



A GUIDE TO

# BAIL REFORM IN NEW YORK

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#BailReformNY

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# A Guide to Bail Reform in New York State

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New Yorkers value justice, fairness, and equal opportunity. But our broken justice system undermines these values. On any given day in New York State, approximately 25,000 people are detained in local jails; nearly 70 percent of them—about 17,500 people—are in jail *pretrial*.<sup>1</sup> This means they have not been convicted of a crime—they have only been *charged* with a crime, are presumed innocent, and are awaiting their day in court. Most are sitting in jail pretrial because they cannot afford to pay cash bail.

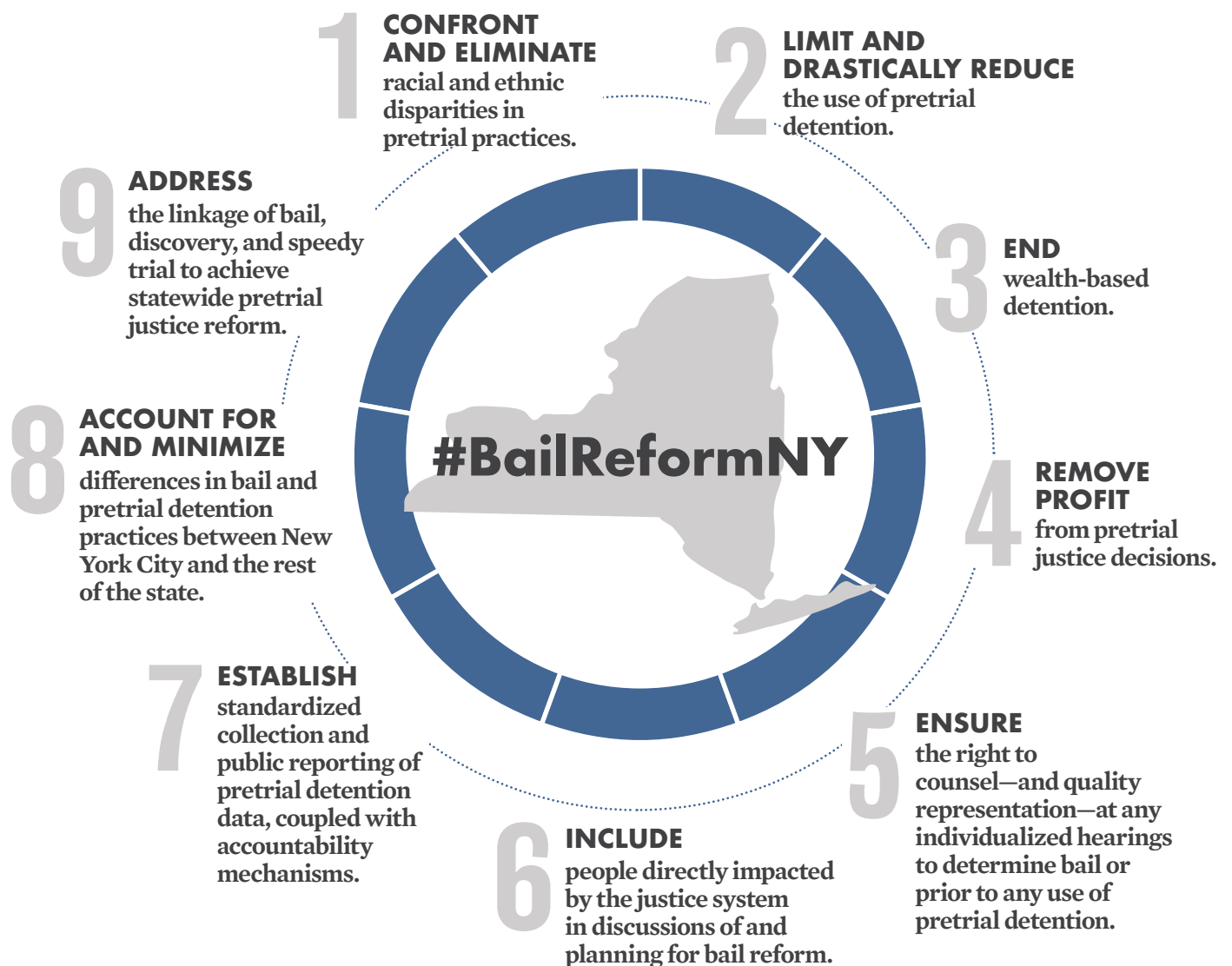
## **NO ONE SHOULD BE DETAINED IN JAIL SIMPLY BECAUSE THEY CANNOT AFFORD TO PURCHASE THEIR FREEDOM.**

Community groups and advocates are pushing for reform of bail practices—and there is growing agreement among elected officials that reform is needed.

On January 16, 2018, New York Governor Andrew Cuomo put forth an Executive Budget, which included bills to reform bail and other pretrial practices across the state. In mid-February, both the NY State Assembly Majority and the NY State Senate Democrats issued their own criminal justice reform packages, which also included proposals for bail and other pretrial practices. While there are differences—some of which are significant—between the reform proposals issued by the Governor, State Assembly, and State Senate Democrats, there is growing agreement that reform is urgently needed and that the time for reform is now.

This guide is intended to help New Yorkers cut through the politics and rhetoric, understand current bail practices, and provide a standard by which to evaluate current and future reform proposals to bail practices in New York.

