FAIRNESS AND SAFTEY: LEGISLATIVE SOLUTIONS TO STRENGTHEN COMMUNITIES AND REDUCE INCARCERATION IN NEW YORK STATE

MASS INCARCERATION TASK FORCE

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NEW YORK CITY BAR

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About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 20,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

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INTRODUCTION

The cruelties, injustices and harms to public safety caused by mass incarceration – along with its staggering societal and economic costs – are now widely recognized. New York State has begun to take steps to address some of these issues, including acknowledging the benefits of alternatives to incarceration and that lengthy prison sentences are often unnecessary and counterproductive. However, such changes have been halting and unequal, and often the decision to impose alternatives to incarceration remains largely in the hands of individual prosecutors. In order to truly begin undoing mass incarceration, the Legislature must revise our laws to place additional discretion in the hands of judges by, among other things, (i) repealing mandatory minimum sentences, (ii) increasing the availability of treatment-based alternatives where crimes stem from mental and physical disabilities, and (iii) enacting laws to give those serving lengthy prison sentences—now often at odds with current social science and evidence-based understandings of appropriate sentences—opportunities for release.

The New York City Bar Association (City Bar) urges the New York State Legislature and Governor to implement the following important revisions to our criminal laws. Passing the reforms outlined below will help address the root causes of crime, effectively and compassionately prevent further crime, and generate cost savings for the state. These laws benefit everyone: the public who deserve reforms designed to prevent rather than perpetuate crime; taxpayers who should not bear the expense of unnecessary and/or unduly lengthy prison sentences;[1] and, of course, those charged and convicted of crimes, who should be treated justly and proportionately.

I. REPEAL MANDATORY MINIMUMS

A. Marvin Mayfield Act (A.1297 AM Meeks / S.1209 Sen. Myrie)

Mandatory minimum sentencing drives mass incarceration, strips judges of discretion, and grants outsized power to prosecutors seeking to resolve cases through guilty pleas. The Marvin Mayfield Act[2] will eliminate mandatory minimum sentences, including New York's two-and three-strike laws, allowing judges to appropriately take into account all the individual factors in a

[1] According to the New York State Department of Corrections and Community Supervision ("DOCCS"), over 32,000 people are incarcerated in New York's prisons. https://data.ny.gov/Public-Safety/Incarcerated-Individuals-Under-Custody-Beginning-2/55zc-sp6m/about_data. The state spends nearly $70,000 per year per inmate, with an annual prison system price tag of over $3.5 billion. https://www.budget.ny.gov/pubs/archive/fy25/ex/agencies/appropdata/CorrectionsandCommunitySupervisionDepartmentof.html#:~:text=Budget%20Highlights,expansion%20of%20transitional%20housing%20opportunities. By decreasing costs of incarceration and prioritizing programming inside and outside of prison that prevents future crimes, these reforms would cause significant cost savings to the state of New York (All websites last accessed on February 2, 2026).

[2] The Marvin Mayfield Act is named after prominent organizer and policy advocate, Marvin Mayfield, who himself as a young man pled guilty to a crime he did not commit because of the fear that he would be subject to a mandatory minimum after trial and because of the abhorrent conditions at Rikers Island. Aundrea Cline-Thomas, *Criminal justice advocate shares his experience being held on Rikers Island "It was hell"*, CBS New York, Mar. 29, 2022, *available at* https://www.cbsnews.com/newyork/news/new-york-bail-reform-criminal-justice-advocate-rikers-island/. For the text of the bill, see https://www.nysenate.gov/legislation/bills/2025/S1209; https://www.nysenate.gov/legislation/bills/2025/A1297.

case rather than being hamstrung by an outdated sentencing scheme that imposes harsh sentences based on the charges and not on individual circumstances.[3]

Right now, judges cannot deviate from mandatory minimums, leading to carceral sentences even if a judge or prosecutor does not believe it is in the best interest of the community or the individual. Mandatory minimums can be used to coerce individuals into plea deals, thereby forfeiting their right to trial. Prosecutors can use the threat of long mandatory minimum sentences to pressure the accused person into pleading guilty in exchange for a reduced sentence. By requiring a judge to hand down a minimum prison sentence based on the charges levied by a prosecutor, mandatory sentences transfer sentencing power from judges to prosecutors and give them outsize and overwhelming leverage in plea negotiations.[4]

