TESTIMONY OF:

Chief Defenders Association of New York

Joint Written Testimony of:

James McGahan, President

Stan Germán, Incoming President

Clare Degnan, Past-President

Presented before

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Public Protection

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Introduction

The Chief Defenders Association of New York (CDANY) is a membership organization of appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices and Administrators of Assigned Counsel Panels throughout New York State. Our organizations collectively provide the mandated service of indigent representation to close to 400,000 people annually in New York's criminal, family and appellate courts. We are the voice

of the defender organizations that are the fulcrum upon which the integrity of the criminal justice system rests.

<u>Protecting New York's Successful Discovery Laws</u>

We wish to thank the legislature for remaining committed to the importance and success of the landmark discovery reforms of 2019. Every year since its implementation, prosecutors have sought to erode the essential enforcement mechanism that restored the promise of due process and fair dealing in our criminal legal system. Indeed, by standing firm protecting our discovery law and refusing to accept rollbacks, New York's trial and appellate courts have been able to further interpret and clarify the statute, making clear that the legislative intent of discovery reform never demanded a "perfect prosecutor" but rather one who is duly diligent in their work[1]. In its wake, trial courts and appellate court decisions in the last year have shown again and again that cases are <u>not</u> being dismissed on "technicalities" or by defense attorneys exploiting "loopholes". We ask that you continue to hold the line and reject the Governor's proposed rollbacks, as well as reappropriate the necessary funding to defenders and prosecutors to ensure that the law can be implemented as intended.

We urge the Assembly and the Senate to reject the entirety of Part B of the Executive Proposal within the Public Protection and General Government legislation. If enacted, this proposal would effectively repeal our landmark discovery laws, gutting fairness and reducing efficiency in the courts while increasing pretrial incarceration as New Yorkers wait to see the evidence gathered against them.

The Governor has justified her sweeping proposal by citing the need to close "loopholes," increase case efficiency and address criminal recidivism. She supports these proposals with data from DCJS that does not represent a dismissal rate of cases actually prosecuted as felonies nor does it distinguish between speedy trial dismissals based on discovery violations and other dismissals. Not one of the justifications offered is based on what is really happening in criminal courts – where judges, in decision after decision, find that diligent prosecutors' cases are not dismissed for inadvertent mistakes. As to the alleged connection between recidivism and our discovery law, the Governor has offered no proof of this connection, nor does there exist any logical connection between repeat crimes and evidence-sharing. The Governor's claims are no more than a distraction from the legislature funding the needed programming and investments in community-based services that drive down the potential for violence and arrest and create thriving communities.

We must look past the arguments about data, especially since data from the Office of Court Administration shows that every year since 2019, fewer than 0.5% of indicted felony cases have been dismissed for speedy trial violations. While it is true that OCA data shows an increase in

[1] *People v. Bay*, 2023 NY Slip Op 06407 Court of Appeals (2023)

misdemeanor speedy trial dismissals in New York City, outside of NYC misdemeanor dismissal rates have not changed in a meaningful way since 2019. So, it is clear that this is a problem of both NYPD's policing practices and their resistance to turning over evidence. We must not forget that the intent of our landmark legislation was to stop blind pleas at arraignments by creating an enforcement mechanism for the timely and open sharing of evidence collected by the government.

If enacted, the Governor's proposal would annihilate Kalief's Law while decreasing efficiency and increasing the potential for coerced plea agreements, wrongful convictions and prolonged pretrial detention. The Governor's proposal would give total control back to the prosecutors to decide what evidence is relevant to the charge. It would enable the police to hide misconduct and exculpatory evidence. Prosecutors will be absolved of any responsibility to diligently obtain all this evidence, depriving New Yorkers accused of crimes of due process and fairness.

The Governor's proposal is out of step from discovery laws in even the most conservative states like Texas and North Carolina. If enacted, her proposal would take us back to the days of the 'blindfold law.' This must not be allowed, and this proposal must be wholly rejected.

Budget Priorities for FY 2026

This is a critical year for New York leadership to double down on its commitment to building true public safety. We call on the Governor and Legislators to appropriate adequate funding and resources for defenders who are critical stakeholders in the state's efforts to make New York safer for all. Indigent defenders are on the frontline working to end the revolving door of New York's criminal legal and family court involvement.

