



STATEMENT TO GOVERNOR HOCHUL AND MEMBERS OF THE LEGISLATURE OPPOSING PROPOSED ROLLBACKS TO CRITICAL CRIMINAL JUSTICE REFORMS

The New York City Bar Association urges Governor Hochul and members of the New York State Legislature to oppose rollbacks to critical criminal justice reforms enacted in recent years. These reforms are being falsely vilified as the source of increases in crime nationwide that began during the COVID-19 pandemic. Our elected leaders should take seriously the public's concerns about crime and safety. However, blaming the wrong cause means we ignore the right solutions. Rolling back meaningful criminal justice reforms, particularly out of public view and during the last week of budget negotiations, is not the right solution.

We are living through a period of heated public discourse about the impact of criminal justice reform on community safety and stability. As lawyers committed to making our criminal legal system more just for all New Yorkers, we are disturbed by a lawlessness narrative that erroneously blames reform -- especially, bail reform -- for increases in crime rates that are being seen across the country in jurisdictions without similar bail laws. This narrative presents a false choice between community safety and criminal justice reform. But rhetoric is not fact, and the facts are clear: bail reform has been shown to reduce the number of people in jail without compromising community safety.¹

Opponents of criminal justice reform have attacked the existing bail reform legislation, incorrectly alleging that the law is increasing criminal behavior and reducing public safety. In fact, evidence suggests that the 2019 bail reform legislation has successfully reduced the overuse of confinement without compromising public safety.² This inaccurate criticism is dangerous on two fronts: it risks misdirecting resources that could be used to prevent violent crime to the wrong arenas, as well as undoing the enormous positive change that came with bail reform.

Recent data from the Mayor's Office of Criminal Justice underscores the point, showing that in June 2021 less than one percent of people awaiting trial in New York City were rearrested for violent felony offenses.³ Pretrial detention has harmful effects on individuals, their families, and communities, as even short periods of pretrial detention can cause the loss of one's housing, employment, and even custody of children. Detention itself also drives future involvement with the criminal justice system.⁴ Of the 11,000 people released from New York City jails between January and June of 2020—as a result of bail reform and in response to the threat of COVID-19

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

behind bars—less than one percent were involved in any gun violence during that period.⁵ Of that less than one percent, approximately half were involved as victims or bystanders to gun violence.⁶

The numerous substantive policy changes related to criminal justice reportedly being proposed are ill-advised and represent significant roll-backs of recent and sound policy changes which we have supported previously.⁷ It is not possible to intelligently evaluate these proposed policy changes on the budget timeline. Several of the proposals being discussed prove redundant and perpetuate misinformed claims that judges no longer hold discretion to set bail for gun crimes and repeat low-level offenses, such as shoplifting. For example, bail reform did not remove any gun crimes from bail eligibility. And under the 2020 bail rollback's "harm plus harm" provision codified in Criminal Procedure Law 530.40(4)(t), judges already may set bail on a person with an open desk appearance ticket.⁸ There is no need to add redundant language to the state's bail regime. A number of others are seemingly technical in nature, but as lawyers familiar with the day-to-day practices in criminal court, it is apparent to us that the implications of many of these changes could be sweeping and harmful.

We are also concerned about proposed modifications to the Raise the Age statute that would reverse an important and belated reform in New York, and change the central tenet of the law: that children should be treated like children in our justice system.⁹ As we argued in our initial support for the Raise the Age statute, community safety is not served by treating children as adults.¹⁰ There is a robust body of research demonstrating that prosecuting youth in the adult system -- even youth charged with violent offenses -- increases the likelihood of future violence.¹¹ These basic facts have not changed since Raise the Age was first adopted.

