

A hand holding a set of keys in front of a door handle, with a red overlay.

# **PRESUMED INNOCENT FOR A PRICE:**

The Impact of Cash Bail Across Eight New York Counties

**NYCLU**

NEW YORK CIVIL LIBERTIES UNION

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## The Impact of Cash Bail Across Eight New York Counties

In eight of New York's 62 counties between 2010 and 2014, over 90,000 people spent a day or longer in custody on bail.

Across New York State tens of thousands of New Yorkers are held in city and county jails, not because they have been convicted of a crime, but because they cannot afford to pay for their release while awaiting trial.

The harms of unaffordable cash bail are unequivocal: people lose their jobs, homes and families while detained. People also forfeit their rights to trial when pleading guilty in exchange for release. Yet little has been known about how many people across the state have been locked up because they did not have the means to pay bail, about the charges they faced or how long they were kept in jail.

To better understand the impact of bail practices in New York, in 2015 the New York Civil Liberties Union sent Freedom of Information Law requests to a sample of eight small, medium and large counties across the state asking for five years of data. The information we received offers a stark glimpse into what New Yorkers have had to endure.

### IN JUST EIGHT OF THE STATE'S 62 COUNTIES ALONE, WE FOUND THAT BETWEEN 2010 AND 2014:

- more than 90,000 New Yorkers spent a day or longer in custody on bail;
- more than 45,000 were held for a week or longer;
- black pretrial detainees were twice as likely as white pretrial detainees to spend at least one night in custody on bail;
- more than 35,000 New Yorkers spent at least one night in custody on a bail of \$1,000 or less, and more than 21,000 on \$500 or less;
- 60 percent of people held on bail had only a misdemeanor or violation as their most serious charge;
- more than 5,000 New Yorkers were held on bail charged only with violations; and
- *petit larceny* and *misdemeanor criminal possession of a controlled substance* were the most common charges, and the most serious charges against a fifth of all pretrial detainees.

Of the **45,651** pretrial detainees who spent one week or more in custody, one-fifth had a bail of **\$500 or less.**

## Population and Length of Stay

In the five-year period between 2010 and 2014, 177,390 individuals were held in custody pretrial in the eight counties reviewed alone.<sup>1</sup> Of these pretrial detainees, 113,015 people, or 64 percent, had a bail set. **Ninety thousand New Yorkers spent at least one night in a county jail because they could not post bail.**<sup>2</sup> Over half of this group (45,651 people) was in custody for one week or more.

County	Total	1 or more days in custody	7 or more days in custody
Albany	12,733	10,391	5,816
Dutchess	12,309	9,196	5,691
Monroe	27,923	24,997	11,806
Niagara	11,800	6,483	2,369
Orange	12,657	8,617	2,501
Schenectady	4,508	3,023	1,249
Ulster	6,344	4,635	2,088
Westchester	24,741	22,734	14,131
<b>Eight County Total</b>	<b>113,015</b>	<b>90,076</b>	<b>45,651</b>

The proportion of people who were not able to post bail the day it was set varied widely across counties, ranging from 55 percent of pretrial detainees in Niagara County to 92 percent in Westchester County. The proportion of pretrial detainees who remained in custody for seven days or more ranged from just under 20 percent in Orange County to 57 percent in Westchester County.

Across the eight counties, people of color were detained pretrial longer than whites. While black and white New Yorkers each accounted for 45 percent of pretrial detainees who spent any time in custody after bail was set in their case, 48 percent of those who spent at least one night in custody were black compared to 41 percent white, and 50 percent of those who spent at least one week in custody were black compared to 38 percent white.<sup>3</sup>

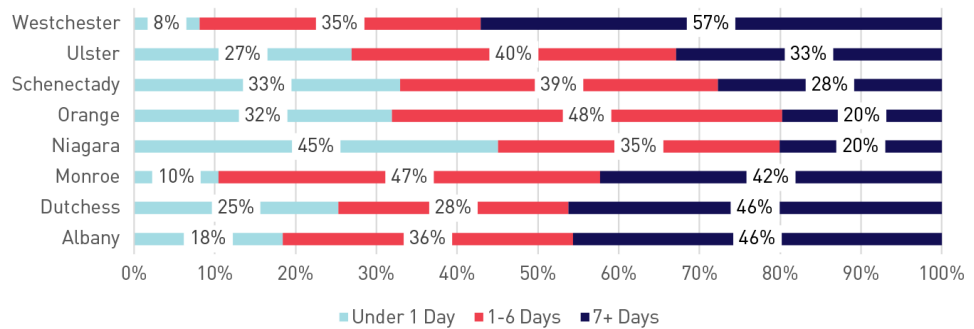
<sup>1</sup> All numbers in this report exclude pretrial detainees with the following most serious charges: escape; fugitive; violations of probation/parole/conditional release; unspecified violations of Family Court Act; and court orders or punishments. These were excluded because factors associated with each may affect pretrial release eligibility.