# Achieving meaningful bail reform in New York will require the following actions:



# 1

## CONFRONT AND ELIMINATE

### racial and ethnic disparities in pretrial practices.

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Every stage of the criminal justice system is marked by systemic racial bias and disparities. Racial and ethnic disparities in policing practices mean that Black and Latino people are more likely to be arrested than are white people for the exact same offenses.<sup>2</sup> After an arrest, Black and Latino people in New York City are more likely than white people to be taken into custody for low-level offenses.<sup>3</sup> A study of prosecutorial patterns in Manhattan also showed that Black and Latino people were subject to higher rates of pretrial detention and more punitive plea offers than similarly charged white people.<sup>4</sup>

In 2014, Black and Latino people made up approximately 63 percent of the state's jail population, despite representing only 34 percent of the total population statewide.<sup>5</sup> In New York City, the figures are also disturbingly disparate: Black and Latino people make up 90 percent of the city jail population but only slightly more than half of the overall population.<sup>6</sup>

Systemic racial bias in pretrial detention also negatively affects victims of violence and other crime. People of color—particularly Black women, LGBTQ people, young men, and immigrants—are among the groups most likely to experience and survive violence and least likely to receive support in the aftermath.<sup>7</sup> This means that many of the people detained pretrial are crime survivors, and that their detention is concurrent with their trauma and healing. Many people who are detained pretrial are likely to experience 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 violence and seek help for the harm they sustain.<sup>8</sup>

Bail reform must not exacerbate or replicate racial and ethnic disparities in the criminal justice system. It must not contribute to expanding undue surveillance and monitoring (known as “net widening”) of marginalized communities. Successful reform requires an end to the over-criminalization, over-policing, and over-charging that drive disproportionate numbers of people of color into jails and prisons.

**Race and wealth should not be factors in our criminal justice system.**

—GOVERNOR ANDREW CUOMO  
State of the State Address, January 3, 2018

# Concerns About the Use of Risk Assessment Instruments in Pretrial Detention

Risk assessment instruments (RAIs) are tools used to predict the *probability* of a particular outcome: whether police will re-arrest someone at a later date, or whether a person will be able to make it to court. In New York, the existing statute in place allows for RAIs based on a “risk of flight.” It does not allow for the so-called “dangerousness” model used in other states. In fact, the legislature specifically considered and rejected adding dangerousness to New York’s bail statute when it was drafted in the early 1970s, based largely on concerns that such determinations would be too speculative and would disproportionately impact low-income communities of color.<sup>9</sup> These early concerns have been shown to be valid; not only have racial disparities persisted in New Jersey, which recently adopted these instruments,<sup>10</sup> but recent research has shown that popular tools had no effect on reducing racial disparities in pretrial detention.<sup>11</sup> Several studies demonstrate that many of these tools label Black and Latino people disproportionately as “high risk” in comparison to whites, even when people pose little to no risk of being re-arrested.<sup>12</sup> There is growing concern that RAIs used to assess the risk of re-arrest or committing future crime (the “dangerousness” model) may reinforce the disproportionate incarceration of poor people and people of color. Tools that do so have the potential to further entrench and legitimize discriminatory practices in the criminal justice system, especially if used pretrial, when a person is presumed to be innocent.

What’s more, risk assessment instruments are not guaranteed to reduce pretrial detention populations. A study by Professor Megan Stevenson of the Antonin Scalia Law School at George Mason University found that Kentucky’s adoption of a new dangerousness-based RAI “had negligible effects on the overall release rate, [failure to appear] rate, [and] pretrial rearrest rate.”<sup>13</sup> A separate report found that in Lucas County, Ohio, pretrial detention rates *increased* and the rate at which people

pleaded guilty at first appearance *doubled* since implementing a dangerousness RAI.<sup>14</sup>

RAIs that do not consider dangerousness are now in use in New York State. For the past 40 years, the New York City Criminal Justice Agency has been administering an RAI that makes release and detention recommendations according to whether a person will make it to future court appearances.<sup>15</sup> This approach preserves the presumption of innocence guaranteed by the Constitution—and also makes practical sense: one 2012 study showed that only 1.9 percent of people who are released pretrial in the United States were re-arrested for a violent felony.<sup>16</sup>

The use of RAIs should continue to be limited in New York State and continue to exclusively evaluate the likelihood of future appearances. This approach respects the presumption of innocence, while ensuring judges retain the authority to make individualized bail determinations. Further, it ensures courts can prioritize and fund meeting the needs of people accused of crimes, many of whom frequently cannot make it to court because they lack basic childcare or reliable transportation. Where these tools are currently in use in New York—as with the CJA tool—there should be an explicit objective of reducing racial and ethnic disparities in pretrial detention and decreasing such detention overall. They should be evaluated according to these metrics by an independent third-party agency and not by the entity that developed the tool. Use of these tools must be immediately discontinued if, after a test period, they do not reduce racial disparities. RAIs do not guarantee that pretrial detention decisions will be more objective, and should never be a substitute for robust evidentiary hearings that permit the judge to scrutinize the evidence and allegations against the accused. These types of due process protections can contribute to addressing and eliminating the disproportionate representation of Black and Latino people in pretrial detention populations.

# 2

## **LIMIT AND DRASTICALLY REDUCE** **the use of pretrial detention.**

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Pretrial detention of even a few days can increase the likelihood of a new arrest and future failures to appear in court. It can also lead to family instability and loss of employment and housing, as well as disruption of medical care.<sup>17</sup> These problems are especially pronounced among youth, with studies showing that detention may increase the chance of recidivism.<sup>18</sup> Recent research has also identified a causal link between pretrial detention and adverse case outcomes; youth and adults who are held pretrial are more likely to receive a jail or prison sentence and are more likely to plead guilty—regardless of guilt—than those who have been released before trial.<sup>19</sup>

State laws relating to bail can be found in the New York Criminal Procedure Law, §§ 500-540, which took effect on September 1, 1971.<sup>20</sup> The statute preserved the system of money bail that existed under the former Code of Criminal Procedure, but created four additional bond options so that judges would no longer be limited to a decision of either release on recognizance (ROR) or setting cash bail.<sup>21</sup> The state's bail statute was crafted with the explicit intention of facilitating the release of pretrial detainees, hence the mandatory consideration of a person's financial resources and the multiple alternatives to cash bail. By adhering to the intent of the original statute, New York State can drastically cut its pretrial detention population.

