



NY State Legislative Priorities (2021 - 2022)

The [Immigrant Defense Project \(IDP\)](#) is a New York based nonprofit that fights for fairness and justice for all immigrants caught at the intersection of the criminal legal and immigration systems.

IDP has identified the following pieces of legislation as **high priority** for the State of New York and encourages legislators to co-sponsor and support these pieces of legislation.

Disentangling ICE Policing from Local Agencies

The **New York For All Act [S3076 \(Salazar\)](#) and [A2328 \(Reyes\)](#)** Prohibits and regulates the discovery and disclosure of immigration status. A priority for IDP because ICE continues to lean on local law enforcement and local government agencies to search for, arrest, and deport people, and to separate families.

Curtailing Unregulated Proliferation of Surveillance Technologies

Ban Rogue DNA Bill [S1347 \(Hoylman\)](#) and [A6124 \(Zinerman\)](#) - Preserving a single computerized state DNA identification index and requiring municipalities to expunge any DNA record stored in a municipal DNA identification index. As Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) increase DNA collection, we are particularly concerned about the potential for harm to the DNA dragnet, including expanded data sharing of DNA between local police and immigration police.

Protecting Procedural Rights

Wrongful Convictions Act [S266 \(Myrie\)](#) and [A98 \(Quart\)](#) - The Wrongful Convictions Act provides opportunities for people to clear their records of defective pleas and convictions entered without their full knowledge of the immigration consequences and disproportionate punishments, as is required by law.

Court Notifications Bill [S2903 \(Kavanagh\)](#) and [ATBD \(Cruz\)](#) - This bill strengthens the requirement for courts to notify people in criminal proceedings of the possibility of deportation as a result of a plea. Currently, courts are only required to provide notification in certain cases. The bill would also enact standard notification language from the judge that supports an attorney's duty to provide proper immigration advice instead of undermining it.

Clemency Justice Act [S7667 \(Myrie\)](#) and [A9145 \(Solages\)](#) - This bill demands accountability and transparency in New York's clemency process for those harmed by this country's unjust and racist criminal legal system.

IDP expresses strong support for the following additional bills:

Stop Immigration Bond Abuse Act [S7475 \(Bailey\)](#) and [A0770 \(Epstein\)](#) - This bill prohibits private companies from using electronic shackles, abolishes fees and exorbitant interest rates on immigration bonds and ensures immigrants are not misled by profiteering businesses.

Treatment Not Jails [S2881B \(Ramos\)](#) and [A8524 \(Forrest\)](#) - This bill levels the field of judicial diversion and creates tangible steps toward ending the criminalization of mental health challenges and functional impairments in New York.

Stop Violence in the Sex Trades Act (SVSTA) [S3075 \(Salazar\)](#) and [A849 \(Gottfried\)](#) - This bill will amend NY Penal Law Article 230 for consenting adults who trade sex for resources and/or money and decriminalize collaborating with peers and patronizing adult sex workers while upholding all anti-trafficking statutes that protect survivors and minors from exploitation and coercion.

Communities Not Cages is a campaign seeking to overhaul New York's sentencing laws that funnel thousands of New Yorkers into cages and fail to deliver safety, healing or justice. The campaign's three bills are **End Mandatory Minimums** [S7871 \(Myrie\)](#) and [A9166 \(Meeks\)](#) which eliminates mandatory minimum sentences, **Earned Time Act** [S7873A \(Cooney\)](#) and [A8462B \(Kelles\)](#) which strengthens and expands "good time" and "merit time" laws and **Second Look Act** [S7872 \(Salazar\)](#) and [A8894 \(Walker\)](#) which allows judges to review and consider excessive sentences.

In addition to these priorities, IDP is a **founding member and supporter** of the [Justice Roadmap](#), which includes key policy changes that would reduce the number of people in in New York's jails, prisons, and detention centers; address inhumane treatment of people behind bars; and ultimately limit the power of the police, prison, and immigration systems to dictate and limit opportunities and lives of people.

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The ICE Entanglement Problem:

Why We Need to Prevent ICE from Using New York's Resources to Harm Our Communities

Over the past decade, Immigrations and Customs Enforcement (ICE) has increasingly relied on local law enforcement and local government agencies to search for, arrest, and deport New Yorkers.

