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## Memorandum of Support

### **A Fair Process for Reducing Erroneous Welfare Sanctions Should Apply Statewide**

*A.2455 (Hunter)/S.3840 (May)*

In 2014, a new state law dramatically improved the process by which public assistance recipients can respond to an allegation that they have failed to comply with a welfare work requirement. Unfortunately, at the last minute, the statewide bill was modified to apply only to New York City, leaving all other jurisdictions out. The law provides common sense protection against the imposition of unwarranted and unduly harsh sanctions on the poorest New Yorkers. **Empire Justice Center strongly supports A.2455/S.3840, which would broaden the law to apply statewide.**

For the entire state outside of New York City, a local Department of Social Services' (DSS) belief that a person has failed to comply with a work rule triggers a sanction process. Individuals may use an informal "conciliation" process or may request a Fair Hearing, but they essentially have the burden to demonstrate that they either did in fact comply, or had good cause for not complying. Although clients often prevail when they ask for a hearing, far too many individuals, but particularly those who may be disabled, have difficulty accessing the hearing process or otherwise asserting their rights.

Three powerful considerations guide our support for expansion of this law to the whole state:

*(1) A disproportionate number of those who are sanctioned have disabilities or face other barriers that make it difficult for them to comply with work rules.<sup>1</sup>* People with serious physical or mental health limitations that were not identified by DSS are often ill-equipped to comply with work requirements and are therefore at greater risk of sanction. Individuals with lower levels of literacy, education, and skills, as well as those with domestic violence issues and limited English proficiency are all more likely to be sanctioned.<sup>2</sup>

*(2) Sanctions cause serious hardship.<sup>3</sup>* The full welfare benefit is extremely inadequate. Any reduction due to a sanction is likely to cause severe hardship. Parents and children in sanctioned families are more likely to experience hunger and food insecurity, increases in hospitalization, eviction, homelessness, loss of utility and telephone service, and the need for emergency services including emergency housing, food and clothing aid.

(3) *Decisions to impose sanctions are often the result of administrative errors, inadequate notice or client disabilities.*<sup>4</sup> Factors include:

- Notices that do not clearly explain the clients' rights,
- Notices that are not timely sent or are not properly addressed, and
- Non-compliance that is the result of a disability that DSS failed to detect, or detected but did not accommodate.

**A.2455/S.3840 would protect against inappropriate sanctions** by requiring that:

- Before imposing a sanction, districts must determine whether the alleged failure to comply was related to a disability, a child care problem or transportation difficulties.
- Mandatory durational sanctions, with inflexible punishment periods of reduced benefits, are eliminated. Instead, sanctions can be avoided, or lifted if already in effect, if the client demonstrates a willingness to comply with the work requirements, or establishes that they are unable to do so.
- A client who is otherwise satisfactorily participating in assigned work activities must not be sanctioned for a single infraction.

There is no justification for failing to apply these fair and reasonable measures statewide. They provide critical protection to clients who may be unable to comply with a work requirement for reasons beyond their control, or who have a single lapse in a system that is often rigid and punitive. This bill will afford **all** public assistance recipients in New York the opportunity to participate in appropriate activities and limit the risk of unwarranted punishment.

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<sup>1</sup> See Nadel, Wamhoff and Wiseman, footnote 2; Dan Bloom and Don Winstead, "Sanctions and Welfare Reform," Brookings Institution, Policy Brief No. 12, Jan. 2002, <http://www.mdrc.org/publications/191/policybrief.html>; Shawn Fremstad, "Recent Welfare Reform Research Findings: Implications for TANF Reauthorization and State TANF Policies," Center on Budget and Policy Priorities, Jan. 2004.

<sup>2</sup> LaDonna Pavetti, "TANF Studies Show Work Requirement Proposals for Other Programs Would Harm Millions, Do Little to Increase Work," Center on Budget and Policy Priorities, November 13, 2018. This article includes a helpful compilation of research sources on the barriers welfare recipients often have, and their relation to sanctions. See also, LaDonna Pavetti, "Review of Sanction Policies and Research Studies-Final Literature Review," Submitted to Department of Health and Human Services by Mathematica Policy Research, Inc., March 10, 2003.

<sup>3</sup> Tim Casey, *The Sanction Epidemic in the Temporary Assistance for Needy Families Program*, Legal Momentum, August 2010, <http://www.legalmomentum.org/assets/pdfs/sanction-epidemic-in-tanf.pdf>.

<sup>4</sup> See, for example, Public Advocate for the City of New York, "Hearing Problem: An Analysis of Human Resources Administrations Fair Hearing Outcomes in New York City," October 2009; Brennan Center Strategic Fund, Inc., "Improving New York City's Public Benefits System: A Key Role for Help Desks," 2008, [http://www.brennancenter.org/content/resource/improving\\_new\\_york\\_citys\\_public\\_benefits\\_system\\_a\\_key\\_role\\_for\\_help\\_desks/](http://www.brennancenter.org/content/resource/improving_new_york_citys_public_benefits_system_a_key_role_for_help_desks/)