

**New York County District Attorney's Office
Testimony Before 2024 Joint Legislative Budget Hearing
Fiscal Year 2025 Public Protection Hearings
January 25, 2024**

Thank you to the Assembly and Senate for the opportunity to present the views of Manhattan District Attorney Alvin L. Bragg Jr. regarding the New York State Executive Budget for Fiscal Year 2025. We thank the Governor and legislature for their past and continued support, and our fellow District Attorneys for their collaboration, on our shared goal of public safety.

The twin goals of the Manhattan District Attorney's Office are delivering safety and fairness, and we know that we cannot have one without the other. We are achieving these goals with a targeted strategy:

1. Focusing on the drivers of violence;
2. Addressing the underlying needs of those who commit crimes; and
3. Investing in preventative measures, all of which will keep our communities safe today and in the long term.

We apply these strategies every day to the prosecution of hate crimes and retail theft, in our problem-solving courts and the use of alternatives to incarceration, as well as our investments in mental health services, and other critical areas addressed in this budget. That is why we are pleased to highlight some of these areas in our testimony, and explain why we believe these investments will make our borough and our state safer and our criminal justice system fairer.

Hate Crimes

According to the New York State Division of Criminal Justice, hate crime incidents hit a five year low in 2015¹. Since then, reported hate crimes have almost doubled.² These statistics are in line with national trends, as the Federal Bureau of Investigation's annual crime report for 2022 shows that even as violent crime rates dropped nationwide, more than 11,600 hate crime incidents were reported, the highest number since the FBI began tracking these statistics in 1991.³ Citywide, hate crimes reported to the NYPD have more than doubled from 2015 to 2022.⁴ In October 2023, reported hate crimes more than doubled compared to October 2022, and as of January 9, 2024 our office has nearly 146 open hate crime cases.

Since the Hate Crimes Act of 2000 created New York Penal Law Article 485 regarding hate crimes, the Act has been amended several times to update both the definition of a protected class as well as to include additional crimes that are committed as acts of hate. However, the list of

¹ New York State Division of Criminal Justice Services, *Hate Crime in New York State 2015 Annual Report* (Criminal Justice Research Report, August 2016), <https://www.criminaljustice.ny.gov/crimnet/ojsa/hate-crime-in-nys-2015-annual-report.pdf>

² *Id.*; New York State Division of Criminal Justice Services, *Hate Crime Incidents By Bias and Region*, <https://www.criminaljustice.ny.gov/crimnet/ojsa/hatecrimeincidents2022.xlsx>

³ Federal Bureau of Investigation, *FBI Releases 2022 Crime in the Nation Statistics* (October 16, 2023), <https://www.fbi.gov/news/press-releases/fbi-releases-2022-crime-in-the-nation-statistics>

⁴ *Id.*

violent crimes covered by the Hate Crimes Act is not comprehensive, and some offenses that are clearly hate crimes simply cannot be charged as such. For example, assault can be charged as a hate crime, but gang assault cannot. So, if *one* person beats up another person because of the victim's race, that assault can be charged as a hate crime. But, inexplicably, if a *group* of people beats someone up because of their race, that *gang* assault (as the law calls it) *cannot* be charged as a hate crime. This needs to change.

Our Office is intimately aware that the current list of eligible offenses contains glaring omissions and does not reflect the reality of bias-motivated offenses that we see in our practice, because we need to explain to victims and their families regularly that offenses that are clearly hate crimes cannot be charged as hate crimes. Over the course of nearly a year, our hate crimes prosecutors have consulted with our legislative partners to identify the 31 new eligible offenses to the hate crimes statute that are included in the proposed budget, and we appreciate the partnership with Assembly Member Lee, Senator Hoylman-Sigal in introducing this legislation, and applaud the Governor for including it in the proposed budget.

Retail Theft/Fostering Sale of Stolen Goods

We are pleased to see that Governor Hochul is taking serious action against the rise in retail theft and look forward to working collaboratively with her office and with our partners in the Assembly and State Senate to address this issue.

Retail theft has been a major focus of our work since Manhattan District Attorney Alvin L. Bragg, Jr. took office. In 2022, the District Attorney and the Manhattan Small Business Alliance announced a comprehensive plan to help combat retail theft in the borough. The plan was the culmination of the Alliance's monthly meetings with the D.A. and small group focus meetings, where store owners shared the negative impacts that retail theft has had on their businesses, and members heard from law enforcement and service providers. The strategy focused on the small group of people driving retail theft in Manhattan: between 2015 and 2021, 18 percent of people arrested for shoplifting comprised nearly half of all shoplifting arrests.

We use data to prioritize addressing the small number of repeat offenders causing the most harm. Our Crime Strategies Unit sets arrest alerts and builds out profiles to make the strongest possible bail argument when recidivists with open cases are rearrested. Our next step is to keep track of people who re-offend after they have been arrested and released on open cases to pursue meaningful outcomes—intensive treatment or state prison time—rather than continuing to pursue the revolving door of short jail sentences. This list of repeat offenders is constantly evolving to ensure that we are using the most recent and accurate data to identify those that cause the most harm to retail establishments. We also identify target neighborhoods experiencing the most retail theft based on input from business owners, community members, and police department data. We then focus on recidivists in those target neighborhoods.

