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WRITTEN TESTIMONY OF:

Clare Degnan

President

Chief Defenders Association of New York

Presented before

The New York State

Senate Committee on Finance &

Assembly Committee on Ways and Means

Joint Legislative Budget Hearing: Public Protection

January 25, 2024

I. Introduction

The Chief Defenders Association of New York (CDANY) is a membership organization of appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices and Administrators of Assigned Counsel Panels throughout New York State. Our organizations collectively provide the mandated service of indigent representation to close to 400,000 people annually in New York's criminal, family and appellate courts. We are the voice of the defender organizations that are the fulcrum upon which the integrity of the criminal justice system rests.

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In the 2024 legislative session, CDANY partnered with other organizations to advance critical reforms, leading to passage of the [Clean Slate Act](#) and the [Parental Equity Act](#). We also worked with elected leaders to enhance the stability of public defense, securing \$40 million for defenders statewide to fund pre-trial discovery reform implementation, \$40 million for defense services, \$14 million to improve the quality of family defense representation, and [increased hourly rates to assigned counsel](#) to \$158 per hour, their first pay raise in 20 years.

As the direct providers of legal services with experience derived from a street level understanding of the law and how it operates, impacts, and often subjugates our clients, we have a unique perspective to bring to legislative advocacy in New York. We appreciate the legislature for taking steps to honor and protect long overdue pretrial reforms to bring us in line with other states, while also maintaining and continuing to fully support adequate funding for all mandated representation in the state.

This year in particular we raise the alarm about our resource-starved family courts and the urgent need for investment at all levels of that court system. We urge the legislature and Governor Hochul to work with the judiciary and stakeholders like public defenders to initiate a much-needed overhaul of these courts.

II. Budget Priorities for FY 2025

This is a pivotal time for those providing defense services in the criminal and family courts of New York State. While much has been accomplished in recent years with the passage of criminal justice reforms and expansion of services pursuant to *Hurrell-Harring* settlement and statutory funding, much is yet to be done to assure continuation of these hard fought and achieved milestones in criminal defense. The Executive's proposed FY 2025 budget falls short of the mark to responsibly maintain these reforms. Moreover, the budget also fails to recognize an escalating crisis in the family court system in New York.

A. Criminal Defense Funding

In 2017, the State Legislature enacted Executive Law 833, which codified the ideals of *Hurrell-Harring*, a landmark lawsuit in which the State and five counties were named parties. Over the last six years, and under the watchful eye of the New York State Office of Indigent Legal Services, every county in New York has benefitted from impactful reforms that have improved the quality of indigent defense representation, the result of an infusion of State funding and resources. Monumental work has been done by indigent defense providers to implement new programs, recruit, hire and onboard new attorneys and support staff, and navigate the intricacies of

administering State funding. Defense providers did this work with an expectation of annualized enhancements to maintain staffing and programmatic improvements.

Defenders are therefore at the mercy of the state budget process to continue these reforms and to maintain the current ranks of attorneys and auxiliary staff hired to perform these mandates. What's more, attorney caseload caps imposed by the settlement and extended statewide for criminal attorneys and issued by New York State Office of Indigent Legal Services for family court attorneys, effectively limit the number of cases an attorney can accept. It is incumbent therefore on individual provider offices to strive for maintenance of effort and staffing, which is wholly dependent on continuation of funding.

Please note: The Executive Budget fails to provide a 3% cost of living increase for settlement, statutory and distribution funding as requested by NYS Office of Indigent Legal Services. CDANY urges the addition of \$10,649,100 which is the sum total of COLA for this funding which will secure these entrenched improvements in criminal defense. 18-B statutory rates for assigned counsel, which were finally increased in SFY 2023-24 after being stagnant for almost two decades, must likewise be secured with a state commitment to fully fund the increase plus cost-of-living increases going forward.

B. Funding Family Court Representation

Even more concerning is the Executive's refusal to address the crisis inside New York's family court system in the proposed budget. On November 1, 2023, in the Joint Public Hearing before the Senate Standing Committee on Judiciary and the Senate Standing Committee on Children and Families, a common refrain was that New York's family court is in "crisis" and is a "second class court;" and, that family court is often "dehumanizing" for both litigants and attorneys appearing on their behalf.

Many of the issues highlighted in the *Hurrell-Harring* lawsuit are precariously present in family court, including crushing caseloads, lack of training and supervision, lack of supportive resources, lack of timely access to counsel, and worrisome attrition of staff. Indeed, the testimony elicited at the Joint Senate Hearing raised concerns that all the essential ingredients now exist for a "*Hurrell-Harring*" in family court, and that there is a looming specter of a similar lawsuit that would throw New York State into chaos.

