

A person with dark, curly hair tied back is holding a blank, rectangular sign. The person is wearing a colorful, patterned top. The background is a blurred image of a building with a sign that partially reads "NY". The entire image has a dark blue overlay.

Leading the Way:

The 2020 Civil Liberties
Agenda for New York

NYCLU

ABOUT THE NYCLU

The New York Civil Liberties Union (NYCLU) is one of the nation's foremost defenders of civil liberties and civil rights. Founded in 1951 as the New York affiliate of the American Civil Liberties Union, the NYCLU is a not-for-profit, nonpartisan organization with eight chapters and regional offices, and more than 180,000 members across the state. The NYCLU's mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality and due process of law for all New Yorkers. For more information, please visit **www.nyclu.org**.

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THE FIGHT IS
**FAR FROM
FINISHED.**

NYCLU

New York Should Be a Beacon of Liberty

In 2018, New Yorkers went to the polls demanding change. Their votes ushered in new leadership in the State Senate and paved the way for a new era of progressive values in Albany.

Lawmakers listened.

After the midterms, the New York Civil Liberties Union released our *First 100 Days* agenda, calling on New York elected officials to keep civil rights and civil liberties at the heart of their decisions.

Legislators passed more than two-thirds of the NYCLU's policy agenda. They enacted legislation that made our reproductive health laws stronger, our voting system more democratic, our criminal legal system fairer, immigrants and students safer, and police more accountable. It was the most successful and historic legislative session in recent memory.

Now lawmakers must prove that last year was no fluke. Already there are rumblings in political circles that the next legislative session will be less productive than the last. But we cannot afford to take our foot off the gas. We know President Trump and his allies are charging ahead with policies that devastate entire communities and wreak havoc on our rights. We cannot allow these policies to go unchallenged in New York — and keeping them at bay requires legislative action.

Trump has made it his mission to separate immigrant families and lock them up in torturous and deadly conditions. He has tripled down on the war on drugs, allowed police to abuse Americans with impunity, and made it clear his solution to poverty is to lock up poor people. Meanwhile, his Education Department has turned its back on students while adding fuel to the school-to-prison pipeline, and his Justice Department wants employers to be able to fire LGBTQ employees because of who they are.

In 2020, legislators in Albany should prioritize making New York a bulwark against these attacks on our civil rights. This report sets out critical legislative initiatives that build on the remarkable progress of

the last session and ensure that New York is a haven for equality and justice, even in these dark times.

State lawmakers must act now to pass legislation that will:

- **Expand our democracy** by enacting automatic voter registration and restoring parolee voting rights.
- **Make our criminal system more just** by holding police accountable, legalizing marijuana, ending the torture of solitary confinement, curtailing the punishment of poverty, and reforming our parole system.
- **Protect immigrants** by prohibiting local governments from cutting corners on due process to fuel the deportation machine, keeping ICE out of courthouses, and providing lawyers for people facing deportation.
- **Stand up for students** by promoting Solutions Not Suspensions and requiring comprehensive sex education.
- **Defend trans, gender non-conforming, and non-binary people** in schools, jails, prisons, and in police encounters, and by expanding gender markers on IDs.
- **Safeguard our privacy and bodily autonomy** by banning the collection of biometric data and other sensitive information, and giving people who are dying the right to a peaceful death.
- Fight discrimination by establishing a robust framework for equality with a State Equal Rights Amendment

New York should serve as an example of what happens when politicians respond to the people who elected them. Our leaders must take bold steps to make our state a more just, equitable, and fair place. The 2019 legislative session should be a blueprint for how to achieve justice, not an excuse for inaction in 2020.

THE BRONX

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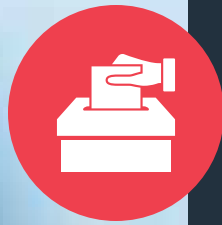
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Expand Our Democracy

AUTOMATIC VOTER REGISTRATION

New York should automatically register eligible voters when they interact with state agencies.

In November 2016, New York ranked 47th among the 50 states and Washington, D.C. in voter registration rates, according to data from the Census Bureau.¹ The burden is on New Yorkers to make sure that they are registered, and that burden is a heavy one.

Currently, online voter registration is only available to New Yorkers with Department of Motor Vehicle identification. All other voters have to submit paper forms to their local Board of Elections, until New York makes electronic registration available in 2021.

Automatic Voter Registration would capitalize on this technology to securely register eligible citizens when they interact with a state agency, unless the citizen chooses to opt out. By shifting the burden and making registration seamless, it would bring as many as one million new voters onto the rolls and significantly improve New York's dismal registration rate.

Lawmakers must keep their pledge and pass Automatic Voter Registration early in the 2020 session.

RESTORE VOTING RIGHTS FOR PEOPLE ON PAROLE

New York should automatically allow parolees to vote in all elections.

People who are released from prison on parole have very few resources. They must reenter their communities and adjust to daily life, find work and housing, reestablish family and community relationships, and avoid re-incarceration.

Yet our laws fail to acknowledge their right to participate in the democratic process. This is both unfair and unwise because when people on parole vote, everyone wins. Community supervision officials report that increased civic engagement correlates with decreased recidivism, improved public safety, and much more positive outcomes for people on parole.ⁱⁱ

At any given time, between 35,000 and 40,000 people are on parole in New York.ⁱⁱⁱ Nearly three-quarters are either Black or Latinx, and most have limited economic means. Voting rights have been restored to most New York parolees by executive pardon since 2018 — but the process is not automatic and can be confusing. Too many New Yorkers on parole are still unable to vote as a result.

