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## MEMORANDUM

**TO:** NYSCOPBA Executive Board  
**FROM:** Lippes Mathias Wexler Friedman LLP *KMT*  
**DATE:** January 17, 2018  
**SUBJECT:** Executive Budget Proposal 2018-19

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On Tuesday, January 16, 2018, Governor Cuomo delivered his proposed Executive Budget for State Fiscal Year ("SFY") 2018-19.

As you know, the Governor's proposed spending plan for the next fiscal year contains both agency appropriation bills which contain specific financial allocations for the various State agencies, commissions and departments, and Article VII proposals, which constitute the necessary statutory changes that must be implemented for the Governor's proposed spending plan to take effect.

On behalf of NYSCOPBA, we have conducted a preliminary review of the entire Executive Budget proposal for SFY 2018-19 and have provided a brief summary below for your review and reference. We will continue to review the Executive Budget proposal in the next few weeks and provide additional details as necessary. If you have any questions or comments about any information contained within this memorandum, as always, please feel free to contact us.

### New York State Financial Plan

Governor Cuomo proposes to spend \$99.98 billion in SFY 2018-19 on a State Operating Funds basis. This represents an increase of \$1.85 billion or 1.9% from the \$98.13 billion now projected to be spent in the current fiscal year. On an All Governmental Funds basis (which includes Capital Projects and funding from the federal government), Disbursements are projected to total \$168.19 billion, up \$3.7 billion or 2.3% from the current fiscal year projection.

### Agency Appropriations

**DOCCS:** Of the \$99.98 billion mentioned above, \$2.61 billion is allocated to the Department of Corrections and Community Supervision ("DOCCS"). This represents

a decrease of \$0.012 billion or 0.5% from the \$2.62 billion projected to be spent in the current fiscal year.

As you know, there is often a difference between a Department's legal authority to spend (defined as an Appropriation) and the amount the Division of the Budget ("DOB") anticipates it will actually spend in cash during a given period. Regrettably, DOB does not provide the same programmatic breakdown of cash disbursements for DOCCS or other Departments as it does for Appropriations. So, to get at the most important DOCCS program (Supervision of Inmates), we must rely on the breakdown of Appropriations provided on the DOB web site.

On an All Funds basis, the Governor is proposing a DOCCS Appropriation for 2018-19 of \$3.295 billion.

Of this amount, \$2.839 billion or 86% was for State Operations. Of this amount, \$1.507 billion or 53% is allocated for the Supervision of Inmates program. This represents a decrease of \$0.013 billion or 0.9% from the current fiscal year. Of the \$1.507 billion, \$1.487 billion or 99% goes toward salaries and other wages and \$0.02 billion goes toward supplies, travel, equipment and contractual services.

DOB projects DOCCS will employ 29,254 Full-Time Equivalent employees at the end of the current fiscal year and is projected to shrink by 71 to 29,183 at the end of SFY 2018-19. Of this amount, 19,330 or 66% of the total are dedicated to the Supervision of Inmates program.

The narrative on the DOCCS Appropriation further states "The Executive Budget recommends a workforce of 29,183 FTEs for the Department, a decrease of 71 FTEs from FY 2018. This workforce level reflects a decrease related to the closure of three special housing units, offset by an increase for the implementation of programming related to the NYCLU agreement, and additional Parole Board members."

The prison population is projected to remain at its current level (50,300) throughout all the years of the Financial Plan (through SFY 2021-22).

**OMH:** Of the \$99.98 billion in the State Operating Funds Financial Plan for SFY 2018-19, \$2.626 billion is allocated to the Office of Mental Health ("OMH"). This represents a decrease of \$0.564 billion or 17.7% from the \$3.190 billion projected to be spent in the current fiscal year. General State Charges, estimated at \$655 million in SFY 2017-18, is zeroed out in SFY 2018-19. In all likelihood, this is just a budgeting change and does not reflect an elimination of General State Charges for OMH employees.

On an All Funds basis, the Governor is proposing an OMH Appropriation for 2018-19 of \$4.246 billion.

Of this amount, \$2.284 billion or 54% is for State Operations. Of this amount, \$0.329 billion or 14% is allocated for the Forensic Services program. This represents no

change from the current fiscal year. Of the \$0.329 billion, \$0.195 billion or 59% goes toward salaries and other wages and \$0.134 billion goes toward supplies, travel, equipment, contractual services and General State Charges.

