rikers Campaign, a representative from the New York Civil Liberties Union, a representative from the Metropolitan Black Bar Association. As he will come on down.

[background comments]

CHAIRPERSON LANCMAN: All right. Let's-- Anyone else? I did. Okay.

[background comments]

CHAIRPERSON LANCMAN: Well, if we could have-- I'm sorry. If we could have just one representative giving testimony from each organization. So, if you decide whoever you would like that to be.

[background comments]

CHAIRPERSON LANCMAN: All right. Let's all get sworn in. You swear or affirm the testimony

are about to give is the truth, the whole truth, and nothing but the truth?

FRED PARKER: Yes.

PANEL: Yes.

CHAIRPERSON LANCMAN: Terrific. We'll start from my left. You have five minutes. Please state your name.

AARON SANDERS: Thank you for having me. Good morning. My name is Aaron Sanders and I'm the outreach and organizing coordinator at the Lesbian, Gay, Bisexual, and Transgender Community Center, also referred to as The Center, which is located in West Village. In my former role, I was a community liaison at Friends of Island Academy, a nonprofit organization that advocates for justice involved to use while they are incarcerated at Rikers Island and they provide support thereafter. New York City's LGBT community formed The Center in 1983 in response to the HIV/AIDS epidemic, ensuring a place for LGBTQ people to access information, care, and support they were not receiving elsewhere. Today, the center has become the largest LGBTQ community center on the East Coast where we host over 400 community group meetings each month and welcome over 6000 individuals each

week. We are proud to offer services to New Yorkers across the five boroughs, ensuring that all LGBTQ New Yorkers can call The Center home. The Center has a solid track record of working for and with the community to increase access to a diverse range of services and resources including resources for LGBTQ immigrants, substance use recovery programming for adults and youth, economic justice initiatives, and our youth leadership and engagement program. Following the 2016 election, The Center revised its strategic plan to include statewide advocacy and programming [inaudible 03:01:34] call rise out. The initiative is a collective of community leaders and allies from every region in New York State working together to advance LGBTQ-affirming legislation and policies statewide. Through outreach and conveying of stakeholders statewide, we identified restorative justice as a sure goal and, as a result, restorative justice is a key focus of our advocacy efforts. For the center, restorative justice means standing up for the community members who are most often negatively impacted by a system intended to help them, particularly transgender and gender nonconforming community members, as well as queer people of car.

In order to work towards our goal of receiving-- advancing restorative justice, rather, the center recommends the following: The city Council should take the necessary steps to ensure that pretrial reforms have the greatest decarceral (sp?) effect when implemented. For example, in 2018, 72 percent of New Yorkers were released on their own recognizance. City Council must ensure that we do not see a decrease in this percentage under the new legislation. The City Council should require training for police departments to implement the appearance ticket portion of the legislation and must ensure oversight of NYPD. We also recommend that the NYPD keep track of and make public all instances when an officer does not issue an appearance ticket. In cases where judges can still money bail, the city Council should timely facilitation and processing of unsecured and partially secured bail payment. The City Council should ensure that judges are complying with the mandates to consider a person's ability to pay when setting bail and, in order to have an accountable implementation process, the city Council must set up a pretrial implementation committee that includes community organizations and impacted people.

Lastly, money bail continues to be unjust, discriminatory, and criminalize low income people and communities of color. While this issue may not be directly under The Center's purview, The Center is committed to working with the administration, the City Council to push the state legislator to enact further pill reform legislation that ends money bail and protects the to process for all people. We welcome him the opportunity to partner and help realize any recommendations referenced above. Thank you to the committee for the opportunity to provide this testimony today and to provide this testimony on a great issue. And we look forward to working with you in the future. Thank you.

AKYLA TOMLINSON: Hi. Hi. Good afternoon. How is everyone doing?

CHAIRPERSON LANCMAN: So far, so good.

