

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

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April 28, 2021  
Start: 10:02 a.m.  
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HELD AT: Remote Hearing - Virtual Room 1

B E F O R E: Adrienne Adams  
Chairperson

COUNCIL MEMBERS:

Justin L. Brannan  
Fernando Cabrera  
Robert F. Holden  
Vanessa L. Gibson  
Carlos Menchaca  
I. Daneek Miller  
Keith Powers  
Kevin C. Riley  
Ydanis Rodriguez

## A P P E A R A N C E S (CONTINUED)

Oleg Chernyavsky  
Assistant Deputy Commissioner for Legal Matters  
at NYPD

Michael Clarke  
Managing Attorney of Legislative Affairs at NYPD

Zahid Williams  
Captain of Information Technology Bureau at NYPD

George DeLuca-Farrugia  
Assistant District Attorney

Maryanne Kaishian  
Brooklyn Defender Services

Yamina Chekroun  
New York County Defenders

Raissa Carpenter  
Legal Aid Society

David O'Brien  
New York County Defenders

Maryann Rosa  
Bronx Defenders

Towaki Komatsu



UNIDENTIFIED: Cloud recording rolling.

UNIDENTIFIED: Thank you and good

morning, and welcome to today's remote New York City Council hearing on the Committee on Public Safety.

At this time, would all Council Members and council staff please turn on their video. To minimize

disruption, please place electronic devices on

vibrate or silent mode. If you wish to submit

testimony you may do so at [testimony@council.nyc.gov](mailto:testimony@council.nyc.gov).

Once again, that is [testimony@council.nyc.gov](mailto:testimony@council.nyc.gov). Thank you, Chair Adams. We are ready to begin.

CHAIRPERSON ADAMS: Good morning. I'm

Council Member Adrienne Adams of the 28<sup>th</sup> District in Queens, and I am the Chair of the Committee

[inaudible]. I'd like to let you all know that I am wearing denim today in recognition of [inaudible]

standing in solidarity with the Women's Caucus of the New York City Council and that recognition. I'd also

like to express my condolences to the members of the NYPD and the family members of Officer Anastasios

Tsakos who lost his life very tragically this week.

Our condolences and our prayers go with you all. Go on to the hearing. I know that a lot of you tuning

for this hearing are anxious to get to the heavy

1 questions that we've been reckoning with for some  
2 time now about what role the police should play in  
3 our society, what kinds of force they should be able  
4 to use and what situations, and how much we should be  
5 spending on our Police Department. These are very  
6 important questions, and at our budget hearing in  
7 May, I'm sure those issues will be at the forefront  
8 of our discussion. Today, however, we choose to  
9 examine an issue that may appear narrower, but in a  
10 lot of ways is representative of some of the problem  
11 that those larger problems address, the collateral  
12 consequences of getting caught up in the criminal  
13 justice system, or to be more precise, the  
14 unnecessary excessive and regressive punishment that  
15 come with simply being accused. Often, these  
16 consequences do nothing more than exacerbate the  
17 circumstances that led the person to the point of  
18 arrest. That is, of course, assuming the person  
19 actually did something wrong, which is often not the  
20 case when we're just talking about an arrest.  
21 Today's topic is [inaudible] in connection with an  
22 arrest, and I want to make sure that right up front  
23 that nobody is saying that officers are doing  
24 anything other than what they're told to do. This is  
25

1 not an issue of accountability for individual  
2 officers, but it is a policy issue. More  
3 specifically, it's about why we have a policy that  
4 presumes that lawfully owned property, not guns, not  
5 drugs, but things we all carry like cell phones or  
6 cash or prescription [inaudible] medications, even  
7 when the overwhelming majority of these items have  
8 nothing at all to do with a criminal case. Under the  
9 rules of the City of New York, an officer designates  
10 a cell phone as arrest evidence, the individual who  
11 was arrested has to jump through a number of  
12 bureaucratic hurdles that can take weeks to resolve,  
13 all while the person is unable to contact loved ones,  
14 attend school virtually, participate in online  
15 programming, communicate with employers, meet with  
16 therapists, all the necessities of life. What's  
17 more, they're unable to access all the things stored  
18 in their phones that we now all rely on having at our  
19 fingertips. This problem is particularly pressing  
20 for our young people during COVID when much of their  
21 education and almost all of their daily life is  
22 dependent on their ability to log into websites from  
23 their phones. So why is it set up this way? Why  
24 does the NYPD voucher and keep phones as a matter of  
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1 course? Why isn't the burden on the prosecutor to  
2 affirm that there is a clear connection with a  
3 criminal case before the property can be withheld by  
4 the police? Our tendencies for take first and figure  
5 out if we need it later is simply unjust, and it has  
6 caused many other problems in the past. Stop and  
7 frisk was a presumption that evidence of crime might  
8 be in people's pockets. Bail reform efforts targeted  
9 the presumption that you need to lock people up first  
10 and ask about was that necessary later. If DAs  
11 really think that crucial evidence is on someone's  
12 phone, they can get a search warrant and [inaudible]  
13 the phone, but more often than not, they don't, and  
14 instead unnecessary life-line is taken away from  
15 people who haven't been arrested, which let's be  
16 clear, it's still typically poor people of color. So  
17 maybe it's time to re-evaluate how we do this. I'm  
18 sure there are cases where a phone is relevant in  
19 evidence, or where a District Attorney might want to  
20 get a search warrant to search personal property, and  
21 there should certainly be a process for that, but  
22 given the constitutional issues here, it's time to  
23 make keeping people's property, especially cell  
24 phones, and especially cell phones that belong to  
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1 juveniles, the exception rather than the norm. I'm  
2 interested in hearing what the NYPD suggests we can  
3 do about this, and I'm interested in learning more  
4 from defenders and advocates about the issues they're  
5 seeing under the current system. We're also hearing  
6 today Introduction 2108 sponsored by Council Member  
7 Cabrera. The bill would increase the minimum fine  
8 for damaging a house of worship from 500 dollars to  
9 1,000 dollars. Hate has no place here in New York  
10 City, and this [inaudible] who would target any of  
11 our religious communities. I would now like to  
12 mention that we have been joined today by my  
13 colleagues Council Member Riley, Cabrera, and Holden,  
14 [inaudible] will join us shortly. At this time, I  
15 would like to-- we also have been joined by Council  
16 Members Rosenthal, Menchaca, Brannan, and Miller.  
17 And at this time, I would like to invite my colleague  
18 Council Member Rafael Cabrera to give his remarks.

19 COUNCIL MEMBER CABRERA: Can you hear me?

20 COMMITTEE COUNSEL: Yes, we can.

21 COUNCIL MEMBER CABRERA: Okay, thank you.

22 Thank you so much. Madam Chair, really appreciate  
23 the opportunity to have a moment to discuss to intro  
24 2108. As it was stated, it would increase the  
25



1 penalties from \$500 to \$1000 dollars for anyone who  
2 willfully-- let me say that again-- who willfully  
3 defaces and damages any houses of worship. Lately we  
4 have witnessed a spike of crimes of hate targeting  
5 religious institutions of all faith. As a pastor  
6 myself, I have seen my own church targeted and  
7 defaced after-- let's be clear-- after I introduced  
8 this bill back in October. I have spoken with Imams,  
9 rabbis, pastors who have suffered the same fate.  
10 Last weekend we all witnessed the awful attacks of  
11 synagogues in Riverdale right here in the Bronx.  
12 This incidents amounted to damage in the thousands,  
13 but even more than that, it's the aura of  
14 intimidation. Testimony has been provided today by  
15 the Archdiocese of New York and the Archdiocese of  
16 Brooklyn that have registered over 42 attacks in  
17 Catholic churches in New York City since 2015. Once  
18 again, resulting in thousands of dollars' worth of  
19 damages, and mosques have not been excluded from  
20 those acts of defacing or acts of hate. Matter of  
21 fact, I was just visiting two weeks ago a mosque, and  
22 the Imam was telling me how he was-- his mosque was  
23 attacked not once, but twice within a month. Some of  
24 these are not even reported. This is where we pray.  
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1 This is where we seek peace. We come to these houses  
2 of worship with our families and friends and we must  
3 protect that. Intro 2108 is a great beginning.  
4 Stand with me and thousands of clergy, leaders, and  
5 parishioners. Let's send a message that when you  
6 attack or deface one, you're attacking and defacing  
7 others. Thank you so much, Madam Chair, for the  
8 opportunity to share, and thank you for your support.

9  
10 CHAIRPERSON ADAMS: Thank you so much,  
11 Council Member Cabrera. I will now turn it over to  
12 our moderator, Committee Counsel Daniel Attis [sp?]  
13 to go over some procedural items.

14 COMMITTEE COUNSEL: Thank you, Chair.  
15 I'm Daniel Attis, Counsel to the Committee on Public  
16 Safety of the New York City Council. Before we begin  
17 testimony, I want to remind everyone that you will be  
18 muted until you are called on to testify. At which  
19 point you will be unmuted by the host. I will be  
20 calling on panelists to testify. If Council Members  
21 would like to ask a question of the Administration or  
22 a specific panelist, please use the Zoom raise hand  
23 function. I will call on you in order. We will be  
24 limiting Council Member questions to five minutes  
25 which includes the time it takes to answer questions.

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All hearing participants should submit written testimony to [testimony@council.nyc.gov](mailto:testimony@council.nyc.gov) if you have not already done so. Members of the public may also submit written testimony. The deadline for written testimony is 72 hours after the hearing. The first panel will include members of the New York City Police Department. The second panel will include representatives of the Queens District Attorney's Office, and we will then hear from members of the public. To the first panel before I call on you to testify I will administer the oath. I will read the oath and call on each of you to affirm. Please raise your right hands. Do you swear to tell the truth-- do you swear or affirm to tell the truth, the whole truth and nothing but the truth before this committee and respond honestly to Council Member questions? Assistant Deputy Commissioner for Legal Matters Oleg Chernyavsky?

DEPUTY COMMISSIONER CHERNYAVSKY: I do.

COMMITTEE COUNSEL: Managing Attorney of Legislative Affairs Unit Michael Clarke?

MICHAEL CLARKE: I do.

COMMITTEE COUNSEL: Captain Zahid Williams, Information Technology Bureau?

2 CAPTAIN WILLIAMS: I do.

3 COMMITTEE COUNSEL: Thank you all. And I  
4 believe Deputy Commissioner you'll be reading the  
5 testimony, is that right?

