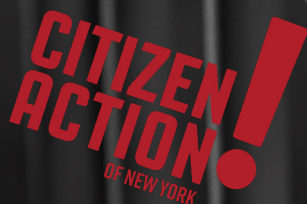


SCHOOLS NOT JAILS

*HOW EDUCATIONAL
RACISM FUELS
MASS INCARCERATION
IN NEW YORK*



PUBLIC POLICY AND
EDUCATION FUND OF NEW YORK

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The Alliance for Quality Education is a coalition mobilizing communities across the state to keep New York true to its promise of ensuring a high-quality public school education to all students regardless of zip code. Combining its legislative and policy expertise with grassroots organizing, AQE advances proven-to-work strategies that lead to student success and echoes a powerful public demand for a high-quality public school education for all of New York's students.

Citizen Action of New York is a statewide grassroots membership organization taking on big issues that are at the center of transforming society—issues that will achieve social, racial, economic and environmental justice in our communities. We look for opportunities to accomplish big changes – not small, incremental reforms. We work to elect progressive candidates to office who are committed to these issues. Our power comes from the grassroots: people coming together to push the edge of the possible. We are affiliated at the national level with People's Action and we partner with local organizations across New York State, working in coalition to win real victories for our communities.

The Public Policy Education Fund was founded in 1986 to address critical social, economic, racial and environmental issues facing low and moderate income New York State residents. Our areas of work have included health care, education, after-school programs, voter participation, economic development and consumer issues. PPEF uses many tools in its work, including grassroots organizing, research and policy development, public education on a wide range of policy issues, and community outreach.

SCHOOLS, NOT JAILS

HOW EDUCATIONAL RACISM FUELS MASS INCARCERATION IN NEW YORK

HIGHLIGHTS: THE ISSUES

- New York State spends \$22,000 on average to educate a child, but spends about \$70,000 per prison bed.
- Nearly 70% of all jailed New Yorkers are legally innocent and they are being incarcerated pre-trial, they have been arrested (not convicted) of a crime. New York spends \$2.5 billion on county jails each year.
- New York state owes schoolchildren across the state \$4.1 billion in Foundation Aid.
- 8 out 10 Black and Latinx students attend a school that has been systematically underfunded by the state.
- The school to prison pipeline is fueled by chronic underfunding of schools and the overuse of suspensions, with over 500 suspension per school day.

RECOMMENDATIONS FOR THE NEW YORK STATE LEGISLATURE

We demand that our state pass legislation to systematically overhaul the pretrial system, divest from incarceration and criminalization, and invest in education and supportive school environments for all children.

Fully Fund Public Schools

Without adequate resources, schools cannot educate students. New York State must get back on track to equity in education with a three year phase in of Foundation Aid, with \$2.2 billion increase in total aid the 2019 state budget.

Supportive and Positive School Climate

The Safe and Supportive Schools Bill (Nolan/ Montgomery) is designed to reduce the over reliance on suspensions and promote alternative approaches to handling students misbehavior. School-based restorative justice offers a more sustainable, equitable, and respectful alternative to dealing with misbehavior, from minor infractions to violence. It can also be used as a proactive strategy to create a culture of connectivity and care where all members of the school community can thrive.

Culturally Relevant Education

New York State public schools should offer a variety of classes, curricula, projects, books and resources that are grounded in the rich diversity of the New York State student population. Students should be learning about the histories and cultures of African, Latinx, Asian, Middle Eastern and Native heritage people in New York schools, and the intersections with gender, LGBTQIA and religious diversity. Every educator and student should have access to anti-racism and anti-bias education.

We must actively recruit and support teachers of different races and cultural backgrounds. When students have teachers of the same race as them, they report feeling more cared for, more interested in their schoolwork and more confident in their teachers' abilities to communicate with them. They are also more likely to graduate high school and have higher college aspirations.

Bail System Transformation

New York must pass legislation that eliminates money bail, dramatically decarcerates jails across the state and eliminates racial disparities in the pretrial system. Bail system transformation must protect due process and the right to pretrial liberty and set strong limits on when and how any pretrial conditions are instituted. Justice means protecting the presumption of innocence and not putting a price tag on freedom.

