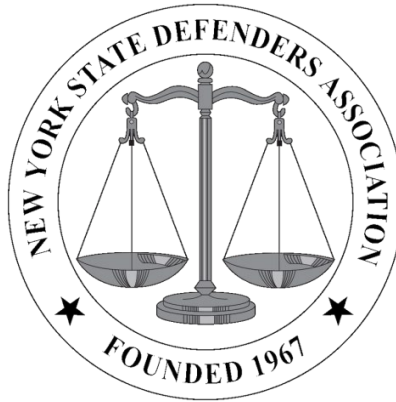


**JOINT LEGISLATIVE PUBLIC HEARINGS
ON THE 2025-2026 EXECUTIVE BUDGET PROPOSAL**

**Testimony before
The New York State Senate Finance Committee
and
The New York State Assembly Ways and Means Committee
on the Public Protection Budget**

**Susan C. Bryant
Executive Director
New York State Defenders Association, Inc.**



**February 13, 2025
Albany, NY**



New York State Defenders Association

NYSDA's Budget Testimony Summary

NYSDA's Funding	
Public Defense Backup Center	● Aid to Localities Budget Bill (Division of Criminal Justice Services) (DCJS), <u>add \$2,520,000</u>: ○ Restore last year's appropriation: add \$2.1 million to the Executive Budget ○ \$420,000 for two essential positions ■ Director of Training ■ Director of the Public Defense Case Management System
Veterans Defense Program (VDP)	● Aid to Localities Budget Bill (Department of Veterans Services), <u>add \$720,000</u> to restore the VDP's funding: ○ Assembly appropriation: \$250,000 ○ Senate appropriations: \$470,000 total (\$250,000 + \$220,000 for VDP Long Island/NYC office)
Funding for Public Defense	
Aid to Localities Budget Bill (Office of Indigent Legal Services)	● <u>Add \$30,500,000</u> for family defense to the Governor's proposed appropriation of \$19,500,000, for a total of \$50 million ● <u>Add \$4,860,000</u> for distributions to counties and New York City to the Governor's proposed appropriation of \$81 million, for a total of \$85,860,000 ● <u>Support</u> the Executive's proposed appropriation for the Hurrell-Harring statewide program (\$273,970,000)
Aid to Localities Budget Bill (DCJS)	● <u>Add \$6 million</u> for Indigent Parolee Program (IPP), or at a minimum, restore IPP funding to last year's \$600,000 (no funding in the Executive Budget proposal for IPP) ● <u>Add \$4 million</u> for the District Attorney and Indigent Legal Services Attorney Loan Forgiveness Program to the Executive's proposed \$2,430,000 ● <u>Support</u> the Executive's proposed appropriations of <u>\$40 million each</u> for <u>additional</u> Aid to Defense and Defense Discovery

NYSDA's Position on Article VII Proposals

OPPOSE	<u>Public Protection and General Government bill</u> : Part B (discovery repeal); Part D; Part F; Part L; Parts N, O, and P; and Part EE (ILSF Sweep)
OPPOSE	<u>Health and Mental Health bill</u> : Part EE
OPPOSE	<u>Transportation, Economic Development and Environmental Conservation bill</u> : Part E

Introduction to Comments on Budget Proposals Affecting Public Defense and Justice.

Thank you for providing this opportunity for the New York State Defenders Association (NYSDA) to comment on the portions of the proposed State Budget that affect public defense and related matters. Those related matters include community safety, family autonomy, and equitable access to justice in the legal systems that exert authority over many aspects of public defense clients' lives. Public defense encompasses institutional offices and assigned counsel panels, individual defenders providing representation in both criminal and family courts, and the overall purpose of public defense is protecting the rights and interests of clients.

This testimony will, primarily, highlight the importance of funding quality, client-centered public defense in today's challenging times. The latter part of the testimony will describe our position on certain proposed Article VII bills, especially opposition to those that are fear-driven and should be abandoned or re-thought.

Restore NYSDA's Public Defense Backup Center Funding.

Through its Public Defense Backup Center, now at a new location in Albany, NYSDA provides a range of services vital to defenders around the state. These include:

- case consultations and legal research assistance for defenders, especially on new, unique, or complex issues;
- continuing legal education (CLE) and other training (in person and online);
- extensive resources, including information in our publications and from our databanks;
- the Public Defense Case Management System (PDCMS), now in redevelopment while serving nearly 100 county-based public defense programs across the state; and
- recruitment and retention programs for public defense statewide to help ensure all clients have lawyers.