The Marvin Mayfield Act would eliminate mandatory minimum sentences and give judges the discretion to make holistic and just decisions based on the totality of the circumstances. Instead of automatically sentencing people to long mandatory prison sentences, judges would be able to consider sentences that would be most effective in addressing the individual's behavior and the unique circumstances of the offense – and to weigh factors such as a person's age, history of trauma, disabilities, and substance abuse issues, among others — and enable more people to remain with their families and communities. Notably, the bill does not change New York's maximum allowable sentences, and judges could continue to impose long sentences in instances where they deem them appropriate. At sentencing hearings, judges receive pre-sentencing reports, which give them detailed information about the person before them. The Marvin Mayfield Act would enable judges to make informed decisions about the individual, and for defense attorneys and prosecutors to present arguments for a disposition that is fair and not beholden to mandatory minimums.[5]

II. EXPAND TREATMENT COURTS

A. Treatment Court Expansion Act (A.4869 AM Forrest / S.4547 Sen. Ramos)

New York State currently relies on a patchwork system of mostly prosecutor-driven mental health and other treatment courts to divert people from jails and prisons. These programs are vastly underutilized and in desperate need of modernization. Under the current system, our jails serve as the largest mental health facilities in the state and, by all accounts, are not equipped to do so. At Rikers Island—where 20% percent of detainees have serious mental illnesses—it has recently been revealed that mentally ill detainees are locked in their cells for weeks at a time, and denied

[3] The City Bar has supported the Marvin Mayfield Act (previously known as the End Mandatory Minimums Act) for several years as part of the Communities Not Cages Act. A fulsome description of why the City Bar supports this law, as well as the Second Look Act and the Earned Time Act, as discussed *infra*, can be found at https://www.nycbar.org/reports/communities-not-cages-act/ ("Communities Not Cages Act report").

[4] American Bar Association, Plea Bargain Task Force Report at 15-17 (2020), *available at* https://www.americanbar.org/content/dam/aba/administrative/criminal_justice/reports/plea-bargain-tf-report.pdf; Dholakia, N. *How The Criminal Legal System Coerces People into Pleading Guilty*, Vera Institute for Justice (Apr. 4, 2024), *available at* https://www.vera.org/news/how-the-criminal-legal-system-coerces-people-into-pleading-guilty.

[5] See Communities Not Cages Act report, *supra* note 3.

medication and treatment.[6] In New York State prisons, 63% of incarcerated women and 23% of incarcerated men are classified as requiring mental health services.[7] More often than not, incarceration without adequate (or, many cases, any) mental health treatment profoundly exacerbates the crisis that led to a person's involvement with the criminal legal system in the first place.[8]

The Treatment Court Expansion Act (TCEA)[9] modernizes and expands an existing state law, CPL Article 216, which created limited drug courts in every county, to enable them to accept people with a wider range of issues, including mental health concerns.[10] TCEA would also create a more efficient and fair process, remove arbitrary barriers to participation, and shift the approach of the current diversion court model to one based in evidence-based practices.

TCEA would expand eligibility for judicial diversion to encompass all "functional impairments," including mental illnesses, substance use disorders, developmental disabilities, and other similar conditions that cause clinically significant distress or disability in social, occupational or other areas of functioning. Programs would be offered on a "pre-plea" model for those charged with nonviolent crimes, eliminating the requirement that people plead guilty before accessing treatment.[11] However, judges would have discretion to require pleas in cases involving violent crime, allowing for more judicial flexibility when people are charged with serious crimes. TCEA would also move away from the current model of applying arbitrary charge-based eligibility criteria, and instead allows judges to consider each application fairly and determine on a case-by-case basis whether treatment is appropriate and in the public interest.

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[6] Graham Rayman, *Mentally ill at Rikers often locked in cells for weeks, denied treatment: Exclusive,* Daily News, (Oct. 8, 2024) *available at* https://www.nydailynews.com/2024/10/08/mentally-ill-at-rikers-often-locked-in-cells-for-weeks-denied-treatment-exclusive/.

[7] *Under Custody Report: Profile of Under Custody Population as of January 1, 2021*, NYS Corrections and Community Supervision, (April 2022) *available at* https://doccs.ny.gov/system/files/documents/2022/04/under-custody-report-for-2021.pdf.

