

# **THE LEGAL AID SOCIETY**

**Justice in Every Borough.**

## **TESTIMONY**

New York State Senate  
New York State Assembly

## **PUBLIC PROTECTION HEARING**

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## **I. Who We Are**

Since 1876, The Legal Aid Society has provided direct legal services to low-income New Yorkers. Over the years, our organization has expanded to become the nation's largest and oldest legal services provider for low-income individuals and families. We specialize in three distinct practice areas: Criminal Defense, Civil Litigation, and Juvenile Rights, where we passionately advocate for our clients in their individual cases, for their communities in our policy work, and for institutional change in our law reform litigation. Each year our staff handles over 300,000 cases throughout New York City, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Legal Aid Society provides comprehensive representation to many of the most marginalized communities in New York. We are a valuable piece of the New York City tapestry, and our work is deeply interwoven within the fabric of many low-income New Yorkers' lives.

Our Criminal Defense Practice is the city-wide public defender, practicing in each of the five boroughs and annually representing over 200,000 low-income New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters.

The Society's Civil Practice provides comprehensive legal assistance in legal matters involving housing, foreclosure and homelessness; family law and domestic violence; income and economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior citizens; low-wage worker problems; tax law; consumer law; education law; community development opportunities to help clients move out of poverty; prisoners' rights, and reentry and reintegration matters for clients returning to the community from correctional facilities.

The Legal Aid Society's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children, including approximately 4,000 who were arrested by the NYPD and charged in Family Court with juvenile delinquency. In addition to representing

many thousands of children, youth, and adults each year in trial and appellate courts, The Legal Aid Society also pursues impact litigation and other law reform initiatives on behalf of our clients.

The breadth of our practice and the many ways our work directly connects us with low-income New Yorkers – who are mostly from communities of color – sharply focuses our ability to see the many interlocking ways that our most vulnerable communities are impacted by systemic injustice, discrimination, and neglect. The Society’s unique role provides our organization with one of the widest lenses to observe the disparate impact that race, gender, sexuality, and ability has on the lives of people of color in New York. We have challenged those patterns through our litigation and our relentless policy work and won hard earned successes on behalf of our clients and their communities.

*Racial Justice Unit:*

In 2018, The Legal Aid Society formed the Racial Justice Unit with the intent to reshape the internal legal practice and advocacy of the Society to center a racial justice lens. The Racial Justice Unit works with each practice to re-examine our work to ensure that we are addressing the societal structures that promulgate racial oppression and inequality as we fight for our individual clients. Since its inception, the Racial Justice Unit has worked with community activists and organizers to promote and advocate for legislative policies that support racial equity. By using litigation, advocacy, and many other tools, the Racial Justice Unit fights against structural racism within New York City and New York State.

Today, we write to strongly oppose Governor Cuomo’s proposals to create new crimes and his attempts to make virtual arraignments permanent. We also write to share our strong support for fully funding Indigent Legal Services and Defense Program budgets.

**II. Expanding criminalization will lead to more mass incarceration in communities of color**

Over the last decade, conversations around mass incarceration and the disparate impact that it has had on communities of color have dominated the discourse in criminal justice reform, with mixed legislative results.<sup>1</sup> Although it is important that awareness is growing around the racial implications of criminalization, throughout New York State government officials continue

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<sup>1</sup><https://www.gothamgazette.com/opinion/9277-new-york-bail-reform-rollbacks-dangerous-failing-moral-courage>

to misguidedly fall into a pattern of addressing social harms with more policing and criminalization.<sup>2</sup> These policies always target Black and Latinx New Yorkers at a disproportionate rate; oftentimes, causing further economic strain on Black, Indigenous and Latinx families, increasing the likelihood of violent police interactions, and the increasing family separation through incarceration.<sup>3</sup>

In March 2020, around 42,123 people were incarcerated in prisons throughout New York, and of those incarcerated individuals, 48% were Black and 24% were Latinx.<sup>4</sup> These high rates of incarceration are disproportionate to the population of Black (17.6%) and Latinx (19.2%) people in New York.<sup>5</sup> Racial justice advocates, community members, public defenders consistently raise the alarm around these issues, yet bills such as S452 and Governor Cuomo's cannabis regulation and taxation act continue to be offered as solutions to address community issues but in the end these proposals will eventually cause more harm to communities of color.

