2020 LEGISLATIVE ASKS

OVERALL ASK

THE ASK

We call on the legislature and the Governor to pass a just state budget which will guided by the following 3 principles:

1. Lift the artificial and harmful 2% Spending Cap. The cap is not a matter of law. It is only a convention which is repeatedly used to flat line or cut money for most programs which benefit the poor and middle class. Because education and medical care traditionally receive more than a 2% increase, it means that everything else has a growth rate of less than 2% or is cut. In fact, since 2011 we have seen a 32% reduction in state funding for human service programs

2. Ask the very wealthiest New Yorkers to Pay their fair share in taxes.

We need to ask the very wealthiest New Yorkers to pay more (the top 1% billionaires and some millionaires). We ask for you to consider our list of 35 billion in potential revenue raisers none of which affect most New Yorkers, and raise taxes to close the budget gap and increase spending on needed programs.

Objection Number 1: Raising taxes on the rich does not enjoy public support and that discussing raising of taxes will be used as a weapon by political opponents who will suggest advocates who support increased taxes for rich people are proposing raising taxes on everybody. That is not true. In fact taxing the rich will mean we don’t have to raise taxes and fees even higher and even cut them especially when it comes to property taxes.

It is also worth noting a recent poll down by the Hart Research Associates finds that an extraordinary 92% of New York voters favor passing legislation that would address the state budget shortfall by raising taxes on wealth over $1 billion, on incomes over $5 million, and on luxury homes.

Tax legislation including the following three provisions enjoys support from 92% of New Yorkers, including 66% strongly in favor:

- Apply a 2% state tax on an individual’s wealth greater than $1 billion.
- Raise the state income tax rate on income above $5 million per year.
- Apply a new tax on luxury homes and apartments in New York that are worth more than $5 million and are not a family’s primary residence.
Support crosses party lines, encompassing 95% of registered Democrats, 89% of unaffiliated voters, and 87% of Republicans, and is found across the state: 92% in New York City, 91% in the NYC suburbs, and 91% upstate.

More details here:


Objection number 2: If we raise taxes on the very wealthiest New Yorkers, they will leave.

Contrary to the Governor’s assertions about rich people leaving New York if we raise taxes, studies show that, while a couple may leave, most will stay because New York is where they make their money and where they call home. The real exodus of people includes New Yorkers who are spending too high a percentage of their income on basics like housing, medical care, child care, and property taxes because the state is not picking up their responsibility and refuses to ask people at the stop to pay more. The exodus of these New Yorkers hurts our economy and tax revenue and also results in a loss of population which means loss of Federal dollars and Congressional seats.

In response to the “rich will run away if we raise taxes” argument we offer this analysis of studies on the matter by Michelle Gittelman, with the Revenue Working Group and Associate Professor of Management and Global Business at the Rutgers University Business School:

“There are a number of recent studies, they are not just for New York but New York is among the states covered. Here are the salient points:

- Some ultra-wealthy DO leave in response to higher taxes (mobility)
- Individuals’ Reported Income DOES fall after tax hikes (avoidance)
- This reduces the benefits of raising taxes on the rich
- Elimination of the SALT deduction intensifies these effects - even though overall, 2017 Trump tax bill TCJA lowers taxes on rich and corporations, and SALT elimination disproportionally hurts middle class

BUT the benefits outweigh the costs:

- Even accounting for mobility, state revenues rise after raising taxes on high earners
- “We find that billionaires’ location is highly sensitive to state taxes. . .but despite high tax mobility, we find that the revenue benefit of a tax exceeds the cost for the vast majority of states” (including New York) (Moretti and Wilson, 2019)
- Even with inter-state competition + mobility + tax avoidance, there is room to raise state taxes on the wealthy before the negative effects are triggered---Note that the mobility effects are pretty small in the aggregate, though they DO increase when taxes go up
- Looking at the type of people who leave: The people that leave are "footloose" - looking for low-tax states. The Young study finds that most of the migration that happens is older people moving to Florida, which indicates that they are looking for low-tax states. However in New York we have a very high number of people who must be in NY in order to make their money - so they can't afford to leave.

[The Moretti study on estate taxes] found that the gain for the average state from taxing the estates of the remaining billionaire population exceeds the loss of income tax flows from the billionaires that flee. Even accounting for mobility and lost income taxes, New York has a net POSITIVE gain from an estate tax on only billionaires or all wealthy (estimated $5 billion -$55 billion)
Moretti had a very clever study that looked at what happened to estate taxes when states started matching Federal rates


They found that the rate of departures among households earning $5 million or more (thus subject to the top 13.3% tax rate) rose from 1.5% to 2.125% from 2012 to 2013, with a similar trend occurring among those with $2 million to $5 million in income. This is the source of the Journal’s assertion that the rate of out-migration increased by about 40%. Yes, 2.125% is about 40% larger than 1.5%, but the Journal’s formulation makes it seem as though the migration turned into a torrent, while the basic figures make clear that the actual numbers are quite small.

3. Do Not Cut Medicaid to balance the Budget

3) The 6 billion dollar budget deficit is due largely to an increase in Medicaid costs. We do not support cutting Medicaid in any way shape or form to balance the budget and, instead, we need to call on the very wealthy to pay their fair share.

BACKGROUND

Austerity is a choice the Governor and legislature makes. It is not a sign of NY State’s economic well-being. We can choose abundance over scarcity:

- Every year Governor Cuomo uses the threat of scarcity to promote his austerity budgets which the legislature is inclined to accept for fear that if they raise taxes on the rich, they will not be re-elected. These austerity budgets lead us to choose to house some people and not house others. We choose to deprive people of the health care they need and not others. We choose to underfund our public schools, foreclosing on the futures of youth in struggling schools and overburdening local property tax payers. Austerity is a political choice, not an economic necessity, and it always hurts those who need the help including poverty-stricken communities and communities of color.
- New York State has the financial resources to meet the needs of all its residents. We don’t need to make difficult choices between basic needs or fund programs at a fraction of the need while claiming we’re addressing the problem.

The wealthy have gotten richer and richer in recent years, at the expense of communities of color and communities in poverty, both urban and rural.

- NYS has allowed the wealthy to take billions of dollars that were meant to benefit all of us. Real estate CEOs and speculators should not be able to get rich on the backs of communities of color and low-income communities.
- Decades of disinvestment have done immeasurable harm to communities of color and low-income communities. All New Yorkers deserve the freedom, dignity and security that comes from knowing their basic needs such as housing, food and health care will be met, regardless of the circumstances into which they were born.

Our economy prioritizes the luxuries of the wealthy over the needs of working people:
• When it comes to something the billionaire class wants, the funds have always been there—whether it’s a helicopter pad for Jeff Bezos or subsidies for luxury developers.

• Billionaires threaten to take their money elsewhere if we raise their taxes, but let’s be clear: they disinvested from our communities long ago. They have left working families to survive on scraps. While a couple may leave because of a rise in tax rates, most will stay. In truth, after we imposed a millionaires tax a number of years ago, the number of millionaire and billionaire New Yorkers continues to grow.

New York’s state leaders are responsible for righting the wrong:

• State leaders have a basic responsibility to limit the greed and excess of the billionaire class by passing all fourteen revenue bills listed below.

• State leaders need to remember the budget is a reflection of our priorities as a state. Right now our priorities are upside-down. We continue to starve our most impoverished communities of the funds they need.

We won’t settle for less than all fourteen revenue bills:

• New York needs to claw back the enormous gains of a few from decades of a regressive and rigged tax policy—like the Federal Tax Cut and Jobs Act of 2017. Big corporations who benefited most from the tax scam spoke of using the additional funds to raise wages for workers and invest in good jobs. All the gains have only served to further enrich the wealthiest New Yorkers. Small and medium sized business, homeowners, renters—indeed most of us are left with higher taxes and cuts in services to subsidize the very wealthy who pay a smaller percentage on their income on taxes than the average New Yorker.

• Billionaires have often used their wealth to flood our elections with money, manipulate the rules of the economy, and take even more money from our communities. The rich have used their political influence to undermine our democracy and dismantle the laws that protect our workers, our families, and our neighbors.

We must invest substantially in the programs in our state budget which aid the poor and middle class and address systemic racism in New York. The levels of poverty in New York State are completely unacceptable. New York’s taxation, spending and community investment policies pose significant burdens for most New Yorkers.

Here are few other budget statistics:

Ø Since 2011, 32% of state funding for human service programs has been cut.

Ø In many cities and rural communities, nearly 50% of NYS’s children live in poverty.

Ø Human service workers, who are already receiving low wages, have not received a cost of living adjustment in 10 years.

Ø Corporate donations from real estate, health care, and Wall Street interests skew our electoral process and lead us to make costly state budget decisions which may or may not help our citizens but definitely pander to special interests. Winning elected office now requires huge corporate and special interest funding, making a run for office often impossible for people of modest means.
Ø The average cost of childcare in NYS is now $21,000 per child. This absolutely cannot be borne by families with modest incomes.

Ø Cuts have been proposed for Medicaid to balance the budget, including long term care. Shifting Medicaid costs to struggling municipalities to “save money” in the state budget is a recipe for disaster.

Ø While the state underfund efforts to alleviate poverty and starves assistance to local and county governments, especially in rural and tax burdened communities, NYS allocates $10 billion a year on economic development efforts which have often been shown to be corruption ridden and no one checks to see if the projected number of jobs ever materialized.

Ø We have more billionaires in New York than any other state and have seen a 72% increase in millionaires since the imposition of a millionaire’s tax. Millionaires are not leaving the state.

Ø Low and moderate income homeowners and renters in every part of the state might be more inclined to leave the state because they pay too high a percentage of their income on property taxes or pay higher rent because of property taxes on landlords passed on to renters.

**FOURTEEN REVENUE PROPOSALS FOR 2020**

*These measures would raise over $35 billion per year*

1: **Billionaire Wealth Tax:** Raising $10 billion per year or more

- Wealth tax to attack inequality -- new proposal being drafted now
- Yearly assessment on the speculative wealth of billionaires -- no one else pays
- Tax wealth-in-speculation including unrealized capital gains which almost never get taxed under current federal and state law
- Ten-year lookback period with new, stronger definitions of personal and corporate residency
- Legislation under development in consultation with Senators Gianaris & Ramos and Assembly Member Peoples-Stokes

2: **Ultramillionaires Income Tax:** Raising $2.2 billion per year or more

- Higher income tax brackets for income above $5M (9.32%), $10M (9.82%) and $100M (10.32%) year
- Current top rate of 8.82% is for $1M/yr individuals and $2M/yr households
- New Jersey raised their marginal tax rate on each dollar earned over $5 million from 8.97 percent to 10.75 percent and the sky didn’t fall -- California has a top rate of 13.3 percent
- Proposed as Part P of the Assembly 2019 budget bill A.2009B
- Additional bills from Senators Salazar and Gianaris and Jackson -- some include “Tax the 1%” options

3: **Pied-á-Terre Tax:** Raising $650 million per year or more

- Assessment on the mostly-vacant extra homes of the rich
- Updated by Senator Hoylman & AM Glick -- totally do-able, politically popular
- 2019 version was Senate Bill S.44 and Assembly Bill A.4540
4: **Stock Buyback “Corporate Greed” Tax:** Raising $3.2 billion per year or more

- A targeted tax on stock buybacks at the rate of 0.5 percent of the value of open market share repurchases
- Hits only controversial stock buybacks, targets the richest heirs & heiresses
- New proposal -- legislation being drafted

5: **Carried Interest Fairness Fee:** Raising $3.5 billion per year or more

- Existing legislation for a multistate compact w CT & NJ (drop MA & PA) -- if they can do it on vaping and marijuana, they can do it on carried interest
- State-level surtax that assures private equity and hedge fund managers pay the same tax rate as teachers and truck drivers
- [Senate Bill S.303 (Hoylman) Assembly Bill A.3976](Aubry)

