



NYSAC
NEW YORK STATE
ASSOCIATION OF COUNTIES

CRIMINAL JUSTICE REFORMS



Cashless Bail and Criminal Justice Reforms

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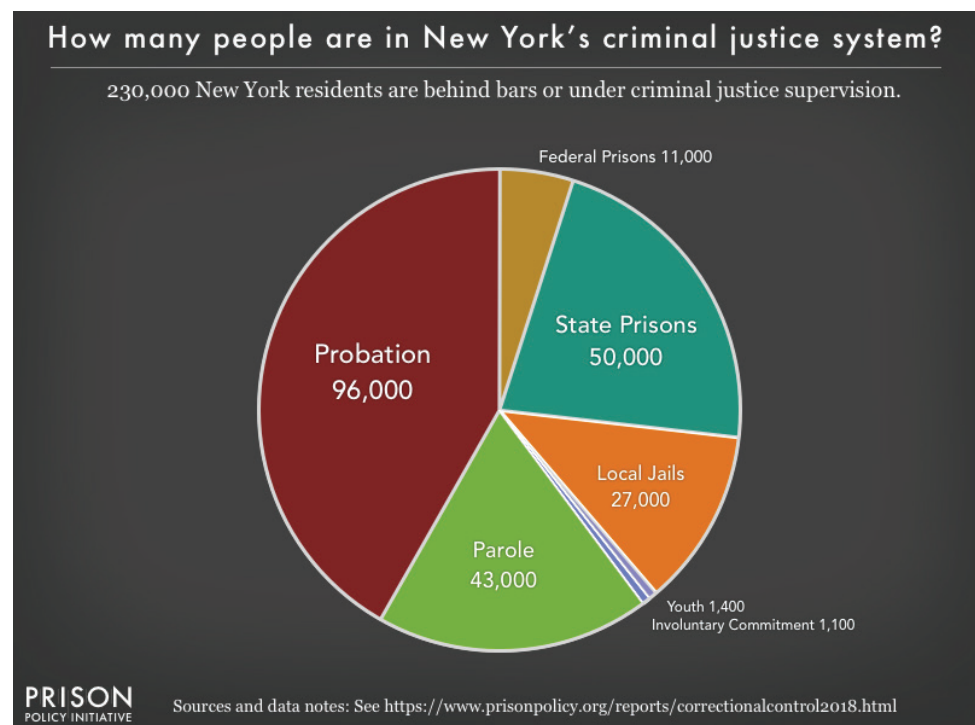


Introduction | The 2019-20 New York State Budget includes criminal justice reforms that limit bail, amend the discovery and speedy trial process, change civil asset forfeiture, and improve the community reentry process. This report provides a review of the reforms that will need to be implemented at the county level. The material has been adapted from budget language, memos, and other documents used to explain these new provisions.

Current Landscape

In a February 2019 report published by the New York State Division of Criminal Justice Services (DCJS), 66% of the New York State jail census are un-sentenced inmates (15,067 out of 22,828). In New York City, 77% of the jail population remains un-sentenced (6,463 out of 8,346) compared to the rest of NYS, where 59% of the jail population remains un-sentenced (8,605 out of 14,482).

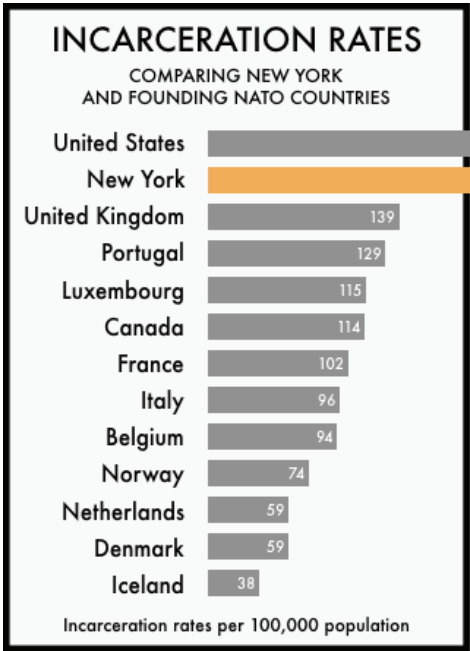
Recently, NYC has reduced the total number of un-sentenced inmates. However, outside of NYC, 22 out of the 57 counties showed an increase in the percentage of un-sentenced inmates from 2009 to 2018. The counties that showed an increase include: Broome, Cattaraugus, Chautauqua, Chenango, Clinton, Cortland, Delaware, Dutchess, Fulton, Genesee, Jefferson, Livingston, Madison, Orange, Oswego, Rensselaer, Saratoga, Schuyler, St. Lawrence, Steuben, Tioga, and Wyoming. This data is representative of the current landscape, prior to the state enacting these reforms.





