



Testimony of

Coalition for the Homeless

and

The Legal Aid Society

on

Oversight: Fair Chance for Housing

submitted to

The New York City Council Committee on Civil and Human Rights

Jacquelyn Simone
Policy Director
Coalition for the Homeless

Robert Desir
Staff Attorney, Civil Law Reform Unit
The Legal Aid Society

December 8, 2022

The Coalition for the Homeless and The Legal Aid Society (LAS) welcome this opportunity to testify before the New York City Council’s Committee on Civil and Human Rights on Intro. 632, the Fair Chance for Housing bill.

Intro. 632 – Prohibiting housing discrimination on the basis of arrest or criminal record

The Coalition for the Homeless and The Legal Aid Society support prohibiting housing discrimination on the basis of arrest or criminal record, and we strongly urge the Council to pass Intro. 632 as soon as possible. Homelessness is a tragic outcome for too many New Yorkers who exit prisons and jails, even though stable housing is vital to a successful reentry. The disproportionate impact of over-policing and incarceration on communities of color is one driver of homelessness among impacted Black and Latinx New Yorkers, and this bill would advance racial justice by reducing barriers to permanent housing for a large subset of people currently languishing in shelters and on the streets. With an all-time record number of people sleeping in municipal shelters each night, the City must utilize all available tools to help New Yorkers move out of shelters and into permanent housing quickly – starting with Intro. 632.

Discrimination on the basis of arrest or criminal record takes a disproportionate toll on New Yorkers of color. This is in part because of gross disparities stemming from systemic racism in New York’s criminal legal system: Of the 34,143 inmates under State custody on January 1, 2021, 50 percent were African-American and 24 percent were Latinx,¹ yet the State’s general population is just 17.6 percent African-American and 19.5 percent Latinx.² And of the 4,389 average daily inmates in City custody, 56 percent were African-American and 32 percent were Latinx,³ even though the city’s population is only 23.8 percent African-American and 28.9 percent Latinx. Consequentially, Black and Latinx New Yorkers are much more likely to be barred from housing because of landlord criminal background checks than White New Yorkers. Moreover, it is well-recognized that arrest records are hardly evidence of misconduct, and landlords’ bars against prospective tenants who have not even been convicted of crimes is unacceptable.⁴ When landlords use discriminatory arrest and criminal background checks, they are overwhelmingly denying the benefits of secure housing – safety, stability, and health benefits – to Black and Latinx New Yorkers.

The use of criminal records makes it more difficult for individuals leaving jail or prison to find housing and avoid long-term homelessness. Indeed, New Yorkers leaving incarceration are uniquely at risk of homelessness. Of the 9,300 people released from State prisons to New York City in 2014, 23 percent of them went directly into the City shelter system; a few years later, in 2017, 54 percent of the people released to New York City, or 4,122 individuals, entered the

¹ State of New York Dept. of Correction and Comm. Supervision, *Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2021* (Apr. 2022),

<https://doccs.ny.gov/system/files/documents/2022/04/under-custody-report-for-2021.pdf>

² United States Census Bureau, *New York Population Estimates* (Nov. 16, 2022)

