



PRETRIAL JUSTICE REFORM:

**A PATHWAY FOR
A SAFER NEW YORK**

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Earlier this year, New York joined a growing list of states, counties, and municipalities that have enacted bail reform to reduce, or eliminate, the reliance on money bail. The new law eliminates cash bail for most misdemeanors and nonviolent felonies, and for more serious offenses bail remains an option at arraignment. The law also requires judges to consider financial ability to pay bail when a person is charged with a bail eligible offense. States such as New Jersey and Maryland, as well as the District of Columbia have seen positive outcomes since enacting bail reform. In several cases the reforms were far more extensive than the New York reforms, which are limited to the elimination of cash bail for most misdemeanors and some non-violent felony charges. None of these states experienced statistically significant negative outcomes, with many experiencing positive trends in appearance rate and recidivism. This memo summarizes the reforms enacted and the positive returns these jurisdictions have enjoyed since enactment.

Bail Reform in New York

Prior to April 2019, New York's bail system had gone largely untouched since 1970 when the current system was developed by the legislature. Under the 1970 statute, a judge may set bail at arraignment for anyone charged with a misdemeanor or felony after determining the

conditions necessary to ensure the defendant returns to court.¹ Contrary to common misconception, New York has, for decades, prohibited judges from setting bail based on an assessment of dangerousness.² As part of the 1970 statute, legislators laid out various forms of bail a judge may set that range from cash bail – which requires a defendant to pay the bail amount in full – to an unsecured appearance bond which only requires that a person pay the court if they fail to appear on their assigned court date.³ Despite the availability of less onerous options, advocates and researchers have noted that New York judges routinely rely on cash bail or an insurance company bond (which requires a down payment by the charged individual to a bail bondsman).⁴

Bail reform has long been a key priority for New York advocates. On an average day in 2018, 70 percent of the Empire State's jail population was comprised of pretrial detention.⁵ For many on pretrial detention, their only hope of release is to post bail. Unfortunately, the average bail amount for New Yorkers is often out of reach for low-income people. The average bail amount for a misdemeanor was \$1,000 and \$5,000 for felonies.⁶ A 2015 report from the Prison Policy Initiative found that the national median income for incarcerated individuals was

¹ "Report on Legislation: Bail Reform," The New York City Bar, March 16, 2018, 2.

<https://s3.amazonaws.com/documents.nycbar.org/files/2017346-BailReformBudget.pdf>

² "Preventive Detention in New York: From Mainstream to Margin and Back," New York University Law School's Center on the Administration of Criminal Law, February 2017, 15.

https://www.law.nyu.edu/sites/default/files/upload_documents/2017-CACL-New-York-State-Bail-Reform-Paper.pdf

³ Ibid, 16.

⁴ Insha Rahman, "Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Court," Vera Institute of Justice, September 2017, https://www.vera.org/downloads/publications/Bail_Factsheet_V4-1.pdf

⁵ Insha Rahman, "New York, New York: Highlights of the 2019 Bail Reform Law," Vera Institute of Justice, July 2019, 6. <https://www.vera.org/downloads/publications/new-york-new-york-2019-bail-reform-law-highlights.pdf>

⁶ Rahman 2017.

\$19,185.⁷ This bail system creates a two-tiered justice system wherein the wealthy are granted release as they await trial while those without the financial resources are held in jail. This system has resulted in an untold number of injustices, most notably the three-year detention of Kalief Browder on Riker’s Island – the trauma of which led to the young New Yorker’s tragic death.

While the jail population for New York City has been in decline over the last few decades, the jail population in New York’s rural and suburban areas has increased.⁸ With New York’s new bail reforms set to go into effect on January 1, 2020, the Vera Institute estimates that New York’s jail population will decrease by 40 percent.⁹ Based on the success of bail reform in other states, this reduction in the jail population does not pose a risk to New York’s public safety.

State-level outcomes

New Jersey

New Jersey’s presumption of nonmonetary bail has greatly increased pretrial release without a spike in failures to appear or recidivism among defendants.

On January 1, 2017, the New Jersey Bail Reform Act and a constitutional amendment allowing preventive pretrial detention went into effect in the Garden State. Under the new law, a

defendant’s public safety risk and risk of nonappearance determine whether the defendant is released and under what conditions.¹⁰ The new system includes a presumption of nonmonetary conditions and cash bail may only be used if no other method could reasonably ensure appearance at court.¹¹ In addition to the presumption of nonmonetary conditions, the conditions set for pretrial release are to be the least restrictive possible to ensure the defendant’s appearance at trial and public safety – such as a text message reminder for low-risk defendants or house arrest for high-risk defendants.¹²

A defendant’s risk to both public safety and of nonappearance is assessed through a validated risk assessment tool created by the Laura and John Arnold Foundation.¹³ This assessment provides risk levels and recommendations for conditions. The court must make a determination within 48 hours.¹⁴

New Jersey’s reform has resulted in positive outcomes for the state. As of February 2019, New Jersey had a [94 percent pretrial release rate since the enactment of bail reform and a 20 percent reduction in their jail population](http://cipp.law.harvard.edu/assets/BailReform_WEB.pdf).¹⁵ In 2017 – the first year of the reform – 81.3 percent of cases in which the prosecution did not request detention had a release determination made within 24 hours, 99.5

⁷ Bernadette Rabuy and Daniel Kopf, “Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned,” Prison Policy Initiative, July 9, 2015. <https://www.prisonpolicy.org/reports/income.html>.

⁸ Rahman, 2019.

⁹ Ibid.

