

Justice For All

It's time for #SchoolsNotJails

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Introduction

The promise of this country is that liberty and justice belong to all our people. But since the founding of our country, that promise has been broken again and again.

For decades, politicians have sought to win votes by campaigning on 'tough-on-crime' platforms and stoking racial fear and resentment. The billions of dollars our country and the state of New York have spent on disproportionately policing and locking up poor people of color have not made anyone any safer. When black and brown kids are charged and arrested for petty, 'quality-of-life' crimes while white bankers on Wall Street get away with destroying our whole economy, there is something deeply wrong.

If New York were a country, we would have the sixth highest incarceration rate in the world -- ahead of Russia.

Right now, New York state spends \$22,000 per child for a year of public school, while we spend \$70,000 per prisoner, 75% of whom are people of color. New York City spends nearly \$118,000 per person per year in city jails, nearly 90% of whom are people of color.¹ Tuition for a full time student at CUNY and SUNY costs about \$6,500 and \$21,000 respectively.

While closing Rikers and other jails and prisons across the state is a critical first step, true justice reform must also prioritize decarceration, decriminalization and targeted reinvestment in communities that have been devastated by a biased and unrelenting criminal justice system. Every step in the justice system is set up against the poor and people of color.

Mass incarceration has torn families apart and decreased the resources our state could be using to actually keep people safe. It's clear that New York must invest in our schools, not jails. We need money for jobs, housing and education, not jails and incarceration.

Police Accountability

New Yorkers' first interaction with our criminal justice system begins with the police. Policing should prioritize safety, justice and equality. It should not be an excessive presence in people's lives based on the color of their skin or their socioeconomic status, and must be accountable to all communities.

¹<http://www.nydailynews.com/new-york/nyc-jails-spend-average-118g-year-hold-inmate-article-1.3176311> ; https://www1.nyc.gov/assets/doc/downloads/pdf/FY17_4th_QUARTER_LL_88_2015.pdf

For too long, there have been issues with our systems of policing and how government utilizes them - police have been relied on to do too much in society. This over-reliance on policing fails to make us safer and harms communities. While abusive police officers certainly exist, they are typically in the minority.

The larger problem is systemic, where politically-appointed police officials and politicians have failed to truly hold police departments accountable to communities and the public. These political officials have allowed abusive officers and practices to undermine safety and trust, and detrimentally infect and taint their departments. Governor Cuomo has not provided the leadership necessary to provide a comprehensive solution to abusive policing.

We must shift away from policing as a solution to poverty and mental illness, when government investment in public services outside of policing can be the truly effective solutions to providing safety and well-being for families and communities. At the same time, we must address the long-standing lack of police transparency and accountability that equally undermines safety by treating police departments as if they are above the law and unaccountable to communities.

Transparency and Accountability

Law enforcement is the only profession that is authorized to use deadly force against civilians. Yet in New York State, we lack policies that promote transparency and accountability, and maintain a state law that impedes them.

Section 50-a of New York's Civil Rights Law is undermining civil rights and police transparency. The outdated state law has been increasingly used to withhold vital information about police misconduct from the public. The result has been the withholding from the public of information about police misconduct, whether officer receive discipline for it, and even video footage. It has been used to keep the public from knowing the misconduct and disciplinary records of law enforcement officers involved in killings of and other uses of force against civilians, or whether law enforcement officers have a history of making false arrests. After the killing of Eric Garner, the NYPD refused to tell the public about the disciplinary record of and earlier incidents of misconduct by Officer Daniel Pantaleo, who placed Garner in a chokehold and ultimately killed him.

Governor Cuomo has done nothing to support greater law enforcement transparency. When discussing Governor Cuomo's inaction on these issues, the New York Times said "as governor and previously as attorney general he has accepted tens of thousands of dollars from law enforcement unions and rarely pushed back against their interests."

New York State has among the most restrictive law enforcement secrecy laws in the country. States like Florida and Arizona are more transparent. As Governor, Cynthia will press for the repeal of Section 50-a of state civil rights law in order to make information and records about law enforcement misconduct and discipline publicly available. Similar information is made

public for other civil servants and taxpayers have a right to know whether public officials with the most severe authority - to take someone's freedom or life - are engaging in misconduct and whether they are being disciplined. The state's existing Freedom of Information Law (FOIL) already provides privacy protections that exempt the release of personal information such as phone numbers, home addresses, and social security numbers, making 50-a entirely unnecessary.

Transparency after Police Killings

Just over three months ago, Saheed Vassell was shot by police officers in New York City. Yet to this day, the names of the four officers who discharged their weapons - and the one officer who did not discharge their weapon - have not been released to the public. New York law enforcement agencies have no consistent policies or standards about the release of information in the aftermath of such serious incidents.

The lack of transparency can undermine public trust, something even the U.S. Department of Justice Office of Community Oriented Policing Services and International Association of Chiefs of Police conveyed in their "Officer-Involved Shootings Guide for Law Enforcement Leaders" in 2016. In it, the DOJ highlights that some law enforcement agencies maintain standard policies to release names of officers involved in shootings within 48 hours. Many departments maintain such policies with similar timeframes. The public should have a right to know the identity of police officers involved in shootings. The DOJ concludes that, "Failure to release officer names risks criticism and public dissent."

