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**Testimony of the Legal Aid Society in Support of Funding for Defender Offices and
Discovery Technology Across New York and in Opposition to Certain Penal Law Changes
Proposed by the Executive**

**Submitted to the Joint Legislative Budget Hearings on Public Protection and Human
Services**

Dear Chairperson Krueger and Chairperson Weinstein,

We thank you for this opportunity to provide written testimony as to the continued and urgent need to fund criminal defense work across our state. Likewise, we appreciate your consideration of our opposition to certain penal law amendments proposed in the Executive Budget that would create an unwarranted expansion of a carceral system that this Legislature has rightfully worked to shrink and reform while turning attention to the root causes of crime and the investments that

truly make our communities safe. We are grateful to the Legislature for recognizing the vital role defenders play in our system and for supporting that constitutionally mandated role by introducing funding for staffing and discovery technology into the final FY23 budget.

The Legal Aid Society is built on one simple but powerful belief: that no New Yorker should be denied the right to equal justice. We seek to be a beacon of hope for New Yorkers who feel neglected -regardless of who they are, where they come from, or how they identify. From our start over 140 years ago, our growth has mirrored that of the city we serve. Today, we are proud to be the largest, most influential social justice law firm in New York City. Our staff and attorneys deliver justice in every borough, working tirelessly to defend our clients and dismantle the hidden, systemic barriers that can prevent them from thriving. As passionate advocates for individuals and families, The Legal Aid Society is an indispensable component of the legal, social, and economic fabric of our New York City.

We are proud to work in coalition with fellow defenders, advocates, impacted individuals and community organizations all of whom organize and agitate for investments in our communities and the eradication of the social inequities that too often lead to arrest, detention and incarceration. We were part of the coalition that pushed for the historic passage of the Clean Slate Act last session and continue to work with our partners across the state to push for a more just, equitable and compassionate legal system and a fully funded social safety net.

Funding Requests

We want to underscore our deep appreciation to the Legislature for receiving our request for statewide funding last year and ensuring that the funding made it into the final budget. While that money has not yet been delivered to defenders across New York, it will provide crucial funding to address high attrition rates and much-needed technology upgrades. In our endeavor to work in coalition with partners to secure funding and resources for our attorneys and the communities we serve, two of our most important partnerships are with the Chief Defenders Association of New York (CDANY) and the New York State Defender Association (NYSDA). Both CDANY and NYSDA have submitted testimony to this joint committee on the state-wide funding requests of the defender community. We fully adopt those funding requests and here outline the requests and our support for the following:

Aid to Defense

- **\$50 million allocated to New York City defense providers**
 - This funding will support critical technology upgrades to handle discovery obligations and is requested to match funds allocated last year and distributed solely to the District Attorneys of New York City in FY24 final budget.
- **Reappropriation of the \$80 million in statewide aid to defense (\$40M) and discovery funding for the defense (\$40M) via the Division of Criminal Justice Services, Aid to**

Localities allocation.