6 DEPUTY COMMISSIONER CHERNYAVSKY: Yes.

7 COMMITTEE COUNSEL: You may begin.

8 DEPUTY COMMISSIONER CHERNYAVSKY: Thank  
9 you. Thank you Chair for your kind words about  
10 Officer Tsakos, and we ask that you keep him and his  
11 family in your hearts and prayers. Good morning,  
12 Chair Adams and members of the Council. I'm Oleg  
13 Chernyavsky, the Assistant Deputy Commissioner for  
14 Legal Matters. I'm joined today by Michael Clarke,  
15 the Managing Attorney at the NYPD's Legislative  
16 Affairs Unit and Captain Zahid Williams from the  
17 NYPD's Information Technology Bureau. On behalf of  
18 Police Commissioner Dermot Shea I'd like to thank you  
19 for this opportunity to discuss the seizure of  
20 property by the NYPD. The NYPD's committed to  
21 ensuring that property that is taken into our custody  
22 is properly safeguarded and returned to its owner.  
23 We take our responsibility to accept, catalog,  
24 safeguard, store, produce, record, and return  
25 property to its legal owner seriously. At the time

1 of arrest, officers may classify property taken into  
2 custody in a variety of ways, including the  
3 vouchering for safe keeping as found property, as a  
4 decedent's property, as arrest evidence, as federal  
5 property, as investigatory evidence. The decision on  
6 how to classify property is unique to the facts and  
7 circumstances of each individual case. While the  
8 Department's mission is to safeguard an arrestee's or  
9 decedent's personal belongings only to return those  
10 items once the owner comes to claim them, we have an  
11 even greater responsibility to act as custodian and  
12 maintain chain of custody of property that is arrest  
13 and investigatory evidence. Failure to maintain  
14 proper control of these latter categories of seized  
15 property may very well result in unsuccessful  
16 prosecutions for serious crimes such as gun crimes,  
17 sex crimes, murders, robberies, and burglaries.  
18 Fundamental to our precision policing model is the  
19 focus on those who commit the most serious crimes in  
20 order to build the best possible criminal case and  
21 the data bears this out. The Department is only  
22 interested in retaining custody of property that can  
23 help prosecutors in their-- to help prosecutors in  
24 these serious crimes and does not seek to hold  
25

1 people's property unnecessarily. The NYPD is not  
2 entrusted in retaining the phone for arrest evidence  
3 that has no evidentiary value, and the Department  
4 aims to limit such seizures to the most serious  
5 cases. There are times that property recovered from  
6 an individual is necessary for prosecuting a crime  
7 for which a person is arrested. It is essential that  
8 we make sure we build a strong, as strong of case as  
9 possible to support the prosecution of serious cases  
10 by the District Attorney's offices. Cell phones, in  
11 particular, have become an integral tool in building  
12 these criminal cases. These devices contain a  
13 significant amount of information that can help  
14 prosecutors prove the case beyond a reasonable doubt.  
15 Seizing these devices allows officers to ensure that  
16 data contained on the phone is neither lost nor  
17 erased without the Assistant District Attorney being  
18 able to determine whether and to what extent valuable  
19 evidence can be utilized. It is important to note  
20 that the Police Department cannot simply search a  
21 phone because it has been vouchered. An investigator  
22 may look at the exterior of a phone, but officers do  
23 not have the legal right to access the contents of  
24 the phone without a probable cause warrant signed by  
25

1 a judge or consent of the owner of the property. It  
2 would be improper to access it otherwise, and any  
3 evidence would be suppressed by a judge. In 2020,  
4 the NYPD vouchered roughly 55,000 cell phones. Of  
5 those, the NYPD vouchered phones as arrest evidence  
6 or investigatory evidence approximately 28 percent of  
7 the time, or 15,462 phones. Thirty-five thousand  
8 four hundred and thirty-six phones were vouchered for  
9 safe keeping and roughly 3,661 were vouchered as  
10 either found property or decedent's property. In  
11 2020, the NYPD made 140,408 arrests, meaning that the  
12 Department was vouchering cell phones as arrest  
13 evidence and investigatory evidence in just 11  
14 percent of its cases. Of the 15,462 cell phones  
15 vouchered as arrest and investigatory evidence, 3,666  
16 were for possession of a dangerous weapon, i.e. guns,  
17 1,153 were for robbery, 556 were for murder or  
18 manslaughter, 550 were for burglary, 547 were for  
19 grand larceny, 503 were for felony assault, 329 were  
20 for sex crimes, and 164 were for grand larceny of a  
21 motor vehicle. Of the roughly 55,000 cell phones  
22 that were vouchered by the NYPD, 2,013 involved  
23 individuals under the age of 18. A little more than  
24 half, or 1,068, were vouchered as arrest or  
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1  
2 investigatory evidence. The 1,068 phones were  
3 vouchered from 731 unique individuals, meaning that  
4 in some cases, more than one phone was seized from a  
5 particular person. Of the 1,068 cell phones that  
6 were vouchered as arrest or investigatory evidence  
7 from juveniles, over 90 percent were evidence in  
8 serious felony cases. This includes 327 devices  
9 vouchered for possession of dangerous weapons, 227 in  
10 connection with robberies, 85 in connection with  
11 grand larcenies, 75 in connection with murder or  
12 manslaughter, 56 in connection with burglaries, 49 in  
13 connection with grand larcenies-- grand larceny of a  
14 motor vehicle, and 47 for felony assault, and 11 for  
15 sex crimes. When property is vouchered for safe  
16 keeping, an individual merely needs identification  
17 and a voucher to retrieve the property. When the  
18 property has been vouchered as arrest evidence, the  
19 individuals will need to produce a release from the  
20 District Attorney's office in order to obtain the  
21 property. The DA's office will release evidence at  
22 the conclusion of a case or where an ADA determines  
23 that the evidence is not necessary for a trial.  
24 Likewise, property seized for investigation will be  
25 returned with a release from the investigator unless



1 an arrest is made and the property is re-categorized  
2 as arrest evidence. In such cases, the evidence  
3 release policy is adhered to. The NYPD seeks to make  
4 retrieval of an individuals' property as easy and as  
5 seamless as possible. Instructions to retrieve  
6 property are included in English and Spanish with  
7 every voucher. Additionally, instructions can be  
8 found on the NYPD's website and can be translated  
9 into more than 100 languages. Moreover, individuals  
10 can call 311 to find out the procedure for retrieving  
11 their property. Thank you for the opportunity to  
12 speak with you today, and we'll be happy to answer  
13 any questions you may have.

14  
15 CHAIRPERSON ADAMS: Thank you so much.  
16 Before we get [inaudible] into the [inaudible] letter  
17 I sent along with Council Members Gibson and Levin,  
18 requesting clear data about property seizure and  
19 arrests involving young people, when am I going to  
20 get a response to that letter?

21 MICHAEL CLARKE: We're still working on  
22 it. Some of the data is difficult, if not  
23 impossible, for us to get at this moment. So we're  
24 trying to get as much data as we can to respond to  
25 the letter. At this moment we're still working on

1  
2 it. Some of it we may not be able to get, but we're  
3 hoping to have a response as soon as we can.

4 CHAIRPERSON ADAMS: Does that mean over  
5 the next month, over the next two months, over the  
6 next 30 days, 60 days?

7 DEPUTY COMMISSIONER CHERNYAVSKY: No,  
8 we'll be-- we'll try, to the extent we can-- whatever  
9 data we can pull in connection with the letter.  
10 Chair, we're going to get to you within days.

11 CHAIRPERSON ADAMS: Okay. Okay. There's  
12 some data on your website that I believe is supposed  
13 to reflect property seized in the year of the report,  
14 but for example, the 2020 report says that some of  
15 the property was retained for two or three years,  
16 which clearly is not possible. So can you explain  
17 how that report works? Is it reporting the property  
18 that was returned in 2020?

19 MICHAEL CLARKE: Yeah, so I think-- I  
20 think you're talking about Appendix D in the public  
21 report. My understanding is we're reporting on the  
22 property that was returned in 2020, how long that  
23 property was kept. So, right, in 2020 there could be  
24 no property. It was kept for longer than a year, but  
25

1  
2 it's property probably that was seized in 2018/2019  
3 that was returned in 2020.

4 CHAIRPERSON ADAMS: Okay. How much money  
5 did the NYPD retain in 2020 because individuals  
6 didn't claim it?

7 DEPUTY COMMISSIONER CHERNYAVSKY: Council  
8 Member, while Mike is getting the numbers that you're  
9 asking for, I think it's important to talk about the  
10 process of on seizing property, for example, for  
11 safekeeping which is going to be most of the dollar  
12 amount that you're talking about, and the process for  
13 getting back. So, for example, if we seize property  
14 that has no evidentiary value, and we're seizing it  
15 for safekeeping-- let's assume an individual was  
16 arrested and they had a sum of money in their pocket,  
17 they had a pair of keys in their picket, a cell phone  
18 in their pocket, and none of these items have  
19 evidentiary value. We're holding on to those items  
20 for that individual so when that individual gets  
21 released, all they need to do is come to the precinct  
22 or the property clerk facility and get the property  
23 back. To the extent that an individual-- and this is  
24 property vouchered as safe keeping. To the extent  
25 the individual doesn't come forward and doesn't

1 retrieve the property, that property effectively  
2 stays on the books or stays on the shelf.

3  
4 Ultimately, over time the property becomes city  
5 property. None of these items, whether we-- whether  
6 the City takes possession of the property and its  
7 auctioned off or in the form of money that over a  
8 certain amount of time it just becomes city property  
9 pursuant to law, none of that property goes to the  
10 NYPD. It goes to the City's general fund. With that  
11 said, we make every effort to return that money. So  
12 even if the individual-- it's a lot easier when it  
13 comes to money, because it's not like you're  
14 auctioning off money like a piece of property. So if  
15 an individual comes even beyond the dates that are  
16 prescribed in law to retrieve their property, we make  
17 every effort to connect that individual with the  
18 money that was seized and return it to them.

19 MICHAEL CLARKE: And then the overall  
20 amount of currency that was retained because no  
21 person retrieved it was about-- a little under six  
22 million dollars between the five boroughs.

23 DEPUTY COMMISSIONER CHERNYAVSKY: And  
24 again, that's not money that was seized in 2020. It  
25 could have been property seized over many years

1 before that. It's just-- it was converted in 2020  
2 because nobody came to retrieve it. But that's not  
3 to say if somebody comes forward at a later date,  
4 we're not going to make every effort to connect them  
5 with that money.  
6

7 CHAIRPERSON ADAMS: So, that's still a  
8 problem. We're talking about somewhere around six  
9 million dollars or so that's retained taken mostly  
10 from poor black and brown New Yorkers because they  
11 don't know how to get their stuff back. So, that's a  
12 problem. The report also shows that most evidence  
13 that's returned to people is returned within six  
14 months, but when you're talking about cell phones,  
15 cash, medications, there's a huge difference between  
16 a couple of days versus six months. So do you have  
17 any more specific data within that six month period  
18 about how long it takes for people to get their stuff  
19 back when they ask for it? We're just trying to get  
20 to-- trying to understand the system.