6: **Tax huge multinational corporations more:** Raising over $1.5 billion per year or more

- Sliding-scale LLC filing fee and progressive adjustments to corporate tax
- Increase in state corporate tax for biggest companies that just got 40% federal tax cut, matched with decrease in state corporate tax for small business
- Big corporations are hoarding profits, not investing in their businesses or workers
- New proposal -- legislation being drafted: needs sponsors

7: **“Hudson Yards Tax” Luxury Land Tax:** Raising $TBD per year or more

- Special assessment on highest-value land tracts in Manhattan
- Target 57th Street, Park Avenue, Hudson Yards, chunks of TriBeCa, High Line & West Village
- Manhattan land that’s under-taxed by global standards: London, Paris, Hong Kong
- New proposal -- legislation in development

8: **CEO Pay Gap Tax on Big Business:** Raising $TBD per year or more

- Securities and Exchange Commission now reports yearly data on the ratio of compensation of every public company’s CEO to the median compensation of all its employees.
- Skoufis/Kim bill establishes a 10% tax on companies where CEOs make over 100X the company's median pay and a 25% tax on companies where CEOs over 250X the company's median pay.
- Portland, Oregon is raising $3.5 million per year with its first-in-the-nation law and California, Connecticut and five other states have proposed similar measures
- New federal bill raises corporate taxes .5% at 50-100X average, 1% 100-200X; 2% 200-300X; 3% 300-400X; 4% 400-500X, 5% over 500X
- [Senate Bill S.1659](Skoufis) and [Assembly Bill A.7454](Kim)

9: **Stop Subsidies (421-a and 485-a) for Real Estate Billionaires:** Eliminating $4 billion per year or more in wasted subsidies

- Legislation to kill the subsidies and redirect the funds to public housing and affordable housing
• State law to end the subsidies and redirect local taxes on luxury development to end the homeless crisis
• New proposal -- legislation under development (421-a Linda Rosenthal) (485-a TBD)

10: **Corporate landlord tax:** Raising $TBD per year or more

• Families pay mortgage recording taxes but huge Wall Street private equity firms don’t -- it’s time to make them pay
• New legislation would assess a fee on mezzanine debt used in large-scale regulated housing purchases by private equity and hedge funds
• Bill numbers forthcoming Senate Bill S. 7231 (Salazar) Assembly Bill A. 9041 (Epstein)

11: **21st Century Bank Tax:** Raising $TBD per year or more

• Reinstate the tax eliminated by Cuomo, Skelos & Klein and make it progressive, raising more from the biggest banks, private equity funds, hedge funds and venture capital firms
• Financial speculation drives economic inequality -- it’s time to redistribute wealth to working people and boost small businesses around the state

12: **Restore the Yachts and Jets Tax:** Raising $TBD per year or more

• Re-impose a tax on the yachts and jets of the ultrarich
• 2015 state budget eliminated sales tax on private jets and cut sales tax on yachts worth over $235,000
• Senate Bill S. 7135 (Hoylman) Assembly Bill A. 9053 (Carroll)

13. **Data tax on digital advertising:** Raising $700 million per year or more

• Targeted tax on digital advertising by the biggest ad platforms
• 2.5% - 10% tax rate depending on the size of corporation: Microsoft, Google, Facebook & Amazon pay the highest rate
• Users won’t pay more because the services are free to -- but we might see a few less annoying ads
• New proposal under development -- needs sponsors

14. **Stock Transfer Tax:** Raising $13 billion per year or more

• Current tax was imposed in 1905 to make Wall Street pay more so working people could benefit - continued until 1980 when Chase Bank president David Rockefeller got Governor Hugh Carey to rebate it in full
• Senate Bill S. 6203 (Sanders) Assembly Bill A. 7791 (Steck) keeps 100% of the tax and directs an estimated $13 billion per year to the MTA, NYCHA, public transportation, roads & bridges, clean energy, water infrastructure and aid to municipalities
• Senate Bill S. 3315 (Myrie) reduces rebate to 60% raises $6.4 billion per year for infrastructure
• Wall Street threatened to leave in 1905 and lived with the tax for 75 years -- they’ll deal with it again if it’s re-imposed
• Could develop new options to tax more speculative instruments
WEBSITES AND ARTICLES


[nybudgetjustice.com](http://nybudgetjustice.com)


[https://www.thedailyrecord.com/ideas/archive/2020/01/american-housing-has-gone-insane/605005/](https://www.thedailyrecord.com/ideas/archive/2020/01/american-housing-has-gone-insane/605005/)


[https://www.hamiltonproject.org/events/tackling_the_tax_code_efficient_and_equitable_ways_to_raise_revenue?utm_campaign=Events%3A%20COMM%26utm_source=hs_email%26utm_medium=email%26utm_content=82418869](https://www.hamiltonproject.org/events/tackling_the_tax_code_efficient_and_equitable_ways_to_raise_revenue?utm_campaign=Events%3A%20COMM%26utm_source=hs_email%26utm_medium=email%26utm_content=82418869)

[https://app.slack.com/client/TMNL5H1NZ/CRY06PJTD/thread/CMNL5HGLV-1578232430.007500](https://app.slack.com/client/TMNL5H1NZ/CRY06PJTD/thread/CMNL5HGLV-1578232430.007500)

[https://www.youtube.com/watch?v=IwFdWkbFnwM](https://www.youtube.com/watch?v=IwFdWkbFnwM) Fiscal Policy Institute Review

Budget Justice Seminar.

[https://zoom.us/rec/play/7pN5ce78qW03EoDExQSDAPUSW421Kq-s2ydNvRZnRyxVSZWN1qlnBIRnuCvzOB60Nxq9sX8MIV5h5Q?continueMode=true](https://zoom.us/rec/play/7pN5ce78qW03EoDExQSDAPUSW421Kq-s2ydNvRZnRyxVSZWN1qlnBIRnuCvzOB60Nxq9sX8MIV5h5Q?continueMode=true) and slide deck [https://drive.google.com/file/d/1o7237voTKOeLFPJSm3-OiVBrVoqyqAMz/view](https://drive.google.com/file/d/1o7237voTKOeLFPJSm3-OiVBrVoqyqAMz/view)

### AFFORDABLE HOUSING

#### 1. HOME STABILITY SUPPORT

**THE ASK:**
We ask for passage of **Home Stability Support (HSS)** Introduced by Assembly Member Andrew Hevesi (A01620) (currently before the Assembly Ways and Means Committee) and Senator Liz Krueger (S02375). This will be a new statewide rent supplement for families and individuals who are eligible for public assistance benefits and who are facing eviction, homelessness, or loss of housing due to domestic violence or hazardous living conditions. HSS will be 100% federally and state-funded, and will replace all existing optional rent supplements.

**BACKGROUND:**

Memorandum in Support from Coalition for the Homeless. February 6, 2020
Coalition for the Homeless strongly supports Home Stability Support Act which was developed to prevent homelessness and its most solvable causes through the provision of State and Federally-funded rent supplements for public assistance households. We are proud to have participated in the development of this Home Stability Support (HSS) proposal with the sponsors, and the experts representing the Legal Aid Society, Empire Justice Center, and NYS Coalition Against Domestic Violence. It is widely supported by dozens of members of the Legislature from both houses and both sides of the aisle, as well as scores of other elected officials at every level of government, and over 140 community groups and faith leaders including the New York State Council of Churches.

The bill would create a new Section 131-bb of the Social Services Law to authorize the provision of rent supplements to those public assistance households who are homeless, as well as those at risk of becoming homeless due to eviction, domestic violence, or hazardous conditions in the home. By providing housing assistance to help these households afford market rents, the program would help thousands of individuals and families to retain their homes, and at the same time help thousands of others to relocate from costly shelters, crowded double-ups, and places unfit for human habitation, to homes of their own. It would also offer support services to help individuals and families find and keep their homes.

There are over 63,092 homeless people staying in NYC shelters each night and 250,000 homeless people statewide each year. Based on City and State reports 23,000 more New Yorkers become homeless each year than exit homelessness. This level of homelessness is unsustainable and far too costly for the poorest New Yorkers and taxpayers alike. By preventing and resolving homelessness simultaneously, HSS would have the power to reduce the number of people in shelters by 60 percent in NYC, and foster true housing stability for those whose homelessness is rooted in the economics of private housing costs that far exceed the incomes of those receiving public assistance.

Ultimately, HSS would more than pay for itself in savings from reduced evictions, shorter shelter stays, reduced public service costs associated with homelessness, and increased housing stability for public assistance households. For the foregoing reasons, the Coalition for the Homeless strongly favors this
legislation and urges its adoption. For additional information please contact Shelly Nortz, Deputy Executive Director for Policy, Coalition for the Homeless at 518-436-5612.

2. **HOUSING ACCESS VOUCHERS**

**THE ASK:**

Pass Affordable Housing Vouchers to help those experiencing homelessness or imminent loss of their housing. Assembly bill A09657 is sponsored by Cymbrowitz and co-sponsored by Barnwell and Senate bill S07628 sponsored by Senator Brian Kavanagh, and co-sponsored by Senators Persaud, Myrie, Salazar

Implements a program of rental assistance in the form of housing vouchers for eligible individuals and families who are homeless or who face an imminent loss of housing.

**BACKGROUND**

*NY lawmakers introduce bill to create new housing vouchers for the poor*


Albany lawmakers are pushing for a new state-managed housing voucher program to assist the homeless and those at risk of becoming homeless.

Their proposal, laid out in a bill submitted Monday night in both the Assembly and state Senate, would cost up to $6 billion a year if fully funded, according to a key supporter.

Cea Weaver, the campaign coordinator for Housing Justice for All, said the key difference in this voucher proposal compared to other housing subsidies is it would be administered through housing agencies, not social services agencies.

That means it would not be directly contingent on whether recipients get welfare, and would instead be directly tied to a household’s income level. It would also give undocumented immigrants the ability to receive the subsidy and better ensure housing quality.

“This voucher is going to be a lot better in getting people stably housed,” she said. “It’s going to be a lot more flexible for people who can’t afford their rents.”

To be eligible, people would have to be either homeless or in imminent danger of losing housing and with an income level “no more than 250% of the federal poverty level,” according to the Senate version of the bill.

The bill’s sponsor, Sen. Brian Kavanagh (D-Manhattan), said the goal is to create a statewide voucher program modeled on federal Section 8 vouchers, which is widely regarded as effective.

“I think of this program as filling a major gap,” he said.

Kavanagh said he hopes to secure “hundreds of millions of dollars” for the program in the current budget cycle. “There’s an enormous need,” he added.

Gov. Cuomo’s administration offered a more neutral response. One official said that rent subsidy programs often perpetuate the cycle of homelessness.

“The Governor proposed the largest investment in supportive housing in state history and continues to advance his unprecedented $20 billion plan to build more than 100,000 affordable homes and 6,000 new units of supportive housing,” said Cuomo spokesman Rich Azzopardi. “We’ll review this plan, but as the governor said it’s not just about the money, it’s how you spend the money, and we’re going to mandate local governments come up with real workable strategies before we fund them.

3. **FULLY FUND 14,000 REMAINING UNITS FOR SUPPORTIVE HOUSING**

**BILL NUMBERS AND SPONSORS FOR ASSEMBLY AND SENATE IF APPLICABLE: NA**
THE ASK

Develop 20,000 Units of Supportive Housing: In 2016, Governor Cuomo pledged to create 20,000 units of supportive housing, but so far his administration has only financed a fraction of these homes—6,000. The State must fund all the 20,000 units of supportive housing units and accelerate the pace of production to meet the crisis. Without the state’s funding commitment, developers will be unable to get greatly needed projects underwritten.