¹⁰ Colin Doyle, Chiraag Bains, and Brook Hopkins, “Bail Reform: A Guide for State and Local Policy Makers,”

Criminal Justice Policy Program at Harvard Law School, February 2019, 45.

http://cipp.law.harvard.edu/assets/BailReform_WEB.pdf

¹¹ Ibid, 45.

¹² Ibid, 45.

¹³ Ibid, 46.

¹⁴ Ibid, 46.

¹⁵ Ibid, 49.

percent had a release determination made within 48 hours.¹⁶

Most important to the success of criminal justice reform is the impact of new legislation on public safety. Earlier this year, the New Jersey Courts released their annual report on bail reform outcomes to the governor and New Jersey legislature. The report found that [the percentage of pre-release defendants charged with a new indictable crime remained “consistently” low in 2017 at only 13.7 percent.](#)¹⁷ Furthermore, appearance rates in New Jersey post-bail reform remained high with [an appearance rate of 89.4 percent.](#)¹⁸ While both data points did experience a slight drop between 2014 and 2017, the authors of the report state, [“concerns about a possible spike in crime and failures to appear did not materialize.”](#)¹⁹

Maryland

A 2017 Maryland court rule change to rein in excessive bail has caused an increase in defendants released on their own recognizance without an increase in failures to appear, recidivism, or overall crime.

In 2017, the Maryland Court of Appeals

approved a proposed court rule change designed to “promote the release of defendants on their own recognizance.”²⁰ The new rule states that if a judicial officer finds bail to be appropriate, they must conduct a review of the defendant’s finances to ensure the defendant can afford the bail amount.²¹ Building off of the 2017 reform, five of Maryland’s 24 counties have begun using validated risk assessment tools and eleven counties have created pretrial service agencies.²²

The 2017 rule change has led to a significant decrease in the use of money bail. [The number of individuals being released on their own recognizance at first court appearance has increased from 35.4 percent prior to the rule change to 41.5 percent.](#)²³ Additionally, [the number of people being held on cash bail, fell significantly from 40.2 percent to 20.8 percent.](#)²⁴ Maryland also saw [a slight decrease in failures to appear,](#) dropping from 10.1 percent prior to the rule change to 9.2 percent.²⁵

Finally, data from the Federal Bureau of Investigation’s Uniform Crime Report show that these rule changes [did not translate to a spike in violent crime.](#) Maryland’s [violent crime rate declined slightly between 2016 \(472.0 per 100,000\)](#)²⁶ and 2018 (468.7 per 100,000).²⁷

¹⁶ Ibid, 49.

¹⁷ Glenn A. Grant, “Report to the Governor and the Legislature,” New Jersey Courts, April 2, 2019, 5. <https://njcourts.gov/courts/assets/criminal/2018cjannual.pdf>

¹⁸ Ibid, 5.

¹⁹ Ibid, 5.

²⁰ MD Rules, Rule 4-216.1.

²¹ Doyle et al., 71.

²² Ibid, 71.

²³ “Impact of Changes to Pretrial Release Rules,” Maryland Judiciary, N.D.A., 7.

<https://mdcourts.gov/sites/default/files/import/media/newsitem/reference/pdfs/impactofbailreviewreport.pdf>

²⁴ Ibid, 7.

²⁵ Ibid, 8.

²⁶ “Crime in the United States: 2016,” Federal Bureau of Investigation, N.D.A., table 3. <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-3>

²⁷ “Crime in the United States: 2018,” Federal Bureau of Investigation, N.D.A., table 5. <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-5>

While violent crime has risen slightly between 2016 (710.3 per 100,000)²⁸ and 2018 (720.8 per 100,000)²⁹ in Baltimore – this appears to be part of an upward trend that predates bail reform as the violent crime rate for Baltimore was lower by over 100 points in 2014 (588.4 per 100,000).³⁰

Washington, D.C.

Washington, D.C.’s experience with pretrial reform dates back to the early 1960s. The District’s strong presumption of pretrial release routinely yields high release rates with very little risk of recidivism or failure to appear.

The District of Columbia has paved the way for bail reform since the early 1960s. The district utilizes a risk assessment tool, has an independent pretrial services agency, employs a strong presumption of pretrial release, and follows strict timeline requirements.³¹ [Dating back to 1975 – Washington had a high pretrial release rate of 70 percent.](#)³²

The district’s long history of pretrial reform has allowed Washington to enjoy positive pretrial outcomes without the burdens of a cash bail dependent pretrial system. [Between 2012 and 2016, between 88 and 90 percent of D.C. defendants released pretrial remained arrest free and made their court dates.](#)³³ Furthermore, [between 98 and 99 percent of defendants on](#)

²⁸ “Crime in the United States: 2016,” table 4. <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-4>

²⁹ “Crime in the United States: 2018” table 6. <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-6>

[pretrial release were not arrested for violent crimes.](#)³⁴

Conclusion

These outcomes from both the state and county levels show that New York was right to take the first steps toward eliminating reliance upon a cash bail system – a system which inevitably results in disparate justice for the poor.

Reforms of the last two decades show that a reliance on cash bail does not equate to safety and that states and counties can reduce or eliminate their reliance on a cash bail system without subjecting their constituents to undue risk or harm, and, in the process, they can keep families together, strengthen communities, and save taxpayer resources.

About NYUJ

New Yorkers United for Justice is a statewide coalition of diverse nonprofit organizations engaged in New York that is leading a movement bringing urgent criminal justice reform to the Empire State. NYUJ is a fiscal project of Dream Corps.

³⁰ “Crime in the United States: 2014,” Federal Bureau of Investigations, N.D.A., table 6. <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-6>

³¹ Doyle et al., 35.

³² Ibid, 35.

³³ Ibid, 38.

³⁴ Ibid, 38.