21 DEPUTY COMMISSIONER CHERNYAVSKY: Sure.  
22 So, I mean, I think the best way to describe it is,  
23 you know, let's take a look at the process, right?  
24 From the moment the property is vouchered until let's  
25 hope that it's retrieved by the individual it's

1  
2 vouchered from. So if we're vouchering property, and  
3 again, depending on the category it's vouchered in  
4 would probably, you know, dictate the length of time  
5 that it's seized, but let's use the simplest one  
6 which is safe keeping. If we seize your property as  
7 safe keeping, generally that happens when we arrest  
8 an individual. That person, the moment they're  
9 released can come right to the precinct and retrieve  
10 that property. If their identification is vouchered  
11 in the voucher, we will look into the voucher to  
12 identify them, because what they need to retrieve the  
13 property is identification and a voucher number,  
14 right? So we'll be able-- so in the case where your  
15 ID is actually vouchered and it's in the voucher,  
16 we'd be able to look at the voucher, at the property  
17 bag and see if that's you. We'd be able to identify  
18 you and return it to you. You can come there within  
19 24 hours and get it. I mean, it's really up to the  
20 individual to show up and get it. Now, every  
21 precinct has a property room. The property room as  
22 you can imagine is not a very large room. So after a  
23 certain amount of days, the property is moved to the  
24 Property Clerk Division, effectively the warehouse.  
25 So if you don't retrieve your property in that time

1 limit, and it fluctuates if it's a much busier  
2 command, that means the space-- they'll probably push  
3 the property out to the property room let's say after  
4 about a week, and the slower commands that aren't in  
5 dire need of the space, maybe the property will be in  
6 that command's property room a little longer. At the  
7 end of the day, through our PET [sic] system which  
8 tracks the property, we're able to know where that  
9 property is at any given moment. So, as long as you  
10 come and retrieve it, we can tell you exactly where  
11 to go to get your property, and depending on how it's  
12 vouchered-- again, the easiest one is safe keeping.  
13 You can come within hours and retrieve it. Once you  
14 are arraigned and you're let go, you can come and get  
15 that property. If the property is vouchered as  
16 evidence or investigation, again, that's a much  
17 smaller subset of the total universe of property  
18 that's vouchered, well, there's a process for that.  
19 If that piece of evidence is-- if that item is needed  
20 as evidence in the case, then you know, we can't  
21 release it. We would be breaking chain of custody.  
22 We would effectively be contaminating evidence and  
23 undermining the prosecution of the case. So when  
24 you're talking about arrest evidence, the process  
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1  
2 there is that once we voucher it and catalog it as  
3 arrest evidence, the individual-- the instruction  
4 that individual is given with their voucher is that  
5 you can get a District Attorney's release. So one,  
6 they're given the voucher as notice that your  
7 property was seized and it's marked as arrest  
8 evidence. Two, they're given instructions on how to  
9 get arrest evidence back if they want to reclaim it.  
10 One of the instructions is you have to get a District  
11 Attorney's release. So, if the District Attorney  
12 determines that the property has no investigatory  
13 value, and that was part of your opening statement to  
14 get the DA's more involved in the process, well, they  
15 are. so once we voucher the property and the DA  
16 makes the determination they don't need it as  
17 evidence or they could take a photograph and release  
18 it, or it just has no evidentiary value, they'd issue  
19 a District Attorney's release, and we would release  
20 that property the same as we would release safe  
21 keeping. So as quickly as that takes, we would  
22 release it. For things that are vouchered as  
23 investigatory, a similar process, right? The  
24 investigator investigates. Generally, investigatory  
25 evidence could be seized if we're executing a search



1 warrant, but no arrest is made. Any property that we  
2 seize, it's not arrest evidence because there was no  
3 arrest made, but it can become arrest evidence once  
4 arrest-- once an arrest is made and the DA could then  
5 release it with a District Attorney's release as  
6 arrest evidence. So that's the process.

8 CHAIRPERSON ADAMS: So you're referencing  
9 [inaudible]. The Queens DA's Office has said that  
10 they grant the release of arrest evidence in 93  
11 percent of cases. So, [inaudible] overshooting the  
12 mark here in my opinion, considering that 40 percent  
13 of cellphones never go back to the owner, shouldn't  
14 you be narrowing the criteria for what constitutes  
15 arrest evidence or cases where the cell phone is  
16 obviously part of the case?

17 DEPUTY COMMISSIONER CHERNYAVSKY: Well, I  
18 mean, look, like anything we always look at what our  
19 procedures are, but if you take a look at just the  
20 raw number, I mean, if we're taking a look at the  
21 overall number of arrests, there were 140,000 arrests  
22 last year, and the cell phones seized for arrest  
23 evidence for investigation numbered 15,000, right?  
24 So they're not being seized wholesale in connection  
25 with every arrest made and vouchered as arrest

1 evidence. But then when you take a look at the  
2 categories where, you know, the most common  
3 categories where cell phones are seized, and I'm  
4 going to look at all ages, not focusing on juveniles,  
5 you're looking at 23 percent or almost 24 percent are  
6 for dangerous weapons such as guns, 17 percent when  
7 you're talking about all ages are for dangerous drugs  
8 like heroin, fentanyl, or crack cocaine, 7.5 percent  
9 are for robberies, 3.6 are for murder, burglary are  
10 3.6 percent, grand larceny 3.5 percent, and also keep  
11 in mind the fact that we're seeing a phone for arrest  
12 evidence, that could be a recovered stolen phone. So  
13 it's not necessarily that it's your phone that's  
14 being-- maybe you were arrested and the phone was  
15 seized, but that phone may have been the phone that  
16 the victim that was robbed. That's vouchered under  
17 your name, and then again, that would go through the  
18 DA's office and they would issue the release to the  
19 victim, but that is evidence in that case. So then  
20 there's that category. So, yeah, you know, it is  
21 used judiciously. Can we look at the process more?  
22 Of course, we always do, but it is a subset. I mean,  
23 it's 11 percent of the cases. It's 11 percent of the  
24 cases, and mind you, I think over 90 percent of all  
25

1 the cell phones we seize are for serious felonies.  
2 So, it's not really-- it's not low-level crimes that  
3 we're seizing these and marking them for evidence.  
4

5 CHAIRPERSON ADAMS: So, a couple more  
6 things and then I'm going to let my colleagues get in  
7 here. There are several different terms that we're  
8 speaking about today. You're speaking about arrest  
9 evidence and there's also investigative evidence  
10 also, but we couldn't find any legal authority or  
11 definition for what constitutes investigative  
12 evidence. So can you give us a definition of what  
13 investigative evidence is?

14 DEPUTY COMMISSIONER CHERNYAVSKY: Sure.  
15 It's evidence that we would seize. I mean, it's a--  
16 it's a category in the vouchers. So, for example, if  
17 a judge issues a Department a probable cause warrant  
18 to do a search warrant at a location, and from that  
19 location we'll recover let's say some guns, some  
20 cash, some scales, and a few cell phones, right? All  
21 of-- but no arrest is made at that location, right?  
22 Because nobody was home when we executed it. All of  
23 that property from guns down to cash and cell phones  
24 would be vouchered as investigatory evidence. Now,  
25 that property would ultimately be converted to arrest

1  
2 evidence once an arrest is made, but you can't call  
3 it arrest evidence if no arrest was made that that  
4 moment. I's call investigatory evidence.

5 CHAIRPERSON ADAMS: So, what's my legal  
6 recourse if you arrest me and take my cell phone,  
7 what's my legal recourse? If you deem something of  
8 mine as investigative evidence.

9 DEPUTY COMMISSIONER CHERNYAVSKY: So, if  
10 I'm-- if I'm arrest-- I just want to be clear on your  
11 question, if I'm arresting you, then I'm not  
12 vouchering as an investigation. I'm vouchering it as  
13 arrest evidence. If there's no arrest, and let's say  
14 in the warrant scenario, that's going to be  
15 investigatory. When you have an investigatory-- when  
16 property is vouchered as investigatory, the method to  
17 get it back would be to get the investigator to issue  
18 a release, which is really effectively the same as a  
19 District Attorney's release for arrest evidence, but  
20 it would be the investigator's release basically  
21 saying that property is no longer necessary in the  
22 investigation. If an arrest is made before that  
23 investigatory evidence is released, it gets re-  
24 categorized as arrest evidence and follows that path.

1  
2 CHAIRPERSON ADAMS: Alright, so let's  
3 turn it around a little bit and take a look at  
4 internal oversight, right? When an officer takes  
5 property from someone who's arrested, are there any  
6 internal oversight mechanisms to ensure that  
7 everything is above [inaudible]. And we've had  
8 complaints that folks that are arrested never see  
9 their property. We've had complaints that folks that  
10 are arrested, all of a sudden their property  
11 mysteriously goes away. It's taken away, disappears  
12 at the hands of the arresting officer. What is your  
13 internal oversight to handle situations like that,  
14 and what is the legal recourse for someone who has  
15 been arrested whose property just mysteriously  
16 vanishes?

17 DEPUTY COMMISSIONER CHERNYAVSKY: Of  
18 course. I mean, the layers of recourse, and I know  
19 I'm going to miss the layers of a few of them. There  
20 are just so many. There's from the supervisor. Let's  
21 start off at the point of vouchering. It gets  
22 vouchered at a precinct. There are supervisors,  
23 whether it be a sergeant, lieutenant, all the way up  
24 to the precinct CO that has the oversight of property  
25 and the vouchering process right there at command.

1  
2 When the property gets transferred there's oversight  
3 mechanisms of property in the Property Division.

4 There's Internal Affairs Bureau that does effectively  
5 audits and checks to see if-- they actually will put  
6 somebody-- we have these mechanisms where Internal  
7 Affairs will put an Internal Affairs undercover to  
8 be-- to test the system, to be arrested and to have  
9 their property seized to see if it gets vouchered  
10 properly, right? So, it's-- you know, they stage an  
11 arrest and do integrity tests of police officers, and  
12 that's yet another process. And I'm sure I'm missing  
13 a lot of these. We have our Data Integrity Unit. We  
14 have the--

15 MICHAEL CLARKE: [interposing] Quality  
16 Assurance.

17 DEPUTY COMMISSIONER CHERNYAVSKY: Quality  
18 Assurance Division which is a whole division that's  
19 set up to monitor among other things the vouchering  
20 of property. But in terms of recourse, I mean,  
21 somebody clearly has a civil right of action if  
22 they're claiming the Department took their property  
23 and they never got it back or that property was  
24 damaged while the Department was a custodian of that  
25 property, they have civil recourse.

