



TESTIMONY

The Council of the City of New York
Committee on Courts and Legal Services

And

Committee on Public Safety

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New York, New York

The Legal Aid Society
199 Water Street
New York, NY 10038

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Good morning. I am Justine M. Luongo, Attorney-in-Charge of the Legal Aid Society Criminal Practice. We submit this testimony on behalf of The Legal Aid Society, and thank Speaker Melissa Mark-Viverito, and Chairpersons Lancman and Gibson for inviting us to speak about this important issue.

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, 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 criminal, civil and juvenile rights matters, while also fighting for legal reform. The Society has performed this role in City, State and federal courts since 1876. With its annual caseload of more than 300,000 legal matters, the 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 Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Society accomplishes this with a full-time staff of nearly 1,900, including more than 1,100 lawyers working with over 700 social workers, investigators, paralegals and support and administrative staff through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. The Legal Aid Society operates three major practices — Criminal, Civil and Juvenile Rights

— and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society’s Pro Bono program.

The Society’s Criminal Practice is the primary public defender in the City of New York. During the last year, our Criminal Practice represented over 230,000 indigent New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters. In the context of this practice many of our lawyers exert considerable thought and effort to avoid the worst of the direct and indirect consequences that are associated with a criminal conviction.

The Society’s Civil Practice provides comprehensive legal assistance in legal matters involving housing, foreclosure and homelessness; family law and domestic violence; income and economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior citizens; low-wage worker problems; tax law; consumer law; education law; community development opportunities to help clients move out of poverty and reentry and reintegration matters for clients returning to the community from correctional facilities.

The long-documented problem of “Broken Windows” policing is that it treats the vast majority of the people stopped for low-level offenses as criminals and that the tactic is executed disproportionately in low-income communities of color. The result is that members of communities of color are treated like criminals for the same conduct, like littering, drinking in public, public urination that officers turn a blind eye to in mostly

white affluent communities.¹ These arrests have life altering, often devastating, consequences such as the loss of employment, housing, government benefits and program participation including student loans, or immigration status.

In addition to the consequences that befall those arrested on these offenses, the stark disparities in how offenses “like spitting, disorderly conduct, loitering, open container and failure to have a dog license” are enforced in communities of color, “more likely to be doled out in predominately Black and Hispanic precincts, reinforce the divide between communities and police.”² One resident of East Harlem told a reporter in 2014 that she felt like her “neighborhood is like it’s under martial law. We got all these rookie officers on each corner. These officers, they just run around and ask you for any excuse to ask you for your ID and write you a summons.”³ This treatment would obviously not be tolerated equally in Park Slope, where public drinking, public urination, littering and riding bicycles on the sidewalk occur without police interference or even observation.⁴

The proposed legislation is a good first step to undoing the harms of disparate policing of communities of color and the over criminalization of these low level acts that do not

¹ For documentation of disparate policing of “low-level” marijuana possession in communities of color, see <http://marijuana-arrests.com/docs/Race-Class-NYPD-Marijuana-Arrests-Oct-2014.pdf>.

² <http://www.nydailynews.com/new-york/summons-broken-windows-racial-disparity-garner-article-1.1890567>

³ Id. <http://www.nydailynews.com/new-york/summons-broken-windows-racial-disparity-garner-article-1.1890567>

⁴ For a report on activists who handed out fake summonses to affluent Park Slope residents committing “low-level” offenses during an educational campaign around disparate policing, see <http://www.newyorker.com/news/news-desk/broken-windows-comes-to-park-slope>.

affect public safety. We fully support the legislation and commend the City Council for their work. However, we ask that you consider several suggested additions and other recommendations that we believe, given our experience as the primary public defender and provider of civil legal services, will strengthen the legislation.

