

IT'S TIME FOR BAIL REFORM IN NEW YORK

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New Yorkers value justice, fairness, and equal opportunity. But our broken justice system is undermining these values. There are over 25,000 people detained in local jails across New York State on any given day; *nearly 70% are being detained pretrial*.¹ This means they have not been convicted—they have only been charged with a crime, are presumed innocent, and are awaiting their day in court. Most are detained in jail pretrial simply because they cannot afford to pay cash bail. **No one should be held in jail simply because they cannot afford to buy their freedom.**

Why We Need Bail Reform in New York

► PUNISHING THE POOR FOR BEING POOR

In New York, there are nine (9) options available to a judge when setting bail to ensure a person charged with a crime returns to court. Some options, like cash bail and insurance company bonds, require cash payments on the front end. Other options, like unsecured bonds, do not require any upfront payment and are therefore easier for low-income people to afford. Unfortunately, most judges in New York use the two options which are the hardest for defendants to afford: paying cash, or paying a bail bondsman to put up the funds, called a “bond.” Not only does this contradict the intent of the law, but research by the Vera Institute has shown that when judges use alternative forms of bail that don’t require up front cash payments, defendants are just as likely to return to court as they are when judges set cash bail or bond.² Over the last 30 years, judges in Madison County have routinely approved unsecured bonds—meaning people pay no money upfront before being released—and people regularly return to court. Community bail funds in New York, including those in the Bronx³ and Brooklyn⁴, have shown that the vast majority of those who have their bail covered return to court. Despite the law’s intention to not make bail dependent on a person’s wealth, under current practice, poor people get penalized for being poor.

► WORSENING RACIAL DISPARITIES IN THE JUSTICE SYSTEM

Systemic racial bias is found at every point in the criminal justice system, including pretrial detention practices. Bias in policing practices means Black and Latino people are disproportionately more likely to be brought into the system, including through arrests for quality-of-life and drug offenses.⁵ Moreover, a study of prosecutorial patterns in Manhattan showed Black and Latino defendants were subject to higher rates of pretrial detention and more punitive plea offers than similarly situated white defendants.⁶ Because of a comparative lack of wealth in Black and Latino communities,⁷ people in those communities are less likely to be able to afford bail to avoid pretrial detention. Additionally, people of color—particularly Black women, LGBTQ people, young men, and immigrants—are among the groups of people most likely to experience and survive violence, and least likely to receive support in the aftermath.⁸ That means that many of the people detained pretrial are crime survivors, and that their detention runs concurrent with their trauma and healing. Additionally, many people who are detained pretrial are likely to survive violence in the future. When that happens, their sense of the justice system’s fairness and legitimacy may shape their decisions about whether or not to report and seek help for the harm they sustain.⁹

¹Vera Institute, “Incarceration Trends,” <http://trends.vera.org/rates/new-york/incarcerationData=all>. ²Vera Institute, “Against the Odds: Experimenting with Alternative Forms of Bail in New York City’s Criminal Courts,” www.vera.org/publications/against-the-odds-bail-reform-new-york-city-criminal-courts. ³See The Bronx Freedom Fund, “Our Work,” www.thebronxfreedomfund.org/our-work. ⁴See Brooklyn Community Bail Fund, <https://brooklynbailfund.org>. ⁵Independent Commission on New York City Criminal Justice and Incarceration Reform, “A More Just New York City,” 34, www.morejustnyc.com/the-reports/#the-commissions-report. ⁶Ibid., 33. See also Jenn Rolnick Borchetta & Alice Fontier, “When Race Tips the Scales in Plea Bargaining,” *Slate* (October 23, 2017), www.slate.com/articles/news_and_politics/jurisprudence/2017/10/new_research_finds_that_prosecutors_give_white_defendants_better_deals_than.html. ⁷Dedrick Asante-Muhammad et al., “The Ever-Growing Gap: Without Change, African-American and Latino Families Won’t Match White Wealth for Centuries,” Institute for Policy Studies, <http://www.ips-de.org/wp-content/uploads/2016/08/The-Ever-Growing-Gap-CFED-IPS-Final-2.pdf>. ⁸See Danielle Sered, “Accounting for Violence,” Vera Institute of Justice (2017), <https://www.vera.org/publications/accounting-for-violence>. ⁹Ibid., 11.