To this end, CDANY strongly supports NYS Office of Indigent Legal Services funding request of \$50 million for parental representation, to be continued for the following two years for a total of \$150 million. This investment in the family court system by the state would address mounting inadequacies that threaten the welfare of children and family stability; harsh realities that disproportionately affect Black and Latinx families. This funding would go a long way toward implementing the

recommendations of the Chief Judge’s Commission on Parental Representation that were issued in 2019. What’s more, these funds are currently available in the Indigent Legal Services Fund. The time has come for the state to address this crisis.

CDANY also strongly supports the NYS Unified Court System’s request to augment funding for the Attorney for the Child (AFC) program. Much like parental representation attorneys in Family Court, attorneys for children are laboring under crushing caseloads, unprecedented attrition, non-competitive salaries and lack of resources. Many of our member organizations provide AFC services, as well as representation for youth pursuant to Raise the Age funding. Support for this additional funding is essential to assure a voice for the most vulnerable in our family court system.

III. Specific Funding Asks

Defenders call upon the Governor and Legislators to acknowledge their integral role in New York’s courts and provide much needed funding as follows:

Indigent Legal Services Office, Aid to Localities

Category of Funding	Executive Proposal	Defense Ask
Family Court Defense	\$4,500,000	\$50,000,000 (150 million over 3 years)
HH Statewide	\$250,000,000	\$257,500,000 (3% COLA)
HH Settlement	\$23,970,000	\$24,700,000 (3% COLA)
Distributions to NYC and Counties	\$81,000,000	\$83,430,000 (3% COLA)
Assigned Counsel Fee Increased Rate	\$92,000,000 (1/2 of the estimated fee increase)	\$184,000,000 (or 100% of the estimated fee increase)

Division of Criminal Justice Services, Aid to Localities

Category of Funding	Executive Proposal	Defense Ask
Aid to Defense	\$7,658,000	\$8,099,000

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Aid to Defense Part II	\$40,000,000	\$40,000,000
Discovery funding for the defense	\$40,000,000	\$120,000,000 (\$1 million/county for discovery technology & \$58 million for paralegal staff [1 paralegal for every 3 attorneys])
Indigent Parolee Program	\$0	\$5,000,000 (\$600,000 restoration + \$4,400,000 to provide full reimbursement to all counties & NYC for parole representation)
New York State Defenders Association	\$ 1,030,000	\$5,267,000 (\$1.030 Gov + \$2.1 m restoration + \$1.792 m discovery & forensic unit expansion + \$345 k statewide recruitment and retention support project)

Department of Veterans Services, Aid to Localities

Category of Funding	Executive Proposal	Defense Ask
Veterans Defense Program, NYSDA	\$0	\$950,000 (\$720,000 restoration + \$230,000 for Central & Northern NY)

IV. Additional Budget Issues

A. Reject the Removal of Money from the ILS and IOLA Funds to the General Fund

CDANY was deeply alarmed to learn of the Governor's proposal to transfer \$234 million from the Indigent Legal Services Fund to the General Fund. Of the proposed transfer, \$114 million is for increased assigned counsel costs, including the State's reimbursement of 50% of counties' and New York City's expenditures for this increase. We join with the Office of Indigent Legal Services in urging the legislature to reject this proposed sweep and ensure that the ILS fund is used only for its statutory purposes – funding quality improvements in both criminal and Family Court representation.

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Relatedly, the Executive Budget also recommends transferring \$100 million from IOLA funds to the general fund, as well. Many of our members rely on IOLA funds to cover the costs of civil legal services, including housing and family law matters. Even during the most extreme financial crises in the past, IOLA funds have never been swept or used for any other purpose than to provide civil legal services to low-income New Yorkers. Now is not the time to divert or undermine the purpose of this critical resource. We likewise urge the legislature to reject this sweep and ensure those funds remain available for their stated purpose only.

B. Other Judiciary Funding

To the extent that the Judiciary Budget includes additional monies for legal services in general and resources for people in the courts, we wholeheartedly support those requests and encourage the legislature to build upon them.

C. NYS District Attorney and Indigent Legal Services Attorney Loan Forgiveness (DALF) Program

In addition, CDANY strongly supports expansion of the NYS District Attorney and Indigent Legal Services Attorney Loan Forgiveness (DALF) Program to address unprecedented and crippling attrition in our offices. Most indigent legal services attorneys are burdened with overwhelming student loan debt (at least \$100,000 of debt; 38% owing more than \$200,000) forcing many to leave the ranks of public service. The DALF expansion legislation ([S.4511 - Ramos /A.1568B - Simon](#)) would accelerate debt relief and provide incentive to help recruit and retain otherwise dedicated public defenders. Last year, the Senate allocated funding for DALF expansion in their one house budget. We urge the legislature to allocate funding in this year's budget, too.

