Katal Center for Health, Equity, and Justice

The Public Health Impacts of Broken Bail Practices and Pretrial Detention

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New Yorkers value justice, fairness, and equal opportunity. But our broken justice system is undermining these values – and harming the health of communities across the state. In New York, there are approximately 25,000 people detained in local jails; nearly 70% – about 20,000 people – are being detained pretrial.[1] This means they have only been charged with a crime and, under the law, are presumed innocent. The public health implications of pretrial detention, and the pipeline it creates to prison, are severe. For instance, 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.[2] And while individuals are at an elevated risk of mortality in the time period immediately following release from jail or prison, as few as 1 in 6 are enrolled in health insurance prior to release.[3] This fact sheet further outlines the public health impacts of pretrial detention in New York.

Economic and Racial Health Disparities

Research shows that people living in poverty experience disparities in both the criminal justice[4] and health care systems.[5] Poverty is not just a strong predictor of poor health outcomes; it directly influences how many individuals are held in jails, with 9 out of 10 defendants in New York City unable to pay bail in time to avoid pretrial detention.[3] Pretrial detention deepens the impact of economic insecurity by disrupting employment and income as well as impacting engagement in the healthcare system. [4]

Black and Latino New Yorkers are also disproportionately represented in jails; in 2014, Black and Latino people made up approximately 63% of the state's jail population, despite making up only 34% of the state's total population.[4] These figures reflect the lack of wealth in these communities,[5] which makes it difficult to afford bail. However, they also reflect arrest and prosecutorial patterns that target Black and Latino communities. After an arrest, Black and Latino defendants in NYC are more likely than white defendants to be taken into custody for low-level offenses.[6] A study of prosecutorial patterns in Manhattan also showed Black and Latino defendants were subject to higher rates of pretrial detention and more punitive plea offers than similarly situated white defendants.[7]

Behavioral and Physical Health

People with chronic health conditions make up almost 40% of jail populations.[8] These individuals receive poor health care while detained and are less likely to receive medications for these conditions.[9] Further, detention and incarceration increases risk of exposure to HIV, STDs, Hepatitis B and C, and tuberculosis.[10] These diseases are 3-4 times more concentrated in jail and prison settings than the general population.[11]

Individuals with substance abuse disorders represent nearly 70% of jail populations[12], and rarely receive evidence-based treatments for these conditions.[13] As communities across the state struggle with an unprecedented opioid overdose epidemic that takes the life of a New Yorker every seven hours,[14] current pretrial practices, especially bail, exacerbate the problem. Detention for as little as 72 hours can drop physical tolerance, raising the risk of relapse and fatal overdose for individuals with an opioid dependency upon release.[15] Further, evidence-based treatments for opioid dependence such as methadone and

buprenorphine are underutilized in jail and prison settings despite the fact that such treatment is associated with greater post-release engagement in treatment and reduced risk of overdose.[16]

Similar to those struggling with substance abuse disorders, people in jail are 4 to 6 times more likely to have a serious mental illness than the general population and receive minimal appropriate treatment if treated at all.[17] These people are also less likely to make bail and spend longer periods of time in jail than others.[18] Tragically, the conditions experienced by people with mental health issues in jail exacerbates symptoms,[19] and leads too often to suicide.[20] In fact, nearly 80% of these suicides are by individuals who have not been convicted of a crime.[21]

Children and Families

Incarceration, whether pretrial or otherwise, is associated with higher rates of familial involvement in the child welfare system.[22] Nearly 7% of children in the U.S. have had a parent in jail, disproportionately impacting Black children and those living in poverty.[23] A purely penal response to substance use has resulted in a foster care system that is in severe crisis.[24] The economic impact of a jailed parent often leads to housing and nutritional insecurity for children.[25] For these children, experiences related to household substance abuse, mental illness, violence, and divorce/separation are higher than their counterparts.[26] Young adults who have experienced jail or incarceration have poorer economic, health, and other psychosocial outcomes than those who have not.[27]

Pretrial Detention and Public Safety

Research shows that low-risk individuals assigned cash bail and held in jail may actually be more likely to commit new crimes upon release than those who are not.[28] This puts into question the very justification for bail practices as a protection of public safety. Further, in New York State nearly 70% of those held in jails are being held pretrial – presumed innocent, yet stuck in jail awaiting resolution of their cases.[29] In New York City, individuals spend an average of 400 days detained while awaiting trial,[30] separated from their families, healthcare, employment, and support systems. In New York City, the cost to detain an individual in jail per year is a staggering $247,000,[31] money that could instead be invested in public health, youth services, and programs that divert individuals away from the criminal justice system altogether.