See our [2024 Annual Report](#) for details.

Full funding for the Backup Center must be restored, as the funding proposed in the Executive Budget does not come close to covering the critical resources needed to help ensure the State meets its constitutional obligation to provide public defense. Our legal staff provide a range of assistance that is particularly important to defenders in small programs with few resources. With the State providing only half the funding for the overdue 2023 raise in assigned counsel fees, counties struggle to cover necessary costs while defenders' need to keep up with legal and policy changes grows. The Backup Center's centralized resources provide cost-effective support.

This chart summarizes our budget request. The text that follows explains the work to be funded.

NYSDA's Public Defense Backup Center	
Public Defense Backup Center 2024-2025 SFY appropriation restoration (Executive Proposed Budget Appropriation: \$1,030,000; add \$2.1 million)	\$3,130,000
Expanding Defender Discovery and Forensic Support Through DCJS ATL Defender Lump-Sum Appropriations (Commitment from DCJS)	\$2,000,000
Add for Public Defense Backup Center Leadership Positions: Director of Training and Director of Public Defense Case Management System	\$420,000
Total	\$5,550,000
NYSDA's Veterans Defense Program 2024-2025 SFY appropriation restoration	
Assembly 2024-2025 appropriation: \$250,000 Senate 2024-2025 appropriation: \$250,000 Senate 2024-2025 appropriation Long Island/NYC office: \$220,000	\$720,000

NYSDA's vital resources include the Discovery and Forensic Support Unit.

Defenders need NYSDA's assistance on discovery and forensic issues, as the Legislature wisely recognized three years ago when it first funded our Discovery and Forensic Support Unit ("Unit"), designed to provide support to defenders with forensic or discovery issues. At NYSDA we have seen an increased overlap in discovery and forensic issues in pre-trial proceedings. In 2024 alone nearly one-third of inquiries NYSDA received specifically related to discovery and forensic science issues. Our Unit receives inquiries, conducts legal research, provides practical guidance for practitioners, connects attorneys to expert consultants, and provides continuing legal education (CLE) courses to the defender community. Our thoughtfully curated webinars and in-person CLE courses reach thousands of attorneys in New York State and beyond. Our Unit, with generous assistance from external experts in their fields who volunteer their time to educate New York defenders on topics ranging from ethics in forensics to discovery document management, defender discovery obligations, DNA evidence, pattern matching with latent prints and firearms, geofence warrants, cell site location information, call detail records, litigating against algorithms, and litigating digital evidence.

With the additional funding that the Division of Criminal Justice Services has committed to providing to the Public Defense Backup Center, we plan to add more experienced staff to our Discovery and Forensic Support Unit; ensure that staff continue their education in evolving forensic fields by funding their attendance at external trainings; increase the number of training programs we offer and expand our presenter roster with speakers who have more diverse and specialized knowledge; offer additional in-person and advanced training; dedicate resources to cultivating expert defense witnesses from educational institutions—a project that keeps getting placed on the back-burner due to more pressing needs in the defense community (direct litigation and research support); and enhance the forensic and discovery resources available on our website.

For discovery to work properly, the defense must evaluate the information received. Reviewing and analyzing material takes time and resources, and we appreciate that the State has provided funding for discovery to both prosecution and defense. We do note that, while prosecutors and police can choose which cases to prioritize, defenders are ethically bound not to choose one client over another but must push for full compliance with the discovery law in every case. In addition to the discovery assistance noted above, NYSDA assists defenders with the handling of discovery, such as by including functionality in the cloud version of our Public Defense Case Management System (PDCMS) that allows defense offices to seamlessly integrate discovery with the other aspects of their case management.

NYSDA also provides information to the Legislature, the Executive, and the public about the importance of the new discovery law in ensuring the effective assistance of counsel and justice. See our comments below on the Article VII bill that would roll back discovery reform.

PDCMS improves public defense efficiency. The case management system designed exclusively for New York public defense programs, which NYSDA offers to public defense offices across the state, not only helps improve administrative efficiency but also supports team-based, holistic representation. The long-time Director of PDCMS is retiring after more than two decades of doing the work of two people. To ensure that PDCMS continues to serve defenders and their clients, we need funding to add a second leadership position to the PDCMS team. See the attached budget request for details.

