

Bail Reform in New York



The inherent unfairness and cruelty of the cash bail system undermines the promise of safety, equal opportunity, and equal justice under law that New Yorkers cherish.

That's why the pretrial laws the state legislature passed in 2019—including bail reform—are so important.

The ever-worsening crises at Rikers and other jails across New York have magnified the importance of critical measures—including the 2019 bail reforms—that decarcerate, promote justice, and improve public safety. This fact sheet briefly reexamines the 2019 bail reform laws, the partial rollbacks of them in 2020, and what's happening now.

The Problem

Before bail reform was passed in 2019, jails were crowded with people who couldn't afford to buy their freedom. About 23,000 people were detained in local jails across New York State—and even in early 2020, almost 70 percent of the people detained in New York City jails and nearly half of those in the state's other jails were pretrial; they had not been convicted of a crime.¹ They were locked up because they couldn't afford bail. The overwhelming majority of those held in jails pretrial were Black and Latinx and poor. Though wealthier people accused of crimes could await trial in home confinement or with other restrictions, those who couldn't afford cash bail frequently wound up at jails like the notorious Rikers Island simply because they couldn't pay.²

The tragic death of Kalief Browder in 2015 drove home the real-world consequences of criminalizing poverty and other entrenched racial disparities in our legal system. Kalief was a young Black man from the Bronx who was arrested at the age of 16 for the alleged theft of a backpack. His family could not afford the \$3,000 bail set for him at his initial arraignment, so—like thousands of other New Yorkers—he was sent to Rikers, where he remained for almost three years awaiting trial. Kalief endured regular, almost unspeakable violence and numerous lengthy stays in solitary confinement.³

The Bronx DA eventually dropped the charges and he was released. But spending three years pretrial at Rikers caused him devastating harm. Kalief hanged himself when he was just 22 years old.⁴

Kalief's story forced the nation to bear witness once again to the violence-plagued Rikers Island jail complex and New York's lethal bail system. His death spurred widespread calls for bail reform and to shut Rikers down.⁵

The 2019 Justice Reforms

On April 1, 2019, after years of work by grassroots groups and advocates across New York, lawmakers in Albany passed a historic slate of criminal justice reform bills.⁶ As part of that legislation, bail reform accomplished several key objectives to advancing justice statewide:

- 1. The reforms eliminated money bail and pretrial detention** for most New Yorkers facing misdemeanor and nonviolent felony criminal charges. This means that the majority of people who are charged with most low-level offenses are not detained pretrial.

2. **The legislation requires that most people are released on their own recognizance** unless a judge rules that other conditions are necessary to assurance court appearances.⁷
3. **The reforms restrict the use of electronic monitoring.**
4. **The legislation requires courts to consider an individual's ability to pay** before setting bail (for anyone who is still subject to bail).

Given New York's unique pretrial laws, which prohibit the consideration of a finding of "dangerousness" in pretrial proceedings, the 2019 reforms represented a substantial overhaul of the state's pretrial system. Combined with changes in discovery practices passed in the same package, these reforms stand out nationwide in their transformation of pretrial practices.⁸

For a more detailed explanation of the 2019 bail laws, [see the excellent resources provided by the Center for Court Innovation.](#)

Bail Reform Implementation—and Blowback

As the new laws went into effect, the impact on jail populations was immediate: fewer people were imprisoned. The jail population in New York City alone dropped by more than 40 percent upon the law's implementation.⁹

But immediately after reforms passed, opponents called for repeal. The NYPD claimed that the crime rate was rising: it wasn't. And even before bail reform took effect, New York City pols and tabloids sensationalized stories about people who had been released without bail and rearrested.¹⁰

Early in 2020, lawmakers reversed course, pushing measures to undermine bail reform. Community groups and other advocates fought against these changes, preventing the worst of the opposition's proposals from passing. But lawmakers did make changes to the bail law—rolling back some of the reforms that advocates argued would lead to more unjust pretrial detention.

