



Testimony by Center for Community Alternatives

Presented before the New York State Senate and Assembly  
Joint Legislative Budget Hearing on January 25, 2024

Thank you for the opportunity to testify today. We are here to testify in opposition to the Governor's proposal to expand criminalization as a solution to social ills, and to testify in support of increased investment in transitional housing, urgently needed sentencing reform (Second Look Act - S.321/A.531, Earned Time Act - S.774/A.1128, Eliminate Mandatory Minimums Act - S.6471/A.2036), and the End Predatory Court Fees Act (S.313/A.4183).

I. **REJECT GOVERNOR'S EXPANDED CRIMINALIZATION AS A SOLUTION TO SOCIAL ILLS**

The Governor's archaic focus on criminalization as a solution to so-called "social disorder" harkens back to the repudiated policies of the 1990s. Rather than exacerbating the criminalization of poverty through a misguided focus on shoplifting and "retail theft," our lawmakers should work to address the profound economic inequality in our state by supporting the reintegration of incarcerated New Yorkers and returning breadwinners to their families.

Despite what the Governor's focus suggests, [crime is down](#) in New York, and the right focus is anti-poverty work – not criminalization. Research shows that fears about an epidemic of shoplifting have been [manufactured and overblown](#), and the National Retail Federation, a lobbying group for retailers, [retracted](#) its key claim on the cost of "organized retail crime." In an earnings call with investors, a Walgreens executive suggested that the company had indeed [overstated concerns about shoplifting](#). "Maybe we cried too much," he said, adding that it may have resulted in the retailer spending more than it should have to bolster security.

While hate violence, antisemitism, and Islamophobia are critical issues that New York State must address, expanding the list of offenses eligible to be charged as hate crimes is a misguided response that will cause more harm than good. Expanding hate crimes charges does not actually prevent hate violence; it simply means that more people will face longer sentences if convicted. Studies show that longer sentences have a limited deterrent effect. And we know that incarcerating someone causes lasting damage to the individual and to their community.

Furthermore, the research is clear that the prosecution of hate crimes disproportionately targets Black and brown people, despite the fact that a majority of hate crimes are perpetrated by white people. For example, in 2021, national civil rights groups conducted a comprehensive national [review of hate crime statistics](#) and found that though the majority of hate crimes in the U.S. are committed by white people, motivated by racial or ethnic bias, the crimes disproportionately reported Black Americans as the attackers.

We do have successful models to follow: In 2019, when a 12-year-old allegedly drew swastikas on the playground of PS 139 in Rego Park, Queens, Jews for Racial and Economic Justice (JFREJ) opposed a police-driven response with criminal penalties. Instead, they immediately reached out to the school and the community, and held an antisemitism workshop for children in the neighborhood led by a team of professional youth educators.



The most effective way to combat hate violence and bias incidents is through strategies focused on the long-term impact, healing, and learning. This prevention work is best done in our communities, not by the police or by prosecutors. If New York State is serious about combating hate violence, we must invest in restorative, community-based education and healing – not symbolic punitive measures that only cause more harm.

## II. SUFFICIENTLY INVEST IN TRANSITIONAL HOUSING

While we appreciate the expansion of college-in-prison and transitional housing opportunities proposed in the Governor's Executive Budget, these must be dramatically better funded to make a meaningful impact. The Governor's budget proposes an investment of only \$2 million in transitional housing, a drop in the bucket compared to the need reflected in the prison-to-shelter pipeline.

According to the Department of Corrections and Community Supervision (DOCCS), 57% of people leaving prison in New York State are released to three regions outside of New York City: Hudson Valley, Central NY, and Western NY, with the largest percent released to Western NY. Annually, 21,940 leave state prison and 201,939 people leave local jails.

For upstate New York alone, our transitional housing coalition is requesting between \$5-7 million to fund transitional housing. Upstate, transitional housing service program's annual operating costs are between \$500,000 and \$600,000 (\$12,500 to \$15,000 per person). This is more cost efficient than leaving people unsheltered, where they cycle between emergency shelters, jails, hospitals, and street homelessness. A \$5 million investment by New York State would fund 400 transitional housing units upstate, and a \$7 million dollar investment would fund 560 transitional housing units.