D. Expansion of Treatment Courts

We deeply appreciate the Governor's call for expansion of mental health courts along with additional funding of \$24 million in this year's Executive Budget. Chief Judge Rowan Wilson has expressed strong support for judicial diversion and alternatives to incarceration, including in a recent concurring decision in *People v. Greene*, where he noted:

“Treating incarceration as the default response to individuals convicted of low-level offenses has outsized deleterious consequences that, ultimately, make our communities less safe: the cycle of incarceration further destabilizes these individuals; mental health treatment in prison is costlier than community-based treatment; individuals with mental illness are at greater risk of detention in prison and extended incarceration; prison mental health resources are often inadequate; and

individuals living with mental illness face greater risk of harm and abuse while behind bars.”¹

But mere expansion of treatment courts is insufficient. We need to take a step further and pass the Treatment Not Jail Act ([S.1976B - Ramos/A.1263B - Forrest](#)) in the budget. This legislation will ensure that mental health courts are expanded equitably across the state, but importantly, are also modernized. The Treatment Not Jail Act will bring fairness and clarity to the admissions process, codify due process protections, curb abusive practices, and adopt evidence-based treatment that is driven by medical professionals and participants themselves. Any monetary investment in these courts can only go so far if judges do not have statutory authority to admit people to enter these courts and prosecutors remain the gatekeeper.

E. Protecting Discovery Reform

We also wish to thank the legislature for remaining committed to the importance and success of the landmark discovery reforms of 2019. Last year, New York City District Attorneys made a concerted effort to roll back our landmark discovery reform protections and we expect more of the same this year. We call on you again to hold the line in 2024. Indeed, a recent decision by the Court of Appeals demonstrates the importance of holding the line against early changes to the law. In *People v. Bay*, the Court unanimously affirmed the legislative intent of discovery reform and clarified that the statute has never demanded a “perfect prosecutor” but rather one who is duly diligent in their work.² We ask that you continue to hold the line as necessary funding makes its way to both prosecutors and defenders to ensure that the bill can be implemented as intended and as occurs in nearly every other state in the country. Consequently, we urge you to expand funding for aid to defense in proportion to aid to prosecution.

F. Executive Plans to Expand Criminal Exposure for Retail Theft and Hate Crimes

Finally, CDANY has deep concerns about the Governor’s proposals on increasing prison time for retail theft and a lengthy expansion of hate crimes. The proposal to add the category of “retail worker” to P.L 120.05 making an otherwise misdemeanor allegation a violent felony punishable by up to 7 years prison must be rejected. All persons now covered under the PL 120.05 (3) assault “bump ups” are government workers or persons licensed by the government or persons performing functions

¹ *People v. Greene*, 2024 NY Slip Op 00096 (NY Ct App, decided Jan. 11, 2024), available at <https://law.justia.com/cases/new-york/court-of-appeals/2024/43-ssm-10.html>.

² *People v. Bay*, 2023 NY Slip Op 06407 (NY Ct App, decided Dec. 14, 2023) available at <https://cdn.ymaws.com/nysaedl.org/resource/resmgr/amicus/baydecision2023.pdf>.

which are public in nature (e.g., school crossing guards). The addition of “retail workers” adds a category not of the same character and is thus out of harmony with the existing statute. It opens the door to other special interest groups from the private sector lobbying for potential further expansion of the penal law to protect additional categories of private sector employees. Moreover, most cases involving injury to retail workers are prosecuted as felony robbery, making this nonsensical and harmful expansion unnecessary in its broad scope.

Likewise, the hate crime expansion provision fails in its intended protection of individuals as the unintended consequences of such legislation is far more damaging than it is helpful. Research has repeatedly shown that hate crime legislation often harms the communities of people it intends to protect.³ We urge the legislature to reject creating expanded hate crimes laws that are disproportionately used against Black and Brown communities and result in additional or longer prison sentences. Instead, we hope this Legislature will place the resources, money, and time currently spent on enforcing hate crimes into continuing its work to provide New Yorkers with stable and protective housing, covering healthcare needs in our communities, making education available and affordable and continuing to create economic opportunities for all New Yorkers.