To reach their full potential, existing criminal justice reforms must be fully funded and supported by the State. The State left much of the implementation of the bail reform legislation up to each county, including the establishment of pretrial supervision programming, but counties did not receive financial support to ensure that such programming would succeed. Similarly, the Raise the Age statute has not been given the full breadth of resources it needs. This is especially salient given that incarcerating even one person for one year at Rikers Island costs New Yorker City taxpayers over \$556,000, while the average public school student expenditure as of 2020 is just \$28,000.¹² Instead of returning to an era of massive over-incarceration of people at Rikers Island for minor offenses, the Legislature should focus on funding desperately-needed investments in our communities, such as mental health treatment, job training, violence intervention programs, and pretrial services. Such programs have proven far more effective at preventing crime than incarceration. We urge evidence-based investment in preventive support, pretrial programming and research to ensure that these statutes' positive impacts can be maximized and assessed, and data disseminated transparently to all New Yorkers. The pandemic has only heightened the need for this investment, and we support reported efforts to increase those investments in the budget. Indeed, adequate investments in services are a necessary precondition for a number of the reforms contemplated.

We call on Governor Hochul and members of the Legislature to oppose rushed and ineffective rollbacks to criminal justice reform, and instead to use data, facts and transparency to rebut misinformation suggesting that such reforms have led to the release of dangerous people into the community and increased crime. We welcome the opportunity to have an open and transparent

debate in the normal course of the legislative session about how to address community safety concerns and ensure existing criminal justice reforms are being implemented in ways that are effective and accomplish their intended goals. We echo, however, many of our partners in criminal justice reform in the belief that our criminal justice policies should be rooted in the principle that the safest communities are the ones with the most resources -- committed to housing, education, and mental health treatment -- not the highest jail populations.

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¹ This fact was recognized by Governor Hochul and Lieutenant Governor Benjamin in a recent opinion piece, stating: “Blaming bail reform for the increase in violence that cities across America are facing isn’t fair and isn’t supported by the data. Doing so risks distracting us from what are likely far more significant factors: upheaval from the pandemic, the availability of illegal guns, increased gang activity, lower arrest rates and a backed-up court system, to name a few.” Governor Kathy Hochul, Lieutenant Governor Brian Benjamin, “Don’t blame bail reform; do improve it,” N.Y. Daily News, March 23, 2022, <https://www.nydailynews.com/opinion/ny-oped-bail-reform-hochul-benjamin-bail-reform-20220323-do5im3lfzrd2lfhfmlsbc6mpte-story.html>. See also Tiana Herring, “Releasing people pretrial doesn’t harm public safety,” Prison Policy Initiative, Nov. 17, 2020, <https://www.prisonpolicy.org/blog/2020/11/17/pretrial-releases/>; see also “Empire State of Incarceration,” Vera Institute of Justice, February 18, 2021, <https://www.vera.org/empire-state-of-incarceration-2021> (“the first few months of bail reform implementation showed that releasing more people pretrial made communities no less safe”); citing University of North Carolina study showing Philadelphia District Attorney’s decision to stop requesting bail for people charged with one of 25 misdemeanor and felony offenses decreased the number of people who spent at least one night in jail and “did not increase failures to appear for court or re-arrests of people out on bail”); “The Facts on Bail Reform and Crime in New York City,” Center for Court Innovation, Feb. 3, 2021, https://www.courtinnovation.org/sites/default/files/media/documents/2021-02/Handout_Bail_Reform_Crime_02032021.pdf (New York Post analysis of NYPD data revealed that, of 528 shootings through June 30, 2020, only one person released due to New York’s bail reform was charged with a shooting; and studies of New Jersey, Chicago and Philadelphia’s restricted use of bail and pretrial detention found the reforms had no adverse effect on recidivism or court attendance. “There are no rigorous evaluations of bail reforms in any jurisdiction suggesting that they compromised public safety”) (all websites last visited March 25, 2022).