Because the law is applied ineffectively, pretrial detention is commonplace statewide. Approximately 25,000 people are detained in jails statewide; nearly 70 percent of them are being detained pretrial while presumed innocent.<sup>22</sup>

In New York City, 77 percent of people detained on Rikers Island are held pretrial, mostly on felony charges.<sup>23</sup> Approximately 12 percent of the city's jail population are people detained on misdemeanor charges.<sup>24</sup> It costs \$270,876 a year to incarcerate one person in a New York City jail,<sup>25</sup> money that could instead be invested in stable and affordable housing, public health, youth services, and programs that divert people from the justice system altogether.

Although most people held in New York City jails have been charged with felonies, the rate of incarceration in the rest of the state is driven largely by misdemeanor charges.<sup>26</sup> In counties like Broome, Columbia, Cortland, Dutchess, Greene, Jefferson, Nassau, Rockland, and Schenectady, more than 70 percent of the average daily jail population is being held pretrial.<sup>27</sup> Counties where more than 70 percent of the entire jail population (pretrial and sentenced people) is detained on misdemeanor charges include Seneca, Chenango, Jefferson, Oneida, Montgomery, and Saratoga.<sup>28</sup> In Clinton County, nearly 90 percent of the people in jail are detained only for misdemeanors.<sup>29</sup>

In New York City, more than 86 percent of people released pretrial appear for subsequent court dates.<sup>30</sup> Several studies have demonstrated that simple reminders before a court date—whether in writing or by phone—can substantially increase the likelihood of a person appearing for their court date.<sup>31</sup>

## 2 LIMIT AND DRASTICALLY REDUCE the use of pretrial detention. (cont'd)

The Office of Court Administration and local county and city officials must continue to address administrative impediments to paying bail, in order to reduce the number of people needlessly held in jail before trial. Recent changes to the New York City Administrative Code have tried to remove some of the obstacles to posting bail which otherwise leave individuals to suffer pre-trial detention for some period of time. Those changes include: mandating the NYPD allow people access to their cell phones in order to retrieve contact information of loved ones;<sup>32</sup> providing a bail facilitator to help detained people post their own bail;<sup>33</sup> mandating DOC to (1) accept bail payments continuously even if the individual is not yet housed in a specific correctional facility,<sup>34</sup> (2) accept bail at or near Criminal Court locations in each borough or online,<sup>35</sup> (3) release a person within 5 hours of posting bail, gradually reducing to 3 hours,<sup>36</sup> and (4) wait 4-12 hours before transporting someone from arraignments to jail if there is contact with someone who can post the bail;<sup>37</sup> and, mandating OCA to post accurate instructions in courthouses on how to post bail.<sup>38</sup> Many of

these changes took effect in January of 2018, and are a step in the right direction to reduce pre-trial detention. Additional fixes, however, must include accepting debit cards as a form of payment; allowing bail payments to be made online; releasing people with \$1 bail and no other holds automatically; and generally updating the technology used to accept bail payments, instead of using outdated equipment like fax machines.<sup>39</sup>

The mandatory release of people charged with misdemeanors and most felonies along with administrative fixes to posting bail would dramatically reduce jail populations across the state. The substantial costs avoided by reducing unnecessary pretrial detention should be calculated, captured, and reinvested in the education, health, and safety of communities that have been disproportionately impacted by the juvenile and criminal justice systems. Local and state governments must vest directly impacted communities with the authority to determine how any newly available funding will be invested, whether through the creation of community approval boards or otherwise.

**“My stepson, Ricardo Jr., had bail set at \$100,000. It was a hard, crucial burden on the entire Forde family [as] a whole. Me and my mother-in-law were emotionally and physically affected by this, trying to figure out where to get this money from. Our (appointed) lawyers didn’t do too much for us, and didn’t fight to get the proper evidence. My family did all the leg work and asked questions as to who saw what. My mother-in-law finally got a lawyer who charged her almost \$25,000, which she was only able to come up with \$10,000, which she actually borrowed. Now she is in debt for the rest of her life. My stepson still ended up doing two years. It changed me as a whole to see how they treat people pretrial in today’s society. They say we came so far, yet it looks like we still at the beginning.”**

—CAROLYN FORDE, mother of Katal member Ricky Forde

# END

## wealth-based detention.

People should never be detained simply because they don't have enough money to purchase their freedom.

Throughout the state, presumptively innocent people are being detained because they cannot afford to pay bail. A look at the 2016 figures in New York City shows that 9 out of 10 people in the adult system were unable to pay bail at arraignments, and were therefore unable to avoid pretrial detention.<sup>40</sup>

Although nine forms of bail exist in New York State, judges primarily use two of the most financially burdensome options, which both require up-front cash payments: cash bail and insurance company bond.<sup>41</sup> Unsecured bonds are an important alternative and can ensure that a presumptively innocent person comes back to court, without forcing the individual or a loved one to pay cash up front to either the court or a bondsman.

Even people who can afford one of the two bail options (cash or insurance-company bond) are not spared the punitive aspects of the money bail system. This system fails to account for the tremendous effort low-income families must expend to find the money necessary for the release of a loved one. If paying cash bail, individuals must pay refundable funds to the court, and if using a bondsman, they must pay both nonrefundable fees as well as collateral.

