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October 13, 2015

Honorable Andrew M. Cuomo  
Governor of New York State  
N.Y.S. Capitol Building  
Albany, NY 12224

Dear Governor Cuomo:

On behalf of the District Attorneys Association of the State of New York (DAASNY), I write to request your support for our 2016-2017 budget priorities.

A snapshot of our 62 offices illustrates our diversity and hints at the scope of our responsibilities:

- Of the 62 counties we serve, some are home to millions of residents and visitors every day; others cover vast swaths of rural landscape.
- 39 District Attorney's Offices have 10 or fewer assistant district attorneys.
  - ❖ 30 of those have six or fewer assistants.
- The five offices in New York City work with one large police agency; counties north of the city work with multiple police departments – more than 550 police agencies overall.
  - ❖ Westchester County alone has 42 police departments in addition to the State Police.
- New York City has a centralized court system; counties north of the city have dozens of town and village courts in addition to their county and Family Court systems.
  - ❖ Cattaraugus County (population of 84,000) has only 5 assistant district attorneys but a staggering 38 courts in which they must appear.

Prosecutors' responsibilities continue to increase. In addition to our basic responsibilities trying misdemeanor and felony cases and conducting long-term investigations, we see increasing numbers of cases that require specialization and specialized technology, such as domestic violence, sexual assault, and intricate financial and cybercrimes. District Attorneys aren't just investigating and trying cases, however. We work extensively in our communities on education initiatives, crime prevention programming, victim services, tutoring and mentoring programs, and re-entry programs. We are at the forefront of developing specialty court parts and new pilot programs aimed at youth, drug addiction, the mentally ill, veterans, and others. We increasingly seek collaborative programs focusing on both alternatives to incarceration and re-entry. We invest in technology that is

3 COLUMBIA STREET, ALBANY, NEW YORK 12210  
TEL: (518) 598-8968 EMAIL: PRESIDENT@DAASNY.ORG  
WWW.DAASNY.ORG

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used to conduct sophisticated investigations, to videotape interrogations, and even to provide body-worn cameras to police.

All of these initiatives reflect good and progressive public policy, but they come at a financial cost that is not met by declining budget appropriations. Police body-worn cameras, as an example, pose significant personnel and administrative costs to the prosecution, costs that are astronomically higher than those connected with videotaping limited interrogations. A 45-minute interaction on a criminal contempt call in which two officers activate their cameras may need to be watched, transcribed, redacted for security concerns, possibly translated into English, and turned over to the defense – and this is a routine interaction, one of thousands that occur across the state. As funding stands today, District Attorneys will not be able to meet their Constitutional obligations to review and disclose all of this material without additional staffing. County governments cannot absorb the extra costs this will create – the state **must** make this funding an ongoing priority if new technologies are going to improve the criminal justice system.

With the foregoing in mind, I submit DAASNY's priorities for the coming year. The four focus areas are: personnel, technology, programming, and partnerships.

### **CRITICAL STAFFING: \$26.142 Million**

#### **Aid to Prosecution**

State Aid to Prosecution funding, an important component of the funding of District Attorneys' Offices, has been reduced significantly over the past 10 years. Fifteen years ago, Aid to Prosecution received \$22.763 million; in 2015, the program received \$10.68 million – an overall reduction of more than 50% in an era when prosecutors have been called upon to dramatically expand the duties of their staff to address new crime trends and support progressive criminal justice initiatives.

DAASNY supports the appropriation of **\$15 million** for Aid to Prosecution.

#### **Prosecutor Recruitment and Retention**

District Attorneys' Offices outside of New York City are being decimated by turnover due to low salaries compared to private sector positions. In the past, limited funding was available to help retain attorneys. The appropriation for disbursements by District Attorneys outside of New York City to recruit and retain prosecutors, which once stood at \$1.5 million, **has been completely defunded**. Well-trained, experienced prosecutors are desperately needed, but attorneys overwhelmed by student loans and living expenses are consistently forced to leave public service for the private sector.

DAASNY strongly recommends **reinstating** this program at the previous funding level of **\$1.5 million** to ensure the integrity of the statewide prosecuting infrastructure.

#### **Loan Forgiveness**

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The Tuition Reimbursement Program for Prosecutors and Indigent Legal Services Attorneys eases the burden of undergraduate and law school loans that regularly exceed \$100,000. The program, while incredibly valuable, fails to keep pace with the economic realities of our time.

DAASNY and the Association of Legal Aid Attorneys agree that changes must be made so that this program meets the needs of public sector attorneys by:

- Increasing the maximum annual loan reimbursement from \$3400 to \$4000;
- Increasing the period of eligibility from 6 to 8 years of service;
- Adding a tolling provision so that time spent by the ADA on maternity and military leave would no longer be considered an “interruption” to the service year.