New York should be leading, not lagging, in this key area of transparency. As governor, Cynthia will press for policy that ensures law enforcement around the state releases the names of officers involved in shootings or killings of civilians within 48 hours of the incident. Such policy would also ensure police departments publicly post the objective facts surrounding the incident, full unedited video and other vital information within a similar timeframe. As President Obama's White House Task Force on 21st Century Policing outlined, it would be critical for law enforcement to "communicate with citizens and the media swiftly, openly, and neutrally," refraining from issuing background information on victims that seeks to influence public perception. Police departments in other states, like the Philadelphia Police Department, already do this. New York State's law enforcement agencies must become leaders in transparency.

Public disclosure regarding arrests and stops Public access to information regarding law enforcement arrests and stops is essential to understanding and ending racial disparities in law enforcement practices. This is an important statewide issue. For instance, in late June civil rights organizations filed a lawsuit against the Buffalo Police Department for racial profiling in setting up traffic checkpoints targeted at the African American community. [This case](#) is currently being litigated.

Cynthia will secure amendments to state law in order to require public disclosure regarding arrests and stops. This includes public disclosure of items contained in the Police STAT Act S7002/A594 and additional disclosure.

Cynthia will prioritize the disclosure of:

- The total number of arrests and tickets for violations and misdemeanors;
- The total number of people who die in the course of an arrest;
- The race, ethnicity, age and sex of people who are charged with violations and misdemeanors or who are killed by the law enforcement or die in law enforcement interactions.
- The location of enforcement activity and arrest-related stops, whether or not they result in arrests, as well as excessive force incidents and arrest-related deaths.
- Ensure there is a firewall that denies federal immigration officials access to the specific arrest records that underlies this data without a court order;

Ending Harmful and Needless Arrests for Low-Level, Ticketable Offenses

Former Chief Judge of the State of NY Jonathan Lippman chairs the non-partisan [Independent Commission on New York City Criminal Justice and Incarceration Reform](#) which found that in 2016, 41 percent of all criminal arrests in NYC were for low-level offenses “including jumping the subway turnstile, petty theft, possessing a small amount of marijuana or other drugs, or driving with a suspended license.” Chief Judge Lippman [concluded](#) that “the enforcement of low-level crimes sweeps New Yorkers into the system who have never been arrested before, giving a potentially life-altering criminal justice record to someone for a minor offense. Criminal charges can have serious consequences on employment, housing and potentially immigration status—particularly for those who are already poor.”

Broken Windows policing is the theory that cracking down on small signs of 'disorder' can prevent more serious offenses. In reality, it is applied in discriminatory ways and means that every single day countless New Yorkers are needlessly brought into the criminal justice system, a disproportionate number of whom are people of color, youth, low-income, or homeless. Many of these offenses are so minor that they are not even legally classified as crimes, but law enforcement officers nonetheless have the ability to make arrests for them. These infractions can [include](#) sitting on the steps of a subway platform, jumping a turnstile, being in a public park after hours, or even [putting your feet up on a subway seat](#).

These arrests carry significant social and public costs to taxpayers, and can jeopardize employment opportunities, immigration status, and access to health, housing, and other programs for those subjected to these unnecessary arrests. There are extreme racial disparities in these arrests.

Cynthia will pass legislation, such as A.3201-Aubry/S.6360-Bailey, that ends harmful and needless arrests for low-level, ticketable offenses. By making law enforcement action commensurate with an offense, this legislation can help reduce financial resources spent on

minor infractions, and increase resources available for meaningful safety measures for all New Yorkers.

Regulate the misuse of racially discriminatory "predictive policing" technologies and law enforcement databases.

These technologies can become an extension of discriminatory broken windows and stop-and-frisk policing. For instance, overly broad "gang databases" can criminalize children and families through questionable predictive algorithms.

Cynthia will:

- Issue an Executive Order to ensure that no state agencies maintain databases that include people who have not been convicted for crimes that are specific to the database;
- Ensure the state does not fund the use of facial recognition software unless there is clear, unequivocal evidence that the software does not produce discriminatory outcomes and is not used for predicting criminality or other behaviors that might criminalize poverty and/or have a disparate impact on communities of color;
- Require that footage is made available to individuals subject to Body Worn Camera taping within 10 days and that body worn cameras footage is available to civilian oversight agencies for the purpose of investigating complaints of police misconduct.

Law Enforcement Transparency and Accountability Unit at Attorney General's office

Far too many New York State residents have been subjected to police violence, with the most tragic incidents resulting in death or serious injury. resulted in deaths, but others result in injury. In New York, as across the country, there is a pattern of law enforcement violence disproportionately impacting Black and Latinx communities.