“The cost of housing New Yorkers in county jails is nearly \$2.5 billion per year—\$1.3 billion per year in New York City, and \$1.15 billion per year in county jails across the rest of New York State. This is in addition to the \$3.7 billion per year New Yorkers spend annually on state prisons,” *JustLeadershipUSA* (2017).

New York State has a lower incarceration rate compared to the average U.S. state. However, when comparing the landscape in New York State internationally, the incarceration rate in our state alone (includes local, state and federal inmates) exceeds that of many industrialized countries (see graph below).



Furthermore, in addition to the 27,000 individuals incarcerated in county jails and 50,000 in state prisons, over 230,000 New York State residents are under a form of supervision (parole or probation).

The Vera Institute of Justice has provided a comprehensive report showing various statistics of county jails.

vera.org/state-of-incarceration/solutions



The 2019-20 Adopted Budget

Elimination of Monetary Bail for Certain Offenses ¹

The SFY 2019-20 Adopted Budget eliminates monetary bail for people facing misdemeanors and non-violent felony offenses. This new law is effective January 1, 2020.

This measure replaces the current statute which was adopted in 1970, when it was designed to “reduce the un-convicted portion of our jail population.” Under the statute, bail was authorized in the current ways: cash bail; an insurance company bail bond; a surety bond; a secured appearance bond; a partially secured surety bond; a partially secured appearance bond; an unsecured surety bond; an unsecured appearance bond; or with a credit card (CPL 520.10).

Ending Cash Bail

Beginning January 2020, bail will only be available to a limited cohort of crimes deemed “qualifying offenses.” A qualifying offense includes but is not limited to: all violent felonies (except Burglary 2nd, Robbery 2nd), all Article 130 (sex related) offenses, all non-drug class A felonies, all felony terrorism offenses, all incest offenses, domestic violence-related contempt’s, as well as witness intimidation, witness tampering, operating as a major trafficker, conspiracy to violate Article 124, child sexual performances and luring a child. If a qualifying offense is charged, the court will make a determination for bail if the accused poses a flight risk.

For the non-qualifying offenses, this legislation mandates that police issue appearance tickets only (therefore not place in custody) in misdemeanor and class E felony cases with enumerated exceptions. Some exceptions include but are not limited to: a charge with a crime between members of the same household; charged with a crime or offense involving sexual misconduct; a person is in such distress that he or she would face harm without immediate medical or mental health care.

Non-qualifying offenses, which are largely comprised of misdemeanors and non-violent felonies, will be governed under a system of pre-trial release services that include release on recognizance (ROR) or release under the least-restrictive non-monetary conditions (LRNMC) as options for a court. Pre-trial service agencies (PTSAs) are mandated to exist in every county in order to assist with individuals that have been released (both ROR and LRNMC). All forms of pre-arraignment bail will be abolished and there will be restrictions established on law enforcement detaining individuals pending arraignment.

In a case that involves a qualifying offense and the judge determines that the defendant is a flight risk, then the defendant can be released under non-monetary conditions. These can include electronic monitoring, and/or mandated check-ins with a “pre-trial services agency.”

¹ Part JJJ, Revenue Bill



The State’s Office of Court Administration (OCA) shall certify and regularly review for recertification one or more pretrial services agencies in each court to monitor principals released under non-monetary conditions. Every such agency shall be a public entity under the supervision and control of a county or municipality or a non-profit entity under contract to the county, municipality or the state. A county or municipality can enter into a contract with another county or municipality in the state to monitor principals under non-monetary conditions of release in its county, but counties, municipalities and the state shall not contract with any private for-profit entity for such purposes.

The supervision by a pre-trial services agency may be ordered as a non-monetary condition if the court finds that no other realistic non-monetary conditions will assure the principal’s return to court. The court or a certified pretrial services agency shall notify all principals released under non-monetary conditions and on ROR of all court appearances in advance by text message, telephone call, electronic mail or first-class mail.