NYSDA helps defenders help clients with specific needs, including those with mental health issues, those who are immigrants, and more. Defenders' duty to provide every client with quality

representation includes the duty to identify and address the circumstances of each client's life that can affect their case. Defenders must be resourced to deal with a range of needs. NYSDA provides training, assistance, and advocacy to defenders regarding a variety of special circumstances that can affect a criminal or family case, such as mental health, domestic violence, military background, immigration status, and more.

Many of these issues intersect with each other and with wider issues. People who have experienced trauma and resulting mental health issues may become involved in the criminal or family legal systems. Youth developing mental illness who receive effective treatment may avoid legal problems while those left untreated may not; people of any age unable to access care in the community are at risk. In this, as in many facets of the health care and legal systems, racial disparity is obvious. Defenders and their clients are confronted with all these issues, and NYSDA helps in a number of ways, from providing information and consultations generally to delivering the specific services offered by the Veterans Defense Program (VDP). Detailed testimony about VDP will be submitted as part of the Human Services Budget Hearing.

We appreciate Governor Hochul's often-expressed desire for New York State to do more and better for people who need early mental health treatment, and her efforts to increase investment in alternatives to incarceration. But we are disappointed in the proposal to change the involuntary commitment standard, discussed further below.

NYSDA maintains our commitment to exposing and ending racism and to helping public defense lawyers confront it. Racism continues to harm Black people and other people of color throughout the system. Racism hurts public defense clients, their families and communities. Lawyers and other defense team members of color suffer indignities due to overt and systemic racism even as they struggle to protect clients. Racism leads to horrors such as the beating death of Robert Brooks, a Black man, at the hands of and under the observation of a group of white Department of Corrections and Community Supervision (DOCCS) employees at Marcy Correctional Facility last December. As the DOCCS budget—a proposed \$4.34 billion, up \$523 million from FY 2025—is considered, we ask that the Legislature and Executive demand changes to upend the institutional culture that led to Mr. Brooks' torture and death. New York State should be a leader in not just decrying racial injustice when the cruelties that result are made manifest, but in ending it.

Current developments in federal immigration policy impact the work of both criminal and family defenders in representing people who are not U.S. citizens. The detention and possible removal of immigrant clients charged criminally, under the new law known as the Laken Riley Act, threatens to deprive those clients of any effective defense. Defenders' ability to communicate with clients detained in federal facilities or deported to another country will be limited at best, interfering with the rights to counsel and to present a defense. Likewise, detention and removal will make family defenders' efforts to help clients craft and implement plans for the care of their children difficult if not impossible. NYSDA is working with many others to keep defenders informed about federal laws and policies affecting representation in state cases and to direct them to resources. These efforts continue our decades of involvement in the defense of immigrants, from our 1997 creation in-house of what later became the Immigrant Defense Project in New York City to our ongoing collaboration with a variety of organizations providing information and assistance to immigrant communities.

Family defense is public defense. Parental rights are no less important than the rights that protect people charged with crime. For most parents, the former are *more* important. The family regulation system, intended to protect children and ensure family safety, suffers from the same

systemic racism and resulting unfair practices that plague the criminal legal system and society at large. Defenders who are publicly paid to protect parents and therefore families are as vital to justice as those in criminal court, yet the State continues to deny family defense the same level of funding that is provided for criminal defense. The Executive proposal to flat fund the State's support of improved quality representation in family court (by appropriating \$19.5 million to be distributed by the New York State Indigent Legal Services Office (ILS) to counties) is nowhere near sufficient. That funding is not enough to provide even minimal funding to all counties; instead, the funding must be distributed through a time-consuming competitive grant process. NYSDA supports the ILS request for \$50 million, with increases over the next two fiscal years.

And the money is available to do this in the Indigent Legal Services Fund (ILSF), a special revenue fund created to improve the quality of public defense, not the general fund. The Legislature only needs to include an additional appropriation of \$30.5 million from the ILSF in the 2025-2026 SFY Budget.