- This crucial infusion helps support defenders across the city and state who have been dealing with high attrition rates and critical technology upgrades
- **Full funding for the budget requests of the New York State Unified Court System**
 - Importantly, the judiciary budget identifies the urgent need for increased funding for **Attorney for the Child** providers like our own Juvenile Rights Practice. This request includes annualized contractual enhancements for Attorney for the Child providers and cost-of-living adjustments for all legal and professional services providers.
- **Full funding for New York State Office of Indigent Legal Services SFY 2025 Budget**
 - Including \$50 million for Parent Representation Quality Improvement and 3% COLA for criminal defense; to continue maintenance of effort of ILS grants and distributions and to adequately staff office and operations.
- **\$4 million for HESC/DALF Expansion for Indigent Legal Services Providers and District Attorneys as contemplated in (S4511B/Ramos; A1568C/Simon).**
 - This fund provides crucial loan assistance to public defenders and district attorneys, many of whom carry enormous loan burdens while earning salaries that have not kept pace with the cost of living or inflation.
- **\$24.5 million to Fund the Expansion of Mental Health Courts in Every County Across the State.**
 - In addition to providing this funding, we urge the Governor to embrace the statutory framework of the Treatment Not Jail Act (S1976B Ramos/A1263B Forrest).
- **Fund Proven Community-Based Solutions to Enhance Community Safety**
 - We urge the Legislature to continue your commitment to community investments by funding community-based treatment programs, peer navigators, and violence intervention programs. We likewise urge a continued focus on the housing needs across our city and state, including investments in funding and infrastructure for emergency reentry housing to reduce jail and prison populations and provide a pathway to permanent housing. We also urge the Legislature to prioritize protecting New York tenants from unreasonable rent hikes and retaliatory or discriminatory evictions by passing Good Cause Eviction.
- **Oppose proposed IOLA Sweep to General Fund proposed in PPGG, Part X**
 - We join with our colleagues in our Civil Practice and the New York Legal Service Coalition to which they belong in our strong opposition to the Executive's proposed sweep of \$100 million from the Interest on Lawyers Account (IOLA) to the general fund. This will directly block access to justice efforts from moving forward and we urge the Legislature to oppose this proposal in the strongest terms. New York's IOLA Fund was established in 1983, under New York State Finance Law (§ 97-v). With the recognition of the vast need to fund civil legal

services, these funds were created for the sole purpose of funding civil legal assistance.

- IOLA funding not only supports essential services that help low-income New Yorkers obtain help with civil legal problems affecting their most basic needs, such as food, shelter, jobs and access to health care, it is a critical source of infrastructure dollars that the civil legal services community is in desperate need of. These funds are accumulated for distribution at the next round of grants to civil legal services providers, which are intended to assist in addressing the dual crises of an estimated \$ 1 billion civil justice gap and community wide salaries that are at least 30% below counterparts in similar public interest and public sector fields.
- We urge the legislature to join us in this opposition and reject the proposed sweep of \$100M from the IOLA Private Contribution Account to the General Fund.

Additional Recommendations Based on the Executive Budget Proposal

First, we wish to take this opportunity 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 outside of the public budget hearing process to roll back our landmark discovery reform protections. These back-room efforts were rejected thanks to the members of the Senate and Assembly. We have reason to expect the same proposals to strip our discovery laws this year, although we are indeed heartened to see no such language in the proposed Executive budget. We thank the Governor for recognizing that the Discovery laws of 2019 brought New York into the modern age of evidence disclosure and need only be properly funded to succeed in their intent. And we thank the Legislature for meeting that funding need in FY24 and ensuring that funding for defenders was included alongside and on par with funding for prosecutors. We call on you again to hold the line this budget season and reject any attempts to roll back CPL 245 while continuing to fund technology upgrades for defender offices.

Indeed, a recent decision by the Court of Appeals demonstrates the importance of holding the line against continuous changes to the law so our highest court can render decisions which serve as important guidance for the judiciary and the attorneys practicing before them. In *People v. Bay*,¹ 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. Due diligence is buoyed by updated technology and crucially, the cooperation, not obstruction, of evidence sharing by police and law enforcement with their local prosecutor office. We ask that you continue to hold the line on rollbacks and continue to fund defender offices in proportion to prosecutor offices which will ensure that the reforms you championed can be implemented as intended.

¹ NY Slip Op 06407 Decided on December 14, 2023, Court of Appeals.

Recommendation to Reject Executive Proposal in PPGG PART A: Increased Penalties for Assault of Retail Workers

We urge the Legislature to soundly reject the Governor’s proposal to add “retail worker” to the public officials considered in the “bump-up” statute of PL § 120.05, which raises an otherwise misdemeanor allegation to a violent felony punishable by up to 7 years prison. The proposed change shoehorns private sector employees into a section intended to protect public officials or those performing public duties. The proposal also ignores the reality that where assaults are alleged as part of a shoplifting charge, that assault or use of force is now chargeable as a felony punishable by up to 7 years or more.

