

THE PROBLEM WITH BAIL & PRETRIAL DETENTION



As New Yorkers, we want to make sure our communities are safe. We also want to ensure that we are all treated with fairness and humanity. But too often, people who are accused of committing a crime are presumed guilty even before their trial—and many are detained for weeks, months, or years before trial simply because they can't afford bail. Faced with the inhumane conditions in jail like rotten food and floors covered in urine and feces, many incarcerated people plead guilty to the charges they're facing.

Incarcerating people pretrial causes them to lose their jobs, leaves them unable to care for their children, and causes serious physical and mental health issues—all of which exacerbate the underlying conditions that produce violence. New York City spends far more than any other locality on incarceration, yet New Yorkers still experience violence. If relying on policing and incarceration worked, then we would have eliminated violence a long time ago.

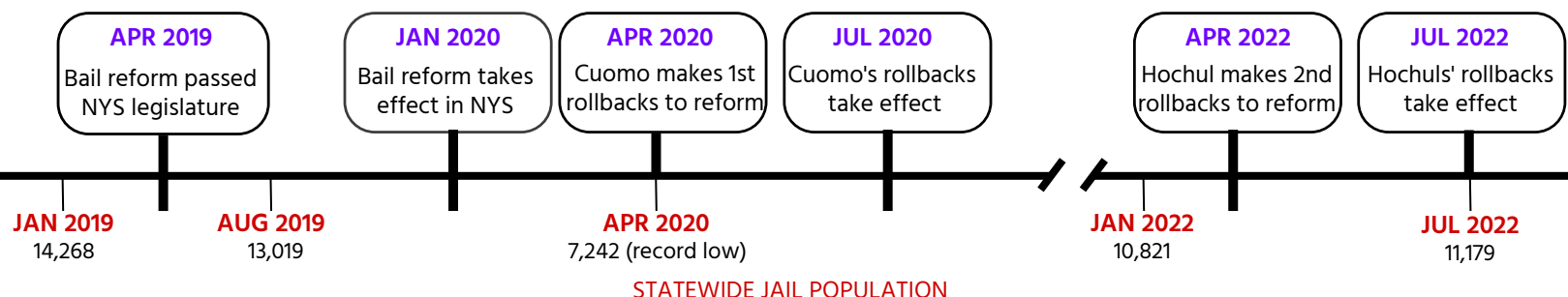
BY THE NUMBERS

- Over 70% of people in jail awaiting trial are incarcerated because they can't afford bail
- Over half of incarcerated people in NYC jails are deemed to need mental health services
- Pretrial detention increases a person's likelihood of pleading guilty by 46%
- NYC spends roughly \$2.6 billion on its local jails—that's \$1 billion more than the country's second largest city jail system
- Black and Latinx New Yorkers are over 5x more likely to be incarcerated pretrial than white New Yorkers
- At least one person in New York City's jails has died each month since the beginning of 2021
- Nearly 80% of people jailed pretrial in New York are Black or brown

SUCCESSSES & LIMITATIONS OF BAIL REFORM

To address the harmful nature of money bail and pretrial detention, advocates fought to pass bail reform legislation in 2019 that limited the scope of New York's unjust money bail system for the majority of people accused of violations, misdemeanors, and nonviolent felony offenses. Since bail was not completely eliminated, many still face the harms of bail and pretrial detention, including the increased likelihood of pleading guilty, losing their job, losing their homes, and experiencing physical and mental health issues. Only a few months after the reform took effect in 2020, then-Governor Cuomo rolled back the reform, weakening its impact by expanding the number of categories of offenses eligible for bail. Governor Hochul further rolled back bail reform in April 2022.

BAIL REFORM TIMELINE



Pretrial detention is not only ineffective at addressing crime, it is often fatal for people behind bars. In 2010, sixteen-year-old Kalief Browder was falsely accused of stealing a backpack. Because he couldn't afford the \$3,000 bail set by the judge, Kalief spent three years in jail awaiting trial, much of it in solitary confinement, while fighting malicious prosecution tactics designed to force a plea. After prosecutors eventually dropped the charges against him and he was released to his family, Kalief became an advocate for ending the abuses at Rikers while earning a high school equivalency diploma and starting community college. Sadly, because of the trauma and violence he suffered while behind bars, Kalief died by suicide only two years later.

SUCCESSES OF BAIL REFORM

→ Bail reform initially led to a significant decline in the statewide jail population, reaching record lows by summer 2020. That meant thousands of New Yorkers who otherwise would have been in jail were able to keep their jobs, housing and access to life-affirming services, such as mental health care and substance use treatment.

→ Nearly everyone (96%) released without bail in New York goes on to live their lives without re-arrest for a violent crime. For those who were released on their own recognizance, fewer cases resulted in rearrest since bail reform (18% in 2019 down to 16% in 2021).

→ Court appearance rates improved since bail reform. 91% of people released pretrial during bail reform either attend all court dates or return from any missed date within 30 days (compared to 85% before bail reform). This rate rises to 96% for people charged with violent felonies.

In late 2019, a man charged with a drug offense was released by a judge in consideration of the bail reform laws. Two court dates and approximately six weeks later, the case against him was dismissed by the DA's office. Before bail reform, the man would have spent those 6 weeks in jail, lost his job, and may have taken a guilty plea in a case that would otherwise have gotten dismissed. Thanks to bail reform, he was able to fight his case from a position of freedom, while maintaining his job and caring for his family.



LIMITATIONS OF BAIL REFORM

→ Opponents of bail reform have wrongly claimed that judges lost their discretion through bail reform, however the truth is judges are using their broad discretion to drive up the jail population.

In April 2022, a Latinx man was arraigned on assault charges for allegedly brandishing a screwdriver at a stranger and threatening them. Despite being told by the defense attorney that any amount of bail would remand the defendant to jail, disrupting his job and stable housing, the judge set \$5,000 bond.



→ Despite a provision in the law requiring judges to take into consideration a person's ability to pay, judges are not doing so, keeping large numbers of people jailed pretrial simply because they cannot afford to pay their bail. In fact, post-bail reform, there are more cases where bail is set that people are not able to pay. In 2021, bail amounts averaged over \$38,000 in New York State.

→ NYC judges are releasing people without bail less often since bail reform was enacted (release rates dropped from 74% in 2019 to 68% in 2021). By the beginning of 2022, pretrial jail populations started to rise, erasing much of the decarceration achieved during the first few months of bail reform.

→ Racial disparities persist. Across New York State, Black and Latinx New Yorkers are over five times more likely to be incarcerated pretrial than white New Yorkers, and thus more likely to experience the trauma of jail.

THE WAY FORWARD

To truly keep us all safe, New York State must end money bail and pretrial detention, and instead focus on violence prevention and investing significant resources into our communities to address systemic inequities in access to housing, healthcare and education. These types of interventions have been proven to reduce violence without relying on the police or jail.



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