**a. The New York State Legislature must enact the Marihuana Regulation and Taxation Act (MRTA) and reject the Cannabis Regulation and Taxation Act (CRTA)**

Although Governor Cuomo claims to address marijuana prohibition through the Cannabis Regulation and Taxation Act (CRTA), his proposal perpetuates marijuana criminalization and fails to address harms experienced by Black and Latinx communities as a result of decades of racist marijuana enforcement. We urge the Senate and the Assembly to pass the MRTA with its original criminal provisions.

Under the Governor's proposal, the unlicensed sale of marijuana would still be a criminal offense under many circumstances, and a Class D felony if sold to a minor in any amount.<sup>6</sup> The

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<sup>2</sup> See Mayor de Blasio's choice to use NYPD to enforce social distancing and the resulting racial disparities in arrests (<https://www.time.com/5834414/nypd-social-distancing-arrest-data/>); 9 year old girl handcuffed and pepper sprayed by Rochester police had no other mental health options to help her while in crisis (<https://www.npr.org/2021/02/04/964260764/mother-of-pepper-sprayed-girl-says-police-denied-mental-health-help-for-daughter>); The Governor's plan to address the MTA budget deficit by hiring 500 more police officers (<https://www.vice.com/en/article/y3mww7/here-are-the-fare-evasion-enforcement-data-the-nypd-fought-to-keep-secret>)

<sup>3</sup> <https://www.everysecond.fwd.us/downloads/everysecond.fwd.us.pdf>

<sup>4</sup> <https://data.ny.gov/Public-Safety/Inmates-Under-Custody-Beginning-2008/55zc-sp6m>

<sup>5</sup> <https://www.census.gov/quickfacts/fact/table/NY/RHI225218#qf-headnote-a;>  
<https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork,NY/PST045219>

<sup>6</sup> FY 2022 NYS Executive Budget: Revenue § H pg 234-236

CRTA falls short of providing the meaningful change we need. This is not legalization. Unlike the CRTA, the original MRTA provided extensive protections to reduce police discretionary marijuana criminalization – such as allowing individuals to legally possess up to two pounds of marijuana and significantly reducing criminal penalties for unlicensed marijuana sales. Advocates, legislators, and experts intentionally drafted the original MRTA with these provisions because of the risk of law enforcement using marijuana as a predicate for unlawful interactions with Black and Latinx community members.<sup>7</sup>

Moreover, the CRTA seeks to increase the penalties for driving while intoxicated not just under the influence of marijuana but also alcohol. The CRTA gives police officers the ability to collect bodily fluids of the accused at the scene of arrest if the person was involved in a vehicle accident. This is an alarming shift from current procedures that will increase the unlawful collection of DNA and support further surveillance and genetic spying on communities of color. This provision alone makes the CRTA extremely dangerous because of the future implications this type of genetic surveillance will have on communities of color and individual constitutional rights.

By continuing to allow for criminalization, the CRTA fails to meet the basic premise of legalization. The CRTA will permit further racist policing in communities of color and will be weaponized as a tool to allow for the continuation of racist marijuana criminalization. As we have seen repeatedly in New York, whenever marijuana is decriminalized or the penalties are reduced for possession, the police continue to use marijuana as a pretense for violent interactions in communities of color, and as an opportunity to enact unconstitutional and unlawful behavior against Black and Latinx people.<sup>8</sup>

The CRTA fails to address the use of marijuana odor as a predicate for law enforcement to search a person. This will leave Black and Latinx New Yorkers vulnerable to unlawful police interactions. The original MRTA contemplated this challenge in preventing discriminatory policing, and the drafters intentionally removed marijuana odor as a basis for a search. This protective provision is crucial in ending racist police enforcement of marijuana regulations. We urge the Legislature to pass the original MRTA because it will substantially reduce the

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<sup>7</sup> <https://www.nytimes.com/2018/05/13/nyregion/marijuana-arrests-nyc-race.html>

