



This Week in New York

Covering New York State and City Government

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“Every record has been destroyed or falsified, every book rewritten, every picture has been repainted, every statue and street building has been renamed, every date has been altered. And the process is continuing day by day and minute by minute. History has stopped. Nothing exists except an endless present in which the Party is always right.”
-George Orwell, 1984-

Greetings of the Season



In the News – New York State

What’s on Your End of Session List?

APRIL						
S	M	T	W	T	F	S
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

MAY						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

JUNE						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

When the State Legislature returns to Albany on April 25th, there will be 19 legislative days until the session meets its scheduled end on June 2nd. Issues that fell off the budget negotiating table--Clean Slate and Good Cause--may see new life. Laws that are due to sunset--Mayoral Control and 421-a--may find their extensions. And, of course, there is the question of who (if anyone) gets a timely fiscal note and who gets the coveted home rule message before the sun goes down on the 2022 session.



FY2023 Budget Criminal Justice Initiatives

The negotiations surrounding the recently enacted criminal justice reforms garnered the lion share of the FY2023 New York State budget headlines. From the “release” of the Executive Chamber’s internal criminal justice wish list on March 17th to the release of Part UUU of the ELFA bill late Friday afternoon, headlines discussed the status of bail reform, discovery and Raise the Age amendments, Kendra’s Law extension and expansion, and the much-needed balance between justice and public safety.

"By putting an end to the trafficking of illegal guns, protecting victims of hate crimes and domestic violence, stopping the cycle of repeat offenders, and investing in our mental health infrastructure, we are proving that justice and public safety are not mutually exclusive," Governor Kathy Hochul said upon passage of the budget.

To follow is a discussion, from the Executive Chamber, of the provisions of the criminal legislation:

Clarify and Expand the Factors That Judges Must Consider When Setting Bail

The FY2023 Enacted Budget expands the list of factors that judges must consider when setting bail, adding: (1) history of gun use or possession (which currently applies only in domestic violence cases); (2) any previous violation of an order of protection (which currently applies only in domestic violence cases); and (3) whether the charge is alleged to have caused serious harm to an individual or individuals. In addition, there will be new reporting requirements related to bail determinations made by judges, and how they relate to recommendations made by prosecutors.

Expand Arrest-Eligibility and Bail-Eligibility for Repeat Offenses and Hate Crimes

The FY2023 Enacted Budget will allow police to make arrests (not just issue desk appearance tickets) for all repeat offenses currently covered by the bail law — repeat felonies and class A misdemeanors involving harm to a person or property will now be both arrest-eligible and bail-eligible. Repeat offenses involving theft of property will also now be arrest-eligible and bail-eligible, with limited exceptions for crimes of poverty.

In addition, the "Desk Appearance Ticket loophole" will be closed, so that these provisions of law will apply to repeat offenses even if there has not yet been an arraignment for the first offense. All hate crimes that are not currently arrest-eligible will become arrest-eligible if the individual is eighteen or older.

Expand Bail Eligibility for Gun Offenses

The FY2023 Enacted Budget allows judges to set bail for all three felony gun offenses that are not currently bail-eligible: criminal sale of a firearm to a minor (265.16) and criminal possession of a defaced firearm (265.02(3)) will be fully bail-eligible, while criminal possession of an unloaded gun (265.01(b)) will become bail-eligible (and arrest-eligible) on a second offense. In addition, criminal possession of a gun on school grounds (265.01(a)) (commonly applied to unloaded guns), which is already bail-eligible but not arrest-eligible, will become arrest-eligible if the individual is eighteen years old or older.

Ease Prosecution of Gun Trafficking

The FY2023 Enacted Budget makes it easier to prosecute gun trafficking, which will facilitate the work of the Governor's newly established inter- and intra-state gun tracing consortium. The illegal sale of two or more guns within a year will now constitute a C felony (down from five guns), and the illegal sale of three or more guns within a year will now constitute a B felony (down from ten guns). In addition, possession of three or more guns (down from five) will constitute a presumption of the intent to sell, making it easier to bring forth these charges.