To cover all of New York State (including New York City), millions more are required.

## III. ADVANCE SENTENCING REFORM (Second Look Act - S.321/A.531, Earned Time Act - S.774/A.1128, Eliminate Mandatory Minimums Act - S.6471/A.2036)

Over the past half-century, New York's sentencing laws have driven the crisis of mass incarceration, from the 1970's Rockefeller Drug Laws to the 1990's "tough on crime" era, which has disproportionately impacted Black and brown communities. Right now, over 30,000 people are incarcerated in New York's prisons. [Nearly 75% are Black or brown.](#)

It is time for New York to reform our unjust and archaic sentencing laws. Under New York's current law, there is no mechanism for a judge to be able to review or reconsider an excessive sentence. Because of the coercive power of mandatory minimums, [98%](#) of convictions come through guilty plea, not trial, making a mockery of our system of justice. And while other states have modernized their earned time laws to support rehabilitation, New York lags behind.

It is possible to end this shameful era of mass incarceration in New York. We urge the legislature to pass the [Second Look Act](#), [Earned Time Act](#), and [Eliminate Mandatory Minimums Act](#).



The Second Look Act would allow judges to review and reconsider excessive sentences. 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 Eliminate Mandatory Minimums Act would eliminate mandatory minimum sentences, allowing judges to consider the individual factors and mitigating circumstances in a case and addressing the outsize power of prosecutors to coerce plea deals. The Earned Time Act would strengthen and expand “good time” and “merit time” laws to support rehabilitative efforts in state prisons.

These urgent and common-sense reforms are supported by [over 150 organizations](#). The [American Bar Association](#) has also endorsed all three bills. The bills are also supported by over dozens of [labor unions](#), [families](#) with incarcerated and formerly incarcerated loved ones, [business owners](#), [judges](#), and [law enforcement](#).

During the 2023 legislative session, New York passed the Clean Slate Act, taking a historic step towards ending systems of perpetual punishment and addressing the economic marginalization of millions of New Yorkers. This year, lawmakers have the opportunity to expand upon this success and advance reforms to New York’s unjust and archaic sentencing laws that will further support rehabilitation and the reintegration of incarcerated New Yorkers and contribute to a safer and more just New York.

### ***The Second Look Act (S.321/A.531)***

New York State has the third-largest population of people serving terms of life imprisonment in the country. Thousands of New Yorkers are currently serving life sentences. Prisons have become inadequate hospitals and long-term care facilities for thousands of sick and aging people. There are over 8,000 people today aged 50 and older in New York prisons and 44% of New Yorkers in state prison struggle with a chronic health condition. And many of these New Yorkers were given lengthy sentences for crimes they committed as young people.

Under current law, sentencing judges do not have an opportunity to review and reconsider excessive sentences. Even [judges](#) have spoken out about their inability to address sentences that are extreme or unjust. The Second Look Act allows incarcerated people to petition for resentencing and permits judges to revisit and reduce sentences, giving New Yorkers the opportunity to return to their families and communities, and to rebuild their lives. Nationally, second look bills are gaining momentum with legislation passed in four states— Illinois, Louisiana, Maryland, Oregon—and the [District of Columbia](#), and proposed in an additional 22 states. Federally, [U.S. Senator Cory Booker](#) has proposed second look legislation in Congress.

### ***The Earned Time Act (S.774/A.1128)***

Despite clear research that longer prison sentences harm individuals and families and do not increase community safety, New York has shifted focus from rehabilitation to warehousing people in prison for as long as possible. In response to the federal 1994 Crime Bill, which incentivized states to institute harsher sentencing laws, New York State slashed programs for incarcerated people and dramatically limited the amount of time people could earn off their sentences. This included eliminating financial aid for incarcerated college students, decimating college-in-prison programs. New York also restricted access to merit time based on conviction



type, eliminating key opportunities for rehabilitative programming and earned time for thousands of New Yorkers each year. New York is substantially behind other states—including traditionally conservative states—in allowing incarcerated people to earn time off their sentences through good behavior, completing programming, or otherwise demonstrating rehabilitation. For example, Alabama, Nebraska, and Oklahoma all permit incarcerated people to earn over 50% earned time. The Earned Time Act will strengthen and expand “good time” and “merit time” laws to encourage personal transformation and reunite families.