<sup>8</sup> <https://www.nydailynews.com/opinion/ny-oped-marijuana-enforcement-is-still-driving-racist-policing-20200529-sv2fkrwuzhfvn3tuc5t4oh7oe-story.html>

disproportionate impact that marijuana criminalization will have on poor communities of color. The Governor's bill does not address the multiple consequences that Black and Latinx families suffer because of abusive and racist marijuana criminalization. The CRTA does not protect New Yorkers who are vulnerable to ICE enforcement and potential deportation. By allowing marijuana to remain an arrestable offense, it remains a deportable offense, even where a person's underlying criminal case has been dismissed.<sup>9</sup> In Black immigrant communities, where criminalization and extremely high levels of policing create a prison to deportation pipeline, marijuana enforcement places individuals in increased danger of being permanently ripped away from their homes, families and communities.<sup>10</sup> Additionally, criminalization leaves families open to separation through the child welfare system.<sup>11</sup> Black and Latinx parents are more likely to have their parental rights challenged or terminated for marijuana use. Marijuana criminalization in any form is dangerous to communities of color and Black and Latinx families.

The CRTA completely fails to provide redress to communities that have suffered and continue to suffer from racist marijuana enforcement. The CRTA does not provide reparations to the communities that were most impacted by the war on drugs and suffered immense financial harm for decades. By failing, to provide economic incentives for people from the legacy market to join the regulated marijuana market and failing to apply the tax revenues from marijuana sales directly to the communities that suffered the most criminalization, the CRTA continues the long, shameful legacy of ignoring and never repairing the exploitation and violence experienced by Black and other communities of color. New York must break this cycle and the MRTA is the tool that can help us.

The Senate and Assembly must reject the CRTA and instead pass the MRTA. Anything less than this will be an abdication of the responsibility New York has to address the harms of racist marijuana prohibition enforcement.

**III. Governor Cuomo's punitive approach to domestic violence is misguided, will not reduce instances of domestic violence, and will continue to criminalize communities of color.**

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<sup>9</sup> <https://www.uclalawreview.org/pdf/62-2-5.pdf>

<sup>10</sup> <https://www.vox.com/identities/2019/9/30/20875821/black-immigrants-school-prison-deportation-pipeline>

<sup>11</sup> <https://theappeal.org/parents-threatened-with-losing-kids-over-cannabis-use/>

Governor Cuomo has proposed creating Penal Law § 120.65—a new crime of “domestic violence”—in cases where a person is alleged to have committed a specified penal law offense against a member of their household or someone who is a former spouse, parent, or other relative.<sup>12</sup> The Governor has also proposed amending the Criminal Procedure Law to give judges the power to impose substantial financial obligations whenever they issue an order of protection, even prior to any finding of guilt.<sup>13</sup>

The stated aims of these proposals are to disqualify individuals from owning or purchasing a new firearm once convicted of the new domestic violence law and to address the harms of intimate partner violence and intrafamilial violence. However, the proposal achieves neither, and it fails to acknowledge the history of discriminatory policing and enforcement in New York State against Black, Indigenous, and non-white communities. These proposals will have a disproportionately harmful impact on New Yorkers of color, criminalize Black and Latinx survivors of domestic violence, expose Black and Latinx New Yorkers to more police violence and create greater financial instability in Black and Latinx communities. However, instead of addressing the root causes of domestic violence and gun-based violence, this new law merely reiterates existing penal laws under one unifying statute, PL 120.65, creating a direct pathway to a mandatory arrest of either/or both parties involved.