This year, lawmakers must pass a bill to permanently and automatically restore the right of New York parolees to vote in all elections, and provide affirmative and accurate information about the right to vote.





**VOTE
HERE**



END
POLICE
SECRECY

NYCLU

END
POLICE
SECRECY



Make Our Criminal System More Just

MAKE POLICING TRANSPARENT AND ACCOUNTABLE

New York has a police secrecy problem. Police officers are public servants, but the public is routinely denied basic information about the impact of policing on their communities.

A single interaction with a police officer can be deadly, or have lifelong consequences. Communities of color bear the brunt of misconduct.

We must guarantee that police departments throughout New York State are fully accountable to the communities they are sworn to protect and serve. Lawmakers must ensure real accountability through transparency and independent oversight.

OPEN THE BOOKS ON POLICING

New York should pass the Police Statistics and Transparency (Police-STAT) Act to shed light on law enforcement.

From the lowest-level tickets like drinking beer in the park, to the most serious cases when someone dies in police custody, New Yorkers often have very little information about how their communities are policed. Departments regularly keep secret how, when, and whom they decide to ticket or arrest. Some departments do not even track this information at all.

Without data on New Yorkers' encounters with the police, it is impossible to gauge the true impact, costs, and effectiveness of police practices.

For the past four years, the Assembly has passed the Police-STAT Act. This bill would require the collection and reporting of basic information, including:

- The number of people who die as the result of a police encounter
- The number of arrests and tickets for all violations and misdemeanor offenses
- The locations of police encounters
- The race, ethnicity, age, and sex of people ticketed, arrested, or killed by the police

This common-sense measure is a first step to help understand how policing affects our lives and our communities.

New York is one of just two states with **full secrecy** around police discipline.

REPEAL 50-A

New York should repeal Section 50-a of the state Civil Rights Law and make the outcomes of police misconduct cases public.

New Yorkers are in the dark about how departments hold officers accountable for misconduct, including officers who kill New Yorkers. Section 50-a of the state Civil Rights Law, the most secretive police misconduct law in the country, declares that police "personnel records" about officer performance are confidential. These are not sensitive documents like health records, they are records of alleged and substantiated police abuse.

As bad as the law is on its face, police departments, local governments, and police unions across the state are trying to make it even worse. Police departments are invoking 50-a to hide outcomes of disciplinary trials — even for allegations of serious misconduct that are substantiated by investigators. Some departments have tried to hide information on use-of-force incidents, claiming that even statistics about the frequency of these incidents are personnel records.

New York should repeal 50-a and treat police disciplinary records like any other public record under the state's Freedom of Information Law. New York is one of just two states with full secrecy around police discipline, while 28 states make at least some information on police misconduct public. As long as 50-a remains on the books, it will be used to prevent the public from learning important information about the people sworn to protect them and the department leaders tasked with holding them accountable.

New York has the opportunity to end police secrecy and set a new standard for transparent and equitable policing.

ENSURE INDEPENDENT INVESTIGATIONS WHEN POLICE KILL NEW YORKERS

New York should pass legislation to create a permanent special prosecutor to investigate and prosecute cases where police unjustifiably kill people.

We have seen the same pattern emerge over and over across the country and here in New York: A police officer kills someone. Then a local prosecutor declines to file charges after a secretive grand jury process. Outrage erupts because the public does not trust that the system holds officers accountable when they kill someone unjustifiably.

When people are killed by the police, the public must be able to trust in the integrity of any investigation. But local district attorneys, who rely on close collaboration with law enforcement to do their jobs, may have conflicts of interest when tasked with investigating police.

Governor Cuomo issued an executive order in 2015 appointing the Attorney General to act as special prosecutor when someone dies in the course of a police encounter. But executive orders can be revoked. The legislature should act to make this permanent, ensuring independent investigations of all future cases in which someone dies in police custody — regardless of who sits in the governor's office. In three different sessions, the Assembly has already passed legislation to do just that.

In addition to ensuring the continued existence of the Office of Special Investigation, the legislation would also shed light on the murky grand jury process and allow the public to gain a window into how the Attorney General's office reaches decisions in these types of cases.

LEGALIZE CANNABIS

New York should pass the Marijuana Regulation and Taxation Act (MRTA) to legalize cannabis and reinvest in communities.

Marijuana arrests have a devastating and disproportionate impact on communities of color. In New York State, more than 80 percent of people arrested for marijuana possession are Black or Latinx.

New York State decriminalized possession of small amounts of marijuana in 1977, but it left in place loopholes that allowed for hundreds of thousands of arrests for smoking in public and public display of marijuana. Low-level possession has remained one of the most frequently charged crimes in New York, generating more than 800,000 arrests since 1996.

Marijuana arrests have a disastrous impact on New Yorkers, especially in communities of color. Hundreds of thousands of people across the state have been funneled into the criminal justice system for behavior that most New Yorkers don't even believe should be a crime. This entanglement with the justice system can have far-reaching consequences: people can lose their jobs, housing, and child custody. Lives can be upended and destroyed.

Low-level possession
has remained one of
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since 1996.