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▶ DRIVING JAIL GROWTH IN NEW YORK

While arrests have declined in New York State overall in recent years, pretrial incarceration in local jails has increased—especially in such rural counties as Cortland and Chenango¹⁰—leading to proposals for new jails in some upstate counties. In New York City, nearly 80% of those in jail at Rikers Island are being detained *pretrial*; most simply can't afford bail.

▶ NEEDLESSLY INTRODUCING PROFIT INTO PRETRIAL DECISIONS

People who can't afford to pay bail are often forced to use commercial bail bonds and are subjected to a largely unregulated industry known for exploitative practices. Commercial bail bonds are a particularly onerous form of bail; it is the only type of bail that requires consumers to pay an upfront fee that is non-refundable, no matter the outcome of the case.¹¹ The U.S. is the only country in the world other than the Philippines that allows the operation of a commercial bond industry.¹²

▶ BURDENING TAXPAYERS

Pretrial detention is incredibly expensive for taxpayers. In New York City, it costs \$247,000 a year to detain just one person in jail¹³—money that could instead be invested in stable and affordable housing, public health initiatives, youth services, and programs that divert individuals away from the criminal justice system altogether.

▶ HARMING PUBLIC HEALTH

The public health implications of pretrial detention are severe. Pretrial detention of just a few days increases the likelihood of a new arrest and can lead to family instability, as well as the loss of employment, housing, and medical care.¹⁴ People with chronic health conditions make up approximately 40% of those behind bars, while individuals with substance use disorders represent nearly 70% of jail populations.¹⁵

Real Bail Reform in New York State Must:

1 CONFRONT & ELIMINATE racial disparities in pretrial practices. Any bail reform must reverse and end the disproportionate detention of select racial groups.

2 LIMIT & DRASTICALLY REDUCE the use of pretrial detention. New York must pursue and execute the original intent of the bail statute and protect the presumption of innocence.

3 END wealth-based detention. No one should be in jail because they can't afford to buy their freedom.

4 REMOVE PROFIT from pretrial justice decisions. Stop exploitative practices that profit off low-income people.

5 ENSURE right to counsel—and quality representation—at any individualized hearings to determine bail or prior to any use of pretrial detention.

6 INCLUDE people directly impacted by the justice system in discussions and planning for bail reform.

7 ESTABLISH standardized collection and public reporting of pretrial detention data, and couple with accountability mechanisms.

8 ACCOUNT FOR & MINIMIZE differences in bail and pretrial detention practices between New York City and the rest of the state.

9 ADDRESS the linkage of bail, discovery, and speedy trial to achieve real pretrial justice reform in New York.

GOVERNOR CUOMO, THE LEGISLATURE, AND THE OFFICE OF COURT ADMINISTRATION MUST ENACT MEANINGFUL BAIL REFORM NOW. #BailReformNY

¹⁰Vera Institute, forthcoming publication. ¹¹Color of Change & American Civil Liberties Union, "Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System," 2, www.aclu.org/sites/default/files/field_document/059_bail_report_2_1.pdf. ¹²Adam Liptak, "Illegal Globally, Bail for Profit Remains in U.S.," *The New York Times* (January 29, 2008), www.nytimes.com/2008/01/29/us/29bail.html?mcubz=1. ¹³"A More Just New York City," 14. ¹⁴See ABA Criminal Justice Section, "Report to the House of Delegates," 3-6, www.americanbar.org/content/dam/aba/publications/criminaljustice/2017/Adult_Cash_Bail_Resolution.authcheckdam.pdf. See also Human Rights Watch, "The Price of Freedom," www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york. ¹⁵Vera Institute, "On Life Support: Public Health in the Age of Mass Incarceration," www.vera.org/publications/on-life-support-public-health-in-the-age-of-mass-incarceration.

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