BACKGROUND

Excerpt of testimony from Shelly Nortz, Coalition for the Homeless
We are pleased that Gov. Cuomo provided additional funds for more supportive housing in his Executive Budget proposal, but, honestly, it is far too little given the dire situation we are seeing on the ground. We strongly urge the Senate and Assembly to provide a capital appropriation to support all of the remaining supportive housing units originally announced in 2016. Given that supportive housing placements for single adults in New York City are at an all-time low, even as the shelter census rises, it is literally a matter of life and death for the most vulnerable New Yorkers facing homelessness as well as serious mental illnesses and other disabilities. They demand our compassion and immediate attention.

Gov. Cuomo promised these neediest of New Yorkers 20,000 units of supportive housing in 2016, of which only 6,000 have been funded. Please, ensure that this budget contains a capital appropriation for the remaining 14,000 units so that the sponsors and investors can get this vital housing into production. We do not need to remind you that it will cost less to build it now than it will later, in both dollars and, more importantly, human suffering.

4. CORRECT THE POISON PILL BUDGET LANGUAGE FOR HIV/AIDS HOUSING ALREADY FUNDED IN THE BUDGET

BILL NUMBERS AND SPONSORS FOR ASSEMBLY AND SENATE IF APPLICABLE: NA

ASK: We ask that you ensure that the budget language below is included in BOTH One House Budgets. It is critical to the success of the pilot program that this language be changed to allow local partners to propose the best use of health care savings realized through improved housing status, including sharing savings among the local social services district and the health payor to support program administrative costs and provide ongoing HIV housing subsidies.

BACKGROUND

HIV Rental Assistance Pilot Projects—Concept
Paper January 2020

The End AIDS NY 2020 Community Coalition proposes an innovative strategy to incentivize communities outside New York City to implement NYS Blueprint for Ending the Epidemic recommendations that call for concrete action to meet non-medical needs to ensure effective HIV care, including access to adequate, stable housing as an evidence-based HIV health intervention (BP8 & BP16).

Background Safe, stable housing is essential to support effective antiretroviral treatment that sustains optimal health for people with HIV and makes it impossible to transmit HIV to others. A large body of research evidence shows that:¹
• Homelessness and housing instability are linked to:
  o Delayed entry into HIV care
  o Discontinuous care, or lack of retention in care
  o Lower rates of HIV viral suppression
  o HIV-related health disparities
  o Increased mortality
• Action to address housing stability is necessary to:
  o Support engagement and retention in effective antiretroviral treatment
  o Stop HIV-related mortality
  o Reduce new infections
  o Lower costs by averting new HIV infections and reducing avoidable health care utilization

Indeed, for New Yorkers with HIV, unstable housing is the single strongest predictor of poor outcomes and health disparities. For that reason, NYS’s historic EtE Blueprint for Ending the Epidemic recommends action to meet non-medical needs to ensure effective HIV care, including access to adequate, stable housing.

Governor Cuomo has fully implemented the EtE housing recommendations in NYC by enacting a 30% affordable housing protection for NYC residents with HIV who rely on Federal disability benefits and expanding medical eligibility for the existing HIV Enhanced Shelter Allowance (ESA) program and other HIV-specific housing and services to include all persons with HIV infection. In 2016, the City became the first jurisdiction in the world to offer every income-eligible person with HIV a rental subsidy sufficient to afford housing stability and a 30% rent cap of affordable housing protection.

Upstate and on Long Island, however, there are as many 4,200 low-income households living with HIV remain homeless or unstably housed because the 1980’s regulations governing the ESA program sets maximum total household rent at a level ($480/month for an individual) too low to secure decent housing anywhere in the State, and the 30% rent cap is limited to residents of NYC. Only the NYC local department of social services employs “exception to policy” waivers to provide ESA rental subsidies in line with fair market rents.

Failure to meet the housing needs of people with HIV who live in the rest of the State outside NYC threatens to undermine the EtE plan—with the result that we will achieve the 2020 EtE goals in NYC, but not in the rest of the State. Indeed, surveillance data show stark differences in the HIV care continuum for New Yorkers with HIV who live in NYC and those who live in the balance of the State. At the end of 2018, 86% of all NYC residents with HIV had evidence of HIV care, compared to only 68% in the balance of the State; 69% were retained in continuous care in NYC, compared to just 53% in the rest of the State; and the rate of viral load suppression was 77% among NYC residents with HIV, compared to 68% viral suppression among New Yorkers with HIV outside NYC. At the end of 2018, there remain almost 9,000 people with HIV in the rest of the State outside NYC who are not HIV virally suppressed, meaning that 9,000 people in Upstate NY and Long Island will NOT have optimal health outcomes and are able to transmit HIV infection to others.

Current NYS Budget Language The NYS FY 2021 Executive Budget for the third year includes language authorizing Local Departments of Social Services (LDSSs) across the State to provide
enhanced ESA subsidies in line with fair market rents and the 30% rent cap protection. However, the budget language leaves these enhancements to the ESA program optional for each LDSS, and over two years now no LDSS has proposed a plan for opting into the program. Coalition members have been told by LDSS Commissioners that they lack the resources required to expand housing options for community members with HIV who remain homeless or unstably housed.

The EtE Community Coalition was pleased, therefore, that the NYS FY 2020 Budget also included our proposal to make $5 million in annual NYS funding available to enable LDSSs outside NYC to voluntarily partner with local health payors (such as MCOs and PPSs) and community-based organizations to pilot innovative strategies to fund meaningful rental assistance for homeless and unstably housed low income New Yorkers with HIV. This NYS funding would leverage matching dollars from local partners, for a total $10 million annual HIV housing investment. Ample evidence shows that dollars spent on HIV rental assistance generate Medicaid savings from avoided emergency and inpatient care that offset the cost of housing supports. The proposed pilots would encourage the innovative use of health care savings to fund housing assistance.

The NYS FY 2021 Executive Budget proposal again includes $5 million in State funding for the Rest of State (ROS) HIV housing pilot initiative. (As well as re-appropriation of the $5 million included in the NYS FY 2020 enacted budget.)

However, the pilot program budget language in the FY 2021 Executive Budget for the second year includes a “poison pill” that makes it impossible for social service districts to secure local partners and propose successful plans. The current Aid to Localities language undermines the initiative by providing that any savings realized through improved housing stability be recaptured to reduce the State investment, while requiring the local partner providing the matching funds continue to pay 100% of the cost for housed participants in perpetuity. It is critical to the success of the pilot program that this language be changed to allow local partners to propose the best use of health care savings realized through improved housing status, including sharing savings among the local district and the health payor to support program administrative costs and provide ongoing HIV housing subsidies. As we predicted when advocating for this change to last year’s budget language, no local district has proposed to opt into the pilot program as written, with the result that the $5 million 2020 allocation was not spent and no households with HIV have been housed through the pilot initiative.

Proposed Pilot Projects The End AIDS NY Community Coalition urgently requests that the Governor and the Legislature revise the budget language in order to enable local districts to secure local partners and propose successful plans.

Specifically, the Aid to Localities language must be changed to allow local partners to determine how best to use savings realized through improved housing status, and the proposed Education, Labor and Family Assistance (ELAF) Article VII legislation must include language amending the Social Services Law to authorize the proposed HIV housing pilot initiative. The ROS HIV housing pilot initiative, as proposed by the EtE Community Coalition, would incentivize innovative strategies at the local level to employ projected savings in avoidable health spending to support housing investments for persons with HIV experiencing homelessness and housing instability. The pilot would make $5 million in State funding available for up to five $1 million annual grants to support pilot projects in LDSSs outside NYC. To be eligible for this State funding, proposed pilots must:
• Represent a formal collaboration or partnership among the LDSS; one or more third-party payer(s) such as Managed Care Organizations, PPSs, and/or other organizations accountable for HIV health outcomes; and a community-based HIV services organization:

  o The LDSS to receive applications and administer the basic HIV Enhanced Shelter Allowance (ESA) rental assistance grant and other public benefits for eligible persons with HIV infection; o The third-party payer to provide matching funds to support pilot costs including the additional rental costs above the basic $480 ESA assistance provided by the LDSS as well as any additional costs of the 30% rent cap for their patients with HIV, and to track health care utilization and costs; o The HIV services organization to assist persons with HIV infection with unmet housing needs to locate housing units and apply for program assistance, to administer rental assistance as appropriate, and make referrals to supportive services as requested/needed.

• Make up to $1 million in annual funding available from the 3rd party payer(s) as a dollar for dollar local match for the requested State funding;

• Build upon the existing HIV Enhanced Shelter Allowance program to provide eligible households living with HIV infection with rental assistance in line with HUD Fair Market Rents, and provide a 30% rent cap affordable housing protection for extremely low-income persons, including those who rely on disability benefits; and

• Meet reasonable State reporting requirements to enable assessment of the efficacy and cost-effectiveness of the pilot project.

Each LDSS and its collaborating partners must be authorized to propose the structure and administration of their local program, mechanisms to track outcomes and costs, and arrangements to share expenses and any savings accrued among project partners to cover administrative costs and provide ongoing HIV rental subsidies.

The Community Coalition proposes that the pilot project be administered and managed by the NYS Department of Health AIDS Institute, as a critical component of the Ending the Epidemic initiative in Upstate New York and on Long Island. The pilots would be evaluated annually by the AIDS Institute to assess the potential for statewide scale-up if, as expected, pilots yield savings in Medicaid and other public spending that offset the additional costs above the $480/month NYS Enhanced Shelter Allowance benefit.

**Access to Stable Housing Saves Lives and Money** Evidence shows that improved housing status not only improves the health of people with HIV and prevents new infections, but also generates annual savings from avoided emergency and inpatient care that more than offset the cost of housing. Estimates indicate that the proposed investments in housing would generate average offsetting savings in current year health spending of $7,000 to $15,000, and each new HIV infection prevented is estimated to save the health care system at least $450,000 in lifetime treatment costs. These estimates do not even take into account savings from avoided emergency shelter use, jail stays and other areas of public spending to address the crisis of homelessness for this group. Pilot projects will be encouraged to adopt mechanisms for tracking and sharing realized savings among all pilot partners, including the LDSS.
Conclusion The lack of housing assistance in Upstate New York and on Long Island undermines EtE efforts and both individual and community health. It is time to spend public dollars wisely by investing in housing as health care for homeless and unstably housed New Yorkers with HIV across the State. The proposed pilot projects would provide the opportunity for innovation and development of replicable models, while meeting the immediate needs of New York households living with HIV.


Rest of State HIV Housing Pilot Proposed Amendments to the Executive Budget and Proposed EFLA Article VII Language To Authorize HIV Housing Pilots in Local Social Service Districts Outside NYC

The proposed FY2021 Executive Budget includes $10 million in funding ($5 million in new funding and $5 million re-appropriated from the FY2020 budget) to enable departments of social services outside of New York City to voluntarily partner with local health payors (such as MCOs and PPSs) and community-based organizations to pilot innovative strategies to fund meaningful rental assistance for homeless and unstably housed low income New Yorkers with HIV. This NYS funding would leverage matching dollars from local partners, for a total of up to a $20 million HIV housing investment. Ample evidence shows that dollars spent on HIV rental assistance generate Medicaid savings from avoided emergency and inpatient care that offset the cost of housing supports. The End AIDS New York 2020 Community Coalition supports New York State investment in pilots that would encourage the innovative use of such health care savings to fund housing assistance.

The pilot project is critical in order to meet unmet housing need among as many as 4,200 homeless or unstably housed people living with HIV in the rest of the State outside New York City, by providing these households equal access to rental assistance in line with local HUD fair market rents and a 30% rent cap affordable housing protection currently available only to people with HIV who live in NYC. This disparity must be addressed if we are to reach our Ending the Epidemic goals in every part of the State.

