



Testimony by Center for Community Alternatives

Presented before the New York State Senate and Assembly Joint Legislative Budget Hearing

February 7, 2023

Thank you for the opportunity to testify today. We are here to testify in opposition to the Governor's Executive Budget proposal on bail reform and in support of the Clean Slate Act (S.211/A.1029) and End Predatory Court Fees Act (S.313).

I. BAIL REFORM

The Governor's Proposal

In her [Executive Budget](#), Governor Hochul proposes eliminating the standard that judges set "the least restrictive" condition that "will reasonably assure [a person's] return to court." Instead, judges are left with a list of factors to consider and no standard whatsoever to guide their decision-making. This is unworkable and unconstitutional – and goes against decades of New York's law and jurisprudence.

- The lack of a standard will generate widespread confusion and disagreement among trial judges and appellate courts. Given the Governor's stated justification for the change – that judges are confused about how to apply the standard – the proposal is particularly bewildering.
- The change would condemn more Black and Latinx people and people in poverty to dangerous and potentially deadly pre-trial jailing across the state with no benefit for public safety.

The Purpose of Bail in New York Has Always Been to Ensure a Person's Return to Court

New York's law requires judges to consider the "least restrictive means" to ensure a person's appearance in court – a standard derived from constitutional protections that has guided New York judges for decades. While the "least restrictive means" language was made more explicit in the 2019 reforms, it existed in case law prior to these changes. Moreover, the stated purpose of bail – to ensure a person's return to court – has always been the law in New York. In eliminating this language, the Governor is not simply rolling back the much-needed reform. She's fundamentally changing the law itself.

Contrary to Governor Hochul's claims, the current standard is neither confusing nor conflicting for judges, as the Office of Court Administration [testified](#) recently at a public hearing. It simply requires that courts make an individualized determination, based on a number of factors – including the nature of the charges, a person's conviction history, seriousness of harm, history of violating orders of protection, and more – whether the accused is likely to submit to the proceedings, and if not, what conditions are necessary to secure their compliance. Where the court reasonably believes additional safeguards are required, it has numerous options at its disposal: from supervised release, to mandated programming, to electronic monitoring, money bail, or remand.

Thirty-three other states have adopted the least restrictive means standard through identical or



similar language in their own bail laws. We are not aware of any other state that has no standard at all, as Governor Hochul is proposing.

Real Solutions to Community Safety

The safest communities are those with the most resources, not the highest rates of incarceration. In her State of the State address, Governor Kathy Hochul herself acknowledged what the data has repeatedly shown: that [pretrial reform has not led to a rise in crime](#). This fact was reiterated in the joint hearing of the Senate and Assembly Codes, Judiciary and Corrections committee. In fact, data shows that bail reform has succeeded in reducing the injustice of pretrial incarceration and upholding public safety. The vast majority of people are [successfully released pretrial](#).

A politicized focus on bail reform distracts from real solutions for community safety. Pretrial incarceration can [exacerbate](#) drivers of crime. By destabilizing people's lives, pretrial incarceration increases the likelihood of future arrests and undermines the health and safety of individuals, families, and their communities. [Data](#) show that community-based, public health-centered violence intervention programs do a better job of preventing and decreasing violence. New York must take an evidence-based approach to address the root causes of crime by investing in safe and affordable housing, mental health services, and employment opportunities, not pursuing unwarranted changes to bail reform.

II. CLEAN SLATE

New Yorkers deserve real solutions to create stronger, safer communities. Ahead of the final budget, we urge the Governor and the legislature to increase investments for community-based programs and to pass the Clean Slate Act, which will allow New Yorkers to support themselves and their families and break cycles of poverty and criminalization.

The Problem of Perpetual Punishment

The Clean Slate Act will help address the systemic barriers to jobs, housing and education posed by old conviction records. Under our current system, people who have successfully served their time are [subjected to perpetual punishment](#) long after their sentence is served. Doors that were once open – to jobs, a place to live, an education – can remain closed for a lifetime, and this impact reverberates across children, families, and whole communities, [disproportionately](#) impacting Black and brown New Yorkers and deepening already-existing inequalities in civic life.

Economic Opportunities Create Safety

New York can change this. We urge the legislature to pass the Clean Slate Act (S.211/A.1029), a common-sense bill that would create opportunities for New Yorkers in every corner of the state. A [recent study](#) found New York loses an estimated \$7.1 billion in wages because of unemployment and underemployment among people with old conviction records. By expanding opportunity, Clean Slate will boost economic growth, expand the state's workforce, and help businesses hire employees, while increasing community safety and tackling long-standing racial inequities in our criminal legal system. Within two years of clearing their records under Michigan law, [research showed](#) people were 11% more likely to have a job, were earning 22% more, and were less likely than members of the general public to be convicted of a crime. By helping to



ensure that all New Yorkers can access stable employment and housing, Clean Slate will revitalize our communities, which are safest when individuals have what they need to thrive.