Last year, New York took additional steps to undo some of the harms of criminalization, eliminating misdemeanors for smoking in public and public display of marijuana, and lowering penalty amounts for low-level possession. For the first time, the state will begin expunging records of convictions for low-level marijuana offenses. These steps are important, but they do not undo the devastating consequences wrought by decades of aggressively enforced prohibition.

It's time to end the criminalization of cannabis for good by passing the MRTA and making New York the 12th state to legalize and regulate cannabis for use by adults.

The MRTA:

- Allows adults 21 and older to legally possess, purchase, and consume cannabis for personal recreational use
- Removes cannabis and cannabis products from the state Controlled Substances Act
- Legalizes private cultivation of up to six plants

- Builds on last year's reforms by eliminating most existing misdemeanors and felonies related to cannabis, and expands avenues for expungement and resentencing for prior convictions
- Ensures a well-regulated, diverse, and inclusive legal cannabis industry going forward

The fiscal benefits of legalizing cannabis are substantial — the MRTA would direct hundreds of millions of dollars in annual state revenues from legal sales to good use. Half of the tax revenues would go to the Community Grants Reinvestment Fund for job training, after-school programs, and community-centered projects in low-income communities and areas hardest hit by the war on drugs. Another 25 percent of the surplus revenue would fund drug treatment programs and public education campaigns. The remaining share would help fund public schools.

The MRTA is a long-overdue initiative to right a grave, decades-long injustice. It is time for New York officials to step up, stop the harm, and start repairing the damage from the failed war on drugs.



END LONG-TERM SOLITARY CONFINEMENT, COMBAT MASS INCARCERATION, AND STOP CRIMINALIZING POVERTY

In 2019, lawmakers passed major reforms to our bail, speedy trial, and discovery laws. Yet much remains to be done.

New York must improve conditions for the tens of thousands of New Yorkers in state prisons, and directly reduce the number of people incarcerated in our state. This year, legislators must ban the use of long-term solitary confinement, reduce the prison and jail population by reforming our parole system, and stop criminalizing poverty by no longer suspending people's drivers' licenses when they cannot pay minor fines.

HALT LONG-TERM SOLITARY CONFINEMENT

New York should pass the Humane Alternatives to Long-Term Solitary Confinement (HALT) Act to end the torture of prolonged solitary confinement.

Prolonged solitary confinement creates severe mental and physical trauma that can cause irreparable harm. The United Nations considers long-term solitary (more than 15 consecutive days) torture.^{iv} The effects can be deadly.

Yet thousands of people are subjected to prolonged solitary confinement in New York. State laws permit 23-hour confinement in jails and prisons, sometimes for minor misbehavior, for months or even years at a time. Corrections officers have broad discretion over who they subject to this form of confinement.

Assembly and Senate leadership struck an agreement with Governor Cuomo near the end of the last legislative session to reform solitary practices through

regulatory changes. But these new state regulations do not adequately address what New York needs.

New York should pass the Humane Alternatives to Long-Term Solitary Confinement (HALT) Act, which would:

- Limit confinement to no more than 15 consecutive days, or 20 days total in any 60-day period
- Ban solitary confinement for those most vulnerable to the psychological and physical harms of isolation, including people 21 years or younger, those 55 years or older, people with certain physical, mental, or medical disabilities, and anyone pregnant or in the first eight weeks of post-partum recovery
- Only allow solitary for serious misconduct
- Mandate rehabilitative programs
- Require reporting on who is put in solitary

The HALT Act will help prevent some of the most harmful aspects of solitary confinement while putting strict limits on when it can be used. These humane and effective reforms promote treatment and true rehabilitation of incarcerated people, rather than punishment and isolation.

FAIR AND TIMELY PAROLE

New York should grant parole based on who a person is when they come before the parole board — including evidence of rehabilitation.

Our state's prison population has decreased over the last decade, but the average minimum sentence has climbed to 10 years. A third of New York's prison population could serve terms of at least 15 years, and 9,000 people face life in prison if they are not

paroled.^v

We must address mass incarceration at both the front end, before people are put in prison, and on the back end, after they have served a portion of their sentence and are eligible for parole. The New York Parole Board has the authority to release people before the end of their sentences if they demonstrate rehabilitation. But the number of people granted parole by the board has decreased in recent years.^{vi}

The Fair and Timely Parole bill would ensure that parole decisions are based on evidence that they have been rehabilitated and a person's current risk to public safety. The bill could make up to 12,000 people eligible for consideration for release.

Our criminal system should not be centered on vengeance. Parole should be granted based on who a person is when they come before the parole board, not on the crimes they have committed.

LESS IS MORE ACT

New York should pass the Less is More Act to make sure people who have not committed new crimes are not locked up.

Nearly 40% of the people sent to state prison in New York in 2018 were incarcerated for technical parole violations, not for committing crimes.

Under New York law, people on parole can be sent to prison for technical violations like ignoring a curfew or missing an appointment with a parole officer. Nearly 40 percent of the people sent to state prison in New York in 2018 were incarcerated for technical parole violations, not for committing crimes. And they are automatically locked up, regardless of the alleged infraction.

There are 35,000 people living under parole supervision in New York who are required to comply with certain rules or conditions after their release from prison.^{vii} They can be sent to jail or prison if a court finds that there is a better chance than not that a person violated their parole. Unsurprisingly, parole revocations are one of the major drivers of incarceration in county jails and prisons across the state.

