

**Brooklyn** (B  
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**Defenders**

**The Bronx  
Defenders**

**THE  
LEGAL AID  
SOCIETY**  
Justice in Every Borough.

**NDS** THE POWER OF  
PUBLIC DEFENSE

**NYCDS**

**QUEENS  
DEFENDERS**

January 8th, 2024

Hon. Kathy Hochul  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Hon. Andrea Stewart-Cousins  
Majority 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: New York City Public Defenders Legislative Priorities for Criminal Legal System Reforms

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

As New York City's public defense organizations, we write to share our criminal legal system reform priorities for the 2024 legislative session.

We applaud Albany's passage of the Clean Slate Act, which will transform the lives of millions of New Yorkers and boost our statewide economy. We remain committed to continuing to assist in implementation planning and public education around this transformative accomplishment.

While the historic passage of Clean Slate was indeed a high-water mark, we lament that several crucial and widely-supported bills were vetoed with little discussion at the end of the year. We hope that the Legislature will again take up and swiftly pass the Challenging Wrongful Convictions Act ([S7548](#) Myrie/[A2878](#) Aubrey), the Restoring Appellate Review Act ([S939](#) Bailey/[A152](#) Cruz), Fair Courts for Immigrant New Yorkers ([S5826](#) Kavanagh/Cruz [A3057](#)), and the Preserving Family Bonds Act ([S6720](#) Brisport/[A5394](#) Joyner). We likewise urge Governor Hochul to meaningfully engage with lawmakers and advocates to address her concerns and sign these bills when they are once again delivered to her desk.

We must also denounce that our bail laws were rolled back once again, contributing to an increased pre-trial detention population<sup>1</sup> even as violent crime levels have continued to decrease both state-wide and locally in New York City.<sup>2</sup> Pre-trial detention continues to disproportionately affect Black New Yorkers,<sup>3</sup> and those who cannot afford the amount of cash bail imposed on their freedom. What's more, at the grossly mismanaged Rikers Island, detention too often results in death: 29 people have died while in custody in our city jails since the beginning of 2022, with the most recent loss occurring just this past week.

While these dangerous rollbacks were included in the FY24 budget, the same budget also included a concurrent focus on investments in community-based violence intervention as well as critical aid to defense organizations. We extend our gratitude for this emphasis on investments. We hope that Albany will cease the yearly rollbacks to our bail laws, the threat of rollbacks to our discovery and Raise the Age laws and instead fully commit to continued funding human-resource investments in evidence-based solutions that increase community safety and protect all New Yorkers.

A focus on investments is especially necessary when it comes to addressing the intersection of mental health and the criminal legal system. The number of people with a mental health designation detained in our city jails continues to grow unabated, making up 56% of the NYC jail population as of January 2023.<sup>4</sup> As has been recently reported, many of those with a diagnosis have been found unfit to stand trial and are forgotten to the purgatory of Rikers Island while awaiting in-patient restoration services, making the jail complex the state's largest mental

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<sup>1</sup> "Over the past year, the number of people detained in facilities on Rikers Island grew steadily from 5,708 on August 1, 2022 to 6,182 on August 1, 2023. 5,403 people were detained pretrial – representing 87% of the current jail population." *The State of New York City Jails: One Year of Measuring Jail Operations and Management on the Comptroller's DOC Dashboard* August 2023. Available at <https://comptroller.nyc.gov/reports/the-state-of-new-york-city-jails/#:~:text=The%20number%20of%20people%20in,the%20jail%20population%20was%205%2C708>.

<sup>2</sup> <https://www.governor.ny.gov/news/governor-hochul-details-first-comprehensive-overview-crime-trends-across-new-york-state-2023>

<sup>3</sup> 60% of the city jail population is Black compared to 23% of the population of New York City, compare daily jail population at <https://greaterjusticenyc.vera.org/nycjail/> with census demographics at <https://www.census.gov/quickfacts/newyorkcitynewyork>

<sup>4</sup> 3,386 people detained with Brad H designation of total 6,003 in custody as of January 3, 2023, see <https://greaterjusticenyc.vera.org/nycjail/>

health institution.<sup>5</sup> In line with Governor Hochul’s historic commitment to invest one billion dollars in mental health infrastructure, we encourage the codification and funding of mental health courts across the state alongside robust investments in community-based programming and services, with a specific aim to fund programming for youth and emerging adults. These much-needed measures will stop the criminalization of a public health crisis and create opportunities for community-based mental health treatment and restoration, not jail. Alongside these crucial investments we urge Albany to pass into law the Treatment Not Jail Act and the Youth, Justice and Opportunity Act both of which will modernize the court process and sentencing structures with an aim to end recidivism and strengthen individuals ties to and resources in their own communities.