Addressing Intergenerational Poverty

Clean Slate is also crucial to address intergenerational poverty. [Nearly 50% of children](#) have at least one parent with a conviction record, and children who grow up in poverty are far more likely to remain living in poverty throughout their lives. By lifting barriers to life essentials, including jobs and housing, Clean Slate will allow New Yorkers to support themselves and their families and break the cycle of poverty for millions of children.

Support for Clean Slate

A large and diverse coalition is calling for passage of the Clean Slate Act. The Clean Slate Act has been endorsed by three Fortune 500 companies ([Microsoft](#), [Verizon](#), and [JP Morgan Chase](#)) who employ tens of thousands of New Yorkers and the [Business Council of New York State](#) which represents 3,500 member companies, local chambers of commerce, and professional and trade associations. The bill also has the support of unions representing over 2 million workers, including [District Council 37](#), [1199 SEIU](#), [Local 338 RWDSU/UFCW](#), [Mason Tenders' District Council](#), [Laborers' Local 79](#), and the [New York State Nurses Association](#). In addition, local governments have indicated their support, including NYC, Buffalo, Albany, Westchester, and a dozen other cities and counties who have passed resolutions in support of the bill.

The Clean Slate Act

Under the Clean Slate Act, records would be sealed automatically after three years for misdemeanors and seven years for felonies not including time incarcerated, once someone is not on community supervision and has not incurred any new convictions. Sealed records would still be accessible to law enforcement and for employment with vulnerable populations, including children, the elderly and people with disabilities. Sex offenses are not eligible for sealing.

We urge the legislature to pass the Clean Slate Act ahead of the budget, as well as include this critical legislation in the Assembly and Senate one-house budgets.

III. END PREDATORY COURT FEES ACT (S.313)

The End Predatory Court Fees Act (S.313), would eliminate mandatory court surcharges, probation fees, mandatory minimum fines, as well as arrests and incarceration for unpaid fines and fees. Last year, the legislature made it clear that eliminating parole supervision fees was a priority by eliminating them in the 2022 budget, and this year we urge the legislature to pass the End Predatory Court Fees Act in its entirety.

New York's Fiscally Irresponsible and Regressive Method of Raising Revenue

The U.S. Justice Department's [Ferguson Report](#) came out over five years ago, after police in Ferguson, Missouri, killed Michael Brown, and uncovered a pattern of racially discriminatory policing practices incentivized by the city's dependence on the criminal legal system to raise revenue. The report cites the use of warrants and jail time to coerce fine and fee payments and stark racial disparities in traffic stops, citations, and arrests. This pattern of discrimination, incentivized by revenue goals, contributed to "deep mistrust between parts of the community



and the police department.” Yet New York continues to depend on this toxic revenue source that criminalizes Black and Brown New Yorkers and low-income people. In fact, [thirty-four localities](#) in New York are about as reliant or even more reliant on fines and fees for revenue than Ferguson at the time of the USDOJ investigation.

Racial disparities across New York State mirror many of the DOJ’s findings in Ferguson. Police acting as “armed debt collectors” risk Black and brown lives and extract wealth from New York’s poorest communities. The COVID-19 pandemic and resulting financial crisis only intensify the negative racial, economic, and health impacts of policing in pursuit of revenue. And the problem of “policing for profit” continues, in the wake of the horrific death of Tyre Nichols, we must look at police-citizen encounters that are directly tied to raising revenue. Distrust of law enforcement is already entrenched in low-income and marginalized communities, and when police officers and members of the warrant squad are deployed to arrest people for failure to pay mandatory fines and surcharges, “it further [diminishes their credibility](#).” What’s worse, is that the entire court system is involved in this “shakedown... judges preying upon the most vulnerable members of the general population” to fund the very system that keeps them trapped in the cycle of poverty and incarceration. “Debtors’ prisons may have been abolished in 1833, but it is shockingly easy to end up behind bars if the state is your creditor.”

New York’s Mandatory Surcharge Amounts to Taxation-By-Citation

Fees (or surcharges) are extra costs that the government attaches to every conviction — even traffic tickets and minor infractions. They can total hundreds of dollars (not including the amount of any fine a court may impose). Individuals are often required to pay fees on top of a fine, or even when the judge decides not to impose a fine at all. These court fees are explicitly intended as revenue raisers; they function as a form of regressive taxation on New Yorkers who are often the least able to afford them.

