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# *Committee Meeting*

of

## ASSEMBLY REGULATORY OVERSIGHT COMMITTEE

*“The Committee will discuss the implementation of the Sudan divesture act, P.L.2005, c.162; discuss the justice gap in New Jersey, which refers to the need for increasing legal representation resources for low-income State residents; revisit the status and implementation of Danielle’s Law, P.L.2003, c.191; and revisit the status of removing adjudicated juveniles with mental illness from juvenile correctional facilities to provide them with mental health treatment”*

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**LOCATION:** Committee Room 8  
State House Annex  
Trenton, New Jersey

**DATE:** December 8, 2005  
10:00 a.m.

### **MEMBERS OF COMMITTEE PRESENT:**

Assemblyman William D. Payne, Chair  
Assemblyman Joseph Cryan, Vice Chair  
Assemblyman Douglas H. Fisher  
Assemblywoman Connie Myers  
Assemblyman John E. Rooney



### **ALSO PRESENT:**

James F. Vari  
*Office of Legislative Services  
Committee Aide*

Elizabeth Stone  
*Assembly Majority  
Committee Aide*

Thomas Neff  
*Assembly Republican  
Committee Aide*

***Meeting Recorded and Transcribed by  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***

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## TABLE OF CONTENTS

	<u>Page</u>
Senator Thomas H. Kean Jr. District 21	3
William Clark Director Division of Investment New Jersey Department of the Treasury	6
Susan Sarnowski Manager Division of Investment New Jersey Department of the Treasury	10
Assemblyman Craig A. Stanley District 28	26
Assemblyman Patrick J. Diegnan Jr. District 18	28
Melville D. Miller Jr. President and General Counsel Legal Services of New Jersey	29
Harold Rubenstein Executive Director New Jersey State Bar Association	35
Kevin M. Ryan, Esq. Child Advocate Office of the Child Advocate New Jersey Department of Law and Public Safety	56
Yolanda Padilla Private Citizen	80
Howard L. Beyer Executive Director Juvenile Justice Commission	84

## TABLE OF CONTENTS (continued)

	<u>Page</u>
Gail Krebs Assistant Commissioner Division of Child Behavioral Health Services Office of Children's Services New Jersey Department of Human Services	90
Theresa C. Wilson Deputy Commissioner Disability Services New Jersey Department of Human Services	100
James M. Ewanochko Administrative Practice Officer Division of Developmental Disabilities New Jersey Department of Human Services	104
Diane T. Gruskowski Mother Danielle J. Gruskowski	109
Robin M. Turner Aunt/Guardian Danielle J. Gruskowski, and Representing The Family Alliance to Stop Abuse and Neglect	109
Paul Gadomski Captain Carteret Fire Department/EMS	120
Brian O'Connor Chief Carteret Fire Department	124
Lowell Arye Executive Director Alliance for the Betterment of Citizens with Disabilities	125

## TABLE OF CONTENTS (continued)

	<u>Page</u>
Michelle Boggan Executive Director Community Options, Inc. Burlington County	129
Janette Vance Representing The Family Alliance to Stop Abuse and Neglect	130
<b>APPENDIX:</b>	
Testimony submitted by William Clark	1x
Statement, plus attachments submitted by Melville D. Miller Jr.	4x
Testimony submitted by Harold Rubenstein	17x
Testimony submitted by Theresa C. Wilson	22x
Testimony submitted by Diane T. Gruskowski	26x
Testimony, plus attachments submitted by Robin Turner	29x
Statement submitted by Kathleen Wigfield Private Citizen	56x

**TABLE OF CONTENTS (continued)**

**APPENDIX (continued):**

	<b><u>Page</u></b>
Testimony submitted by Margaret Griscti Private Citizen	57x
lmb: 1-133	

**ASSEMBLYMAN WILLIAM D. PAYNE (Chair):** Good morning. I'd like to call the Assembly Regulatory Oversight Committee meeting to order, to opening.

We will first call the roll.

MR. VARI: Assemblyman Rooney?

ASSEMBLYMAN ROONEY: Here.

MR. VARI: Assemblywoman Myers?

ASSEMBLYWOMAN MYERS: Here.

MR. VARI: Assemblyman Fisher?

ASSEMBLYMAN FISHER: Here.

MR. VARI: Vice Chairman Cryan?

ASSEMBLYMAN CRYAN: Here.

MR. VARI: Chairman Payne?

ASSEMBLYMAN PAYNE: Here.

MR. VARI: All present.

ASSEMBLYMAN PAYNE: Thank you.

I welcome every one of you here this morning to discuss some of the topics that are extremely pressing here, in the State of New Jersey -- on topics that we have been discussing for the past year or so that impact, I think, on the lives of all the citizens of the State of New Jersey. We have had some rather significant legislation that we have had passed over the past year or two, which has, I think, made considerable improvements in many of the areas of service that we have for our citizens.

Today we are going to have a discussion on the Sudan bill -- the Sudan divestiture bill that the State of New Jersey passed this past year. We're going to have a status report on where we stand with that.

Also today, we will be discussing what's been called a *justice gap* here in the State of New Jersey, where people who -- many people who are in need of legal services have been denied that simply, in many instances, because they don't have the ability to pay for their own legal fees, or legal services, or other reasons. So we're going to have a discussion about that gap that does exist here in the State of New Jersey.

We'll also have a discussion today on Danielle's Law, that we all know was passed some time ago, which requires that 911 be called whenever there is a situation that exists in any of our institutions that appears to be life threatening. So we will be discussing those.

And we have one other area that we will be discussing, and that has to do with our juvenile detention centers. We have Mr. Howard Beyer here today to give us an update on the status of the conditions that exist in our juvenile detention centers; and also that we will be reviewing the progress, or lack thereof, of the movement of youngsters who were inappropriately housed in a juvenile detention center for a period of time. We had a hearing early last year in which we reviewed the conditions that existed that impacted upon the youngsters who were being held in juvenile detention centers, many of whom should have been placed in other facilities that were more appropriate for their needs, namely mental institutions or being cared for by those who are trained in psychiatric problems. Some of these youngsters have been held inappropriately because of the lack of beds in some of the facilities.

So we'll be reviewing those things to see where we are on those. But first, we're going to start out with a review of the Sudan divestiture bill that was passed, signed into law in July of 2005. Mr. Bill Clark, with the

Division of Investments, is here to testify. However, I see present with us today is Senator Thomas Kean, who was one of the cosponsors of this legislation in the Senate, and I would like to ask Senator Kean if he would like to have a comment to make.

**S E N A T O R T H O M A S H. K E A N J R.:** Thank you, Mr. Chairman. I'd like to thank you and members of this Committee for looking -- having this Oversight hearing on this issue, of which I was the prime sponsor in the State Senate, as well as on Danielle's Law. I think it's very important, not only for your leadership on the Sudan issue, sir, and your passion and dedication on this issue, but your passion and dedication making sure that the State Government is everything it's supposed to be for the citizens of this State. And having the adequate oversight in both regards to the Sudan divestiture issue, as well as on Danielle's Law, and these other issues you bring forth today, are very, very important. I was the prime Senate sponsor of the Danielle's Law, as well as those two issues of which I am very grateful to you for following up on today.

Thank you, sir, for your dedication, and thank you for holding these hearings.

**ASSEMBLYMAN PAYNE:** Thank you, Senator.

Mr. Clark.

Before you start -- and you can identify your colleague -- I would just like to make a few remarks, if you don't mind? That is, that as you know, on November 4, 2004, I introduced legislation prohibiting the investment of public employee retirement account funds in companies doing business in Sudan. The legislation would prohibit, as you know, the investment of New Jersey Public Employee Retirement Funds in companies

doing business in Sudan, because of that country's failure to prevent genocide and its human rights abuses, including severe restrictions on freedoms of assembly, association, movement, and speech. We were made aware by the press and others that the conditions in the Darfur regions of Sudan were tantamount to genocide -- that people in Sudan were being murdered, villages were being burned, that women were being raped, people were being killed, that the villages were being pillaged, and that the government of Khartoum was doing nothing about what -- the conditions that were existing there. In other words, as we say, that there was genocide going on, that there were atrocious conditions that existed there, and that the State of New Jersey and many other states around this country had a number of investments in countries that are doing business over there, which contributed to and supported the government of Sudan.

That it was our feeling that we had to do whatever we could to weaken that government, to take out the horror that was going on there, to put a halt to it. And that it was our feeling that by withdrawing our investments, that would be one step in letting that country know, and let any companies that were doing business there know, that we would not tolerate that. And that we needed to stop this genocide before it got to the amount that was done during the Second World War, when we had genocide and over six million people, or more, were killed. And the world turned the other way. The world ignored the horrors that were going on. Well, the same situation is existing now, that people were looking the other way, that nobody was paying any attention to this. And when we learned about it, we felt there was something that we needed to do about it. And

one of the things that we needed to do was to withdraw our investments -- that we should move forward on that.

So the legislation, as you know, was passed, signed into law by Governor Codey in July of this year. Now, I think it's very, very important -- I'm not fully aware of what we've been doing so far. But I think it's extremely important for the State of New Jersey, for the Treasury Department, for those of us to know that we are very, very serious about this. What has happened, I think in some instances, is when the spotlight is taken off some of these situations, that people go back to doing business as usual, that people seem to think that sometimes these kinds of legislation are simply ceremonial, and that it's just simply is something that we would forget about after a while.

I want to make it clear that this Committee and that this Legislature intends to keep the spotlight on the conditions that exist in the Sudan. And we want everyone to know, everyone who is responsible for implementing this legislation know, that we are going to be looking very, very carefully to make sure that what the legislation says is being done, that there cannot be any shortcuts. There cannot be any way that we would deviate from this path. I want to make it very, very clear: The reason for the Regulatory Oversight Committee is to do exactly that -- to have oversight over regulations of laws that are passed and make sure that those laws are being carried out through the regulations.

And with that, I would like to have you -- to give us a report on where we are with the legislation. Before we do that, Mr. Fisher or Cryan, or anyone, have any other statements to make? (no response)

Thank you, Mr. Clark.

**WILLIAM CLARK:** Thank you.

With me, I have Sue Sarnowski, who is a manager in the Division of Investment, who has been intimately involved with this. I do have a prepared statement. It should take a few minutes, and the two of us will try to answer any questions that you may have.

Thank you for providing me with the opportunity to address the Committee on the efforts of the Division of Investment pertaining to P.L. 2005, Chapter 162. As you know, the law requires the Division of Investment to divest of its holdings in certain companies doing business in Sudan within three years of the date the law was enacted.

I intend to be as open as possible during this testimony and any question-and-answer period about the activities of the Division with respect to this law. The only area where I am unable to provide specific information to the Committee concerns the timing and amounts of any planned sales of investments, as required by the law. I trust the Committee appreciates that public disclosure of such information could detract from our ability to obtain maximum value for the pension funds in these sales transactions.

Let me now discuss the steps the Division has already taken and plans to take with respect to the law. First, as required by the law, the Division has retained the services of the Institutional Shareholders Services, commonly referred to as ISS, to serve as our consultant to identify companies doing business in Sudan. While we respect the quality of the ISS database, however, we made the decision early on that we would not exclusively rely on any one vendor to determine which investments required divestiture under the bill. The risks with that approach are obvious: The

vendor may incorrectly include a company as doing business in Sudan and, more likely, might omit companies that are actually doing business in Sudan.

Given these risks, the Division undertook its own survey of all 515 international companies in our portfolio. The survey asked specific questions about each company's activities in Sudan. You should also know that we have also initiated a screening process associated with this divestment law for new companies being added to the portfolio. As part of our trading system, any time a new company stock is considered for purchase, it is first checked against the full list of companies identified in the ISS database as having operations in Sudan. If it is included on that list, the purchase is automatically rejected. If the company is not on the ISS database, the purchase is permitted, but a survey is sent out shortly thereafter to verify that the company is not doing business in Sudan.

I will now briefly discuss the process being followed within the Division, during this period that I would consider an evaluation period of companies in the portfolio. As survey responses come in, they are reviewed by both the portfolio management and compliance sections of the Division, and they are compared with any information contained in the ISS database. Based on this analysis, we divide companies into three categories.

First, companies where the survey response and ISS indicate that there are no business activities in Sudan. Two, would be companies where the survey response clearly indicates there are business activities in Sudan, as defined by the law, or where ISS indicates the company does business in Sudan and the company has not completed a survey response that challenges this determination. And third, companies where a final

determination cannot be made, either because there are conflicts between the survey response and the ISS database, or because the information in the survey response is incomplete or ambiguous.

For companies falling into the first category, no further action is taken, although, of course, we will continue to monitor the company's activities through updates to the ISS database to ensure that they do not initiate business activities in Sudan in the future. For the second category, that is companies that admit to activities in Sudan on their survey response or where ISS indicates the company does business in Sudan, the company is placed on our internal divestment list. This means that the portfolio manager is prohibited from purchasing the stock and will meet periodically to evaluate the sales of each investment on the list.

For the final category -- that is companies where we have conflicting or incomplete information -- the company may be placed on an internal do-not-buy list, meaning the portfolio manager cannot add to his position, depending on the facts and circumstances associated with each case. We will then take appropriate steps to obtain more information about the company's activities in order to make a final determination as to whether divestment is required. These activities include sending follow-up letters to the company requesting more specific information, contacting the company directly via telephone or a face-to-face meeting, and consulting with ISS.

While I indicated at the start of my testimony that I cannot provide specific information about our plans to divest of these companies, I am able to provide a general framework for how we intend to proceed. As I said earlier, we will review our divestment activity internally on a periodic

basis to determine whether we are making appropriate progress in divesting of these companies. In doing this, we must, of course, balance the requirement to divest with our fiduciary duty to the pension funds. A year from now, however, I expect that we will be able to report meaningful progress in our divestment of these companies. While it may be legally permissible, I do not think waiting until year three to begin significant investment would be consistent with the spirit of the law.

Speaking of the spirit of the law, I would like to conclude by mentioning additional activities being undertaken by the Division that are not specifically included in the law. First, we are having discussions with several companies about ceasing their activities in Sudan. In at least two cases, the activities in Sudan for these companies are extremely small relative to their entire business, and they may be willing to withdraw from Sudan rather than face growing shareholder pressure on this issue. My view is the goal of the law is not divestment, but to get companies to cease doing business in Sudan in order to precipitate change in the internal politics of the country. If we can use the threat of divestment to accomplish this result, all the better.

Second, we are researching the bylaws of these companies to determine whether it is possible to initiate shareholder resolutions at upcoming shareholder meetings to suggest or require that the company cease doing business in Sudan. While the laws of some countries make it difficult for foreign investors to initiate such resolution, I believe we will be successful in getting a resolution on the agenda of at least one or two upcoming shareholder meetings.

Finally, members of the Division have had discussion with representatives of various pension funds and other shareholder groups about this issue. Where possible, we will work with other shareholders to initiate the changes in corporate activity within Sudan that are the ultimate goal of this law.

Thank you for your patience, and I'm happy to answer whatever questions you may have.

ASSEMBLYMAN PAYNE: Thank you very much, Mr. Clark.

Any questions?

ASSEMBLYMAN CRYAN: I figured you have them.  
(laughter)

ASSEMBLYMAN PAYNE: I wanted to give you an opportunity.

Let me state, again I reiterate, that the legislation, of course, is very, very serious. It's intended to bring a halt to the conditions that are existing in that part of the world. The seriousness of this is something that has to be underscored. Now, the report that I believe we have from you was prepared before September 1, I think.

MR. CLARK: I think it was the end of September.

S U S A N S A R N O W S K I: End of September.

MR. CLARK: It was within the 60 days.

MS. SARNOWSKI: Within the 60 days.

ASSEMBLYMAN PAYNE: Right. Was it submitted the day before, or whatever? I mean, when did we start working on this, in order to be able to prepare this report? The question I have is whether or not we're

leaving this as an aside thing -- something that we're not really dealing with as seriously as we need to. I have some questions about whether we--

For instance, you mentioned one of the things that we're concerned about. One of the things that we are concerned about is to make sure that we do not lose money, that we don't let it impact on us that if, in fact-- We have to be very careful about the moneys that we're investing so that we are doing it in a reasonable way. And that was one of the concerns that the Treasurer had, early on. And at that time, I pointed out that there were people who were dying for every dollar we were earning -- the money was dripping in blood. I know that there was a deep concern about whether or not you weigh the suffering that's going on there with the money that we might lose by divesting it. At one point, we were coming down more on making sure we don't lose too much money. I think that that attitude changed. But I'm hoping that it permeated throughout the Department, that we are not looking for ways not to do this, but we are going to be looking for every kind of way that we can.

Now, there are other states -- Illinois is a state that has begun to move on this. As a matter of fact, I don't believe that their law becomes effective until January 1 of '06. Ours became effective immediately. However, it is my understanding that they are much further along in identifying companies -- much further along in identifying those companies that need to be divested. I don't know whether we need to be in touch with those states that are moving proactively, or whether or not we have a reason why we're being more -- we're taking it a little slower.

MR. CLARK: Thank you.

Well, actually, we have had extensive discussions with the folks in Illinois. There are several pension plans. Unlike New Jersey, the pension fund management--

ASSEMBLYMAN PAYNE: I think there's 13 pensions, yes.

MR. CLARK: Yes. I would tell you, based on those discussions, and I think Sue would concur, I think we are much further along in the process than they are. They have been calling us asking for guidance as to what we've done and which companies we've contacted and identified, and that sort of thing. So we definitely are talking with them. But I would say we're actually advising them on how to proceed, rather than vice-versa.

As far as whether we take this seriously, I can tell you that as soon as the law was passed, we started working on this. And we have been quite active. We have been in touch with many of the companies. Sixty days, in terms of trying to get a full handle on all the companies doing business, was a very tight time frame. Again, we prepared the report virtually on the 60th day, in order to make it as complete as we possibly could, but in no way does that imply that we waited until the last minute to begin working on that. I think that's farthest from the truth.

ASSEMBLYMAN PAYNE: Mr. Cryan.

ASSEMBLYMAN CRYAN: Thank you, Mr. Chairman.

I just have a couple of follow-ups. I wanted to go over the last couple points, with the discussions with companies that are doing business, and attempts to getting out, and also the resolution. Because in the Budget Committees, and as Bill pointed out, that was Treasurer McCormac's real desire, was to do that. And I'm very interested to find out as to whether or

not we have any leverage here. Our investments total here, without giving specifics in terms of the amount of companies, in the hundreds of millions of dollars, do they not? Is that correct?

MR. CLARK: That is correct, yes.

ASSEMBLYMAN CRYAN: Okay. So we're talking about real money, as they say. Could you, and I guess, I suppose, Bill -- Chairman Payne, I could ask this through the Chair -- could you provide us-- How long will it take to understand -- and I'm on the third to last paragraph, "The spirit of the law" concluding "We're having discussions with several companies" -- second page, last paragraph -- "several companies about ceasing their activities." When will we know?

MR. CLARK: I would suspect we'll have a pretty good idea within the next few months whether they intend to actually cease doing business in Sudan. As far as whether or not we'll be able to initiate shareholder resolutions, I think most of the annual meetings are in the April to May time frame, so we would be looking to submit resolutions in the February time frame, I would say.

ASSEMBLYMAN CRYAN: Through the Chair, here in December, I'd like to ask if it's all right with you -- I'm sure the Chairman is going to consider bringing it back -- but I'd like to get a report, dated March 1, as to where we are on both of these issues, as the year initiatives, as well as talking about the spirit of the law. I'd like to know whether we do, in fact, have leverage here. Because it may, in fact, help us in the -- God forbid -- the next Sudan, or whatever the next nightmare is.

MR. CLARK: Absolutely.

ASSEMBLYMAN CRYAN: Thank you.

ASSEMBLYMAN PAYNE: Thank you, Mr. Cryan.

The reports that you've submitted to us, rather that you prepared, states that there are-- Oh, you list one, two, three, four companies that are doing business in Sudan that fall in this category, they're engaged in business there. Correct?

MR. CLARK: At the time, that was the one that was--

ASSEMBLYMAN ROONEY: I don't have that report. Do you have a copy of that?

ASSEMBLYMAN PAYNE: Yes. Go ahead.

MR. CLARK: Yes. That was the status as of the end of September, yes.

ASSEMBLYMAN PAYNE: And that's the total number. You sent out 496, I think, questionnaires to companies. Those were companies -- what -- that we have in our portfolio? That's the number of companies that we have in our portfolio?

MR. CLARK: Actually, I think the number was 515, in terms of surveys we actually sent out.

ASSEMBLYMAN PAYNE: What was the response? How many did you get back?

MR. CLARK: So far we've gotten a third of them back, and we're now, literally today, in the process of mailing out second requests on some of the companies where we have some specific questions.

ASSEMBLYMAN PAYNE: So you got over 150 back?

MR. CLARK: It's about 170, I believe.

ASSEMBLYMAN PAYNE: Is that right, really?

MR. CLARK: Yes.

ASSEMBLYMAN PAYNE: Those surveys -- the questions were sent out when? How soon after those -- when were they sent out, do you know?

MR. CLARK: They were sent out in September.

Correct, Sue?

MS. SARNOWSKI: I think maybe the end of August, late August, with a due date of November 15.

ASSEMBLYMAN PAYNE: The end of August, you say, you sent them out?