Family Court

The proposed Executive Budget fails to address the growing crisis in the state's family court. The NYS Office of Indigent Legal Services (ILS) requested funding of $50 million in FY26, $100M in FY27 and $150 million in FY28. This investment in the family court system by the state would address mounting inadequacies that threaten the welfare of children and family stability; harsh realities that disproportionately affect Black and Latinx families. This funding would go a long way toward implementing the recommendations of the Chief Judge's Commission on Parental Representation that were issued in 2019. What's more, these funds are currently available in the Indigent Legal Services Fund. The time has come for the state to address this crisis.

Despite decades of research, hearings and reports describing the inadequacy in parental representation and the harm to children from unnecessary removals that result, New York has yet to make a meaningful investment in families facing separation. Most families involved in the family court system are facing the removal of their children because they are living in poverty or facing obstacles, such as disability, mental health challenges or drug or alcohol use. Family defense

attorneys and the social workers that work with them, if properly funded, can make the difference for parents and their children by keeping families together rather than unnecessarily placing children in the foster system.

Family court cases are among the most traumatic for families. Given what is at stake in these proceedings, including the temporary or permanent loss of custody of a child, it is critical that parents are represented by qualified counsel with the expertise, time, and resources necessary to dedicate to these important cases. ILS' funding request is the minimum needed to allow New York State to begin to address the issue of the high caseloads being carried by New York's family court attorneys. In June 2021, ILS released Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases to determine appropriate maximum caseload standards. Current caseloads across the state are much higher than these recommendations. These standards were used by ILS to determine the funding needed to ensure that parents in family court have access to the quality of representation that they deserve and that the law requires.

Further, this funding will bring New York State closer to implementing the nationally recognized interdisciplinary model of parental representation. This model, providing parents with teams of attorneys, social workers and parent advocates, has been shown to improve outcomes by reducing the number of children removed from their families as well as expediting reunification and resolving cases in court faster. A 2019 study found that interdisciplinary teams representing parents at risk of losing their children, made up of attorneys, social workers and parent advocates, reduced time children spent in the foster system by 4 months without any increased risk. The same study calculated the cost savings in New York City at $40 million.

Reject the Proposed $234 Million Sweep of the Indigent Legal Services Fund

We strongly urge the Legislature to reject the Governor's proposed $234 million sweep to the Indigent Legal Services Fund (ILSF). The ILSF is an earmarked fund consisting of fees collected by various agencies such as the Office of Court Administration (OCA). This special revenue fund is meant to help the state and counties meet their constitutional obligation to provide effective assistance of counsel to those who cannot afford to hire an attorney. These fees are automatically deposited into the ILSF, but in order to spend them they need to be appropriated in the state budget. Despite the ILS Board's requests, the Governor has not appropriated all that was asked for and needed for many years. Last year the state budget swept $234 million from this fund and was placed in the state's General Fund.

All of the money in the ILSF is needed to support the ongoing efforts to improve the quality of public defense representation in New York State. While *Hurrell-Harring* statewide implementation has led to improvements in public defense representation in criminal cases, there is much more work to be done to achieve quality criminal defense representation in every county. And public defense representation is not just representation in criminal courts. A large percentage of public defense representation is provided in family courts, but New York has failed to provide

more than minimal resources for family defense representation. Counties and NYC are struggling to fulfill their mandated representation obligations and provide consistent quality representation. Every dollar in the ILSF is needed and should not be swept.

ILS Distribution and Grant Funding COLA

CDANY fully supports ILS' FY 2025-26 budget request which includes continued funding for statewide implementation of *Hurrell-Harring* settlement reforms and reimbursement to counties for increased statutory assigned counsel rates. However, CDANY must strongly advocate for ILS funding requests which were not included in the proposed Executive Budget, like family court funding outlined above, and the lack of cost-of-living (COLA) increases for ILS distributions and grants.