Cynthia will champion legislation to create a *Law Enforcement Transparency and Accountability Unit* at the Attorney General's office. This legislation will:

- Create a greatly enhanced Special Prosecutions Unit that is responsible for prosecutions of law enforcement for incidents involving the use of deadly force and/or resulting in the death of a civilian.
- Provide funding to the AG to conduct investigations into racial patterns of law enforcement and policing and incidents of law enforcement abuse and to publish reports on these investigations.
- Establish metrics that will be monitored by the AG's office regarding stops and broken windows policing arrests. The AG will be empowered to enter into consent orders when racially disparate patterns of policing exist

- Mandate that the AG undertake an investigation into all all instances where law enforcement officers use deadly physical force. This includes all incidents that result in deaths of civilians caused by law enforcement officers regardless of whether the civilian is alleged to have been armed or unarmed; it also includes all instances where law enforcement officers used deadly physical force even if no one died as a result, for example shooting a civilian who survived being shot or a civilian who was beaten by law enforcement. These powers are necessary to be housed at the AG because historically, District Attorneys have shown an inability or unwillingness to undertake these investigation in a manner that is effective and free from conflict of interests.

There are problems with the existing Executive Order regarding such prosecutions. For one it allows the AG to undertake the investigation and prosecution only if the civilian involved has no alleged weapon, however, there are a wide array of items which have been classified as weapons and these situations require an objective investigatory process.

In addition, there are incidents, such as the police shooting of Dahmeek McDonald in Troy in August 2017, where the police used deadly force. Dahmeek was shot multiple times, but he survived. Under the existing Executive Order, the AG could not take over the investigation. There should be a new Executive Order that expands the scope and mandate of the AG's office to include all instances where deadly force is used, even if no one is killed.

Innovative Community-Based Solutions

Cynthia will provide grants for pilot programs to create real community accountability for law enforcement and for alternatives to law enforcement interventions. These grants will support innovative approaches to community based accountability for law enforcement. Such approaches could include implementing community evaluations of law enforcement as a factor in law enforcement promotions or community-based organizations serving as local law enforcement watchdogs and publishing research and reports. They will also include grants for community led safety initiatives such as expanding the highly effective Cure Violence violence disruption model, providing mental health interventions, and supporting physical crisis interventions in situations such as drug overdoses.

Reduce Pretrial Detentions: #IStandWithKalief

On any given day, 25,000 New Yorkers are held in county jails across the state.² Nearly 70% of the people in these jails are being held simply because they cannot afford bail.³ Eighty percent of the New Yorkers being held pretrial - for months or even years while legally innocent - are

²https://www.justleadershipusa.org/wp-content/uploads/2018/03/FREENewYork-ByTheNumbers_032618.pdf

³<https://eu.democratandchronicle.com/story/opinion/editorials/2017/10/27/editorial-pressing-need-bail-reform-new-york-discrimination-poor/804750001/>

black or Latino.⁴ New York spends \$42 million per year to jail misdemeanor defendants held on bail amounts of \$1,000 or less.⁵ New York's bail-driven pretrial system creates one legal system for low-income people of color and an entirely different one for wealthy white people who can buy their freedom.

The act of detaining someone triggers a whole range of consequences for people who are often already struggling with poverty. While held in jail awaiting trial, New Yorkers can lose their jobs, homes, health care, and custody of their children. As shown by the tragedy of [Kalief Browder](#), many people can suffer undue mental anguish that follows them for the rest of their lives.

This year, legislation to increase access to a speedy trial and modernize our discovery statute was debated by the New York State Legislature, but it did not pass. The Governor has also refused to support an end to cash bail. This is unacceptable.

New York must lead in passing legislative reform to systemically overhaul a broken and harmful pretrial system by ending cash bail, reforming the discovery process and ensuring access to a speedy trial.

Abolish Cash Bail

The bail reform plan released by Governor Cuomo earlier this year was significantly flawed. It would have expanded the number of people that can be detained by the courts or District Attorney without the possibility of release. It would have created more restrictive release conditions, which could result in more people being held for longer without possibility of being released. It could have resulted in new stream of funding for private corporations who make money off the criminal justice system. And it did not collect any data to help us better understand the impact of our pre-trial policies and practices across the state.

That is not the way forward. Cynthia Nixon's plan to reform our money-driven bail system would revolve around the following tenets:

- **Abolish cash bail in all cases and ensure that neither broad preventive detention nor harmful technology take its place.** Research shows the most effective intervention for ensuring people do not miss their court date is community-oriented assistance, such as phone calls or text messages providing reminders and clear directions for returning to court, and providing transportation support. Restrictive supervision does not increase the likelihood that people make their court date and can disrupt their lives creating barriers to gainful employment.

⁴ <http://observer.com/2018/04/new-york-city-telephone-calls-jail/>

⁵ https://www.justleadershipusa.org/wp-content/uploads/2018/01/FREEnyork-Policy-Brief_Bail_FINAL-1.pdf

- **Ensure the right to counsel at pretrial hearings.** Thousands of New Yorkers are arraigned daily without the benefit of legal representation. Access to legal representation is vital to ensuring a fair and just legal system for all and New York must guarantee all New Yorkers have the right to legal representation at pre-trial hearings.
- **Eliminate the private business interests and profiteering from the pretrial system.** New Yorkers who cannot afford to pay bail are often forced to turn to the for profit commercial bail bonds industry to bring home a loved one awaiting trial behind bars.

The commercial bail bonds industry exploits New Yorkers desperate to be reunited with their family, charging nonrefundable fees as high as 10% of the bond amount, requiring unlimited amounts of collateral, and tacking on illegal fees. As Governor, Cynthia would support the passage of legislation that prohibits the for-profit commercial bail bonds industry from operating in New York.