MR. CLARK: Yes.

MS. SARNOWSKI: Yes.

ASSEMBLYMAN PAYNE: And by the end of September, you had received, I think, 1 percent response. I think that's where the -- for that period of time, is 1 percent of the people and 400-and-some-odd-- I think, you got, maybe, 49 back, or something like that. In other words, how are they awarded? Did the companies that received this realize -- did we indicate that we were serious about getting this information and we put down a date there? These are 400 some-odd -- 515 companies that we're doing business with. We sent out a questionnaire to them asking them for a response, and we're doing business with them, and you get 1 percent back over a period of time. I think it was 1 percent that you got back by September 30. And now you're sending a second request to these folks to send us information.

MR. CLARK: Let me just clarify. Again, part of the issue, especially when you're dealing with international companies, is finding the right contact person to be able to respond. And again, as of the end of

September, we had gotten a very small number back. Again, at this point, the number is more like 170 that have come back. And again, we are now going back to the remaining companies that haven't responded asking basically another -- a second notice indicating that there may be repercussions if a response is not received.

ASSEMBLYMAN PAYNE: What kind of questions are we asking? What do we ask in these things? Is it -- do you have a copy of it?

MR. CLARK: I don't have it with me, but I'd be happy to supply it to you.

ASSEMBLYMAN PAYNE: Yes; but what did it cover, generally?

MR. CLARK: I mean, essentially, we asked about four or five questions, and specifically, "Tell me what you're doing in the country." There are some exemptions for humanitarian activities in the country. And to the extent the company was claiming or asserting that they would fall under those exemptions, we asked for some more specific information as to why we should conclude that, and then just contact information for follow-up questions.

ASSEMBLYMAN PAYNE: You have in the report -- you list companies here. This is public. You say you don't want to let it be known publicly because of some kind of ramifications, but it's written here, names of companies. Is there any problem in naming these companies here? There's no problem with this, is it?

MR. CLARK: No. No. The only issue I have is not naming, it's identifying when we actually plan to sell the stock.

ASSEMBLYMAN PAYNE: Right.

MR. CLARK: But no, this is a matter of public record.

ASSEMBLYMAN PAYNE: Right, right. And you only have four here. Was that the number of companies that we are invested in that are doing business in the Sudan? Is that the total number?

MR. CLARK: Well, let me, maybe, update the number. That was the number we had identified as of September 29. The current number is eight, where we consider them not eligible--

ASSEMBLYMAN PAYNE: Right.

MR. CLARK: --but (indiscernible) divestment is required. And there are another nine companies where -- that fall into the third category that I mentioned, where potentially we may need to divest, but we have some questions as to exactly what their activities are, if there are activities in Sudan. So we're following up on those other nine.

ASSEMBLYMAN PAYNE: There had been some earlier reports that in New Jersey -- was invested up to \$4 billion in companies that were doing business in Sudan or related to-- That's \$4 billion. I have here \$400 million, here -- that there were, I think, about 20 companies, or thereabouts, that we were invested in. And I think it was confirmed that we were using, at one time, Conflict Securities Advisory Group. I think that was the name of it. Is that the company we're still using?

MR. CLARK: We used them initially. We're now using ISS, and they have a similar product to CSAG.

ASSEMBLYMAN PAYNE: Was there any reason -- I mean, the Conflict Securities Company has a very-- I think Illinois is using them now, I believe. Is there any particular reason why we changed from them? Were they unsatisfactory, or what?

MR. CLARK: There were two issues. One, we felt ISS had more breadth and depth of resources. The second issue pertained to the use of the data from the vendor. We had extensive negotiations with CSAG about whether we could publicly disclose any of the information that they provided us, and we were unable to reach a successful resolution of that negotiation. ISS was willing to let us use the information publicly in hearings such as this and with our State Investment Council, which we felt was an important part of the service.

ASSEMBLYMAN PAYNE: That's a key point, whether or not we can reveal publicly the names of companies that are doing business. Conflict Securities Advisory Group said, "No," that you cannot utilize -- publicly release the names, correct?

MR. CLARK: That is correct.

ASSEMBLYMAN PAYNE: And this organization says, "Yes, it's fine." Does that not open up a possibility of some kind of liability? For instance, let's say that there may be an error in the information that is received from this new company. And if, in fact, a company that is not doing business in Sudan is named erroneously, than that could leave the State of New Jersey open for some kind of action. Is that right?

MR. CLARK: I have not been advised of that, but I will say that we would strongly prefer to be able to verify the information. If ISS identifies a company as doing business in Sudan, before we divest -- I think all the eight companies on the list fall into this category -- we want to verify that information either directly from the company or through information in the public domain. And again, all of the eight companies that we now have identified, actually four of the eight were not in the ISS database.

They were ones that we found on our own, based on our own efforts. But we would strongly like to have some independent confirmation, either directly from the company, or from the media, or the annual reports, or other information, to just verify what's in the ISS database.

ASSEMBLYMAN PAYNE: I would certainly expect that the Department of the Treasury, or the AG or someone, would give you -- make sure that we are protected. That I would imagine that the contract that we have with this new company-- How long have they been in business, by the way?

MR. CLARK: They've been around for many, many years.

ASSEMBLYMAN PAYNE: Many, many?

MR. CLARK: Yes.

ASSEMBLYMAN PAYNE: As long as the Conflict Securities Advisory--

MR. CLARK: Yes, much longer, in fact.

ASSEMBLYMAN PAYNE: Much longer?

MR. CLARK: Yes.

ASSEMBLYMAN PAYNE: I would expect that your Department would have counsel to make sure that we are not vulnerable to any kind of possible action. And I suppose that the contract that we have signed with ISS protects us from any kind of possibility there. Is that correct?

MR. CLARK: We believe it does, yes.

ASSEMBLYMAN PAYNE: We want to make sure of that so that we don't have-- We want to make sure that the oversight there is really in place.

I don't know whether any of -- yes, okay, fine.

I'll yield to my colleague, Mr. Rooney.

ASSEMBLYMAN ROONEY: Thank you very much.

You're saying we've found eight so far. How many have we contacted and how many are left to be contacted?

MR. CLARK: Again, we've heard -- out of 515 in the portfolio now -- we've heard from 170 or so. And again -- and some of those 170 we've actually had follow-up discussions with as well. The remaining companies that have not responded -- many of whom we have no reason to believe have any activities in Sudan -- but nonetheless, we are in the process, literally as we speak, in terms of sending out a second request.

ASSEMBLYMAN ROONEY: Yes. Looking at the four that you've given us, without mentioning the specific names, one of them is an oil company. Are they pumping oil in the Sudan? Is that--

MR. CLARK: Yes. They have an equity stake in a drilling platform or a series of platforms within the country.

ASSEMBLYMAN ROONEY: Divestiture is a two-edged sword. We can divest of that particular company or force people into leaving Sudan, and then it's good for the people and bad for the people because there are jobs related to this. There is basically the fact that the people can get some income in a company. If we're cutting off an oil supply or if we're jeopardizing that, we may be hurting the very people we're trying to help. So that's one of the things.

I see two of the others are large electrical-type companies, extremely large electrical. I would imagine this, from my knowledge of that particular industry, that they're involved in power generation for the Sudan.

And that's probably what they're doing, is generating power. Again, another double-edged sword. If we're playing that game, it would affect the lives of the people in the Sudan not having power, not being able to do that.

The third one is a telephone company, and again, communication in the Sudan, which is a very backward country. So these four that you mentioned, again, I bring in the double-edged sword. By pressuring them or dumping them out of our portfolio, I don't know if it does the people of Sudan any good -- the very people that we're trying to help. I also, just to follow up -- again totally unrelated -- are we looking at any other countries that are guilty of human rights violations? One of the ones that come to mind is China. And I would think that any investments in China are far more than there are in the Sudan. There are numerous human rights violations. Their policy with female children -- of what happens there that-- There's a lot of problems there. So are we looking at other countries and starting to move in a direction similar to this?

And I was one of the cosponsors on the original divestiture for South Africa. To say that I was here at the time, I thought it was a good thing. South Africa absolutely needed to have that, and a wake-up call, and it helped change policies in South Africa. I don't know about this. We may be hurting the very people that we're trying to help. But again, looking in the future, what else are we looking at?

MR. CLARK: I think I'll answer that in two ways: One, clearly, the requirement to divest is something that can and should be initiated within the Legislature. I don't think, as our manner of policy, we want the Division to be making policy on where we should divest and where

we shouldn't divest. I think it's something that should be left up to the Legislature, and our job is to carry out the law. I agree, and if you talk to these companies and even read some of their survey responses, they would argue that they are a force for good in the country. And in some cases, their arguments are more believable than in others, quite frankly.

As shareholders in companies that do business in China -- and obviously there are hundreds and hundreds of companies -- if issues come up where we think they're consistent with shareholder returns, we will try to voice our concerns with the company and try to use our shareholdings as a means to try to get the companies to change their behavior, if we feel there's a legitimate argument that they're contributing to something negative going on in the country.

ASSEMBLYMAN ROONEY: One final comment: It is, rather than do divestiture, I think we should look at investiture. When we invest our money, our State money, we should look at the companies and look at what they're doing. Things like people that are well into areas of this type -- we should find that out ahead of time and not make the investment to begin with. I'd just leave that, and I don't know if we can put that in legislation, but I think it should be up to the managers of all of our funds to have that as a primary focus. It's good to make money, but it's also good to make money in companies that are helping rather than hurting, in parts of the world such as the Sudan. So that's my final comment.

Thank you.

MR. CLARK: Yes.

ASSEMBLYMAN PAYNE: Thank you.

Mr. Fisher.

ASSEMBLYMAN FISHER: Thank you, Mr. Chairman.

Just very simply, the next report that we're asking for, Assemblyman Cryan asked for, was in April?

ASSEMBLYMAN CRYAN: March.

ASSEMBLYMAN FISHER: March. And while you've been gathering data, you're trying to understand which companies are dealing in Sudan, I would suggest and urge to you that when we get that report back in April, that we have started that divestiture. The clear symbol you could send to the business community is just that, that we don't want companies that are investing in Sudan and we're not going to invest in them. And the fact that you're helping companies prepare reports, and suggest to their stockholders and directors that this not take place-- I think what the Legislature has clearly shown in its intent, by this legislation, is that we want that divestiture to begin now.

MR. CLARK: Again, without getting into specific names and dates, I can tell you we already have started. So we've already begun to sell some of the eight companies. So I agree with that sentiment.

ASSEMBLYMAN PAYNE: Yes.

Mr. Clark, just a comment. Who are you relying on? You say you're not relying 100 percent on ISS. Who are you using to balance all the information or to verify it?

MR. CLARK: Again, we're relying on ISS as sort of a first screen for companies. But again, we are trying to go out and supplement the data that's in that database through our own efforts, and also trying to verify it. So I say they are the primary source for initial identification of

companies, but I think we're taking it upon ourselves to verify and also to supplement.

ASSEMBLYMAN PAYNE: How are you doing that? What are you doing to verify it? You said we're taking it upon ourselves. What are we doing? Exactly, what are we doing?

MR. CLARK: Again, we're trying to contact the companies directly. We have had instances where we have heard from the other databases, news reports of companies that are active in Sudan that are not part of the database -- in which case, we'll go on the Internet, try to work through our research sources to try to either verify or refute the information as to whether the company is doing business there or not.

ASSEMBLYMAN PAYNE: Mr. Clark, let me just say, you say we'll do our own-- The question was very direct, and your answer was, "Well, we're doing various kinds of things. We may go on the Internet, etc." I think what has to happen here is that we have to make sure that what we're doing is, in fact, effective. For instance, I think we have to be very specific about what we're doing. The question is, what are we doing to verify the information that we're getting? You said, "Well, we may go into the Internet, or we were doing various kinds of things." I think that we need to give a little bit more urgency and more clarity to what it is that we're trying to do with this entire area of legislation. I really think we do.

And let me comment about these companies that are drilling oil over there and providing telephone service and electricity. The people that are being murdered over there, by the Janjaweed, live in villages that don't have telephones, number one. So therefore, they're not being hurt by that. Number two, they don't have oil stoves. They're not being hurt by that.

Number three, they do not have electricity, so therefore-- So this business about maybe we're hurting the people by going after these companies that are making this blood money has no place. The people that I know that are being murdered and that are suffering from genocide live in villages that do not have modern conveniences. Therefore, I hope that that kind of thinking does not enter into what we're trying to do by divestiture.

One of the things -- comments that was made earlier on, when we introduced this legislation, was just that. That we might lose money. That we're not going to be able to make the kind of money we can make. There are hundreds of thousands of companies I'm sure that we can invest in. Whatever money we pull out of a country that is carrying on genocide, I'm sure that with the proper kind of professional work that you can do, we can find other people to substitute there. There should be absolutely no -- no -- consideration of the possibility of losing money with companies where -- that are contributing to or supporting people who are riding through villages and burning them down, etc. So I hope that that doesn't enter into our thinking of being cautious about withdrawing our money, because people are dying there. And if we have -- effective, as we did in South Africa, as the Assemblyman said, and we're effective here, than other companies as well might think twice about doing business with places like that.

So I really would like us to continue to underscore the atrocities that are going on and do everything we possibly can to carry this out, as opposed to trying to find out ways not to do it. So I'm sure that you're committed to making sure that this legislation is carried out expeditiously.

And in your report in March, I'm sure that we're going to see some success. Otherwise, we're going to be extremely disturbed.

Thank you very much.

Are there any other questions or comments? (no response)

If not, I want to thank you very much for appearing here today.

The next area that we want to look into--

Let me acknowledge the presence of Assemblyman Craig Stanley here today. I don't know whether you wanted to say--

**A S S E M B L Y M A N C R A I G A. S T A N L E Y:** Just a few words, if I could. I'm running to another meeting.

**ASSEMBLYMAN PAYNE:** Oh, you're running to another meeting. Well, fine. Then we'll let you squeeze in here. We have a lot of people waiting to testify, Mr. Assemblyman, and we appreciate your coming.

**ASSEMBLYMAN STANLEY:** Thank you, Mr. Chairman.

I will, in fact, be brief. And I am certainly glad that I was able to hear testimony from Treasury. First, let me commend you for having this hearing, because this is a very, very important issue. As you know, I have also met with the Sudanese persons who have actually been victimized by this regime, have relatives and family members and friends who have been victimized. And it's an ongoing issue in the Sudan.

I have a picture here (indicating) that actually is an award-winning Pulitzer Prize photo of a child who is crawling to a United Nations Food Camp a kilometer away, and a vulture is waiting in the background for the child to die, so that the vulture can eat the child. The photo was taken by Kevin Carter. Nobody knows what happened to the child. Kevin

Carter went on to commit suicide -- depression. I say that to say that there is probably not a more urgent issue on the face of the Earth than what is going on in Sudan. I say that because we can't compare some of the atrocities. I see some atrocities right here in the United States; you talk about atrocities in China. But none of those things, as bad as they are, compare to what is going on in the Sudan right now.

And so I think we need -- moving forward with the legislation was certainly the right thing to do, moving forward with this hearing, and keeping pressure on the Treasurer is also the right thing to do, from the standpoint of investment. And it's good to see my colleagues Joe Cryan and Assemblyman Fisher; Connie Myers, I've served with a long time; and John Rooney, who is an Education Committee member with me for a long time. And actually, I worked with Assemblyman Brown when he introduced the South African legislation. And actually, I was aide to the Speaker Pro Tem at the time, and that legislation changed South Africa. It changed a country. I don't understand why we would not think that this legislation would do the same thing. In fact, this is probably the only thing that will make a considerable difference in what happens in the Sudan.

On the issue of investment, many of the people who got out of South Africa -- got out of countries or divested late, ended up losing a lot more money than people who divested on the front end seeing what's coming. Because as people begin to divest, the value of those companies will go down, the value of those stocks will go down. So there's probably an investment case to be made for getting out early, as opposed to late. But even with that being said, what should drive our policy, what should drive the policy with respect to Sudan is not whether we lose money or make

money, as you said Mr. Chairman, but that it is wrong -- it's blood money -- and that we have an obligation to humanity to divest at this point.

So thank you very much, Mr. Chairman. I don't want to take up any more of your Committee's time.

ASSEMBLYMAN PAYNE: Thank you, Assemblyman Stanley. Thank you very much. I appreciate your comments.

Assemblyman Diegnan is also here. I'd like to recognize your presence. Will you have a--

**A S S E M B L Y M A N P A T R I C K J. D I E G N A N J R.:** I'm just here to watch excellence in action, Mr. Chairman. I'm here to learn.

ASSEMBLYMAN PAYNE: Keep watching, you'll learn.  
(laughter)

Thank you very much, very much.

The next area that we will be hearing testimony on is what is known as the *justice gap* in the State of New Jersey. And Mr. Melville Miller, President of Legal Services of New Jersey, is here to testify; along with Harold Rubenstein, Executive Director of New Jersey State Bar Association.

Before you begin, I want to know whether Assemblyman Cryan would like to have -- a comment to make.

ASSEMBLYMAN CRYAN: Thank you, Mr. Chairman.

Thanks for hearing this issue. I asked the Chair, and he was kind enough to put this on. Thank you guys for coming.

I just ask, folks, as you listen to this -- the numbers you are about to hear are just alarming in terms of, in the most prosperous state in the country, how we can't, for whatever the reason-- And I hope today --

how we don't provide the type of services that folks need, really. What I wanted to do was just make this a dialogue-type situation. I know you have comments to make, both of you. But just explore and please be candid, in terms of ways -- whether it's all about money or whether there's other options that we can do that can really try and work this (indiscernible).

I thank you, Mr. Chairman.

**MELVILLE D. MILLER JR.:** Thank you, Mr. Chairman and Committee members. We very much appreciate the opportunity to speak with you this morning. Legal Services of New Jersey and the State Bar each year, every year, approach the Appropriations Committees in both Chambers to detail our services beyond met need, and it's usually, almost invariably, a request for additional funding.

**ASSEMBLYMAN PAYNE:** Excuse me? For the record, since there's two of you there, would you identify yourself?

**MR. MILLER:** I'm Melville Miller, President and General Counsel with Legal Services of New Jersey.

**ASSEMBLYMAN PAYNE:** Very good.

**MR. MILLER:** On my right is Harold Rubenstein, who is Executive Director of the New Jersey State Bar Association.

**ASSEMBLYMAN PAYNE:** Thank you.

**MR. MILLER:** I want to give you -- I'm not going to repeat the very short statement that we circulated. We circulated four things: One is essentially a two-page, just sort of, preliminary statement on plain bond. It looks like this. (indicating) And then there's a report -- the report that probably triggered this is an October report of -- looks like this (indicating) -- "People Without Lawyers," which we released. This came on the heels of

a national study, released by the National Legal Services Corporation, about two weeks before this, which showed very similar things. Ours actually has more detail and is the only place in the country where there's detail about the number of actual represented and unrepresented in the court system. So ours is a little more specific.

The third thing is a much fatter book -- "Legal Problems, Legal Needs" -- that was our 2002 social science study, where we actually did a random sampling of low-income people all over the state, much more detailed about the types of problems. I would commend that to your attention.

And the fourth is "Legal Services at a Glance." It's just a four-pager. And that gives you the overview of our legal services delivery system in the state. I'm not going to repeat any of that.

The only thing I want to highlight, as Assemblyman Cryan just sort of noted a minute ago, is a few of the basic findings from the most recent report. They are also repeated in our testimony: One, 1.7 million -- actually slightly over that -- New Jersey residents are poor enough to qualify for Legal Services assistance. That's people below 200 percent of the Federal poverty line. The 2002 study, the second fact is, showed that one-third of low-income individuals in this state need the assistance of a lawyer every year. That's not surprising. Much of the legal problem and difficulty they face is poverty related. So it's not surprising that it would be that high a number. That is a strikingly high number to me. Of those people -- and if you do that math, it translates to over 500,000 people a year -- of those people, one in six of those needing help actually received the help of a lawyer from any source. We're not just talking about Legal Services here.

We're talking about all sources of lawyers -- private lawyers, people who never come, sort of, register on anybody's tote board. It's the private lawyers who might actually just do it and forego a fee, and not be part of an organized system. But because we did a random sample, we know, in fact, that only one of six needing legal assistance actually receive it.

A fact that we just learned this year, through our participation in the national study by the Legal Services Corporation, is that two-thirds in New Jersey -- two-thirds of those who contact Legal Services' offices have to be turned away. Two out of every three. And I'll talk in a second, very briefly, about what happens to those people. We do provide, through -- we use every conceivable method that we can to try to help people. We've merged our programs. I know you're facing, in another venue, the questions of merging school districts and merging municipality services, and all that sort of thing. We merged from 17 to 14 to 6 regional programs, which seems to be about the right order of magnitude, just to achieve efficiencies.

We have introduced massive technology into our delivery system to use it. One of those things that we use is an interactive Web page, where somebody with a legal problem can go to the Web page and essentially dialogue and get some information. And that Web page gets 13,000 visits a week. Not hits, not people browsing by, but people who actually stop and interact.

