



December 16, 2020

Hon. Andrew Cuomo
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 Defender Legislative Priorities for Criminal Legal System Reform

Dear Governor Cuomo, Senate Majority Leader Stewart-Cousins, and Assembly Speaker Heastie:

As New York City’s public defenders, we write to share our legislative priorities for criminal legal reform at an extraordinary moment in history. We serve hundreds of thousands low-income people, overwhelmingly Black and Latinx New Yorkers, who have been devastated by COVID-19,¹ brutalized by police violence,² subjected to the abject cruelty of the federal immigration system, and incarcerated under lethal conditions in city jails and state prisons.³

¹ Richard A. Oppel Jr., Robert Gebeloff, K.K. Rebecca Lai, Will Wright and Mitch Smith, *The Fullest Look Yet at the Racial Inequity of Coronavirus*, July 5, 2020, <https://nyti.ms/35YQtCv>.

² Allison McCann, Blacki Migliozzi, Andy Newman, Larry Buchanan & Aaron Byrd, *N.Y.P.D. Says It Used Restraint During Protests. Here’s What the Videos Show.*, N.Y. Times, July 14, 2020, <https://nyti.ms/38LLjMc>.

³ Timothy Williams, Libby Seline and Rebecca Griesbach, *Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide*, N.Y. Times, June 16, 2020, <https://nyti.ms/2HA2zZC>; Jan Ransom, *Virus Raged at City Jails, Leaving 1,259 Guards Infected and 6 Dead*, N.Y. Times, June 16, 2020, <https://nyti.ms/3laCRZv>.

The needs of the people we serve were set in stark relief during the reckoning that followed George Floyd’s murder—in the midst of an unprecedented pandemic and in the wake of thousands of Black lives so recently lost to police violence and white supremacy. Those forces have inspired a global movement for racial justice⁴ that demands concrete action from policymakers across the country. Albany must act, and it must directly confront a criminal legal system that has long dehumanized the people we serve.

We support specific legislation to decarcerate jails and prisons, reduce law enforcement budgets and increase accountability, invest in Black and Latinx communities, treat immigrant communities with dignity, and protect young people who deserve compassion, not incarceration. This year’s supermajority presents a historic opportunity to advance those goals and promote racial justice by attacking mass incarceration and criminalization, bill by bill. We urge Albany to seize it.

We urge Governor Cuomo to sign the following bills that have already passed both chambers with broad support:

Driver’s License Suspension Reform Act - S.5348A (Kennedy) / A.7463A (Hunter)

Under current law, thousands of New Yorkers have their driver’s licenses suspended every year, not because they are unsafe drivers, but because they simply cannot afford to pay traffic fines and fees. In the last two years, states and cities all over the country have stopped suspending driver’s licenses for traffic debt, including California, Mississippi, Montana, Idaho, Oregon, Washington, D.C., and Virginia. At least six other states have introduced legislation to do the same. The Driver’s License Suspension Reform Act would allow New York to join them in this commonsense reform by ending driver’s license suspension for failure to pay and allowing affordable payment plans for traffic debt.

The Prison Proximity Bill – S.724A (Montgomery) / A.6710A (Rozić)

This Prison Proximity Bill requires the Department of Corrections and Community Supervision (“DOCCS”) to consider the location of an incarcerated parent’s minor children and place incarcerated parents at correctional facilities and institutions closer to their children’s home when they deem it possible. The majority of people incarcerated in New York are placed in facilities over 100 miles from their homes and families.⁵ For children and families, this distance – coupled with limited visiting schedules and travel expenses – may mean visits to correctional facilities are infrequent or impossible. Our support is rooted in voluminous research demonstrating the public health necessity of placing incarcerated parents close in proximity to their minor children, and our ongoing advocacy for incarcerated parents and their families.

We urge the Legislature to pass the following critical bills:

Overhaul New York’s Costly, Racially Discriminatory Parole System

New York State spends more than \$3.2 billion on prisons and supervision every year.⁶ That staggering commitment to mass incarceration has devastated Black and Latinx communities for decades. This year, it

⁴ Larry Buchanan, Quoc Trung Bui and Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. Times, July 3, 2020, <https://nyti.ms/3lyf1HU>.