- **Collect and publicly report detailed disaggregated pretrial data.** Most counties throughout New York do not collect or publicly report data about their pretrial detention practices. Creating standardized data collection and public reporting will allow counties to measure progress towards improving pretrial detention practices.
- **Ensure due process protections and individualized hearings in any case where pretrial detention is a possibility.** Before bail or pretrial detention is determined, an individualized hearing should take place. At the hearing, defendants should have access to legal representation and all the evidence in possession of the prosecutor or judge in order to ensure each side is able to be fully prepared for the hearing.

Speedy Trial Reform: Restoring Balance Between Prosecutors and Defense

One of the most important ways to reduce pretrial detention rates is to ensure access to our constitutionally guaranteed right to a speedy trial. New York is the only state in the country that does not actually have a speedy trial framework that accounts for when a case is tried. Instead, we have a "ready rule" framework that only requires prosecutors to announce that they are "ready" for trial within certain timeframes, and which prosecutors are able to easily manipulate.

It's past time to pass **Kalief's Law** and make sure New Yorkers genuinely have their right to a speedy trial protected. State law requires that a prosecutor announce that they are ready for trial within 180 days for someone accused of a felony and within 90 days for a class A misdemeanor charge.

Prosecutors can get around these constitutional guarantees of a speedy trial by stopping the 'speedy trial clock,' telling the court they are no longer ready to continue and requesting an adjournment. The Governor made this legislation a focus of his 2018 budget address, but ultimately failed to make it a priority before the legislative session concluded in mid-June.

In Kalief Browder's case, the broken process led to prosecutors requesting a one-week adjournment from the judge and getting six weeks instead due to the clogged up and overcrowded court system. But the entire time that Kalief was kept in jail only counted as **one week** since that was the agreed upon adjournment period. The New Yorker reported that an index card in the court file documented the delays:

June 23, 2011: People not ready, request 1 week.

August 24, 2011: People not ready, request 1 day.

November 4, 2011: People not ready, prosecutor on trial, request 2 weeks.

December 2, 2011: Prosecutor on trial, request January 3rd.

In any given year, this practice results in thousands and thousands of people being incarcerated in New York jails for months or years awaiting trial. In 2013, the [median length](#) of a case from arrest to disposition in the Bronx was 517 days.

We must take into account when cases are actually brought to trial. Any speedy trial law in New York must address the inherent problems associated with the prosecutorial readiness rule, and close the loopholes that prosecutors take advantage of to prolong cases. **In order to close those loopholes, reform must:**

- **Count delay attributable to court congestion in speedy trial calculations for all defendants.** New York courts frequently adjourn cases for months at a time, not because of the lawyer's schedules, but due to the court's availability. People charged with crimes should not be punished because the court is unable, or unwilling, to try a case when both parties are ready or to grant a short adjournment.
- **Deem all statements of readiness that are followed by statements of unreadiness as illusory.** Prosecutors often stop the speedy trial clock by filing a written certificate of readiness with the court, only to appear in court on a later date and announce that they are not ready to go to trial. The "off calendar statement of readiness" loophole lengthens cases and is unjust. If a prosecutor certifies that they are ready for trial, they should be held to that statement.
- **Mandate judges scrutinize statements of readiness to make sure they are not illusory.** Judges must inquire as to whether prosecutors who answer ready for trial are actually ready with their witnesses in court.

- **Ensure that prosecutors cannot claim that they are ready for trial without first having met their discovery obligations.** Our justice system cannot work if one party is at a gross disadvantage. A prosecutor should not be able to announce “ready” for trial if they have not satisfied their discovery obligations and given the defense the evidence that they need in order to be ready for trial.

Reform must also ensure that defendants’ rights are protected by:

- **Allowing trial court decisions to survive guilty pleas, so that a higher court can review those decisions.** Currently, when the court denies a speedy trial motion and the defendant pleads guilty, a higher court cannot review the lower court’s decision. Defendants deserve to have their claims reviewed by a higher court.
- **Applying speedy trial to vehicle and traffic law infractions.** Under our current system, individuals charged with vehicle and traffic law infractions, like unlicensed driving, do not get the benefit of the right to a speedy trial. Meaning, even though they are not charged with a crime, their cases have the potential to last well beyond the time limits imposed on more serious charges. People charged with petty offenses should not have to return to court for months or years without recourse.

Discovery Reform: Balancing the Scales of Justice

Defendants and their attorneys are often kept in the dark about evidence prosecutors intend to use against them. New York is one of only 10 states where prosecutors can wait until just before trial to turn over key evidence to the defense. Even Texas, under Trump Cabinet member Rick Perry, was able to pass a better discovery law than New York currently has.

We can no longer have a criminal justice system that leaves the accused blindfolded to the evidence against them, and that forces people to choose between plea deals and receiving the evidence in their case. Our current system does not balance the scales between the prosecution and the defense -- leading to a situation where over 98 percent of felony arrests end in convictions through a guilty plea rather than trial.⁶ This includes in many cases where people are innocent but plead guilty because they cannot afford bail.

