



NEW YORK BAIL REFORM: WHAT'S FACT AND WHAT'S FICTION

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Q: What is included in the new bail reforms?

The new bail reforms, which go into effect on January 1, 2020, remove money bail and pretrial detention for most misdemeanors and nonviolent felonies, leaving bail and remand an option for the most serious and violent felonies. Under the new pretrial system, people facing most misdemeanors and most nonviolent felonies will either be released on their own recognizance or face non-monetary conditions of pretrial release ahead of their trial.

For those accused of offenses that are bail eligible, little has changed. A judge will still assess a number of factors to determine whether a defendant is a flight risk and set bail accordingly. Under the new system, judges are required to consider a defendant's ability to pay and must set at least three forms of bail, including a partially secured or unsecured bond (which are two of the least onerous forms of bail). For the most serious cases, remand remains an option, allowing a judge to hold someone in pretrial detention without bail.

Q: Some law enforcement authorities say that these reforms are dangerous. Are they?

A: These reforms are not dangerous, they have been made based on evidence that these types of changes improve public safety. In fact, similar reforms have already contributed to lower crime rates in states and localities across the country, from Texas to California to North Carolina.

It is the goal of the justice system to maximize public safety and minimize undue harm and burdens on public resources. *The fact is the current system does neither. Research has shown that time spent on pretrial detention away from job, family and community actually increases the risk of that person committing future crimes. By decreasing reliance on pretrial detention, we decrease the harmful impacts of incarceration that fracture families and drive people to commit further crime.*

These reforms will also help lower the risk of incarcerating innocent people: Pretrial detention has led to a considerable increase in guilty pleas - even for those who are not guilty. *The Innocence Project reports that 10% of convictions (for serious offenses such as rape and murder) exonerated by DNA evidence nationwide were guilty pleas.* In 2018 alone, *49 of the 151 exonerations nationwide were based on guilty pleas.* And when dealing with less serious crimes, and those for which there is no biological evidence that can establish innocence, no

one knows how many actually innocent people plead guilty simply to avoid sitting in jail for months or years because they cannot afford to post money bail. By decreasing our use of pretrial detention, we will decrease the risk that innocent people plead guilty, perhaps enabling the guilty to go free.

Q: Won't these reforms let dangerous people out of jail, back into the street?

A: No – these reforms will not endanger New Yorkers with an influx of dangerous people into our communities. [In New York, bail has never been set as a reflection of the dangerousness of a defendant.](#) [Bail is not a punishment.](#) It was designed as a tool to ensure that people accused of a crime appear for their day in court. However, over time we have learned that cash bail does not improve court appearance rates. [The new reforms do not change to role of bail in cases of the serious crimes previously discussed.](#) Rather, they correct issues that have been plaguing the New York justice system for decades by providing judges with more effective methods of pretrial accountability, and putting poor and wealthy defendants on an even playing field.

Importantly, those who will no longer be held because they could not afford bail will not simply be unconditionally released. Judges will have the ability to set non-monetary conditions of pre-trial release and, if those who are released persistently and wilfully fail to appear in court, or if they commit witness intimidation or tampering, the judge can set bail. Additionally, those who are released for nonviolent felonies can have bail set if a new felony or a violent felony is committed. Finally, if convicted our justice system will still hold them accountable.

Q: Why does law enforcement oppose these reforms?

A: It is not true that all Law Enforcement opposes these reforms. In fact, many lifelong law enforcement professionals are ardent supporters of these reforms *because they know they work*. [Kings County District Attorney Eric Gonzalez, who is responsible for one of the largest jurisdictions in New York State, not only supports these reforms, but enacted some of them under his authority as a DA, before the legislature took action to enshrine them in law.](#) He did that because he knew these changes would make his communities safer. DA Gonzalez has prioritized public safety throughout his entire career and has a proven track record of reducing crime.