1  
2 CHAIRPERSON ADAMS: Okay. I think we're  
3 going to deal with that probably at another time,  
4 because I think there are several layers of this  
5 onion to be peeled back regarding this particular  
6 issue. I'd like to know specifically what the  
7 mechanisms are specifically, that cash goes where  
8 it's supposed to go and not where it's supposed to  
9 go, you know, what happens. What are the internal  
10 checks and balances that [inaudible] to make sure  
11 that officers aren't abusing their authority when it  
12 comes to personal property and other things of value  
13 they might recover in a search. I'd like to hear  
14 very, very specifically what the NYPD does about  
15 that. So, I think we'll deal with that more  
16 specifically at a later time, but I do want to get  
17 that out there as well. I'd like to also acknowledge  
18 that we've been joined by Council Members Rodriguez,  
19 Powers, and Gibson. Counsel, I will turn it over to  
20 you. Thank you very much, Oleg.

21 DEPUTY COMMISSIONER CHERNYAVSKY: Thank  
22 you.

23 COMMITTEE COUNSEL: Thank you, Chair.  
24 I'll just ask any Council Members who wish to ask  
25 questions to use the Zoom raise hand function. We'll

1  
2 give everybody a minute. Do we have any Council  
3 Members who would like to ask questions? Looks like  
4 Council Member Menchaca.

5 COUNCIL MEMBER MENCHACA: Thank you,  
6 Chair. I am having trouble with the camera for  
7 whatever reason. So I'll just hit the NYPD with a  
8 question. This is a general question about evidence  
9 and this longer story about connecting people back to  
10 their property, and more about just the general plan  
11 for storing property in general, and if you can give  
12 us an update, Oleg. I know this is something that we  
13 have been talking about a lot because there is an  
14 evidence storage place in Red Hook with a--  
15 essentially with a cliff on timing. Can you give us  
16 a quick update on just like the overall evidence plan  
17 in the City of New York and storage, etcetera? This  
18 could be an interesting component to this longer  
19 question about how long you take evidence and how  
20 quickly you want to get it back out so you don't have  
21 to store it somewhere in the City.

22 DEPUTY COMMISSIONER CHERNYAVSKY: Sure.  
23 I mean, I'll be honest with you, I'll have to do a  
24 little digging on the status of Red Hook. I know we  
25 had worked on it over a year ago, pre-pandemic. So



1  
2 I'll get status there. But I mean, I'd be lying to  
3 you if I didn't tell you that the overall larger  
4 picture of storage of property has taken a massive  
5 setback, because the-- there was a plan and was  
6 funded to have one facility rather than have these  
7 number of facilities around the City that was going  
8 to be used to store-- it was going to be the single  
9 property storage facility for the Department, but  
10 that was-- that facility was defunded in the last  
11 budget. So--

12 MICHAEL CLARKE: [interposing] And we'd  
13 also had a problem with the ULURP. The landlord had  
14 wanted-- didn't want to wait as long as it took to  
15 get through the process. So we lost it. So we are  
16 still working on that. I know on the Red Hook  
17 facility we have maybe eight years left on the  
18 approved lease, maybe seven. I don't remember the  
19 exact time we extended it. So, that is part of the  
20 discussion is trying to modernize all of our property  
21 storage and tracking systems to get into a new era  
22 where some of the stuff will be a lot easier for us  
23 to report out and store. But I-- like Oleg said, on  
24 this specific project, we'll have to go back and find  
25 out a little bit more where we stand.

1  
2 COUNCIL MEMBER MENCHACA: Okay. Yeah,  
3 and it's really not just the Red Hook, but I think  
4 it's a larger question about storage and the ever-  
5 growing concern that you have in where to store  
6 thing. And with this community pressure, I think the  
7 Chair's onto something, in terms of how we just get  
8 people back their stuff as soon as possible so that  
9 it's not-- it's like a logistics issue, separate and  
10 apart from the social justice and getting black and  
11 brown people their property. Let's get it back to  
12 them, and this could be a nice little pressure point  
13 that can inform this bigger discussion. So, I'll  
14 follow up with you on all the rest of that stuff.  
15 Thank you.

16 DEPUTY COMMISSIONER CHERNYAVSKY: Sure,  
17 we'll have no opposition from us. I mean, we-- look,  
18 it takes resources for us to store property that  
19 certainly we're capable of getting back. I mean,  
20 we're not talking about the smaller universe of  
21 arrest evidence or investigatory evidence that has a  
22 value in the criminal prosecution but even that, once  
23 the DA releases it, the turnaround time of  
24 individuals actually picking up arrest evidences.  
25 You know, it's-- folks aren't running back and

1  
2 retrieving their property within hours, even though  
3 they're able to do that. I mean, we don't have a  
4 vested interest in holding onto property for  
5 protracted amounts of times. We would like to  
6 relinquish it as soon as possible.

7 MICHAEL CLARKE: In fact, our property  
8 clerk tells me that every day, they want to get it  
9 out as soon as possible.

10 COUNCIL MEMBER MENCHACA: Okay. Well,  
11 Chair, I'd like to work with you on this, as someone  
12 who hold property-- evidence location in district.  
13 Thank you, Chair.

14 CHAIRPERSON ADAMS: Thank you, Council  
15 Member Menchaca, and we will definitely get together  
16 on that. I don't think there are any other questions  
17 from my colleagues. So I'll just wrap up with this.  
18 You know, to me the system-- I mean, it's been  
19 explained by you all pretty easily, but to me, it's  
20 very problematic. We've got an issue with checks and  
21 balances. We've got issues when, you know, folks go  
22 to pick up their property, what happens if the  
23 property clerk says no. They have to get permission  
24 from the DA. You know, why do we have to have a  
25 system where tens of thousands of people [inaudible]

1  
2 realistically have to jump through a lot of  
3 bureaucratic hoops and [inaudible].

4 DEPUTY COMMISSIONER CHERNYAVSKY: I'm  
5 sorry, Council Member, you broke up a little bit, but  
6 I think I got the gist of your question about  
7 individuals having to jump through hoops to get  
8 property. Am I about right?

9 CHAIRPERSON ADAMS: Yes, you are.

10 DEPUTY COMMISSIONER CHERNYAVSKY: So,  
11 again, as I said, I think the "controversial" part of  
12 this conversation, I don't think it's the safe-  
13 keeping evidence which is by far the vast majority of  
14 the property that we seize and gets categorized as  
15 safe keeping. Folks can get that back literally  
16 within hours of its seizure, and again, all they need  
17 is an ID and the voucher number, and we'll facilitate  
18 that to the extent the ID's, you know, been  
19 vouchered. We'll look at the voucher to see if the ID  
20 is there and connect the individual. I mean, we  
21 have-- I mean, we offer different points where the  
22 process of retrieving that evidence is explained,  
23 whether it's on the voucher that's given to the  
24 individual, whether it's through 311, you know, it's  
25 in different languages to make it easier. It's on our

1 website. We're doing our best one, to explain it to  
2 connect individuals with their property to the extent  
3 that we can. Again, when it comes to arrest evidence  
4 and investigatory evidence, really it comes down to  
5 chain of custody. I mean, and we cannot relinquish  
6 evidence. I mean, I don't think anybody at this  
7 hearing is in favor in any way of undermining or  
8 compromising a prosecution for a serious offense, and  
9 mind you, over 90 percent of the cell phones-- if  
10 we're focusing on cell phones. Over 90 percent of  
11 the cell phones we seize and mark as arrest evidence  
12 or investigation are for serious felonies. You know,  
13 whether it be homicide or guns or robberies or  
14 burglaries. These are major, major crimes that it's  
15 in all of our collective best interest to have as  
16 strong of a prosecution as possible, not to have any  
17 evidence escape or get contaminated. But we have,  
18 again, there is a process in place. One, the  
19 individual is made aware of what they need to do to  
20 get it back. Their attorney is given an inventory  
21 list of the property that was seized from their  
22 client. So not only is the client or the defendant  
23 given a voucher that has this explanation, but the  
24 defense lawyer is given as part of the discovery  
25

1 process a list of property that was seized or  
2 vouchered from their client. And they're in contact  
3 with the prosecutor at every stage during the  
4 prosecution. So as long as the prosecutor releases  
5 it and says we don't need it as evidence, we  
6 facilitate the return of that property. We don't  
7 have a vested interest in holding onto it if it has  
8 no investigatory value.

10 CHAIRPERSON ADAMS: Yeah, Oleg, you make  
11 it sound so simple, and I'm going to beg to differ.  
12 You make it sound so very simple, because I mean, it  
13 doesn't seem to me that it would matter whether or  
14 not the offense is serious. It's about whether it's  
15 relevant to the case itself. Now, I mean, it just  
16 seems that there's a problem, and we got to recognize  
17 how we can do this better. It just sounds a little  
18 simplistic to me, the explanation, and [inaudible] I  
19 do believe we'll-- with that, I'm going to thank you.  
20 I see [inaudible] questions. Counsel, no further  
21 questions?

22 COMMITTEE COUNSEL: No further questions.  
23 Thank you to members of the NYPD. Chair Adams, I'm  
24 actually going to ask if you could-- we're having  
25 some issues hearing you. If you could just log off

1 while the Queens DA is testifying and log back on  
2 just to see if that takes care of the problem. Thank  
3 you to members of the NYPD, and in just a moment we  
4 will turn to Assistant District Attorney George  
5 DeLuca. I'm sorry, DeLuca-Farrugia. And if you're  
6 ready, you may begin your testimony.

8 GEORGE DELUCA-FARRUGIA: Thank you.  
9 Good morning.

10 COMMITTEE COUNSEL: Oh, I'm sorry. I  
11 apologize. Before we do, do you swear to tell the  
12 truth the whole truth and nothing but the truth and  
13 answer all questions to the best of your ability?

