

BAIL REFORM IN NEW YORK: THE FACTS

In 2019, New York enacted historic pretrial reforms that will result in a dramatic reduction in pretrial detention populations across the state by eliminating pretrial detention on most misdemeanors and non-violent felonies. In most cases, a person's liberty will not depend on how much money they have. The new law is a positive step toward eliminating the wealth and race-based detention that has plagued our state for decades. This law will change the lives of thousands of New Yorkers — all presumed innocent — who would otherwise be detained pretrial because they are unable to afford their bail. The law also includes critical protections to eliminate the influence of for-profit interests, curb the criminalization of poverty, and prevent the expanded mandatory use of biased risk assessment instruments. No longer will prosecutors be able to use a person's inability to pay as a tool to coerce guilty pleas in most cases. The law also includes critical protections to eliminate the influence of for-profit interests and curb the criminalization of poverty.

This monumental reform was thoroughly vetted and debated by all system actors, and all attempts to subvert this crucial law are an affront to the will of the people of the State of New York. As January 1st approaches, there has been a marked increase in fearmongering and disinformation from forces intent on undoing this progress before the law even goes into effect. Here are the real facts about bail reform:



Bail reform will make New York State FAIRER and MORE JUST.

Bail reform will reduce the number of people subject to the trauma of pretrial jailing simply because they cannot afford bail. Under the current system, people spend days, weeks and even months and years in pretrial detention on bail as low as \$250. In a 2018 study, the New York Civil Liberties Union found that in 8 New York counties (Albany, Dutchess, Monroe, Niagra, Orange, Schenectady, Ulster and Westchester) nearly 10,000 people were detained for one day or more on bail of \$250 or less over a five year period.¹ Another study conducted in 2018 in Buffalo, NY found that the average misdemeanor bail was \$5,000 and the average felony bail was \$10,000.² Yet forty percent of Americans do not have \$400 in emergency funds.³

Bail reform will begin to address the structural racism of the current pretrial system. White New Yorkers are nearly twice as likely as Black New Yorkers to be released on the same day that their bail is set and serve shorter amounts of time in pre-trial detention overall than Black New Yorkers.⁴ It will make the pretrial system more transparent by requiring pretrial services to gather and report data on who is being released pretrial and on what conditions.

Bail reform will significantly reduce wealth extraction and profiteering in the current system where already marginalized communities lose money to for-profit bail bond companies and families with an incarcerated loved one lose tens of millions of dollars in wages every year.⁵ For the charges courts are permitted to set bail, courts will be required to set an alternative to monetary bail instead of resorting solely on cash and commercial bail bonds.

Bail reform will reduce the number of wrongful convictions. People detained pretrial are far more likely than people who await trial at home to be coerced into guilty pleas, be convicted of a crime, and receive harsher sentences.^{6,7,8} People routinely plead guilty to crimes they did not commit because of the deleterious effect of pretrial detention and lack of discovery available in criminal cases, leading to hundreds, if not thousands, of wrongful convictions.⁹ Pretrial liberty will allow people to mount a meaningful defense while maintaining employment, family and community ties.



Bail reform will make New York's communities SAFER and STRONGER.

Pretrial jailing imposes a wide range of devastating costs on New York's families and communities. These costs begin with the need to post bail or pay for someone's release from jail after their arrest. When they cannot afford bail, it costs families to stay in contact with their loved ones as they have to pay exorbitant rates for phone calls and transportation to visit. On top of these direct costs, families lose income, child or elder support, and other financial contributions when a wage-earner is incarcerated. The NYC Comptroller's Office estimates that families unable to post bail lose \$28 million in wages each year while incarcerated.¹⁰ Finally, incarceration also takes a toll on family members' physical and mental health, education outcomes, and other measures of well-being. Even one day in jail can totally derail a person's life. They can lose their jobs, homes, and potentially their children.

By providing support not punishment, bail reform will strengthen communities. Research shows that the pretrial jailing worsens public safety because it exacerbates economic and familial instability from lost housing and employment to deteriorated mental health.¹¹

Bail reform will also reduce the number of people who are subject to jail conditions that pose a serious, and too often deadly, threat. Since 2001, more than 370 people have died in New York City's jails.¹² In Erie County, at least 26 people have died in the county's jail since 2005.¹³ Perhaps the most well-known story of trauma caused by pretrial jailing is that of Kalief Browder, who took his own life after spending three years as an innocent teenager on Rikers Island, or Layleen Polanco, a young transgender woman who died on Rikers Island where she was held on \$500 bail in 2019.^{14 15}

People will return to court without money bail. Research shows that court reminders - now required by law - and resources like access to transportation can effectively ensure a person's return to court.¹⁶ Community bail funds have demonstrated that people return to court without any financial "skin in the game."¹⁷ The Brooklyn Community Bail Fund has paid bail for nearly 5,000 people who would otherwise have been jailed for their poverty, and 95% have made all of their court dates.¹⁸ Similarly, the Columbia County Bail Fund has a 90% return to court rate.



Bail reform is SUPPORTED BY NEW YORKERS

New Yorkers strongly support bail reform that keeps people at home while they wait for trial. According to a 2018 survey, 71% of New Yorkers supported ending pretrial detention for people charged with misdemeanors and nonviolent felonies.¹⁹

Among survivors of crime, support for ending pretrial detention was at 73%, two percentage points higher than the average. Survivors of intimate partner violence have also been vocal in their support for bail reform.²⁰

Faith communities and organizations have named bail reform as a moral issue and supported New York State's efforts.²¹



Bail reform will REDUCE WASTEFUL SPENDING

Pretrial jailing is unnecessary, cruel, and expensive. According to the New York City Comptroller, it costs, on average, \$832 to jail someone each day at Rikers Island versus \$8 per day for supervised release.²²

The five largest counties outside of New York City - Erie, Nassau, Suffolk, Westchester, and Onondaga - spend an average of \$114 million per year on their jail systems, which amounts to roughly \$115,000 per detained person per year.

This money could instead be invested in communities to alleviate poverty, end homelessness, ensure quality education, and tackle mental illness and substance use disorders.

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