Each pretrial service agency certified by the OCA shall at the end of each year prepare, file, and publish with such office an annual report on its pretrial services and make available upon request to members of the public on its website.

Defendant’s will be entitled to representation by counsel at any point where conditional release, bail, detention, or release from detention is being considered.

Key Components

Pre-Trial Services (PTSA)
Counties must have PTSAs in-house or on contract
PTSAs must be OCA certified and reviewed
PTSAs area an option for monitoring defendants at liberty
Court appearance reminders are mandated

Least Restrictive Non-Monetary Conditions (LRNMC)
LRNMCs may include any “condition reasonable under the circumstances,” and specifically may include restrictions on travel related to flight from jurisdiction, restrictions on weapons possession, PTSA monitoring, and, where applicable, electronic monitoring.
Electronic Monitoring: Only available for felonies, DV misdemeanors, Article. 130 offenses, misdemeanors where the defendant has prior Violent Felony Override in the past 4 years and “530.60(2)(b) scenarios.”

Appearance Tickets
Required on Misdemeanors & Class E Felonies
Stationhouse bail is repealed entirely
Returnable ASAP (20-day outside limit), unless diversion
AT Exceptions: open warrant; FTAs within 2 years
OP or DMV restriction; Art. 130 or DV offense; Escape 3rd
Bail Jumping 2 nd ; need court assistance with a medical issue

Presumptions and Process
In every case, a court shall ROR unless the court makes “individualized determination” of flight risk. A court may progress to a higher level of securing order only when such a finding has been made, with its explanation on the record or in writing.
In every case, the court must utilize the least restrictive terms to ensure a defendant’s return to court. A bail review may be launched on grounds the court did not use the least restrictive means.

Summary of Bail Reform, Courtesy of Nassau County District Attorney’s Office
Written by Jed Painter, Counsel to the DA
(Painter, DANC)

Bail Review

According to Jed Painter, Council to the Nassau County District Attorney, “The law eliminates three existing considerations determining bail, including (1) the defendant’s family ties and length of residence in the community; (2) the weight of evidence against the defendant; (3) the sentence that may be imposed upon conviction. These are no longer to be considered. In various places of the revised statute, it is noted that the purpose of any securing order is solely to ensure a defendant’s return to court.” (Painter, DANC).

At the same time, superior court reviews of local criminal court bail determinations will be expanded to allow an enumerated standard of review where the lower court “has set a securing order of release under non-monetary conditions which are more restrictive than necessary to reasonably assure the defendant’s return to court,” (CPL 530.20). Additionally, as a court must always use the least restrictive terms to ensure a defendant’s return and must always explain its determination on the record or in writing, there will be a record for any superior court review. (Painter, DANC).

Finally, under any conditions of release, courts are encouraged to consider a “lessening of conditions” to a less burdensome form as the case progresses “based on the defendants compliance with the conditions of release.” Additional conditions may be imposed on the record or in writing only after notice and a hearing. All conditions of release must be in writing in an “individualized written document” and explained “in plain language and a manner sufficiently clear and specific.” (Painter, DANC).

*Promoting Bail Alternatives**

A judge must provide three different mechanisms, for a list of alternatives, for a defendant to post bail. Among those three, they must include an unsecured or partially secured surety bond. (Painter, DANC).

* The authorized alternatives of bail include cash bail, an insurance company bail bond, a secured surety bond, a secured appearance bond, a partially secured surety bond, a partially secured appearance bond, an unsecured surety bond, an unsecured appearance bond, and a credit card or similar device.

Discouraging Bench Warrants

Courts may no longer issue bench warrants immediately, but must instead delay the issuance of a bench warrant for a period of 48 hours after notice is provided to the defendant or defense counsel.

Exceptions: A new arrest or production of relevant, credible evidence demonstrating the failure to appear was willful. (Painter, DANC).





Additional Criminal Justice Reforms Included in the Adopted Budget

In addition to reshaping bail and pretrial detention services, the enacted budget includes additional proposals.