Legal Services programs represented, in this state, over 51,000 people last year, in 2004. This year's statistics won't be available, obviously, until next month. But they'll be up slightly over that. Some of you who are attorneys, who read attorney periodicals, know that one of our

major two funding sources -- the State of New Jersey; and the IOLTA program, under the auspices of the Supreme Court, had some issues around bank performance during the year. With the recent resolution of that -- an agreement with the banking community that we were able to achieve, and approval of that by the Supreme Court -- that IOLTA funding, we expect to uptick somewhat next year. The problem is, one, it's unpredictable as to how much that's going to be; and two, that IOLTA funding is inherently volatile in that it goes up and down with the interest rates. So when the economy is taking a dip and the interest rates go down, then it goes down.

Chairman Payne, I know, has heard these tales of woe for many, many years.

Lastly, the most striking figures from the study that we did in October that Assemblyman Cryan referred to -- these just absolutely stopped me in my tracks. I've done this since 1971. I've done it as a life-long career passion. One percent of defendants in tenancy matters in New Jersey -- 1 percent are represented by an attorney; 5 percent of defendants in the special civil part -- which is the area of more limited jurisdiction, matters under \$15,000 -- 5 percent of them are represented by a lawyer. And actually most stunning to me of all, welfare fair hearings -- that's the opportunity for a low-income person, who either applied for welfare or was receiving welfare and then was terminated or reduced, that's the opportunity for them to challenge government's decision-- Those are all poor people. And they have gone to the trouble and had the gumption to challenge something that had happened. Only a small fraction of the people who have negative actions by welfare do challenge it. Only 5

percent of those people have the representation of an attorney. So there is a huge gap.

I'm proud that since the State has taken a very active role in funding Legal Services, which began in the early part of the 1980s -- I'm proud to say that we've nearly doubled the caseload, notwithstanding inflation, notwithstanding the fact that Federal funds are now at under 30 percent of what they were in comparative dollar terms in 1980. I'm very proud of the fact we've doubled our caseload. But there is much more that we need to do. That's the bottom line.

Just a question might occur to you -- two out of three are turned away. Gee, what happens to these people? The point I would make is that it's very detrimental. Our experience, my personal experience is, a very small number of the low-income people who have problems have the courage to seek help about it. Many of them are not fluent in English. Many of them are fearful of the court system, fearful of government. They don't come forward. The ones who do come forward, if we're turning away two-thirds, guess what happens? That word echoes through the community -- "Legal Services doesn't do this kind of case. Legal Services doesn't--" That just suppresses the demand and likelihood of other people coming forward.

Nonetheless, we instituted, several years ago, one of the innovations, the Statewide Legal Hotline -- LSNJLAW. And that at least is a mechanism through which anybody who contacts us will get at least some legal advice. Everybody -- 100 percent of those folks get it. But what they don't get is the help of a lawyer in court. Legal matters for the most part are too complex. Many of the folks that we are servicing have limited

abilities just by virtue of the luck of the draw. Many of them have language issues. Many of them have fear issues around the court system.

But think of yourselves. How many of you would want to face an even moderately complex legal problem in the court system, that was affecting you, without the help of a lawyer? It's just not real to think that the help of the hotline, which is very important, and we use-- I'm really, absolutely convinced that the small segment of resources that we use for that are just key -- that's just not enough.

So I would conclude by saying, I certainly -- the question is, what's the outlook? I certainly hope that the IOLTA agreement will mean, at least in the early part, middle part of next year, through that period of time it will be of some significant help in giving us some more resources to represent more people -- look forward to that, expect that. That's what I'll report to the Appropriations Committee in March. But that money, as I said before, is inherently unstable. We already hear about the housing market starting to level off and maybe decline. That means lower balances in attorney trust accounts, that means less IOLTA revenue. That's what it means. There's no question that we will need additional, stable State fundings soon.

Just for your own reference, the direct State appropriation to us in total each year, right now, is at an annual level of \$16.4 million. About half of that's supplied by a filing fee increase that we got in 1996; the rest is just general revenue from general revenue sources. That amount is the same as it was in the prior fiscal year. Because we were hopeful that the IOLTA thing might be settled a bit earlier than it was, we did not ask the Legislature, because of the State funding crisis last Spring, for more money.

Last year, we asked them to leave us alone. So that's just the history of the lay of the land.

Harold.

**HAROLD RUBENSTEIN:** Again, I'm Harold Rubenstein, the Executive Director of the New Jersey State Bar Association.

I believe my staff has sent a statement on my behalf. In the interest of expediting this matter, and unless a compelling reason to do so, I'll waive my interest in rereading that statement. I believe everybody has a copy. I have additional copies if anybody needs them.

I would just add, the State Bar has long been an institutional supporter of Legal Services of New Jersey. We routinely, and have I believe for decades, testified immediately following Mr. Miller's testimony before the various Appropriations Committees. We support lawyers donating time and services to Legal Services of New Jersey, as well as a variety of other low-income service providers for legal services. We provide information on our Web site and encourage lawyers to go and make those kinds of donations. We're also an institutional supporter of the Community Health Law Project. I believe they were founded, in part, by efforts of the State Bar.

So we support Mr. Miller's efforts, the idea of closing the justice gap. When Mr. Miller issued his report, we issued a joint statement with him -- was discussed with him -- and he and I frequently discuss these issues.

**ASSEMBLYMAN PAYNE:** Thank you very much.

Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Thanks. Thank you, Chairman. I just have some follow ups.

Are nonresidents, immigrants, included in the counts?

MR. MILLER: Nonresidents, meaning people who live outside of New Jersey?

ASSEMBLYMAN CRYAN: No. I mean people who live undocumented.

ASSEMBLYMAN FISHER: Who live fully undocumented.

MR. MILLER: There are -- we serve people who are found here, if they reside here. If they have an established residence, they would be included.

ASSEMBLYMAN CRYAN: Okay. I just wanted -- the one that really leaps off to me is the landlord/tenant thing. It just -- in terms of just numbers -- and I just want to highlight it off this report -- 163,733 cases, 1 percent had an attorney. One percent of those who were fighting at some level or another to possibly stay in where they live, 1 percent had the right of counsel. We've got to just do better. It's just amazing. One hundred and fifty thousand people went, in this, in the most wealthiest State in the country, without some sort of representation in the most vital thing -- where they live.

I mean, the welfare hearings, which you talked about so eloquently in regards -- I'm just following up on yours and expanding a little bit -- 6,799 cases, and only 5 percent, as you mentioned, to fight for their income. Do me a favor? Can you just explain IOLTA a little bit? What it is?

MR. MILLER: Sure.

There is a program that started in Oregon and Florida in the early 80s. It is designed to capture the interest that can be obtained from pooling attorney trust account deposits. There's no question, if a deposit is large enough or held for a long enough period of time that it would generate interest for the client, the client gets the interest. But some amounts are so small, are held for a very short period of time, that only if that money is pooled together and used for a common, public purpose does it generate any revenue. It doesn't take anything away from the client. That program slowly spread through the United States. It was implemented finally in New Jersey in 1988, started in 1988 and '89. And it has generated very substantial amounts. It's become a very important funding source. So much so, that in some years it's been the reason that the State Appropriation Committees have felt, I think, more comfortable in holding back from giving a State funding increase.

ASSEMBLYMAN CRYAN: So of the 16 million that we appropriated last year -- 16.4 -- of the dollars, how much was IOLTA money?

MR. MILLER: None of it.

ASSEMBLYMAN CRYAN: Right.

MR. MILLER: That's all--

ASSEMBLYMAN CRYAN: Supplemental.

MR. MILLER: --State money. The IOLTA money in '05, not quite over yet, but it looks like it will be in the neighborhood of 18 million. Most of that increase, which is a significant increase from the year before, came to us in the fourth quarter.

ASSEMBLYMAN CRYAN: So is the Legal Services budget around 30--

MR. MILLER: No. If you look at the back page of this "*At a Glance*" sheet--

ASSEMBLYMAN CRYAN: Okay.

MR. MILLER: --it's actually, statewide, about \$48.1 million; about a little less than half of the public defender budget, I would note. And of that, the Federal Legal Services Corporation shares have actually gone down in both nominal dollars, from 7.8 million in 1980 to 5.8 million now. But obviously, in real dollars, much below that. But we managed to try getting funding from every conceivable source -- county governments and United Ways, and private fundraising we do, and so on.

ASSEMBLYMAN CRYAN: How much fixes the problem? How much money does it take to actually fix the problem?

MR. MILLER: Well, one in six could give you, in some sense, the broad outline. But I think that's too easy. Right now, our world is made up of proportionate amounts of money from a lot of sources, and it's also made up of voluntary contributions from the private bar. I think that probably something on an overall order of magnitude of four-to-five times the amount of State funding we have now would be what we would be looking for over time. It's not something we could, obviously, all spend tomorrow.

ASSEMBLYMAN CRYAN: You couldn't use it if it all came tomorrow anyway, right?

MR. MILLER: No. We would try real hard, but it's not going to come that quickly either. (laughter) But I think we have to ask all of the

others partners -- the Federal partner, the main Federal partner, the private bar in the counties, and everybody else to up their shares as well. In other words, I'd look to keep the proportion and the richness of funding from multiple sources.

ASSEMBLYMAN CRYAN: My other question is for Mr. Rubenstein -- and thanks for your comments.

Are there areas that you see -- you talk a lot about the pro bono work, and there's quite a bit of it that's done. Are there areas that you see where the pro bono work could be encouraged in any way? Are there efficiency areas, or maybe whether it's in a specific area? I'm thinking whether it's in tenant law, things like that. Are there areas where maybe a gentle push could help or--

MR. RUBENSTEIN: We try and gently and not so gently push on a variety of different areas. Again, we have on our Web site a list of 11 legal service providers -- I use that in the generic sense -- to encourage people to go and -- attorneys to go and volunteer their time and their effort, or their money, to these organizations. In addition, we encourage people-- We have a Mass Disaster Committee that responds to mass disasters -- the flooding in South Jersey and so forth. People who are out there trying to help people recover. We did it after 9/11. We were recognized by the Governor at the time for putting together a fairly substantial group of attorneys, over 250, working with Essex County.

So sometimes those are incident specific. With regard to encouraging people to go into a particular area, sure. We can certainly do that. And indeed, probably Mr. Miller and I will talk about that further. But one of the things that we emphasize is the voluntary nature of pro

bono. New Jersey, as you may or may not be aware, is the only state in the country that mandates that lawyers sometimes have to take cases.

Currently, the New Jersey Supreme Court heard oral argument a month ago on a case involving whether there is a right to counsel, in obligors -- in dead-beat dad cases, child support obligors -- and they're considering whether, first, there's a right to counsel, and second, whether it's a right to counsel that will be imposed on attorneys. So there is another issue and another component on this. There's a voluntary component which we strongly support, unequivocally support that, but there's also a mandatory component, in New Jersey alone, which we do not support.

MR. MILLER: The one thing, Assemblyman, I would probably add to Harold's points: the immediate past president of the State Bar, Ed McCreedy, made a very conscience effort-- The State Bar leadership usually goes to every county bar association, I think, as you know, every year and visits. And in those visits, made a very a conscience effort to talk to everyone about the need for more pro bono help for Legal Services. It was a major part of his push. It may be going, still, on--

MR. RUBENSTEIN: It is.

MR. MILLER: --with the current president.

ASSEMBLYMAN CRYAN: We need to do more here.

MR. MILLER: Yes.

MR. RUBENSTEIN: We're not arguing with that.

ASSEMBLYMAN CRYAN: We've got an obligation. And I would imagine if we stay on this track, I don't-- I'm sure all of us would prefer it didn't be a legislative assistance, but as we move on this track, your members should be aware we share a vision, so to speak.

There's actually a center in Essex that closed. We couldn't take cases for 20 days.

ASSEMBLYMAN PAYNE: Twenty days, right.

ASSEMBLYMAN CRYAN: Twenty days. After 20 days, that Legal Services was essentially closed, right, in Essex County?

MR. MILLER: Right.

MR. RUBENSTEIN: Yes.

MR. MILLER: And that's not uncommon.

ASSEMBLYMAN CRYAN: Not uncommon. We close around the state in different sites, based on timing.

MR. MILLER: Yes.

ASSEMBLYMAN CRYAN: I just find that to be amazing.

And I wanted to share one comment on dead-beat dads. In my day job, I'm an Undersheriff in Union County. We do our sweeps. A lot of counties did sweeps a couple of weeks ago. In Union County, we swept up over 40 people, and the judge let them all go. All 40 just -- were told, "Okay, if you pay up, you can leave." Not one of them went to jail that day.

MR. RUBENSTEIN: Were those sweeps announced in advance?

ASSEMBLYMAN CRYAN: No.

MR. RUBENSTEIN: The AOC used to have a policy of announcing them in advance, on the theory that people would rather pay, if you had the money, than to be arrested.

ASSEMBLYMAN CRYAN: Well, you know what? I'd rather see them-- Because you know what? It's their families, and their wives; and

court orders -- and none of them -- respect for the process but the people who aren't seeing the money. And you know what, it's a disgrace.

MR. RUBENSTEIN: You're not going to get an argument on that one either, right.

ASSEMBLYMAN CRYAN: You know, you go in and get these guys that can't handle a few dollars.

What percent of legal assistance goes to the Essex services? And the reason I ask is, I know they have like a third of the cases there.

MR. MILLER: Our funding distribution formula for both the IOLTA and the State dollars, which is -- actually for the Federal dollars as well, is based exactly on each county's proportional share of the low-income population in the state. So we just track the census shares. If County X has 12 percent, they're going to get 12 percent of the funding.

ASSEMBLYMAN CRYAN: And does census shares generally follow the amount of case-- I mean, is there a proportion to the--

MR. MILLER: Yes. If a program concentrated in a particular kind of case that was longer lasting and higher cost, then there might be some variation, for that reason, from the percentage. They're not going to -- necessarily exactly mathematical, but very, very close.

ASSEMBLYMAN CRYAN: I just wanted to, again, say thank you, Chair, for hearing this issue. It's just unbelievable.

ASSEMBLYMAN PAYNE: Thank you, Mr. Cryan.

Mr. Rooney.

ASSEMBLYMAN ROONEY: Thank you.

You're dealing -- basically, your group deals with other than the Public Defender's Office.

MR. MILLER: Absolutely.

ASSEMBLYMAN ROONEY: There's two separate budgets. The one thing I'm concerned with is, you said that people weren't eligible by income level. Is that true in both cases, in Public Defender and-- Is it the same situation? How does it work?

MR. MILLER: I'm not actually-- The Public Defender is a State agency. I'm not 100 percent sure of what their eligibility cutoffs are. We've tried to adjust ours over the years and finally left it at the 200 percent level, because -- after looking at the real cost of getting a lawyer.

ASSEMBLYMAN ROONEY: Yes. I had a question brought up by a constituent recently about getting a Public Defender -- an individual who is making, approximately, between \$30,000 or \$40,000. And going to jail, he makes nothing, of course. He has no job.

MR. MILLER: The one thing I recall, Assemblyman, about the Public Defender system is they go above 200 percent, which is our cutoff on a sliding scale fee basis, I think, or at least that used to be true. You used to be able to get help at a higher income, maybe up to 300 percent, but you had to pay part of the way, I think. So that might be one of those situations.

ASSEMBLYMAN ROONEY: Yes. What is the--

MR. RUBENSTEIN: Yes. They have a recoupment-- There's a recoupment opportunity for the Public Defender to recoup from their clients at some point in time, even if they're incarcerated.

ASSEMBLYMAN ROONEY: What is the level? I mean, what level are we talking about? As far as--

MR. MILLER: Okay. A family of three people--

ASSEMBLYMAN ROONEY: An individual. Let's say, starting with an individual.

MR. MILLER: I don't have them all. I have a family of three memorized.

ASSEMBLYMAN ROONEY: Okay. (laughter)

MR. MILLER: It's just, like, \$13,900 for a family of three -- is 100 percent of the Federal poverty line. For us, we use 200 percent, so if you think 28,000, that would be the cutoff for a family of three. And very few people can make it in New Jersey.

ASSEMBLYMAN ROONEY: Yes, that's for sure.

Thank you.

MR. MILLER: Yes.

ASSEMBLYMAN PAYNE: Thank you.

Well, I think Mr. Fisher had a question.

But I -- while he's out of the room -- I share the frustration that all of us have, of course. Mr. Cryan has brought this to our attention for this discussion. And I just have things like, why? One of six of those needing help actually receive legal assistance, why? Limited resources, etc.?

MR. MILLER: That's it. That's absolutely the story.

ASSEMBLYMAN PAYNE: So these people, what happens to them? Tell me the relationship between, if you can, the Legal Services, the Public Defender, the Bar Association? The Public Defender, what are their clientele -- what's their clientele, the Public Defender?

MR. MILLER: They do only criminal work.

ASSEMBLYMAN PAYNE: Only criminal work.

MR. MILLER: Only criminal work.

We do only civil work.

ASSEMBLYMAN PAYNE: Mr. Rubenstein.

MR. RUBENSTEIN: I'd actually like to supplement that. With regard to -- I mentioned the mandatory pro bono. There were occasions where we were able to work with the Legislature and the Public Defender to have their mandates statutorily changed, at least in one instance with the termination of parental rights, where they set up a separate unit of attorneys -- not employees, but I guess individual attorneys who were paid an hourly rate. And the Legislature funded that to assist, and that was a pro bono obligation.

In addition, there were issues involving Megan's Law. Defendants in hearings that are civil hearings on the tier classifications, and challenges the tier classifications. Again, the Bar Association worked with the Legislature and with the Public Defender, and they have those as well. Neither of those, technically, are criminal matters, but Mr. Miller is correct. The bulk of the Public Defender's work is in criminal matters.

ASSEMBLYMAN PAYNE: And Legal Services, there are people that-- Legal Services, what's the criteria there? That's civil--

MR. MILLER: It's any civil case. It's a statewide system. That statement is true. Individual programs, because of the shortage of resources and because, perhaps, of restrictions in their funding, may limit the kinds of cases they do in one particular area or another. But any civil case, 200 -- financial eligibility, 200 percent of the Federal poverty line. Anybody higher than that, we don't take them, we can't take them.

ASSEMBLYMAN FISHER: Mr. Chairman?

ASSEMBLYMAN PAYNE: I'm sorry.

Ms. Myers has a question. You were out.

ASSEMBLYMAN FISHER: Oh, yes, I'm sorry. I didn't see you raise your hand. My apology.

ASSEMBLYWOMAN MYERS: Thank you, Mr. Chairman.

My question is really more for Mr. Rubenstein than Mr. Miller.

MR. RUBENSTEIN: Sure.

ASSEMBLYWOMAN MYERS: When I saw the title of *justice gap*, I was very excited about the topic, because this is an area where I have been increasingly concerned as a legislator, because I find that in huge amounts of my constituency -- have been finding it increasingly impossible to deal with the court system, because lawyers are too expensive. And yet, if you look at the chart, my county has the lowest low-income, I guess, population in the state. So that's why my question is more directed toward Mr. Rubenstein.

I think we need to note today that, yes, there are maybe a million low-income people who may qualify for, or close to it, for legal services in some way. And yes, there's another million, or maybe more than that, millionaires in New Jersey. We are a wealthy state. But those millionaires, multimillionaires in many cases, make us appear very wealthy, and especially my county of Hunterdon. But everyone is not wealthy in Hunterdon County, and everyone certainly isn't wealthy between the low-income population and the millionaire population -- who can afford to go to lawyers whenever they want to. They pick up the phone, they don't come to people like me.

But I will tell you that in the 10 years that I have served in this House, the numbers of calls coming to our office that are really legal

questions have increased tremendously. People just don't know where to go with questions. And we have very few that we can refer to Legal Services. Fortunately, there are nonprofits. There are State agencies. With my background in State government, I've been able to usually help them to some degree by pointing them in the right direction. But I believe that there are numbers that are far and above what you are talking about in the Legal Services level, in the middle-income population, that's left in this state.

And the problem is, this is one of the things that's driving out the middle class in New Jersey -- the most, probably, expensive state and most litigious state in the country. The middle class needs something. And it will be to you all to determine if and what could be done. But I would suggest the Bar Association do some kind of a survey, or something, because I think you'll find that the need is at least as great, and that maybe something could be done between Legal Services and pro bono, and nothing. Some kind of clinics. I was wondering about the Web site.

MR. MILLER: The Web site is not income limited.

ASSEMBLYWOMAN MYERS: It's not. So I could refer people to your -- and would they be able to get an answer to a question without qualifying?

MR. MILLER: Yes.

ASSEMBLYWOMAN MYERS: Oh, that's really good news.  
That--

MR. MILLER: It would be unadministerable to do otherwise. It's LSNJLAW -- it's in the written statement -- but it's *LSNJLAW.org*.

ASSEMBLYWOMAN MYERS: I think that's really helpful. You may find that if we publicize that, that you're overwhelmed. But things like that would be very helpful.

MR. MILLER: We've been publicizing it. Each time we publicize it--

MR. RUBENSTEIN: I'd like to comment on two things. One is to make a distinction in something that you said between people who need representation and people who need advice. And I think it's an important distinction.

ASSEMBLYWOMAN MYERS: Well, both.