14 GEORGE DELUCA-FARRUGIA: I do.

15 COMMITTEE COUNSEL: Thank you.

16 GEORGE DELUCA-FARRUGIA: Good morning.  
17 My name is ADA George DeLuca-Farrugia. I'm the  
18 Director of Extraditions, Renditions, and Property  
19 Release Services at the Queens County District  
20 Attorney's Office and I'm here today to present  
21 testimony on behalf of the District Attorney Melinda  
22 Katz, who could not be here today. I'd like to thank  
23 Speaker Johnson, Chairperson Adrienne Adams, and the  
24 members of the Committee on Public Safety for the  
25 opportunity to appear virtually before you to provide

1 testimony in reference to property seizure and arrest  
2 evidence as it relates to the work of the Queens  
3 District Attorney's Office. Queens DA's Office does  
4 not hold onto property without a specific cause or  
5 legal reason to do so in accordance with New York  
6 City rules, Title 38 Section 12-34. Our office  
7 issues property releases within the guidelines set by  
8 the New York City Rules and Regulations which require  
9 that the DA's office must make a decision on  
10 releasing general property within 15 days of  
11 receiving a formalized demand consisting of both the  
12 demand form and a copy of the voucher. In cases of  
13 motor vehicles, that decision must be made within  
14 seven days. Since its founding in 2019, our Property  
15 Release Services Unit has processed over 4,700  
16 property release requests. These requests for  
17 release are for various types of personal property  
18 including backpacks, property found within a car,  
19 United States Currency, cell phones, and motor  
20 vehicles. Upon receipt of a property release demand,  
21 one of three decisions can be made: release,  
22 deferral, or decline. Out of the 4,700 property  
23 release requests our office has received, a release  
24 has been issued on every demand with the exception of  
25



1 342 cases where deferrals were issued. A deferral is  
2 issued in accordance with the New York City rules  
3 which specify the basis for deferral. For non-  
4 vehicle property, we may defer to release under the  
5 following circumstances. One, the property involves  
6 a case presently pending against the defendant or co-  
7 defendant. Two, if the case is currently pending  
8 appeal. Three, if there's a collateral attack on the  
9 property, or four, if there's an ongoing  
10 investigation regarding the property. Deferrals for  
11 release of a motor vehicle can only be issued in the  
12 following circumstances: One, where photographs of  
13 the motor vehicle are needed. Two, where the  
14 appearance and/or operability of the vehicle are at  
15 issue. Three, where the motor vehicle must be tested  
16 and photographed. Four, where the defendant has not  
17 yet raised a defense, and five, whether the vehicle  
18 is need to rebut a defense at trial. The Queens DA  
19 Property Release Unit notifies a claimant of the  
20 decision to defer a release via email and regular  
21 mail. This notification includes the basis for the  
22 deferral and advises the claimant of the appeals  
23 process and their right to file an appeal. Of the  
24 342 where property release was deferred, 64 of those  
25

1 involved cell phones. Since 2019, 64 appeals-- and  
2 that's not a mistake, it's just a coincidence-- 64  
3 appeals of our decision to defer releases have been  
4 filed by the claimant seeking a supervisor's review  
5 of the deferral. Of those 64 appeals of our decision  
6 to defer release which have been filed, only four  
7 remain in deferral status. In addition, since its  
8 inception, there have been 265 separate demands for  
9 which we have declined to release property. Declines  
10 to release are often due to the fact that the  
11 property is contraband. This includes weapons,  
12 forged instruments, stolen property, or other  
13 proceeds of the crime. In addition, release may be  
14 declined if the property has been forfeited by  
15 agreement at the time of plea. In each of these  
16 instances, the claimant is mailed an emailed letter  
17 explaining the basis for the decline. If a  
18 forfeiture agreement had been entered into, a copy of  
19 that agreement is usually sent to the claimant along  
20 with the decline letter. Often times an issue may  
21 come up during the release process where the invoice  
22 property will be categorized as investigatory. Any  
23 question regarding the classification of voucher  
24 property has to be directed to the NYPD. Our office  
25

1 has no control over the designation of property.

2 When possible, we do have the assigned ADA reach out

3 to the vouchering officer in an attempt to get them

4 to reclassify the property. Our property releases

5 indicate that our office no longer needs the property

6 for trial. Once we issue that release, it is up to

7 the NYPD to release the property. Any other holds on

8 such property have nothing to do with our office.

9 Once we issue a release, we have no control over what

10 is done with the property, and would direct anyone

11 with questions to the NYPD regarding those issues.

12 The biggest issue here is property marked for

13 forfeiture. In those cases, we direct claimants to

14 the NYPD Civil Enforcement Unit. Finally, throughout

15 the pandemic our Property Release Services Unit has

16 continued to process every demand that has come in.

17 Statutorily we have 15 days on non-vehicle demands

18 and seven days on vehicle demands to make a

19 determination on a release once the demand is

20 finalized and all of the paperwork necessary to

21 process the demand has been received. In an effort

22 to streamline the process for those who are seeking

23 return of the property, our office in conjunction

24 with the NYPD, specifically with the Queens Property

1 Clerk's office, has set up a system by which the  
2 releases are sent directly to the NYPD Property  
3 Clerk. Once that has happened, an email is sent to  
4 the requestor advising them of the release. The  
5 District Attorney's Office does not have jurisdiction  
6 to handle any request to release property associated  
7 with the arrest of a juvenile. Juvenile arrests are  
8 handled in family Court and prosecuted by New York  
9 City Cooperation Council. I thank you for the  
10 opportunity to appear before you today, and I look  
11 forward to working with you and your staff on this  
12 important issue.

14 CHAIRPERSON ADAMS: Thank you very much,  
15 Mr. DeLuca-Farrugia. Thank you. [inaudible] I guess  
16 my first question of retaining, of reviewing,  
17 retained property could be automatic? Right--

18 GEORGE DELUCA-FARRUGIA: [interposing] I  
19 didn't hear your question at all, Council Member  
20 Adams.

21 CHAIRPERSON ADAMS: My apologies. Can  
22 you hear me now?

23 GEORGE DELUCA-FARRUGIA: Yes, ma'am.

24 CHAIRPERSON ADAMS: Okay. I was asking  
25 about whether or not the process of reviewing

1 retained property could it be automatic from  
2 arraignment instead of waiting for a claim in hand.

3  
4 GEORGE DELUCA-FARRUGIA: Judge-- sorry.  
5 Council Member, that's not possible, because the case  
6 has to actually be assigned to an assistant who has  
7 to review the case filing, make a determination as to  
8 what property is needed for the purposes of trial and  
9 what property is not needed for purposes of the  
10 trial. And obviously, that's not possible at the  
11 arraignment since, you know, we're just having  
12 processed the complaint [sic].

13 CHAIRPERSON ADAMS: I see. What  
14 percentage of cell phones vouchered by the NYPD do  
15 you move-- do you move search warrants for?

16 GEORGE DELUCA-FARRUGIA: I can tell you  
17 that in calendar year 2020 the office obtained search  
18 warrants on somewhere between 100 and 150 of phones,  
19 and I think if you give us a few days I can give you  
20 a concrete number on that, but between 100 and 150  
21 warrants were obtained for cell phones that were  
22 recovered.

23 CHAIRPERSON ADAMS: Do you have any idea  
24 how many phones are actually kept if cases are  
25 dismissed?

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GEORGE DELUCA-FARRUGIA: If-- I guess I'm not clear. You're asking if where a demand has been made, any case where there's been disposition, the phone will get released upon demand.

CHAIRPERSON ADAMS: So you're saying that in every case-- a case that is dismissed, those phones are immediately given back to the individual?

GEORGE DELUCA-FARRUGIA: I'm saying if they've made a demand for property to be released, we immediately process them and release the property. If they had previously made a demand and that demand had been deferred based on one of the reasons I stated earlier, then once the case is resolved, whether it's the plea or disposition or dismissal where the item is no longer needed, the release will be issued immediately.

CHAIRPERSON ADAMS: Do you know how many DA requests, release requests, are received within a year?

GEORGE DELUCA-FARRUGIA: Hold on, I can give you the number for 2020.

CHAIRPERSON ADAMS: And how long it actually takes you to comply with them?

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COMMITTEE ON PUBLIC SAFETY

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GEORGE DELUCA-FARRUGIA: Within 15 days. We have never not met the deadline that's imposed by the New York City Rules and Regulations. In calendar year 2020, we received a total of 3,089 demands.

CHAIRPERSON ADAMS: [inaudible] 2020?

GEORGE DELUCA-FARRUGIA: That's 2020, yes.

CHAIRPERSON ADAMS: For the cases where you don't consent to release, how many are actually appealed?

GEORGE DELUCA-FARRUGIA: I'm sorry, let me revise that. That was actually 2019; 1,679 in 2020. I apologize for that.

CHAIRPERSON ADAMS: 1,679?

GEORGE DELUCA-FARRUGIA: Yes, ma'am.

CHAIRPERSON ADAMS: [inaudible] and then my follow up question, was how [inaudible] and then for those that are not consented to release on, how many are actually appealed?

GEORGE DELUCA-FARRUGIA: Total number of appeals filed in 2020 were seven.

CHAIRPERSON ADAMS: Seven? [inaudible] Apart from a release form, do [inaudible]

2 GEORGE DELUCA-FARRUGIA: I didn't hear  
3 your question.

4 CHAIRPERSON ADAMS: Okay.

5 COMMITTEE COUNSEL: I'm sorry, Chair,  
6 maybe--

7 CHAIRPERSON ADAMS: [interposing] I  
8 apologize, my internet is unstable.

9 COMMITTEE COUNSEL: Chair, maybe try  
10 stopping your video.

11 CHAIRPERSON ADAMS: Can you hear me?

12 COMMITTEE COUNSEL: Let's try that way.

13 CHAIRPERSON ADAMS: Is that better?

14 GEORGE DELUCA-FARRUGIA: Yes, I can hear  
15 you now.

16 CHAIRPERSON ADAMS: Okay, great. So,  
17 apart from a release form, do you also ask for a copy  
18 of the NYPD voucher? In other words, do you every  
19 accept something in lieu of the voucher?

20 GEORGE DELUCA-FARRUGIA: No, we require--

21 CHAIRPERSON ADAMS: [interposing] Like ID?

22 GEORGE DELUCA-FARRUGIA: We require the  
23 voucher. If the defendant or claimant does not have  
24 the voucher, we then look for it in our system, and



1 if we don't have it, we then have to go to the NYPD  
2 to obtain a copy of it.

3 CHAIRPERSON ADAMS: Interesting. Okay.  
4 How many of-- how many other releases are for cell  
5 phones?  
6

7 GEORGE DELUCA-FARRUGIA: I don't have  
8 immediate access to that. I can provide that for you  
9 at a later date. We have to run a report to obtain  
10 that, and we have not been able to get that as of  
11 yet.

12 CHAIRPERSON ADAMS: Okay. I think I'm  
13 going to stop here, Counsel, and go to my colleague's  
14 questions.

15 COMMITTEE COUNSEL: We have a few Council  
16 Members here to ask if anyone wants to ask questions,  
17 use the Zoom raise hand function. If not, we will  
18 turn to the public. Seeing no hands. Thank you very  
19 much Mr. DeLuca-Farrugia.