Revise the Discovery Statute

The FY2023 Enacted Budget ensures that cases will not be automatically dismissed when prosecutors make belated discovery disclosures in good faith. Judges will assess the extent of the prejudice to the defendant created by any belated disclosure, and determine what, if any, sanctions are appropriate. In addition, automatic discovery will no longer apply to traffic infractions and other administrative tickets.

Close the "Raise the Age Loophole" and Provide Program Referrals to Juveniles on Release

The FY2023 Enacted Budget closes the "Raise the Age loophole" and provides Family Court with jurisdiction over cases when 16- and 17-year-olds are charged with an offense but not arraigned until they are 18; currently these cases are dismissed due to lack of jurisdiction. Courts will also be required to provide referrals to programs and services to juveniles who are being released.

Extend and Revise Kendra's Law

The FY2023 Enacted Budget extends Kendra's Law through 2027, and makes the following revisions: These amendments will make "assisted outpatient treatment" (AOT) orders function more effectively, remove procedural bars, and increase coordination between service providers. To better enable AOT hearings, physicians will now be able to testify virtually. Courts will be able to issue AOT orders for individuals whose symptoms have worsened. And hospitals will now be required to share patient information with the mental health professionals responsible for supervising AOT orders. Additionally, the state will conduct an independent study on mental health treatment outcomes for individuals on AOT compared to individuals receiving voluntary services by June 30, 2026.

Allows Judges to Require Mental Health Evaluations as a Condition of Pretrial Release

The FY2023 Enacted Budget allows courts to order psychiatric assessment for individuals who appear, by clear and convincing evidence, to be mentally ill such that if left unattended their conduct may result in harm to themselves or others. Upon assessment and determination by a physician, individuals may be subject to involuntary commitment in accordance with the mental hygiene law. Additionally, judges will have access to assessment summaries to ensure compliance with any conditions of release, including essential treatment and services.

The Budget will also include \$227 million to fund initiatives that will strengthen the gun violence prevention efforts of law enforcement and community-based organizations. These efforts include providing \$13.1 million to expand the use of Community Stabilization Units, providing \$18 million in direct support to local law enforcement for gun violence prevention, allocating \$20 million to respond to regional needs in the aftermath of gun violence, and \$3 million for the Office of Gun Violence Prevention.

Comptroller DiNapoli: State Needs To Do More for Growing Mental Health Crisis in Schools

Audit Finds Many NY School Districts Lack Sufficient Staff for Mental Health Services and Adequate Oversight of Mental Health Education

Too many of New York school districts' mental health teams are understaffed, with too few available services and inconsistent and limited oversight of mental health education for students, [an audit](#) released this week by New York State Comptroller Thomas DiNapoli found.

"The upheaval caused by the COVID-19 pandemic created a crisis for many students in New York, but not enough is being done to make sure they are getting the information and support they need," Comptroller DiNapoli said. "The State Education Department should work with state and local entities to ensure resources to address the problem are available and prioritize mental health instruction and outreach among school districts so students and staff can recognize warning signs of distress and know how to get help."

According to the American Psychological Association, over 80% of teens experienced more intense school-related stress due to COVID-19. The Centers for Disease Control and Prevention reported that in 2020, mental health emergency room visits rose 24% among 5- to 11-year-olds and 31% among 12- to 17-year-olds. In December 2021, the U.S. Surgeon General issued a warning of an [urgent mental health crisis](#) among America's youth.

Prior to the pandemic, the State Education Department (SED) published guidance and resources for mental health education on its website and, during the pandemic, gave school districts further instruction about the importance of checking on students' mental health and promoting the availability of resources for those in distress.

But as the Comptroller DiNapoli's audit shows, most of the state's 686 districts outside of New York City entered the pandemic with mental health teams that were far short of nationally recommended staff-to-student ratios:

- 19 school districts reported having no mental health professional staff at all;
- 653 (95%) did not meet the recommended ratio of one school social worker for every 250 students;
- 450 districts (66%) did not meet the recommended ratio of one school counselor for every 250 students; and
- 344 (50%) did not meet the recommended ratio of one school psychologist for every 500 students.

The audit notes that while state law does not require school districts to provide in-school mental health services to most students, schools are often considered the natural and best setting for comprehensive prevention and early intervention services, and that the need for these services will likely increase as COVID-19-related and other life stresses continue to plague students.