However, changes are needed to the proposed Executive Budget in order to incentivize and enable local districts to secure local partners and propose successful plans. The current language undermines the initiative by providing that any savings realized through improved housing stability be recaptured to reduce the State investment, while requiring the local partner providing the matching funds continue to pay 100% of the cost for housed participants in perpetuity. As written, we know that no local district will be able to attract local investment or propose a successful pilot. We know this because the same language and funding was included in the FY 2020 enacted NYS budget, and because of the undermining language, not a single local district proposed a pilot, the $5 million allocated was not spent, and not a single household living with HIV was housed.
Specifically:

- The Aid to Localities allocation language must be amended to allow local partners to propose the best use of health care savings realized through improved housing status, including sharing savings among the local district and the health payor to support program administrative costs and provide ongoing HIV housing subsidies.
- Passage of ELFA Article VII language is required to amend the Social Services Law to authorize the proposed HIV housing pilot initiative.

Proposed Revisions to Aid to Localities FY21 Executive Budget Language

Aid to Localities, Pages 419 – 420

Page 419 16 For services and expenses of a voluntary 17 initiative in social services districts 18 with a population of five million or fewer 19 to fund emergency shelter allowance 20 payments in excess of those promulgated by 21 the office of temporary and disability 22 assistance, but not exceeding an amount 23 reasonably approximate to 100 percent of 24 fair market rent, and to reimburse 25 the additional rental costs 26 determined based on limiting such person's 27 earned and/or unearned income contribution 28 to 29 percent, which the district determines are necessary to establish or maintain independent living arrangements among 30 persons eligible for or in receipt of public assistance 31 who are living with medically diagnosed 32 HIV infection as defined by the AIDS 33 institute of the State department of 34 health and who are homeless or facing 35 homelessness and for whom no viable and 36 less costly alternative to housing is 37 available; provided, however, that funds 38 appropriated herein may only be used for 39 such purposes if the cost of such allowances are not eligible for reimbursement 40 under medical assistance or other 41 programs, and further provided that such payments shall not be part of the standard 42 of need pursuant to section 131-a of the 46 social services law. Such funds may be 47 provided by the commissioner of the office 48 of temporary and disability assistance to 49 participating social services districts 50 with a population of five million or fewer 51 in accordance with a plan submitted by 52 such social services district and approved 53 by the office of temporary and disability 54 assistance and the director of the budget. 55 Up to $1,000,000 may be made available, 56 without local participation, to selected 57 social services districts that submit an approved plan, which includes one or more agreements with medicaid managed care 60 organizations, performing provider 61 systems, and/or other third-party payors.
Page 420

1 to provide dollar for dollar matching 2 funding and an agreement with a qualified 3 not-for-profit entity to provide services, including case management, to those persons in receipt of the emergency shelter allowance in excess of that promulgated by the office of temporary and disability assistance and the 30 percent income contribution identified in this paragraph. To the extent that savings are realized over the course of the designated period set forth in the plan, at the end of the period set forth in the plan, the savings shall be shared among the social services district and the medicaid managed care organization, performing provider system, and/or other third-party payor shall continue to fully fund such ongoing excess shelter allowance payments and services for the participating public 19 assistance recipients to cover administrative costs of the initiative and to continue to provide ongoing funding to ensure housing stability for persons eligible for or in receipt of public assistance who are living with medically diagnosed HIV infection. (52350)

Proposed Education, Labor And Family Assistance Article VII Legislation

ELFA New Part Description: Authorize a three-year voluntary initiative to provide funding for enhanced shelter allowances in line with fair market rents and an affordable housing protection for public assistance applicants or recipients with medically diagnosed HIV infection.

Section 1. Section 131-a of the social services law is amended by adding a new subdivision 15 to read as follows:

15. Notwithstanding the provisions of this chapter or of any other law or regulation to the contrary, up to $1,000,000 annually may be made available by the department, without local participation, to social services districts with a population of five million or fewer, pursuant to a plan approved by the department, to cover the excess costs of providing enhanced emergency shelter allowances and an affordable housing protection to public assistance applicants or recipients who are living with medically diagnosed HIV infection as defined by the AIDS institute of the State department of health and who are homeless or facing homelessness and for whom no viable and less costly alternative to housing is available. Approved plans must include one or more agreements with medicaid managed care organizations, performing provider systems, and/or other third-party payors to provide dollar for dollar matching funding, and an agreement with a qualified not-for-profit entity to provide services, including case management. Approved plans must provide eligible public assistance applicants or recipients with emergency shelter allowance payments in excess of those promulgated by the department, but not exceeding an amount reasonably approximate to 100 percent of fair market rent, and reimburse 100 percent of the additional rental costs determined based on limiting a person’s earned and/or unearned income contributions to 30 percent, which the district determines are necessary to establish or maintain independent living arrangements among persons applying for or in receipt of public assistance, provided, however, that funds provided by the department pursuant to this section may only be used for such purposes if the cost of such allowances is not eligible for reimbursement under medical assistance or other programs, and further provided that such payments shall not be part of the standard of need pursuant to this section 131-a of the social services law. To the extent that savings are realized over the course of the designated period set forth in an approved plan, at the end of the period set forth in the plan, the savings shall be shared among the social services district and local payors to cover administrative costs of the initiative and to provide ongoing funding to ensure housing stability for public assistance applicants or recipients with medically diagnosed HIV infection.

Section 2: This act shall take effect immediately and remain in effect for a period of at least three years from the effective date.
Fight AIDS with statewide housing assistance

By Perry James Junjulas and Charles King

New York state has made unprecedented progress toward the goal of ending HIV as an epidemic statewide by 2020, an effort Gov. Andrew Cuomo committed to in 2014 with his three-point “Ending the Epidemic” (EtE) plan. However, we are gravely concerned that current data indicate the state will achieve that goal only in New York City, not statewide.

One key reason for this is that in New York City, every low-income person living with HIV is guaranteed safe, secure housing through enhanced rental assistance and dedicated supportive housing initiatives. This is not the case in any upstate or Long Island locality due to state law, policy, and funding, leading to dire personal and public health consequences that should worry us all. The lifetime cost of treating just one person with HIV can top $450,000 — costs that can be prevented if we act now.

Research shows that safe, stable housing is essential to support effective HIV medical treatment that sustains optimal health for people with HIV and makes it impossible to transmit HIV to others. New York has had a rental assistance scheme for people with AIDS since the 1980s, but regulations cap total rent at $480 per month for a single individual. New York City has long approved waivers to the $480 limit to match rising rents. Implementing EtE recommendations, Cuomo expanded program eligibility to include all HIV-positive persons and capped disabled New York City tenants’ share of rent at 30 percent of fixed income.

Beyond the city, however, no other locality provides fair market-rate HIV rental assistance or the 30 percent rent cap. The 2016 state budget gave upstate localities the option to implement these policies, but no new funding. Not surprisingly, no locality opted in, nor do most have mechanisms in HIV housing services to protect confidentiality.

We urge Cuomo and the Legislature to eliminate this glaring disparity with the funding needed to replicate the elements of the New York City program statewide. This is an opportunity to show that upstate residents with HIV are treated fairly, with the same life-saving access to affordable housing as those in New York City. Let us end the AIDS epidemic for all New Yorkers, not just those in New York City.

* Perry James Junjulas is executive director of the Albany Damien Center. Charles King is CEO of Housing Works.

5. 3 BILLION INVESTMENT IN PUBLIC HOUSING

THE ASK: We ask the Legislature to add 3 billion in FY2021 to fund public housing in New York. Public housing is in a state of severe disrepair. The legislature must invest $3 billion annually to fix and preserve public housing, with $2 billion directed to NYCHA. To be successful, public housing must be fully funded and democratically controlled by organized residents, labor, and other stakeholders. It must be energy efficient and capable of withstanding extreme weather events. Privatization and housing should never mix, and Albany must allocate funding to address repairs and operations. There is a claim by the Governor that 550 million from this year’s budget has yet to be spent. He argues we must spend that money before adding additional money. Given that NYCHA alone has a 40 billion dollar capital deficit, the remaining money will not go very far and will be completely spent by the time the 2021 budget goes into effect.
After Cuomo omits public housing funds from budget, advocates speak out

Mark Hallum, February 4, 2020, AM New York

Activists – and Council Speaker Corey Johnson – are making demands from Albany after Governor Andrew Cuomo left additional funding for public housing in the 2021 fiscal year budget release last week.

With Legal Aid Society taking the lead, demands from Cuomo range from $3 billion in public housing funds, $500 million for rental vouchers to 20,000 new units of supportive housing for New Yorkers across the state.

Cuomo, in his executive budget address, simply reallocates up to $350 million from previous budgets meant to fund infrastructure upgrades.

“It is extremely disappointing that Governor Andrew Cuomo failed to include sufficient funding in his Executive Budget to combat the serious housing problems New Yorkers currently face,” Judith Goldiner, Attorney-in-Charge of the Civil Law Reform Unit at LAS, said. “New Yorkers need a budget that fully funds NYCHA, invests in rent support vouchers such as Home Stability Support, and prioritizes the immediate construction of 20,000 units of supportive housings. Our clients and others cannot wait another budget cycle. We need these measures passed this session.”

According to NYU’s Furman Center, NYCHA needs upwards of $31.8 billion, or about $180,700 per unit, over the next five years to replace failing building systems. NYCHA would need in the ballpark of $45.2 billion over the next 20 years.

“A lot of the programs that we have right now do not really solve the issue, but rather maintain it,” Clayton Roulhac-Carr, from VOCAL-NY, said. “We need permanent housing that is truly affordable for people living in the street, that means supportive housing and a voucher program to humanize people instead of showing them as a problem.”

Johnson held a press conference last week that recommended the city increase funding for housing vouchers to end the current homeless crisis and prevent future crises in the near future. This, he said, would be a cheaper and more effective alternative to creating homeless shelters.

“Our city is in the midst of a housing crisis, and we need the State to do its part. Our public housing system is crumbling and desperately needs more funding. We also need serious investments in rent vouchers to get people experiencing homelessness into permanent housing,” said Johnson.

What new funding did Cuomo allocate in the budget in regard to housing vouchers and homeless support?

On Jan. 29, the governor said $128 million for the Homeless Housing Assistance Program, which creates units for those living on the street, and an additional $5 million for supportive housing for veterans.
“While local governments and the feds have the financial obligation to make these investments, no Governor has done more to invest in housing and homelessness: with an unprecedented $650 million for NYCHA, $20 billion to build more than 100,000 affordable homes and 6,000 new units of supportive housing, and this budget doubles the investment for the Homeless Housing and Assistance Program to $128 million,” Caitlin Girouard, Press Secretary for Governor Cuomo, said. “If there are other real proposals, we will of course review them, but New Yorkers can spot a politician looking for a headline a mile away.”

This $133 million is part of Cuomo’s five-year plan to combat homelessness which he said would be funded by $20 billion.

**WAGE THEFT**

**SWEAT BILL**

**THE ASK**

* Pass The Securing Wages Earned Against Theft (SWEAT) bill A9008/S7256 which gives critically needed tools to workers and the Department of Labor to stop employers from transferring and hiding their assets by freezing the assets of employers at the onset of a wage claim.

**BACKGROUND**

* Workers in New York State are robbed of $1 billion in wages each year, according to the U.S. Labor Department. This wage theft takes the form of workers not getting paid for all the hours that they have worked, or being denied the minimum wage or overtime pay. Wage theft is on the rise because our laws have loopholes that render them unenforceable. Even when workers win Labor Department decisions and court judgments for their owed wages many employers fraudulently transfer assets, shut down and re-open under a new name, declare bankruptcy, or find other ways to avoid payment. This leads to more poverty and homelessness for workers and their families. Immigrant and low-income families are hurt the most.