[8] *See e.g.* Katie Rose Quandt & Alexi Jones, *Research Roundup: Incarceration can cause lasting damage to mental* health, Prison Policy Initiative, May 13, 2021, *available at* https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/#:~:text=Some%20researchers%20suggest%20that%20the,not%20belonging%20in%20social%20settings. Mental illness can even turn deadly while incarcerated; for example, in 2021 alone, six people died by suicide and four from drug overdoses while incarcerated on Rikers Island.

[9] The City Bar's support for this bill, previously known as the Treatment Not Jail Act, is set forth in more detail in its legislative memo in support, https://www.nycbar.org/reports/support-for-the-treatment-not-jail-act/?back=1.

[10] For the text of the bill, see https://www.nysenate.gov/legislation/bills/2025/S4547; https://www.nysenate.gov/legislation/bills/2025/A4869.

[11] Requiring pleas before treatment is offered can create significant barriers to treatment. If an individual has immigration consequences, a strong defense, or other reasons not to plead guilty, they should not be denied treatment. Additionally, pleas require significant consideration after review of discovery, which slows people's entry into treatment, which can have a detrimental effect on people's ability to succeed in treatment.

III. PAROLE REFORM AND RESENTENCING

Even as views of harsh sentences have changed,[12] the legacy of past practices remains deeply embedded in New York's criminal legal system. Of those currently incarcerated in the state, 44.7% are serving a minimum sentence of ten years or more.[13] Many of these individuals are serving sentences that would never have been imposed if they were convicted of these crimes today. And the impact of these lengthy sentences is racially disparate—New York's prison population is 49% Black, but only 16% of the total population of New York.[14] To truly undo mass incarceration, we must implement laws that would allow judges to amend past sentencing decisions, recognize when people have committed themselves to positive change in prison, and address the diminishing returns of keeping older people in prison who pose no threat to public safety.

A. Elder Parole (A.514 AM Davila / S.9846 Sen. Cleare)[15]

New York's prison population is rapidly aging, with one in every four people in New York State prisons over 50.[16] The proposed Elder Parole legislation[17] would allow incarcerated people aged 55 and older who have served 15 or more years of their sentence the opportunity to go before the Parole Board, regardless of the time left on their sentence. Approximately 1,000 people would become eligible for parole with the passage of Elder Parole, with thousands more benefiting in future years.[18] Elder parole would save lives, reunite families, promote racial justice, and ultimately save the state hundreds of millions of dollars.[19]

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[12] There has been a sharp decrease in the number of people sentenced to prison for nonviolent felonies in New York since it peaked in 2000. https://datacollaborativeforjustice.org/work/racial-justice/four-decades-of-law-enforcement-in-new-york-state-changing-arrest-prosecution-and-sentencing-trends-1980-2023/. The change in attitudes is particularly obvious with the repeal of the Rockefeller Drug Laws in New York in 2009. https://www.vera.org/publications/end-of-an-era-the-impact-of-drug-law-reform-in-new-york-city.

[13] *Under Custody Report: Profile of Under Custody Population as of January 1, 2021*, NYS Corrections and Community Supervision, (April 2022) *available at* https://doccs.ny.gov/system/files/documents/2022/04/under-custody-report-for-2021.pdf.

[14] *Id.*

[15] For more information on the City Bar's support for Elder Parole, see "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 2021, https://www.nycbar.org/reports/a-pathway-out-of-mass-incarceration-and-towards-a-new-criminal-justice-system-recommendations-for-the-new-york-state-legislature/?back=1.

[16] Brad Hoylman-Sigal, *NYS Legislators' Letter Urging Master Plan on Aging Include Incarcerated Elders*, (Oct. 19, 2023), *available at* https://www.nysenate.gov/newsroom/articles/2023/brad-hoylman-sigal/nys-legislators-letter-urging-master-plan-aging-include.

[17] For the text of the bill, see https://www.nysenate.gov/legislation/bills/2025/S454; https://www.nysenate.gov/legislation/bills/2025/A514.

[18] People's Campaign for Parole Justice, https://www.parolejusticeny.com/campaign-platform.