In 2017, the State Legislature enacted Executive Law 833, which codified the ideals of *Hurrell-Harring,* a landmark lawsuit in which the State and five counties were named parties. Over the last eight years, with oversight by ILS, every New York county has benefitted from impactful reforms that have improved the quality of indigent defense representation, the result of an infusion of State funding and resources. Even prior to the settlement in *Hurrell-Harring* however, ILS oversaw state funding to improve the quality of indigent defense via distributions and grants. This funding made possible the addition of staff, including social workers and other interdisciplinary partners, resources like experts and technology, and the addition of attorney staff to assure counsel at first appearance, increased supervision, training, etc. Over the last fifteen years, this funding has continued with but what is lacking is additional funding for the realities of COLA and salary increases (mandated in union offices) that have caused erosion to the ideals and operation of these improvements.

Defenders are therefore at the mercy of the state budget process to continue these reforms and to maintain the current ranks of attorneys and auxiliary staff hired to perform these mandates. What's more, attorney caseload caps imposed by the settlement and extended statewide for criminal attorneys, and issued by ILS for family court attorneys, effectively limit the number of cases an attorney can accept. It is incumbent therefore on individual provider offices to strive for maintenance of effort and staffing, which is wholly dependent on continuation <u>and expansion</u> of funding. With cost-of-living increases and mandated salary commitments, the stagnation of State funding has resulted in dwindling staff and programmatic challenges under ILS distributions and grants.

It is therefore alarming that the Executive Budget fails to include the 6% COLA adjustment that ILS sought in its FY 2025-26 budget request, at the behest of defense providers. CDANY urges the addition of $4,860,000, which comprises 3% COLA not granted in FY 2024-25 and 3% COLA for FY 2025-26, to right-size defender programs funded with state commitments.

<u>Specific Funding Asks</u>

Defenders call upon the Governor and Legislators to acknowledge their integral role in New York's courts and provide much needed funding as follows:

Indigent Legal Services Office, Aid to Localities

Category	Defense FY26 Ask	FY26 Executive Proposal	Received in FY25
Family Court Parent Representation	$50,000,000 added each year for three years. ($50M FY26; $100M FY27; $150M FY28)	$19,500,000	$19,500,000
HH Statewide & Settlement	$273,970,000	$273,970,000	$273,970,000
Distributions to NYC and Counties	$85,860,000 (includes 3% COLA for 2024/25 and 2025/26)	$81,000,000 (did not include COLA)	$81,000,000
Assigned Counsel Fee Increase (18b)	$92,000,000	$92,000,000	$92,000,000

Division of Criminal Justice Services, Aid to Localities

Category	Defense Ask	FY26 Executive Proposal	Received in FY25
Aid to Defense	$7,658,000	$7,658,000	$7,658,000
Aid to Defense Additional Funding	$40,000,000	$40,000,000	$40,000,000

Defense Discovery Funding	$40,000,000	$40,000,000	$40,000,000
DA & Indigent Legal Services Attorney Loan Forgiveness	$6,430,000 (additional $4 million for increased forgiveness maximum per S161)	$2,430,000	$2,430,000
Indigent Parolee Program	$6,000,000 ($600,000 restoration + $5,400,000 to provide full reimbursement to all counties & NYC for parole representation)	$0	$600,000

New York State Defender Association (NYSDA)

Category	**Defense Ask**	**FY26 Executive Proposal**	**Received in FY25**
Veterans Defense Program	$720,000 (restoration: $250k Assembly + $250k Senate + $250k Senate-LI/NYC office)	$0	$720,000
Public Defense Backup Center	$5,500,000	$1,030,000	$3,130,000

Additional Budget Issues

To the extent that the Judiciary Budget includes additional monies for legal services in general and resources for people in the courts, we wholeheartedly support those requests and encourage the legislature to build upon them.

NYS District Attorney and Indigent Legal Services Attorney Loan Forgiveness Program

In addition, CDANY strongly supports the expansion of the NYS District Attorney and Indigent Legal Services Attorney Loan Forgiveness (DALF) Program to address unprecedented and

crippling attrition in our offices. A majority of indigent legal services attorneys are burdened with overwhelming student loan debt (at least $100,000 of debt; 38% owing more than $200,000) forcing many to leave the ranks of public service. The DALF expansion legislation (S.161 - Ramos /A.1602 - Simon) would accelerate debt relief and provide incentive to help recruit and retain otherwise dedicated public defenders. Last year, the Senate allocated funding for DALF expansion in their one house budget. We urge the legislature to allocate funding in this year's budget, too.

