



THE POWER OF
PUBLIC DEFENSE



December 16, 2021

Hon. Kathy Hochul
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

Re: NYC Public Defender Legislative Priorities for Criminal Legal System Reform

Dear Governor Hochul, Majority Leader Stewart-Cousins, and Speaker Heastie:

As New York City’s primary public defense organizations, we write to share our priorities for the 2022 legislative session.

We applaud Albany’s passage of marijuana legalization, elimination of long-term solitary confinement, repeal of the walking while trans ban, and overhaul of New York’s draconian parole revocation process. Each victory was the result of tireless advocacy by communities directly impacted by New York’s criminal legal system.

Despite those victories, thousands of our clients continue to suffer from decades of carceral policies that have bred lethal conditions in New York’s jails¹ and prisons,² unchecked surveillance,³ permanent disenfranchisement, categorical denial of alternatives to incarceration,⁴ and coercive bail. The devastating effects of those policies have been borne by Black and Latinx communities for decades and have been on raw display at Rikers Island where our clients have been stripped of human dignity.⁵ The images below are a sampling of the humanitarian crisis currently taking place in New York City’s jails, where 16 people have died:



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We urge your offices to do everything in your power to reduce the number of people being held inside these jails and to reduce the number of people being sent to jail across the state. Albany must lead by enacting legislation that invests in communities, not cages, overhauls our racist parole system, seals records and empowers New Yorkers, reduces law enforcement budgets, curbs discriminatory hyper-surveillance, protects New York’s immigrant communities, recognizes the harm of family separation caused by removal of children from their parents and placing them in the foster system, and protects young people who deserve compassion, not incarceration. And we must defend

¹Jan Ransom and Jonah Bromwich, *10 Deaths, Exhausted Guards, Rampant Violence: Why Rikers Is in Crisis*, N.Y. Times, September 15, 2021, <https://www.nytimes.com/2021/09/15/nyregion/rikers-island-jail.html>.

²Victoria Law, *The Worst Prison in New York State*, The Nation, November 10, 2021, <https://www.thenation.com/article/society/great-meadow/>.

³Erin Durkin, *New York City said it would purge its DNA database. A year later, it's expanded*, Politico, February 23, 2021, <https://www.politico.com/states/new-york/albany/story/2021/02/23/the-city-said-it-would-purge-its-dna-database-a-year-later-its-expanded-1364993>.

⁴Ariama C. Long, *Advocates Focus on Mental Health for Incarcerated at Rikers*, Amsterdam News, October 7, 2021, <https://amsterdamnews.com/news/2021/10/07/advocates-focus-mental-health-incarcerated-rikers/>.

⁵Gabrielle Fonrouge, *Photos Inside Rikers Island Expose Hellish Deadly Conditions*, N.Y. Post, October 21, 2021, <https://nypost.com/2021/10/21/photos-inside-rikers-island-expose-hellish-deadly-conditions/>.

⁶ *Id.*

critical reforms — bail, discovery reform, and Raise the Age legislation principal among them. The legislation we are championing below is a reinvestment: not in expanding dangerous jails and prisons, but in the communities disproportionately targeted by our criminal legal system.

We urge Governor Hochul to sign the following bills:

Ensure the Right to a Jury Trial for All – S689 (Hoylman) / A4319 (Dinowitz)

New York State grants a right to a jury trial for everyone facing misdemeanor charges, except those charged with B misdemeanors and certain unclassified misdemeanors in New York City. This legislation clarifies 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.

Technical Fixes to Driver’s License Suspension Reform Act – S7053 (Kennedy) / A7874A (Hunter)

The Driver’s License Suspension Reform Act (DLSRA), enacted in 2020, has already had a huge impact, leading to the lifting of 3.1 million driver’s license suspensions for 1.4 million people. This bill makes critical fixes to the DLSRA, clarifying the process for entering into installment payment plans and lifting license suspension in line with the legislative intent of the 2020 legislation.