DAASNY supports the continued appropriation of **\$2.43 million** along with the legislative revisions detailed above.

### **District Attorney Salary Reimbursement Program**

The appropriation for salary reimbursement has been adjusted to meet the mandated increase in judicial salaries, to which District Attorneys’ salaries are tied. With due consideration to this ongoing financial obligation, it is essential that the budget continue to provide this support, which has enabled certain smaller counties to have a full-time, rather than a part-time, District Attorney.

DAASNY supports the continued appropriation of **\$4.212 million** for salary reimbursement.

### **Representation at Arraignments**

Last year’s Hurrell-Haring settlement provided important funding for public defenders to appear at local court arraignments (something they were previously unable to do), establish public defender caseload caps, and hire qualified expert witnesses.

Public defenders only represent a portion of all defendants – namely those who cannot afford private representation. Prosecutors -- who represent the People in 100% of all cases -- should also have manageable caseloads, access to high-caliber expert witnesses, and enough staff to represent the interests of the victim and the community at arraignments. However, jurisdictions outside of New York City are now in a situation in which a judge and defense attorney, **but not a prosecutor**, are present for arraignments because prosecutors’ offices remain understaffed and cannot attend every arraignment in the more than 1,300 courts located in our state. This has far-reaching implications for local court practice, including bail recommendations, the issuance of orders of protection, and plea dispositions.

The snapshot of Jefferson County illustrates how one jurisdiction must allocate personnel in order to staff all of the local town and village courts.

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<i>Jefferson County</i>	Geography:	1,857 miles <sup>2</sup>
	Prosecutors:	9
	Courts:	33
	Distance:	72 miles from DA's Office to furthest court

DAASNY recommends immediate relative parity in funding at the level of **\$3 million** for the jurisdictions already impacted by Hurrell-Haring -- Onondaga, Ontario, Schuyler, Suffolk, and Washington Counties.

Further, DAASNY recommends that if the legislature expands this mandate statewide as called for by the Chief Judge, funding be appropriated at \$105 million, as requested by the NYS Association of Counties in its 2015 report.

### **Residency Requirements**

State law prohibits cities with less than one million residents from hiring staff who reside outside their county, with limited exceptions. This prevents District Attorneys from sharing part-time employees.

DAASNY recommends a simple **cost-saving** change to the County Law that will allow District Attorneys in counties with less than one million residents to hire assistant district attorneys who reside outside of that county.

### **GAME-CHANGING TECHNOLOGY: \$3 Million**

Investment in technology directly contributes to a fair, strong, and transparent criminal justice system. Two pieces of emerging technology deserve immediate and full funding: equipment for videotaping certain interrogations, and police-worn body cameras.

### **Videotaping Interrogations**

In 2014, DAASNY, the Innocence Project, and the New York State Bar Association agreed upon language that would codify the videotaping of interrogations for certain felony charges and allow the admissibility of photo arrays. The reasoning for this unusual agreement among the three entities is simple: Both elements of the proposal will reduce wrongful convictions. While that legislation has not passed, several other bills have been introduced that would require videotaping of police interrogations, some of which preclude evidence when interrogations are not videotaped.

Since 2010, DAASNY has supported videotaping of certain custodial interrogations. Using DCJS funding, every county has equipped or begun the process of equipping at least one interview room with recording equipment. In the more rural and geographically expansive counties, there is a concerted effort to equip rooms in multiple police departments; in densely populated counties, the effort is to provide multiple rooms in each precinct to accommodate the high volume of interviews.

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A survey of District Attorneys' Offices revealed that while some jurisdictions are nearing 100% videotaping capability, meaning every police department has one room equipped for such purposes, most are merely at the beginning of the process with one or two of the departments equipped. It further revealed that renovating and equipping a single room costs approximately \$50,000. That does not include maintenance, storage, transcription, and discovery expenses.

DAASNY recommends a minimum of **\$3 million** in funding for the continued development of rooms, purchasing of equipment, and additional administrative costs.

### **Body-worn cameras**

A survey of DAASNY members indicated that while several larger police agencies have begun equipping officers with body-worn cameras, there is still a long way to go. District Attorneys have a vested interest in equipping beat officers with cameras; cameras memorialize police / civilian encounters from a different visual perspective. District Attorneys are so committed to this initiative, some offices are assisting police departments by helping to fund the purchase of cameras. Most offices, however, don't have the resources to provide his assistance.

The cost of purchasing the cameras, which averages close to \$1,000 per camera, is only part of the equation. Maintenance, storage of digital evidence, software to "tag" camera footage in a way that connects it to the correct arrest record, transcription of materials, and discovery compliance all create ongoing expenses. Indeed, absent significant state funding, once police begin routinely wearing recording devices District Attorneys will be unable to comply with the voluminous Constitutional and statutory obligations that will be associated with these recordings -- namely reviewing, redacting, transcribing, translating and disclosing thousands of hours of recordings.

