

PROMOTING PRE-TRIAL (PROMPT) STABILITY ACT

S.6271A (Ramos)/A.6455 (Septimo)

WHAT IS THE PROMPT STABILITY ACT?

Everyday, New Yorkers are kicked out of their homes and rendered homeless without advanced notice and minimal process as a result of temporary orders of protection (“TOPs”) issued by criminal court judges. These orders, issued as a matter of course in virtually every case involving a witness, require the person charged to stay away from the home and place of business of that witness. Thus, those subjected to a TOP are often left on the street, confronting homelessness and at a heightened risk for re-arrest. The practice impacts certain populations at a disproportionate rate: survivors who were protecting themselves, teenagers and young people that get into altercations with parents, and LGBTQ+ people and populations who present as “other” even when they are defending themselves.

While well-intentioned, the one-size-fits-all nature of these orders is problematic. TOPs are issued shortly after arrest, when judges have little information about cases, and thus are forced to rely almost entirely on the unverified representations of law enforcement. Unlike in many other states, there is no statutory due process to protect the liberty interests of impacted people.

To remedy this, the legislature must pass the **Promoting Pre-Trial (PromPT) Stability Act S.6271A (Ramos)/A.6455 (Septimo)**, which gives charged parties the right to a hearing to determine whether a full TOP is necessary and appropriate during the pendency of a criminal proceeding. This would codify a recent decision by the First Department which held that such hearings are necessary to comport with due process.

WHY IS THIS LEGISLATION SO IMPORTANT?

Full TOPs have immense human costs and collateral consequences for impacted people and their families. These consequences can include but are not limited to:

- **Family separation.** Parents are prevented from living with or seeing their own children, even if the parent does not want the TOP. This exacerbates youth homelessness, forecloses opportunities to reconcile, and can adversely impact college admission and participation in collegiate activities.
- **Homelessness.** Those subject to TOPs are frequently excluded from their homes if they cohabitate with the protected party or simply live in the same building.
- **Loss of employment.** Those subject to TOPs may not be able to work while such order is in effect.
- **Immigration consequences.** Non-citizens may lose their ability to adjust their status.

Often, courts put the onus on the protected party to enforce these orders. All of these inequities have persisted for decades.

HOW DOES PROMPT ADDRESS THESE ISSUES?

In June 2021, the First Department, Appellate Division ruled that when a TOP is issued against someone, they are entitled to meaningful due process in the form of an evidentiary hearing. In *Crawford v. Ally*, Shamika Crawford, a Black mother and survivor of intimate partner violence from the Bronx, was arrested after her partner weaponized the system against her. Despite evidence indicating she was not the aggressor, the court quickly issued a full TOP against her over her counsel's objection, effectively evicting her from her own NYCHA apartment. As a result, Ms. Crawford lost her job, access to her children, and was rendered homeless for three months, until the case against her was ultimately dismissed.

Recognizing Ms. Crawford's plight, the Court held that when issuing a TOP, the Criminal Court must conduct a "prompt evidentiary hearing . . . in a manner that enables the judge to ascertain the facts necessary to decide whether or not the TOP should be issued." The decision, however, leaves critical questions unanswered. As a result, the ruling has been undermined and applied in an inconsistent manner.

The **PromPT Stability Act** codifies Crawford's holding into law and clarifies key details about the required hearings. This bill ensures that New York courts are complying with their due process obligations, and that there is uniform application of the decision across the State. It allows judges to respond to the unique needs of a particular case or relationship, 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 TOPs based upon more complete information than they have at arraignment.

Notably, this bill will not prevent TOPs from being issued. Prosecutors are still authorized to ask for TOPs, and judges will have discretion to issue them when they are appropriate and necessary for the safety of the protected party. Further, this legislation only concerns criminal court TOPs—parties can continue to petition family court for civil orders of protection. This bill does not require protected parties to testify in these hearings, but it does give them an opportunity to be heard if they choose. Both parties will be given advanced notice of the hearing, including information about the protected parties' rights with respect to the hearing, and the types of orders available. Further, this bill ensures hearings occur expeditiously so that accused parties can avoid significant harms caused by improper TOPs.

Unnecessary TOPs do not make New Yorkers safer. Rather, they disenfranchise the most marginalized New Yorkers by separating them from their families and communities, making housing, employment, and education even more difficult to obtain. Survivors of violence, particularly Black and brown women, are frequently criminalized, even when defending themselves. The PromPT Stability Act provides necessary review of orders to ensure due process and stabilize families.