Discovery Law Overhaul

New York must pass an open, early and automatic discovery law - guaranteeing that defendants have access to vital information about their case. Open-file discovery gives the defense access to all unprivileged information that is known or should be known to the prosecution, law enforcement agencies, or any other agencies working on behalf of the prosecution. Early discovery means that a prosecutor's initial discovery obligation begins at the very start of a case. Disclosure of specified information must be mandatory and discovery material should be handed over in one initial phase then turned over automatically as prosecution gathers additional discovery material throughout the case.

INTRODUCTION

Education advocates and criminal justice advocates are joining together to create and advance a shared vision of racial justice for New York. It's time we prioritize schools, not jails. Every day across our state, 16,000 legally innocent New Yorkers are being jailed pretrial. They are deprived of their freedom, and their rights violated, because of New York's unjust bail, discovery, and speedy trial laws. Black, Brown and immigrant New Yorkers as well as low-income and working class people are disproportionately jailed and criminalized. Mass jailing comes with an annual price tag of \$2.5 billion. And every day, Black, Brown and immigrant students as well as low-income children attend schools that are underfunded and under resourced. New York State owes students \$4.1 billion in unpaid Foundation Aid for schools. It's time for our state to get our priorities right. In 2019, New Yorkers demand the governor and legislature to systematically overhaul the pretrial system, divest from incarceration and criminalization, and invest in education and supportive school environments for all children.

When it comes to educating Black, Brown and poor children we are always told that money is in short supply. Yet, dollars for incarceration and mass criminalization seem to be endless. While schools literally crumble from decay and outdated infrastructure, jails and prisons continue to be funded, constructed and expanded. Community supervision and mass surveillance continue to be instituted with “state of the art technology” that criminalizes people of color and threatens the safety of impacted communities. Instead of spending billions to maintain the prison industrial complex and systems of oppression and structural racism, we need to instead invest in the education of our youth. Too many students still lack access to early childhood learning opportunities. Sports, music, art and other extracurricular activities are not available to every student at every school. The current and systemic underfunding of our neediest schools creates a system of “haves” and “have nots”. Wealthy white communities have well funded, high quality public schools and poor Black and Brown children are too often in overcrowded and underfunded schools. These same racial disparities exist as a result of New York's discriminatory money bail law which fills jails with legally innocent people and creates a two-tiered “justice system”. While the wealthy can make bail and walk free, working-class, low income and Black and Brown New Yorkers are left to waste away behind bars as they await their day in court. Many lose jobs, apartments, relationships, or custody of their children without ever having been convicted of anything.

THE HIGH COST OF INCARCERATION

If New York were a country, we would have the sixth highest incarceration rate in the world — ahead of Russia. Despite a steady decrease in crime, the number of people in county jails across the state has grown, with some jails even doubling in size. The State and counties across New York are consistently spending more on jails and prisons than on education, supportive services, or other investments to strengthen

communities, particularly those facing economic challenges and hardships.¹ **New York State spends on average \$22,000 per year to send one child to public school but nearly \$70,000 per prison bed per year.**² In addition to the \$3.7 billion per year spent on state prisons, New York's counties pay almost \$2.5 billion each year to lock people up in county jails.³ The hypocrisy from New York State's political leadership is glaring, when you compare their lofty progressive rhetoric with draconian investments in incarceration over education. This investment reflects the impacts of decades of myriad criminal "justice" policies and practices focused on punishment, incarceration and criminalization. It is commonly acknowledged that slavery was not abolished in 1865 with the passage of the Thirteenth Amendment. Rather, slavery evolved in new forms and took on new names — the Black Codes, Jim Crow Laws, segregation, pretrial incarceration, mass criminalization. Nowhere is this more true than in New York State where, 40 years ago, New York passed extreme sentencing guidelines known as the "Rockefeller drug laws" which paved the way for many "tough-on-crime" policies that became the new normal across the state and the country. The Rockefeller drug laws have since been reformed. However, they and many other "criminal justice" laws informed the development of a system of racist, discriminatory and criminalizing policies, including those that govern New York's pretrial system: bail, discovery and speedy trial laws. Mass incarceration has targeted people of color and poor communities, resulting in immeasurable harm and socioeconomic damage across the state. We must pass laws that address both the crisis of mass incarceration, while also rectifying generational harm to people and communities targeted by criminalization and state sanctioned violence.

