

# New York Passed Historic Reforms to its Bail, Discovery and Speedy Trial Laws.

*Here's the good and the bad.*



## Bail Reform

*The issue:* In New York, two out of three people in jail have not been convicted of a crime.

Instead, they are jailed awaiting trial because they cannot afford the money bail set on their cases. That amounts to 15,000 presumptively innocent people locked in New York jails on any given day, separated from their families and communities, placing their jobs, rent, childcare, and more at risk. These practices disproportionately impact black and brown communities — 88% of the people locked on Rikers Island, for example, are Black and Latinx — and poor New Yorkers.

*“These practices disproportionately impact black and brown communities.”*



In 2019, New York lawmakers advanced a long fought for package of laws to reform the state's bail, discovery, and speedy trial practices. Details on the bail reform, including our take on what we need to keep fighting for, are below.

The new law goes into effect January 1, 2020 and is not retroactive. **Here's what it does:**

### **Reduces the number of arrestable offenses by mandating that police issue a Desk Appearance Ticket.**

Currently, officers have broad discretion to decide who they are going to arrest for lower-level crimes and to whom they issue DATs. This is significant because the process of being arrested, detained in the precinct before transfer to central bookings for processing, and detained in the courthouse while awaiting arraignment can often add up to 24 hours of detention before even seeing a judge.

The new law mandates that police issue DATs instead of making an arrest for all offenses up to Class E felonies. However, it's important to note the broad exceptions. The new law's mandatory DATs do not apply if the person: is charged with any domestic violence or sex offense or a crime where the court might issue protective orders or revoke driver's licenses; has any outstanding warrants or has failed to appear in court in the past two years; is unable or unwilling to make their verifiable identify known; or the officer believes they may benefit from medical or mental health care.

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### **Mandates pretrial release without money bail for people charged with almost all misdemeanors and nonviolent felonies.**

Currently, money bail can be set on any misdemeanor or felony case. The new law requires that anyone charged with a qualifying offense\* be released without bail while they await their day in court and released with no conditions unless it is proven that conditions are necessary to ensure court appearance.

The conditions of release must be nonmonetary and the least restrictive to reasonably assure return to court. A person charged with a qualifying offense who is released to await trial in the community can be subject to bail or pretrial detention at a later point if he or she persistently and willfully fails to appear in court, violates an order of protection, is accused of witness tampering or intimidation, or is charged with another felony while awaiting trial for a felony.

*\*Qualifying offenses include all misdemeanors (except sex offenses and contempt of court charges related to an allegation of domestic violence), all non-violent felonies (except witness intimidation and tampering, sex offenses, and incest as well as some conspiracy, terrorism and contempt charges), robbery in the second degree, and burglary in the second degree.*

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### **Requires that judges issue additional, easier-to-pay forms of bail in cases where bail can still be set.**

Currently, judges often only set two forms of bail: cash bail — which requires a family to pay the full amount of money up front, and insurance bond — which requires families to work with for-profit bail bonds companies.

The new law requires that when courts issue bail, they always issue bail in three forms. It further requires that one of these three forms must be either an unsecured bond (which only requires the accused or their family to sign an agreement promising to pay the court if the accused fails to appear) or partially secured bond (which requires a cash deposit that cannot exceed 10% of the total bond and which is returned in total when the case resolves).

These two forms of bail are paid directly to the court, rather than to a private insurance company, further limiting for-profit entities in the pretrial system.

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**Prohibits for-profit entities from administering pretrial services or supervision and ensures that the accused will never shoulder these costs.**

The new law requires that pretrial services or supervision, including electronic monitoring, be administered by nonprofit or government agencies. This prohibits counties, municipalities, and the state from contracting with any private and for-profit entities, ensuring that New York is shrinking and not expanding the presence of private investment and profit in its criminal justice systems. Further, people accused of crimes will never be required to pay for these services, which will serve as an important check on the criminalization of poverty.

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**Stiffly regulates risk assessments to control for bias.**

When instruments or tools are used to inform decisions related to release or conditions of release, the new law requires these tools be free of any discrimination on the basis of a protected class, including race, and that the tools be validated, regularly revalidated, and made publicly available on request. This is important because risk tools, which are on the rise in criminal justice systems across the country, are increasingly coming under scrutiny for their role in perpetuating racial and other biases.

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**Requires court appearance reminders to support people in returning to court.**

While court reminders exist in parts of New York, the new law standardizes the practice by requiring that the court or pretrial services provider issue a text, call, email or mailed letter reminding people of their court dates. This has been proven to increase court appearance rates.