MR. RUBENSTEIN: Well, there's an important distinction. Many county bars, and indeed, I believe almost all county bars have a lawyer referral service in one form or another. And some of those -- lawyers sign up for those. They generally self-certify in their particular areas of practice. And in those instances, some of those services offer an initial consultation to a client at a very low -- either a nominal or no cost. On our Web site, we do not operate a lawyer referral service. Now, I'm going to talk about an option that we may be considering shortly. But we do list all of the lawyer referral services in the state on our Web site. It's very clearly marked. And we also -- either people can go to it directly to see where the county referral services are; and of course, a resident is not limited to the lawyer referral service in their own county. They can go anywhere.

And we also -- if people choose to, say, contact us, and seeking a lawyer referral -- "I have a question" -- we'll refer them out. We don't offer that kind of-- We don't offer advice, we simply don't have the staff for it. But we are considering -- you ought to know, and this has been well

publicized; though there is some dispute with the counties -- offering a listing of members of our sections. We have over 12,000 members who practice in substantive areas of (indiscernible) sections, and offering that publicly online. People may be able to connect up with lawyers at that point, but that's still in discussion stages. The county Bars are a little concerned about that competing with their own work.

But we agree. I should tell you, other state Bars have done middle-income gaps as well. We have those reports, we're looking at them. It's obviously a separate problem, but an important one. I don't disagree.

ASSEMBLYWOMAN MYERS: But what do the lawyers charge?

MR. RUBENSTEIN: For -- you mean on the lawyer referral service, or do you mean on a normal rate?

ASSEMBLYWOMAN MYERS: I mean, my impression, or what I've heard, is the minimum is going to be almost \$200 an hour.

MR. RUBENSTEIN: It depends on the nature of the case. There are some cases, a personal injury matter, there's going to be a contingent fee--

ASSEMBLYWOMAN MYERS: Right, right.

MR. RUBENSTEIN: --based on-- On some other matters -- matrimonials -- it depends on the lawyer, the reputation of the firm, and so forth, their experience. I can't give you a ballpark figure. I can tell you, though, it would range throughout the state, in part because of the cost of doing business.

One thing I should add, for what it's worth, is the Assembly has dealt with the issue of doctor medical malpractice. And as you know,

lawyers are paying some of the cost. We're underwriting some of the cost for doctors' medical malpractice. Legal malpractice insurance has gone up significantly as well. That's the side of the story you haven't heard. So there are real costs of doing business.

ASSEMBLYMAN PAYNE: Thank you, Assemblywoman Myers.

Assemblyman Fisher.

ASSEMBLYMAN FISHER: Thank you, Mr. Chairman.

You mentioned that there are four types of legal cases that you generally deal with. Do you also -- I mean, like for instance, do you do consumer fraud?

MR. MILLER: Yes, absolutely. Yes, that's within the category of consumer cases. We absolutely do consumer fraud cases. I argued a consumer fraud case in the State Supreme Court a couple of weeks ago.

ASSEMBLYMAN FISHER: Okay. Because if they weren't, I was trying to figure out where they fit in. But now you're telling me that it's basically all the civil issues.

MR. MILLER: Yes. Yes, every civil issue.

ASSEMBLYMAN FISHER: And in private practice, if someone comes in and says, "I need an attorney," they determine some -- would determine, "Well, that's not a good case," I guess -- I'm not a lawyer -- "I don't think the merits of this warrant that you should go to trial." Do you have to take every case that comes to you?

MR. MILLER: No. You can rest assured that we absolutely look real carefully at the merits of every single case, and we act accordingly.

We do not pursue cases without any merit, frivolous cases, any of that sort of stuff.

ASSEMBLYMAN FISHER: So you're suggesting that one of six that need legal-- When you say one in six, you mean one in six.

MR. MILLER: Absolutely.

ASSEMBLYMAN FISHER: So there's no ranking here. You couldn't say to me, "Of those one in six," because then you'd be trying the case almost. Is that right?

MR. MILLER: That's right. That's right.

ASSEMBLYMAN FISHER: Okay. Well then, that is really disturbing. Actually, I thought I was going to hear -- because I've heard people who want to go to Legal Aid. They assume that they're going to get-- "I'm going to Legal Aid. I know I'm going to get represented," and you know that those who are on the private side who are going to pay sometimes think that -- they weigh it out and they decide they're not going to go forward.

MR. MILLER: If anything, I personally worry much about just the opposite, which is: because of the financial pressures on us, there's a huge incentive to take cases of only exceedingly high merit, as opposed to 50/50 or--

ASSEMBLYMAN FISHER: Right.

MR. MILLER: --75 percent chance.

ASSEMBLYMAN FISHER: Because what would follow, to me, would be, in terms of how we spend all our public dollars, you would hope that there's also a return, so to speak. In other words, I'm concerned that this starts a cycle of a spiral downward for folks, and they end up then

getting way on the wrong side of the law. For instance, when you have landlord/tenant cases, and a guy or a gal is being totally abused by the landlord, and then they just go into this cycle of despair, can't pay their bill. And now you're not going to be talking about civil cases, you're going to be ending up talking about criminal cases. And I wonder sometimes if we need to make the case that the investment on this side would be far greater, because we could help short-cycle that spiral.

MR. MILLER: Well, I think your point is absolutely right. I will take the advice that we need to make that case more strongly. I noticed before, earlier, I saw Kevin Ryan in here. One of the areas where we see that is the cycle from a housing eviction to a second evict. They move, they go somewhere else. There's another eviction. There's pressure on the family, children -- DYFS gets involved -- and start to have a breakup of the family. Kids are placed in foster care in a lot of those situations. I don't mean all of them, but in a lot of those situations, the root cause is poverty. There's all these other costs on the system, aside from the human costs -- the social costs, governmental costs to remedy the problem, which has now gotten, as you're suggesting--

ASSEMBLYMAN FISHER: Well, I would like to see it pursued in that vein. Because, just like you say we need to make investments in educational systems so that we don't end up in that cycle, this is maybe at a different choke point, but it still, I think, could start people -- on a much more costly, in an aggregate kind of a way, to the State than if we could get some of these cases where those that are clearly -- should be represented, and would be adjudicated, and would not be subject

to what's going to happen, based on their not being represented and being abused.

MR. MILLER: Right.

ASSEMBLYMAN PAYNE: Yes. The problems have been laid out very clearly, the situation. The point of having hearings, I suppose, is to try to, number one, identify the problem or the dilemma, etc., and try to come up with some kinds of solutions to it. The human cost is just -- I'm just so glad that I'm not one who has to go and try to find this help and the doors are closed, let's say, where the Legal Services are closed for a month because there's no one to care for-- Where do those people go? What happens to them, as it's related to Assemblyman Fisher's question? What's the solution? What do we do?

MR. MILLER: Well, I think the only real solution is resources. I think the State probably needs to commit to a long-term, multiyear plan to get to a point, sort of suggested by Assemblyman Cryan's question before -- how much ultimately would be necessary to move there in sort of a steady progression. I think that's probably what we need to do. Immediately, the answer is, if the door is closed in a particular program, in a particular kind of case, they're referred to the Statewide hotline. We give them advice. We give them the best referral that is humanly possible to make, in terms of other agencies, not lawyers, that at least might give them some help. But that's where it is.

ASSEMBLYMAN PAYNE: All the related social problems that Fisher talked about -- extremely costly. And if, in fact, the investment could be made on the front end and we could eliminate all those other kinds of things down the line-- I've been preaching in the Assembly for a long time,

invest in the beginning, invest in the education, etc., and we cut down on our criminal justice system. We cut down on our kids doing jail, etc. And it's not difficult to really convince people of those kinds of things. It's just something we have to continue doing. But just to try to imagine being in a situation like that, where every door seems to be closed. What do people do? You said it takes, first of all, it takes a lot of courage and a lot of -- to initially go and look for this.

MR. MILLER: Absolutely.

ASSEMBLYMAN PAYNE: And then when they go and the door is closed on them, my God, it's just something that -- it's unfathomable. I know we have to try to find a way to address that, because there's so many people out there that are forgotten, that have fallen through the cracks. My God, it's a chasm that they fall into -- and everything is beginning to spiral downward. So we have to really come up with ways to kind of help resolve this terrible situation.

Well, thank you very much for your comments.

MR. MILLER: Thank you, Mr. Chair and Assemblymen.

MR. RUBENSTEIN: Thank you.

ASSEMBLYMAN PAYNE: Yes, did you open a window? (high temperature in room)

ASSEMBLYMAN ROONEY: Yes, please, open a window.

ASSEMBLYMAN PAYNE: Either open a window or give me a pillow, one of the two.

We'll start up again in five minutes.

## RECESS

### AFTER RECESS:

ASSEMBLYMAN PAYNE: The Assembly Regulatory Oversight Committee meeting will continue now. This portion of our hearing will be concerned with the juvenile detention centers, and specifically the area in which we were concerned early on, and that had to do with some young people, defendants, that were being held inappropriately in juvenile detention centers throughout the State of New Jersey. At that time, there were approximately 200-plus youngsters who were being held inappropriately in juvenile detention centers, awaiting proper placement in facilities where there were -- for either mental health-- Many of the youngsters were suffering from mental illnesses. Some needed medication, etc., etc., and they had been assigned to a facility, a bed, in a facility that could treat them. However, because of a shortage of beds in those facilities, these youngsters were being held inappropriately in juvenile detention centers.

The Public Advocate -- the Child Advocate rather, Kevin Ryan and others, brought this to the attention of the public and to the Legislature. We determined to have a hearing to discuss this matter to see whether or not we could have a -- to see what the status is. Right now, we're going to have a hearing that will discuss the status, what has happened with those youngsters, what's going on there, etc.

And Kevin Ryan is here to speak about that.

Howard Beyer, Executive Director of the Juvenile Justice Commission, is also here, and he will testify on that and other related matters.

And Gail Krebs is also here, from the Division of Child Behavioral Health, to give us some insight into what's happening to these youngsters and what's the kinds of needs that they have.

I am going to ask Assemblyman Fisher to chair this meeting, because I have to absent myself for just a short while, and I will be back.

Thank you very much.

Doug Fisher.

And why don't we have Mr. Ryan.

Welcome, Kevin.

**KEVIN M. RYAN, ESQ.:** Thank you. Thank you, Chairman.

**ASSEMBLYMAN PAYNE:** I apologize for leaving. The Governor-Elect would like to meet me at 12:00, and I'm a little late. And I don't like to keep the Governor waiting -- I'm 20 minutes late. (laughter)

**MR. RYAN:** Thank you, Mr. Chairman. Thank you, members of the Committee.

It's a pleasure to return to your Committee to discuss the care of juveniles with identified mental or behavioral health needs who are locked in our county detention centers. This is the third hearing you have held on this matter this year. I cannot remember an instance where a legislative panel has played so important a role in keeping public attention focused on the treatment of children in juvenile detention centers.

During your June 16 hearing, I offered that we had counted 39 children who were being held illegally in the 17 detention centers one day

earlier, which was down from 45 youth in similar circumstances on May 30. During the hearing, Deputy Commissioner Kathi Way indicated that she expected youth awaiting mental health and child welfare placements would be removed from juvenile jails by September 30, and requested an extension from a deadline of June 30, established within the child welfare reform plan.

Much has happened since that time. For one thing, we continue to get to know these kids. As part of my office's ongoing advocacy on behalf of illegally detained youth, we toured many of the juvenile jails again this Summer and met many youth who, although they were post-disposition, remained locked up. Many were in detention for minor offenses -- riding in a stolen vehicle, violating probation -- and some were much tougher kids. But all shared the legal status of being ordered by the court to a non-secure placement, free from detention. And all the post-dispositional kids were waiting for a residential placement.

You may recall that part of our discussion during the first Committee hearing in January concerned a lack of resources for these kids. I am very pleased to acknowledge that the Department of Human Services has been working very hard in this regard, and has produced meaningful results. In September of this year, the Department reported a significant expansion of beds for children who need mental or behavioral health treatment, including specialty residential treatment beds, intensive residential treatment centers, and treatment homes.

As of yesterday, I understand that 243 new residential- or hospital-based beds have been contracted; 146 are currently operational. Of those 146 new beds, 97 beds, or 66 percent, are in the State of New Jersey. DHS is also working to expand family-based treatment homes for

youth, and we're in the process of verifying how many of those new homes have come online.

The data does indicate an increase in out-of-state mental health care for New Jersey youth. The number of children being served out of state increased from 196 youth in January 2005, to 245 youth in September of 2005, which represents a 25 percent increase. To the extent this expansion has decreased the likelihood that children will deteriorate in detention centers awaiting a mental health placement, the growth of non-New Jersey placements clearly has an upside. And some out-of-state placements, particularly those that are just across our borders, may be closer to a youth's home than alternative New Jersey-based placements. But many of these placements are distant, and we would do well not to impose upon children the choice whether they linger in New Jersey jails or receive treatment far from their families in out-of-state placements. This will not be easy. A few communities have already resisted efforts by the State to site mental health programs for these children in certain neighborhoods. There is no magic wand here. Capacity-building will take time.

Meeting the needs of children is not just about building residential placements. Our commitment to the children of New Jersey in our child welfare reform plan is to help youth stay close to their families and their communities, and, whenever possible, afford them the opportunity to receive treatment and services in the community instead of in an institutional placement. I have said before, and I will say again, that the truest measure of the success of our children's mental health system will be how many children have recovered to the point of living at home, going

to school, and enjoying life as a child. Success does not occur just with the expansion of residential programs alone.

The Department of Human Services has made irrefutable progress in decreasing the illegal detention of children awaiting mental health or child welfare services. The progress was fitful, but unmistakable. On May 30, we counted 45 illegally held kids; that number dropped to 29 kids on June 30; 28 kids on July 30; 30 kids on August 30; and then the first steep decline of the Summer, to 19 illegally held youth on September 15. Two weeks later, on September 30, only two illegally held children were present in any juvenile detention center in New Jersey. It was remarkable. We had counted 131 youth who had been detained illegally, post-disposition, awaiting mental health or child welfare services, at some point between May 30 and September 30; but by September 30 they were almost all gone. We counted, center by center, and time and again. We found the juvenile jails virtually cleared of post-dispositional youth awaiting mental health care.

You should know that on occasion there are discrepancies in the number of post-dispositional youth that DHS knows of, and that my office has tracked. My information source has remained constant: regular contact with the county detention centers. But the challenge is not whether the count is 30 or 25 kids, or 19 or 15 kids; the challenge is the sustainability of the progress evident on September 30.

And today I'm here to say to you that there is reason to be hopeful about sustained progress and that there is reason to be concerned. First, the cause for hope. You may remember from your last hearing on this matter that one of the greatest obstacles to resolving this problem has been

the lack of a computerized data tracking system for DHS to identify that youth are present in the juvenile jails and in need of mental health or child welfare services. Several of you indicated last time that in an age of ready technology, when we can communicate across the globe in a matter of seconds, or we can track a satellite millions of miles away, it is a poor reflection of our own priorities if we cannot track our most vulnerable kids from the courthouse to the juvenile jail, to the treatment homes, in a fashion that allows us to plan for and end their illegal detention.

On September 30, I was present at a meeting among the agencies charged to solve this problem, convened by the Office of the Governor. At this meeting, the Administrative Office of the Courts committed to pilot, with the Department of Human Services, their joint use of a statewide juvenile tracking system to identify adjudicated and disposed youth in detention centers awaiting DHS services or placements. I know this technology collaboration could go far to help DHS plan for the needs of youth who need mental health or child welfare services. That partnership, in tandem with DHS's very significant expansion in behavioral health placements for youth, could form the basis for long-term sustainability of this September 30 achievement.

The cause for concern is this: the number of illegally held children in detention centers since September 30 has been rising, and their lengths of stay, post-disposition, in many instances have been more than simply a couple of days. On October 15, we counted four illegally detained youth, a number that rose to 10 youth on October 30, then 11 youth on November 15. We are still verifying some of the data for November 30, but as of yesterday we confirmed that at least 20 youth had been detained

illegally, awaiting mental health or child welfare services, at some point between September 30 and November 30. The good news for sure is that this number is much lower than the May 30 count, and that is due almost entirely to DHS's efforts. My apprehension is that this uptick is not what we should expect on the heels of September 30's landmark achievement.

Yesterday, I was in Bergen County meeting with Howard Beyer and county leaders regarding our collective efforts to ensure the safety of detained children in a dilapidated building that Bergen plans to replace. One of the current building's central drawbacks is that every cell must be manually locked and unlocked, making timely evacuation difficult when the detention population exceeds 14 youth. As a result, the Bergen County Executive has decided to request a cap on the facility of 14 youth, which I support. Yesterday, there were 16 youth in Bergen's Juvenile Detention Center, in part because three youth who had been disposed for a mental health or child welfare placement on November 28 continued to languish illegally behind bars waiting for placement. Their continued presence in detention negatively impacts not just those individual children, but also all the residents and staff of the facility should an evacuation be necessary.

The continued illegal detention of post-dispositional children who need mental health or child welfare placements indicates that there is still work to be done to make this reform endure. I don't think this is an impossible task, but I believe the fitful pace of progress to date reveals how difficult it will be to end, truly end, the illegal detention of our children. Those who say to you that no progress has been made in this area are simply not paying attention. And those who tell you the problem is solved are way ahead of themselves.

Progressive reform of children's services is not for the faint of heart. Systems designed to step in when poverty overwhelms, illness afflicts, and families break down will never be fail-safe. Even in jurisdictions with the best systems, tragedies occur. When they do, accountability, institutional learning, and mid-course correction, if warranted by the facts, are necessary. This is a marathoner's challenge and must be approached as such.

I thank you for the opportunity to be with you today, and I welcome your questions.

ASSEMBLYMAN FISHER: Thank you, Kevin, for that report.

Before we make any comment, do you, Assemblymen, have any questions or comments?

ASSEMBLYMAN ROONEY: Yes. Having come from Bergen County and being intimately involved with that Paramus Center -- because now they're talking about moving it to, basically, a town next to me, which we -- as Mayor of Northvale -- we extend police coverage for Rockleigh. So I'm very concerned about that facility. We've been told that the facility is beyond repair, no question about that. I agree with it. The thing is, why is it still open? I think it's beyond just the two individuals. I think that is a probably potentially dangerous facility for the individuals that are there. I don't think that it's wise to wait until they find another site, until they find -- and they build a center. And again, you said there were 14. I've spoken to Howard. The planned facility that they're talking about is somewhere in the neighborhood of 64 beds, which is absolutely ludicrous, as far as I'm concerned. I believe from your standpoint, as the Advocate for these

juveniles, that they should be moved now, and moved to a facility that can help them, that is modern.

I believe Sussex County has one. I believe Morris County has another -- plenty of room in there from what I understand. And then I think that facility in Paramus should be condemned, knocked to the ground, and then rebuilt on that same site, because that's where it's been. It can be rebuilt a lot better than it is currently. So I would offer that to you in consideration. I don't think -- and I'm telling you right now that-- This is a warning. That if anything happens to those children in that Paramus facility, I'm going to hold you responsible. Because you've been put on notice, everyone's been put on notice, that facility is not safe. So, be that as it may, we're talking about people who don't belong in the facility, and I appreciate that is part of your concern. But the ones that do belong in that facility should have a facility that is safe and surroundings that are safe for them.

MR. RYAN: Well, Assemblyman, I welcome the opportunity to be held accountable for the safety of children in this state, and I believe you and other elected officials are also accountable for the safety of children in the system.

ASSEMBLYMAN ROONEY: Absolutely.

MR. RYAN: And I draw great direction on this regard from the Juvenile Justice Commission, and I've had lengthy conversations with them and have expressed my concerns, many of which they share with respect to that facility. And they have worked very hard to put in place, with the county leadership, a series of steps that they believe, as a short-term approach -- and I'll let Howard speak to this at greater length -- preserve the

safety of children while a new center is being completed. If I thought for a second that the children in that center were not safe, I would insist that they be evacuated. It is my understanding that it is the Juvenile Justice Commission's view, and it is my staff's view, that so long as a soft cap of 14 youth is put in place, that we have every reason to believe that the largest issue, which was the inability to safely evacuate children within two minutes -- which is required in State regulation -- that that can be achieved, if the cap is put in place and all of the children are moved to the second floor, which is the county's plan. So I support that plan.

You may know that the census was as high as 29 children within the last quarter. So this is a dramatic decrease in the census of that facility. And I think we all have to be vigilant about this. This is not something that any of us can take for granted. That center is one of the State's oldest and least, in terms of its design, sensible facilities. Not the only one in the State, but certainly at the top of the list. And the county leadership, as I understand, also wants to replace it. So it would be important for us all to make sure that that happens as quickly as possible. I want to be unequivocally clear that I believe that center has to be replaced as quickly as possible.

ASSEMBLYMAN ROONEY: Well, just to add on to that, one of the problems that we have right now is they're doing a study. And I don't know how long that engineering study is going to take. The one thing that I said at the Freeholder meeting, when we had about 200 people show up for a meeting, which is a pretty significant number, was that it's the wrong place for it. They were suggesting Rockleigh. Rockleigh is probably the furthest place from any place in Bergen County. The current location is

right by Bergen Pines Hill, Bergen Pines, which is not Bergen Regional Hospital. And if there's a health problem, it's across the street. It's right there. In order to get from Rockleigh to Bergen Pines or from Bergen Regional, it's at least a half an hour, at least a half an hour by ambulance.