THE SYSTEMIC UNDERFUNDING OF PUBLIC SCHOOLS

New York State has one of the most inequitable education funding systems in the nation. New York ranks 49th in the nation in education equity.⁴ This huge inequality is largely based upon race. **Eight out of every 10 Black and Latino (Latinx) students in New York attend a school that has been systematically underfunded by the state.**⁵ Wealthy districts, where schools spend on average nearly \$10,000 more per pupil, graduate 95 percent of their students, with the majority of them earning the Advanced Regents designation. In contrast, the districts that the state classifies as high need, which also have more than 50 percent Black and Latino (Latinx) students—all of which have been chronically underfunded by the state—graduate 69 percent of their students with only 13 percent of them earning Advanced Regents designation. We know there is a direct correlation between education and incarceration. Eighty percent of incarcerated people have dropped out of school. Children who attend underfunded schools often have a direct pathway to prison and jails instead of colleges and universities.

We must end the school push out that has created the school-to-prison pipeline. New

1 https://www.justleadershipusa.org/wp-content/uploads/2018/03/FREENewYork-ByTheNumbers_032618.pdf

2 https://www.newyorkupstate.com/news/2017/07/data_cost_per_prisoner_in_new_york_tops_other_states.html

3 http://www.newyorkupstate.com/news/2017/07/data_cost_per_prisoner_in_new_york_tops_other_states.html

4 <http://apps.urban.org/features/school-funding-do-poor-kids-get-fair-share/>

5 http://www.aqeny.org/wp-content/uploads/2018/09/educationalracism_corrected.pdf

York public schools' continued reliance on punitive school climate strategies—in-school police presence and alarmingly high suspensions rates—are ineffective, harm students and exacerbate existing inequities along the lines of race and disability. These strategies also drain public funds that could be used to help ensure that all young people receive the support, resources, and access to opportunities they need to thrive. Harsh disciplinary policies, executed by both police and school personnel, lead to high rates of permanent dropout as well as ongoing, and often escalating, entanglements in the criminal legal system. This pattern is widely referred to as the “school-to-prison pipeline.” New York’s school-to-prison pipeline is rooted in a history of racial segregation and the punitive treatment of Black and Latinx* children in our public schools. The impact of these wrongheaded policies and practices, among others, extend beyond New York City and across the rest of the state and are significant drivers of jailing youth and cyclical incarceration.

Black, Brown and low income children often attend schools that are underfunded, under-resourced and over policed. This has only fueled the School-to-Prison Pipeline. Young people are being suspended at alarmingly high rates. 91,495 – that’s the number of suspensions in New York State for the 2015-2016 school year according to the New York State School Report Card (the most recent data available). That’s more than 500 suspensions per day. Even children in kindergarten being suspended for typical age-level behavior. Suspensions often result from minor incidents that escalate due to a lack of resources, training, and effective alternatives. In addition to facing suspension or expulsion, some students are arrested in school. In New York schools, there are more police than guidance counselors and social workers combined. Any unnecessary contact with the juvenile justice system puts a student at risk of continued system involvement, and just one court appearance more than quadruples a student’s likelihood of ending up in prison. Investments in education are necessary for creating a holistic approach to decarceration.