DAASNY recommends that sufficient resources be allocated to equip officers statewide with cameras, as well as for prosecutors to access, transcribe, translate, and disclose recorded material, a cost that remains to be established.

### **SPECIAL PROGRAMMING: \$35.740 Million**

#### **Gun Involved Violence Elimination (GIVE)**

The Gun Involved Violence Elimination (GIVE) initiative (previously known as Operation IMPACT) focuses on the reduction of firearm-related homicides and shootings in those communities in 17 counties outside of New York City that collectively report 86% of violent crime. Despite New York's leadership in gun control, this program -- which is designed to reduce gun crimes -- has seen repeated cuts in funding. From \$15.6 million in 2010-11, the program now receives \$15.219. These cutbacks, if sustained, will handicap the revised focus of GIVE.

DAASNY recommends the appropriation of **\$15.6 million** for GIVE.

**Crimes Against Revenue Program**

The Crimes Against Revenue Program (CARP) was initiated in 2004 as a means to hold accountable those who defraud the state of revenue from taxes owed, as well as programs such as Medicaid, public assistance, and worker's compensation.

This program is **revenue-generating**. To date, more than \$171 million has been returned to the state – a 162% return on investment.

DAASNY recommends the continued appropriation of **\$16 million** for CARP.

**Motor Vehicle Theft and Insurance Fraud Prevention Program**

This competitive grant program provides funds for innovative local programs aimed at reducing insurance fraud and motor vehicle theft. Evidencing the success of the program in just one arena, the reduction in motor vehicle theft stands at nearly 80%.

Funding has been cut nearly in half since 2007. In order to investigate and prosecute insurance fraud rings, medical mills, and other organized criminal enterprises that are both dangerous and costly to New Yorkers, funding is critical.

DAASNY recommends the continued appropriation of **\$4.140** million to fund this program.

**ESSENTIAL PARTNERS: \$4.104 Million**

**New York Prosecutors Training Institute (NYPTI)**

Beyond providing assistance, resources and training to prosecutors, NYPTI spurs information sharing and collaboration among prosecutors and between prosecutors and other criminal justice agencies in order to promote problem solving while maximizing scarce resources.

- **Trial and Appellate Assistance** - NYPTI attorneys research, write and advise prosecutors at all stages of criminal cases, services that are critical to resource-strapped upstate counties who need NYPTI to assist with complex trial motions and appeals. This year, NYPTI handled appeals in the 3rd and 4th Departments and the NY Court of Appeals and is also helping during retrials of complex murder cases.
- **Prosecutors Case Management System (PCMS)** - 49 counties use NYPTI's PCMS to track cases and produce documents and grant reports. PCMS is also enabling District Attorneys' Offices to go paperless with e-discovery and e-filing.
- **New Data Tools** – Leveraging existing resources, NYPTI is creating new tools to combat emerging and existing criminal justice problems and measure successes, for example:

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- **DNA** - NYPTI is working with DCJS and State Police on a state-wide system to track and report on the outcome of each DNA hit that DCJS reports.
- **Heroin** - Through PCMS, NYPTI is working with District Attorneys and the Special Narcotics Prosecutor to share data on heroin cases and drug traffickers.
- **Witness Protection Program** – Emergency, short-term assistance is provided directly to witnesses (not informants) who have been threatened, which covers, short-term, basic needs in primarily domestic violence, gang-assault, and sexual violence cases.
- **Training** - NYPTI trains thousands of prosecutors each year with an eye toward keeping them up-to-date on ethics, forensics, technology, best practices, and conviction integrity. Trainings are recorded and available on demand.
- **Publicly Available Resources** - NYPTI advances criminal justice by providing: CrimeTime, an online sentencing calculator relied upon by judges, defense attorneys and prosecutors; NYS Laws, a compilation of statutory and relevant case law; and NY Decisions-at-a-Glance, a collection of criminal cases from all appellate courts.

NYPTI has not received a funding increase in several years. To maintain current services DAASNY requests an appropriation of **\$2.8 million** for NYPTI and **\$304,000** to continue NYPTI's witness protection program.

### **Office of the Special Narcotics Prosecutor (OSNP)**

OSNP is confronting a heroin epidemic that is compounded by an unprecedented explosion of heroin use among suburban and rural communities. While New York City may be a major distribution point, the new reality is that the drug is moving out into all communities, as people become addicted to prescription opioid painkillers and subsequently turn to street heroin because it is cheaper and more readily available. Last year, OSNP:

- Seized a record amount and are on target to top that this year.
- Took a leadership role in multi-county (outside of NYC) heroin investigations, including Sullivan, Suffolk and Nassau counties.
- Assisted in an investigation that led to the identification of the drug dealer who sold a lethal dose of heroin upstate.