* Rampant wage theft has hurt law-abiding businesses which are struggling to compete with scofflaw businesses that can charge less by cheating their workers.

* The Securing Wages Earned Against Theft (SWEAT) bill A9008/S7256 gives critically needed tools to workers and the Department of Labor to stop employers from transferring and hiding their assets by freezing the assets of employers at the onset of a wage claim.

* The bill was created by and advocated for more than five years by workers, attorneys, sponsors Senators Jose Peralta & Jessica Ramos and Assembly Member Linda Rosenthal, and supported by more than 80 organizations statewide. Last June the SWEAT bill passed the Senate and Assembly.

* On January 1st, Governor Cuomo vetoed the SWEAT bill. Although he recognized that wage theft is a problem in New York State, he vetoed the effective enforcement measures of the SWEAT bill that resulted from years of collaboration among workers directly affected by wage theft, attorneys and legislators. The SWEAT bill has been re-introduced this year in the Senate and Assembly. We urge you to support passage of this bill and to tell Governor Cuomo to pass this, and not weakened legislation.
* The SWEAT bill aims to give workers the tools to enforce the labor law so that they can hold their employers accountable not only to pay back the stolen wages but also to start complying with the law. This will help make our minimum wage increases a reality in workers’ lives, rather than just an aspiration.

* We need the support of our elected officials to call for the SWEAT bill to be included in the budget, or passed and signed intact—not a weakened bill that would subject workers to a more burdensome process that would discourage many from using tools to claim their stolen wages from law-breaking businesses!

**CARE OF CREATION AND ENVIRONMENTAL JUSTICE**

**1. IMPLEMENTATION AND FUNDING OF CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT**

**THE ASK**

We ask you to support the Climate and Community Investment Fund and to allocate at least $1 billion in this year’s budget to meet New York’s climate justice goals.

**BACKGROUND**

By voting to pass the Climate Leadership and Community Protection Act (CLCPA), our legislators made a promise to the people of New York that our state would work for climate, jobs, and justice. Now they need to begin to fulfill that promise by allocating at least $1 billion in this year’s budget to meet New York’s climate justice goals. The Climate and Community Investment Fund is the first step in implementing the CLCPA and moving New York off of fossil fuels while investing in communities most impacted by the crisis.

The Climate and Community Investment Fund includes:

**Green Jobs and Infrastructure:** Building utility-scale wind turbines and solar arrays, updating our electric grid, and more. Investments will decrease our reliance on fossil fuels & create good, green jobs.

**Community Just Transition Fund:** Direct grants to community organizations to support community-led energy planning, reduce local emissions, and increase resiliency. 75% of funds go to marginalized communities.

**Increased Efficiency and Lower Utility Bills:** Efficiency programs for low- and middle-income homeowners, plus residents of low-income and public housing, to lower emissions and decrease utility bills.

**Protecting Workers and Communities:** Cash and job training to impacted workers, funds to replace lost tax revenue for municipalities and school districts, expanding economic development programs. At least 40% of this fund will go to low-income communities & communities of color, who are hit first and worst by the climate crisis.

$1 billion in the 2020 budget is a down payment on the promises made in the Climate Leadership and Community Protection Act.
2. DIVEST FOSSIL FUEL STOCKS FROM STATE PENSION FUNDS.

Pass the Fossil Fuel Divestment Act S.2126-A(Krueger)/A.1536-A(Ortiz).

THE ASK

We ask you to co-sponsor The Fossil Fuel Divestment Act S.2126-A(Krueger)/A.1536-A(Ortiz). This act would direct the New York State Comptroller to divest the Common Retirement Fund (the state employee pension fund) from all direct and indirect investments in companies that meet the bill’s definition of coal, oil, or gas producers. This would be a critically important way for the state of New York and CRF to address the climate crisis.

BACKGROUND

- **There is an urgent need to address the Climate Crisis.** The UN Intergovernmental Panel on Climate Change has determined that we have until 2030 to dramatically change the way we live if we are to avoid a climate catastrophe. To avoid a climate catastrophe, 80% of all known fossil fuels must not be burned. Oil, gas and coal companies already have five times that much in reserve.

- **People who are poor and the most vulnerable will suffer the most from the effects of climate change**—indeed they already are. Continued investment in the fossil fuel industry furthers this injustice.

- **Divestment can be successful**—it helped end apartheid in South Africa in the mid-1980s. Divestment appropriately stigmatizes the fossil fuel industry for its culpability in the climate crisis, and will eventually break the hold that the fossil fuel industry has on our government. Divesting from fossil fuels will help accelerate the transition to a renewable energy economy.

- **Continued investment in fossil fuels is fiscally irresponsible.** The energy sector was the worst performing sector of the S&P in 2018 and 2019. If the NYS Common Retirement Fund had divested from fossil fuels 10 years ago, it would be $22 billion better off today according to a 2018 analysis by research firm Corporate Knights. It is estimated that $1 trillion in oil reserves and $300 billion in natural gas reserves will become ‘stranded assets’ and need to be written off resulting in enormous loss of value. Globally over 1100 institutions representing more than $12 trillion in assets have committed to divest.

- **Divestment is an act of leadership.** When the New York Common Retirement Fund divests, it will raise public consciousness about the severity of climate change, and it will inspire other institutions to divest. It will also be a message to the rest of the country and the rest of the world.
that although our national leadership has pulled out of the Paris Accord and abdicated responsibility for fighting climate change, Americans can still make a difference on the State and local level, and New York stands ready to work with the rest of the world community to do so.

SUPPORTING ARTICLES AND WEBSITES

https://gofossilfree.org/divestment/what-is-fossil-fuel-divestment/
https://gofossilfree.org/ny/divest-ny-sandy5/

IMMIGRANT JUSTICE

THE ASK

1. Pass amended Social Services Law (proposed by Assemblyman Harvey Epstein and Senator Brian Benjamin) to require reporting about increases or decreases in the number of foster care children in state agencies and disclosure about the number of unaccompanied children. Bill incorporates most principles from the Separation of Children Accountability Response Act which was introduced but did not pass in last legislative session.

BACKGROUND

The Epstein and Benjamin bill as of February 11 is still being amended although the suggested change in language proposed by the sponsors has been approved by advocates as an acceptable compromise of the original SCAR bill.

In the Separation of Children Accountability Response (SCAR) Act (S0222 introduced by Senator Benjamin and Assembly 01436 introduced by Assembly Member Epstein) in 2019 Legislative Session authorized agencies to report on unaccompanied children under such agencies' care; provides that a person who knowingly submits false information shall be guilty of offering a false instrument for filing; provides that the commissioner of social services may deny, revoke, or terminate an authorized agency's existing licensure or registration for failure to report such information in the prescribed time frame.

This bill passed the Senate but failed in the Assembly in 2019.

This year, Epstein and Benjamin inserted the essence of the SCAR bill into section 17 of the social services law. It requires quarterly reports on the number of children in foster care and a statistical display of the number of unaccompanied children which is not specific to children separated from parents at border but can be surmised by the statistical display. While we preferred to have a specific category for children separated at border, such disclosure was feared to jeopardize Federal funding the agencies. This more general reporting accomplishes our goal especially combined with reporting on 10% increase or decrease in reporting.
2. PROTECT OUR COURTS

The Ask

Makes it unlawful for any law enforcement officer (including Immigration and Customs Enforcement) to arrest a person for a civil violation while that person is going to, attending, or leaving court unless a judicial warrant or court order authorizing the arrest is presented to court staff. Prohibits law enforcement officers from outside of New York (including ICE) from entering a courthouse to enforce federal immigration law, unless they present a valid judicial warrant or court order authorizing the arrest. A.11013/S.08925

BACKGROUND

Ted DeBarbarieri, Professor at Albany Law School

An unprecedented increase in ICE arrests makes it impossible for our courts to run the way they’re supposed to. The Immigrant Defense Project documented a 1200% increase in ICE courthouse operations from 2016 to 2017. The surge in ICE arrests has made immigrants and their families fearful of going to court. This means children aren’t getting child support, domestic violence survivors aren’t getting orders of protection, tenants aren’t bringing complaints against abusive landlords, and people facing criminal charges are denied their fair day in court.

1. ICE’s courthouse arrests undermine public safety for all New Yorkers. Prosecutors and law enforcement have said that ICE arrests make it harder for them to convince victims and witnesses to come forward. In a statewide survey by the Immigrant Defense Project, more than two-thirds of advocates who work with survivors of violence said they have clients who have declined to seek help from the courts due to fear of ICE. More than half of housing rights advocates surveyed have clients who are too scared to file a housing court complaint because of ICE being in court. 2. This bill will help ensure access to courts for ALL New Yorkers regardless of immigration status. Our constitution guarantees access to the courts to ALL New Yorkers, regardless of immigration status. Equal access to our courts is vital to our democracy and central to everything that New York stands for. 3. This bill will help protect the fundamental constitutional right of all New Yorkers to have their fair day in court. ICE snatches immigrants from court when they’re in the middle of defending themselves against criminal charges. Once ICE detains someone, they can refuse to send them back to state court, meaning that the person never gets their fair day in court. This not only violates basic constitutional rights, it derails our state’s criminal justice system. 4. The legislature has the power to protect the state’s courts from ICE. ICE is exploiting our courthouses by using them as a hunting ground for immigrants. When an outside agency interferes with our courts, we have a duty to protect them. The state constitution gives New York’s legislature clear authority to regulate the court system to ensure that they operate effectively and serve EVERY New Yorker.

This bill would prevent Immigration and Customs Enforcement agents from arresting people inside New York State courthouses, or when they are on their way to or from court without a judicial warrant or court order.

Supporters of the legislation, including Brooklyn District Attorney Eric Gonzalez, Manhattan DA Cyrus Vance and Bronx DA Darcel Clark say the measure would encourage noncitizen crime victims and witnesses to visit courts without fear of arrest. Acting Queens District Attorney John Ryan said he does not think the state has the authority to limit federal law enforcement.
Queens District Attorney-elect Melinda Katz supports efforts to keep ICE away from courts and backed a lawsuit filed against ICE by Gonzalez and Attorney General Letitia James. Brooklyn and Queens accounted for the most courthouse ICE arrests of any counties in the state last year, according to a report by the Immigrant Defense Project.

The Office of Court Administration issued a directive in April mandating that ICE agents present a signed judicial warrant before making an arrest inside a courthouse. At least seven people have been arrested by ICE inside state courthouses in 2019, according to OCA.

SUPPORTING ARTICLES WEBSITES


3. FUNDING IN BUDGET FOR LEGAL DEFENSE FOR IMMIGRANTS

THE ASK

Please pass the Access to Representative Act and Restoration of Immigration Legal Service funding.

BACKGROUND

1. Restore Immigration Legal Services Funding

What funding is being sought?

1. We are asking for a total of $25 million to be invested in immigration legal services in this year’s New York State budget, to be divided as follows:

1. Increase the funding for immigration legal services to $15.3 million, from its current $10 million, to enable legal representatives within the Liberty Defense Project to continue work on existing cases and to allow new providers to serve 1,000 New Yorkers needing legal assistance to protect themselves against federal anti-immigrant enforcement. The funds should be distributed to organizations providing legal representation as well as community-based organizations handling outreach, know your rights presentations, and community education.

2. Increase the budget of the Office for New Americans to $9.1 million from its current $6.4 million, to restore full funding to the ONA Opportunity Centers and to bring the number of centers back to its original 27. This would allow ONA to prepare an additional 400 citizenship applications, host an additional 48 intake days, and restore English classes for approximately 3,000 New Yorkers a year.