PRETRIAL SYSTEM OVERHAUL: BAIL & DISCOVERY

Jails are local incarceration facilities operated by a county or city government to detain people before they go to trial (i.e. pretrial incarceration), people serving sentences of 12 months or less (usually for misdemeanor convictions), and people who have been sentenced and are awaiting transfer to a prison or another facility. Prisons are state operated and incarcerate people who have been convicted of a felony charge and are serving sentences of 1 year or more. Unjust pretrial laws fuel jail incarceration, and jails fuel prison incarceration. Statewide, roughly 200,000 people are admitted into jails each year. **Nearly 70 percent of all jailed New Yorkers are legally innocent and being incarcerated pretrial, costing billions in tax dollars each year.** The vast majority of people incarcerated before trial are people of color, Black, Brown, low-income, working class and immigrant New Yorkers. They are jailed because New York’s criminal legal system is designed to detain people who can’t afford to pay the financial conditions placed on their freedom - their bail. Pretrial injustice continues as rights to due process and a fair and timely trial are violated by New York’s archaic discovery and

speedy trial laws. These laws place immense, unchecked power in the hands of police and prosecutors, and contribute to a dramatically unbalanced “justice” system. The harms of New York’s pretrial incarceration crisis cause undeniable trauma: people lose their jobs, homes and families while detained, impacting children and their education.

Whether or not a person is jailed before trial has significant impact on the outcome of their case. Being jailed pretrial makes people more likely to plead guilty, and to worse terms and charges, as they face the possibility of being held in jail for months and even years as they await trial. People accept lifelong convictions (whether true, false or somewhere in between), with excessive probationary terms and long prison sentences simply to avoid the purgatory of pretrial incarceration. The impact of incarceration extends well beyond the jail and prison walls to the families on the other side. The parents, children, siblings and other family members pay the emotional costs of having a loved one jailed - the long and often harrowing visitation experience, efforts to support their loved ones’ case, and attempts to pick up the pieces of their loved one’s abruptly interrupted life. They also pay the financial costs: phone and commissary fees, fees to post bail through a bond agency (if even possible), and beyond. Even a single night in jail can be destabilizing and traumatic for the families involved. These consequences are magnified the longer a person is incarcerated. Long prison sentences impose a whole new set of challenges on families that are forced to be separated for years or even decades. Justice means dramatic decarceration of jails and prisons statewide, no price upon freedom, and the elimination of racism and private profiteering in the system. New York State must pass legislation to overhaul the pretrial system and protect the rights to due process, liberty and a fair and speedy trial. As we fight to end mass incarceration in New York State, we must also fight to dismantle the systemic racism, oppression and criminalization perpetuated by the criminal legal system.

THE SOLUTIONS

The pathway to racial justice for New York includes a deep divestment in incarceration paired with a significant investment in education. In order to undo centuries of harm to communities of color, New York’s elected leaders need to take bold and immediate action.

We need to end a money bail system that directly harms the working poor, working class and communities of color in New York. We must end money bail for all cases without instituting harmful replacement systems like broad preventive detention and/or electronic monitoring, algorithm based risk assessment tools and mass community surveillance.

New York State’s discovery law—one of the weakest in the country—forces a system of “trial by ambush” in which people facing criminal charges are denied access to critical case information that is essential for defending themselves and making rational decisions about their pending cases. New York doesn’t require prosecution to share evidence with a defendant or their attorney until JUST before trial. This leads to coerced guilty pleas, wrongful convictions, and long & drawn-out cases - which in turn results in mass incarceration, millions of wasted taxpayer dollars each year, and

countless lives destroyed. **97 percent of criminal cases in New York end in a plea deal —meaning that thousands of individuals accept convictions before seeing information about the case against them.** Without access to evidence, defense attorneys cannot make well-informed decisions while the defendant's future is at stake. Defense is unable to conduct independent investigation, accurately assess plea offers, access exculpatory evidence, or prepare for trial. New York must pass legislation creating an open, early, automatic discovery system to balance the scales of justice and eliminate uninformed guilty pleas, reduce wrongful convictions and racial and socioeconomic disparities in the criminal justice system, increase the transparency and efficiency of court proceedings, create opportunities for earlier resolutions in cases and build a more equitable and fair system.

These changes to New York's criminal justice laws must be coupled with robust investments in education. Schools need the resources and tools to prepare students to compete in today's fast paced, tech savvy world.

