

## Memorandum of Support

New York's Jail Time Credit Bill  
A7718 (Burgos)  
**February 2022**

**Brooklyn Defender Services (BDS) strongly supports the immediate passage of [A7718 \(Burgos\)](#).** BDS provides multi-disciplinary and client-centered defense practice, representing clients in criminal, family, immigration, and civil legal matters. Our attorneys, social workers, and advocates represent and advocate for nearly 30,000 indigent Brooklyn residents every year.

The smallest of rules can sometimes result in great injustice. A7718 (Burgos) would modify a technical rule concerning the allocation of jail time credit when a person on parole faces new criminal charges. As currently enforced, this jail time accounting rule arbitrarily results in some persons being forced to serve additional years in prison for circumstances completely beyond their control. The accounting rule also unfairly punishes poor people who cannot afford to post bail. The Office of Court Administration (OCA) has characterized the current rule as “arbitrary and inequitable” and has requested enactment of this ameliorative legislation. Brooklyn Defender Services agrees with OCA and strongly supports A7718.

### **New York's Current Jail Time Credit Rule:**

When a person is on parole and gets arrested for a new felony, they are usually held in jail on the criminal charge and a parole violation charge. The clock on the parole sentence stops, subject to starting up again depending on the various ways that the criminal and parole charges are resolved. If the person is convicted of a new felony and again sentenced to state prison, the time spent in jail as a pre-trial detainee is credited as “jail time” on the new sentence. (Jail time exists in all fifty states and functions as a credit against a sentence of imprisonment.) The time owed on the older parole sentence is added to the new sentence (i.e., the old and new sentences run “consecutively”) and will eventually be served as additional time under supervision when the person is again released from prison. For example, if a person is sentenced to 2 to 4 years while still owing 1 year of parole supervision time, the 1 year owed will be added to the 4-year maximum, and the combined new sentence will be 2 to 5 years. The time spent as a pre-trial detainee is credited as jail time against the 2 to-5 year sentence. Thus, with 6 months spent in jail as a pre-trial detainee, the person would be eligible to see the Parole Board at 1 ½ years and owe a total of 4 ½ years on the combined sentences.



### **An Unjust Technical Rule:**

About a decade ago, the Department of Corrections and Community Supervision (DOCCS) devised a new policy concerning jail time allocation rules. Under this policy, whenever a new felony charge remains pending on the date the parole sentence would otherwise have expired, DOCCS will treat the situation as if the clock had never stopped and credit all the pre-trial detention time to the older parole sentence – as if the person had remained under parole supervision while in jail awaiting trial. In the above example, if the pre-trial detention had lasted one year (instead of 6 months), the new sentence would be 2 to 4 years because the parole sentence time owed (1 year) is deemed fully served and is therefore not added to the new sentence. But as a consequence, none of the time spent in pre-trial detention is credited to the new sentence. Now, with zero jail time credit, the person must serve 2 years (instead of 1 year) before becoming eligible for parole release on the new sentence. As OCA has observed, these “disparate outcomes are solely attributable to the pace of the proceedings in criminal court,” which defendants have no real control over. This inequality will only grow worse as courts resume normal operations after the long delays caused by the COVID-19 pandemic. To make matters even worse, few defense attorneys, prosecutors, and judges are aware of this highly technical rule as felony sentences are negotiated and imposed, and so affected persons usually don’t know their pre-trial detention will be disallowed as jail time credit.

### **New York’s Current Jail Credit Rule Disproportionately Impacts Communities of Color:**

The same jail time “stripping” problem can occur when DOCCS chooses, for whatever reason, not to file a parole violation charge even though a person under supervision has been rearrested on a new felony and held in jail as a pre-trial detainee. A Brooklyn Defender Services’ client was jailed as a pre-trial detainee for three years before being sentenced on a new felony. But he was granted zero jail time credit because DOCCS determined that he effectively continued under parole supervision while awaiting trial at Rikers Island. This is economic discrimination pure and simple. A person of means would have been able to post bail on the new felony and continued to serve the parole sentence in the community. But our client could not post bail and so he was required under this policy to “serve out” his older parole sentence in jail. In other words, this inequitable jail time allocation rule has a disproportionately negative effect on the poor and, in turn, on persons from Black and brown communities in New York.

### **A7718 (Burgos): A simple solution:**



The Office of Court Administration has proposed a simple solution to this unfair jail time stripping problem: treat everyone equally. Under OCA's proposal, whenever a person on parole is charged with a new felony and held in jail as a pre-trial detainee, the parole sentence clock remains stopped. And it does not begin running again until the person is released from jail (*e.g.*, on bail) or is again sentenced to state prison on the new felony. In the latter situation, the person will still serve the remaining portion of the old parole sentence upon re-release from prison.

OCA's simple proposal addresses the injustice of jail time stripping on terms that are fair to all concerned. Arbitrary denials of jail time based on the pace of criminal court proceedings are eliminated; the fiction that a person is serving parole supervision while locked up in jail as a pretrial detainee is rejected; and rich and poor alike are treated equally under the law.

**Brooklyn Defenders Services shares the Office of Court Administration's concern about the fair administration of New York's sentencing laws. We strongly support passage of A7718 (Burgos).** Any questions can be directed to Jacqueline Gosdigian, Senior Policy Counsel, Brooklyn Defender Services, [JCaruana@bds.org](mailto:JCaruana@bds.org).