The continuing shortfall in state funding for family defense makes NYSDA's Backup Center a vital resource for family defenders. We have a Family Court Attorney on staff and provide a plethora of resources and training for family defenders. Our annual conference, long a major source of CLE for criminal defenders, now includes a family defense track. The conference also provides joint criminal/family law plenary sessions, which increase defender understanding that many public defense clients have matters in both systems; these are not wholly separate matters but rather pose entwined issues; and clients in both systems confront daily realities, often stemming from poverty, that affect their cases. Current problems confronting many clients have particular impact in family defense matters, such as action by the federal government against an immigrant parent who has children who are U.S. citizens. NYSDA cannot solve these problems, but we can and must help defenders do everything possible within their cases to help immigrant (and all) clients. State funding is crucial and makes it possible for us to do this.

Public defense programs need help attracting and retaining defenders. A continuing, nationwide shortage of lawyers willing and able to do public defense work is affecting New York State's ability to meet its constitutional and statutory duties to ensure the right to counsel. NYSDA is acting on the issue. Last year we started a Public Defense Recruitment and Retention project that has started to help institutional offices and assigned counsel programs across the state attract and keep qualified lawyers. The project's Director has been meeting with chief defenders to gather information and has conducted a survey of their needs. She is connecting with law school career services, public interest offices, and clinics; this includes participation in career fairs in and far beyond New York. Our [PD Employer Resources](#) webpage illustrates some of these efforts, including provision of information for employers. This project has also improved maintenance of our long-established [job postings](#) page. Hiring the Director was made possible by a Division of Criminal Justice Services grant outside any specific budget line item; ongoing state support will be needed if federal funds disappear.

Chief defenders have asked NYSDA to expand our training program, including by adding a curriculum for new attorneys as well as for other defense team members and enhancing our advanced training. To do so, and to maintain and expand our existing trainings, we need a full-time Director of Training. Currently, two of our staff attorneys design and implement most of the programs presented by the Backup Center. This constrains their time for directly assisting defenders, contributing to our publications, etc.

NYSDA works with other organizations that provide or support public defense. Striving to maximize our effectiveness and avoid duplication of efforts, we work with a variety of entities,

some of whom directly receive state funding. And we support requests for state funding that assists public defense programs. We request an increase or continuation of the state funding described below.

Appropriately Fund Other Public Defense Assistance.

Office of Indigent Legal Service (ILS). The Executive proposal, which includes a small increase in state operations funding for ILS, has again flat-funded the base level distributions by ILS to New York City and counties at \$81 million dollars. ILS had requested a modest 6% cost of living increase to account for the significant cost increases we have seen in recent years. We strongly support increasing this appropriation to \$85,860,000 (which would cover a 3% COLA for last year and this year). We know that county needs are great and growing; some requests to NYSDA for assistance have included references to lack of resources available in the requesters' counties. While the *Hurrell-Harring* settlement period has ended, the State must not backslide in its duty to adequately fund public defense, risking a decline in the availability and quality of public defense services. Adequate funding requires regular COLAs. And as discussed above, the State must also increase its funding of family defense.

Reject the proposed sweep of the Indigent Legal Services Fund (ILSF). The Executive seeks authorization to transfer up to \$234 million from the ILSF to the General Fund. The ILSF was established in 2003 to improve the quality of public defense representation and is funded through several revenue streams that were specifically created for this purpose. The Legislature must not allow the Governor to take special revenue funds away from public defense; it is even more outrageous because the Governor has coupled that proposal with flat funding of family defense despite the desperate and well-established need for substantial family defense funding.

Indigent Parolee Representation Program (IPP). Created in 1978, the IPP is intended to ensure that counties are not fiscally burdened by the required provision of counsel to people involved in parole proceedings, which arise from discretionary decisions by state actors. With liberty interests at stake, public defense clients should be assured of quality representation in parole matters. As the Executive has again zero-funded the IPP, the Legislature must step in. Restoring \$600,000 will bring the IPP up to the level at which it has remained for over a decade; more is needed. We urge the Legislature to appropriate \$6 million to bring this reimbursement program closer to the level needed to cover county costs for state proceedings.

Loan forgiveness. Student loans are a factor in the shortage of public defense lawyers noted above; prosecutors' offices are experiencing similar problems. The Executive's proposal to flat fund the Loan Forgiveness Program for prosecutors and legal services attorneys at \$2,430,000 will hinder efforts to ensure a sufficient pool of candidates for defense and prosecution positions. We ask that the Legislature incorporate the expanded eligibility and payment provisions in S.161/A.1602, add assigned counsel attorneys to the definition of eligible attorneys, and increase the funding to \$6,430,000. Each house acknowledged the need for this action last year, and we hope that this year both will agree to the necessary legislative amendments and an increase of \$4 million.