⁵ New York Initiative for Children of Incarcerated Parents, “Fact Sheet: Proximity to Children when a Parent is Incarcerated,” The Osborne Association, 2013, Available online at <http://www.osborneny.org/news/youth-actioncouncil-advocates-for-proximity-legislation-in-albany/proximity-fact-sheet/>.

⁶ Office of the New York State Comptroller, Report on the State Fiscal Year 2019-20 Enacted Budget, April 2019, <https://bit.ly/376IYZG>; <https://on.ny.gov/2VdqGAd>.

perpetuated a public health crisis, by creating COVID-19 hotspots across the state.⁷ Overhauling New York's parole revocation system and guaranteeing meaningful opportunities for parole release will substantially decarcerate state prisons and local jails, reunite families, promote public health and advance racial justice.

Elder Parole - S.2144 (Hoylman) / A.9040 (De La Rosa) and Fair and Timely Parole – S.497A (Rivera) / A.4346A (Weprin)

Elder Parole ensures 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 would 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.⁸ More information is available at: <http://rappcampaign.com/>.

Less is More: Community Supervision Revocation Reform Act - S.1343C (Benjamin)

There are approximately 35,000 people under active parole supervision in New York State who are at constant risk of seeing their efforts to reenter society undermined by unnecessary technical violations of parole. The Less is More Act eliminates the use of incarceration for most technical violations, while capping jail sentences for other non-criminal offenses at 30 days. It creates an earned credit system for those fulfilling their conditions of release. And it provides bail as an option for those accused of violating parole, so they can maintain employment and family ties while resolving their parole matter. We respectfully request that this important bill be amended so that people with life sentences, who are currently excluded from earned time credit provisions, may become eligible for earned discharge. We additionally request that the bill be amended to eliminate jail for non-criminal violations of parole.

End Marijuana Prohibition and Promote Racial and Economic Justice

The Marijuana Regulation and Taxation Act (MRTA) – S.1527C (Krueger) / A.1617C (Peoples-Stokes)

This legislation ends broad-based marijuana prohibition and begins to meaningfully repair its harm, including by automatically expunging criminal records and directing investments into communities most impacted by the War on Drugs. The Office of the New York City Comptroller estimates that revenue generated by legalizing marijuana will exceed \$1.3 billion annually, revenue that is critical to directly impacted communities.⁹ More information is available at <http://smart-ny.com/>.

HALT Solitary Confinement

The H.A.L.T. Solitary Confinement Act – S.1623 (Sepúlveda) / A.2500 (Aubry)

According to a report by NYCLU, there were nearly 40,000 solitary confinement sanctions in 2018, an *increase* over the prior year.¹⁰ The average sentence was 105 days — many times longer than the 15-day threshold at which the United Nations defines it as torture. Many people receive multiple sentences and remain in solitary for years and even decades. The Humane Alternatives to Long-Term (HALT) Solitary Confinement Act ends the torture of

⁷ Reuven Blau and Rosa Goldensohn, *Families Fear for Inmates as COVID Spike Puts State Prisons on Lockdown*, The City, Nov. 4, 2020, <https://bit.ly/3ljG0WZ>.

⁸ Edward McKinley and Amanda Fries, A 'broken' parole process: Data shows widened racial bias, Times Union, Nov. 22, 2020, <https://bit.ly/2HwZ9Xm>.

⁹ Office of the New York City Comptroller, *Estimated Tax Revenues from Marijuana Legalization in New York*, May 15, 2018, <https://on.nyc.gov/2V7vBD6>.

¹⁰ Michelle Shames and Philip Desgranges, *TRAPPED INSIDE: The Past, Present, and Future of Solitary Confinement in New York*, NYCLU, Oct. 2019, <https://bit.ly/2Jfj8KI>.

prolonged solitary confinement and creates more humane and effective alternatives, including by limiting solitary to 15 days for all people, prohibiting it altogether for people with mental illness and other special populations, and restricting the criteria that can lead to this extreme punishment. The HALT act would also save the state more than \$132 million annually.¹¹ More information is available at www.nycaic.org.