20 GEORGE DELUCA-FARRUGIA: Thank you.

21 COMMITTEE COUNSEL: We will now hear from  
22 members of the public. We have six witnesses, so  
23 I'll just let everybody know the order right up front  
24 so you all know when you're coming up. First up will  
25 be Maryanne Kaishian from Brooklyn Defender Services,

1 followed by Yamina Chekroun from New York County  
2 Defender Services, followed by Raissa Carpenter from  
3 the Legal Aid Society, David O'Brien from New York  
4 County Defender Services, Maryann Rosa from Bronx  
5 Defenders, and Towaki Komatsu. So, first up, Maryanne  
6 Kaishian from Brooklyn Defender Services.

8 SERGEANT AT ARMS: Time starts now.

9 MARYANNE KAISHIAN: Good morning and  
10 thank you to the City Council, particularly Chair  
11 Adams, for holding this important hearing. It's  
12 impossible to overstate the frequency with which New  
13 Yorkers are having their property seized by the NYPD,  
14 and the testimony making it seem like these items are  
15 seized primarily in serious cases is frankly fiction  
16 that seems ripped from a police procedural show.  
17 Furthermore, the testimony that, you know, these  
18 items are left on the shelf until the NYPD can  
19 legally take ownership amounts to really, you know,  
20 we stole it until it became ours. And also,  
21 suggesting that the police don't have a vested  
22 interest in holding property is simply untrue.  
23 Especially when, you know, non-vehicular items such  
24 as wedding rings were sold at auction and netted over  
25 \$425,000 last year alone for police pension funds.

1 We know that these seizures occur whether or not the  
2 owner of the property is ultimately prosecuted for or  
3 even accused of criminal conduct. Property is taken  
4 when it has no connection to alleged criminal conduct  
5 and it's sometimes still sold by the police after  
6 they've stonewalled the rightful owner from  
7 retrieving it. And as defense attorneys we can attest  
8 that we, you know, even as trained advocates and  
9 lawyers find the property return process extremely  
10 taxing, time consuming, frustrating, and ad hoc. You  
11 know, people have to navigate this without legal  
12 representation often, especially if they're  
13 retrieving property in cases that were never brought  
14 through prosecution. The right to counsel doesn't  
15 attach. We have countless harms about the  
16 illegitimate and unreasonable property seizures  
17 through the courts with our representation of people  
18 here in Brooklyn. We represented a young person who  
19 was the victim of a shooting, and while he was in  
20 surgery, the NYPD came, seized his phone and his  
21 clothing, and labeled it as investigatory. He was  
22 not suspected of a crime, but his phone and his only  
23 means of communicating with his loved ones and  
24 updating them on his progress and his health was  
25

1 taken for over two months, and he was left without  
2 recourse. We represented a young person who  
3 witnessed a police assault. When he attempted to  
4 record this assault it was taken as evidence. I  
5 represented young people whose arrested were baseless  
6 and not pursued by prosecutors, but whose phones were  
7 taken during those encounters for investigatory  
8 purposes and other matter-- and other matter which  
9 really amounts to a warrant work-around. The police  
10 are using baseless arrests that will not hold up in  
11 court to gain evidence that they later use in other  
12 unrelated prosecutions. The NYPD will also create  
13 unrealistic and impossible requirements to return,  
14 such as requiring docket numbers or prosecutor  
15 approval on cases that were never brought for  
16 prosecution and that's never assigned any sort of  
17 prosecutors in the District Attorney's Office. And  
18 the impacts of this are real, and I'm sure that other  
19 speakers will speak to this, but we're living in a  
20 time when virtual school is happening, virtual work  
21 is happening. We have only limited ways of  
22 connecting with our friends and loved ones, and so  
23 taking people's technology, especially for young  
24 people, is incredibly isolating and damaging. We  
25

1  
2 also represented a mom whose car was seized as a  
3 result of her son's arrest, and even though we were  
4 in touch with her from our off--

5 SERGEANT AT ARMS: [interposing] Time  
6 expired.

7 MARYANNE KAISHIAN: with the NYPD from  
8 our office-- I'm sorry, if I may just finish-- for  
9 well over a year. We were unaware that the NYPD had  
10 taken the items inside the car, including a baby's  
11 car seat and destroyed it, and the current rules  
12 allowed it. Furthermore, we have every reason to  
13 believe given the NYPD's data capabilities and  
14 testimony from cell phone and laptop owners that  
15 we've represented about the state of their items  
16 after they're returned, that the NYPD is using its  
17 unchecked power to seize property as a warrant-less  
18 and illegal intelligence gathering tool. We know  
19 that since 2018 the NYPD has had the technological  
20 capability to break into and make copies of  
21 electronic devices and information stored not on the  
22 physical device, but in iCloud and apps, social media  
23 apps, and in other information and make copies of  
24 these items in a clandestine way. And we have no  
25 reason to believe that that's not happening while

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these cellphones and other technology are being held in their possession. We ask the City Council to pursue responses to this harm, but don't simply create new rules for the NYPD to decline to follow, because the truth is that there are already rules in place, such as the requirement for a warrant, that simply aren't being respected. As in so many areas of police practice, rules and legal constraints do exist, they're simply disregarded. So this is an issue of unchecked police power, unaccountability, and a persistent disregard for rules intended to safeguard the civil rights of the people of New York.

Thank you

COMMITTEE COUNSEL: Thank you. Next up will be Yamina Chekroun, New York County Defender Services.

SERGEANT AT ARMS: Time starts now.

YAMINA CHEKROUN: My name is Yamina Sara Chekroun and I am an attorney at NYCDS. The property issues presented in today's hearing are frequent in my practice. Unlike housing or licensing issues, they are among the most frustrating because of lack of clarity, lack of due process, and lack of oversight. Our public defense clients of whom people

1 of color are disproportionately represented are  
2 forced to navigate through a number of obstacles to  
3 retrieve their property. More often than not, the  
4 property is never even used as evidence in the  
5 prosecution's case. It is my stance that these  
6 obstacles are by design, implemented in such a way  
7 that make it nearly impossible for a person to  
8 retrieve their personal property in a reasonable  
9 manner. For example, when a cellphone is taken from  
10 a client and vouchered by the NYPD as arrest  
11 evidence, they're subjected to the following: After  
12 being arraigned, a person may have no idea that their  
13 phone has been taken for any other reason than safe-  
14 keeping. This is because no instructions are given,  
15 and arresting officers do not always provide  
16 vouchers. A person may go back to the precinct and  
17 ask for their property back. They will be told no,  
18 the property is being kept as evidence. If the  
19 precinct does not give them a voucher, they must then  
20 borrow someone's phone to call their lawyer. They  
21 ask them how to get their phone back. The lawyer  
22 asks for the voucher, because this is the only way  
23 they can identify and confirm the specific property  
24 category and the appropriate steps to take. They're  
25

1 then instructed to go to One Police Plaza to finally  
2 obtain the voucher. They must send their lawyer a  
3 copy of the voucher. Normally, a text photo would  
4 suffice, but without a phone, this adds and  
5 additional layer of complication. And in-person  
6 meeting with the attorney to present the voucher.  
7 If the law office has the capacity, which many do  
8 not, they will request a District Attorney's release  
9 on their behalf, and they will have to wait 15 days  
10 for an answer. If their lawyer does not have the  
11 capacity, the client just has to return to 100 Tenor  
12 Street and go up to the seventh floor with their ID  
13 and their voucher. The person at the window makes a  
14 request to the DA to release the phone. It's now a  
15 full two weeks without a phone. The request was  
16 denied. No substantial reason was given. Often, the  
17 reiteration of arrest evidence will present itself no  
18 other supporting facts. There's nothing our clients  
19 can do other than wait for the case to be disposed  
20 of. With the endless backlog caused by court  
21 closures, this could be months or years. By creating  
22 a protocol system that ensures that the property  
23 being kept by the NYPD is legitimately needed as  
24 evidence in the case, we ensure that individuals are  
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1  
2 not unfairly losing the right to personal property at  
3 the tremendous cost of losing the connection to their  
4 lifeline. Thank you.

5 COMMITTEE COUNSEL: Thank you for your  
6 testimony. Next up will be Raissa Carpenter from  
7 Legal Aid Society.

8 SERGEANT AT ARMS: Time starts now.

9 RAISSA CARPENTER: Good morning. My name  
10 is Raissa Carpenter. I'm a staff attorney with the  
11 Legal Aid Society's Criminal Defense Practice where I  
12 represent people who are arrested and prosecuted.  
13 Whenever a person is arrested by the NYPD, regardless  
14 of how minor the offense, the person is searched, and  
15 during the course of that search property is seized.  
16 Our clients have their cellphones seized as well as  
17 identification, money, cars, and countless other  
18 items that they need to navigate life in New York  
19 City. Property seizure should be short term and  
20 primarily for safe-keeping. After a person is  
21 released from custody, all of their property should  
22 be returned. Unfortunately, that is not happening.  
23 Instead, NYPD officers seize any property they can  
24 and broadly categorize it in a way that allows for  
25 long-term retention, often for months, and in some

1 cases, years by saying that it may be contraband or  
2 evidence of a crime, classifications that there's  
3 often no justification for. NYPD's operating  
4 assumption seems to be that any potentially valuable  
5 property, any phone, any money, even petty cash  
6 recovered from someone who's been arrested must have  
7 been obtained through illicit means. We urge you to  
8 reject that assumption. You have heard many stories  
9 about the devastating impact that property seizure  
10 has on people's lives and how this practice  
11 perpetuates the trauma and terror the people  
12 experience at the hands of the NYPD every single day.  
13 Our clients are seized on the street, arrested,  
14 searched, have their property confiscated and then  
15 they're placed in holding cells, shackled in central  
16 booking, processed through the court system, and  
17 they're finally released only to discover that their  
18 phone, identification and money, all tools of  
19 survival, may be held by police and prosecutors  
20 indefinitely. The result is that our clients  
21 struggle to communicate with friends and families for  
22 their struggle to pay rent, buy groceries, complete  
23 their jobs or education programs, schedule and attend  
24 medical appointments, and even to attend future  
25

1 remote court appearances. In 2013, then Justice Neil  
2 Gorsuch asked the following question, "What after all  
3 is reasonable about police seizing an individual's  
4 property on the ground that it potentially contains  
5 relevant evidence and then simply neglecting for  
6 months or years to search that property to determine  
7 whether it really does hold relevant evidence needed  
8 for trial or is totally irrelevant to the  
9 investigation and should be returned to its rightful  
10 owner." On behalf of thousands of our clients, our  
11 answer to Justice Gorsuch's question is nothing.  
12 Nothing is reasonable about the practice of arbitrary  
13 and indefinite retention of property essential to  
14 modern life, and right now our clients have no legal  
15 recourse to get their property back. We urge the  
16 Council to partner with us and develop a legislated  
17 fix to this chronic problem, a legislative fix that  
18 creates a clear time frame for release, presumption  
19 in favor of returning property to those it was taken  
20 from, and an opportunity to seek the intervention of  
21 a judge whenever NYPD claims an interest in retaining  
22 our client's property. Thank you for shedding light  
23 on this unacceptable practice. We look forward to  
24 working with you.  
25

1  
2 COMMITTEE COUNSEL: Thank you. Next up  
3 will be David O'Brien from New York County Defender  
4 Services.

