



**STATEMENT TO GOVERNOR HOCHUL AND MEMBERS OF THE NYS LEGISLATURE
OPPOSING PROPOSED ROLLBACKS TO BAIL REFORM
IN THE FY 2024 NEW YORK STATE BUDGET**

The New York City Bar Association urges the Governor and the New York State Legislature to keep in place the important reforms to our criminal justice system made in January 2020 (the 2020 reforms), including bail reforms in particular, and withdraw or reject proposed public protection amendments in the 2024 State Budget (Public Protection and General Government Article VII bill (A.3005-A/S.4005-A, Part B)). The proposed amendments will result in bail set more often and in higher amounts, will increase unnecessary pretrial detention in understaffed, dangerous facilities across the state, and will likely decrease public safety, not promote it. Rather than acceding to inaccurate reporting, selective reliance on arrest statistics or inflammatory rhetoric, we respectfully urge our elected representatives to promote policies based on data, fairness, and common sense.

The Governor’s proposed public protection amendments undermine the core principle guiding the 2020 reforms: that the presumption of pretrial detention is a major driver of wrongful imprisonment and false convictions. As we noted last year, “blaming the wrong cause means we ignore the right solutions.”¹ Rolling back these vital criminal justice reforms, and doing so out of public view during budget negotiations, is not the right solution.

Data from jurisdictions across New York State shows that new crime is not propelled by people awaiting trial: since the reforms, there has been almost no change in the number of arrests of people awaiting trial in the community.² Moreover, the state failed to track key public safety statistics before these

¹ “Statement Opposing Proposed Rollbacks to Critical Criminal Justice Reforms in the Budget,” New York City Bar Association, March 25, 2022, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/rollbacks-to-criminal-justice-reforms-in-the-budget>. (All websites last accessed on March 28, 2023).

² NYC Office of the Comptroller, “NYC Bail Trends Since 2019,” March 22, 2022, available at: <https://comptroller.nyc.gov/reports/nyc-bail-trends-since-2019/> (“Data released by the New York City Criminal Justice Agency and the Mayor’s Office of Criminal Justice show that the share of released people awaiting trial who are rearrested remained roughly the same before and after implementation of bail reforms. In January 2019, 95% of the roughly 57,000 people awaiting trial were not rearrested that month. In January 2020, 96% of the roughly 45,000 people with a pending case were not rearrested. In December 2021, 96% were not rearrested. In each of those months, 99% of people, regardless of bail or other pretrial conditions, were not rearrested on a violent felony charge.”). (Also note: John Jay’s Data Collaborative shows bail reform actually reduced recidivism for some groups over the past two years. See <https://datacollaborativeforjustice.org/work/bail-reform/does-new-yorks-bail-reform-law-impact-recidivism-a-quasi-experimental-test-in-new-york-city/>.)

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 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.

reforms were passed, making it difficult to further debate any risk to public safety. At the same time, the setting of money bail has not been eliminated by the 2020 reforms. As the reforms took effect just prior to the COVID-19 emergency, it is true that bail reform led to a significant decline in the statewide jail population.³ But beginning in 2022, pretrial jail populations have nearly returned to pre-reform levels, and judges continue to set money bail in amounts far beyond what most New Yorkers can afford to pay.

Bail reform was and remains essential to help ensure fairness in New York’s criminal justice system. Prior to the 2020 reforms, unchecked discretion in setting money bail led to the jail confinement of tens of thousands of New Yorkers – disproportionately Black and brown people and people from marginalized low-income communities – with only the payment of excessively high cash bail as a recourse. Statistics show that this mass detention did not make New Yorkers any safer. According to data collected by the New York City Mayor's Office for Criminal Justice, in 2018, only five percent of individuals released pretrial were arrested on violent felony charges thereafter.⁴ In addition, analysis of statewide data collected by the Albany Times Union in 2021 showed that, since the 2020 reforms took effect, only two percent of bail-eligible individuals were rearrested on violent felony charges after their release pretrial.⁵ And while critics of the 2020 reforms routinely cite statistics concerning shootings, less than one-half of one percent of those cases involved someone with a pending case who was rearrested for a violent felony with a firearm charge.⁶

In New York, bail is a means for a court to ensure an individual’s appearance, not a statement about an individual’s alleged dangerousness. Yet it has been chronically misused for exactly this purpose, resulting in massive numbers of people being unnecessarily detained pretrial. The 2020 reforms provided an elegant solution to this problem: a mandate that judges set the “least restrictive” method of ensuring an individual’s return to court.⁷ The presumption of release requires judges to make on-the-record individualized determinations, but it still allows them to consider the seriousness of the charges, the individual’s history, whether the person allegedly possessed a firearm, or whether they previously evaded prosecution. As statistics cited above show, this solution helped reduce unnecessary pretrial detention while maintaining public safety. And judges continue to have discretion in setting money bail for those charged with a host of “qualifying offenses,” which are not limited to violent crimes. In fact, members of the New York City Bar Association who practice in the state’s criminal courts routinely see bail set on individuals charged with stealing necessities like clothing, food, or hygiene products, due to existing provisions allowing judges to set bail on any rearrest when the crime involves “harm to an identifiable person or property.”

³ *Id.*

⁴ Data tables available at <https://criminaljustice.cityofnewyork.us/system-data/>.