Expand Alternatives to Incarceration

Treatment Not Jails – S.8687 (Ramos)

This legislation will ensure that our clients who live with mental illness, substance use disorders, neurocognitive impairments, and other disabilities can be diverted into treatment for any offense. Currently, Criminal Procedure Law § 216 limits diversion to a small number of non-violent felony offenses—mostly drug offenses—and focuses exclusively on treating substance use disorders. Treatment Not Jails 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 throughout the state. The legislation prioritizes pre-plea diversion, which will allow for immigrants with mental illness to fully take advantage of diversion programs without negative immigration consequences. The legislation also embraces a harm-reduction model which places critical treatment 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.

Hold Law Enforcement Accountable

Independent Oversight of Police Discipline – S.7527 (Myrie) / A.10560 (Richardson)

Law enforcement agency internal affairs divisions in New York state are typically tasked with handling allegations of police wrongdoing, but they have historically failed to hold officers accountable for their misconduct. Law enforcement accountability requires independent, effective, and accessible mechanisms for investigating and sanctioning police officer misconduct. Chapter 834 of the laws of 1940, currently limits localities from designating independent adjudicators to preside over police disciplinary hearings. Passage of S7527 would authorize localities and police chiefs to designate independent and impartial adjudicators, such as OATH tribunals, to preside over police disciplinary hearings and thereby increase public confidence in the integrity of those proceedings.

Banning Qualified Immunity – S.8668 (Jackson) / A.10978 (Hunter)

In cases where law enforcement officials are sued for violating a person’s constitutional rights, courts are quick to shield individual officers from liability under the doctrine of qualified immunity, even when those courts agree that the officer has violated the law. The doctrine insulates government actors from civil damages—typically the only form of relief available against individual officers in such situations—unless their actions violated rights that had been “clearly established” in nearly-identical cases. Passage of this bill will end the defense of qualified immunity and advance the simple and important principle that where there is a right, there must be a remedy.

The New York for All Act S.7562 (Salazar) /A.9586 (Reyes)

ICE has long used State and local law enforcement to obtain information and assistance in carrying out civil arrests of immigrants. This bill would prevent New York State resources from being diverted to fuel mass detention and deportation of immigrants by prohibiting law enforcement officers from sharing information with ICE or Customs and Border Patrol and outlawing agreements where State and local law work as de facto ICE agents.

¹¹ Amanda Fries, *Report: Reducing Solitary Confinement Could Save New York \$132M annually*, Times Union, Nov. 27, 2020, available at <https://bit.ly/36rZ7cX> (last accessed Dec. 1, 2020).

Shrink the Penal Law to Reduce Discriminatory Enforcement

Repeal Loitering for the Purposes of Prostitution - S.2253 (Hoylman) / A.654 (Paulin)

This legislation repeals P.L. § 240.37, relating to loitering for the purpose of engaging in a prostitution offense. In practice, this statute has been used by police to profile predominately women of color, particularly transgender women, for simply existing in public. The law currently allows police to interpret lawful behavior such as “repeatedly” waving at a person in a vehicle, wearing a mini skirt, or talking to people in the streets as cause to arrest for loitering for the purpose of prostitution. Transgender women of color and non-binary people of color – who already experience high instances of violent attacks – are dehumanized by this practice, reinforcing bigoted stereotypes.¹² New York State must do better for our transgender, non-binary, and gender non-conforming community members.

Stop Violence in the Sex Trades – S.6419 (Salazar) / A.8230 (Gottfried)

Criminalization of consensual sex work has driven people who do sexual labor by choice, circumstance or coercion, into the shadows in an underground environment where violence, abuse, and exploitation are rampant, and people are more vulnerable to trafficking, as people attempting to leave the sex trade are often unable to seek assistance. This legislation would decriminalize all forms of commercial sex between consenting adults and thereby uphold the rights of those who trade sex, reduce violence and trafficking, and increase labor protections.