Solutions

Existing bail practices drive individuals with substance use disorders and mental illnesses into jails, where they cannot access life-saving supports and services. Beyond just changing bail practices, we must shift our entire approach to addressing substance use dependency, mental health, and poverty. These issues demand health-based and community-based solutions rather than the punitive approach of the criminal justice system.

The Affordable Care Act has laid a strong foundation for this necessary and critical shift. The law requires comparable levels of coverage for substance use and mental health disorders as is provided for other medical needs, rebuking the current practice of funneling people with substance use disorders into the criminal justice system.[32] Further, community mental health and substance use treatment options have been expanded, allowing individuals to access individualized case management in their communities rather than relying on jails and prisons for treatment.[33] New York has even gone a step further than many other states by only *suspending* a person's Medicaid when they are incarcerated for less than a year, rather than totally terminating their medical coverage.[34]

Much work remains to be done, however, particularly in the realm of pretrial justice reform. In order to reduce the number of people held in jails across the state, we must reform our speedy trial and discovery laws, and especially reform existing bail practices. Meaningful bail reform requires pursuing the following objectives:

1. Drastically reduce the use of pretrial detention;
2. Confront and reduce racial disparities in pretrial practices;
3. End wealth-based detention;
4. Establish standardized collection and public reporting of pretrial detention data, and couple with accountability mechanisms;
5. Remove profit from pretrial justice decisions;
6. Ensure robust right to counsel at any individualized hearings to determine bail or prior to any use of pretrial detention;
7. Include people directly impacted by the justice system in discussions and planning for bail reform;
8. Account for differences in bail and pretrial detention practices between New York City and the rest of the state;
9. Address the connections between pretrial practices in New York – bail, discovery, and speedy trial.

Additionally, innovative public health and safety interventions, like Albany's Law Enforcement Assisted Diversion (LEAD) program,[35] should be actively pursued and developed. LEAD, for example, offers true pre-arrest diversion away from the criminal justice system and into a service array that addresses the psychosocial drivers of contact with law enforcement. This program could easily be deployed across the state. It expands upon the model developed in Seattle, WA in 2011, which led to a 58% reduction in recidivism for participants when compared to a similar control group.[36] Prosecutors, public defenders, judges, and law enforcement are key collaborative partners in LEAD, working with case managers to address legal issues for participants.

Finally, while pre-arrest diversion, done correctly, can represent movement toward justice and public health, it is only an interim step. Decriminalization or legalization of drug use/possession, sex work, and other low-level offenses is necessary to stop over-criminalization of marginalized communities, achieve significant reductions in pretrial detention populations, and reorient the justice system. In 2016, there were over 65,000 misdemeanor drug arrests in New York State and almost 1,500 for prostitution.[37] The individuals arrested pose little threat to public safety and are less likely to receive public health, treatment, and other resources as a result of the illegal nature of their behavior.[38] Evidence from states and countries that have lessened or eliminated criminal penalties for drug use and possession show no increases in drug use or crime as a result.[39]Key health and other organizations supporting the decriminalization of drugs include the United Nations and World Health Organization,[40] The John Hopkins-Lancet Commission on Drug Policy and Health,[41] International Red Cross,[42] American Civil Liberties Union,[43] and Human Rights Watch.[44] The American Public Health Association released a policy statement in 2013 called, "Defining and Implementing a Public Health Response to Drug Use and Misuse" that explicitly calls for decriminalization for personal use and possession of drugs. [45] Organizations calling for decriminalization of sex work include the Lancet, [46] Amnesty International, [47] World Health Organization,[48] UNAIDS,[49] and Human Rights Watch.[50] Preventing arrest entirely through decriminalization is among the surest ways to reduce pretrial detention populations overall.

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