3. Since 2012, New York State has distributed funds through the Office for New Americans (ONA) for immigration legal services. Initially, ONA funding was limited to citizenship applications and assistance with Deferred Action for Childhood Arrivals (DACA). Since 2018, ONA has served many different types of cases, including those facing deportation. In addition, in 2017, $10 million was allocated to specific organizations to provide immigration legal services. That funding was used to create the Liberty Defense Project, which includes the upstate public-defender type system for detained immigrants (New York Immigrant Family Unity Project or “NYIFUP”). Since 2017, however, funding amounts have not increased even as caseloads are growing exponentially.
4. Providers are at capacity and community groups often struggle to find lawyers when facing deportation. Because immigration cases take many years to resolve, failing to increase funding levels mean that the providers cannot take on new cases and so more and more people are left without lawyers.

Why is this funding important?

1. Unlike in criminal proceedings, where defendants will be given a lawyer if they cannot afford one, immigrants do not have a right to a government-paid attorney. Low-income and indigent individuals facing deportation must either hope to find a non-profit attorney able to help them, or face the court system alone - even as the government is represented by a highly-trained lawyer. This is true even if the person is detained, or is an asylum seeker fleeing persecution in their home country, or is a young child, or has mental competency issues.

2. Having a lawyer represent someone in deportation proceedings makes a huge difference. 78% of immigrants with lawyers win their cases, versus 15% who don’t have legal help. For immigrants who are detained, only 3% win their cases without a lawyer. Under the Trump Administration, both the number of immigration arrests and new deportation cases have risen sharply, especially in New York. These are our neighbors, co-workers, and friends-- they are a vital part of communities across the state. Without legal help, these New Yorkers are left to navigate a byzantine and confusing system alone.

3. Without legal representatives acting as procedural safeguards, many immigrant New Yorkers who are meeting the requirements for legal status will be caught up in a dragnet, unable to find a lawyer and unjustly deported.

4. Currently, hard-working immigrants unable to afford a private attorney must rely on a network of not-for-profits that are sporadically funded, stretched to capacity and poorly distributed throughout the state. Because immigration cases take years to complete, but funding has remained at the same level for years, providers cannot continue work on existing cases and take on new cases at the same time.

5. Ultimately, this funding is about providing due process to all New Yorkers. Having a right to a lawyer makes sure that the system is fair and works the same for everyone. If someone qualifies for legal status under existing federal laws, a lawyer makes it more likely that they will obtain that status. But regardless of the outcome, having access to legal help means that individuals are fully informed about their case and can make the best decisions for themselves, their families, and their communities --- whether it is to fight deportation charges, or to leave the United States.

2. Why Now?

1. More New Yorkers are at risk of deportation than ever before. There were 80% more deportation orders entered in 2019 compared to 2018 in New York, and Immigration and Customs Enforcement (ICE) and Border Patrol arrests jumped by 25% across the state between 2017 and 2018. At the same time, there have been numerous changes to immigration court policies and practices aimed at speeding up case timelines and limiting immigrants’ opportunities to present their cases in full.
2. At the same time, non-profit organizations that provide legal representation to immigrant New Yorkers are at capacity and struggle to take on new cases to meet the need. New York City organizations, which make up 63% of the New York providers, rely primarily on New York City funding to carry out their services, preventing them from serving individuals in the rest of the State. Providers outside of New York City have access to much less funding. In both cases, the resources are not sufficient to meet the crushing need.

3. Guaranteeing access to legal help for everyone was the top ask by the New York Immigration Coalition’s 200 members in our annual survey of needs in 2019. In every part of the state, our member organizations reflected the fear and uncertainty faced by immigrant communities today and noted that not having access to legal services was one of the most critical immigrant issues that needed to be addressed in the 2020 Legislative Session.

4. There has been a growing national movement recognizing the need to fund immigration legal representation. Recognizing the dire consequences of deportation and the systemic imbalance that harms immigrants facing deportation, the American Bar Association in 2017 called for a federally-funded access to representation in immigration proceedings, and also called on states to adopt similar policies until the Federal Government does so. In 2019, the New York State Bar Association called on New York State to become the first state to introduce such legislation. On January 15th, Senator Brad Hoylman and Assemblymember Catalina Cruz introduced the Access to Representation Act to do just that.

2. Pass the Access to Representation Act

As immigration enforcement reaches an all-time high in New York State, communities and their advocates have increasingly looked for ways to protect and defend individual members from the deportation pipeline. A report released by the New York State Bar Association in June, 2019 highlighted the impact that having legal representation can have on someone’s ability to defend themselves against deportation charges. Specifically, the report showed that only 15% of never-detained unrepresented immigrants won their cases, versus 78% of never-detained immigrants who were able to have an attorney represent them. Similarly, 32% of represented, detained immigrants were able to win relief from deportation versus merely 3% of un-represented, detained immigrants. The report also noted that, according to a statistical survey of the outcomes of the New York Immigrant Family Unity Project (NYIFUP), the pioneering public defender model for detained immigrants launched in 2013 in New York City, having an attorney increases the likelihood of success and relief from deportation by 1,100%.

In response to the needs articulated by community members, and based on the evidence highlighted in the NYSBA report, the New York Immigration Coalition is working on legislation to create a statutory right to counsel for all immigrants, a summary of which is included below.

Who is covered by the bill?

Any New Yorker who makes less than 200% of the federal poverty guidelines ($51,500 for a family of four) and is either currently in removal proceedings in front of an immigration judge or already has a deportation order with a basis to challenge that order. Individuals who do not live in New York, but have a strong connection to New York, could also be given an attorney on a case-by-case basis. The right to a lawyer will apply when a New Yorker is going through a deportation hearing before the immigration
courts located in New York or New Jersey, or when a Department of Homeland Security office located in New York is moving forward with expedited removal. The right to a lawyer will also apply in family court for minors who need special findings orders, in federal district courts in connection with habeas petitions to challenge someone’s detention, and in appeals before the Board of Immigration Appeals, the federal District or Circuit courts and the US Supreme Court.

**What kind of services will these lawyers provide?**

Lawyers will be required to provide consultations, ongoing continuous legal representation throughout someone’s case before the immigration courts, representation on any appeals to the Board of Immigration Appeals (BIA) or federal courts, filing of motions to reopen or reconsider when there is a basis to file such a motion, representation before family court to obtain special findings orders for Special Immigrant Juvenile Status (SIJS) applications, and Habeas petitions to challenge someone’s detention.

**When will the right begin and when will it end?**

Someone will have a right to a lawyer as soon as the Notice to Appear (NTA) is filed in immigration court to start a deportation case against the person. If someone already has a deportation order, they will have a right to a lawyer as soon as Immigration and Customs Enforcement (ICE) begins to try to enforce the order. The right to a lawyer will end once the cases is ended by the last court hearing the case, once there are no more possible appeals or basis to request re-opening of the deportation order, once the person moves out of New York or has an income too high to qualify them for a free lawyer, or when they decide they no longer want to work with a state-appointed lawyer.

**Who will oversee the system to appoint lawyers?**

The system would be administered by the Office for New Americans (ONA), an agency within the Department of State, in conjunction with an advisory committee of nine (9) members that would be appointed by the Governor, the Senate, and the Assembly. ONA, working with the Advisory Committee, will have flexibility in the partnerships and systems it develops to connect individuals to lawyers. The Governor would appoint five (5) individuals to the Advisory Committee, including an equal number of representatives from non-profit legal service organizations and community based organizations, as well as one private attorney. The Speaker of the Assembly and the President if the Senate would each get two appointments. At a minimum, the Advisory Committee will advise on case rates, ways to get services to underserved areas, community engagement efforts, ensuring language access, and other efforts by the state to support those facing deportation. The Advisory Committee will issue its own yearly report. Committee members will serve two-year terms without compensation.

**What Data Will the Administrator Collect?**

In order to analyze and improve the provision of legal services for immigrants in New York ONA will establish performance measures and collect non-confidential information about the types of cases, case loads, financial and in-kind costs and resources, outcomes, and other information and will use this data. ONA will be required to provide a yearly report to the Governor and legislature on the program.

**How Will These Legal Services Be Funded?**

The law directs New York to provide enough funding in its budget to carry out this right, and also allows ONA to seek private sources of funding. However, it also explicitly prevents New York
1. Why the Access to Representation Act?

1. Unlike in criminal proceedings, where defendants will be given a lawyer if they cannot afford one, immigrants do not have a right to a government-paid attorney. Low-income and indigent individuals facing deportation must either hope to find a non-profit attorney able to help them, or face the court system alone - even as the government is represented by a highly-trained lawyer. This is true even if the person is detained, or is an asylum seeker fleeing persecution in their home country, or is a young child, or has mental competency issues.

2. Having a lawyer represent someone in deportation proceedings makes a huge difference. 78% of immigrants with lawyers win their cases, versus 15% who don’t have legal help. For immigrants who are detained, only 3% win their cases without a lawyer. Under the Trump Administration, both the number of immigration arrests and new deportation cases have risen sharply, especially in New York. These are our neighbors, co-workers, and friends-- they are a vital part of communities across the state. Without legal help, these New Yorkers are left to navigate a byzantine and confusing system alone.

3. Without legal representatives acting as procedural safeguards, many immigrant New Yorkers who are meeting the requirements for legal status will be caught up in a dragnet, unable to find a lawyer and unjustly deported.

4. Currently, hard-working immigrants unable to afford a private attorney must rely on a network of non-profits that are sporadically funded, stretched to capacity and poorly distributed throughout the state. The Access to Representation Act will guarantee that funding must be included in the budget every year for these services, giving both attorneys and their clients confidence that each case will have legal representation through the multiple years it usually takes to complete deportation proceedings.

5. Ultimately, this legislation is about providing due process to all New Yorkers. Having a right to a lawyer makes sure that the system is fair and works the same for everyone. If someone qualifies for legal status under existing federal laws, a lawyer makes it more likely that they will obtain that status. But regardless of the outcome, having access to legal help means that individuals are fully informed about their case and can make the best decisions for themselves, their families, and their communities --- whether it is to fight deportation charges, or to leave the United States.

2. What will the bill do?

1. The bill will create a statutory right to a lawyer, rooted in the New York State constitution, for any New Yorker facing deportation who cannot afford an attorney on their own. This means that the State will appoint a lawyer to anyone in New York who has a case before an immigration judge or who has a basis to file an appeal of a request to reopen an old deportation order.

2. The bill also creates an advisory committee to work with the State agencies in implementing the right. The bill requires that the advisory committee include at least one private bar attorney and an equal number of non-profit attorneys and community based organization representatives. This will ensure that the right is implemented in a way that makes sense for communities on the ground.
3. For more information on the different provisions of the bill, please refer to the bill summary.

3. **Why Now?**

1. More New Yorkers are at risk of deportation than ever before. There were 80% more deportation orders entered in 2019 compared to 2018 in New York, and Immigration and Customs Enforcement (ICE) and Border Patrol arrests jumped by 25% across the state between 2017 and 2018. At the same time, there have been numerous changes to immigration court policies and practices aimed at speeding up case timelines and limiting immigrants’ opportunities to present their cases in full.

2. At the same time, non-profit organizations that provide legal representation to immigrant New Yorkers are at capacity and struggle to take on new cases to meet the need. New York City organizations, which make up 63% of the New York providers, rely primarily on New York City funding to carry out their services, preventing them from serving individuals in the rest of the State. Providers outside of New York City have access to much less funding. In both cases, the resources are not sufficient to meet the crushing need.

3. Guaranteeing access to legal help for everyone was the top ask by the New York Immigration Coalition’s 200 members in our annual survey of needs in 2019. In every part of the state, our member organizations reflected the fear and uncertainty faced by immigrant communities today and noted that not having access to legal services was one of the most critical immigrant issues that needed to be addressed in the 2020 Legislative Session.