Moving forward, OSNP is planning to:

- Set up a model of collaborative prosecutions with Albany County, which will allow them to follow leads and react more quickly to information about heroin supplies.

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- Work closely with a DEA Strike Force team to follow leads to heroin supply mills that are identified in counties outside of New York City.
- Hold regional meetings to identify New York City related heroin supply routes.

OSNP has taken on these additional responsibilities without any increase in state funding, and in fact, while shouldering substantial budget cuts.

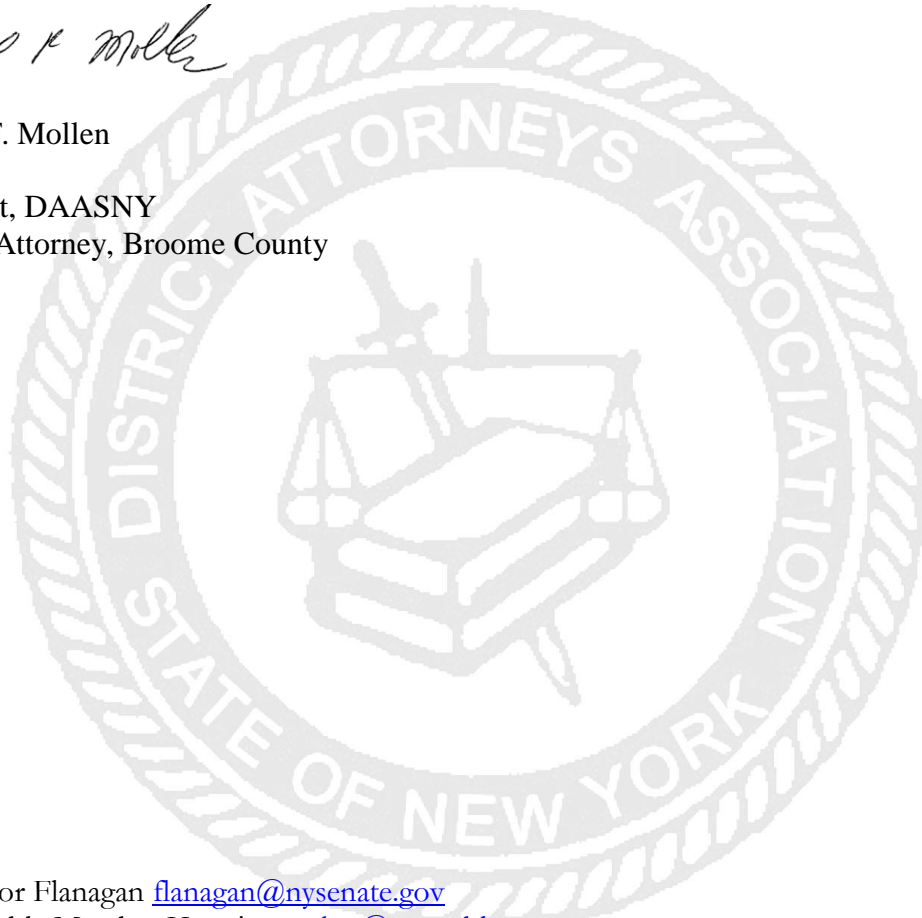
DAASNY recommends the appropriation of **\$1 million** for OSNP.

Respectfully Submitted,



Gerald F. Mollen

President, DAASNY  
District Attorney, Broome County



cc: Senator Flanagan [flanagan@nysenate.gov](mailto:flanagan@nysenate.gov)  
Assembly Member Heastie [speaker@assembly.state.ny.us](mailto:speaker@assembly.state.ny.us)  
Senator DeFrancisco [jdefranc@nysenate.gov](mailto:jdefranc@nysenate.gov)  
Assembly Member Farrell [FarrelH@assembly.state.ny.us](mailto:FarrelH@assembly.state.ny.us)  
Alphonso David [alphonso.david@exec.ny.gov](mailto:alphonso.david@exec.ny.gov)  
Terence O'Leary [Terence.oleary@exec.ny.gov](mailto:Terence.oleary@exec.ny.gov)  
Mary Beth Labate [budgetdirector@budget.ny.gov](mailto:budgetdirector@budget.ny.gov)  
Jim Yates [yatesj@assembly.state.ny.us](mailto:yatesj@assembly.state.ny.us)  
Robert Mujica [mujica@nysenate.gov](mailto:mujica@nysenate.gov)  
Mike Green [mike.green@dcjs.ny.gov](mailto:mike.green@dcjs.ny.gov)