Mental Health Treatment

While we appreciate the Governor's proposed investments in mental health services, they are insufficient to help New Yorkers struggling with serious mental illness—especially those who are homeless—get off the streets and subways, and into housing and treatment. We strongly oppose the proposed expansion of involuntary inpatient and outpatient commitment. A continued reliance on involuntary care will simply maintain the broken mental health care system that leaves people in need in unacceptable states of distress and deterioration. Inpatient hospitalization provides short-term care that, at best, temporarily stabilizes an individual. It does not connect them to, or provide, the mental health services and housing that are necessary for the individual to succeed in the community. In fact, all too often, involuntary inpatient and outpatient services traumatize individuals, erode trust in the system, and divert critical resources away from solutions that actually work.

But additional funding is insufficient. We need to take a step further and pass the Treatment Not Jail Act (S.4547 - Ramos/A.4869 - Forrest) in the budget. This legislation will ensure that mental health courts are expanded equitably across the state, but importantly, are also modernized. The Treatment Not Jail Act will bring fairness and clarity to the admissions process, codify due process protections, curb abusive practices, and adopt evidence-based treatment that is driven by medical professionals and participants themselves. Any monetary investment in these courts can only go so far if judges do not have statutory authority to admit people to enter these courts and prosecutors remain the gatekeeper.

Recommendation to Reject Part D: Dispossess Domestic Violence Abusers of Firearms

The proposed Executive Budget includes a new crime of "domestic violence" in cases where a person is alleged to have committed a specified penal law offense against a member of their household or someone who is a former spouse, parent, or other relative. Notably, this proposal has been suggested in prior years by former Governor Andrew Cuomo and rejected by the legislature.

The aim of this proposal is to disqualify individuals from owning or purchasing a new firearm once convicted of the new domestic violence law and to address the harms of intimate partner violence and intrafamilial violence. However, this proposal achieves neither. Importantly, laws

already exist to dispossess individuals accused of domestic violence from possessing firearms (See CPL § 530.14, which requires individuals to surrender firearms and the suspension of applications for firearms when an order of protection is issued). The drafting of the proposal is ambiguous and could raise potential constitutional challenges, as it refers to "any misdemeanor" offense without specifying the jurisdiction. Under this language, it may be possible for a person to be prosecuted in New York for alleged conduct within another state.

Instead of addressing the root causes of domestic violence and gun-based violence, this new law merely reiterates existing penal laws under one unifying statute, PL 120.65, creating a direct pathway to a mandatory arrest of either/or both parties involved. These proposals will also have a disproportionately harmful impact on New Yorkers of color, criminalize Black and Latine survivors of domestic violence, and expose vulnerable New Yorkers to more state violence.

Recommendation to Reject Part F: Eliminate the Statute of Limitations for Sex Trafficking Cases

Part F in the proposed Executive Budget would eliminate the statute of limitations for Penal Law § 230.34 and § 230.34-a for sex trafficking and sex trafficking of a child, respectively, and while well-intentioned, the proposal will have serious implications for survivors of sex trafficking and gender-based violence. Our offices represent many people charged with offenses related to sex work and survivors of trafficking and gender-based violence facing prosecution for other offenses.

In New York, survivors of trafficking can seek to vacate criminal convictions pursuant to New York State's vacatur law, Criminal Procedure Law Section 440.10(1)(i) which was expanded by the START Act. While survivors face many challenges in rebuilding their lives, the stigma of a criminal record imposed for acts in which they were compelled to engage in is particularly burdensome as it impedes survivors' ability to obtain stable employment and housing and is a constant reminder of their exploitation. It is common for them to experience retaliation from the person who trafficked them when initiating these procedures and would be less likely to proceed with this critical process if further prosecution of their trafficker was possible. Because the statute of limitations has typically expired by the time individuals seek relief under the START Act, we are currently able to assure them that a new prosecution will not result from their application. Removing the statute of limitations entirely would have a chilling effect on the vacatur motions and the START Act and may put individuals who decide to utilize it in danger.

