



Safe Horizon Memo Regarding Criminal Justice Reform February 7, 2019

Safe Horizon, the nation's largest victim assistance organization, submits this memo to Governor Cuomo and the State Legislature in response to criminal justice reform efforts currently underway in New York State.

Safe Horizon has over 40 years of experience helping survivors of crime and abuse find healing and rebuild their lives. Our programs and advocacy have always been undertaken with the needs of crime survivors first and foremost in our minds. We know that survivors of crime and abuse seek a wide range of remedies to help ensure their safety in the aftermath of an abusive or violent incident. One of the places survivors may turn is the criminal justice system—for example, a police precinct or criminal court. We also know that survivors often seek help outside of the criminal justice system—for example, through an emergency domestic violence shelter, through family or civil court, through their faith community or extended family, or through counseling. We believe that any system that a crime survivor interacts with should be trauma-informed, racially just, and responsive to survivors' expressed safety needs and concerns. It is through this lens that we offer our perspective on current criminal justice reform proposals being considered in Albany.

Overall, we recognize and support the need for criminal justice reform. We understand that for too long, our current system of over-incarceration has been particularly punishing for communities of color, which historically bear a disproportionate burden of criminal justice involvement. We also reject a narrative that simply positions victims against defendants in criminal justice policy debates.

Many crime victims we serve have themselves been defendants in criminal cases. This may occur as a direct result of their victimization. For example, trafficking victims are sometimes charged with crimes such as prostitution or carrying false identification; victims of domestic violence who defend themselves are sometimes charged with domestic violence crimes themselves; a survivor of child abuse who self-medicates with illegal drugs to cope with overwhelming trauma symptoms may be charged for drug possession. In other cases, our clients have both been severely victimized and been charged with crimes arising from poverty and desperation, such as theft or fraud.

We also recognize that individuals within the criminal justice system also frequently become victims of violence and abuse themselves -- within the very system that is supposed to deliver justice. This outcome is counterproductive to the healing of all involved in a crime. The trauma that individuals experience within and around the system has damaging and negative repercussions on individuals, families, and entire communities, and we see criminal justice reform efforts as an opportunity to address this head on.

Safe Horizon has given careful thought to the issue of criminal justice reform. We spent several months gathering input from staff that operate our various programs, including staff in our criminal court programs, domestic violence shelters, Child Advocacy Centers,¹ and runaway and homeless youth programs. We have explored these issues with other victim services organizations throughout the state, and have researched reforms and best practices from across the country. We have also reviewed literature that provides information on victim perspectives related to criminal justice reform. Most importantly, we conducted two focus groups with Safe Horizon clients, in order to understand their perspectives and center their voices and concerns in our organization's advocacy efforts.

Bail and Pre-Trial Detention

In focus groups, clients overwhelmingly criticized the current cash bail system that exists for low-level offenses, calling it unfair and punishing for defendants charged with crimes like drug possession or petty theft and held in jail on bail levels that they will never be able to meet. Clients connected the cash bail system to issues of poverty and race—remarking that the cash bail system overwhelmingly targeted poor people of color who could not afford to pay, while wealthy individuals could post bail and be free before a trial. Some clients spoke about being defendants themselves, or about relatives or friends who experienced the cash bail system. Most supported eliminating cash bail from the criminal justice system. However, when asked about charges of domestic violence, sexual assault, or child abuse, most participants in the focus groups recommended that these charges be considered differently. They identified personal safety concerns that might differ from case to case, and argued that domestic violence, sexual assault, and child abuse cases required special consideration.

Given the perspectives shared in our client focus groups, and in discussions and interviews with our staff, **Safe Horizon supports a presumption of release for individuals charged with crimes, without cash bail or traditional bail bonds.** Such release could be either on the individual's own recognizance, or with the least restrictive, non-monetary conditions needed to ensure the individual's return to court.

However, there must be an option to rebut this presumption of release in cases where there is clear and convincing evidence that the defendant currently poses an identifiable threat to the physical safety of a person or persons.

The voices and needs of a survivor in a given case must be centered when making decisions about pretrial detention. Each survivor is the best expert on what will keep them safe; the survivor's point of view must be considered, as they can often predict whether pretrial detention would help them be safe, or place them in further danger. Survivors must have access to individualized, expert and collaborative safety planning, and a survivor's perspective on the likely effectiveness of pretrial detention must be a consideration in the court's decision.

¹ Child Advocacy Centers serve children who are victims of severe physical and sexual abuse in New York City. CACs are a partnership between the NYPD, the local district attorney, the NYC Administration for Children's Services, Corporation Counsel, medical providers, and Safe Horizon. All partners work together on a multi-disciplinary team to investigate child abuse, and help children and families heal.