We use different enforcement tools for different people. For certain opportunists who are stealing for economic gain, we seek incarceration to hold them accountable. Other times, the person has serious underlying issues driving their behavior that can never be addressed by sending them to jail. Indeed, substance use disorders, mental illness, and a lack of housing are often exacerbated

by incarceration. We also use our Investigations Bureau to go after the most brazen organized retail theft circles by following the money to build cases against large scale fencing operations.

While penalties exist for possessing stolen goods, there is no specific law in New York State that targets facilitating the sale of these items online. Creating these new penalties will push companies – including large companies such as Facebook, Instagram and Amazon, where stolen goods often end up – to take further steps to safeguard their platforms and allow law enforcement to target the ringleaders of these schemes. It will also create a further disincentive for sellers to put stolen goods up for sale online. We thank Senator Hoylman-Sigal for introducing legislation to address this issue, Assembly Member Rosenthal for sponsoring this bill in the Assembly, and the Governor for including this language in the proposed budget. We also thank the Governor for including increased funding to combat retail theft in the proposed budget.

Alternatives to Incarceration and Problem Solving Courts

We make our communities safer by connecting people with treatment and other services to address some of the common drivers of harmful behavior, including substance use disorder, untreated mental illness, joblessness, housing instability, and trauma. Of course, not every case is appropriate for an alternative to incarceration, and for certain cases a significant period of incarceration is required for accountability and to keep our community safe. However, the data is clear that incarceration in New York City has a criminogenic effect – it makes those who are incarcerated more likely to recidivate upon their release. Therefore, when used in the wrong cases, incarceration makes our City less safe, and alternatives to incarceration make us safer.

This is why when District Attorney Bragg took office, he created the Pathways to Public Safety Division to center the question of safety in all our work. We placed specially trained Pathways Division deputies in each of our six trial bureaus to assess felony cases for potential diversion as early as possible in the process. The sooner we connect someone with treatment or other services, the more likely they are to succeed in diversion and desist from crime. Since DA Bragg took office, in the six months after their felony problem solving court graduation, 96% of graduates have not been re-arrested for violent felony offenses, 92% have had no new felony arrests, and 87% have had no new arrests at all.

Alternatives to incarceration have flourished in New York County's unique array of problem-solving courts. Historically, New York County has had many of the common types of problem-solving courts that are present in many jurisdictions throughout New York State, including our Mental Health Court, Judicial Diversion Court for drug and drug-related cases, and Veterans court. These courts continue to provide excellent services in Manhattan every day. However, our Office found significant gaps in opportunities for alternatives to incarceration for those that did not fit neatly into one of these specialized courts, but for whom an alternative to incarceration program was in the interest of fairness and public safety. To ameliorate this critical gap in services, a "Felony ATI" problem-solving court was created. Since the launch of the Felony ATI Court in June of 2019, the Office has referred about 750 cases—more than 460 since DA Bragg took office. At every graduation ceremony, we hear a few consistent themes from the graduates: that they deeply regret the harm they caused, that the work they had to do on themselves to complete the program was difficult—perhaps more difficult than going to prison would have been—and that it was worth it.

Manhattan is also unique in providing a “mental health track” in our Judicial Diversion Court for drug and drug-related offenses. Unlike our other problem-solving courts, the Judicial Diversion court is mandated by state statute and funded by the state. In that respect, it operates like other Judicial Diversion courts across the state. However, our Office noticed that a large number of individuals in this court have co-occurring mental health issues, and the staff trained to address drug issues were not always adequately trained or prepared to support those presenting serious mental health issues. Therefore, DANY funded the creation of a “mental health track” in the Judicial Diversion court to provide these individuals with specialized treatment appropriate to their needs. These are individuals who would otherwise not be accepted into Judicial Diversion.

Since taking office, DA Bragg has more than doubled annual referrals to problem-solving courts. This has brought greater fairness and safety to Manhattan, but has also strained existing resources. At present, individuals awaiting assessment for placement into our alternative to incarceration programs on Rikers Island can wait up to two months for their assessment. Those who are not incarcerated wait even longer. This poses a genuine public safety issue, as those with untreated behavioral health issues living in our communities are more likely to recidivate the longer they wait for treatment, and those incarcerated in city jails languish there needlessly. As our referrals and acceptances grow, our system must grow concurrently to handle this increased volume.

To date, our Office has funded both our Felony ATI court and mental health track in our Judicial Diversion Court almost exclusively, using our asset forfeiture funds to create and pilot these courts, spending well over \$3 million on these two courts in last year alone. Now that we know these courts are successful, we need other actors to continue this funding, as our asset forfeiture funds are dwindling and will not be replenished. Not only do we need this funding to be picked up, we need to expand the reach of these courts; as we increase the rate at which we use these courts, their funding must increase accordingly. We trust that the legislature and Governor recognize the critical importance these courts play and will fund them to scale.