<sup>2</sup> Length of stay in custody refers to the number of calendar days between an individual's admission and discharge from custody.

<sup>3</sup> Analysis of outcomes by race was limited to black and white pretrial detainees because only three counties had Hispanic or Latino as a category, and all other groups accounted for less than five percent of the pretrial population with a set bail.

FIGURE 1

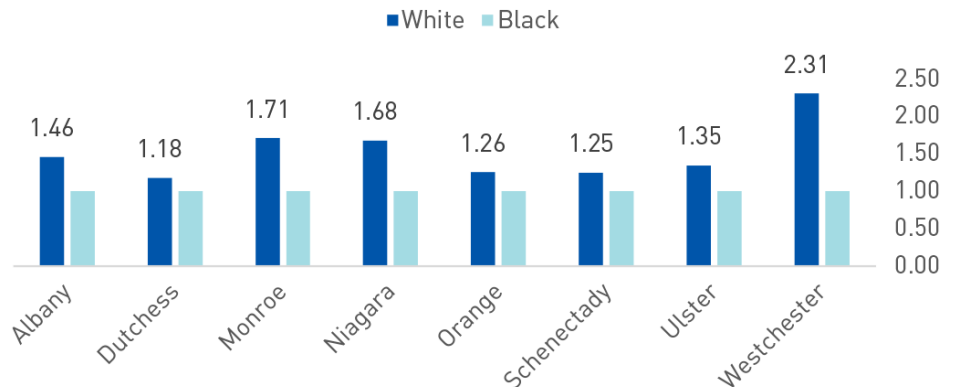
### Proportion of Pretrial Detainees with Set Bail by Length of Stay in Custody



White New Yorkers were nearly two times more likely (27 percent) than black New Yorkers (14 percent) to be released the same day their bail was set, and in all counties sampled, remained in custody overnight at a lower rate. The disparity between the proportions of black and white pretrial detainees who were able to post bail the day it was set was the greatest in Westchester County.

FIGURE 2

### Rate of White Detainees Released Day Bail Set per Black Detainee Released Day Bail Set



White New Yorkers were two times more likely than black New Yorkers to be released the same day their bail was set.

## Bail Amounts

In the eight counties sampled over the five-year period, more than 110,000 people spent time in custody after bail was set in their case. **Nearly two-thirds of bails were set at \$2,500 or less, half at \$1,000 or less and one-third at \$500 or less.** Thousands of people in each county could not readily pay these amounts to be released.

**Table 2: Numbers of People Held on Bail by Amount**

Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	12,733	12,309	27,923	11,800	12,657	4,508	6,344	24,741	113,015
\$5,000 or less	7,605	8,323	24,226	10,897	10,969	3,875	5,232	17,446	88,573
\$2,500 or less	4,581	6,088	20,468	10,031	9,483	3,500	4,207	12,827	71,185
\$1,000 or less	2,246	4,464	16,071	8,701	7,235	2,767	3,073	7,373	51,930
\$500 or less	962	2,837	11,667	6,659	4,786	1,845	1,719	3,481	33,956
\$250 or less	605	1,122	5,325	4,487	2,172	817	505	1,057	16,090

Of the more than 90,000 pretrial detainees who spent at least one night behind bars after bail was set, 40 percent (35,679 people) had a bail of \$1,000 or less and 24 percent (21,833 people) had a bail of \$500 or less. In eight counties alone, nearly 10,000 New Yorkers stayed overnight in jail on a bail of \$250 or less.

**Table 3: Numbers of People Held on Bail One Day or Longer by Amount**

Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	10,391	9,196	24,997	6,483	8,617	3,023	4,635	22,734	90,076
\$5,000 or less	5,805	5,507	21,361	5,631	7,087	2,479	3,606	15,612	67,088
\$2,500 or less	3,411	3,639	17,804	4,855	5,860	2,190	2,739	11,249	51,747
\$1,000 or less	1,631	2,441	13,859	3,742	4,181	1,657	1,912	6,274	35,697
\$500 or less	655	1,351	9,991	2,388	2,580	1,013	992	2,863	21,833
\$250 or less	402	484	4,483	1,255	1,046	408	265	876	9,219

Of the 45,651 pretrial detainees who spent one week or more in custody, half (22,205 people) had a bail of \$2,500 or less, one-third (14,940 people) had a bail of \$1,000 or less, and one-fifth (8,808) had a bail of \$500 or less. In Monroe County alone, more than 1,900 people spent one week or more behind bars on a bail of \$250 or less.

Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	5,816	5,691	11,806	2,369	2,501	1,249	2,088	14,131	45,651
\$5,000 or less	2,803	2,794	9,754	1,848	2,030	938	1,456	8,584	30,207
\$2,500 or less	1,531	1,641	8,215	1,513	1,610	826	1,034	5,835	22,205
\$1,000 or less	736	1,000	6,673	1,082	1,061	642	695	3,051	14,940
\$500 or less	302	485	4,760	642	596	382	347	1,294	8,808
\$250 or less	189	160	1,914	304	222	150	76	362	3,377

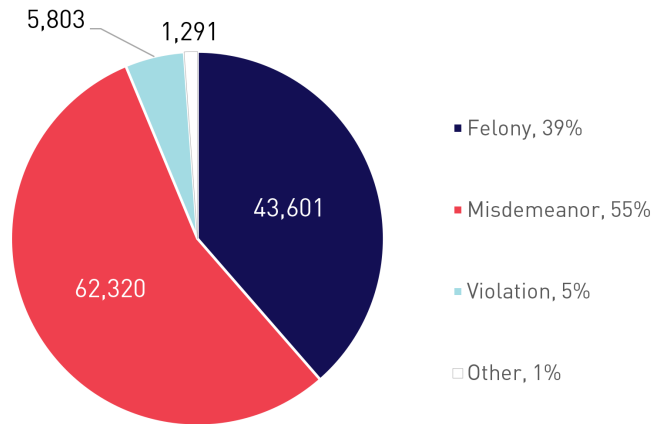
**60%** of people held on bail had only a misdemeanor or violation as their most serious charge.

### Most Serious Charges<sup>4</sup>

Most New Yorkers held on bail had been charged with minor offenses. In the eight counties alone in this five-year period, more than 60 percent of pretrial detainees who spent time in custody after bail was set (68,000 people) were charged with only misdemeanors or violations. The proportion of pretrial detainees with these low-level charges was greater than half in each of the eight counties, ranging from 55 percent in Albany County to 71 percent in Niagara County.

FIGURE 3

### Most Serious Charges Against People Held on Bail

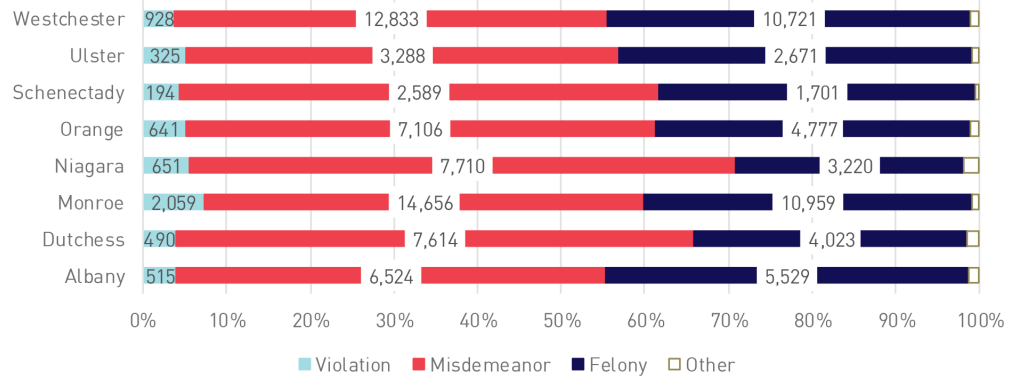


<sup>4</sup> A misdemeanor is a criminal offense other than traffic infraction of which a sentence in excess of 15 days but not greater than one year may be imposed. A violation is the least serious type of proscribed activity, a non-criminal offense other than a traffic infraction for which a sentence to a term of imprisonment of up to 15 days or a fine of up to \$250 may be imposed. (New York State Penal Law, Article 10). <https://www.omh.ny.gov/omhweb/forensic/manual/html/chapter1.htm>.



FIGURE 4

## Numbers of People Held on Bail by Most Serious Charge



### Misdemeanors

**More than half of New Yorkers held on bail had a misdemeanor as their most serious charge.** Of the 62,320 people who could not readily post bail for misdemeanor charges, 78 percent had a bail of \$2,500 or less, 61 percent had a bail of \$1,000 or less, and 42 percent had a bail of \$500 or less. Nearly 19 percent (12,000 people) of those who had a misdemeanor as their most serious charge spent time in custody on a bail of \$250 or less.