People who are released from jail or prison have the opportunity to get back to their community and to their families. We should be doing everything we can to help them contribute to society, instead of finding ways to put them back behind bars for technical violations.

Lawmakers should pass the Less is More Act, which would:

- Prevent most people accused of technical parole violations from being put behind bars
- Allow people under community supervision to earn "good time credits" that will reduce the amount of time a person has to stay under supervision
- Provide protections to ensure people are not incarcerated while their alleged parole violation is adjudicated
- Require speedy hearings for any technical parole violation

The Less is More Act recognizes that people on parole who have committed no new crimes should not be locked up.

PAROLE FOR OLDER PEOPLE

New York should pass the Elder Parole Bill so that older people in prison have a chance to be free.

Decades of draconian prison sentences meted out as part of the so-called wars on drugs and crime have grown the population of elderly people in prison. Few are brought before the parole board to be considered for release, despite the fact that most won't reoffend.^{viii}

Instead, they remain behind bars, with limited access to health care while their health deteriorates. Research shows that prison actually speeds up a person's aging: A person in prison who is 55 years old has a health profile that is more like someone who is 65, or even older.^{ix}

Giving older people a chance to come home to their families after years in prison can give them more time to acclimate to society and be with the people they love. It will also help reduce the high cost to taxpayers of caring for older people in prison.^x

The Elder Parole Bill will:

- Ensure that every person 55 and older who has served 15 consecutive years or more has a chance to be considered for release by the parole board
- Create a pathway to allow older people in prison an opportunity to demonstrate that they are ready for re-entry

STOP PUNISHING POVERTY

New York should pass legislation that prevents the suspension of drivers' licenses for minor defaults in payments or missed court dates.

In 2019, lawmakers made improvements to New York's cash bail system, ensuring thousands of New Yorkers are no longer jailed for months or even years while awaiting trial because they cannot afford to pay. But there are other critical ways in which our criminal legal system punishes people for being poor.

Many New Yorkers do not have the cash to pay a court fee or fine that can cost hundreds of dollars. Many work at low-income shift jobs that they would lose if they took time off to appear in court. For these New Yorkers, missing a court date or payment typically leads to even more fines and fees they cannot pay, which can lead to steeper consequences. One of the most frequent punishments is driver's license suspension.

The inability to drive can make it impossible for many people keep or find a job, or take care of family.

It is time to address our legal system's fundamental economic inequities. A violation that a person with economic means can easily afford can upend the life of someone who is less well-off. Lawmakers should end the practice of suspending drivers' licenses for minor defaults in payment or missed court appearances, and ensure that fines and monitoring fees are not higher than a person can afford.

No one should be penalized for their poverty.





Stand Up for Students

SOLUTIONS NOT SUSPENSIONS

New York should pass the Judge Judith S. Kaye Solutions Not Suspensions Act to stop the school-to-prison pipeline.

Schools should be places where students are included, respected, and supported. But in New York, students lose hundreds of thousands of days in the classroom each year because of suspensions, often for normal youthful behavior. These punishments disproportionately impact Black and Latinx students and those with disabilities. They also limit academic achievement and fuel the school-to-prison pipeline, pushing students out of the classroom and into the criminal legal system.

End the **school-to-prison pipeline** and pass the Solutions Not Suspensions Act



Zero-tolerance policies particularly harm students of color and those with disabilities. In New York City, Black students have the highest rate of suspension. They account for 27 percent of the school population but almost half of all suspensions.^{xi} Students with disabilities represent 19 percent of all students, but account for 39 percent of suspensions.^{xii} According to the most recent federal data, in Buffalo, Black students are about 2.6 times more likely to be suspended than their white peers; in Rochester, 1.7 times more likely; and in Yonkers, 3.3 times more likely.^{xiii} Suspensions also have financial consequences for New York. Experts estimate that suspensions cost states hundreds of millions of dollars in lost wages, tax revenue, and other social costs.^{xiv}

The Judge Judith S. Kaye Solutions Not Suspensions Act will:

- Encourage the use of positive and age-appropriate school discipline strategies that teach students the consequences of their behavior and hold them responsible
- Eliminate the use of out-of-school suspensions for minor infractions
- Significantly limit suspensions for students in K-3
- Limit suspensions to twenty school days
- Ensure students receive instruction when they are removed from school

The act will move New York to the forefront of nationwide efforts to end the school-to-prison pipeline and eliminate racial inequities in school discipline.

COMPREHENSIVE SEX ED

New York should require comprehensive sexual health education in public schools.

New York State does not currently require comprehensive sexual health education in public schools. As a result, many public school districts across New York provide sex education that is inaccurate, incomplete, or biased — and some schools provide none at all. This has resulted in poor health and educational outcomes for young people, and perpetuates the broader culture of sexual harassment and violence.

Without comprehensive sexual health education, young people are at risk. In New York, about 10 percent of teenagers reported experiencing physical violence in dating, and LGBTQ students are more than twice as likely as their peers to report such violence.

Failing to teach comprehensive sexual health education also leads to poor health and educational outcomes. Among New York high school students surveyed in 2017, half had engaged in sexual intercourse, but of these only 11 percent reported using a prevention method to protect against pregnancy and infection.

Three in ten young women in New York will become pregnant at least once before their 20th birthday.

