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## 2021-2022 Legislative Memorandum

**Subject: Promoting Pre-Trial Stability Act (PromPT Stability Act)  
S.2832B (Ramos) / A. 4558B (Quart)**

**Position: SUPPORT**

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During New York Criminal Court arraignment – the first appearance on a case – judges issue full temporary orders of protection (TOPs) as a matter of course on nearly every case if there is a complainant.<sup>1</sup> These orders exclude people from their homes and jobs, which has immense consequences for the most marginalized New Yorkers, including young people, criminalized survivors of violence, non-citizens, and people with limited resources that become homeless. While a New York appellate court has found that courts must grant a hearing to determine whether these orders are proper,<sup>2</sup> the practice has been inconsistent throughout the state.

**To correct this inequity, the NYCLU urges the legislature to pass the PromPT Stability Act.** This bill will codify uniform rules throughout the state, standardize notice and protections for complainants, and ensure that New Yorkers subject to these orders have an opportunity to be heard promptly after they are separated from their homes, employment, and families.

Prosecutors ask for TOPs based almost entirely on the representation of law enforcement officers, who can act with incomplete information and biases. As a result, TOPs are often issued against survivors of violence who were protecting themselves, teenagers and young people that get into altercations with parents regardless of who is the initial aggressor, and LGBTQ+ people and populations who present as “other” even when they are defending themselves.<sup>3</sup> Unlike most other states and the District of Columbia, New York does not provide a codified process for accused persons or protected parties to be heard when these orders are issued. Yet, TOPs typically last

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<sup>1</sup> In criminal cases, the “complainant” is the party who was allegedly aggrieved and who allegedly suffered some harm.

<sup>2</sup> *Crawford v. Ally* (1st Dep’t 2021), 2021 WL 2582799.

<sup>3</sup> See Aviva Stahl, *Advocates Say Brooklyn D.A.’s Office Is Prosecuting Transgender People in Self-Defense Cases*. The Appeal (Oct. 24, 2018), <https://theappeal.org/advocates-say-brooklyn-da-is-prosecuting-transgender-people-in-self-defense-cases/>. A transgender couple was attacked by an individual. However, even though they were not the initial aggressors, they were arrested and had orders of protection issued against them. As the result, at least one of the individuals lost their job.

until the underlying case resolves, which can take months or years, and many are issued against the wishes of the protected parties. In some cases, TOPs are even issued against both or multiple parties.

Full TOPs have immense human costs and collateral consequences for accused parties and their families. Charged parties can lose their employment if they share a workplace with the accused, and employers often use TOPs to deny or terminate employment. Noncitizens can lose their ability to adjust their immigration status.<sup>4</sup> Charged parties are often excluded from their homes if they cohabitate with the protected party. For New York City Housing Authority tenants, this can lead to all parties being evicted if the protected party claims the apartment as their residence but is not on the lease, while the accused party is the lessee but excluded from the residence.<sup>5</sup> This has a tremendous destabilizing impact on families.

Further, prosecutors sometimes put the onus on survivors, particularly parents, to enforce TOPs against their children – even if the parent does not want the TOP in the first place. This causes additional trauma to the survivor and their family, exacerbates youth homelessness, and forecloses opportunities to reconcile. Likewise, TOPs against young people can adversely impact college admissions and participation in collegiate activities.<sup>6</sup>

In June 2021, one of New York’s appellate courts ruled that charged parties are entitled to some process when orders of protection are issued against them. Shamika Crawford, a Black mother and survivor of intimate partner violence from the Bronx, had been the complainant on 13 separate occasions.<sup>7</sup> On the 14th occurrence, her partner weaponized the system against her, and called law enforcement, complaining that Ms. Crawford was the aggressor. As a result, Ms. Crawford was arrested. In spite of evidence from her attorney that she was not the initial aggressor, the court quickly issued a TOP against Ms. Crawford, which required her to stay away from the home of the complainant. Further, the court refused to grant Ms. Crawford a hearing to determine whether the order was proper.