Criminal Trial Discovery²

Criminal discovery is the process that governs when, how, and what information the District Attorney's (DA) Office must share with the criminal accused and their counsel. The enacted 2019-20 state budget requires prosecutors and the police to share more information, and more quickly, with the defense before a trial takes place. This includes disclosure of evidence and information favorable to the defense; intended exhibits; expert opinion evidence; witnesses' criminal history information; and search warrant information will be made available to defendants in a timely and consistent manner. The law provides prosecutors the ability to petition a court for a protective order, shielding identifying information when necessary to ensure the safety of those witnesses.

Under the new law, prosecutors must perform "automatic" discovery obligations no later than fifteen days after the defendant arraignment on an indictment, superior court information, prosecutor's information, and misdemeanor complaint or felony complaint. "Automatic discovery" means "all items and information that relate to the subject matter of the case and are in the possession, custody, or control of the prosecution." This includes material in possession of the police. The prosecutor must disclose this material "as soon as practicable" within the 15 day window.

The prosecution must disclose statements of the defendant to any defendant who has been arraigned in a local criminal court upon a currently undisposed felony complaint charging an offense which is the subject of a prospective or pending grand jury proceeding no later than 48 hours before the time scheduled for the defendant to testify at a grand jury proceeding.

The prosecutors must disclose the information expeditiously to the defendant upon its receipt and shall not delay if it is obtained earlier than the time period for disclosure in subdivision one of CPL 245.10.

Sanctions for non-compliance of discovery can now range from preclusion of the evidence up to dismissal of charge.

² Part LLL of the Revenue Bill



Speedy Trial Access³

Affording the criminally-accused a speedy trial is a constitutional right. In New York, the DA must be ready for trial within six months of the arraignment for a felony, within ninety days when the case is a Class A misdemeanor and within sixty days for a Class B misdemeanor. The difference in time allotted to the DA is in recognition that higher level charges may involve more witnesses and preparation. If the DA fails to declare they are ready for trial on such deadlines, the charges must be dropped. However, delays not caused by the DA and/or agreed to by defense counsel can allow for these speedy trial deadlines to be extended.

This legislation will obligate courts to take a more proactive role in actively advising litigants regarding how time will be charged and will not take at face value an assertion that the prosecutor is ready to proceed with trial. The prosecutor must declare readiness and the defense must be afforded opportunity to be heard on the record to affirm disclosure requirements have been met. The legislation outlines that the court must ask the DA for “actual readiness” for trial. If the court determines that the district attorney is not ready, the statement of readiness is not valid.

The effective date for this legislation is January 1, 2020.

Transforming Civil Asset Forfeiture⁴

The enacted budget limits asset forfeiture proceedings to cases that have reached conviction. It also expands reporting requirements for local law enforcement and district attorneys. New York’s current reporting procedure only requires these groups to report the total value of assets seized and the distribution of those assets. The State Division of Criminal Justice Services will expand reporting requirements to include additional information, such as demographic and geographic data, to better understand how civil asset forfeiture is used in NYS. Once a more comprehensive data set is created, New York will then evaluate the asset forfeiture systems and make changes to fix any identified issues.

The new legislation will take effect 180 days after it shall have become law and shall only apply to crimes which were committed on or after such date.