There is no consideration about whether money used to pay for bail or bonds is needed for basic living expenses like rent and food. Refundable funds are often not repaid for months or years. Even when returned, the funds may be less than the original deposit due to “bail poundage fees,” which can be deducted if the person pleads guilty in the case.<sup>42</sup>

As efforts such as charitable bail funds demonstrate, people do not need a financial stake in their case to appear in court and meet their obligations. For example, in Brooklyn, 95 percent of those who have their bail covered by the Brooklyn Community Bail Fund return for all of their court dates.<sup>43</sup> In the Bronx, 96 percent of people whose bail is paid by the Bronx Freedom Fund return for all of their court dates.<sup>44</sup> And over the past 30 years, judges in Madison County (east of Syracuse) have routinely approved unsecured bonds—meaning people pay no money up front before being released—and these individuals regularly return to court.

Money bail is cruel and ineffective, forcing people to languish in jails while their friends and family struggle to pull together the necessary funds. Nonfinancial conditions of release—available under current New York law—successfully ensure future court appearances, save taxpayers money, and prevent unnecessary pretrial detention.<sup>45</sup> If money bail is imposed, it must not exceed a person's ability to pay.

**“When Travis got arrested, it took time for the whole family to put money together to equal the bail amount. By the time we bailed him out, he had already served eight months on Rikers. Within these eight months, he lost his tooth and part of his personality. I believe if we could have gotten him out earlier, my cousin would be the same as he was prior to being held in jail pretrial.”**

—JESSICA WARD, Katal member

# 4 REMOVE PROFIT

## from pretrial justice decisions.

People who cannot 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 particularly onerous: this is the only type of bail that requires consumers pay an up-front nonrefundable fee that families lose regardless of the case outcome. When consumers use commercial bail bonds, they lose about 10 percent of their bond amount in nonrefundable fees and sometimes more.<sup>46</sup> The United States and the Philippines are the only two countries in the world that allow the operation of a commercial bond industry.<sup>47</sup>

The use of commercial bonds has increased in New York City in recent years; for cases with bail set at \$1,000 or more, commercial bonds account for one in five bail releases.<sup>48</sup> In 2016, people paid an estimated \$14 million to \$20 million in legally charged fees to for-profit bail bond companies in New York City.<sup>49</sup> This estimate does not include illegal fees that families are charged or any collateral withheld by bondsmen.

Paying bail via a commercial bail bond often requires families put down collateral, in amounts decided by the bail bond companies and their

agents. These agents can also impose additional requirements, such as GPS tracking and mandatory in-person visits.<sup>50</sup> The system allows for-profit bail bond agents to take measures that the court and police cannot, such as warrantless searches of a person's home.<sup>51</sup>

The transfer of wealth through legal fees, illegal fees, and collateral is concentrated in just a handful of already marginalized New York City neighborhoods.<sup>52</sup> This is not just money that could have been used to pay rent or put food on the table; it is liquid capital that cannot otherwise be spent within the community, too often permanently restricting economic mobility for low-income families, particularly people of color.

Secured-money bonds do not lead to higher rates of appearance at trial. Multiple studies have shown that unsecured bonds, which do not require an up-front deposit with a bondsman or the court, are as effective as secured bonds in ensuring an individual's return to court.<sup>53</sup> When pretrial supervision is imposed, the associated costs must not be passed on to presumptively innocent people or to their families. Profit must be removed from pretrial detention decisions.

**I was detained on Rikers for over six weeks while my mom was trying to gather the funds from family members to pay my \$2,500 bail. My mom paid the bondsman, but even though the judge exonerated the bail, none of the bondsman fees have been returned to us. It's more than just the money. People are getting hurt on a daily basis in these jails. There are seven other forms of bail under New York law that can actually help, but those aren't being used by judges, and that's not right.**

—MICHAEL MUIR, Katal member

## ENSURE

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

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People are entitled to the benefit of competent, zealous counsel when their liberty is at stake. Yet thousands of New Yorkers are arraigned daily without the benefit of legal representation. This is another practice that differs between New York City and the rest of the state. In New York City, every indigent person is assigned legal counsel at arraignment. That is not true statewide, and access to legal representation can be inconsistent among counties and even among towns in the same counties. The Vera Institute of Justice report, “Empire State of Incarceration,” illustrates this disparity in Erie County, where people charged in Buffalo are assigned legal counsel and have their cases heard before a judge, whereas in the village of Hamburg, individuals are not guaranteed such counsel or to have their cases heard before a legally trained judge.<sup>54</sup>

Quality representation at any bail or pretrial detention hearing depends on defense counsel having an opportunity to engage in a meaningful interview of their client and an opportunity to prepare their arguments. Time and resources should be reserved for attorneys and/or court

personnel to reach the friends and family of the accused in order to confirm their ties to the community, a main factor for bail determinations.

Bail hearings should take place at arraignment. Before bail or pretrial detention is imposed, a fully litigated, individualized hearing should take place and the defense attorney should be provided with all evidence currently available to or in the possession of the prosecutor and judge. If bail is set, there should be an automatic de novo review within a reasonable period, ideally just a day or two later.

Release with minimal to no supervision should be the default. Community supervision or monitoring should be imposed only in specific, limited, rigorously defined circumstances. These conditions should not be unduly onerous but should be tailored to the individual needs of the person who has been charged. Few to no restrictions should be placed on those who are eligible for pretrial release, and community supervision must not continue to be used as a proxy for surveillance of communities of color.

## INCLUDE

**people directly impacted by the justice system in discussions of and planning for bail reform.**

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Hundreds of thousands of New Yorkers have suffered the consequences of a broken pretrial system in the state: bail practices that punish people for being poor; lack of meaningful speedy trial rules, which entangle people in the system for months or years; and outdated discovery rules that undermine justice and prevent people from getting their day in court. (To read more about speedy trial and discovery, see page 14.) People of color and poor people are

overwhelmingly impacted by these practices and disproportionately represented among the state’s pretrial detention populations.

