



April 26th, 2022

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 Defenders Priorities for Remainder of Legislative Session on Criminal Legal System Reform

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

As New York City's primary public defense organizations, we again write to share our criminal legal system reform priorities for the remainder of the 2022 legislative session. The budget process was consumed by discussions of changes to discovery, bail and mental health protections, but much work remains to thoughtfully address the entrenched failings of the criminal legal system and its wide-ranging consequences.

Since we last wrote on December 16th, 2021, the conditions on Rikers Island have continued to deteriorate. After the inexcusable deaths of 16 people detained at Rikers facilities in 2021, three

additional people have perished in the squalid conditions, all presumed innocent and unable to make bail at the time of their death. In mid-March, the federal monitor appointed to oversee Rikers found that the jail continued to be “unstable and unsafe”¹ and by mid-April the US Attorney in Manhattan threatened to place federal control via a receivership.²

While we recognize the political pressure to address the perceived rise in crime, we know that the most effective method to increase public safety remains creating and funding the conditions in which individuals can thrive. As the Governor herself has made clear, there is no data suggesting that bail reform is responsible for the rise of violent crime in American cities.³ We were disheartened to watch additional rollbacks made to the hard-fought reforms pass through the state budget process, despite the overwhelming evidence that these short-lived reforms have been a success. In the remaining weeks of the legislative session, we urge you to turn your attention to bills that will address many of the root causes that lead to criminal system involvement, not simply increase jailing and incarceration, and that will create safer communities.

We commend you on restoring New York’s Tuition Assistance Program (TAP) resources and the funding for a fully staffed parole board, as well as ending the imposition of parole supervision fees. But much remains to be done. We urge you to continue the crucial work of reducing New York’s incarcerated population and investing in our communities by swiftly passing and signing the following proposed legislation this legislative session.

Empower Communities and Support Civic Engagement ***Clean Slate Act – [S1553C \(Myrie\)](#) / [A6399A \(Cruz\)](#)***

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.

The legislative version of this bill is supported by a state-wide coalition of people directly impacted by the criminal legal system, labor organizations, civil rights groups, racial justice organizations, public defenders, business leaders and members of law enforcement. The waiting periods for sealing laid out in the legislative version of Clean Slate ensure timely access to opportunity for people who

¹ Jonah Bromwich and Jan Ransom *Rikers Still ‘Unstable and Unsafe’ Under New Jails Chief, Watchdog Says*, NY Times March 16, 2022 <https://www.nytimes.com/2022/03/16/nyregion/rikers-jail-violence-report.html>

² Jonah E. Bromwich and Jan Ransom, *Chaos at Rikers Could Lead to Federal Court Control, U.S. Attorney Says*, April 19th, 2022 <https://www.nytimes.com/2022/04/19/nyregion/rikers-island-federal-control.html>

³ Kathy Hochul and Brian Benjamin *Gov. Hochul and Lt. Gov. Bejamin: Don’t Blame Bail Reform, Do Improve It*, The Daily News, March 23, 2022 <https://www.governor.ny.gov/news/icymi-governor-hochuls-op-ed-new-york-daily-news-dont-blame-bail-reform-do-improve-it>

most need it; extending the periods to toll for the hypothetical maximum period of incarceration and community supervision would render the promise of Clean Slate meaningless for many.

Overhaul New York's Costly, Racially Discriminatory Parole System

Elder Parole – [S15 \(Hoylman\) / A3475 \(De La Rosa\)](#) and Fair and Timely Parole – [S1415A \(Rivera\) / A4231A \(Weprin\)](#)

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 penalty⁴. 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.⁵ 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.⁶ More information is available at: <https://rappcampaign.com/>.

Expand Avenues to Treatment and Reentry

Treatment Not Jail Act– [S2881B \(Ramos\) / A8524A \(Forrest\)](#)

The Treatment Not Jail Act will authorize judges to divert our clients who live with mental illness, substance use disorders, neurocognitive impairments, developmental disorders and other disabilities into treatment and out of New York's jails and prisons. Currently, Criminal Procedure Law § 216 limits statutory 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 in every county in 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

⁴ 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>.

⁵ *Id.*

⁶ Edward McKinley and Amanda Fries, *A 'broken' parole process: Data shows widened racial bias*, Times Union, Nov. 22, 2020, <https://bit.ly/2HwZ9Xm>.

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.

The Treatment Not Jail Act is ripe for passage in the wake of the legislative appetite evinced by the newly added language to C.P.L. 500.10(3c)(e), which directs judges to adjourn cases to mental health “treatment courts” where appropriate. However, New York law does not currently authorize or fund mental health courts rendering them largely unestablished throughout the state. Treatment Not Jail addresses this inequity and ensures that every county in New York State can access mental health courts.

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.

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.

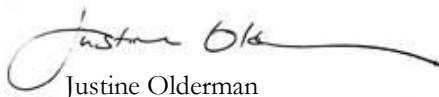
Secure Due Process Protections and Protect Fundamental Rights to Appellate Review

[S1280](#) and [S1281 \(Bailey\)](#) / [A5687](#) and [A5688 \(Cruz\)](#)

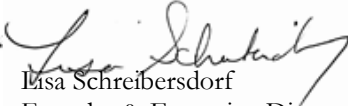
Prosecutors have increasingly required our clients to waive their appellate rights to take a plea. Such a broad government-extracted waiver policy strips individuals of their fundamental right to appellate review, insulates excessive sentences from scrutiny, and shields police misconduct from the public 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.

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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