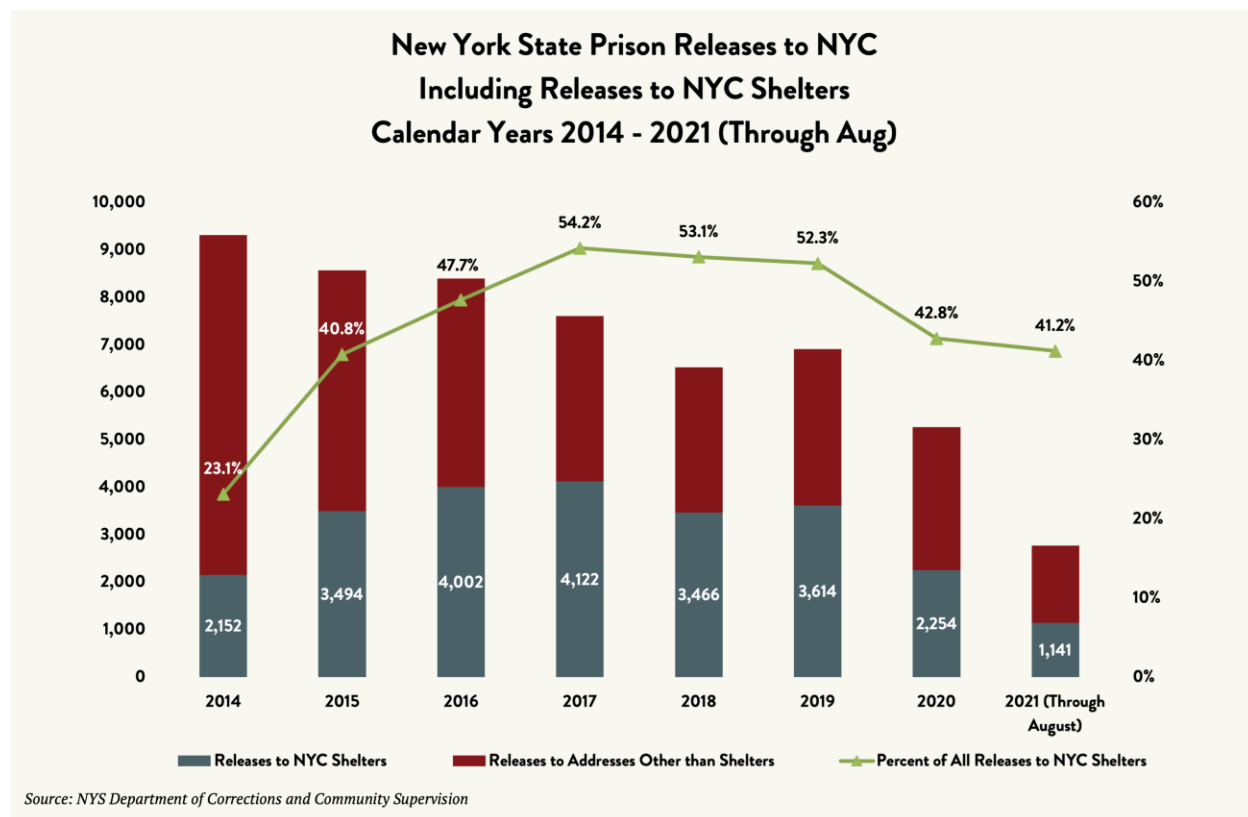
<https://www.census.gov/quickfacts/NY>

³ NYC Department of Correction at a Glance, Information for the first 6 months of FY 2021. Department of Corrections.

https://www.nyc.gov/assets/doc/downloads/press-release/DOC_At_Glance_first6_months_FY2021-030921.pdf

⁴ See e.g., *Schwabe v. Bd of Bar Examiners*, 353 U.S. 232, 241 (1957); *United States v. Berry*, 553 F.3d 273, 282 (3d Cir. 2009); *United States v. Zapete-Garcia*, 447 F.3d 57, 60 (1st Cir. 2006).

shelter system.⁵ Each year since 2015, more than 40 percent of people released from State prisons to New York City were released directly to shelters.⁶



The connection between incarceration and homelessness is longstanding. A 2006 study of 7,000 individuals in the City’s public shelter system found that nearly a quarter had been incarcerated in the previous two years. For many of them, the primary barrier to achieving stable housing was their criminal record. Moreover, people experiencing homelessness are at increased risk of recidivism and encounters with law enforcement: Those who have experienced homelessness make up more than 15 percent of the national jail population, and are about 10 times more likely to be in jail.⁷ Law enforcement that criminalizes homelessness, including encampment sweeps, subway patrols, and other police encounters, further fuels a cycle of homelessness and involvement with the criminal legal system. When landlords are permitted to discriminate on the basis of arrest or criminal records, they exacerbate the city’s homelessness crisis at a time when we must make it easier for New Yorkers to find housing, not harder.

⁵ Courtney Gross, *The New York prison-to-shelter pipeline*, Spectrum News NY1 (Feb. 27, 2018) <https://www.ny1.com/nyc/all-boroughs/politics/2018/02/27/ny1-investigation-more-inmates-released-upstate-prisons-going-into-nyc-shelter-system>; Jacquelyn Simone, *Today’s Video: The New York Prison-to-Shelter Pipeline*, Coalition for the Homeless (Feb. 28, 2018), <https://www.coalitionforthehomeless.org/todays-video-new-york-prison-shelter-pipeline/>

⁶ Jacquelyn Simone, *State of the Homeless 2022*, Coalition for the Homeless, <https://www.coalitionforthehomeless.org/state-of-the-homeless-2022/>

⁷ Greg A. Greenberg and Robert A. Rosenheck, *Jail Incarceration, Homelessness, and Mental Health: A National Study*, Psychiatric Services, Feb. 2008, available at <https://homelesshub.ca/sites/default/files/Greenberg.pdf>.

