

BAIL REFORM 2020: THE FACTS

What does our new bail law do?

Makes sure most people charged with misdemeanors and non-violent felonies are not caged on Rikers Island because they are too poor to pay.

Under the new law, most people charged with misdemeanors and non-violent felonies* must be released on their own recognizance or released with non-monetary conditions, like supervised release or electronic monitoring, by the judge at their arraignment. For people charged with most violent felonies offenses money bail is still an option.**

Gives the court judicial discretion throughout the pendency of the case.

For all people who are at liberty on a pending case, regardless of the charge, the court can set money bail at a later date after a hearing: if the person persistently and willfully does not appear on their court dates; if they violated an order of protection; if they tampered or intimidated a victim or a witness; or if they have a pending felony and commit another felony. In all cases the court must set the least restrictive condition to ensure people return to court.

Makes it easier for people to pay bail when it is set in their case.

The accused must be given three options to pay, including a partially secured surety bond or an unsecured surety bond. An unsecured bond is a promise to pay the court if the accused does not return on their court date. A partially secured bond involves making a down payment to the court (which is fully refundable if the accused returns for all of their court dates), and a promise to pay the remaining balance if the accused does not show to their court date.

What does the bail law not do?



The bail law does not endanger the public.

Truth is bail has never been a way to keep the public safe, it has always been about money. There are thousands of people walking around New York who have criminal charges that are the same as the people sitting in jails. The only difference between those people who are free and those who are in a cage is the amount of money they have. New York has never held people pretrial based on supposed predictions of future "dangerousness."



The bail law does not "let criminals back on our streets."

This offensive, racially coded language is used to dehumanize people after they have been arrested — people who have NOT been proven guilty of any crime. Hundreds of thousands of people are arrested every year in New York City alone. This is the result of over-policing and targeting of poor Black and Brown communities. All of these people are presumed innocent under the law. According to the most recent data before bail reform took effect, 35% of these cases were resolved at their arraignment. Of cases that continue after arraignment 76% of people were released on their own recognizance.

*There are exceptions to this release provision. Judges can still set bail for people charged with sex crimes, violating orders of protection in domestic violence cases, intimidating or tampering with victims and witnesses.

**There are two charges wrongly labeled as "violent felonies" that trigger release or release with conditions until and unless a person is convicted: Robbery aided by another person and Burglary of a dwelling, as long as neither includes any allegations of violence.

THIS SESSION – DON'T ROLLBACK NY'S PROGRESS. DON'T ROLLBACK BAIL REFORM.



In 2019, New York passed sweeping reforms that will significantly reduce the footprint of cash bail, expand criminal discovery, and further enforce the right to a speedy trial. But fear-mongers are leading a vicious campaign relying on stereotypes and misinformation to roll back these transformative laws and move New York backwards.

Rollbacks to the bail reform bill will not make our communities safer.

Money bail neither protects people nor keeps people from committing crime. Bail is simply intended to ensure a person's return to court, not to penalize a person who has not yet been convicted of any crime. Requiring someone to pay money before their release only criminalizes poverty and perpetuates mass incarceration. People with money pay the bail and people without sit in jail.

Throwing people in jail pre-trial will not stop hate crimes.

To suggest that anyone accused of a hate crime should be locked up before proven guilty is not justice. It suggests that we should treat people as guilty until proven innocent, no matter the facts in the case. Jail cells will not solve the root causes of hate, prejudice, or crime. Mental health services, housing, education, and building trust across communities are the long-term solutions.

So-called "predictions of future dangerousness" perpetuate bias and racism in our criminal legal system.

A so-called dangerousness standard allows a judge to deem someone a threat to the public based on nothing more than a suspicion. The judge would be able to strip away a person's liberty for months, if not years, based on a suspicion even though that person remains legally innocent. A dangerousness standard only increases the already egregious racial disparities and inequities in our criminal legal system. We should not pretend that courts can decide with any certainty who is a danger to society before trial without relying on systemic racial biases. When judges are asked to lock people up based on a perceived threat to safety, judges are empowered to rely on factors that are less than factual or solely criminal histories that are riddled with systemic biases due to existing racial disparities in policing, housing, health care, and education..Adding a dangerousness standard runs counter to protecting the presumption of innocence. It criminalizes people before they are proven guilty of anything. Instead of detaining a person after criminal conduct is determined, the standard would allow courts to detain a person to generate reasons to determine criminal conduct.



Judges have more discretion to determine what is actually needed to ensure a person back to court.

The new law allows judges to not simply rely on money to ensure a person's return to court but also needed services and programs, including supervision.

