Open Letter to Governor Cuomo:
Necessary Amendments to Bail Proposal in FY2020 Executive Budget

January, 2019

Dear Governor Cuomo,

In December, directly impacted New Yorkers and over 130 organizations across the state sent you a letter outlining key principles for bail overhaul. The FY2020 Executive Budget Proposal reflects many of these principles — ending money bail, expanding the use of mandatory desk appearance tickets, and ensuring that individuals do not have to pay for the conditions of their release. However, other provisions stray from our common goal of protecting the presumption of innocence and vastly reducing the number of people incarcerated pretrial. In 2019, New York State has the opportunity to lead the nation in overhauling a deeply unjust bail system. To make this vision a reality — and to address the jail crisis, protect the constitutional and human rights of all New Yorkers, and meet the needs of communities most harmed by these injustices — we urge you to adopt the following critical changes as part of your 30-day amendments to the FY2020 Executive Budget:

1. **Narrow the net of pretrial detention:** As is, the Executive Budget Proposal allows for the pretrial incarceration of too many New Yorkers. The proposal must be amended to ensure that people charged with misdemeanors or statutorily “violent” felonies with no true acts of violence are never subject to pretrial detention. As evidenced by our current system, if given the opportunity, prosecutors will overcharge and over-request pretrial detention, so the charges that could subject someone to pretrial incarceration must be severely limited. Without this necessary change, we may see an increase in pretrial incarceration in some areas of the state.

2. **Ensure robust due process:** To protect the presumption of innocence for all New Yorkers, the proposal must be amended to require live witness testimony at the pretrial detention hearing, exclude hearsay, and mandate regular, ongoing review of any detention decision.

3. **Make liberty the default in all cases:** The proposal currently contains provisions for mandatory or presumptive detention. These provisions undermine the presumption of innocence and must be removed. Instead, legislation must include a universal presumption of pretrial release in all cases.

4. **Vastly limit electronic monitoring:** Electronic monitoring has the potential to result in mass community surveillance. In light of this, the proposal must be amended to prohibit...
5. **Strengthen the mandatory DAT provision:** The expanded use of desk appearance tickets (DATs) is a powerful component of the Executive Budget Proposal with the potential to divert people at the point of arrest and prevent time spent in jail. However, there are far too many exceptions that give police officers broad, unchecked discretion and invite discrimination and bias. These exceptions must be eliminated.

6. **Ensure that poverty is not the basis for detention:** Determinations regarding “risk of flight” are often coded discussions about poverty. People who are homeless, unemployed, or do not have a phone are considered “high risk” for missing court. Instead of “risk of flight,” the proposal must be amended to read “high risk of flight for the purpose of evading criminal prosecution.”

7. **Eliminate any kind of “dangerousness” consideration:** A progressive element of New York’s current bail statute is that it does not call on judges to predict future “dangerousness” in making pretrial determinations. Empowering judges to consider whether a person may cause future harm before any finding of wrongdoing — even under the circumstances set forth in the Executive Budget Proposal — will likely increase the number of people subject to pretrial detention. Furthermore, because of racially-biased notions of who is “dangerous,” this provision may increase racial disparities.

8. **Strengthen speedy release provisions:** To ensure that no one languishes in jail pretrial, the proposal must be amended to shorten the timeframe by which a detained person is released if their trial has not begun. The numerous exceptions and indefinite 20 day extensions must be eliminated. Additionally, any requests for release must allow for an oral application with a prompt hearing if any facts are in dispute, so that a person entitled to release is not held for additional days or weeks as their request is processed.

9. **Ensure that pretrial services are supportive, not punitive:** While treatment and services should be available through pretrial services agencies, the proposal must be amended to ensure that judges cannot mandate them as a condition of release, and that failure to comply with voluntary services cannot be grounds for detention or more restrictive conditions. Moreover, pretrial services agencies must be required to accept - and provide services to - any person referred by a court, without exception.

Open Letter to Governor Cuomo: Necessary Amendments to Bail Proposal in FY2020 Executive Budget
10. **Prohibit probation departments from acting as pretrial services agencies:** Because pretrial services must be supportive rather than punitive, only governmental pretrial services agencies or non-profits should be permitted to play this role, and the state must provide adequate funding for this purpose.

With these amendments, New York can start to right the wrongs caused by decades of discriminatory bail practices, and lead the nation toward a more just pretrial system. We look forward to working with you, the Assembly and the Senate to ensure the passage of bail legislation that meets the needs and demands of directly impacted New Yorkers and ensures the decarceration of jails across the state.

Signed,

[.list in formation]

1. Ali Forney Center (New York City)
2. Alliance for Quality Education (New York State)
3. Bend the Arc Jewish Action (National)
4. Brooklyn Defender Services (Brooklyn, New York City)
5. Bronx Defenders (Bronx, New York City)
6. Brooklyn Community Bail Fund (Brooklyn, New York City)
7. Bronx Freedom Fund (Bronx, New York City)
8. The Brotherhood/Sister Sol (Harlem, New York City)
9. Citizen Action of New York (New York State)
10. College and Community Fellowship (New York City)
11. Color of Change (National)
12. Drive Change (New York City)
13. Fines and Fees Justice Center (National)
14. Girls Inc. of Long Island (Long Island)
15. Greater New York Labor-Religion Coalition (New York State)
16. Immigrant Defense Project (New York City)
17. Irvington Activists (Irvington, Westchester County)
18. Justice Ministries Committee, Presbytery of NYC (New York City)
19. JustLeadershipUSA (National)
20. Labor-Religion Coalition of New York State (New York State)
21. LatinoJustice PRLDEF (National)
22. Legal Aid Society (New York City)
23. Long Island Progressive Coalition (Long Island)
24. LPS/LIFE Progressive Services Group (Westchester County)
25. Nazareth College Jail Project (Rochester, Monroe County)
26. New York City Council Member Keith Powers (New York City)
27. New York County Defender Services (New York City)
28. New York Immigration Coalition (New York State)
29. New York State Council of Churches (New York State)
30. NYC Anti-Violence Project (New York City)
31. Robert F. Kennedy Human Rights (National)
32. Metro Justice (Rochester, Monroe County)
33. New York Communities for Change (New York State)
34. Rise Up Kingston (Kingston, Ulster County)
35. Second Chance Reentry (Nassau County, Long Island)
36. Students for Sensible Drug Policy (National)
37. STRONG Youth, Inc. (Nassau County, Long Island)
38. SURJ ROC (Rochester, Monroe County)
39. VOCAL-NY (New York State)
40. WESPAC Foundation (Westchester County)
41. The West Side Commons (New York City)
42. WNY Peace Center (Rochester, Monroe County)
43. Women’s Prison Association (New York City)
44. Working Families Party (New York State)

For more information, or to sign on, contact:
Katie Schaffer, JustLeadershipUSA
Katie@justleadershipusa.org • 347-454-2195

Open Letter to Governor Cuomo: Necessary Amendments to Bail Proposal in FY2020 Executive Budget