We urge the Legislature to pass the following critical bills:

Overhaul New York’s Costly, Racially Discriminatory Parole System

Elder Parole – S15 (Hoylman) / A3475 (De La Rosa) and Fair and Timely Parole – S1415 (Rivera) / A4231 (Weprin)

More people have died in NY State custody in the last decade than the total of number of people executed in the 364 years New York State had the death penalty.⁷ Today, more than 1 in 2 people who die in NY State custody are older adults, compared to roughly 1 in 10 at the beginning of the era of mass incarceration. In 2018, Black people accounted for 45% of all deaths in DOCCS custody, despite only making up 14% of all deaths of New York State residents.⁸ This crisis of death by incarceration must be addressed by overhauling NY’s parole system and guaranteeing meaningful opportunities for release. Doing so will help reunite families, promote public health, advance racial justice, and save lives.

Elder Parole legislation will ensure 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. Fair and Timely Parole legislation will amend the standards used by the Board of Parole to make release determinations based on a person’s rehabilitation and current public safety risk, and would curtail the Board’s discretion to make racially discriminatory parole decisions, a practice that the Board has perpetuated for decades.⁹ More information is available at: <https://rappcampaign.com/>.

Empower Communities and Support Civic Engagement

Enact Clean Slate Legislation to Create Broad Automatic Record Clearance – S1553C (Myrie) / A6399A (Cruz)

⁷ Melissa Tanis and Cameron Rasmussen, *New York State’s New Death Penalty: The Death Toll of Mass Incarceration in a Post Execution Era*, Center for Justice at Columbia University, October 2021, <https://centerforjustice.columbia.edu/sites/default/files/content/New%20York%27s%20New%20Death%20Penalty%20Report.pdf>.

⁸ *Id.*

⁹ Edward McKinley and Amanda Fries, *A 'broken' parole process: Data shows widened racial bias*, Times Union, Nov. 22, 2020, <https://bit.ly/2HwZ9Xm>.

For the 2.3 million New Yorkers living with a conviction history, the stigma is inescapable. From employment, to housing, to higher education, people with conviction histories are locked out of opportunities integral to living safe and stable lives. Far too many experience a conviction history as a civil life sentence, a state of perpetual punishment, one that—due to decades of discriminatory, unjust over-policing and over-prosecution across the state—Black and brown New Yorkers disproportionately experience. The Clean Slate Act can change this by automatically sealing conviction records so that all New Yorkers can move ahead and fully participate in their communities.

End Predatory Court Fees – S3979C (Salazar) / A2348B (Niou)

Predatory fines and fees criminalize poverty and punish our indigent communities and families. They are a form of taxation that extract wealth from those who can least afford to pay. They also jeopardize the safety of Black and brown New Yorkers by exposing them to increased contact with the police. The End Predatory Court Fees Act would eliminate mandatory court surcharges for all Penal Law and Vehicle and Traffic Law offenses. It would eliminate mandatory minimum fines and would require the court to do an individualized assessment of a person's ability to pay. It would also end incarceration for failure to pay fines and fees and end the garnishment of an incarcerated individual's commissary account for unpaid fines and restitution. Ultimately, this legislation would end the predatory reliance on surcharges and other forms of financial extraction from predominantly low-income New Yorkers of color to fund a criminal legal system that unfairly targets and punishes them.

Build Communities Not Cages: Overhaul New York's Punitive Sentencing Laws

New York's current sentencing laws strip judges of discretion, grant outsized power to prosecutors, fail to account for personal transformation, and drive mass incarceration. This session legislators will introduce three bills to overhaul New York's sentencing laws including: (1) legislation that will eliminate mandatory minimums and predicate sentencing enhancements and create a statutory presumption against incarceration, (2) legislation that will allow judges to review and reconsider excessive sentences where a person has served 10 years or more in prison, and (3) legislation that will afford incarcerated people more opportunities to earn "good time" and "merit time" to account for personal transformation and reunite families.

Expand Youthful Offender Status, Create Young Adult Status

Youth Justice and Opportunities Act – A3536A (O'Donnell) / S5749A (Myrie)

Modern research in neuroscience and psychology shows that an adolescent's brain is not fully developed until their mid-twenties. New York's criminal law should reflect that twenty-first century understanding of brain development and its bearing on criminal culpability and prospects for rehabilitation, by strengthening and expanding existing protections of the youthful offender statute, allowing emerging adults, ages 19-25, to take responsibility for the commission of a crime while fostering their ability to enter the workforce, secure stable housing and pursue education without the stigma of a criminal record, or, in many cases, the lifelong trauma of a long prison sentence.