² “New York’s Bail Reform Was a Necessary Step for Justice and Safety,” Vera Institute for Justice, Feb. 2022, <https://vera-advocacy-and-partnerships.s3.amazonaws.com/Feb+2022+Bail+Reform+Explainer.pdf>; Ames Grawert, Noah Kim, “The Facts on Bail Reform and Crime Rates in New York State,” Brennan Center for Justice, March 22, 2022, <https://www.brennancenter.org/our-work/research-reports/facts-bail-reform-and-crime-rates-new-york-state>.

³ See “How Many People with Open Criminal Cases Are Re-Arrested?” Mayor’s Office of Criminal Justice, Dec. 2021, at 22, <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/12/Pretrial-Docketed-Rearrest-Contextual-Overview-December-2021-Update.pdf> (“Of the about 45,000 people who were awaiting resolution of their case in the community in June 2021, 96% were not rearrested at all during the month, and over 99% were not rearrested on a VFO”).

⁴ See e.g., Diana D’Abruzzo, “The Harmful Ripples of Pretrial Detention,” Arnold Ventures, March 24, 2022, <https://www.arnoldventures.org/stories/the-harmful-ripples-of-pretrial-detention>; see also Leon Digard, and Elizabeth Swavola, “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention,” Vera Institute of Justice, April 2019, <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>.

⁵ Craig McCarthy, Carl Campanile and Aaron Feis, “NYPD’s own stats debunk claims of bail reform leading to spike in gun violence,” NY Post, July 8, 2020, <https://nypost.com/2020/07/08/nypds-own-stats-debunk-claims-about-bail-reform-link-to-shootings/> (“In fact, just 91 of the approximately 11,000 people sprung from Rikers Island under the initiative — or 0.8 percent — have been found to be anywhere near a shooting this year, the figures show”).

⁶ *Id.* (“And more than half of those 91 are not accused of any wrongdoing, with the department describing 25 as ‘victims’ and another 24 as ‘witnesses’ — on the grounds that the mere presence of criminal justice reform beneficiaries is leading to shootings”).

⁷ The City Bar supported efforts to reform bail and to raise the age of criminal responsibility, among other reforms, when they were enacted. See “New York Needs Bail Reform,” March 22, 2019, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-needs-bail-reform>; and “Report in Support of Raising the Age of Criminal Responsibility,” March 27, 2017, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/statement-on-raising-the-age-of-criminal-responsibility>. We urged elected officials to resist urges to change the 2019 bail reform legislation before it could be given a chance to work; see “Bail Reform Should be Given a Chance to Work: Letter to Electeds,” Feb. 11, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/bail-reform-should>.

[be-given-a-chance-to-work-letter-to-electeds](https://tinyurl.com/ybwp6z9s). For a full list of our work related to bail reform, *see* <https://tinyurl.com/ybwp6z9s>.

⁸ Governed by Criminal Procedure Law 150.

⁹ At the time of its enactment, New York and North Carolina were the only remaining states that prosecuted all youth as adults once they turned 16. *See* “Report in Support of Raising the Age of Criminal Responsibility,” *supra* note 7 at 1. North Carolina has since also amended its law. *See* “Raise the Age Resources,” North Carolina Judicial Branch, <https://www.nccourts.gov/media/raise-the-age-resources>.

¹⁰ “Report in Support of Raising the Age of Criminal Responsibility,” *supra* note 7.

¹¹ *Id.* at 2.

¹² “Comptroller Stringer: Cost of Incarceration per Person in New York City Skyrockets to All-Time High,” New York City Comptroller, Dec. 6, 2021, <https://comptroller.nyc.gov/newsroom/comptroller-stringer-cost-of-incarceration-per-person-in-new-york-city-skyrockets-to-all-time-high-2/>; Reema Amin, “NYC spends a record \$28K per student, but the state is footing a smaller portion of that bill,” Jan. 27, 2020, <https://ny.chalkbeat.org/2020/1/27/21121084/nyc-spends-a-record-28k-per-student-but-the-state-is-footing-a-smaller-portion-of-that-bill>.