And that was exactly what happened. Even though there is no link between bail reform and increased crime—crime went down overall in 2020—the blowback has been substantial.¹¹ Some law enforcement officials, including the NYPD commissioner, have been caught lying publicly about bail reform and continue to misinform the public.¹²

As predicted, the bail-reform rollbacks have sent more people to jail pretrial, making it that much harder to close not only Rikers, but other deadly jails throughout the state.¹³

What's Next

Governor Hochul has proposed more bail reform roll backs. **Katal opposes efforts to roll back bail reform.** It is wrong to hold people in jail simply because they cannot pay bail. It is racist to detain mostly Black and Latinx people at Rikers and other jails while wealthier (and mostly white) defendants can pay their way to freedom.

Lawmakers must make sure that judges are following the law in the pursuit of justice. To do otherwise further corrodes public safety and trust, continuing to pervert the legal system and use it as another tool of oppression rather than one of redress.

For more information, or to get involved, please contact:
Yonah Zeitz, Director of Advocacy: yonah@katalcenter.org or (347) 201-2768.

References

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- ⁵ Katal Center for Equity, Health, and Justice. “Nearly 1,000 People March and Rally in Queens in Action to Close Rikers Island Jail Complex.” Press release. September 26, 2016. katalcenter.org/nearly-1000-people-march-and-rally-in-queens-in-action-to-close-rikers-island-jail-complex.
- ⁶ Katal Center for Equity, Health and Justice. “Major Criminal Justice Reforms Passed in New York.” Press release. April 1, 2019. katalcenter.org/release-major-criminal-justice-reforms-passed-in-new-york.
- ⁷ *Release on recognizance* means “a [release](#), without the requirement of a posting [bail](#), based on a written promise by the [defendant](#) to appear in court when required to do so.” Cornell Law School Legal Information Institute. [law.cornell.edu/wex/own_recognizance_\(or\)](https://law.cornell.edu/wex/own_recognizance_(or)).
- ⁸ Each party in a court case must turn over the evidence it intends to use at trial, a practice referred to as *discovery*. But before the 2019 reforms, prosecutors in New York didn’t have to disclose evidence they had until the day a trial started, undermining the ability of the accused person to prepare. New York’s outdated and unfair discovery law contributed to delays in court processing times by denying people accused of crimes with the critical materials needed to make informed decisions about their cases.
- ⁹ “Bail reform went into effect January 1, 2020, and, with close to nine out of 10 cases made ineligible for bail, contributed to a 40 percent decline in New York City’s pretrial jail population. Elsewhere in the state, the impacts were even slightly larger.” See Michael Rempel and Krystal Rodriguez. *Bail Reform Revisited: The Impact of New York’s Amended Bail Law on Pretrial Detention*. Center for Court Innovation. 2020, 1. www.courtinnovation.org/sites/default/files/media/document/2020/bail_reform_revisited_05272020.pdf.
- ¹⁰ Christopher Robbins. “Bail Reformers Say Bill Bratton and Others Are Trying to ‘Scare the Public to Death.’” *Gothamist*. January 13, 2020. gothamist.com/news/bail-reformers-say-bill-bratton-and-others-are-trying-scare-public-death.
- ¹¹ Krystal Rodriguez, Michael Rempel, and Matt Watkins. “The Facts on Bail Reform and Crime in New York City.” Center for Court Innovation. February 2021. www.courtinnovation.org/publications/bail-crime-nyc.
- ¹² See CBS New York. “During Questioning in Albany, NYPD Commissioner Shea Backtracks on Bail Reform Law as Big Reason for Gun Violence.” October 14, 2021. [cbsnews.com/newyork/news/bail-reform-nypd-commissioner-dermot-shea-assembly-hearing](https://www.cbsnews.com/newyork/news/bail-reform-nypd-commissioner-dermot-shea-assembly-hearing). Similar false claims have been made beyond New York City; see Justice Not Fear. “Westchester County Officials Debunked by Their Own Data.” February 25, 2022. justicenotfear.org/debunk/westchester-county.
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