This proposal could also expose non-citizens to increased contact by law enforcement. With an unlimited statute of limitations, police would have permission to increase contact upon vulnerable groups, including non-citizens, and pressure them to cooperate on old cases. This would result in increased exposure for these individuals and put survivors at risk. Finally, for many EIP clients who are prosecuted, prosecutors often require a proffer session with the District Attorney's office. In these meetings, clients waive privilege and share their experiences with District Attorneys. They

also answer questions that may be helpful to the prosecutor's investigation. Extending the statute of limitations for these two offenses will make these already delicate conversations less likely to occur, as criminal liability for the person could now extend to the individual communicating with the prosecutor. For example, people who are trafficked are often coerced to recruit and manage other victims, meaning that they are also technically engaging in sex trafficking. Understandably, survivors of trafficking will be less willing to come forward to talk about their experience of being trafficked when fewer protections exist to assure them of their safety.

Recommendation to Reject Part N: Expand the Transit Ban

The proposed Executive Budget includes the same expansion of the transit ban, as defined by Penal Law § 65.10(2)((k-2), that was put forth last year and rightly rejected by this Legislature. This amendment would dramatically increase the scope of New Yorkers that judges could ban from public transportation for up to three years and would disproportionately impact low-income communities. Further, given the stark racial targeting and biases of the criminal legal system, the proposal expanding conviction-based bans will have a disproportionate impact on Black, Indigenous, and Latine people and their families, subjecting them to increased searches and suspicionless stops while using public transportation.

If passed, the Governor's proposal would allow a ban in cases where someone was convicted of an assault against a passenger, MTA employee, or anyone working within the transit system. Importantly, bans would be permitted if the assault happened either in or **adjacent to** the entire MTA system. Given the scope of the New York City transit system, this expansion to include adjacent spaces is untenable. Banishing more people from accessing public transit will not keep New Yorkers safe. In fact, expanding transit bans, as proposed here, will only exacerbate housing and job insecurity, while also depriving people from accessing critical services and health care. New York should reinvest funds spent on aggressive policing, surveillance, and punishment and instead focus on ways to make public transit affordable for low-income New Yorkers, while also ensuring people can access housing, health care, education, and employment.

Recommendation to Reject Part O: Expand Definitions of Criminal Trespass and Burglary Statute to Add Transportation Facilities

The legislature should reject Part O, which will expand the definition of "building" as defined under the criminal trespass and burglary statutes to include transportation facilities. If this amendment is passed, subway cars and buses would be considered "buildings," drastically expanding the ordinary or publicly understood meaning of the word. The Governor's proposal appears again to be aimed at increasing criminal penalties upon the most vulnerable New Yorkers, while failing to actually meet the goal of increasing community safety. This proposal will impact

low-income, unhoused, and young people most severely, subjecting them to increased criminal penalties and the possibility of years in prison.

This expansion of the criminal definition for building would allow for an unhoused person who enters the subway without paying the fare and panhandles on the train or platform to be charged with burglary, a felony offense. The proposal will also result in the increased criminalization of conduct that arises from poverty, while failing to provide the solutions and resources New Yorkers actually need. This expansion is unnecessary and dangerous, as police and prosecutors already have numerous tools at their disposal for holding people accountable for conduct that causes harm and it will subject vulnerable New Yorkers to increased police contact, destabilizing interaction with the criminal legal system, and pre-trial detention.

Recommendation to Reject Part P: Aggravated Transportation Offense

We urge the Legislature to reject Part P of the proposed budget which creates a new crime that is a C felony, a category of crime that is punishable by up to 15 years in prison. The proposal is an extremely dangerous expansion of the criminal law that will allow prosecutors to seek punishments which do not fit the crime. A person can be charged with PL § 240.80 if they were convicted of a specified offense within the prior five years (excluding any time spent incarcerated) and are now accused of committing any of the specified offenses "in or adjacent to any facility or conveyance of the MTA or a subsidiary thereof or NYC transit authority or subsidiary thereof..."

The Aggravated Transportation Offense would allow prosecutors to dramatically increase penalties for conduct that is the least severe in the criminal code, including conduct that is considered non-criminal (violations) or the lowest level of crimes (B misdemeanors and non-violent offenses). The proposal includes more than 64 eligible offenses, including Criminal Mischief in the Fourth Degree for causing damage to property. The proposal would also punish individuals accused of attempting to commit a crime with the same level of culpability as individuals who are accused of completing a criminal act, which runs afoul of how the criminal code operates in all other instances.