We also urge you to fully fund the budget requests of the New York State Unified Court System<sup>6</sup> which have identified the urgent need for increased funding for Attorney for the Child providers including annualized contractual enhancements for Attorney for the Child providers and cost-of-living adjustments for all legal and professional services providers. The Judiciary request also focuses on the stark need for investments to continue to effectively implement the historic Raise the Age legislation by supporting and funding programming for emerging adults with programs focused on bringing together young people with opportunities to engage with social services and rehabilitative services, rather than fines and incarceration. We urge you to fund their additional requests for enhanced funding and expansion of specialty courts including these court services for emerging adults and mental health court participants.

Under the leadership of Majority Leader Stewart-Cousins and Speaker Heastie, the Legislature has made great strides to address the racist and overly punitive criminal legal system, but much work remains. We urge passage and signing of the below legislation because robust investments in our communities - including housing infrastructure, public health infrastructure and community programming and quality education for young people - are the cornerstone for building true community safety where all New Yorkers have the opportunity to thrive. We hope that you will prioritize these forward-looking investments in 2024 and ignore the fear-mongering calls for rollbacks to our bail, discovery, and Raise the Age laws.

***We urge Governor Hochul to include the following important measures in the Executive Budget:***

**Aid to Defense**

\$50 million to the New York City defense providers to support critical technology upgrades to match what was allocated to the District Attorneys.

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<sup>5</sup> *How Rikers Island Became New York’s Largest Mental Institution* “ by Jan Ransom and Amy Julia Harris, The New York Times, published Dec 29th, 2023, <https://www.nytimes.com/2023/12/29/nyregion/nyc-rikers-homeless-mental-illness.html>

<sup>6</sup> [https://www.nycourts.gov/LegacyPDFS/admin/financialops/FPCM-PDFs/V2\\_jdbgt/FY2025\\_FINAL-JudiciaryBudget.pdf](https://www.nycourts.gov/LegacyPDFS/admin/financialops/FPCM-PDFs/V2_jdbgt/FY2025_FINAL-JudiciaryBudget.pdf)

Reappropriation of the \$80 million in statewide aid to defense support to address high attrition rates at public defender offices across the city and state.

Full funding for New York State Office of Indigent Legal Services SFY 2025 budget, including \$50 million for Parent Representation Quality Improvement and 3% COLA for criminal defense; to continue maintenance of effort of ILS grants and distributions and to adequately staff office and operations.

### **HESC/DALF Expansion for Indigent Legal Services Providers and District Attorneys**

The estimated \$4 million needed to fund this expansion is now more timely than ever as the federal pause on student loan payments ended in October of last year, creating additional pressure on public servants and causing attrition throughout the criminal legal system. . This fund provides crucial awards to public defenders and district attorneys, many of whom who carry enormous loan burdens while earning salaries that have not kept pace with the cost of living or inflation. However, it is currently available only after 4 years of service and the maximum awards trail those for both social workers and registered nurses – professions who carry on average much less debt than the average attorney. This proposal has the support of public defenders and district attorneys and the pending legislation ([S4511B/Ramos](#); [A1568C/Simon](#)) passed the Senate in 2023 with an almost unanimous bipartisan vote.

### **Fund the Expansion of Mental Health Courts in Every County Across the State.**

Mental health courts should be expanded to every county in the state by doubling the existing treatment court budget, from \$16 million to \$32 million. In addition to providing this funding, we urge the Governor to embrace the statutory framework of the Treatment Not Jail Act, ([S1976B Ramos/A1263B Forrest](#)). There is no statute mandating mental health courts and while many courts have taken it upon themselves to create their own mental health diversion programs, only 42 mental health courts are currently in operation. What’s more, given funding constraints in these existing courts, access is limited and too often blocked by district attorneys despite the well-documented fact that a substantial portion of our incarcerated population suffers from serious mental health concerns.

### **Fund Proven Community-Based Solutions to Enhancing Community Safety**

We urge the Governor to continue her commitment to community investments by funding community-based treatment programs, ACT programs, peer navigators, and violence intervention programs. We likewise urge a continued focus on the housing needs across our city and state, including investments in funding and infrastructure for emergency reentry housing to reduce jail and prison populations and provide a pathway to permanent housing.