The other problem that you have is that if there's an incident within that facility, I have to send my police with the ambulance, with the individual, and police coverage is a problem. The other problem that you've got is that, first of all, there are no sewers in the Borough of Rockleigh. In order to get sewers, you'd have to come through Orangetown, New York. Well, actually, the superintendent of Orangetown has already told them he's not willing to extend that line. So this feasibility study is ridiculous. They're wasting time and money by going in a direction that will, ultimately, be the worst place you could go.

The other thing is that these youths have to go to Hackensack for court. To get from Rockleigh to Hackensack is at least 45 minutes. So you've got another situation. Right now, I think that most police departments south of Route 4 in Bergen County, they probably don't even know how to get to Rockleigh, when they have a problem in the middle of the night -- picking up a juvenile for whatever has happened, bringing him there. Then they have to go back in the morning and take him to court. It's absolutely the worst thing. They're only wasting time. And the more time they waste, the more these juveniles are at risk at the current facility.

So, again, I just wanted to give you more information. I've already talked to Howard about this, and I've said exactly the same things.

MR. RYAN: I appreciate that, Assemblyman. This is where I'm at a real disadvantage. I'm a Monmouth County resident, and I defer to you on all the local geography questions.

ASSEMBLYMAN ROONEY: Oh, one other thing I'd like to bring up--

MR. RYAN: And I'm not endorsing Rockleigh.

ASSEMBLYMAN ROONEY: Right.

MR. RYAN: I'm not endorsing-- What I'm saying here, really clearly, is that the safety of children in that facility has to be of paramount concern--

ASSEMBLYMAN ROONEY: Right.

MR. RYAN: --and I believe that the facility needs to be replaced as quickly as possible. Where the responsible adult leaders in Bergen County decide to site that program is a local decision.

ASSEMBLYMAN ROONEY: One other thing that I brought up at that particular meeting was that this facility is right on the New York state line. The actual building will be within a thousand feet of the New York state border. If perchance one of these young people decides to run and makes it the thousand feet to the New York border, there's no extradition on juveniles. We can't extradite them from New York state. So they'll be free and clear. And I'm sure most of them will know that when they go to the facility, and be looking for that state line.

So I just say it's the wrong place. And again, we're wasting time. We're putting juveniles at risk.

The other thing is that any of these juveniles that will have family members or anybody else coming to visit are going to have a real

problem, because you can't get there from here. Rockleigh is one of the most inaccessible locations in Bergen County. There's no public transportation. There's no major roads that go anywhere near it. It's just wrong. And I just want to caution you that this is the wrong direction. It's wrong-headed. They'd better start looking at alternatives and not waste time -- time that something could happen to these juveniles in the current facility.

Thank you.

ASSEMBLYMAN PAYNE: Thank you very much, Assemblyman.

Assemblyman Fisher.

ASSEMBLYMAN FISHER: Thank you.

Kevin, I'm so glad that you came in today to report just the great accomplishments that you've achieved. And while we understand that the Juvenile Justice system is going to continue to have problems and challenges, I think that in this case it's satisfying to me, as a member of a government body, that we brought you in, we explained what we thought was a horrendous situation, and you have numbers to report to us that reflect that you and your Department took the challenge and have brought these people out of juvenile detention centers, waiting for treatment. That's the first thing, and that's -- we don't always hear that in these bodies. And I think that I want to stress that. Because we don't always hear -- we have these hearings, we talk about a lot of things, and sometimes the departments just don't get it. You got it. And I am so pleased to hear that they been removed from those facilities and they're going to have treatment.

I'm troubled somewhat that we're back -- the numbers are coming back up. And we don't want to get back into that situation again. I think it's -- what -- 20 now?

MR. RYAN: No, no. It's 20 in total. It's never been more in our count than 11 on a given day. I thank you for your thanks. I have the watchdog job. So this job is much easier than the job of the people at the Department, Assemblyman, who did this hard work. And the credit goes to them -- to Commissioner Jim Davy and to his team -- here represented by Gail Krebs, who took the challenge seriously and made ending illegal detention of children in New Jersey a priority. And now the challenge for all of us is to make sure that that is not a blip, but that that is an enduring reform that will be a legacy item for those who worked on it.

ASSEMBLYMAN FISHER: And I appreciate you sharing all that--

MR. RYAN: Thank you, Assemblyman.

ASSEMBLYMAN FISHER: --with the rest of the Department.

And the other thing is, we had talked about the fact of the -- I think it's remarkable -- two things: One, you did say, and we don't always hear, that the State is telling itself that it's having illegal detentions. And in this case, brought that forward, and we understand just how severe that was. And the second part of it would be mentioning that the tracking system -- that we now can take a census and we know exactly at this juncture -- now we can take a count. We know what that census is.

And it's troubling in one respect: that it took a hearing to demand something that seemed so simple to us. But on the other hand, I'm glad that that part is over now, and we won't let that system deteriorate.

We will always be able now to track these cases in a systemic, statewide data bank. Is that correct?

MR. RYAN: That's my understanding. I think Gail would better speak to the partnership that she's endeavoring to create with the AOC on that.

ASSEMBLYMAN FISHER: Okay. Well, thank you very much.

MR. RYAN: Thank you.

ASSEMBLYMAN FISHER: We're glad to have this report in.

ASSEMBLYMAN PAYNE: Thank you.

ASSEMBLYMAN FISHER: Thank you, Chairman.

ASSEMBLYMAN PAYNE: Let me ask you just one question. I have some questions for Howard Beyer later on, but what -- the youngsters that you are concerned with, for instance, are foster children, are they? For instance, we have youngsters in detention centers, some of whom are DYFS children, some are not?

MR. RYAN: Right. Some are not.

ASSEMBLYMAN PAYNE: Kathi Way's people and others, they are responsible for the foster children. Is that correct?

MR. RYAN: The agency is responsible when the court orders that the young person, whether that young person was a foster child or not, is directed to go to a child welfare or a mental health placement. So you could really have a young person whose systematic behavior -- maybe engaging in some activity that lands him in detention -- has never been in DYFS's care, right? And it turns out that this young person has a behavioral health issue, or a mental health or a mental illness issue. That

child then becomes the responsibility of the Department of Human Services, in terms of providing that young person with care and services. And there's been enormous progress in this front in the last year, and there's miles to go.

ASSEMBLYMAN PAYNE: So it's not just-- As the Child Advocate, your involvement or interest is in all children, correct?

MR. RYAN: Right. All the kids in the detention centers, children who are in the foster care system, kids at risk of abuse and neglect, children who have developmental disabilities. All kids who rely on government to be their safety net.

ASSEMBLYMAN PAYNE: Right. The youngsters who are from a solid home who get in trouble are placed in the detention center -- they're not the ones that would-- They're not wards of the State in any way, except that they have been found guilty of some kind of crime, right?

MR. RYAN: Which children would those be? I'm sorry.

ASSEMBLYMAN PAYNE: Youngsters who come from a "stable" home that are not involved with any kind of State agency, as far as support or welfare, etc., goes.

MR. RYAN: Well, if they end up in detention, and the judge says that Johnny or Kayla are going to go to a child welfare/mental health placement, that becomes the responsibility of the State.

ASSEMBLYMAN PAYNE: Okay. All right.

MR. RYAN: It's a huge responsibility. There are thousands of children involved in this system every year. The opportunities for us to create a model reform are here, but it will not be easy. And it hasn't been easy.

You've held three hearings on this. I said at the outset of the testimony that you've played, in my view, a critical role, as you know, I believe, in keeping public attention focused on kids in detention. And the progress during the course of that year -- our first hearing in January, the second one that you convened in June, and now this third one in December -- demonstrates unmistakable progress and much to do yet. I'm not asking you to invite me three more times next year. (laughter) Though, I would welcome it.

ASSEMBLYMAN PAYNE: One of the concerns-- It's my understanding that the youngsters who have been sentenced to a -- who are being held in a juvenile detention center -- is a temporary place, right?

MR. RYAN: Right.

ASSEMBLYMAN PAYNE: They are there. Not supposed to be there more than maybe 45 days max.

MR. RYAN: That's right.

ASSEMBLYMAN PAYNE: Yet we have youngsters who are in these detention centers for up to a year, in some instances--

MR. RYAN: That's right.

ASSEMBLYMAN PAYNE: --and maybe beyond that.

MR. RYAN: That's right.

ASSEMBLYMAN PAYNE: That seems to be a violation of somebody's rights. I'm not sure whose they are.

MR. RYAN: Well, it would depend. For children, there's a group of children who might be in a waiver process where there is procedural due process underway with regard to their case that would have them lodged in a detention center. But for children who are not in a waiver

case, for kids who are simply remaining in detention and the judge hasn't-- I'll lay out for you, quickly, the scheme. The vast majority of children in detention are to be adjudicated. The adult equivalent of that would be, there would be a trial. But the kids are not adults, so that it's an adjudication of delinquency. That's supposed to occur within 30 days. And then within another 30 days there's what's called a *disposition*. That would be -- the adult equivalent of that would be a sentencing, but it's different. These are kids, and so it's about what's the best way to engage that young person.

Some kids will go to Howard's programs. Some kids don't need to go to a secure correctional program, and so they will go to a foster family or they will go to a residential treatment center if they have a mental health illness. And so that's the way the system works. And we should be seeing the vast majority of children, right, who are moving to non-secure placements and are in detention, move out in 60 days. When kids don't, when judges don't dispose children timely, within 60 days, what I hear from the vast majority of judges in New Jersey who I have spoken with is that they are waiting to dispose children until the placements become available -- that the reality is that they don't want me out there saying that she is illegally being held there. And so they don't dispose the child because of a lack of placements. And that's a hidden population to us. Because what we're all talking about today, and tracking today, are the post-dispositional kids. The kids where the judges handed down an order--

ASSEMBLYMAN PAYNE: Right.

MR. RYAN: --and said, "Free this child--"

ASSEMBLYMAN PAYNE: Right.

MR. RYAN: "--to a child welfare or mental health placement." But there are, today, scores, maybe even hundreds, of children who are in the pipeline but haven't been disposed. And in those instances, real reform will mean not just that the Department of Human Services is held accountable, but that all the system players are held accountable for moving kids quickly. And most importantly, that we be more robust on the front end about creating alternatives to detention, so that children who don't need to be detained, aren't being detained. That's a huge piece of this. If we do a better job in that regard -- and there's a lot of progress that I think Howard deserves a huge amount of credit for -- the stuff that's been happening in JDI in the last year is going to put New Jersey on the map, especially in Camden and Essex. And if that template rolls out in all 21 counties, and we have a statewide JDI, and we become the model that I think we can become in the next four years, there's no reason in the world to think we're going to have this many kids coming into detention. The question will be fundamentally changed. We'll have many more kids appropriately served in alternatives to detention.

One of the kids I met this Summer, Chairman, right after I spoke with you, was a 12-year-old who'd been in a detention center for seven-and-a-half months. His worst offense, his only offense was that he had been sitting in a vehicle that his brother had stolen, allegedly stolen. This kid was sitting in it, so he had been charged as an accessory. And he was in the detention center, and the family wouldn't care for him, and he had a diagnosed mental illness. Right? He was a 12-year-old kid, but he had very serious bipolar condition. And so in this particular facility where

he was housed, he was segregated from the other children, and he was there for seven-and-a-half months waiting for a mental health placement.

I'm not suggesting to you that that's normative today. I think that there's been a lot of progress on that. But you see, we're not very far away from that moment when kids were sitting in juvenile jails for months and months and months. And that's why I don't want to put up a flag here and say, "Victory, fixed." I want to say we have got to keep working on this. Because, frankly, if I came to you today and I said, "Hey, this problem is fixed," there would be 17 juvenile detention center directors who would be on the phone with you in 15 minutes telling you that's not credible, that's not true.

ASSEMBLYMAN PAYNE: The youngster held in this instance for seven months, is it one of the cases where the judge was waiting for a bed to be available, therefore did not--

MR. RYAN: Yes, yes. This child had three interviews over a four-and-a-half month period in the last four-and-a-half months of his stay in detention. And it was where we used to be. His experience was, it took three months for this child to pop up on the radar screen to schedule the interview, and then-- The system used to be, before Gail and Kathi and Allen, who will speak to you -- before they took hold of it in a very real way, it used to be that children were moved through an interview process in order to be freed from detention. So they would go to a program, and the program would interview them and make a determination about whether the child was appropriate, and often send the kids back. And while that's still true, that there are still programs that have that process, Gail has brought online, in the last six months, a number of beds that are what we

call *no eject, no reject*. Which means that if the Department of Human Services has a contract with a program that says you are going to take these children, and the program has agreed to take these children in advance, then when Gail says, "It's my responsibility to move you today," that program accepts that child. And we do away with the very time-consuming interview process that had -- or there might still be an interview, but the child is moved and the child is received -- that had really forced kids to languish in jails for long periods of time.

Now the whole system is not *no eject, no reject*, nor do I think it will be. And there are not enough beds and not enough services. So we've got work to do. But people are working. There's progress being made. There's just no question about it.

ASSEMBLYMAN PAYNE: There are a number of component parts to this whole system -- the judges, and etc., etc., etc. Yet, some do get caught up and are not moved. I've heard of instances where, as I said before, youngsters are -- a year of time, and whatever, or more.

MR. RYAN: Yes.

ASSEMBLYMAN PAYNE: It's that youngster. We're working on it, and obviously a lot more needs to be done. We need to specifically identify those clogs, those--

MR. RYAN: Right.

ASSEMBLYMAN PAYNE: --and unclear them. Because even though we're making progress, there's still countless youngsters who are being held in these places when they shouldn't be there.

MR. RYAN: Amen.

ASSEMBLYMAN PAYNE: And I think that's why we have to keep the spotlight on this, because we make progress that something like-- Some other reports I've heard where the Federal Government comes in and says, "You must do so and so." So the agency begins to develop a wonderful strategic plan. Not implement it, but develop a wonderful plan. And the Federal Government says, "Oh, you're making a great deal of progress on the development of the plan." So then the agency goes out and advertises it, "See, we've gotten approval from the Federal Government." The plan has not been implemented, but they're drawing it up. And I don't want us to get caught up in this business about proving or--

MR. RYAN: Right.

ASSEMBLYMAN PAYNE: --giving praise to something that's--

MR. RYAN: To a plan?

ASSEMBLYMAN PAYNE: Precisely.

MR. RYAN: Yes.

ASSEMBLYMAN PAYNE: And that's happening big time.

MR. RYAN: I've seen some beautiful plans.

ASSEMBLYMAN PAYNE: Right, exactly. And these kids suffer. These are the ones, in the bottom line, that suffer.

MR. RYAN: Well, I'm a bottom-line guy like you are, Mr. Chairman, and the key for me is, how many kids are sitting in jail illegally, waiting to be removed? I realize that people bristle at that characterization, that children are sitting there illegally, and that it is offensive. But the reality is, that that is the law. Children disposed to nonsecure placements are, by virtue of the mandate of this Legislature, directly to be released upon the direction of the court. When they remain in jail, subsequent to

that, it's illegal. It's a violation of the law that you all passed. So the thing to celebrate here is that four months ago -- five, six months ago -- on any one day, there were 45 of those kids. On a bad day in New Jersey right now, it's a quarter of that number.

I'm apprehensive about that, because I want it to be two. I want it to be zero.

ASSEMBLYMAN PAYNE: Right.

MR. RYAN: But I think we have to continue to monitor this. I'm not ready to say that this reform is enduring, and I am absolutely not ready to say that it is not enduring. We just have to continue to monitor this and make sure that it sustains over time.

ASSEMBLYMAN PAYNE: Yes. So as long as we keep our focus on those youngsters or those people -- at the end result -- that's what we must always do--

MR. RYAN: Right.

ASSEMBLYMAN PAYNE: --regardless of the pressure to let up. I think we have to continue the--

MR. RYAN: Right. What pressure?

ASSEMBLYMAN PAYNE: One last thing, the education. The youngsters in these detention centers, are they supposed to be provided with ongoing education?

MR. RYAN: They are.

ASSEMBLYMAN PAYNE: They are?

MR. RYAN: They are.

ASSEMBLYMAN PAYNE: Okay. Is that happening in all the centers, do you know of?

MR. RYAN: It is happening. It happens to varying degrees of quality. But every detention center has an arrangement to ensure the education of kids. I met kids in both the Camden and the Essex detention centers in the last six months who told me that they preferred going to school in the detention center than to the schools that they came from. What that says about the world we're building is not good, but-- (laughter)

ASSEMBLYMAN PAYNE: Yes. One of the alternatives to incarceration -- the Attorney General just announced yesterday--

MR. RYAN: Yes.

ASSEMBLYMAN PAYNE: --the results of this study -- this State House adjustment study. I am a member of the Criminal Disposition Commission now, and one of the things we've been talking about is not how you handle youngsters once they get into jail, how do we prevent them from going in the beginning? And I've talked for a year or so about this, the decisions that are made on the curbside or, rather, the station house.

MR. RYAN: Right.

ASSEMBLYMAN PAYNE: And too often, you can tell it. In inner cities poor neighborhoods, that youngster who commits a non-violent crime, or what have you, is arrested and sent to the juvenile detention center, he gets a record from that day one. A youngster who does the same thing, let's say it's Sussex County or someplace else like that, is sent home or he's told that, "Go see your parents or a PTI." So what you have are youngsters who have committed the same kind of crime who are invariably sent to prison -- begin at age 13, 12, whatever, with a record for the rest of their lives, when the same kid-- I always use Livingston Mall as an example; it's in Livingston, New Jersey -- where a kid up there who might do

something non-violent -- maybe running through the hallway or doing something like that -- is sent home. A youngster in the city of Newark who does the same thing is sent to the detention center because the judgment is made by the police officer who stops him or in the precinct. So these kids are sent automatically there. And what I've been saying over and over again is that we need to look at -- that either training has to happen with the police officer who makes the decision or in the courthouse. Because it's just totally unfair that these kinds of things -- either send all of them to prison or don't send any of them, or at least adjudicate.

I think I'm really welcoming this announcement by the Attorney General, who says now that we will have decisions made, and we will analyze this thing. Before, we automatically sent a kid to jail. I think that's great. And I think he points out in his report that this happens so much more in urban areas, poor sections, than they do in other areas. And I think that's one of the things that will help us a great deal to keep these youngsters out. My thing has always been not how well you treat a prisoner once he gets to jail, but how do we keep them from going? And that takes us into the whole other area of investing money in educating these kids, as opposed to investing money and keeping them in jail.

I always say that in Essex County, the most recent facility that's been built for teenagers is a youth house there. It's \$26 million to build a state-of-the-art detention center for kids. And for 32 years, these same kids were subjected to going to a school, which was a factory that was built to relieve overcrowding 32 or 35 years ago, and they were supposed to go to school there for two years. It was a cinderblock building. Thirty-two years later, these kids were still going to the school. So we failed them in the

public school, but we sent them to a brand new prison after we failed them, which is so illogical to me. And these are the kinds of things that we have to keep our pressure on. That's where we need to look. We need it at the very beginning.

And then you have people saying, "My God, they want to spend \$12,000 a year to educate these kids. (expletive deleted), it's too much money." But we'll spend 35,000 to keep them in jail. The logic there just kind of escapes me, all right? And I have a tendency sometimes to get a little excited about it, but-- (laughter)

Thank you very, very much. We appreciate your coming here.

MR. RYAN: Thank you. Thank you, Chairman.

ASSEMBLYMAN PAYNE: We have -- keep up the good work, and we will make it better for everybody.

MR. RYAN: Thank you.

ASSEMBLYMAN PAYNE: We have two other people. We also have, however, here Ms. Padilla. Let's see, yes. Let's see, oh, yes. Yolanda Padilla.

**YOLANDA PADILLA:** Would you like me to speak?

ASSEMBLYMAN PAYNE: Yes, I'm sorry. If you will, you introduce yourself and just--

Mr. Cryan is not here right now, but he did introduce me to you. I wonder if you'd tell us a little bit about yourself, and why you're here?

MS. PADILLA: Okay. My name is Yolanda Padilla. And I would just -- I'm a little nervous.

ASSEMBLYMAN PAYNE: Where do you live?

MS. PADILLA: I live in Elizabeth.

ASSEMBLYMAN PAYNE: Okay.

MS. PADILLA: And I just want to thank everybody who's trying to do something positive for the juveniles, and Mr. Cryan for coming up with this bill. I wrote something, so let me just say it before I forget it or whatever.

ASSEMBLYMAN PAYNE: Most don't know what bill it is. Tell us briefly what it is and why are you interested in this.

MS. PADILLA: Okay. It's a bill to have the State have more oversight over the county. And the reason for that is, is because the county does what they want without having to answer to nobody. So therefore, if it was changed and the State can step in and make them do certain things, they'd have more say over what they do. Right now, the State is like -- their hands are tied. There's nothing they can do to these people. So therefore, if this bill goes into effect, it would only help our juveniles.

ASSEMBLYMAN PAYNE: You said Mr. Cryan has this bill and he's going to consider it?

MS. PADILLA: Yes. He did a draft.

ASSEMBLYMAN PAYNE: Okay.

MS. PADILLA: And I met with Mr. Brown as well. And hopefully it will go through, for something positive for all juveniles.

ASSEMBLYMAN PAYNE: The reason I wanted you to speak before Mr. Beyer is that he could hear what you had to say and then see whether or not that's the case, whether or not the State needs to have that.