For years, ICE entanglement with state and local agencies have enabled the cruel separation of family members across New York State. When local agencies conspire with ICE, it multiplies the injustices of the racially biased criminal legal system and discriminatory policing.

All New Yorkers, regardless of immigration status, want to participate in their communities, provide for family, and access health care and public goods without fear and intimidation. [The New York for All Act](#) (S3076/A2328) offers protections that help make this possible, by prohibiting all local law enforcement and state agencies from conspiring with ICE or participating in its cruelty.

As we have seen with ICE courthouse arrests, the potential to be arrested by ICE when accessing a government service has a significant chilling effect. People should feel safe enough to access every resource available to them. However, ICE has taken advantage of people who rely on state agencies, such as the DMV, and those who are fulfilling their civil and legal responsibilities, including those following the requests of local police or probation officers.

Hundreds of thousands of people have been exiled by our past three presidents, regardless of party, and the Biden Administration has already issued policies that lay out who they plan to deport and detain. So long as ICE continues its operations, immigrant New Yorkers remain at risk.

See the other side for stories from across New York of the harms of ICE entanglement with New York agencies.

The Stories:

More reports available on IDP's [ICEwatch Raids Map](#) (Initials used to protect privacy)

DMV

LG was arrested by ICE after he left the DMV's traffic violation bureau in Harlem. He had gotten a traffic ticket in November and was given January 29, 2020 as the day to go to the DMV to pay the ticket. When LG arrived for the hearing on January 29, a DMV officer told him that the hearing was delayed, that he should go to lunch and come back. When he left to get lunch, ICE agents stopped him, asked his name and then arrested LG. January 2020

FW was arrested by ICE agents at the Dutchess County Department of Motor Vehicles (DMV) in Wappinger Falls, NY after the DMV agent told her to return the following day. FW showed up and the ICE agents were waiting there to arrest her. September 2017

New York State Troopers

IU was a passenger in a car that was stopped by a New York State Trooper. The State Trooper asked who in the car was "illegal". He handcuffed everyone in the car and called ICE. He held everyone in the car, handcuffed, until ICE agents came and arrested IU. Erie County, NY, July 2017

Court mandated programs

KJ was arrested by ICE agents when he went to attend a court-mandated program. When he entered the Town Hall where the program was held, a local police officer asked if he had papers. Shortly after KJ said no, ICE agents came to the program and arrested him. Altamont, NY, November 2017

Local Police

After ICE had surveilled his home overnight, two local police sheriffs and four ICE agents arrested FCC at his home at 5:30 am. They waited outside his home and did not come inside. Out of fear for the safety of his partner and young children, FCC voluntarily went outside, where the agents arrested him. Amenia, NY, April 2018

After JS's family paid bail, he was taken from criminal custody in East Hampton and turned over to the East Hampton town police. The town police held him for over two hours as they waited for ICE to arrive and arrest him. East Hampton, NY, May 2018

The New York For All Act will help ensure that interactions with police, going to school, and renewing a driver's license do not carry the risk of deportation. Everyone fares better when state and local dollars stay out of the business of federal immigration deportation and detention.

Learn more about how to protect your rights with ICE at immdefense.org/kyr



IMMIGRANT
DEFENSE
PROJECT



Memorandum of Support
New York For All Act
S3076 (Salazar)/ A2328 (Reyes)

The Immigrant Defense Project (IDP) supports Senate Bill 3076 and Assembly Bill 2328, also known as the New York For All Act, which stops collaboration between local agencies and ICE in New York State.

Over the past decade, ICE has increasingly relied on local law enforcement and local government agencies to search for, arrest, and deport New Yorkers. For years, ICE entanglement with state and local agencies have enabled the cruel separation of family members across New York State. When local agencies conspire with ICE, it multiplies the injustices of the racially biased criminal legal system and discriminatory policing.

Even with a new Presidential Administration in power, ICE has continued to deport and detain community members. Deportations have continued with cruelty, with approximately 900 people deported to Haiti during the month of February 2021 alone, in a time of extreme political turmoil and nationwide unrest in the country.¹ The Administration's immigration policies released to date have rearticulated justifications for continued deportation and detention that are similar to what we witnessed during the mass deportations of the Trump and Obama Administrations. These enforcement priorities articulate the intention to continue operations, paint community members as threats, and leave loopholes that permit individual line ICE officers to use broad discretion in making arrests.

