

OVERVIEW OF CRIMINAL JUSTICE REFORM EFFORTS IN NEW YORK

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The United States has the world's highest incarceration rate; with 2.2 million Americans held in jail or prison today. Approximately 1.5 million people are incarcerated in US prisons, with approximately 700,000 held in local jails. Another 4.5 million Americans are on parole or probation. However, the U.S. system of incarceration is not delivering safety or justice. The two most commonly cited sources of crime statistics in the U.S. both show a substantial decline in the violent crime rate since it peaked in the early 1990s. One is an annual report by the FBI of serious crimes reported to police in approximately 18,000 jurisdictions around the country. The other is an annual survey of more than 90,000 households conducted by the Bureau of Justice Statistics, which asks Americans ages 12 and older whether they were victims of crime, regardless of whether they reported those crimes to the police.

Economics aside, the toll that mass incarceration takes on communities is immeasurable. Children losing one or more parent to incarceration can set a child up for a life of poverty and detrimental mental health issues. Further, communities that suffer from a high rate of mass incarceration often are impacted by "zero-tolerance" policies in schools. Thus, children often experience their first arrest in their early teenage years and quickly find themselves on a path of repeated incarceration.

Down from over 21,000 in the 1990s, county jails on Rikers Island and in the New York City boroughs still house over 7,000 people on any given day, over 75 % of them are being held pretrial – detained while awaiting trial – despite the fact that NYC is now the safest big city in the country. Over the last 20 years, New York State's prison population has dropped by more than a third. At one point, NYC led the nation in recognizing that there are more effective alternatives to lengthy imprisonment, with the most robust infrastructure of Alternative to Incarceration programs anywhere in the country. In 2019, New York State passed reform of bail, discovery and speedy trial laws and we are now working to ensure strong implementation of those measures in order to accelerate pretrial decarceration. New York State is undergoing a shift in culture and beginning to recognize that we can achieve more public safety by locking up fewer people.

In recent years, New York State has passed laws with the goal of reducing incarceration and increasing fairness and transparency in the criminal legal system, In April 2017, the state finally righted a long-standing injustice by raising the age of criminal responsibility from 16 to 18 years of age. This reform aligned New York with 48 other states and will ensure that youth receive the evidence-based treatment they need to lead productive lives.

NYS also passed a law requiring video recordings of custodial interrogations for serious offenses, enabling the use of photo identifications made by witnesses at trial, providing indigent legal services statewide, investing in alternatives to incarceration, supplying incarcerated individuals with greater educational opportunities, implementing solitary confinement reforms, creating the Community Re-Entry and Reintegration Council, and granting over 100 acts of clemency. NYS has also closed 26 adult and juvenile detention facilities—more than in any other period in state history—and the State's prison population has declined by nearly 10,000 over the past 15 years, achieving savings of \$162 million per year. This has coincided with significant decreases in reported crime.

THE FOLLOWING ARE SOME OF THE CRIMINAL JUSTICE REFORMS THAT HAVE PASSED MORE RECENTLY AS THE RESULT OF SUCCESSFUL ADVOCACY CAMPAIGNS:

Detention Eligibility at First Appearance: Cash Bail and Remand: Creates the elimination of bail and mandatory pretrial release (on recognizance or with conditions) for the vast majority of misdemeanors, all non-violent felony charges, robbery 2 and burglary 2. For charges still eligible for bail (i.e. when a person is charged with a “qualifying offense”) the court may release the principal on his or her own recognizance or under non-monetary conditions, fix bail, or if the offense is a qualifying felony, the court may remand the principal. If monetary bail is set, the court must now set it in three forms including either unsecured or partially secured security bond (less financially onerous forms of bail). If a court does not approve bail, it must explain the reasons for not approving it.

Mandatory Desk Appearance Tickets (DATs): The police must give a desk appearance ticket (DAT) rather than making an arrest for all misdemeanor charges and for E felony charges (with the exclusion of certain sex offenses or bail jumping). The police must also inform the arrestee that they may provide their contact information for the purpose of receiving court reminder notifications. The police must transmit that contact information to the local criminal court within 24 hours of issuance. DATs must be returnable as soon as possible but no longer than 20 days from issuance.

Speedy Trial Reform: Rules now include VTL offenses and right to appeal denial of speedy trial motions after conviction, including by guilty plea. Law also now prohibits “partial conversion”, so that a prosecutor may not state ready and stop the clock unless they are ready for trial on each count in the accusatory instrument. There is no exception for delays caused by court congestion.

Discovery Reform: Prosecution must turn over all evidence to the defense within 15 days. Discovery is automatic – not by written “demands” and discovery motions. Statute requires true “open file” discovery from DA. The provision listing the DA’s discovery obligations states that DAs must disclose “all items and information that relate to the subject matter of the case” and that are in DA’s or law enforcement’s possession, “including but not limited to” all of the listed items. It also states that when interpreting DA’s discovery obligations, there is a “presumption of openness” and “presumption in favor of disclosure.”

Charitable Bail Fund Reform Act: This bill removes the geographical restriction that a Charitable Bail Organization (CBO) may only offer bail in one county outside of New York City so that more efficient regional CBOs can be established; raises the monetary amount so CBOs can provide in bail assistance up to \$10,000 for both felonies and misdemeanors; and reduces the certification fee for CBOs to \$500.

