

THE BRONX DEFENDERS

2024 POLICY AGENDA (DETAILED VERSION)



**The Bronx
Defenders**

**Redefining
public
defense.**

Justice and Opportunity for All

Each day in New York State, tens of thousands of people languish behind bars. Nearly 75% are Black and brown.

After a half century of racist and excessive sentencing laws, it's time to end them and create pathways of opportunity for New Yorkers to be released from incarceration or avoid it altogether, particularly for New Yorkers with mental health and substance use needs. **In 2024, our Criminal Defense Practice will focus on these major priorities:**

Justice and Opportunity

1

TREATMENT NOT JAIL (S1976B/A1263B)

New York State over-relies on jails and prisons as the primary treatment provider for people with mental health and substance use needs. **But it is a lie that incarcerating people with these needs makes us safer. On the contrary, treating mental health and substance use as a public health issue, rather than a criminal legal one, has proven more successful in promoting public safety than any alternative.** Research shows that when someone is motivated to change from their own interest, those changes last longer than when motivation comes from external pressure, such as the threat of punishment. Although **New York saves \$2.21 for every \$1 invested in programs designed to divert people with these needs away from jail**, the average NY county spent twice as much on its jails as on public health in 2019.

By passing Treatment Not Jail, New York can provide an off-ramp from the criminal legal system that allows New Yorkers with mental health and substance use needs to obtain robust treatment and support in their communities, rather than languish in jail.

SECOND LOOK (S321/A531)

New Yorkers serving long sentences have no chance to demonstrate to a judge that they have changed after years or decades in prison, or when laws change, to argue their sentence is no longer appropriate. **As a result, long prison sentences have become the norm in New York**, with nearly 1,000 people every year sentenced to 10 or more years in prison and over 5,000 people – more than 10% of people in prison – having served 15 years or more.

The Second Look Act would allow people who are incarcerated to apply for a resentencing hearing after they have served 10 years or half of their sentence. It would also allow judges to review and reconsider excessive sentences on their own, with cases heard by a different judge than the initial sentencing judge.

ELIMINATE MANDATORY MINIMUMS (S6471/A2036A)

New Yorkers who are arrested often face an impossible choice: take a guilty plea and serve some time, or exercise a right to trial, risking not only incarceration in death traps like Rikers Island, but possibly longer prison sentences than the plea deal. **As a result, over 30,000 New Yorkers are sitting in prisons right now, costing the state \$3 billion a year to keep people locked up who never actually had a day in court.** And when they are released, these New Yorkers find it impossible to get a job, housing, or obtain other services because of a criminal record.

The Ending Mandatory Minimums Act would create a presumption against incarceration, requiring a hearing before any period of incarceration can be imposed and re-orienting the system towards healing and accountability and away from knee-jerk sentencing.

EARNED TIME (S774/A1128)

Ever since the 1990s, New York has slashed programs designed to help incarcerated people rehabilitate and earn time off their sentences. This happens despite clear research that longer prison sentences increase, rather than reduce, a person's likelihood to reoffend. Research also shows that earned time opportunities help prepare incarcerated people for reintegration into society and to restore them to their families and communities. As cruel as it is counterproductive, New York's desire to keep people in prison for as long as possible puts us behind many other states – including traditionally conservative states like Alabama, Nebraska, and Oklahoma – on allowing people to earn time off their sentences.

The Earned Time Act will strengthen and expand “good time” and “merit time” laws to encourage personal transformation in prison and reunite families.

5

PROMOTING PRE-TRIAL (PROMPT) STABILITY ACT (S3066/A3750A)

Every day, New Yorkers are kicked out of their homes or separated from their families because of temporary orders of protection (TOPs). These orders are issued in virtually every case involving a witness, but because orders are issued shortly after arrest, judges have little information and must rely almost entirely on the unverified reports of law enforcement.

As a result, our most vulnerable neighbors are needlessly thrown out on the streets or barred from seeing their children without any chance to argue before a judge. In 2021, The Bronx Defenders successfully argued that **Shamika Crawford** was unjustly treated this way due to a TOP and the courts agreed that from now on, all courts should hold hearings before TOPs are issued, known as "Crawford hearings." However, this ruling has not been applied consistently, requiring the state to act.

Justice and Opportunity

6

YOUTH JUSTICE AND OPPORTUNITIES ACT (S3426/A4238)

The barriers young people face with a criminal conviction only perpetuate injustice while undermining their futures and reducing the vitality of our neighborhoods. Criminal convictions limit access to certain educational and employment opportunities, and can result in substantially lower lifetime earnings, increasing the likelihood of housing instability and re-arrest. These consequences are particularly devastating for Black, Latine, and other communities of color.

The Youth Justice and Opportunities Act will expand the scope of laws designed to protect young people from excessive and unjust punishment by expanding the categories of cases and judicial discretion to seal cases so they won't appear on a background check.