For years, IDP has monitored ICE raids across the state through our hotline, which receives reports of ICE activity from advocates, attorneys, and community members in New York. Collaboration between ICE and local agencies are common, and there are a number of noticeable trends. For example, ICE agents have arrested people just before or after they have contact with local agencies. In January 2020, an individual was arrested by ICE after he left the Department of Motor Vehicles (DMV) office in Harlem, and another individual was arrested by ICE at the Dutchess County DMV in September 2017. In Rockland County, individuals were arrested at their probation check-ins, even though they were on the road to recovery and in compliance with court-mandated substance treatment. Individuals are also blindsided when a police stop escalates into imminent deportation. For example, in July 2017 in Erie County, a community member was stopped by a New York State Trooper who called ICE to the scene during the stop. As more and more of these stories are shared among community members, the fear of accessing resources or communicating with local law enforcement or government agencies has

¹ Marcela García, *Opinion: The Biden administration is deporting hundreds of Haitians to a country mired in political chaos*, Bos. Globe (Feb. 22, 2021), <https://www.bostonglobe.com/2021/02/22/opinion/biden-administration-is-deporting-hundreds-haitians-country-mired-political-chaos/>.

intensified. In addition, when local officials are given free reign to contact or collude with ICE, it incentivizes racial profiling and increased criminalization of immigrant communities.

The New York for All Act would prohibit the use of state and local government resources for immigration enforcement, restrict the disclosure of sensitive information collected by government agencies to ICE and CBP, prohibit 287(g) agreements, and make it clear that ICE cannot access non-public areas of government property without a judicial warrant. The bill would also require local jails to inform people of their rights when they interact with ICE, including their right to decline an interview and seek the assistance of counsel.

In passing this legislation, New York will follow the example of multiple other states and cities that have enacted similar legislation. California and Washington state have passed robust legislation that restricts collaboration with ICE. Illinois and Vermont also have state-level protections, and Oregon has limited the use of local resources for immigration enforcement since 1987. New York City is one of the two most immigrant-rich metro areas in the country, and New York state has one of the largest immigrant populations as well.² Our state has a unique responsibility to catch up with other jurisdictions.

All New Yorkers, regardless of immigration status, want to participate in their communities, provide for their families, and access health care and public goods without fear and intimidation. The chilling effect ICE has created in the state has led many New Yorkers from seeking resources available to them.

As we move away from the cruel anti-immigrant agenda of the Trump administration, New York State has an opportunity to protect immigrant communities and ensure that local and state agencies get out of the business of federal immigration detention and deportation. Passing New York for All sends a clear message to all New Yorkers that New York State stands alongside them.

² Abby Budiman, *Key findings about U.S. immigrants*, Pew Research Center, <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/>.



Stop the DNA Trap:

Why We Need to Stop Rampant DNA Police Databases and the Genetic Surveillance State

Ban Rogue DNA Bill (S1347/A6124)

DNA has the power to reveal highly personal and sensitive information—yet while in many cases DNA is precise, it can still be prone to human error and several factors can undermine its reliability including contamination, clerical errors, and misinterpretation, especially where the evidence involves mixtures. Nevertheless, DNA evidence is commonly presented and regarded as incontrovertible proof of guilt. Therefore, DNA evidence can be weaponized very easily by police, prosecutors, and immigration officers as there are few avenues for people to challenge DNA evidence. Indeed, DNA databases mirror the discrimination in the criminal justice system—a [recent study](#) found that DNA has been collected from Black individuals at 2.5 times the rate of white people.

In addition to a massive federal DNA database overseen by the FBI, local policing agencies and immigration police have been vastly expanding DNA collection and amassing huge repositories of DNA profiles. For example, the NYPD has been engaging in widespread and often surreptitious or coercive DNA collection in a practice referred to by some as [“knock and spit.”](#) The NYPD database even includes profiles of people who have not been charged with a criminal offense, including [children and teenagers](#). Little is known about how the samples in the growing database are used by NYPD, and [lab errors](#) have been shown to have lead to wrongful arrests.