In order to have a just system, **criminal discovery must be early, open, and automatic, meaning we must have:**

- Mandatory disclosure of all discoverable material pre-plea, especially where the prosecution places a deadline on the acceptance of a plea deal;

⁶<https://www.nytimes.com/2017/08/07/nyregion/defendants-kept-in-the-dark-about-evidence-until-its-too-late.html>

- Disclosure of all information in the possession of prosecutors and law enforcement at the outset of the case;
- Disclosure of names and contact information of all persons with relevant knowledge immediately following arraignment on indictment or immediately following when a prosecutor can move forward with a misdemeanor case;
- Early disclosure of grand jury minutes for all witnesses who testify in the grand jury, regardless of whether those witnesses will testify at trial.
- Remedies and sanctions for noncompliance with disclosures.

Juvenile Justice for New York's Children

In 2017, New York became the 49th state in the nation to raise the age of criminal responsibility from 16 to 18. While Governor Cuomo touted this as historic achievement for New York, the truth is that his Raise the Age law continues to place too many young people in the adult criminal justice system and does not adequately address the urgency by which children must be diverted from an unforgiving and relentless criminal justice system.

To create a fair New York where all young people have the resources and support needed to thrive, we have to rethink an approach to community safety that seeks to take young people out of our communities and separate children from their families by holding them in cages. We must dismantle racially biased policies that ensnare our youth before they have the chance to reach their full potential and invest in resources, support, and access to opportunities prevalent in wealthy communities.

Cynthia will do this by fulfilling the promise to raise the age. Cynthia will expand Raise the Age (RTA) so that all youth under 18, including those charged with felonies that are now exempted from RTA, are treated as children and sent to family court for all offenses. She will also increase the age of adult criminal responsibility in steps up to age 21, in recognition that adolescent brain development continues into the mid-20s.

Additionally, Cynthia will eliminate the Juvenile Offender statute to ensure all 13, 14, 15 year olds are treated as children, and sent to family court for all offenses. Finally, she will reduce secure detention for youth under 16 to zero, and phase out secure detention for youth under 18 once Raise the Age is fully implemented. Closing down secure facilities will save the state significant funds that can be reinvested in programs to help at risk youths. The estimated cost of youth confinement in New York is \$352,663 per year per child.⁷

⁷ http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf

Cynthia will also improve the conditions in our juvenile facilities. Using funds from the closure of secure facilities, Cynthia will ensure youth in juvenile facilities will be supervised by staff trained in youth development and trauma-informed care. She will also ensure these facilities have robust, high quality, age appropriate programming for all youth that's focused on social, safety, and educational needs, not based on the court they are being tried in.

Cynthia will also expand community driven and community-based alternatives. Using funds from the closure of secure detention centers and other justice reforms, Cynthia will restore the \$30.5 million in funding for Close to Home, which Governor Cuomo cut in his 2019 budget and will work to expand and fund this program to counties in upstate New York.⁸

Cynthia will also expand pre-booking and pre-arraignment diversion programs, and expand alternatives to incarceration post-conviction. She will also create a continuum of programs and services in the community to help children reentering society, including high quality vocational training and job placement.

⁸ <https://www.wnyc.org/story/cuomo-cuts-close-home/>

Abolish Solitary Confinement

In addition to drastically reducing our pretrial population, we also have to improve prison conditions across the board. Nowhere is this more clear than with solitary confinement.

Solitary confinement is a form of torture. It inflicts devastating mental, emotional, and physical harm. Being in solitary means spending 22 to 24 hours a day in a cell without any meaningful human contact or programs. As common sense and years of evidence demonstrate, solitary causes intense suffering and it makes our prisons, jails, and communities less safe. Solitary leads people to commit acts of self-harm and suicide. Over 30% of all suicides in New York prisons take place in solitary.⁹

Thousands of New Yorkers – disproportionately black and Latino people– are in solitary each day; tens of thousands each year.¹⁰

As Governor, Cynthia will end solitary confinement through executive action.

Cynthia would also support passage of legislation, like the HALT Solitary Confinement Act, to permanently end the torture of solitary in New York. The bill would establish Residential Rehabilitation Units (RRUs) to fundamentally transform the response to people’s needs and behaviors from isolation and deprivation to rehabilitation and treatment. If someone must be separated from the general population, the separate, secure RRUs would have at least 7 hours out-of-cell with meaningful human interaction and congregate programming.¹¹

The United Nations General Assembly – including the United States – passed the Mandela Rules, which prohibit any person from spending more than 15 consecutive days in solitary confinement, in line with international standards that recognize any longer periods in solitary as torture.¹² Yet, in New York people regularly spend months and years in solitary, and sometimes even decades.

Other states around the country have also made substantial reductions in the use of solitary, and New York is far behind. New York still has a higher percentage of people in solitary (5.8%) than the national average (4.4%) and much higher than states that have significantly limited solitary (less than 1% to 2%). States that have reduced the use of solitary have seen a positive impact on safety for both incarcerated people and correction officers.

