



Jan 28, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Recommendations for Combating Mass Incarceration in New York State

Dear Governor Hochul:

We are writing on behalf of the Mass Incarceration Task Force (Task Force), the Criminal Justice Operations Committee, the Corrections and Community Reentry Committee, and the Criminal Courts Committee of the New York City Bar Association (City Bar). Our committees address issues that impact the criminal justice system, including operations, procedure, and the rights of defendants and persons with prior criminal convictions. The Task Force was formed to examine the issues surrounding mass incarceration, monitor developments on the federal, state and local levels, encourage dialogue among various groups with differing interests, and advocate for reform. As we kick off the 2022 legislative session, we urge you to consider the pressing issue of mass incarceration and our recommendations for reducing the jail population.

The Committees, led by the Mass Incarceration Task Force, compiled a thorough report that details several key areas of focus and comprehensive policy recommendations to reduce mass incarceration across New York City and New York State.¹ The report calls on our City and State legislators to implement sweeping revisions to the criminal justice system, so that its central purpose is to address the root causes of crime and more effectively and compassionately prevent further crime. The report details how this can be done by: arresting fewer people, arraigning fewer people, convicting fewer people, sending fewer people to prison, reforming prisons, reforming parole and reentry, expanding sealing of convictions, recognizing mental health issues and concerns, and including those convicted of crimes of violence in reform.

The report draws on large bodies of research to propose reforms that will not simply reduce incarceration, but will also increase public safety and save money. By implementing these reforms, you will demonstrate that you are not just a champion of needed criminal justice reform, but also a Governor who cares deeply about using evidence-based practices to increase safety of the population. You have already taken steps advocated for in the report, including signing into law Less Is More and an act decriminalizing syringes, and we hope you will continue your work on this important issue. The Task Force urges you to review this report in its entirety as you shape

¹ "A Pathway Out of Mass Incarceration And Towards a New Criminal Justice System: Recommendations for the New York State Legislature," New York City Bar Association, May 13, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/a-pathway-out-of-mass-incarceration>. (All sites last visited Jan. 27, 2022).

your criminal justice agenda. Here, however, we call your attention to a few key recommendations that, as Governor, you can immediately support and implement to address mass incarceration.²

RECOMMENDATIONS

- Arrest fewer people, by supporting the passage of bills that would:
 - decriminalize theft of services; and
 - decriminalize buprenorphine (addiction medication).
- Arraign fewer people by legislating the use of and providing permanent funding to programs that have been proven to reduce recidivism and save money by providing services before an individual enters a courthouse.
- Convict fewer people by supporting legislation and funding to expand the availability of diversion courts which have been proven to reduce recidivism, including by passing legislation such as:
 - a first time felony offender diversion;³
 - increasing the youthful offender age (A.3536-A AM O'Donnell / S.5749-A Sen. Myrie);⁴
 - diversion for individuals suffering from mental health disorders; and
 - expansion of the availability of drug treatment court.
- Send fewer individuals to jail and shorten sentences by:
 - supporting the end of mandatory minimum sentences and return discretion to judges to determine who should go to jail, including supporting the repealing of:
 - predicate felon status;
 - violent predicate felon status; and
 - mandatory and discretionary persistent felony offender statutes;
 - supporting funding for Alternative to Incarceration Courts;
 - passing legislation to provide relief to those who are serving long sentences, including enacting:
 - the Second Chance Amendment (S.1179 Sen. Benjamin);⁵

² See also, “2022 New York State Legislative Agenda,” New York City Bar Association, <https://www.nycbar.org/issue-policy/issue/new-york-state-legislative-agenda> (in particular, our “Criminal Justice Reform” plank).

³ “Creating a First-time Felony Diversion Court,” New York City Bar Association, Dec. 9, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/creating-a-first-time-felony-diversion-court>.

⁴ Available at <https://www.nysenate.gov/legislation/bills/2021/s5749/amendment/a>.

⁵ See “Report in Support of the Second Chance Amendment,” New York City Bar Association, Feb. 07, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-second-chance-amendment-report-in-support>.

- elder parole (A.3475-A AM De La Rosa / S.15-A Sen. Hoylman);⁶ and
 - parole for young and emerging adults.
- Reform prisons by appointing a commissioner who will focus on overhauling the prison system to make prisons a place of rehabilitation rather than punishment.
 - The new commissioner should be required to:
 - ensure basic services are provided for all, including mental health services;
 - ensure compliance with the Americans with Disabilities Act;
 - reduce and report on violence in prisons; and
 - track recidivism rates and work actively to reduce recidivism rates of individuals paroled out of State prisons by providing proven services during incarceration.
 - Prisons that fail to rapidly and radically improve in provision of services, reduction in violence and reduction in recidivism rates should be closed.
 - Parole should be reformed by directing NYS DOCCS to provide services to individuals paroled to assist in their re-entry.
- Increase availability of sealing of criminal convictions by supporting the passage of comprehensive legislation, such as the Clean Slate Act (A.6399-A AM Cruz and S.1553-C Sen. Myrie).⁷ We applaud your calls for passage of the Clean Slate Act in your State of the State and look forward to your working with the Legislature to see this Act enacted.

In addition, we urge you to ensure that reforms are not restricted to affect only those accused of “non-violent” crimes. Neither public safety nor justice requires this bifurcation of reform, and if we are to both reduce violence in our communities and truly end mass incarceration, we must stop reflexively and needlessly incarcerating those accused of “violent” crimes. Finally, any reforms must acknowledge and seek to address that our criminal justice system has become a repository for those who suffer from mental health issues, which almost always results in the exacerbation of these mental health issues that may have contributed to an individual’s criminal activity.