The people and communities directly affected must be part of fixing the broken system. This includes those who have been arrested, detained, and incarcerated, as well as their families and community members who are confronted with having to support a loved one trapped in the maze of the justice system.

# 7 ESTABLISH

## standardized collection and public reporting of pretrial detention data, coupled with accountability mechanisms.

Most counties in New York State do not collect and share data about their pretrial detention practices. The absence of standardized data and reporting hinders accountability and limits transparency.

To aid lawmakers, advocates, and the public in fostering an understanding of pretrial practices in New York, data collection and reporting should track the following:

- criminal charges;
- the form of bail;
- the amount of bail;
- the duration of jail stay;
- the revocation of bail; and
- demographic data, including information about race and ethnicity, gender, and age.

Any such data collection must, however, protect the identities of those who have been accused, particularly details related to medical history, immigration status, and country of origin.

Data reporting should also track what type and amount of bail prosecutors request; whether defense attorneys ask for alternative forms of bail; and the judge's reasoning when making a bail determination.

Standardized collection and reporting should be coupled with the creation of accountability mechanisms to make sure corrective action is taken when data shows that outcomes are inconsistent with reform objectives. Such corrective action could include the following:

- automatic dismissal of cases that have been unnecessarily pending for months or years;
- the mandatory release of indigent individuals who have been detained for no other reason than the inability to afford their bail;
- mandatory review of judicial decisions in jurisdictions where patterns of racial or ethnic disparities are found; and/or
- reduced funding to those jurisdictions that routinely and disproportionately detain low-income people of color.

**When I was 8, my uncle was arrested and taken away from my family; he was the only father figure I had. One of the main things I remember about that time was how much and how constant we had to travel around New York City visiting family and friends of my uncle, collecting money. When I would ask my mom what [we were] doing, she would tell me we're helping to bring Uncle Billy home. As I got older, I realized we were collecting [money for] my uncle's bail. Families are being hurt by these bail practices, and reform is needed now.**

—BRANDON LONG, Katal member

# ACCOUNT FOR AND MINIMIZE

## differences in bail and pretrial detention practices between New York City and the rest of the state.

The landscape of pretrial and court practices related to arraignment, bail, discovery, and speedy trial are vastly different in New York City and the rest of the state. Those differences affect the following:

- whether a person will have legal counsel assigned at arraignment or go without;
- whether the case will be heard in front of a qualified judge or a justice with no formal legal training;
- whether a prosecutor will be present for the arraignment;
- whether a case can be resolved at arraignment; and
- whether the decision maker will have any information regarding the accused person's background.

The presence or lack of legal counsel for the person accused of a crime, as well as the presence or absence of a prosecuting attorney, can influence the disposition of cases tremendously. Their presence or absence can determine whether a case can be resolved at arraignment—as many are in New York City—obviating the need for pretrial detention and mandatory bail determinations because the individual need not return to court at a later date.

Even the availability of public defenders is different in New York City and elsewhere in the state. There has long been a crisis in Upstate New York regarding the lack of funding for public defenders, leaving many individuals to wait or

go without any counsel whatsoever. Advocates recently won a change to the law that forces the state to fund public defense, but even this will take time to be fully functional, leaving New Yorkers to suffer in the meantime.<sup>55</sup>

New York City used to be the main driver of jail populations statewide; this is no longer true, as upstate counties drive jail growth through use of expanded pretrial detention.<sup>56</sup> New York City's overall jail population is lower than that of many jurisdictions nationwide, including those that have successfully won and implemented reform.<sup>57</sup> Even so, 77 percent of people being held on Rikers Island are there pretrial.<sup>58</sup> In the rest of the state, more than 60 percent of those in jails are being held pretrial.<sup>59</sup>

The ability to resolve misdemeanor cases at arraignment in every county would reduce the pretrial jail population, given that pretrial detention for misdemeanors is relatively common in most of the state. But in New York City, the majority of those detained pretrial are charged with felonies (nonviolent or violent), not misdemeanors.<sup>60</sup> Bail reform must therefore include careful examination and research-based assessment of the criminal justice system's definitions of violence in the context of felony charges, and must account for the racial disparities that occur in this context.

The reform process must account for these different practices; stakeholders from every region of the state must be involved to ensure that reform works for everyone.

# ADDRESS

## the linkage of bail, discovery, and speedy trial to achieve statewide pretrial justice reform.

Bail, along with discovery and speedy trial, exists within a pretrial justice framework statewide. The entire pretrial justice framework is in need of reform to ensure justice and improve public safety. Bail reform should therefore be coupled with reform of other pretrial practices statewide.

Each party in a court case must turn over the evidence it intends to use at trial, a practice referred to as *discovery*. But in New York, prosecutors don't have to disclose evidence they have until the day a trial starts, undermining the ability of the accused person to prepare. New York's outdated and unfair discovery law contributes to delays in court processing times by denying people accused of crimes with the critical materials they need to make informed decisions about their cases. This makes it difficult for them to assess plea offers and prepare adequately for trial, both factors that contribute to longer detention periods for

presumptively innocent people who cannot afford bail.<sup>61</sup> Discovery reform must include early and automatic disclosure of all evidence and relevant information about the case.

New York is also one of the few states without a real speedy trial law—instead, it has a *readiness rule* that routinely leads to significant delays in court processing times, particularly in New York City. Problems with the city's speedy trial process, which is heavily weighted in the favor of prosecutors, result in many people being forced to wait for *years* before they have their day in court. This means that presumptively innocent people who can't afford bail remain detained for an egregiously long time.<sup>62</sup> No one should be detained in jail simply because of court delays. Speedy trial reform must ensure cases go to trial in a reasonable, fair timeframe.

Without also addressing discovery and speedy problems, bail reform will be limited.