V. Conclusion

The Chief Defenders Association of New York issues a call to action for Governor Hochul and the New York State Legislature to change the status quo; to secure justice for all New Yorkers and keep families together. We have made great strides in New York to repair a broken criminal justice system, and now the time has come to make similar strides in family court. It is our hope and request that we can continue to divert carceral funding and instead invest in our communities to fight the degradation brought on by poverty. Tangential to CDANY’s aforementioned funding requests, we call for increased funding for supportive services, housing, educational and job opportunities and better healthcare for the indigent to promote public safety and racial justice.

Please also review our 2024 Legislative Priorities document for a complete list of priorities (attached as an appendix to this testimony).

If you have any questions about our testimony, please email CDANY Director Jennifer Van Ort (jlvanort@chiefdefendersny.com).

³ Movement Advancement Project, *Policy Spotlight: Hate Crime Laws* (2021), available at <https://www.lgbtmap.org/file/2021-report-hate-crime-laws.pdf>.



Chief Defenders Association of New York

LEGISLATIVE PRIORITIES 2024

Undoing the Status Quo: Justice for New Yorkers and Families

January 2024

The Chief Defenders Association of New York (CDANY) is a membership organization of appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices and Administrators of Assigned Counsel Panels throughout New York State. Our organizations collectively provide the mandated service of indigent representation to close to 400,000 people annually in New York's criminal, family and appellate courts. We are the voice of the defender organizations that are the fulcrum upon which the integrity of the criminal justice system rests.

In 2023, CDANY partnered with other organizations to advance critical reforms, leading to passage of the [Clean Slate Act](#), the [Parental Equity Act](#). We also enhanced the stability of public defense, securing \$40 million for defenders statewide to fund pre-trial discovery reform implementation, \$40 million for defense services, \$14 million to improve the quality of family defense representation, and [increased hourly rates to assigned counsel](#) to \$158 per hour, their first pay raise in 20 years.

As the direct providers of legal services with experience derived from a street level understanding of the law and how it operates, impacts and often subjugates our clients, we have a unique perspective to bring to legislative advocacy in New York. As such, we are pleased to present herein CDANY's *Legislative Priorities 2024: Undoing the Status Quo: Justice for New Yorkers and Families*.

CDANY has undertaken a survey of its membership to ascertain the legal and societal issues that are most pressing for our clients and our practice. The survey tasked our members to prioritize the areas of law that require immediate attention and advocacy. The result is a call to action for the Governor and Legislators to appropriate adequate funding and resources for defenders, and to protect and effect valuable and much-needed policy reforms. In this document we lay out CDANY's policy asks for the 2024 New York State legislative session. Our FY25 budget

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requests are detailed in our 2024 Public Protection Hearing testimony, [available here](#).

CDANY strongly supports the following legal system reform bills:

I. **Defending Humane Law Reforms that Work: Raise the Age, Discovery, and Protecting Bail, Discovery, Speedy Trial Laws and Raise the Age**

It must be stated at the outset that CDANY remains committed to landmark Raise the Age, Discovery, Bail and Speedy Trial reform legislation. We resist any rollbacks to these laws. Instead of more rollbacks, the legislature must increase implementation funding and direct funds to community-based organizations with the strongest ties to youth and families and best equipped to serve them. And while CDANY herein advocates for fair and just prison to home measures, it is worthwhile to reiterate CDANY support for Less is More and continued efforts and funding to successfully implement this landmark parole reform legislation.

II. **Enact Meaningful Alternatives To Incarceration and Community Support**

- **Treatment Not Jail Act (S.1976B- Ramos/A.1263B - Forrest)**
- **Low-level drug possession decriminalization (S.2340 – Rivera/A.3434 – Meeks)**

In approving reform of the state’s bail statute, the legislature explicitly recognized that the state must address the underlying issues that often lead to arrest and detention – including mental illness, drug and alcohol dependency, homelessness and the range of life problems related to poverty. It is due to a failure of public policy that these issues have been left, by default, to the police, prosecutors and the courts.

The **Treatment Not Jail Act** will dramatically expand pre-trial diversion for people with mental health or substance use concerns to every county in New York State under a new framework based on national best practices. *S.1976B - Ramos/A.1263B - Forrest.*

The **Drug Decriminalization bill** will remove criminal penalties for possessing small amounts of any controlled substance and instead levy fines of \$50. The bill transform’s New York’s approach to drug use from one based on criminalization and stigma to one based on science and compassion. *S.2340 – Rivera/A.3434 – Meeks.*

III. Build Communities Not Cages: Overhaul New York’s Punitive Sentencing Laws

- [Eliminate Mandatory Minimums Act \(S.6471- Myrie/A.2036A - Meeks\)](#)
- [Second Look Act \(S.321 - Salazar/A.531 - Walker\)](#)
- [Earned Time Act \(S. 774 - Cooney/A.1128 - Kelles\)](#)

New York’s current sentencing laws strip judges of discretion, grant outsized power to prosecutors, fail to account for personal transformation, and drive mass incarceration.