Summary of Budget Requests.

NYSDA asks the Legislature to

- restore funding for its Public Defense Backup Center to the \$3,130,000 it was allocated last year,
- add \$420,000 to cover the costs of two leadership positions--Director of Training and Director of the Public Defense Case Management System; and

- Support the proposed appropriations of \$40 million each for additional Aid to Defense and defense discovery, \$2 million of which DCJS has committed to allocating to NYSDA.

Details about our request for \$720,000 for the Veterans Defense Program are provided in separate testimony, as noted above.

In addition to NYSDA's own budget, we ask that the Legislature:

- increase the Aid to Localities funding to be distributed by ILS to \$85,860,000 and reject the Executive's proposed sweep of the ILSF;
- increase funding for improvement of family defense to \$50 million;
- at least restore IPP's prior \$600,000 and, if possible, increase it to \$6 million; and
- increase funding for the Loan Forgiveness Program for prosecutors and legal services attorneys to \$6,430,000, while also incorporating the legislative amendments referenced above.

Introduction to Comments on Proposed Bills.

Traditional and social media are reporting on—and feeding—fear that is driving policies. Analyzing the effects of fear on individuals and groups, and on justice, is an inherent part of public defenders' work. Similarly, the existence of media-driven fear does not justify certain proposals by the Executive and others regarding the 2025-2026 budget.

Some of the fear-driven bills proposed threaten the provision of justice. Some would directly impact the work of public defenders, including the need for defenders to develop legal challenges to harsh and unconstitutional procedures and outcomes. And some proposals do not in fact address public safety concerns but reflect only a reluctance on the part of prosecutors and law enforcement to abide by rules that provide fairness.

Headlines about horrific but isolated incidents have led to calls for ending the personal autonomy of people with serious mental illness to assuage *fear* of crime. The claim that this is for the good of the targeted individuals rings hollow when the problems of inadequate housing and lack of community treatment have been obvious but unaddressed for years; current proposals are blatantly based on public fear at best or based on a myth of fear that dominates headlines at worst. Similarly, crime is down yet there is a call for increased criminalization of behavior and increased policing to assuage *fear* of danger. Such changes will affect public defenders and their clients as a result. Defenders will see increased caseloads at a time when it is already hard to attract lawyers to the work. More clients will face incarceration in jails and prisons where conditions threaten their lives and wellbeing.

The fear driving criminal legal system changes can also affect the clients of defenders in Family Court. When mental illness is viewed as threatening, the harsh involuntary hospitalization measures being proposed as appropriate responses to public behavior may also be applied to parents with mental illness, in lieu of offering support that will keep families safe and together.

The testimony that follows is based on our decades of experience and analysis. One concern is that several proposals repeat failed historical policies such as the war on crime that led to mass incarceration and continued racial discrimination. Another concern is that some proposals will lead to further stigmatizing and marginalizing people with mental illness. And another concern about these damaging proposals is that they will increase, not curb the destruction of families.

We ask the Legislature to consider these concerns and look beyond media-driven fear when deciding on the bills in question.

Discovery Law Must Not Be Repealed: Intentionally Omit Part B of Public Protection and General Government (PPGG) Article VII Bill.

The discovery laws of 2020 removed the blindfold for one of the most vulnerable populations in the state: those accused of crimes. NYSDA's Discovery and Forensic Support Unit, described above, has helped many defenders and their clients invoke the rights and protections provided by the reform.

The discovery statute as originally enacted has been a landmark success. Two years ago, the law was partially rolled back in concessions to the prosecution. In its current form, CPL article 245 works as intended so long as the prosecution and police follow it. The State has provided substantial funding to both so they have the resources needed to comply, but funding must be coupled with an acceptance of the now four-year-old law and willingness to abide by its reasonable requirements.

The link between discovery and the speedy trial provisions is necessary for discovery reform to protect the due process rights of accused people, who are presumed innocent. The purpose of the reform was to remove the blindfold from defendants and their attorneys so they could adequately assess the evidence against them, assess the exculpatory evidence, and decide whether to accept a plea or to litigate to trial. And in places around the state where prosecutors and police have accepted that the law was changed and have used the funding provided to obtain the technology and staffing needed to comply, the law is working and cases are not being dismissed.