**a. Enacting PL 120.65 will cause women of color who experience intimate partner violence and intrafamilial violence to be criminalized and punish them for protecting themselves against their abusers**

Resurrecting mandatory arrest laws despite national studies demonstrating their ineffectiveness at protecting victims of domestic violence is an assault against Black, Indigenous and Latinx communities against whom these laws will be disproportionately enforced.<sup>14</sup> The people who the law is intended to protect will become the targets of the law through discriminatory enforcement and racist policing. It cannot be overstated that the historical relationship between the police, prosecutors, and communities of color is one of oppression and

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<sup>12</sup> FY 2022 NYS Executive Budget: Public Protection § C

<sup>13</sup> FY 2022 NYS Executive Budget: Public Protection § D

<sup>14</sup> Urban Justice Center, The Family Protection and Domestic Violence Intervention Act of 1996: Examining the Effects of Mandatory Arrest in New York City (2001).



repression. It's time to take an effective approach to public safety that emphasizes addressing the root causes of harm: poverty, lack of healthcare, and lack of opportunity. COVID-19 has highlighted once again that these factors are dangerous and often deadly for Black and Latinx New Yorkers.

Enacting statutes such as 120.65 assumes that every person who is subjected to intimate partner or familial violence wants their abusive partner or family member criminalized, jailed, and separated from their families. New York's mandatory arrest policy for cases alleging domestic violence removes any discretion from the victim to determine that an arrest is not an appropriate way to address the harm that has occurred. Additionally, homophobic and/or transphobic bias and discrimination in policing further increases the risk that LGBTQ couples will experience more criminalization and little to no protection under this law. In situations where the alleged abuse of an intimate partner is between same-sex couples, queer couples, or involves a trans person, there is a heightened risk that both partners will be arrested regardless of the aggressor.

Black and Latinx women understand that calling the police is sometimes riskier than doing nothing. The decision becomes complicated when combined with other considerations like immigration status, mental health, substance dependency, access to public benefits, and access to secure housing.

The Domestic Violence Justice Survivors Act (DVJSA) was enacted to address the very issue of the criminalization of domestic violence survivors and this would increase the mechanisms by which these people are introduced into the carceral system. In a press release for the law, Governor Cuomo stated, "The vast majority of incarcerated women have experienced physical or sexual violence in their lifetime, and too often these women wind up in prison in the first place because they're protecting themselves from an abuser, by signing this critical piece of our 2019 women's justice agenda, we can help ensure the criminal justice system takes into account that reality and empowers vulnerable New Yorkers rather than just putting them behind bars."<sup>15</sup> Indeed, over 60% of incarcerated women were previous victims of sexual or gender-based violence.<sup>16</sup> Incarceration of women also disproportionately affects Black and Latinx

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<sup>15</sup> <https://www.governor.ny.gov/news/governor-cuomo-signs-domestic-violence-survivors-justice-act>

<sup>16</sup> <https://www.aclu.org/other/prison-rape-elimination-act-2003-prea?redirect=prisoners-rights-womens-rights/prison-rape-elimination-act-2003-prea>

women. As of 2019, Black women were incarcerated at 1.7 times the rate of white women. Latinx women were imprisoned at 1.3 times the rate of white women.<sup>17</sup> Retaliatory and dual arrests end up subjecting women to “...further violence from the criminal justice system, including use of force during arrest, threats to remove and removal of children into state custody, strip searches, and other violent and degrading conditions of confinement.”<sup>18</sup>

Further, women of color who do go to the police are either ignored because of indifference to communities of color or criminalized for defending themselves against an abuser. The work of *Survived and Punished* speaks directly to the criminalization of survivors. A study showed that 66% of people who were arrested with their abusers or as a result of retaliatory complaints by their abusers were Black or Latinx.<sup>19</sup> Mandatory arrest provisions further increase the likelihood of retaliatory complaints by abusers.<sup>20</sup> Thus, women of color are traumatized by the violence of their abusers and by the violence of the criminal system for protecting themselves—they will not be any safer or less subject to violence through the enactment of the 120.65 because criminalization does not address the root causes of domestic and gender-based violence.