The **Eliminate Mandatory Minimums Act** will eliminate mandatory minimum sentences and predicate sentencing enhancements and create a statutory presumption against incarceration. *S.6471- Myrie/A.2036A - Meeks.*

The **Second Look Act** allows judges to review and reconsider excessive sentences where a person has served 10 years or more in prison. *S.321 - Salazar/A.531 - Walker.*

The **Earned Time Act** affords incarcerated people more opportunities to earn “good time” and “merit time” to account for personal transformation and reunite families. *S.774 -Cooney/A.1128 - Kelles.*

IV. Improve the Quality of Mandated Parental Representation and Enact Structural Changes to Family Courts

Family Court Article 10 and Termination of Parental Rights cases are among the most traumatic for families. Given what is at stake in these proceedings, including the temporary or permanent loss of custody of a child, it is critical that parents are represented by quality counsel with the expertise, time, and resources necessary to dedicate to these important cases.

An interdisciplinary model of family defense, which links attorneys, social workers and parent advocates to provide low and no-income parents with comprehensive representation, is recognized as the most effective model of representation of its kind in the nation. It’s been proven to reduce the time children spend in the foster system and saves money.¹ Unfortunately, the model of interdisciplinary representation for

¹ A 2019 study found that interdisciplinary teams representing parents at risk of losing their children, made up of attorneys, social workers and parent advocates, reduced time children spent in the foster system by 4 months without any increased risk. The same study calculated the cost savings in New York City at \$40 million. Gerber et al, *Effects of an interdisciplinary approach to parental representation in child welfare*, 102 Children and Youth Services Review 42-55 (July 2019), available at <https://www.sciencedirect.com/science/article/pii/S019074091930088X>.

parents subject to Article 10 cases is not available to parents outside of New York City or to most assigned counsel (18-b attorneys) in the state. Access to interdisciplinary defense teams is essential in providing early advocacy for parents under investigation by a local child protective services agency, before a case is ever filed in court. In September 2022, the Office of Court Administration adopted uniform standards of eligibility for assigned counsel in all family court proceedings. The rules ensure more equitable access to counsel for indigent parents who are subject to CPS investigations, before an Article 10 petition is filed in court. To fully realize the intent behind this important rule and ensure parents are aware of their right to seek the advice of counsel and be given access to available resources, the state will have to invest in these resources and clarify how it will be operationalized within OCA.

The decades-long crisis inside NYS's family courts is well documented.² In addition to adequately funding parental representation, there are overdue structural changes needed inside the court system that will address the harm to families caused by long court delays.

- Persons in Need of Supervision (PINS) matters and misdemeanor juvenile delinquency matters should be dealt with as community matters, not with court intervention. These young people should receive community-based services, not court dates.
- In custody/visitation cases, the expanded use of mediation may be appropriate in some circumstances and parents should be given the option to have a mediator as opposed to a judge review their situation. Mediation, of course, would not be appropriate in cases where there is a history of domestic violence.
- Redefine who has standing under Article 8, domestic violence cases. Eliminate unnecessary interpersonal and property disputes from family court dockets to expand the court's capacity to focus on the cases that truly need consideration in this narrowly tailored arena.
- New York's family court must have specialized hearing parts for emergency removal proceedings in Article 10 cases to ensure these immensely important proceedings can be handled efficiently and without interruption.

V. **Legislation to End Family Separation and Reduce Pathways into the Family Regulation System**

² Commission on Parental Legal Representation, *Interim Report to Chief Judge DiFiore* (Feb 2019), available at https://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf.

- **Family Miranda (S.901- Brisport/A.1980 - Walker)**
- **Informed Consent (S.320B - Salazar/A.109B - Rosenthal)**
- **Anti-Harassment in Reporting (S.902 - Brisport/A.2479 - Hevesi)**
- **Preserving Family Bonds Act (S.6720 - Brisport/A.5394 - Joyner) (2023 bill #)**

The following slate of bills will help narrow three of many entry points into this system and will lessen the weaponization of this system against families living in poverty. The final bill described below addresses the harm and provides opportunities for understanding and healing when a child is adopted out of this system.