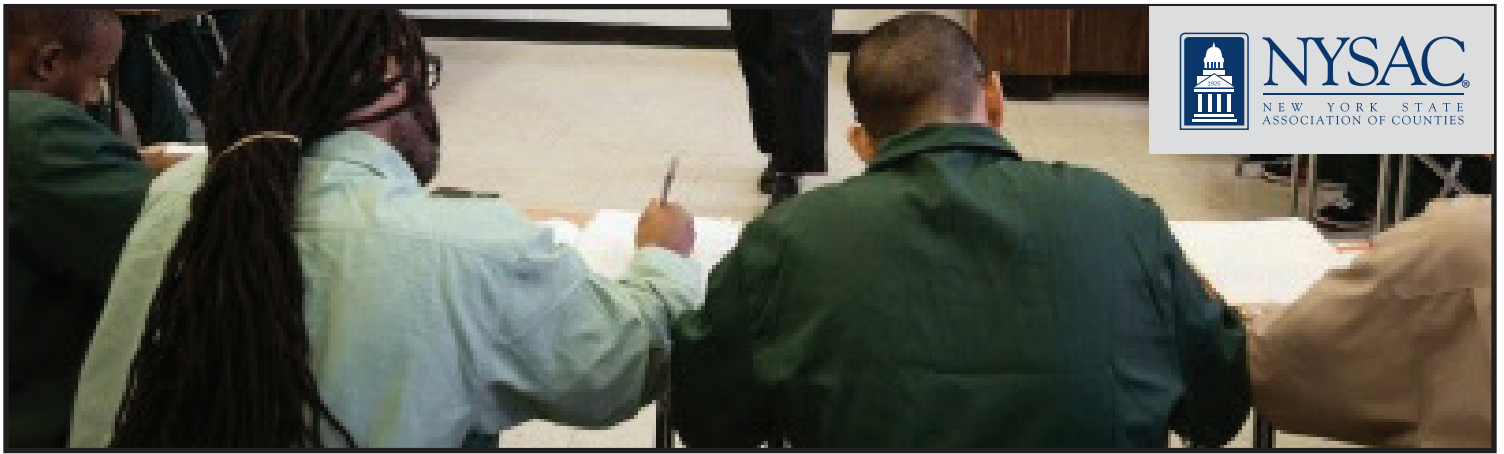
Improving Re-entry Process⁵

Finally, the budget also removes outdated statutory bans on occupational licensing for professionals outside law enforcement, and instead, applicants will be assessed on an individual basis.

³ Part KKK of the Revenue Bill

⁴ Part PP of the PPGG Bill

⁵ Part II of the PPGG Bill



The mandatory suspension of driver's licenses following a drug conviction will also be removed to allow people to travel to work and attend drug treatment, if the crimes did not involve driving.

Prohibiting Distribution of Mugshots

This legislation also prohibits disclosure of mugshots and arrest information, and allows for increased probability of parole for incarcerated individuals over the age of 55 who have incapacitating medical conditions exacerbated by age.

The State Budget amends New York's Public Officer's Law 89(2)(b), which is the Freedom of Information Laws (FOIL) section that governs and lists what is to be considered "an unwarranted invasion of personal privacy..." The State budget adds language regarding arrest or booking photographs. These photographs are commonly taken by arresting agencies (State and local police/Sheriff) as well as the booking agency (Sheriff and/State prison). Prior to this State Budget arrest/booking photographs were considered subject to FOIL laws and therefore, typically, available to the public upon request or proactively distributed to the public by the arresting or booking agency.

The new legislation amends FOIL law by adding the following: "...disclosure of law enforcement arrest or booking photographs of an individual, unless public release of such photographs will serve a specific law enforcement purpose and disclosure is not precluded by any state or federal laws." Opinion/Guidance from the State's Committee on Open Government is expected in the near future regarding this change in the law.

NYSAC Bail and Criminal Justice Reform Taskforce

In response to the new law, NYSAC created a Bail and Criminal Justice Reform task force to discuss implementation of this new statute. The mission of the Bail and Criminal Justice Reform task force is to help local leaders facilitate the implementation of the new law and provide leadership, guidance, assistance and track the fiscal impact so the counties can be fully reimbursed for the expanding impacted programs.

The vision of the task force is to develop a county task force that will influence the new state law that will be implemented at the county level.



The task force goals are to:

- Generate and collect concerns and recommendations from all the county departments that will be affected by the new law;
- Report concerns and recommendations to that state to most effectively implement this new law;
- Engage local government and the state to work together to make sure the intention of the law is fulfilled, while providing the county departments responsible for implementation maintain funding and assistance from the state;
- Provide a communications system and procedure to provide guidance to local governments on the implementation of Raising the Age; and
- Produce a model that can assist all the county departments that will be affected by the implementation of the new law.

Taskforce members represent the county departments most directly affected by the law, and include:

- Bob Iusi, Warren County Probation Director (Chair)
- Ruth Doyle, St. Lawrence County Administrator
- Mark Scimone, Madison County Administrator
- Scott Samuelson, Sullivan Co. Legislator & Incoming NYSAC President
- Gene Funicelli, Putnam County Probation Director
- Steven Bayle, Saratoga County Probation Director & President of COPA
- Robert A. Durr, Onondaga County Attorney
- Tim Donaher, Monroe County Public Defender
- David Soares, Albany County District Attorney
- John Flynn, Erie County District Attorney
- Bob Carney, Schenectady County District Attorney
- David Hoover, Orange County District Attorney & President of DAASNY
- Jed Painter, Counsel to the District Attorney at Nassau County



- Victor Mallison, Director of Government Relations at Westchester County
- Jason Molino, Tompkins County Manager
- Craig Apple, Albany County Sheriff

The NYSAC Bail and Criminal Justice Reform Taskforce convened the first meeting on July 17th and has held a subsequent meeting on August 13th. The taskforce intends to meet monthly, or more frequently as needed. Taskforce members have begun collecting county budget impacts and have advised members of the statewide bail reform taskforce of modifications to the draft OCA pretrial checklist/survey.