*We urge the Legislature to pass and the Governor to sign the following critical bills:*

**Expand Avenues to Treatment in the Community and End the Incarceration of People with Mental Health Diagnoses**

*Treatment Not Jail* [S1976B Ramos](#) / [A1263B Forrest](#)

New York law does not currently authorize or fund mental health courts, rendering them largely unestablished throughout the state. The **Treatment Not Jail Act** addresses this inequity and ensures that every county in New York State can access mental health courts. This act will dramatically expand pre-trial diversion for people with mental health or substance use concerns to every county in New York State under a new framework based on national best practices.

**Overhaul Sentencing Laws and Increase Programming Opportunities for Sentence Reduction**

*Eliminate Mandatory Minimums Act* [S6471 Myrie](#) / [A2036A Meeks](#).

*Second Look Act* [S321 Salazar](#) / [A531 Walker](#).

*Earned Time Act* [S774 Cooney](#) / [A1128 Kelles](#).

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. The **Eliminate Mandatory Minimums Act** will eliminate mandatory minimum sentences and predicate sentencing enhancements and create a statutory presumption against incarceration. The **Second Look Act** allows judges to review and reconsider excessive sentences where a person has served 10 years or more in prison. The **Earned Time Act** affords incarcerated people more opportunities to earn "good time" and "merit time" to account for personal transformation and reunite families.

**Restore Appellate Review of Police Misconduct and Excessive Sentences**

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

Prosecutors have increasingly conditioned our clients accepting plea offers on waiving their right to appeal. 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. The **Restoring Appellate Review** bills amend the criminal procedure law to address each problem by banning waivers of appeal in cases involving suppression and excessive sentence issues. The bill relating to issues of police misconduct passed the Legislature in 2023, received support from the Office of Court Administration, but was vetoed by Governor Hochul. We urge the Legislature to again pass this bill before budget season and urge the Governor to engage with advocates who can address the concerns set out in Veto Memo 93.

**Increase Access to Justice for New Yorkers**

*Challenging Wrongful Convictions Act* [S7548](#) [Myrie](#) / [A2878 Aubrey](#)

A [June 2023 poll](#) of New Yorkers showed 77% of respondents expressed some support for "a bill that would make it easier for wrongfully convicted people to be exonerated." Despite this

widespread support, Governor Hochul chose to veto this vitally important legislation. **The Challenging Wrongful Convictions Act** overhauls Criminal Procedure Law 440 to ensure that all innocent people have a pathway to exoneration.

***Jury of Our Peers Act*** [S206 Cleare](#) / [A1432 Aubry](#)

Jury service is a cornerstone of our system of self-government and, along with voting, represents Americans' most significant opportunity to participate in the democratic process. Yet New York law permanently disqualifies people convicted of felonies from serving on a jury, no matter the offense or how long ago it occurred. The **Jury of our Peers Act** will repeal New York's lifetime categorical ban and postpone the service of anyone currently incarcerated until they complete their term of imprisonment.

**Make New York State More Just for Children and Young People**

***Youth Justice and Opportunities Act*** [S3426 Myrie](#) / [A4238 O'Donnell](#)

The **Youth Justice and Opportunities Act** would increase opportunities for Youthful Offender status for young people under the age of 18 as well as add Young Adult status for emerging adults ages 19 through 25. This Act would provide for judicial discretion in sentencing and record sealing in appropriate cases to protect youth and young adults and enable them to reach their potential through education and employment opportunities that are foreclosed when they have a criminal record.

***Right to Remain Silent*** [S1099 Bailey](#) / [A1963 Joyner](#)

The **Right to Remain Silent** legislation would ensure that all youth under 18 are provided a consultation with an attorney before they can agree to waive their right to remain silent and be subjected to custodial interrogation by law enforcement.

**End Slavery in New York**

***No Slavery in NY Act*** [S225 Myrie](#) / [A3412 Epstein](#)

The 13th Amendment ended chattel slavery, but with an insidious exception: "as a punishment for a crime." This loophole has allowed New York to build a prison system so dependent on human exploitation and degradation that it is a form of modern day slavery. The **No Slavery in NY Act** will abolish the prison labor exception that allows for modern-day slavery for people incarcerated in New York's prisons and jails.