New York’s Family Miranda Rights bill will ensure that parents are informed of their rights prior to being questioned by an investigator with child protective services. This bill does not create new rights, but simply requires that parents are informed of their existing rights when they are the subject of an investigation. *S.901-Brisport/ A.1980-Walker.*

New York’s Informed Consent bill will address the “test and report” practices within hospitals that disproportionately target low-income Black and Latine pregnant people and their newborns for drug tests. This legislation will require health care providers to obtain written and verbal informed consent before drug testing new parents and newborns unless there is a medical emergency. *S.320B-Salazar/ A.109B-Rosenthal.*

The Anti-harassment in Reporting bill will eliminate New York’s anonymous reporting system by requiring that all non-mandated reporters to the Statewide Central Register of Child Abuse and Maltreatment (SCR) provide their name and contact information, which will remain confidential and only be made available to the investigating agency. Anonymous reporting encourages abuse of the reporting system, leading to harassment and wasted investigation resources. *S.902 - Brisport/ A.2479 - Hevesi*

Preserving Family Bonds would bring New York adoption law in line with growing research that shows children benefit from healthy family bonds. This bill gives family court judges the authority to allow children to maintain contact or visit their biological parents after parental rights have been terminated, in a manner that is safe and appropriate, when it is in the best interest of the children. *Awaiting reintroduction.*

VI. Protect the rights and well-being of young people facing criminal charges

- **Youth Justice & Opportunities Act (S.4326 - Myrie/A.4238 - O’Donnell)**
- **Youth Interrogation (S.1099 - Bailey/A.1963 - Joyner)**

Research in neuroscience and psychology demonstrates that the brains of young people are not fully developed until they are in their mid-twenties. Brain development affects physical and mental health, maturity and judgment. Criminal law and policy, however, does not reflect current scientific knowledge about brain development in young people. In the name of law and order, authority figures resort to aggressive policing and prosecution of young people, when their conduct could be addressed more effectively through positive, constructive interventions. Legislation pending before the state legislature would reform policing and prosecution when the accused is a young person.

Youth Justice & Opportunities Act offers New York the chance to lead the nation by expanding laws to protect the futures of young people under the age of 26, enhance community well-being, and provide emerging adults the opportunity to move forward in their lives without the barrier of a criminal conviction. *A.4238-O'Donnell/ S.4326-Myrie*.

The **Juvenile Miranda Warnings bill** will ensure young people under the age of eighteen are able to consult with an attorney before being subject to custodial interrogation to prevent police coercion. *S.1099 - Bailey/A.1963 - Joyner*

VII. Ensuring Fair and Just Trials

- **Police Deception in Interrogations** (*S.2303 - Myrie/A.1156 - Vanel*)
- **Criminal Mischief Threshold** (*S.3239 - Sepulveda/A.1388 - Aubry*)
- **Burglary Reclassification** (*S.1102 - Bailey*)
- **Increase Larceny Threshold** (*S.6024 - Benjamin*)
- **Rap Music Bill** (*S.1738 - Hoylman/A.127 Cruz*)
- **Increased Jury Pay** (*S.793 - Hoylman*)
- **Jury of our Peers Act** (*S206A - Cleare/A.1432A - Aubry*)
- **Batson reform**
- **Admissibility of AI and related evidentiary technological issues**

New York can and must take steps to ensure more fair and just trials for people accused of crimes, which will require reform of arrest procedures, criminal laws and expanding access to jury service to diverse New Yorkers.

The **Police deception in interrogations bill** provides increased protections against false confession and/or false incrimination by individuals subject to interrogation and requires the collection of data concerning recorded interrogations. *S.2303 - Myrie/A.1156 - Vanel*

The **Criminal Justice Equity bills** limit the number of people exposed to felony convictions. This set of bills will:

- Raise the criminal mischief monetary threshold that was set in 1915 at \$250 to \$1000. *S.3239 - Sepulveda/A.1388 – Aubry.*
- Reclassify the definition of burglary by limiting the definition of a dwelling. *S.1102 - Bailey/A.7140 – Richardson*
- Increase the dollar thresholds for the categories of larceny. *S.6024/Benjamin*

The **“Rap Music on Trial” bill** establishes an assumption of the inadmissibility of evidence of a defendant's creative or artistic expression against such defendant in a criminal proceeding; requires the proffering party to affirmatively prove that the evidence is admissible by clear and convincing evidence. *S.1738 – Hoylman/A.127 Cruz*

The **Increased Jury Pay bill** increases the amount of jury duty pay to \$72 to reflect increased costs of living since the last increase more than twenty years ago. *S.793 – Hoylman.*

The **Jury of our Peers bill** eliminates the lifetime ban on jury duty for people convicted of felony offenses who have completed their sentence. *S206A – Cleare/A.1432A – Aubry.*

Batson reform - CDANY calls for statutory reforms to shore up the protections in *Batson v. Kentucky (1986)* to ensure that peremptory strikes in criminal cases are not racially biased.