There has been a growing national movement recognizing the need to fund immigration legal representation. Recognizing the dire consequences of deportation and the systemic imbalance that harms immigrants facing deportation, the American Bar Association in 2017 called for a federally-funded access to representation in immigration proceedings, and also called on states to adopt similar policies until the Federal Government does so. In 2019, the New York State Bar Association called on New York State to become the first state to introduce such legislation.

**4. ADD FUNDS FOR HEALTH-CARE FOR UNDOCUMENTED IMMIGRANTS IN THE ESSENTIAL PLAN**

**Covering Immigrants**

Immigrants make up a disproportionate share of uninsured New Yorkers. Some undocumented immigrants in New York are eligible for Medicaid (pregnant women) or Child Health Plus (children under 19), but over 400,000 New Yorkers remain uninsured because of their immigration status.

The State can provide coverage to a portion of this population by passing Senate bill 3,900 and Assembly bill 5974 to create a state funded Essential Plan covering over 46,000 people in 2020. The existing Essential Plan covers people who earn up to 200 percent of the Federal Poverty level but excludes many New Yorkers because of their immigration status.
BACKGROUND

1. For more background, see “How Can New York Provide Health Insurance Coverage to its Uninsured Immigrant Residents?,” from the Community Service Society of New York, a HCFANY Steering Committee member. It’s date from 2016 but offers a very complete overview about coverage of immigrants.


In the midst of the endless demagoguery by President Donald Trump and other politicians nationwide about immigrant families, immigrants and their supporters can’t be faulted for sometimes getting discouraged. But California has recently provided us with some good news.

In July, California’s new Democratic governor, Gavin Newsom, signed legislation to cover (with state dollars) an estimated 90,000 low-income undocumented young adults ages 19 to 25 through that state’s Medicaid program. Immigration advocates in California had originally hoped to cover far more of the undocumented, but the state is nonetheless the first to cover undocumented adults long-term. Coverage will begin in 2020.

The Affordable Care Act — while in many ways a big step forward — largely failed undocumented communities. It excluded them from the right to enroll in Medicaid, to receive subsidies for private plans (called “qualified health plans,” or QHPs), or even the right to enroll in QHPs while paying the full premium.

People without health coverage often delay care or go without necessary care, often leading to more severe problems that are ultimately more expensive to treat. And hospitals are required by federal law to stabilize every patient who seeks emergency care, including the undocumented, placing disproportionate economic burdens on the institutions serving these patients. Effectively denying the undocumented preventive and primary care by excluding them from insurance coverage is both punitive and bad health policy. It is also bad economic policy, as uninsured people are more exposed to financial risk that makes it more difficult to escape the vicious cycle of poverty.

For the foreseeable future, a national solution seems unlikely. Many Democratic presidential hopefuls have embraced the concept of coverage for the undocumented, but details are scarce. Unsurprisingly, the president and the Republican-controlled Senate are adamantly opposed. Right now, we need to look to the states.

California has provided a model, and in New York, we are looking to take that model a step further. Coverage4All, a campaign of the large health care consumer coalition Health Care for All New York, is fighting for comprehensive coverage for undocumented New Yorkers through our state’s Essential Plan, which covers people up to 200 percent of the federal poverty line for no or a small premium and minimal cost-sharing. HCFANY estimates that more than 100,000 additional New Yorkers would get coverage.

The passage of “Green Light” legislation in 2019, restoring access to driver’s licenses for undocumented New Yorkers, as well as laws to strengthen rent regulation and environmental protections, have given us reason for hope. But this new progressive vision has notably lacked significant advancement in health
care. Now, in 2020, New York should top California's recent coverage initiative, and set a humane path in health care for the nation to follow.

CRIMINAL JUSTICE REFORM

1. RETAIN BAIL AND DISCOVERY LAWS

THE ASK

Retain the current bail and discovery laws and let them work. Do not succumb to fear mongering. There is no need to modify these laws. We do not support any of the legislation proposed to weaken current laws. Defeat all bills which are designed to weaken current bail and discovery laws.

Please keep this issue in front of you when you return to your districts. Opportunities will emerge to advocate for continuing to support the laws without modification. The opposition is holding three more bail roundtables in Syracuse, Long Island and the Hudson valley-dates to be announced.

BACKGROUND

STANDING FIRM FOR JUSTICE: NEW YORK’S BAIL LAW

The bail reform statute is an important step forward for fairness, justice, and public safety. This new law addresses fundamental problems that have plagued poor people forced to sit in jail for months and years simply because they could not afford bail. The law will help make our communities safer and save county taxpayers millions of dollars. While in the past, individuals with the resources to afford bail were generally released into the community without conditions, the new law provides that persons facing criminal charges may be subject to pretrial supervision; equally important, services should be made available to assist persons in need. Additional non-monetary conditions may be ordered, with the focus on the least restrictive alternative necessary to assure the person’s return to court. Judges can also issue orders of protection, where needed, to protect alleged victims and witnesses.

New York City’s pretrial service programs, which provide support for those with mental health or substance abuse problems, provide examples of what is needed in every county. During the first few years, state funding will be necessary until the cost-savings from reduced jail populations are realized, due to one- to three-year county contracts. We urge the Legislature to include new and adequate state funding in the State Budget for non-profit community-based programs in Upstate and Long Island counties, to establish or expand pretrial service programs.

We do not need to keep people accused of lower-level offenses in jail—which often leads to job loss, disruption of families, and potentially more crime—to ensure that they return for their court date. The experience of charitable bail funds and other pretrial service organizations in New York State demonstrate that bail is not necessary to help ensure that people return to court. Roughly 95% of the people whose bail was paid by a community bail fund—from Kings to Tompkins and Onondaga counties—returned for their court dates. The Bronx Freedom Fund found that 96% of the more than 2,500 people for whom they paid bail attended all of their court dates, and 55% of those cases were dismissed. We commend the Governor and Legislature for maintaining New York’s statutory “risk of flight” criteria on bail, established in 1970. We are proud of New York’s statute as it best exemplifies how courts maintain the Constitutional principle of ‘presumption of innocence’ in pre-trial proceedings.
Proposals to adopt perceived ‘dangerousness,’ or perceived threats to public safety, were rejected during the administration of Governor Nelson Rockefeller and have been continually rejected by the New York State Legislature for over 50 years. Now, some officials are again calling for adding this new element to the bail statute, an element that would allow a judge to attempt to predict a person’s future behavior. **Adding perceived ‘dangerousness’ to a judge’s evaluation of an individual undermines the Constitutional principle of ‘innocent until proven guilty.** Simply put, allowing generalized predictions of future dangerousness to result in pretrial detention would only serve to deepen the institutionalized racism that already exists in the system by providing it legal imprimatur.

Appellate Judge Karen K. Peters (retired) stated in an Albany *Times Union* Commentary (1/8/20):

> “…Notwithstanding the fear mongering that has occurred in opposition to the changes to the bail and discovery statutes, they will undoubtedly make our state a safer and more just place to live. The new bail law levels the playing field; pretrial incarceration is grounded upon the crime charged, not the wealth of the individual charged. Moreover, the new bail laws provide that people who will be released pretrial under court oversight can be supervised within the community in ways well beyond what the current law provides. This can include treatment for substance use and mental health issues, electronic monitoring with GPS tracking when a judge determines it to be necessary, home detention, curfew and the seizing of passports… **Whether conservative or progressive, we all want our system of justice to be fair. Gov. Andrew Cuomo and the members of the Legislature who championed these reforms should be commended for leading the way.**”

**What to know about the state’s new bail reform law**

**By REBECCA C. LEWIS**  
**JANUARY 14, 2020**

Unless you’re an attorney, criminal law can be confusing, even for die-hard “Law & Order” fans. The state’s new bail reform law, all 20 pages of it, is no exception. Here’s what you need to know about bail, the new law and the various new provisions that it puts in place for people accused of a crime and awaiting trial.

**What is the purpose of bail and pretrial detention?**

The point of bail, submitting a payment in order to be released from jail, is to encourage someone who has been charged with a crime to return for their court dates. Defendants are constitutionally protected by the [Eighth Amendment](https://www.law.cornell.edu/constitutions/united-states/8th-amendment) against excessive bail. In New York, a judge is able to consider a variety of factors when setting bail, such as prior criminal history, whether or not someone has previously returned to court and the charges against the defendant. Judges cannot directly consider the danger someone might pose to the community or other individuals when setting bail or determining whether someone should be held in jail before trial. Bail is used as collateral and returned to a defendant at the end of their criminal proceedings. If a person can’t post bail, they are jailed for the course of their trial. If a defendant flees after posting bail, he or she forfeits that money. Pretrial detention and bail are not meant to keep accused criminals off the streets prior to a conviction.
What changed under the new bail law?

Under the new bail law, prosecutors can only ask for bail or pretrial detention in certain felony cases – including almost all violent felonies – and a handful of misdemeanor charges. Nearly all Class A felonies – the most serious category of crime, including murder, first-degree arson and first-degree kidnapping – are still eligible for bail or pretrial detention. So are the vast majority of felony sex offenses. Witness tampering and witness intimidation also fall under that category, as do terrorism and terrorism-related charges.

Most other misdemeanors, nonviolent felonies and a couple categories of violent felonies now lead to someone being automatically released. However, a judge can impose non-monetary conditions like electronic monitoring or travel restrictions to help ensure that someone returns to trial, if that’s considered necessary. A judge can use the same set of criteria for bail to set non-monetary restrictions. One notable change, however, is that judges can no longer consider the strength of a case against a defendant nor the likelihood of a conviction when setting bail or nonmonetary conditions.

Wait, there are some violent felonies that will lead to a defendant being automatically released?

Yes, certain felonies are technically categorized as violent or sound like they are violent that won’t be eligible for bail. In some cases, though, the crimes don’t involve a weapon or even direct interaction with the victim. Second-degree manslaughter – also referred to as involuntary manslaughter – is one of the more serious sounding crimes that now leads to an automatic release. This crime is not even technically considered a violent felony under state law. Although someone died, a defendant accused of second-degree manslaughter is not believed to have intended to kill or injure the victim, and they are accused of acting in a criminally reckless way that resulted in death. This is different than varying degrees of murder, when the defendant is generally accused of intentionally trying to kill someone, or even first-degree manslaughter, when there is at least an intent to cause harm.

The two “violent felonies” that lead to an automatic release are second-degree burglary and second-degree robbery, but only in very specific instances. For the burglary charge, the automatic release only occurs if the building that the defendant is accused of breaking into is a “dwelling.” In other words, if someone is unarmed, does not threaten anyone and does not harm anyone when breaking into a home, that person will now be automatically released. Similarly, someone accused of second-degree robbery can only be released if that person is helped by a second person, but neither caused physical harm or displayed a weapon.

What about the guy who allegedly robbed a bank in New York City and is now accused of committing another bank robbery after being released?

In that case, the accused was charged with grand larceny, which is considered a nonviolent felony under state law. He did not allegedly use or display a weapon, nor did he cause any physical harm, so he was automatically released without bail. However, if this person is in fact arrested again while awaiting trial for the original arrest, stricter pretrial restrictions, including bail, may be imposed. Stricter pretrial conditions can be set for any defendant who is arrested for a felony after being released, regardless of the nature of the original felony charge. Bail can also be set if someone repeatedly does not show up to court or engages in alleged witness tampering while released.

It’s important to remember that there was no guarantee that this alleged bank robber would have been in jail pretrial prior to the passage of the bail reform law. If bail had been set, he could have posted it and been released.
What about domestic abuse and domestic violence cases that are not eligible for bail? What protects those victims?

As it was before the bail reform law took effect, judges remain able to put in place certain protections if the victim of a crime shares a home with the defendant. These include issuing an order of protection against a defendant and ordering a defendant to give up their firearms. If a defendant violates the order of protection, a judge can set bail or hold that person pretrial. That person would be accused of criminal contempt, which is considered bail-eligible under the new law. Other instances of someone violating an order of protection while released prior to trial can lead to stricter pretrial conditions. This was also true before the bail reform law was passed.