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**Requires the court to wait 48 hours and to provide notice to the defendant or defendant's counsel before issuing a bench warrant for failure to appear.**

Because bench warrants come with severe and lasting consequences, the new law extends a grace period and the opportunity to remedy missed court appearances before a warrant is issued.

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*“The new bail law will result in a dramatic expansion of pretrial liberty...”*

**Our take on what the new law accomplishes (and where it falls short):**

The new bail law will result in a dramatic expansion of pretrial liberty and significant reductions in pretrial incarceration across the state. It also includes critical checks on privatization, the criminalization of poverty, and biased risk-based decision-making.

However, the new law falls short of eliminating money bail and therefore upholds a system where wealth can determine pretrial liberty and impact case outcomes. Leaving much of the status quo in place for people charged with serious crimes is unacceptable because it's those very people who stand to benefit most significantly from a presumption of innocence.





People accused of violent felonies are the most likely to have a judge set high or unaffordable bail and the most vulnerable to coercive plea deals even as they remain unlikely to be found guilty of the crime for which they are charged. Of the 39,326 cases charged as violent felonies in New York State in 2016, 33% were dismissed entirely while only 22% ended with a felony conviction.

Additionally, we are troubled by the inadequate limitations placed on the use of electronic monitoring. We're still fighting for:

The full elimination of money bail

Stricter limitations on who can be electronically monitored pretrial

Reforms that further protect those still subject to the unjust money bail system as long as it remains in place including:

- Expanding the statutory authority for charitable bail funds to post bail for those people who can still be required to pay bail

- Additional due process protections, including a hearing within five days of arraignment, for people subject to pretrial detention.

***“For many New Yorkers, that day of trial does not come for months, years or ever...”***

### **Discovery and Speedy Trial Reform**

***The Issue:*** New York’s discovery law is among the four worst in the country and acts as a blindfold, preventing the accused from making informed decisions about their cases. Prosecutors are not even required to turn over basic police reports and witness statements until the day of trial, if at all.

For many New Yorkers, that day of trial does not come for months, years or ever because of the state's broken speedy trial law. People charged with even low-level offenses are required to come back to court over and over again, for months to years, often with no realistic hope of having their day in court.

In 2019, New York lawmakers advanced a long fought for package of pretrial laws to reform the bail, discovery and speedy trial practices.

Details on the speedy trial and discovery reforms, including our take on what we need to keep fighting for, are below. The new laws go into effect January 1, 2020 and are not retroactive. Here's what they do:

**Require, early, automatic and open-file discovery from prosecutors. Prosecutors must turn over discovery within fifteen days of arraignment.**

This 15 day discovery requirement can be extended by up to 30 additional days if materials are exceptionally extensive or if they are not in the DA's actual possession despite diligent, good faith efforts. In practice, this new discovery law means that people accused of crimes will be able to make better informed decisions about their cases with knowledge of the evidence, or lack thereof, that could be used against them.

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**Requires that prosecutors give the accused full discovery before withdrawing any plea offers.**

Similar to the reform above, this requirement ensures people accused of crimes have a fuller picture of the case against them in the window when it matters most.

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**Requires judges to more closely inspect prosecutors' statements of "readiness" for trial.**

The "speedy trial clock" — which determines whether or not a defendant's speedy trial rights are being met — can be stopped if a prosecutor states they are "ready for trial" but the defense is not. The new laws weaken prosecutors' ability to "game the system" and stop the speedy trial clock by cursorily stating "ready" for trial.

**“New York will move from having one of the weakest discovery statutes in the nation to having one of the strongest.”**

**Our take on what the new law accomplishes (and where it falls short):**

The power imbalance between prosecutors and people accused of crimes is heavily skewed in favor of the prosecutor. These laws will place important checks on prosecutorial power. New York will move from having one of the weakest discovery statutes in the nation to having one of the strongest. The speedy trial law will start to streamline the process of bringing a case to trial and further protect the rights of people detained pretrial to be released, or have their cases dismissed, if their speedy trial rights have been violated.

Together, the discovery and speedy trial reforms will give people the information they need to fight their cases, remove loopholes that allow prosecutors to coerce people into plea deals, and curb wrongful convictions.

We're still fighting for:

- A true speedy trial clock that would mandate dismissal and/or release for people held pretrial if they haven't be brought to trial after a certain number of days.

- A requirement that prosecutors provide discovery at the first appearance also known as arraignment.

- A requirement that prosecutors revive a rejected plea offer if they violate discovery requirements.