Expand Alternatives to Incarceration

Treatment Not Jail – S2881A (Ramos) / A8524 (Forrest)

This legislation will ensure that our clients who live with mental illness, substance use disorders, neurocognitive impairments, developmental disorders and other disabilities can be diverted into treatment for any offense. Currently, Criminal Procedure Law § 216 limits diversion to a small number of non-violent felony offenses—mostly drug offenses—and focuses exclusively on treating substance use disorders. Treatment Not Jail amends the CPL to grant judges the discretion to order diversion for all defendants, regardless of the nature of their impairment. The legislation will encourage diversion at the earliest opportunity and will create diversion courts throughout the state. The legislation prioritizes pre-plea diversion, which will allow for noncitizens to fully take advantage of diversion programs without

negative immigration consequences. The legislation also embraces a harm-reduction model which places critical treatment and medication decisions in the hands of clinicians, and will ensure that drug and alcohol relapse and mental health crises are not punished with incarceration.

Improve Conditions of Confinement

The Gender Identity Respect and Dignity Act – S6677(Salazar) / A7001 (Rozić)

Despite New York laws protecting the right of transgender, gender non-conforming, non-binary, and intersex (TGNCNBI) people to be free from discrimination on the basis of gender identity and expression, the state prison system and local jails continue to house the vast majority of TGNCNBI people in facilities that do not correspond to their gender identity. This practice is not only discriminatory, but also extremely dangerous in light of the high rates of sexual abuse and assault experienced by TGNCNBI people while incarcerated. The proposed legislation resolves this serious deficiency by creating a presumption that people are housed consistently with their gender identity unless the person opts out of such placement or if there is clear and convincing evidence that the person presents a current danger of committing gender-based violence. It also provides protections to ensure incarcerated TGNCNBI people are referred to by the correct name and pronouns, have the right to be searched by officers most closely aligned with their gender identity, and have access to affirming commissary items, clothing, programming, and medical care.

Freedom from Forced Labor – Two Acts – S308 (Myrie) / A3142 (Epstein)

DOCCS currently forces the vast majority of the approximately 45,000 people incarcerated in New York state prisons to work under threat of punishment. Those who refuse to work—for whatever reason—can suffer various disciplinary actions, including loss of family visits, solitary confinement and loss of “good time” and thus extended incarceration. This bill will prohibit forcing incarcerated people to work through the use of force, punishment, failure to pay wages, or any legal coercion by amending Section 24 of the State Constitution and Section 170 of the Correction Law to ensure that all labor is actually voluntary. The bill allows for incarcerated workers to seek monetary remedies through the Court of Claims and strips the absolute immunity of DOCCS employees who violate the forced labor prohibition. The Freedom from Forced Labor Acts will close the loophole in the Thirteenth Amendment that permits forced labor – essentially slavery by another name – and would extend one of the most basic of human rights to all New Yorkers.

Hold Law Enforcement Accountable

Banning Qualified Immunity – S1991 (Jackson) / A4331 (Hunter)

In cases where law enforcement officials are sued for violating a person’s federal constitutional rights, courts are quick to shield individual officers from liability under the doctrine of qualified immunity, even when those courts agree that the officer has violated the federal law. The doctrine insulates government actors from civil damages—typically the only form of relief available against individual officers in such situations—unless their actions violated rights that had been “clearly established” in nearly-identical cases. Passage of this bill will eliminate end the defense of qualified immunity under the state’s civil rights law and advance the simple and important principle that where there is a right, there must be a remedy.

Protect Immigrant Communities

The New York for All Act S3076A (Salazar) / A2328 (Reyes)

ICE has long used State and local law enforcement to obtain information and assistance in carrying out civil arrests of immigrants. This bill would prevent New York State resources from being diverted to fuel mass detention and deportation of immigrants by prohibiting law enforcement officers from sharing information with ICE or Customs and Border Patrol and outlawing agreements where State and local law work as de facto ICE agents.