How did you become involved in this whole matter? What happened to you?

MS. PADILLA: Okay. I'm going to read from this, because this will tell you. I'm the mother of Eddie Sinclair Jr., the young man who died at the Elizabeth Juvenile Detention Center on May 10, 2003. I am here today because I needed to let you see the face of a parent who is living a nightmare, excuse me, every day without my son. And it's sad and frustrating to know that Eddie's death could have been prevented, and I refuse to have this tragedy happen to another family. The Union County Freeholders have known about the conditions at the juvenile detention center for many years prior to my son's death. It is so tragic that my son had to die in a facility that so many authorized officials knew was unsafe, overcrowded, and understaffed. And no one cared, no one spoke for the children housed in this death trap. No one but Eddie.

This bill would ensure that the county doesn't get away with slacking off or making promises with no results. Let them abide by the same rules and regulations everyone else has to and do their job. It was their job to ensure the safety and well-being of Eddie and every juvenile held in that detention center, and they failed miserably, every last one. Giving the State more oversight would ensure that the county does the job that they have to do and not the ones they want to do. Let them realize that they do have to answer to someone other than themselves.

The day my son died, he wasn't supposed to be there, because the center was already crowded and packed way over capacity, by 168 percent. The county had set aside money so overcrowding wouldn't happen and have juveniles placed somewhere else. But they didn't follow rules. The county was only allowed to have 34, but they had 57. The county had Eddie on a 24-hour lockdown, and was using splits -- where they let out half

the population and keep the other half locked in -- which was a violation of manual standards.

The cell he was put in should not have been occupied, because it had an exposed sprinkler pipe that went unrepaired for 17 months. And the 911 tool that they should have used to cut down my son was never there. Eddie was put in this cell, and they really expect me to believe 15-minute checks were done. The county knew what was going on, because the Juvenile Justice Commission tried time after time to make them abide by the rules and regulations. And the county didn't care. They ignored them year after year, with no fines, no reason to make basic repairs. After all, they run the county. They do what they want to do and could care less about how they keep children confined and violating their civil rights. Let that have been a day care, and the county would impose fines or shut them down. And if a child died, someone would be held accountable for the loss of life.

Eddie's death has had an impact on how juveniles are treated, housed, and taken care of in a juvenile detention facility. And that is why I believe it should be called Eddie's Law.

ASSEMBLYMAN PAYNE: Thank you. Thank you very much for your testimony.

MS. PADILLA: Thank you.

ASSEMBLYMAN PAYNE: Any questions or comments? (no response)

Okay. All right. I'd like to call Mr. Beyer, Howard Beyer. Howard Beyer is the Executive Director of the Juvenile Justice Commission. We've heard a lot about the programs that are taking place, and this is the

man that's responsible for implementing many of the programs that are going on. You might also -- you may have a reaction to Ms. Padilla comments, too.

**HOWARD L. BEYER:** Good afternoon, everyone.

Very difficult, Ms. Padilla.

I have been in this business for over 30 years of corrections. Dealing with kids, though, it becomes much more emotional and much more difficult, because I feel very emotional myself. I look at you, Assemblyman, and what you said to Kevin Ryan -- and I almost wanted to say, hurray, because he said that to me, and now I wonder how he feels. Because it's a terrible feeling, because no one ever, ever in the business of people wants to lose somebody under their watch. I say that to you with all my heart. It's a terrible, terrible thing. And I would hope that you not hold Kevin Ryan responsible. Because I want to tell you this, he has worked very hard to do the right thing for the right reasons with us and with Human Services -- and I shouldn't speak for Human Services -- but we're all trying to do the very best thing.

I want you to know that -- I always say I have been in this business, again, over 30 years. I'm 52 years old, and it's a miracle. I've never seen -- Kevin said he's been here three times, so have I -- that so much time, emphasis, and care has gone on in something that people never used to care about. For you to be so concerned about what we do, to hear the words of a mom who just said that, is an amazing thing.

We took what happened in that county very, very seriously. Yes, we had worked very hard with the county to try and improve it. But we knew that you can't always, if you will, hold a gun to their head to get

people to do things. Sometimes you have to work and be willing to collaborate and work together. And that's why we went so aggressively after the Casey Foundation to begin the Juvenile Detention Alternative Initiative. Because we knew if we were ever going to make a change in places like Camden, where when we started it was 147 kids, and Union, and if we could ever get a social conscience about what's going on in Bergen -- let me just say, when we went and we had our first meeting, finally, to talk about a commitment for a new detention center, there were people sitting in that room who said, "I have been crying about this for 12 years. This is not a new issue about this detention center."

But there were a lot of people in a room, now, committing to us that a new detention center was going to go up. And while I really do appreciate the issue of what location it will go in, I can't tell you how good it made us feel to hear that, one, Bergen was going to build a new detention center, and two -- again I'm not picking on wherever it is -- but it is the right thing to do for a county to take care of their own kids. And that is really what mom is saying back here -- to properly take care of our kids.

And so here is this collaborative effort that we have worked together. Kevin gave us funding so that our officers in the Juvenile Justice Commission and all the county detention officers could be better trained in how to deal with kids with behavioral issues, so we could do better at what we do. That is an amazing accomplishment. It has happened.

We teamed up with UMDNJ, and we have a champion model that is being worked effectively into all the counties. We now have the MAYSI tool -- the Massachusetts Youth Screening Instrument -- which is a mental health screening tool. And it's been implemented in all 17 counties.

We have worked hand-in-glove with all the counties. And now kids are screened on the way in -- those kids with issues. And we will know at that particular moment, at that particular time if a child, a boy or a girl, has a problem. We'll know it, and we could then -- the detention centers will be in a place to deal with that. That is amazing.

Since we started JDAI, where we actually started moving forward in April of 2004, we have in the five counties that we're involved with -- and those counties being Atlantic, Camden, Essex, Hudson, and Monmouth -- 194 less kids in detention. One hundred and ninety-four less kids. And do you know how we're doing that, Chairman? It's by talking to each other -- us, the Child Advocate, Department of Human Services, the courts, the judges, the prosecutors, the police -- we're all in this together. We're not pointing our fingers anymore at each other. We're actually working together.

On a daily basis, overall in detention, we have 151 less kids in detention every day. Now, if you go to your issue -- Chairman, I know you are very passionate about this -- about disproportionate minority contact. Think about this. If there are 151 less kids and we know predominantly who is in detention, we are finally making a dent. There's 31 percent less minority kids in detention as a result of what's going on. There's not many states that can make that brag after a relatively short period of time. And you know, it's happening because people are really working hard to try and make things better.

That station house adjustment that you talked about yesterday is incredible. If you would say, "I was at that press conference with the General, and I was very proud of what he did," because it's -- the station

house adjustment is really the prelude to JDAI. If you can work out a situation for a kid with his parents and the police officer -- and a police officer was standing right next to me at the press conference and made a statement that, he says, "it's worth it." Because just as you said, no involvement, no record, no detention, no on to adult system. All the dominoes kind of fall together.

And so this is really a commitment of all of us to stay on course, to continue to do the very best that we can. There is going to be a new detention center in Union, hallelujah. There will be -- I don't know where it will be placed -- a new detention center in Bergen, just as there's one in Middlesex and in other places around the state.

I just want to say one more thing, and please understand me. It's not that easy to just shift kids around from one place to another because there happens to be room. It is such a delicate balance that we have to take into consideration, because we don't want to overpopulate another detention center. We want to make sure that the staff, who may be accustomed to a certain population and a certain size -- all of a sudden it grows and they can't handle it, they get upset, they want to leave. So we have a very delicate balance that we have to walk when we'd say, "We'll just put a population somewhere else."

And then even if we do-- If we take Bergen kids, and let's say I have room where I feel, as a system, we can safely house your Bergen kids, and let's say it's Atlantic County, imagine what that would be? The strain that would be, to go from Bergen to Atlantic, back and forth. And so we always try to emphasize to try and keep our kids in their home counties, and keeping the folks who know the kids best to be able -- to do that.

I pray to you that we never have another mom to have to come forward and hear what you just heard. I'd like to believe that since the social consciousness has been raised here, by you all and by us, and with Kevin, and with Human Services and what's doing there, and the fine folks who are working so hard there, that things that we once experienced will not happen again.

It's almost hard to believe. I remember when judges may not have wanted to talk to us about this, and now judges sit at our table and help us make things better. When police may not have wanted to talk about this, and now police want to make things better. When folks from the county are willing to sit down with us and try to make things better -- it is happening. It's happening before -- and I agree with you, we worked very hard to try and prevent kids from coming in, and let's keep doing that. For the kids who are there, let's do the very best that we can -- making education the foundation. And yes, we are working very hard to make equitable educational opportunities for kids where it is affordable and doable in the state; and then when the kids are on their way out, which is a giant component and perhaps the most difficult. For the kids who really -- have we really changed their lives and given them a chance so that they can grow up to be responsible adults, as opposed to adult inmates? That's the real challenge.

So since we can't get everybody, we have to worry about everybody, and that's what we're doing.

Thank you.

ASSEMBLYMAN PAYNE: Thank you very much. Thank you very much, Mr. Beyer, for that overview that you gave us, and obviously

your passion. We seem to have some of the right people in the right places. Between you and Kevin there, we have people with a great deal of passion and concern that these people who are in your charge are not just numbers, but these are human beings. I was pleased to have the opportunity to attend the graduation at the facility a year or so ago -- years ago, and see some of the work you're doing. We must always keep our eyes focused on the least among us and to try to do things better. It used to be that we did the same thing over and over again, and expected a different outcome. Now currently, we're beginning to do new things, now we're beginning to do innovative things, and you're right.

And thank you very much for being here with us, Ms. Padilla. And you can see that we're all concerned about trying to avoid a situation like that ever happening again. And thank you for your contribution to this hearing.

MS. PADILLA: Thank you.

ASSEMBLYMAN PAYNE: Doug, do you have any questions or comments?

ASSEMBLYMAN FISHER: No. I just wanted to say to you, Chairman, that I applaud you for being steadfast in this issue, and we are making progress. And we thank you for this collaborative effort, which is clearly, from the top on down, beginning to take hold. We're seeing real progress.

MR. BEYER: Thank you very much.

ASSEMBLYMAN PAYNE: Thank you very much, Howard.

May we have Ms. Gail Krebs. Thank you for your patience. You're not as patient as the people that are going to follow you, they've been here forever. And I have to leave in 10 minutes.

**ASSISTANT COMMISSIONER GAIL KREBS:** I'll speak quickly.

Good afternoon, Chairman Payne, and member of the Committee.

**ASSEMBLYMAN PAYNE:** Is the red light on? (referring to PA microphone)

**ASSISTANT COMMISSIONER KREBS:** Okay.

Good afternoon.

Thank you for the opportunity to bring you up-to-date on the status of child welfare reform and the behavioral health needs of adjudicated children and adolescents. I am happy to tell you that I bring mostly good news today. The Department of Human Services and the Office of Children's Services remain deeply committed to ensuring that our adjudicated young people with behavioral health needs get the treatment they need in a timely way. We have worked very hard over the past six months, since our appearance before this Committee last June, to expand the treatment options that are available and to expedite the process of evaluation and placement for adjudicated youth.

As we discussed in our previous testimony, the first step in providing youth in detention with needed behavioral health services is early identification of those in need. We are continuing our close collaboration with the Juvenile Justice Commission and the county detention centers to

more efficiently and effectively identify youth with behavioral health needs early on.

All 17 county detention centers are now using the Massachusetts Youth Screening Instrument, the MAYSI that was referred to previously, to screen youth upon admission to detention. When the results of the MAYSI indicate a need for further evaluation, the detention center social service staff quickly contacts our behavioral health administrators, and a licensed clinician goes to the detention center to conduct a comprehensive evaluation, which is completed within five business days.

Facilitating this type of evaluation so early after a youth enters detention was of some concern to the defense bar; the issue was whether information revealed in such evaluations could be incriminating. We are pleased to report that we have just recently concluded discussions with State public defenders to address their concerns.

Let me share some of the numbers with you to illustrate how we have been able to expand the use of this important early screening tool. In calendar year 2004, we conducted 402 comprehensive evaluations in detention centers. In the 11 months of calendar year 2005, we have already conducted 555 comprehensive evaluations -- a 38 percent increase -- and we still have a month to go.

A comprehensive evaluation is of great use to the court as Family Court judges seek to identify the most appropriate disposition for a child or adolescent involved with the Juvenile Justice system. In addition to the MAYSI process, there is another opportunity to obtain a behavioral health assessment of a youngster -- judges have the discretion to order a 14-

day plan when a child first appears in court. This order also triggers a comprehensive evaluation, which is then available to help the judge determine an appropriate disposition.

We have made significant progress in reducing the number of youth waiting for behavioral health placement after judicial disposition. Last June, Office of Children's Services' Deputy Commissioner Kathi Way reported to this Committee that approximately 20 children and youth were waiting in detention post-disposition for placement in a residential treatment facility.

And as Kevin Ryan said, by the end of September the number was two. Since that date, as children and youth continue to enter the system and are determined to need behavioral health care, Office of Children's Services staff and child behavioral health care managers continue to work diligently to make timely assessments and place youngsters in the appropriate treatment facilities. This has enabled us to decrease the amount of time youth wait before an appropriate treatment placement is found. While children used to spend weeks and sometimes months, as Kevin mentioned, awaiting placement, today few children in detention have been there more than a week post-disposition awaiting a behavioral health placement, although even a few children waiting more than they have to is far too many.

Most children have been waiting a relatively short time. As evaluations are completed, work is done to match the child to the right treatment facility and regulatory prerequisites are met. As you may be aware, these regulatory imperatives include school district assurance of

financial responsibility for education expenses; and when a child needs to attend a facility out of state, compliance with the Interstate Compact.

A major factor in our ability to place children in youth and treatment facilities more readily is our successful effort to expand our treatment capacity. Since last June, the Division of Child Behavioral Health Services has awarded contracts for 110 treatment home beds. Just two weeks ago, 17 more proposals were received in response to a second RFP for additional treatment home beds. These additional contracts will be awarded by December 15.

Seventeen new specialty beds have come on line at Bonnie Brae, and 15 additional specialty beds will come on line by March at Trinitas in Union County. The division has also awarded contracts for inpatient treatment facilities to three agencies to replace the inpatient psychiatric treatment services for 11- to 17-year-olds presently at the Arthur Brisbane Child Treatment Center, scheduled to close at the end of this month.

Another strategy is to move youth out of detention even if their final treatment placement has not been determined. At the end of August, five beds for youth from Camden County Detention, who are considered able to function in a community setting while waiting for a longer-term treatment setting, were opened. Just this week, another eight beds became available targeted specifically for youth in detention who need intensive treatment while they await a long-term treatment placement. These beds are intended for 30- to 45-day stays, while case managers complete evaluations and identify appropriate treatment options.

In addition to expanding the capacity of our treatment facilities, we have expanded our program of detention alternatives. Originally piloted in Camden, the Youth Advocate Program was expanded this Summer to Middlesex and Essex Counties. This program is intended to provide intensive mentoring for youth who return to their communities, and it is an alternative to detention or placement in an out-of-home treatment facility.

Youth and families are provided with up to 30 hours a week of mentoring, group intervention, links to educational and employment opportunities, and additional services and treatment if necessary. Over time, the hours of support can be reduced as the youngster and his family learn to manage independently.

The Camden YAP program serves 40 youth and their families; in Essex, 54 youth are receiving services; and in Middlesex, the program capacity is 26 youth at a time. Program capacity during a calendar year is expected to be approximately 200 young people and their families.

Finally, we are also working directly with detention center staff in a training program to help staff gain a deeper understanding of youth in their facilities with mental illness or behavioral health issues. The training program is designed to support a more peaceful environment and encourages the staff in providing positive behavioral supports to youth. A corollary benefit has been development of a better relationship between the detention system and the behavioral health system, resulting in better access to services for kids.

Despite our substantial progress in this area, there are still difficulties. Timely and accurate collection of information about children

and youth as they enter detention and move through the system continues to be challenging, although we are working with the Administrative Office of the Courts to address this issue and refine the system.

Siting new facilities is also a problem. We have been unable to successfully negotiate the terms of more than one contract for treatment home or specialty beds, because of problems in locating suitable sites in our state.

In closing, we are pleased to be able to present to the Committee a brighter picture of behavioral health care for youngsters in the Juvenile Justice system than on the occasions of our earlier testimony. We would like to thank our partners for their participation in this progress, including the Juvenile Justice Commission, the Administrative Office of the Courts, the Public Defender, the Office of the Attorney General, and the Office of the Child Advocate. And we look forward to continuing to collaborate with them.

Thank you for your attention. I'd be happy to take your questions.

ASSEMBLYMAN PAYNE: Thank you very much -- is it Dr. Gail Krebs?

Mr. Fisher, do you have any questions you want to raise at this time? (no response)

ASSEMBLYMAN FISHER: No thank you, Chairman.

Thank you.

ASSEMBLYMAN PAYNE: Ms. Krebs, your report was excellent, very good -- at least the plans that you have developed to try to

resolve this problem area. You mentioned the mentoring for youth and their families, etc. Has that been implemented?

ASSISTANT COMMISSIONER KREBS: Those are not just plans. Those have already been implemented.

ASSEMBLYMAN PAYNE: Okay. As of when? For instance, that specific area of mentoring?

ASSISTANT COMMISSIONER KREBS: The YAP program?

ASSEMBLYMAN PAYNE: Is that what it's called?

ASSISTANT COMMISSIONER KREBS: It was early Summer, and then it was started first in Camden and then it was expanded to the other two counties, I think, during the Summer.

ASSEMBLYMAN PAYNE: So Camden, Essex County, and where else -- what's the other county?

ASSISTANT COMMISSIONER KREBS: Middlesex.

ASSEMBLYMAN PAYNE: Middlesex County. I think you said there are 55 in Essex County. How many families are involved?

ASSISTANT COMMISSIONER KREBS: Middlesex has 26, Essex is 54, and Camden is 40. And those turn over during the year, so we expect that we will be able to accommodate 200 youth and their families in that program.

ASSEMBLYMAN PAYNE: The evaluations -- now, you said, that now we screen youngsters upon entry, is that correct?

ASSISTANT COMMISSIONER KREBS: Yes. They do the MAYSI tool, and that helps identify those youth who really do need behavioral health services.

ASSEMBLYMAN PAYNE: And that's--

ASSISTANT COMMISSIONER KREBS: That's already in effect in all 17 detention centers.

ASSEMBLYMAN PAYNE: In all 17 detention centers. Someone mentioned before, 17 counties. Actually there are 17 -- some counties do not have their own detention centers, is that right?

ASSISTANT COMMISSIONER KREBS: Right.

ASSEMBLYMAN PAYNE: They follow up, then, with a comprehensive health examination. Once they're screened, then we determine -- do an evaluation of what they need?

ASSISTANT COMMISSIONER KREBS: The comprehensive behavioral health assessment is then done by a licensed professional, who will then help determine what that child's behavioral health needs are, so that we can then say to the court, "These are the child's needs," and get that child to the appropriate treatment setting in a very timely fashion.

ASSEMBLYMAN PAYNE: What happens when we notify the court that this is what the youngster needs? Does the court then order -- do we have the beds, do we not have the beds? We can determine what they need. One of the problems in the past is that we couldn't find beds for them. You said it's difficult finding beds, etc. What--

ASSISTANT COMMISSIONER KREBS: We certainly do not have all the beds that we need now. Some of the beds that we had hoped were going to come to the State of New Jersey-- Out-of-state providers came forward and said they would like to serve some of the kids in the State of New Jersey. We have not been able to site those facilities here in this state. There's also one in-state provider that we have not been able to site a place because of community objection to having kids in their communities.

ASSEMBLYMAN PAYNE: You said there was a difficulty in collecting data. You said that you were having some difficulty--

ASSISTANT COMMISSIONER KREBS: We're working with the Administrative Office of the Courts on the data system that Kevin referred to, and we're working very closely to ensure that we have one system that really does look at all of the children who are sitting in detention, and that we're accurately identifying them as post-adjudication, post-disposition children needing behavioral health services. We're working very closely with them to refine that system. We've started, we're working together. The system still does need to be refined, that tracking system, but we're really working on it.

ASSEMBLYMAN PAYNE: How long have we been working on it? How long have we been trying?

ASSISTANT COMMISSIONER KREBS: Again, that's probably been since sometime this Summer.

ASSEMBLYMAN PAYNE: And there's glitches in it, as difficult as--

ASSISTANT COMMISSIONER KREBS: There's glitches, yes.

ASSEMBLYMAN PAYNE: And you're working on it. What's going to resolve them? What do we need to do to resolve those? As long as there's glitches in them, there's delays in carrying out the--

ASSISTANT COMMISSIONER KREBS: I wish I could respond to what are the technical glitches, but I can't respond to what the technical glitches are. I apologize.

ASSEMBLYMAN PAYNE: We obviously need to resolve these glitches. We obviously need to resolve these, so these situations -- and we need to work as aggressively--

ASSISTANT COMMISSIONER KREBS: Absolutely.

ASSEMBLYMAN PAYNE: And I don't know what we need to do, but we have to do that. Because there are human beings on the other end of this thing that are--

ASSISTANT COMMISSIONER KREBS: Absolutely. I think that manually we really do have a pretty good idea of what children are in detention centers on any given day. I just think that it's a tracking glitch, not that we're losing kids, hopefully.