Of additional importance is your continued support of bail reform, which is being falsely vilified as the source of already declining upticks in shootings and homicides that began during the COVID-19 pandemic. Opponents to criminal justice reform have attacked the existing bail reform legislation, incorrectly alleging that the law is increasing criminal behavior and reducing public safety. In fact, the 2019 bail reform legislation appears to have successfully reduced the overuse of confinement without compromising public safety. This inaccurate criticism is dangerous on two fronts: it risks focusing resources needed to prevent violent crime on the wrong arenas, and it risks undoing the enormous positive change that came with bail reform.

⁶ Available at <https://www.nysenate.gov/legislation/bills/2021/s15>.

⁷ A.6399-A (NYS 2021), https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A06399&term=&Summary=Y&Actions=Y&Memo=Y&Text=Y; and S.1553-C (NYS 2021), <https://www.nysenate.gov/legislation/bills/2021/s1553>.

Bail reform has the possibility of decreasing crime rates, as research suggests that even short periods of pretrial detention are associated with higher incidences of future involvement with the criminal justice system.⁸ However, to reach its full potential, the legislated reforms must be fully funded and supported by the State. The State left much of the implementation of the bail reform legislation up to each county, including the establishment of pretrial supervision programming, but counties did not receive financial support to ensure that such programming would succeed. Moreover, as lawyers committed to making our criminal legal system fairer and more just for all New Yorkers, we are disturbed by a lawlessness narrative that blames reform – especially, bail reform – for an overstated increase in crime rates. This narrative presents a false choice between public safety and criminal justice reform. But rhetoric is not fact, and the facts are clear: bail reform has been shown to reduce the number of people in jail without compromising public safety.⁹ Thus, we urge you to invest both in pretrial programming and research to ensure that the legislation’s positive impact can be maximized, assessed, and disseminated transparently to all New Yorkers.

Beyond the changes outlined in this letter, additional proposed changes to the criminal justice system, both smaller and larger, are outlined in our report. The guiding principle of our recommendations is one we hope you will carry forward in your administration: that the criminal justice system is relentlessly and unnecessarily punitive, and that reform is necessary not only to provide justice to those who continue to be harmed by this system, but also to promote public safety by focusing the criminal justice system on addressing the root causes of crime. We trust that

⁸ See e.g., Leon Digard, and Elizabeth Swavola, “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention,” Vera Institute of Justice, April 2019, <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>.

⁹ Tiana Herring, “Releasing people pretrial doesn’t harm public safety,” Prison Policy Initiative, Nov. 17, 2020, <https://www.prisonpolicy.org/blog/2020/11/17/pretrial-releases/>; see also “Empire State of Incarceration,” Vera Institute of Justice, February 18, 2021, <https://www.vera.org/empire-state-of-incarceration-2021> (“the first few months of bail reform implementation showed that releasing more people pretrial made communities no less safe”; citing University of North Carolina study showing Philadelphia District Attorney’s decision to stop requesting bail for people charged with one of 25 misdemeanor and felony offenses decreased the number of people who spent at least one night in jail and “did not increase failures to appear for court or re-arrests of people out on bail”); “The Facts on Bail Reform and Crime in New York City,” Center for Court Innovation, Feb. 3, 2021, https://www.courtinnovation.org/sites/default/files/media/documents/2021-02/Handout_Bail_Reform_Crime_02032021.pdf (New York Post analysis of NYPD data revealed that, of 528 shootings through June 30, 2020, only one person released due to New York’s bail reform was charged with a shooting; and studies of New Jersey, Chicago and Philadelphia’s restricted use of bail and pretrial detention found the reforms had no adverse effect on recidivism or court attendance. “There are no rigorous evaluations of bail reforms in any jurisdiction suggesting that they compromised public safety”).

See also New York City Bar letter to Hon. Eric Adams, Jan. 19, 2022, pp. 5-6, <https://s3.amazonaws.com/documents.nycbar.org/files/2020967-AdamsTransitionMassIncarceration.pdf> (citing NYC data showing that, of the 11,000 people released from New York City jails between January and June of 2020—as a result of bail reform and in response to the threat of COVID-19 behind bars—less than one percent were involved in any gun violence during that period; and showing that in June 2021 less than one percent of people awaiting trial in New York City were rearrested for violent felony offenses.)

you will be a voice of reason and rationality, as you were as an advocate for bail reform, and promote criminal justice reforms proven to help our communities.

Thank you for your consideration of these recommendations. We look forward to working with you on these vital and important reforms.

Sincerely,

Sarah J. Berger, Co-chair
Jullian D. Harris-Calvin, Co-chair
Mass Incarceration Task Force

Tess M. Cohen, Chair
Criminal Justice Operations Committee

Gregory D. Morril, Chair
Corrections and Community Reentry Committee

Anna Cominsky, Member
Criminal Courts Committee

Cc: Hon. Jamaal Bailey, Chair, NYS Senate Codes Committee
Hon. Jeff Dinowitz, Chair, NYS Assembly Codes Committee
Hon. Carl Heastie, NYS Assembly Speaker
Hon. Julia Salazar, Chair, NYS Senate Crime Victims, Crime & Correction Committee
Hon. Andrea Stewart-Cousins, NYS Senate Majority Leader
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