⁹ <https://www.hrw.org/news/2017/05/02/fixing-solitary-confinement-new-york-state-prisons>

¹⁰ <http://nycaic.org/wp-content/uploads/2013/02/Fact-Sheet-Solitary-NY-2016.pdf>

¹¹ <https://www.google.com/url?q=http://nycaic.org/wp-content/uploads/2013/02/Summary-of-the-HALT-Act-2015.pdf&sa=D&ust=1529946585711000&usg=AFQjCNGCDcpcmBqF-7Xzv2qZ-ZGrW8ghrA>

¹² <https://www.unodc.org/unodc/en/press/releases/2015/May/mandela-rules-passed--standards-on-the-treatment-of-prisoners-enhanced-for-the-21st-century.html>

New York can no longer condone the systematic infliction of torture. Solitary confinement must be abolished.

Close Rikers

Rikers Island, the state's main jail complex is known across the world for its horrific conditions and poor treatment of New Yorkers who are incarcerated and their basic human rights. Some 75% of people detained on Rikers are held pretrial at a cost of over \$270,000 per person. 88% of people held there are people of color.

Closing Rikers Island within a ten-year timeframe is far too long. We must enact bail reform to decarcerate Rikers and we must close the jail on an expedited timeline. If the City of New York does not move expeditiously to close the jail, Cynthia Nixon is prepared to ensure that her administration, through the Commission of Correction, uses every available power to force the closure of all facilities on Rikers Island.

Rikers is one of the worst jails in the state and violent incidents have risen in recent years. Despite this the Cuomo administration has taken no definitive action. As governor, Cynthia will not be as patient with the inhumane conditions at Rikers as Governor Cuomo has been for the past eight years.

Commutations and Pardons

On June 12, 2017, Shantell Green believed she was about to die. Her boyfriend had her pinned against the kitchen sink at his family's home and with his hands wrapped tightly around her throat. As he squeezed harder, Shantell sensed that she was slipping away. This was it -- she was going to be killed right there in front of her four children.

Shantell desperately looked around in the sink behind her for something she could use to defend herself. When she found a kitchen knife, she used it to successfully fight her boyfriend off.

Shantell is thankfully alive today. However, when her boyfriend died from a stab wound at a local hospital later that day, Shantell was arrested and charged with murder in the second degree -- a crime that carries a minimum sentence of fifteen years to life in prison.

Although her lawyer described her case as "classic self-defense," Shantell simply did not trust that the justice system would actually do justice in her case. She had prior experience with the system herself and was afraid jurors would be biased against her. Faced with the terrifying possibility of a life sentence if convicted after trial, she accepted a plea bargain to manslaughter with a sentence of nine years in prison. Her current earliest possible release date is in 2025.

Shantell and her children could be spared the anguish of further separation if Governor Cuomo commuted her sentence. Commutation is a form of clemency that shortens the length of a person's prison sentence. Under the New York State Constitution, only Governor Cuomo is empowered to commute the sentences of anyone who hasn't been impeached or convicted of treason. **Governor Cuomo has the power to free Shantell right now.**

According to the ACLU, nearly 60% of people in women's prison nationwide have a history of physical or sexual abuse. For many survivors, the experiences of domestic violence, rape, and other forms of gendered violence pushed them into the criminal justice system. Most unjustly, it is exactly survivors' history of defending themselves from physical and sexual abuse that results in the incarceration of such a large number of survivors.

Many survivors are parents and are unjustly separated from children by these systems. Once incarcerated or detained, many survivors experience further sexual violence from correctional officers and other prison personnel.

The Governor has virtually unlimited power to grant commutations. However, he has implemented wholly arbitrary guidelines that severely and needlessly limit people's access to clemency. In 2015, Governor Cuomo declared he would make clemency more accessible through the creation of a website specifically for this purpose and through partnership with legal organizations. Since then, his record on commutations has been abysmal. He has granted only 12 commutations since 2011, and only two in 2017. By contrast, Governor Jerry Brown of California issued 52 pardons and 12 commutations in a single day.

As Governor, Cynthia will pardon and commute the sentences of survivors of domestic violence, rape, and other forms of gendered violence, who were or remain incarcerated for their self-defense. All survivors of gendered violence deserve support, not incarceration.

Parole Reform

Addressing the Aging Prison Population

The number of older people (individuals over the age of 50) incarcerated in our prison system is increasing every year -- even as the total prison population is falling. While the prison population in New York state decreased by 27% between 2000 and 2016, the number of older people incarcerated more than doubled from 4,706 to 10,337 people.¹³

¹³ <https://www.nytimes.com/2017/01/05/opinion/elderly-and-in-prison.html>

Over 20% of the prison population is aged 50 or older.¹⁴ This demographic, especially those who have been convicted of the most serious crimes, have the lowest recidivism rates of any age cohort, posing little, if any risk to public safety.¹⁵

Lengthy mandatory minimum sentences since the 1980s and lower parole release rates since the 1990s have all but ensured that our prison population will continue aging over the coming years, forcing the prison system to open more geriatric nursing care units and expand the existing resources for persons suffering from dementia, diabetes, heart disease and other physical and cognitive disabilities relating to old age. It costs our state between \$120,000 and \$240,000 annually to incarcerate one older person.¹⁶

Finally, and perhaps most tragically, long sentences and frequent parole denials lead to death in prison. Since Governor Cuomo took office in 2011, 961 have died in a New York State prison instead of being released.¹⁷ Most were older people whose release would have posed no risk to public safety. Fundamental changes to parole would reverse this troubling trend.