We are encouraged that the Council recognizes the need for prohibiting criminal background checks in housing, and we urge the Council to pass Intro. 632 to outlaw landlord and broker discrimination against applicants with criminal and arrest records. This bill is an urgently needed tool to help tackle homelessness and improve public safety, without involving new public expenditures. In fact, this bill will save tax dollars by ending the prison-to-shelter pipeline and reducing the need for shelters. It is time for New York City to finally ban discrimination that deprives people of the stable housing they need to thrive.

Conclusion

We thank the Committee on Civil and Human Rights for the opportunity to testify on this important topic, and we urge the Council to pass Intro. 632 as soon as possible.

About The Legal Aid Society and Coalition for the Homeless

The Legal Aid Society: The Legal Aid Society (LAS), the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform. This dedication to justice for all New Yorkers continues during the COVID-19 pandemic.

The Legal Aid Society has performed this role in City, State, and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of more than 2,000 attorneys, social workers, paralegals, and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City, LAS provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

LAS's legal program operates three major practices — Civil, Criminal, and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by LAS's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, LAS's law reform representation for clients benefits more than 1.7 million low-income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

The Legal Aid Society is uniquely positioned to speak on issues of law and policy as they relate to homeless New Yorkers. The Legal Aid Society is counsel to the Coalition for the Homeless and for homeless women and men in the *Callahan* and *Eldredge* cases. The Legal Aid Society is

also counsel in the *McCain/Boston* litigation in which a final judgment requires the provision of lawful shelter to homeless families. LAS, in collaboration with Patterson Belknap Webb & Tyler, LLC, filed *C.W. v. City of New York*, a federal class action lawsuit on behalf of runaway and homeless youth in New York City. Legal Aid, along with institutional plaintiffs Coalition for the Homeless and Center for Independence of the Disabled-NY (CIDNY), settled *Butler v. City of New York* on behalf of all disabled New Yorkers experiencing homelessness. Also, during the pandemic, The Legal Aid Society along with Coalition for the Homeless continued to support homeless New Yorkers through litigation, including *E.G. v. City of New York*, Federal class action litigation initiated to ensure WiFi access for students in DHS and HRA shelters, as well as *Fisher v. City of New York*, a lawsuit filed in New York State Supreme Court to ensure homeless single adults gain access to private hotel rooms instead of congregate shelters during the pandemic.

Coalition for the Homeless: Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless and at-risk New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to address the crisis of modern homelessness, which is now in its fifth decade. The Coalition also protects the rights of homeless people through litigation involving the right to emergency shelter, the right to vote, the right to reasonable accommodations for those with disabilities, and life-saving housing and services for homeless people living with mental illnesses and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term, scalable solutions and include: Permanent housing for formerly homeless families and individuals living with HIV/AIDS; job-training for homeless and low-income women; and permanent housing for formerly homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen, which usually distributes 800 to 1,000 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx, had to increase our meal production and distribution by as much as 40 percent and has distributed PPE and emergency supplies during the COVID-19 pandemic. Finally, our Crisis Services Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic necessities such as diapers, formula, work uniforms, and money for medications and groceries. In response to the pandemic, we are operating a special Crisis Hotline (1-888-358-2384) for homeless individuals who need immediate help finding shelter or meeting other critical needs.

The Coalition was founded in concert with landmark right-to-shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981, the City and State entered into a consent decree in *Callahan* through which they agreed: "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The *Eldredge* case extended this legal requirement to homeless single women. The *Callahan* consent decree and the *Eldredge* case also guarantee basic standards for shelters for homeless men and women. Pursuant

to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless single adults, and the City has also authorized the Coalition to monitor other facilities serving homeless families. In 2017, the Coalition, fellow institutional plaintiff Center for Independence of the Disabled – New York, and homeless New Yorkers with disabilities were represented by The Legal Aid Society and pro-bono counsel White & Case in the settlement of *Butler v. City of New York*, which is designed to ensure that the right to shelter includes accessible accommodations for those with disabilities, consistent with Federal, State, and local laws. During the pandemic, the Coalition has worked with The Legal Aid Society to support homeless New Yorkers, including through the *E.G. v. City of New York* Federal class action litigation initiated to ensure WiFi access for students in DHS and HRA shelters, as well as *Fisher v. City of New York*, a lawsuit filed in New York State Supreme Court to ensure homeless single adults gain access to private hotel rooms instead of congregate shelters during the pandemic.