Shrink the Penal Law to Reduce Discriminatory Enforcement

Stop Violence in the Sex Trades – S3075 (Salazar) / A849 (Gottfried)

Criminalization of consensual sex work has driven people who do sexual labor by choice, circumstance, or coercion, into the shadows in an underground environment where violence, abuse, and exploitation are rampant, and people are more vulnerable to trafficking, as people attempting to leave the sex trade are often unable to seek assistance. This legislation would decriminalize all forms of commercial sex between consenting adults and thereby uphold the rights of those who trade sex, reduce violence and trafficking, and increase labor protections.

Ban Invasive and Dangerous Surveillance

End Rogue DNA Databanks – S1347 (Hoylman) / A6124 (Zinerman)

When New York's legislature authorized the State DNA index to store profiles from people convicted of crimes, New Yorkers were assured that their genetic privacy would remain protected against law enforcement overreach. Local governments – most notably New York City – are ignoring that balance by running their own, rogue DNA indexes, without any regulation, accountability, or oversight. New York City's shadow databank contains profiles from children as young as 12, people never charged or prosecuted, 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 databases that have perpetuated genetic stop-and-frisk and eroded sacred privacy rights.

Prohibit Use of Biometric Surveillance – S79 (Hoylman) / A5492 (Glick)

Biometric surveillance systems, like facial recognition technologies, which are largely unregulated, pose a tremendous threat to civil society. Terribly powerful, they have the capacity to end public anonymity and thereby chill core liberties, like the freedoms of speech, expression, assembly, and protest. Additionally, they have already been used by law enforcement in ways that enhance and exacerbate existing racial inequities in the criminal system. Multiple studies have found that many biometric surveillance systems are strikingly inaccurate, and their inaccuracies affect some demographic groups more often and more substantially than others. There is a heightened error rate in the identification of people of color, young people, women, and non-binary people, making it more likely that those groups will be misidentified. This bill will press pause on the currently unregulated use of inaccurate biometric systems, such as facial recognition, by law enforcement while also creating a task force to conduct a necessary review of their impact on marginalized communities.

Protect Our Privacy (POP) Act – S675 (Ramos) / A3311 (Kim)

Police use of drones in public spaces, frequently during political protests intensifies public intimidation and erodes protected First Amendment speech. This bill limits the use of drones for law enforcement purposes; prohibits the use of drones by law enforcement at concerts, protests, demonstrations, or other actions protected by the First Amendment and requires a search warrant prior to using a drone for law enforcement purposes.

Prohibit Geofence Searches – S296A (Myrie) / A84A (Quart)

Geofence searches, also known as reverse location searches, allow law enforcement to surveil an entire neighborhood through a single warrant or request. Unlike traditional, constitutionally permissible searches, which are limited to specific people, reasonably suspected of criminal activity, geofence searches impose no limit on the number of people that may be subject to an invasion of privacy. A single geofence, especially in a place as densely packed as New York, can affect thousands of people, easily tracing their location and identity, even when they are not suspected of any crime. This kind of search is unprecedented in Fourth Amendment history, and is precisely the type of unreasonable

search that the Fourth Amendment seeks to prohibit. This legislation would amend the Criminal Procedure Law to ban reverse location search warrants and reverse location search warrant requests.

Secure Due Process Protections

Protect Fundamental Rights to Appellate Review – S1280 and S1281 (Bailey) / A5687 and A5688

Prosecutors have increasingly required our clients to waive their appellate rights to take a plea. Such a broad government-extracted waiver policy strips individuals of their fundamental right to appellate review, insulates excessive sentences from scrutiny, and shields police misconduct from the public eye. These bills would amend the criminal procedure law to address each problem by banning waivers of appeal in cases involving suppression and excessive sentence issues.

Address Wrongful Convictions through Post-Conviction Reform – S266 (Myrie) / A98 (Quart)

New York ranks third in the nation in terms of wrongful convictions. Thousands of people were wrongfully convicted and imprisoned before critical reforms to our bail, discovery and speedy trial laws were passed in 2019, but as the law exists now, most have no meaningful avenue for redress in our state courts, unless they have DNA evidence of their innocence. This bill would limit or eliminate procedural roadblocks in Criminal Procedure Law 440, New York's post-conviction statute, to create more avenues for relief and ensure that people who have strong claims of actual innocence are entitled to a hearing and an opportunity to present evidence of their innocence. The bill also extends access to free counsel to help wrongfully convicted people to draft, investigate and litigate claims for relief and creates a right to post-conviction discovery.

