



POLICY MEMO ON REGRESSIVE SENATE BAIL PROPOSAL

On January 1, 2020, a new bail reform law took effect in New York State that has already successfully spared thousands - and likely tens of thousands - of New Yorkers from pretrial jailing. Yet after less than six weeks, the New York State Senate Majority is proposing legislation that would dismantle our hard-won reform. This proposal would be a devastating step backward from even the old bail law, creating a system of mass preemptive detention that fundamentally restructures our criminal legal system in favor of more incarceration, not less. Last year, New York State won sweeping reforms to advance pretrial justice and they must continue to be implemented in full. **We adamantly oppose the changes proposed by the Senate Majority and strongly urge that they be rejected.**

Analysis of Regressive Senate Majority Proposal

The principal aims of bail reform have always been to reverse mass incarceration, advance racial justice and protect New Yorkers' constitutional right to the presumption of innocence.¹ While legislative language has not been disclosed, the proposal put forth by the Senate on February 11th, 2020 through an article in *Newsday*² fails to achieve these fundamental principles, and would instead create a pretrial system that is more regressive than the one New Yorkers suffered under for decades. This proposal would:

1. **Violate the presumption of innocence on a mass scale:** Under the Senate's proposal, hundreds of thousands of additional people could be subject to pretrial jailing each year. For the first time in New York State's history, people accused of misdemeanors could be remanded - subject to indefinite pretrial incarceration without the possibility of release - an expansion of pretrial jailing that surpasses the gross injustices of the prior system. The Senate's proposal would also allow for the remand of people accused of *any* felony, including non-violent felonies. In 2018, there were over 100,000 non-violent felony arrests in New York State.³ Nearly 80% were dismissed, acquitted, or resulted in a misdemeanor.⁴ In fact, almost 40 percent of violent felony cases were dismissed outright.⁵ **This proposal would place everyone arrested for these charges, no matter their innocence, at high risk of pretrial incarceration.**

¹ "[EXCLUSIVE: Groups tell Cuomo it will take more than ending cash bail to stop mass pretrial jailing](#)" (New York Daily News)

² [Amid uproar, Senate Democrats to offer compromise on bail law](#) (Newsday)

³ Under the bail reform law enacted on January 1, people accused of non-violent felonies - with a few exceptions - are not eligible for bail or pretrial jailing at arraignment.

⁴ <https://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/Allcounties.pdf>

⁵ <https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nys.pdf>

2. **Replace money bail with mass indefinite detention:** Although the Senate Majority trumpets its proposal for eliminating money bail, which is inherently unjust, it then replaces money bail with a far more unjust system - mass indefinite detention - completely undermining the presumption of innocence.
3. **Increase pretrial jailing:** By vastly expanding the number of people subject to remand, the Senate's proposal would reverse the progress of the current law in reducing the state's jail population. Because of the pretrial reforms passed last year, each day 6,000 fewer people are in jail pretrial than in 2019.⁶ While money bail is a gross injustice, an expansive system of indefinite detention will subject an even larger number of unconvicted people and their families to the devastation of pretrial incarceration.
 - a. The Senate likened their proposal to the deeply flawed federal pretrial system. Roughly 75% of people charged in federal court are detained pretrial, compared with 10% under New York's current bail laws. (Even before reform, the rate in New York City was 23%.)⁷ And racial disparities in the federal system abound. Black people are 33% more likely and Latinx people are almost twice as likely to be detained as white people.⁸
 - b. In New Jersey, prosecutors filed detention motions in almost 50% of cases and the courts granted the motion half of the time.⁹ If New York followed suit, that would be tens of thousands of people detained pretrial. Racial disparities persist in New Jersey as their jail population remains 54% Black while only 13.7% of their residents are Black.
4. **Exacerbate racial disparities:** The rollbacks proposed by the Senate Majority will exacerbate the pretrial system's disparate impact on Black, brown and poor New Yorkers. By allowing judges to remand such a staggering number of people, the Senate's proposal would magnify the impact of both systemic and individual biases. Allowing judges to speculate about a person's "dangerousness" would further entrench racial disparities given the long history in the United States of assigning "dangerousness" or "criminality" to communities of color.
5. **Allow for mass community surveillance:** While the details of their electronic monitoring provisions are not spelled out, the Senate's proposal also seems to allow for an expanded use of electronic monitoring. Electronic monitoring is not an alternative to incarceration but an alternative form of it, and evidence indicates electronic monitors are disproportionately used on people of color.¹⁰ Expanding electronic monitoring provisions, or removing safeguards, allows for New York's most vulnerable communities to be turned into open air jails.

⁶ <https://www.vera.org/downloads/publications/bail-reforms-impact-on-jail-incarceration.pdf>

⁷ https://www.nycja.org/assets/CJA_RWM_March_2019.pdf

⁸ https://www.uscourts.gov/sites/default/files/82_2_2_0.pdf

⁹ <https://njcourts.gov/courts/assets/criminal/cjrreport2019.pdf?c=500>

¹⁰ <https://mediajustice.org/wp-content/uploads/2019/03/electronic-monitoring-guidelines-final.pdf>

6. **Fail to meaningfully address antisemitism or other acts of bias:** As many rabbis and Jewish organizations¹¹ - who support the new bail reform law - have said: “We need approaches to hate violence and bias incidents that *prevent* violence through education and community-building, *interrupt* violence, through community-based upstander/bystander trainings and rapid response at the local level, and *repair* through restorative justice, counseling and peer-support.” Expanding mass incarceration or jailing people with mental illness does nothing to combat hate in our society, and can, in fact, worsen the mental health and other needs that contributed to the act of harm. This is why Elyse Maister, one of the Jewish women allegedly hit by Tiffany Harris, supports the bail reform law passed last year and argues that Harris needs treatment, not pretrial jailing.¹²

Conclusion

Any proposal that would perpetuate a failed system of mass incarceration is unacceptable and represents a betrayal to those who have had their livelihoods and families destroyed as a result of these discriminatory outcomes. The Senate’s proposal would do just that. It would be a step backwards for New York State, creating a pretrial system that is worse than the one we spent years fighting to reform.

¹¹ [“Elected officials, rabbis say hate crimes against Jewish community, bail reform not related”](#) (News 12)

¹² [“Jewish woman who claims Tiffany Harris assaulted her says attacker needs help, not bail”](#) (New York Daily News)