Further, the offense would not just include individuals accused of committing violations or crimes within subways or transit buildings, but any area "adjacent" to it. In New York City, this could subject individuals to extreme criminalization at almost every street corner.

Recommendation to Reject Changes to Vehicle and Traffic Law 1192 as contained in part E of the Transportation, Economic Development and Environmental Conservation Article VII Legislation

The final proposal in the Executive Budget that we urge this Legislature to reject is Part E of the Transportation, Economic Development and Environmental Conservation Bill. We recognize that this bill is not contained with the PPGG Article VII proposals, but nonetheless it is a dangerous expansion of criminal penalties. This proposal expands the definition of the term "drug" for alleged impaired driving offenses, and mandates submission to scientifically unreliable field-testing methods as the basis for arrest and license suspension. The proposed bill would not, as it suggests, "strengthen drug-impaired driving provisions" or "enhance public safety". To the contrary, these provisions would unjustly stigmatize those with chronic conditions or mental health diagnoses and deter them from seeking treatment – creating far more dangerous road conditions and public safety concerns.

Because of the clear danger of over broadly defining a "drug", the Legislature enacted Vehicle and Traffic Law 114-a, limiting a "drug" to the hundreds of substances listed in Public Health Law (VTL) 3306 (which itself mimics the Federal Controlled Substance schedules). As the Court of Appeals has noted, "The legislative history is conclusive that the Legislature in 1966, like previous legislatures, intended that "intoxication" refer to inebriation by alcohol. It appears that the Legislature did not want to penalize a driver who inadvertently took prescription drugs without knowing their side effects. In addition, the Legislature sought to limit criminalization by defining the drugs prohibited." People v. Litto, 8 NY 3d. 692 (NY Court of Appeals, 2007)

The proposals included in the Governor's bill would not only upend decades of Legislative intent, but it would also unduly expand criminal culpability to a nearly infinite list of benign substances[2].

Currently, for law enforcement to arrest someone for operating while impaired by drugs, they must allege that impairment is caused by a substance listed in the Public Health Law (PHL). While this may seem limiting, this list includes hundreds of substances – and has been (and will continue to be) amended on a myriad of occasions over the years to add substances deemed potentially dangerous by medical and scientific consensus[3]. Conversely, per National Highway Traffic Safety Administration's own standardized training material, there are thousands of physical and mental conditions that can resemble and mimic drug impairment. Expanding the definition of a drug to an infinite number of unspecified "substances" will undoubtedly result in a number of unfounded arrests and wrongful accusations of those who are taking (but are not impaired by) a medication for legitimate purposes. To compound this danger, this could conceivably even include alleged impairment by something as ubiquitous as the caffeine found in coffee or over the counter allergy medications. More importantly, those who take medications to manage the symptoms of a mental

[2] See *People v. Litto, 8 NY3d (2007)* at 706: "The Legislature has repeatedly and definitively concentrated on precise mechanisms to prevent deathly accidents related to alcohol and drugs ... Including driving while under the influence of limitless "drugs" as a violation of driving while intoxicated has not been part of that mechanism."

[3] See Public Health Law 3306

health or other chronic condition may choose not to take them for fear of being accused of a criminal act – resulting in substantially more dangerous driving conditions.

The overly broad amendments proposed by the Governor pose a significant and unjust danger to New York drivers – many of whom take medication to manage a chronic physical or mental health condition – and must be rejected.

Conclusion

The Chief Defenders Association of New York issues a call to action for Governor Hochul and the New York State Legislature to change the status quo; to secure justice for all New Yorkers and keep families together. We have made great strides in New York to repair a broken criminal justice system, and now the time has come to make similar strides in family court. It is our hope and request that we continue to divert carceral funding and instead invest in our communities to fight the degradation brought on by poverty. Tangential to CDANY's aforementioned funding requests, we call for increased funding for supportive services, housing, educational and job opportunities and better healthcare for the indigent to promote public safety and racial justice.

If you have any questions about our testimony, please email CDANY Director Jennifer Van Ort (jlvanort@chiefdefendersny.com).