NYSAC Recommendations & Policy Positions

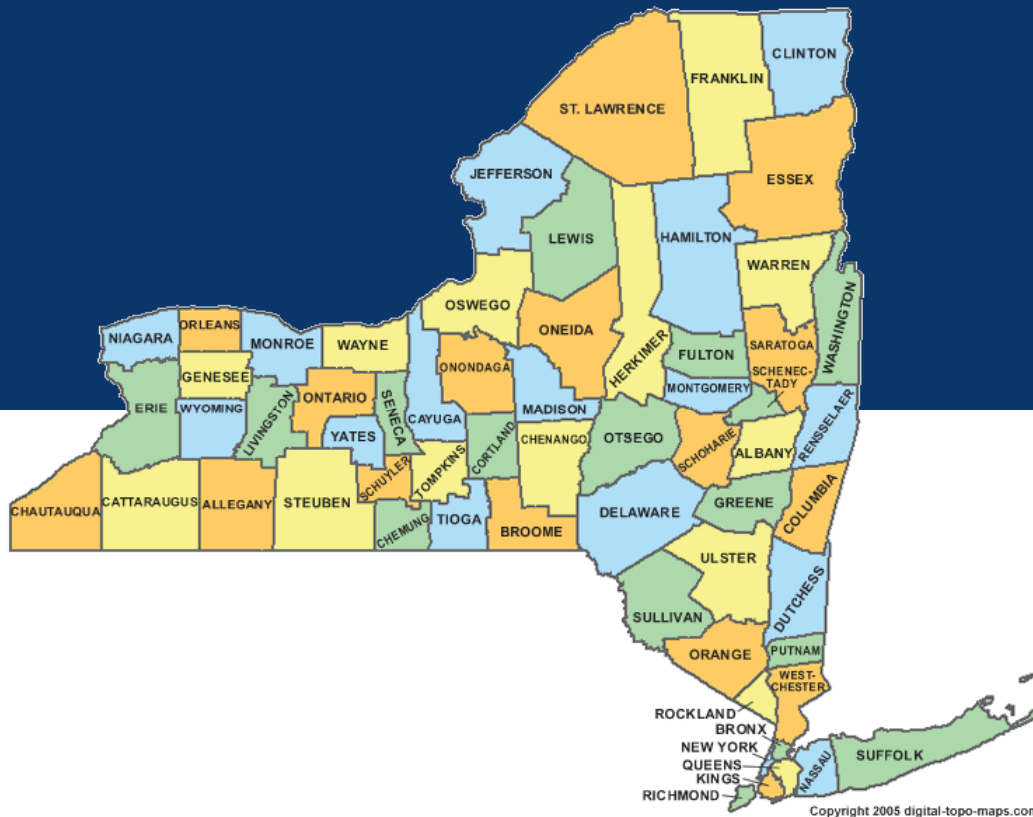
Counties support the reforms outlined in the 2019-20 Adopted Budget. However, there will be increased costs to County Sheriffs, Probation Departments, and District Attorney offices. These added costs should be considered and accounted for by the state.

In addition, the State Commission on Corrections should revise the minimum staffing requirement for each local correctional facility as set forth in 9 CRR-NY 7041.2 NY-CRR upon implementation of this legislation to adjust for expected reductions in local jail census. Otherwise, counties will not see a reduction in county jail costs.

NYSAC urges the Governor and State Legislature to create a taskforce to understand the true costs of implementing these criminal justice reforms. This taskforce must work to determine the full impact to the criminal justice system, and recommend appropriate state funding support to assist counties with continued effective implementation.

Attribution

A special thank you to members of the District Attorney Association of New York, especially Jed Painter and the Nassau County District Attorney's Office. Their work and knowledgebase on this issue was essential to providing these needed facts



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