7

YOUTH INTERROGATION BILL (S1099A/A8923A)

Millions of children under the age of 18 have face-to-face contact with police in any given year. According to the American Bar Association, 90 percent of young people waive their Miranda rights prior to police interrogation. Research by the Prison Policy Initiative further shows that **youth are more than three times as likely as adults to falsely confess during a police interrogation.** Our youth deserve a meaningful opportunity to consult with counsel prior to police interrogation.

The Youth Interrogation Bill would mandate counsel be provided to youth under 18 before interrogation occurs, ensure consultation cannot be waived by youth or their families, and establish that any statement obtained in violation of the above cannot be used against the youth at trial.

FREEDOM AND DIGNITY FOR ALL

Nearly a third of the residents in The Bronx were born outside the U.S., and many more face the unprecedented threat of detention and deportation every day.

Our Immigration Defense Practice attorneys and advocates help people facing criminal, family, and civil proceedings make informed and strategic decisions to protect their rights. We are also one of the three public defender organizations leading the nation's first-ever program to guarantee a lawyer for every detained New Yorker facing deportation free of cost. **In 2024, our Immigration Practice will focus on these major priorities:**

1

DIGNITY NOT DETENTION (S306/A4354)

While New York prides itself on welcoming immigrants, the state is still in business with Immigration and Customs Enforcement (ICE). On any given night, hundreds of New Yorkers are detained by ICE in jails and prisons across the state. They are subjected to inhumane conditions and torn from their families and communities, solely because they were not born in the United States. Recent studies confirm that reducing bedspace reduces ICE enforcement. Local jails make up a huge percentage of ICE's detention capacity nationwide. New York State can do its part to end ICE detention by refusing to let ICE use state resources to detain more people.

The Dignity Not Detention Act would forbid anyone in New York State from going into business with ICE, thus ending ICE's contracts with our local jails, reuniting people with their families and communities, and enabling them to more capably fight deportation. New Jersey, California, Illinois, and Maryland have already passed similar legislation. New York can continue the important work of chipping away at ICE's detention capacity by passing Dignity not Detention.

2

NEW YORK FOR ALL (S987/A5686)

All New Yorkers, regardless of immigration status, want to lead open lives, participate in their communities, provide for their families, and access health care without intimidation. But for years, New York's law enforcement agencies have cooperated with ICE to intimidate, harass, and separate families.

The New York for All Act will protect immigrants by forbidding local law enforcement from cooperating with ICE and prevent any state or local resources from being used to deport people and to separate families. Where Washington has failed to act, Albany can take the lead in keeping New York out of ICE's cruelty and keeping all New Yorkers safe.

3

ICE OUT! NYC (Intros 185, 184, 158)

In 2014, NYC passed laws limiting when the New York Police Department (NYPD) and the NYC Department of Correction (DOC) could cooperate with ICE. These “detainer laws” specifically called for ICE to present to NYPD and DOC a warrant signed by a federal judge before honoring any request for transfer to their custody. However, despite these laws, the NYPD and DOC continue to cooperate with ICE due to perceived loopholes in the law.

The ICE Out! NYC bill package before the NYC Council would limit the NYPD's and DOC's ability to hold people on immigration detainers, limit communication between DOC and ICE, and create a way for immigrant New Yorkers harmed by violations of the detainer laws to seek justice. With these bills, NYPD and DOC will be forced to honor the freedom of every New Yorker.

STABILITY AND PROSPERITY FOR ALL

People who are arrested lose more than their freedom. They risk losing their jobs, homes, property, and basic civil rights - struggles that can be more devastating than the criminal charges themselves.

Through our Civil Action Practice, we not only defend people against these terrible consequences of system involvement, but also advocate for changes at the city and state level to stop these injustices once and for all. **In 2024, our Civil Action Practice will focus on these major priorities:**

STABILITY AND PROSPERITY

1

RIGHT TO COUNSEL (S2721/APending)*

Everyone has the right to be represented by a lawyer in any legal proceeding - it is fundamental to our legal system. However, hundreds of thousands of renters in New York are facing evictions, with many unable to access a lawyer to defend them and protect their rights. Evictions disrupt lives and can lead to devastating consequences for families.

A Statewide Right to Counsel would guarantee ALL tenants in the state the right to a lawyer when facing an eviction. Right to Counsel would stop evictions, protect tenants' rights, keep families in their homes, and save New York State millions on expensive shelters and homeless services.

2

CLEAN HANDS (S6769 /A1853)

Everyone has the human right to housing, and deserves to live in peace, safety and dignity. But the impacts of substandard housing conditions violate those values of safety, peace and dignity, and trigger effects that can break families and keep the oppressive cycle of systemic racism alive.