The Department of Homeland Security (DHS) and its agencies, including Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), have been vastly expanding its collection of DNA. In 2019, CBP started to conduct Rapid DNA tests on [recent border crossers](#)—a context in which people have very few legal protections. In 2020, the federal government started to collect DNA from all [people in ICE detention](#) to be stored in the FBI DNA database. DHS is also currently upgrading its biometric surveillance capacities by building a massive cloud-based platform, HART (Homeland Advanced Recognition Technology System). This system will include DNA, facial recognition, iris scans, voice prints, and other biometrics.

Unchecked DNA Databases:

The massive expansion of collection and retention of the DNA creates a repository of very detailed information that can severely limit rights and violate privacy. In addition to potentially reinforcing the structural racism of the criminal legal system, DNA can become a weapon to fuel division. DNA is a powerful tool as it could reveal extremely personal information such as biological relationships, propensity for disease, and countless other traits. Reliance on genetic analysis to categorize people has had a [checked history](#); as modern science evolved, notions of biological difference have been repeatedly deployed as a “neutral” scientific measure to justify conquest, social control, and exploitation based on “[inherent superiority](#).” Indeed, courts in [Kuwait](#), [Kenya](#), and the U.K. have recently struck down DNA collection to protect privacy rights.

Efforts to curtail reckless and harmful DNA collection include the [Rogue DNA Bill](#) (S1347/A6124) in NYS. This bill would preserve New York State’s singular, computerized DNA identification index; expunge records stored in existing municipal DNA databases; and ban the current and future use and maintenance of municipal DNA databases.

NYPD Rogue DNA database

NYPD aggressively engages in widespread surreptitious and coercive DNA collection. While NYS law says only people convicted of offenses can be kept in an DNA index, the NYPD’s database has made their own rules and contains information on tens of thousands of individuals including [children](#) and people [who have not been convicted](#) of a criminal offense. The NYPD has also been found to offer arrestees cigarettes and water, in order to [surreptitiously collect DNA](#). The NYPD has also conducted DNA dragnets, such as in the case of the Howard Beach jogger, in which a woman was killed in Queens park in 2019. Based on DNA collected from the crime scene, the [NYPD collected DNA from 384 black males](#) in the area, but didn’t find a match.

DNA databases mirror discriminatory policing practices—studies have found that the [genetic profiles of Black men](#) are disproportionately represented in state and federal DNA databases. In 2020, 86% of people subject to stop-and-frisk NYPD’s arrests were Black and Latinx people, and it is highly likely that their representation in rogue database is similarly skewed.

HART: ICE’s massive biometric database

The Department of Homeland Security (DHS) is planning to build a massive biometric database, the [Homeland Advanced Recognition Technology System \(HART\)](#). HART will be a huge cloud-based repository for a range of biometric and other personal data, hosted by Amazon Web Services, facilitating data sharing between local, state, national, and international agencies. The biometric data available through HART will include: digital fingerprints, iris scans, facial recognition data, voice prints, and DNA.

HART would be a massive step towards the expansion of DHS’s biometric surveillance apparatus. The use of biometric surveillance, such as facial recognition, allows for [tracking of people](#) in real time and monitoring of people’s activity including at protests. DHS is also planning on collecting information to map relationship patterns, which could include religious activities or political affiliations.





MEMORANDUM OF SUPPORT
Ban Rogue DNA Bill
Senate Bill 1347 (Hoylman)

The Immigrant Defense Project submits this statement in support of S1347 (Hoylman), which would limit New York State to a singular, computerized DNA database; expunge records stored in existing municipal DNA databases; and ban the current and future use and maintenance of municipal DNA databases.

This bill is specifically needed to clarify New York State Executive Law §995-c that allows for the creation of a computerized DNA database at the state level but fails to eliminate DNA collection and storage at the municipal and local levels.¹ More broadly, this bill is necessary to safeguard New Yorkers' genetic privacy.

Unregulated state and municipal DNA databases are dangerous and pose serious privacy and human rights violations because, "DNA can be used to track individuals or their relatives, so a DNA database could be misused by governments or anyone who can infiltrate the system."² Therefore, S1347 would protect the genetic privacy of all New Yorkers—and especially those targeted by discriminatory policing including Black and brown youth, immigrants, and gender non-conforming people—by limiting governmental access to DNA databases to the state level.