Admissibility of AI and related evidentiary technological issues - While possibilities abound from emerging technologies like Artificial Intelligence (AI), legislators must understand that the intersection of AI and criminal justice is fraught with dangers. Law and policy must keep pace with these technological advances with the realization that such advances could further widen the racial and digital divide. The pernicious use of AI in policing is predicated upon suspect data that may be biased and flawed. AI in the courtroom poses many more questions like the reliability and admissibility of evidence. We look to lawmakers to provide the guardrails needed to protect individual civil liberties and to ensure the integrity of our court system.

VIII. Post Conviction Fairness and Justice

- [Challenging Wrongful Convictions Act \(S.7548 - Myrie/A.2878A - Aubry\) \(2023 bill #\)](#)
- [Appeal Waivers \(S.938 & 939 - Bailey/A.153 & 152 - Cruz\)](#)

New York's law of criminal procedure provides protections of fairness and due process, including the right to appeal a conviction and seek other forms of relief. But, as applied, these rules are often subverted. For example, prosecutors routinely condition the acceptance of a plea upon a waiver of the right to appeal. As a consequence, people surrender their right to appellate review even when the court record includes compelling evidence of police misconduct, racial disparities in sentencing, sex-trafficking of the person convicted, or ineffective assistance of counsel. The following legislation would amend the law consistent with the legislature's intent regarding the right to seek post-conviction relief.

The **Challenging Wrongful Convictions Act** overhauls New York's post-conviction statute to ensure that all wrongfully convicted people have a working pathway to exoneration. *Awaiting reintroduction.*

Appellate Rights Legislation will restore the right to appeal a conviction, notwithstanding a guilty plea when:

- Unlawful police conduct leads to an unjust outcome. *S.938- Bailey/A153-Cruz*
- Racial bias in sentencing leads to an unjust outcome. *S.939- Bailey/A152-Cruz*

IX. Opportunities to Require Jails & Prisons to Acknowledge the Humanity and Dignity of People who are Incarcerated

- [Gender Identity Respect Dignity & Safety Act \(S.2809 – Sepulveda/A.691 – Rozic\)](#)
- [Connecting Families \(S.1942 – Bailey/A.2164 – Epstein\)](#)
- [Right to In-Person Visits \(S.3318 – Sepulveda/A.6488 – Weprin\)](#)
- [Repeal Jim Crow Prison-Voting Bans \(S.316 – Salazar/A.412 – Epstein\)](#)
- [Freedom from Forced Labor Act \(S.225B – Myrie/A.3142B – Epstein\)](#)
- [Prison Minimum Wage Act \(S.2345 – Myrie\)](#)
- [Rights Behind Bars Bill \(S.7772 - Salazar/A.8364 - Forrest\)](#)
- [Compassion and Reproductive Equity \(CARE\) Act \(S.7132 - Salazar/A.7630 - Kelles\)](#)

The **Gender Identity Respect Dignity & Safety Act** will help keep TGNCNBI people safe by requiring that prisons and jails presumptively house people consistently with their gender identities. *S.2809 – Sepulveda/A.691 – Rozic*

The **Connecting Families Act** ensures free phone calls in jails and prisons across the state, as is already the law in NYC jails. *S.1942 – Bailey/A.2164 – Epstein*

The **Right to In-Person Visits bill** ensures that video visitation may not take the place of in-person visiting. While DOCCS has long allowed visitation in its facilities, nothing in law requires them to do so. *S.3318 – Sepulveda/A.6488 – Weprin.*

The bill to **Repeal Jim Crow Prison-Voting Bans** creates an affirmative right in the New York Constitution entitling incarcerated people to vote in a jail or prison. *S.316 – Salazar/A.412 – Epstein*

The **Freedom from Forced Labor Act** abolishes the prison labor exception that allows for modern-day slavery for people incarcerated in New York’s prisons and jails. *S.225B – Myrie/A.3142B – Epstein*

The **Prison Minimum Wage Act** mandates basic labor protections for incarcerated workers including safe and healthy working conditions, workers’ compensation if injured on the job, the right to form a union, and create ways for incarcerated workers to sue based on violations. *S.2345 – Myrie*

The **Rights Behind Bars bill** will strengthen the HALT Solitary Confinement Act, overturn bans on personalized care packages, make prison and jail phone calls free, and attempt to limit impunity for abusive corrections officers. *S.7772 - Salazar/A.8364 - Forrest*