Clean Hands would prohibit landlords from evicting residential tenants when there are hazardous building code violations. The bill would protect tenants by putting the onus on the landlord to prove that the living conditions were fixed before an eviction proceeding may be pursued. Landlords must ensure that they have "clean hands" when a tenant is at risk of losing their home.

3

ENFORCING THE RIGHT TO VOTE

The law in New York requires the state to educate and assist people on how to register to vote. This should apply to anyone regardless of their involvement in our legal systems. Yet thousands of New Yorkers on parole, in jail, or with felony convictions continue to be denied their right to have a say in the laws and policies that govern their lives.

New Yorkers who are paroled, incarcerated, or have felony convictions must receive education on how to register to vote, without burdensome practices designed to discourage. Detrimental contact with our legal system must not bar anyone from a full and robust civic life.

FAMILY UNITY AND FAIRNESS FOR ALL

The most accurate predictor of a child's placement in the foster system is not alleged maltreatment - it is poverty and race.

As residents of the poorest borough in the city, families in the Bronx experience the highest rates of family separation. Our Family Defense Practice defends parents and caretakers against the painful and unnecessary removals of their children in the Bronx. Together, our attorneys, social workers, and parent advocates provide the legal defense and support necessary to keep families together and interrupt generational cycles of foster system involvement. **In 2024, our Family Defense Practice will focus on these major priorities:**

FAMILY MIRANDA RIGHTS (S901/A1980)

Parents have rights during a family regulation investigation, such as the right to an attorney and the right to refuse entry. However, the family regulation system disproportionately surveils and polices Black, Latine, and low-income families. As a result, family regulation workers search their homes and remove their children at an alarming rate: **Black children make up 15% of children in NYS but represent 40% of children in the foster system.** A recent FOIL by The Bronx Defenders revealed that such targeting is deliberate. Rights cannot be meaningful if they are not understood by both government officials and the communities they serve. Yet, in family regulation investigations, where missteps carry the profound risk of family separation, most parents and even caseworkers, are unaware of the rights at stake.

The Family Miranda Rights Act would require child protective services (CPS) across the state to notify parents and caretakers of their existing rights, orally and in writing, at the outset of a child protective investigation, including the right to an attorney and the right to refuse entry. Requiring CPS to inform parents and caretakers of their existing rights will make NYS families safer and improve transparency, without compromising or limiting in any way CPS's ability to investigate allegations of maltreatment.

INFORMED CONSENT (S320B/A109B)

New York families have the right to be healthy, happy, and whole, but medical care providers are drug testing Black, Latine and low-income pregnant people, newly parenting people, and their newborns without their knowledge or consent. Although we know that a drug test is not a parenting test, medical providers are reporting positive tests to the family regulation system and causing countless children to be taken from their parents and fed into the foster system. This is common practice **even though NYS law is clear that a positive drug test in a parent or newborn, without evidence of any actual harm or risk to a child, is not evidence of neglect or maltreatment.** In addition to the trauma of family separation, “test and report” undermines maternal-fetal health by making pregnant people fearful of accessing critical prenatal care services.

All people have a right to be informed of and meaningfully consent to or reject drug tests for themselves and their newborns, especially when seeking reproductive healthcare. Informed Consent would prohibit drug and alcohol testing and screening unless a person provides verbal and written consent, require healthcare providers to tell you of this right and risks, and prohibit the denial of care if a New Yorker refuses testing or to answer questions about alcohol or drug use.

ANTI-HARRASSMENT IN REPORTING (S902/A2479)

Every year, more than 10,000 New York families are forced to endure lengthy, invasive, and stressful investigations because of anonymous reports before they are eventually cleared. **Of parents investigated because of an anonymous report, over 86% are cleared of all wrongdoing after an initial investigation. Yet the damage is done.** In NYC, Black families are 5 times more likely than white families to be reported to the child maltreatment hotline. Survivors of intimate partner violence in particular are hurt by the current law, which allows those who perpetrate violence against them to continue to repeatedly harass them and their children by taking advantage of the weaknesses of the reporting system. Fundamentally, the problem is that NYS allows anyone to call the child maltreatment hotlines and make allegations anonymously. This is supposed to improve child safety, but in practice, it results in abuse, harassment, and the separation of thousands of low-income families and families of color.

The Anti-Harassment in Reporting Act offers a simple solution to drastically reduce the number of malicious false calls: require that every caller provide their name and contact information when making a report to the hotline. This information would be kept confidential from the public and from the person accused of child maltreatment, while allowing family regulation investigators to conduct a full and more reliable investigation, including being able to speak directly with the source of the report.

Policy & Organizing at

**The Bronx
Defenders**

Our cross-practice Policy and Organizing Team plays a dynamic role within the movement ecosystem, deploying strategic and technical expertise and base building experience to draft legislation that will improve the lives of the Bronx residents we represent and build power in the community we love.

Meet the Policy & Organizing Team

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