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 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. This proposal also opens the door to other special interest groups from the private sector lobbying for further expansion of the penal law to protect additional categories of private sector employees, e.g., construction workers, delivery workers, or really *anyone* doing a job. This hierarchical approach to “protection” is not sound practice and is not rooted in any evidence-based solutions for true community safety.

While no one disagrees that retail workers must feel safe in their workplace, granting them special protected status based on debunked complaints² of lost income from the retail lobby is wholly different from the special protected status of New Yorkers performing a public duty. Most cases involving alleged injury to retail workers are prosecuted as felony robbery rendering this expansion unnecessary to address alleged harm. The most common scenario for injury to a retail worker would involve the use of force to prevent or overcome resistance to the taking of property or to the retention of it immediately after the taking, which is robbery under PL §160.00(1) (a D felony). Given that assaults on retail workers are now chargeable as a D felony if the allegations rise to that level, folding these private sector workers into the same categories as public officials is a plain overreach and must be rejected.

Recommendation to Amend Executive Proposal in PPGG PART B: Fostering the Sale of Stolen Goods

² "The powerful National Retail Federation (NRF) lobbying group has retracted a claim that “organized retail crime” accounted for “nearly half” of the shopping industry’s \$94.5bn losses due to “shrink” in 2021." see <https://www.theguardian.com/business/2023/dec/07/retail-theft-losses-inventory-nrf>
Walgreens [said organized shoplifting](#) was the reason it closed five stores in San Francisco in 2021. This year, however, a Walgreens executive [said that the company might have overstated the effect](#), telling investors during an earnings call that “maybe we cried too much last year.” as reported in the NYT on April 15th, 2023 [“A Tiny Number of Shoplifters Commit Thousands of New York City Thefts” by Hurubie Meko](#)

We will always encourage the Legislature to refrain from expanding the penal code and criminal penalties because community investments, not incarceration, create the conditions that generate safe and thriving communities. If the Legislature is inclined to adopt the executive proposal to create PL § 165.56, however, then we do suggest that it must be amended to include a requirement of proof of knowledge. Culpability based on proof that the defendant “should have known” that the goods were stolen is a vague standard that can be used to unfairly prosecute young people and people experiencing mental health challenges where the knowledge is open to serious question. Knowledge can be proven inferentially, and proof of knowledge should be required if the Legislature were to adopt this proposed addition to the Penal Law.

Recommendation to Reject Executive Proposal in PPGG PART C: Expansion of Hate Crime Eligibility

We understand that the recent rise³ in incidents against Jewish and Muslim New Yorkers, coupled with the incidents against Asian American New Yorkers during the COVID-19 crisis and its continued aftermath,³ has created a real sense of insecurity for New Yorkers with these identities. We nevertheless urge the Legislature to reject this over-broad list of proposed crimes eligible for the hate crime designation.

The current eligible offenses are all offenses against a defined person – but the expansion includes charges like “making graffiti” and various criminal possession of a weapon offenses, which do not involve “victim selection.” This expansion will inevitably be used against people of color and activists. The issue here is not just who is “guilty” but who gets harassed by being drawn into the system to answer charges and face potential prison time.

Research has shown that hate crime legislation often harms the communities of people it intends to protect as our legal systems continue to be rooted in bias and produces inequitable outcomes based on race⁴. Instead of creating expanded hate crimes laws that are disproportionately used against Black and Brown communities and result in additional or longer prison sentences, we urge the Legislature to instead place the resources, money, and time currently spent on enforcing

³ Noting, In NYC in November 2023, NYPD reported that the number of bias incidents investigated by the NYPD Hate Crime Task Force continued its downward trend by dropping 6% (568 v. 603) year to date. See <https://www.nyc.gov/site/nypd/news/p00097/nypd-citywide-crime-statistics-november-2023>

