

**THE
LEGAL AID
SOCIETY**



NDS



**The
Bronx
Defenders**

November 27, 2019

Hon. Andrew Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Hon. Andrea Stewart-Cousins
Democratic Leader, New York State Senate
188 State Street LOB - Room 907
Albany, NY 12247

Hon. Carl Heastie
Speaker, New York State Assembly
New York State Capitol Room 349
Albany, NY 12247

Dear Governor Cuomo, Senate Majority Leader Stewart-Cousins, and Assembly Speaker Heastie:

This past April, Albany passed long overdue reforms to New York's broken pretrial system – overhauling bail, criminal discovery, and speedy trial protections. These new laws will be implemented on January 1 and hold the promise of a more fair and just criminal legal system. These transformative changes will follow other advances already in effect, such as One Day to Protect New Yorkers, protections against employment and housing discrimination based on open ACDs, and the expedited closure of state prisons.

As public defenders serving New York City, we can report that stakeholders are working diligently together with the Mayor's Office to implement the new pre-trial laws to realize their full promise. While some prosecutors across the state are using taxpayer resources to mislead and spread baseless fear -- and even to promote tactics to subvert the new laws -- we are working to support local and statewide efforts to prepare for these changes, overwhelmingly supported by New Yorkers.

With the 2020 session only weeks away, we respectfully ask New York State to continue this progress and prioritize and pass critical and urgent reforms to other aspects of the system, including policing, due process, prison and jail conditions, and parole.

We request prompt action to enact the following legislation:

End Marijuana Prohibition and Promote Racial and Economic Justice

The Marijuana Regulation and Taxation Act (MRTA) – S.1527 (Krueger) / A.1617 (Peoples-Stokes)

This legislation ends broad-based marijuana prohibition and begins to meaningfully repair its harm, including by automatically expunging criminal records and directing investments to the communities most impacted by the War on Drugs. More information is available at www.smart-ny.com.

Make our Courts More Fair and Safe for All and Enhance Due Process Protections

Protect Our Courts Act – S.425 (Hoylman) / A.2176 (Solages)

Following an alarming and unprecedented 1700% increase in ICE arrests and attempted arrests in and around courthouses across the State, the concerted advocacy of the Immigrant Defense Project, public defenders, and others led to a ban of ICE arrests inside New York courthouses without judicial warrants. We are grateful for this decisive action. Immigrant New Yorkers, however, are still vulnerable to being abducted by ICE on their way into or out of courthouses. The Protect Our Courts Act would protect against this miscarriage of justice. More information can be found at <https://www.immigrantdefenseproject.org/ice-courts/>.

Ensure the Right to a Jury Trial for All - S.33 (Hoylman) / A.3462 (Lentol)

New York State grants a right to a jury trial for everyone facing misdemeanor charges, *except* those charged with a B misdemeanors and certain unclassified misdemeanors in New York City. This legislation would clarify that anyone charged with a misdemeanor in New York City is entitled to a trial in front of a jury of their peers, just as they would be if they were charged in any other part of New York State. The legislation should also ensure that all people eligible for Youthful Offender status are also entitled to a jury trial.

Preclude Introduction of Confessions Obtained by Deceptive Tactics (The “Exonerated 5 Bill”) - S.6806 (Myrie)

Our legal system should be based on basic principles of fairness and transparency. When accused people are under interrogation, however, our current law allows law enforcement to use deceptive practices and to do so in unrecorded interactions. This bill would require law enforcement to record interrogations and preclude the introduction at trial of confessions obtained through deceptive police tactics, including claiming the existence of evidence or testimony that does not exist.

Protect Young People

Increase Protections for Juveniles Interrogated by Police - S. 4980A (Bailey) / A. 6982 (Joyner)

Young people are far more vulnerable than adults to police coercion and more apt to falsely confess. Social science evidence suggests that *Miranda* warning are insufficient to protect young people’s 5th Amendment right against self-incrimination. This bill would require that young people under the age of 18 consult with an attorney before being subjected to custodial interrogation, ensuring that any waiver of rights under *Miranda* is genuinely knowing, voluntary, and intelligent. Violation of this requirement would result in suppression of the child’s statement at trial.