Housing

Housing instability is highly correlated with criminality. Particularly for people with complex behavioral health needs, this means that stable and supportive housing is a critical component to public safety. A key component for our system is providing temporary housing after arraignment or a carceral sentence. Reentry transitional housing helps people leaving incarceration avoid the instability caused by homelessness by providing immediate housing combined with an array of treatment options and services. According to the Coalition for Supportive Housing (CSH), New York City has tens of thousands of supportive housing apartment units that offer affordable housing with voluntary, individualized support. However, there are significant eligibility and funding barriers that prevent most people with behavioral health needs, cycling between Rikers Island and homelessness, from accessing stable permanent supportive housing. We encourage our partners in government to address these issues and ensure a clean path to supportive housing for those who need it.

We also encourage funding for this housing where warranted. For example, the current request for proposals from the Office of Mental Health for reentry scattered site housing does not include any

units in New York City and is only for those leaving prison, not those leaving jails. In our jurisdiction, Justice Involved Supportive Housing (JISH) is the only dedicated supportive housing for people leaving our city's jails, currently 120 units are available across three different providers, but 500 JISH units are needed to support the eligible population that is chronically housed on Rikers Island. We encourage all stakeholders to fund this housing at needed levels.

Domestic Violence

We applaud the Governor for including several important public safety initiatives specifically addressing domestic violence and encourage the legislature to approve this critical funding. Expanding and supporting trauma-informed and survivor-centered prosecution practices, such as the Domestic Violence STAT model, will help NYPD and our office in building more trust and rapport with survivors and enhancing evidence collection in high-risk cases both pre-and post-arrest. Our office recently created the Intimate Partner and Sexual Violence Bureau within our Special Victims Division to ensure we have full time designated ADAs specially trained to work on these sensitive cases. We know that there is more work to be done to identify and address the barriers survivors face in engaging with a prosecution and ensure we hold offenders accountable, even when survivors are unable to participate. The expansion of best practices like the Domestic Violence STAT Model is a big step in moving that work forward here in New York City and across the state.

We also supports the Governor's inclusion of expanded funding through the Gun Involved Violence Elimination (GIVE) initiative to improve how law enforcement and service providers work together on risk assessment protocols that can identify high risk offenders and predict domestic violence lethality. An essential element in any city or statewide response to domestic violence is to ensure that we consistently fund survivor and community supports, including both the critical and lifesaving services provided within prosecutor's offices, such as our Survivor Services Bureau, and the rich network of community-based organizations we partner with every day in New York City. The emergency domestic violence financial relief program included in the Executive Budget provides an additional and effective way to ensure survivors can address acute needs while dealing with the aftermath of violence. Importantly, these kinds of programs include flexibility that increase survivor access to the funding so they can address urgent needs quickly.

We look forward to working with all stakeholders in the implementation of these important initiatives.

Assertive Community Treatment Teams

Among the most challenging choices facing our office and other District Attorneys and judges every day is how to address individuals charged with less serious crimes, who might otherwise be released, but who exhibit serious mental health issues and are either unhoused or have unstable housing. For these individuals, we face a choice between either: a) incarceration, which may be unduly harsh and is likely to exacerbate mental health issues, or b) release into the community without the supports these individuals need, where they are likely to continue in patterns of criminality. Either choice is highly problematic. The key to solving this problem is robust community-based treatments, such as Assertive Community Treatment (ACT) teams, which have

a demonstrated track record of effectively serving individuals with serious mental illness. These teams are a mix of forensic ACT providers, which serve people with any interaction with the criminal-legal system, and Alternative-to-Incarceration ACT teams, such as the CASES' Nathaniel ACT (NACT) team. These teams are crucial for receiving wraparound services while a person is in the criminal justice system or exiting it. Based on the current population at Rikers, 19 new ACT teams are needed to support the chronically incarcerated with serious mental illness. Further, New York County and Kings County share a forensic NACT team and have had a significant history of long waitlists for people with cases pending in either jurisdiction. To address this unmet demand and streamline program efficiency, including in the critical courthouse operations, of the 20 ACT teams funded statewide, one should be a distinct NACT team for New York County.

We are encouraged by Governor Hochul's shared vision for expanding the use of ACT/FACT Teams statewide and are thrilled to see \$9.6 million in the FY 2025 Executive Budget for this purpose. We encourage our partners in the legislature to make sure that this critical component of the modern criminal legal system receives the funding it desperately needs, and our communities deserve.

Conclusion

Our testimony highlights only some of the myriad areas of investment in safety and fairness in the proposed budget, and our office is proud to work with our partners in the legislature and executive branches to continue existing funding critical initiatives to address gun violence, domestic violence, reentry, and other areas in which we practice every day. We thank all our partners in government for their continued focus and look forward to our continued collaboration in pursuit of our shared goals of fairness and public safety.