Improve Conditions of Confinement

Require Jails and Prisons to Provide Medications for Opioid Use Disorder (MOUD) – S.2161B (Bailey) / A.833 (Rosenthal)

This bill will require all New York State jails and prisons to provide life-saving Medications for Opioid Use Disorder (MOUD). This will allow incarcerated individuals therapeutic access to all three FDA-approved medications for Opioid Use Disorder, including methadone and buprenorphine, medications which are proven to reduce overdose rates associated with opioid use and are widely acknowledged as the standard of care for OUD. MOUD is particularly important in custodial settings, where people are more vulnerable to fatal outcomes upon release. Other states, such as Rhode Island, have instituted broad MOUD access with very promising outcomes. Though DOCCS currently has a pilot MOUD program, it is extremely limited—offering only methadone and only to people who enter DOCCS already on methadone and have two years or less left to their earliest release date—and denies the standard of care for OUD to the severe detriment of incarcerated New Yorkers. This bill is necessary to ensure essential health treatment for people in state custody.

The Gender Identity Respect and Dignity Act – S4702A (Sepulveda) / A5257A (Rozić)

Despite New York laws protecting the right of transgender, gender non-conforming, and non-binary (TGNCNB) people to be free from discrimination on the basis of gender identity and expression, DOCCS and local jails continue to house the vast majority of TGNCNB people in facilities that do not correspond to their gender identity. This practice is not only discriminatory, but also extremely dangerous in light of the high rates of sexual abuse and assault experienced by TGNCNB people while incarcerated. The proposed legislation resolves this serious deficiency by creating a presumption that people are housed consistently with their gender identity unless the person opts out of such placement or if there is clear and convincing evidence that the person presents a current danger of committing gender-based violence.

¹² Madeleine Roberts, *HRC Mourns Skylar Heath, Black Transgender Woman Killed in Miami*, HRC, December 2020, <https://www.hrc.org/news/hrc-mourns-skylar-heath-black-transgender-woman-killed-in-miami>

Freedom from Forced Labor – Two Acts – S6781 (Myrie) / A8661 (Epstein)

DOCCS currently forces the vast majority of the approximately 45,000 people incarcerated in New York state prisons to work under threat of punishment. Those who refuse to work—for whatever reason—can suffer various disciplinary actions, including loss of family visits, solitary confinement and loss of “good time” and thus extended incarceration. This bill will prohibit forcing incarcerated people to work through the use of force, punishment, failure to pay wages, or any legal coercion by amending Section 24 of the State Constitution and Section 170 of the Correction Law to ensure that all labor is actually voluntary. The bill allows for incarcerated workers to seek monetary remedies through the Court of Claims and strips the absolute immunity of DOCCS employees who violate the forced labor prohibition. The Freedom from Forced Labor Acts will close the loophole in the Thirteenth Amendment that permits forced labor – essentially slavery by another name – and would extend one of the most basic of human rights to all New Yorkers.

Ban Invasive and Dangerous Surveillance

End Rogue DNA Databanks – S.6009 (Hoylman) / A.7818

When New York's legislature authorized the State DNA index to store profiles from people convicted of crimes, New Yorkers were assured that their genetic privacy would remain protected against law enforcement overreach. Local governments – most notably New York City – are ignoring that balance by running their own, rogue DNA indexes, without any regulation, accountability, or oversight. New York City's shadow databank contains profiles from children as young as 12, people never charged or prosecuted, and innocent people from communities of color who were specifically targeted based on their race. The Legislature never intended for cities to run amok with DNA collection and storage. This bill clarifies the law to protect the State DNA index and end the other databases that have perpetuated genetic stop-and-frisk and eroded sacred privacy rights.

Prohibit Use of Biometric Surveillance – S.7572 (Hoylman) / A.9767 (Glick)

Biometric surveillance systems, like facial recognition technologies, which are largely unregulated and also socially and ethically understudied, pose a tremendous threat to civil society. Terribly powerful, they have the capacity to end public anonymity and thereby chill core liberties, like the freedoms of speech, expression, assembly, and protest. Additionally, they have already been used by law enforcement in ways that enhance and exacerbate existing racial inequities in the criminal system. Multiple studies have found that many biometric surveillance systems are strikingly inaccurate, and their inaccuracies affect some demographic groups more often and more substantially than others. There is a heightened error rate in the identification of people of color, young people, women, and non-binary people, making it more likely that those groups will be misidentified. This bill will press pause on the currently unregulated use of inaccurate biometric systems, such as facial recognition, by law enforcement while also creating a task force to conduct a necessary review of their impact on marginalized communities.