**Overhaul New York's Costly, Racially Discriminatory Parole System**

***Elder Parole*** – [S2423 Hoylman](#) / [A2035 Davila](#)

***Fair and Timely Parole*** – [S307 Salazar](#) / [A4162 Weprin](#)

The 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 it would curtail the Board's discretion to make racially discriminatory parole decisions.

### **End The Criminalization of Poverty**

***End Predatory Court Fees*** – [S313 Salazar](#) / [A4183 Burgos](#)

This legislation will 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. The **End Predatory Court Fees Act** would eliminate mandatory court surcharges for all Penal Law and Vehicle and Traffic Law offenses, eliminate mandatory minimum fines, 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.

### **Ban Invasive and Dangerous Surveillance**

***Ban Rogue DNA databases*** [S998 Holyman-Sigal](#) / [A1877 Zinerman](#)

This bill requires police to stop using any DNA database other than New York's official DNA index. New York City and other localities maintain illegal DNA databases which are ripe for abuse. These databases incentivize the police to secretly collect the DNA of New Yorkers, including young children, to store their DNA in these illegal databases, potentially keeping it forever.

***DNA Phenotyping Ban*** [A4965 Rosenthal](#) / [S226 Gianaris](#)

This bill would ban police use of DNA phenotyping to predict what the suspect of a crime might look like, including what race they may be. New York must ban this dangerous pseudoscience before it leads to wrongful arrests and convictions.

***Prohibit Geofence Searches*** [S217 Myrie](#) / [A3306 Solages](#)

Geofence searches, also known as reverse location searches, allow law enforcement to surveil an entire neighborhood through a single warrant request.

***Protect Our Privacy "POP" Act (Police Drone Ban)*** [A5251 Kim](#) / [S4162 Ramos](#)

Bans police use of drones except for search and rescue operations.

### **Expand Access to Justice and Procedural Protections for New Yorkers**

***Promoting Pre-Trial Stability Act (PromPT Stability Act)*** [S3066 Ramos](#) / [A3750 Septimo](#)

This act codifies the right to a hearing to determine whether a full temporary order of protection is necessary and appropriate during the pendency of a criminal proceeding, and outlines uniform procedures for such hearings. The act codifies the *Crawford* decision by the First Department which held that such hearings are necessary to comport with due process

***End Qualified Immunity*** [S182A Jackson](#) / [A710 Hunter](#)

Qualified immunity is a Supreme Court invented doctrine that shields government officials from liability in civil cases. The defense is mainly used by police and correctional officers when faced

with lawsuits for civil rights violations. In practice, qualified immunity creates a massive hurdle for victims seeking justice. The **End Qualified Immunity Act** will enable New Yorkers whose state or federal constitutional rights have been violated to sue officials in NY State court instead, where the defense of qualified immunity would be prohibited.

***Transparency in Police Custody*** [S449 Gianaris](#) [A505 Gonzalez-Rojas](#)

This bill codifies the Court of Appeals decision in *Roundtree v. New York*, which provides that a person must be arraigned within 24 hours of arrest and establishes a balanced framework for courts to decide whether a person held in police custody for more than 24 hours is entitled to release. It also establishes a real time, searchable, secure, registry of every person the New York City Police Department has in their custody. Currently, such information is generally unavailable to anyone other than the NYPD, preventing people's attorneys and their families from locating them.

***Stop Violence in the Sex Trades Act*** [S4396 Salazar](#) [A7175 Jackson](#)

This Act amends statutes so that consenting adults who trade sex, collaborate with or support sex working peers, or patronize adult sex workers will not be criminalized. It also amends the law so that people can trade no-longer-criminalized sex in spaces where legal businesses are permitted, while upholding that exploitative workplaces where coercion and trafficking take place is a felony.

***Gender Identity Respect, Dignity, and Safety Act (GIRDS)*** [S2860 Salazar](#) / [A709A Rozic](#)

The New York State criminal justice system often refuses basic rights to TGNCNB people who are incarcerated. TGNCNB people face much higher rates of discrimination, violence, lost opportunity, and deprivation of basic needs. This bill will ensure that TGNCNB people are housed consistent with their gender identity, referred to by their name and pronouns even if they do not have legal paperwork, and given access to gender affirming items. The bill will also enable people to opt out of being housed consistently with their gender identity if they have overriding safety concerns.

If you have questions about any of these bills or funding requests, please do not hesitate to contact us.

Thank you,



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