**Table 5: Numbers of People Held on Bail with Misdemeanor as Most Serious Charge**

Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	6,524	7,614	14,656	7,710	7,106	2,589	3,288	12,833	62,320
\$5,000 or less	5,316	5,880	14,537	7,518	6,854	2,539	3,100	10,294	56,038
\$2,500 or less	3,294	4,515	13,910	7,242	6,341	2,477	2,730	8,004	48,513
\$1,000 or less	1,632	3,350	12,267	6,589	5,158	2,151	2,130	4,809	38,086
\$500 or less	690	2,121	9,315	5,385	3,548	1,507	1,242	2,323	26,131
\$250 or less	419	711	3,966	3,691	1,531	674	338	663	11,993

More than 25,000 pretrial detainees with a misdemeanor as their most serious charge spent one week or more in custody. Sixty-five percent had a bail of \$2,500 or less, 46 percent had a bail of \$1,000 or less, and over one-quarter had a bail of \$500 or less. Ten percent of those who spent a week or more in custody with a misdemeanor as their most serious charge (nearly 2,500 people) had a bail of just \$250 or less.

Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	2,859	3,465	6,871	1,121	1,741	697	1,020	7,427	25,201
\$5,000 or less	2,080	2,046	6,795	999	1,590	666	900	5,369	20,445
\$2,500 or less	1,180	1,249	6,449	881	1,332	636	714	3,854	16,295
\$1,000 or less	565	761	5,641	666	891	510	500	2,075	11,609
\$500 or less	235	357	4,094	423	498	303	262	895	7,067
\$250 or less	140	95	1,485	191	169	120	57	242	2,499

While misdemeanors encompass a broad range of charges, the majority are non-violent. Of the more than 62,000 people who spent time in custody with a misdemeanor as their most serious charge, the three most common charges were:

- Petit Larceny, which is the unlawful taking of property or services valued under \$1,000,
- Misdemeanor Criminal Possession of a Controlled Substance, which does not involve sales, and
- Criminal Contempt in the Second Degree, which can include insolent behavior in the courtroom.

Of those held on bail for any amount of time with a misdemeanor as their most serious charge, 34 percent (or 21,141 people) had one of these three charges as their most serious charge. This share increased to 40 percent for those held in custody for a week or longer (9,965 people). Of the more than 45,000 pretrial detainees held for one week or longer on *any* charge, these three misdemeanors accounted for 22 percent.

## Violations

**In the eight counties sampled, 5,803 people spent time in custody charged with no more than a violation.** Nearly three-quarters spent at least one night behind bars, and more than 20 percent spent one week or more in custody. More than 70 percent of those held on a violation had a bail of \$500 or less. Of those who spent one week or more in custody, more than half had a bail of \$500 or less.

	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Spent time in custody	515	490	2,059	651	641	194	325	928	5,803
Held 1 or more days	383	308	1,821	232	325	143	211	818	4,241
Held 7 or more days	116	108	535	20	55	61	43	365	1,303



The most common violations charged were Harassment in the Second Degree, Disorderly Conduct, and Trespass, which combined accounted for charges against 85 percent of all pretrial detainees who had a violation as their most serious charge. New York State's General Criminal Statute stipulates that the maximum fine punishable for any of these three violation is \$250.<sup>5</sup> Of those who had one of these three charges as the lone charge in their case, 41 percent had a set bail that exceeded the maximum fine they could have been required to pay if found guilty.

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## RECOMMENDATIONS

The purpose of bail is to ensure someone returns to court, not to exact punishment before conviction. Yet data from the counties sampled over this five-year period reveal that tens of thousands of New Yorkers were jailed without having had their day in court simply because they could not pay.

To reduce the numbers of New Yorkers trapped in the state's bail system, and to ensure justice does not depend on the size of someone's bank account, **New York needs to make the following reforms to its bail practices:**

- People charged with misdemeanors and nonviolent felonies should be released before trial.
- Jail time before trial should **only** be used when a court finds that nothing else will ensure a person will return to court.
- Bail amounts should not exceed what someone can afford to pay and should not be set without lawyers present.
- Judges should be required to consider alternatives to money bail and should put their reasoning for any bail decision in the record.
- Whenever someone remains in custody because they cannot afford to pay bail, judges should be required to revisit their bail decision.
- Risk assessment tools, which rely on flawed and often biased data, should not be used to make bail decisions.
- Courts should no longer allow for-profit insurance bail bonds.

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<sup>5</sup> NYPL § 80.05 (4) <https://www.nysenate.gov/legislation/laws/PEN/80.05>