This law also fails to account for the large numbers of people who are abused in their familial relationships with law enforcement officers. Violence that police officers commit against their spouses has been studied for decades. In one self-reported survey from the early 1980s, 40 percent of police officers admitted that they have behaved “violently” toward their spouses or children in the previous 6 months.<sup>21</sup> Even when police departments are notified of a police officer’s domestic violence, consequences are rare and mild. A 2013 New York Times project found that police officers in Florida were more likely to keep their jobs after a domestic violence allegation than an allegation of drug use.<sup>22</sup> Frustratingly, police departments have little interest in recording and updating statistics regarding domestic abuse within their departments. It is difficult to know how much underreporting actually exists. This violence does not only affect partners but

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<sup>17</sup> <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>

<sup>18</sup> <https://incite-national.org/wp-content/uploads/2018/08/toolkitrev-domesticviolence.pdf>

<sup>19</sup> <https://survivedandpunished.org/research-across-the-walls-guide/>

<sup>20</sup> <https://www.endabusewi.org/wp-content/uploads/2018/11/Chronicles-36-2.pdf>

<sup>21</sup> <https://sites.temple.edu/klugman/2020/07/20/do-40-of-police-families-experience-domestic-violence/>

<sup>22</sup> <https://files.eric.ed.gov/fulltext/ED338997.pdf>

also extends to children. A police officer in Berthoud, Colorado was fired for child abuse only after his then-girlfriend made the video of the abuse public because the police chief took no action.<sup>23</sup> This is an ongoing and persistent issue. In considering public protection, New York must consider that all people who commit interpersonal harms will not be equally criminalized under PL. 120.65. Instead of leaning towards more criminalization or creating more financial hurdles for families, New York must adopt targeted efforts to provide survivors with financial resources from the state, so they are empowered to make choices about their safety without being encumbered by poverty or discrimination.

**b. Enacting 120.65 will lead to more interactions between New Yorkers of color and police which will lead to more police violence against those communities because of the history of racist and discriminatory policing.**

Persistently, in communities of color police officers often behave violently or disrespectfully to the people they are hired to serve. This issue has long been documented and the state has taken some meaningful actions in uncovering the perniciousness and widespread nature of this problem.<sup>24</sup> However, , families who have been affected by police violence must wait years for any disciplinary action against the officers, with the understanding that there may not be any consequences at all. In New York City, 1 out of 9 officers have at least one substantiated complaint from the Civilian Complaint Review Board (CCRB); however, only roughly about 10% of all CCRB complaints are substantiated. The vast majority of complaints for many reasons, such as the inability of the complainant to pursue the allegations because of time or financial reasons, are deemed unsubstantiated. This does not prove innocence or that the officer did not have a harmful interaction with the complainant.<sup>25</sup>

Many people are aware of fatal encounters with the police because in recent years those have gained public attention through the work of activist and organizers; however, many violent police interactions rarely lead to death and usually result in the harmed individual having to fight a criminal case. There are very few ways for advocates against police brutality to collect the data

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<sup>23</sup> <https://www.theatlantic.com/national/archive/2014/09/police-officers-who-hit-their-wives-or-girlfriends/380329/>

<sup>24</sup> <https://innocenceproject.org/in-a-historic-victory-the-new-york-legislature-repeals-50-a-requiring-full-disclosure-of-police-disciplinary-records/>

<sup>25</sup> <https://gothamist.com/news/nypd-police-ccrb-database-shows-confirmed-record-misconduct>

or measure the full scope of police misconduct and violence. Further, people who experience emotional and psychological trauma, but not physical trauma, are not included in these statistics either.

Yet, what we do know is that the vast majority of people who are arrested by the police or either Black or Latinx, we know that police brutality is a widespread issue that leaves survivors with little or no recourse to address the harm that they experience, and we know that criminalization of any new law will disproportionately impact communities of color. If new criminalization is passed, New Yorkers of color can expect to bear the burden of more policing in their communities; which raises the risk of more violent police interactions under the guise of domestic violence enforcement.

**c. Granting judges authority to force poor New Yorkers to take on additional financial burdens will drive them further into poverty, create more economic strife, and lead to further community violence.**

Governor Cuomo's proposal to grant judges authority to issue orders of protection that impose financial obligations at arraignment is a misguided attempt to support survivors; but instead, it will lead to financial instability for poor families and further police enforcement and potential criminalization. Orders of protection are a documented racial justice issue. Because Black people and other people of color are most likely to be prosecuted by the state, they are disproportionately subjected to orders of protection that often exclude them from their lawful homes. These situations are not limited to intimate partner violence but extend to cases with parents and children and cases that occur between siblings. Adding to the burden of an accused person, before there has even been an evaluation of the case or a judicial determination of culpability, would lead to poor New Yorkers of color having yet another debt that drives them further into poverty and does nothing to address the needs of survivors.