[19] "Unlocking Billions: A Fiscal Analysis of Pending Justice Reforms in New York State." Columbia University Center for Justice, *available at* https://centerforjustice.columbia.edu/sites/default/files/content/Final%20Unlocking%20Billions%20Report.pdf.

Passage of the Elder Parole bill would not mean that every eligible person would be granted parole, it only ensures that they are given the opportunity to go before the Parole Board. The Board would then do an evaluation, including an evaluation of the public safety implications, before deciding whether or not to allow a person to go home. Too many incarcerated New Yorkers are ineligible for parole or will not be eligible until they are in their 70s or older. The bill will decrease the number of people serving lengthy and unjust sentences in New York. It also will not negatively impact public safety, as it was crafted based on scientific research showing that people's likelihood of committing crimes drops dramatically after age 55.[20] Thus, lengthy prison sentences extending past this age are often unnecessary, cruel and costly, since caring for elderly incarcerated individuals is a significant cost for New York State.[21]

B. Fair and Timely Parole (A.127 AM Weprin / S.159 Sen. Salazar)[22]

The Fair and Timely Parole Act[23] would provide more meaningful parole reviews for incarcerated people who are already parole eligible. The bill would amend the standard for granting parole by centering release not only on the original crime but on the person's rehabilitation while incarcerated. In other words, parole commissioners would no longer be able to deny release based solely on the crime for which the person is convicted. This is a meaningful step towards ensuring fair parole hearings, increasing New York's dismally low parole release rate, and reducing the number of New Yorkers behind bars.[24]

The bill focuses on public safety, allowing for parole to be denied where there is an identifiable public safety risk that cannot be mitigated in the community. But it also ensures that the original purpose of parole is fulfilled, specifically focusing on a person's readiness for release,

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[20] "When given the opportunity to return to society, older adults present little to no public safety risk. Nationwide, 43.3 percent of all released individuals recidivate within three years, while only seven percent of those aged 50-64 and four percent over 65 return to prison for new convictions—the lowest rates among all incarcerated age demographics. The low recidivism rate of older adults remains consistent regardless of the nature of a person's criminal conviction. People who have served longer sentences for violent crimes return to prison at lower rates than those who serve shorter sentences for nonviolent crimes. Less than 2 percent of people 55+ who served prison time for violent crimes return to prison for new crimes." https://council.nyc.gov/data/justice-in-aging/#:~:text=Misunderstanding%20the%20Risk%20of%20Recidivism,to%20prison%20for%20new%20crimes.

[21] The New York State Comptroller's Office has recognized the significant costs of providing medical care to an aging population, noting that the average cost of providing healthcare to incarcerated people increased to $7,380 per person in 2021-2022, reflecting a 29% increase compared to 8 years prior. *New York State's Aging Prison Population: Share of Older Adults Keeps Rising*, OFF. NYS COMPTROLLER at 8 (Jan. 2022) *available at* https://www.osc.ny.gov/files/reports/pdf/aging-prison-population-2022.pdf.

[22] For more information on the City Bar's support for Fair and Timely Parole, see https://www.nycbar.org/reports/report-in-support-of-the-fair-and-timely-parole-act/?back=1.

[23] For the text of the bill, see https://www.nysenate.gov/legislation/bills/2025/S159; https://www.nysenate.gov/legislation/bills/2025/A127.

[24] In 2019 only 40% of those eligible for parole were granted release by parole board, and in 2020 the number rose only to 41%. The Vera Institute of Justice undertook an analysis of 168 parole denials, 85% of those denied parole had been determined to have a low risk of reoffending or violence according to the recidivism tool used by DOCCS. https://vera-institute.files.svdcdn.com/production/downloads/publications/toward-a-fairer-parole-process-report.pdf.

not relitigating the original case for which punishment has been imposed and a sentence already served.