New York’s top predatory fee is the mandatory surcharge. The mandatory surcharge is a fee attached to every conviction in New York, from minor violations to felonies. Courts cannot waive or reduce these fees or surcharges, or even consider your ability to pay them, and ending this practice across the state calls for legislative reform. Depending on the type of conviction, a single mandatory surcharge can amount to hundreds of dollars. In addition to mandatory fees, many charges come with a mandatory minimum fine, meaning that judges cannot consider someone’s ability to pay.

New York’s Court Fees Place an Undue Burden on the Poor

Fines and fees punish people living in poverty. When governments use predatory fines and fees to raise money, the result is a hidden, disproportionate tax on those who can least afford it. This system of taxation-by-citation encourages policing for profit, extracts wealth from some of the most vulnerable members of our society and exposes Black and brown New Yorkers to more encounters with police resulting in a disproportionate rate of court involvement. Fees have significant consequences, and they impact everything from housing stability to emotional well-being to relationships with friends and family. Paying just one traffic ticket and its mandatory surcharge could mean missing rent, going without healthcare, or living without basic necessities. These fines and fees often force an indigent defendant, or their family, to choose between paying a fine that if unpaid would land a family member in jail, or the ability to afford rent, food, and other daily essentials.



Moreover, data shows New York has not only increased fees over time, but also made certain fees *less affordable* and a much greater financial burden. Since the creation of the mandatory surcharge in the 1980s, the surcharge for violations has increased *178 percent more* than the expected inflation-adjusted amount. For misdemeanors and felonies, the surcharge increased 92 percent and 75 percent, respectively, relative to the inflation-adjusted amount.

New York's Fines and Fees Are a Racist Source of Revenue

Black and brown New Yorkers are significantly more likely to be stopped, questioned, frisked, and issued summonses by police, and are living everyday with the fear of being arrested and jailed for the inability to pay a fine or fee. Harsh policing of minor violations, driven by governments' dependence on fines and fees as revenue, does not lead to greater public safety. It instead exposes Black and brown people to unnecessary interactions with law enforcement and financial insecurity.

Jailing those unable to pay fines and fees is especially costly, and New York is wasting money to chase money that does not exist. Courts and law enforcement agencies are spending more time and resources than ever on unsuccessful collection efforts aimed at those least able to afford it.

Collecting Court Debt is a Waste of Time and Money

It is no secret that New York's courts are overwhelmed. In the wake of the pandemic, the backlog of cases continues to build, and everyone within the entire court system; judges, prosecutors, public defenders, court officers, and court clerks are desperately trying to catch up. This legislature held a hearing on Criminal Justice Date on January 30th of this year, and it was quite clear that this backlog is a problem, administratively, and financially for many agencies and organizations in the state. The Office of Court Administration testified that "there are limits to [their] resources, especially on the number of personnel available" and that "legislative reporting requirements do not include funding that may be needed to secure supplemental resources." One of these reporting mandates is the imposition and collection of fines and surcharges by the courts.

Yet, agencies in New York are not keeping legally mandated records on how the government assesses, collects, and distributes revenue from individual fees, including the mandatory surcharge. These agencies also fail to maintain data reporting infrastructure to track the amounts imposed and collected for specific fees, including the mandatory surcharge and associated revenue spending. The elimination of predatory court fees, such as the mandatory surcharge, along with the elimination of mandatory minimum fines would actually save New York Money. The cost to impose and attempt to collect these fines and fees, along with the personnel and infrastructure needed to track and maintain the data, is more than is actually collected. In many circumstances, money is never collected and state government agencies and localities are footing the bill in an attempt to raise uncollectible revenue for the state.

End Predatory Court Fees

The End Predatory Court Fees Act, (S.313) would address these injustices by first and foremost eliminating mandatory court surcharges, which is New York's most predatory fee. Probation fees would be eliminated so a person's ability to re-enter the community and the workplace isn't



unnecessarily burdened by further financial obligations. Additionally, the practice of garnishing the commissary accounts to pay for fines and fees would be eliminated. These accounts are held by individuals who are incarcerated, and family members contribute their hard-earned money to these accounts so that incarcerated individuals can purchase things they need while in prison. This legislation would also eliminate mandatory minimum fines and create a mechanism for judges to consider a person's ability to pay before imposing a fine. And most significantly, this legislation would put a long overdue end to the draconian practice of incarceration for failure to pay a fine or a fee.

New York must start funding government equitably, not on the backs of those least able to afford it. This inefficient, extractive, and predatory practice of imposing predatory fees has far-reaching consequences that endanger individuals' attempts to secure stable housing and employment. In addition to systematically punishing people living in poverty, fines and fees disproportionately exposes Black and brown New Yorkers to more, potentially deadly, interactions with law enforcement.