Public health experts and researchers agree that K-12 age-appropriate, comprehensive sex education empowers young people and improves health and educational outcomes. Comprehensive sexual health education is a proven tool for building a culture of consent and preventing sexual assault and violence.^{xv}

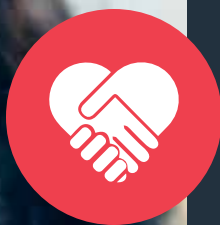
New York must act to require public schools to teach medically accurate, age-appropriate K-12 comprehensive sex education that reflects national standards and best practices.



K-12 Comprehensive
Sex-ed
NOW!



NO BODY IS ILLEG



Protect Immigrant New Yorkers

New York should stop local governments from serving as ICE agents, prevent ICE arrests at courthouses, and ensure lawyers for immigrants.

New York has taken steps to become a more secure place for immigrants. Last year's legislature passed:

- The New York State Dream Act to open up financial assistance for college-bound students who are undocumented
- Reforms to misdemeanor sentencing that will help people with low-level convictions avoid deportation
- The landmark Green Light Bill to make driver's licenses available regardless of immigration status

Yet the Trump administration's cruel campaigns against immigrants continue, including raids and threats of more raids. New York can do more to be a national leader for immigrants' rights.

STOP LOCAL GOVERNMENTS FROM SERVING AS AGENTS OF ICE

In 2020, New York must pass comprehensive legislation to keep state and local officials out of the business of immigration enforcement. In many parts of our state, immigrant New Yorkers live in fear that a brush with local authorities — even for a minor offense — could put them on the path to deportation. This is because many law enforcement agencies or other government officials reflexively give over information to and otherwise enable U.S. Immigration and Customs Enforcement (ICE). This makes immigrant residents reluctant to report crimes, work with local officials, and participate in the community.

New York should pass legislation to prohibit employees at all levels of state and local government from investigating people's immigration status, reporting people to ICE, or entering into agreements that use local resources for immigration enforcement.

PREVENT ICE ARRESTS AT COURTHOUSES

One of the most pernicious ways that ICE targets immigrant New Yorkers is by arresting people in and around courthouses when they appear to resolve various legal matters. Since President Trump took office, ICE has begun arresting immigrants at state courthouses at alarmingly high rates, often resorting to violence in the process.

ICE's brazen tactics mean domestic violence survivors are afraid to pursue cases against their attackers, people wrongfully accused of crimes are scared to challenge the allegations against them, and witnesses for the defense and prosecution are unwilling to testify. Our legal system cannot function if people are afraid to use it.

New York should pass the Protect Our Courts Act. The

bill would make it illegal to arrest someone for civil offenses, like immigration violations, without a warrant either while attending court or when coming to or leaving a court appearance.

The fear of ICE should not prevent our courts from functioning.

ENSURE LAWYERS FOR IMMIGRANTS

The federal government has made it clear that it wants to deport as many non-white immigrants as possible, as quickly as it can, regardless of how many lives are shattered in the process.

New York must expand its efforts to provide legal assistance to immigrant New Yorkers facing deportation proceedings and seeking other relief through the courts. Since 2017, New York State has allocated millions of dollars of funding for immigrant legal services through the Liberty Defense Project. When the legislature returns next year, it must continue to fund immigrant legal services at a level that ensures immigrant New Yorkers have meaningful access to a lawyer.

New York needs to
pass the Protect Our
Courts Act to **stop**
the fear of ICE at our
courthouses.

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RESIST

MASS DETENTION
AND DEPORTATION

NYCLU

ALL OF US | ASIAN | ATHEIST | **ACLU**
BI/PAN/FLUID | BLACK | BROWN

CATHOLIC | CHRISTIAN | DISABLED
DIVA | FABULOUS | FAT | FEMME | GAY
GENDERQUEER | HINDU | IMMIGRANT
INDIGENOUS | JEWISH | LATINX | LESBIAN
MAN | MULTIRACIAL | MUSLIM | NON-BINARY
PACIFIC ISLANDER

NO BODY
IS ILLEGAL

QUEEN | QUEER
SAGE | SIKH | TRANS | WHITE | WOMAN
YOUNG | ASEXUAL | BLACK | BROWN
BUDDHIST | DISABLED | DIVA | FAT
FABULOUS | FEMME | GAY | ALL OF US





Defend Trans, Gender Non-Conforming, and Non-Binary New Yorkers

Last session, New York passed the Gender Expression Non-Discrimination Act (GENDA), which amended the state's anti-discrimination statutes to explicitly add gender identity and expression to the list of protected classes.

National surveys prove that there is pervasive discrimination against transgender and gender non-conforming people. For some New Yorkers, expressing the simplest and most fundamental parts of their identities — how they dress, the pronouns they use, their speech, even their names — can expose them to hostility, abuse, and exclusion.

Now the rights of LGBTQ New Yorkers hang in the balance at the federal level, endangered by the Trump administration. New York legislators must build on last session's momentum and ensure our state adequately protects transgender, gender non-conforming, and non-binary people.

EXPAND GENDER MARKERS

New York should pass the Gender Recognition Act.