Right now the parole process is incredibly broken. The Board interviews more than 11,000 people every year -- roughly 60 hearings per day -- via videoconferences that last an average of 15 minutes.¹⁸ In 2015, the Board denied release to nearly 75% of all parole-eligible people.¹⁹ Many have served additional decades in prison due to the Board's punitive and tough on crime culture. For those serving long sentences, the Board repeatedly denies parole based on one, unchangeable factor -- the nature of a person's crime -- and not a person's age, many accomplishments while in prison, personal transformation or network of support.

Parole is also highly political. Commissioners are appointed by the Governor and confirmed by the Senate. Many of these commissioners still hold outdated 'tough on crime' views about our justice system.

Thanks to the tireless work of advocates and formerly incarcerated leaders, there have been marginal improvements to the Parole Board since new parole regulations were implemented and new Commissioners joined the Board. However, Governor Cuomo has failed to fully staff the Parole Board with truly qualified Commissioners and has yet to usher in an era of real parole justice in New York State. For example, in 2017, he appointed William Smith, despite the fact that Smith was opposed by nineteen state senators. Smith denied one seventy year old persons petition for parole three times. Ultimately, the person committed suicide.²⁰

¹⁴ <https://www.nytimes.com/2017/01/05/opinion/elderly-and-in-prison.html>

¹⁵ https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/2017_207_Recidivism-Age.pdf

¹⁶ <https://www.google.com/url?q=http://osc.state.ny.us/reports/aging-persons.pdf&sa=D&ust=1529805236192000&usg=AFQjCNFvwZjb3CoPK4YOhfR5ZTiU42hiLA>

¹⁷ <http://www.nydailynews.com/new-york/ny-metro-parole-20180605-story.html>

¹⁸ <https://www.nytimes.com/interactive/2016/12/04/nyregion/new-york-parole-decision-in-minutes.html>

¹⁹ http://www.doccs.ny.gov/Research/Reports/2016/Parole_Board_Dispositions_2015.pdf

²⁰ <https://www.villagevoice.com/2017/07/05/lawmakers-fail-to-fix-new-yorks-broken-stingy-parole-system/>

As governor, Cynthia Nixon would reform the Board of Parole by appointing more commissioners who are social workers, psychologists, nurses, and other professionals who embrace notions of mercy, redemption and rehabilitation.

As older persons who have served long sentences present the lowest risk of recidivism of any other class of persons, **Cynthia would also permit the Board of Parole to evaluate all persons over the age of 55 who have served at least 15 years in prison for possible parole release.**²¹

It does not mandate release, but allows the Board to make a public safety assessment to see whether an elderly person is safe to be released to parole supervision even if he or she has not completed his or her minimum sentence and to have the discretion to grant such release.

Cynthia would also support presumptive release that requires the Board to parole all individuals at their first hearing, unless there is a clear and unreasonable risk to public safety.

Reducing the Number of People Sent to Prison for Parole Violations

Over the past four years, the number of New Yorkers being sent to jail for parole violations has increased by double digits. From 2015 to 2016, prison admissions for parole violations increased by 21.4% and nearly half (47%) of all parole exits in New York State were to reincarceration, substantially higher than the national average failure rate of 28%.²²

According to the Columbia University's Justice Lab report, in 2016, 29.2% of admissions to New York State prisons were for violations of parole, and of those, most were for technical violations of conditions of release, not new crimes. Ultimately, parole, which is supposed to be a mechanism for reintegration into the community, is instead driving mass incarceration in state prisons and local jails.

In New York, people released on parole are more likely to return to incarceration not for new convictions, but for violating the conditions of their parole. New Yorkers released from prison, trying to rebuild their lives, are being sent back to jail for technical violations, like missing an appointment with a parole officer, or staying out past curfew.

As Governor, Cynthia would also support passing the following reforms to post-release

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²² http://justicelab.iserp.columbia.edu/img/Less_is_More_in_New_York_Report_FINAL.pdf

parole to finally free people from an unforgiving cycle of mass incarceration:

- Shorten parole and post-release supervision terms overall
- Incentivize good behavior by allowing people under supervision to earn early discharge from parole for conviction free periods in the community
- Shorten and cap the amount of jail time people under supervision receive for technical and non-technical violations
- Require due process so that a person under supervision cannot be automatically jailed by their parole officer without seeing a judge

A Just Re-Entry

People who come out of jail or prison face great obstacles as they attempt to get their lives back on track. These barriers are known as “collateral consequences” but are often lifetime consequences. The laws and regulations that bar people from jobs, education and housing and other basic needs continue long after the sentence has been served. These structural and institutional barriers to education and employment for people with criminal justice records raise more than social policy concerns; they are abrogations of civil rights. A criminal record has become a surrogate for race-based discrimination throughout the U.S., serving the same function as did the Black Codes and Jim Crow in earlier times.