⁴ “Because the criminal justice system is itself biased, any use of that system has the potential to recreate or reflect those structural biases. For example, even though evidence shows that white people report higher rates of illicit drug use than Black or Hispanic people, people of color are significantly more likely to be arrested and incarcerated for drug-related offenses. In 2019, Black and Latino people comprised 32% of the national population but 46% of people in state prison and 74% of people in federal prison for drug offenses. As recent years have increasingly called attention to, this pattern is true across many areas of the criminal system, with people of color being more likely to be arrested and convicted for many types of crimes and to receive longer sentences compared to white peers. Research similarly shows that LGBTQ people, particularly LGBTQ people of color, are also more likely to be arrested and incarcerated, and that low-income communities are disproportionately harmed by criminal fines, fees, bail, and other punishments.” Movement Advancement Project, *Policy Spotlight: Hate Crime Laws* (2021), available at <https://www.lgbtmap.org/file/2021-report-hate-crime-laws.pdf>. P. 31/32

hate crimes into continuing its work to provide New Yorkers with stable and protective housing and covering healthcare needs and making education available and affordable. We believe that these investments in our community well-being and other measures like educational initiatives, conflict resolution programs, or other proactive efforts aimed at the root causes of hate crimes could prevent hate crimes from occurring in the first place.

At the very minimum the extensive list must be culled by removing charges like jostling, making graffiti and possession of a weapon in the 4th through 1st degrees. As explained below, the connection to biased mental state for these charges is specious at best and an overly broad bludgeon that will lead to increased pre-trial detention and prolonged incarceration at worst.

First, the classification of “Jostling” as a hate crime must be rejected. A person is guilty of this class A misdemeanor, crime of opportunity when, in a public place, they intentionally and unnecessarily place their hand in the proximity of a person's pocket or handbag. Imagine how NYPD patrolling our subways would employ this statute if enhanced to a felony hate crime. This designation would endorse arrest for a felony hate crime if the alleged pick-pocket is of a race that differs from the alleged victim. It would sanction police or prosecutors to read bias/prejudice into a situation long classified as a crime of opportunity. This is a dangerous enhancement and must be rejected.

Second, the proposal to include “making graffiti” as a hate crime must be rejected. If enacted, this would mean that the police and prosecution’s misguided interpretation of speech or artistic expression could result in a person being prosecuted for an art form that has long been over-criminalized in Black and brown communities. This country has a long history of labeling street art as vandalism.⁵ New York should be working to reverse this trend by decriminalizing street art, not giving prosecutors with political motivations another tool to lock up Black and brown New Yorkers. Otherwise, adopting this new classification could allow a “Black Lives Matter” mural artist to be charged with a hate crime in conservative jurisdictions that embrace the trope that this phrase is “reverse-racism” against white people. This “hate crime” enhancement will only further police and incarcerate Black and brown community members, and this provision must be rejected.

And, finally, the Legislature must reject the inclusion of the weapons possession charges in the proposed enhancement. Criminal Possession of a weapon in the 4th and 3rd degrees are possession only charges, requiring no showing of an intent to use the weapon. How can one possess something without intent but with prejudice? For instance, if a person is charged with keeping a gun at home despite having a prior record, can the police check the person’s social media to see if they can find expressed thoughts that they consider discriminatory? Or if they

⁵ See “Street Art Activism: What White People Call Vandalism” by Caroline Choi in the Harvard Political Review October 21,2020 available at <https://harvardpolitics.com/street-art-activism/>

arrest someone at a rally who has a screwdriver in their pocket, can they charge them with a hate crime if the rally is against white supremacy? Adding any hate crime enhancement to the possession charges as proposed defies logical reason and must be rejected.

Conclusion

Thanks to the leadership in the Legislature, we have made great strides in recent years to make our criminal legal system more just and equitable in outcome; however, our work is far from done. We offer our partnership in advancing our shared goals of safe and thriving communities and encourage you to continue divesting in carceral tools while investing in the social services, housing, health care, and robust public education that create safety and opportunity for all New Yorkers.

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 Criminal Defense Practice Policy Director Amanda Jack ajack@legal-aid.org.

Sincerely,



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