The **Compassion and Reproductive Equity (CARE) Act** will enact prenatal and postpartum protections for incarcerated pregnant people. *S.7132 - Salazar/A.7630 - Kelles.*

X. Prison to Home Measures that Are Fair and Just

- **Fair and Timely Parole (S.307- Salazar/A.162 - Weprin)**
- **Elder Parole Act (S.2423 - Hoylman/A.2023 - Davila)**
- **Clemency Justice Act (S.222 – Myrie/A.155 – Solages)**
- **Reentry from the Inside Out (RIO) (S.207 – Cleare/A.2461 – Hevesi)**

The **Fair and Timely Parole** bill would establish standards for making parole determinations based upon a person’s rehabilitation and status at the time of review, pursuant to procedures designed to remove racial discrimination from a determination of parole eligibility. *S.307- Salazar/A.162 - Weprin*

The **Elder Parole** bill would authorize parole review for persons aged fifty-five or older. *S.2423 - Hoylman/A.2023 - Davila.*

The **Clemency Justice Act** will establish application processing and review requirements for executive reprieves, commutations, and pardons. *S.222 –*

Myrie/A.155 – Solages

The **Reentry from the Inside Out (RIO)** bill requires DOCCS to coordinate with social service agencies, the department of motor vehicles and non-profits to assist with benefits applications prior to release; provide access to a range of reentry services before and after release. *S.207 – Cleare/A.2461 – Hevesi*

XI. Ending Perpetual Punishment and Stigmatization

- **End Predatory Court Fees Act (S.313 - Salazar/A.4183 - Burgos)**
- **PromPT Stability Act (S. 3066 - Ramos/A. 3750A - Septimo)**

More than one in every five people in the United States has a criminal record. The legal system, including federal and state laws, impose a range of collateral consequences that may result in disqualification for a job, a professional license, housing, college admission, financial aid for higher education, the right to vote, to own a gun – even the right to have custody of one’s own children. What’s more, the state imposes various fines and surcharges on people with a criminal conviction or traffic infraction. Failure to pay a fee or surcharge related to a conviction can lead to extended incarceration, or to the suspension of a license for an unpaid traffic fine.

The **End Predatory Court Fees Act** will prohibit mandatory minimum fines and surcharges for violation of criminal or traffic laws, vacate warrants issued solely because of a person’s inability to pay such fines or fees, and suspend existing sentences of incarceration for such non-payment, among other provisions. *S.313 - Salazar/A.4183 - Burgos*

The **Promoting Pre-Trial Stability Act (PromPT Stability Act)** codifies a recent First Department decision by providing a right to an evidentiary hearing when a temporary order of protection is issued at arraignments. *S. 3066 - Ramos/A. 3750A - Septimo.*

XII. Federal Legislation

- **Ensuring Quality Access to Legal (EQUAL) Defense Act (H.R. 3758 - Rep. Bonamici)**
- **The New Way Forward Act (H.R. 2374 - Rep. Garcia)**
- **Marijuana Opportunity Reinvestment and Expungement (MORE) Act (H.R. 5601 - Rep. Nadler)**
- **End Solitary Confinement Act (H.R. 4972 - Rep. Bush)**

CDANY also supports federal legislation that positively impacts New Yorkers accused of crimes.

Chief Defenders Association of New York
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The **Ensuring Quality Access to Legal (EQUAL) Defense Act** would establish federal grant funding for public defense offices to ensure competitive wages and benefits for public defenders. *H.R. 3758, sponsored by Rep. Bonamici.*

The **New Way Forward Act** would dramatically overhaul our racist and unjust immigration laws by ending mandatory immigration detention, ending laws that create automatic pipelines to deportation through the criminal legal system and decriminalizing migration by repealing criminal prosecution for unlawful entry and reentry into the US. *H.R. 2374, sponsored by Rep. Garcia.*

The **Marijuana Opportunity Reinvestment and Expungement (MORE) Act** would end marijuana prohibition by removing marijuana from the federal list of controlled substances. The bill would expunge the record of those convicted of certain marijuana-related offenses and reduce sentences for others. Through a tax on sales, it would also fund services in communities most impacted by prohibition and provide support for a more diverse and inclusive market. *H.R. 5601, sponsored by Rep. Nadler.*

The **End Solitary Confinement Act** will end solitary confinement in federal prison and detention facilities, establish minimum standards for incarceration and due process protections, and incentivize states and localities to end solitary in state and local facilities. *H.R. 4972, sponsored by Rep. Bush.*

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