C. Second Look Act (A.1283 AM Walker / S.158 Sen. Salazar)[25]

The Second Look Act[26] will allow judges to review and reconsider excessive sentences. Nearly 1,000 people are sentenced to 10 or more years in prison each year, and over 5,000 people in prison (i.e., more than 10% of the prison population) have been incarcerated for 15 or more years.[27] New York State has the third largest population of people serving terms of life imprisonment in the country, with nearly 9,000 New Yorkers currently serving life sentences.[28]

Under current sentencing laws, incarcerated people have no opportunity to demonstrate to a judge that they have transformed while incarcerated or to seek a reconsideration of their sentences based on changes in law and norms. The Second Look Act will allow incarcerated people to apply for a resentencing hearing after they have served 10 years, or half of their sentence if they have been sentenced to more than 10 years, whichever is shorter. In addition, the Act would create a presumption that resentencing will be granted if the person is over 55 years old at the time of the resentencing hearing, or was under 25 years old at the time the crime occurred.[29] Judges will be able to consider several factors in considering resentencing, as well as examine the person's prison record, in making a resentencing determination. As with the Elder Parole Act, resentencing would not be automatic, but it would at least permit a person to make the showing that their original sentence would now be considered excessive, that they no longer pose a threat to public safety, and that continued incarceration would be both harsh and unnecessary. This bill would also result in cost savings to the public.[30]

The Second Look Act would allow judges to review and reconsider excessive sentences. Judges, including New York State Chief Judge Rowan D. Wilson, have spoken out about their inability to address extreme or unjust sentences,[31] and second look bills are gaining momentum

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[25] This bill is part of the Communities Not Cages suite of bills. For more information on the City Bar's support for the Second Look Act, see Communities Not Cages Act report, *supra* note 3.

[26] For the text of the bill, see https://www.nysenate.gov/legislation/bills/2025/S158; https://www.nysenate.gov/legislation/bills/2025/A1283.

[27] *SECOND LOOK ACT* (2025), https://cdn.prod.website-files.com/6150e908914d66ce067076e1/67878e425b3c07b32451cce6_2025%20CNC%20Second%20Look%20Act.pdf

[28] See id.

[29] See id.

[30] See FWD.us, *The Second Look Act – New York* (2023), https://www.fwd.us/wp-content/uploads/2023/01/The-Second-Look-Act-NY.pdf; see also Vera Inst. of Just., *The Cost of Incarceration in New York State*, https://www.vera.org/the-cost-of-incarceration-in-new-york-state

[31] Hurubie Meko, *Top Judge Favors a Second Chance for Those Languishing in Prison*, N.Y. TIMES, Feb. 10, 2025 *available at* https://www.nytimes.com/2025/02/10/nyregion/second-look-prison-ny-judge-wilson.html#:~:text=The%20second%2Dlook%20bill%20would,%2C%E2%80%9D%20according%20to%20its%20language; Hon. Stefan R. Underhill, *Did the Man I Sentenced to 18 Years Deserve It?*, N.Y. TIMES, Jan. 23, 2016 *available at* https://www.nytimes.com/2016/01/24/opinion/sunday/did-i-sentence-a-murderer-or-a-cooperative-witness.html.

across the country. Four states (Illinois, Louisiana, Maryland, Oregon) and the District of Columbia have passed second look legislation, with an additional 22 states considering their own proposals.[32]

D. Earned Time Act (A.1085 AM Kelles / S.342 Sen. Cooney)[33]

Following the federal 1994 Crime Bill, New York State slashed programs for incarcerated people and dramatically limited the time people could earn off their sentences. The Earned Time Act[34] will strengthen and expand "good time" and "merit time" laws to encourage personal transformation in prison and reunite families. It will incentivize the use of programming in prison, which will benefit both the community and incarcerated individuals.

CONCLUSION

While much reform is needed in the criminal legal system, passage of these common sense laws would significantly increase justice and proportionality within the system *and* benefit communities by addressing the root causes of crime and focusing on rehabilitation over reflexive punishment. Additionally, these sensible reforms would result in significant cost savings for the state. The City Bar urges prompt passage of these laws.

Mass Incarceration Task Force
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[32] CNC. (2025). *2025 CNC Second Look Act*. https://cdn.prod.website-files.com/6150e908914d66ce067076e1/67878e425b3c07b32451cce6_2025%20CNC%20Second%20Look%20Act.pdf

[33] This bill is part of the Communities Not Cages suite of bills. For more information on the City Bar's support for the Earned Time Act, see Communities Not Cages Act report, *supra* note 3.

[34] For the text of the bill, see https://www.nysenate.gov/legislation/bills/2025/S342; https://www.nysenate.gov/legislation/bills/2025/A1085.