To rent an apartment, access public benefits, open a bank account, or drive a car, New Yorkers need identity documents. Transgender, gender non-conforming, and non-binary New Yorkers deserve access to identity documents that reflect who they are and that enable them to participate fully in society. Inaccurate identity documents can lead to harassment and abuse, even from police.^{xviii}

The process to change the name or gender marker on a state identity document is antiquated, cumbersome, and for many, shaming. State law requires applicants to publish their current names, previous or “dead” names, their addresses, their birth dates, and their places of birth in a designated newspaper. This requirement violates one’s privacy and dignity and can put people in danger of discrimination, ridicule, or even violence. Making matters worse, non-binary people cannot even obtain a state identity document that reflects their identities, because the only gender markers New York offers are “male” and “female.” New York should pass the Gender Recognition Act, which would:

- Make New York the 10th state to create a non-binary gender marker for drivers’ licenses and the fourth state to create a non-binary gender marker for birth certificates^{xix,xx}

- Create a privacy-protective, streamlined, and non-stigmatizing process for people to change the names and gender markers on their identity documents

PROTECT STUDENTS’ GENDER EXPRESSION

New York should pass legislation to make GENDA a reality for students.

For many transgender, gender non-conforming, and non-binary students, GENDA’s promise remains unfulfilled. According to a recent nationwide survey, 45 percent of LGBTQ students feel unsafe because of their gender expression. The vast majority, 87 percent, heard negative remarks about transgender people in school, and a whopping 94 percent heard negative remarks about gender expression. 71 percent of students reported hearing transphobic comments not only from peers, but also from teachers or school staff. And more than four in ten were prevented from using their names or pronouns, required to use the bathroom or locker room designated for their sex assigned at birth, and/or avoided single-sex spaces altogether.^{xxi}

As a result, transgender, gender non-conforming, and non-binary youth are more likely to miss school, have lower GPAs, and experience school discipline than their cisgender peers. They are also less likely to pursue higher education, and they experience higher levels of depression and lower self-esteem.^{xxii}

New York should enact legislation to make GENDA’s promise a reality in schools by requiring schools to adopt policies and procedures that ensure:

- Schools and their employees treat students consistently with their gender identity or expression, including by correctly using students’ names and pronouns
- Students can participate in single-sex activities

45 percent of LGBTQ students **feel unsafe** because of their gender expression.

and use the single-sex spaces most consistent with their gender identities

- Students' records accurately reflect their gender

With these reforms, the principles enshrined in GENDA can match the lived experiences of New York's transgender, gender non-conforming, and non-binary students.

END GENDER-BASED MISTREATMENT BY THE CRIMINAL SYSTEM

An encounter with a police officer or a trip to jail can be terrifying, degrading, and dangerous experiences for anyone. But transgender, gender non-conforming, and non-binary New Yorkers suffer particular indignities in the law enforcement and correctional contexts.

Many transgender women of color are profiled by police as sex workers and arrested for "loitering" in public places. And when transgender and non-binary New Yorkers go to jail, they are all too often misgendered and mocked by correctional officers. They are all too often misgendered, mocked by correctional officers, forced to ensure humiliating examination, and placed in populations where their safety is in danger.

In 2020, New York lawmakers must end the practice of criminalizing transgender and gender non-conforming New Yorkers who dare to appear in public places. And nobody entering the correctional system should be subjected to degrading treatment or unsafe conditions because of their gender identity or expression.

REPEAL THE 'WALKING WHILE TRANS' LAW

New York should repeal the offense of loitering for the purpose of engaging in prostitution.

In 1976, New York lawmakers created the offense of "loitering for the purpose of engaging in prostitution," making it a violation and sometimes a crime — for anyone appearing in public to repeatedly call to, stop, or attempt to stop passers-by; to attempt to engage them in conversation; or to signal to motor vehicles "for the purpose of prostitution."^{xxiii,xxiv}

Police enforcement of this law has entailed decades of profiling and false arrests of women of color, particularly transgender women.

Talking to another person or being in a public place is not a crime. Yet courts charged with upholding these rights have convicted New Yorkers merely because they were wearing form-revealing and gender non-conforming clothing.^{xxv} The ways that women of color present themselves should never be policed, let alone result in an arrest or conviction.

It's past time to repeal the archaic and unfairly-enforced offense of loitering for the purpose of engaging in prostitution, derided by LGBTQ advocates as the "walking while trans" law.

END GENDER IDENTITY-BASED MISTREATMENT IN THE CORRECTIONAL SYSTEM

New York should prevent gender identity-based discrimination and mistreatment in jails and correctional facilities.

Going to jail is a traumatizing experience. But for transgender, gender non-conforming, and non-binary New Yorkers, it is especially likely to result in harassment and violence.

Correctional officers frequently misgender people whose gender expression does not match their sex assigned at birth, either carelessly or intentionally. Routine processing can lead to degrading interrogations about a person's gender and humiliating genital examinations. And some people are placed in a men's or women's facility that does not match their gender identity and puts their safety at risk.

These housing placements regularly lead to violence, and when trans, gender non-conforming, and non-binary people are attacked by other people in jail, they are often put in solitary confinement. These victims of violence are sometimes forced to spend the duration of their incarceration in the torturous conditions of extreme isolation, ostensibly for their own safety.

This year, New York should pass legislation that ensures local jails and state correctional facilities adopt best practices to prevent discrimination, harassment, and dangerous housing conditions for transgender, gender non-conforming, and non-binary New Yorkers.