ASSEMBLYMAN PAYNE: Let's hope not. And you can be sure that we're going to continue to put -- keep the attention on this whole area. I started to say put pressure or keep pressure on, but we're going to stay focused on this. Because as long as there are any youngsters that are not being served, that impacts on all of us.

ASSISTANT COMMISSIONER KREBS: Absolutely.

ASSEMBLYMAN PAYNE: And in the past, sometimes we got involved in bureaucratic kinds of problems and communications, etc. I'm glad to see that the component parts are working together more than in the past, but probably needs some improvement.

Mr. Fisher, do you have questions or comments? (no response)

Thank you very much, Ms. Krebs.

ASSISTANT COMMISSIONER KREBS: Thank you.

ASSEMBLYMAN PAYNE: Let's see, I believe we have-- I think that's it for the status report, you might say, of the situation that

existed early on in this year. I guess, overall, there's been some improvements, but we are -- let it be known that we will continue to keep the spotlight on this whole area.

I want to thank you very much.

Now, the next -- excuse me. Now, we have now -- our agenda? We will be discussing Danielle's Law. We will have a brief overview on the status of Danielle's Law, and we do have another committee meeting that's scheduled for this room in a short while. So what we are going to do is be very expeditious. We've had considerable discussion on Danielle's Law, and we want to make sure that we can get a status report on where we are with it. And I'm going to ask--

We have two slips: one for Theresa Wilson, one for Terri Wilson, both the Deputy Commissioner. So perhaps Terri, or Theresa, would you please come forward.

**DEPUTY COMMISSIONER THERESA C. WILSON:**  
You get both.

**ASSEMBLYMAN PAYNE:** Let's hit the cogent points, please. We're not going to be able to-- Yes, if you'll identify yourself and--

**MS. WILSON:** Yes. Good afternoon. My name is Terri Wilson. My father prefers me to have been called Theresa Wilson. I'm Deputy Commissioner for Department of Human Services, for Disability Services. And to my right is Jim Evanochko, the Assistant Director of the Southern Region of the Division of Developmental Disabilities.

On behalf of the Department of Human Services, Commissioner James Davy and I want to begin by thanking you, Chairman Payne, and also Vice Chairman Cryan, and the members of this Committee

for giving us the opportunity to update this Committee regarding the progress that has been made related to the implementation of Danielle's Law.

I would like to recognize the participation of family members, particularly Danielle's mother, family, and friends; and our colleagues who have joined this hearing today to share concerns for the well-being and safety of people with developmental disabilities.

I would also like to take this opportunity to recognize the diligence that I have witnessed by our own employees and the employees of the many private agencies who have dedicated their time and energy to learning and helping others learn about the spirit and intent of Danielle's Law.

In June, when the Committee last met, we discussed changes to the proposed regulation, the addition of outside phone lines at all of the seven State Developmental Centers, the training of State and private agency employees, and the necessary oversight to track the compliance with the law.

As you will recall, the primary concern about the initial rule proposal was that there were two different procedures established. Since the private agency-operated community homes rely on the community medical care, and the State-operated developmental centers have medical teams on staff, the original procedure varied, based on where the person with disability was living. This Committee, and other public members, commented that the procedure should be the same. We revised the new regulation to reflect that sentiment. The rule now requires that staff members of State-operated developmental centers and the staff members of

private provider agencies must call 911 directly in the event of a life-threatening emergency.

Additionally, we adapted the telephone system at all seven of the developmental centers so that the calls can be made directly to 911, without having to go through the medical team at the facility or through the switchboard operator.

At the last hearing, we discussed the new rule proposal, which was developed and published in the New Jersey *Register* in February. The comment period ended in April. We received eight comments. Since we met, the final rule was published in the New Jersey *Register* and adopted on August 1, 2005. This rule now guides the implementation of Danielle's Law throughout the more than 2,000 programs of public and private agencies serving people with developmental disabilities and traumatic brain injury.

The rule guides timely and appropriate emergency medical services if an individual lives in a developmental center or in an agency operated in a community program. The regulations require that 911 must be called in a life-threatening emergency in accordance with Danielle's Law.

The rule requires that all licensed and contracted facilities submit to the Department a procedure, and train all direct care staff in that procedure. The Department reviews the procedures. All 123 of the agencies that provide group home and other residential programs have submitted their agency procedures requiring staff to call. One hundred and twenty-one have had their procedure approved by the Department and one is currently being processed. There are 86 agencies that provide non-residential programs, such as rehabilitative services or day programs. Of the

86 agencies, 25 requested to be reviewed for applicability under Danielle's Law. For those agencies that we have determined that Danielle's Law applies, 52 have received Department approval of their procedures and nine are currently being processed.

To help ensure that all agencies and facilities have access to training, the Division of Developmental Disabilities provides train-the-trainer sessions. In these sessions, the Division of Developmental Disabilities uses the training materials created with the input and assistance of community agency representatives and the members of the Family Alliance. These training materials are made available to private provider agencies and the developmental centers, and are available on the Division's Web site.

The State-operated developmental centers have completed the training of all of their employees responsible for direct care and related activities, and will continue to train new employees.

We have worked very hard to implement Danielle's Law throughout the more than 2,000 programs of the State and private agencies serving people with developmental disabilities and traumatic brain injury.

The Department's Office of Program Integrity and Accountability have been tracking all reports that are related to Danielle's Law. Between April 23, 2004 and December 5, 2005, the Department has received more than 5,572 reports related to Danielle's Law. Of the more than 5,572 reports, 996 have been reported from State-operated developmental centers and 4,576 have been reported from programs operated by private community agencies.

ASSEMBLYMAN PAYNE: Let me ask you, excuse me, I missed that.

MS. WILSON: Yes.

ASSEMBLYMAN PAYNE: That figure you just gave is -- what -- 5,000? Repeat that, please?

MS. WILSON: I'm sorry. I was rushing, trying to save time.

Let me start again -- between April 23, 2004 and December 5, 2005, the Department has received more than 5,572 reports.

ASSEMBLYMAN PAYNE: Reports what?

MS. WILSON: That means a report. That does not mean it was substantiated. We have to investigate it and review it. Those are reports of failure to call 911.

ASSEMBLYMAN PAYNE: Five thousand.

**J A M E S M. E V A N O C H K O:** Good afternoon.

The regulations require that all calls to 911 must be reported to the Department.

ASSEMBLYMAN PAYNE: Okay.

MR. EVANOCHKO: So in the period of time that -- since Danielle's Law became effective, February 23, 2004, to the day before yesterday or two days ago, we received over 5,572 calls. In other words, people are calling 911.

MS. WILSON: Thanks, Jim.

ASSEMBLYMAN PAYNE: Five thousand--

MS. WILSON: --five hundred and seventy-two--

ASSEMBLYMAN PAYNE: --calls made to 911--

MS. WILSON: Yes.

ASSEMBLYMAN PAYNE: --since '04, April? Is it April?

MS. WILSON: It was April 23, 2004.

ASSEMBLYMAN PAYNE: All right. Go ahead. And of that number, what happened?

MS. WILSON: Of the more than 5,572 reports, 996 have been reported from the State-operated developmental centers, and 4,576 have been reported from programs operated by the private community agencies. Okay? To date, there are five incidents in which the Department's review and the Office of Program Integrity and Accountability has substantiated that staff failed to call 911 -- five incidents. Three of these cases are now under legal review, and the remaining two are under review by the Division.

It is our sincere intent to comply with both the letter and the spirit of Danielle's Law. Safety is our primary concern. Emergency procedures have always been required by the Department throughout the many programs for people with developmental disabilities and traumatic brain injuries. Service providers are required to have emergency procedures, and a staff member trained in CPR and First Aid must be available on each shift in the community agency programs and the developmental centers. The staff training for all direct-care employees requires Red Cross training curricula for CPR and First Aid. Now Danielle's Law adds the requirement that 911 is called in a life-threatening emergency.

ASSEMBLYMAN PAYNE: Commissioner, for further clarification for me of these 5,500 calls, and 996 from State centers, etc., 4,500--

MS. WILSON: Four thousand, five hundred and seventy-six.

ASSEMBLYMAN PAYNE: Yes. That's from private agencies. All right. The report said in five instances persons failed to call 911, correct?

MS. WILSON: Substantiated that they failed to call 911.

ASSEMBLYMAN PAYNE: Okay. Of the numbers of calls, what were found to be justified or not, or do you guys have figures on that or what? Is that subjective or what? You've got 5,500 calls, how many were judged to be justified, or whatever?

MS. WILSON: The five.

ASSEMBLYMAN PAYNE: No, no, no, no, no, no. You said five--

MS. WILSON: The five incidents that we had reviewed, yes.

ASSEMBLYMAN PAYNE: The persons that didn't call, right.

MR. EVANOCHKO: Of the 5,572 calls, only in five instances did we find that people failed to act appropriately.

ASSEMBLYMAN PAYNE: Okay. All right.

But of that number, how many were true emergencies, or whatever?

ASSEMBLYMAN FISHER: I'm a little confused myself. You said that -- I'm sorry, Chairman.

ASSEMBLYMAN PAYNE: Yes.

Excuse me, didn't you say that 5,500 total -- 5,572 calls were made to 911, correct?

MS. WILSON: Yes.

ASSEMBLYMAN PAYNE: Of that-- There was some concern early on, when we introduced this legislation or talked about it, that people

might be making calls frivolously and they won't be emergencies. All right? That was one of the concerns that, "Oh, my God, you know that--"

MS. WILSON: Yes.

ASSEMBLYMAN PAYNE: So, there was 5,500 calls. Were any of them emergencies? Were any of them justified? Were they all justified? And how did we determine that?

MS. WILSON: We would need to give you the detail on that, as to how many were actual emergencies.

ASSEMBLYMAN PAYNE: Mr. Fisher.

ASSEMBLYMAN FISHER: No. I thought you said that they weren't all reviewed -- all 5,500? You know of five that--

MS. WILSON: I'm sorry. Five were substantiated as failure to call 911.

ASSEMBLYMAN FISHER: Right. But they're just the five you know. We're just trying to get a handle on it.

MS. WILSON: Yes, I understand.

ASSEMBLYMAN FISHER: They were the five that you know of.

MS. WILSON: Yes.

ASSEMBLYMAN FISHER: The other 5,500 cases, you haven't fully reviewed each one of those cases to determine -- now, there's only five that you've determined that were--

MR. EVANOCHKO: If I may?

ASSEMBLYMAN PAYNE: Please.

MR. EVANOCHKO: The Division and the Department have a series of reviews in which all 5,572 incidents are reviewed. And when there

is any question, there is an additional level of review. When there's an additional level of review, of the ones that we have required additional level, only five of those appear to be a failure to call 911. It's a remarkably positive statistic.

ASSEMBLYMAN PAYNE: Oh, sure it is, sure it is. But I was curious, the reason why we introduced this was to try to prevent people -- to bring emergency assistance immediately, and that there was a question of whether or not somebody would be able to determine whether or not this is life-threatening or not, and therefore some people would be reluctant to make the calls. Someone had said that if they make the call and it turns out not to be an emergency, whether the person who made the call would be penalized, etc., etc., etc. What I would like to know is, of all of those calls, has there been a judgment made as to whether any of them were frivolous, should not have been made? Do we know whether or not all of them were, in fact, substantiated or -- not substantiated, but were bona fide that they needed to make a call?

MS. WILSON: Our training is to call 911. So I would not identify any as frivolous.

ASSEMBLYMAN PAYNE: Okay, all right. Okay. All right.  
Are you close to concluding?

MS. WILSON: I understand you're short for time. I can consider myself having concluded my comments.

ASSEMBLYMAN PAYNE: You'll remain for the other persons who will be testifying?

MS. WILSON: Absolutely.

ASSEMBLYMAN PAYNE: All right.

Let's see, Robin Turner, from Family Alliance -- and Diane Gruskowski. Are you related, aren't you? You're not related?

**D I A N E T. G R U S K O W S K I:** For anybody that doesn't know, it's my sister, Robin Turner.

**ASSEMBLYMAN PAYNE:** Okay. All right. And unfortunately, we are running out of time. However, those of you who we can move to another room and testify further, Mr. Fisher will probably be the only one that will be here. But we can really move expeditiously. At 2:00, the lights will start dimming. (laughter)

I'm told that Assemblyman Fisher is on the next committee that's meeting and the staff person is also there, too. If we stayed, I would be out in the hallway, and it would be only me.

Please, Ms. Turner.

**R O B I N M. T U R N E R:** Diane is going to go first.

**ASSEMBLYMAN PAYNE:** All right, Diane, identify yourself for the--

**MS. GRUSKOWSKI:** Diane Gruskowski. Good afternoon -- I guess the morning is over -- Assemblyman Payne and members of the Committee, Mr. Fisher. My name is Diane Gruskowski. My daughter, Danielle Jeniese Gruskowski, was the inspiration for Danielle's Law. And I appreciate your commitment and follow-up to Danielle's Law for the proper implementation.

I'm going to just try and skip over this. The last (*sic*) ARO Committee hearing was September 30, 2004, and it was agreed then that the rules did not reflect the spirit and intent of the law, which, at the time, the Department of Human Services retracted the rules to clarify them. All

of us were concerned then, and over one year has passed and still there appears to be concerns about some of the inconsistencies.

I do want to express my gratitude to the Department of Human Services for respecting our ideas. However, the fact still remains that there are many inconsistencies in its implementation.

After attending four DDD training sessions -- these are the training sessions that the Department gave to providers who will be responsible for training their direct care staff at their facilities -- I left each class very concerned. Major confusion existed. There were questions raised that went unanswered. And I'll admit, even I was confused. It did not appear that the Department was prepared or knowledgeable enough about the true intent and spirit of Danielle's Law. The bigger concern was that the providers in attendance were headed back to their facilities to initiate training to direct care staff with unanswered questions and without having a clear understanding of the law.

Another compelling concern was how the Department explained life-threatening emergencies to the providers. By the fourth session, the Department clarified the explanation to the providers, but what about the providers in the first, second, and third sessions? They were delivered a very different message. I believe that that issue itself should warrant a retraining from the Department to those folks. I have always said, when the situation becomes life-threatening, when it becomes a matter of life or death, that is when it's life-threatening, not before. That was the intent of Danielle's Law from the beginning.

So I would just like to add that since Danielle's Law, if there was an inordinate increase of number of calls to 911, then maybe the staff

isn't being trained properly; 911 should only be called in a life-threatening emergency.

You only have to read about the horror of what happened to my precious daughter, Danielle, to begin to suffer the pain that she went through. Danielle did not just suddenly die. It was a serious medical emergency that was allowed to go on for hours. My daughter needed an ambulance, not a hearse. She needed urgent medical help, and no one assisted her. I'm here today in my daughter's memory. I want to prevent future tragedies from ever happening again to helpless people like Danielle. And I will continue to advocate for the rights of our children until every one of them is safe and protected.

I'd like to thank you wholeheartedly for your tireless dedication to people with developmental disabilities and for providing the much-needed oversight.

Thank you very much.

ASSEMBLYMAN PAYNE: Thank you. Thank you very much, Ms. Gruskowski.

I attended one of the training sessions down in South Jersey, early on.

MS. GRUSKOWSKI: In Vineland.

ASSEMBLYMAN PAYNE: In Vineland. And I tend to agree with you that those who received the early, somewhat, training--

MS. GRUSKOWSKI: Much confusion.

ASSEMBLYMAN PAYNE: --need to be retrained. There's no question about it. Early on, and as you say, there was confusion and there was a lot of unanswered questions, etc. The persons did not clearly

understand the law. And these were people who were going to become trainers. They were going back to train other people. So I strongly recommend to the Department that those folks be retrained, that in fact -- that the ones who, certainly early on, were not adequately trained. And that's why -- a strong recommendation I would make -- that they, in fact, be retrained so we could include those questions.

MS. GRUSKOWSKI: Can I just add one more thing.

ASSEMBLYMAN PAYNE: Yes.

MS. GRUSKOWSKI: In one of the e-mails from DHS, I'll read the line: "We also hear that some people are confused and we are working on clarifying information." I would like to know what DHS clarified and how they clarified it. How did they get back to these folks?

ASSEMBLYMAN PAYNE: Well, I'd like to know what areas people are confused on--

MS. GRUSKOWSKI: Right.

ASSEMBLYMAN PAYNE: --and see what they addressed. I mean, we would like to know where the areas of confusion lie and what is being done, or has been done, to address it. But I recommend, again, that adequate training is necessary for all of the people and certainly the ones that were there early on. It's pointed out that the last training session was adequate, we might say. All right. Still, there may have been some questions. But whatever the curriculum was for and the training was for, the last session certainly should be the training mode for all of them, everyone. Okay.

Ms. Turner, yes.

MS. TURNER: My name is Robin Turner, and I'm Danielle's Aunt, guardian, and her advocate, and a cofounding member of the Family Alliance to Stop Abuse and Neglect. I would like to graciously thank you, also, for holding another Regulatory Oversight meeting to discuss the implementation of Danielle's Law. And I'm here to testify on the spirit and the intent of the law.

I believe that Danielle's Law is one of the most important laws we have seen emerge to protect people with developmental disabilities and traumatic brain injury in life-threatening situations. But I am afraid that the ground is shifting beneath our feet because of the many utterly transparent inconsistencies that have surfaced. I am far from first to discover the inconsistencies with its implementation. And I'm going to focus on three things, even though my testimony is probably 50 pages long.

Danielle's Law is a very simple law, a law that is woven into the very fabric of society, a law that protects the human rights of people with developmental disabilities and traumatic brain injuries. And unless these rights have meaning, the law will serve no purpose.

The first issue that needs much clarification today are behavioral emergencies. It is not so difficult to draw a clear distinction between a behavioral emergency versus a medical emergency. And I would like to explain to you why behaviors is not relevant to Danielle's Law. If staff should fail at all aspects of avoidance, prevention, deescalation, and response to immediate danger -- and I am sure they will -- they do not need a regulation telling them they must call 911, because they already can do it and they will do it. And they will do it for the following reasons:

A behavior emergency by its very nature cannot be ignored. It cannot be approached with a wait-and-see attitude. It will not wait until tomorrow. Someone is doing something very dangerous right now, and you have failed to prevent or stop it. There is no opening for debate, and no need for a regulation in such a situation.

A medical emergency, on the other hand, can be all too easy to ignore, to overlook, to wait and see, to postpone until tomorrow when it's too late, as in Danielle's situation. A sick client is not a threat to anyone, and it is all too easy to place a client in bed and walk away. Danielle's Law would prevent a situation like that from occurring. Adding a component requiring a 911 call in a behavioral emergency will only create mischief by pushing staff in the direction of making a call, rather than making a real effort to solve the problems themselves. It will cause them to confuse medical needs with behaviors, rather than seeing behaviors as communication, and responding to the frustration or distress that is probably causing the client to act out in the first place.

When a client's behavior turns into an emergency, staff will know, and they will find themselves unable to wait to get help. Staff already have the right to make the phone call in such a situation. There was never a regulation to deal with this, because there was no need to have one. When a client's medical condition turns into an emergency, staff may not know, and may inappropriately ignore the problem and wait to get help. This is why a special set of regulations and training is needed. This is the beauty of Danielle's Law.

The second item that we had was unsafe situations. And we asked the Department to clearly identify what is meant by unsafe

situations. And as per an e-mail that I received on November 3, the Department stated, and I quote, "If they find the facility unsafe, CMS places a condition of immediate jeopardy on the facility, so the term *unsafe* can be serious." But when you actually spell this out, the Department's description of unsafe situation seems to pertain to more of a licensing and inspection audit, rather than a life-threatening emergency where somebody is going to die if they don't get help. An unsafe situation is a potential emergency or accident waiting to happen. A life-threatening emergency is, the emergency or accident is in progress or has taken place, requires immediate intervention -- "And if I don't do something right now, this person may die." And clearly, waiting for an emergency or an accident to happen is not the intent of Danielle's Law.

Danielle's Law is for extreme life-threatening emergencies that cannot wait, which would require staff to activate the 911 system immediately, because an ambulance could mean the difference between life and death. A CMS audit should not be the reason to call 911, nor should it be included in any type of example from the Department.

The third thing, and this is my final, is that I attended the last trainer -- I attended all four trainer sessions as well. And the last one, Assemblyman Payne, you were there. And there was a woman who -- an office worker who said that sometimes that she is left alone with the primary responsibility for residents. And the answer I received from the Department stated, "For office staff members not directly charged with client care, we do recommend that these employees take their training, and they certainly can attend the training. However, they are not subject to the personal fines." I think this Committee would agree that if a resident is left

alone with an office worker, the office worker must be required to take the Danielle's Law training, in addition to all the other training that a direct care staff person is required to take.

The only alternative I see would be for DHS to promulgate a clear policy that at no time shall a person with a developmental disability or traumatic brain injury be left in the care of a paid, non-direct care staff person. And perhaps we can get that -- some clarification on that today. Is there a policy that exists? How do you follow it, etc.?