Without some level of oversight, the Comptroller asserted, SED cannot be assured that students are receiving mental health education or that the instruction achieves the intent of the law.

Comptroller DiNapoli recommended SED:

- Explore partnering with state and local entities to determine whether school districts should maintain certain staffing levels for mental health professionals; and
- Develop a mechanism to determine if school districts are providing mental health education as required by law.

In its audit response, SED concurred with the Comptroller's recommendations.

In the News – New York City

NYC Comptroller: NYC Department of Education Slow to Spend Federal COVID Stimulus Funds

New York City Comptroller Brad Lander this week [released a spending update](#), which found that the NYC Department of Education (DOE) has been slow to spend federal COVID stimulus funds allocated for FY 2022. While reopening spending was on track, nine months into the fiscal year, DOE has spent less than 25% of funds earmarked for academic and instructional support, and social and emotional wellbeing.

DOE received \$7 billion in total federal stimulus money through the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) and the American Rescue Plan Act (ARPA).

The Comptroller's analysis compares DOE's October 2021 spending plan to its actual spending from the start of the fiscal year on July 1, 2021 through the first week of March 2022. To date, DOE has spent less than 50% of the funds allocated for FY 2022, and is not on track to spend the full amount allocated in the three months remaining in the fiscal year. According to the data, three-quarters of the way through the fiscal year, DOE has spent:

- 65% of \$1.3 billion total for re-opening healthy and safe schools (including Summer Rising for the Summer 2021 year).
- 22% of the planned \$984 million in Academic and Instructional Support, such as early literacy, college and career prep, and special education.
- 24% of the \$274 million allotted for social-emotional wellness programs, including 5% of the \$12 million for restorative justice programs.

The Comptroller's Office discussed the underspending with DOE, who provided the data and additional context regarding spending challenges, including pandemic related delays, hiring difficulties, and supply chain issues as well as long contracting and procurement processes.

The DOE will be able to roll over unspent funds into FY 2023-2024, funding that could bolster current initiatives or could be redirected to other priorities.

Briefs

NY Issues First Licenses to 52 Adult-Use Cannabis Cultivators

The Cannabis Control Board today approved the applications of 52 cultivators for adult use cannabis in New York State. As outlined in legislation approved by the Governor earlier this year (Chapter 18 of the Laws of 2022), all of the approved cultivators are currently growing hemp for the State's programs.

The cannabis grown by cultivators awarded licenses today will be the first products sold at legal cannabis retail stores later this year, according to the Board.

Pension Reform for Tier 5 & 6 Included in State Budget

New York's FY2023 budget included reform of the pension laws approved in 2010 and 2012 for certain Tier 5 and Tier 6 employees. Specifically, the budget reduced the vesting time required, as well as reduced overtime costs.

Previously, new state and local government workers hired under new Tiers 5 and 6 were required to work 10 years to be vested in the pension system. Under the enacted budget, vesting is reduced to five years of service.

In addition, the budget redefines annual wages to exclude overtime for Tier 6 workers for the next two years. Currently, Tier 6 members are required to make Basic Member Contributions (BMC) ranging from 3% to 6% depending on the members' applicable annual wages. Annual wages currently include overtime up to a certain limit.

Under the enacted FY2023 budget any pensionable earnings paid in addition to the annual base wages, including overtime and compensation earned for extracurricular activities, during the specified period would be excluded from annual wages used to calculate Tier 6 BMC rates.

The pension reform did not include uniformed members of the NYC workforce, including police, fire, corrections, and sanitation.

New York Schools to Begin Electric Bus Conversion

All school buses purchased in New York State after 2027 must run on electricity and all 50,000 diesel-fueled buses in the state must be replaced by electric vehicles by 2035, under provisions included in the recently enacted State Budget. The budget provides funding for charging infrastructure needed to power the transition, and extends lease terms to 12 years from five to help school districts finance the conversion.

New York's 2022-23 spending plan provides \$500 million in the \$4.2 Billion Clean Water, Clean Air, and Green Jobs Environmental Bond Act to support electric school buses and charging infrastructure. The Bond Act goes before New York voters in the November election. New York State Energy Research and Development Authority (NYSERDA) will provide technical assistance to school districts during the transition.

