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***STATEMENT FROM THE CHIEF DEFENDERS
ASSOCIATION OF NEW YORK ON CALLS FROM LAW
ENFORCEMENT TO DELAY CRITICAL CRIMINAL
JUSTICE REFORMS***

(Albany, NY) - The Chief Defenders Association of New York – an organization representing the heads of public defender officers in counties across the state – released the following statement on calls by certain prosecutors and sheriffs to delay justice for New Yorkers by placing a moratorium on new bail, discovery, and speedy trial laws, which are set to take effect on January 1, 2020:

“Earlier this year, New York took a giant leap forward for fairness, public safety, and fiscal responsibility by enacting new bail, discovery, and speedy trial laws. No longer will defendants be starved of critical evidence in their cases, which has fueled wrongful convictions and cost taxpayers millions in civil settlements. No longer will our bail laws allow the wealthy to go free pretrial while people in poverty are jailed for the exact same charges. As defenders, we have been appalled as countless people have been forced to plead guilty, regardless of guilt or innocence, to get out of jail.

It's unfortunate that, when faced with the choice of doing right by New Yorkers or working to protect their own unfair tactical advantages in court, certain District Attorneys and Sheriffs have chosen the latter. What makes this especially unacceptable is that they are using taxpayer resources to mislead and spread baseless fear in our communities rather than working to implement the new laws that New Yorkers overwhelmingly support."

Background:

New Yorkers across the state are regularly jailed pretrial due to poverty. This injustice is more common upstate and in other parts of New York State outside New York City. In 2018, bail was set in 42% of non-NYC cases and 25% of NYC cases. A total of approximately 15,000 people across the state are currently jailed pre-trial, or 59% of the total jail population. Statistics show that pre-trial detention negatively impacts public safety, denies equal justice, and wastes taxpayer funds.

Community Safety: [Studies](#) show that brief periods in pretrial detention can actually increase the likelihood that a person will be rearrested, likely because they worsen the root drivers of harm and crime: poverty, trauma, housing instability, unmet mental health and health needs and untreated substance use disorder. [Decades of data](#) and experience show us that decarceration can come with improved public safety.

Distortion of Justice: Statistics show that pre-trial detention distorts justice and contributes to mass incarceration by empowering the prosecutors to coerce guilty pleas, regardless of guilt or innocence. A summary of analyses included in a 2015 report by the VERA Institute of Justice found defendants jailed before trial were far more likely to accept harsher plea deals and receive prison or jail sentences. Of all those who receive prison and jail sentences, people who were incarcerated pre-trial received sentences that were, on average, [two to three times longer](#) than those who were released pending trial. The Bureau of Justice Assistance, a division of the U.S. Department of Justice, has found that "[t]hose who are taken into custody are more likely to accept a plea and are less likely to have their charges dropped."

Costs of Pretrial Incarceration: It is not only more harmful, but also more expensive to incarcerate people than to provide services to meet their needs. Orange County spent [\\$44,820,926](#) on the county jail alone in 2018. This amounts to \$87,031 per detained person per year or \$238 per person per day (excluding federal aid and federal immigration detainees). This is funding that could instead be allocated to housing, economic development, education or healthcare.

Pretrial Jailing is Increasing Counties Like in Orange County: While overall incarceration rates in New York State have plummeted, pre-trial jailing has [increased 24%](#) in Orange County,

and constitutes fully two-thirds of people locked in the county jail, excluding immigrants detained through a federal contract with ICE. Many other upstate counties have experienced similar increases.

Appearance Rates: Data from charitable bail funds across the state also demonstrates that bail is not necessary to ensure that people released pretrial return to court. Roughly 95% of the people whose bail was paid by a community bail fund — from Kings to Columbia to Suffolk to Tompkins and Onondaga counties — returned for all of their court dates, despite having no financial “skin in the game.” The Brooklyn Community Bail Fund paid bail for nearly 5,000 people who would otherwise have been jailed for their poverty and, in many cases, coerced to plead guilty, regardless of guilt or innocence, just to get free. Instead, they were free to fight their cases while at liberty. BCBF clients were three times as likely to have favorable case outcomes. That means fewer lives and families derailed by incarceration and criminal records. That means far greater chances at positive outcomes in education, employment, housing, and health. This is achieved through support, not punitive measures. Bail funds provide court reminders and help connect people to needed social services.

Harm of incarceration: Pretrial jailing imposes a wide range of devastating costs on New York’s families and communities. These costs begin with the need to post bail or pay for someone’s release from jail after their arrest. When they cannot afford bail, it costs families to stay in contact with their loved ones as they have to pay exorbitant rates for phone calls and transportation to visit. On top of these direct costs, families lose income, child support, and other financial contributions when a wage-earner is incarcerated. Finally, incarceration also takes a toll on family members’ physical and mental health, education outcomes, and other measures of well-being. Even one day in jail can totally [derail a person’s life](#). They can lose their jobs and housing. The state may take their children away.

Jail conditions pose a serious, and too often deadly, threat to incarcerated people. The New York State Commission of Correction found that in six different deaths across five different New York county jails, there were “egregious lapses in medical care.” Perhaps the best known story of the trauma caused by pretrial jailing is that of Kalief Browder, who took his own life after being jailed for three years as an innocent teenager on Rikers Island. There is [an epidemic of jail deaths](#) in Broome County. In addition, at least [30 people have died](#) in Erie County’s jail since 2005. At least [372 people have died](#) in New York City jails since 2001. Efforts to protect public safety must also address the acute and grave risk that incarceration poses to the safety and well-being of the tens of thousands of New Yorkers locked inside.

People in pre-trial detention are regularly locked in solitary confinement for months and even years. Ample research and accounts from survivors of solitary affirm that this practice causes serious and lasting psychological and physical harm.

Solution: Thankfully, our legislature and Governor took action to address this injustice. They responded to the call of the community and passed the new pretrial laws so that all people – not just relatively wealthy people – accused of misdemeanors and non-violent felonies can fight their cases while at liberty, with their families and communities and support networks, though with some degree of community supervision if needed.

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The Chief Defenders Association of New York (“CDANY”) was created by a group of chief defenders from across New York State. CDANY advocates for those who administer organizations providing mandated legal representation, their staff, and their clients, in an effort to bring positive change to the criminal justice system. <http://www.cdany.info/>