Bail reform – in effect for less than two weeks -- is already reuniting families and saving taxpayers money and allowing judges to make decisions on what is actually needed to ensure return to court.

Thousands of people statewide have been released from jail or released after arrest without bail ever being set. Parents and children have been reunited, people have been transferred to mental health or addiction treatment, and supervised release programs have connected court-involved people with the services they actually need to turn their lives around. Within the first week of reform, the NYC jail population dropped to 5771, down from just under 8000 in August. Herkimer County's jail population plummeted – saving money that the county previously spent boarding 20-30 people per day in nearby counties and making a new jail unnecessary. Albany County released around 100 people and carved out \$8.75 million in jail savings in this year's budget.

Real reform means ending cash bail altogether and removing money from the pre-trial freedom equation. Rollbacks are not the answer. #NoRollbacks

JEWES FOR RACIAL AND ECONOMIC JUSTICE

Why do Jewish communities support bail reform?

For decades, New York's money bail system violated the presumption of innocence, criminalized poverty, and devastated families and communities. While wealthy people paid bail and went home, poor and working-class people languished in jail for days, months or years. New Yorkers across the state - including many Jewish organizations - fought to change this unjust system. In April, New York State passed bail reform legislation that eliminates money bail and protects the presumption of innocence in the vast majority of cases. All of us are committed to combating antisemitism and to keeping our communities safe. Money bail and pretrial detention accomplish neither of these goals. Pretrial jailing - which can cause people to lose their jobs, housing and healthcare - destabilizes families and communities, exacerbating root causes of harm and violence. Pretrial detention also exacerbates mental health crisis, while doing nothing to support treatment, accountability, or transformation. True community safety requires affordable housing, economic and educational opportunities, access to quality healthcare and mental health services. The Torah and the Talmud teach that we must be committed to rooting out injustice in all its forms. Psalm 23 directs us: Do not deny justice to a poor man when he appears in court. That is the core of bail reform: ensuring that the poor do not languish in prison because they cannot afford to pay bail, while the wealthy are able to purchase their freedom. Jewish communities cannot and will not allow racist fear-mongering or the weaponization of antisemitism to stand in the way of full and complete implementation of long overdue bail reform. The new bail reform law will create more fairness, more justice, and more safety for Jewish communities and all New Yorkers.

What does the new bail law actually do?

The new bail law ends money bail and protects the pretrial liberty of people accused of most misdemeanors and non-violent felonies. In these cases, judges can release people on their own recognizance, release under pretrial supervision, or set non-monetary conditions. Judges have substantial discretion with the kinds of conditions that can be set, including regular check-ins with a pretrial services organization, treatment, or other kinds of programming. When someone is charged with a violent felony, judges can still set bail if they deem it the "least restrictive" condition to ensure return to court.

Why should we oppose rollbacks to the new bail law? Why are money bail and pretrial jailing ineffective responses to antisemitism and other forms of hate?

Hate violence and bias incidents are most effectively prevented in community, not by the police or by prosecutors. We need approaches that prevent violence through education and community-building, interrupt violence, through community-based upstander/bystander trainings and rapid response at the local level, and repair through restorative justice, counseling and peer-support. Zero-tolerance approaches are simply ineffective. Responses that are proportional to the harm and that protect the dignity and humanity of the accused are what best serve the long-term interests of all of our communities. A few days or weeks in jail does nothing to address the underlying issues and can, in fact, worsen the mental health and other needs that contributed to the act of harm. The prior money bail system did nothing to address the underlying causes that led the person to be involved in the criminal legal system. It only privileged the person with wealth by allowing them to buy their way out of jail, and punished the poor for that identical alleged conduct because they cannot afford their freedom.

The concept of harsh criminal penalties is to deter crime and for some, to extract vengeance. Neither of these frameworks is relevant or constructive in the context of fighting antisemitism. The new bail law ends money bail and protects the pretrial liberty of people accused of most misdemeanors and non-violent felonies. In these cases, judges can release people on their own recognizance, release under pretrial supervision, or set non-monetary conditions. Judges have substantial discretion with the kinds of conditions that can be set, including regular check-ins with a pretrial services organization, treatment, or other kinds of programming. When someone is charged with a violent felony, judges can still set bail if they deem it the "least restrictive" condition to ensure return to court.