Parents have long fought for education justice and fair funding for schools. The Campaign for Fiscal Equity (CFE) was created by parents who filed a lawsuit against the State of New York, claiming that children were not being provided the opportunity to an adequate education. In 2006, the New York State Court of Appeals ruled in favor of the parents, and found that New York State was violating students constitutional right to "a sound basic education" by leaving schools without the funding necessary. As a result of the ruling, the state decided to provide a statewide solution by committing \$5.5 billion increase in basic operating aid (also known as Foundation Aid) over four years from 2007 to 2011. For the first two years school districts saw an increase of over \$1.5 billion each year and were able to expand programming and opportunities for children. But when the 2008 financial crisis hit, New York State decided to balance the budget on the backs of children. Schools saw two consecutive years of almost \$3 billion in cuts, completely reversing the benefits of the landmark CFE victory. It's been over a decade since the CFE decision and, even though Foundation Aid is still in law, New York State has still not fulfilled its commitment to adequately fund schools. According to the New York State Education Department schools are owed \$4.1 billion in Foundation Aid. New York must get back on track to equity in education with a three year phase in of Foundation Aid, with \$2.2 billion increase in total aid the 2019 state budget.

Parents and families want children to have access to high quality academic opportunities, social and emotional supports, full access to arts, music, physical education, and after-school enrichment programs like sports and other extracurricular activities. It's time to end the record inequality in education funding in New York that perpetuates a widening opportunity gap. New York's students need New York's leaders to invest in providing high quality public schools in every community.

We need to equip our schools to meet the social, emotional, and mental health needs of students – guidance counselors, social workers, school psychologists, restorative justice coordinators, and school staff trained in trauma informed care. Education justice requires adequate and equitably distributed funding for our public schools.

We need a divestment of resources from the criminalization infrastructure and an investment in teaching, counseling and high quality K-12 education for all students.

Spending on policing and incarceration divert critical funding from education. Millions of tax dollars are wasted on criminalization and imprisonment. Yet, New York continues to systemically underfund public schools. New York State has a funding formula that was created out of the demand for equity and adequacy. It is time that the state fully funds the Foundation Aid formula and fulfills the Campaign for Fiscal Equity court ruling.

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The Safe and Supportive Schools Bill (A.3873a/ S.3036a) is designed to reduce the over reliance on suspensions and promote alternative approaches to handling students misbehavior. School-based restorative justice offers a more sustainable, equitable, and respectful alternative to dealing with misbehavior, from minor infractions to violence. It can also be used as a proactive strategy to create a culture of connectivity and care where all members of the school community can thrive.

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Bail System Transformation

New York must pass legislation that eliminates money bail, dramatically decarcerates jails across the state and eliminates racial disparities in the pretrial system. New York State cannot continue to allow for a system of money bail that punishes low-income people and people of color, and allows for private businesses to exploit and profiteer from incarceration. Bail system transformation must protect due process and the right to pretrial liberty and set strong limits on when and how any pretrial conditions are instituted. Algorithm based risk assessment tools, mass surveillance, and broad electronic monitoring & preventative detention only serve to replace one racist system with another. Partial reforms and half-measures won't fix the problem. Justice means protecting the presumption of innocence and not putting a price tag on freedom.

Discovery Law Overhaul

The consequences of justice involvement irreparably alter the course of a person's life. Our current discovery laws result in innumerable miscarriages of justice. Under the current discovery system, prosecutors have far too much unchecked power and people are often forced to wait months and sometimes years before seeing the most basic facts about the charges being brought against them. New York must pass an open, early and automatic discovery law - guaranteeing that defendants have access to vital information about their case. Open-file discovery gives the defense access to all unprivileged information that is known or should be known to the prosecution, law enforcement agencies, or any other agencies working on behalf of the prosecution. Early discovery means that a prosecutor's initial discovery obligation begins at the very start of a case. Disclosure of specified information must be mandatory and discovery material should be handed over in one initial phase then turned over automatically as prosecution gathers additional discovery material throughout the case.