AKYLA TOMLINSON: That's good. That's good to hear. My name is Akyla Tomlinson and I am a member of the Close Rikers Campaign through Just Leadership USA and I want to thank you for the opportunity to present my views to the committee. I serve as one of many advocates for comprehensive criminal justice reform. Today I am here to express

my concerns and offer solutions to pretrial legislation. As someone who has been indirectly affected by the current conditions of the criminal justice system, I want to ensure that those arrested are treated fairly. In 2017, my brother was arrested for a crime he did not commit. Today marks the 645th day that my brother has been sitting in a cell on Rikers Island. The presumption of innocence until proven guilty has not been given to my brother. He is already being treated as if he were convicted of the crime he is being accused of committing. Every court date since his arrest continues to be rescheduled despite the prosecution having little to no evidence to present in court. He deserves to be treated fairly, as does every person who is arrested. Although the prison population has shown decline, there are still too many defendants detained pretrial. As an alternative, supervised release programs have been implemented and has resulted in a decrease to the prison population. However, it is concerning that defendant's eligible for supervised release in New York is determined by risk assessment tool. Algorithms that determine the risk of the defendant can be detrimental to real reform, since it

could potentially exclude people from the program that need it the most. People like my brother. Alternatives to pretrial detainment like supervised release programs can be beneficial if it is implemented the right way, as excessive monitoring to already over police areas could be harmful. It is important to consider the use of the city's asset forfeiture fund to reinvest in community programs that will aid in providing specialized mental health services, substance abuse counseling, employment, and housing. What we need our reforms to ensure fewer people will be detained pretrial. We must have dedicated reinvestment into communities, including funding community-based alternative incarceration programs to scale, expanding transitional housing opportunities and removing barriers to employment and housing for people with criminal records. We can get this investment from the police budget knowing that crime is going down. Also, the Department of correctional budget knowing that incarceration is also dropping. According to the Lippman Commission, the Rikers Island being close to what estimate to have a leftover fund of 570 million dollars. I look forward to working with you guys in the future on

these issues and concerns and open to hearing what you guys have to say.

NICOLE TRIPLETT: Hi, Chair Lancman. My name is Nicole Triplett with the New York civil liberties Union, and a felony of the American Civil Liberties Union. So, because many of those who have spoken before me have already articulated why we are here in the problems that we are seeking to address and the contents of the pretrial bills, I'm just going to jump to the recommendations that we would like for the city Council to pursue within its oversight authority. So, because of the injustices in the city pretrial practices, we urge the city Council to do everything in its power to ensure that everyone gets to enjoy the presumption of innocence. In doing so, we recommend the following actions:

One, as it's already been stated, we recommend ensuring robust supplemental funding for pretrial services, diversion programs, community-based programs, and solid reinvestment and housing, healthcare, and education programs.

Two, we want the City Council two, within its oversight authority, prevent practices that may lead to net widening in unintended consequences that

may sustain our current pretrial jailing practices. So, to do that, we are recommending that you work with the office of Court administration to, one, ensure that judges are complying with one of the mandates in the bail legislation that would force courts, force judges to consider ability to pay when they do set bail. Otherwise, we are still going to have people in jail and pre-detention due to the size of their bank account or due to wealth based factors.

Two, we want the City Council to work with criminal justice agency and the Mayor's Office of Criminal Justice, MOCJ, to place additional limitations on the use of harmful pretrial conditions, including establishing stringent electronic monitoring restrictions and barring drug testing as a pretrial condition. We also want, as it's already been stated, you know, despite the real complications and challenges, we do think that these types of reforms can be phased in now as opposed to having DAs and other stakeholders wait until January 1. We also would like for the City Council to work with the New York Police Department to ensure that they change their police practices now to effectively implement the appearance ticket provisions of the

bill. Also work with district attorney offices to ensure that they begin allocating funding and resources for implementing discovery and bail forms. And then, this is key. We would love for the city Council to track data on case outcomes, including who is being subject-- who will continue to be subject to pretrial detention and for how long. And then patterns and prosecutorial charging and the time it takes for a case disposition. This can really be critical in tracking how much of a success the letter of the law will actually be in then also trying to really identify any unintended or abusive practices. And I just want to close by saying, you know, as a civil liberties organization, these reforms are of paramount importance to us. The city cannot afford to jail people based on prejudicial biases, wealth based factors, and in an adequate due process protections. Our lines, civil rights, human rights, and civil liberties are all at stake. So we urge you to support early and effective implementation of the new state laws and we look forward to working together towards the broader goal of overhauling pretrial jailing practices. Thank you.