DOB projects OMH will employ 13,903 Full-Time Equivalent employees at the end of the current fiscal year and is projected to shrink by 275 to 13,628 at the end of SFY 2018-19. Of this amount, 2,573 or 19% of the total are dedicated to the Forensic Services program. Total employment in this program is not projected to change from the March 31, 2018 estimate.

**OPWDD:** Of the \$99.98 billion in the State Operating Funds Financial Plan for SFY 2018-19, \$1.787 billion is allocated to the Office for People with Developmental Disabilities (“OPWDD”). This represents a decrease of \$1.1 billion or 38.1% from the \$2.888 billion projected to be spent in the current fiscal year. General State Charges, estimated at \$696 million in SFY 2017-18, is zeroed out in SFY 2018-19. In all likelihood, this is just a budgeting change and does not reflect an elimination of General State Charges for OMH employees.

On an All Funds basis, the Governor is proposing an OPWDD Appropriation for 2018-19 of \$4.698 billion.

Of this amount, \$2.198 billion or 47% is for State Operations. Of this amount, \$0.631 billion or 29% is allocated for the Institutional Services program. This represents an increase of \$0.018 billion or 2.9% from the current fiscal year. Of the \$0.631 billion, \$0.311 billion or 49% goes toward salaries and other wages and \$0.316 billion goes toward supplies, travel, equipment, contractual services and General State Charges.

DOB projects OPWDD will employ 18,612 Full-Time Equivalent employees at the end of the current fiscal year and is projected to shrink by 32 to 18,580 at the end of SFY 2018-19. Of this amount, 2,906 or 16% of the total are dedicated to the Institutional Services program. Total employment in this program is not projected to change from the level projected on March 31, 2018.

### **Article VII Proposals**

As you know, in addition to proposing the funding levels for State agency spending in the form of appropriation bills as part of his Executive Budget proposal, the Governor also proposes various statutory changes that are necessary to implement his spending plan. These changes to statute are found in the plethora of Article VII budget bills that are introduced each budget cycle. For your review and reference, provided below are highlights of various Article VII proposals and, in some instances, notable exclusions.

**Prison Closures:** The Governor has refrained from proposing any prison closures as part of his Executive Budget plan. We will review his constitutionally permitted 30-day amendments in the coming weeks to ensure no closures are proposed.

**Death Gamble Legislation:** As we have indicated during recent discussions with the Executive Board and at recent Executive Board meetings, we have approached leadership in both the Senate and Assembly and requested inclusion of our “Death Gamble” legislation as part of the legislative budget resolutions that will be introduced in each House of the Legislature during the next several weeks. It is our hope that, with the assistance of the Legislature, our “Death Gamble” proposal will become a part of the enacted 2018-19 Executive Budget.

**SHU Bed Reduction:** As part of his Executive Budget proposal relating to public safety, the Governor references his decision to implement a reduction of SHU beds throughout the correctional system. According to the Governor, “New York has gone above and beyond the parameters of the settlement reached between the New York Civil Liberties Union and the New York State Department of Corrections and Community Supervision by advancing regulations providing stricter oversight of the use of solitary confinement.” According to the Governor, the NYCLU settlement, coupled with the State’s implementation of stricter regulations, has resulted in a 29 percent reduction in the number of inmates serving sanctions in a Special Housing Unit.

**Raise the Age of Juvenile Jurisdiction:** As you know, in October of 2018, the Governor’s “Raise the Age” initiative will begin its implementation with NYSCOPBA’s correctional officer members providing care, custody and control of the juvenile inmate population. As part of the new law’s mandates, all employees of the adolescent offender facilities being established will be subject to random drug testing. On behalf of NYSCOPBA, we proposed language to the Senate and Assembly, as well as to the Governor’s office, that would utilize the reasonable suspicion standard for drug testing currently applicable to other Departmental employees. Despite our providing a proposed statutory amendment to the Executive Chamber, the Governor failed to include this proposal within the context of his Executive Budget proposal. We will continue to advocate for this change with both the Senate and Assembly.

**FOIL Reform:** Once again, the Governor is proposing to reform the State’s Freedom of Information Law (“FOIL”) as part of his Executive Budget proposal for SFY 2018-19. As was the case last year, the vast majority of the proposed changes would only impact elected officials. However, once again, the Governor is proposing a change that would impact all collective bargaining units. Specifically, the Governor is proposing to make the proposed terms of a collective bargaining agreement available for public review. As we did last year, we will advocate to the Legislature for the removal of this language from the final version of the Executive Budget for SFY 2018-19.