Safeguard Our Privacy and Bodily Autonomy

PROTECT PRIVACY IN OUR DIGITAL WORLD

New and invasive technology poses a serious risk to our civil rights and civil liberties. Companies surreptitiously harvest our personal data for profit. Facial recognition and other biometric technology collect physically identifiable information in secret. Algorithms used by government agencies foster discrimination while promising neutrality. Law enforcement can access our private digital communications without a judge's approval.

New Yorkers' rights should extend fully to the digital world. This means banning algorithms that violate civil rights laws; ensuring meaningful access to and control of personal data; banning biometric recognition technologies in policing, housing, and education; and requiring warrants to access online communications and data. New Yorkers should see their lives enhanced by 21st century technology, not become victims of it.

PREVENT DISCRIMINATORY ALGORITHMS

New York should enact affirmative civil rights protections for the online world and require strong oversight and review of public automated decision systems.

In the digital age, our personal information is easily wielded against us. Precisely-targeted pricing, advertising, and other automated decision tools are used to exclude people of color, women, and older individuals from housing, credit, and employment opportunities in ways that would be unthinkable in the offline world.^{xxvi}

Government agencies increasingly turn to automated decision systems, like algorithms, to determine everything from teacher evaluations and child custody, to sentencing, probation, and parole — and more. Computer-generated decisions have the veneer of objectivity, but when these systems rely on data selected through biased human input, they are likely to spit out biased results. When an algorithm bases a decision to hold someone in jail before trial, in part, on stable housing history, that decision will be biased against people of less means who are unable to afford a home.

New York must enact affirmative civil rights protections for the online world and must also require transparency, strong oversight, and rigorous review of public automated decision systems.

Biometric technologies
are notoriously
inaccurate and
racially biased.

PROTECT PERSONAL DATA

New York should enact a comprehensive privacy law that shows us how our data is collected, used, and shared, and lets us control *what* is collected, *how* it is used, and *where* it goes.

Every time we browse the internet, use our smartphones, connect to a network, or even purchase something with a credit card, we share our personal data. While private to us, that data is valuable to businesses, who use it in ways we might not approve of, sell it to parties we don't know, and occasionally lose it to hackers and thieves. If we try to control this process, we wind up mired in the inscrutable fine print of Privacy Policies and User Agreements, and too often simply give up.

This needs to change.

New York must enact a comprehensive privacy law that:

- Shows us how our data is collected, used, and shared, and lets us control *what* is collected, *how* it is used, and *where* it goes
- Requires businesses to secure our data and use it only as we intend, putting our privacy above their profits
- Respects First Amendment values like robust online speech, a free press, and open access to publicly available information

CURTAIN BIOMETRIC SURVEILLANCE

In recent years, New York has seen an uptick in the use of biometric recognition technologies — like face, voice, gait, and fingerprint recognition — in public spaces like housing, schools, mass transit, and bridges.

Biometric technologies are notoriously inaccurate and racially biased. For example, facial recognition technology is wildly inaccurate at matching faces, especially those of women and people of color.^{xxvii} In addition, biometric technologies rely on the monitoring and collection of your personal biological characteristics. Unlike a password or credit card number, this information cannot be changed if it's compromised or stolen.

Biometric technologies have no place in our schools or in our homes, and they should not be used in police body cameras.

BAN BIOMETRIC RECOGNITION IN SCHOOLS

New York should bar the use of facial recognition technology and other biometric surveillance in public schools to protect students' privacy and civil rights.

New York State has no rules in place to govern the use of the most invasive technology — biometric surveillance — against our schoolkids. In the absence of limits on schools' abilities to track and collect students' biological data, Lockport City School District in Western New York used millions in state taxpayer dollars to purchase facial recognition technology for its schools. Lockport is one of the first public school districts in the country to attempt to use this unethical, error-prone, and biased technology on students. More districts could soon follow Lockport's lead if the legislature fails to act.

Facial recognition technology is inaccurate, particularly in identifying women, young people, and people of color. This technology has the potential to turn schools into surveillance farms, and youthful misbehavior into a crime. How the information and images collected will be maintained and shared and who will have access to them, remain unanswered. Many districts, including Lockport, may be ill-equipped to safeguard this sensitive student data. There is also a danger that the data could be used for immigration enforcement, which could make parents of immigrant students afraid to send their children to school for fear that they or their children could end up on ICE's radar.

Students should think of schools as a safe place to learn, not have to worry that their every move is being monitored or that their pictures could end up in a police or immigration database simply because they came to class.

The New York State Education Department and the State Legislature should prohibit its use in public schools so that students, including those as young as four, are not subjected to this invasive surveillance technology.



BAN BIOMETRIC RECOGNITION IN BODY CAMERAS

New York should prevent police from using biometric recognition in body-worn cameras.

Police body cameras are supposed to be an oversight tool to guard against police misconduct and to increase community trust. Yet when they are combined with biometric technology, like facial recognition, they become an instrument for dragnet surveillance.

Such surveillance capabilities would chill free speech rights in public places by making people afraid to speak out for fear of having their biometric information snatched up by police. It would also exacerbate bias and discrimination — already over-policed communities of color would be doubly punished by both heightened surveillance and the risk of misidentification, since facial recognition is especially inaccurate in identifying people with darker skin tones.

California has shown that facial recognition is not inevitable and can be curtailed; New York should follow suit and enact a similar ban against this form of surveillance by law enforcement.