The law does include some flexibility. For example, it enables the state Education Department to delay implementation if the 2027 deadline cannot be met without unreasonable cost or parts from overseas. School districts can also apply for a one-time, two-year implementation waiver from the department.

NYC Mayor Adams Designates Juneteenth as a Paid City Holiday

Mayor Eric Adams this week designated Juneteenth (June 19th), considered the longest-running African American holiday, as a paid City holiday.

“Juneteenth is a time for reflection, assessment, and self-improvement,” Mayor Adams said. “People across the country of all races, nationalities, and religions unite on this day to truthfully acknowledge the stain of slavery and celebrate the countless contributions of Black Americans. It’s time for our city to finally do what’s right and officially designate Juneteenth as a city holiday. This decision is long overdue, which is why it will immediately take effect this year.”

Juneteenth marks the anniversary of the day federal troops arrived in Galveston, Texas in 1865 to announce that all enslaved people were free. Coming two and half years after President Abraham Lincoln issued the Emancipation Proclamation, it is recognized as the effective end of slavery in the United States. On June 17, 2021, Juneteenth was officially designated as a federal holiday by President Joe Biden. Gov. Andrew Cuomo signed legislation in October 2020 officially marking Juneteenth as a state holiday.

This year City employees will have a paid holiday on Monday, June 20th in honor of Juneteenth.

NYC Rent Guidelines Board Recommends Rent Increases

The Rent Guidelines Board today issued its [Price Indexing of Operating Costs Report](#), recommending increases ranging from 2.7 percent to 4.5 percent for one-year leases and 4.3 percent to 9 percent for two-year leases.

The projections are based upon three commensurate methods and take into account that the Price Index of Operating Costs (PIOC) for buildings that contain rent stabilized apartments is projected to increase 4.7% next year. It consists of seven cost components: taxes, labor costs, fuel, utilities, maintenance, administrative costs, and insurance costs.

According to the Board, “each of these formulas may be best thought of as a starting point for deliberations. The data presented in other Rent Guidelines Board annual research reports (e.g., the Income and Affordability Study and the Income and Expense Study) along with public testimony can be used in conjunction with these various commensurates to determine appropriate rent adjustments.”

Coming Up

New York State

No Scheduled Hearings

New York City

Monday, April 18th

Joint – Committee on Immigration, Health, Hospitals, and the Subcommittee on COVID Recovery and Resiliency, Remote Hearing – Virtual Room 1, 10 a.m.

Oversight – The Impact of the COVID-19 Pandemic on the Health of Immigrant New Yorkers.

Committee on Consumer and Worker Protection, Council Chambers – City Hall, 1 p.m.

Oversight – The Office of Nightlife and the State of the Nightlife Industry.

Tuesday, April 19th

Committee on Governmental Operations, Committee Room – City Hall, 10 a.m.

Oversight – New York City’s Civic Engagement Commission.

Joint - Committee on Women and Gender Equity, Civil Service and Labor & Economic Development,

Remote Hearing – Virtual Room 2, 10 a.m.

Oversight – Gender Diversity in the Trades.

Joint - Committee on Transportation and Infrastructure & Resiliency and Waterfronts, Remote

Hearing – Virtual Room 1, 10:30 a.m.

Oversight – Assessing New York City’s Infrastructure: Laying the Foundation for Federal Infrastructure Funding.

Committee on Land Use, Remote Hearing – Virtual Room 3, 3 p.m.

Wednesday, April 20th

Committee on Education, Remote Hearing – Virtual Room 2, 10:30 a.m.

Oversight – Foster Care Students in the DOE System.

Thursday, April 21st

City Council, Council Chambers – City Hall, 1:30 p.m.

Friday, April 22nd

Committee on Parks and Recreation, Remote Hearing – Virtual Room 1, 10 a.m.

Oversight – The Effect of COVID-19 on Park Equity.

“No man can be a good citizen unless he has a wage more than sufficient to cover the bare cost of living, and hours of labor short enough so after his day’s work is done he will have time and energy to bear his share in the management of the community, to help in carrying the general load.”

-Theodore Roosevelt-

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