#### ***The Eliminate Mandatory Minimums Act (S.6471/A.2036)***

Mandatory minimum sentencing drives mass incarceration, limits the ability of judges to consider the facts of an individual case, and grants outsized power to prosecutors to coerce plea deals. To address this injustice, The Eliminate Mandatory Minimums Act will eliminate mandatory minimum sentences, allowing judges to consider mitigating factors and make individualized determinations. In doing so, the Eliminate Mandatory Minimums Act will finally undo the harm of the Rockefeller Drug Laws.

#### **IV. END PREDATORY COURT FEES ACT (S.313/A.4183)**

The End Predatory Court Fees Act (S.313/A.4183), would eliminate mandatory court surcharges, probation fees, mandatory minimum fines, as well as arrests and incarceration for unpaid fines and fees, and we call for its inclusion in the final enacted budget.

#### ***New York’s Fiscally Irresponsible and Regressive Method of Raising Revenue***

The U.S. Justice Department’s [Ferguson Report](#) came out over five years ago, after police in Ferguson, Missouri, killed Michael Brown, and uncovered a pattern of racially discriminatory policing practices incentivized by the city’s dependence on the criminal legal system to raise revenue. The report cites the use of warrants and jail time to coerce fine and fee payments and stark racial disparities in traffic stops, citations, and arrests. This pattern of discrimination, incentivized by revenue goals, contributed to “deep mistrust between parts of the community and the police department.” Yet New York continues to depend on this toxic revenue source that criminalizes Black and Brown New Yorkers and low-income people. In fact, [thirty-four localities](#) in New York are about as reliant or even more reliant on fines and fees for revenue than Ferguson at the time of the USDOJ investigation.

Racial disparities across New York State mirror many of the DOJ’s findings in Ferguson. Police acting as “armed debt collectors” risk Black and brown lives and extract wealth from New York’s poorest communities. The COVID-19 pandemic and resulting financial crisis only intensify the negative racial, economic, and health impacts of policing in pursuit of revenue. And the problem of “policing for profit” continues, in the wake of the horrific death of Tyre Nichols, we must look at police-citizen encounters that are directly tied to raising revenue. Distrust of law enforcement is already entrenched in low-income and marginalized communities, and when police officers and members of the warrant squad are deployed to arrest people for failure to pay mandatory mandatory fines and surcharges, “it further [diminishes their credibility](#).” What’s worse, is that the entire court system is involved in this “shakedown... judges preying upon the most vulnerable members of the general population” to fund the very system that keeps them trapped in the cycle of poverty and incarceration. “Debtors’ prisons may have been abolished in 1833, but it is shockingly easy to end up behind bars if the state is your creditor.”



### ***New York's Mandatory Surcharge Amounts to Taxation-By-Citation***

Fees (or surcharges) are extra costs that the government attaches to every conviction — even traffic tickets and minor infractions. They can total hundreds of dollars (not including the amount of any fine a court may impose). Individuals are often required to pay fees on top of a fine, or even when the judge decides not to impose a fine at all. These court fees are explicitly intended as revenue raisers; they function as a form of regressive taxation on New Yorkers who are often the least able to afford them.

New York's top predatory fee is the mandatory surcharge. The mandatory surcharge is a fee attached to every conviction in New York, from minor violations to felonies. Courts cannot waive or reduce these fees or surcharges, or even consider your ability to pay them, and ending this practice across the state calls for legislative reform. Depending on the type of conviction, a single mandatory surcharge can amount to hundreds of dollars. In addition to mandatory fees, many charges come with a mandatory minimum fine, meaning that judges cannot consider someone's ability to pay.