Orders of protection destabilize individual households, families, and communities. Consider an all too often example involving an undocumented woman. A loud argument leads to a neighbor calling the police. Mandatory arrest provisions lead to the woman's abusive partner's arrest and the financial provider being charged with P.L. 120.65 As an undocumented woman, it will be difficult for her to gain employment and the introduction of the criminal system into her life may expose her to deportation and detention. The presence of children in the home could

lead to ACS involvement and the removal of her children from the home. The situation becomes even more complicated if the police are called and find that the woman has injured her abuser. In a calculation of who to arrest, the police may decide to arrest both and simply “let the judge sort it out.” At arraignment, the judge sets an order of protection and requires one party to continue to pay the expenses for the household while being ordered to stay away from the household and maintain a separate residence. The already strained resources of the household are stretched even further to accommodate the legal mandates or be subject to re-arrest and more instability. In the end, the arrest and prosecution has done nothing to center the resources and services needed to assist the woman and in fact, created more harm.

Multiple studies have shown the direct relationship between poverty and the increase likelihood of domestic violence.<sup>26</sup> Many people stay with their abusive relationships because they have no economic options, and many families that are experiencing abuse are poor. By mandating a low-income person accused of domestic violence to additional economic burdens, the Governor will be seeking to extract blood from a stone. For poor families, this will not provide survivors with the economic resources they need to find a safe way to leave. If anything, this will trigger further strife and stress. The Governor’s proposals fail to address one of the main root causes of gender-based violence, poverty. If New York wants to meaningfully address domestic violence, then the Legislature must reject the Governor’s proposals and add meaningful tools to reduce poverty and income inequality.

#### **IV. Virtual Arraignments Dehumanizes People Accused of Crimes**

Before the pandemic began, arraignment courtrooms across the state were places where communities of color experienced degrading and inhumane treatment. Spaces where Black and Latinx New Yorkers—our neighbors, family members, and friends—were shackled in chains, often bloodied after violent encounters with police, referred to by court staff as “bodies,” held in cages called “pens” and marched before judges to have decisions made about their freedom.

The use of virtual arraignments has only further dehumanized our clients, making it nearly impossible to see the expressions on their faces, to hear the tone of their voices, to witness and document their injuries up close, to retrieve essential medical and psychiatric documents

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<sup>26</sup> <https://talkpoverty.org/2016/09/19/want-reduce-domestic-violence-treat-like-economic-issue/>

they carry after an arrest, and to make copies of identification necessary to connect them with support services.

We adamantly oppose Governor Cuomo's proposal to make such a dehumanizing system permanent across the state.

Virtual arraignments deprive the families and loved ones of our clients and the general public access to the Courts. Family members cannot walk into a virtual courtroom. Courts do not share links with the public to avoid internet interference. This results in families being unable to attend arraignments to support loved ones who are often in crisis, to gather crucial information from their loved ones' attorney, to vouch that they have a home to return to, and to witness life-changing decisions about freedom and jail.

The Legal Aid Society defends poor and working-class New Yorkers when they are accused of crimes. Virtual arraignments undermine our clients' ability to fully participate in their defense and further exacerbate the chasm between the rich and the poor in the criminal justice system. Low-income New Yorkers are far less likely to have access to the resources necessary to make virtual appearances adequate. Many poor and working-class New Yorkers do not have consistent access to computers, broadband internet or smartphones.<sup>27</sup> Our clients are typically unable to meet their attorney until the day they are arraigned, while wealthy defendants retain and meet with attorneys prior to arraignment. As a result, the rich enjoy attorney-client privilege and informed advocacy, while our clients have impersonal representation, hampered by lack of time and proximity because of the barriers inherent to virtual legal representation. Virtual arraignments have led to more people going to jail. In 1999, Illinois implemented televised arraignments. A study of that system revealed that bail was set at a staggering rate of 51% more often than it had been before the televised system was implemented, a clear result of the dehumanizing effects of virtual appearances.<sup>28</sup>