Protect Our Privacy (POP) Act - S.6435B (Ramos) / A.09931 (Kim)

Police use of drones in public spaces, frequently during political protests intensifies public intimidation and erodes protected First Amendment speech. This bill limits the use of drones for law enforcement purposes; prohibits the use of drones by law enforcement at concerts, protests, demonstrations, or other actions protected by the First Amendment and requires a search warrant prior to using a drone for law enforcement purposes.

Prohibit Geofence Searches – A.10246A (Quart) / S.8183 (Myrie)

Geofence searches, also known as reverse location searches, allow law enforcement to surveil an entire neighborhood through a single warrant or request. Unlike traditional, constitutionally permissible searches, which

are limited to specific people, reasonably suspected of criminal activity, geofence searches impose no limit on the number of people that may be subject to an invasion of privacy. A single geofence, especially in a place as densely packed as New York, can affect thousands of people, easily tracing their location and identity, even when they are not suspected of any crime. This kind of search is unprecedented in Fourth Amendment history, and is precisely the type of unreasonable search that the Fourth Amendment seeks to prohibit. This legislation would amend the Criminal Procedure Law to ban reverse location search warrants and reverse location search warrant requests.

Secure Due Process Protections

Protect Fundamental Rights to Appellate Review

Prosecutors have increasingly required our clients to waive their appellate rights in order 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. Additionally, the current system for providing appellate counsel is unnecessarily onerous for both clients and the appellate courts, which assign counsel on appeal. Assemblymember Catalina Cruz is currently drafting bills that would amend the criminal procedure law to address each problem. Her legislation will ban waivers of appeal in cases involving suppression and excessive sentence issues and streamline the process for assignment of appellate counsel.

Address Wrongful Convictions through Post-Conviction Reform – S.7255 (Myrie) / A.9147 (Quart)

New York ranks fourth in the nation in terms of wrongful convictions. Thousands of people were wrongfully convicted and imprisoned before critical reforms to our bail, discovery and speedy trial laws were passed in 2019, but as the law exists now, most have no meaningful avenue for redress in our state courts, unless they have DNA evidence of their innocence. This bill would limit or eliminate procedural roadblocks in Criminal Procedure Law 440, New York’s post-conviction statute, to create more avenues for relief and ensure that people who have strong claims of actual innocence are entitled to a hearing and an opportunity to present evidence of their innocence. The bill also extends access to free counsel to help wrongfully convicted people to draft, investigate and litigate claims for relief and creates a right to post-conviction discovery.

Ensure Judicial Review of Orders of Protection – A.7633 (Quart)

Currently, courts 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. This bill 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 requires the government to show by clear and convincing evidence that the order should not be modified, and it requires the judge to state their reason for or against modifying on the record.

Ensure the Right to a Jury Trial for All - S.33 (Hoylman) / A.3462

New York State grants a right to a jury trial for everyone facing misdemeanor charges, except those charged with B misdemeanors and certain unclassified misdemeanors in New York City. This legislation would clarify that anyone charged with a misdemeanor in New York City is entitled to a trial in front of a jury of their peers, just as they would be if they were charged in any other part of New York State. The legislation should also ensure that all people eligible for Youthful Offender status are also entitled to a jury trial.

Preclude Introduction of Confessions Obtained by Deceptive Tactics (The “Exonerated 5 Bill”) - S.6806 (Myrie)

Our legal system should be based on basic principles of fairness and transparency. When accused people are interrogated, however, our current law allows law enforcement to use deceptive practices and to do so in unrecorded interactions. This bill would require law enforcement to record interrogations and preclude the introduction at trial of confessions obtained through deceptive police tactics, including claiming the existence of evidence or testimony that does not exist.

