

THE FACTS ABOUT THE NEW BAIL LAW

Last year, legislators passed a broad criminal justice reform bill that eliminated the use of cash bail for most misdemeanors and some nonviolent felony charges, in an overdue recognition that a person's wealth shouldn't determine their liberty. Under the new law, judges retain their discretion to set terms that ensure a person shows up for trial. New York has never permitted judges to guess whether a defendant is dangerous to determine whether they should be released before their trial – and lawmakers rightly rejected attempts to insert such a new standard into our law. But there has been much misinformation spread about the impacts of the new bail law. Below are the facts.

1 THE NEW BAIL LAW, WHICH REDUCES OUR RELIANCE ON MONEY BAIL AND PRETRIAL DETENTION, HELPS KEEP NEW YORKERS SAFER.

- Studies show that people who are kept in jail pretrial are more likely to be rearrested for another crime.
- We know from decades of our mistakes: A knee-jerk, lock-'em-up approach only furthers the cycle of violence and incarceration.

2 NO SYSTEM – INCLUDING MONEY BAIL AND PRETRIAL DETENTION CAN ENSURE THAT PEOPLE WHO ARE RELEASED BEFORE THEIR TRIALS WON'T BE SUSPECTED OF COMMITTING ANOTHER CRIME.

- The new law does not release people who were ineligible for release under the old law. Under the old law, release has always been an option for the vast majority of charges – just for those who could afford it.
- We need to take crime seriously. The best way to do that is to stop criminalizing poverty and race, increase supportive housing, and provide mental health services and programming – not to lock up everyone who is merely accused of a crime.

3 THE NEW BAIL LAW EMPOWERS JUDGES – IN THE RIGHT WAY.

- Under the new law, judges will actually have improved ways to use their discretion to determine what is needed in each case to ensure a person's return to court. They can use their discretion to open up pathways for defendants to receive mental health services, supportive housing, and drug treatment – services that defendants were often denied when sent to jail under the old law.
- Judges did not have authority under the old law to guess who might be dangerous. That's because there is no way to accurately predict who will commit a crime, and perceived dangerousness often becomes a proxy for race and skin color.

4 IMPACTED COMMUNITIES FOUGHT TO PASS THE NEW BAIL LAW. FEARMONGERING AND MISLEADING STATEMENTS ARE ATTEMPTING TO WEAKEN SUPPORT.

- The new bail law was widely supported when it passed. Support has decreased, but only because DAs and law enforcement have stoked fear. We've seen this tactic before: It led to the War on Drugs and decades of harsh sentencing, over-incarceration, entrenched racial inequities, and wasted money.

5 NEW YORK MUST NOT REPEAT THE MISTAKES OF NEW JERSEY AND OTHER STATES THAT HAVE MANDATED PRETRIAL RISK ASSESSMENT TOOLS.

- Studies show that risk assessment tools cannot reliably predict future actions, especially for Black and Latinx people. That's because these algorithms rely on factors like past encounters with law enforcement and convictions from a time we know police and prosecutors were targeting, prosecuting, and punishing Black and Latinx people for drug crimes at disproportionate rates.
- We know that Black and Brown people have been targeted and discriminated against by law enforcement for decades. We cannot double down and now use the effects of discrimination to perversely justify denial of pretrial liberty. These tools are regressive and will only deepen racial inequities, as they have done in other states.

WHAT THE NEW BAIL LAW DOES

Reduces courts' reliance on money bail by eliminating money bail for most misdemeanors, nonviolent felonies, burglary in the second degree and robbery in the second degree) and by guaranteeing their release either on their own recognizance or by setting the least restrictive conditions on release (i.e. check-ins or electronic monitoring).

Improves citation-and-release policies by requiring police to issue appearance tickets with court notifications to people charged with some low-level minor offenses (violations, misdemeanors, and class E felonies, unless they qualify for exceptions).¹

Limits the use of electronic monitoring (EM) by permitting judges to only order EM for people charged with felonies, domestic violence misdemeanors, sex misdemeanors, and anyone who has had a misdemeanor conviction in the past five years; by imposing 60-day caps on the use of EM with the option of continuing its use only after another review; by qualifying time under EM as time subject to speedy trial dismissal protections; and by requiring judges to justify that EM is the least restrictive means to ensure return to court and is “unobtrusive to the greatest extent possible.”

Makes judicial pretrial decisions more transparent by requiring judges to make their findings on conditions of release, bail, and remand on the record or in writing.

Requires judges to set at least one alternative to money bail that is either partially secured or unsecured, which should make it easier for people to post bail.

Requires any pretrial risk assessment tools used to be made public and prohibits questionnaires that discriminate on the basis of race.

Requires court reminders for all people released pretrial in advance of all court appearances by providing text messages, telephone calls, emails, or first-class mail. Prior to issuing a bench warrant for a failure to appear, the court must provide 48 hours' notice to the principal or their attorney.

Requires judges to consider a person's ability to pay when setting bail for those charged with bail-eligible charges.

¹Exceptions:

1. no one who has an outstanding warrant
2. no one who has failed to appear in court during the past 2 years
3. no one who has failed to reasonably verify their identity and methodology of contact
4. no one charged with a sex offense
5. no one charged with a DV offense
6. no one who may need an order of protection according to police
7. no one charged with an offense that could result in suspending or revoking driver's license
8. no one who seems to need immediate medical or mental health care