FRED PARKER: Good afternoon, Chairperson Lancman, Committee Members, community. My name is Fred Parker. I'm here on behalf of Just Leadership USA alongside campaigns such as Free New York, Hashtag Close Rikers, 2 Million Voices, Half by 2030. Just wanted to thank you-- Thank you. I just wanted to thank you for the opportunity to submit my testimony today and for your recognition that New York City must be a model for decarceration and accountability to impact the communities. As you already know, bail, discovery, and speedy trial legislation passed in New York State budget because of advocacy by people who have been personally impacted by this firsthand. It has become clear to me that, to be accountable to the communities most devastated by money bail and pretrial incarceration, City Council must commit to three principles.

First, City Council must commit to maximizing decarceration. One its own, the new bail legislation will vastly reduce the number of people who are subject to pretrial jailing, however, implementation matters. And I want to stress that. Implementation matters in this situation. We can and we must push forward for even greater expansion of

pretrial liberties while working to limit the use of bail, even in cases where judges can still legally set it and to create opportunities for release. Right now, the mayor's office of criminal justice prohibit services. This must be changed to maximize pretrial liberty. Civil counsel must consist-- excuse me. City Council must insist that there must be no categorical or charge based restrictions on pretrial services.

Second, City Council must limit net widening. As a young black person without a lot of money, like many people subjected to these systems, I am not a flight risk. I do not have a passport. I do not have a private jet and I definitely don't have access to a plastic surgeon who will change my face so I can run. As evident in the city's data, the vast majority of people do not need supervision to ensure that they go back to court. Given this information, City Council must work to maximize release on recognizance. In other words, ROR, to ensure that we do not see an increase in pretrial conditions or incarceral supervision under the new legislation. City Council must push New York City's Criminal Justice Agency, or the CJA, to move from a

risk assessment model to a needs assessment model. City Council must also insist that when CJA rules out their new assessment tool, there is a transparent community center process for evaluating the outcomes of that tool. The punitive onerous nature of parole and probation is well documented, as we all know, and is acknowledged by City Council in support of the Less is More Act. Therefore, we must ensure that pretrial services do not come to resemble parole. To do this, City Council must establish additional stations on the use of harmful pretrial conditions, including electronic monitoring and mandatory drug testing, as miss just stated. Neither which of these items have ever been part of New York's pretrial model, to date or before. The use of electronic monitoring during pretrial litigation should alarm everyone in this room. If ever there was a big brother technology in effect, electronic monitors are it. We see the harm they do in the parole system. When a dear friend of mine was on parole, his ankle monitor malfunctioned and the police showed up to his home in full-blown SWAT mode, terrifying his elderly grandmother. We cannot and shall not allow electronic monitors to become a part of the pretrial

system and worsen over policing and communities of color.

Finally, city Council must commit to community investment and community accountability. City Council must set up a pretrial implementation committee that includes community organizations and impacted people. Over the past 40 years, jail has become the catchall for failures of policy and social support. We will no longer stand for that. As these reforms reduce the number of people incarcerated pretrial, we must have dedicated reinvestment into our communities. Is black and brown New Yorkers know, jail does not produce safety. Housing, education, healthcare, and jobs are the key to safety and justice in our community. Thank you for your time. Good day.

CHAIRPERSON LANCMAN: Thank you to all of you. Thank you for waiting as long as he did to testify and that will close out our hearing.

[gavel]

CHAIRPERSON LANCMAN: Have a good afternoon everyone.

FRED PARKER: Thank you.

[background comments]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.

Date June 19, 2019