In addition, misdemeanor domestic violence offenses and all felonies can also qualify a defendant for electronic monitoring, the most restrictive non-monetary condition a judge can impose upon release.

What about a proposal that would allow judges to consider the danger a defendant poses when deciding on bail or pretrial detention?

The idea of adding a clause about dangerousness is not new, and was in fact negotiated out of the new law that passed as part of last year’s state budget. Several other states, including New Jersey and California, allow judges to hold a defendant before trial if that person is deemed to pose a risk to the community or others. Many wanted to give judges similar discretion in New York as a safety measure, and the issue has been raised again now that Democratic leaders have opened the door to tweaking the bail reform law. On the surface, bail and dangerousness seem interwoven, but realistically they are two different issues, particularly in New York. Bail is meant to ensure compliance with the criminal justice system by encouraging defendants to return to court, while dangerousness is a public safety measure. Although federal courts and some states allow a defendant’s right to bail to be waived in certain instances with regard to dangerousness, New York has never directly allowed judges to do this. Advocates for criminal justice reform argue that giving judges this discretion would result in the same biases that saw poor, minority defendants disproportionately incarcerated pretrial while they are still innocent in the eyes of the law. Coincidentally, the federal law that allowed judges to consider dangerousness when deciding whether to waive bail came as a result of heightened fears about crime in the 1970s after the bail reforms of the 1960s.

So does bail reform make us less safe?

The short answer is that it is too soon to tell in New York. Although newspapers and television news have highlighted sensational cases, there is no data yet on the overall impact of the new bail reform law and whether it has had any significant effect on public safety. It’s also impossible to tell if the number of people missing court dates has increased, decreased or remained steady under the new law. However, data from New Jersey – which changed its bail system in 2017 and includes assessments of public risk – suggests that eliminating cash bail does not lead to a surge in crime, and defendants there showed up to court at the same rates as before.

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NEW YORK'S BAIL LAW IS SMART AND UPHOLDS OUR VALUES

New York’s pretrial reform represents a giant leap forward, transforming an unequal system that deprived people of their right to liberty because they could not afford bail. Countless lives have been destroyed by mass incarceration, which has only destabilized people and families and made our communities less safe. Pre-trial jailing of people solely because they cannot afford bail may be the most pernicious form of mass incarceration in that the people have not been convicted of the crime.

Legally innocent people should not be locked behind bars because of a grossly outdated premise that harkens back to a time before the middle ages, when it was believed that people would abscond unless they deposited money with the court. In those days a trial occurred in a matter of days. Today, a trial can be delayed for months and even years due to inefficiencies in the system as well as the more complex nature of evidence, including scientific, medical and technological evidence.

As it turns out, money bail is no more effective at getting people to appear for court than asking for someone’s word to return and providing a reminder. We learned this from community bail funds, which posted bail for hundreds of people and did no more than remind when to come to court. Now that we are fully aware of this, we can no longer justify holding people in jail before they have had a trial, much less been convicted by a jury.

Under a money bail system, people of means have always been released pretrial, regardless of the charges. So arguments today that eliminating bail is resulting in dangerous people being released who otherwise would not have been is simply untrue. Anyone who could afford to pay bail would have had a chance to be released. The only change is that now, for misdemeanors and non-violent felonies the default is release without posting bail, with certain exceptions.

Poor people should not have different rights than people with resources. In passing the new bail law, the Governor and Legislature took a critical step towards correcting this stark inequity, which was also immoral, expensive and counterproductive. It is imperative that New Yorkers stand strong and oppose any rollback of the pretrial bail laws.

NEW YORK STATE MUST REJECT CALLS TO SUBVERT THE PRETRIAL LAWS

There is an active fear-mongering campaign to undermine the new bail and discovery laws. This opposition is being driven by special interest groups and is based on false claims about the laws, media sensationalization and racist rhetoric. The same prosecutors, police and judges who are now claiming “outrage” are the ones who were locking up innocent people and setting high bails to criminalize poor people and people of color. We can’t trust the intentions of people who benefit from keeping jails and prisons full.

A legislative response to this coordinated opposition effort would validate dangerous misconceptions, entrench the failed intervention of mass pretrial jailing and set our state back. New York must stand strong and continue to implement the new bail law with no revisions or rollback: no expansion of bail-eligible charges and no inclusion of so-called predictive “dangerousness” standards.

The safety of communities, including Black, Brown and poor communities who are disproportionately impacted by violence and disproportionately subjected to the violence and harm of pretrial injustice and incarceration, must be at the center of our decision-making. Data and lived experience prove that reducing injustice and pretrial jailing improve public safety. No one law will ever end crime or control for all human behavior - but the new bail law helps us to address root causes of illegal behavior by expanding opportunities for mental health and substance use treatment and supportive services - rather than
exacerbating and entrenching underlying behavioral health issues by relegating people to jails where these conditions worsen.

2. We also seek retention of the discovery law.

What follows is a commentary from City & State to clear up mis-information about the new discovery law in New York.

What to know about New York’s new discovery laws.
Bail wasn’t the only major criminal justice reform passed in 2019

By REBECCA C. LEWIS
FEBRUARY 10, 2020

New York state’s criminal justice reforms have drawn a lot of scrutiny since being passed at the beginning of April last year. Critics have focused on changes to the bail law that mandated the vast majority of those charged with misdemeanors and nonviolent felonies be released without bail. But changes to the state’s discovery laws – rules governing how and when the prosecution must turn over evidence to the defense – have also been maligned, even by progressive prosecutors. The effects of discovery reform are less immediately apparent than bail reform, as it’s easy to see when defendants get released and what they do afterward. But the recent murder of a witness in the trial of MS-13 gang members on Long Island has brought more attention to the new rules about discovery. Although officials have since said that the murder had no direct link to the new discovery rules, the case has nonetheless shed a spotlight on another aspect of New York’s criminal justice reforms. Here’s what you should know about the state’s changes to discovery.

What is “discovery?”

Discovery refers to the evidence in a trial and the process of both sides exchanging relevant information before a trial begins. It enables both the prosecution and the defense to build their cases based on all available evidence. Information obtained and exchanged during discovery can include witness statements, physical evidence, police interrogations, witness lists and other information that could play a role in the trial. The discovery process tries to ensure that neither side is ambushed during the case with information that is known but concealed by one side.

What changed under the state’s new law?

The biggest change to discovery is that prosecutors must automatically hand over relevant information in a timely fashion. Previously, state law required discovery only if the defense filed a written request for it. It also imposed no time frame for discovery after the request was made, so prosecutors used to be able to keep relevant information from the defense until the eve of a trial. Under the new law, prosecutors must provide the defense with all evidence it has access to within 15 days of an arraignment. However, that time frame can be extended by another 30 days if there is a large volume of material, or if prosecutors don’t have the material in their possession after 15 days. Once the prosecution has handed over all discoverable material, the defense has 30 days to turn over all of its discoverable material. Prosecutors have argued that the new time frame places an undue burden on them and that the state has not provided the necessary resources to help offices comply with the law.
What are “discoverable materials”? 

The new law lists 21 types of evidence that are covered by discovery. Many remained unchanged compared to the old law, such as statements made by the defendant to law enforcement, and the date and location of a defendant’s arrest. This did not include things like a list of witnesses or surveillance footage. But several new provisions greatly expanded the list of discoverable material to include anything deemed explicitly favorable to the defense. Notably, prosecutors are required to provide the name and contact information of anyone with information relevant to the case and any statement made by someone with information relevant to the case – regardless of if that person will testify during the trial – and electronic recordings, such as 911 calls. The witness requirements have concerned prosecutors – including those in New York City – who have argued that the new law puts witnesses at risk and discourages people to come forward with information about a crime.

That doesn’t sound good, what do proponents say?

Proponents argue that New York’s recent changes to discovery brings the state’s laws in line with the majority of other states and makes the system fairer. Previously, New York was only one of 10 states that allowed prosecutors to wait until the day before the trial to provide discoverable materials. Defense attorneys have argued the practice hindered their ability to defend their clients and gave prosecutors an unfair advantage. Criminal justice advocates also said that implementing the new discovery rules also put New York in line with 46 other states that have similar “open discovery” laws. Additional requirements also ensure that defendants have the right to view all the evidence that prosecutors have for at least three days before considering a plea deal. Prosecutors used to be able to offer a deal before an indictment without providing that information, effectively forcing the defendant to make that decision blindly. The new law still permits judges to issue orders of protection, preventing the defense from accessing any discoverable material if the prosecution shows good cause, such as protecting a vulnerable witness who may be put at risk if his or her identity is made available too quickly. The protective order can alter the discovery timeline to limit the amount of time a defendant would have to access information about that person. A judge can also rule that only a defendant’s lawyer can have access to certain discovery information, including witness names and contact information. And the new law does not require prosecutors to provide the defense with anyone’s home address.

Rebecca Lewis is a staff reporter at City & State.

OTHER SUPPORTING ARTICLES:

https://forward.com/opinion/438206/new-yorks-new-no-bail-law-is-not-bad-for-the-jews/?fbclid=IwAR0q5jca7JK5i_X_d7s9yItcLAVYLJz3PHnIGtCQQ0hgCFV_63sjWWISCO

https://www.nydailynews.com/opinion/ny-oped-dont-roll-back-progress-on-bail-20200115-5wvkzr70szglzogq4b7b262domstory.html?fbclid=IwAR1ormgQ1zpT8aWAiLPr7lMy5Aw2SeLURaM3JEmF_K5nO9Aw_tUEjddizYc

https://newrepublic.com/article/156155/cash-bail-never-safety?fbclid=IwAR23Xj8MOMEMEgUGvVWui1Bf3JtBhIgMEqIVk5bdIHg9wn6urHr7PQyu0

https://www.cityandstateny.com/articles/politics/news-politics/political-extremists-have-found-home-gop-backed-facebook-group.html?fbclid=IwAR3Z50WXDz1Bc99GqbY5yYuHoVzobKPeMlEYTSFIrWgyL6dtJD5KPRM21Kg
3. **NY Campaign for Alternatives to Isolated Confinement HALT**

**ASKS:**

Our ask for legislators who have not signed on already as co-sponsors is for them to sign on. For all legislators, we additionally ask them to pressure their respective Assembly or Senate leadership to bring the bill to the floor for a vote. Although we had a majority of each house co-sponsoring the bill last session, Speaker Heastie and Senate Leader Stewart-Cousins refused to allow the bill to come to a vote before their legislative bodies.

The HALT Solitary Confinement bill is A.2500/S.1623

**Background info:**

Solitary Confinement is torture--it destroys people’s minds and lives--disproportionately Black and Latinx people.

Also makes prisons, jails, and communities less safe. The lack of human engagement and programming causes devastating harm. 30% suicides in solitary.

The legislature must bring the HALT solitary confinement to a vote NOW and the Governor must sign it. HALT has majority support in both houses and it must pass now.

Governor’s proposed regulations will perpetuate this torture--allowing people to be in solitary for months and years. NYCLU reports shows solitary is increasing (over 38,000 sentences to solitary last year). Governor's cost claims false; no need to build new jails or units.

BEYOND SOLITARY, some priorities: Elser Parole and Fair and Timely Parole, voting rights for people in prison and on parole, Access to education, stop staff brutality, marijuana justice, visiting.

**HALT solitary act will decrease not increase costs to the state**

1. HALT will create substantial savings by allow whole prisons and buildings to close
2. HALT does not require any new construction costs in the state prisons
3. The Governor’s proposal requires more construction and operating costs than HALT.
4. HALT will save money by reducing harm in prisons, increasing release rates, reducing costs on the outside community, and reducing the number of people re-incarcerated