

# New York Bail Reform: Key Facts

The 2019 bail reform was the result of years of policy development driven by a diverse coalition of stakeholders, from law enforcement and victim advocates to the families of those who have lost loved ones to pretrial incarceration. It was grounded in evidence-based practices that have been proven to reduce unnecessary pretrial jailing and keep communities safe. The reactionary partial rollbacks to the reform enacted in 2020 — before the reform could even be evaluated — were fueled by politics, not facts.

Fortunately, even with the partial rollbacks, bail reform continues to protect thousands of New Yorkers from unjust and life-threatening pretrial jailing, all without jeopardizing public safety. By all objective measures, bail reform in New York has been a success. Lawmakers must prioritize defending the reform against further amendments that would increase the statewide jail population.

The misinformation driving the partial rollbacks is still being spread widely by those who have always opposed bail reform. The campaign of misinformation confuses New Yorkers and threatens to undermine the life-saving reforms that have advanced justice and increased safety inside and outside jails.

## BAIL REFORM EXPLAINED

- With notable exceptions, the current law requires courts to release most people charged with misdemeanors and nonviolent felonies without money bail so that they can await their court dates from home without missing school, losing their jobs or housing, and where they can continue to care for their families.
- The reforms expanded non-monetary release conditions and pretrial services to help ensure that people make all their mandatory court appearances.
- As before, people charged with violent felonies and myriad other “qualifying offenses,” including many misdemeanors and nonviolent felonies, remain bail eligible, leaving it up to a judge’s discretion whether or not to set bail and in what amount. Judges may also remand (detain without bail) in any bail-eligible felony case.
- Judges retain virtually unfettered discretion to set bail for people who are charged with a violent felony, persistently skip court dates, violate a protective order, are rearrested on a second felony, are charged twice (or more) with any alleged offense involving harm to a person or property, or are on parole or probation charged with felonies.
- New York’s bail law has never allowed for pretrial jailing based on predictions of future “dangerousness” - legislators rightly rejected it when they enacted a new bail law in 1971 and they did so again in 2019. This standard forces judges to rely on unproven factors or on criminal histories or other qualifiers that are weighted with systemic biases due to existing racial disparities in policing, housing, health care, and education. States that have added dangerousness often end up with more, not less, people jailed pretrial on lower-level charges.

Significant judicial discretion remains in the system after bail reform. So much so, that some judges have recently used that discretion to dramatically increase the number of cases they set bail on from the broad range of still bail-eligible cases. In New York City, this has resulted in a sharp increase in the number of people being sent to and held on Rikers Island, where conditions are deadly, amidst a pandemic that is still raging behind bars.

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Bail reform gives substance to the presumption of innocence that is the foundation of our criminal justice system and allows many thousands of New Yorkers who would have otherwise been unable to afford their freedom to fight their cases from home. In New York City, pretrial jailing for people facing the lower-level offenses impacted by bail reform is down almost 50% since September of 2019.

While the full impact of the 2019 reforms was blunted by 2020 rollbacks, the good news is that the bail reforms that are still in place are working exactly as designed: reducing the state jail population without compromising public safety. It is a win/win for all New Yorkers.

## HOW DID BAIL REFORM IMPACT THE JAIL POPULATION AND PUBLIC SAFETY?

- Pretrial jailing of people facing the lower-level offenses impacted by bail reform is down almost 50% in New York City (the jurisdiction with the most available data) since September of 2019.
- New York City's recent spike in shootings and murders is tragic and must be taken seriously. That means following the facts. All available data contradict the notion that bail reform is linked to this increase, much less a major driver of it.
- Fewer than [one percent of people on pretrial release](#) in New York City are rearrested for a violent felony in any given month, a rate that remained constant before and after bail reform.
- The rise in shootings is almost certainly driven by the massive societal disruptions resulting from the pandemic. The rise in homicides in [New York City](#) is matched or outpaced by increases seen [in cities across the nation](#), regardless of whether those cities or states have taken steps to reform their justice system.
- Furthermore, research has long shown that the overuse of jails can actually lead to more criminal activity and risks undermining the health of individuals, families, and entire neighborhoods. Those who go into jail with challenges — substance use, mental health concerns, joblessness, or unstable housing — tend to come out with those challenges worsened. Studies in [New York City](#) and [other jurisdictions](#) across the country consistently show that people who are sent to jail are more likely to be re-arrested in the future as compared to similarly situated people who were not.

## WHY WERE CHANGES TO NY'S BAIL SYSTEM NEEDED IN THE FIRST PLACE?

**In addition to bail and pretrial jailing being ineffective public safety tools that can drive up recidivism rates, they are also extremely expensive, racially biased, and dangerous for those that end up behind bars.**

- Money bail criminalizes poverty. It means that people who are rich can afford to await their trials at home and poor people cannot. While money bail was not entirely eradicated by New York's bail reforms, it was dramatically scaled back.
- New York's old pretrial system drove deep racial disparities. [Before bail reform passed](#), Black New Yorkers charged with a crime were twice as likely as white New Yorkers to spend at least one night in jail pretrial because they were unable to pay bail.
- Pretrial jailing is deadly. The current conditions on Rikers Island amount to a humanitarian catastrophe. The conditions have [already led to the deaths of 14 people in custody this year alone](#) and will no doubt lead to more deaths, serious injuries, sustained declines in health, and long-term trauma. These losses are in addition to the tragic deaths of Layleen Polanco, Kalief Browder, and many others over the years.