We cannot forget the legislative justification for the original discovery reform and must resist going back. As stated in then Assembly Codes Chair Joseph Lentol's sponsor's memo, the intent was to correct the plain fact that "far too many criminal cases have exposed the government's failure, whether through negligence or by design, to uphold our constitutional obligations to defendants." We must continue to require prosecutors to meet their obligations. The Governor's proposal would virtually eliminate the court's ability to enforce the law.

As described in the legislative justification for the 2020 bills, under the old laws, "defendants [were] denied vitally important information, essential to make rational decisions about their pending cases. The limited information they receive[d] [was] also turned over so late that it [was] often impossible to intelligently investigate, to secure and use any potentially exculpatory evidence, to fairly weigh a guilty plea offer, or to develop a trial strategy." **If the proposed legislation is enacted, these injustices will happen again. That is unacceptable.**

Despite the outcry—largely from New York City District Attorneys' Offices—the current discovery statute did not overcorrect the pre-reform blindfold law. People accused of crimes are not in a better position than the prosecution. At first glance the proposed discovery legislation may not seem to be a devastating rollback, but it is in fact a full repeal of discovery reform. As proposed, the changes strip away any need for prosecutors to exercise real "due diligence" by mandating only disclosure of evidence in their actual possession, which would give the police the ability to withhold evidence from both the prosecution and the defense; permit prosecutors to redact any information without getting approval from a judge, and grant prosecutors the power to be the arbiters of what constitutes "relevant" material to disclose. CPL article 245 was written to eliminate those practices.

The way the Governor has discussed dismissals of criminal cases in the State sends a deeply flawed and wholly inaccurate message that these cases are swiftly and automatically dismissed when a minor technicality is not met; a one strike, you're out law. This could not be further from the truth.

When evidence is too voluminous, the prosecution has a remedy under the current discovery law. When they determine evidence is missing (whether on their own or through notification from the defense) and then inform the law enforcement agency of the missing evidence but do not receive the evidence, they need only explain this to the court and the case will not be dismissed. This is real diligence. This is the prosecution living up to the constitutional standard. This diligence is the foundation of the discovery reform. This diligence is what has finally leveled the playing field for people accused of crime in New York. Removing diligence is removing accountability, which leads to more delays, more unfairness, and more wrongful convictions.

A less diligent prosecutor is currently penalized with dismissal only when *all* of the following are met: (1) the prosecutor fails to diligently investigate and request evidence the police may have in their possession that may be critical for either side's case prior to declaring ready for trial; (2) defense counsel timely calls the prosecutor's attention to missing evidence; (3) the prosecutor does not act to disclose that evidence within the speedy trial time limits of 90 days for misdemeanors and six months for felonies; (4) defense counsel timely files a motion to dismiss; and (5) the judge reviews the evidence, motion papers, and determines that dismissal is warranted. None of these dismissals are taken lightly by the judiciary or any party involved. None of these dismissals are as easily obtained as the Governor, certain District Attorneys, or anyone else would have you believe.

Under the proposed law, a less diligent prosecutor faces zero consequences for failing to inquire with the police about the evidence they have. A criminal case originates with and relies on evidence gathered and housed by law enforcement agencies. The totality of evidence related to an alleged criminal act is not shared with the prosecution automatically. The proposed law gives the police discretion to determine whether to disclose evidence and gives the prosecution discretion to determine whether that evidence is "relevant" to the charges. As written, this proposed law puts the blindfold back on those accused of crimes and severely limits their attorneys' ability to provide quality representation.

We urge you to intentionally and fully omit Part B of the Executive Budget Proposal. To the extent that there is a barrier to the prosecution's access to police records and evidence, a recently introduced bill, S.613, would address that problem by streamlining the sharing of evidence between law enforcement and the prosecution.

New Criminalization: Omit Parts D, F, L, N, O, and P of the PPGG Article VII Bill.

These proposals encompass a wide range of behaviors and should be analyzed carefully outside the budget process before they are passed.

- Part D creates the misdemeanor of domestic violence. It is unclear if this is needed to accomplish the stated goal.
- Part F would add sex trafficking to the list of offenses which can be charged "at any time." Statutes of limitation protect individuals from accusations made in bad faith or error long after the alleged act; supporting a valid defense may be impossible after the delay, which will have legal, human, and societal costs.
- Part L would add "a performance created or altered by digitization" to the statutes prohibiting promoting an obscene sexual performance by a child and possessing such a performance. Charging someone criminally for possession of digitally-created images

raises a host of practical and legal issues. Bringing or defending against such a charge could require the assistance of experts, technical equipment, and a lot of time; establishing or disproving the existence of a “child” victimized by the promotion or possession of such an image could be nigh impossible.