It is critical that we bring nuance and specificity to our assessment of antisemitic acts. There are enormous differences between:

- Organized and/or radicalized white supremacists attempting to intentionally vilify, kill or expel Jews;
- Angry individuals harassing or even physically assaulting Jews because existing antisemitic myths tell them to blame Jews for their economic distress or simply because of proximity and inter-communal tension;
- Someone with mental illness using abusive symbols such as a swastika or racial slurs to gain a sense of power and control in their lives;
- A young person who is simply seeking attention using symbols they recognize as potent without fully understanding them;
- We have to draw clear distinctions and respond accordingly.

Incidents like these in recent weeks are a test for those of us who stand for justice and want a criminal justice system that no longer routinely harms Black and brown communities and low-income people by jailing them pretrial. None of us want to see harm and violence directed at our Jewish communities. It is important to understand, however, that violent incidents targeting Jews in 2019 and bail reform are not related. Bail reform only went into effect a week ago and did not cause these individuals to suddenly act upon their hatred and distrust. The challenge for us now is to hold firm to the goals of bail reform — to end needless jailing simply because people are poor — and to look for community-based solutions that truly promote safety and well-being.

Why should misdemeanor hate crimes not be made bail eligible?

Expanding mass incarceration or jailing people with mental illness does nothing to combat hate in our society. Low-level charges will put a poor person in jail - and it won't address the underlying issue or make communities targeted by hate any safer. In cases where serious violence takes place, like the attack in Monsey, bail can still be set. Incarcerating people pretrial actually harms public safety, which is why low-level charges, and commonly-filed charges that include no actual acts of violence - are excluded from bail eligibility. Under the new bail laws, judges can still order pretrial supervision or non-monetary conditions in all cases.

What about judicial discretion?

New York's mass jailing crisis exists because judges and prosecutors abused the bail law to incarcerate people before they even had a chance at a trial or other due process. The new bail law limits judicial discretion on charges that include no acts of violence because it was meant to. Judges have proven that they will use their discretion to incarcerate. We cannot allow that discretion on cases of misdemeanors and low-level felony cases. The new bail law also creates more tools for judges and law enforcement to monitor people being released pretrial. All people facing criminal allegations will now be subject to a wide range of supervision options, all are at the discretion of the judge. Despite the misinformation campaign promulgated by change-resistant district attorneys and regressive politicians, under the new law, people accused of violent felonies can still be subject to bail. Others are subject to non-monetary conditions of release that may include, among other conditions, home detention, curfews, seizing of passports, and electronic monitoring. This is far better for public safety than a monetary system where people (and only those with means, like Harvey Weinstein) can pay and walk.

What about Tiffany Harris?

Tiffany Harris, a Brooklyn woman with mental illness, allegedly slapped several people and made anti-Semitic statements. Some have used her release from jail to stir up opposition to bail reform. This is, however, seriously misguided. If the new bail laws had not been passed, she would be on Rikers Island getting inadequate or no treatment for her illness, and would also likely suffer serious and lasting trauma, ranging from solitary confinement to, sadly, sexual violence by staff. The new bail law results in more humane and effective solutions. Rather than being in jail, where her mental health condition would only get worse, she is now hospitalized and receiving services that should help address the underlying mental illness that prompted the incident, and make us all safer. As is often the case, the people who were harmed want Harris to receive treatment and help, rather than jail.

Why are we witnessing a wave of antisemitic hate violence?

Antisemitic ideas are embedded in European and American society — they have been for two thousand years. Sometimes they are more visible while at other times they remain under the surface of everyday life, however they are always profoundly dangerous. During and after the 2016 election, right-wing politicians embraced white Christian nationalist policies, and the Republican Party, FOX News, and other organizations on the right ushered fringe hate groups and ideas into the political mainstream. Pundits and politicians on the right have repeated antisemitic conspiracy theories on television and tweets. Hate groups have grown by 30% since the 2016 election — after three years of decline under President Obama (SPLC). A rise in antisemitic violence and harm is not connected to bail reform. New York's previous money bail neither promoted safety nor combated hate. This is a shared, social problem — if we want to address it meaningfully, we need to pull it up by the roots — name it and address it everywhere we see it — rather than target individuals.

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.