5 SERGEANT AT ARMS: Time starts now.

6 DAVID O'BRIEN: Good morning. Thank you  
7 for having me here today. My name is David O'Brien  
8 and I'm a trial attorney with the Juvenile Defense  
9 Unit at New York County Defender Services. My unit  
10 represents Raise the Age children and felony cases in  
11 both Supreme and Family Court. I'm here to testify  
12 on an issue that's of utmost importance, the  
13 confiscation of our clients' cellphones by the NYPD  
14 which occur as a matter of course when they are  
15 arrested. The vast majority of court appearances in  
16 New York City are occurring virtually. If a child  
17 does not appear in court, a warrant can be issued.  
18 Our clients are also often required to participate in  
19 programming as part of their cases which are  
20 occurring virtually as well. Participation often  
21 determines whether a child will earn youthful  
22 offender treatment and avoid a lifelong felony record  
23 or whether a child is permitted to remain in the  
24 community at all. In some cases, of course, a phone  
25 is legitimate arrest evidence, and in those cases it

1 makes sense that the NYPD and prosecutors would need  
2 it for a limited period of time. These scenarios  
3 represent a fraction of the cases we see where our  
4 clients lose their phone to the police, often  
5 permanently. Despite previous representations made  
6 in this hearing, phones are routinely held  
7 indefinitely as arrest evidence when there is no  
8 discernable connection to the case. In these cases,  
9 the seriousness of the allegations are irrelevant to  
10 this injustice. Just because charges are serious  
11 does not magically turn the phone into evidence.  
12 It's a fishing expedition at best. Other testimony  
13 you've heard today backs this up. ADA DeLuca-  
14 Farrugia testified that his office, the Queens  
15 District Attorney, requested search warrants for 150  
16 phones in 2019, while the NYPD's own data said that  
17 in that borough alone over 16,500 phones were  
18 vouchered, and citywide that year the number was over  
19 92,000. We spend hours on the phone trying to figure  
20 out where our client's phones are and how we can get  
21 them back. It's a wild goose chase that almost  
22 always comes up empty-handed. Without a phone, young  
23 people cannot log into their court appearance. They  
24 also cannot call their attorneys or probation  
25

1 officers, the programs they're mandated to attend,  
2 remote therapy sessions they're required to complete,  
3 or conduct court-ordered curfew checks. If parents  
4 stay home to work so their child can use their phone,  
5 they lose money to support their family and sometimes  
6 even put their jobs at risk. Moreover, the vast  
7 majority of young people in the system come from low-  
8 income families. Often the phone that was  
9 confiscated was the only phone the family had, and  
10 therefore the entire family is left disconnected.  
11 Just recently, a 16-year-old client of ours was  
12 arrested in his home and every electronic device in  
13 the house was confiscated, and now multiple siblings  
14 have no way of logging into remote school. His  
15 family has now been floundering for months. For  
16 another client, 14 years old, whose case has been  
17 pending for almost a year with literally no action  
18 from the prosecution and where there's no apparent  
19 connection between the phone and the case. This  
20 confiscation is a maddening financial hardship. His  
21 mother is in a binding service contract that she  
22 continues to pay the phone bill despite not having  
23 the phone. She's had to do through a house fire that  
24 destroyed everything she owned, through a  
25

1  
2 hospitalization for COVID, and with no end in sight  
3 for any answers about when they will get the phone  
4 back. In a time when the phone represents a young  
5 person--

6 SERGEANT AT ARMS: [interposing] Time  
7 expired.

8 DAVID O'BRIEN: Thank you. I'm almost  
9 finished. At a time when a phone represents a young  
10 person's entire ability to engage with their family,  
11 school, work, and most relevant here, court  
12 appearances and obligations, and when cases are  
13 dragging on for many months longer than usual, that  
14 confiscation is completely unjust and unacceptable.  
15 This problem must be tackled immediately. Thank you.

16 COMMITTEE COUNSEL: Thank you for your  
17 testimony. Next up will be Maryann Rosa from Bronx  
18 Defenders.

19 SERGEANT AT ARMS: Time starts now.

20 MARYANN ROSA: Good morning. My name is  
21 Maryann Rosa and I am a legal advocate with the Bronx  
22 Defenders Civil Action Practice. Because of the 2017  
23 law requiring the NYPD to disclose information on  
24 seized property, the public now has greater awareness  
25 of what we as civil public defenders in the Bronx

1 have known for years, that merely for having contact  
2 with the criminal justice system can mean lengthy  
3 seizure of essential personal property or it even  
4 disappearing permanently into a black hole. Every  
5 day we see the harm of the City's archaic property  
6 retrieval procedures on our clients and their  
7 families. NYPD seizure of property such as cash,  
8 house keys, and cell phones and vehicles leads to  
9 temporary homelessness, loss of employment, and  
10 inability to meet familial obligations. In the last  
11 12 months, we've assisted clients in almost 500  
12 property cases. Even with the assistance of an  
13 advocate, our clients experience months' long delays  
14 in retrieving property because of the overly  
15 complicated nature of the process. For example,  
16 contrary to the NYPD's assertions this morning, we  
17 have seen countless cases where an NYPD officer  
18 seizes property during an arrest and unlawfully  
19 categorizes it as investigatory. There is no  
20 specific procedure for how a claimant would request a  
21 release from the investigating officer, or what  
22 happens if the investigating officer fails to respond  
23 to that request at all, or declines to provide a  
24 release, even if the criminal case is dismissed. And  
25



1 even the process for property marked as arrest  
2 evidence where the District Attorney unilaterally  
3 decides whether to retain property is inadequate. It  
4 is unnecessarily complicated and confusing, and other  
5 than for vehicles, there is no judicial review. In  
6 our written testimony we also touch on the NYPD's  
7 archaic forfeiture program. In sum, the NYPD's  
8 practices seem designed to thwart our clients rather  
9 than to serve the public. The time for half-measures  
10 is over. The Council should act to end these abusive  
11 practices and bring New York City in line with other  
12 jurisdictions around the country. This would include  
13 repealing and replacing Admin Code 14140 with  
14 streamlined accessible procedures in plain language,  
15 requiring a judicial hearing to review the NYPD's  
16 designation of property and money as evidence, a  
17 process which currently only exists for vehicles but  
18 no other forms of property, abolishing the NYPD's  
19 ability to permanently seize property and money as  
20 revenue through civil forfeiture under 14140. We  
21 urge the Council to act now to end the harm that  
22 lengthy, unnecessary seizure of personal property can  
23 cause, exacerbating the already distressing toll of  
24 the COVID-19 pandemic.  
25

COMMITTEE COUNSEL: Are you finished?

Okay. Thank you for your testimony. I'm going to turn it back to the Chair who has a few questions for all of the defenders. So we're going to actually invite you all to unmute yourself, and just be mindful if you're not speaking at the time, you are going to be unmuted, but so that you can answer when you would like to. So, while you're unmuting yourselves, I'll turn it back to the Chair.

CHAIRPERSON ADAMS: Thank you, Counsel, and I apologize for my video off and on, but as I mentioned, I am having internet problems today. So I think the only way that I can be heard is to turn the camera off and that you all won't freeze on me, I've got to keep the camera off. Thank you so much for your testimony this morning. It is so appreciated. This issue is something that is so relevant, especially now during COVID. It is relevant to the people, Ms. Rosa, as you just said that have been victimized by this, particularly to our youth and communities of color [inaudible] to families that depend on this. You know, we've got to do something about it. So, this question is for all of you, and again, thank you so much for your testimony. How

1  
2 long does it normally take for your clients to get  
3 their property back?

4 DAVID O'BRIEN: Well, I can speak if no  
5 one else wants to go first. I'll put on my video.  
6 So, in our cases, generally, they're held until the  
7 case over, and the Raise the Age cases, they start in  
8 the youth part of Supreme Court. If they are removed  
9 to Family Court, then the paperwork is transferred to  
10 the prosecutors there, but that doesn't mean that any  
11 case is filed at that point, and therefore there's  
12 not even a prosecutor available to talk to you about  
13 consenting to a release of the phone. And because of  
14 the pandemic, the deadlines of when the have to file  
15 a case have been expanded or suspended for over a  
16 year now, and so I don't have an average amount of  
17 time, but I can say that in our cases is many months  
18 to over a year if they get the phone back at all.

19 CHAIRPERSON ADAMS: So, what--

20 UNIDENTIFIED: [interposing] Just to echo  
21 [inaudible]

22 CHAIRPERSON ADAMS: Oh, go. Go ahead  
23 Maryann.

24 MARYANNE KAISHIAN: Thank you. Just to  
25 echo what David saying, in cases that are not

1 involving juveniles, so they're not removed, we're  
2 also facing similar delays. So there's no set time in  
3 which a persons will retrieve their property, but  
4 certainly there have been delays in speedy trial  
5 time. so even while we're waiting for certain cases  
6 to be dismissed or even going on longer than usual,  
7 there's delays between somebody's arrest often, and  
8 if they're issued a desk appearance ticket, they go a  
9 significant amount of time between the issuance of  
10 the ticket and their actual appearance, at which  
11 point counsel attaches. So that could be months of  
12 them attempting to navigate the return of their  
13 property without any sort of assistance. And then  
14 there are additional delays with the courts not being  
15 opened, and with-- again, this is delays between  
16 counsel visits. So, often it takes over a year for  
17 someone to get their property back, and I'd say also  
18 often people abandon their property because they've  
19 tried. They've made multiple visits to precincts.  
20 They're sent to various property clerks. They're  
21 given conflicting information depending on who they  
22 speak to at any given time at the precincts, and so a  
23 lot of times people will never get their property  
24  
25

1 back. I think that that's something that everybody  
2 who has testified today has touched on.

3  
4 YAMINA CHEKROUN: I'd like to second what  
5 Maryann said about clients giving up on getting their  
6 property. You know, often times they aren't able to  
7 speak to an attorney that is knowledgeable about  
8 property issues, because not all criminal defenders  
9 have the capacity or the time to become well-versed  
10 in all the different procedural stats. You know,  
11 they will go to the precinct and be told that they  
12 need something else or need to go somewhere else, and  
13 it just becomes very confusing putting all the pieces  
14 together, and so they'll just think that they can't  
15 get their property back, and they will just fully  
16 give up, and that's in particular if they don't end  
17 up with a voucher after arraignments. In my stance,  
18 the likelihood of seeing someone who has just given  
19 up getting property is very high.