Recognizing Racial Disparity and Reducing The Effects

While expanding the penalties to include civil fines for low-level offenses is an important step to undoing years of unfair and unjust criminal system policies, the devil will be in the details. How the NYPD will articulate who gets a civil summons versus a criminal summons, and how large the margin of discretion a police officer has will determine the value of this bill. If the NYPD continue to target communities of color for enforcement of low-level offenses, this bill will have little impact on police and community relations. We should also recognize that any decision to grant a civil summons that factors in a person's criminal history of prior low level arrests, factors in disproportionate race-based decisions that occurred in the past. To protect from this built in bias, this bill should not consider past criminal history to determine who should get a civil summons.

We call upon the Council to pass the "Right To Know Act" so that this legislation can join the many protections afforded New Yorkers in that legislation. The legislations, together, can begin to build community/police relations,

Further, how summonses are enforced in different communities and across different demographics should be closely monitored. The demographic reporting, including the

racial breakdowns of low-level summons enforcement should be available on a quarterly basis to the public. Hearings should be held annually to review the data and give communities and advocates the opportunity to discuss issues with the continued policing policies.

Alternative to Fines in Civil Enforcement

It should be recognized that while civil enforcement of summonses is far more preferable than criminalization, the clients we serve, indigent New Yorkers, will not be able to pay fines. We must also recognize the long-term effects of the issuance of civil judgments for the failure to pay a fine will cause a person, and over time, this City. While the legislation calls for an option to perform community service, this fails to recognize many issues associated with performing this community service and misses an opportunity to really assist a person that may need services.

For many low-wage workers, the requirement to perform community service may cause them to lose their jobs. Missing a day of work to respond to a civil summons and then another full day to attend community service increases the likelihood that a minor offense can cause a person to be terminated. A similar issue affects young people with school attendance. Further, many people who cannot pay a fine live with physical impairments or health conditions. For this population, community service is impossible. Finally, community service misses an opportunity to actually provide services that a person may need:

For these reason we suggest the following:

- A person who cannot pay a fine should be given an option to provide a limited number of community service hours on a day they select (including after-school or weekends) or attend an intake/counseling session on the day the person responds to the civil summons. The latter can be modeled after the community courts such as Red Hook or Midtown run by the Center For Court Innovation. This intake/counseling session could assist a person in a wide array of needs such as obtaining a birth certificate, obtaining a municipal ID or advice on housing or employment
- The standard for qualifying for a non-fine based option should be interpreted as broadly as possible (400% of the Federal Poverty Level).

Need For Legal Advocates

While we recognize that there is no right to counsel for civil summonses, we ask that the legislation consider a provision allowing for free legal advice and consultation from a legal advocate. A legal advocate would be available to give advice of the consequences of paying a civil fine, determine that there was no police misconduct and provide advice on other consequences. For example, of particular concern is a plea of guilty to noise violations. Without advice a person may elect to plead guilty not understanding that their landlord may turn around and use that guilty plea as a basis to evict them from their homes (based on a breach of contract). Considering that many landlords are looking for ways to evict lower-income residents, who are also mostly people of color, from communities struggling through gentrification, we believe that low-income New Yorkers

of color are vulnerable to eviction if they are not privy to this potential consequence of a guilty plea.

Further, the new law “aggravated noise” will allow noise violations to remain criminal, with all the collateral consequences of criminal cases attaching, including the loss of employment, housing, government benefits and program participation including student loans, or immigration status.

A Call to Decriminalize All Park Offenses

Unless all of park rules and regulation offenses are converted to violations, New Yorkers will continue to suffer serious collateral consequences of low-level offenses. Currently, parks violations are misdemeanors, even if the same conduct is a violation outside of a park. Parks regulations include innocuous behavior like having a dog off a leash, playing a musical instrument, or begging. Misdemeanor convictions harm low-wage workers’ employment prospects for the rest of their lives. The Legal Aid Society recently represented someone who was barred from working as a home health aide because of a 7-year old misdemeanor conviction. Further, park rules that remain misdemeanors can have enormous immigration consequences especially those seeking Temporary Protected Status or Deferred Action for Childhood Arrivals.

We thank you for allowing us time to discuss these issues and we are available to meet further to discuss ways to structure this legislation to insure New Yorkers are treated fairly