It is no secret that the Department of Human Services has been flooded with huge challenges. They need a shot at new life. They wear their past achievements with pride. But as we all know, they are hardly cutting-edge. The past can be a burden when you are driving for the future. The face they show should be one that could launch a thousand world-changing ideas for people with developmental disabilities. There is too much perspiration emanating from the Department of Services (*sic*) and not enough inspiration. How many more times will we be back here to discuss Danielle's Law, Assemblyman Payne? How many more times will it take?

I still, however, and for the sake of our loved ones, remain confident that real glory days are yet to come for people with developmental disabilities and traumatic brain injury. And with your help today, and together, we can make this happen. We must make it happen. I urge this Committee to pump life back into the spirit and intent of Danielle's Law.

ASSEMBLYMAN PAYNE: Thank you very much, Ms. Turner.

MS. TURNER: Thank you.

ASSEMBLYMAN PAYNE: On your point of training for people, I said early on that I think anybody who is in the facility and may be left alone with a client should receive the training. I don't know whether it's a maintenance person, or what have you, an emergency can happen in the middle of the night when maybe the only person there is an aide, etc. So I don't know how we resolve this. So you either keep these people out of the -- away from the patients, or if they're there, I think everyone needs to be trained. It's my thing. And I think this is something that the Department is going to have to wrestle with and have to resolve that. There's no question about it. If, in fact, someone says that an office worker is left alone with these clients -- and obviously they need to be trained -- it may be just an isolated incident, but it may not be. So I think that that's something that's well-taken. And I'm sure that the Department and this Committee will take that into consideration.

MS. TURNER: I also gave everyone a copy of this, on the Committee. And when I went to the Web site several months ago, this is what it said on the Web site, when I looked at the training. And to me, this looks -- when in doubt, don't call 911. And then, they fixed it since then, but twice I had to call, because it messed up twice. So I'm assuming it's fixed correctly now, and it will never happen again. Because I'm the only one that's finding them. It doesn't appear that--

ASSEMBLYMAN PAYNE: I don't understand that. I don't understand. Let me see that again? Hold it up, please? There's a cross between that and what? What does that mean? Maybe we can get something very clear and understand about that.

MS. TURNER: They had an issue with the Web site, monitoring the Web site, I guess.

MS. WILSON: (speaking from audience) We had a Web site problem, Assemblyman, and we corrected the Web site.

ASSEMBLYMAN PAYNE: Well, what do we mean, Web site problem? There seems to be--

MS. TURNER: A glitch.

MS. WILSON: There was a glitch in the Web site.

MS. TURNER: Well, this is the new one, now. That's the new one that's on there now. But I had to call twice for this, to get it removed.

MS. WILSON: I don't -- I wouldn't argue. It's been straightened--

ASSEMBLYMAN PAYNE: Yes, it's not a matter of arguing.

MS. TURNER: No. I'm just saying, that's how much we need oversight here. We need oversight.

ASSEMBLYMAN PAYNE: Thank you, Ms. Turner. Thank you very much. Thank you, Ms. Turner.

I just don't understand how that glitch -- a cross between -- over "call 911" is a technical glitch. I don't understand how that occurred.

MS. WILSON: What happened-- May I?

MR. VARI: You're going to have to use the microphone? (referring to PA microphone)

ASSEMBLYMAN PAYNE: Either that or use the mike. And then we're going to-- Now just a very brief answer. I don't know how it happened. It looks obvious to me.

MS. WILSON: Assemblyman, the Web site actually looked fine when you did it from our offices. And then when you would look at it from a home base, or wherever, that error was on there. And we were grateful for Robin Turner notifying us, and they corrected it. But when you looked at it, at our offices, it did not have that.

ASSEMBLYMAN PAYNE: What was the explanation of how a cross ended up on there? What was the explanation of whomever prepared that? Why, in a home viewing that -- I don't understand that.

MS. WILSON: I'm not an IT person, and IT people would have to come and explain that answer to you. I could not, sir.

ASSEMBLYMAN PAYNE: Okay. All right.

We have people barging to come in here. Is it something that's imminent -- you want to say very briefly? Fine.

MS. WILSON: Thank you. The issue regarding behavioral challenges and changes--

ASSEMBLYMAN PAYNE: Yes, right.

MS. WILSON: --we've had significant legal review out of the Attorney General's office, and we had to follow their guidance on how that had to be written.

Thank you.

ASSEMBLYMAN PAYNE: Okay. Thank you very much for that answer.

Now, is there anyone here desirous of going to another room to continue this, or have we heard most of it? I intend to call the EMT people here. I really would like to hear from them before we adjourn this.

We have another meeting coming in this room, I do believe?  
And they're outside waiting.

I would really like to hear from, let me see, Captain Paul Gadomski, from the Carteret Fire and EMS, and also I think that we have Brian. Please?

**CAPTAIN PAUL GADOMSKI:** Good afternoon. I'll try to make this as brief as possible.

First, I'd like to introduce myself. I'm Captain Paul Gadomski. And sitting next to me is Chief Brian O'Connor of the Carteret Fire Department. And we'd like to thank you for allowing us to speak here today.

From an emergency service provider's perspective, the past few years seem especially dynamic with regards to the evolution of emergency technology and procedures, as well as that of special care. With renewed Federal and State concern, through various appropriations and programs, to specific legislation, local departments are becoming invigorated with updated training, procedures, and equipment. These improvements are most commonly spurred by appropriate forethought and planning, while in other cases they fulfill needs that have been emphasized with particular events. As is characteristic of Americans, we learn from our shortcomings, and improve so that we can continue to move forward. In this case, specific occurrences bring to light flaws in the protocols of emergency and special care services, making clear why and how they need to be addressed. Unfortunately, these improvements sometimes occur at a price not worth paying.

In November of 2002, the price Carteret paid was that with the life of a very special resident. It is arguable that with enough foresight and consideration, the appropriate protocol for emergency medical treatment would have been implemented within our institutions for special care, and Danielle Gruskowski might be alive with us today. Unfortunately, such was not the case. And because there was no preestablished procedures for special care providers faced with sudden emergencies, Danielle passed away.

The prevention of tragedy should be the standard of success for any emergency worker or department. More practically, prevention can be the cornerstone of these services. In Carteret, our Fire Department now offers a variety of workshops offering residents of all ages a better understanding of fire safety and deterrents. Our EMS Division also offers a service whereby our firefighters and EMTs contact participating seniors on a daily basis to ensure that they are in no need of immediate medical attention. These are just examples, but it is clear that a constant concern of any emergency service provider should be to prevent tragedies and disasters by addressing them before they occur.

How do we do this in areas where there are those present who have very specific needs, such as Danielle Gruskowski? It can be difficult to respond properly to the unexpected. But what should be obvious in the area of special care is that avenues of communications need to be kept open. When there are particular needs in question and several institutions and services, each with particular concerns and procedures involved, the coming together of ideas can allow service providers to better identify and prepare for what might normally be considered the unexpected. And simply put, it is vital that the left hand know what the right hand is doing.

Without undermining the magnitude of the national tragedy that will be known historically as 9/11, I would suggest that there is something pertinent therein to what we are addressing today. In the wake of that disaster, as our period of national mourning gradually subsided, a subsequent theme emerged. It became impressively clear to Americans how potent and efficient emergency service departments could be when properly coordinated with each other. In the days following September 11, we saw footage of “New York’s Finest,” its Emergency Service workers and devastated Fire Department, working to mitigate one of the most shocking disasters in recent history.

Since then, concerted efforts have been made on every administrative level to bolster our emergency services. From Federal Homeland Security funding programs to localized departmental consolidation, our EMS and Fire Departments are becoming better equipped, more efficient, and most significantly, synchronized. Coincidentally, Carteret’s Fire Department formed its EMS Division the same month that Danielle passed away. Although the measure was taken to allow the Fire Department to better manage a limited volunteer staff, we have since learned the value of coordinating two vital public services that are often required to function together.

We are fortunate today to have EMS representatives taking an active interest in Danielle’s Law, as well as their potential involvement in special care improvements. There is much to be gained in having emergency medical technicians and special care providers work together by sharing ideas and helping to improve emergency treatment strategies. On November 5, the Gruskowskis lost a beloved family member, while the

Borough of Carteret lost a valued member of its community. We are hopeful that with the Danielle's Law legislation, emergency and special care organizations will be able to better coordinate with each other to ensure that similar tragedies don't occur in the future, because we maintain that any tragedy is a tragedy too many.

Thank you.

ASSEMBLYMAN PAYNE: Thank you very much, Captain, for your remarks.

Yes. Do you have additional comments you would like to make? Yes.

One of the concerns that we had early on was that there are those who said that the EMS might be reluctant to respond to all of these calls, that many of the calls would be, as I said before, frivolous or really not significant. And I was asking whether or not that's been the experience -- what is the experience when 911 is called -- not just here with this law, but generally? Would there be a dramatic increase in calls to 911 which turn out to be a waste, or what?

CAPTAIN GADOMSKI: Well, we currently have a system now in place where the dispatch centers would receive a call for just help on any given day. And by what the dispatcher is told, they determine what level of care needs to be sent, whether it's just a BLS unit or EMTs. And then if there's a life-threatening call by -- that the dispatch person receives, she'll also dispatch the paramedics. The same thing would be here. If the trained personnel at that local care facility does a quick evaluation with the proper training, they will know whether they need to step the level up to call for an ambulance, to call for the paramedics, and the transport will take

place to the hospital. So there are systems like that in effect now that, again, through proper training, we as an EMT would provide BLS service. When we get on scene, we would do an evaluation. And through our training, would say, "Okay, we need the paramedics to continue responding," and then provide advanced life support.

So there is a system already in place that, again, through proper training, coordination, working with each other, refines that down to a well-oiled machine.

ASSEMBLYMAN PAYNE: So those of you who provide the kind of service you do are supportive, I suppose, of this kind of legislation that would call upon the caregiver, or whomever, to make the call when there's a possibility of a life-threatening situation.

CAPTAIN GADOMSKI: Most definitely.

CHIEF BRIAN O'CONNOR: Absolutely. It's just like with the smoke detector law. Of course, we got more calls, but we also saved thousands of lives. In the '70s, early '80s, we had 10,000 people die. Now it's under 4,000 people, because of smoke detectors and because of the law to call.

ASSEMBLYMAN PAYNE: Right. I'm glad to hear that. Because, as I said, there had been some -- among the things that people were wary about was whether or not there's going to be a tremendous increase of calls to 911, and whether or not, after a while, it would be like crying wolf; and whether or not people would respond, etc.

CAPTAIN O'CONNOR: We have a small group home in our town -- we have yet to be called -- the Woodbridge Developmental Center. It borders us, and we service mutual aid between each town, and we have

yet to be called there. And I have yet to hear, in the EMS community, a problem as far as responding like that.

ASSEMBLYMAN PAYNE: Good. Thank you.

I appreciate your coming here to provide that testimony. It certainly relieves me of some concerns that I had.

Thank you very much.

CAPTAIN GADOMSKI: Thank you.

ASSEMBLYMAN PAYNE: We may not be evicted just yet, so I'm going to ask Lowell Arye if he would please come, identify yourself, and we'll have your testimony, please.

**LOWELL ARYE:** Thank you, Mr. Payne.

My name is Lowell Arye. I'm the Executive Director of the Alliance for the Betterment of Citizens with Disabilities, ABCD. We represent 13 member agencies across the state who serve more than 8,000 individuals with developmental disabilities. Many of these individuals are medically complex and have severe medical needs.

My agencies have been looking at Danielle's Law, and we've had several meetings to discuss the implementations of Danielle's Law. And what I'm going to present to you today is basically their analyses. DDD has taken a law that is fairly simple and made it overly complex, which as a result -- in an influx of 911 calls for medical situations that are not necessarily life-threatening. And there has been an increase. And the reason for this is because there's been an increase in the liability and risk and potential consequences associated with the failure to call 911, and it predisposes people to make those calls.

ABCD surveyed its members, and of those who responded there was 182 percent increase in calls to 911 between 2004 and 2005. In a number of these cases, the EMTs did ask, “Why are you calling us? This could have been taken care of by staff.” And in at least one of our agencies, they were told to stop calling because they had already called about eight times in less than two weeks. According to our survey at the same time, there has not been a comparable increase in the numbers of hospitalizations when the person was brought to the emergency room.

In addition, DDD did not contact municipalities to explain that there would be an increase in 911 calls because of Danielle’s Law, and several of my agencies began to do that. And we’ve continuously asked them to make the contacts to the municipalities for them to understand that. We don’t know yet as of this time if that has occurred, but we have told our members agencies to contact the municipalities to make sure that that’s the case. At least part of the reason for increased calls is the result of direct support professionals who are panicked because of the lack of clarity of training by DDD and the possibility of a high fine. As you’ve heard about the initial trainings and the first training by DDD, it was explained that even if a person breaks their finger, the staff should call 911. Certainly, several clarifications were sent out by DDD after that training and after the first initial trainings, but as you’ve heard already and you certainly saw yourself, there’s still not a complete clarification and understanding.

In addition, given that my member agencies serve some of the most medically complex individuals in the state, many of them have nurses and other health professionals on staff. But these professionals are now

feeling disenfranchised from assessing and evaluating medical conditions. Instead, direct support staff deals immediately because the law says to dial 911 no matter what, even if there is a nurse on hand.

An example of this problem is that a person was sent from another organization's group home to a day program of my agency's -- that individual was looking lethargic, and so they were brought to a nurse. And they found out that the person had a 99.7 degree temperature. When that organization called the other organization and said, "Why did you send them to a group home" -- from the group home to the day program -- that other organization said, "We're dialing 911."

ASSEMBLYMAN PAYNE: We're what?

MR. ARYE: That we're going to dial 911. This is a medical emergency. It was a 99.7 degree fever. That's not a high fever for anybody, let alone-- And that has happened in a number -- in several cases.

Another issue relates to the issue of seizures. The regulations and the training basically focused in and says, basically, that if you have seizures that are normal up to five minutes, you don't need to dial 911. But if the person has a seizure over five minutes, you basically have to call 911. But for some individuals, seizures lasting 10, 15 minutes are the norm. ABCD's agencies have doctors' notes and parents' notes saying that these seizures are the norm, but staff must call according to the regs and according to the training they received. And they do make that phone call.

This is a problem for some of the parents. We have, at least four times -- and I can document -- at least four times that parents have actually stopped the ambulance from taking their son or daughter to a

hospital, because they know that that's not necessarily what is needed for that individual.

Another example gives you that the hospital actually does not have the correct seizure medication for this particular client. And what has happened is, is that staff calls after five minutes that there's a seizure, and then hands to the emergency medical personnel the actual medication that's necessary, so that when the person is at the hospital they actually take it. In addition, when the person is brought to an emergency room, what ends up happening is staff must accompany the individual, and that leaves -- lessens the staffing ratios at the group home or the day program. And that is a problem and a concern of ours at the same time.

In addition, there are unusual incidents reports. And it's my understanding from my agencies that the formatting does not provide for distinction between medical emergencies -- medical emergencies that are non-life-threatening and those that are life-threatening. And so we really need a new format that provides an unusual incident report that looks at the other two. Because if you have an issue that is a medical non-life-threatening emergency, it is still listed as an unusual incident report, because you have to dial 911. So that also is some of the things that my agencies would like to see.

In conclusion, DDD took a law that was simple and reiterated that a person should call 911 based upon a prudent layperson's thought of what is a life-threatening emergency. And unfortunately, my agencies have found it to be a little bit more overburdensome with the way they have implemented it.

Thank you.

ASSEMBLYMAN PAYNE: Thank you. Thank you very much. I appreciate your testimony. And obviously, it points out the need for more clarification. That this is new legislation that is -- we're refining as we go. And if one life was saved, however, I think it was worth it. And I appreciate your perspective on this. And certainly, you've been heard and we will take that into consideration.

MR. ARYE: Thank you.

ASSEMBLYMAN PAYNE: Thank you.

Do we have anyone else who is desirous of testifying this afternoon, or have all points been covered?

Yes. Have you registered?

**M I C H E L L E B O G G A N:** (speaking from audience) No. I am here from Community Options.

ASSEMBLYMAN PAYNE: I have people that have registered. We are running out of time.

MS. BOGGAN: I'm registered, and we were invited.

ASSEMBLYMAN PAYNE: I beg your pardon?

MS. BOGGAN: We were invited.

ASSEMBLYMAN PAYNE: You were invited?

MS. BOGGAN: So I was--

ASSEMBLYMAN PAYNE: None of the staff persons gave you something to register your name down that you wanted to speak?

MS. BOGGAN: No.

MS. TURNER: (speaking from audience) She's brief. She's very brief. She's going to be very brief.

ASSEMBLYMAN PAYNE: All right.

What about Kathleen Wigfield? Ms. Wigfield, do you want to testify? (declines)

ASSEMBLYMAN PAYNE: Okay. Janette Vance. I do really -- I have just about eight minutes left. Can you identify yourself, please?

J A N E T T E V A N C E: Hi. My name is Janette Vance, and I represent The Family Alliance to Stop Abuse and Neglect. We thank the Committee for its continuing efforts to oversee the Department of Human Services' implementation of Danielle's Law.

The Family Alliance believes that when the Legislature passed Danielle's Law, it's intention was to send what was a very simple message to providers of services for people with developmental disabilities and the State agencies that regulate them: respond to life-threatening emergencies involving our constituents with disabilities in the same manner as you would respond to those who are not disabled. Perhaps some of the members of this Committee, who are asking yourselves the same question as Diane Gruskowski, Robin Turner, and all of us who advocated for this bill -- why is that so complicated? How did Danielle's Law become Al Gore's ash tray?

The Family Alliance is concerned that some providers appear to be, at the very least, misinterpreting Danielle's Law as applying to incidents that occur when the individuals they serve exhibit behavior that is not uncommon, given the nature of their disabilities. Some of these so-called *challenging behaviors* may very well have the potential to escalate into life-threatening emergencies. But strategies for preventing such escalation should already be in place, as part of an individualized, positive behavior support plan. If they are not, then either the plan itself is flawed, or it is

not being properly implemented. Provider training must be very clear on this point: Danielle's Law was meant to address medical emergencies, not behavioral ones.

An incident occurred in September of this year in the New Lisbon Developmental Center and serves as a good example of how Danielle's Law is being misconstrued by some provider agencies. Francisco Macias initially became agitated over the noise level in his cottage. And I could paper this room with New Lisbon's 10 years of documentation on his tendency to do so. His behavior then progressed to property destruction. That's another target behavior. From there, it escalated to the point where he picked up an electrical cord and tied it around his neck. Well, that's a suicidal gesture, which is also a target behavior addressed in his behavior support plan. Well, at this point, the staff called 911. I should add, at the time of this incident, Francisco was on one-to-one priority supervision and there may have been other staff members present as well.

I cannot help viewing Francisco's experience as an example of Danielle's Law being used almost as a substitute for treatment. But I'm certain that the Department shares the Family Alliance's commitment to preventing its misuse in this manner. While we are concerned that the implementation process is taking so long, we appreciate the willingness of Deputy Commissioner Wilson and her staff to accept our input and consider our suggestions on behalf of Danielle's Law. We must all work together to ensure that the bill you passed is the law you get.

ASSEMBLYMAN PAYNE: Thank you very much, Ms. Vance. Thank you for your testimony, and thank you for your -- all of you -- for your patience of being here.

Now, that concludes the folks who have signed up to testify. And I have two minutes left. I really have to get out of here.

Yes. Don't let these people get you in trouble now. They'll all get you in a minute, this whole crew.

MS. BOGGAN: Thank you, Mr. Assemblyman. My name is Michelle Boggan. I am the Executive Director for Burlington County Community Options, but I am here on behalf of the entire state, just to say that we are in support of the spirit and the intent of Danielle's Law. That's all.

I was asked to come here this morning, so I wanted to make sure I made that statement.

ASSEMBLYMAN PAYNE: Burlington County -- what's the organization?

MS. BOGGAN: Community Options, Incorporated.

ASSEMBLYMAN PAYNE: And your name? What was your name again?

MS. BOGGAN: Michelle Boggan.

ASSEMBLYMAN PAYNE: Boggan?

MS. BOGGAN: Yes.

ASSEMBLYMAN PAYNE: Well, thank you very much. I'm glad that you had an opportunity to at least give your name and get you on the record.

MS. BOGGAN: Okay.

ASSEMBLYMAN PAYNE: I want to thank everyone for coming. We certainly have a great deal of interest in this area, and that, yes, we are all -- I'm sure we are all focused on the bottom line, and that is

to provide the very best service for the citizens of New Jersey who may not be able to provide for themselves. Sometimes there is some confusion about how it should be done, etc. And I think that the dialogue that we're having is necessary to try to clarify the misunderstandings that we do have. But I trust that everyone who comes, and came here to this hearing and previous ones, are here to try to make it better, to try to correct those kinds of deficiencies or inaccuracies or mistakes that we made in the past. And I hope that we will be able to continue working together to try to resolve the problems that have surfaced in this legislation, but also recognize that there have been some improvements.

I'm very glad that the emergency workers were here -- EMT was here -- to clarify at least that one point about people saying that we would get an avalanche of unnecessary calls. That doesn't seem to be the case. And your organization will be certainly -- we'll take into consideration the comments that you made.

Thank you, everyone, for coming and thank you for having the patience to stay here with us to try to resolve this matter.

Thank you very much.

This hearing is concluded.

**(MEETING CONCLUDED)**