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## Public Testimony

### New York Joint Legislative Public Hearing on 2020-2021 Executive Budget Proposal: Public Protection

February 12, 2020

Dear Senator Krueger, Assemblywoman Weinstein, and members of the New York Senate and Assembly:

We are here today to testify in favor of making changes to the bail reform laws that were passed last year. While we have agreed that changes should have been made to the system, we think the changes went too far.

National research has clearly shown that no one particular charge is predictive of pretrial misconduct. To discriminate based thereon, we think, lacks a rational basis. Thus, we believe, that limiting judicial discretion to impose bail or other conditions of release on a level playing field *based solely on particular charges*, is not evidence-based and should be rejected. Instead, national research consistently points to prior failures to appear and prior misconduct as predictive in terms of determining when a particular defendant will fail to appear, which is what judges were looking at when setting bail under the old law. To treat all persons charged with a similar offense equally in terms of risk, regardless of all of the other considerations, which are supported by substantial research, is to enact too rigid of a system and restrict judges from doing what they are there to do in the first place. Significantly, this has created, according to the Mayor of New York City, an explosion in crime that would not have occurred but for the new bail reform law.

We do of course understand that the legislature was concerned about lower-level defendants languishing in jail on low, perhaps unnecessary bails. We think solving that problem was a good move, and we support any efforts in that vein. Unfortunately, there were substantial unintended consequences of the bail reform legislation, which, we think, should be a top priority to get right.

While others are calling for a move to the New Jersey system, we come back to what was the problem we were trying to solve in the first place? New York judges have operated well without the now-debunked risk assessment algorithms and the use of preventative detention. With a few minor adjustments to the law passed last year, we think the judges can smooth out the problem cases again and stop an inevitable movement to the New Jersey system, which we think is ineffective, too costly, and not good for New York.

Sincerely,

DocuSigned by:

A handwritten signature in black ink that reads "Jeffrey J. Clayton".

Jeffrey J. Clayton, M.S., J.D.

Executive Director

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