This bill would curtail reckless and harmful DNA collection that is happening across the State, and, most egregiously, in New York City. NYC's "rogue" DNA database, maintained by the New York Police Department (NYPD) and the Office of the Chief Medical Examiner (OCME) currently contains 33,600 DNA samples. In order to collect these samples, NYPD may use deceit or collect a sample without a person's knowledge.³ Additionally, little is known about how the samples in the growing database are used by NYPD and shared with other agencies such as ICE.⁴ In certain cases, the database has even led directly to wrongful arrests.⁵ NYC's rogue DNA database is highly unregulated and threatens the privacy of residents' genetic information.

¹ SB1347, 2021-2022, Reg. Sess., (NYS 2021), <https://legislation.nysenate.gov/pdf/bills/2021/S1347>.

² "DNA Databases and Human Rights," *Forensic Genetics Policy Initiative*, undated, <http://dnapolicyinitiative.org/resources/dna-databases-and-human-rights/>

³ Many reports reveal that NYPD plants vessels during questioning, like water bottles, snacks, and cigarettes, that are later sampled for a suspect's DNA, often without their knowledge; see Edgar Sandoval, "N.Y.P.D. to Remove DNA Profiles of Non-Criminals From Database," *New York Times*, February 20, 2020, <https://www.nytimes.com/2020/02/20/nyregion/dna-nypd-database.html>

⁴ David Bland, "NYC's DNA Database Swells, even as some samples are removed," *Queens Daily Eagle*, January 14, 2021. <https://queenseagle.com/all/nycs-dna-database-swells-even-as-some-samples-are-removed>.

⁵ Aaron Morrison, "NEW YORK CITY AGENCY HAS UNDERREPORTED LAB ERRORS IN DNA DATABASE IT OVERSEES," *The Appeal*, February 24, 2020, <https://theappeal.org/new-york-city-dna-database-lab-errors/>.

As an organization that focuses on the collusion between local law enforcement and Immigration and Customs Enforcement (ICE), we are particularly concerned about the potential for expanded data sharing of DNA between local police and the US Department of Homeland Security (DHS). DHS and its agencies, including ICE and Customs and Border Protection, have been expanding DNA collection from migrants and people in ICE detention. DHS is also currently upgrading its biometric database, HART (Homeland Advanced Recognition Technology), into a massive cloud-based platform hosted by Amazon Web Services to include DNA, facial recognition, iris scans, and other biometrics. This database will be interoperable with biometric databases, which, in turn, enables data sharing between local, state, federal, and foreign agencies.⁶

DNA samples stored in NYC's "rogue" database disproportionately represent black and brown people due to the systemic racism underpinning the criminal legal system and the racist DNA collection methods used by NYPD. For example, NYPD may conduct "knock-and-spit" searches where officers go door to door and ask for DNA samples from residents of a neighborhood as part of an investigation. Oftentimes the places targeted for these dragnet DNA seizures are over-policed Black and brown communities.⁷ Thus, S1347 is an important step towards limiting aggressive, invasive, and racist policing tactics.

Without the additional regulations offered under S1347, youth will continue to remain vulnerable to DNA collections that permanently give them criminal status.⁸ Under current NYS law,⁹ even if a sample of DNA is expunged at the state level, the DNA samples are able to remain in local databases, which happens often in NYC. In one case, NYPD extracted the DNA of a child by enticing him with a soda and kept his DNA in their database. In the case of the 12-year-old child, his DNA was removed, but this case shows how a minor's DNA could remain in NYPD's DNA database permanently,¹⁰ regardless of their criminal record.¹¹ This practice enables the permanent criminalization of people whose DNA is collected by the state, and reveals that NYS prioritizes DNA collection over individual privacy. S1347 is a needed step to ensure a cleared criminal record is synonymous with a clear DNA record.

Ultimately, New York has looser regulations on DNA collection than almost any other state, which greatly compromises the genetic privacy of its residents. In turn, the most populous city in the United States is able to collect DNA from residents with few restrictions and little oversight. The lack of regulations on

⁶ U.S. Department of Homeland Security, "Privacy Impact Assessment for the Homeland Advanced Recognition Technology System (HART) Increment 1 PIA," *DHS/OBIM*, February 24, 2020, https://www.dhs.gov/sites/default/files/publications/privacy-pia-obim004-hartincrement1-february2020_o.pdf

⁷ Alison Lewis, "The NYPD's new DNA dragnet: The department is collecting and storing genetic information, with virtually no rules to curb their use," *Daily News*, February 8, 2019, <https://www.nydailynews.com/opinion/ny-oped-the-nypds-new-dna-dragnet-20190206-story.html>

⁸ George Joseph, "How Juveniles Get Caught up in the NYPD's Vast DNA Dragnet," *Gothamist*, January 10, 2019, <https://gothamist.com/news/how-juveniles-get-caught-up-in-the-nypds-vast-dna-dragnet>.