### ***New York's Court Fees Place an Undue Burden on the Poor***

Fines and fees punish people living in poverty. When governments use predatory fines and fees to raise money, the result is a hidden, disproportionate tax on those who can least afford it. This system of taxation-by-citation encourages policing for profit, extracts wealth from some of the most vulnerable members of our society and exposes Black and brown New Yorkers to more encounters with police resulting in a disproportionate rate of court involvement. Fees have significant consequences, and they impact everything from housing stability to emotional well-being to relationships with friends and family. Paying just one traffic ticket and its mandatory surcharge could mean missing rent, going without healthcare, or living without basic necessities. These fines and fees often force an indigent defendant, or their family, to choose between paying a fine that if unpaid would land a family member in jail, or the ability to afford rent, food, and other daily essentials.

Moreover, data shows New York has not only increased fees over time, but also made certain fees *less affordable* and a much greater financial burden. Since the creation of the mandatory surcharge in the 1980s, the surcharge for violations has increased *178 percent more* than the expected inflation-adjusted amount. For misdemeanors and felonies, the surcharge increased 92 percent and 75 percent, respectively, relative to the inflation-adjusted amount.

### ***New York's Fines and Fees Are a Racist Source of Revenue***

Black and brown New Yorkers are significantly more likely to be stopped, questioned, frisked, and issued summonses by police, and are living everyday with the fear of being arrested and jailed for the inability to pay a fine or fee. Harsh policing of minor violations, driven by governments' dependence on fines and fees as revenue, does not lead to greater public safety. It instead exposes Black and brown people to unnecessary interactions with law enforcement and financial insecurity.

Jailing those unable to pay fines and fees is especially costly, and New York is wasting money to chase money that does not exist. Courts and law enforcement agencies are spending more





time and resources than ever on unsuccessful collection efforts aimed at those least able to afford it.

### ***Collecting Court Debt is a Waste of Time and Money***

It is no secret that New York's courts are overwhelmed. In the wake of the pandemic, the backlog of cases continues to build, and everyone within the entire court system; judges, prosecutors, public defenders, court officers, and court clerks are desperately trying to catch up. This legislature held a hearing on Criminal Justice Date on January 30th of this year, and it was quite clear that this backlog is a problem, administratively, and financially for many agencies and organizations in the state. The Office of Court Administration testified that "there are limits to [their] resources, especially on the number of personnel available" and that "legislative reporting requirements do not include funding that may be needed to secure supplemental resources." One of these reporting mandates is the imposition and collection of fines and surcharges by the courts.

Yet, agencies in New York are not keeping legally mandated records on how the government assesses, collects, and distributes revenue from individual fees, including the mandatory surcharge. These agencies also fail to maintain data reporting infrastructure to track the amounts imposed and collected for specific fees, including the mandatory surcharge and associated revenue spending. The elimination of predatory court fees, such as the mandatory surcharge, along with the elimination of mandatory minimum fines would actually save New York Money. The cost to impose and attempt to collect these fines and fees, along with the personnel and infrastructure needed to track and maintain the data, is more than is actually collected. In many circumstances, money is never collected and state government agencies and localities are footing the bill in an attempt to raise uncollectible revenue for the state.

### ***End Predatory Court Fees***

The End Predatory Court Fees Act, (S.313/A.4183) would address these injustices by first and foremost eliminating mandatory court surcharges, which is New York's most predatory fee. Probation fees would be eliminated so a person's ability to re-enter the community and the workplace isn't unnecessarily burdened by further financial obligations. Additionally, the practice of garnishing the commissary accounts to pay for fines and fees would be eliminated. These accounts are held by individuals who are incarcerated, and family members contribute their hard-earned money to these accounts so that incarcerated individuals can purchase things they need while in prison. This legislation would also eliminate mandatory minimum fines and create a mechanism for judges to consider a person's ability to pay before imposing a fine. And most significantly, this legislation would put a long overdue end to the draconian practice of incarceration for failure to pay a fine or a fee.

New York must start funding government equitably, not on the backs of those least able to afford it. This inefficient, extractive, and predatory practice of imposing predatory fees has far-reaching consequences that endanger individuals' attempts to secure stable housing and employment. In addition to systematically punishing people living in poverty, fines and fees disproportionately exposes Black and brown New Yorkers to more, potentially deadly, interactions with law enforcement.