Re-Enfranchise Communities and Support Civic Engagement

Restore Voting Rights to People in Prison and on Parole - S.6905 (Salazar)

Black and Latinx communities have long been targeted by voter disenfranchisement laws. All New Yorkers should be able to exercise their right to vote, and their vote should count in the county where they previously resided. We urge the Legislature and the Governor to ensure that no New Yorker loses the right to vote by virtue of a conviction, including while incarcerated, by enacting S.6905.

Enact Clean Slate Legislation to Create Broad Automatic Expungement

Automatic expungement should be a key element of New York's plans to recover from the economic toll of the pandemic and address systemic racial injustices. There is no rational argument for reforming the criminal legal system, as New York has begun to do, without working to repair the harm done under laws that everyone now agrees were racist and unfair. Millions of New Yorkers have criminal records that prevent them from finding jobs and housing, and moving forward with their lives. As Clean Slate bills pass around the country, New York lags behind. The application-based sealing that was passed in 2017, which has provided relief to less than 1% of people who are eligible, has taught us important lessons about the need for automatic expungement and shorter waiting periods. Senator Zellnor Myrie is working with a coalition of advocates on legislation that will significantly expand the existing sealing and expungement provisions in New York. This groundbreaking legislation will create the automatic expungement of a broad range of offenses and will substantially reduce the 10-year waiting period. As we experience wide-ranging economic fallout from a global pandemic, now, more than ever, is the time to create an expungement law that truly gives New Yorkers with past convictions a chance to move on with their lives.

End Predatory Court Fees - A.11083 (Niou)

This bill would eliminate mandatory court fees for all Penal Law and Vehicle and Traffic Law offenses. It would end the use of incarceration as a sanction for a failure to pay a fine, surcharge, or fee, lifting and vacating existing warrants issued for such reasons; and end the garnishment of incarcerated people's commissary accounts for 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.

Expand Post-Conviction Relief for Survivors of Trafficking (START Act) - S.4981 (Ramos) / A.6983 (Gottfried)

Current law only permits survivors of sex and labor trafficking to vacate convictions for prostitution-related offenses. The START Act remedies the current law's shortcomings by empowering courts to vacate a range of criminal convictions that stem from a person's experience as a victim of sex trafficking or labor trafficking, in addition to other provisions making this relief more accessible.

End the Lifetime Felony Ban on Jury Duty Service - S.221A (Benjamin) / A.4760A (Aubry)

Existing law precludes people with felony convictions from serving on juries for their entire lives, regardless of their rehabilitation. That prevents people from serving their communities as full-fledged and equal citizens and directly impacts heavily policed and over-prosecuted Black and Latinx communities. This bill will guarantee that if a person has completed their sentence for a felony, their right to serve on a jury will be fully restored.

Increase Transparency in Pre-Arrest Detention

Transparency in Police Custody – S.8707 (Gianaris)

This bill would establish that any pre-arrest detention exceeding 24 hours from arrest to arraignment constitutes an “unnecessary delay” under the law and creates an automatic right to release, until and unless the presumption is rebutted by clear and convincing evidence that such a delay was actually necessary for each individual petitioner identified in a writ of habeas corpus. This bill would also require municipalities with a population of one million or greater to establish and maintain a searchable online registry to locate detainees, to further ensure that defense attorneys have access to those who might require assistance with pre-arrest issues.

Protect Young People

Expand Youthful Offender Status, Create Young Adult Status – A.8381A (O’Donnell)

Modern research in neuroscience and psychology shows that an adolescent's brain is not fully developed until their mid-twenties. New York's criminal law should reflect that twenty-first century understanding of brain development and its bearing on criminal culpability and prospects for rehabilitation, by strengthening and expanding existing protections of the youthful offender statute, allowing emerging adults, ages 19-25, to take responsibility for the commission of a crime while fostering their ability to enter the workforce, secure stable housing and pursue education without the stigma of a criminal record, or, in many cases, the lifelong trauma of a long prison sentence.

A Second Look at Youthful Offender Protections - S.6572 (Myrie) / A.8160

This legislation would enable a person who was initially denied youthful offender treatment, and has not been convicted of a crime for at least five years since their sentence, to apply to the sentencing court for renewed consideration. Allowing judges the ability to assess an individual's track record since the original sentencing will provide countless New Yorkers the opportunity to pursue jobs, housing and educational options that have been foreclosed by a criminal conviction. This will enable more New Yorkers to fully integrate into their communities without being continuously stigmatized for mistakes made in their youth.