BAN BIOMETRIC SURVEILLANCE OF HOMES

New York should ban biometric technology of residential premises.

When biometric surveillance technology is installed by landlords, it allows for the precise tracking of tenants and guests in their homes, where there is the greatest expectation of privacy. No one should have to give up their right to privacy as a condition of having a home.

It's impossible for every tenant and guest to give meaningful consent to having their biometric data captured — once such a system is installed, people have no way to opt-out from having their sensitive

information scooped up.

Biometric surveillance has no place in the hands of landlords.

GIVE PEOPLE WHO ARE DYING THE RIGHT TO A PEACEFUL DEATH

New York should pass the Medical Aid in Dying Act.

New Yorkers who are dying deserve a basic measure of control and comfort as they near the end of their lives. No one who is confronted with a terminal illness should be forced to endure needless suffering or be denied a death with dignity. A person facing terminal illness should have the right to make decisions about their own body and health care, including the right to make an informed decision to end their life peacefully.

Patients diagnosed with terminal illness often endure extensive, sometimes painful treatment. When the limits of such treatment are reached, many patients wish to have control over when and how their death occurs. The New York State Constitution guarantees the right of every individual to make their own medical decisions, including whether to accept or refuse medical treatment. The law must also recognize the right of terminally ill patients to end their lives on their own terms.

The Medical Aid in Dying Act would give terminally ill people the legal right to make these critical decisions in consultation with qualified physicians. Similar laws are on the books in six other states and Washington, D.C. The bill would allow people to be prescribed medication for the purpose of ending their lives if they have been found by two physicians to meet the following criteria:

- The person is mentally competent and makes a voluntary and informed request

- The person suffers from a terminal illness
- The person has less than six months to live

For those living in pain, the bill would provide an end-of-life option that would shorten periods of suffering.

The decision to accelerate the end of life is a deeply personal one and must never be the product of coercion. The Medical Aid in Dying Act contains critical safeguards intended to make sure that end-of-life decisions are voluntary and informed:

- Medication to accelerate death could only be requested by the patient — both orally and in writing, with witness signatures — and must be self-administered

- Both an attending and consulting physician must conclude that an individual is competent to make this decision, and if either cannot make that determination, a referral for an independent mental health evaluation must be made
- Attending physicians must present alternative end-of-life options to the patient, including palliative and hospice care
- The decision of if or when to end one's life always remains with the individual

New York should pass this enlightened and compassionate legislation that honors and respects the wishes of our fellow New Yorkers during the most trying time of their lives.



**NO HUMAN
IS ILLEGAL**

#WOMENSVALE





Fight Discrimination

EXPAND THE STATE'S EQUAL RIGHTS AMENDMENT

New York should update its State Constitution to protect more New Yorkers.

Our state constitution sets forth the fundamental rights that each New Yorker can be confident will be protected against discrimination — no matter who is in power. But New York's existing equal protection clause (Article 1, Section 11 of the New York Constitution) is more than 80 years old and only protects New Yorkers from discrimination based on race or religion. It is in dire need of an update for today's New York.



To achieve true and lasting equality, New York must amend the state constitution to include a robust and inclusive Equal Rights Amendment.

Lawmakers should pass anti-discrimination language that includes protections based on a person's sex, pregnancy and pregnancy outcomes, sexual orientation, national origin, or disability — because we all need and deserve the constitution's protection.

New York needs to increase the categories of people protected by the law to include these groups. But

we must also expand New York's constitutional protections to address the structural impacts of racism and bigotry, including by explicitly protecting affirmative action programs in the face of a hostile U.S. Supreme Court.

It's time for New York's Constitution to have an inclusive and updated Equal Rights Amendment to truly secure equal rights for all New Yorkers.



A CENTURY OF STANDING WITH WORKERS

From the ACLU's beginnings a century ago, the struggle for workers' rights has been an integral part of our mission. The anti-union crusades of the early 20th century were the battlegrounds upon which ACLU founders Roger Baldwin, Crystal Eastman, and their colleagues fought employers seeking injunctions, defended jailed labor strikers, and challenged laws banning public meetings and organizing.

The NYCLU has also been deeply engaged in the struggle for workers' rights since our founding nearly 70 years ago. In 1969, the NYCLU adopted a policy in support of farmworkers and the United Farm Worker's call for a national grape boycott – ahead of the ACLU. Fifty years later, in 2019 – after 20 years of fighting – the NYCLU and our partners around the state cheered as New York's farmworkers finally gained the same rights as other workers.

In 2020, the NYCLU will continue our work with stakeholders and lawmakers to ensure that New York maintains its status as a nationwide leader on workers' rights and economic justice.

This session, lawmakers must:

- Ensure labor protections for gig economy workers, home health aides, and others with limited protections
- Protect employees' speech and privacy
- Establish a fair wage for the work done by incarcerated New Yorkers

END NOTES

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- xiii *Id*
- xiv *Id*

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- xx California, Oregon, and Washington state all have the option of a non-binary gender marker for birth certificates.
- xxi THE 2017 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION'S SCHOOLS xviii – xx (GLSEN 2018).
- xxii *Id.* at xx.
- xxiii The same conduct becomes a misdemeanor if a person has previously been convicted under the same section, or certain other sections of the penal code.
- xxiv N.Y. Pen. L. § 240.37.
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