20 CHAIRPERSON ADAMS: Yeah. You know,  
21 that's actually where I was going with this. I  
22 thought it was particularly disturbing to hear that  
23 if someone did not have a voucher and couldn't  
24 produce ID, I think that's very unreasonable. So I  
25 would imagine that we would lose a lot of [inaudible]

1 a lot of property that way, and you know, for me  
2 that's an issue. That's a stinging issue with me.  
3 Something else that I want to touch on-- did you want  
4 to say something else? Go ahead.

6 YAMINA CHEKROUN: You know, often times  
7 the precinct will actually give the person invoice  
8 number. They will write it down on a piece of paper,  
9 but unfortunately it's not sufficient. In my  
10 experience, to provide the District Attorney's office  
11 with only the invoice number in order to request a  
12 release, they require the full copy of the voucher.  
13 And so having a client then, you know, go to One  
14 Police Plaza, especially when they live all the way  
15 uptown, particularly during the pandemic just seemed  
16 like such an unreasonable ask, but it was an ask that  
17 I had to make quite frequently.

18 CHAIRPERSON ADAMS: Yeah. Also, if they  
19 would-- also, if they live southeast [sic] Jamaica,  
20 Queens where I live.

21 YAMINA CHEKROUN: Yes, exactly.

22 RAISSA CARPENTER: If I could jump in as  
23 well. I think another issue that we see with clients  
24 is not necessarily actively giving up, but feeling as  
25 though they have no other option. You know, they

1 first go to the precinct themselves and try to  
2 retrieve the property, and then when that's not  
3 successful, sometimes they're just told no, you can't  
4 have it back right now. You need to wait for DA  
5 release, and then that's when they contact the  
6 attorney tries to seek the release, but unless the  
7 attorney is notified to then notify their client--  
8 the client is never given notice when the property  
9 status changes within the NYPD. So you'll have the  
10 attorney seeking the release from the DA's office,  
11 and in some case the release is granted, but we're  
12 never notified. So the only way that you find out is  
13 by continually calling the DA's office back and  
14 getting someone to respond to you and let you know  
15 that yes, that release has been granted, but then  
16 we've even had situations where clients go to pick up  
17 the phone being told that a DA release was needed,  
18 and the DA release is granted, and then it's at that  
19 point that the NYPD decides to reclassify the  
20 property for seizure. So then a whole new process  
21 starts over. So you see people giving up not because  
22 they want to give up or because they don't care about  
23 the property anymore, but because so many obstacles  
24  
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1  
2 are put in their way that they feel that there's no  
3 way for them to succeed.

4 DAVID O'BRIEN: I also-- I just want to  
5 add one thing.

6 CHAIRPERSON ADAMS: Yeah.

7 DAVID O'BRIEN: It's particular to our  
8 clients in the youth part. That, you know, in the  
9 rare cases where the District Attorney or corporation  
10 [sic] counsel does counsel does consent to the  
11 release of the phone and when it is properly  
12 reclassified by NYPD in the PET [sic] system, that's  
13 often after a long runaround process, and it's very  
14 rare when this happens at all. But there's this  
15 catch-22 where our clients are too young to have  
16 driver licenses and really the only ID they have is a  
17 school ID, and the school has been virtual, and so  
18 they have-- the NYPD does not accept last year's ID,  
19 which is the only ID that they have. So their  
20 parents are not allowed to pick up their phones for  
21 them unless they have a notarized from our child  
22 client giving their parent permission to pick up the  
23 phone, their property, for them, and often times a  
24 notary would require that child to have an ID as  
25 well. And so there's circumstance where even in the



1  
2 rare instances when they can possibly get their phone  
3 back before the case concludes, it's really  
4 impossible to do so.

5 CHAIRPERSON ADAMS: Wow. This  
6 [inaudible] one more thing around that, David, and  
7 you could probably answer this, just to piggy back  
8 and then that's going to be it for me. You know,  
9 something that's near and dear to my heart is  
10 education of our children, and we see, you know, our  
11 kids going through this process and going through the  
12 system, and a lot of times it's just, you know, so  
13 unnecessary to put them through this. What's  
14 disturbing to me, the virtual learning, the remote  
15 learning, phones are taken away. So if your client  
16 is a juvenile and they use their vouchered phone for  
17 e-learning, how does your client do remote learning?  
18 Is it just impossible?

19 DAVID O'BRIEN: Often times it is  
20 impossible. Often times they use their parents  
21 phones and then cannot-- either their parents stay  
22 home, miss work, lose their jobs, or their parents  
23 are not in communication while they're out of the  
24 house, or they just scramble and try to make it to  
25 some camera that they can, and you know, this is a

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2 problem with services in the youth part as well,  
3 coming and dialing into court, checking in with  
4 probation like you're supposed to, and these are  
5 often pre-conditions that are dangled in front of our  
6 clients for either a favorable disposition in the  
7 case or a removal to Family Court, and they really--  
8 it's really-- often takes herculean efforts to comply  
9 if the family is financially able to do so.

10 CHAIRPERSON ADAMS: Wow. So disturbing.  
11 I do have one more question. Maryanne, I don't want  
12 to let this go. You suggested amending 14140 with  
13 better procedures. Could you just give me an idea  
14 what you think it would look like or the system would  
15 look like of what you suggest? The system would like  
16 that would allow DA's to still access relevant  
17 evidence?

18 MARYANN ROSA: Yep. So, I mean, I think  
19 for our office our hope would be a full repeal and  
20 replacing of 14140. Right now, vehicles that are  
21 marked for civil forfeiture or arrest evidence are  
22 the only property where there is an attempt to  
23 judicial review. So we would like to see all  
24 property, you know, to be considered where there is  
25 an ability for someone outside of just the NYPD or

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2 District Attorney's office to unilaterally decide  
3 whether or not they should be able to retain  
4 property, and our office, you know, would look  
5 forward to continuing this discussion and look into  
6 this further and definitely get back to you.

7 CHAIRPERSON ADAMS: Very good. Thank you  
8 so much. Thank you all so much for this testimony.  
9 It's been extremely valuable for me, and I really  
10 appreciate your work. I appreciate all that you do,  
11 particularly for our youth out there, our youth that  
12 are struggling, our youth in trouble. You all are  
13 the ones that have really, really, really been their  
14 wind beneath their wings. So I commend you for your  
15 great work. Thank you so much for your testimony  
16 today. I appreciate it.

17 UNIDENTIFIED: Thank you.

18 UNIDENTIFIED: Thank you.

19 CHAIRPERSON ADAMS: Counsel, I'll turn it  
20 back to you.

21 COMMITTEE COUNSEL: Thank you, Chair.  
22 Thank you to the defenders. Before we turn to our  
23 next witness, I would just invite any other member of  
24 the public who has not signed up to testify who is  
25 present and who wishes to testify to please use the

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Zoom raise hand function. I will now turn to Towaki Komatsu, and if any other hands are raised we'll turn to them after.

SERGEANT AT ARMS: Time starts now.

TOWAKI KOMATSU: Can you hear me?

COMMITTEE COUNSEL: Yes.

TOWAKI KOMATSU: Hello, can you hear me?

COMMITTEE COUNSEL: Yes, we can.

TOWAKI KOMATSU: So, yeah, Oleg Chernyavsky, I talked to him before in the City Council, or I should say in City Hall, with regards to the property, I guess, seizure, collection, and return issue that was discussed today. He basically lied through his teeth. He was sworn under oath when he made his remarks today. I previously beat the NYPD in court. I have a federal lawsuit against the NYPD, now as a countersuit. It's assigned to Federal Judge Valerie Kaproni [sp?]. Case number is 20CB10942. After I was arrested, the NYPD illegally did not collect all of my property. It also lost possession of my wallet while I was in NYPD's custody. The officers involved were NYPD officers Koy Harris [sp?] of the 48<sup>th</sup> precinct, Steven Perez [sp?]. Mr. Harris accompanied me to the hospital

1 after he criminally assaulted me, and while I was in  
2 the custody in the hospital he was jiggling the  
3 handcuffs behind my back that likely caused the  
4 wallet to fall out of my pocket, and no search was  
5 thereafter conducted by the NYPD to try to find that  
6 wallet, the business cards, the social security card,  
7 all that kind of stuff that could be used to commit  
8 identity theft. So once I realized that, I apprised  
9 the NYPD about that fact. They never conducted a  
10 search. I talked to the Commanding Officer of the  
11 precinct. They basically said, "You know what, we  
12 gave you your wallet back while you were in our  
13 custody. It was your responsibility to maintain  
14 control over that property while you were in  
15 handcuffs." So, the question is, if Mr. Chernyavsky  
16 is lying through his teeth during today's hearing  
17 while he's sworn under oath, at what point will the  
18 New York City Council step up to the plate and  
19 essentially impose sanctions against him for lying  
20 through his teeth by claiming that there's, you know,  
21 proper oversight of protocols and procedures, when in  
22 fact there isn't. Also, after I met up with Mr.  
23 Harris-- this all happened on December 26<sup>th</sup> of 2017--  
24 he didn't have his body camera turned on when he and  
25

1 I first met. He criminally assaulted me in a public  
2 corridor. I've testified about that repeatedly to  
3 City Council to no avail. And to try to close out my  
4 testimony, Chaim Deutsch, he's no longer a member of  
5 the City Council. The reason why, he violated  
6 [inaudible] law and his [inaudible] City Council  
7 still are members of the Council did so as well. So,  
8 yesterday, I filed paperwork with a federal lawsuit  
9 that I have asking a federal judge to allow Mr.  
10 Deutsch to have some company by essentially  
11 terminating the employment of members of the City  
12 Council with the City of New York effective  
13 immediately pursuant to the same law that Mr. Deutsch  
14 was fired under. Anyway, have a good day. Bye.

16 COMMITTEE COUNSEL: Thank you for your  
17 testimony. At this time I do not see any raised  
18 hands, so I will turn it back over to the Chair to  
19 close out the hearing.

20 CHAIRPERSON ADAMS: Thank you so much,  
21 Counsel. I'd like to thank members of the NYPD, DA's  
22 office members, my colleagues, public defenders, my  
23 legal staff for working on today's hearing Daniel  
24 Attis [sp?], Maxwell Captor Williams [sp?], Aliya  
25 Reynolds [sp?], [inaudible] Matthew Thompson. Thank

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COMMITTEE ON PUBLIC SAFETY

you also to our moderator behind the scenes, Malcolm  
Butehorn [sp?], for your guest appearance today  
during this hearing. That said, this hearing is now  
adjourned. Have a great day.

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COMMITTEE ON PUBLIC SAFETY



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 15, 2021