⁹ A03543, Amd. 995-c, 2018-2019, Reg. Session, NYS (2018),

https://nyassembly.gov/leg/?default_fld=&bn=A03543&term=2017&Summary=Y&Actions=Y&Text=Y&Votes=Y

¹⁰ Jan Ransom and Ashley Southall, "N.Y.P.D. Detectives Gave a Boy, 12, a Soda. He Landed in a DNA Database," *The New York Times*, August 15, 2019, <https://www.nytimes.com/2019/08/15/nyregion/nypd-dna-database.html>

¹¹ "REPORT ON LEGISLATION BY THE CRIMINAL COURTS COMMITTEE, THE CRIMINAL JUSTICE OPERATIONS COMMITTEE AND THE MASS INCARCERATION TASK FORCE," New York City Bar, February 25, 2020, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/curbing-unregulate-d-local-dna-indexing#_ftn30

DNA collection and storage are exacerbated by the racist methods of DNA collection and the racist foundation of the State's criminal legal system, and thus, S1347 offers a means of eliminating NYC's unethical DNA database, which has, on multiple occasions, been exposed as operating illegally.¹²

The Immigrant Defense Project supports S1347 because it offers a standard of genetic privacy that will shield the most vulnerable people in NYS, like minors and immigrants, from exploitation by local police departments. It also limits the possibility for expanded surveillance powers and harmful discriminatory practices of police and ICE. IDP implores the legislature to take legislative action on this matter immediately.

¹² Rachel Rippetoe, "New York Lawmakers Want Limits on Collection of Kids' DNA," *The Imprint*, December 3, 2020, <https://imprintnews.org/justice/new-york-lawmakers-want-limits-collection-kids-dna/49893>



Wrongful Convictions Act:

Strengthening Noncitizen Rights (S.266/A.98)

The Problem

Everyone in this country has the right to defend themselves in court, regardless of their immigration status. But many obstacles stand in the way of immigrants exercising this right, including language barriers, financial barriers, pressures to plead guilty, and the lack of education and knowledge about criminal-immigration law among defense attorneys and noncitizens. People who are hit with criminal charges are immediately confronted with countless considerations and deprivations—pretrial detention, making bail, potential prison time, loss of a job, separation from loved ones, the list goes on. For noncitizens, the calculus is even more complex because taking a bad plea deal or having an unfair trial can land you in immigration court, immigration detention, and ultimately even in exile.

For immigrants, the stakes of a criminal case are so high that the right to legal advice on immigration consequences is guaranteed by the Constitution. But in the moment, many noncitizens are not informed about these consequences. Attorneys commonly misadvise clients that they won't be deported or have an application for benefits denied, and other attorneys may fail to mention immigration at all. It is not until ICE comes knocking at the door, often years or even decades after a person serves their sentence, that people stitch the story together and are confronted with the reality of being separate from their loved ones and deported.

A Solution to Reverse Wrongful Convictions:

The Wrongful Convictions Act (S.266/A.98) provides an indispensable tool to vindicate the rights of noncitizens in this situation. This bill would provide more opportunities for people to clear their records of defective pleas and convictions entered without their full knowledge of the immigration consequences and disproportionate punishments, as is required by law.

Strengthens and expands the One Day to Protect New Yorkers Act.

The One Day to Protect New Yorkers Act became law in April 2019 to protect New Yorkers from disproportionate collateral consequences like deportation and detention, by reducing criminal sentences by just one day. To ensure that these one-day reductions are honored by immigration, the Wrongful Convictions bill creates stronger post-judgment motions that outline the unfairness of the initial plea or conviction.

Guarantees that everyone gets the opportunity to have their 440 case reviewed on appeal.

This ensures that judgments that may have legal or factual errors are reviewed. This right to appeal is very important for immigrants because the improper conviction is often the sole reason they are facing deportation or cannot become a green card holder or citizen.

Guarantees a right to counsel.