Expand Youthful Offender Protections

Even after the Raise the Age law passed in 2017, thousands of young people remain in the adult criminal legal system facing overly harsh outcomes, permanent records, and devastating so-called “collateral” consequences. It is imperative that the State improve opportunities for rehabilitation among our youth by strengthening and expanding Youthful Offender protections and creating a new “Young Adult” status that would increase the age of eligibility. Legislation is currently being drafted and we urge that you make enacting it a priority this session.

Improve Transparency and Accountability for Law Enforcement

The Safer NY Act: The STAT Act - A.05472 (Lentol) / S.1830 (Hoylman), Codifying Special Prosecutor - A.1601 (Perry) / S.2574 (Bailey), End Police Secrecy and Repeal 50-a - A.2513 (O’Donnell) / S.3695 (Bailey)

The crisis of police misconduct and systemic lack of consequences and accountability has gained national and even international attention in recent years. New Yorkers deserve the truth about the people policing their communities, but our current laws make that impossible. Laws like 50-a have routinely been used to shield police officers from being held accountable for misconduct. This package of legislation would increase transparency and accountability for police departments across the state. More information is available at <https://www.changethenypd.org/safer-ny>.

End Rogue DNA Databanks – S.6009 (Hoylman) / A.7818 (Wright)

New York’s Legislature struck a careful balance between genetic privacy and law enforcement needs when it authorized the State DNA index to store profiles from all people convicted of crimes in this State. Local governments – most notably New York City – are ignoring that careful balance by running their own, rogue DNA indexes, without any regulation, accountability, or oversight. Operating as a shadow DNA index, New York City’s databank contains profiles from children as young as 12, and innocent people from communities of color who were specifically targeted based on their race. The Legislature never intended for cities to run amok with DNA collection and storage. This bill clarifies the law to protect the State DNA index and end the other ones that have perpetuated genetic stop-and-frisk and eroded sacred privacy rights.

Shrink the Penal Law to Reduce Discriminatory Enforcement

Repeal Loitering for the Purposes of Prostitution - S.2253 (Hoylman) / A.654 (Paulin)

This legislation repeals section 240.37 of the Penal Law, relating to loitering for the purpose of engaging in a prostitution offense. In practice, this statute has been used by police to profile predominately women of color, particularly transgender women, for simply existing in public. The law currently allows police to interpret lawful behavior such as “repeatedly” waving at a person in a vehicle, wearing a mini skirt, or talking to people in the streets as cause to arrest for loitering for the purpose of prostitution.

Improve Conditions of Confinement

The H.A.L.T. Solitary Confinement Act – S.1623 (Sepúlveda) / A.2500 (Aubry)

According to a report by NYCLU, nearly there were nearly 40,000 solitary confinement sanctions in 2018, an *increase* over the prior year. The average sentence was 105 days -- many times longer than the threshold at which the United Nations defines it as torture, which is 15 days. Many people receive multiple sentences and remain in solitary for years and even decades. The Humane Alternatives to Long-Term (HALT) Solitary Confinement Act ends the torture of prolonged solitary confinement and creates more humane and effective alternatives, including by limiting solitary to 15 days for all people, prohibiting it altogether for people with mental illness and other special populations, and restricting the criteria that can lead to this extreme punishment. Regulations proposed by Governor Cuomo in August fail to meaningfully restrict solitary confinement and we believe enactment of HALT is still needed. More information is available at www.nycaic.org.

Require Jail and Prisons to Provide Medication-Assisted Treatment (MAT) – S.2161B (Bailey) / A.833 (Rosenthal)

This law would require all New York State jails and prisons to provide life-saving medication-assisted treatment (MAT). This would allow incarcerated individuals access to methadone and buprenorphine, medications proven to reduce overdose rates associated with opioid use.

Fix Our Broken Parole Systems

Elder Parole - S.2144 (Hoylman) / A.4319 (Weprin), Fair and Timely Parole – S.497 (Rivera) / A.4346 (Weprin), and a fully-staffed Parole Board

Elder Parole ensures that all people aged 55 or older who have served at least 15 years of their sentence are granted a parole hearing, regardless of their original sentence. (This does not amount to automatic release.) Fair

and Timely Parole would amend and clarify the standards used by the Board of Parole to make release determinations based on a person's rehabilitation and current public safety risk. We also support a fully-staffed parole board that includes Commissioners of diverse backgrounds who believe in rehabilitation and commit to evaluating people based on who they are in the present day, rather than the nature of the underlying conviction for which they have already been sentenced. More information is available at www.rappcampaign.com.