The proposal in Governor Cuomo's FY20 Executive Budget includes the option for a presumption of release to be rebutted based on certain charges and in instances where a defendant poses an immediate risk of physical harm to members of their family or household.² We recommend that this list of charges that are eligible for preventive detention be expanded to include sexual assault charges and charges related to child physical and sexual assault.

Every case of intimate partner violence, sexual assault, or child abuse is different, and requires a different approach to ensuring survivor safety. We do not put forth this position to say that anyone charged with a domestic violence, sexual assault, or child abuse misdemeanor should automatically be detained pre-trial. We know that this is currently not the case; most individuals charged with domestic violence misdemeanors in New York City are released on their own recognizance.³ We advocate for this policy so that for cases where there are identifiable threats of violence against an individual or group of people, **all options to ensure someone's safety are available**, including pre-trial detention. Furthermore, establishing a clear and convincing evidentiary standard would ensure that this option will be reserved for serious cases where pre-trial detention is warranted.

Furthermore, we support the statewide expansion of pretrial service programs like those currently supported by the Mayor's Office of Criminal Justice in New York City. These pretrial services should be available to individuals charged with domestic violence, sexual assault, and child abuse offenses. We believe that defendants should not have to pay for any pretrial services that are designed to ensure their return to court. **We also strongly encourage the State to ensure that there is sufficient funding committed to counties to operate robust pretrial services.**

We also want to offer caution when it comes to electronic monitoring, particularly around domestic violence cases. Electronic monitoring is not a fail-proof mechanism for keeping domestic violence survivors safe, as technology can fail and false alarms can occur. We encourage counties to ensure that there are robust options for ensuring the safety of a domestic violence survivor in the case of criminal proceedings, including access to emergency shelter and safety planning with a domestic violence advocate.

Discovery

Safe Horizon supports reform to the State's discovery laws as long as there is an option for the prosecution to withhold or redact the identifying information of victims and witnesses if disclosure would impair their safety, integrity, and/or the integrity of the ongoing investigations.⁴ Coming forward and pursuing or testifying at a case in criminal court can put a victim in danger, and there must be safeguards in place to ensure that a victim's or witness' identity can be protected when

² See the Public Protection and General Government Article VII Legislation of the FY2020 New York State Executive Budget: <https://www.budget.ny.gov/pubs/archive/fy20/exec/artvii/ppgg-artvii.pdf>

³ According to the Center for Court Innovation, 78% of defendants charged with a domestic violence misdemeanor were released on their own recognizance in 2013, which was only slightly lower than the release rate for non-domestic violence misdemeanors (81%). For more information on pretrial decisions on domestic violence cases, see https://www.courtinnovation.org/sites/default/files/media/documents/2018-03/domestic_violence_nyc_case_processing.pdf

⁴ This position is expanded upon in a report by the Justice Task Force, of which Safe Horizon is a voting member: <http://www.nyjusticetaskforce.com/pdfs/Criminal-Discovery.pdf>

necessary. We also recommend that strong protections be in place for children, as we know that children who are victims of or witnesses to crime can be highly traumatized by what has happened, and their identities and addresses must also be protected if needed.

Beyond the Criminal Justice System

Much of the discussion around the needs of crime survivors has been in the context of criminal proceedings. At Safe Horizon, we know that many people seek remedies outside of the criminal justice system entirely, and that these services may be sought out concurrent with or separate from criminal proceedings. In order to respond holistically to survivors of crime, we need to ensure that survivors have a wide range of choices for safety and healing. Expanding access to civil legal services, to emergency domestic violence shelter, to long-term affordable housing, to counseling and other mental health services, to case management services, and to economic empowerment programs are all crucial ways to support survivors of crime, though these services are often in short supply. As New York State reforms its criminal justice system, we urge the State to also ensure that crime survivors have access to the supportive services that they need to heal in the aftermath of a crime.

Conclusion

Reform efforts that do not reflect the real needs and perspectives of survivors and survivors will miss the opportunity to envision and build a criminal justice system that is effective, accessible, and helpful to individuals and families seeking justice.

Safe Horizon recommends:

- Ending the cash bail system and having a presumption of release pre-trial;
- Ensuring that there is an option to rebut a presumption of release in cases where there is clear and convincing evidence that the defendant currently poses an identifiable threat to the physical safety of a person or persons;
- Centering the decisions and preferences of survivors when it comes to choices about pre-trial detention; and
- Ensuring safeguards for the protection of victims and witnesses when their safety could be at risk through sharing evidence during an early discovery process.

Safe Horizon urges Governor Cuomo and the New York State Legislature to incorporate the needs of survivors in all criminal justice reforms.