440 motion practice for noncitizens is a specialized area of criminal-immigration law where many attorneys do not have deep experience. Unscrupulous attorneys can take advantage of immigrants who face life-and-death consequences, and other immigrants who cannot afford a lawyer never have the opportunity to bring their legitimate claims to court.





Court Notification Bill

(S2903A)

The Problem: Immigrants have the right under the Constitution to receive immigration advice from defense counsel when facing criminal charges, due to the severe immigration consequences that can follow, including mandatory detention and deportation. In many cases, counsel who meet their duty to advise on immigration consequences can resolve cases or negotiate pleas that minimize the likelihood of deportation and preserve future eligibility for status or citizenship. But many New Yorkers do not receive accurate legal advice regarding the immigration consequences of a conviction in a criminal case, which can attach even if they are documented or have a green card.

In New York, due to the gravity of potential immigration issues that can follow from a plea, judges notify people of this risk to help ensure they make informed pleas and promptly have an opportunity to discuss the issues with their counsel. Indeed, the Court of Appeals has found that judicial notification is required under the State Constitution in felony cases, and New York state law requires the same. However, because notifications are not standardized by statute, some judges provide notifications that do more harm than good and directly conflict with defense counsel's duty to provide individualized, accurate legal advice to their clients.

Solution: The [Court Notifications Bill \(S2903A\)](#) enacts standardized court notification language such that judges cannot provide legal advice to criminal court defendants, but instead reinforce defense counsel's duty to provide individualized advice. The notification also provides an additional opportunity for the individual to become aware of the possibility of immigration consequences resulting from a plea.

- **Meaningful Representation.** Creating a robust judicial notification early in the criminal process will facilitate meaningful consultation between clients and their attorneys, afford counsel reasonable time to research and advise, and will ultimately result in fairer pleas that satisfy the objectives of both the People and the defendant.
- **Informing Immigrants of their Rights.** Judges have a critical role to play to promote compliance with the law, protect the rights of the accused, and ensure defendants enter knowing and voluntary pleas. Judicial notification to the accused of defense counsel's duty to advise on immigration consequences empowers the individual to ask their attorney about immigration issues where the attorney may have otherwise overlooked or abdicated their responsibility to investigate.
- **A Right with a Remedy.** The bill ensures that immigrants' rights violations are made right. When a judge fails to provide proper notification, pleas can be vacated through filing of a motion. This follows the example of 15 other states that provide a remedy when notification is not given, which will help prevent unlawful deportation based on unfair and unknowing pleas.

Clemency Justice Act

Bill number: S.7667/ Assembly bill number pending
Sponsors: Senator Zellnor Myrie & Assemblymember Michaelle Solages

The **Clemency Justice Act** proposes to make New York's clemency process more transparent and accessible. Between 2017-2020, the Governor's Office received over 6,400 clemency applications but granted only 95 clemencies: less than 1.5%. Deportations and de facto life sentences continue to separate New York's immigrants and people of color from their families and destabilize already-struggling communities. With an unprecedented pandemic ravaging immigration detention centers and prisons, New Yorkers need this bill now more than ever.

What does the Clemency Justice Act do?

- **A better process.** Currently, the clemency process is convoluted and inaccessible, with no way for applicants to check the status of their application or expedite it in case of an emergency, such as life-threatening health conditions or imminent deportation by ICE. Often, applicants wait years before receiving any communication from the Governor's office or Department of Corrections and Community Supervision (DOCCS).

This bill establishes a system for processing and evaluating clemency applications.

Under this bill, the Governor must provide notice at several stages, including confirmation when the application is received and a status update one year later. Additionally, applicants can indicate an "urgent need" and request an expedited review of their application.

- **Transparency and Accountability.** Currently, New Yorkers have no regular access to information on their Governor's clemency record. Any public clemency announcements are made based on the Governor's discretion.

This bill requires the Governor to publish clemency reports. Under this bill, the Governor must, through a publicly accessible website, share information on the number of pardon and commutation applications submitted and granted, as well as the race, ethnicity, gender, and age of applicants. Personally identifying information will remain confidential.

The Clemency Coalition of NY is a multi-racial coalition dedicated to using New York's clemency power as a tool to free our people from deportation and incarceration, and to correct the injustices of the US's racist immigration and criminal legal systems.