⁵ “GOP questions state's bail data; updated data show 2% of bail offenses led to rearrests on violent felonies,” Albany Times Union, Jan. 12, 2022, available at <https://www.timesunion.com/state/article/GOP-calls-into-question-state-s-actions-on-bail-16768206.php>

⁶ 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>.

⁷ “New York Needs Bail Reform,” New York City Bar Association, March 22, 2019, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-needs-bail-reform>.

Governor Hochul's budget proposal removes the requirement that a judge adhere to this “least restrictive” standard for “qualifying offenses” or other charges where setting money bail is currently permissible, and would regress our state’s policy to an era of using bail as punishment pretrial. It would upend the theory behind setting bail in the first place, namely, to guarantee an individual will appear in court as their case proceeds. This is unnecessary: individuals charged with a “qualifying offense” already face a much higher risk of pretrial detention by money bail; the “least restrictive” standard is necessary in order to keep the price of an individual’s cash bail to rational and justified amounts. If any further reform is needed, it is statutory guidance on permissible ranges for cash bail.

There is no evidence that the “least restrictive alternative” standard has hamstrung judges or forced them to allow pretrial release where setting bail would instead be appropriate. The Governor has recently relied on an uptick in so-called Index Crimes reported to police to support her proposed bail reform rollbacks.⁸ But those statistics reveal that the number of homicides and shootings has actually decreased in the same time period. More importantly, there is no evidence that judicial missteps related to bail reform are the cause of any increase in crime. The data recently referenced by the Governor’s office showing subsequent arrests for people released with pending violent felony charges comes to a mere one percent increase across the state between 2019 and 2022.⁹ According to an analysis of New York State Division of Criminal Justice Services data conducted by Envision Freedom Fund, judges still use their discretion to set burdensome bail. While statewide pretrial jail populations hit their lowest rates ever at 11,089 in July 2020,¹⁰ this number increased to 16,122 in February 2023.¹¹ Even as the median bail imposed statewide sat at \$5,000 during this period, many judges ignored reforms directing them to take an individual’s financial hardship into account. For example, in the Bronx, 20 percent of cash bail amounts set were higher than an entire year’s income for the median household in the county (\$41,432). Across the state, Black and Latinx people awaiting trial were five times more likely to be incarcerated pretrial than white people awaiting trial.¹²

Instead of making hasty changes to our bail laws, we should be seeking to enact further reforms to keep individuals away from unnecessary and, in many cases, dangerous pretrial detention. In New York City, the Office of the Comptroller noted in its Department of Correction 2023 Fiscal Year Report that city jails are in a state of crisis.¹³ At least 36 people have died in New York City Department of Correction’s

⁸ See <https://www.governor.ny.gov/news/governor-hochul-details-statewide-crime-data-highlights-need-public-safety-investments-and>.

⁹ Available at https://www.governor.ny.gov/sites/default/files/2023-03/DCJS_Preliminary_Crime_Arrests_Dispositions_and_Shooting_Data_032223.pdf.

¹⁰ Jaeok Kim and Christopher Gernan, Vera Institute for Justice, “New York State Jail Population Brief, January 2019 – June 2021” (Jan. 2023), <https://www.vera.org/downloads/publications/new-york-state-jail-population-brief-2019-2021.pdf>.

¹¹ *Id.*

¹² “Pretrial Detention in New York, April 2022,” available at <https://envisionfreedom.org/wp-content/uploads/2022/04/Envision-Freedom-Pretrial-Detention-in-New-York-April-2022.pdf>.

¹³ See <https://comptroller.nyc.gov/reports/agency-watch-list/fy-2023/departments-of-correction-fy-2023/>.

(DOC) custody since the start of 2021.¹⁴ The DOC jail population – around 5,700 individuals are detained at facilities under the agency’s control daily – has returned to pre-pandemic levels, even as the City’s plan to close Rikers Island requires a cap on capacity of 3,300 individuals.¹⁵

We applaud other positive proposals from the Governor’s office, such as increased funding for District Attorneys’ discovery reform implementation, alternative to incarceration programs, and pretrial service agencies, though additional state funding for defense agencies and 18-b counsel is also urgently needed.¹⁶ But the last thing New York’s criminal justice laws need are amendments that would result in bail set more often, and at higher amounts, virtually guaranteeing a massive rise in unnecessary pretrial detention in understaffed, dangerous facilities across the state.

For these reasons, we respectfully urge you to reject the proposed bail law changes set forth in the Governor’s proposed budget. Thank you for your consideration.

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¹⁴ Nineteen people died in 2022 alone. See <https://www.vera.org/news/nyc-jail-deaths-2022>. Sixteen died in 2021. See <https://www.nytimes.com/2022/01/28/nyregion/rikers-island-prisoner-deaths.html#:~:text=At%20least%2016%20people%20died,mainland%20by%20the%20East%20River>. And one person has died this year. See <https://www.amny.com/new-york/rikers-island-first-in-custody-death-2023/>.

¹⁵ Available at <https://comptroller.nyc.gov/reports/agency-watch-list/fy-2023/departments-of-correction-fy-2023/>

¹⁶ “2023 NYS Legislative Agenda: Increase the rates paid to 18-b attorneys,” New York City Bar Association, Feb. 13, 2023, <https://www.nycbar.org/media-listing/media/detail/increase-pay-for-18-b-attorneys-access-to-justice>.