Increase Protections for Juveniles Interrogated by Police - S.4980B (Bailey) / A.6982B (Joyner)

Young people are far more vulnerable than adults to police coercion and more apt to falsely confess. Social science evidence suggests that *Miranda* warnings are insufficient to protect young people’s 5th Amendment right against self-incrimination. This bill would require that young people under the age of 18 consult with an attorney before being subjected to custodial interrogation, ensuring that any waiver of rights under *Miranda* is genuinely knowing, voluntary, and intelligent. Violation of this requirement would result in suppression of the child’s statement at trial.

Raise the Lower Age – S.8685 / A.10727

In New York, children between the ages of 7 and 12 can be handcuffed, transported in police cars, interrogated, detained with older kids, placed on probation or mandated to confinement. Rather than criminalize elementary

school children, disproportionately children of color, our state must allow other, more appropriate social service systems to address young children's behavioral needs. This legislation would amend the Family Court Act and Social Services Law to raise the lower age of jurisdiction for juvenile delinquency proceedings in Family Court from 7 to 12, and would prevent detention of youth under age 13 in secure facilities.

Courtroom Shackling of Children – A.7528 / S.6534

Children appearing in Family Court proceedings are indiscriminately shackled. This practice has the potential to prejudice a factfinder, interferes with a youth's ability to communicate with counsel and can cause humiliation and physical and emotional harm. This bill would prohibit the use of mechanical restraints on children appearing in Family Court unless a judge finds, after a hearing, that the restraint is the least restrictive alternative necessary to prevent physical injury to the child or another person, physically disruptive courtroom behavior or flight from the courtroom. The proposed statute would impose a presumption against the use of shackles and a process for a judge to determine whether the particular circumstances warrant their use.

Family Court Delinquency Discovery Reform – A.8085 (Joyner)

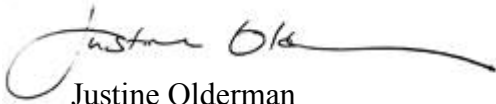
Current law deprives young people full protection of discovery rights that are granted to adults under the Criminal Procedure Law. This practice is inconsistent with constitutional Due Process and Equal Protection principles. This bill would require disclosure of certain materials that are in the presentment agency's possession at the time of the initial appearance and set forth time frames for full discovery. The bill would be even more fair and even more effective if amended to require disclosure of all materials in the presentment agency's possession at the time of the initial appearance when a youth is in detention. Additionally, when a young person is in detention, complete discovery disclosure should be required not later than three days prior to the first scheduled fact-finding hearing date, or seven days after the initial appearance, whichever is earlier. This will ensure timely disclosure.

Exclusionary School Discipline – A.1981 / S.0767B

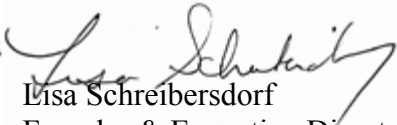
School districts throughout New York state over-utilize exclusionary discipline practices, including suspensions and classroom removals. These punitive practices have a disproportionate impact on students of color and students with disabilities. They deprive students of critical instructional time and increase the likelihood that students will be held back a grade or drop out. This legislation would require school districts to develop discipline codes that require the use of age-appropriate, graduated and proportionate disciplinary interventions, including restorative practices. It would limit the use of suspensions for students in kindergarten to 3rd grade, shorten the maximum length of suspensions from one year to 20 school days, and require school districts to provide suspended students with alternate instruction so that they don't fall behind academically.

If you have questions about any of these bills, please do not hesitate to contact the undersigned at their respective organizations.

Thank you,



Justine Olderman
Executive Director
The Bronx Defenders



Lisa Schreibersdorf
Founder & Executive Director
Brooklyn Defender Services



Tina Luongo
Attorney-In-Charge
Criminal Defense Practice
The Legal Aid Society



Alice Fontier
Managing Director
Neighborhood Defender
Service of Harlem



Executive Director
New York County Defender
Services



Executive Director
Queens Defenders