**I know how stressful it is to have a case and be stuck in the system. But having a case drag on for two years due to lack of a real speedy trial law is heart-wrenching and mentally straining on individuals and families. And that's with me being home, when other people aren't so fortunate. Imagine someone else who's locked up on Rikers or any other jail in NY because they can't pay bail. I know from experience what it's like to be detained on Rikers; it's horrible. Just sitting there waiting for your case to proceed. No one should be detained just because they don't have money, and no one should have their case drag on for years simply because the courts are clogged or the evidence hasn't been shared. We need bail reform, and also speedy trial and discovery reform.**

—VALDEZ HERON, community organizer, Katal

For too long, New York's bail practices have undermined justice and caused harm.

## **The time for bail reform in New York State is now.**

Governor Cuomo, statewide and local lawmakers, and court officials have all acknowledged that New York's bail practices are unfair, unjust, racially biased, and in urgent need of reform. Meaningful reform is not only essential to reducing pretrial detention rates across the state; it is also an integral part of closing Rikers Island Jail Complex—a priority for both elected officials in New York City and the governor. To accomplish these goals, lawmakers must account for the nine objectives contained in this guide, and rectify the racial and wealth-based disparities that undermine fairness and justice in New York's pretrial practices.

## **#BailReformNY**

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# End Notes

<sup>1</sup> Vera Institute of Justice, “Incarceration Trends,” (New York: Vera Institute of Justice, 2015), [www.trends.vera.org/rates/new-york?incarcerationData=all](http://www.trends.vera.org/rates/new-york?incarcerationData=all).

<sup>2</sup> For more about disparities in marijuana arrests despite whites using the drug at comparable rates, see American Civil Liberties Union, *The War on Marijuana in Black and White* (New York: ACLU, 2013), 17-21, [www.aclu.org/report/report-war-marijuana-black-and-white](http://www.aclu.org/report/report-war-marijuana-black-and-white).

<sup>3</sup> Jonathan Lippman, Richard M. Aborn, Juan Cartagena, et al., *A More Just New York City* (New York: Independent Commission on New York City Criminal Justice and Incarceration Reform, 2017), 34, <http://www.morejustnyc.org/the-reports/#the-commissions-report>.

<sup>4</sup> Ibid. Also see Jenn Rolnick Borchetta and Alice Frontier, “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](http://www.slate.com/articles/news_and_politics/jurisprudence/2017/10/new_research_finds_that_prosecutors_give_white_defendants_better_deals_than.html).

<sup>5</sup> Vera Institute of Justice, “Incarceration Trends,” 2015.

<sup>6</sup> Lippman, Aborn, Cartagena, et al., 2017, 14.

<sup>7</sup> Danielle Sered, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration* (New York: Vera Institute of Justice, 2017), [www.vera.org/publications/accounting-for-violence](http://www.vera.org/publications/accounting-for-violence).

<sup>8</sup> Ibid., 11.

<sup>9</sup> See David Burnham, “State Unit Drops Detention Plan,” *The New York Times*, September 3, 1969, <http://query.nytimes.com/mem/archive/pdf?res=9405EFD1031EE3BBC4B53DFBF668382679EDE>; and Aryeh Neir and Neil Fabricant, “NYCLU Legislative Memorandum #20,” February 6, 1969, [www.nycourts.gov/library/nyc\\_criminal/penal-law-bartlett/099.pdf](http://www.nycourts.gov/library/nyc_criminal/penal-law-bartlett/099.pdf).

<sup>10</sup> See Alexander Shalom, “ACLU-NJ: N.J. Bail Reform Praised, But Mass Incarceration Persists,” *The Star-Ledger*, December 5, 2017, [www.nj.com/opinion/index.ssf/2017/12/aclu-nj-the-problem-with-njs-a-grade-on-bail-reform.html](http://www.nj.com/opinion/index.ssf/2017/12/aclu-nj-the-problem-with-njs-a-grade-on-bail-reform.html).

<sup>11</sup> See Megan T. Stevenson, “Assessing Risk Assessment in Action,” George Mason Law & Economics Research Paper No. 17-36. (Arlington, VA: George Mason University, 2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3016088](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3016088).

<sup>12</sup> See Julia Angwin, Jeff Larson, Surya Mattu, et al., “Machine Bias,” *ProPublica*, May 23, 2016, [www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing](http://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing); Christopher T. Lowenkamp and Jennifer L. Skeem, “Risk, Race, & Recidivism: Predictive Bias and Disparate Impact,” June 14, 2016, <https://ssrn.com/abstract=2687339>; and Laurel Eckhouse, “Big Data May Be Reinforcing Racial Bias in the Criminal Justice System,” *The Washington Post*, February 10, 2017, [www.washingtonpost.com/opinions/big-data-may-be-reinforcing-racial-bias-in-the-criminal-justice-system/2017/02/10/d63de518-ee3a-11e6-9973-c5efb7ccfb0d\\_story.html?utm\\_term=.55f41837a991](http://www.washingtonpost.com/opinions/big-data-may-be-reinforcing-racial-bias-in-the-criminal-justice-system/2017/02/10/d63de518-ee3a-11e6-9973-c5efb7ccfb0d_story.html?utm_term=.55f41837a991).

<sup>13</sup> Ibid.

<sup>14</sup> Human Rights Watch, “Not in It for Justice”: *How California’s Pretrial Detention and Bail System Unfairly Punishes Poor People* 99-100, [www.hrw.org/sites/default/files/report\\_pdf/us\\_bail0417\\_web\\_0.pdf](http://www.hrw.org/sites/default/files/report_pdf/us_bail0417_web_0.pdf).

<sup>15</sup> New York City Criminal Justice Agency, “Measuring Justice: Redesigning New York City’s Pretrial Risk Assessment and Recommendation System,” September 18, 2017, New York University Law School, [www.nycja.org/measuring-justice-panel](http://www.nycja.org/measuring-justice-panel).