Promote Pre-Trial Stability and Ensure Judicial Review of Orders of Protection (PromPT Stability Act) – S2832B (Ramos) / A4558B (Quart)

Currently, courts reflexively issue orders of protection based primarily on the word of police, with little recourse for our clients. As a result, people are excluded from their homes, jobs and prevented from seeing family without any process. The Promoting Pre-Trial (PromPT) Stability Act codifies a recent First Department decision by providing a right to an evidentiary hearing when a temporary order of protection is issued at arraignments. It also modifies CPL § 530.30 to enable accused parties to seek review in supreme court if a criminal court denies their request to modify or vacate an order of protection. It allows judges to respond to the unique needs of a particular case, while also allowing families to work out their differences, and teenagers and young adults to stay in their family's homes. Importantly, judges will make decisions as to the propriety of stay-away orders based upon more complete information than they have at arraignment.

Preclude Introduction of Confessions Obtained by Deceptive Tactics (The “Exonerated 5 Bill”) – S324A (Myrie)

Our legal system should be based on basic principles of fairness and transparency. When accused people are interrogated, 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.

End the Lifetime Felony Ban on Jury Duty Service – S1014 (Benjamin) / A2377 (Aubry)

Existing law precludes people with felony convictions from serving on juries for their entire lives, regardless of their rehabilitation. That prevents people from serving their communities as full-fledged and equal citizens and directly

impacts heavily policed and over-prosecuted Black and Latinx communities. This bill will guarantee that if a person has completed their sentence for a felony, their right to serve on a jury will be fully restored.

Protect Young People

Increase Protections for Youth Interrogated by Police – S2800B (Bailey) / A5891B (Joyner)

Young people are far more vulnerable than adults to police coercion and more apt to falsely confess. Adolescent brain development research demonstrates why *Miranda* warnings 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.

Family Court Delinquency Discovery Reform – S4554 (Bailey) / A4952 (Joyner)

Consistent with Constitutional Due Process and Equal Protection principles, New York statutes governing juvenile delinquency proceedings must, to the extent that they affect substantial rights, provide at least as much protection as Criminal Procedure Law provisions governing criminal proceedings. Those principles mandate the proposed legislation, which would provide discovery rights in juvenile delinquency proceedings that mirror discovery rights in criminal proceedings that were put in place with the enactment of CPL Article 245.

Exclusionary School Discipline – S7198 (Jackson) / A5197 (Nolan)

School districts throughout New York state over-utilize exclusionary discipline practices, including suspensions and classroom removals. These punitive practices have a disproportionate impact on students of color and students with disabilities. They deprive students of critical instructional time and increase the likelihood that students will be held back a grade or drop out. This legislation would require school districts to develop discipline codes that mandate the use of age-appropriate, graduated and proportionate disciplinary interventions, including restorative practices. It would limit the use of suspensions for students in kindergarten to 3rd grade, shorten the maximum length of suspensions from one year to 20 school days, and require school districts to provide suspended students with alternate instruction so that they don’t fall behind academically.

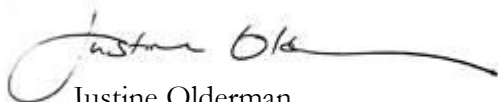
Increase Transparency in Pre-Arrest Detention

Transparency in Police Custody – S1184A (Gianaris) / A5264 (Richardson)

This bill would establish that any pre-arrest detention exceeding 24 hours from arrest to arraignment constitutes an “unnecessary delay” under the law and creates an automatic right to release, until and unless the presumption is rebutted by clear and convincing evidence that such a delay was actually necessary for each individual petitioner identified in a writ of habeas corpus. This bill would also require municipalities with a population of one million or greater to establish and maintain a searchable online registry to locate detainees, to further ensure that defense attorneys have access to those who might require assistance with pre-arrest issues.

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

Thank you,



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