As a result of the order, Ms. Crawford was rendered homeless; even though she was the sole leaseholder, she was unable to return home because the complainant also lived in her apartment. Not long after, she lost her job, and then lost access to her children. Ms. Crawford remained entangled in this precarity for three months, until

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<sup>4</sup> See *U.S. v. Wang* (N.D. Cal. 2005) 404 F.Supp.2d 1159, 1163.

<sup>5</sup> Criminal courts issue TOPs excluding charged persons from wherever the protected party claims is their home address, regardless of who is the lessee. The New York City Housing Authority can terminate leases when units are occupied by someone other than the tenant of record. Criminal courts issue TOPs excluding charged persons from wherever the protected party claims is their home address, regardless of who is the lessor of the property. See NYCHA MGMT. Manual, CH. IV, Termination of Tenancy, at 4 (2016).

<sup>6</sup> See Vallas et al., *Removing Barriers to Opportunity for Parents with Criminal Records and Their Children, A Two-Generation Approach* (2015), Cent. for Am. Progress 1, 5 (finding that 66 percent of colleges and universities use background checks in the admissions process).

<sup>7</sup> *Crawford v. Ally*, note 2 *supra*.

the case against her was ultimately dismissed.<sup>8</sup> The First Department then held that criminal courts must conduct a “prompt evidentiary hearing . . . in a manner that enables the judge to ascertain the facts necessary to decide whether or not the TOP should be issued.”<sup>9</sup>

Cases like Ms. Crawford’s happen every day in courts throughout the state, impacting criminalized survivors, young people that live with parents, and others who have no recourse when full TOPs are improperly or unnecessarily issued against them. The First Department’s decision provides a baseline of critical due process protections that all New York jurisdictions should uphold. However, courts have misapplied this ruling, which has led to inconsistent results and denial of hearings – and too often, has rendered New Yorkers homeless.

The PromPT Stability Act is necessary to codify the First Department’s decision, create uniformity throughout the state, and establish clear evidentiary standards for these vital hearings. At the hearing, a judge has discretion to maintain the TOP, vacate it, or modify it to make it limited, such as by allowing contact between parties while making clear that harassment, threats, or illegal interactions will result in additional criminal charges. This bill would permit judges to respond to the unique needs of a particular case or relationship, and means that judges will be able to make decisions as to the propriety of TOPs based upon more complete information than they have at arraignment. And importantly, while complainants are entitled to notice of these hearings, they are not required to appear or testify.

To be clear, the PromPT Stability Act will not lead to the vacatur of all TOPs. Prosecutors will continue to ask for TOPs, and judges will retain discretion to issue these orders. Moreover, this bill *only* concerns criminal court TOPs; parties can continue to petition family court for civil orders of protection.

Unnecessary TOPs do not make New Yorkers safer. Rather, they disenfranchise the most marginalized New Yorkers by making housing, employment, and education even more difficult to obtain. Survivors of violence, particularly Black and brown women, are frequently criminalized, even when defending themselves.<sup>10</sup> The PromPT Stability Act provides a safeguard against arbitrary orders and ensures that accused people can be meaningfully heard shortly after they are deprived of their liberty, property, or benefits. Along with a broad and growing coalition, the NYCLU supports this bill.

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<sup>8</sup> Andy Newman, *Barred From Her Own Home: How a Tool for Fighting Domestic Abuse Fails*. The New York Times (June 17, 2021), <https://www.nytimes.com/2021/06/17/nyregion/order-of-protection-domestic-violence-abuse.html>.

<sup>9</sup> *Crawford v. Ally*, note 2 *supra*.

<sup>10</sup> Elizabeth Swavola, Kristine Riley, Ram Subramanian. *Overlooked: Women and Jails in an Era of Reform*. Vera Institute of Justice, 2016. See also Rachel Leah, *86 Percent of Women In Jail Are Sexual-Violence Survivors*. Salon (November 11, 2017), <https://www.salon.com/2017/11/11/86-percent-of-women-in-jail-are-sexual-violence-survivors/> (noting that 77 percent of incarcerated women are survivors of intimate partner violence).