

## OVERVIEW OF SENATE'S/GOVERNOR'S BAIL PROPOSAL

March 31, 2020

*This proposal would represent a drastic, regressive rollback of the current bail law and would be a significant step backwards from even the previous bail law. The combination of preventative detention (remand) and a substantial expansion of detention-eligible charges/circumstances would **undermine the presumption of innocence, dramatically increase jail populations across the State, and exacerbate racial disparities**. This proposal would also subject huge numbers of people charged with misdemeanors to remand without possibility of release, something that has never before been done in New York.*

*This is exactly why hundreds of organizations across the state are demanding **NO ROLLBACKS, NO TWEAKS, NO CHANGES**. Every part of this proposal is harmful in its own right, but taken together, this proposal would take New York State back decades in the fight for justice.*

This proposal:

***Eliminates cash bail entirely and replaces it with indefinite preventative detention (remand) with no possibility of release for most people, including people charged with misdemeanors, based on flight risk or a “dangerousness” assessment***

- The bill repeals cash bail but greatly increases detention. Options available to judges are: release on own recognizance, release with non-monetary conditions, and remand (preventative detention). Individuals who are remanded have no avenue for release as the due process provisions are eviscerated.

***Creates new standard for pretrial detention based on a so-called “dangerousness” assessment***

- The bill broadens the standard for detention: “the least restrictive conditions that will reasonably assure the principal’s return to court or *prevent the principal from committing a crime involving serious physical injury to another person based on the facts of the instant case.*”
- This language asks judges to try to predict the future and invites implicit bias into our pretrial system: it allows judges to guess future “dangerousness.” This will undoubtedly lead to more racial disparities in our system.
- This would eviscerate the presumption of innocence and will greatly increase the number of presumptively innocent people who are subject to pretrial detention.

### ***Dramatically expands pretrial detention eligibility (buckets)***

- This bill greatly expands the eligibility for indefinite preventative detention to include many more charges that are currently not bail eligible. This will increase pretrial detention rates across the State.

### ***Allows remand in misdemeanor cases for the first time in New York's history***

- The bill appears to create a new detention eligibility category for an undefined group of “persistent offenders.” A person can become eligible for remand whenever they are out on any felony case or a class A misdemeanor involving “harm to an identifiable person or property” and pick up a new felony or class A misdemeanor involving “harm to an identifiable person or property”. This provision is particularly problematic and subject to broad interpretation.
- This would make huge numbers of people charged with misdemeanors subject to remand for the first time ever.

### ***Violates due process for people facing remand***

- Prosecutors can move to detain people at arraignment pending a detention hearing with an evidentiary standard even lower than probable cause.
- Judges can pre-determine guilt by evaluating the “strength of the case” or “weight of the evidence.” This provision flouts the presumption of innocence.
- The defense is entitled to one subsequent hearing requesting release. After that, there must be “**substantial** change in circumstances.” This provision, again, is regressive and lowers the standard that was in the previous bail laws or by limiting opportunities for release.

### ***Prioritizes for-profit industries over people***

- Allows for-profit industry to supply electronic monitoring devices incentivizing the overuse of these devices for monetary gain. This will lead to mass e-carceration and exploitation of poor Black and Brown New Yorkers.
- The bill includes no oversight or transparency measures or privacy protections.