<sup>16</sup> Shima Baradaran Baughman and Frank McIntyre, “Predicting Violence,” *Texas Law Review*, Vol. 90 (Austin, Texas: UT Law School Publications, 2012), 561, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1756506](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1756506).

<sup>17</sup> See American Bar Association, Criminal Justice Section, “Report to the House of Delegates” (Chicago: ABA, 2017), 3-6, [www.americanbar.org/content/dam/aba/publications/criminaljustice/2017/Adult\\_Cash\\_Bail\\_Resolution\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/criminaljustice/2017/Adult_Cash_Bail_Resolution_authcheckdam.pdf); and Human Rights Watch, *The Price of Freedom* (New York: HRW, 2010), [www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york](http://www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york).

<sup>18</sup> Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (Washington, DC: Justice Policy Institute, 2006), [www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf).

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<sup>19</sup> See Paul Heaton, Sandra Mayson, and Megan Stevenson, “The Downstream Consequences of Misdemeanor Pretrial Detention,” (Philadelphia: University of Pennsylvania Law School, 2016), [www.law.upenn.edu/live/files/5693-harriscountybail](http://www.law.upenn.edu/live/files/5693-harriscountybail).

<sup>20</sup> “Proposed New York Criminal Procedure Law: 1969 Bill,” XVIII (West Publishing Co., 1969), [www.nycourts.gov/library/nyc\\_criminal/Penal-law-Bartlett/196.pdf](http://www.nycourts.gov/library/nyc_criminal/Penal-law-Bartlett/196.pdf).

<sup>21</sup> Ibid.

<sup>22</sup> Vera Institute of Justice, “Incarceration Trends,” 2015.

<sup>23</sup> Lippman, Aborn, Cartagena, et al., 2017, 33.

<sup>24</sup> Vera Institute of Justice, “Empire State of Incarceration: Drivers of Jail” (New York: Vera Institute of Justice, 2017), [www.vera.org/state-of-incarceration/drivers-of-jail](http://www.vera.org/state-of-incarceration/drivers-of-jail).

<sup>25</sup> New York City Comptroller’s Office, Budget Bureau, *NYC Department of Correction FYs 2007-17 Operating Expenditures, Inmate Population, Cost Per Inmate, Staffing Ratios, Performance Measure Outcomes, and Overtime* (New York: New York City Comptroller’s Office, 2017), <https://comptroller.nyc.gov/wp-content/uploads/documents/Corrections-FY-2017.pdf>.

<sup>26</sup> Vera Institute of Justice, “Empire State of Incarceration,” 2017.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Insha Rahman, “Chipping Away at New York City’s Unjust and Misguided Bail System,” April 29, 2016, [www.vera.org/blog/chipping-away-at-new-york-citys-unjust-and-misguided-bail-system](http://www.vera.org/blog/chipping-away-at-new-york-citys-unjust-and-misguided-bail-system).

<sup>31</sup> See for example Timothy R. Schnacke, Michael R. Jones, and Dorian M. Wilderman, “Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program,” *Court Review: The Journal of the American Judges Association* Vol. 48, no. 3, (Williamsburg, VA: AJA, 2012), 86-95, <http://digitalcommons.unl.edu/ajacourtreview/393>; and Mitchel N. Herian and Brian H. Bornstein, “Reducing Failure to Appear in Nebraska: A Field Study,” *The Nebraska Lawyer* (Lincoln, NE: Nebraska State Bar Association, 2010), 11-14, <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1008&context=publicpolicyfacpub>.

<sup>32</sup> N.Y.C. Admin. Code § 14-168 eff. 01/18/2018.

<sup>33</sup> N.Y.C. Admin. Code § 9-150 eff. 01/18/2018.

<sup>34</sup> N.Y.C. Admin. Code § 9-148(a) eff. 10/01/2017.

<sup>35</sup> N.Y.C. Admin. Code § 9-148(c) eff. 01/22/2018.

<sup>36</sup> N.Y.C. Admin. Code § 9-148(d) eff. 10/01/2017.

<sup>37</sup> N.Y.C. Admin. Code § 9-149(a) eff. 09/20/2017.

<sup>38</sup> N.Y.C. Admin. Code § 9-302 eff. 8/21/2017.

<sup>39</sup> Elise White, Melissa Labriola, Ashmini Kerodal, et al., *Navigating the Bail Payment System in New York City: Findings and Recommendations* (New York: Center for Court Innovation, 2015), [www.courtinnovation.org/sites/default/files/documents/Bail%20Payment%20in%20NYC.pdf](http://www.courtinnovation.org/sites/default/files/documents/Bail%20Payment%20in%20NYC.pdf).

<sup>40</sup> Lippman, Aborn, Cartagena, et al. (2017), 41.

<sup>41</sup> See for example Insha Rahman, Vera Institute of Justice, *Against the Odds: Experimenting with Alternative Forms of Bail in New York City’s Criminal Courts* (New York: Vera Institute of Justice, 2017), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/against-the-odds-bail-reform-new-york-city-criminal-courts/legacy\\_downloads/Against\\_the\\_Odds\\_Bail\\_report\\_FINAL3.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/against-the-odds-bail-reform-new-york-city-criminal-courts/legacy_downloads/Against_the_Odds_Bail_report_FINAL3.pdf); and Katal Center for Health, Equity, and Justice, “New York State Bail Chart” (New York: Katal, 2017), [https://d3n8a8pro7vhm.cloudfront.net/katal/pages/116/attachments/original/1506435099/Katal\\_NYStateBailChart\\_Factsheet\\_07.pdf?1506435099](https://d3n8a8pro7vhm.cloudfront.net/katal/pages/116/attachments/original/1506435099/Katal_NYStateBailChart_Factsheet_07.pdf?1506435099).