It is not clear why some police and DA's oppose these reforms, especially because evidence shows that reducing incarceration actually makes us safer, while pretrial detention is associated with *increased* recidivism upon release.

Pretrial detention for people unable to afford bail also wastes taxpayers dollars -- [\\$100 million dollars annually in New York City alone](#) -- and stretches law enforcement and correctional resources thin, hindering law enforcement's ability to focus on those who pose a threat to our communities. The money saved from reducing pre-trial incarceration should, instead, be spent on much-needed resources such as direct services for the homeless and mental health services.

Q: The bail reforms are supposed to be limited to low-level offenses, but some of the non-bail eligible offenses seem serious. Are we preventing judges from setting bail for serious and dangerous offenders?

A: It's important to remember that a judge has never been able to set bail because someone might be dangerous, and that even charges that sound serious to the public may not indicate that the person charged with them is dangerous. It is even more important to remember that *the punishment for these crimes upon conviction has not changed*. When someone is convicted of a crime in court, they will be held accountable by our justice system.

What has changed is how our courts help ensure that people appear for their hearings and trials. Prior to these reforms, accountability was tied to an individual's ability to *afford* bail. That created enormous inequality in our justice system that didn't help keep anyone safer:

Under the old system, if two people were charged with aggravated vehicular assault and one was wealthy and the other was not, the wealthy individual was likely to await their trial at home with little or no accountability until the trial date, while the low-income individual would be detained in jail, putting their job, apartment, and family at risk. Under the new system, a judge can avoid this inequality under the law and the high cost to taxpayers while holding everyone, regardless of wealth, accountable to appear in court. There are new tools at their disposal to do this, from text message reminders to electronic monitoring.

Additionally, in some cases, the offenses that have raised red flags for some do not carry a jail or prison sentence upon conviction. For example, under our old system people accused of Class E felonies would only serve periods of incarceration *prior* to conviction and would be released

under probation once convicted of their offense. This system saw pretrial detention rise to levels that far exceeded the punishment we have set for such an offense.

Q: Are judges hamstrung by these reforms? What about police?

A: No. For the most serious crimes, judges can still choose from the nine types of bail that have been on the books since 1971. In fact, judges are given more leeway to carry out the true purpose of bail by allowing them to consider a person's ability to afford the bail amount.

For cases where the offense is no longer bail eligible, a judge now has *more* options, not fewer, at his or her disposal. The new law lays out a number of non-monetary conditions a judge can place upon an individual accused of a crime to ensure that the individual appears for their court date. These non-monetary conditions include travel restrictions, firearm restrictions, mandatory participation in pretrial services, and electronic monitoring.

Finally, these reforms do not impact a police officer's ability to carry out their duty to protect and serve the people of New York. Pretrial reforms do not impact their ability to respond to emergency calls, investigate crime, or make arrests. In fact, pretrial reform will help ensure that the correct person is held accountable and that their work is more effective.

Q: Are these reforms harmful for victims and families?

A: No. In fact, bail reform has received the vocal support of a number of victim and survivor rights advocacy groups including

- Alliance for Safety and Justice;
- Day One New York;
- NYC Anti-Violence Project;
- STEPS to End Family Violence; and
- Violence Intervention Project, Inc.

These reforms will improve New York's ability to ensure that the right person is held accountable for harming our communities. Under our current system, people unable to afford bail are left sitting in the harsh environments of New York's jails while their defenders fight to see the evidence against their client. These factors combine to make guilty pleas seem very appealing even to the innocent: The pressure on an individual in pretrial detention is extreme.

That causes innocent people plead guilty so they can go home sooner, while the true perpetrators are not held accountable. Most importantly, it is morally and ethically unacceptable for New York State to allow our criminal justice system to put innocent people behind bars because of bad pretrial policies.

About NYUJ

New Yorkers United for Justice is a statewide coalition of diverse nonprofit organizations engaged in New York that is leading a movement bringing urgent criminal justice reform to the Empire State.