Less is More: Community Supervision Revocation Reform Act - S.1343A (Benjamin) / Assm. Same-As # pending (Mosley)

There are approximately 35,000 people under active parole supervision in New York State who are at constant risk of seeing their efforts to reenter society undermined by an unnecessary and pointless technical violations of parole. The Less is More act provides incentives to people on parole by providing earned time credits for those fulfilling their conditions of parole. It also provides bail as an option for those accused of violating parole so they can stay in their community with their families and jobs while they resolve the matter. The bill would also reduce incarceration by providing speedy violation hearings and restricting the use of incarceration for technical violations. Incarceration would be eliminated as a sanction for many technical violations, and for other technical violations, jail sentences would be capped at 30 days.

Support Re-Entry and Civic Engagement

Restore Voting Rights to People in Prison and on Parole - S.6.821 (Parker)

Governor Cuomo issued an important conditional pardon restoring voting rights to most people on parole, but confusion by local Boards of Election has limited its impact. Legislation (S.1931/A.4987) to codify that restoration for all people on parole represents an important step toward ending New York's racist and wholly unjustifiable felony disenfranchisement laws. We further urge the Legislature and the Governor to ensure that no New Yorker loses the right to vote by virtue of a conviction, including while incarcerated, by enacting S.6821.

Enact Broad Automatic Expungement for Low-Level Offenses and Expanding Eligibility for Application-Based Sealing

The 2017 sealing law has had a much more limited impact than some hoped when it was passed as part of the Raise the Age legislation. Fewer than 2,000 people have had their records sealed statewide. With millions of people in New York struggling to find work and access other opportunities due to criminal record discrimination, much broader legislation is necessary. Legislation currently being drafted will create broad, automatic expungement of low-level convictions. It will also expand eligibility for the current application-based sealing law to allow for more convictions to be sealed, reducing the 10-year waiting period, and allowing for more people to apply. New York enacted its first ever automatic expungement bill in 2019 with the passage of the marijuana decriminalization law. Now is the time to build upon that progress and create a sealing and expungement law that truly gives New Yorkers with past convictions a chance to move on with their lives.

Expand Vacatur for Survivors of Trafficking - S.4981 (Ramos) / A.6983 (Gottfried)

Current law allows for survivors of sex trafficking to vacate convictions for prostitution and loitering for the purposes of prostitution. This legislation expands the current trafficking vacatur law to allow judges the discretion to vacate all types of criminal convictions that stem from a person's experience as a victim of either sex trafficking or labor trafficking upon consideration of the defendant's individual circumstances, in addition to other provisions making this relief more accessible.

Driver's License Suspension Reform Act - S.5348A (Kennedy) / A.7463A (Hunter)

Under current law, thousands of New Yorkers have their driver's licenses suspended every year, not because they are unsafe drivers, but because they simply cannot afford to pay traffic fines and fees. Between January

2016 and April 2018, New York issued nearly 1.7 million driver's license suspensions for traffic debt. In the last two years, states and cities all over the country have stopped suspending driver's licenses for traffic debt, including California, Mississippi, Montana, Idaho, Washington, D.C., and Virginia. At least six other states have introduced legislation to do the same. The Driver's License Suspension Reform Act would allow New York to join them in this commonsense reform by ending driver's license suspension for failure to pay and allowing affordable payment plans for traffic debt.

End the Lifetime Felony Ban on Jury Duty Service - S.221A (Benjamin) / A.4760A (Aubry)

Existing law precludes people with past felony convictions from serving on juries for their entire lives, regardless of their rehabilitation. This law prevents people from serving their communities as full-fledged and equal citizens. In New York State, more than 10% of adult Black people have a felony record. In certain neighborhoods, this rate is even higher. This law therefore has a disparate impact and denies New Yorkers their right to a jury of their peers.

If you have any questions about any of these bills, please do not hesitate to contact the undersigned at their respective organizations.

Thank you,



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