In addition to formal bars and barriers, the adjustment to daily living after incarceration is an overlooked aspect of reentry. While securing a job and housing are critically important, these alone cannot address the disorientation and psychological disconnection that accompanies the movement from custody to freedom. Prison life is characterized by limited opportunities to develop and maintain close personal relationships where even human touch between family visitors and people who are incarcerated is proscribed and surveilled. It is highly regimented, requires limited personal responsibility for basic human needs – food, clothing and shelter. Release back to the “free world” is nothing less than culture shock. Support to address this adjustment, particularly when offered by formerly incarcerated people who have made this journey, is essential to successful reentry.

But real reentry reform requires a commitment to address structural factors that leave the communities from which most formerly incarcerated people come in extreme poverty. Reintegration implies full, functional and non-stigmatized connection to normative social institutions including family, work, and civic engagement.

As Governor, Cynthia would support the following actions to ensure successful reentry

- Continue to support banning the box at SUNY enacted in 2016 by the SUNY Board of Regents, including legislation that would prohibit all colleges in New York State from including questions about criminal conviction on their college applications

- Better fund re-entry services organizations who are helping returning New Yorkers with jobs, completing high school and college education
- Support organizations led by formerly incarcerated that can provide critical, experience-based support to people returning home from prison.
- Remove regulations and ban practices that keep people with criminal records from housing, jobs, volunteer activities and education

Legalize Marijuana

The criminalization of marijuana is a persistent barrier to racial and economic justice in New York State. It's time for New York to follow the lead of nine other states and the District of Columbia and legalize recreational marijuana.

We have to stop putting people of color in jail for something that most white people do with impunity. The simple truth is that drug laws are not enforced the same way in affluent, white communities as they are in communities of color. Racial and economic inequality determines enforcement of marijuana laws despite data showing racial and ethnic groups use marijuana at similar rates), where police are assigned and make arrests, and what kind of legal representation people have to reduce the likelihood of prosecution and conviction. Eighty percent of New Yorkers who are arrested for marijuana are black and Latino despite the fact that white people and people of color use marijuana at roughly the same rates.²³²⁴ The consequences follow people for the rest of their lives, making it harder for them to get jobs or housing and for non-citizens, by putting them in the cross hairs of deportation.

Regulation will bring a new set of economic opportunities for people who participate in the new marketplace. Legalization will produce more public and private sector jobs in agriculture, product design and innovation, testing and monitoring, marketing and in sale of legal marijuana products and many other ancillary industries.

And as we move toward legalization, New York must ensure that our policy is equitable and places the communities most harmed by racist drug laws at the center -- including who is able to benefit from the new jobs and revenue. Comptroller Stringer's office offered conservative estimates that regulated and taxed marijuana for adult use would generate \$3.1 billion in profits per year in New York State and \$436 million annually in new state tax revenue.²⁵

It's no surprise that as this new industry emerges, racial and class bias are already evident in who stands to profit. This April, former Republican House Speaker John Boehner announced

²³<http://www.politifact.com/new-york/statements/2018/apr/25/kirsten-gillibrand/are-people-color-arrested-more-often-marijuana-new/>

²⁴<https://www.vox.com/identities/2018/5/14/17353040/racial-disparity-marijuana-arrests-new-york-city-nypd>

²⁵<https://comptroller.nyc.gov/newsroom/new-comptroller-stringer-analysis-legalizing-marijuana-could-lead-to-millions-in-tax-revenue-for-city-and-state/>

that he was lobbying for the marijuana industry and had joined the board of a marijuana cultivation and distribution business. This follows decades of Boehner's support for the draconian "war on drugs" that propelled mass incarceration by targeting black and brown communities for high volume arrests and by funding law enforcement over job creation, health care, social services and education.

As Governor, Cynthia would pass legislation that will seal and vacate people's records of marijuana possession or sale. She will also implements models similar to those created in places like Oakland, which sets aside half of its marijuana licenses for low-income residents who have been convicted of a marijuana-related crime or who live in a community targeted by the drug war. Utilizing some of the tax revenue from marijuana sales, she would also implement a statewide marijuana equity program similar to Massachusetts which provides supports such as loans and technical assistance to applicants from qualifying communities.

The Massachusetts marijuana equity program is worthy of replication. They have focused on providing opportunity to people and communities hardest hit by the war on drugs. The Massachusetts program prioritizes the review of applications from businesses where more than half of the employees have lived in an area of disproportionate impact for five of the last ten years, and where 75% or more of the employees will reside in areas of disproportionate impact by the time the business opens. Priority review is also given to businesses where more than half of the employees have drug-related criminal defense records. This does not ensure that a business will receive a license but it does put them at the front of the line.

The Massachusetts program has other elements worthy of replication. For example, it provides businesses grounded in these communities with fee waivers, and a wide array of training and technical assistance including assistance with borrowing and obtaining capital. The Massachusetts program also requires that businesses are committed to the inclusion of under-represented groups and that they submit and adhere to a plan for how the business will positively impact such communities. New York needs to follow the lead of our neighboring state.

Legalization must also be accompanied by reinvesting in the communities that were the hardest hit by mass criminalization. **As Governor, Cynthia will reinvest a significant portion of the tax revenue from adult-use marijuana sales back into communities to fund community-directed and led projects including adult education services, job training, the expansion of afterschool programs, reentry services, and other community-centered projects.**