<sup>42</sup> N.Y. Gen. Mun. Law § 99-m, <https://www.nysenate.gov/legislation/laws/GMU/99-M>.

<sup>43</sup> See Brooklyn Community Bail Fund, <https://brooklynbailfund.org>.

<sup>44</sup> See The Bronx Freedom Fund, “Our Work,” <http://www.thebronxfreedomfund.org/our-work>.

<sup>45</sup> See “Brief of Amici Curiae Current and Former District and State’s Attorneys, State Attorneys General, United States Attorneys, Assistant United States Attorneys, and Department of Justice Officials, in Support of Plaintiffs-Appellees,” (Washington, DC: Georgetown University Law Center, Institute for Constitutional Advocacy and Protection, 2017), 2, [www.clearinghouse.net/chDocs/public/CJ-TX-0010-0013.pdf](http://www.clearinghouse.net/chDocs/public/CJ-TX-0010-0013.pdf) and Rahman, 2017.

<sup>46</sup> Color of Change and American Civil Liberties Union, *Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System* (New York: Color of Change and ACLU, 2017), 2, [www.aclu.org/sites/default/files/field\\_document/059\\_bail\\_report\\_2\\_1.pdf](http://www.aclu.org/sites/default/files/field_document/059_bail_report_2_1.pdf).

<sup>47</sup> Adam 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](http://www.nytimes.com/2008/01/29/us/29bail.html?mcubz=1).

<sup>48</sup> Mary T. Phillips, Research Brief No. 26: *Commercial Bail Bonds in New York City*, (New York: New York City Criminal Justice Agency, 2011), [https://www.pretrial.org/download/infostop/Commercial%20Bail%20Bonds%20in%20New%20York%20City-%20Characteristics%20and%20Implications%20\(New%20York%20Criminal%20Justice%20Agency%20Inc.-%20April%202011\).pdf](https://www.pretrial.org/download/infostop/Commercial%20Bail%20Bonds%20in%20New%20York%20City-%20Characteristics%20and%20Implications%20(New%20York%20Criminal%20Justice%20Agency%20Inc.-%20April%202011).pdf).

<sup>49</sup> Brooklyn Community Bail Fund, *License & Registration Please...An Examination of the Practices and Operations of the Commercial Bail Bond Industry in New York City* (Brooklyn, NY: Brooklyn Community Bail Fund, 2017), 2, [static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport\\_ExecSummary.pdf](http://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport_ExecSummary.pdf).

<sup>50</sup> The Bail Lab, “A User Guide to Bail” (2017), <http://bail-lab.nyc/bail-faqs/#bond-requirements>.

<sup>51</sup> See *Akins v. United States*, 679 A.2d 1017 (Washington, DC: District of Columbia Court of Appeals, 1996), <https://www.courtlistener.com/opinion/1997831/akins-v-united-states>.

<sup>52</sup> Brooklyn Community Bail Fund, 2017, 2.

<sup>53</sup> “Brief of Pretrial Justice Institute and the National Association of Pretrial Services Agencies: Amici Curiae in Support of Plaintiff-Appellee,” 9-12, *Walker v. City of Calhoun*, Docket No. 16-10521 (Aug. 18, 2016), <https://www.pretrial.org/download/infostop/PJI-NAPSA-Amicus-Brief-Walker-v.-City-of-Calhoun-8-18-16.pdf>.

<sup>54</sup> Vera Institute of Justice, “Empire State of Incarceration: Drivers of Jail,” 2017.

<sup>55</sup> Lorelai Laird, “For the First Time, New York Will Provide Some State Funding for Indigent Defense,” ABA Journal blog, April 14, 2017, [www.abajournal.com/news/article/for\\_the\\_first\\_time\\_new\\_york\\_will\\_provide\\_some\\_state\\_funding\\_for\\_indigent\\_de](http://www.abajournal.com/news/article/for_the_first_time_new_york_will_provide_some_state_funding_for_indigent_de).

<sup>56</sup> Vera Institute of Justice, “Empire State of Incarceration,” 2017.

<sup>57</sup> See Judith A. Greene and Vincent Schiraldi, “Better by Half: The New York City Story of Winning Large-Scale Decarceration While Increasing Public Safety,” *Federal Sentencing Reporter* Vol. 29, no. 1 (2016), 22-38, [https://sites.hks.harvard.edu/ocpa/cms/files/criminal-justice/research-publications/fsr2901\\_04\\_greeneschiraldi.pdf](https://sites.hks.harvard.edu/ocpa/cms/files/criminal-justice/research-publications/fsr2901_04_greeneschiraldi.pdf).

<sup>58</sup> Lippman, Aborn, Cartagena, et al., 2017, 33.

<sup>59</sup> See Vera Institute of Justice, “Incarceration Trends,” 2015.

<sup>60</sup> Ibid.

<sup>61</sup> See New York State Bar Association Task Force on Criminal Discovery, *Final Report for the Consideration of the House of Delegates* (Albany, NY: NYSBA, 2004), 2-7, [www.nysba.org/WorkArea/DownloadAsset.aspx?id=54071](http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=54071); and The Legal Aid Society, *Criminal Discovery Reform in New York: A Proposal to Repeal C.P.L. Article 240 and to Enact a New C.P.L. Article 245*, (New York: The Legal Aid Society, 2009), 4-12, <https://www.legal-aid.org/media/73762/proposal%20for%20discovery%20reform%20in%20new%20york.pdf>.

<sup>62</sup> Daniel Hamburg, “A Broken Clock: Fixing New York’s Speedy Trial Statute,” *Columbia Journal of Law and Social Problems* Vol. 48 (New York: Columbia University, 2015), 223-264, <http://jlsplaw.columbia.edu/wp-content/uploads/sites/8/2017/03/48-Hamburg.pdf>.

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