An end to automatic drivers license suspensions for non-driving drug convictions

364 Days: A reduction of A misdemeanor maximum sentences by 1 day to help prevent immigration detention & deportation based on low-level offenses

A prohibition on employment and housing discrimination against people with open ACDs

Application of Article 23A protections against baseless discrimination for people with criminal records to certain state-operated professional licenses

A prohibition on release of mugshots for certain cases

Domestic Violence Survivors Justice Act

Marijuana Decriminalization and Expungement: New York state lawmakers voted to decriminalize small amounts of marijuana and expunge thousands of low-level charges — but exactly how that process will work is hazy. The law eliminates criminal charges for possession of less than two ounces of marijuana, reducing offenses to non-criminal violations (an increase in amount of marijuana that is decriminalized). The law also decriminalizes possession of small amounts of marijuana in public view and makes it a violation and calls for expungement of records for prior marijuana convictions. The decriminalization law fails to address the broader universe of collateral consequences of marijuana prohibition, including in child welfare, housing, employment, etc. Marijuana possession will still be illegal and arrestable in the cases not outlined above.

THE FOLLOWING ARE SOME PENDING CJ REFORM PROPOSALS IN NYS:

Ending Marijuana Prohibition: The Marijuana Regulation and Taxation Act is comprehensive legislation that will remove marijuana from consideration under the Controlled Substances Act, and will authorize the personal use and cultivation of marijuana. Marijuana prohibition has failed in its stated goal of stopping or curbing marijuana use across New York State. Instead, the enforcement of marijuana statutes has been used to target and criminalize communities of color. The Marijuana Regulation and Taxation Act (MRTA) will help address the discriminatory enforcement of marijuana prohibition statutes.

The Humane Alternatives to Long-Term Solitary Confinement Act, which will end the torture of solitary confinement, bring NYS solitary practices in line with UN Human Rights Law & the Mandela Rules, and create more humane and effective alternatives to segregation and isolation.

Ending Discriminatory and Abusive Policing:

- The Police STAT Act would require statewide public reporting on: the total number of arrests and tickets for violations and misdemeanors, and information on their disposition; The race, ethnicity, age, and sex of people who are charged with violations or misdemeanors; The total number of people who die during an interaction with police or in police custody, including demographic information; The geographic location of enforcement activity and arrest-related deaths.
- Repeal 50a: Repeals provisions of Civil Rights laws relating to personnel records of police officers, firefighters and correction officers to improve transparency.
- Enact Special Prosecutor Legislation Pass legislation that provides the Attorney General's office with jurisdiction in all cases of police killings and deaths in police custody, codifying and strengthening EO147. The bill, if enacted, would help to ensure fair and thorough investigations and – when warranted – effective prosecutions in tragic incidents that the criminal justice system has historically failed to address.
Reduce unnecessary arrests: Requires police officers and peace officers to issue appearance tickets to individuals charged with certain offenses instead of arresting such individuals.

Parole Justice:

- Less Is More Act (A.5493A-Mosley/S.1343B-Benjamin) would follow the lead of states like Louisiana, Missouri, and South Carolina and reform parole revocations to provide good time credits for people who do not violate parole; end mandatory incarceration for all alleged parole violations, no matter how serious; eliminate incarceration as a punishment for most technical, non-criminal parole violations like missing curfew or testing positive for marijuana; cap incarceration periods for parole violations that remain subject to incarceration; and speed up parole revocation hearings.
- Fair and Timely Parole (A.4346-Weprin/S.497-Rivera) to end repeated parole denials based on the severity of the original charge and create a presumption of release that requires the Parole Board to make decisions based on individual evaluations of a person's transformation and accomplishments, and to parole individuals at their first hearing, unless evidence is presented of a clear, current and unreasonable risk to public safety.
- Elder Parole (S.2144-Hoylman) This bill would require that all people aged 55 or older who have served 15 years or more in prison become eligible for parole consideration/interview with the parole board, regardless of crime or sentence. Nearly 1,200 people would be impacted by passage of Elder Parole which will begin to address the cruel practice of imprisoning people to death.

- **A Fair & Fully Staffed Parole Board:** Advocacy efforts to ensure that the Parole Board be fully staffed by 19 commissioners who are social workers, psychologists, nurses, and other professionals that embrace notions of mercy, redemption and rehabilitation.

Restoration of Voting Rights: (A.4987-O'Donnell/S.1931-Comrie): This bill will ensure that the right to vote is granted to New Yorkers who are denied the right to vote because they are on parole.

Ending the School to Prison Pipeline

- **Solutions, not Suspensions (A.1981-Nolan/S.767-Montgomery):** This legislation will help break the school to prison pipeline by: Ending suspensions for K-3 students, Instituting restorative justice and other alternative discipline in place of harsh and ineffective removals from school, Limiting the amount of time that a student can be out of school to 20 days and providing access to work and alternative instruction during the suspension, Stopping inappropriate interactions between school resource officers and students, Making sure all of the adults that students interact with have training of best practices in creating safe, healthy, and inclusive schools.
- **Culturally Responsive Education (A.1548-Richarson/ S.2937-Myrie):** Establishes a culturally responsive education curriculum and standards; requires all school districts, charter schools and private schools to integrate culturally responsive education throughout the education of all students at all grade levels; establishes a pilot program in culturally responsive education and appropriates \$25,000,000 to fund this.

Adding Public Defenders to “Qualified Agency” Definition to Obtain Criminal History

Reports: The bill adds “public defenders, legal aid societies, and assigned counsel administrators” to the list of qualified agencies to give defenders direct access to state criminal history report information.

Wrongful Conviction Prevention Act: This bill seeks to decrease wrongful convictions by authorizing payment to assigned appellate lawyers when they raise claims of ineffective assistance of trial counsel. According to the ILS, counties seeking to comply with the ILS Appellate Standards and Best Practices, which are consistent with this legislation, can include the minimal expenses in their state-funded county improvement public defense plans funded by the Justice Equality Act of 2017, wherein the State will incrementally increase funding over a six-year period, resulting in \$250 million annually for improvements to public defense programs in all 62 counties.