Virtual arraignments are grossly inefficient. Attorneys must wait for phone lines and virtual rooms to open before speaking to clients. Links frequently do not work or are sent incorrectly or to the wrong person. Internet fails and programs crash. When multiple people speak simultaneously, from the same interview rooms, clients cannot be heard. Paperwork

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<sup>27</sup> <https://www.democratandchronicle.com/story/news/2020/10/05/internet-gaps-new-york-cities-complicate-remote-learning-heres-how/3587596001/>

<sup>28</sup> <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7365&context=jclc>

cannot be passed from court staff to attorneys, and must be emailed, causing delay and issues with data storage. This has culminated in arraignment calendars taking far longer per person than under the pre-pandemic system. We urge the Legislature to reject the Governor's proposal.

**V. New York State Must Support and Fund Indigent Legal Services and Defense Program Budgets**

The Legal Aid Society supports the NYS Office of Indigent Legal Services SFY 2021/2022 Budget of \$316 Million, including \$200 Million for 4th Year of Statewide Expansion of *Hurrell-Harring* Reforms. We support the Governor's \$316 million proposed budget for the NYS Office of Indigent Legal Services (ILS). It includes the following provisions: aid to Localities: \$309.81 million would be allocated for base level grants and distributions to public defense programs; the *Hurrell-Harring* settlement in the five counties to maintain current funding for counsel at arraignment, caseload relief, and quality improvement; and \$200 million to finance the fourth year of the five-year statewide implementation of *Hurrell-Harring* reforms pursuant to plans filed by the ILS on December 1, 2017. State Operations: \$6.52 million would fund general office operations; office operations to implement the *Hurrell-Harring* reforms in five counties; and office operations to implement statewide expansion of the *Hurrell-Harring* reforms.

**a. Support the Legislative Add-on of \$441,000 to Restore the Aid to Defense Program in the SFY 2021/2022 Budget.**

Aid to Defense (ATD), created as a counterpart to Aid to Prosecution (ATP) to offset some of the increased costs of certain law enforcement initiatives, currently provides financial support to public defense entities in 25 counties and New York City. In SFY 2018/2019, the proposed Executive Budget included \$7,658,000 for ATD, and the Legislature added \$441,000 to restore the ATD appropriation to \$8,099,000, so these localities were able to fully focus on the quality improvements necessary to ensure the State meets its constitutional obligations.

However, in the last two years, the appropriation for ATD was not restored, and counties either had to bear the additional financial burden or cut their public defense budgets. The State's calculation of the amount of funding needed to ensure full implementation of the *Hurrell-Harring* reforms statewide was based on the assumption that other public defense funding in the State budget would remain level. Reducing ATD funding undercuts such

implementation. Assuming the Governor's Budget proposal continues the reduced ATD funding, Legal Aid asks the Legislature to restore the base funding of \$8,099,000 for Aid to Defense by adding \$441,000 to the SFY 2021/2022 Budget.

## **VI. Conclusion**

The Racial Justice Unit of The Legal Aid Society strongly opposes any new criminalization proposals, urges the Legislature to reject Governor Cuomo's proposal to make virtual arraignments permanent and urges the Legislature to fully fund Indigent Legal Services and Defense Programs. Greater criminalization does not decrease harm to communities. New criminalization does not address the root cause of violence and often inflicts greater harm against the very population it seeks to protect. New criminalization ignores the violence perpetuated by police officers. It leads to more police interactions with Black and Latinx communities, which will lead to more violence against those communities. New criminalization ignores the economic and community factors that lead to domestic violence. The Legislature has an opportunity to shift away from years of failed offender-centric models that leave survivors at higher risk of harm and further criminalized. It is time for the Legislature to embrace that opportunity, create a path for survivor-centric models based on needs, harm-reduction and community healing, and reject the Governor's proposals that would inflict greater harm on Black, Indigenous and Latinx communities, communities that are entitled to redress and reparation.<sup>29</sup>

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<sup>29</sup> Erika Sasson, Can Restorative Practices Address Intimate Partner Violence (2016).