**Medicare Part B Premium Reimbursement:** There are two initiatives contained in the Executive Budget proposal that would impact the amount of Medicare reimbursement for retirees. As a condition of participation in the New York State Health Insurance Plan (“NYSHIP”), both active employees and retirees are required to apply for Medicare benefits upon attaining eligibility. Currently, Medicare eligible

retirees and active employees participating in NYSHIP are reimbursed for the full cost of any Medicare Part B premiums they may be charged, including any additional premiums paid by higher income retirees.

The proposals contained in the Governor's fiscal plan for 2018-19 limit the amount of reimbursement of Medicare Part B premiums in two ways. First, the dollar amount for reimbursement would be set at a standard rate of \$134 per month, effective April 1, 2018. Currently, the amount of the premium paid under Medicare Part B is between \$109 and \$134 per month. The proposal ensures the standard premium rate that New York State would reimburse will be no higher than \$134 per month. Should the Medicare Part B premiums be increased by the federal government in the future, the amount of the reimbursement by New York State (above the \$134 per month) would be subject to the budget process. Second, Medicare eligible individuals classified by the federal government as "higher income" beneficiaries currently pay an additional premium referred to as IRMAA premiums, which under existing New York law are reimbursed by the State. The second part of this proposal would effectively cease reimbursement of IRMAA premiums for higher income retirees. Current IRMAA premiums apply (at various amounts) to individuals whose adjusted gross income is above \$85,000.

**Merit Time Expansion/LCTA Proposal:** As part of his Executive Budget proposal, the Governor is proposing to expand merit time eligibility to inmates who successfully complete two consecutive semesters of college programming with no less than six college credits per semester.

In addition, the Governor is proposing to add four significant program accomplishments that would allow an inmate to qualify for the six month limited credit time allowance ("LCTA") program. Specifically, the following inmate accomplishments would be added:

- Complete a cosmetology training program, earn a license and then participate in the program for no less than 18 months;
- Complete a barbering training program, earn a license and then participate in the program for a period of no less than 18 months;
- Successfully participate in a computer operator, general business or computer information and technology and support vocational program for a minimum of two years and earn a Microsoft Office specialist certification from Microsoft Word, Excel, or Power Point, following the administration of an exam; or
- Successfully complete the Thinking for a Change cognitive behavioral treatment program within phase 2 of transitional services and then participate in the work-release program for a period of at least 18 months.

In addition to completing one of these four programs, the inmate must not have filed any frivolous lawsuits and must also maintain a positive disciplinary record.

**Temporary Release Programs:** The Governor is proposing legislation to authorize DOCCS to pilot two temporary release programs. Specifically, DOCCS would be

authorized to pilot a college education leave program and a separate work release program. Each pilot program would be limited to no more than 50 inmates at any one time. Inmates would be permitted to leave the premises of their respective correctional facility to participate in these programs. Only inmates eligible for parole or conditional release within two years of enrollment in the program would be eligible for participation. In addition, inmates who have committed certain violent crimes or have significant disciplinary records would be prohibited from participating in either program.

**Geriatric Parole Initiative:** The Governor is proposing legislation to authorize geriatric parole for certain inmates. To qualify for geriatric parole, an inmate must be at least 55 years of age and suffering from a chronic or serious condition, disease, syndrome or infirmity that is exacerbated by age and has rendered the inmate incapable of providing self-care within a correctional facility setting. Inmates serving a sentence due to certain murder charges or those serving a sentence of life without parole would be ineligible for the program, irrespective of their physical health.

**Jail-Based Restoration to Competency Proposal:** The Governor is once again proposing legislation to authorize the establishment of jail-based restoration to competency programs for felony defendants within mental health units operated by local jails and State prisons, subject to the consent of the jail or prison. Currently, felony-level defendants may be restored to competency in an OMH psychiatric center, a psychiatric unit within an Article 28 hospital, or on an outpatient basis within the community. Implementation of this proposal could potentially reduce the number of patients residing within the State's forensic psychiatric institutions. The Governor introduced a similar proposal last budget cycle. However, the Legislature failed to include this proposal within the enacted version of the Executive Budget for SFY 2017-18.

**Community Reinvestment for State Psychiatric Center Bed Closures:** The Governor is proposing legislation to extend for three years the current law requiring OMH to reinvest \$110,000 per inpatient bed closure for community mental health services.

We will continue to review the Executive Budget documents – appropriation bills and Article VII bills – and will provide further clarification regarding some of the proposals referenced herein that will require further explanation by the second floor and/or DOB. We will also monitor the ongoing negotiations between the Executive and the Legislature and will keep the Executive Board of NYSCOPBA fully informed of any significant developments. In the meantime, if you have any questions please feel free to contact us.