1. https://www.nyclu.org/sites/default/files/field_documents/bailreport_20180313_final.pdf
2. https://ppgbuffalo.org/files/documents/criminal-justice/cruelty_and_cost_money_bail_in_buffalo.pdf
3. <https://money.cnn.com/2018/05/22/pf/emergency-expenses-household-finances/index.html>
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13. <https://buffalonews.com/2019/08/25/inmate-bleeding-internally-was-sent-to-an-isolated-detox-cell-he-died-within-days/>
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15. <https://www.cnn.com/2019/07/31/us/layleen-polanco-rikers-island-autopsy/index.html>
16. https://www.ncsc.org/~media/Microsites/Files/PJCC/PJCC_Brief_10_Sept_2017_Court_Date_Notification_Systems.ashx
17. <https://bds.org/bds-testifies-before-the-nyc-council-on-the-harm-of-the-commercial-bail-bond-industry/>
18. <https://brooklynbailfund.org/our-results-1>
19. <https://www.fwd.us/wp-content/uploads/2018/03/NYCJR-poll-memo-Final.pdf>
20. <https://avp.org/open-letter-by-lgbtq-women-survivor-advocacy-organizations-in-support-of-bail-reform/>
21. <https://www.trinitywallstreet.org/social-justice/bail-reform>
22. <https://comptroller.nyc.gov/newsroom/comptroller-stringer-despite-a-decline-in-incarceration-correction-spending-violence-and-use-of-force-continued-to-rise-in-fy-2018/>

Governor Cuomo, Leader Stewart-Cousins, and Speaker Heastie,

January 1st was a historic day that ushered in pretrial reforms that will make New York fairer and more just. These reforms are a huge step forward towards eliminating the race- and wealth-based detention that has plagued New York for decades. The new laws will dramatically expand pretrial liberty and reduce jail populations and taxpayer spending on jails across the state.

These reforms are the result of years of work by directly impacted people, advocates, faith leaders, and lawmakers to address the rampant injustices of New York's pretrial system. Prior to these reforms, tens of thousands of people across the state languished in jail each year simply because they were too poor to afford bail and forced to accept plea deals without ever seeing the evidence in their cases. People routinely lost their homes, jobs, and custody of their children because of the state's broken and racist pretrial laws. The laws passed by the legislature and signed into law by the Governor will go a long way towards righting these wrongs.

Less than a week after these historic reforms were implemented, some regressive district attorneys and legislators are calling to reverse your great work and return to a pretrial system that will continue to prey on Black, Brown, and low-income communities. By referring to the new bail reforms as a "get-out-of-jail-free card," these fear-mongers are trying to expand a two-tiered system of justice in which the wealthy pay bail and go home and poor people languish in jail.

Others are clamoring for the introduction of dangerousness to our bail statute, an approach that would exacerbate racial disparities and that New York has rightfully rejected for half a century. This small but vocal group is stoking fear by spreading misinformation about a small number of cases to the media rather than celebrating the fact that thousands of people are reuniting with their families, returning to work, and making their communities stronger.

Pretrial reform is about fighting for a fairer, more just New York. Make no mistake – retreating from bail reform less than a week after it goes into effect because of predictable fearmongering will be a retreat from New York's position as a leader in criminal justice reform and will embolden opponents who prefer the status quo. Each of you fought hard to secure these important reforms, and tens of thousands of New Yorkers are and will continue benefiting from them. We are urging you to stand firm and stop any attempts to roll back New York's historic pretrial reforms.

Sincerely,

Action Together Rochester
Alliance for Quality Education
Bend the Arc: Jewish Action
Brooklyn Community Bail Fund
Brooklyn Defender Services
Broome Tioga Green Party
Center For Community Alternatives
Citizen Action New York

Civil Rights Corps
College & Community Fellowship
Color Of Change
Correctional Association of New York
Drug Policy Alliance
Empire State Indivisible
End New Jim Crow Action Network (ENJAN)
Enough Is Enough
Federal Defenders of New York
First Presbyterian Church of Brooklyn
FWD.us
Harm Reduction Coalition
Human Rights Watch
Immigrant Defense Project
Innocence Project
Irvington Activists
John Brown Lives!
JustLeadershipUSA
Labor-Religion Coalition of NYS
LatinoJustice PRLDEF
Legal Aid Society
Long Island Progressive Coalition
Make the Road New York
New Hour for Women & Children LI
New York Civil Liberties Union
New York Communities for Change
New York County Defender Services
New York State Defenders Association, Inc.
New York Working Families
Rikers Debate Project
Rise Up Kingston
Robert F. Kennedy Human Rights
ROCitizen
Showing Up For Racial Justice (SURJ NYC)
Southern Tier AIDS Program
Students for Sensible Drug Policy
SURJ ROC
T'ruah: The Rabbinic Call for Human Rights
The Bronx Defenders
The Bronx Freedom Fund
The Osborne Association
Truth Pharm
Ulster People for Justice & Democracy
Uri L'Tzedek

VOCAL

WESPAC Foundation

Westchester Children's Association

Westchester Coalition for Police Reform

Westchester for Change

Westchester MLK Institute for Nonviolence

Worth Rises

Youth Represent