- Parts N, O, and P criminalize more behavior in or involving Metropolitan Transportation Authority (MTA) locations, passengers, or personnel. Clearly intended to address media-driven public fear that New York City subways are unsafe, the provisions cast a wide net, criminalizing some behavior “adjacent to” an MTA facility or conveyance, expanding the definition of “building” to beyond recognition (“any structure, vehicle or watercraft used for ... the business of transporting persons,”) adding to the list of convictions that allows courts to bar someone from using or entering MTA facilities and conveyances for up to three years, and creating the crime of “aggravated transportation offense.” These provisions appear poised to monopolize a lot of police, prosecution, defense, and court time, provide opportunities for overpolicing and other systemic inequities, and offer little likelihood that they will, in fact, solve any problem.

Prison Programming to Reduce Reoffending: Part E of PPGG Article VII Bill.

NYSDA would support policy and programming changes that offer incarcerated people the support they need for success upon release; we enthusiastically support comprehensive sentencing reform that would address over-incarceration and other measures to address the continuing racism and criminalization of poverty. We question the efficacy of a statutory provision that merely allows the DOCCS Commissioner to designate additional programs and achievements as a basis for the provision of merit time. The brutal culture inside DOCCS, stunningly revealed in the recent beating death of Robert Brooks, noted earlier, demands examination of and fundamental change within New York’s carceral system. We need comprehensive reentry planning and programming, whether in DOCCS or elsewhere, development of which should include the leadership and participation of impacted people.

The need for reentry programming would decrease if there were successful efforts to prevent incarceration. One example is the pending bill, [S. 643/A. 767](#), which would create the Youth Justice Innovation Fund. Money from the Fund would support community-based organizations’ efforts to further youth development and prevent arrest and incarceration of youth. This approach need not be limited to youth. NYSDA encourages the Legislature and Executive to explore alternatives to fear-driven criminal policies.

That includes abandoning the overpolicing measures proposed by the Governor, such as state funding to increase police presence on New York City subway platforms, which merely adds to public fear without providing real safety.

Drugged Driving Laws: Part E of Transportation, Economic Development and Environmental Conservation Article VII Bill.

The Governor proposes to add to the definition of “drug” in Vehicle and Traffic Law 114-a, which criminalizes drugged driving, “any substance or combination of substances that impair physical or mental abilities to any extent.” This broad definition presents a variety of problems not only for people charged with violating the law but for police and prosecutors. How will a “combination of substances” be identified as impairing? What experts and tests will be required?

Defining “impairment” as being reached when a driver has ingested a substance or substances that “impaired, to any extent, the physical and/or mental abilities” required of a driver invites overpolicing and could threaten anyone who has ingested caffeinated drinks with a criminal charge if an officer deems them impaired thereby.

Adding “evaluation conducted by a drug recognition expert” to the deemed consent law will, among other things, increase the work of prosecutors and defenders, as they will have to engage in ongoing legal and scientific debates about the efficacy and requirements of Drug Recognition Evaluator (DRE) evaluations. These are just some of the reasons that the amendments should not be made.

Expanding Involuntary Commitment and Assisted Outpatient Treatment: Part EE of Health & Mental Hygiene.

Earlier in this testimony, we mentioned our opposition to this bill. We join with our colleagues at the Alliance for Rights and Recovery and other advocates in asserting that the proposal will do little to address the current mental health crisis. Nor will the proposal increase public safety. What is needed are long-term solutions that people with mental illness will use, which means solutions designed with the input of impacted people. We need solutions that address multiple problems including stigmatization of mental illness; the housing shortage that contributes to leaving people with mental illness no place to go, which exacerbates their illness; and the drastic shortage of community mental health services.

Summary of Positions of Bills.

NYSDA opposes bills that would effectively repeal the discovery reforms that removed the blindfold that long prevented justice in criminal cases; expand criminal laws, penalties, and enforcement that will not contribute to public safety and will contribute to ongoing problems such as overpolicing and overincarceration; deprive people with mental illness of agency while failing to provide them with what they need; and purport to further successful reentry of incarcerated people into our society but in fact only perpetuate the myth that prisons foster the well-being of those held there.